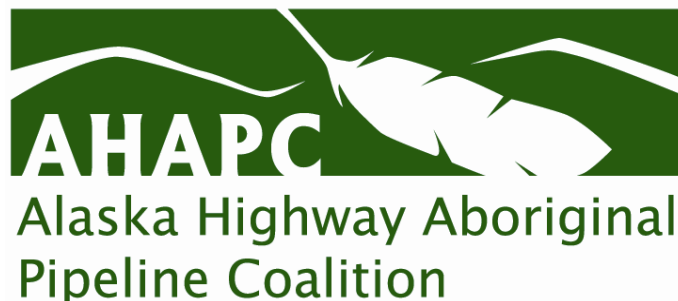


# AHAPC Topic II Workshop Report

Role of Yukon First Nations in an Environmental Assessment and Impact Statement  
Related to the Alaska Highway Gas Pipeline and Other Major Development Projects

6-7 May 2008

High Country Inn, Whitehorse Yukon



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### Table of Contents

1.0	Introduction and Background
2.0	Workshop Objectives
3.0	Workshop Overview
4.0	Day 1: Presentations and Discussions
4.1	Alaska Highway Aboriginal Pipeline Coalition Overview
4.2	Alaska Highway Pipeline Project Overview
4.2.1	Questions and Comments
4.3	Defining the Environmental Assessment (EA) Process
4.3.1	Questions and Comments
4.4	Defining the Environmental Impact Statement (EIS)
4.4.1	Questions and Comments
4.5	Plenary Discussion
5.0	Day 2: Presentations and Discussions
5.1	Example 1: Overview of the Wildlife Impacts and Treatment: Focus on Woodland Caribou
5.1.1	Questions, Comments and Break-out Group Discussions
5.2	Example 2: Overview of Socio-economic Impacts and Treatments
5.2.1	Questions, Comments and Break-out Group Discussions
5.3	Example 3: Overview of Cultural Impacts and Treatments
5.3.1	Questions and Comments
5.4	First Nations Capacity Issues and Needs Overview
5.4.1	Questions and Comments
6.0	Task List for the AHAPC
7.0	Acknowledgements
Appendix A	Workshop Agenda
Appendix B	List of Participants

## 1.0 Introduction and Background

The Alaska Highway Aboriginal Pipeline Coalition (AHAPC) is a non-political, community-based, nonprofit society, constituted in 2004 and based in Whitehorse, Yukon. The AHAPC is comprised of Yukon First Nations who have a vested interest in the proposed gas pipeline project. The mandate of the AHAPC is to help First Nations to prepare for any opportunities that may lead to meaningful engagement with industry and the governments of Yukon and Canada. In matters pertaining to regulatory framework, environmental assessment and socio-economic impacts and benefits, the AHAPC is preparing First Nation citizens and communities for future development opportunities.

In April 2007, the AHAPC, in cooperation with industry and the governments of the Yukon and Canada, delivered a workshop that confirmed support for building capacity among Yukon First Nations through preparedness of the proposed Alaska Highway Gas Pipeline project. This first workshop in April 2007 identified the need for future topic workshops in areas focused on environmental, regulatory and socio-economic issues. The first topic workshop was held on 20-21 November, 2007 in Whitehorse on Employment, Training, and Business Opportunities Related to the Proposed Alaska Highway Gas Pipeline Project.

On May 6 - 7, 2008, AHAPC, in cooperation with industry and the governments of Yukon and Canada, hosted the second topic workshop entitled “**The Role of Yukon First Nations in an Environmental Assessment and Impact Statement Related to the Alaska Highway Gas Pipeline Project and other Major Development Projects**”.

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Workshop proceedings and more information on the AHAPC can be found at: [www.ahapc.ca](http://www.ahapc.ca).

## 2.0 Workshop Objectives

The objectives of the workshop were to:

- Provide an overview and improve understanding of the:
  - Environmental assessment process (EA) associated with the review of major projects such as the pipeline, and
  - Environmental impact statement (EIS) that is the subject of the review.
- Provide an opportunity for First Nations, government and industry to discuss the role, engagement and expectations of Yukon First Nations in the EA and in the preparation of the EIS.
- Provide an opportunity for First Nations, government and industry to discuss the needs and capacity-building requirements to participate effectively in the EA and in the preparation of the EIS.
- Identify follow-up requirements for the AHAPC and First Nations arising from the workshop discussions.

The workshop agenda is located in Appendix A.

### 3.0 Workshop Overview

The two day workshop provided opportunities for information sharing and knowledge acquisition, as well as prospects for debate, discussion, collaboration and engagement. Approximately 60 delegates participated in the workshop of which about sixty per cent represented First Nation governments and organizations. Delegates included First Nation government representatives with land located on and off the proposed pipeline corridor, representatives from Government of Yukon, Government of Canada, the US Government, private sector consultants and the oil and gas industry (see Appendix B for a list of participants).

The workshop opened with an Opening Prayer and Opening Remarks by Chief Ruth Massie of the Ta'an Kwacha'an Council. The first day comprised a series of four short presentations designed to provide background information on the AHAPC, the proposed Alaska Highway Pipeline Project, the Environmental Assessment (EA) process, and the Environmental Impact Statement (EIS). Following the presentations, delegates were invited to discuss specific questions, clarify their understanding and to explore new ideas in small table breakout groups.

George Asquity, President of Great River Journey was the guest speaker at lunch. A final afternoon plenary discussed what are the issues arising from the EA and EIS discussions.

The second day of the workshop examined particular topics of relevance for First Nations including wildlife matters and socio-cultural and socio-economic impacts analysis. Three short presentations provided opportunities for background information from which discussion and evaluation of the issues arose in smaller breakout groups.

The workshop ended with a closing prayer by Chief Ruth Massie.

## 4.0 Day 1: Presentations and Discussions

### 4.1 Alaska Highway Aboriginal Pipeline Coalition Overview – Claudia Riveros, AHAPC

The history and current status of the AHAPC was profiled in this presentation. In 2003, the nine First Nations whose territory would be crossed by the pipeline right-of-way met to discuss collaboration and agreed to create the AHAPC. Six First Nations signed a Cooperation Protocol in September 2003. The Protocol formerly established a working relationship between the First Nations as well as the role of the AHAPC in addressing identified issues of concern in a coordinated fashion. At present, one additional First Nation is considering signing the Protocol and several are observers to the process.

In 2004, the AHAPC was incorporated as a non-profit society and an operations plan created. Partners provide funding, technical and other in-kind support and include: Government of Yukon, Government of Canada, BP Canada Energy Company, ConocoPhillips, Enbridge Inc, Exxon Mobil Canada and TransCanada Pipelines Ltd.

The AHAPC takes a neutral view on the pipeline and any issues related to it, but serves as an information conduit to and from its First Nation members. The goal is to help the member First Nations make better informed decisions. The responsibility for pipeline negotiations rests with the First Nation governments.

The AHAPC budget is currently \$300,000 and a new Manager and Researcher have been hired. The new research position will assist with the development of an in-house and on-line resource library as well as information

documents. New staff will also be involved in outreach to the communities and facilitate the implementation of findings including recommendations and outcomes of workshops etc.

The current AHAPC work plan involves securing a \$1 million budget and hiring Community Liaison Workers as well as strengthening research capacity, information distribution and the implementation of findings. AHAPC has just launch a new web site designed to be a one stop information portal at [www.ahapc.ca](http://www.ahapc.ca). Industry and governments were encouraged to assist in the provision of information to the web site.

## 4.2 Alaska Highway Pipeline Project Overview – Wayne Marshall, National Energy Board (NEB)

The history and current status of the Alaska Highway Pipeline project was summarized in this presentation. The natural gas project that will move high pressurized gas from Prudhoe Bay, Alaska, to southern markets, has been under consideration since the late 1960's. Twelve hundred kilometers is proposed through Alaska, 800 km through the Yukon and 700 km through BC. The estimated volume of natural gas is 35 trillion feet or enough to heat all households in Canada for thirty-five years.

Examples of large, recent pipeline projects from which lessons can be learned regarding Northern pipeline projects include the Alliance Pipeline between Canada and the US, the Trans Alaska Pipeline from the North Slope to Valdez and the Mackenzie Gas Project currently under consideration in the NWT.

Of particular interest historically, is the Foothills Alaska Highway Pipeline Project formed in 1970's to transport gas from Alaska to Canada. The Canadian National Energy Board recommended the project go ahead at that time and in 1978, Canada passed the Northern Pipeline Act and awarded contract to Foothills for the Canadian portion of the pipeline. Foothills obtained access to federal lands in Yukon in the 1980's through an agreement with the Government of Canada. Sections of the pipeline were built in the 1980's but gas prices fell and the project was not completed.

More recently, TransCanada/Foothills submitted a proposal under the Alaska State legislature's Alaska Gas Inducement Act (AGIA). A recommendation from the legislature will be coming out later in May 2008 and a decision on the project will be made in the summer of 2008.

There is a second Alaska natural gas pipeline project being proposed. Three producers in the Prudhoe Bay area (ExxonMobil, ConocoPhillips and BP) have been considering a pipeline project since 2000. In November 2007, ConocoPhillips announced its intention to develop a pipeline from Prudhoe Bay to southern markets. In April 8, 2008, BP and ConocoPhillips announced their partnership in Denali – the Alaska Gas Pipeline to travel across Alaska, Yukon and BC for a total distance of 3,200 km.

A generic pipeline project development timeline involves the following with a minimum of one year per phase:

- Preliminary project development – 1 year
- Planning, field data collection – 1 year
- Application preparation. Open season for commercial arrangements, shipper commitments – 1 year
- Regulatory approvals – socio-economic and environmental assessment reviews (US regulatory approvals are under FERC – Federal Energy Regulatory Commission) – 2 years
- Pre-construction/construction – 4 years

- In-service by year 10

#### 4.2.1 Questions and Comments

This timeline was noted as optimistic by one participant, given the outcomes of the regulatory reviews under the Mackenzie Gas Pipeline, which took four years. The Mackenzie Gas Pipeline has involved seventeen regulatory agencies in decision-making.

The Alaska Highway Pipeline project is complicated and many actors are involved from many jurisdictions.

Chief Massie indicated that First Nations have full intention of being involved in the project, but are not yet clear on how. The situation may be complex, but First Nations must prepare five years or more in advance. They are concerned that things are going to be dropped on us for short-term decision-making. Bill Webber, Kwanlin Dun First Nation, questioned when the First Nations governments would get involved in regulatory discussions as other governments are already in discussion to define the regulatory processes.

In response to the overarching questions of whether or not there was a project, John Pierce of the Canadian Environmental Assessment Agency stated that there are no commercial arrangements in place and thus no regulatory process has been triggered and there is, therefore, no project.

Drew Pierce of the US Federal Energy Regulatory Commission (FERC) indicated that Governor Palin of Alaska will announce on May 19th whether she will take the current AGIA process proposal (TransCanada Pipelines) to the legislature for sanction. If so, then there will be a proposal going through the federal approvals process to licensing. For all practical purposes, there will be a project in its planning faces through to licensing. The Denali group has announced that they will spend up to \$600 million and do fieldwork on the Alaska side this summer. This will allow them to prepare a cost estimate of the pipeline. If they come to FERC with a proposal and become a pre-applicant, then that process will move forward as well. This implies that two pipeline projects proposals could be underway at the same time.

#### 4.3 Defining the Environmental Assessment (EA) Process – Michael Muller, Yukon Environmental and Socio-Economic Assessment Board (YESAB)

The presentation sought to clarify the nature of a generic Environmental Assessment (EA) process and inform participants of the steps along the way. It was noted that the EA happens prior to the regulatory process that is conducted by governments and leads into it. The EA process is an advisory one. The job of the assessment is not to regulate or take decisions but to advise regulators who will. While designed to give the best information to regulators, the EA process is not a decision making one.

The main purpose of an EA is to provide for public participation in the assessment process, minimize or avoid adverse project effects before they occur, and incorporate environment and socio-economic considerations into subsequent decision-making. An EA process:

- provides for public participation,
- identifies possible effects of a proposed project,
- proposes measures to mitigate possible potential adverse effects,
- predicts if there will be significant adverse effects after mitigation, and

- presents information to government decision makers.

An EA process starts, or is triggered, by a project application proposal, which includes an environmental impact statement, and which is provided to government regulators. There are then four stages in the EA process:

### 1. Adequacy Review of the Proposal

At this stage regulators determine if there is enough information in the project proposal for people to adequately comment on it. Considerations include:

- Identification of the project area and activities – Information on where, when, how, phases of project, timelines of the project etc.,
- Description of the existing environmental and socio-economic conditions – Does the proposal describe the way things are now – baseline conditions in terms of communities, activities, land conditions and wildlife,
- Predicted project effects - What effects will the project have on these baseline conditions?
- Suggested mitigation - How will these adverse effects be mitigated?
- Cumulative effects - What are the residual effects of the projects in combination with the residual effects of all other projects?

### 2. Comment Period

This occurs over a defined period of time and provides opportunity for all stakeholders to provide input such as comments, experiences, concerns and additional information that is critical to the assessment. This stage provides opportunities or dialogue and discussion between parties including First Nations.

### 3. Assessment Process

Every process is unique but a generic process for assessing effects includes an examination of the following aspects and elements:

- Identify issues and concerns from the evaluation of submissions;
- Identify values (VESECs) – How important is a healthy moose population for subsistence harvesting and cultural values?
- Identify potential interactions between the project and each value - Where do moose live? How do they move through an area? What potential effects of vegetation loss/gain are there? How will winter/summer habitat be impacted? etc;
- Identify potential effects of these interactions - Will the project result in more or less moose? How will existing usage patterns change? etc;
- Characterize potential effects (a change from baseline) – What will be the potential impacts of new corridors, different vegetation, different hunter access and line of sight, new predator access, etc;
- Consideration of mitigation - How to identify ways that project can go ahead so as to not affect, for example, moose habitat?
- Identify residual effects – Will there be any effects even after mitigation?
- Significant determination – How important are these residual effects? What can be tolerated and what cannot?
- Cumulative effects assessment

## 4. Recommendations

These are provided to the regulators by the assessment process, which include: a summary of the process, effects of the project, and mitigation measures; and a summary of the project aspects that cannot be mitigated and cumulative effects of the project. A report is provided to the regulatory process to inform its decision-making. Regulators may implement the recommendations as appropriate.

### 4.3.1 Questions and Comments

In response to a question regarding how First Nations would be engaged in the YESAA process and when, it was acknowledged that this was a difficult question to answer due to the complicated process regarding international projects. The Northern Pipeline Act was a precursor to YESAA and thus, the project may not be submitted through YESAA, but would go directly through a federal regulatory review process. The regulatory roadmap was, at this time, therefore unclear.

This issue was flagged for AHAPC follow-up and the need for the organization to give the regulatory process careful and considered attention. It was noted that the Canadian environmental assessment process was a generic one and thus the Yukon and Canadian processes were largely similar.

Regarding a question about the Northern Pipeline Act (NPA) several respondents provided background information. The NPA is a special act of Canadian Parliament designed specifically to deal with issues that arose around the Foothills project following 1977 hearing in which the National Energy Board recommended construction and operation. The Act was passed in 1978 and is still in place. The NPA is enabling legislation designed to provide a regulatory regime to Alaska gas pipeline project and to facilitate the permits and approvals specific to that project. This was an international project and at the time, federal regulators concluded that a facilitated approvals process, through a new act was required to avoid a vulcanized approval process that could tie the project up in many jurisdictions for a long time. The Act was designed to be flexible enough to include current law. It is umbrella legislation to facilitate dialogue. Any processes within it would be separate from YESAA.

A participant sought clarification of the process of evaluation at the environmental assessment. The issue of the qualitative nature of the process was a recurrent theme in the workshop. In response, a recurring feedback loop throughout the process was described that allowed regular input and ensured a good amount of discussion and feedback. Assessors ask questions based on issues and concerns in the communities affected and seek information to support or refute submissions assertions.

Chief Ruth Massie raised a question regarding the criteria for assessing value and noted that First Nations value on moose differently than a pipeline company or regulators. While no specific response was forthcoming, it was noted that half of the appointees to the YESA board are Council of Yukon First Nation representatives and thus, First Nation values are well represented at that forum.

A series of questions were presented to help First Nations provide effective comments to the environmental assessment process. These included:

- What do you value in the proposed project area?
- How might those values be affected or impacted by the project and why?
- What can be done to reduce or eliminate those effects?
- How are your concerns based? – experience, studies, other information?

The final half hour of the morning engaged table breakout groups to discuss any issues, clarifications or points of concern that remained from the morning's presentations. The purpose of the exercise was to share and clarify information. There was not reporting back to plenary.

#### 4.4 Defining the Environmental Impact Statement (EIS) – Gerry Simon and Linda Graf, ConocoPhillips

The first presentation of the afternoon defined the scope of information in a project, how it is prepared and how First Nations are involved from the perspective of the proponent.

The Environmental Impact Statement (EIS) is a document that is required by a government review panel doing an environmental and socio-economic assessment. The proponent is required to put this information together at the proponent's cost, by law. The document contains:

- a project overview,
- the purpose and need for the project,
- the range of alternatives to the project and ways to carry it out,
- an analysis of the environmental impacts of alternatives,
- a summary of the current environment of the bio-physical and socio-economic baseline conditions of the affected environment,
- an assessment of the bio-physical, economic and socio-economic potential impacts,
- a description of mitigating measures and a summary of environmental and monitoring measures.

The EIS makes information concerning potential significant environmental impacts available to regulatory agencies, the proponent and the public. The EIS includes input gathered from public participation, traditional knowledge studies, and science and research. The EIS preparation process involves:

- consultations with stakeholders;
- a review of all legislation and EA requirements;
- a review of case law;
- a determination of the assessment area and assessment methodology;
- identification and review of relevant existing environmental information;
- identification of data gaps;
- a plan to undertake research and draft the EIS.

Most EISs do not consider cultural impacts in southern Canada, yet northern projects tend to, due to role and presence of First Nations. This is a controversial area of assessment, as culture as a concept is very difficult to define. Traditional knowledge, however, is now accepted as part of an EIS.

EIS Topics for consideration include but are not limited to:

##### **Biophysical impacts:**

- Air – dust, greenhouse gases;
- Noise – impact on communities, dislocation of wildlife;

- Land – slope stability, permafrost and discontinuous permafrost;
- Vegetation – rare and harvested plants;
- Water – stream and water crossing, water use;
- Fish – habitat disturbance, management of non-resident fishing, species of interest, sensitive areas;
- Wildlife – species, protected areas, habitat impact, waste disposal, hunting, sensitive areas, management of non-resident hunting;
- Cumulative effects

#### **Socio-economic impacts:**

- Economy – business opportunities, local wages and revenue base for government;
- Employment and Income – education and skill levels, employment by sector;
- Communities – demographics, in/out movement of people, impact on infrastructure and services;
- Community Wellness – air and water quality, food choices and affordability, living conditions;
- Traditional Culture – social organization, harvesting, lifestyle and values;
- Non-traditional Land and resource use – type/rates of extraction, ownership and access to resources;
- Heritage resources – historical/heritage sites and archaeological sites;
- Cumulative effects.

#### **4.4.1 Questions and Comments**

There was no specific answer to this question about whether the scope of the project would be defined beyond the pipeline corridor right of way. It was noted, however, that clarifying questions around the scope of assessment by proponents would help AHAPC and its members define the scope of their work.

Regarding the scoping question, it was noted that not everything could be assessed and that issues of concern and value to individuals and communities should be seen as priorities. A combination of qualitative and quantitative information could be provided. It was stated that the last thing a proponent wanted was an inaccurate EIS as the entire project would be off if the EIS was wrong.

David Keenan of the Teslin Tlingit Council asked what benchmarks were used for assessing economies and would economies, such as the Tlingit traditional economy, be a part of those assessments. He noted that asking a culture to estimate where it wanted to be in a few years was very difficult as the aspirations of a people were difficult to quantify. He was concerned that the cultural and economic aspects of an EIS are not seen as important.

This sparked a discussion, a part of which involved a response that assessments tend to look at statistical information at the community, regional and federal levels, where it existed. These statistics did not serve as benchmarks but indicators of trends. Unfortunately, no statistics exist for many economies including the cash and traditional economies. It was noted that information is not often routinely collected on many subjects of concern to First Nation by statisticians.

In response to a question, it was clarified that the hearings and review processes are not a validation, but an examination and a test of the proponent’s assertions. The information provided is carefully weighed in the assessment process and that “solid, substantial” evidence is viewed more closely. It was noted that the proponent has a vested interest in moving the project forward and therefore, is interested in getting comprehensive and correct information

into the assessment. Industry participants indicated that an EA assists in planning and through the EA process aspects of the plan may change including route, water crossings, engineering, compressor stations etc.

## 4.5 Plenary Discussion

In the Final Session of Day 1, delegates engaged in a plenary discussion of the general issues arising from the EA and EIS discussions of the day including what are the expectations, roles and participation of the Yukon First Nations in the EA and EIS. These include issues associated with consultations, collection of baseline information, the collection and use of traditional knowledge etc. These considerations raise further issues around how First Nation organize themselves and address capacity concerns in order to fully engage in a large-scale project environmental assessment process and the preparation of an environmental impact statement. A summary of the discussions follows.

### 1. Issues associated with an Alaska Pipeline Project Environmental Impact Statement and Environmental Assessment Process:

- A pressing need for clarity on the regulatory road map and associated regulatory bodies that will be associated with the assessment process;
- Concern regarding how First Nations without a Final Agreement in place (e.g. Kaska, White River First Nations) will be engaged in the environmental assessment process;
- Recognition that many First Nations do not have legislation in place including lands acts, wildlife acts or consultation protocols to support activities associated with pipeline regulation and project impact management;
- First Nations urge stakeholders not to increase expectations without grounds. Project certainty and schedules should be clearly articulated; early project-feasibility work (including field studies, geotechnical work, etc.) should be clearly identified and explained.
- The need for clarification regarding what will happen with the environmental assessments conducted in the 1970's and their relevance and application 35 years later.

### 2. Expectations, Roles and Participation of First Nations:

**Regarding consultations, First Nations expect meaningful consultation based on trust and respect and including:**

- Early engagement and ongoing dialogue in any process of consultation and EIS/EA preparation with pipeline companies and regulatory bodies is essential, and specifically, ahead of the Preliminary Information Package;
- Consultation with First Nations as governments;
- Recognition that participation by any First Nation in any aspect of the consultation process does not constitute endorsement of, or support, for that process;
- Recognition of the diversity of perspectives in the Yukon First Nation community and across communities, including varying degrees of interest and willingness to engage in any consultation process;
- Recognition that consultation is a two-way street between parties;
- One-one-one engagement of individual First Nations is required;
- The clear identification of stakeholders;
- The direct provision of information by First Nations to the regulatory process to ensure that all information is on the decision-making table;

- Demonstration of an understanding of Yukon First Nation Final Agreements and their implications by pipeline proponents;
- Development of a consultation protocol with industry. Participants recognized the onus was on First Nations to develop these protocols;
- The establishment, by First Nations and other governments, of guidelines for EA timelines including when the Terms of Reference for an EA would be issued and the EA undertaken;
- Conversations with grassroots First Nations members that used clear and plain language to ensure their full contribution and participation;
- Early clarification on how First Nations participation in any EIS or EA will be funded;
- That disagreements on values may impact perceptions of the significance of pipeline impacts between First Nations and proponents and/or regulatory bodies;
- Clarity on the involvement of First Nations in any final decision and clarity on the nature of that decision.

**Regarding Traditional Knowledge, delegates believed that there was potential for Traditional Knowledge to greatly inform the EIS and EA processes but expressed concerns:**

- That information provided to any review process be treated with respect and confidentiality;

**Regarding how Traditional Knowledge was recognized, considered and weighted in any decision-making process;**

- That each First Nation will have its own requirements regarding what it is willing to share;
- That Traditional Knowledge was not always well documented nor in a form that met submission requirements.

**Regarding First Nation capacity to participate in any consultations, concerns were expressed that;**

- Many First Nations do not currently have the capacity to participate in consultations;
- Current and more urgent priorities are taxing existing human and financial resources;
- The capacity of First Nation's businesses to engage the pipeline project may also be limited.

**Regarding baseline data collection for input into the EIS, participants recognized a role for First Nations and articulated concerns including:**

- The need for the development of communications protocols to ensure clear information flow and traffic control;
- Early identification of the information required for baseline/indicators work and an understanding of how First Nations can respond with the information they already have;
- That First Nation members be trained for baseline data collection and environmental monitoring employment opportunities.

**Other areas highlighted by participants included:**

- Identification of the need to recognize training opportunities early to ensure skills development, employment opportunities and transferability;

- The challenges associated with managing internal relationships in the communities regarding those who come to gather information on behalf of project proponents;
- The challenges associated with ensuring that those who come to communities to do environmental field work demonstrate capability and expertise;
- Concern that cumulative effects will not be adequately addressed in any environmental assessment.

## 5.0 Day 2: Presentations and Discussions

### 5.1 Example 1: Overview of the Wildlife Impacts and Treatment: Focus on Woodland Caribou – Michael Settington, Environmental Dynamics Inc.

The presentation provided an overview of the scope of information required to contribute to a thorough EA using the example of woodland caribou. It was noted that traditional knowledge and western scientific knowledge are given equal consideration in any assessment.

Regarding caribou, baseline data to be gathered for the EA would include the identification of herds, their range and population characteristics, their important habitats and other “benchmark” conditions as well as potential interactions with the project. Caribou is already a species at risk and much research has already been done to create baseline information and monitor herds.

The impact assessment could include a number of aspects:

- Predictions of population and behavioral responses to a project;
- Prediction of impacts of habitat;
- Identification of mitigation options to minimize effects;
- Determination of cumulative effects; and
- Identification of monitoring needs.

Habitat modification and human access are already affecting woodland caribou. The overall Yukon caribou population of 35,000 is currently stable, but each herd is not. Five of 35 Yukon caribou herds are in decline and all five would be on the proposed pipeline path.

Concerns regarding caribou and a pipeline project include right of way clearance, construction activity and compressor noise levels and may result in both direct and indirect interactions. Direct interactions include mortality due to road traffic and loss of winter habitat due to access roads and the pipeline corridor. Indirect effects include increased predation from wolves through the cleared corridors. The cumulative effects of individuals killed on roads will have a cumulative effect on the herd, as they are small herds.

The involvement of First Nations in the EA process is not “triggered” as it is with regulatory bodies, by specific actions. First Nations may be involved at any time. The creation of an environmental assessment may provide opportunities for First Nations to incorporate traditional knowledge and build their capacity. Work has already been done in this regard through the land claims processes.

#### **First Nations roles may include:**

- identifying values associated with wildlife;
- identifying information gaps;

- ensuring a respectful and fair use of knowledge;
- identifying the interactions with the project;
- contributing and collecting baseline information;
- providing suggestions and comments on mitigation options and follow-up monitoring.

A great deal of information has already been gathered by First Nations but is unpublished or not used. The appropriate use of this information should be determined by each First Nation. Each nation should be deciding now whether and how to use that knowledge. Capacity concerns have already been identified by First Nations and once a project starts it cannot be stopped. There will be proponent deadlines to keep the process moving and on time.

### 5.1.1 Questions, Comments and Break-out Group Discussions

In response to a questions seeking clarification on the meaning and use of “cumulative effects”, it was noted that there are seldom any cumulative or combined effects analysis done in an EIS, as the impacts of each aspect of a project (construction separate from compressor stations, for example) are treated separately. It is difficult to anticipate impacts in the future and how they will interact.

Regarding a question on how baselines are established, it was noted that, in some cases, such as caribou, baselines were already established due to historical management area work. Baselines are established based on existing conditions, not on conditions in the past.

**Breakout groups were formed to discuss the following questions with regard to caribou and other wildlife:**

1. What are the key issues and values of Yukon First Nations with respect to wildlife, specifically Woodland Caribou?
2. How should these values be addressed in the EIS?
3. How and what should/could First Nations contribute to the EIS?

#### 1. The key issues and values for First Nations with respect to wildlife included:

- wildlife as a key to maintaining traditional lifestyles and passing on history, culture and language between generations;
- wildlife represents food, clothing, shelter, medicine, tools and crafts;
- spiritual values are associated with wildlife and hunting - the land is important to culture and inter-generational relations;
- recognition that species at risk must be protected – some First Nations are already voluntarily not hunting to protect wildlife;
- First Nations respect wildlife.

#### 2. The means to address these values in the EIS include:

- the creation of no hunting corridors on the right of way;
- the identification of critical habitat areas that are not to be disturbed;
- the creation of management plans for areas of special concern;

- address outfitters impacts on wildlife populations;
- Efforts that enhance values and build trust and relationships between proponent and First Nations are critical – the proponent should contribute to the management of herds;

### 3. The ways in which First Nations could or should contribute to the EIS included:

- address the mistrust and misuse issues associated with traditional knowledge;
- use traditional knowledge to set the Terms of Reference for the EIS – this will frame the process appropriately;
- create a mechanism to protect traditional knowledge so that First Nations feel comfortable sharing it;
- find ways to give traditional knowledge currency or value in the western scientific system;
- organize First Nations to train in science and take advantage of EIS employment opportunities;
- Build First Nations partnerships into some of the mechanisms like renewable resource councils and the YESAA board to ensure a role in decision-making;
- Take a proactive approach and engage early. Work with the proponent of baseline research;
- Work to ensure traditional and scientific knowledge are given equal consideration.

## 5.2 Example 2: Overview of Socio-economic Impacts and Treatments – Karen Etherington, TransCanada Pipelines

The presentation reviewed the components and process of a socio-economic assessment (SEA). The SEA is a stepwise process, undertaken by the proponent, to understand how the project might affect people and communities. The economy, health, lifestyles, culture are examined to identify positive and negative effects of a project as well as potential measures to mitigate negative and enhance positive effects.

SEAs are focused on the ground as they deal specifically with needs of each affected community. Some of the steps include:

1. Issue scoping – how will the project affect people? What are the issues of concern? This stage involves a review of similar projects, consultation with First Nations and other stakeholders, review of existing literature etc.
2. Describe and determine indicators – what are the things you want to look at? These may include health, traditional land and resource use, infrastructure and services, employment and economy and social and cultural well being.
3. Determine study boundaries – How far do you look? This step determines temporal, spatial and administrative and technical limitations to the assessment.
4. Describe the current social, economic, and cultural setting – What is the current situation? This step involves the collection of baseline data including statistics, local meetings and consultations, regulatory agency discussions etc. Sources and methodologies need to be documented for future reference.
5. Establish the potential effects– What might happen? This stage identifies the pathways of effects resulting from the project and what might happen in each. Traditional and scientific knowledge are evaluated.
6. Identify mitigation – What can be done? Identify practical and feasible actions and strategies to avoid, reduce or eliminate potential negative effects.
7. Determine which effects cannot be mitigated (residual effects) – What is going to happen no matter what we do? Determine frequency, duration extent and magnitude of residual effects.
8. Evaluate the significance of the residual effects – How big is the answer to step 7? Criteria to weigh the impact of residual effects are calculated to determine the significance of the effect. From that, approaches to

address and manage the effects are developed. Communication is necessary then to validate the process with the community.

9. Evaluate the potential combination of residual effects and reach conclusions about cumulative effects – What else is going on that could have negative effects on people? Cumulative effects are those residual effects of multiple projects or activities. In this step, multiple effects are examined and recommendations made to inform decision-makers about a path forward.
10. Develop monitoring plans – What do we need to watch? Were our predictions accurate? The final step is monitoring to determine if the predictions were accurate and if any changes are needed. The communication of results is essential.

Regarding management of the entire process, the proponent, First Nations, and regulatory or co-regulatory management bodies are involved.

### 5.2.1 Questions/Comments & Breakout Group Discussion

It was pointed out that words like mitigation, significance and cumulative effects point to the negative only, whereas effects can be either or both. New acts and processes like YESAA now incorporate positive data on impacts as well.

One participant noted that the process as outlined on the slides represented a linear thinking process and encouraged others that if they wanted to incorporate traditional knowledge that there was a need to get out of a linear paradigm.

Another participant indicated that First Nations data are not well organized on a First Nation by First Nation basis. Yukon wide data may be available in some instances or by community, not by nation. Re-aggregating that data may be difficult. Data are typically compiled by governments that may not be helpful for baseline information calculations. Custom made surveys, therefore, may need to be undertaken.

A question was raised on the issue of confidentiality, particularly in a small community. In response, it was noted that trust building is key to any information sharing and use. Agreement is essential. It was suggested in a previous discussion that there be the potential to engage in the development of the Terms of Reference of the entire exercise. The use of community liaisons would help ensure good communications and accurate information.

Breakout groups were formed to discuss the following questions with regard to the socio-economic impact assessment:

1. What are the key socio-economic issues and values of Yukon First Nations?
2. How should these values be addressed in the EIS?

#### 1. The key issues and values for First Nations with respect to socio-economic issues included:

- The challenge of managing the social ills associated with this kind of a project and particularly in communities already facing difficult socio-economic realities including:
- The rise in the cost of living and how it will affect people;
- The impact of a large influx of people and money into a community;
- Transient workers and alcohol and drug use impacts as well as increased pregnancies in communities;
- The impact on local people working in low-paying service jobs in the affected communities.
- The challenge of measuring the economics and value of a subsistence lifestyle with a different value system – values of the waged and unwaged economies must be assessed;
- Positive impacts include new jobs, tax revenue, contribution to local infrastructure, heritage and youth centre construction and cross cultural education etc.;

- Recognizing that there is not a distinction in communities between social, cultural and bio-physical;
- Addressing the issue of cross-cultural communication is critical.

## 2. The means to address these values in the EIS included:

- Build strong relations between governments including between First Nation governments with overlapping territories;
- Take an holistic approach and respect the differing frames of reference of participants in the process;
- Prepare benefits agreements between First Nations;
- Build a dialogue and be clear on any consultation strategy – do not use hope as your strategy;
- Remind proponents that they are consulting with an under-funded government that lacks capacity;
- Recognize the potential for collaboration between affected communities;
- Clarify the revenue opportunities in this project.

### 5.3 Example 3: Overview of Cultural Impacts and Treatments – Sheila Greer, Champagne and Aishihik First Nations; Mark Nelson, Ta’an Kwach’an Council

The presentation provided a visual overview of traditional land use and heritage-based resources and observed that heritage is a living resource for First Nations and permeates all community and government. A connection to the land is critical to First Nations at many levels. The goal of First Nation heritage is to maintain the connection between themselves and the land and to exercise stewardship over those lands. These connections are strongly inter-generational and linked to community.

The stories attached to a place are considered by First Nations to be more important than the artifact or place as they reflect the connection between people and the land. The story is the essence of the connection to the place. The connection between youth and elders is being re-affirmed in the communities, often through these stories.

Traditional use is also tied to place for First Nations and provides opportunities to transfer knowledge between generations. Traditional sites provide a sense of time depth and are located for specific purposes. Culturally modified trees, for example, identify harvesting, camping and other uses in the past. There is a correlation between very old archaeological sites and places where people camp today, thus linking past and present through the land.

These views challenge the notion of what we think of as ‘heritage’, for it is not just old sites and artifacts that are valued, but the cultural landscapes they evoke. Heritage is not site-specific but the relationship between the land and people. Thus, the valuation and quantification associated with culture and heritage for the purposes of an EA and EIS are challenging and may not be appropriate. The relationship to the land may be disturbed even if you move a pipeline away from a specific old site or village. The cultural landscape is still affected. That has implications about the definition of an impact and raises difficult questions including, “How do you mitigate intangible values?” Standard mitigative measures may not remove the impact for First Nations.

New and creative forms of mitigation are required rather than the standard buffering of specific sites. Ceremonial mitigation or clan-specific mitigation may be options as traditional rights dictate the following of clan protocols. Fragmentation and contamination can be impossible to mitigate, but questions arise as to how proponents can invest and strengthen the relationship with First Nations in other ways. The provision of resources to traditional camps, working with youth and trail work may assist in mitigation.

First Nations values need to be front and centre in any EA or EIS, which must reflect the link between identity and stewardship of the land. Traditional knowledge (TK) has been inappropriate or exploitive in some instances but it is being influenced by the need to be a part of EAs etc. The *Yukon First Nation Heritage Program* is working to help First Nations develop TK policies to deal with sensitive information. A framework policy has been developed but each community will drive its own process. One First Nation has implemented a policy and several others are in process.

There is a broad menu of matters and considerations that need to be considered for cultural impact assessments and participants were encouraged to not underestimate the importance of cultural landscapes as precedents had been set in other EAs in the Mackenzie Valley project. Many First Nations are taking a leadership role in evaluating heritage research and many are doing their own research as they know the value of their resources. The last thing any First Nation wanted was a landscape of regret associated with the proposed pipeline project.

### 5.3.1 Questions and Comments

1. What are the opportunities that the project can provide to enhance First Nations culture and the ability/capacity to advance the work to better manage heritage resources?
2. What are the key cultural issues and values to Yukon First Nations?
3. How should these values be addressed?

#### 1. The opportunities associated with the project that could advance the work to better manage heritage resources included:

- focus on the development of traditional knowledge protocols;
- seize opportunities for capacity building by encouraging First Nations to do this work themselves;
- seize opportunities to provide opportunities for youth and elders to reconnect with cultural landscapes;
- land use planning can be supported by this kind of development;
- accept the reality that the right of way is a done deal already and there are no real opportunities to make changes now;
- recognize and accept the cumulative effect on the cultural landscape already;
- use art to convey messages around impacts (Carol Geddes);
- explore lessons learned from other First Nations in similar situations;
- the pipeline project can provide an opportunity for First Nations to map and recover and record their traditional knowledge that may be being lost.

#### 2. The key cultural issues and values to First Nations were:

- ownership is a foreign value to First Nations;
- there needs to be knowledge of the communities goals and objectives and where they see their future;
- there is a need to pass on the value of the land to children;
- the definition of traditional knowledge is not as clear as we assume;
- can acceptable mitigation to cultural impacts be defined?
- Traditional knowledge is highly valued but is either undocumented or poorly documented.

#### 3. These values should be addressed in the following ways:

- Provide cross-cultural education to provide opportunities for others to understand the cultural concerns of each First Nation;

- Fund culture camps for First Nation youth;
- Proponents need to listen first to First Nations;
- Define and teach cultural rules associated with any right of way on First Nations land;
- Proponents should go to First Nations to learn how to consult with their people first;
- Teach others to understand First Nation cultural cues and how important they are (i.e. when an elder speaks);
- Develop the capacity to record traditional knowledge on appropriate databases so it is not lost.

#### 5.4 First Nations Capacity Issues and Needs Overview – Bill Slater, Bill Slater Environmental Consulting

The presentation examined the capacity requirements for environmental assessment, examining project needs, First Nation expectations and the challenges to meet both. The project needs, in terms of potential information requirements or options from First Nations had already been discussed in previous presentations, so they are not re-iterated here.

##### **The expectations of First Nations include:**

- to participate fully as governments;
- to be recognized and respected as partners/collaborators;
- to define their engagement in the process and the process itself;
- to be represented on decision-making bodies;
- to have their views considered and incorporated;
- to benefit from the project through jobs, training, business opportunities, tax revenue etc.

##### **The challenges to First Nations, in terms of engagement are many, and include:**

- Project size, complexity and the lack of previous experience and technology in the Yukon to respond to it;
- Complicated EA process with unclear regulatory process and players;
- Many governments involved with individual agendas;
- Not all First Nation land claims are finalized;
- Most First Nations do not have fully developed regulatory regimes in place to guide engagement;
- There are many challenges in cooperation between First Nations;
- Engagement requires extensive human and financial resources.

To meet the expectations and challenges, First Nations need to evaluate their current capacity and take the necessary steps to develop new capacity. Three capacity categories were identified with the requirements of each noted:

##### **1. First Nations Government Capacity**

- Internal capacity – Identified needs included new government structures to address these new priorities, the development of sufficient technical understanding of the project to engage, administrative capacity to handle the volume of work, the ability to clearly articulate objectives of engagement and evaluate the information from external advisors, the ability to bring in expertise as well as human and financial resources for a project of this scale.

- External capacity – Identified needs included the ability to find, use and afford the necessary external expertise, the determination of what advice is required including technical advice (scientific and engineering as well as socio-economic advice) as well as expertise on process (CEAA, YESAA, NEB).

## 2. Community Capacity

- Willingness and readiness to participate in the EA process – Communities must recognize this as valuable and a priority, other issues and concerns must be resolved first including unresolved land claims and concerns about past projects, recognition that the difficult social issues facing communities right now are often afforded the highest priority and must be resolved first.
- Project Ownership - Real opportunities and value for communities must be visible, people's issues and concerns must be addressed, communication and honesty are essential from the start.
- Business readiness – Business that are capable of taking advantage of new opportunities should engage business development and training is necessary, businesses that can provide services after the project is completed. Most of these businesses will be too small to take advantage of the business opportunities associated with the pipeline project;
- Employment – Does the community have the skills and abilities to seize opportunities? If not, training and education are essential, particularly the development of skills that can be used after the project.
- Coordination Capacity – This area answers the question: Can all these groups work together? If each First Nation tries to do it alone, the task will be immense. To develop capacity and community readiness, a coordinated approach to find and allocate resources for socio-economic issues is critical. For example, a \$500 million fund for Mackenzie Valley Gas Pipeline to address socio-economic issues prior to pipeline was set up to build capability to participate on a level playing field with others including large governments and proponents with hundreds and millions of dollars.

### **In order to develop capacity and make First Nations a meaningful part of the EA process, the following suggestions were offered:**

- Develop EA Cooperation Agreements between First Nation and other governments that state how EA will be done and how First Nations will be involved in the process;
- Develop consultation protocols;
- Negotiate impact benefit agreements between peers. This requires coordination between First Nations and avoids competition and resentment;
- Develop participation agreements to provide First Nations with adequate resources to participate in the assessments and ensure a level playing field;
- Coordinate the search for external technical resources – find and share the best and brightest advisors.

#### **5.4.1 Questions and Comments**

Speakers recognized the importance of continuing to foster the relationships reflected in the room between industry, government and First Nation governments. Industry representatives encouraged First Nations to be proactive and approach them with resource needs. Industry recognized the need for high quality dialogue to better understand needs, noting the concept of cultural landscape was new to them. A First Nation participant noted a need for more information on the proponents and their industry as they were new to her.

A Vuntut Gwitchin representative noted that their traditional knowledge policy provided an excellent example of what First Nations can achieve when they work together. He noted that AHAPC is in a very good position to continue to facilitate this work.

Another representative indicated a need for more focused and technical workshops and the need to get very specific very quickly so that communities could prepare for the coming work. He noted that First Nations have the right to not only be consulted but to be accommodated as this right is guaranteed by the constitution of Canada. They are not just stakeholders but governments with equal rights with all governments. He saw a role for AHAPC in facilitating the more technical workshops.

Another suggestion for AHAPC was regarding its ability to assist in providing information to the communities, many of whom may not be aware of what is coming. Chief Massie indicated that when AHAPC started its goal was to gather information and get research out to communities, the Yukon and federal governments as well as industry. Another goal was the creation of Community Liaison Worker positions, which has not happened due to lack of funding. AHAPC will re-initiate the request for these officers to have continuity at the grassroots level. The work and its complexity are increasing and the need for these workers is growing. She noted that the oldest self governing First Nation in the Yukon is just 12 years old and cautioned that if First Nations do not have enough information to make a decision, there will be no decision.

Another role for AHAPC was suggested and involved the creation of impacts and benefits templates for First Nations as well as other policy tools to assist them in being prepared.

The group was reminded that while the focus of discussions was on the Yukon, that the pipeline is not a Yukon project, but an international one. Only one third of the line through Canada is in Yukon only. He indicated that the AHAPC and individual First Nations should enter into discussions immediately with the federal government regarding financial support for capacity development.

In conclusion, Chief Massie offered some closing remarks and a closing prayer.

## 6.0 Task List for the AHAPC

Throughout the workshop, participants offered suggestions for a plan of action for AHAPC for the coming months. The items identified are as follows:

- Research, monitor and provide clarification to AHAPC members on the regulatory road map and associated regulatory bodies that will be associated with the assessment process;
- Clarify questions around the scope of any environmental assessment so as to assist AHAPC members in defining the scope of their work;
- Facilitate the development of traditional knowledge policy templates and documents;
- Facilitate more technical and in-depth workshops on specific issues of concern to AHAPC members;
- Re-initiate the request for resources to create Community Liaison Worker positions to assist in providing information and support on issues associated with the pipeline project at the grassroots level;
- Research and create impacts and benefits templates for First Nations members as well as other policy tools to assist in preparation for the pipeline project.

## 7.0 Acknowledgements

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support: Wayne Marshall, NEB; Michael Muller, YESAB; Gerry Simon and Linda Graf, ConocoPhillips; Michael Setterington, Environmental Dynamics; Karen Etherington, TransCanada; Sheila Greer, Champagne and Aishihik First Nations; Mark Nelson, Ta'an Kwach'an Council; Bill Slater, Bill Slater Environmental Consulting.

# APPENDIX A – WORKSHOP AGENDA

08:00	<b>Day 1 - Registration</b>	
09:00	<b>Opening Prayer and Welcome</b>	Chief Ruth Massie, AHAPC
09:15	<b>Workshop Goals</b>	Lindsay Staples, Facilitator
	<ol style="list-style-type: none"> <li>Provide an overview and improve understanding of the:               <ol style="list-style-type: none"> <li>Environmental assessment process (EA) associated with the review of major projects such as the pipeline, and</li> <li>Environment impact statement (EIS) that is the subject of the review.</li> </ol> </li> <li>Provide an opportunity for First Nations, Government and Industry to discuss the role, engagement and expectations of Yukon First Nations in the EA and in the preparation of the EIS.</li> <li>Provide an opportunity for First Nations, Government and Industry to discuss the needs and capacity-building requirements to participate effectively in the EA and in the preparation of the EIS.</li> <li>Identify the follow-up requirements for the Aboriginal Pipeline Coalition and First Nations arising from the workshop discussions.</li> <li>The workshop will not talk about the regulatory permitting phase.</li> </ol>	
09:30	<b>Alaska Highway Aboriginal Pipeline Coalition Overview</b> A presentation on the history and status of the organization.	Claudia Riveros, AHAPC
09:45	<b>Alaska Highway Gas Pipeline Project Overview</b> A presentation on the history and current status of the project.	Wayne Marshall, National Energy Board
10:15	<b>Refreshment Break</b>	
10:30	<b>Defining the Environmental Assessment Process (EA)</b> A presentation that defines: 1) the EA and how it differs from the regulatory permitting phase, 2) who are the key players, and 3) how are First Nations involved.	Michael Muller, Yukon Environmental and Socio-economic Assessment Board
11:30	<b>EA Discussions</b> <ol style="list-style-type: none"> <li>What are the issues arising from the EA presentation?</li> <li>What are the expectations, role and participation of Yukon First Nations in the EA?</li> </ol>	First Nations, All
12:30	<b>Lunch</b>	
1:00	<b>Defining the Environmental Impact Statement (EIS)</b> A presentation that defines 1) the scope of information of the EIS in a project like the pipeline, 2) how it is prepared, and 3) how are First Nations involved.	Gerry Simon & Linda Graf, ConocoPhillips, BP
2:00	<b>EIS Discussions</b> <ol style="list-style-type: none"> <li>What are the issues arising from the EIS presentation?</li> <li>What are the expectations, role and participation of Yukon First Nations in the EIS?</li> </ol>	First Nations, All
3:00	<b>Refreshment Break</b>	
3:15	<b>Plenary Discussions</b> What are the issues arising from the EA and EIS discussions?	All
4:30	<b>Closing Remarks</b>	Lindsay Staples
5:00	<b>Cash Bar</b>	Room C,
6:00	<b>Banquet and Entertainment</b>	Convention Centre

08:45	<b>DAY 2 - Recap</b>	Lindsay Staples, Facilitator
09:00	<b>Example 1 – Overview of Wildlife Impacts and Treatment: Focus on Woodland Caribou</b> A presentation that defines 1) the scope of the information, 2) how the information is prepared and plays out in an EA, and 3) how are First Nations involved.	Michael Settingington, Environmental Dynamics Inc.
09:30	<b>Discussion 1 – The Wildlife Chapter of the EIS</b> 1. What are the key issues and values of Yukon First Nations with respect to wildlife, specifically Woodland caribou? 2. How should these values be addressed in the EIS?	First Nations, All
10:30	<b>Refreshment</b>	
10:40	<b>Example 2 – Overview of Socio-economic Impacts and Treatment</b> A presentation that defines 1) the scope of the information, 2) how the information is prepared and plays out in an EA, and 3) how are First Nations involved.	Daniel Begley & Karen Etherington, TransCanada Pipelines
11:00	<b>Discussion 2 – The Socio-economic Chapter of the EIS</b> 1. What are the key socio-economic issues and values of Yukon First Nations? 2. How should these values be addressed in the EIS?	First Nations, All
12:00	<b>Lunch</b> Guest Speaker – George Asquith, President, Great River Journey	
1:00	<b>Example 3 – Overview of Cultural Impacts and Treatment</b> A presentation that defines 1) the scope of the information, 2) how the information is prepared and plays out in the EA, and 3) how are First Nations involved.	Sheila Greer, Champagne / Aishihik First Nation & Mark Nelson, Ta’an Kwach’an Council
1:20	<b>Discussion 3 – The Cultural Chapter of the EIS</b> 1. What are the key cultural issues and values of Yukon First Nations? 2. How should these values be addressed in the EIS?	First Nations, All
2:20	<b>Role of Yukon First Nations in the EA and EIS – Recap</b>	Lindsay Staples
2:30	<b>Refreshment Break</b>	
2:40	<b>First Nations Capacity Issues and Needs Overview</b> A presentation that identifies the major capacity issues and needs affecting the participation of Yukon First Nations in the project.	Bill Slater, Bill Slater Environmental Consulting
3:00	<b>Plenary Discussions</b> 1. What are the key issues affecting capacity and the ability for Yukon First Nation to participate in an EA? 2. How could these issues be addressed? 3. What are the actions and next steps for the AHAPC and others?	All
4:30	<b>Closing Prayer</b>	

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