

Certificate Exemption Policy

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EAO

Environmental
Assessment Office

This document provides guidance to help EA 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 INTRODUCTION

This document provides guidance for carrying out an environmental assessment certificate exemption review (certificate exemption) pursuant to Section 16(2)(b) of the [Environmental Assessment Act \(2018\)](#) (the Act). The primary users of this policy are staff at the Environmental Assessment Office (EAO) and proponents. However, other environmental assessment (EA) participants, including Indigenous nations, may also use this policy to understand the roles, responsibilities, and requirements of a certificate exemption review. The Certificate Exemption Policy should be read in conjunction with the Early Engagement Policy and Readiness Decision Policy found [here](#), as well as the Act, including sections 13 to 17.

If the Chief Executive Assessment Officer (CEAO) considers that a [reviewable project](#) will not have significant adverse environmental, economic, social, cultural or health effects, or will not have serious effects on an Indigenous nation or the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project, the CEAO may refer the project to the Minister of Environment and Climate Change Strategy (Minister) with a recommendation that the project be exempt from the requirement under section 6 to obtain an environmental assessment certificate. This recommendation is included in a Certificate Exemption Report.

If the Minister determines that a certificate is not required, the Minister will issue an order under section 17(1)(b) of the Act, including an Exempted Project Description, and may attach any conditions he or she considers necessary. The proponent may then proceed directly to permitting without an EA. The Exempted Project Description binds a project with a description or list of project features and spatial boundaries at a level of detail that ensures adequate mitigation. If the proponent were to receive a certificate exemption, it does not relieve the proponent from compliance with the applicable requirements that pertain to the project under other regulations. In addition to any permitting or other regulatory requirements, the project would be required to be constructed, operated and decommissioned in accordance with the exemption order, including the Exempted Project Description EPD and any attached conditions. In making the decision to exempt a project from the requirement for an EA, the Minister must set out the reasons for decision. If the Minister determines that a certificate is required, the project will be referred to the CEAO for further decision consistent with section 17(1)(c) of the Act. When required, the EAO will work with the proponent and other parties involved in the certificate exemption to support the transition from the certificate exemption review to the Readiness Decision, and EA process, if applicable.

The CEAO will seek consensus with participating Indigenous nations regarding the Certificate Exemption Report prepared to inform the Minister's decision, along with any proposed conditions, and the Exempted Project Description. Participating Indigenous nations may also provide a notification indicating their consent or lack of consent to issuing an exemption order. The Minister must consider the notification when making their decision and must provide reasons where an exemption order is granted, and a participating Indigenous nation has provided a notification indicating a lack of consent.

The process for a certificate exemption review is similar to the process outlined in the Early Engagement Policy found [here](#). There are two key documents produced by the proponent during the certificate exemption review: the Initial Project Description (IPD) and the Detailed Project Description (DPD). During a certificate exemption, these documents require sufficient information for the EAO, Indigenous nations, the public, and technical advisors to understand the project's potential effects and whether it is an exemption candidate. Proponents are encouraged to provide this information as early in the process as possible, to help promote a smooth and efficient process leading to the Readiness Decision.

Figure 1 below provides an overview of a certificate exemption review.

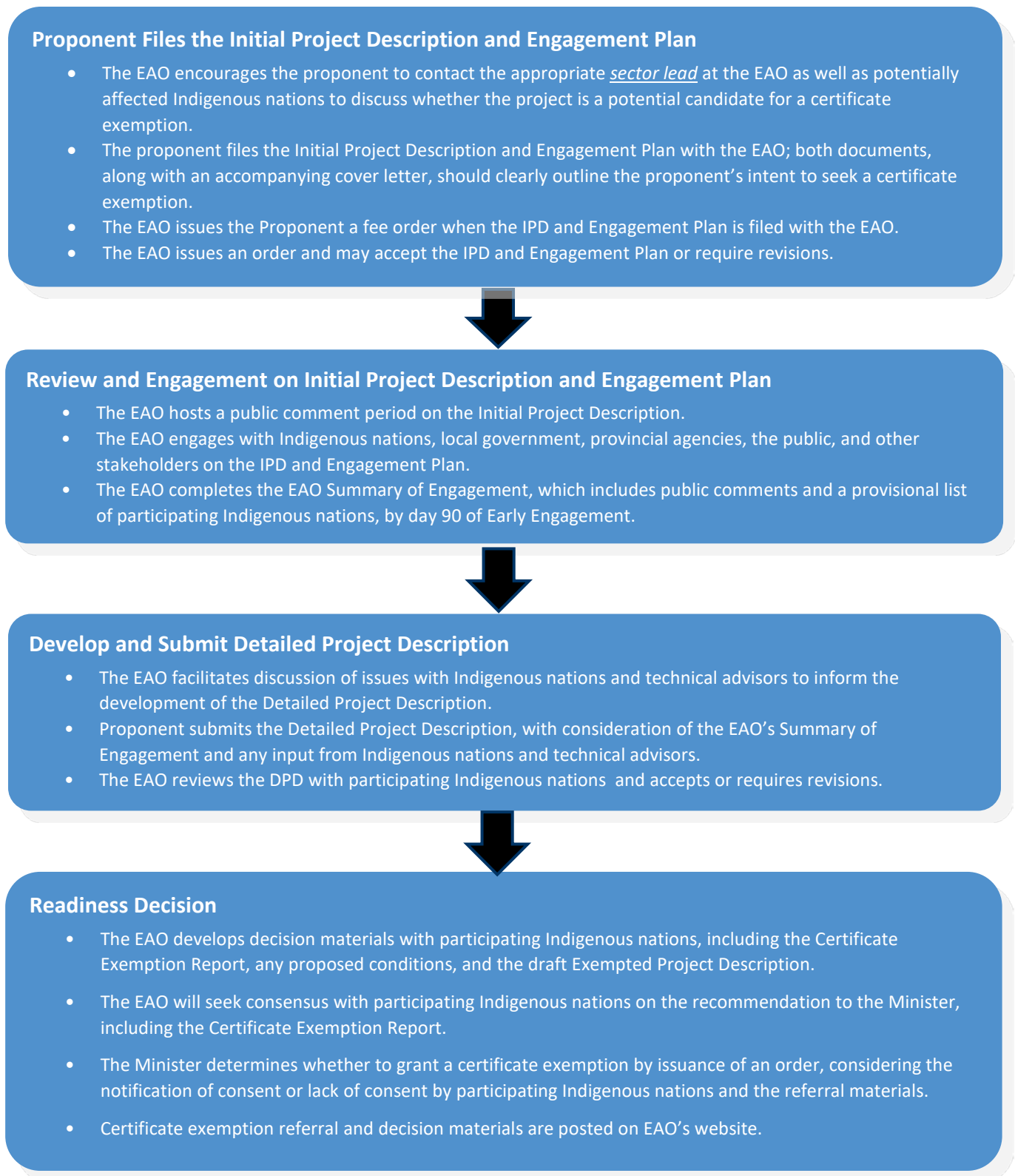


Figure 1. Overview of the certificate exemption review steps

2.0 EXEMPTION PROCESS AND INFORMATION REQUIREMENTS

Project proponents who are interested in pursuing a certificate exemption for their project are encouraged to review the relevant EAO policies and guidelines, the Act and contact the appropriate [sector lead](#) at the EAO for an initial discussion about the project and whether it is a potential candidate for a certificate exemption. The EAO also encourages proponents to contact potentially affected Indigenous nations to discuss the project and seek their views as to whether it is a candidate for a certificate exemption.

The EAO typically considers the following kinds of information to understand if a project is a potential candidate for a certificate exemption:

- Are plans for the project developed in sufficient detail that the potential for significant adverse effects can be determined?
- What are the current conditions, including existing adverse cumulative effects, of environmental, economic, social, cultural, health, and Indigenous values that would be impacted by the project?
- Is there potential for significant adverse environmental, economic, social, cultural or health effects taking into account practical means of preventing or reducing these effects to an acceptable level? Can this be known without a full assessment, taking into account permitting and other regulatory requirements?
- Is there potential for serious effects on Indigenous nations or their rights, taking into account practical means of preventing or reducing these effects to an acceptable level? Can this be known without a full assessment, taking into account permitting and other regulatory requirements?
- Will the project rely largely on existing infrastructure and facilities?
- Is there (or has there been) a pre-existing activity at the project location that is conducive to ongoing activity, e.g. brownfield development?
- Are there relevant conclusions from past regulatory processes, or is there a subsequent regulatory process through which appropriate mitigation measures will be required?
- What issues or concerns have been identified by Indigenous nations or the public during the proponent's efforts to engage? What measures has the proponent proposed to respond to and mitigate these issues?

The proponent is required to develop two key documents during the certificate exemption review process: the Initial Project Description (IPD) and the Detailed Project Description (DPD). If an exemption is sought, the CEAO will require sufficient information to be able to exercise their discretion under section 16 appropriately, as will the Minister under section 17. The proponent should ensure that the IPD and the DPD provide the necessary information to inform this recommendation, and ultimately demonstrate that the project will not have potential for significant adverse effects or serious effects on Indigenous nations or their rights, taking into account practical means of preventing or reducing these effects to an acceptable level. Additionally, it is important for Indigenous nations to have the required information to inform consensus seeking through early engagement and their consent decision regarding whether a certificate exemption order should be issued. The EAO encourages proponents to involve Indigenous nations in the development of the IPD and the DPD, to ensure they have the necessary information to inform their decision-making at the Readiness Decision.

The EAO encourages the proponent to use the IPD and DPD information requirements included in the Early Engagement Policy found [here](#) to guide what will be included in these documents during a certificate exemption review. Proponents are encouraged to provide the necessary information about their project's suitability for an exemption as early as possible in order to inform the EAO, Indigenous nations, public, stakeholders, and government agencies, as well as decision makers and to promote a smooth and efficient process leading to the Readiness Decision. Where possible, this means including more information in the IPD so that the public comment period and early engagement for a certificate exemption review

are based on the most complete information available. Where additional information that outlines a project's suitability for an exemption is not provided in the IPD, it may result in a longer Readiness Decision period or necessitate further engagement with Indigenous nations, the public, technical advisors and government agencies. Proponents seeking an exemption should consider best available science, local and Indigenous knowledge in developing these documents. In addition to the IPD and DPD guidelines provided in the Early Engagement Policy, the following types of information are important to understand early on during an exemption review in order to facilitate an efficient review. It is recommended that this information be provided in the IPD:

- Potential project effects (requirement outlined in Appendix 3 – DPD in the Early Engagement Policy):
 - A description of potential positive and negative direct and indirect effects of the project on the biophysical and human environments, and Indigenous rights and interests, including any potential cumulative effects;
 - A summary of biophysical feasibility studies undertaken that may be pertinent to understanding potential interactions, if applicable;
 - A description of measures to prevent or reduce the potential negative effects to an acceptable level. Include measures that could be integrated into project design, compliance with applicable regulations, standards, codes of practice, or Best Management Practices, corporate management systems, and/or project-specific measures that will be implemented; and,
 - A description of proposed monitoring programs that will be implemented to measure the effectiveness of mitigations to prevent or reduce the potential negative project effects.
- Results of technical and desktop studies undertaken for the project in order to obtain information on current conditions, potential interactions and modeling of effects;
- Human and Community Wellbeing (requirements outlined in Appendix 3 – DPD in the Early Engagement Policy):
 - An outline of the anticipated number of construction and operating jobs and anticipated percent of workforce from local community; and,
 - A description of how the project may affect the local and regional economy.
- Emissions, Discharges, and Waste (requirements outlined in Appendix 3 – DPD in the Early Engagement Policy):
 - An estimate of project GHG emissions by phase;
 - A description of the potential effects on the province being able to meet its targets under the *Greenhouse Gas Reduction Targets Act*;
 - An estimate of upstream GHG emissions; and,
- Land Use Plans (requirements outlined in Appendix 3 – DPD in the Early Engagement Policy):
 - An outline of how the project is consistent or inconsistent with land use plans and provide a rationale; and,
 - A justification for updates/changes to relevant provincial land use plans and a description of how engagement was considered.
- Results of engagement activities already undertaken with Indigenous nations, the public and relevant government agencies;
- Any proposed mitigation measures to be included in the table of conditions;
- Indigenous, public and stakeholder engagement:
 - Description of outcomes of issues-resolution with technical advisors and Indigenous nations, including but not limited to design changes and proposed mitigation measures;
 - Description of any engagement with landowners, land rights holders, other commercial, industrial, agricultural, and recreational land users, as well as the public, including key interests or issues identified and how these interests/issues were considered in project design; and
 - A table identifying the issues that have been raised through Early Engagement, including the public comment period, and an explanation of how those issues have been considered and addressed, where

appropriate, by the proponent.

- A draft Exempted Project Description (a physical description of the project's components and activities), including maps, which ultimately would be reviewed, finalized and included in the decision materials. The draft Exempted Project Description will include maps, and be developed following guidelines provided by the EAO.

The following information outlined in Appendix 3 of the Early Engagement Policy, found [here](#), may not be required in a certificate exemption IPD or DPD, as they only relevant for projects seeking to proceed to an assessment:

- Project-specific risk matrix;
- Information requirements related to future methods of information collection, including studies;
- Continuing/future engagement information requirements, unless related to proposed mitigation measures; and
- Optional information related to potential future phases of the EA.

2.1 Coordination with Permitting Agencies

Proponents are encouraged to discuss the IPD and Engagement Plan with provincial, and if applicable, federal government agencies prior to submission to the EAO to better understand how interested parties want to be engaged during early engagement and to ensure understanding of all permitting and regulatory requirements. In addition to the steps outlined in the Early Engagement Policy, during a certificate exemption review the EAO will seek to identify and work with government agencies and technical advisors earlier in the process (i.e. before day 90) so that proponents have information from them as they prepare their DPD. Technical advisors may also be engaged during the development and review of the DPD. In considering a request for an exemption order, it is important to understand the types of project effect mitigations that could be required by other agencies. This understanding informs mitigations that could be included in an exemption order.

2.2 The First 90 Days

The Early Engagement phase begins with the filing of a proponent's IPD and Engagement Plan with the EAO. The EAO will hold a public comment period to seek input on the IPD, including the proponent's request for an exemption order. The EAO will also commence engagement with Indigenous nations, local governments, provincial and federal governments, and any other key stakeholder groups.

Participation of Indigenous nations in a certificate exemption review is similar to the processes outlined in the Early Engagement Policy. Indigenous nations who wish to participate in an EA as a participating Indigenous nation are responsible for notifying the EAO of their intention by email or letter as soon as feasible, preferably by day 60 of Early Engagement and no later than day 80. The CEAO may initiate a process to provide such a nation with an opportunity to be heard before determining that there is no reasonable possibility that that nation, or its rights, will be adversely affected by the project. If consensus is not reached on the determination, then the EAO or the Indigenous nation may trigger dispute resolution under Section 5 of the Act. By Day 90, EAO will provide a provisional list of the participating Indigenous nations in the EAO's Summary of Engagement. Where dispute resolution is underway associated with any nation providing notice under s. 14(1), those Nations are not included in that provisional list. However, the proponent will be aware of a Nations' requested participating Indigenous nation status, as all notices should be posted on EPIC. The EAO Summary of Engagement will also include a summary of comments received during the public comment period, as required by [Section 13\(5\)](#) of the Act. Where appropriate, the EAO's Summary of Engagement will also identify:

- The EAO's understanding of Indigenous nations' interests in the project area in relation to certificate exemption

review;

- A summary of the issues and concerns identified to date;
- Additional information or engagement requirements for the DPD, including requirements identified by participating Indigenous nations; and
- Any other prescribed matters required by the EAO to inform the Readiness Decision.

3.0 READINESS DECISION

The Readiness Decision phase is described in the Readiness Decision Policy, found [here](#), and begins when the proponent files the DPD with the EAO. Once the DPD is submitted, the EAO and participating Indigenous nations will conduct an evaluation of it against the requirements outlined in the Early Engagement Policy, the certificate Exemption Policy, and the EAO's Summary of Engagement to determine whether the information provided is adequate to inform the readiness decision. The EAO will seek consensus with participating Indigenous nations, within applicable timelines on which of the options under s. 16(2) and 18 under of the Act should be exercised:

1. Require that the proponent prepare a revised DPD;
2. Proceed to an EA;
3. Refer to the Minister with recommendation that an assessment body conduct the assessment under s. 24;
4. Recommend that the Minister exempt the project from the requirement for an EA; or,
5. Recommend that the Minister order that the project may not proceed (i.e. terminate the project from the process).

It is important to emphasize that all of these options will be considered at Readiness Decision, and must be the subject of consensus-seeking with participating Indigenous nations. If consensus cannot be reached before exercising one of the options (1-5) above, dispute resolution is available. For more information refer to the Readiness Decision Policy, found [here](#).

For a certificate exemption review, in addition to the consensus-seeking on the options set out above, the CEAO will seek consensus with the participating Indigenous nation(s), within applicable timelines, regarding the Certificate Exemption Report, any proposed conditions, and the draft Exempted Project Description, prepared to inform the Minister's decision on the exemption order. If consensus is reached, the EAO will include this in the Certificate Exemption Report for the Minister's consideration. This report, alongside the Exempted Project Description and any conditions will be finalized during this phase. The Certificate Exemption Report will include the following:

- Whether the project will have a significant adverse environmental, economic, social, cultural or health effects or serious effects on an Indigenous nation or its rights taking into account practical means of preventing or reducing potential adverse effects to an acceptable level;
- Results of public engagement;
- Whether there are any applicable regional or strategic assessments;
- Consistency with any land-use plan of the government or an Indigenous nation if the plan is relevant to the project;
- Whether another assessment of the project has been or will be conducted;
- Whether potential effects of the project can be adequately addressed by another regulatory process;
- Notification, if any, provided by a participating Indigenous nation of the nation's consent or lack of consent to issuing an exemption order and reasons for that consent or lack of consent; and
- Information, if any, respecting an arrangement reached with a participating Indigenous nation in relation to the potential effects of the project on the Indigenous nation.

3.1 Ministers Decision

A certificate exemption order must set out the reasons for the order and must, in a case where a decision is contrary to the notification of lack of consent received from participating Indigenous nations, give reasons for why the decision to issue the order was made.

As per section 17(2) of the Act, in deciding on a certificate exemption, the Minister must consider any prescribed matters and the purpose of the EAO outlined in sections 2(2)(b)(i) and 2(2)(b)(ii) of the Act to:

- Promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities; and
- Support reconciliation with Indigenous peoples in British Columbia.

If a certificate exemption is granted, it will include the following materials:

- 17(1)(b) order, including:
 - Schedule A: Exempted Project Description
 - Schedule B: Conditions
- Reasons for Decision

The above materials will be provided to the proponent and participating Indigenous nations when a certificate exemption is granted. These materials will also be posted on the EAO's website.

If an exemption order is issued with conditions, any required compliance and/or monitoring reports submitted by the proponent will be posted to the EAO website. The proponent must construct, operate and decommission (if applicable) the project in accordance with both the EPD and conditions. Proponents and regulators should have a good understanding, based off engagement that occurred during Early Engagement, of the additional permitting requirements post-certificate exemption. This coordination is intended to allow for an efficient regulatory continuum following the certificate exemption review (if the order is granted).

3.2 FEES

The fee for a certificate exemption review is \$25,000 and the fee order will typically be issued at the time the Initial Project Description and Engagement Plan is approved. For more information on fees, see the [fees overview](#) page on the EAO website.

3.3 CERTIFICATE EXEMPTION AMENDMENT

A certificate exemption order can be amended under section 32 of the Act. See the Amendment Guidance found [here](#) and the [fees overview](#) page for details on how to amend a certificate exemption order. The fee for this process is variable and is described in the Fee Guidance, found [here](#).