

Overview of BC Environmental Assessment Process and Opportunities for Indigenous Participation

Under the *Environmental Assessment Act, 2018*

Presentation for the T̓silhqot'in Nation

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Purpose of this Presentation

- Very high level overview of BC's environmental assessment process (**EA Process**) under the 2018 *Environmental Assessment Act, 2018 (EA Act)* and the opportunities for Indigenous involvement in that process
- **Part 1** identifies the phases of the BC EA Process and the standard opportunities for Indigenous participation
- **Part 2** describes ***potential customized opportunities*** under the EA Act for Indigenous nations to participate in and influence the outcome of EAs. These need to be negotiated and secured on a Nation by Nation basis.
- Background information to support the Nation's priority work of developing/confirming the Nation's own decision-making criteria and internal process requirements for deciding whether to approve or reject projects proposed in T̂silhqot'in Territory.

BC's new EA Act better than old EA Act

- New EA Act is different from, and in many ways better than, BC's old law. It requires BC to involve interested nations every step of the way and “seek to achieve consensus” with them at key decision points.
- It requires BC's final decision-makers (Ministers) to consider, among other things:
 - the sustainability implications of every project (this was not required before!),
 - impacts on Indigenous nations and their rights,
 - any Indigenous (and BC) land use plans, and
 - any decision by Indigenous nations for or against the project.
- However, EA Act still makes BC the final decision-maker for projects, which is problematic: does not recognize and respect Aboriginal title and Indigenous jurisdiction to decide how Indigenous lands are used. Especially problematic where the Nation and BC reach different conclusions about whether a project should proceed.

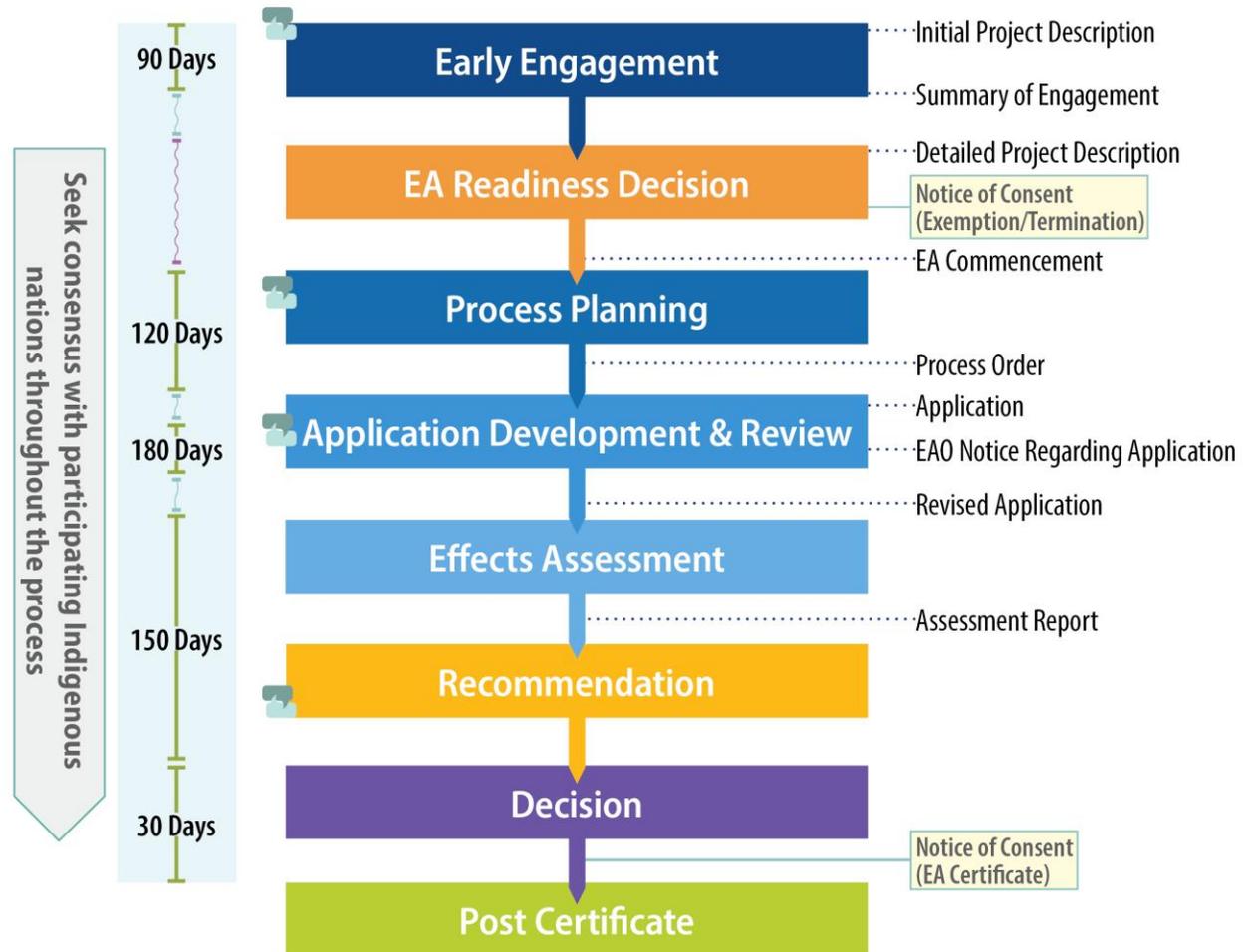
Provincial Environmental Assessment

Environmental Assessment Process (2018)

SUMMARY OF THE PROCESS FROM EARLY ENGAGEMENT TO POST-CERTIFICATE

Timelines

- Legislated Time
- EAO Time
- Proponent Time
- Public Engagement & Comment Period



PART 1: Major Steps in BC EA Process

1. Early Engagement
2. Readiness Decision
3. Process Planning
4. Application Development and Review
5. Effects Assessments and Recommendations to BC government
6. BC's Decision on whether to approve the project

The next slides briefly explain each of these steps in the EA Process and the opportunities for Indigenous participation.

Major Steps in BC EA Process:

1. Early Engagement

- Early Engagement happens before the EAO decides whether proposed project will go to assessment. This phase will normally last 90 days.
- Indigenous nations can share with proponent and EAO
 - their initial interests, concerns, questions relating to a project;
 - their decision-making criteria and what information they will need to make their own decision about the project.
- Affected Indigenous nations tell EAO whether they will participate in the EA as “Participating Indigenous Nations”. Participation includes a spot on Technical Advisory Committee and EAO must “seek to achieve consensus” with Participating Indigenous Nations at key points in the EA process.
- “Consensus seeking” should involve EAO trying to get to a shared understanding on outcomes but does not mean securing consent.

Major Steps in BC EA Process:

2. Readiness Decision

- “Readiness Decision” is a new step in EA process.
- It happens once proponent submits Detailed Project Description (**DPD**) to EAO.
- 4 possible outcomes:
 1. Proponent must improve their DPD
 2. Proceed with assessment
 3. Project can go ahead without an EA (Exemption)
 4. Project is rejected outright, without an EA (Termination)
- EAO must seek consensus with Participating Indigenous Nations on the outcome.
- Termination and Exemption will be much rarer than outcomes 1 and 2.
- Termination possible if BC concludes either that project would have “extraordinarily adverse effects” in general or for an Indigenous nation **or** that project is “substantially the same” as a previously rejected project.

Major Steps in BC EA Process:

3. Process Planning

- If BC decides at Readiness Gate to assess project, next step is to plan the assessment in detail. Planning phase will normally take 60 days.
- The EAO prepares a ***Process Order*** and supporting documents that set out:
 - scope of the assessment (i.e. what is being assessed)
 - what information must go into the proponent's Project Application to support assessment ("Application Information Requirements"),
 - who will gather what information (proponent, Crown, Indigenous nations, independent experts);
 - who will participate (including Technical Advisory Committee members);
 - timeline for the assessment; and
 - what other permits/approvals the project needs and which Crown department/agency issues those ("Regulatory Coordination Plan")

Major Steps in BC EA Process:

3. Process Planning

- EAO must try to reach consensus with Participating Indigenous Nations on the Process Order. This is an opportunity to make sure the assessment is set up to provide all the information and analysis a nation needs to make its own informed decision about the project.
- Important process decision for Participating Indigenous Nation under s. 19(4): whether nation will assess for itself the project effects on the nation, or let the EAO prepare that part of the effects assessment report.

Major Steps in BC EA Process:

4. Application Development and Review

- Proponent prepares their Project Application, which must include all the information required under the Process Order/Application Information Requirements.
- Proponent has up to 3 years to prepare their Application.
- Proponent should be in contact with the EAO, the Technical Advisory Committee, and Participating Indigenous Nations to get relevant information and confirm whether Application is on track.

Major Steps in BC EA Process:

4. Application Development and Review

- EAO, Technical Advisory Committee and Participating Indigenous Nations review the draft Project Application and identify any gaps or concerns.
- EAO decides whether draft Application is complete.
- EAO must seek consensus with Participating Indigenous Nations on whether the Application is complete. This is the time to identify any gaps or concerns with the quality of the proponent's information or analysis (and maybe get EAO to pay for independent technical advice on a tricky topic).
- If the Application is not complete, EAO orders proponent to prepare a revised Application. Revised Application gets reviewed for completeness by EAO, Technical Advisory Committee and nations.
- This phase ends when the EAO determines the Application is complete and ready to support the "effects assessment".

Major Steps in BC EA Process:

5. Effects Assessment and Recommendation to BC government

- EAO prepares Assessment Report. Report explains all the project's impacts (environmental, economic, social, cultural, health), including cumulative effects and including on Indigenous nations. As noted above, under s. 19(4) of the EA Act, Participating Indigenous Nation may contribute the part of the Report assessing effects on their own nation.
- EAO also prepares recommendations about
 - whether the project promotes sustainability
 - how the project affects Indigenous nations and their rights, and
 - whether Indigenous nations have consented to or rejected the project
- The EAO also prepares draft project conditions, even if approval unlikely.
- All this material goes to BC's final decision-makers (Ministers), to inform their decision on whether to approve project and if so, on what conditions.

Major Steps in BC EA Process:

5. Effects Assessment and Recommendation to BC government

- Nations who committed to preparing the effects assessment for their own Nation deliver that part of the Report.
- EAO must seek consensus with Participating Indigenous Nations on
 - Assessment Report,
 - its recommendations about whether the project promotes sustainability and how it affects Indigenous nations, and
 - draft project conditions.
- Effects Assessment report and recommendations will normally determine BC's final decision. Participating Indigenous Nations should therefore
 - ***make their decision for or against a project before these materials are finalized;***
 - make sure EAO report and recommendations accurately share their perspective and any decision they have made about the project; and
 - try to reach consensus with EAO on the key recommendations to the Ministers.

Major Steps in BC EA Process:

6. BC's Decision

- BC Ministers must consider Assessment Report, EAO's recommendations and draft project conditions
- Ministers must also consider perspectives of Indigenous nations and any decisions by Indigenous nations for or against project.
- If EAO concluded that project is ok but an Indigenous nation has decided against the project, the Ministers must offer to meet with that nation before making their decision and try to reach consensus.
- The Ministers will make their final decision and publish reasons for their decision. When they approve a project, they must issue an EA Certificate that includes project conditions.
- If they approve a project that one or more Indigenous nations rejected, they must explain why.

PART 2: Potential Customized Opportunities to Participate in and Influence BC EAs

- 1. EA Process Collaboration Agreements (s. 41(2)(b))**
- 2. EA Decision Consent Agreements (s. 7)**
- 3. Indigenous-led EA (s. 24(3) or 41(2)(a))**
- 4. Indigenous-BC EA Cooperation Agreement (s. 41(2)(b))**

EA Process Collaboration Agreements

(s. 41(2)(b))

- Confirm how Indigenous nation and EAO/BC will work together through the EA process
- BC still makes its own final decision
- Benefits from collaboration agreement:
 - Nation can hit ground running when a project comes through the door
 - more opportunity to work towards consensus with BC and shape the EA and BC's understanding of project effects
 - Strong signal to proponents that nation will play a major role in EA and that it would be wise to try to develop a strong relationship with the nation and address the nation's concerns and interests
 - Helpful groundwork for a s. 7 consent agreement

EA Decision Consent Agreements (s. 7)

- BC can enter into consent agreement with indigenous nation for a defined part of their territory **or** for a particular project.
- ***BC will only approve project if Nation consents.*** If Nation rejects project, so will BC.
- Talhtan Nation and BC are negotiating the first consent agreements for 2 mines.
- We can expect BC to be very selective about entering into s. 7 consent agreements.
- At a minimum, BC will expect clarity on who decides for the nation, the nation's decision-making criteria, and a commitment to transparency and procedural fairness before negotiating consent agreements.

Indigenous-led EA (s. 24(3) or 41(2)(a))

- Minister can
 - have Indigenous nation conduct assessment for a specific project (s. 24(3)) or
 - enter into an agreement with an Indigenous nation to rely on nation's assessment to inform BC's decision making (s. 41(2)(a)).
- Neither provision has been used yet and EAO has no policy on them yet to explain when BC might let Indigenous nations run BC's EA and exactly how much freedom Indigenous nation would have to design the assessment.
- Indigenous-led assessment would probably need to cover all the things that EA Act requires be assessed.
- Assessment report would still go to Ministers, who would still make BC's final decision.
- But an Indigenous nation who leads the EA and the effects assessment
 - would have significant control and influence over the EA
 - should be comfortable relying on the EA to make its own decision.

Indigenous-BC EA Cooperation Agreement (s. 41(2)(b))

- Would be an agreement to jointly review a project or multiple projects
- BC has a Cooperation Agreement with Canada
- No policy at all on this opportunity and hasn't been used yet with Indigenous nations
- BC might only do cooperation agreements where they already recognize the nation's jurisdiction over resource development projects (e.g. T̓silhqot'in Declared Title Area), though I am speculating here.

For more information on BC EA Process

Please visit the Environmental Assessment Office website:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments>

You are also welcome to ask me questions:

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Sechanalyagh for your interest!