GICHI OZHIBI'IGE OGAAMIC
ADMINISTRATIVE OFFICE

May 10, 2026

Mr. Terence Hubbard
President, Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa, ON K1A 0H3

Via Electronic Submission

Dear Mr. Hubbard,

I am writing to you to express concerns with the Impact Assessment Agency of Canada's ("**IAAC**") draft Tailored Impact Statement Guidelines ("**Guidelines**")[1] and the draft Indigenous Engagement Participation Plan ("**IEPP**").[2]

IAAC posted both documents on its Registry on April 10, 2026, and set a comment period deadline for the Guidelines on Sunday, May 10, 2026 (Mother's Day). No deadline has been set for the IEPP.

Comments on Guidelines/IEPP

I. Introduction: Background and Context

1. The Nuclear Waste Management Organization ("**NWMO**") wants to build and operate a facility, and related transportation works and undertakings, to manage all of Canada's existing high-level used nuclear fuel waste for the duration of its toxicity, estimated to be 1 million years (the "**Project**"). The proposed site, and transportation works/routes, for the Project are within the pristine Territory of the Nation in Treaty #3 ("**Treaty #3 Territory**"). Within the 55,000 square miles of Treaty #3 Territory, the twenty-eight (28) Treaty #3 First Nations and the Anishinaabe Nation in Treaty #3 (the "**Nation**") work together to protect, preserve and enhance inherent and Treaty #3 rights, and implement the Nation's laws to protect the environment (i.e. *Manito Aki Inaakonigewin* or "**MAI**").

2. The Nation must, and will continue to, have a role in the impact assessment for the Project. IAAC's Guidelines and IEPP must be updated to reflect, and be harmonized with MAI,[3] and the Nibi

ANISHINAABE NATION
in Treaty Three

[1] IAAC (April 10, 2026), "draft Integrated Tailored Impact Statement Guidelines: Deep Geological Repository (DGR) For Canada's Used Nuclear Fuel Project" < https://iaac-aeic.gc.ca/050/documents/p88774/166000E.pdf>.
[2] IAAC (April 10, 2026), "draft Indigenous Engagement and Partnership Plan: Deep Geological Repository (DGR) For Canada's Used Nuclear Fuel Project" < https://iaac-aeic.gc.ca/050/documents/p88774/166012E.pdf>.
[3] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 3-4, and 16-18.

Declaration.[4] The Guidelines and IEPP must also be updated to reflect the Nation's comments on NWMO's Initial Project Description ("**IPD**").[5] The Nation is not convinced that **the IPD[6], Guidelines and IEPP will ensure that sufficient information or studies will be produced that are necessary to conduct an impact assessment for the Project**, nor a clear vision for assessing impacts to the Nation in the process outlined by the IEPP. As such, the Nation insists that the IPD/Project Description, Guidelines and IEPP ("**Scoping Requirements**") not be finalized without the meaningful involvement of Treaty #3 First Nations and the Nation.

3. On February 16, 2026, under Section 14 of the *Impact Assessment Act* ("**IAA**"),[7] IAAC outlined its summary of issues for whether impact assessment was required and what would be assessed in an impact assessment. On March 12, 2026, IAAC released NWMO's Response to the Agency's Summary of Issues. Contrary to Section 15 of the IAA, this 767-page response ignored the Nation, its jurisdiction and authority within Treaty #3 Territory, and the significant concerns set out in the Nation's February 4, 2026, comments on NWMO's IPD.

4. On March 18, 2026, IAAC determined that the Project required impact assessment. Pursuant to Sections 43 and 44 of the IAA, the Minister is required to refer this assessment to a review panel and work with the President of the Canadian Nuclear Safety Commission ("**CNSC**") to establish terms of reference for the panel and appoint its members. No IAAC document on the public registry announces this referral. The Nation repeats its February 4th request that, as a "jurisdiction," it have a role in the panel's terms of reference and appointments.

5. It is undeniable that all of this nuclear fuel waste was, is, and will be produced outside of Treaty #3 Territory. This Project would be the first of its kind in Canada. It is also undeniable that this entire initiative – particularly its toxicity timeline and future burden on Treaty #3 Territory – is unique for Canada and the two lead federal authorities including IAAC and CNSC. IAAC and the CNSC have not been responsible for reviewing a comparable project of this magnitude before. To date, neither the IAAC nor the CNSC have shown any recognition of the extraordinary nature of the burden this Projects imposes on the Nation and Treaty #3 Territory for the next 1 million years.

6. If IAAC cannot even identify "who" must be involved in the review of this unique Project correctly, it can certainly not be trusted to carry out an impact assessment of this magnitude in Treaty #3 Territory without IAA/MAI Harmonization. For this Project, the Treaty #3 Chiefs mandated the Nation, as represented by Grand Council Treaty #3 ("**GCT3**"), to ensure that MAI is in full force and effect. GCT3 has clearly communicated the Treaty #3 Chiefs' mandate to IAAC/CNSC/NWMO and has walked IAAC/CNSC/NWMO through the well-established MAI framework numerous times for the better part of a decade. For greater certainty, at a Special Chiefs Meeting recently held in February 2026, in Thunder Bay, Ontario, the Treaty #3 Chiefs directed GCT3 to continue this work.[8]

7. The Nation is incredulous that these documents and this timeline were Canada's best effort to introduce regulatory action under its principles of reconciliation, its constitutional duties for

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[4] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 11-12.

[5] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836>; GCT3 (4 February 2026), "Appendix to the GCT3 Comment on NWMO Initial Project Description" <Appendix to GCT3 Comments on NWMO Inital Project Description.pdf; GCT3 (4 February 2026) "Schedules 1-4 to GCT3 Comments on NWMO Initial Project Description <Schedules 1-4 to GCT3 Comments on NWMO Inital Project Description.pdf>.

[6] Note: On February 4, 2026, the Nation wrote IAAC to provide its 229-page response to the IPD. These comments included extensive consideration of IAAC's duty to cooperate, coordinate and collaborate with the Nation as a "jurisdiction" within Treaty #3 Territory.

[7] *Impact Assessment Act*, SC 2019, c 28, s 1.

[8] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 15-16 and 29.

consultation and accommodation, and the Articles of the UN Declaration relevant to hazardous waste. The Nation participated in extensive discussions with IAAC and others for several years beginning in 2019. The Nation thus expected that the first regulatory action for this Project would have met the Honour of the Crown by involving the Nation directly as part of the leadership of regulatory oversight over this Project, not as the recipient of a major document for a cursory 30-day review.

8. Further, the Scoping Requirements for future information and study requirements ("**ISRs**") in NWMO's impact statement fail to (1) meet reconciliation commitments, (2) comply with Canadian law including the IAA and the *United Nations Declaration on the Rights of Indigenous Peoples Act,* S.C. 2021, c. 14 ("**DRIPA**")[9] and (3) recognize and respect the traditional governance, jurisdiction, and decision-making of the Nation.

9. In light of these significant issues on a unique Project of this magnitude, the Nation cannot emphasize enough that IAAC needs to immediately resume and build off of the existing work with the Nation, as well as Treaty #3 First Nations, to properly identify, and thereafter add, Anishinaabe ISRs ("**Treaty #3 ISRs**") and Anishinaabe valued components ("**Treaty #3 VCs**"). It is critical that consensus is reached between the Crown and Treaty #3 Chiefs on the ISRs, valued components ("**VCs**") and Scoping Requirements for the Project before moving onto the next step in the Planning Phase and the MAI framework. A written process is <u>not</u> sufficient for a Project of this magnitude. Furthermore, as the UN Declaration explicitly demands free, prior and informed consent ("**FPIC**") for matters relating to nuclear fuel waste,[10] it is important to ensure that NWMO provides the Crown and Treaty #3 decision-makers with all required and sufficient, comprehensive, and the best information and studies. The process for developing ISRs, Treaty #3 ISRs and Treaty #3 VCs must be meaningful.

10. It is undeniable that the ISRs, Treaty #3 ISRs and Treaty #3 VCs contribute and support evidence-based decision-making by the Nation and Treaty #3 First Nations. Treaty #3 ISRs and Treaty #3 VCs are critical for ensuring that Anishinaabe people in Treaty #3 have a voice and meaningful opportunity to participate in the review of the Project. A failure to develop appropriate ISRs and reach consensus on the Scoping Requirements, including Treaty #3 ISRs and Treaty #3 VCs, could be consequential to providing Anishinaabe people in Treaty #3 with a fair, effective, and culturally-appropriate impact assessment. GCT3 remains open and willing to resume working together with IAAC and CNSC on planning and impact assessment matters for the Project, including collaborating on ISRs and a plan that can facilitate the Crown's honourable discharge of its duty to consult and accommodate the Nation.

11. On behalf of the Crown, IAAC must ensure that the Scoping Requirements (incl. the Guidelines and IEPP) can fulfill Canada's commitments regarding the inherent and Treaty #3 rights of Anishinaabe peoples. IAAC must ensure that the Scoping Requirements (incl. the Guidelines and IEPP) comply with DRIPA. The Nation is not convinced that the current draft Scoping Requirements (incl. Guidelines and IEPP) meet these objectives.

12. Based on everything that the Nation has generously shared with IAAC over the years and the years of work that was performed collaboratively by IAAC/CNSC and the Nation[11], the failure of the Crown

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[9] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

[10] *United Nations Declaration on the Rights of Indigenous Peoples,* GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) at article 29(2).

[11] Not exclusive to the NWMO matter. For example, I understand that IAAC e-mailed GCT3 asking if they could spotlight a "success story" internal to IAAC to highlight the "impactful work Grand Council Treaty #3 has completed to date through the Indigenous Capacity Support Program (ICSP)" including "Helping to Re-shape Impact Assessment Through Anishinaabe Law: Grand Council Treaty #3's Leadership in Environmental Stewardship".

to propose any regulatory partnership with the Nation under the IEPP, the unjustified brief timelines, and the weakness of the Scoping Requirements (incl. the Guidelines and IEPP) demonstrates dishonourable conduct contrary to the objectives of reconciliation, disrespect and a blatant disregard for our historic Treaty #3 and our Nation-to-Nation relationship.

II. Comments on IAAC's draft Guidelines and IEPP

The Nation must, and will continue to, have a role in impact assessment

13. The current legal benchmark of Canada's recognition and reconciliation of rights is that the Crown will recognize, affirm and implement rights, and shift away from colonial systems of administration including the *Indian Act*. The repeal of CEAA 2012 and replacement with IAA was meant to establish a framework premised on the recognition and reconciliation of rights. Unlike CEAA 2012, the IAA codified "planning" to ensure that fundamental mistakes are avoided at the onset of an impact assessment by, *inter alia*, maximizing the participation of Indigenous governing bodies early. Although the IAA only describes what the planning phase entails at a high-level, IAAC must get the "who" is involved in the review correct before moving into a discussion of "what" will be reviewed (i.e. Scoping Requirements). Failing to do so by **denying the existence of the Nation exposes the Project to an enormous amount of regulatory uncertainty and risk**.[12] Denying the existence of the Nation contradicts one of the fundamental purposes of IAA reform and repudiates Canada's commitment to reconciliation.

14. Pursuant to the IAA, an "Indigenous governing body" is purposively defined broadly to inclusively mean "a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*".[13] As noted by IAAC's Circle of Experts in July 2024, "**[d]etermining who is 'authorized to act on behalf of' rights holders should be read pursuant to Indigenous legal processes and standards, consistent with the UN Declaration**."[14] Articles 3, 4, 5, 18, 33, and 34, *inter alia*, of the UN Declaration set out legal rights and standards relating to the question of "who" is to be consulted and accommodated by the Crown. IAAC is clearly not following the UN Declaration on this question. Additionally, Canada's *Principles respecting the Government of Canada's relationship with Indigenous Peoples* advise in Principle #1 that "all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government". The IAA unequivocally captures Indigenous governing bodies that are exercising jurisdiction and authority within, and outside of, the *Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government (1995)* framework. In other words, it is not a prerequisite of the IAA to have an existing self-government agreement or land claim agreement with federal and provincial/territorial Crown to be an "Indigenous governing body".

15. For the purposes of the IAA, read together with DRIPA, the Nation clearly meets the definition of "Indigenous governing body". The Nation is the traditional government of the Anishinaabe Nation in Treaty #3 that is authorized, from time to time and by direction of Treaty #3 Chiefs through its well-established Four Direction Governance Model ("**4DGM**"), to act on behalf of the signatories to the historic Treaty #3 / Treaty #3 First Nations. The Nation has exercised, and will continue exercising

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[12] IAAC is working contrary to its organization's goals of improving timelines, collaboration with Indigenous governing bodies, predictability, and efficiency.
[13] *Impact Assessment Act*, SC 2019, c 28, s 1, s. 2.
[14] Indigenous Advisory Committee (July 2024) "Indigenous Co-Administration Agreements Discussion Paper," PDF p 27 <https://ehq-production-canada.s3.ca-central-1.amazonaws.com/45dca22b18d224e2dfe33afa34f5ac1131ed1194/original/1721932800/e136fc8a1c373e828e7a11cea4370d2a_Indigenous_Co-Administration_Discussion_Paper_EN.pdf>.

as and when appropriate, the power to make[15], implement and enforce Anishinaabe laws (i.e. MAI). The Nation has powers other than law-making powers including the ability to make decisions relating to, *inter alia*, its mandate to protect, preserve and enhance inherent and Treaty #3 rights and the environment within Treaty #3 Territory (i.e. MAI Authorizations). Canadian courts have acknowledged that the Nation worked collectively prior to the signing of the historic Treaty #3.[16] The Nation continues to come together through ceremony and Anishinaabe legal processes and standards that result in collective decisions being made, as and when appropriate, and acted upon, regarding matters relating to, *inter alia*, the environment within Treaty #3 Territory.

16. Section 3 of the draft Guidelines requires NWMO to "meet the standard requirements related to Indigenous engagement as outline in the Generic Requirements for the Preparation of an Impact Statement ["**Generic Requirements**"]". Section 6 of the Generic Requirements states that the "IEPP identifies Indigenous groups that the Crown will consult with to understand the concerns and potential impacts of the projects on their exercise of potential or established Aboriginal or Treaty rights and, where appropriate, make accommodations." The Generic Requirements require the proponent to "engage with Indigenous groups identified in the IEPP". It is inexplicable and unacceptable to the Nation that **IAAC has failed to list the Nation in the draft IEPP, especially as the Nation has already allocated significant resources to contributing to NWMO and IAAC in the Crown's Planning Phase** (i.e. GCT3's comments on NWMO's IPD). Given the direct connection between the IEPP and the Guidelines, the IEPP must be revised at Section 3.1 to include the Nation, as represented by GCT3. **Any decision by IAAC to exclude the Nation would prejudice and cause harm to Aboriginal and Treaty rights that are constitutionally protected under Section 35 of the Canadian Constitution. IAAC's decision would impair reconciliation**.

17. To be clear, for this Project, the Treaty #3 Chiefs have mandated the Nation to implement and enforce the well-established MAI framework. This has in fact been communicated to IAAC for years; however, for this Project, **the more NWMO and IAAC/CNSC learned about MAI, the less they seemed to know**.

18. For other projects in Treaty #3 Territory, the Nation has participated in provincial and federal assessments in varying capacities, based on MAI. The range varies from being an observer and staying informed, acting as a coordinating body, to being an intervenor with full participation rights. The degree of participation depends on the direction of Treaty #3 Chiefs. This varying degree of participation aligns with the MAI framework, which has been explained to IAAC/CNSC/NWMO numerous times and again. For this Project, the Nation must, and will continue to, have a role in impact assessment. **Failing to update the list in the IEPP – which has direct implications on the Guidelines and broader impact assessment – to include the Nation would impair reconciliation**.

19. GCT3's concern is exacerbated by the fact that NWMO failed to identify the Nation, MAI and the Nibi Declaration it its IPD.

20. NWMO is also exposing itself to enormous regulatory uncertainty and risk if it fails to identify the Nation, MAI and the Nibi Declaration in its forthcoming project description. Other proponents have recognized GCT3 for other projects in Treaty #3 Territory. Notwithstanding the degree of participation in federal or provincial environmental assessments or impact assessments, as the case may be, it is commonplace for proponents to identify the need to engage GCT3 on its project description/application. Given the concerns raised by GCT3 on NWMO's IPD, IAAC must be firm, clear and prescriptive with NWMO, as the "proponent", that it is expected to list the Nation in its

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[15] Note: the term "make" is a Western term that is being used for convenience only. For an example of Anishinaabe law-making please see: https://gct3.ca/environmental/manito-aki-inakonigaawin/mai-history/.

[16] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF p 9.

project description, act in accordance with shared principles established between NWMO and the Nation, fulfill the commitments that it has made to the Nation, and that NWMO must continue to engage the Nation on planning and regulatory matters and throughout impact assessment.

21. Again, the IEPP must be updated to list the Nation.

22. Lastly, GCT3 raises that Treaty #3 First Nations have voiced concerns in response to NWMO's IPD that have not been identified by IAAC at Section 3.1 of the IEPP.[17] Additionally, individual Anishinaabe people and members of Treaty #3 First Nations have expressed concerns on NWMO's IPD. IAAC has not communicated any reasons or explanation as to how it prepared Section 3.1 of the IEPP.

Site Selection and Alternatives

23. As Site Selection and Alternatives were noticeably deficient in NWMO's IPD, GCT3 is encouraged to see that the draft Scoping Requirements address both IAA factors of assessment related to alternatives: alternatives to the Project (s.22(1)(f)); and alternative means of carrying out the Project (s.22(1)(e)). However, the Draft Scoping Requirements propose different treatment of these two types of alternatives, as described below:

1. Alternatives to the Project

24. In section 2.3.3, Alternatives to the Project, the draft Scoping Requirements advise that the information contained in the 2005 NWMO final study, Choosing a Way Forward, was sufficient regarding the process of study set out in the *Nuclear Fuel Waste Act* ("**NFWA**") and requires no additional information.

25. GCT3 accepts the exclusion of alternatives to the Project from the future impact assessment due to the role of legislation and the federal Governor in Council (i.e., the cabinet) in approving the 2005 NWMO final study. The NFWA set out specified alternatives (s.12), the scope of consultation (ss.13 and 14), and legal approval of the final study by cabinet (s.15).

2. Alternative means of carrying out the Project

26. In section 2.3.4, Alternative means of carrying out the Project ("**alternative means**"), the draft Scoping Requirements include sixteen examples of alternative means. Additionally, separately within section 2.3.4, the draft Scoping Requirements reference site selection as an example of alternative means.

27. As set out in the Nation's IPD comments, the Nation regards site selection as one of the fundamental factors to be addressed by the future impact assessment: see pages 18-24. Key issues are the technical suitability of the proposed site and legal suitability of Ignace Township as the host community for the site.

28. Regarding site selection, the draft Scoping Requirements advise that the impact assessment must provide a "detailed summary" of the site selection process resulting in the November 2024 site selection. Further, this summary is to include information on timelines, milestones, management activities, key criteria in decision making, and the results leading up to the November 2024 site.

[17] This includes: (1) Asubpeeschoseewagong (Grassy Narrows), (2) Iskatewizaagegan No. 39, (3) Ojibways of Onigaming First Nation, (4) Rainy River First Nations, (5) Seine River First Nation, and (6) Ojibway Nation of Saugeen.

29. GCT3 supports the inclusion of site selection as an "alternative means" of carrying out the Project which must be included in the impact assessment. Neither of the reasons—timing and legal/regulatory context—underlying GCT3's acknowledgement of the 2005 NWMO final study applies to the NWMO site selection. In timing, site selection occurred after the 2005 NWMO study. In law, unlike the study carried out on "alternatives" through the 2005 final study, NWMO site selection has involved no legal guidance from legislation or cabinet, and no scrutiny by any regulator – federal, Indigenous governing bodies or otherwise. Throughout its time dealing with site selection—2008 to 2024—NWMO could have triggered environmental or impact assessment and thereby engaged regulatory scrutiny, but NWMO decided not to do so. The extraordinary toxicity of the hazardous waste at issue here must be subject to the most onerous regulatory scrutiny—not the least.

30. Under the heading of "Leveraging Existing Information," section 4.1 of the draft Guidelines also addresses site selection. This section references the 2010 NWMO document, "Moving Forward Together: Designing the Process for Selecting a Site." Section 4.1 advises that the process outlined in this 2010 document resulted in "various studies" to determine that the site was potentially suitable from the perspective of (1) identifying a willing host community, and (2) identifying a site with the requisite technical characteristics to safely contain nuclear fuel at depth over long periods of time.

31. GCT3 supports the principle of having the impact assessment include existing information regarding site selection, including but not limited to (a) NWMO documents on its selection process and (b) the studies which determined the suitability of the site from two perspectives—the identification of the preferred site as within a willing host community and the identification of the preferred site as having the requisite technical characteristics to safely contain nuclear fuel at depth over long periods of time. NWMO should also include information regarding Anishinaabe knowledge and how that was incorporated into NWMO's purported site selection.

Canadian DRIPA legislation

32. GCT3 expresses fundamental concerns with Sections 3 and 8 of the Guidelines' failure to adequately incorporate the UN Declaration and its implementing legislation, DRIPA, into the requirements governing Indigenous engagement and the assessment of impacts on Indigenous Peoples and Indigenous rights.

i. The UN Declaration Imposes Binding Obligations on Federal Decision-Makers

33. In 2021, Canada passed the DRIPA, which affirms the UN Declaration as a universal international human rights instrument with application in Canadian law. Pursuant to section 5 of DRIPA, the Government of Canada is required to take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration. DRIPA thereby incorporates the UN Declaration into the domestic legal framework and imposes binding obligations on all federal decision-makers, including the Prime Minister, Ministers, IAAC/CNSC, et al.

34. The IAA must be interpreted in a manner that aligns with the UN Declaration. The Preamble to the IAA expressly references the Government of Canada's commitment to implementing the UN Declaration, and section 21 of the IAA requires that the impact assessment process respect the rights of Indigenous Peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. These provisions, read together with DRIPA, establish a legal floor below which federal processes, including the preparation of Guidelines, may not fall.

35. It is insufficient for the Guidelines or IEPP to reference the UN Declaration merely as a policy aspiration or contextual consideration. The UN Declaration is not only a declaratory instrument, but is a source of binding legal obligations on the Crown. The Guidelines must reflect this legal reality and expressly require that the impact statement demonstrate compliance with the specific

substantive provisions of the UN Declaration that are engaged by the Project, including but not limited to Articles 26, 29, 32, and the principle of FPIC.

ii. The UN Declaration requires more than the 2004 Haida Framework

36. Section 3 of the Guidelines directs NWMO to describe its "approach to seek and support Indigenous Nations and communities' respective decisions about their free, prior, and informed consent (FPIC) for the project." The Guidelines further note in a footnote that "[i]t is ultimately the responsibility of the Crown, not proponents, to aim to secure FPIC where appropriate for Crown decisions." While we acknowledge this reference to FPIC, the framing in the Guidelines conflates the UN Declaration standard with the *Haida* duty to consult and accommodate framework; worse still, it suggests that FPIC is subordinate to this framework. **The Guidelines treat FPIC as aspirational rather than as a binding legal standard that must be met as a precondition to project approval**.

37. This conflation is legally untenable in light of the Federal Court's recent decision in *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319. In *Kebaowek*, the Federal Court held that UN Declaration obligations, as incorporated into Canadian law through DRIPA, are distinct from and go beyond the Crown's duty to consult and accommodate. The Court found that DRIPA creates independent legal obligations that are not satisfied merely by fulfilling the procedural requirements of the *Haida* framework for the duty to consult and accommodate. Specifically, the Court held that compliance with the duty to consult and accommodate does not necessarily constitute compliance with the UN Declaration, and that federal decision-makers must separately consider whether their actions are consistent with the rights affirmed in the UN Declaration.

38. Although the magnitude of the NWMO Project is incomparable, NWMO's Project involves the same federal nuclear regulatory framework and the same provisions of UNDRIP that were at issue in *Kebaowek*. NWMO's Project seeks to store hazardous radioactive materials (i.e. nuclear fuel waste) within Treaty #3 Territory for a period of up to one million years. If UN Declaration obligations are distinct from and additive to the *Haida* framework, as *Kebaowek* confirms, then the Guidelines are legally deficient because they frame FPIC as merely an aspect of engagement that the proponent should "seek and support," rather than as a substantive legal requirement that must be affirmatively demonstrated prior to Crown decision-making.

39. The footnote in Section 3 acknowledging that it is "ultimately the responsibility of the Crown, not proponents, to aim to secure FPIC" does not cure this deficiency. The phrase "aim to secure" reflects the language of the duty to consult and accommodate, not the language of the UN Declaration. Under the UN Declaration and DRIPA, **the standard is not merely to "aim to secure" consent, but to *obtain* it** (i.e. through an MAI Authorization). The Guidelines must be revised to reflect the distinction established in *Kebaowek* between these two legal regimes and to require that the impact statement address both independently.

iii. Specific deficiencies in the Guidelines

40. Section 3 of the Guidelines contains the following specific deficiencies with respect to UN Declaration compliance:

    a. **Failure to require demonstration of FPIC as a precondition to approval.** Section 3 requires the proponent to describe its "approach" to FPIC but does not require the proponent to demonstrate that FPIC has been or will be obtained prior to the issuance of any approval, licence, or permit for the Project.

    b. **Conflation of FPIC with the 2004 *Haida* Framework.** The footnote to Section 3 characterizes FPIC as a Crown responsibility to "aim to secure … where appropriate for Crown decisions." This language mirrors Canadian common law duty to consult and accommodate framework and fails

to reflect the distinct and more rigorous UN Declaration standard established by *Kebaowek.* See also below.

c. **No reference to Article 29(2) of UNDRIP.** Section 3 makes no specific reference to Article 29(2) and its prohibition on the storage of hazardous materials on Indigenous lands without FPIC, despite the fact that this provision is directly and obviously engaged by the Project.

d. **No requirement for independent assessment of UN Declaration compliance.** Section 3 does not require the Impact Statement to include a separate analysis of whether the Project is consistent with the rights affirmed in UN Declaration, as distinguished from the Section 35 rights analysis required under Section 8.4 of the Draft Guidelines.

e. **Inadequate treatment of FPIC as a substantive legal standard.** The reference to the Government of Canada's website on "Implementation of the United Nations Declaration" is insufficient. The Guidelines must contain operative requirements, not merely informational cross-references.

41. GCT3 remains open and willing to resume work with IAAC/CNSC to address these significant legal and regulatory issues.

Contributions to inform Canada's decision-making

42. Section 12 of the draft Scoping Requirements (i.e. Guidelines) set out the information required to inform decision-making. Section 1 of the Guidelines provides the following context:

> The federal impact assessment process is intended to prevent or mitigate significant adverse effects within federal jurisdiction — and significant direct or incidental adverse effects — by anticipating, identifying and assessing the effects of designated projects in order to inform decision making under the Impact Assessment Act (IAA).
>
> The draft Integrated Guidelines include information and studies necessary for the conduct of the impact assessment based on adverse effects within federal jurisdiction, or direct or incidental adverse effects (collectively referred to as adverse federal effects hereafter) that could potentially be significant as informed by the nature, complexity and context of the project, as well as by consultation and engagement with the proponent, Indigenous Nations and communities, the public, lifecycle regulators, jurisdictions, federal authorities and other interested parties.

43. Though not expressly referenced in these statements, the key decision under the IAA is for the Minister to determine under section 60 whether a project is likely to cause significant "effects within federal jurisdiction" or significant "direct or incidental effects" within the meaning of these two defined terms. Neither section 12 nor any other section of the draft Scoping Requirements address what information the Minister requires to make this determination on the significance of adverse effects. The Nation seeks to ensure that its future engagement with IAAC and the CNSC will expressly address this major omission.

44. Instead of addressing the main question of the IAA set out in section 60, the draft Scoping Requirements focus exclusively on what is relevant under section 63 of the IAA. Though unsaid in the draft Scoping Requirements, section 63 is relevant only where the Minister has determined that the Project is likely to cause significant adverse effects on federal jurisdiction.

45. Section 63 provides the Minister and cabinet with three factors applicable to determining whether the significant adverse federal effects are justified in the "public interest". The three Section 63 factors may be summarized as (a) impacts on Indigenous rights, (b) impacts on Canada's

international environmental obligations, and (c) impacts on sustainability.[18] Currently, the Guidelines explicitly set out:

> 12.1 Canada's environmental obligations and climate change commitments;
>
> 12.2 Environmental obligations; and
>
> 12.3 Sustainability.

This is incomplete and is not an exhaustive list of the factors that go into the "public interest" analysis.

46. GCT3 is concerned that IAAC has failed to explicitly mention reconciliation as a factor in this part of the Guidelines.

47. The Supreme Court of Canada held that the overarching purpose of Section 35 of the Canadian Constitution is the reconciliation of Indigenous peoples and Crown sovereignty.[19] Building on this constitutional foundation, courts have recognized that reconciliation is not merely an abstract principle, but a legally relevant consideration that informs the content of the "public interest" in decision-making.

48. In *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43, the Court recognized that statutory public interest mandates may encompass constitutional considerations, noting that the Commission's broad authority to consider "any other factor that the commission considers relevant to the public interest" was sufficient to include issues relating to Crown consultation.[20] In that context, the Court observed that "[t]he constitutional dimension of the duty to consult gives rise to a special public interest, surpassing the dominantly economic focus" of the statutory scheme.[21] The Court endorsed the reasoning of Donald J.A., who asked: "How can a contract formed by a Crown agent in breach of a constitutional duty be in the public interest?"[22]

49. In *Kainaiwa/Blood Tribe v Alberta (Energy),* 2017 ABQB 107 the Court observed that the Minister did not appear to have considered "the role the decision could play for the Band in the ongoing process of reconciliation between Aboriginal peoples and the Crown."[23] The Court held it was unreasonable to fail to consider this issue, noting that "the Constitution requires the Minister to consider whether, and if so how, his decision may advance or impair the process of reconciliation."[24] Moreover, the Court emphasized that "even though the Act contains no mandatory considerations… the broader law does".[25] This principle has since been articulated as an "administrative law

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[18] They are: (a) the impact that the effects that are likely to be caused by the carrying out of that project may have on any Indigenous group and any adverse impact that those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; (b) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change; and (c) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to sustainability.
[19] *Beckman v. Little Salmon/Carmacks First Nation,* 2010 SCC 53 at para 10.; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director),* 2004 SCC 74 at para 24.; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage),* 2005 SCC 69 at para 1.
[20] *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 70.
[21] *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 70.
[22] *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 70.
[23] *Kainaiwa/Blood Tribe v Alberta (Energy),* 2017 ABQB 107 at para 129.
[24] *Kainaiwa/Blood Tribe v Alberta (Energy),* 2017 ABQB 107 at para 130.
[25] *Kainaiwa/Blood Tribe v Alberta (Energy),* 2017 ABQB 107 at para 130.

requirement to assess if a decision will advance or impair reconciliation" in *Eskasoni First Nation v. Canada (Attorney General),* 2024 FC 1856.[26]

50. Similarly, in *Fort McKay First Nation v Prosper Petroleum Ltd,* 2020 ABCA 16 ("**Fort McKay**"), the Court confirmed that issues of reconciliation fall within the scope of a tribunal's public interest mandate.[27] The Court explained:

> The issues raised here are not limited to the adequacy of the consultation on this Project, but raise broader concerns including the Crown's relationship with the FMFN and matters of reconciliation. These issues engage the public interest and their consideration is not precluded by the language of s 21.[28]

51. The Court further held that, while the adequacy of Crown consultation may fall outside a tribunal's jurisdiction, this does not preclude consideration of broader reconciliation-related impacts, and the regulator erred in concluding otherwise.[29] The Court concluded in Fort McKay that "[t]he honour of the Crown may not mandate that parties agree to any one particular settlement, but it does require that the Crown keep promises made during negotiations designed to protect treaty rights. It certainly demands more than allowing the Crown to placate FMFN while its treaty rights careen into obliteration. That is not honourable. And it is not reconciliation."[30]

52. In the concurring reasons in *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2021 ABCA 342, the Court expressly recognized that reconciliation and the honour of the Crown may bear on a tribunal's assessment of the public interest. The Court stated that it was appropriate to "provide guidance and assist the Commission in exercising its statutory powers and responsibilities consistently with the honour of the Crown and the goal of reconciliation when raised by the parties and relevant to the public interest".[31] The Court acknowledged that reconciliation is a foundational objective of Aboriginal law and explained that it forms part of the broader public interest which decision-makers must consider when exercising statutory mandates.

53. Federal policy provides an important interpretive backdrop for understanding how statutory decision-makers are expected to exercise their mandates in relation to Indigenous peoples. The Government of Canada's *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (the **"Principles**") confirm that reconciliation is a "fundamental purpose of section 35" and that it "frames the Crown's actions in relation to Aboriginal and treaty rights and informs the Crown's broader relationship with Indigenous peoples."[32] The Principles further emphasize that Indigenous rights, interests, and perspectives must be recognized and incorporated in decision-making, and that Indigenous peoples must have a role in public decision-making as part of Canada's constitutional framework.[33] Taken together, these principles establish that reconciliation is not merely aspirational, but is intended to guide how federal decision-making powers are exercised in practice, even for discretionary decisions made by Crown representatives.

54. Against that backdrop, IAAC's policy framework confirms that reconciliation is not external to decision-making, but is intended to be a central and guiding consideration that informs how impact assessments, and ultimately public interest determinations, are designed and carried out. This

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[26] *Eskasoni First Nation v. Canada (Attorney General),* 2024 FC 1856 at para 100.
[27] *Fort McKay First Nation v Prosper Petroleum Ltd,* 2020 ABCA 16 at para 57-58.
[28] *Fort McKay First Nation v Prosper Petroleum Ltd,* 2020 ABCA 16 at para 57.
[29] *Fort McKay First Nation v Prosper Petroleum Ltd,* 2020 ABCA 16 at para 58.
[30] *Fort McKay First Nation v Prosper Petroleum Ltd,* 2020 ABCA 16 at para 83.
[31] *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2021 ABCA 342 at para 85.
[32] Government of Canada Department of Justice, *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (2018) at page 7.
[33] Government of Canada Department of Justice, *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (2018) at page 13.

provides an important interpretive backdrop for understanding how statutory decision-makers are expected to exercise their mandates under the IAA.

55. IAAC's *reconciliation Framework* expressly situates reconciliation as a guiding objective for all impact assessment work, stating that IAAC must undertake its mandate "to advance reconciliation with Indigenous Peoples" and "practice it in our everyday work."[34] In doing so, the reconciliation Framework establishes that reconciliation is not confined to high-level policy commitments, but is to be operationalized throughout the IAAC's work, including in its processes, approaches, and interactions with Indigenous peoples.[35] It directs that the IAAC's work must align with the recognition of Indigenous rights and the honour of the Crown, and that Indigenous knowledge and perspectives must be "meaningfully considered" within impact assessment processes and decision-making.[36] Read as a whole, the reconciliation framework reflects an institutional expectation that reconciliation will shape how impact assessments are designed and conducted, including the way in which relevant ISRs and considerations are identified, assessed, and weighed in decision-making.

56. This approach is reinforced in IAAC's *Policy Context: Indigenous Participation in Impact Assessment*, which states that "[r]econciliation needs to be at the centre of all aspects of the Government of Canada's relationship with Indigenous peoples."[37] Importantly, the policy connects this principle directly to the statutory decision-making framework, explaining that "[i]mpacts on Indigenous peoples and rights must be explicitly addressed at key decision points, including the decision on whether to require an impact assessment, and the final public interest determination."[38] This makes clear that reconciliation is not merely a procedural consideration relevant to consultation, but a substantive factor that must be addressed at the stage where the public interest is determined.

57. IAAC's *Guidance: Indigenous Participation in Impact Assessment* further reinforces this linkage between reconciliation and decision-making.[39] It provides that integrating Indigenous participation in impact assessments "supports the Government's commitment to reconciliation" and that reconciliation "needs to be at the centre" of the Crown's relationship with Indigenous peoples throughout the assessment process.[40] Consistent with this, the guidance explains that decision-makers must consider impacts on Indigenous rights as part of the public interest determination, and must demonstrate in their reasons how those impacts were taken into account.[41]

58. Taken together, these policy instruments establish a coherent framework in which reconciliation is intended to inform both the process and substance of impact assessments performed by IAAC. They demonstrate that:

    a. reconciliation is to be embedded across IAAC's processes, methodologies, and approaches to assessment;

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[34] Impact Assessment Agency of Canada, *reconciliation Framework* (June 26, 2024) at pages 4-5.
[35] Impact Assessment Agency of Canada, *reconciliation Framework* (June 26, 2024).
[36] Impact Assessment Agency of Canada, *reconciliation Framework* (June 26, 2024) at pages 6 and 8.
[37] Impact Assessment Agency of Canada, *Policy Context: Indigenous Participation in Impact Assessment* (modified Aug 7, 2025) at part 1.
[38] Impact Assessment Agency of Canada, *Policy Context: Indigenous Participation in Impact Assessment* (modified Aug 7, 2025) at part 1.2.
[39] Impact Assessment Agency of Canada, *Guidance: Indigenous Participation in Impact Assessment* (modified Aug 7, 2025).
[40] Impact Assessment Agency of Canada, *Guidance: Indigenous Participation in Impact Assessment* (modified Aug 7, 2025) at part 1.
[41] Impact Assessment Agency of Canada, *Guidance: Indigenous Participation in Impact Assessment* (modified Aug 7, 2025) at part 4.5

b. Indigenous rights, knowledge, and perspectives must be meaningfully incorporated into the evidentiary and analytical foundations of decisions; and

c. impacts on Indigenous peoples and their rights must be explicitly addressed at the stage of the "public interest" determination.

59. Both the jurisprudence and the governing federal policy framework establish a consistent and reinforcing principle: reconciliation under the Canadian Constitution is not an external or discretionary consideration, but a foundational component of lawful decision-making that informs the content of the public interest. Courts have made clear that reconciliation must be considered by decision-makers exercising statutory mandates, including where they are tasked with determining whether a project is in the public interest. Federal policy, including IAAC's own frameworks and guidance, confirms that this principle is to be operationalized in impact assessment processes, and explicitly requires that impacts on Indigenous peoples and their rights be addressed at the stage of public interest determinations.

60. In this context, the omission of reconciliation as an explicit guiding principle in Chapter 12 of the Tailored Guidelines creates a material gap. While related considerations—such as consultation, impacts on rights, and Indigenous Knowledge—are addressed elsewhere, the absence of reconciliation from the public interest framework risks narrowing the scope of the analysis in a manner that is inconsistent with the legal and policy context governing federal decision-making.

61. Accordingly, to ensure alignment with Canadian law, the applicable jurisprudence, and IAAC's own policy framework, reconciliation should be expressly incorporated into Chapter 12 as a core consideration guiding the assessment of whether project effects are justified in the public interest.

62. Additionally, as mentioned above, and for reasons that will not be duplicated here, IAAC's decision to refuse to recognize the jurisdiction and authority of the Nation for this Project would impair reconciliation.

Selection of Values Components

63. For the Project, it is imperative that the Nation has a meaningful opportunity to participate in the selection of VCs and the assessment of potential impacts. As GCT3 has shared with IAAC/CNSC, for this Project, Canada must not cut any corners. It must deliver the best impact assessment that meet the needs of both the IAA and MAI, as well as the assessment needs of Treaty #3 First Nations.

64. Section 1.2 of the Guidelines sets out standard/generic VCs for the Project. At p. 4, IAAC notes that "the proponent may select additional VCs, based on engagement with Indigenous Nations and communities and public participants and in consideration of Indigenous Knowledge and community knowledge." As mentioned above, in addition to the reasons provided, the Nation must be added to the list of Indigenous Nations that NWMO must engage with on the Project.

65. At this time, GCT3 wants the Guidelines to expand on what IAAC typically calls "holistic VCs" at p. 55 therein. For example, from the Nation's perspective, the Guidelines should explicitly mention the importance of Nibi (water)[42] + 4DGM (governance)[43] and MAI (laws)[44] and reconciliation.

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[42] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 11-13.
[43] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 6 and 10.
[44] GCT3 (4 February 2026), "GCT3 Comments on NWMO IPD" <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions/id/65836> PDF pp 3-4, 14-18, and 27-28.

III. Moving Forward: Opportunities to resume working together

66. At this time in IAAC's Planning Phase, GCT3 is requesting meaningful consultations on:

    a. shared ISRs for Federal and MAI processes;

    b. Treaty #3 ISRs and Treaty #3 VCs[45];

    c. information sharing between GCT3, IAAC and CNSC; and

    d. arrangements that support cooperation, coordination & collaboration structures with the Nation established, supported, and incorporated into the IEPP.

67. Additionally, the requests made in GCT3's IPD Comments remain outstanding and need to be addressed before the Planning Phase concludes, including:

    a. Immediately arrange reasonable cost recovery mechanisms, including funding for technical expertise to, among other things, evaluate the geological and hydrogeological merits of the proposed site and its design, compared to alternatives. NWMO's Project, proposed within Treaty #3 Territory, imposes significant costs on the Nation.

    b. Completion of MAI/IAA Harmonization Plan, including provision for Anishinaabe expert participate on the future IAA/CNSC hearing panel.

        i. GCT3 wants a commitment that the process for appointing the IAA/CNSC hearing panel is led by Treaty #3 First Nations and Treaty #3 Chiefs.

    c. Co-develop the final Integrated Tailored Impact Statement Guidelines, including amendment to the scope of the impact assessment to include and focus on demonstrating the technical and social merits of NWMO's unilaterally designed and imposed site selection process.

    d. Co-develop the final Indigenous Engagement and Partnership Plan, Cooperation Plan, and Permitting Plan.

    e. Co-develop the Hearing Panel Terms of Reference and schedule, including provision for Treaty #3 First Nations and/or the Nation to participate in the nomination of the hearing panel.

68. As mentioned on February 4, 2026, GCT3 remains ready, willing and able to work with IAAC on these actions identified above at paragraphs 66 and 67, in addition to anything else identified by the Parties.

69. At this time, the Nation has not been provided a meaningful opportunity to participate in the Crown's Planning Phase. The Crown's capacity funding of $13,000 for a Nation of this size (i.e. 28 Treaty #3 First Nations) is negligible. GCT3 has wrote to NWMO requesting capacity funding but has not heard a response back.[46]

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[45] To be clear: Treaty #3 ISRs and Treaty #3 VCs would be in addition to any and all ISRs and VCs identified by Treaty #3 First Nations.

[46] A copy of the letter is attached as **Appendix "A"** to these comments. Furthermore, the IAAC contributions of $3,000 for the IPD review and $5,000 covering do not facilitate a meaningful opportunity to participate in the impact assessment. For example, the costs to host the Treaty #3 Chiefs at the aforementioned February 2026 Special Chiefs Meeting far exceeded the $8,000.00 allocation.

IV. Closing

70. Treaty #3 is a historic agreement that symbolizes the enduring partnership between Anishinaabe People and the Crown. It must be respected. GCT3 has been carrying out the mandate of the Nation to implement the Relationship Agreement 2.0 with NWMO and to set up a framework that supports all jurisdictions in Treaty #3 Territory which includes Treaty #3 First Nations and the Nation. This Mandate has provided IAAC and NWMO the opportunity to build partnerships, provide regulatory certainty, and create process efficiencies, to the extent possible. A lot of good work has happened since 2021 when IAAC committed to reach an agreement with the Nation.

71. The Nation's Mandate has not shifted. In fact, as mentioned above, the Treaty #3 Chiefs recently directed GCT3 to continue to move forward with MAI and ensure that it is in full force and effect for the Project.

72. Given the uniqueness of this impact assessment, GCT3 hopes to resume and continue to keep working together during impact assessment (incl. MAI processes) to support Nation-to-Nation decision-making.

73. That said, **time is of the essence**. Although GCT3 continues to be agreeable to timing concessions[47], and the IAA allows for the suspension or extension of timeframes, there will be a point where the Nation will need to consider other options or positions based on the reciprocal actions of IAAC/CNSC/NWMO. GCT3 has worked with IAAC/CNSC and NWMO in good faith. If IAAC/CNSC, and NWMO, do not fix the significant Scoping Requirements issues in the IPD, Guidelines, IEPP early, the Nation will not hesitate to consider alternative pathways. Treaty #3 Chiefs expect MAI to be in full force and effect for the Project and GCT3 is accountable to the Treaty #3 Chiefs. I always say: Treaty #3 Chiefs tell us to jump, GCT3 asks how high?

74. The Treaty #3 Chiefs told GCT3 to implement MAI for the Project. It is imperative that we resume and conclude MAI/IAA Harmonization plans before the process gains too much momentum and/or proceeds into the next phase.

Sincerely,

Lucas King

Chief Executive Officer
Grand Council Treaty #3

cc: Ogichidaa Francis Kavanaugh
Gaakinawataagizod Cheyenne Vandermeer
Treaty #3 Chiefs
Mr. Chris Herc. Director, Territorial Planning Unit, GCT3
Mssrs. Garry Allen & Dan Morriseau, Political Office, GCT3
Ian Ketcheson, Vice President, Indigenous Relations Sector

[47] Note: for example, GCT3 and NWMO endeavoured to finalize the planning and regulatory agreement prior to NWMO concluding site selection. GCT3 then provided NWMO the opportunity to finalize the planning and regulatory agreement prior to NWMO submitting its initial project description, building off of the solid foundation that NWMO and GCT3 laid. GCT3 then provided NWMO the further opportunity to finalize the planning and regulatory agreement prior to the ending of the planning/visioning phase for the Project.