BRITISH COLUMBIA

ENVIRONMENTAL ASSESSMENT REVITALIZATION
DISCUSSION PAPER

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INTRODUCTION

Why is British Columbia's Environmental Assessment process changing?

The Province of British Columbia is revitalizing the environmental assessment (EA) process "To ensure the legal rights of First Nations are respected, and the public's expectation of a strong transparent process is met."[1]

Resource development is an important part of British Columbia's economy, contributing to overall community and economic well-being.

The EA process is one part of a broader regulatory process for major projects (see below). If a project is successful in the EA process, several additional authorizations must be obtained before the project can proceed to construction.

A revitalized EA process presents an opportunity to provide an important foundation for economic stability and development in B.C., by charting a path that advances reconciliation and ensures sustainability for future generations.

1. Mandate letter to Minister of Environment and Climate Change Strategy, George Heyman

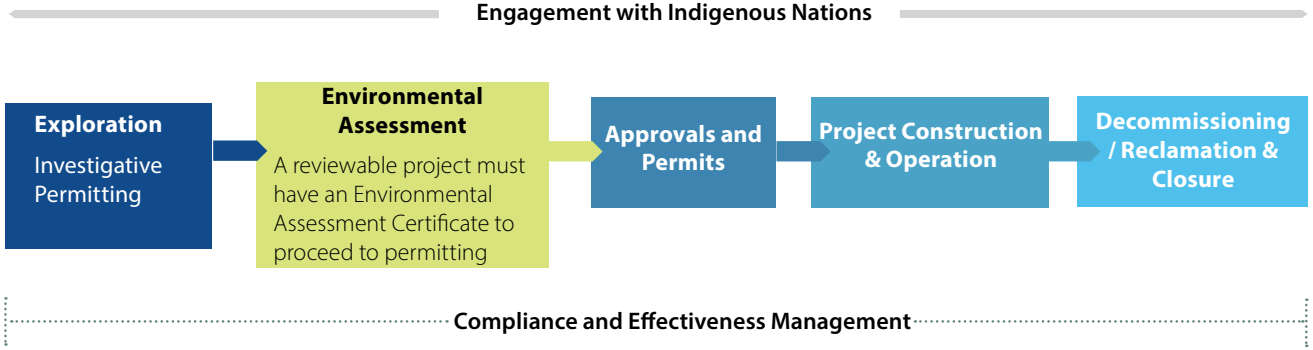
EA revitalization is intended to result in changes to EA legislation, regulations, policies and practices that:

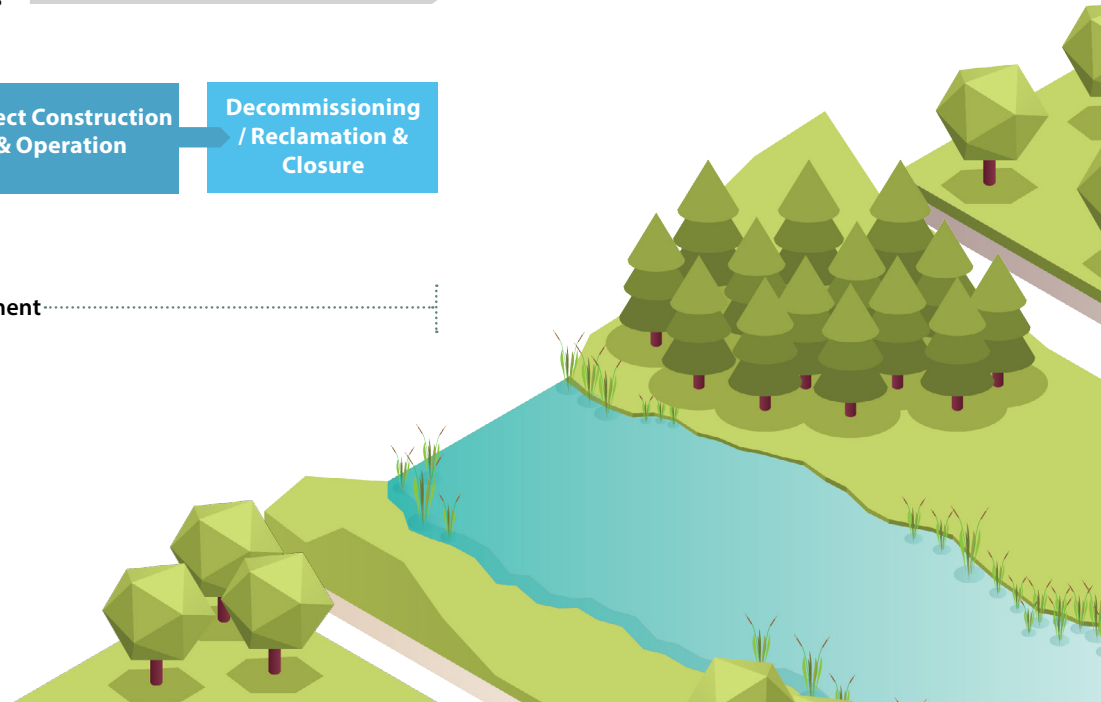
1. Enhance public confidence, transparency and meaningful participation;
2. Advance reconciliation with First Nations; and
3. Protect the environment while offering clear pathways to sustainable project approvals.

EAs are a tool for governments to make a strategic decision on whether a project can proceed. Rigor, independence, predictability, process certainty, timeliness, accessibility and transparency are all important hallmarks of a trusted EA process that can support investor confidence in B.C.

This discussion paper provides an overview of what a new EA process could look like. Feedback on the proposed changes is important, and will help inform legislative, policy and regulatory changes. Information on how to provide feedback is found in the summary on page 26.

The Regulatory Continuum





RECONCILIATION

Provincial commitments to Indigenous rights recognition and implementation of the UN Declaration

The Province of British Columbia has committed to the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), the Truth and Reconciliation Commissions (TRC) Calls to Action and the Supreme Court of Canada's decision in Tsilhqot'in v. B.C., and to reviewing its policies, programs and laws to bring these commitments into action.

Revitalizing the Environmental Assessment process presents an opportunity to develop a new legal framework and to make organizational shifts based on recognition of Indigenous title, rights and jurisdiction, treaty rights, and the legal pluralism that exists in Canada. Doing so has the potential to increase process certainty and result in resilient outcomes for all.

For millennia, Indigenous peoples have been making decisions about the use of lands and resources in their territories –according to their own laws and legal processes – to sustain the well-being of their communities, cultures, environment and economies.

Indigenous nations and peoples pre-existed and continue to exist today and have their own laws, governments, political structures, social orders, territories and rights inherited from their ancestors. This inherent right of self-government is an Aboriginal right recognized and affirmed under the Constitution. The Supreme Court of Canada in Delgamuukw (1997) and in Tsilhqot'in (2014), affirmed that constitutionally protected Aboriginal title is a legal right in the land itself, including the right to exclusive use, the right to proactively use and manage the land, and the right to benefit from its inescapable economic component.

Recognition of Indigenous peoples as decision-makers in their territories based on their inherent rights of self-government, self-determination, and to sustain and benefit from the wealth of their territories, will advance reconciliation and help create predictability for other users of the land.

UN Declaration:

The UN Declaration is an international human rights instrument adopted by the United Nations, which was fully endorsed by Canada in 2016. The rights affirmed in it "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world" (Article 43).

Among other things, the UN Declaration recognizes Indigenous peoples' rights to self-determination (Article 3), to "maintain and develop their own indigenous decision-making institutions" and "to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves" (Article 18). The UN Declaration recognizes "free, prior, informed consent" as the standard for consultation with Indigenous peoples prior to the approval of any project affecting their lands or territories and other resources (Article 32(2)) or the adoption and implementation of any legislative or administrative measures that may affect them (Article 19).

TRC Calls to Action:

The final TRC report contains 94 Calls to Action for reconciliation between Canadians and Indigenous peoples. Particularly relevant to the EA revitalization process, the TRC urged the recognition and integration of "Indigenous laws and legal traditions in negotiation and implementation processes" and called on Crown governments "to reform those laws, government policies and litigation strategies" that reflect outdated concepts of Crown sovereignty over Indigenous peoples (Calls to Action 45-47).

WHAT WE HAVE DONE AND WHAT IS NEXT:

The Environmental Assessment Revitalization process

Environmental Assessment Process Announced
March 7th, 2018

Initial Engagement Phase
February - April, 2018

Environmental Assessment Advisory Committee:

- Independent committee to provide recommendations
  - 2 co-chairs
  - 10 members
  - 75 hours of meetings
  - Report & 33 recommendations

Read the Report of the Committee

First Nations Workshops:

- Led by FNEMC on behalf of FNLC and supported by EAO
- 4 regional workshops in Terrace, Prince George, Kamloops and Nanaimo
  - Over 60 nations participated
- 1 province wide forum in Vancouver
  - Over 70 nations participated

Read the Summary of Regional Workshops

Direct Engagement:

- 67 Indigenous nations represented
- 7 Industry & business associations represented (63 representatives)
- 44 EA practitioners at workshop
- 33 NGO representatives at workshops

Read the Summary of Direct Engagements

June, 2018

Discussion Paper

Discussion paper informed by the outcomes of workshops, engagements and recommendations of the Environmental Assessment Advisory Committee

June 18 - July 30, 2018

Comment Period on Discussion Paper

You are here

Late Summer / Fall, 2018

What We Heard Report & Intentions Paper

Documents are created to outline what we heard and the intended direction of B.C.'s new environmental assessment process

Late Fall, 2018

Revitalization

New legislation introduced to support B.C.'s revitalized environmental assessment process

SUMMARY OF ENGAGEMENTS TO DATE

Within the initial engagement phase of environmental assessment (EA) revitalization there were three streams of engagement: Environmental Assessment Advisory Committee; First Nations Workshops; and Direct Engagement. Summary reports from each of these streams provided the foundation for this discussion paper and are all available here.

The EA Advisory Committee was an independent forum representing a diversity of experience, interests, and expertise in relation to the EA process, established by the Minister to review and make recommendations on B.C.'s current EA process. The committee met 10 times (over 75 hours) between March and April 2018 and produced a report with 33 recommendations that seek to be workable for all parties in the EA process.

The First Nations Workshop stream was led by the First Nations Energy and Mining Council (with involvement from the Environmental Assessment Office (EAO)), and consisted of four regional group workshops for Indigenous nations held between February 23 and March 7, 2018. A fifth province-wide workshop was held on May 29-30, 2018 to provide a forum for dialogue among Indigenous leaders on EA Revitalization.

The Direct Engagement stream consisted of meetings between the EAO and a variety of EA participants including Indigenous nations, industry associations, Environmental and other NGOs and EA practitioners, to seek input on the challenges of the current EA process, the opportunities for improvement, and recommended changes.

The EAO had government-to-government meetings with 67 Indigenous nations at 14 meetings. The EAO met with seven industry and business associations, including 63 companies or organizations. The EAO also held workshops with expert EA practitioners (44 people), and Environmental and other NGOs (33 representatives from multiple organizations).

Some Common Themes We Heard:

- Changes to legislation must create certainty of process and predictability while also allowing for the flexibility necessary to accommodate individual project circumstances.
- Early engagement in the EA process to identify key issues early is important, and meaningful public participation should occur throughout the EA process.
- Many groups requested certainty about timelines, scope of activities, role of the EAO and EA participants, engagement activity criteria, and information requirements for EA deliverables.
- Indigenous nations need to be formally recognized by the Province and the proponent as decision makers and co-regulators of the EA of a project, and the EA process needs to provide the information to inform their decisions.
- "Higher level" regional and strategic EAs have an important role to play in protecting rights and values, managing cumulative effects and guiding project EAs.
- EA decisions should be informed by both high quality, robust, credible scientific information and Indigenous knowledge.

ENVIRONMENTAL ASSESSMENT
REVITALIZATION FOCUS

FOCUS ON PUBLIC CONFIDENCE

Revitalizing Environmental Assessments (EA) to ensure public confidence and meaningful participation

To have confidence in the EA process, the public, local communities and stakeholders must be able to meaningfully participate throughout EAs, have their interests and concerns fully understood, and be able to see how their involvement has impacted the outcomes of the assessment. ***To achieve this, we are considering:***

- Framework of the EA process is clearly set out in legislation:
  - Purpose statement
  - Key elements of the EA process, including timelines
  - Opportunities for engagement
  - Factors that must be considered in each EA
  - Criteria for decision-making
  - Requirement to publish reasons for decision
- Revise *Reviewable Projects Regulation* to align with new EA legislation and to utilize criteria that reflects the potential for a given project to result in adverse effects.
- Public engagements provide a variety of types and means of engagement beyond traditional comment periods, including more opportunities for dialogue, supported by plain language materials.
- Public participation funding program.
- Formal opportunity for the public to identify interests, issues, and concerns with a project to inform project design, location, alternatives and study requirements, and to shape the approach to public engagement.
- The EA Advisory Committee recommended that in certain circumstances a community advisory committee may be established.
- EA decisions are based on legislated decision criteria and supported by published reasons for decision.
- Increased public engagement opportunities throughout the EA, including: early engagement on project design, on any project's potential exemption from an EA, and on the Information Requirements, Effects Assessment and EA conclusions.
- Transparent online posting of all substantive project EA information including post-certificate compliance information.
- EA certificates include legally binding conditions that are enforced and evaluated for effectiveness.
- Review legislation and report on the progress of reconciliation in the context of EA in five years.

WHAT DO YOU THINK?

- Do these proposals support public confidence in EA and ensure meaningful public participation?
- What should be included in a purpose section of the EA Act?

FOCUS ON RECONCILIATION

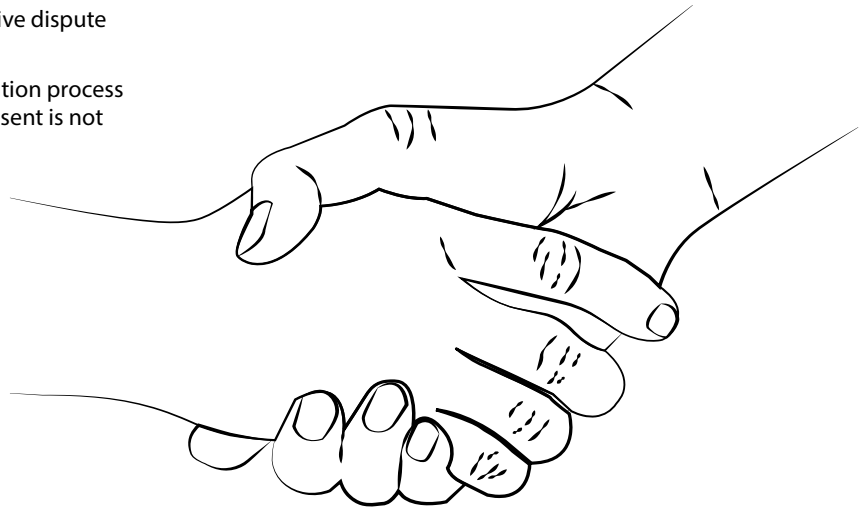
Revitalizing Environmental Assessments (EA) to advance reconciliation with Indigenous nations

The Province of B.C. is committed to revitalizing the EA process as part of the commitment to implement the UN Declaration and the TRC's Calls to Action, which includes recognizing Indigenous nations as decision-makers in their territories. Legislative change that recognizes the role of Indigenous nations in a revitalized EA process enhances clarity and certainty. ***To achieve this, we are considering:***

- Purpose section of EA legislation includes implementation of the UN Declaration in the context of EA.
- Establish relationships with Indigenous nations before EA reviewable projects are proposed in nations' territories (or early in the EA process), including through the negotiation of government-to-government agreements on EA in their territories and/or for particular EA processes, including engagement protocols and protocols for handling sensitive Indigenous knowledge.
- New EA legislation recognizes various options to conduct EA including collaborative and Indigenous-led EAs in whole or part.
- Alternate models to ensure Indigenous nations have secure and timely funding for the EA process, e.g. the province and industry provide funding, potentially administered by an independent body.
- Early engagement of Indigenous nations to identify interests, issues, and concerns that inform project design, siting and alternatives, including serious issues with the project proceeding through an EA or issues that need to be resolved in the EA process.
- Opportunity to identify the information needs of Indigenous nations for decision-making, and to support the assessment of potential project impacts on Indigenous rights and title.
- Base EAs on both scientific and Indigenous knowledge.
- Support the early collection of data and information specific to needs of Indigenous nations including Indigenous-led collection, analysis and interpretation of data, where desired.
- Enable consensus-based decision-making with Indigenous nations at a technical level throughout the EA process, as well as recognition of decisions made by Indigenous governing bodies at key junctures, supported by an alternative dispute resolution mechanism (see next page).
- A time bound alternative dispute resolution process will be available in situations where consent is not secured (see next page).

WHAT DO YOU THINK?

- What types of agreements or arrangements would need to be in place at the technical level for consensus-based processes between the EAO and Indigenous nations to be effective?
- At what points in the process are decisions, i.e., free, prior informed consent, from Indigenous governing bodies required?
  - At the readiness gate?
  - On the decision whether to approve the project?
  - Other?



ALTERNATIVE DISPUTE RESOLUTION & EA ADVISORY COMMITTEE RECOMMENDATIONS

The EA Advisory Committee recommended that government-to-government collaboration agreements for the environmental assessment of specific projects should be developed.

The EA Advisory Committee recommended that provisions be made in EA legislation to recognize options for the level of engagement of Indigenous nations in the EA process that include co-administration with the EAO as well as taking on full responsibility for conducting and managing an EA.

The EA Advisory Committee recommended consensus decision-making between the EAO and Indigenous nations:

- At the readiness gate, on whether to proceed to an assessment
- At the end of process planning, on the process order
- Before entering effects assessment, on whether the application is complete
- On the recommendation whether to issue an EA Certificate and proposed conditions

The EA Advisory Committee recommended the creation of a "Reconciliation Commission" as a time bound alternative dispute resolution process to provide constructive direction and support for reconciliation initiatives within the EA process, to address disputes arising from the implementation of the UN Declaration in a new EA process – for example to provide support for reconciling differing decisions of Indigenous nations and public governments with respect to EA – and to apply Indigenous laws and legal processes to address disputes among Indigenous nations in areas of shared territories in relation to EAs when requested to do so.

For more information, see recommendations R1-6 in the EA Advisory Committee Report.

FOCUS ON THE ENVIRONMENT AND OFFERING CLEAR PATHWAYS TO SUSTAINABLE PROJECT APPROVALS

Revitalizing environmental assessments (EA) to produce decisions that protect the environment and offer clear pathways to sustainable project approvals

A revitalized EA process will be robust, comprehensive and credible, assessing a full range of adverse and positive effects of a project in a transparent, predictable and timely way, thereby supporting sustainable development. A revitalized EA process will enable Provincial and Indigenous governments to make strategic decisions about whether projects can proceed, based on whether they protect the environment and support sustainable development.

To achieve this, we are considering:

- Protecting the environment and fostering sustainability across the five pillars - environmental, economic, social, cultural and health - is a central purpose of EA.
- Making resources available for regional and strategic level assessments to provide building blocks for individual project assessments.
- All project EAs include assessment of cumulative effects informed by the province's Cumulative Effects Framework, and guided by higher level plans and assessments, including regional and strategic assessments as they become available.
- EAs continue to assess environmental, economic, social, cultural and health effects, appropriately defined and focussed for individual projects, including the effects of malfunctions or accidents that could occur.
- Assessments include consideration of risk and uncertainty, and apply the precautionary principle to seek to avoid significant adverse effects.
- Identify effective and feasible mitigation measures and conditions.
- Requirements for social impact assessment are strengthened and include consideration of how different populations could be affected, with particular attention to gender analysis and impacts on Indigenous women and girls, as appropriate.
- The EA process results in independent conclusions on the effects on a project, including clearly identifying any significant adverse effects, based on scientific and Indigenous knowledge, and informed by public engagement and expert advice.
- Legislated decision criteria require consideration related to sustainable development objectives (e.g., consistency with BC's climate targets and strategies).

Cumulative Effects are the combined effects from past, present and reasonably foreseeable human activities on the environment and human well-being.

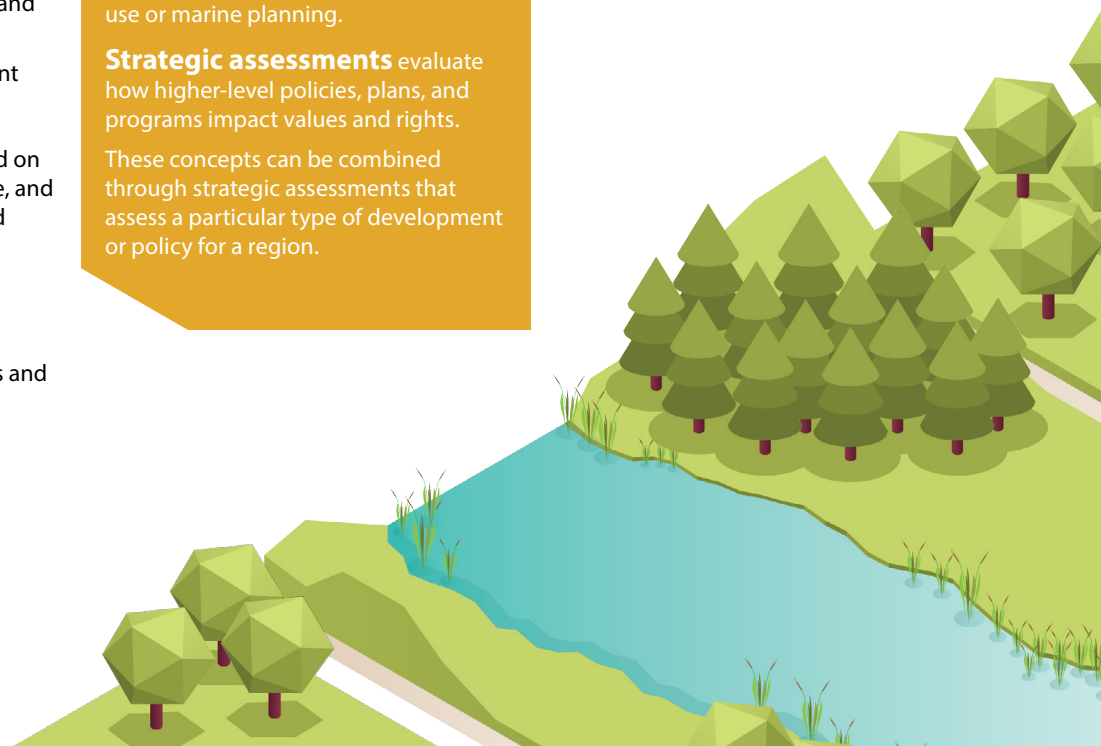
Regional assessments evaluate how different scenarios for development, protection and restoration in a region will cumulatively affect values and rights compared to historic and current conditions. They can identify management objectives and limits based on scientific and Indigenous knowledge, which can be directly applied in project level assessments and regulatory decision-making, and serve as an input to land use or marine planning.

Strategic assessments evaluate how higher-level policies, plans, and programs impact values and rights.

These concepts can be combined through strategic assessments that assess a particular type of development or policy for a region.

WHAT DO YOU THINK?

- Do these proposals support protecting the environment and offering clear pathways to sustainable project development?
- How would you apply sustainability criteria and the precautionary principle in the context of EA?

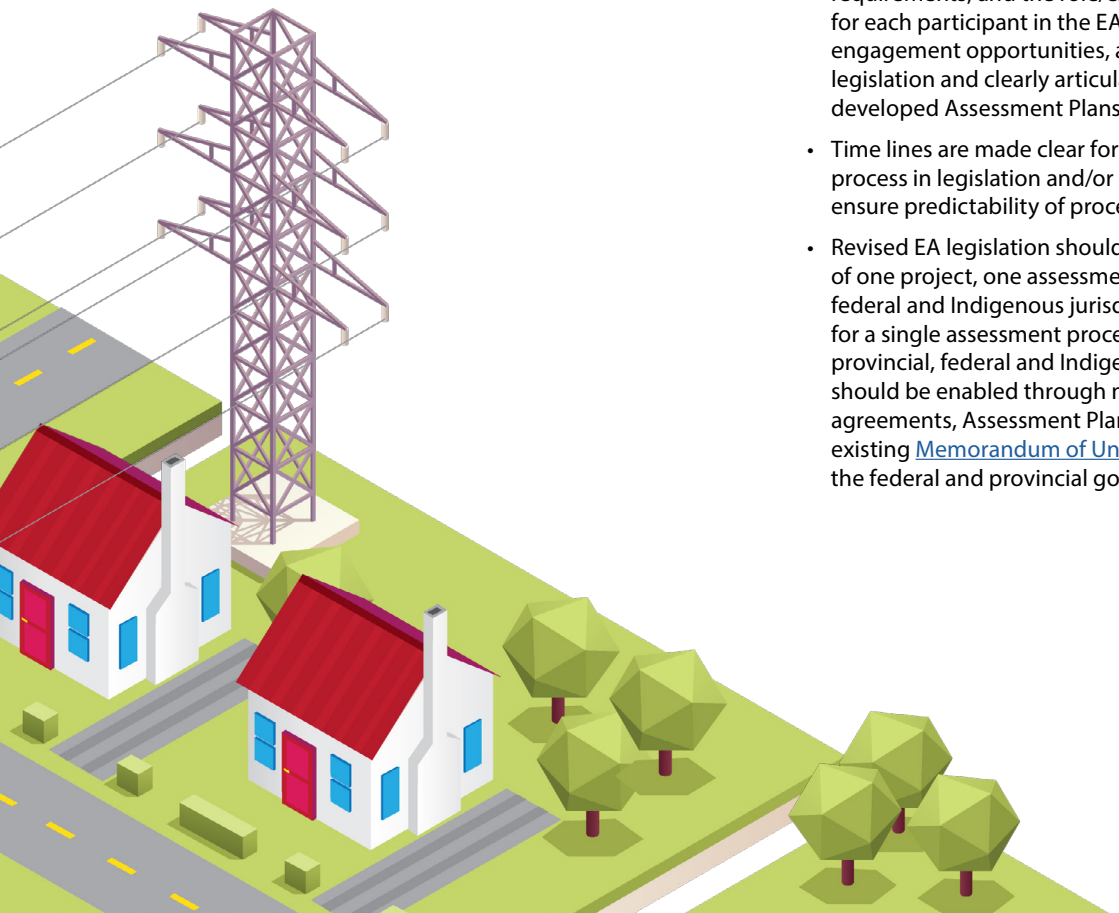


PROCESS CERTAINTY AND PREDICTABILITY

A revitalized environmental assessment (EA) process must provide process certainty and predictability

WHAT DO YOU THINK?

- Do these proposals support process certainty and predictability of the EA Process?



Supporting continued investment in B.C. and maintaining confidence in our approach to EA requires a clear and predictable process.

To achieve this, we are considering:

- Proponents are easily able to determine if their proposed project requires an assessment.
- Early communication of regulatory process costs to proponents undertaking an EA (e.g. EA fees, capacity funding to Indigenous nations and key stakeholders), including consideration of a legislated fee schedule.
- Early identification of issues reduces timeline delays later in the process.
- Details on process, timelines, information requirements, and the role/expectations for each participant in the EA, including public engagement opportunities, are described in legislation and clearly articulated in collaboratively developed Assessment Plans.
- Time lines are made clear for the stages of a new process in legislation and/or Assessment Plans to ensure predictability of process.
- Revised EA legislation should promote the concept of one project, one assessment between provincial, federal and Indigenous jurisdictions, which allows for a single assessment process to support separate provincial, federal and Indigenous decisions. This should be enabled through new tri-partite agreements, Assessment Plans and revision of the existing Memorandum of Understanding between the federal and provincial governments.
- Enable consensus-based decision-making with Indigenous nations at a technical level throughout the EA to provide increasing levels of certainty that the process is proceeding in mutually agreeable way.
- Over time, develop and post sector specific information requirements that increase the predictability of roles for proponents, Indigenous nations and the public.
- Interaction between EAs and the permitting process is strengthened and clearly understood.
- The Environmental Assessment Office identifies requirements and provides guidance and training to proponents, consultants, and other EA participants in important areas of the process including expectations for early engagement activities, EA methodology, and methods of effects assessment.
- Projects currently under assessment under the current EA Act will continue under the existing process, with a practical transition provision.

THE REVITALIZED EA PROCESS

WHAT PROJECTS GET ASSESSED?

Determining projects and activities that require an environmental assessment (EA)

Ensuring that all projects with the potential to result in adverse effects are assessed is important to meeting EA revitalization goals. The Environmental Assessment Office will be engaging on changes to the Reviewable Projects Regulation following the passage of new EA legislation.

Currently, there are three ways that projects can enter the EA process:

- Project exceeds threshold set in the Reviewable Projects Regulation
- Proponent requests to opt in to the EA process
- Minister designates project as reviewable

The EA Advisory Committee recommended and we heard in our direct engagements that the Reviewable Projects Regulation needs to be revised to:

- Move away from being assessed strictly on production capacity-based outputs, to criteria that more accurately reflects the potential for a given project to result in adverse effects.
- Introduce a clear framework and criteria for designation of projects not on the list as reviewable, including by request of Indigenous nations or the public.

Some ideas for potential changes that are currently being considered include:

- Making the regulation easier to understand: determining if a project is reviewable without having to consult external resources.
- Identifying the types of projects and activities that should be regulated under the Act.
- Identifying appropriate triggers and thresholds to make sure the right subset of projects in each category are entering the EA process.
- Introducing a regional element to project reviewability triggers.
- Creating a clearer framework for the Minister to designate projects as reviewable, including on request of Indigenous nations or the public.

WHAT DO YOU THINK?

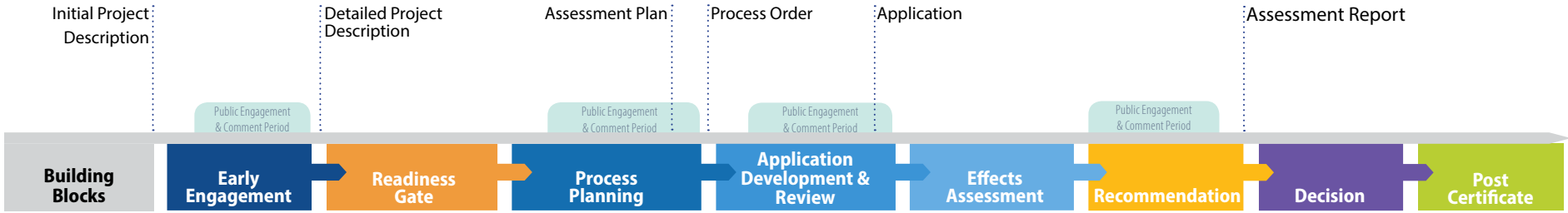
- What are key topics to consider in the upcoming consultation on the reviewable project regulation?
- What criteria should be applied for designation of projects not on the list as reviewable?

PROPOSED ENVIRONMENTAL ASSESSMENT PROCESS

Click on each phase of the process to be taken to its corresponding page with more detail.

WHAT DO YOU THINK?

- What timelines (if any) would be appropriate for each phase?



Building Blocks	Early Engagement	Readiness Gate	Process Planning	Application Development & Review	Effects Assessment	Recommendation	Decision	Post Certificate
Important building blocks that government, Indigenous nations and proponents put in place to provide a strong foundation for EAs. Proponents have access to information to better understand the regulatory context, cumulative effects, and if their project will trigger the EA act.	Early identification of potential key issues, and how those issues will be addressed.	EAO and Indigenous nations make a decision on whether to commence the EA and provide direction on key issues Time bound alternative dispute resolution process available.	Establish scope, procedures and methods for EA, and how provincial and Indigenous processes and decision making will align, including public engagement.	Proponent conducts technical studies to develop application, seeking feedback from government and Indigenous nations.	Potential effects are assessed according to an agreed to Assessment Plan. Draft conditions are developed, informed by technical advisory group where applicable.	EAO and Indigenous nations make a recommendation on whether to issue a certificate or not. Time bound alternative dispute resolution process available.	Determine whether a project should receive an EA certificate and if so under what conditions.	Project is monitored to ensure it complies with certificate conditions.

Consensus among parties increases as process progresses, consistent with the United Nations Declaration on the Rights of Indigenous Peoples

BUILDING BLOCKS

Setting the stage for successful project assessments

There are important building blocks that governments and proponents can put in place to provide a strong foundation for environmental assessments (EA). Revitalization of the EA process should create linkages to these building blocks once in place, while recognizing that ongoing and new project EAs must use the best information and approaches currently available.

Indigenous Relationships:

- Proponents continue efforts to build early relationships with Indigenous nations, including by entering into project agreements.
- The Province will establish government-to-government relationships and agreements with Indigenous nations in advance of EA project proposals to support decision making in regional and project EAs.

Improved Information and Data:

- We heard that there are concerns about the independence of scientific information collected and analyzed in EAs and the recognition of Indigenous knowledge.
- The EA Advisory Committee recommended that Regional "Reconciliation" or "Sustainability" Offices should be put in place to house assessments, data and information (see section 9.4 of the EA Advisory Committee Report).
- Data collected during project EAs are made available and accessible to all in a useable format, subject to protection of sensitive Indigenous knowledge.

Strategic and Regional Assessments:

- Introduce a legal framework for regional and strategic assessments in B.C., including criteria for prioritizing regions for assessment.
- Make resources available for provincial government agencies and Indigenous nations to conduct regional and strategic level assessments to provide context for individual project assessments.

Relationship between EA and Permitting:

- The interactions between exploration/investigation, EA, and subsequent permitting processes are strengthened and clearly understood.
- Project EAs should have a clear linkage to requirements in subsequent permitting.
- At the end of the EA process, there is a common understanding of what has been resolved during the EA, and what requires further consideration during the permitting process.

Priority Provincial Government Initiatives:

- The provincial government has already committed to:
  - Review the professional reliance model
  - Modernize land use planning
  - Enact an endangered species law
  - Advance the cumulative effects framework
  - Implement a comprehensive climate-action strategy

Successfully implementing these priorities will support the objectives of EA revitalization and provide greater regulatory certainty.

Legislated EA decision criteria will include clear linkages to other planning mechanisms and environmental goals, such as consistency with climate targets and strategies.

The provincial government will continue to work collaboratively to ensure outcomes of these initiatives provide a strong foundation for project EAs.

View process diagram

WHAT DO YOU THINK?

- Are these the right building blocks needed to support a clear, effective EA process? Are there others?

EARLY ENGAGEMENT

Building early understanding of project issues and opportunities

If a project is identified as reviewable, the proponent would submit an initial project description. Based on the initial project description, Indigenous and provincial governments, as well as local communities and the public have the opportunity to identify key issues and considerations. This feedback will inform the proponent's development of a detailed project description that would demonstrate how concerns have been considered in the project's design. The feedback also informs development of a list of key issues to be resolved, and informs the decision about whether a project is ready to proceed to assessment.

Why is this Important?

Early engagement ensures feedback from Indigenous nations, governments and the public is considered in design and siting decisions of projects. A formal early engagement stage supports the development of positive relationships between proponents, Indigenous nations and communities, setting the stage for an EA process that focusses on the important issues.

Key Proposed Features

- Require an early engagement phase so that Indigenous nations, local communities and others find out about projects earlier and their concerns can be better heard and addressed.
- Allow the EAO an opportunity to engage participants early, and support better preparation for the EA process.
- Require proponents to provide an initial project description earlier that is less detailed, for use in engagement and relationship building, including a summary of their engagements thus far.
- Give the public an opportunity to identify things they are concerned about through engagement that includes a new public comment period.
- Indigenous nations identify if they have rights or title that could be impacted by a project proposal. Indigenous nations and government agencies provide feedback on key issues and concerns that need resolution, including compatibility with policies, regional cumulative effects context, land use plans etc.
- Helps governments identify potential policy gaps that may need attention to support an EA.
- Proponents develop a detailed project description that reflects the proposed project, issues raised, and key approaches for studying and resolving the issues.
- Timelines would be set for this phase and need to recognize that the extent of early engagement may vary based on: the project, location, proponent, local interests, Indigenous nations.

View process diagram

WHAT DO YOU THINK?

- What features are needed to support an early understanding of project issues and opportunities?

READINESS GATE

Making a decision on whether to commence the environmental assessment (EA) and providing direction on the key issues

WHAT DO YOU THINK?

- What factors/ criteria should be considered for this decision?

At this stage, the EAO and Indigenous nations would determine if it is appropriate for a project to enter the EA process, consistent with decision criteria in the EA Act.

Why is this Important?

Currently there is no formal opportunity for the EAO and Indigenous nations to collaborate to identify and evaluate key issues and indicate the level of project complexity early in the EA process. There is also no ability to indicate whether there are unacceptable issues with the proposed project. This early direction from the EAO and Indigenous nations will transparently identify key project issues for resolution.

Key Proposed Features

- The EAO and Indigenous nations evaluate if the proponent's early engagement was sufficient.
- The EAO and Indigenous nations review the proponent's detailed project description, evaluating any potential key issues.
- The EAO and Indigenous nations decide whether the project is ready to proceed to EA, or should go back for more engagement and resubmission of a revised detailed project description.
- Provide for an early decision by the Minister and Indigenous governing bodies that a project is clearly irreconcilable with existing law or defined policy objectives supported by reasons for decision, or if a project should proceed directly to permitting.
- The criteria for a reviewable project to proceed directly to permitting are clear, including an opportunity for public engagement and reasons for decision.
- The EAO, working with EA participants, identifies the key issues that require resolution during the assessment, which is posted publicly.
- A time bound alternative dispute resolution process will be available in situations where Indigenous consent is not secured (see page 10).
- The decision during this phase of the process (subject to alternative dispute resolution being required) would need to be completed within a set time period.

View process diagram

PROCESS PLANNING

Setting clear and predictable plans and requirements for the environmental assessment (EA)

Prior to commencing an EA, an Assessment Plan is developed by the EAO and Indigenous nations (working with the proponent, government agencies and other EA participants) that sets out the scope, procedures and methods for EA, and how provincial and Indigenous processes and decision-making will align, including funding, timelines, and public engagement opportunities. Where applicable, Assessment Plans will be informed by standing government-to-government agreements regarding EA in a nation's territory, and/or project-specific assessment agreements that are concluded before an assessment is commenced.

Why is this Important?

Collaboratively developed Assessment Plans, informed by early engagement, provide a mechanism for flexibility, while establishing clear and predictable procedures and requirements. The process should enhance meaningful and effective participation in project EAs. This process also ensures that proponents understand what is required of them and can provide the right information to all parties, increasing timeline certainty.

Collaboratively developed Assessment Plans help ensure that EA processes and information requirements meet the needs of Indigenous decision-makers, and that decisions are informed by Indigenous knowledge.

Key Proposed Features

- Different types of assessment may be specified in an Assessment Plan, including:
  - EAO-led assessment
  - Indigenous-led assessment, in full, or in part
  - Panel process
  - Other collaborative approaches with EAO and Indigenous nations, as identified through government-to-government agreements
- Project specific Application Information Requirements will be developed from general and sector specific template requirements, providing predictability for all EA participants.
- Information requirements are for positive and negative project effects, and cumulative effects, on the natural and human environment; Indigenous rights and title; and, Indigenous human rights as set out in the UN Declaration, applying best available scientific and Indigenous knowledge.
- Assessment Plan specifies the requirements for how the proponent must develop its Application, and how the review will be undertaken.
- Assessment-specific government-to-government EA agreements may establish joint technical tables for EA, if not previously established through an existing agreement, address decision points, and dispute resolution mechanisms.
- Assessment Plan reflects how Indigenous nations will be involved in collecting and analyzing data.
- Assessment Plan identifies proponent responsibilities such as Indigenous nation and public engagement.
- Assessment Plan identifies specific engagement or other tools, such as community hearings, appointed panels of experts, etc.
- Information requirements reflect the needs of both provincial and Indigenous decision makers.
- This phase would need to be completed within 180 days.

View process diagram

WHAT DO YOU THINK?

- What needs to be included as part of the Assessment Plan?

SPECIAL ROLES IN EA

Technical Advisory Group

The Environmental Assessment Office's (EAO) technical advisory group is currently the principal forum for the detailed, independent, technical review of all of the proponent's technical studies.

In a revised EA process the technical advisory group could provide advice to the EAO and Indigenous nations about the potential effects associated with a proposed project, including cumulative effects.

The technical advisory group is made up of representatives with the mandates and technical expertise relevant to the review of a proposed project, including appropriately qualified provincial, Indigenous and community experts and regulators. Additional independent experts may be appointed to the group, as needed.

Local Governments

Municipalities and regional districts provide services such as drinking water, parks and recreation, and fire protection to their communities and can be affected by proposed projects requiring an EA. These local governments can feel the added pressure from projects that increase demands for housing, medical and other services in their communities, which can impact community wellbeing. Local governments also have land use plans relevant to project development, and they have a unique relationship with their community members.

Local governments have an important role in EAs. Local government technical experts and regulators are invited to be part of the technical advisory group, and provide advice and information to the EAO and Indigenous nations during an EA related to the potential effects of a project on their community and reflecting their own planning process and land use/ community plans.

Early engagement ensures local governments have the opportunity to share local concerns, land use objectives and plans and identify key issues and considerations with a project proposal. This feedback would inform project design and the Assessment Plan, including information requirements and public engagement, and how local government decision making process will align with the EA.

Local governments have the opportunity to be engaged in the development and review of the Application to ensure their issues are understood. Local governments have confidence their issues are considered in the ministers' decision as it is based on required criteria with defined factors, including the outcomes from public engagement processes.

View process diagram

APPLICATION DEVELOPMENT AND REVIEW

Iterative, participatory approach for the development and review of the project application

The proponent typically undertakes the technical studies needed to develop its project environmental assessment (EA) Application. In a revitalized EA, the proponent would seek feedback while developing the Application. The Application Development portion of this phase provides for early feedback on data collection and analysis to help identify and resolve key issues, which reduces delays in final review stages. The Application Review portion of this phase is for the Environmental Assessment Office (EAO), Indigenous nations and all EA participants, including the public, to review and comment on the draft Application within time limits. Feedback would be addressed and incorporated prior to submitting a final application.

Why is this Important?

Major projects with the potential for significant adverse effects need to undergo a rigorous assessment, and the studies (scientific and Indigenous) to support this are technical and complex. Applications often extend to thousands of pages, and are filled with complex technical studies written by a wide range of professionals. Currently, there is no requirements for proponents to collect data, define their study approaches or have their draft results reviewed by the EAO, Indigenous nations, government technical reviewers, or the public, prior to submitting their Application. A new approach is proposed to ensure that any concerns or necessary changes can be identified as soon as possible. Mechanisms for independent studies and peer review are important tools to increase confidence in EA information in some circumstances.

In addition, it is important that the right level of information is provided to the right audiences, whether this is local communities, Indigenous nations, or technical experts.

Key Proposed Features

- The proponent develops its Application iteratively, engaging with Indigenous nations, government agencies, technical reviewers and other groups on key topic areas, as defined in the Assessment Plan.
- Proponent and Indigenous nations may choose to work together to develop portions of the Application.
- All of the proponent's technical studies would be undertaken by appropriately qualified experts and reviewed by independent experts either from inside or outside of governments, as set out in the Assessment Plan (e.g., through the technical advisory group).
- Early review during the development of the Application increases certainty as all parties seek agreement on key areas such as baseline requirements, modelling approaches, assessment results, and mitigation measures.
- Early review of the Draft Application also reduces or eliminates information requests during the next phase of the EA.
- Opportunities for local community and public engagement using various methods could support the review of a draft application. All, or a portion of this phase may be subject to a set time period.

View process diagram

WHAT DO YOU THINK?

- What else would give you confidence in the data and studies that inform the EA?

EFFECTS ASSESSMENT AND RECOMMENDATION

Reaching assessment conclusions and making a recommendation to decision makers

Potential effects of the project are assessed according to the approach identified in the Assessment Plan, by the Environmental Assessment Office (EAO), government agencies and Indigenous nations. Proposed conditions and recommendation to decision makers are developed. Advice provided by the technical advisory group, and input provided by the public and local communities during engagement opportunities, informs the development of conditions and recommendation to decision makers.

WHY IS THIS IMPORTANT?

The EAO and Indigenous nations reach conclusions on the effects of the project based on the proponent's Application, advice from government and other experts, and the views of the public and Indigenous community members. This process ensures that the information used to support environmental assessment (EA) decision making has been robustly assessed.

Key Proposed Features:

- The assessment includes information to be used by both Indigenous and provincial decision makers.
- Indigenous nations assess, independently or with the EAO, the effects of the project on their rights and interests.
- The EAO and Indigenous nations develop proposed conditions, assessment report and recommendation to decision-makers, consistent with the approach set out in the Assessment Plan.
- The parties may choose to use time bound alternative dispute resolution processes if required (see page 10).
- Public has confidence that legislated decision criteria are addressed in recommendation.
- The proponent, government agencies, Indigenous nations and the public all have the opportunity to comment on the draft Assessment Report and draft Certificate Conditions, before it is finalized for decision makers.
- This phase would be bound by timelines as set out in the Assessment Plan – ranging from 100 to 200 days.

View process diagram

WHAT DO YOU THINK?

- What else would give you confidence in the assessment and recommendations that inform the EA decision? How would you like to be engaged at this stage?

DECISION

Determining whether a project should receive an environmental assessment (EA) certificate and if so, under what conditions

Collaboration, earlier process agreements and dispute resolution mechanisms aim to contribute to consistency between provincial and Indigenous decisions about EA outcomes. Provincial ministers make a decision in consideration of the recommendations of the Environmental Assessment Office (EAO), the decisions of Indigenous nations and according to defined decision criteria. Ministers issue reasons for their decision.

Why is this Important?

Fair, transparent, timely, resilient decisions are essential at the end of an EA process. Decisions need to be founded in the robust assessment that was just completed, reflect public interest, and respect the decision making authority of Indigenous nations. Recognition of Indigenous nations' decisions is a key aspect of the UN Declaration and reconciliation.

In addition, it is important that the right level of information is provided to the right audiences, whether this is local communities, Indigenous nations, or technical experts.

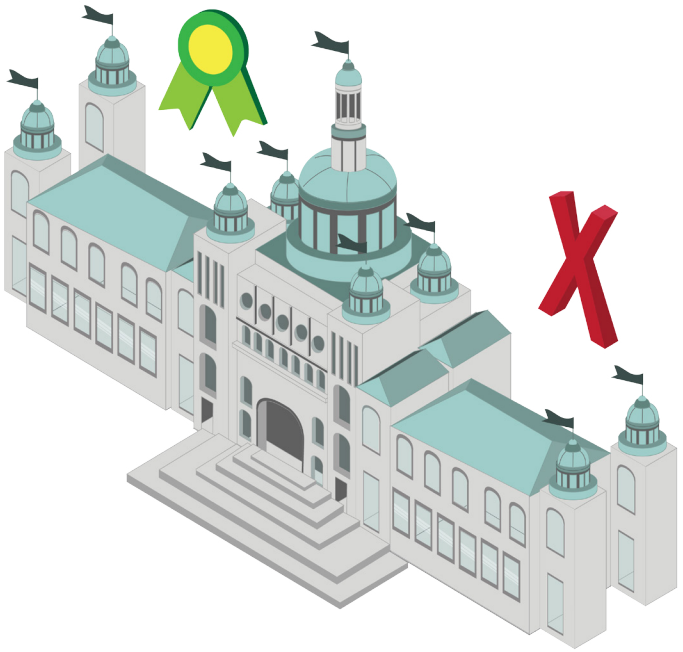
Key Proposed Features

- Indigenous governing bodies make a decision on the project.
- A time bound alternative dispute resolution process will be available in situations where Indigenous consent is not secured (see page 10).
- Ministers' decision is based on required criteria with defined factors set out in legislation.
- Ministers' decision options are:
  - Issue certificate
  - Do not issue certificate
- Decisions would be required within 45 days.

View process diagram

WHAT DO YOU THINK?

- What factors/criteria should be applied in the decision to issue a certificate?



POST CERTIFICATE

Ensuring projects are in compliance with their environmental assessment (EA) certificates

If ministers issue an EA certificate, ongoing monitoring, compliance inspections - and where required - enforcement actions, ensure that projects are designed, built, operated and decommissioned/reclaimed in compliance with their EA certificates.

Why is this Important?

Monitoring adherence to the conditions required in the EA certificate ensures that a project's potential effects to the environment, economy, health, culture or social values does not exceed what was accounted for in the certificate conditions.

Key Proposed Features:

- Enhanced linkages with other agencies or groups that have a role in post-EA permitting or compliance and enforcement.
- Increased clarity of issues resolved during the EA and issues requiring further resolution at permitting.
- Modernized compliance and enforcement regime including:
  - Administrative financial penalties
  - Tickets
  - Preventative orders
  - Increased court imposed penalties
- New tools for auditing the effectiveness of certificate conditions to inform future certificate condition requirements.
- Authority and opportunity for Indigenous nations to co-administer or participate in monitoring, compliance and enforcement programs (e.g. Indigenous guardian programs).
- Continued engagement of EA participants in compliance and enforcement.
- Compliance and enforcement on all EA certificate conditions: environmental, economic, societal, cultural and health.
- Address public complaints arising from project operations.

View process diagram

WHAT DO YOU THINK?

- What else should be done to ensure projects are in compliance with their certificates?

SUMMARY

SUMMARY / HOW TO PARTICIPATE / NEXT STEPS

Summary

We're changing B.C.'s environmental assessment (EA) process to ensure the legal rights of First Nations are respected, and the public's expectation of a strong, transparent process is met.

EA is about protecting the environment and fostering sustainability across the five pillars: environmental, economic, social, cultural and health.

We're proposing changes that make information about projects undergoing an EA more transparent and easy to understand, while providing greater transparency about how a final decision is reached on a project. This will make it easier for British Columbians to participate in the process, understand potential effects to their communities, and provide meaningful feedback that informs the outcome of the process.

By advancing reconciliation and working with Indigenous nations throughout the process, B.C.'s revitalized EA process will create greater process certainty for all EA participants and reduce the potential of unforeseen conflicts and time delays.

How to Participate

You can help shape the future of EA in B.C. in two ways:

1. Read this discussion paper, think about the questions in the thought bubbles, and let us know what you think about the proposed changes by visiting gov.bc.ca/eao/revitalization
2. Help us do a better job of communicating with the public, making materials easier to understand, and presenting information in a way that works best for you, by filling out the Public Engagement Survey it should only take between 8-15 minutes.

Next Steps

Feedback on this discussion paper will inform next steps regarding the proposed changes to ensure they serve the best interests of Indigenous nations and all British Columbians.

In late summer, we'll release a *What we Heard Report* that outlines the feedback we received throughout the revitalization process, including public feedback. We'll also release an *Intentions Paper* that will outline the intended direction of the revitalized EA process in early fall.

You can follow along as revitalization progresses through to completion by signing up to receive updates at the end of the Public Engagement Survey

The specific changes proposed in this discussion paper are not finalized – feedback on this discussion paper will inform the direction that government takes, and will help ensure that a revitalized EA process works for all British Columbians.