

Transfer Policy and Procedures

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This document provides guidance to help environmental assessment participants and the public better understand British Columbia's environmental assessment process. It is not advice and does not replace requirements of the *Environmental Assessment Act* (2018) or its regulations or bind any decision-maker.

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1.0 PURPOSE

This document provides guidance to Holders of Environmental Assessment Certificates (EACs) and Exemption Orders (Orders) on transfers of EACs or Orders and transfers of projects or interests in projects. Topics include:

- When to apply to transfer an EAC or Order;
- How to apply to transfer an EAC or Order;
- When to request consent to transfer a project, interest in a project or a significant interest in a project; and,
- When amendments will be required because of a transfer.

2.0 BACKGROUND

Under Section 6(1) of the *Environmental Assessment Act* (2018) (the Act), if a person wants to construct, operate, modify, dismantle or abandon any of the facilities that are part of a reviewable project, or carry out any other activities associated with a reviewable project, they must be either:

- Holders of the EAC or Order; or,
- Agents or contractors for the Holder of the EAC or Order.

Therefore, if a Holder is transferring ownership or control over the facilities and activities that constitute a project, it will be essential for the person who is acquiring ownership or control to become a Holder of the EAC or Order or an agent or contractor for the Holder, if they want to construct, operate, modify, dismantle or abandon those facilities or carry out those other activities.

Similarly, under Section 6(2) of the Act, a person who is undertaking any designated activities, or constructing, operating, modifying, dismantling, or abandoning any of the facilities that are part of a reviewable project, they must do so in accordance with the EAC. Failure to do so can lead to penalties being imposed on the Holder, changes to the terms of EACs or Order, stop work orders or legal action. Therefore, most Holders will want to maintain ownership and control over all the assets that allow them to ensure compliance with the EAC.

Because of these requirements, where project related assets owned or controlled by a Holder are transferred to someone else, they are usually transferred in conjunction with all the project related assets and the EAC or Order. The purchaser typically becomes the sole Holder and obtains control over all the land and other property necessary to implement the project in accordance with the EAC or Order.

Occasionally, EACs are transferred to multiple Holders who are either jointly responsible for implementing all aspects of a project, or who are responsible for individual elements of a project. Transferring ownership and control over parts of a project to others can create a significant risk for project owners. For example, if one of the persons acquiring a part of a project does not implement their part of the project in accordance with the EAC, the consequences may include penalties imposed on one or all of the Holders, the EAC being amended to impose new conditions on one or all of the Holders, or other enforcement remedies available under the Act.

Finally, Holders must ensure the Environmental Assessment Office (EAO) knows who holds the EAC or Order at all times because:

- Only the Holder has the authority under the Act to make certain requests, such as for amendments, extensions, and cancellations of EACs;
- If a Holder transfers a project but does not transfer the EAC, they will remain responsible for compliance with the EAC;
- The EAO must have a primary contact for all compliance and administration issues; and,
- Certain powers under the Act can only be applied to Holders.

2.1. EAC and Order Transfers

The Act includes provisions for transfers of EACs and Orders in Section 33.

- Section 33 applies to all projects with an EAC, no matter when the Certificate was issued.
- Conditions in EACs issued before December 16, 2019 (the date the Act came into force) for transfers of the EAC are cancelled under Section 78(4) of the Act and replaced with Section 33.
- Section 78(4) and Section 33 do not apply to Orders issued before December 16, 2019, and the transfer provisions in those Orders remain in effect. Holders can seek to have these conditions amended by a simpler provision that mirrors Section 33.

Decisions whether to consent to a transfer will only be made after consultation with Indigenous nations is conducted, and there is an opportunity for nations to indicate whether the transfer may have an adverse impact on their nation or rights. Transfers may also be subject to conditions contained in the transfer order. For example, the transfer order may not be effective until the current Holder and proposed Holder apply for amendments to EACs or Orders or provide required documentation confirming that the sale of project assets has closed.

2.2. Transfers of the Project or an Interest in the Project

EACs or Orders issued before December 16, 2019 may include a condition that requires consent from the Chief Executive Assessment Officer (CEAO) to transfer a “project”, “an interest in a project” or a “significant interest in a project”. If an EAC or Order contains such conditions, consent from the CEOA is required if either the entire project is transferred or where the Holder transfers interests necessary to implement the project according to EAC or Order conditions. Section 78(4) of the Act does not cancel conditions dealing with transfers of interests in a “project”, “an interest in a project” or a “significant interest in a project”. If a single condition governs both transfers of a “project”, “an interest in a project” or a “significant interest in a project” and transfers of the EAC or Order, the portion of the condition that governs transfers of a “project”, “an interest in a project” or a “significant interest in a project” is still in effect as long as it is in the EAC or Order.

After the 2018 Act came into force, the EAO stopped including conditions requiring consent for transfers of a “project”, an “interest in a project”, or “a significant interest in a project”. For EACs or Orders issued after the Act came into force, the EAO will rely on general compliance provisions of the Act to address compliance issues associated with transferring an EAC or Order or a transfer of a “project”, an “interest in a project”, or “a significant interest in a project”. For example, the EAO may issue stop work orders if a person who is not a Holder, or acting as an agent or contractor for the Holder that is under control of the Holder, tries to operate or construct project facilities or does so in a manner that is inconsistent with EAC conditions. The EAO will also rely on enforcement mechanisms such as imposing penalties if EAC conditions are not complied with, including if a Holder breaches a condition requiring consent to transfer of a project or interest in a project. Holders can seek an amendment to an Order or an EAC to remove conditions related to the transfer of the Project.

See Table 1 for a summary of rules governing transfers of EACs and orders under the *Environmental Assessment Act* (2002) (the former Act) and the Act.

Act	Transfer of EAC	Transfer of Exemption Order	Transfer of a “Project”, “Interest in a Project” or Significant Interest in a Project”
2002	<ul style="list-style-type: none"> Included in a condition in the EAC Cancelled by Section 78(4) and replaced with Section 33 of the 2018 Act 	<ul style="list-style-type: none"> Included as a condition in the Order Not cancelled by Section 78(4) of the 2018 Act Section 33 of the 2018 Act does not apply to exemption orders issued under the 2002 or earlier Acts Holders can apply to amend the transfer condition so that is similar in effect to Section 33 of the Act. 	<ul style="list-style-type: none"> Included as a condition in EACs and Orders Condition no longer necessary. Condition can be removed when EACs and Orders are amended. EAO will rely on Section 6 of the 2018 Act and compliance and enforcement authorities to ensure only the Holder(s) or parties contracted to the Holder develop the project.
2018	<ul style="list-style-type: none"> Section 33 of the Act 	<ul style="list-style-type: none"> Section 33 of the Act 	<ul style="list-style-type: none"> The EAO will rely on Section 6 of the 2018 Act and compliance and enforcement authorities to ensure only the Holder(s) or parties contracted to the Holder develop the project.

Table 1: Transfers Under the 2002 Act and the 2018 Act

NOTE: Even if an EAC or Order does not require consent to transfer an interest in the project, the parties to the sale of a project or part of a project may be at risk if the transfer is made without an appropriate transfer of the EAC or Order. Purchasers of project components who intend to carry out project activities or construct or operate project facilities (other than as a contractor or agent for the Holder where the Holder retains control over the Project) may not be able to do so unless they also become a Holder. EACs may be cancelled or amended, or administrative penalties imposed on Holders, if elements of the project are not carried out in accordance with the EAC. For more information on compliance and enforcement, see the EAO’s Compliance and Enforcement Policy and Procedures on the EAO’s Compliance and Enforcement webpage at: https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement/eao_ce-policy-procedures_march2020.pdf.

2.3. Who can Apply for a Transfer

It is important to note that only the current Holder can:

- Apply for a transfer of an EAC or Order under Section 33 of the Act; or,
- Request consent to a transfer of a “project”, “interest in a project” or “a significant interest in a project” as required by a condition in the EAC or Order.

2.4. Multiple Holders or Persons with Interest in a Project

Where a proposed transfer of an EAC or Order will lead to multiple parties holding the same EAC or Order, the EAO’s policy is to require that as a condition of the EAC or Order being transferred, the EAC or Order is amended to either clearly identify joint and separate liability of all Holders for meeting conditions or divide responsibilities amongst multiple Holders.

3.0 WHEN TO APPLY TO TRANSFER A EAC OR ORDER

Consistent with [Section 2.0](#) above, only the Holder of an EAC or agents or contractors for which the Holder is responsible can carry on activities associated with reviewable projects or construct, operate, modify, dismantle or abandon any of the facilities that are part of the reviewable project.

Therefore, any other person hoping to carry out any of these activities will need to become a Holder or an agent or contractor of the Holder. Any application to transfer an EAC or Order can only be submitted by the person named as the Holder in the EAO's records, or, if the named Holder is in bankruptcy proceedings or in Receivership, on application by trustee in bankruptcy or a Receiver whose authority includes making such applications.

3.1. No Transfer of EAC or Order Required

A request to transfer an EAC or Order is not required in the following cases:

- If the Holder retains ownership of the EAC or Order and project assets. For example:
 - Transfers in ownership of shares in a corporate Holder;
 - Change of Holder legal name (e.g. rebranding); or,
 - Amalgamation of a corporate Holder with another corporation.
- If the EAC or Order or project assets are held in the name of a partnership (e.g. the Holder is simply identified as 123456 BC L.P.), a change in partners (either general partners or limited partners) does not require a transfer of the EAC.
 - However, if the EAC or Order is held by one or more partners for the benefit of the partnership¹ and the EAC is being transferred to a different partner or group of partners for the benefit of that partnership, the EAC or Order will need to be transferred.

4.0 HOW TO APPLY FOR A TRANSFER OF A EAC OR ORDER

To obtain a transfer, the current Holder, or someone empowered to act on behalf of the Holder or a manager of their assets such as a trustee in bankruptcy or receiver, and the proposed Transferee must apply for the transfer.

4.1. Application Information Requirements

To apply for a transfer, the Holder and the proposed Transferee must submit a written request to the EAO applying for a transfer of an EAC or Order in accordance with Section 33 of the Act (transfer application). The following information must be included with the transfer application:

- The project name and EAC number (note Exemption Orders are not assigned numbers);
- The name of the current Holder(s);
- The full legal name of the proposed new Holder (Transferee), including incorporation numbers if incorporated under BC laws, or registration numbers and jurisdiction of incorporation if incorporated outside of BC;
- Proof of identify for the propose holder (for business organizations this means proof of incorporation or partnership);
- For entities incorporated in other jurisdictions, proof of registration in BC under the Business Corporations Act or Partnership Act;
- If an application is received from the Transferee and a person other than the person who is identified as the Holder in EAO records (e.g. a trustee in bankruptcy or Receiver), the application must identify the name of the second person, explain what authority they have to request the transfer in lieu of the named Holder, and provide evidence that they have the authority to request the transfer. For trustees in bankruptcy this will require evidence that they have been appointed as trustee over the assets of the person who is identified as the Holder in EAO records. For Receivers, a copy of the complete court order (including amendments) appointing them should be included in the application;

¹ It is best practice to name a general partner on behalf of the partnership as the Holder. For example, "ABC Ltd. as general partner for XYZ L.P."

- A record of any consultation that has occurred to date with Indigenous nations, stakeholders, and the public regarding the transfer, including any concerns that have been identified and how those concerns may have been addressed;
- A clear statement on whether project assets have been transferred from the current Holder to the Transferee. If the assets have not yet been transferred the application must include the date of the proposed sale and purchase of project assets;
- A clear statement of whether all or only some of the assets of the Holder that constitute the project or are necessary for fulfillment of EAC or Order conditions will be transferred or have been transferred. If only some of the assets have been or will be transferred, a description of what assets are and are not transferred and a description of how the new Holder will carry out the project or fulfill conditions;
- Either a declaration that the EAC or Order is being transferred to the proposed Transferee along with all of the current Holder's interest in the project, or if not all of the Holder's interest in the project is being transferred, a description of what interests are or are not being transferred to another person;
- A declaration of whether the Transferee is contemplating any significant changes to the project. This will allow staff to determine if any amendments are required;
- Acknowledgement that, if the transfer is made, the Transferee understands it must comply with the EAC or Order;
- If the transfer will result in multiple persons being Holders of the EAC or Order, a description from the proposed Transferee(s) as to how they propose dividing responsibilities for conditions in the EAC or Order, including an analysis of whether the proposed division of responsibilities will increase the potential for non-compliances. The description should include discussion of the Holder's practical ability to implement conditions, whether there is any increase in risk of non-compliance due to the "stranding of liabilities" (i.e. liabilities being imposed on an entity without corresponding assets that ensure they have the ability to finance compliance and an interest in maintaining compliance), and whether responsibility for implementing conditions will be borne by the Holders whose activities require that mitigation; and,
- Where consent to transfer the project, an interest in the project or a significant interest in the project is required, the application must include the request for consent.

4.2. Application Processing

After receiving a transfer application, the EAO will:

- Review the application to ensure all the information required in Section 4.1 is included.
- Inform the Holder about the EAO's consultation procedures for Indigenous nations.
 - Typically, consultation for applications for transfer includes notification of the application to Indigenous nations but depending on the specifics of the project and the request, a deeper level of consultation may be required. If a deeper level of consultation is required, the current and proposed Holder(s) will be notified.
- Identify any necessary amendments. Examples of what could trigger an amendment can be found in [Section 6](#) of this document.
 - If an amendment is required, the Transferor and Transferee(s) will be required as a condition of the transfer order to apply for those amendments in accordance with the EAO's EAC Amendment Policy in order to complete the transfer. See [Section 6](#) for a description of the types of amendments that may be required because of a transfer.
- Notify Indigenous nations about the transfer application. The standard notification period will be 30 days.

4.3. Application Decision

4.3.1. Transfer is granted

If the CEAO approves the transfer:

- For Orders issued on or after December 16, 2019 and all EACs, an Order under Section 33 of the Act (Transfer Order) will be issued. The Section 33 Order will transfer the EAC, either immediately or conditionally (e.g. on confirmation from both parties that related sales of the project has completed or on receipt of application to amend) and name the new Holder.
- For Orders issued prior to December 16, 2019, the CEAO will issue a consent letter consenting to the transfer to the new Holder. Either the terms of the Order or the consent letter may make the transfer conditional on confirmation from both parties that related sales of the project has completed.
- The Section 33 Order or the consent letter may also provide consent to transfer of the “project”, “interest in a project” or “significant interest in a project”, if such a request was included with the transfer application.

4.3.2. Transfer is refused

The CEAO can decide to refuse a transfer. This might occur if:

- The transfer will result in a situation where the legal entity that has control of the project and mitigations required by the EAC or Order is not the Holder²;
- Where the applicants for the transfer have refused to apply for necessary amendments; or,
- Where there are outstanding and significant issues that have been identified through the review of the transfer application.

If a decision is made to refuse a transfer, the CEAO will issue a written decision and reasons for the decision which will be sent to the Holder and the Transferee and posted on the EAO’s website.

5.0 WHEN TO REQUEST CONSENT FROM THE MINISTER OR CEAO TO TRANSFER A PROJECT, AN INTEREST IN A PROJECT OR A SIGNIFICANT INTEREST IN A PROJECT

As noted above in [Section 2.2](#), some EACs and Orders include conditions requiring the Minister or CEAO (referred to in older EACs as the Executive Director) to consent to the transfer of “the project” “interest in a project” or “significant interest in a project”. These EACs and Orders were typically issued under the former Act (2002), however some EACs and Orders issued under the 1996 Act also include these conditions. If an EAC or Order contains such conditions, consent for a transfer of “an interest” or a “significant interest in a project” may be required if only a portion of the project and not the entire project is transferred. Generally, transfers of assets that form part of a project will only be considered relevant and require consent if they affect the Holder’s ability to carry out the reviewable project or comply with all conditions in the EAC or Order. If all the assets that constitute the project are transferred, then consent will be required.

It is the responsibility of the Holder to determine if consent from the CEAO is required. Requests for consent to transfers of significant interest in a project must generally be processed with requests to transfer the EAC or Order.

Examples of a transfer of a significant interest include:

- Selling or leasing land identified in the EAC for mitigation activities, but not retaining any interests in the land (e.g. easements) that would allow the Holder to carry out the mitigation; or,

² This can cause a situation where the Holder may be unable to comply with the EAC or Order or could be prevented from complying with the EAC or Order.

- Assigning *Land Act* tenures or selling or leasing land that are necessary for the Holder to develop key project infrastructure.

NOTE: Even if an EAC or Order does not require consent to transfer a project, an interest in the project, or a significant interest in a project, the Holder and Transferee may be at risk if such a transfer is made without the purchaser or transferee becoming a Holder of the EAC or Order. See discussion under [Section 2.2](#).

5.1. No Request for Consent to a Transfer of a “Project”, “an Interest in a Project” or a “Significant Interest in a Project” Required

Consent to transfer a “project”, “an interest in a project”, or a “significant interest in a project” is not required in the situations identified in [Section 3.1](#) of this policy. In addition to the situations identified in section 3.1, some conditions may not require consent to a transfer of a significant interest made in the context of insolvency proceedings but do require notification to the EAO within 30 days of transfer if a significant interest is transferred in those circumstances. The condition requiring consent to transfer will specify these situations and must be reviewed to determine if this is applicable.

5.2. Procedures to Issue Consent if Required

The CEAO will generally only provide consent for a transfer of a “project”, “interest in a project”, or “significant interest in a project” if the request for consent is made in combination with an application to transfer an EAC or Order containing all the information set out in [Section 4.1](#). The request for consent will be processed with the application for transfer of the EAC or Order.

6.0 WHEN AMENDMENTS MAY BE REQUIRED BECAUSE OF A TRANSFER

The following amendments may be required as part of a transfer.

6.1. Transfer of Agreements

If a condition requires the Holder to enter into an agreement, such as an agreement to conduct works in a location outside of the project site or to provide financial contributions, consideration should be given to amendments that require the new Holder to:

- Assume the liabilities of the former Holder under the existing agreement; or,
- Enter into a new agreement.

Timing of Amendments

If a division of responsibilities is proposed, the amendment process will occur alongside the transfer process. Details of the amendments may affect the acceptability of the transfer to the EAO and Indigenous nations, and proposed amendments will need to be determined prior to notification of Indigenous nations and transfer.

6.2. Multiple Holders

If the proposed transfer will result in more than one person being the Holder, the EAO will generally insist on an amendment to clarify which project proponents will have responsibilities for what parts of a project and compliance with what conditions. The EAO will consider:

- Joint and separate responsibility of all Holders for all EAC requirements; or,
- Division of responsibilities amongst different Holders.

6.2.1. Joint and Separate Liability

For joint and separate liability, every Holder is legally responsible for compliance with every condition of an EAC, but penalties and sanctions for non-compliance may be imposed on individual Holders. Even though all Holders are legally responsible, the EAO will issue EAC conditions that identify the Holder which will be the lead in implementing the

condition. This will be the person that the EAO contacts to verify compliance, or in the case of non-compliance. However, it is important to note that compliance action can be taken against all Holders.

6.2.2. Assignment of Responsibilities

EACs and Orders can be amended so that responsibilities to fulfill conditions are assigned to different Holders. This should only be considered where different Holders of the project own or control different parts of the project. Care should be taken to ensure that:

- The Holder responsible for complying with a particular condition has the means to do so (i.e., to avoid stranded liabilities where the liability to comply with a condition is imposed on an entity that does not have the assets necessary to achieve compliance or an interest in maintaining compliance); and,
- Responsibility for implementation of key mitigation measures is borne by the Holder or Holders whose activities create the need for the mitigation measures.

A Holder requesting a transfer to multiple Holders, should include with the request the suggested conditions:

- The sole responsibility of a single Holder;
- The responsibility of multiple Holders; and,
- The responsibility of all Holders.

Please note that the CEO will scrutinize recommendations to ensure they do not increase compliance risk.

6.2.2.1. Sole Responsibility of a Single Holder

Where a project component will be completed and operated by a single Holder and the condition has only been imposed to deal with the effects of that component, the transfer request should identify this and request that the condition be assigned as the sole responsibility of a single Holder. Example: Project description identifies Holder X as completing Facility Y. A condition that deals only with Facility Y might be assigned to Holder X.

6.2.2.2. Divided Responsibility

Holders can seek a division of responsibilities if all Holders are required to implement the condition, but each is only responsible in relation to the project component that they build or operate (i.e. each Holder is required to implement a sediment control plan in relation to their aspect of the project).

6.2.2.3. Joint and Separate Liability

Holders can seek joint and separate liability if a condition is necessary as a result of the actions being undertaken by all Holders. For example, if the environmental assessment found that increased activity in the area of the project will make surrounding areas less suitable for a threatened species, it would be appropriate to make all the Holders responsible for implementing a condition to create compensatory habitat. The EAO will identify in the conditions which Holders will take the lead on such activities and act as a point of contact for EAO. All Holders, however, will be responsible for implementation. Conditions may prohibit any Holder from starting construction or operations until the condition is complied with.

7.0 FEES

There are no fees charged for applications to transfer an EAC or Order or for a request for consent to transfer a “project”, “an interest in a project” or a “significant interest in a project”.

For fees related to amendments, see the Environmental Assessment Fees Regulation on the BC Laws webpage here: http://www.bclaws.ca/civix/document/id/crbccrbcc/246_2019.

8.0 QUESTIONS

Please direct any questions about this policy to the Legislation and Policy section of the Strategic Services and Compliance Division at the EAO. Contact information is available on the EAO's contact webpage here:

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