

APPROACH TO CROWN CONSULTATION FOR THE NORTHERN GATEWAY PROJECT

The Government of Canada will take a whole-of-government approach to Aboriginal consultation; federal departments will work together in a coordinated manner that is integrated with the environmental assessment process. The approach for federal Crown consultation with Aboriginal peoples for major resource projects was created in accordance with "Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult" (INAC/Department of Justice; February, 2008, <http://www.ainc-inac.gc.ca/ai/mr/is/acp/intgui-eng.asp>)

For the Northern Gateway Project, the Crown will rely on the consultation efforts of the proponent and the Joint Review Panel (JRP) process, to the extent possible, to meet the duty to consult. More specifically:

- The project proponent will contact Aboriginal groups potentially affected by the project and provide them with information about the project and its potential impacts. It will document their concerns, accommodate those concerns in the project planning stage and initial design of the project and include information on unresolved concerns in its application. The JRP can require the proponent to gather more information about impacts, Aboriginal concerns and/or mitigation, if necessary.
- The JRP, as a recommendation body under the *Canadian Environmental Assessment Act*, will submit an Environmental Assessment Report to the Minister of the Environment and the relevant federal departments; the response to the report will be considered by the Governor-in-Council and if approved would subsequently inform all federal permitting/authorisation decisions.
- The JRP, as decision maker under the *National Energy Board Act*, will consider all evidence provided by the proponent, Aboriginal groups and other third parties in order to determine whether the project should be permitted to proceed and if so, to include mitigation or accommodation where necessary through imposition of conditions on the project approval.

It is important for Aboriginal groups with concerns about the project to participate in the JRP process to ensure that their concerns are considered by the decision-makers responsible for the project. There is no separate or parallel process to deal with issues within the JRP mandate.

The JRP is the key assessment and decision-making body for the project and has a broad mandate under both the *National Energy Board Act* and the *Canadian Environmental Assessment Act* to examine project-related issues. The JRP will consider and address all project-related Aboriginal issues and concerns within this mandate. The Canadian Environmental Assessment Agency (Agency) representing the Crown, will lead the initial consultation on the JRP Agreement as well as consultation on the Environmental Assessment Report issued by the JRP. The response to the report will be considered by the Governor-in-Council and if approved, would subsequently inform permitting and authorisation decisions by federal authorities. The Agency will be the contact for the Crown for project-related matters raised by Aboriginal groups that are outside the mandate of the JRP.

The phases for Crown consultation for the Northern Gateway Project are summarized below:

Phase I: Preliminary Phase

The Agency will consult on the JRP Agreement and the Agency and the National Energy Board (NEB) will provide information on their respective mandates and the JRP process.

Phase II: Pre-Hearing

The Agency and the NEB will continue to provide information on the JRP process and encourage Aboriginal groups to participate in the JRP process. The Agency will be the contact for the Crown for project-related matters raised by Aboriginal groups that are outside the mandate of the JRP.

February, 2009

Phase III: Hearing

Aboriginal groups and federal agencies with regulatory responsibilities in the project will participate in the hearing. The Agency will be the contact for the Crown for project-related matters raised by Aboriginal groups that are outside the mandate of the JRP.

Phase IV: Report/Decision

Crown consultation will be carried out on the JRP Environmental Assessment Report prior to consideration of the response by Governor-in-Council. The Agency will be the contact for the Crown for project-related matters raised by Aboriginal groups that are outside the mandate of the JRP.

Under the *National Energy Board Act*, the JRP will take into consideration all relevant Aboriginal issues and concerns brought forward in the hearing process and consider them in its decision making. If the project is approved, the JRP may impose conditions on the project to mitigate any potential adverse impacts.

Phase V: Regulatory/Permitting

If it is determined that additional consultation about the project is required on permits or authorizations which other federal departments are requested to issue, the Crown will appoint a federal department to lead any consultations that may be required after the environmental assessment phase is complete.

PHASE I AND II STEPS IN THE CONSULTATION PROCESS

1. Letters, via mail and fax, were sent to Aboriginal groups in October 2008 with a few additional notifications taking place in early 2009. The letters indicated that the Crown looks forward to receiving comments on the draft JRP Agreement, would be available to discuss the draft JRP Agreement and that the Agreement will be subject to a 60 day comment period in early 2009. Included was a copy of the draft JRP Agreement and the comments received in 2006 as well as information on funding to support Aboriginal participation in the preliminary phase of the regulatory review process.
2. Through November and December 2008, the Agency contacted recipients to ensure that the letters were received and to determine the interest of recipients in meeting to receive information on the draft JRP Agreement and the JRP process.
3. Several meetings have been held with Aboriginal groups and others have been planned.
4. In February 2009, letters were sent to Aboriginal groups notifying that the formal comment period on the draft JRP Agreement will commence 9 February 2009.
5. In February 2009, letters, to which this document is attached, are sent to Aboriginal groups with a copy of the News Release announcing the commencement of the public comment period.
6. Meetings with Aboriginal groups to discuss the draft JRP Agreement will continue as requested until 14 April 2009, the deadline for receiving comments on the JRP Agreement.
7. The Minister of the Environment and the NEB will consider all comments prior to finalizing the JRP Agreement.
8. Information sessions on how to participate in the JRP process will continue through to the start of the JRP Hearings, as required.

If required, a further communication concerning consultation for the Phase III: Hearings will be provided prior to the start of that phase.