



# ENVIRONMENTAL ASSESSMENT REVITALIZATION INTENTIONS PAPER



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# Introduction

The Province of British Columbia is revitalizing the environmental assessment (EA) process “to ensure the legal rights of First Nations are respected, and the public’s expectation of a strong transparent process is met.”<sup>1</sup>

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

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

The EAO has engaged in substantial dialogue with EA participants throughout the EA revitalization process. To inform the development of the [Discussion Paper](#) – which first outlined proposed changes to the EA process – the EAO held [direct engagements](#) with Indigenous groups, industry and business associations, non-governmental organizations and EA practitioners. The EAO also received important input from the Minister’s [Environmental Assessment Advisory Committee](#) and a series of [First Nations workshops](#) led by the First Nations Energy and Mining Council.

The EAO continued its direct engagement with those groups during the [comment period](#) on the EA Revitalization Discussion Paper, which provided an opportunity for the public to provide input on the proposed changes.

The [What We Heard Report](#) provides a summary of the over 2,500 comments we received during the public comment period, including over 60 submissions from

Indigenous nations, Indigenous organizations, industry and businesses, non-governmental organizations, health authorities and others.

To date, the EAO has had direct engagements with 73 Indigenous nations, 7 industry and business associations (63 representatives), 33 non-governmental organizations and 44 EA practitioners.

The input gained through the EAO’s direct engagements and comment period on the Discussion Paper have been carefully considered in the development of new EA legislation.

The EAO will continue to engage with EA participants in the development of [regulations and key supporting policies and tools](#).

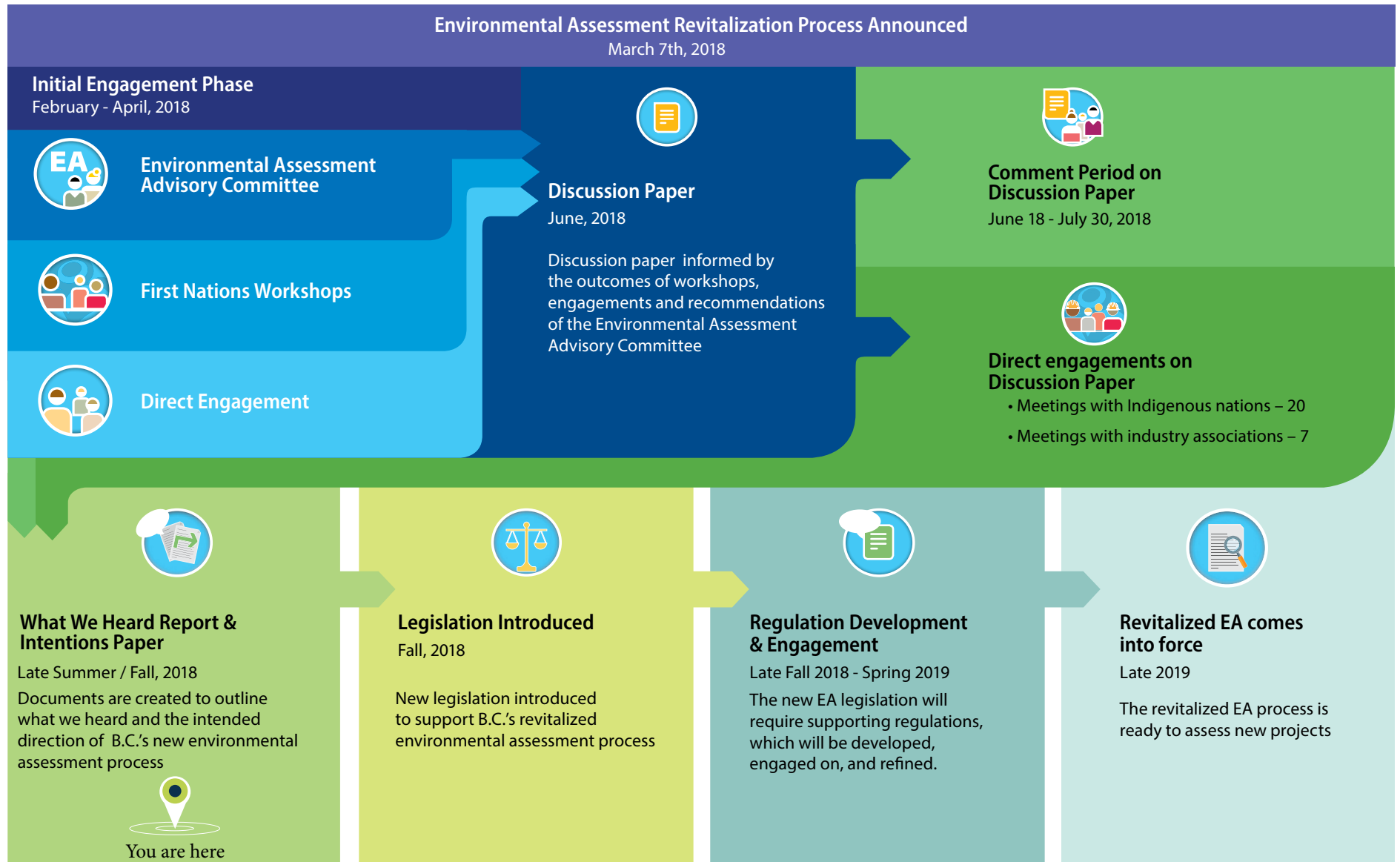
While the final EA legislation is expected to be brought forward in the Legislature in fall 2018 and will be the subject of decisions by government and the Legislature, this Intentions Paper discusses the current intended direction of new EA legislation, explains how the EA process will work phase-by-phase, **and highlights regulations and policies that will be subject to further engagement, which have been highlighted in bold throughout the Intentions Paper.**

New legislation will only fully come into force once the key supporting regulations and policies have been developed.

<sup>1</sup> Mandate letter to Minister of Environment and Climate Change Strategy, George Heyman



# What We Have Done and What is Next:



# Highlights

## WHAT IS NEW IN THE PROCESS

- A defined purpose for the Environmental Assessment Office (EAO) including:
  - Promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities.
  - Supporting reconciliation with Indigenous peoples in British Columbia, and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- A clearly defined process for seeking consensus with participating Indigenous nations, including a number of opportunities identified throughout the process that aim to secure consent on decisions.
- Commitment ensuring adequate funding for all participating Indigenous nations.
- Early engagement phase to identify interests, issues and concerns of Indigenous nations, stakeholders and the public that can inform project design, siting and alternative approaches to developing the project, including identifying serious issues with the project proceeding through an EA or issues that need to be resolved in the EA process.
- An early decision following early engagement to determine whether a project is ready to proceed with an EA.
- Dispute resolution with Indigenous nations is enabled in legislation and will be established in subsequent regulation (subject of future engagement).
- New public comment periods and engagement tools, including easier to understand information, earlier involvement of the EAO in local communities and funding to support public participation.
- Flexibility in establishing an assessment process to scale to individual projects based on potential effects and identified issues.
- Enhancing independence of the process through experts and peer reviews.
- Requirements on what needs to be assessed (including cumulative effects) and considered in decisions, increases transparency throughout the EA process.
- Modernized compliance and enforcement tools.
- Monitoring and effectiveness review of EA certificates to ensure mitigations are effective.
- Enable regional assessment in legislation and developed further in regulation (subject of future engagement).



Social



Health



Economy



Culture



Environment

# What Projects Get Assessed

*Under the new Act, projects will still become reviewable in three ways:*

## Reviewable Projects Regulation

A broad range of major projects are automatically reviewable if they fall within certain categories and meet certain triggers and thresholds under the Reviewable Projects Regulation (RPR).

**The EAO will be engaging on potential changes to the RPR following the passage of the new EA legislation**, which will include further consideration of the following new concepts:

- **We have heard that Indigenous nations are interested in developing specific triggers and thresholds for geographic areas, and we will be exploring this concept as part of the engagement.**
- The new EA model will consider ways to move away from reviewable projects being strictly identified based on production capacity-based triggers, to consideration of other criteria that reflect the potential for a given project to result in adverse effects.

## Ministerial designation

The Minister will be able to require an assessment for projects that are not automatically reviewable under the RPR.

A provision in the Act will address requests by Indigenous nations or the public to designate a project reviewable and the factors the Minister must consider in making a decision.

If Minister does not designate the project as reviewable, the Minister will provide reasons.

## Proponent “opt-in”

A proponent may request that the EAO designate a project as reviewable. If the EAO agrees, the project becomes reviewable.

## PROJECT NOTIFICATION

Currently, the EAO does not track projects that do not meet the thresholds set out in the RPR. In some cases, it may be appropriate to bring these projects to the Minister’s attention for a decision as to whether they should be designated as reviewable.

Authority will be provided to require certain projects (for example, within a specified margin below the automatic reviewability thresholds) to submit a project notification to the EAO. This notification will allow the Minister to determine whether the project should be considered for designation and will also be helpful in determining future adjustments to the reviewable projects regulation. **The EAO will be consulting on the appropriate thresholds as part of the engagement on the RPR.**



# Other Types of Assessments

*The new Act will expand upon the authorities in the current Act and provide a framework to guide the appropriate uses of these tools.*

## Regional Assessments

Regional EAs will be enabled in the Act for the first time. Its use will be designed to complement, not duplicate, provincial monitoring, land use planning, and cumulative effects assessment initiatives. When directed by the Minister, targeted regional assessments can be used to fill information gaps and provide recommendations for future project-specific EAs in that region.

The Minister will be enabled to enter into agreements with other agencies or jurisdictions, including Indigenous nations, in relation to developing, undertaking and implementing a regional assessment.

**The EAO will be engaging on the development of a regulation that will set up the scope, conduct and function of regional assessments.**

## Strategic Assessments

The authority of the Minister to order on behalf of government a strategic assessment of any policy, enactment, plan, practice or procedure of the government and make recommendations, will be retained.

## Class Assessments

Class assessment is a streamlined assessment option to address specified potential environmental, economic, social, cultural or health effects of a specified category of reviewable projects. For each specified class, standard information requirements and certificate conditions will be applicable to that class of projects and posted publicly, supporting the goal of predictability and transparency.

The authority to conduct partial or full class assessments will be modified to allow this tool to be quickly deployed to meet operational needs.

## CATEGORIES OF REVIEWABLE PROJECTS (SUBJECT TO ENGAGEMENT)



**Industrial Projects**



**Mine Projects**



**Energy Projects**



**Water Management Projects**



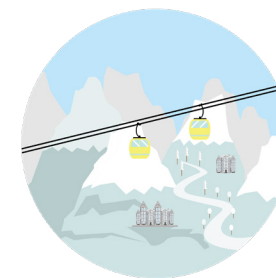
**Waste Disposal Projects**



**Food Processing Projects**



**Transportation Projects**



**Tourists Destination Resort Projects**



**Potential Additional Project Category (s)**

# Reconciliation and UNDRIP

*The EAO recognizes that Indigenous nations make decisions on behalf of their community on whether or not to consent to a project proceeding in their territory. The new Act proposes to advance reconciliation and support implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), while creating predictability for all EA participants.*

*The new EA process is designed to ensure that any decision taken on the question of consent by an Indigenous nation is free, prior and informed. Respectful of their own Indigenous laws, traditions and right of self-determination, a key objective of the new EA process is to create the opportunity for Indigenous nations to make a decision on consent. It is an objective that proponents, the Province and Indigenous nations should be working to achieve. The new EA process facilitates that objective throughout the process.*

*The EAO will work together and seek consensus with Indigenous nations at a technical level throughout the entirety of the EA process, and there will also be key decision points where Indigenous nations may express their consent, lack of consent, or abstain from deciding on behalf of their communities. It is hoped that in the majority of cases - by working together - it will be possible to reach consensus on major issues so that the decisions of Indigenous nations and the Ministers align. Dispute resolution may also assist in this process. Where decisions do not align, Ministers will be legally required to provide reasons.*

## **GOVERNMENT-TO-GOVERNMENT AGREEMENTS**

Agreements with Indigenous nations to date have taken the form of memoranda of understanding, project specific work plans, or, in some cases, as components of broader government-to-government agreements or as a side letter or component of a modern Treaty.

Agreements with Indigenous nations provide significant benefits to EA participants. This includes:

- Clearer integration and reflection of an Indigenous nation's laws, customs and interests in the EA process
- Greater certainty and predictability in the EA process for proponents

regarding how to meet the needs and consider the interests of Indigenous nations within the EA process

- Increased understanding of the requirements to support Indigenous participation and decision-making
- More resilient EA decisions in terms of impacts and benefits to Indigenous communities

The new Act will allow the Minister to enter into agreements with Indigenous nations for the purposes of conducting any aspect of an EA.

This approach allows the flexibility of individual Indigenous nations to reach agreements that are compatible with their approach to governance. While the EAO is providing considerable new opportunities for Indigenous nations to seek consensus with the EAO in the EA process, the EAO recognizes that tailoring processes for individual nations is an important component of reconciliation. By formalizing the approach by which the EAO enters into these agreements, the EAO can ensure the EA process remains transparent and predictable for all participants.

These broad agreements are overarching to any proposed project within an Indigenous nation's territory, and may be established prior to any new EAs being proposed in their territories. Agreements may also be specific to individual project EAs. The EAO will provide capacity funding for the negotiation of such agreements.

## **SUBSTITUTION AND INDIGENOUS-LED ASSESSMENTS**

Provision for an Indigenous nation to enter into an agreement with the Minister to conduct the entire assessment on behalf of the Province (substitution) provided certain conditions are met (see [One Project, One Assessment & Substitution](#) on page 10).

Provision for an Indigenous nation to conduct part of the assessment, e.g. the potential effects of the proposed project on the Indigenous nation. Indigenous-led assessments will be required to be transparent and timely with the approach determined through government-to-government agreements and/or through the development of an assessment plan.

## **INDIGENOUS KNOWLEDGE**

Requirement to apply Indigenous knowledge to decision-making in EAs and provisions to protect confidentiality of Indigenous knowledge considered in the EA.



# Reconciliation and UNDRIP

## IDENTIFYING PARTICIPATING INDIGENOUS NATIONS

Indigenous nation participation in EAs will no longer be driven by reference to strength of claim. Indigenous nations will identify themselves during the Early Engagement phase.

In the event there are disputes among Indigenous nations on which nations will seek consensus with the EAO in the EA (a participating Indigenous nation), dispute resolution is available. Indigenous nations can still engage in the EA process without being a participating Indigenous nation.

## BUILDING CONSENSUS

The EAO will work with technical staff of participating Indigenous nations throughout the EA process with the aim to build consensus (e.g. seeking consensus on information requirements, study plans, issues resolution processes for technical issues). Seeking consensus will be codified throughout the new Act, and the EAO will also engage Indigenous nations, industry and the public in developing a standard assessment process, that can be varied through government-to-government agreements and that will be a foundation for project-specific Orders.

## SEEKING CONSENT THROUGHOUT THE PROCESS

In addition to seeking consensus with Indigenous nations at a technical level throughout the EA process, the Act recognizes Indigenous decision-making by providing an opportunity for participating Indigenous nations to communicate their consent or lack of consent at two decision points in the EA:

- At the EA readiness phase, to exempt the project from an EA and go straight to permitting, or terminate the process; and
- Whether to issue an EA certificate for the proposed project.

Dispute resolution will be available if consent is not secured, before the matter is referred to the Chief Executive Assessment Officer (CEAO) or Ministers. In the event their decision does not align with that of a participating Indigenous nation, the CEAO's or Ministers' reasons would provide a specific response.

## DISPUTE RESOLUTION

The Act identifies a number of specific decision points, including where the EAO will aim to secure the consent of participating Indigenous nations, that is supported by a time-bound, non-binding dispute resolution process consistent with Indigenous approaches to governance.

This tool will be available for all participating Indigenous nations, and **the details of this mechanism are subject to further engagement**. It is envisioned that dispute resolution will assist reaching resolution in cases where consensus is not reached at the following EA steps:

- Which Indigenous nations will participate in an EA
- EA Readiness: Decision to commence an EA, exempt the project from an EA and go straight to permitting, require a revised Detailed Project Description, or terminate the process
- Type of assessment and the Process Order
- Recommendation for whether to issue an EA certificate

In prior engagements, we have heard that:

- Dispute resolution should recognize, prioritize and support Indigenous laws and processes, where desired by Indigenous nations
- Dispute resolution facilitators should have relevant cultural, legal and technical experience and capacity to support the parties
- Outcomes of dispute resolution should not be taken as binding
- Participation in dispute resolution should be without prejudice and not limit an Indigenous nation from seeking a judicial remedy
- The parties should decide if dispute resolution discussions shall be confidential, subject to the obligation of the facilitator to provide a report regarding the outcomes, if any

**Details of dispute resolution will be set out in regulation that will be the subject of future engagement. It is possible that dispute resolution could be accessed during other aspects of the EA process.**

## CONSENSUS:

An outcome that:

- Is actively supported by all participating Indigenous nations and the EAO; or,
- Is not objected to by a participating Indigenous nation, while reserving their right to ultimately indicate their consent or lack of consent for a project after assessment

## SEEKING CONSENSUS:

Cooperation between the EAO and representatives of participating Indigenous nations to achieve consensus on process decisions or recommendations. Processes that seek consensus:

- Inform, but are distinct from, a decision by an Indigenous nation to indicate their consent or lack of consent
- Inform, but are distinct from, a decision by a statutory decision-maker under the Act
- May be informed by, but are in addition to, Indigenous participation in any Technical Advisory Committee

## CONSENT-BASED:

A process where:

- Indigenous nations have the opportunity to make a decision based on their own laws, traditions and right to self-determination
- Minister(s) must legally consider the issue of consent where it has been decided on by Indigenous nations
- Minister(s) are required to address consent in their legally required reasons for decision document

# Overarching Concepts

## **PURPOSE OF THE EAO**

The express purpose of the EAO will be to carry out the responsibilities in the new Act, to promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities, as well as to support reconciliation with Indigenous peoples in British Columbia. **The development of policy and guidance to support the delivery of the EAO's purposes of promoting sustainability and supporting reconciliation will be subject to future engagement.**

To promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities, the EAO will:

- Carry out assessments in a thorough, timely, transparent and impartial way, considering the environmental, economic, social, cultural and health effects of projects
- Facilitate meaningful public participation
- Apply the best available science, Indigenous knowledge and local knowledge to decision making
- Coordinate assessments with other governments, including Indigenous nations

To support reconciliation with Indigenous peoples in British Columbia, the EAO will:

- Support the implementation of the United Nations Declaration on the Rights of Indigenous Peoples
- Recognize the inherent jurisdiction of Indigenous nations and their right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves

- Collaborating with Indigenous nations in relation to reviewable projects, with the goal of achieving the consent of Indigenous nations on decisions made under the Act
- Acknowledging the Indigenous peoples' rights recognized and affirmed by section 35 of the Constitution Act, 1982 in the course of assessments and decision making under the Act

## **ONE PROJECT, ONE ASSESSMENT & SUBSTITUTION**

Revised EA legislation will promote the concept of one project, one assessment between provincial, federal and Indigenous jurisdictions, based on a single process to support separate provincial, federal and Indigenous decisions. This concept supports transparency, predictability and efficiency for everyone.

Substitution, including by Indigenous nations, will be available, provided certain conditions are met. Ministers will still make a decision after the substituted process.

The EAO will seek a new agreement with the new Impact Assessment Agency of Canada (IAAC: successor to the Canadian Environmental Assessment Agency) to achieve one project, one assessment in the Province, including substitution, coordinated EAs and joint panels. The agreement will contemplate substitution to Indigenous nations and other forms of Indigenous-led assessment through tripartite agreements between the EAO, IAAC and individual Indigenous nations.

## **MAINTAINING AND STRENGTHENING INDEPENDENCE**

The EA process results in independent conclusions on the effects of a project, including clearly identifying any significant adverse effects, based on scientific and Indigenous knowledge, and informed by public engagement and expert advice.

The Technical Advisory Committee is the forum for the detailed, independent, technical review of all the proponent's and technical studies.

The Technical Advisory Committee is made up of representatives with the mandates and technical expertise relevant to the review of a proposed project, including appropriately qualified provincial experts and regulators, Indigenous nations and experts from federal and local governments. Additional independent experts may be appointed, as needed.

By policy, the proponent will no longer conclude on significance of effects in their Application. The EAO will make all necessary conclusions in the Assessment Report, including any conclusions regarding the significance of effects, based on the information provided by the proponent and advice provided by the Technical Advisory Committee.

As part of the Process Planning phase, the EAO will identify if independent experts will be used on the Technical Advisory Committee.

While EAs do not follow a professional reliance model (as the proponent's work is independently reviewed during the EA), the EAO has committed to review the recommendations in the [Final Report of the Review of Professional Reliance in Natural Resource Decision-Making](#) to determine their applicability to EA.

Continues 

# Overarching Concepts

## FEES AND CAPACITY FUNDING

As part of EA Revitalization, the EAO is revisiting its fee structure. The Environmental Assessment Fee Regulation, which came into force in 2014, introduced fees to the EA process in BC for the first time.

Three principles will guide updates to the fee structure under the new Act:

1. Support meaningful Indigenous nation participation: Adequate funding should be provided to participating Indigenous nations
2. Ensure fees are predictable and reasonable: New fees should be competitive with other jurisdictions, consider cumulative costs across the entire regulatory spectrum and avoid creating a disincentive for project proponents to undertake an EA
3. Improve stability in fee revenues: The new fee structure should reduce variability, support long-term planning, and ensure adequate funding to support new initiatives in a revitalized EA process

**The EAO will be engaging on the proposed new fee structure, which will be established in regulation, over the next few months.**

## PUBLIC ENGAGEMENT

Legislated elements for enhanced public participation in the EA process include:

- Public comment periods set in legislation, with two additional comment periods compared to the current process. Opportunities to comment include:
  - Early engagement phase (new): interests, issues and concerns with a project to inform project siting, design, and alternatives
  - Assessment plan and information

requirements: study requirements and approach to public engagement

- Draft Application: adequacy of the proponent's assessment of effects and proposed mitigation measures
- Draft Assessment Report and certificate conditions (new): results of the EAO's effects assessment and adequacy of proposed certificate conditions
- Requirement for the EAO to establish a Community Advisory Committee where there is sufficient community interest.
- Enhancement of the [Project Information Centre](#) to facilitate public access to information and records relating to assessments.

Other initiatives to enhance public participation in the EA process include:

- **A program for public participant funding is planned, with details subject to further engagement.**
- Communication materials that are more accessible to the public (informed by results of the recent survey, [Revitalization Engagement Survey](#), and ongoing research).
- Opportunities for public meetings and other public engagement activities or tools identified through engagement best-practices.
- New outreach to communities at the start of an EA process to communicate the process and identify any special engagement opportunities/needs for the EA process.

*The head of the Environmental Assessment Office will be renamed the Chief Executive Assessment Officer (CEAO).*

## TIMELINES

Statutory maximum timelines for major EA process phases will be set out in legislation. Project-specific timelines and processes will be developed to seek to ensure that project EAs are completed within appropriate timeframes. Project timelines will be tracked and reported publicly.

### **Timeline Extensions and Terminations:**

The CEAO will have discretion to extend or impose timelines; a proponent or a participating Indigenous nation can request an extension through application to the CEAO.

The CEAO will have the authority to terminate an EA if:

- The Detailed Project Description is not submitted within one year of the EAO providing a notice regarding the contents of the Initial Project Description
- Required information under the Process Order or any other Order is not provided within three years from the issuance of the Order
- The revised Application is not submitted within one year of receiving a notice from the EAO regarding the contents of the draft Application
- The proponent fails to do something required under the Act by the time required

**For a detailed breakdown of timelines, please see the graphic on the following page.**

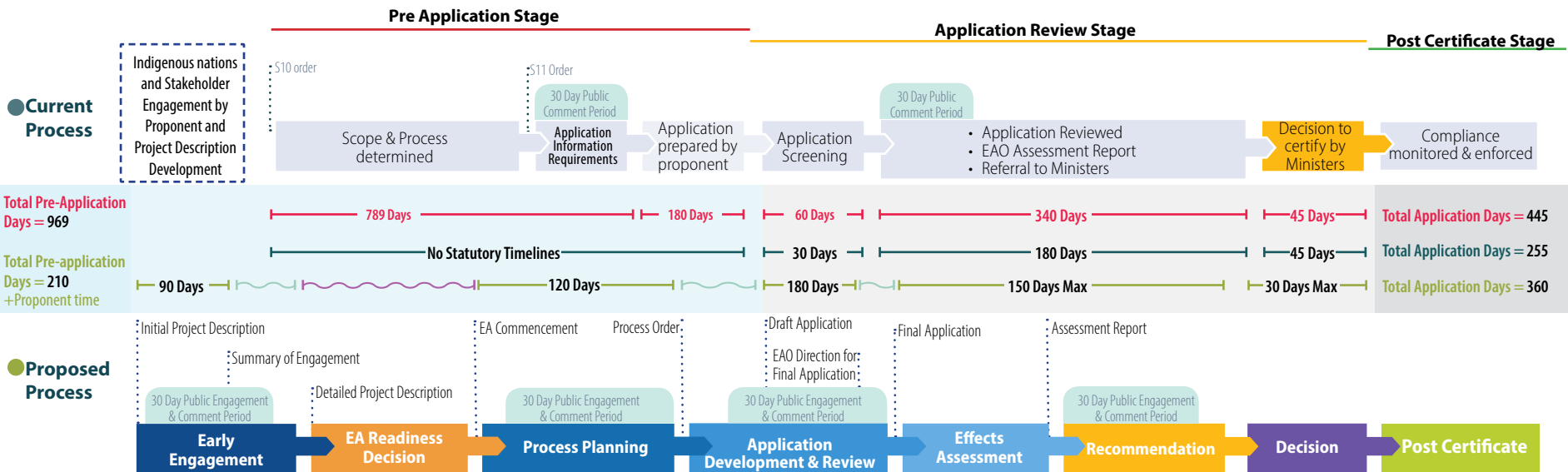
# Process Timeline Comparison

The new proposed process adds statutory timelines where none existed previously, and some timelines have been changed from the current process to more accurately reflect the actual time required. The intended outcome is an EA process that is more predictable, which consequently results in overall shorter timelines (anticipated 570 days) due to a more efficient Process Planning phase.

**Timeline Comparison**

- Current EA Average Time \*  
Total Days: **1414**
- Current EA Designated Time  
Total Days: **255**
- Proposed EA Designated Time  
Total Days: **570**
- Proponent Time
- EAO Time

\* Average calculated using project data with decisions issued between January 8, 2013 and March 18, 2018 (34 total projects)

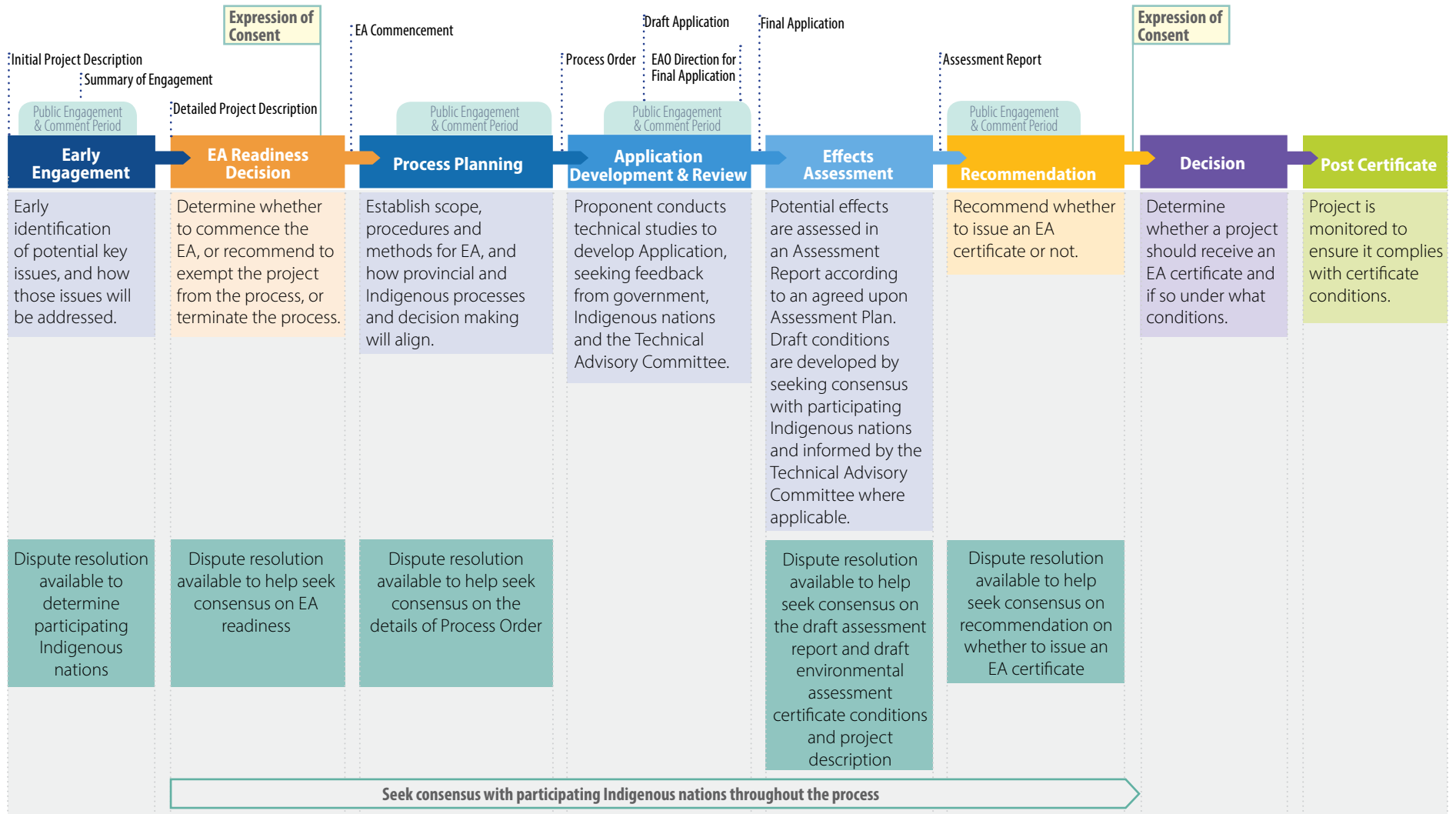


**THE EA PROCESS:  
INDIVIDUAL PROJECT  
ENVIRONMENTAL  
ASSESSMENTS**



# Proposed Environmental Assessment Process

## SUMMARY OF THE PROCESS FROM EARLY ENGAGEMENT TO POST-CERTIFICATE



# Early Engagement

*This phase begins when an Initial Project Description is accepted and ends when a final Detailed Project Description is accepted by the EAO. Indigenous nations file their intention to participate in the EA (to become participating Indigenous nations). Based on the Initial Project Description, Indigenous and provincial governments, as well as local communities and the public have the opportunity to identify key issues. Feedback from the EAO then informs the proponent's development of a Detailed Project Description, which demonstrates how these concerns have or will be considered in the project's design or the assessment process. Information gathered during this phase informs the decision about whether a project is ready to proceed to an EA.*

## Initial Project Description and Engagement Plan

Proponents will be required to submit an Initial Project Description and Engagement Plan. Once accepted by the EAO, the early engagement phase commences.

The Initial Project Description will require fewer details than the current project description requirements, especially regarding project design.

The Engagement Plan will identify the recommended activities to be undertaken by the proponent during the early engagement phase with Indigenous nations, provincial and federal government agencies, local governments and the public.

## Early Engagement & Public Comment Period

Requirement for a public comment period on the Initial Project Description for a minimum of 30 days. This provides the public an opportunity to identify their interests, issues and concerns with a project to inform proponents as they

proceed to refine their more detailed project siting, design and alternatives.

The EAO will also conduct outreach with local communities and stakeholders to better prepare them for what to expect during an EA process, how to participate effectively, and to identify any unique characteristics of the community that will benefit from novel engagement tools during the EA.

## Summary of Engagement

Within 90 days of accepting the Initial Project Description and Engagement Plan, the EAO will provide a summary of the engagement and any requirements that the proponent must address in their Detailed Project Description.

## Participating Indigenous Nations

Within 80 days of the publication of the Initial Project Description, Indigenous nations identify if they intend to seek consensus with the EAO during the assessment (See [page 9 – Identifying Participating Indigenous Nations](#)).

The role of Participating Indigenous nations could vary (e.g. Participating Indigenous nations may only wish to be involved in some aspects of the project assessment, such as a transmission line, access roads, mine site, etc.) but will always include opportunities to seek consensus with the EAO throughout the assessment. Indigenous nations can still engage in the EA without opting to be a participating Indigenous nation.

## Detailed Project Description

The proponent must submit a Detailed Project Description to proceed to the next phase of the process. The Detailed Project Description reflects feedback gathered during the early engagement period and responds to the EAO's requirements.

## TIMELINE

### 90+ Days

- Initial Project Description and Engagement Plan accepted
- The EAO holds Public Comment Period
- EAO and/or proponent undertake specific engagement activities
- The EAO publishes summary of what we heard during its engagements
- Proponent submits Detailed Project Description

Proponent develops Detailed Project Description

### Note:

The proponent determines how long they will take to submit a Detailed Project Description. If the timeline exceeds one year, the assessment process may be terminated.

# EA Readiness Decision

*This phase begins when the Detailed Project Description is accepted and ends when a decision is made to commence an EA (the vast majority of cases), exempt the project from EA, require a revised Detailed Project Description, or terminate the EA process. During this phase, the EAO will seek consensus with participating Indigenous nations aiming to secure consent.*

The EAO will seek a consensus recommendation with participating Indigenous nations. A dispute with respect to the recommendation may be referred to dispute resolution, which provides a time-bound process to find resolution prior to the referral to the decision maker.

Participating Indigenous nations will have an opportunity to indicate consent or lack of consent.

The CEAO or the Minister must consider the consent or objection of the participating Indigenous nations in making their decision.

The four decision options are:

- 1. EA Commencement:** Proceed to the next step of the EA process (Process Planning)
- 2. Exemption:** Proceed directly to permitting
- 3. Revise Detailed Project Description:** Conduct further early engagement and submit a revised Detailed Project Description
- 4. Terminate:** Refer the project to the Minister with a recommendation to terminate the EA

The CEAO can make the first decision to proceed to an EA, but all other decisions will be referred to the Minister.

## Decision to Proceed to EA

If the decision is to proceed with an EA, the CEAO will issue a notice that the project is ready to commence the EA process. This outcome is anticipated in the vast majority of cases.

If the CEAO recommends after seeking consensus with Indigenous nations that the EA be conducted by a review panel or other means, the matter will be referred to the Minister.

## Decision to Proceed to Permitting

The Minister may decide that an EA is not required and the project may

go straight to permitting if the Minister considers that it would not have either significant adverse effects or serious impacts on an Indigenous nation or its rights, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects or impacts.

The Minister must also consider the consent or objection of an Indigenous nation, as well as the following:

- The sustainability and reconciliation purposes of the office
- Results of public engagement
- Any regional, class or strategic assessment conducted under the Act
- Applicable land use plans
- Whether an assessment has been or will be conducted
- Whether potential effects of the project can be adequately addressed by another regulatory process
- Information, if any, about an impact agreement with a participating Indigenous nation

## Decision to Terminate

The Minister may determine that the project may not proceed to an EA if the Minister considers that the project:

- Would have extraordinarily adverse effects generally, or to an Indigenous nation or its rights
- Would have extraordinarily adverse effects to a protected area
- Is clearly incompatible with a government policy
- If relevant, has not demonstrated that it has adequately addressed the issues for which it was previously declined or terminated

The Minister must consider the consent or objection of a participating Indigenous nation, as well as the following:

- The sustainability and reconciliation purposes of the office
- The results of public engagements
- Any regional, class or strategic assessment conducted under the Act
- Applicable land use plans
- Whether an assessment has been or will be conducted
- Information, if any, about an impact agreement with a participating Indigenous nation

## TIMELINE

90 Days



### Note:

The timeline for this phase will vary and therefore no statutory timeline is proposed. If there is consensus that an EA is required, the phase will be completed fairly quickly. If an exemption is requested or termination recommended, the process is anticipated to take 90 days.

# Process Planning

*This phase begins when the EA process commences and ends when the Process Order is issued. During this phase, a project-specific Process Order, including an Assessment Plan and Application Information Requirements, is developed by the EAO, seeking consensus with participating Indigenous nations. Working with the proponent, government agencies and other EA participants, the EAO sets out the scope, procedures and methods for EA, and how provincial and Indigenous processes and decision-making will align, including information requirements, timelines, and public engagement opportunities. Project-specific Assessment Plans and Application Information Requirements will be developed based on standard Assessment Plans and Application Information Requirements, plus additional policy guidance. Project specific Assessment Plans will be based on standing government-to-government agreements with Indigenous nations.*

## Process Order

A Process Order replaces the current combination of the Section 11 Order (scope and methods of assessment) and the Application Information Requirements (what must be studied in the assessment). The Process Order will specify the scope of the project, the assessment plan and the information required from the proponent. The Order may refine the timeline requirements for the project's assessment.

Opportunity for a participating Indigenous nation to carry out an assessment of the potential effects of the project on the nation and its rights will also be identified. The scope and timing of the assessment to be carried out by that nation will be set out in the Process Order by the CEAO.

The EAO will seek consensus with participating Indigenous nations during the development of the Process Order. Participating Indigenous nations will have an opportunity to indicate whether they support the Process Order and may refer the matter to dispute resolution (established through regulation), providing a time-bound process to find a resolution prior to proceeding.

## Public Comment Period

There will be a public comment period on the draft Process Order for a minimum of 30 days.

## Technical Advisory Committee

A Technical Advisory Committee will be established for each project with invitations to participating Indigenous nations and experts inside and outside of government.

## Community Advisory Committee

The CEAO may establish a Community Advisory Committee to consult with community members affected by a project and advise the CEAO of the effects of the project on the community.

## Process Order

- Determines the scope of the assessment
- Determines the scope of project
- Identifies key participants and their roles and responsibilities
- Establishes a Technical Advisory Committee and where required, a Community Advisory Committee

Continues 

## TIMELINE

### 120 Days

- The EAO seeks consensus with participating Indigenous nations to prepare draft Process Order, Assessment Plan and Information Requirements
- Comment period on draft Process Order (30 Days)
- The EAO seeks consensus with participating Indigenous nations on revisions. Dispute resolution is available if there is disagreement.
- Process Order issued

# Process Planning (cont'd)

## Assessment Plan

- Sets out the procedures and methods for the assessment including consensus seeking with participating Indigenous nations
- Establishes the timing and duration of activities
- Specifies the process for resolving any disputes not referable to dispute resolution
- Establishes the permitting plan
- Establishes engagement plans for participating Indigenous nations, the public, stakeholders and local governments
- Specifies optional engagements or other tools such as:
  - Open houses in affected communities
  - Co-hosted community and public information sessions in collaboration with proponents
  - Community hearings
  - Appointment of experts to the Technical Advisory Committee

## Information Requirements

- Establishes the information requirements for the EA, based on sector specific information requirement templates to be developed with industry, including methods by which the information is collected and reviewed
- Identifies information sources (e.g. from a participating Indigenous nation)
- Incorporates any information requirements set out in any agreement with participating Indigenous nations
- Considers information gathered during Early Engagement
- Identifies what issues can be excluded because they are best addressed at the permitting stage





# Application Development and Review

*This phase begins when the Process Order is issued and ends when the EAO determines that issues have been adequately responded to by the proponent and directs the proponent to prepare a final Application.*

*During the Application Development portion of this phase, the proponent will receive feedback from the EAO, participating Indigenous nations and the Technical Advisory Committee while developing the Application. These changes provide for early feedback on data collection and analysis to help identify and resolve key issues, which reduces delays in the Application Review portion of this phase and the Effects Assessment phase.*

*During the Application Review portion of this phase, the EAO, participating Indigenous nations and the Technical Advisory Committee will review and comment on the complete draft Application. Technical issues will need to be addressed and incorporated into the proponent's final Application.*

## Draft Application

The proponent may prepare a draft Application in stages, such as a study plan, modeling plan and draft effects assessment with mitigations. The EAO, participating Indigenous nations and the Technical Advisory Committee provide feedback during the preparation of the draft Application. Project-specific approaches will be specified in the Assessment Plan.

## Final Application

The Proponent prepares a final Application, addressing any changes or errors identified through the information requests and responses generated during the Application Review portion of this stage.

The EAO will seek consensus with participating Indigenous nations on the decision to accept an Application as final.

## Public Comment Period

Requirement for a public comment period on a complete draft Application for a minimum of 30 days.



## TIMELINE

### Application Development

The proponent must develop the draft Application within three years of the issuance of the Process Order, or they may be terminated from the process.

### Application review 180 Days

- Draft Application received
- Public comment period
- Review by the EAO, participating Indigenous nations, and Technical Advisory Committee
- Notice of required revisions to Application
- Revisions to Application by proponent
- The EAO directs proponent to prepare a final Application
- Final Application

### Note:

Project specific timing will be determined in the Assessment Plan and Process Order. The final Application must be submitted within one year of the EAO directing the proponent to prepare the final Application.

# Effects Assessment and Recommendation

*This phase begins with the acceptance of the final Application and ends with the referral to Ministers as the provincial decision-makers. The EAO will complete an assessment of the project and develop proposed conditions, seeking consensus with participating Indigenous nations and engaging the Technical Advisory Committee. Before referral to the Ministers, the public will have an opportunity to comment on the EAO's assessment and proposed conditions, participating Indigenous nations will have an opportunity to express their consent, or lack of consent.*

## What is Assessed

All project EAs will be required to assess the following:

- Effects of the project on Indigenous nations and rights recognized and affirmed by section 35 of the *Constitution Act, 1982*
- Positive and negative direct and indirect effects and adverse cumulative effects of the project, including environmental, economic, social, cultural or health effects
- Risks and uncertainties associated with those effects, including the results of any interaction between effects
- Risks of malfunctions or accidents
- Disproportionate effects on distinct human populations, including populations identified by gender
- Effects on current and future generations
- Effects on biophysical factors that support ecosystem function
- Consistency with any land use plan of the government or an Indigenous nation if relevant to the assessment and any regional or strategic assessment conducted under the Act
- Greenhouse gas emissions, including the potential effects on the province being able to meet its targets under the *Greenhouse Gas Reduction Targets Act*

- Alternate means of carrying out the project that are technically and economically feasible, including through the use of best available technologies, and the potential effects, risks and uncertainties of those alternatives
- Potential changes to the project that may be caused by the environment
- Other prescribed matters

**The development of policy and guidance on these assessment requirements will be the subject of future engagement.**

## Public Comment Period

There will be a public comment period on the draft Assessment Report and proposed certificate with conditions and project description for a minimum of 30 days.

## Assessment Report

The EAO will develop an Assessment Report, consistent with the approach set out in the Process Order, seeking consensus with participating Indigenous nations. The Technical Advisory Committee will provide advice throughout.

## List of Issues to be Further Addressed in Permitting

The EAO, working with the participating Indigenous nations and the Technical Advisory Committee will produce a list of issues to be further addressed in permitting.

## Draft Certificate

The EAO will develop a draft certificate, with certificate conditions and project description.

Continues 

## TIMELINE

150 Days

- Final Application accepted
- With input from the Technical Advisory Committee and in seeking consensus with participating Indigenous nations, the EAO produces the draft Assessment Report, and proposed certificate with conditions and project description
- Public comment period
- Participating Indigenous nations express consent or lack of consent on the recommendation. Dispute resolution is available if consent is not secured
- EAO finalizes referral package for Ministers: final Assessment Report, proposed certificate with conditions and project description, What We Heard Public Comment Report, and recommendations.

# Effects Assessment and Recommendation (cont'd)

## Recommendation to Decision-Makers

The EAO will seek consensus with participating Indigenous nations on the effects assessment in the Assessment Report, draft certificate with conditions and project description, and recommendation to decision-makers. A dispute with respect to the recommendation may be referred to dispute resolution prior to the referral to decision-makers.

Indigenous nations will have an opportunity to indicate consent or lack of consent.

The referral to Ministers for a decision must include:

- Final versions of the Assessment Report and certificate with conditions and project description
- Recommendations on whether the project is consistent with the promotion of sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities
- Recommendation on the duration of the certificate
- Reasons for recommending to issue or not issue a certificate
- Notification made by a participating Indigenous nation, including submissions indicating the nation's consent or lack of consent and reasons, if provided
- Information, if any, about an impact agreement with a participating Indigenous nation
- Any matters relevant to the public interest



# Decision

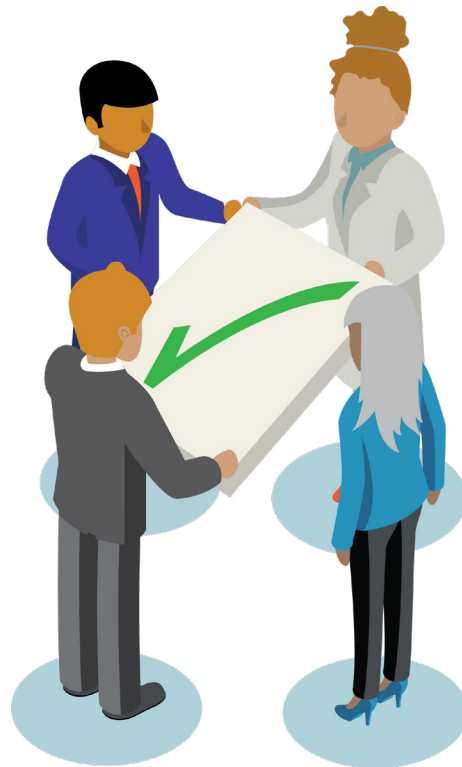
*This phase begins when a referral is made to provincial decision makers and ends when Ministers decide whether to issue an EA certificate, and issue reasons for their decision. Ministers must consider the participating Indigenous nations' decision and other decision factors.*

## Decision Factors

The Ministers must consider the Assessment Report, CEAO's recommendations, sustainability and reconciliation purposes of the EAO and any other matters they consider relevant to the public interest in making their decision.

## Reasons for Decision

Ministers are required to publish reasons for their decision. In the case where their decision does not align with the decision of participating Indigenous nations, they must also provide reasons for issuing the certificate in absence of consent.



## TIMELINE

30 Days

- Ministers receive referral package
- Ministers make a decision on whether to issue, or not issue an Environmental Assessment Certificate, including reasons for the decision

# Post Certificate

## AMENDMENTS TO CERTIFICATES

*Amendments to certificates are required for any proposed changes to the project that will require a variation from what was certified. Currently the EAO has limited powers to amend a certificate and must typically rely on proponents to request certificate amendments.*

The Act will continue to provide the flexibility to establish a process for certificate amendments based on the nature of the amendment and its potential for effects, public interest and seeking consensus with Indigenous nations (or as reflected in government-to-government agreements with Indigenous nations).

The authority to make amendments by the Chief Executive Assessment Officer (CEAO) will be expanded to the following situations:

1. On the recommendation of the statutory decision-maker of a subsequent authorization process
2. Arising from a report under an audit ordered or a mitigation report under the Act
3. After the fifth anniversary of the issuance of a certificate with a duration of five years or longer
4. Upon an extension application

## CERTIFICATE DURATION AND ADMINISTRATION

The initial EA certificate duration will be set to a maximum of ten years (an increase of five years) with a single extension of up to five years. A project will be required to be substantially started by that time.

Proponents will be able to request that a certificate be canceled upon conditions set by the CEAO.

Notwithstanding that a project may be substantially started,

if it is not operational on the 20th anniversary of certificate issuance (or extension), the EA certificate may be canceled by the Minister. This ensures that project benefits are realized for communities and the Province.

The Act will set out transfer provisions for all certificates, rather than including transfer provisions individually in each EA certificate.

## COMPLIANCE AND ENFORCEMENT

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

The EAO will continue to coordinate compliance and enforcement activity with our regulatory partners using modernized compliance and enforcement tools proposed to enhance the current compliance and enforcement program:

- Defining the compliance and enforcement officer role, including powers/authorities to conduct inspections and investigations
- Introducing authority to issue tickets and administrative monetary penalties
- Increasing the range of fines for court-imposed penalties
- Introducing continuing offences for certain repeating offences
- Enabling creative sentencing including prohibitions and directions to take various actions, financial or otherwise
- Enable agreements with Indigenous nations relating to compliance and enforcement, including working with Indigenous guardians

## EFFECTIVENESS EVALUATION AND AUDIT

In July 2011 and May 2015 the [Auditor General Reports](#) recommended that the EAO “Conduct post-certificate evaluations to determine whether environmental assessments are avoiding or mitigating the potentially significant adverse effects of certified projects.”

In order to fully implement a response to this recommendation of the Auditor General and contribute to public confidence in certified projects, the following legislative changes will be introduced:

- Authority to require mitigation effectiveness reports to identify whether mitigation measures are achieving the outcomes intended during the assessment
- Authority to amend certificates based on the results of those effectiveness evaluations
- Authority to require that audits are conducted on certified projects, including audits on the effectiveness reports noted above

These reports and audits will inform future certificate condition requirements, ensuring that lessons learned can be implemented.





# Transition and Review

## TRANSITION

Projects that are currently being assessed or have received EA certificates under the current Act will be transitioned to the new Act. Any proponent may request that their project be brought into the new Act if an Application has not yet been submitted.

Projects that have been issued a Section 11 Order at the time the new Act is brought into force will proceed under the current Act (a transitional project) for the purposes of obtaining an EA certificate. Projects that have not received a Section 11 Order under the current Act will need to submit an Initial Project Description under the new Act.

Any transitional project will have six months to file a notice to indicate their desire to have an Application accepted under the current Act and will be required to complete the EA process within three years. Upon expiry, the CEAO could terminate the assessment process or by Order set procedures to transition the project to the new Act.

Amendments and applications for exemption initiated by the proponent before the new Act comes into force will be processed in accordance with policy and procedures in place under the current Act.

Any project with an existing EA certificate will be subject to the new Act with respect to amendments, compliance and enforcement and post certificate administration provisions. Cancellation of a non-operating project could only occur on the 20th anniversary of the issuance of the certificate, or on the 5th anniversary of the new EA Act coming into force, whichever is later.

## REVIEW OF THE ACT

The new Act will require a review of the Act be conducted after five years.



# Next Steps

## NEW EA LEGISLATION

Legislation is anticipated to be introduced this fall, consistent with the direction set out in this Intentions Paper. If passed, legislation will be brought into force through regulation in late 2019.

## EA IMPLEMENTATION

As a priority, the EAO will be developing the following regulations:

- Reviewable Projects Regulation
- Regional Assessments
- Dispute resolution
- Fees and Funding

**The EAO will be engaging directly with Indigenous nations, industry, non-governmental organizations and broadly with the public in late fall 2018 on regulations and policy.**

It is intended that the following additional tools will be **available and implemented** at the time the new Act comes into force:

- Project notification requirements and process
- Guidance for the development and submission of Initial and Detailed Project Descriptions
- Standard process orders, including assessment plans and Application information requirements
- Guidance for conducting regional and strategic assessments
- Fee and capacity funding program
- Agreement with the successor to the Canadian Environmental Assessment Agency

## OTHER SUPPORTING INITIATIVES

The following initiatives will help support EAs as they are developed over time after the new Act comes into force, or as other provincial agencies advance their own programs. Project EAs will not be delayed in the absence of these initiatives being fully developed or implemented:

- Consider application of Professional Reliance Review in the context of EA
- Conclusion of G2G agreements with Indigenous nations
- Conclusion of regional or strategic assessments
- Ongoing work with partner agencies to define relationships between EA and permitting
- Improvements to information and data availability
- Modernized land use plans\*
- Enactment of an Endangered Species law\*
- Advancing the Cumulative Effects Framework\*
- Implementing a comprehensive Clean Growth Strategy\*

\*Being undertaken by other areas in government

The EAO is participating in the provincial Species and Ecosystem Information Systems Modernization (SEISM) project, which is focused on restructuring provincial data systems that support species and ecosystems management in B.C. This project aims to improve the ease of acquisition, organization, distribution and use of all species and ecosystems information, including the integration of EA project data and Indigenous knowledge.