



***Delivered by Email***

**Impact Assessment Agency of Canada**

Email: NorthernRoad-RouteDuNord@iaac-aeic.gc.ca

To Whom it May Concern,

**RE: Review and Comment on the Draft Tailored Impact Statement Guidelines and Draft Indigenous Engagement Partnership Plan**

---

I am writing on behalf of the Chief, Council, and Nation members of the Weenusk First Nation ("Weenusk"). We, as a Community, are signatories to Treaty No. 9 and hold rights throughout this treaty area. We have the responsibility to protect and uphold these rights.

It is our understanding that the main objective of the Tailored Impact Statement Guidelines ("TISG") is to provide the proponent(s) (Marten Falls First Nation and Webequie First Nation) with direction and requirements for the preparation of an Impact Statement and are developed during the Planning Phase. Further, it is our understanding that the main objective of the Indigenous Engagement and Partnership Plan ("IEPP") is to outline the opportunities and methods of Crown engagement and consultation with Weenusk First Nation and other Indigenous groups throughout the assessment process.

This review focused on any gaps or deficiencies which relate to specific factors for consideration in the Impact Statement connected to Section 35 rights for the TISG and gaps or deficiencies of note related to consultation/engagement for the IEPP. Please see below for an overview of our comments for the TISG and IEPP and a subsequent detailed review table for the TISG.

### **Overarching Comments on the TISG**

Overall, the TISG is comprehensive and generally includes consideration of the rights of Indigenous Peoples. If adhered to, the resultant Impact Statement could contextualize, assess, and address impacts to Weenusk First Nation's Section 35 rights if collaboratively undertaken.

Some key positive indications from the TISG include:

1. Specific references to Indigenous rights throughout the TISG including reference to the United Nations Declaration on the Rights of Indigenous Peoples and specific reference to Free, Prior and Informed Consent.
2. Specific requirements for the analysis of potential impacts to Section 35 rights as well as effects under federal jurisdiction (e.g., current use of land and resources for traditional purposes). This includes describing the context, impacts, and mitigation.
3. A requirement of ongoing collaboration following the submission of the Impact Statement through Impact Assessment, Decision and Post-Approval Phases.
4. Selection of Valued Components ("VCs") must include consideration of Indigenous proposed VCs including those related to Indigenous rights.
5. Cumulative effects must include VCs of particular concern to Indigenous groups.



Weenusk First Nation may require a community-specific consultation plan which can outline our unique consultation requirements, processes, and protocols. This community-specific consultation plan can also be used to articulate actions in the case of unforeseen circumstances (e.g., pandemic, community emergency) and how items like seasonal consideration can be outlined and adjusted for. Further engagement with Weenusk First Nation is required, following internal deliberation, to identify whether this is a requirement.

### *Section 3. Objective of Indigenous Engagement and Partnership*

This section outlines the Impact Assessment Agency of Canada's objectives.

The first listed objective notes that the Impact Assessment Agency of Canada will "Conduct meaningful Crown consultation on the potential positive and adverse effects (direct indirect, cumulative, residual, and incidental) of the Project and adverse impacts of the Project on the exercise of Aboriginal and/or Treaty rights of the Indigenous Peoples of Canada recognized and affirmed in section 35 of the Constitution Act, 1982 (Aboriginal or Treaty rights);" [emphasis added]

Reference to "the exercise" of rights can be construed as limiting language. This is because not all rights are land based, and, not all rights are easily characterized solely through the expression of their exercise. The current *Impact Assessment Act*, 2019 has more expansive language within Section 22(1)(b) which requires the impact assessment of a designated project to take into account the impact the project may have on the rights of Indigenous peoples recognized and affirmed by Section 35 of the *Constitution Act, 1982* [emphasis added]. Further, within the Practitioner's Guide to Impact Assessments there is guidance for completing this including contextualizing and assessing rights themselves rather than just the exercise of those right. As this Act and Guidance directs Impact Statement conduct, they should be reflected within the language of the IEPP and the phrasing "the exercise" should be removed from the IAAC objective as well as other instances throughout the IEPP.

Also within this section, there is a listing of objectives identified by Indigenous communities during the planning phase. As per our previous comments on the TISG which reference capacity funding for tasks not contemplated by provincial funding, we acknowledge that this is also noted as a value/objective. As this is an ongoing objective, this must be emphasized for future discussions with Weenusk First Nation.

We hope that the information described above and in the below review table can facilitate discussion with the IAAC and Proponent. It is the expectation that through these discussions a comprehensive Impact Statement can be completed that fully integrates Weenusk First Nation priorities for involvement.

Sincerely,

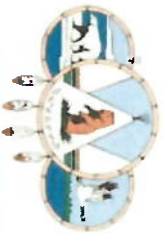
<Original signed by>

Clinton Patrick  
Northern Road Link Community Coordinator



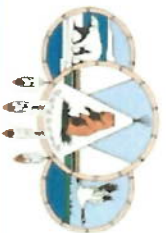
#	Section	Details	Comment
4.	Pages 14-15 6.0 Description of engagement with Indigenous communities Page 25	"The degree of engagement with each Indigenous community will vary and in general, will be proportionate to the evidence provided by Indigenous communities, regarding potential pathways of impact from the Project on Aboriginal or Treaty rights."	Indigenous peoples for traditional or cultural activities.  Reliance on evidence related to the pathways of impact in order for the level of engagement to be defined may result in the proponents prematurely reducing the level of engagement prior to the necessary evidence being collected and provided by Weenusk First Nation. Therefore, it is recommended that this passage be amended as follows:  "The degree of engagement with each Indigenous community will vary and is flexible. In some instances, where data is available, the degree of engagement can be proportionate to the evidence provided by Indigenous communities regarding potential pathways of impact from the Project on Aboriginal or Treaty rights."
5.	6.0 Description of engagement with Indigenous communities Page 26	"...in accordance with any existing community protocols and/or guidance provided by the Agency, collect available Indigenous Knowledge and expertise and integrate it into its Impact Statement, just as it integrates scientific knowledge;"	The phrasing ('collect') in this excerpt relies on the prevalent research paradigm of extracting Indigenous Knowledge which is contrary to Weenusk First Nation protocols; Indigenous Knowledge is embedded in Weenusk First Nation systems.  In order to appropriately use Indigenous Knowledge, Weenusk First Nation must be fully involved in the data collection processes; there must be an understanding that intangible aspects of the environment are important and valuable for the assessment even when not readily quantifiable via western science standards and a meaningful relationship must be established and maintained. <sup>1</sup>

<sup>1</sup> McGregor, Deborah. 2021. Indigenous Knowledge Systems in Environmental Governance in Canada. KULA: Knowledge Creation, Dissemination, and Preservation Studies 5(1). <https://doi.org/10.18357/kula.148>

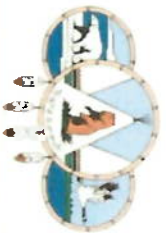


#	Section	Details	Comment
9.	7.6 Mitigation and enhancement measures Page 45	<p>environmental, health, social or economic components that would not be impacted by the Project as determined by the Agency through engagements with federal authorities, Indigenous communities, the public and interested parties.”</p> <p>“The proponent is to work with Indigenous communities to develop mitigation measures and align project goals...”</p>	<p>is deemed to not be impacted by the project for confirmation that there are no unanticipated impacts to Weenusk Rights through its exclusion.</p>
10.	7.6 Mitigation and enhancement measures Page 46	<p>“...document specific suggestions raised by each Indigenous community for avoiding, mitigating, or otherwise accommodating the Project’s environmental, health, social and economic effects, including potential effects and impacts on the exercise of rights of Indigenous peoples and:</p> <ul style="list-style-type: none"> <li>• for those mitigation measures intended to address effects of changes to the environmental, health, social and economic conditions of Indigenous peoples or impacts on the exercise of rights of Indigenous peoples, provide a description of the consultation with Indigenous communities regarding the residual effects; and</li> <li>• describe whether and how these measures will be incorporated in the Project design.”</li> </ul>	<p>Mitigation must be collaboratively developed with Weenusk First Nation to ensure effective management of potential impacts to Weenusk First Nation rights.</p> <p>Updated language includes:</p> <p>“document <b>collaboratively developed measures</b> for avoiding, mitigating, or otherwise accommodating the Project’s environmental, health, social and economic effects, including potential effects and impacts on the exercise of rights of Indigenous peoples...”</p>





#	Section	Details	Comment
	Page 52	<ul style="list-style-type: none"> <li>• magnitude;</li> <li>• geographic extent;</li> <li>• timing;</li> <li>• duration;</li> <li>• frequency;</li> <li>• reversibility; and</li> <li>• the environmental, health, social and economic context within which potential effects may occur.”</li> </ul>	<p>particularly for valued components of importance to Weenusk First Nation. This will ensure Weenusk's Indigenous knowledge for the limits of the environment will be adequately considered when evaluating residual effects.</p>
15.	7.8 Extent to which effects are significant Page 53	<p>“... scope, defined spatially as the proportion of the valued component's occurrence or population within the project, local and regional study areas that can reasonably be expected to be affected by the predicted effect within 10 years. Characterize the scope of each predicted adverse effect on each valued component as follows:....”</p>	<p>The current values listed to characterize the scope of each predicted adverse effect is biophysically focused (e.g., population references) and does not easily adapt to values of importance to Weenusk First Nation.</p> <p>Additional engagement is required for use of 'Scope' and potential adjustments to this criteria to better reflect Weenusk First Nation Indigenous knowledge for valued components of importance.</p>
16.	7.8 Extent to which effects are significant Page 53	<p>“...severity, defined as, within the scope, the level of damage to the valued component from the effect that can reasonably be expected; typically measured as the degree of destruction or degradation within the scope or the degree of reduction of the population within the scope. Characterize the severity of each predicted adverse effect on each valued component as follows....”</p>	<p>The current values listed to characterize the severity of each predicted adverse effect is biophysically focused (e.g., population references) and does not easily adapt to values of importance to Weenusk First Nation.</p> <p>Additional engagement is required for use of 'Severity' and potential adjustments to this criteria to better reflect Weenusk First Nation Indigenous knowledge for valued components of importance.</p>
17.	7.8 Extent to which effects are significant Page 54	<p>“There are tools that can assist with these predictions and analyses, including multi-criteria analysis, risk</p>	<p>Any multi-criteria analysis, risk assessment and/or modelling completed to understand the effects on Indigenous communities must be collaboratively completed.</p>

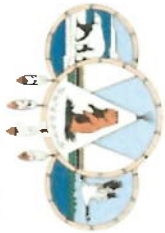


#	Section	Details	Comment
	Pages 67-68		<p>Quality if an important indicator for assessment of rights and interests and can allow for evaluation of changes in key vegetation species in the project area over time.</p>
22.	8.6 Vegetation 8.6.2 Effects to vegetation Page 68-69	<p>"The Impact statement must describe..."</p>	<p>This list should be expanded to include:</p> <ul style="list-style-type: none"> <li>Any changes to soil quality (compaction, morphology, etc.) from all stages of the project that could impact the growth of vegetation</li> </ul> <p>There is an existing comment in this list that refers to "... project effects on areas of soil or ground instability". This is insufficient to represent the potential changes to soil that may impact vegetation growth. Please update this listing to include the above noted specific language.</p>
23.	8.6 Vegetation 8.6.3 Mitigation and enhancement measures Page 69	<p>"...seed mixes to use, the spreading rates and the location of the spreading. Native and indigenous species adapted to the local conditions should be used when the purpose of revegetation is to naturalize or regenerate the area..."</p>	<p>Native and Indigenous species that are adapted to local conditions should be used whenever possible to ensure all revegetation naturalizes and regenerates Project areas.</p> <p>Suggested text:</p> <p>"... seed mixes to use, the spreading rates and the location of the spreading. Native and indigenous species adapted to the local conditions should be used <b>when the purpose of revegetation is</b> to naturalize or regenerate the area."</p>
24.	8.7 Groundwater and surface water 8.7.1 Baseline conditions Page 71	<p>"... explain how baseline data was gathered, and modelling developed, at a scale and resolution that allows for the application of results about groundwater and surface water to the assessment of interrelated valued components, notably for fish, birds and other wildlife, their habitat and their health, as well as human health."</p>	<p>Weennusk First Nation's rights may have interrelated valued components which require baseline data related to groundwater and surface water for consideration. For example, harvesting rights such as the right to fish, water travel, and stewardship of the environment.</p> <p>Suggested text:</p> <p>"... explain how baseline data was gathered, and modelling developed, at a scale and resolution that allows for the application of results about groundwater and surface water</p>





#	Section	Details	Comment
29.	8.9 Birds, migratory birds and their habitats 8.9.1 Baseline conditions Pages 80-88	"The Impact Statement must..." [with relation to baseline conditions to birds, migratory birds and their habitats]	This list should be expanded to include: <ul style="list-style-type: none"> <li>The health of birds, migratory birds, and avian species of importance to Indigenous Peoples.</li> </ul> Weenusk First Nation has concerns related to the health of birds and migratory birds in the Weenusk traditional territory. <p>Migratory birds are vulnerable to negative effects along their migratory routes and can suffer poor health; meaning they may become undesirable for harvest once they arrive in Weenusk First Nation territory. The health of birds, migratory birds and avian species of importance to Indigenous Peoples must be described for baseline conditions.</p>
30.	8.10 Terrestrial wildlife and their habitat 8.10.1 Baseline conditions Pages 91-92	"Identify wildlife species, other than avian species, of ecological or Indigenous importance... that are likely to be directly or indirectly affected, and describe each species:..."	This sub-list should be expanded to include: <ul style="list-style-type: none"> <li>Wildlife health and conditions</li> </ul> See comment 27.
31.	9.2.2 Effects to navigation Page 114	"The Impact Statement must..." [with regards to navigation]	This list should be expanded to include: <ul style="list-style-type: none"> <li>A description of any effects to travel or access to important Indigenous sites including heritage or cultural sites, locations for harvesting, fishing, trapping, etc.</li> </ul>
32.	9.2.3 Effects to employment and overall economy Page 114	"The Impact Statement must..."	This list should be expanded to include: <ul style="list-style-type: none"> <li>Detailed descriptions on how the proponent intends to include and engage local Indigenous Peoples in employment during each stage of the project</li> </ul>
33.	10 Indigenous peoples Page 115	"The Impact Statement must provide information on how the Project may affect Indigenous peoples, as	There is a Duty to Consult Indigenous communities on how the potential decision related to this Project may adversely impact their rights. The language within this section must be strengthened to reflect this Duty.



#	Section	Details	Comment
38.	15.2 Follow-up program monitoring Pages 153-154		Weenusk First Nation requires inclusion in the planning and execution of follow-up program monitoring.  Weenusk First Nation has interest in the project area and participating in follow-up monitoring aligns Weenusk First Nation governance practices.