



Ministry of
Environment and
Climate Change Strategy

WHAT WE HEARD:

Indigenous Engagement on the Public Interest Bonding Strategy Discussion Paper

September 2022

Report authored by Naut'sa mawt Resources Group on behalf of the Ministry of
Environment and Climate Change Strategy



[This Page Intentionally Left Blank]

EXECUTIVE SUMMARY

Over the course of the engagement series, the Ministry of Environment and Climate Change Strategy gathered feedback that showcased very clear themes from Indigenous participants. There was agreement that the provincial government can, and must, do better by First Nations. The importance of preventing contamination was highlighted, in contrast to the historical emphasis on simple remediation; we must shift to treating the underlying causes, rather than settling with managing their effects. However, it was agreed upon that when reclamation does take place, the environment needs to be left better than it was found, and this standard must be determined by First Nations themselves.

First Nations governments and communities must be involved in the entire process, up to and including after a project has ended and the ensuing need for stewardship of the area. There must also be more inclusion and adherence to the mandates outlined in the United Nations Declaration on the Rights of Indigenous Peoples, the British Columbia *Declaration on the Rights of Indigenous Peoples Act*, and Free Prior and Informed Consent.

There is also room for improvement when it comes to enforcement with industry, who are currently not being held accountable for the damage they are causing. In addition to this, participants called for a change in perspective through a move towards a more holistic approach, one which includes the adoption of a Seven Generations model capable of preserving the environment for future generations. The reality of climate change and its associated challenges must also be taken into consideration, including the cumulative effects that will complicate site reclamation years down the road. Difficulties related to community capacity were also highlighted. Capacity funding needs to become a priority so that First Nations can become more involved in processes and overcome the existing barriers that block their meaningful participation.

Lastly, there must be an emphasis placed on a company's track record as it relates to their environmental performance and fulfillment of their commitments. Currently, such information is getting lost when leadership and staff changes, which means that companies are not being held accountable. However, having a clear track record would enable the government to better react to, and discipline, those who act in bad faith by routinely causing damage and falling short of their obligations. It would also provide First Nations with valuable information on the type of companies that are running projects near their territory and throughout the province.

Table of Contents

1. INTRODUCTION	1
1.1 Background	1
1.2 Engagement with Indigenous Peoples	1
1.3 Public Engagement	2
2. METHODOLOGY.....	2
2.1 Engagement Approach	2
2.2 Engagement Sessions.....	2
2.3 Online Feedback Forms and Written Submissions	3
2.4 Analysis of Feedback.....	3
2.5 Limitations and Caveats.....	3
3. FINDINGS – SUMMARY OF INDIGENOUS PARTICIPANTS.....	3
3.1 Engagement Session Participants.....	3
3.2 Participation via Online Feedback Forms and Written Submissions	4
4. FINDINGS – WHAT WE HEARD: DESIRED OUTCOMES.....	4
4.1 Outcome 1: Improved Environmental Clean-Up and Reclamation Requirements Regarding Closure and Decommissioning of Industrial Projects	5
4.2 Outcome 2: Improved Tools to Support Transparent and Accountable Financial Assurance Decisions	7
4.3 Outcome 3: Additional Types of Financial Assurance	8
4.4 Outcome 4: Improved Liability Tools.....	8
4.5 Outcome 5: Improve Risk-Based Decisions to Prioritize Financial Assurance Requirements....	9
4.6 Outcome 6: Improvements to Policies and Procedures (or a Protocol) to Guide Transparent and Accountable Financial Assurance Decisions	10
4.7 Outcome 7: Improved Approaches to Minimize Financial Burden on Industry while Continuing to Uphold and Strengthen the Polluter Pays Principle.....	10
4.8 Outcome 8: Improved Liability Cost Estimates.....	12
4.9 Outcome 9: Improve Data Management Systems and Tools.....	13
5. FINDINGS – WHAT WE HEARD: KEY THEMES.....	13
5.1 Theme 1: Prevention is Key	13
5.2 Theme 2: Improve, Not Just Replace	14
5.3 Theme 3: Consistent Involvement	14
5.4 Theme 4: Incorporation of Mandates	14

5.5	Theme 5: Need for Enforcement	14
5.6	Theme 6: Change in Perspective	15
5.7	Theme 7: Consider Climate Change	15
5.8	Theme 8: Limited Capacity	15
5.9	Theme 9: Track Record	16
6.	RECOMMENDATIONS	16
APPENDIX A: SESSION OVERVIEW		17
APPENDIX B: ONLINE FEEDBACK FORM		19
APPENDIX C: ENGAGEMENT SESSION PARTICIPANTS		21

1. INTRODUCTION

1.1 Background

The Ministry of Environment and Climate Change Strategy (the Ministry), on behalf of the Government of British Columbia (the Province), created the Public Interest Bonding Strategy to address the minister's 2020/2022 mandate commitment on bonding (also referred to as financial assurance):

“With support from the Minister of Energy, Mines and Low Carbon Innovation, take steps to ensure owners of large industrial projects are bonded moving forward so that they – not British Columbians – pay the full costs of environmental clean-up if their projects are abandoned.”

The Public Interest Bonding Strategy aims to establish financial assurance mechanisms under the *Environmental Management Act* and the *Mines Act*, focusing on foreseen clean-up and reclamation costs for existing active and new projects that pose high environmental and financial risks, with the goal of protecting the Province and British Columbians from foreseen clean-up costs.

Financial assurance (e.g., bonds) can be used as an incentive to reduce environmental risks and hold industry accountable for clean-up, as the funds are not returned until the clean-up is complete. If a project is abandoned or a company does not fulfil their obligations, the Province can access the funds to ensure clean-up and reclamation.

While most companies properly manage their environmental risks, some industrial projects in British Columbia (B.C.) have lacked sufficient financial assurance to cover the cost of environmental clean-up and reclamation. This has resulted in taxpayers covering the clean-up costs.

1.2 Engagement with Indigenous Peoples

On April 13, 2022, the Province released a [discussion paper](#) on the Public Interest Bonding Strategy's preliminary considerations with respect to strengthening the financial assurance strategy in British Columbia. The paper was designed to promote discussion and gain feedback to help inform effective and efficient solutions to deliver on the Ministry's mandate commitment.

Broad engagement on the Public Interest Bonding Strategy discussion paper took place from April 13 to May 28, 2022, and utilized the EngageBC platform to collect feedback from Indigenous Peoples, industry, non-governmental organizations, the general public, and other parties. In addition, the Province retained Naut'sa mawt Resources Group to organize, host, and facilitate five virtual Indigenous engagement sessions for Indigenous Nations, Indigenous Organizations and people who self-identify as Indigenous. The purpose of the engagement sessions was to hear directly from Indigenous Peoples on opportunities and solutions for delivering the mandate commitment. The Province wants to include Indigenous perspectives early on and throughout the Public Interest Bonding Strategy. This report reflects the findings from these sessions as well as feedback received from Indigenous Peoples through the EngageBC platform.

1.3 Public Engagement

The Ministry also hosted five virtual public engagement sessions between April 20 and May 5, 2022. The sessions provided an overview of the Public Interest Bonding Strategy discussion paper followed by an opportunity for participants to ask questions. Participants were instructed to provide feedback via an online feedback form or through a written submission. A separate What We Heard report for public engagement will be publicly released in Summer 2022.

2. METHODOLOGY

2.1 Engagement Approach

The Public Interest Bonding Strategy Indigenous engagement process was designed by the Ministry of Environment and Climate Change Strategy in collaboration with Naut'sa mawt Resources Group and the Government Digital Experience Division of the B.C. Ministry of Citizens' Services. Collation of engagement feedback was conducted by Naut'sa mawt Resources Group and is presented in this report. This report will also be shared with engagement session participants and will directly inform future government policy development.

Engagement on the Public Interest Bonding Strategy discussion paper consisted of three elements: an online feedback form hosted on the EngageBC website, an open call for written submissions and virtual engagement sessions. While all three elements were used to promote Indigenous engagement, including encouraging engagement session participants to submit their thoughts online, most of the feedback came from the virtual engagement sessions.

2.2 Engagement Sessions

The Indigenous engagement sessions took place between April 20 and May 3, 2022. Each engagement session was facilitated by Naut'sa mawt Resources Group and an experienced Indigenous facilitator. The facilitator began each session with a welcome, a land acknowledgement, and the introduction of an Indigenous Elder who opened with a prayer, cultural song, or opening remarks to set the tone for the day. Participants were then informed that both the plenary and breakout sessions would be recorded by Naut'sa mawt Resources Group for the purposes of notetaking. Following presentations from Ministry staff about the Public Interest Bonding Strategy and discussion paper, participants were invited to share their feedback during a question-and-answer period and small-group breakout discussions. Each breakout session was moderated by a facilitator and a volunteer participant was appointed to report back during the plenary session, prior to closing remarks from Ministry representatives and a final prayer from the Elder.

The timing of each engagement session, along with the topic that was covered, is listed below in Table 1.

Session 1: Introduction	Session 2: Legal Framework & Statutory Liability Tools	Session 3: Financial Assurance Mechanisms – Part 1	Session 4: Financial Assurance Mechanisms – Part 2	Session 5: Summary / What We Heard
April 20, 2022	April 25, 2022	April 27, 2022	May 2, 2022	May 3, 2022

Table 1 - Overview of Engagement Session Dates

Appendix A includes a more in-depth overview of each session.

2.3 Online Feedback Forms and Written Submissions

In addition to providing feedback during the engagement sessions, participants were invited to provide input via the online feedback form or to make formal written submissions. Online and written feedback was invited from April 13 to May 28, 2022. The form was developed by the Ministry and hosted by the Province on its public engagement platform at:

<https://engage.gov.bc.ca/govtogetherbc/consultation/public-interest-bonding>.

Online feedback form submissions and formal written submissions were reviewed and analyzed for themes, and the qualitative feedback was incorporated into this report. See Appendix B for a copy of the online feedback form.

2.4 Analysis of Feedback

Naut'sa mawt Resources Group identified and aggregated the key themes from the engagements through comparing the written reports of each session and emphasising the feedback was most frequently mentioned or supported by multiple participants. Feedback from individuals that was related to existing themes was also included. Such methods of analysis were also applied to online submissions.

2.5 Limitations and Caveats

The main limitation and caveat for the results of this engagement series is that not every B.C. First Nation or Indigenous organization and individual was represented, so the feedback that was collected only represents a small sample of the Indigenous voices in British Columbia.

3. FINDINGS – SUMMARY OF INDIGENOUS PARTICIPANTS

The Ministry also wanted to express appreciation for all those who gave their time to be present and contribute or provided their feedback in writing and through the online feedback form. Without the contributions from all the Indigenous participants, there would not have been a meaningful engagement series, and their feedback has been highlighted in the report that follows.

3.1 Engagement Session Participants

The sessions were attended by Ministry staff, representatives of various B.C. First Nations communities and organizations, and was supported by Indigenous facilitators, technical advisors, and notetakers from Naut'sa mawt Resources Group. Participants included representatives from Indigenous communities, governments, organizations, and spanned multiple generations, including Elders. However, only the communities that consented to be named are listed in this report (Table 2 and Appendix C). Over the

course of the engagement series there was a range of eight – 13 Indigenous participants per session from across British Columbia. Overall, there were 16 distinct Indigenous communities represented across the engagement sessions, and those that consented to being named in this report are listed below in Table 2.

Adams Lake Indian Band	Leq'á:mel First Nation	Shxw'ōwhámel First Nation
Fort Nelson First Nation	Malahat Nation	Spuzzum First Nation
Gitxsan Nation	Nisga'a Lisims Government	Taku River Tlingit First Nation
Ktunaxa Nation	Penticton Indian Band	Tl'azt'en Nation

Table 2 - List of Indigenous Communities that Consented to be Named

3.2 Participation via Online Feedback Forms and Written Submissions

In addition to providing feedback during the virtual engagement sessions, participants were also encouraged to submit any thoughts and concerns by e-mail or through online written submissions. The feedback received via these methods was incorporated into this report.

4. FINDINGS – WHAT WE HEARD: DESIRED OUTCOMES

Over the course of the virtual engagement sessions and through the online feedback form, participants were introduced to the Public Interest Bonding Strategy discussion paper and asked to provide feedback on nine discussion areas, or desired outcomes, relating to the financial assurance strategy in British Columbia. The desired outcomes were organized into three broad categories:

1. **Legal Framework** – Clear statutory obligations for regulated entities meant to ensure environmental protection, mitigation, and clean-up and reclamation of industrial sites.
2. **Statutory Liability Tools** – Sufficient to hold companies' responsible for the costs of environmental clean-up and reclamation.
3. **Financial Assurance Mechanisms** – Sufficient to guarantee companies can and will pay for foreseen liabilities and to backstop liability tools.

See Figure 1 for an overview of the Public Interest Bonding Strategy discussion paper.

PUBLIC INTEREST BONDING STRATEGY

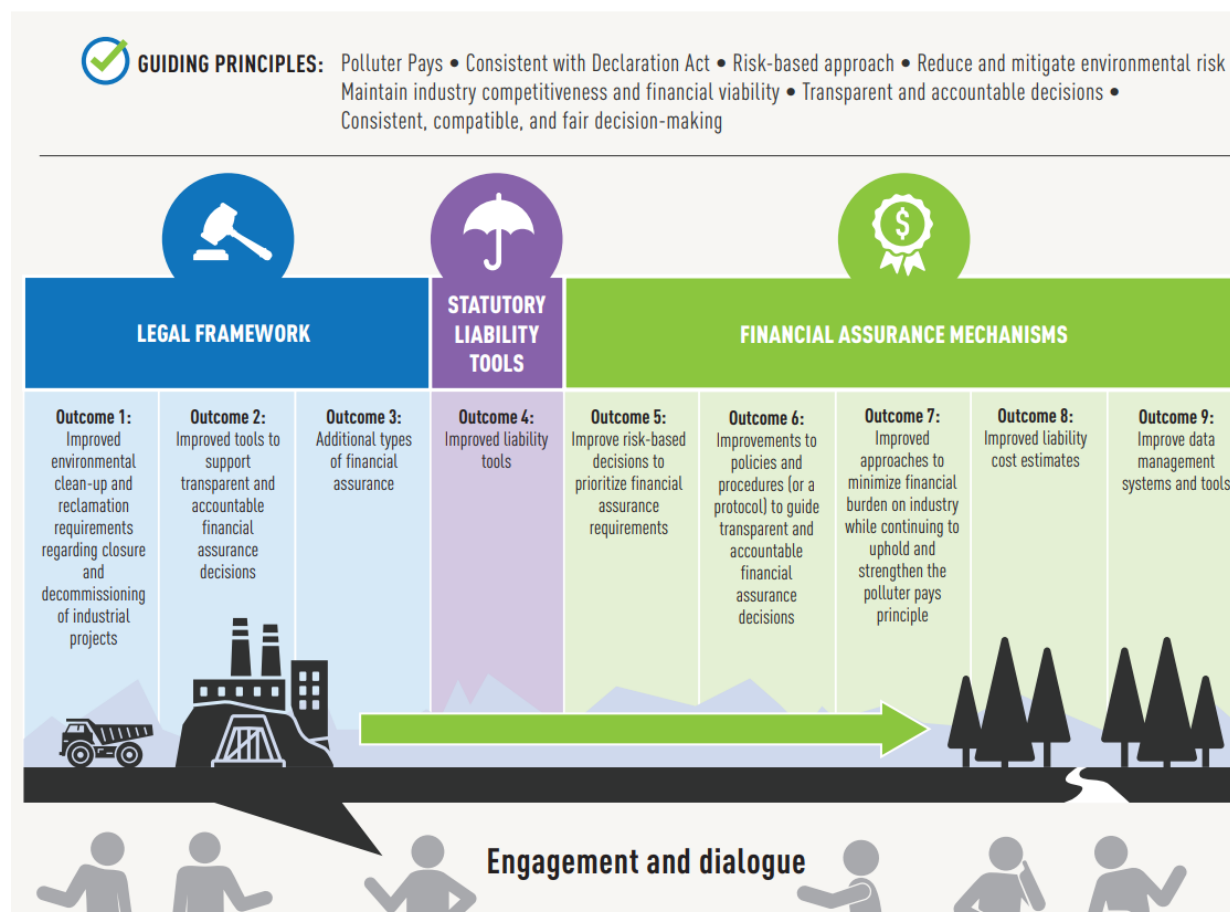


Figure 1 - Infographic of the nine outcomes and the three broad categories they were organized into.

The discussion paper includes questions for each desired outcome. These questions provided the necessary starting points for the virtual discussions and were used in the online feedback form. The following section provides an overview of the feedback received in response to each outcome and its associated discussion questions.

4.1 Outcome 1: Improved Environmental Clean-Up and Reclamation Requirements Regarding Closure and Decommissioning of Industrial Projects

Discussion Questions:

In defining environmental clean-up and reclamation, what key elements are most important to you?

What do you think are the most important considerations when determining which industrial projects should require a closure plan?

The feedback that was heard in response to these questions included:

- There should be monitoring of the site once a project finishes, ideally done by Indigenous monitors, especially in areas that are sensitive or valued by First Nations communities.
- In general, projects need to be approached with a long-term, Seven Generations perspective, which should include cumulative effects studies and holistic monitoring of sites.
- Important elements of reclamation that were identified by participants included being able to safely drink the water, fish the rivers and lakes without limitations, harvest marine resources like clams and crabs, and collect medicinal plants and berries without worrying about toxins or pollution.
- The importance of *who* was defining clean-up and reclamation was highlighted, versus *how* it was defined, because if industry is the one defining these terms, then they are going to be doing so in a way that benefits them. Due to this, there should always be First Nations input on how these terms are defined, with the potential for input from experts.
- It was suggested that a certain percentage of funds from every project be placed into a bonding legacy trust that can be used for unforeseen issues that may arise long-term.
- There need to be laws around reclamation and financial assurance that are practical and enforceable so that industry is held to set standards and will actually follow through with reclamation/closure plans.
- Multiple participants agreed that every industrial project should have a closure plan, since these projects can be so destructive to the environment and human rights, and the fact that it was not already required is concerning.
- The definitions of “environmental clean-up” and “reclamation” are subjective and can mean different things to different people, so a common and clear understanding is needed. While this issue is sometimes addressed through the [environmental assessment process](#), this can be awkward when clear outcomes are not legislated from the beginning and are lacking altogether for projects that don’t trigger an environmental assessment under the *Environmental Assessment Act*. Therefore, closure plans with clear criteria must be prepared and approved before land is even disturbed.
- It was also highlighted that financial assurance is not currently required by the *Environmental Assessment Act* (EAA). Incorporating it into the EAA process would ensure that the project design, risks, and mitigations are considered in evaluating if an appropriate level of financial assurance can be implemented.
- The Province should introduce a fee system for new projects that could then fund the reclamation of contaminated legacy sites, with a focus on Indigenous communities and urban areas.
- Indigenous contractors must become part of the environmental clean-up and reclamation process. There are plenty of qualified and responsible Indigenous contractors that are capable of undertaking reclamation projects, and they need to be included.
- One Nation provided a written comment that said, “Although it is beyond the scope of this consultation, we want to express support for a province-wide brownfield cleanup project that would provide a huge boost to local employment and could rehabilitate large swathes of land and coastal areas. Given the extent of existing sites requiring remediation, a new approach to

financing the rehabilitation of existing brownfield and contaminated sites across the province is required, with distinctive strategies required for urban and rural areas, respectively. Implementing a province-wide cleanup strategy in a prompt manner could help to rehabilitate brownfield and other contaminated sites including in coastal areas where contamination has been well documented for decades. Funding for this could be drawn from a fee applied to existing and new project approvals, as described above.”

- There needs to be a balance between what we ask of the Earth, what it gives, and allowing the Earth time to heal so that these resources are sustainable for years to come.

4.2 Outcome 2: Improved Tools to Support Transparent and Accountable Financial Assurance Decisions

Discussion Question:

What is your feedback on how to support transparent and accountable financial assurance decisions?

The feedback that was heard in response to this question included:

- When asked about how to support transparent and accountable financial assurance decisions, multiple participants echoed that this information needs to be publicly available and freely accessible, such as through a detailed quarterly or annual report, and it needs to be addressed before a project even begins.
- For full transparency and confidence, liability cost estimates need to be given to First Nations for review, even under confidentiality agreements if necessary.
- It was suggested that the Province needs to start by meeting the expectations set out within the United Nations Declaration on the Rights of Indigenous Peoples, and the Declaration needs to be incorporated into the Public Interest Bonding Strategy. There were also the following points that participants recommended the Province pay attention to:
 - Acknowledging that there are traditional Indigenous Knowledge and land use practices that may be impacted by delayed or indefinite decommissioning and reclamation processes.
 - Properly identifying risks to cultural values arising from environmental contamination, including cumulative impacts, and ensuring these risks are identified and addressed by the Public Interest Bonding Strategy.
 - Identifying gaps in the existing framework for financial assurance and instances where existing tools may not compensate for irreversible environmental or cultural damage. Where large-scale irreversible damage is possible, the Province should explain how the Public Interest Bonding Strategy will address this challenge.
 - Acknowledging that there is a spectrum of acceptable clean-up and remediation processes from decent to perfect but impacted First Nations need to have the ability to define what that reclamation looks like.
- One participant commented that there has to be respect for confidentiality agreements. They then gave the example of how a group of workers were discussing the use of new roadways to gain access to a pristine wilderness area for their families once the project was completed, which is a breach of the confidentiality agreements signed. The new roadways also open the wilderness

to hunters and others, which is why First Nations need on-going funding to adequately control access both during and after construction is completed.

- There needs to be more transparency of costs, which are not currently shared. First Nations want to know what it costs to assess, operate, and close a site, including environmental cleanup and reclamation costs.

4.3 Outcome 3: Additional Types of Financial Assurance

Discussion Question:

How could pooled funds be used as a tool to support the Guiding Principles of the Public Interest Bonding Strategy?

The feedback that was heard in response to this question included:

- Multiple participants agreed that if there were pooled funds being held for environmental clean-up, then the process would be streamlined because there would be no question of how to pay for reclamation. It was also suggested that there should be funds held back that can cover unforeseen expenses, legacy costs, or that could be used to offset future inflation for projects that span many years.
- When it comes to requiring financial assurance for environmental clean-up and reclamation, there should also be funds set aside so that the First Nation can become involved in the reclamation process, just like how there are funds set aside for company involvement, and these amounts need to be equal.
- It was suggested that cleanup cost multipliers be utilized in cost calculation templates. This will result in higher environmental cleanup and reclamation cost estimates and financial assurance amounts, which can then offset the higher risks that will likely result from climate change on longer-term projects. It was also emphasized that First Nations communities should be able to review and agree on what those multipliers are.
- Long-term closure plans need to utilize the Seven Generations approach, along with non-discounted costs.
- One participant suggested the implementation of a hybrid model, where funds are held as security for the foreseen costs and then returned once restoration is completed, but non-refundable pooled funds can be put towards any unforeseen costs that arise.

4.4 Outcome 4: Improved Liability Tools

Discussion Questions:

In determining the required frequency of updates and/or triggers for updating financial assurance, what considerations are most important to you, your industry or your organization?

Do you have any recommendations for strengthening the Province's ability to collect financial assurance that is required but has not yet been received, and/or is required but the responsible party has become insolvent?

The feedback that was heard in response to these questions included:

- Any revisions to financial assurance amounts for specific industrial projects should be publicly available and updated at least quarterly throughout the year, and they should be done by non-partisan regulators with no ties to industry. It was also suggested that these updates should be a mandatory authorization/permit requirement for both existing and new projects.
- There should not be any exemptions, or lack of oversight and enforcement, for projects being developed on private property. If there is a risk to the environment, then property holders should be required to have financial assurances and be held to the same standards as industry.
- Financial assurance requirements should apply to all industrial projects, regardless of whether they are existing or new. It was also suggested that the Province should explore redirecting industry taxes, fees, and other levies being charged into a pooled resources fund for reclamation and restoration, which would help to prevent future economic strains.
- Financial assurance requirements implemented by the Province should not detract from similar financial assurances sought by First Nations through Indigenous-led assessment processes.
- It was suggested that financial assurance should be paid upfront and be required for *Environmental Management Act* authorizations/permits, which would avoid legal action to recover costs later, should the owner of an industrial project claim bankruptcy or try to avoid paying for environmental cleanup and reclamation some other way.
- If financial assurance is not provided within a specific amount of time, such as six months, then the *Environmental Management Act* authorization should get revoked and the project should be prohibited from continuing its operations until the balance is paid. There needs to be something established that will hold the owners of industrial projects financially accountable if they refuse to provide financial assurance, such as a fine or permits being revoked.

4.5 Outcome 5: Improve Risk-Based Decisions to Prioritize Financial Assurance Requirements

Discussion Question:

In defining risk criteria, what key elements are most important to you, your industry or your organization?

The feedback that was heard in response to this question included:

- It was highlighted that more than just industrial projects have impacts on the environment, and that air pollution also needs to be considered, along with the cost of greener alternatives, such as the environmental downside to lithium batteries used in electric vehicles.
- It was emphasized that foreseen impacts from any environmental reclamation, mitigation, remediation, or monitoring needs to incorporate the *Species at Risk Act* and prioritize adding protections and safeguards to any species that is threatened, endangered, or may be impacted on the land or in the water. An example given was the riparian habitats and spawning beds of

coho and sockeye salmon, which have been significantly impacted by development, industry, privatization of lands, recreation, dams, flooding, and fires.

- When participants were asked about the key elements that were important to them in defining risk criteria, they responded by highlighting the importance of the environment, especially water; human rights and health; damages to property and sites of significance.

4.6 Outcome 6: Improvements to Policies and Procedures (or a Protocol) to Guide Transparent and Accountable Financial Assurance Decisions

Discussion Question:

What type of tools or guidance would you, your industry or your organization like to see to support transparent and accountable financial assurance decisions?

The feedback that was heard in response to this question included:

- Financial assurance decisions should involve any affected First Nations and utilize a consensus-based approach. Affected First Nations were defined by engagement session participants as any community whose territory is impacted, such as being downstream from a mining operation, and whose voice is often overlooked in comparison to a Nation whose territory a project is operating within.
- One Nation emphasized the importance of government-to-government partnerships, and that relying on the call-and-response system for consultations is not as meaningful as a collective approach. By working in collaboration with First Nations, rather than through a unilaterally designed approach, it ensures that First Nations are actively involved in the decision-making process.
- There should be detailed financial reports made available to the public, ideally every quarter, that showcase estimated reclamation costs and the funds for liability that have been collected. There should also be a yearly audit done by an ethical accounting institution.

4.7 Outcome 7: Improved Approaches to Minimize Financial Burden on Industry while Continuing to Uphold and Strengthen the Polluter Pays Principle

Discussion Question:

What are your recommendations for how the Public Interest Bonding Strategy can ensure financial assurance mechanisms meet the polluter pays principle, while limiting the negative financial impacts on industry and on the economy?

The feedback that was heard in response to this question included:

- A popular recommendation was that reclamation costs and adequate financial assurance requirements should be a higher priority than any associated negative financial impacts on industry/companies, and if the owners of industrial projects can't provide funds for the critical

reclamation stage at the very beginning of a project's lifecycle, then the project should not even be approved.

- Multiple participants admitted to not caring about the potential negative impacts on industry that may result from financial assurance requirements, because industry has shown little concern for the harm they have caused, and participants noted that the Province is just as guilty for not holding industry and corporations accountable.
- One suggested approach was to use a combination of pooled funds, scheduled recurring payments, and up-front bonds as a condition of permitting. The only time that flexibility should be applied to payments is when the project has a low environmental or financial risk.
- Longstanding gaps in the legislative/regulatory framework (legal framework) for financial assurance and limited oversight of existing rules were highlighted as a major cause for environmental disasters; contaminated air, water, and soil; unnecessary loss of life, and substantial costs to taxpayers and Indigenous Peoples. The Province needs to modernize and align the legal framework with the 'polluter pays' principle, and mandates such as the United Nations Declaration on the Rights of Indigenous Peoples, in the crucial industries of oil and gas, forestry, mining, and energy generation and transmission.
- The Province needs to draw on the national and international expertise that is available in the global mining and energy sectors, to create a world-leading financial assurance strategy that puts the 'polluter pays' principle into practice. In order to make good use of government resources and ensure confidence of all participating First Nations, the updated legal framework should reflect this existing expertise and international best practice in creating transparent and consistent financial assurance requirements that align with the public interest. The short report on international best practice case studies mentioned above would help to inform all participants at the outset of the Public Interest Bonding Strategy multiyear consultation process.
- The current discussion paper does not mention the federal *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*. Insolvency law and statutory bankruptcy protections are key barriers to government and community recovery of costs associated with environmental liabilities from companies operating in British Columbia. These important connections should be properly identified and clarified early on in Phase 1 of the Public Interest Bonding Strategy consultation process, because not addressing existing corporate legal frameworks that block systematic recovery of clean-up costs would be a missed opportunity.
- Any updates to the provincial financial assurance strategy for industrial projects should consider all types of power generation projects, including wind power, geothermal, hydro, and nuclear, in addition to other traditional industries with large environmental footprints, such as mining. As pressure increases to utilize more types of net-zero power generation, the Ministry needs to be sure that the Public Interest Bonding Strategy is looking forward and encompasses all project types that may need decommissioning and could come under the new financial assurance rules in the future.

4.8 Outcome 8: Improved Liability Cost Estimates

Discussion Question:

What are your recommendations for improving environmental clean-up and reclamation cost estimates to ensure they accurately reflect liability?

The feedback that was heard in response to this question included:

- One comment came from a participant that spoke about past incidents of their Nation losing resources, such as loss of clams for 21+ years due to contamination. It was suggested that the potential for such significant losses, especially those connected with First Nations culture and knowledge, needs to be taken into consideration when assessing levels for financial assurance. The suggestion was also made that each First Nation should have a list of these culturally valued resources, such as clams, which can then be shared with the Ministry and taken into consideration for financial assurance and potential negative impacts.
- It was emphasized that the Ministry needs to understand the difference between treaty rights and Aboriginal rights, because they are not the same. The details of treaty rights can fluctuate between First Nations groups, notably in regard to consultation requirements for projects and access to lands and resources.
- In terms of clean-up, it was suggested to include a factor of safety when calculating the cost estimates, to try and counteract any unforeseen costs that may arise. It was also suggested that any data management systems need to be user-friendly at both the front and back ends of the system, so it is easy to navigate and retrieve the information that is being stored.
- Financial assurance decisions should be based on evidence, and not based on arbitrarily negotiated amounts. Data is available for most industrial sectors on reclamation, restoration, and remediation, so any amounts should be based on similar projects or development, should be secured before any authorizations are granted, and should include extra funds for unforeseen changes.
- It was suggested that project proposals should double their estimated costs and industry should be required to make monthly payments into a dedicated bank account so that the entire amount is paid off in the first three to five years of the project, and confirmation of those monthly payments should be included in a quarterly report. However, if the reclamation and restoration costs are lower than the accumulated funds, then the owners of the industrial project would get a refund.
- Work involving environmental clean-up and reclamation cost estimates should be done by non-partisan, non-industry regulators on a joint basis with Indigenous Knowledge Keepers, and those regulators should have backgrounds in environmental science and ecology. It is important to consult with independent scientists and experts on the full range of expected project impacts, not just rely on industry and their paid consultants to generate estimates of clean-up and reclamation costs.
- One participant summarized their recommendations with a five-step plan, which was outlined as:
 - 1. *Full Bonding* for new mines and mines in their last five years of operation.
 - 2. *Incentivize* progressive reclamation to allow for ongoing cleanup.

- 3. *Reduce* the scope for discretionary or ad-hoc requirements.
- 4. *Provide Transparency* with annual disclosures of mine liability and bonding amounts.
- 5. *Consistent Closure and Reclamation Requirements* for all industries and consistent financial assurance requirements across projects.

4.9 Outcome 9: Improve Data Management Systems and Tools

Discussion Question:

What are your recommendations for specific improvements to data management systems and tools that are a priority for you, your industry or your organization?

The feedback that was heard in response to this question included:

- One way to improve data management systems is through prioritizing efficient data upload and vetting, along with ensuring transparency and accessibility.
- It was also emphasized that data should not be prioritized over Indigenous Knowledge, as both types of wisdom have something to offer. It is time for traditional Indigenous Knowledge to stop being downplayed.
- One Nation recommend that the Province find a way to address both ‘foreseen’ and ‘unforeseen’ clean-up and reclamation costs in a single process of consultation, rather than duplicating this via two separate consultation phases over a five-year period. Foreseen and unforeseen clean-up and reclamation issues arise from the same projects and companies, impact the same communities, and touch on similar areas of regulation, so the consultation and regulatory response to these issues should be linked.

5. FINDINGS – WHAT WE HEARD: KEY THEMES

The following feedback is a representation of the comments and questions made by participants across each of the five engagement sessions. Themes were chosen based on how often topics were discussed and how many participants voiced their support for opinions that were shared. That being said, there was no attempt to seek a consensus from participants or to gauge the weight of opinion on any issue.

During the fifth engagement session, the Indigenous facilitator presented a summary slideshow of key themes from discussions and feedback heard during the first four sessions. Participants agreed that the key themes were an accurate representation of the feedback provided, and any additional suggestions they had were incorporated.

5.1 Theme 1: Prevention is Key

There was widespread agreement that it is more difficult to clean up contamination after it has happened, especially in bodies of water, than it is to prevent it from occurring in the first place. The focus needs to shift from one that is reactionary, to one that is preventative.

Procedures need to be designed in a way to prevent contamination from happening as much as possible in the first place, especially for aquatic and terrestrial habitats that Indigenous Peoples rely on for food gathering or that have cultural significance.

5.2 Theme 2: Improve, Not Just Replace

Any area that is being reclaimed and restored needs to be left better than it was found, according to standards set by First Nations communities, and not just returned to what it was before. Participants explained that this is because companies are starting from a damaged state, as these areas have already been subjected to generations of industrial and colonial practices. Communities want to be able to use the land and waters like they once did, with healthy ecosystems and habitats in place, not just cosmetic landscaping.

It was also suggested that reclamation should be done throughout the life of a project, rather than only being left until the end. It could better regulate projects by forcing companies to work in phases and show that they can properly reclaim the land after each phase, before being allowed to continue.

5.3 Theme 3: Consistent Involvement

First Nations governments and communities must be involved from the very beginning and consistently consulted throughout a project. They need to be at the table as a decision-maker, not just as a stakeholder, and be given access to as much information as possible so that they can make informed decisions and contribute in a meaningful way. Moving forward, it is crucial to develop a system that keeps Indigenous Peoples and their rights in mind, first and foremost, rather than industry having priority, which has been the case for generations.

Another key suggestion was that when it comes to reclamation, there should be funds set aside so that the First Nation can become involved, just like how funds are set aside for company involvement. Specifically, this funding needs to support the long-term management and guardianship of the land by First Nations once a project has completed and industry has left.

5.4 Theme 4: Incorporation of Mandates

Multiple participants echoed the importance of abiding by the laws and including the principles and mandates of the United Nations Declaration on the Rights of Indigenous Peoples, the B.C. *Declaration on the Rights of Indigenous Peoples Act*, Free Prior and Informed Consent, etc., in the work moving forward.

5.5 Theme 5: Need for Enforcement

Participants expressed that there needs to be better enforcement with industry, in addition to the changes through the Public Interest Bonding Strategy, because improvements will only have a positive impact if companies are being held to account for their performance against new and existing requirements.

It was also expressed that if First Nations are not going to be able to have full control and agency over their own territories, then they should at least have the assurance that companies will be held financially responsible if something goes wrong.

5.6 Theme 6: Change in Perspective

Multiple participants stressed the importance of having a holistic perspective with this issue, and also adopting a longer-term focus that utilizes the traditional Seven Generations model that considers the impacts of decisions on people, the land and the environment over the next 200+ years.

This means that work regarding financial assurance and reclamation needs to consider the longer-term, including greater reclamation costs in the future, and how later generations of First Nations will be impacted. The holistic perspective also means taking an integrative management approach that reaches across the multiple ministries, agencies, and different levels of government that have a role in decision-making.

5.7 Theme 7: Consider Climate Change

Participants emphasized that climate change and the impacts of cumulative effects are complicating the issue of reclamation, yet do not seem to be factored into such discussions. The cost of reclamation will be influenced by environmental circumstances and cumulative effects, but the environment itself is changing from climate change, especially as more extreme weather events occur. Effects from climate change such as fires, floods, and more, may destroy reclamation work already done and this needs to be addressed to ensure the long-term restoration of the lands and habitats.

Financial assurance rates need to take this into consideration so that the cost of reclamation will be fully covered, rather than leaving First Nations communities to pick up the bill. It was also highlighted that much of what we know about the environment today is based on data from the past, which means that it is not truly reflecting how much has changed from climate change, or will continue to change decades into the future.

5.8 Theme 8: Limited Capacity

Many participants shared the challenges that their communities face when it comes to having limited capacity, and that funds and supports for capacity building are crucial to eliminating the barriers that currently prevent First Nations communities from becoming more involved in the referral and reclamation processes, among others. Greater capacity is also needed so that Indigenous communities and governments can attend meetings and engagement sessions, and can also meet with each other and make those meaningful connections with other Indigenous Peoples. It would also allow First Nations to invest in and upgrade their own infrastructure and technology, which is a significant barrier for smaller or more northern and remote communities.

5.9 Theme 9: Track Record

There was a suggestion made that there needs to be more emphasis placed on a company's track record, and a list should be kept which tracks their commitments, outcomes, and performance with remediation and following through on reclamation. This would be especially helpful for projects that run for years or decades, which can result in a lot of staff turnover and the loss of institutional knowledge. Therefore, being able to maintain and showcase a company's track record would ensure that companies are doing what they are supposed to and fulfilling their environmental clean-up and reclamation commitments. It also enables the Province to react accordingly, and those companies that consistently fall short can be fined or have their permits revoked or rejected upfront, whereas companies with a good track record can benefit from higher trust and confidence, along with more certain and favorable financial assurance calculations.

6. RECOMMENDATIONS

When participants were asked if there was anything else that they wished to share on how to improve the Province's approach to financial assurance, the following comments were submitted online or given during the engagement sessions:

- Any next steps must include broader involvement and participation from Indigenous communities throughout the entire lifecycle of industrial projects, not just at the beginning or in the reclamation stage.
- Phase 2 of the Public Interest Bonding Strategy should include an industry-pooled fund for disasters, which could be used to cover unforeseen costs, such as clean up from a spill. This approach may encourage the use and development of less harmful industrial practices and technologies, while also removing the burden of clean up from impacted communities.
- The Major Mines Reclamation Security Policy (Interim) needs to be strengthened and made more resilient, especially towards any changes to which political party is leading the Province of B.C.
- There needs to be capacity funding available for Indigenous communities that are wishing to participate in the engagement process but do not have the staffing or financial capacity to attend and contribute.

APPENDIX A: SESSION OVERVIEW

Session 1 – Introduction

During the first session, the ENV presentation covered part of the Legal Framework category, and specifically highlighted Outcome 1: The improved environmental clean-up and reclamation requirements regarding closure and decommissioning of industrial projects. Participants were then divided into breakout rooms and asked the following questions to help facilitate conversation:

In defining environmental clean-up and reclamation, what key elements are most important to you?

What do you think are the most important considerations when determining which industrial projects should require a closure plan?

Session 2 – Legal Framework & Statutory Liability Tools

During the second session, the ENV presentation covered the rest of the Legal Framework category, specifically Outcomes 2-4: Improved tools to support transparent and accountable financial assurance decisions, additional types of financial insurance, and improved liability tools. Participants were then divided into breakout rooms and asked the following questions to help facilitate conversation:

What are your recommendations for how the Public Interest Bonding Strategy can ensure financial assurance mechanisms to meet the polluter pays principle, while limiting the negative financial impacts on industry and on the economy?

What are your recommendations for improving environmental clean-up and reclamation cost estimates to ensure they accurately reflect liability?

Session 3 – Financial Assurance Mechanisms – Part 1

During the third session, the ENV presentation covered part of the Financial Assurance Mechanisms category, specifically Outcomes 5-7: Improve risk-based decisions to prioritize financial assurance requirements, improvements to policies and procedures (or a protocol) to guide transparent and accountable financial assurance decisions, and improved approaches to minimize the financial burden on industry while continuing to uphold and strengthen the polluter pays principle. Participants were then divided into breakout rooms and asked the following questions to help facilitate conversation:

In defining risk criteria, what key elements are most important to you?

What type of tools or guidance would you like to see to support transparent and accountable financial assurance decisions?

What are your recommendations for how the Public Interest Bonding Strategy can ensure financial assurance mechanisms meet the polluter pays principle, while limiting the negative financial impacts on industry and on the economy?

Session 4 – Financial Assurance Mechanisms – Part 2

During the fourth session, the ENV presentation covered the rest of the Financial Assurance Mechanisms category, specifically Outcomes 7-9: Improved liability cost estimates, and improve data management systems and tools. Participants were then divided into breakout rooms and asked the following questions to help facilitate conversation:

What are your recommendations for improving environmental clean-up and reclamation cost estimates to ensure they accurately reflect liability?

What are your recommendations for specific improvements to data management systems and tools that are a priority for you?

Session 5 – Summary / What We Heard

During the fifth session, the ENV presented a summary slideshow of key themes from discussions and feedback heard during the first four sessions. Following this, one final question was asked of participants to round out the engagement series:

Is there anything else you wish to share on the topic of how to improve the province's approach to financial assurance?

APPENDIX B: ONLINE FEEDBACK FORM

Public Interest Bonding Strategy Feedback Form

The discussion paper includes questions that relate to each of the nine desired outcomes. These questions are designed to promote dialogue and encourage feedback. As you read through the paper, please think about the questions asked, any issues, concerns, ideas or solutions you think we should be aware of, and anything you wish to share on the topic of how to improve the Province's approach to financial assurance.

1. In defining environmental clean-up and reclamation, what key elements are most important to you, your industry or your organization?
2. What do you think are the most important considerations when determining which industrial projects should require a closure plan?
3. What is your feedback on how to support transparent and accountable financial assurance decisions?
4. How could pooled funds be used as a tool to support the Guiding Principles of the Public Interest Bonding Strategy?
5. In determining the required frequency of updates and/or triggers for updating financial assurance, what considerations are most important to you, your industry or your organization?
6. Do you have any recommendations for strengthening the Province's ability to collect financial assurance that is required but has not yet been received, and/or is required but the responsible party has become insolvent?
7. In defining risk criteria, what key elements are most important to you, your industry or your organization?
8. What type of tools or guidance would you, your industry or your organization like to see to support transparent and accountable financial assurance decisions?
9. What are your recommendations for how the Public Interest Bonding Strategy can ensure financial assurance mechanisms meet the polluter pays principle, while limiting the negative financial impacts on industry and on the economy?
10. What are your recommendations for improving environmental clean-up and reclamation cost estimates to ensure they accurately reflect liability?
11. What are your recommendations for specific improvements to data management systems and tools that are a priority for you, your industry or your organization?
12. Is there anything else you wish to share on the topic of how to improve the Province's approach to financial assurance?

The following information will help us understand who is responding to the feedback form. Please help us by answering the following questions:

What best describes your connection to/interest in the Public Interest Bonding Strategy? (Select one)

- Represent an Indigenous community
- Represent an Indigenous Organization
- Industry – Mining sector
- Industry – Pulp and Paper sector
- Industry – Waste sector
- Industry – Forestry
- Industry - other
- NGOs
- Local Government
- Concerned citizen
- Other: please specify

What region of B.C. do you live in?

- Vancouver Island / Coast
- Lower Mainland / Southwest
- Kootenay
- Thompson-Okanagan
- Caribou
- North Coast
- Nechako
- Northeast
- Do not live in B.C.

APPENDIX C: ENGAGEMENT SESSION PARTICIPANTS

Participants

The names listed are not representative of all who attended and gave feedback, but rather show the communities and organizations that consented to being identified in the report.

Attendance List – Session 1 (April 20, 2022)

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY STAFF

SUPPORT STAFF

Patrick Kelly – Facilitator
Wesley Shennan – Breakout Facilitator

NAUT'SA MAWT RESOURCES GROUP

Samantha D'Odorico – Technical Support
Samuel Dzierzawa – Technical Support
Caitlin Bergh – Notetaker

COMMUNITIES REPRESENTED

Adams Lake Indian Band
Fort Nelson First Nation
Gitxsan Nation
Ktunaxa Nation
Leq'a:mel First Nation
Nisga'a Lisims Government
Shxw'owhámel First Nation
Tl'azt'en Nation

Attendance List – Session 2 (April 25, 2022)

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY STAFF

SUPPORT STAFF

Patrick Kelly – Facilitator
Wesley Shennan – Breakout Facilitator

NAUT'SA MAWT RESOURCES GROUP

Samuel Dzierzawa – Technical Support
Caitlin Bergh – Notetaker

COMMUNITIES REPRESENTED

Ktunaxa Nation
Leq'a:mel First Nation
Spuzzum First Nation
Taku River Tlingit First Nation

Attendance List – Session 3 (April 27, 2022)

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY STAFF

SUPPORT STAFF

Patrick Kelly – Facilitator
Wesley Shennan – Breakout Facilitator

NAUT'SA MAWT RESOURCES GROUP

Samuel Dzierzawa – Technical Support
Caitlin Bergh – Notetaker

COMMUNITIES REPRESENTED

Ktunaxa Nation
Malahat Nation
Nisga'a Lisims Government
Shxw'owhámel First Nation
Taku River Tlingit First Nation

Attendance List – Session 4 (May 2, 2022)

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY STAFF

SUPPORT STAFF

Patrick Kelly – Facilitator
Wesley Shennan – Breakout Facilitator

NAUT'SA MAWT RESOURCES GROUP

Samuel Dzierzawa – Technical Support
Caitlin Bergh – Notetaker

COMMUNITIES REPRESENTED

Gitxsan Nation
Ktunaxa Nation
Leq'a:mel First Nation
Nisga'a Lisims Government
Taku River Tlingit First Nation

Attendance List – Session 5 (May 3, 2022)

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY STAFF

SUPPORT STAFF

Patrick Kelly – Facilitator

NAUT'SA MAWT RESOURCES GROUP

Samuel Dzierzawa – Technical Support
Caitlin Bergh – Notetaker

COMMUNITIES REPRESENTED

Adams Lake Indian Band
Gitxsan Nation
Ktunaxa Nation
Leq'a:mel First Nation
Nisga'a Lisims Government
Taku River Tlingit First Nation