



Taykwa Tagamou Nation

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MEMO

To: Spencer Roth, Impact Assessment Agency of Canada

From: Chief Bruce Archibald, Deputy Chief Derek Archibald, Stan Sutherland, Roger Archibald, Dwight Sutherland, Taykwa Tagamou Nation

Stephanie Kearns, Barrister & Solicitor

Scott Mackay, Carrie Breneman, Mike Van Egmond, Chris Wagner, and Jessica Batson, Shared Value Solutions

Date: March 11, 2022

Subject: Review of the Upper Beaver Gold Mine Project Federal Impact Assessment Draft Tailored Impact Statement Guidelines, Draft Indigenous Engagement and Partnership Plan, Draft Permitting Plan, Draft Cooperation Plan and Input on Value Components

Taykwa Tagamou Nation (TTN) and our technical and legal advisors have reviewed the draft Tailored Impact Statement Guidelines (TISG; the Guidelines), Indigenous Engagement and Partnership Plan (IEPP), Cooperation Plan, and Permitting Plan for Agnico Eagle's (Agnico; the Proponent) Upper Beaver Gold Mine Project (Upper Beaver Gold; the Project) Federal Impact Assessment (IA). We have provided comments on these documents for the Impact Assessment Agency of Canada (IAAC; the Agency) to respond to in **Appendix A**.

The IAAC has correctly identified TTN as an Indigenous Nation requiring consultation on the Project. TTN's Traditional Territory includes the Project area and surrounding watersheds. Our Nation has deep historical and family ties to the Project area, as well as Indigenous knowledge and land use in the Project area which we are currently documenting. TTN appreciates the opportunity to provide input on the valued components of importance to our members in order to ensure that our Aboriginal rights and Treaty rights and interests are protected, but seeks to make clear that without a completed Project-specific IKLUS or Project-specific socio-economic study that **the valued components provided are PRELIMINARY ONLY**. The valued components present in the area surrounding the Project site include, but are not limited to, gathering sites, fishing sites, hunting sites and areas, trapping areas, spring water sites, cultural sites, and areas with important habitat for fish and wildlife species of cultural importance.



The Upper Beaver Gold Mine Project as currently proposed may have impacts on our rights, claims, interests, health, archaeological and 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, archaeological and 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 our own Project-specific traditional land-use, occupancy, and Indigenous knowledge information from our knowledge-holders for application and consideration in the impact assessment;
- Facilitates and supports TTN gathering our own community context and baseline health profile for our community including health outcomes, social determinants of health, economic conditions and social conditions, for consideration in the impact assessment. Information will disaggregate by age and gender;
- Facilitates and supports TTN gathering our own Project-specific information on our treaty and Aboriginal rights that may be affected by the Project, including historic, regional, and community context, the geographic extent of our Traditional Territory, and the purpose and importance of our rights to our members (e.g. the practices, customs, beliefs, worldviews and livelihoods);
- Facilitates and supports the involvement of TTN in the planning for follow-up monitoring for the Project should the Project go ahead;
- Facilitates and supports TTN's full involvement in the regulatory process for the Project;
- Facilitates and supports TTN informing and engaging with our members 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 for the Project at key points;
- Involves a process agreement between TTN and the Proponent to formalize how the Proponent will discharge any procedural aspects of the duty to consult and accommodate that it has been delegated by the Crown; and
- Any other measures required to ensure a meaningful consultation and accommodation process that creates a pathway to TTN being able to give our free, prior, and informed consent for the Project.

Please refer to the Taykwa Tagamou Nation Engagement Protocol: A Path to Community Consent for more details on our requirements and expectations for the consultation and accommodation process for this Project (the Protocol has been previously shared with the IAAC and the Proponent).

As the lead and coordinator for the federal Crown's consultation and accommodation process and the authority responsible for ensuring impacted Indigenous Nations are meaningfully informed, engaged, consulted and accommodated, the IAAC must address TTN's needs as outlined above in the



consultation and accommodation process for the Project, including informing and directing the Proponent to address these needs. **TTN wants a community-specific consultation plan for this Project that addresses our needs and we look forward to working with the IAAC and the Proponent to formalize our consultation plan.**



APPENDIX A: COMMENT TRACKING TABLES

Table 1: Comments and recommendations from TTN's review of the TISG for the Upper Beaver Gold Project IA.

COMMENT #	COMMENT	RECOMMENDATION
1.	<p>Section 4.4 of the TISG describes the criteria and methodology for how the effects of alternatives means of carrying out the designated project will be assessed. Given that the proponent has considered the dewatering of York Lake, the potential diversion of the Misema River, and various means/locations of ore processing, the methodology and criteria of the Alternatives Assessment will be a critical aspect of the Impact Assessment. While IAAC requires that the proponent provide “the methodology and criteria that are used to compare the alternative means, to determine the preferred means of carrying out the Project, and to justify the exclusions of other solutions” (p. 17), TTN notes that the impacts on the rights of Indigenous Peoples are not explicitly included in the list of criteria and impact trade-offs that are to be considered.</p>	<p>As part of the list of criteria for comparing alternative means on p. 17 that currently includes a description of environmental criteria, potential effects to species at risk and potential impacts on GHG emissions, the following addition should be made: “<i>Potential effects to the rights of Indigenous peoples associated with each alternative means of carrying out the Project must be assessed through consultation with potentially impacted Indigenous Nations and compared in the Impact Statement and the views of Indigenous peoples on each alternative must be included.</i>”</p>
2.	<p>In Section 6, which describes the requirements of the proponent’s engagement with Indigenous communities, the TISG state that the proponent must “cooperate with Indigenous communities to identify preferred mitigation measures to avoid, minimize, offset or otherwise accommodate for potential adverse impacts on Indigenous peoples or their rights, as well as to optimize the Project’s benefits for their communities” (p. 21). However, later in Section 6, the TISG states that the Crown will consult with Indigenous communities “to understand the concerns and potential impacts of the Project on their exercise of potential or established Aboriginal and Treaty rights and, where appropriate, make accommodations” (p. 22). In past discussions with IAAC regarding the Federal Impact Assessment process, including a call on January 21, 2021, IAAC has stated that the identification of appropriate terms of</p>	<p>a) IAAC should revise the TISG and/or the IEPP to clarify how the proponent’s obligation to identify appropriate benefit and accommodation measures with TTN and other affected Indigenous Nations, relates to the Crown’s responsibility to ensure the Duty to Consult and Accommodate has been fulfilled. b) To ensure accommodation measures identified by the proponent are acceptable to Indigenous Nations affected by the project, the section describing the responsibilities of the proponent to identify accommodation measures should be revised to read: “<i>Where a project may impact the rights, claims and/or interests of Indigenous peoples and those impacts cannot be avoided or mitigated, the proponent and the given rights-bearing Indigenous Nation must confirm that</i></p>



COMMENT #	COMMENT	RECOMMENDATION
	<p>accommodation and benefits are the responsibility of the proponent. TTN notes that the TISG are currently unclear as to how the responsibility of the Crown and proponent to identify terms of accommodation and benefits with Indigenous communities relate to one another.</p>	<p><i>mutually agreed upon accommodation and benefit measures have been identified to address the impacts prior to the Agency issuing approval for the Project.”</i></p>
3.	<p>Section 6 of the TISG sets out the requirements for the proponent’s collaboration with Indigenous peoples in the completion of its Impact Statement. TTN notes that the TISG states that “...the proponent must... .. collect available Indigenous knowledge and expertise and integrate it into its Impact Statement” (p. 21). ” TTN notes that while some Indigenous nations that will be involved in the development of the Impact Statement may already have formally documented Indigenous 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, or enable the collection of project-specific Indigenous knowledge from impacted nations. As such, the Guidelines should state that “<i>the Proponent must provide affected Indigenous Nations with the time and schedule flexibility, resources and opportunity to document Indigenous knowledge and land use information and to enable them 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 6 of the TISG sets out the requirements for the proponent’s collaboration with Indigenous peoples in the completion of its Impact Statement. These requirements include supporting and funding the participation of Indigenous peoples, collecting and integrating Indigenous Knowledge in to all aspects of the Impact Statement, and collaboratively identifying mitigation and accommodation measures. Section 6.1 notes that “community-specific engagement protocols and procedures around Indigenous Knowledge in assessment processes should</p>	<p>Given the importance of meaningful consultation during the development of scoping elements and all subsequent phases of the Impact Assessment, as well as the unique protocols and procedures of each Nation around integrating Indigenous Knowledge in assessment processes, IAAC should include the following addition to Section 6: “<i>In order to ensure the involvement of each affected Indigenous Nation in the development of the Impact Statement is appropriately</i></p>



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	<p>be understood, respected, and implemented” (p. 23). TTN appreciates that to ensure that each Nation’s protocols and procedures are understood, respected and implemented, the TISG requires that the proponent “work with each Indigenous community named in section 4 of the <i>Indigenous Engagement and Partnership Plan</i> to establish a mutually agreed approach to their participation” (p. 22). However, TTN notes that there is currently no requirement for the timing of when this mutually agreed upon approach is established with each Indigenous in relation to the development of the Impact Statement.</p>	<p><i>facilitated in all stages of the impact assessment, and that community-specific engagement protocols and procedures will be adequately implemented, the Proponent is to make all reasonable efforts to develop mutually agreeable approaches to consultation with each Nation prior to commencing any work related to the development of the Impact Statement.”</i></p>
5.	<p>Section 6.2 of the TISG outlines the requirements for the Proponent’s record of engagement. TTN notes that there is not currently any requirement included for the Proponent to obtain verification from Indigenous Nations to confirm that information included in the Impact Statement and record of engagement characterizing their perspectives, concerns, values and knowledge is accurate and sufficient.</p>	<p>IAAC should make the following addition to the list of requirements for the record of engagement in the Impact Statement: “<i>verification from each affected Indigenous Nation that information included in the record of engagement and the Impact Statement obtained during engagement activities about their perspectives, concerns, values and knowledge is accurate and sufficient.</i>”</p>
6.	<p>In Section 7.2 the TISG describes the process for the identification of valued components to be used in the Impact Statement. TTN notes that the valued components are foundational to the integrity of the Impact Assessment process and therefore consultation with Indigenous peoples in the identification of valued components is essential. This requirement for Indigenous consultation in the identification of valued components is not currently stated strongly enough, reading: “The proponent may also identify additional VCs beyond those included in the Guidelines in consultation with Indigenous communities and other participants” (p. 30).</p>	<p>This statement should be revised to read: “<i>The proponent must make all reasonable efforts to co-develop the list of valued components used in the Impact Statement with affected Indigenous Nations participating in the assessment.</i>”</p>
7.	<p>Section 7.3 of the TISG sets out the process for identifying spatial and temporal boundaries used for the Impact Assessment. TTN notes that while the TISG require the</p>	<p>Requirements related to Indigenous engagement in this section should be revised to read: “<i>The proponent is required to co-develop the spatial and temporal</i></p>



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proponent to “engage with Indigenous communities. . . when defining spatial and temporal boundaries for VCs that are identified by, or related directly to, Indigenous peoples” (p. 32), the Agency has not provided any requirements for the engagement of Indigenous communities in the development of spatial and temporal boundaries used in the assessment of other valued components listed in Section 7.2. It is essential that spatial and temporal study boundaries for all aspects of the Impact Assessment are identified collaboratively with TTN and other Indigenous Nations to ensure that boundaries used in the assessment are acceptable to Indigenous Nations, consistent with Indigenous Knowledge and Indigenous perspectives, and that all potential impacts are adequately assessed.

boundaries used to assess the potential adverse effects on each valued component with affected Indigenous Nations participating in the assessment .”

8. Section 7.5 of the TISG outlines the requirements for the identification of mitigation and enhancement measures in the Impact Statement. TTN notes that while the previous section related to the assessment of effects (Section 7.4) includes a requirement to “describe where and how Indigenous and community knowledge and input were considered and incorporated,” this section includes no such requirement.

In the list of requirements for mitigation measures identified in the Impact Statement, the following additions should be made:

1. *“describe where and how Indigenous and community knowledge were considered and incorporated in the development of mitigation measures”*
2. *“indicate whether or not Indigenous communities have verified that mitigation measures address potential impacts and/or agree with the proponent’s assessment of residual effects after mitigation measures are applied”*

9. Section 7.6 of the TISG 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. While this section of the Guidelines require that the proponent “describes how the section of boundaries and other past, existing or future projects or activities for cumulative effects assessment were informed by consultations with the public and Indigenous peoples...” (p.

IAAC must revise Section 7.6 to state: *“The Proponent is required to co-develop the spatial and temporal boundaries used in cumulative effects assessment with Indigenous communities, and collaborate with Indigenous communities in identifying current or reasonably foreseeable future projects for the cumulative effects assessment.”*



COMMENT #	COMMENT	RECOMMENDATION
	<p>39), this section does not state strongly enough the requirement for the involvement of Indigenous Nations in the determining the boundaries and sources used for the cumulative effects assessment. TTN has observed the effects of past and existing projects and activities on our Traditional Territory and hold crucial knowledge that is essential for completing a comprehensive cumulative effects assessment.</p>	
10.	<p>Section 9.1.1, 9.2.1 and 9.3.1 of the TISG outlines requirements for the characterization of baseline conditions of health, social and economic conditions respectively. TTN notes that as this is one of the first federal Impact Assessments including a Health and Socio-Economic Impact Assessment of this nature in the region, this information may not be readily available at the time of the Proponent's work on the Impact Statement. Any lack of this information should not be interpreted by the Proponent as a license to not fulfill the detailed requirements of the TISG.</p>	<p>Section 9.1.1, 9.2.1 and 9.3.1 should be revised to include the statement: <i>"Where information accurately characterizing these baseline conditions is not readily available, the Proponent should work collaboratively with Indigenous communities to complete necessary studies and/or provide funding to support a Nation's completion of its own independent studies."</i></p>
11.	<p>Generally, within the TISG it is noted that the Proponent is to consider studies and information prepared by an Indigenous community in the Impact Statement. In Section 10 particularly, TTN notes that it is not clearly identified who will be funding necessary studies done by Indigenous Nations nor is there any clear direction that these studies will be led by the Indigenous Nations.</p>	<p>The TISG must be revised to include clear details on who (i.e. IAAC, the Proponent) will provide funding for the necessary studies and that these studies will be Indigenous-led to ensure that any study done related to our Indigenous knowledge, rights, interests, or community members are legitimate, fulsome and accurate.</p>
12.	<p>Section 10.3.2 of the TISG outlines the requirements for determining impacts on the rights of Indigenous peoples. TTN notes that the TISG states that "The proponent is therefore encouraged to share studies with Indigenous communities prior to assessing the impact of the Project on their rights." (p. 114). The use of non-committal language in this sentence is concerning to TTN as it means that the Proponent may not provide all relevant studies with us before assessing the impact of the Project on our rights and interests.</p>	<p>The TISG must be revised to clearly state that <i>"The proponent must share all available studies and information with affected Indigenous communities prior to assessing the impact of the Project on their rights."</i></p>



Table 2: Comments and recommendations from TTN’s review of the IEPP for the Upper Beaver Gold Project IA.

COMMENT #	COMMENT	RECOMMENDATION
1.	<p>In Section 1 of the IEPP, the Agency indicates that “to complement this IEPP, interested Indigenous communities may develop community-specific consultation plans, in collaboration with the Agency, to describe the community’s specific objectives for consultation, or any unique features of the impact assessment and consultation process pertaining to that community” (p. 3).</p> <p>A community-specific consultation plan between TTN and the Agency is absolutely necessary for this Project’s Impact Assessment.</p>	<p>The Agency should provide direction on the next steps for co-development of a community-specific consultation plan with TTN and make all reasonable efforts to ensure this plan is collaboratively developed with us before authorizing the proponent to proceed with the Impact Statement phase.</p>
2.	<p>Section 3 of the TISG sets out that, as an objective of Indigenous engagement and partnership, the Agency will “ensure engagement is consistent with the Government of Canada’s commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples...the Declaration also emphasizes the need to work together in partnership and respect, as articulated through the principle of free, prior and informed consent” (p. 4). The IEPP goes on to indicate that “this principle reflects working together in good faith on decisions that impact Indigenous peoples, with the intention to achieve consensus” (p. 4).</p> <p>It is TTN’s position that the implication of the Declaration as it relates to the Impact Assessment process requires TTN to grant its consent for the Project before it proceeds, and the Agency to understand and honor each Nation’s own procedure for providing this consent.</p>	<p>This statement in the IEPP should be revised to read: “<i>The Declaration requires working together in good faith on decisions about projects that impact Indigenous peoples, and requires obtaining the consent of Indigenous Nations that will experience the impacts of projects receiving Crown approval. The Agency will seek to understand and honor each Nation’s own procedure for providing this consent, which may be formalized by a community-specific consultation plan.</i>”</p>
3.	<p>In Section 6 of the TISG, the Agency indicates that the “<i>Indigenous Engagement and Partnership Plan</i> identifies Indigenous communities that the Crown will consult with to understand the concerns and potential impacts of the Project on their exercise of potential or established Aboriginal or Treaty</p>	<p>The final point in the list of the IAAC’s objectives of Indigenous engagement and partnership should be revised to read: “Conduct meaningful consultation with affected Indigenous communities on measures to avoid, mitigate or minimize potential adverse impacts</p>



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	<p>rights and, where appropriate, <u>make accommodations</u>” (p. 22). However, Section 3 of the IEPP, which sets out the IAAC’s objectives of Indigenous engagement and partnership, makes no mention of the Crown identifying mutually agreed upon accommodation measures as an outcome of consultation.</p>	<p>of the Project on Aboriginal or Treaty rights, <i>and where impacts cannot be avoided or mitigated, to identify mutually agreed upon accommodation measures</i>” (p. 5)</p>



Table 3: Comments and recommendations from TTN’s review of the Cooperation Plan for the Upper Beaver Gold Project IA.

COMMENT #	COMMENT	RECOMMENDATION
1.	<p>Section 8 of the Cooperation Plan indicates that “the Agency will lead Crown Consultation on behalf of the Government of Canada for this assessment” (p. 2). However, this section does not clarify the responsibilities of the Ontario provincial government or provincial agencies involved in the cooperative assessment process related to consultation. It is unclear if the Agency’s leadership of Crown Consultation is intended to simultaneously fulfill the Ontario government’s consultation responsibilities or if Ontario’s responsibilities will be fulfilled by other means.</p>	<p>This section should be revised to provide more clarity as to how the Ontario provincial government’s consultation responsibilities relate to the Agency’s leadership of Crown Consultation.</p>



Table 4: Comments and recommendations from TTN’s review of the Permitting Plan for the Upper Beaver Gold Project IA.

COMMENT #	COMMENT	RECOMMENDATION
1.	The Permitting Plan provides details of the federal permits, licenses and authorizations that could be required for the Project should the Project proceed. TTN notes that the Permitting Plan does not provide any details of the provincial permits, licenses and authorizations that could be required.	IAAC must update the Permitting Plan to include federal and provincial permits, licenses and authorizations that could be required for the Project should the Project proceed.

