



British Columbia **Stone Sand & Gravel Association**

July 30, 2018

VIA EMAIL: eaoinfo@gov.bc.ca

VIA WEB: www.projects.eao.gov.bc.ca

Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria, BC V8W9V1

Re: Environmental Assessment Revitalization – Comments on Discussion Paper

British Columbia's aggregates industry provides the tens of millions of tonnes of stone, sand and gravel required for the construction of every road, home, park, building, hydro-electric dam, school and hospital in the province. Every community relies on a local pit or quarry to achieve their municipal infrastructure renewal commitments, earthquake protection, and economic growth objectives.

The British Columbia Stone, Sand and Gravel Association (BCSSGA) is a non-profit member organization that represents the interests of the aggregates industry in the province. Our diverse membership includes both small operators as well as the most recognizable organizations in the sector, which together provide more than ten thousand direct and indirect community-supporting jobs throughout British Columbia. With priority given to minimizing air emissions, supporting public safety and balancing other social and environmental effects, the province's aggregate companies situate their operations close to the municipalities, provincial infrastructure projects and industrial customers they supply.

BCSSGA strives to work in collaboration with the province to develop balanced legislative and regulatory frameworks that sustain a robust industry for the benefit of all British Columbians. We recognize the government's commitment to enhance public confidence, advance reconciliation, and offer clear pathways to sustainable project approvals.

The Province's existing environmental assessment framework currently provides many of the outcomes that are sought through the Revitalization, and it is viewed as an exemplary model by other jurisdictions within Canada – both provincially and federally – for its breadth, inclusivity, and transparency. BCSSGA believes that with greater public understanding and awareness of the process, many of the objectives of the Revitalization could be achieved with little legislative adaptation.

Our members have reviewed the Environmental Assessment Revitalization Discussion Paper that was issued on June 18, 2018, and we appreciate the opportunity to submit our comments for consideration as the Revitalization advances toward the Intentions Paper, and then to legislative amendments in late Fall. Additionally, we welcome the opportunity to offer our members' perspectives on the regulatory adjustments and changes that will be needed to implement and operationalize the revitalized EA legislation, once that process is initiated.

Governed by the Mines Act, several members of the aggregates sector operate within the conditions of Certificates issued under the *Environmental Assessment Act* (Act). As such, BCSSGA is interested in both provisions for amendments to existing Certificates under the revitalized Act,



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as well as the process for undertaking the assessment of new projects subject to review under the revitalized Act.

Defining Consent and Consensus Based Decision Making

BCSSGA acknowledges the provincial government's commitment to fully adopt and implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and its efforts to advance reconciliation with Indigenous peoples in British Columbia. Furthermore, BCSSGA respects the rights of Indigenous peoples of British Columbia and supports the need to enhance reconciliation.

Of concern to BCSSGA and our members is the rapidly changing set of expectations regarding consent, and what it means to the parties involved in the EA process – as well as other regulatory processes within the province. To enable clear and consistent application of UNDRIP principles across all regulatory platforms, including the EA, the need for the province to formalize a provincial strategy for reconciliation and collaborative decision making should be the priority.

Without this overarching strategy, it is challenging for each ministry to define consent, consensus decision-making and consensus decision – all of which are referenced in the Discussion Paper.

Ultimately, important projects that support provincial climate and sustainable project objectives risk getting caught in the decision-making ambiguity, to the potential detriment of all British Columbians.

Eliminating Ambiguity through Clear Decision Making Process and Criteria

With the expansion of parties to decision making at key points in the revitalized process, it is important for those involved to have the process, timeframe and criteria for reaching a decision clearly articulated and embedded within the legislative framework. This will also support the goal of broader public confidence and transparency in decision making. BCSSGA suggests that the decision-making criteria consider the interests of British Columbians, particularly those who are not directly represented in the decision-making process, and that reasons for decisions at each stage will be made public.

In addition to determining the process, criteria and timelines for making decisions, it is important to establish who will be making the decision for each party, prior to the commencement of an assessment process.

Where there is the possibility for a project to be prohibited from advancing through to the EA process, it should be based on pre-established criteria of what would be considered unacceptable to the Minister and the Province, so as to avoid unanticipated outcomes and needless expenditures by a proponent to advance their project toward an Assessment. BCSSGA notes that the federal Impact Assessment Act has taken a lesser approach at this stage in their proposed Impact Assessment Process.

Albeit unintended, the early decision points embed a level of risk and procedural ambiguity in the Assessment process that is detrimental to the confidence needed to support capital investment and job-creation in the province.



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We understand the objectives and conceptual merits of Regional Assessments, Strategic Assessments and Cumulative Effects Assessments to reinforce land use planning and decision making into the future. Where feasible, our members have expressed their willingness to support the undertaking of these assessments. Nonetheless, BCSSGA seeks to ensure that decisions made under the revitalized EA are not delayed until such assessments are completed.

As BCSSGA members provide materials to provincial, municipal, industrial and commercial projects within the province, many of which are subject to review under the Act, we are sensitive to the secondary impacts of an improperly functioning assessment process.

Timely Alternative Dispute Resolution (ADR) to Ensure Fair Process

BCSSGA is encouraged to note that provisions will be made for the resolution of disputes at key decision points in the process, notably:

- Readiness Gate
- Process Planning
- Recommendations/Final Decision

BCSSGA observes that this process is intended to achieve reconciliation objectives exclusively, and would be a bilateral and time-bound process between the province (EAO) and the Indigenous nations that are party to the decisions throughout the EA. To the extent that the delivery mechanism is not defined in the legislation or supporting regulation, BCSSGA strongly encourages the ADR process be pre-defined as a 'building block' prior to the assessment commencing.

Most importantly to BCSSGA, this ADR process should not be viewed as an arbitration mechanism. The failure to achieve consensus or consent should not jeopardize a proponent's ability to proceed through the EA process as a result of the inability of the decision-makers to reach agreement.

It follows therefore, that BCSSGA seeks clarity regarding the provisions that would be available to the proponent to seek resolution of matters that may arise throughout the process.

Cohesive and Clearly Defined Regulatory Continuum

Long considered a planning tool, the Discussion Paper notes in its introduction that the EA is a part of a broader regulatory continuum that assesses and permits the undertaking of reviewable projects on the land base.

The review and permitting of large aggregates projects in British Columbia involves a complex regulatory review and oversight continuum that spans the Ministry of Environment and the Ministry of Energy, Mines and Petroleum Resources.

BCSSGA feels strongly that the objective of the EA should remain the determination of a proposed project's net benefit to British Columbians, and that the permitting process is empowered with setting the adaptive conditions under which the project is undertaken and reclaimed.



Similarly, BCSSGA is troubled that efforts to address concerns regarding participation in the permitting process that were expressed through the consultation process may be incorporated into the EA process, which could lead to duplication or the unintentional misplacement of regulatory jurisdiction. BCSSGA recommends that these concerns be addressed and remedied within the permitting process.

BCSSGA recommends that EAO and the Ministry of Environment engage fully with each of their regulatory counterparts in other Ministries to share the objectives of the revitalization, the outcomes of their consultations that pertain to public confidence, the proposed methodologies and approaches to the revitalization, and the implementation of the concepts set out in the Conceptual Model.

This will serve to reduce the existing duplication of process, optimize efficiency and jurisdictional clarity for the public and government staff, all while supporting the integrated approach to assessment, regulation, and compliance and enforcement of natural resource projects in the Province.

Information Management

Acknowledging the province's objective to restore public confidence in the decision-making for resource projects in British Columbia while advancing reconciliation, BCSSGA appreciates the goal of incorporating Indigenous traditional knowledge (ITK) with scientific data.

In the interest of transparency, BCSSGA suggests that all parties to the process utilize the same pool of information in assessing the effects of a project, respecting the need to hold ITK in confidence. Specifically, the proponent, Indigenous Nations, practitioners and EAO staff would be referring to the same dataset in undertaking their review and assessment – be it in collaboration with, or independent of BC EAO.

Further, BCSSGA suggests that the usage of this dataset for post-Certificate project-related permitting would enable the efficient functioning of the regulatory continuum, and could allow for the potential of parallel permitting with the assessment process where practical.

Recognizing the mounting time and cost burden faced by the proponent, BCSSGA suggests that advance consideration be given to protocols where the findings of one assessment differ from another, or where the same information inputs to the assessments achieve conflicting outcomes. This could occur between ITK findings, or between ITK and western science findings. Confidence in the data is as important as confidence in the interpretation of that data.

Legislated Timelines to Enable Timely Process

The aggregate materials mined from projects undertaken under the conditions of an EA certificate are often an essential component of the construction and operation major infrastructure and industrial projects, which in turn can be subject to EA's themselves. Therefore, BCSSGA is encouraged by EAO's commitment to legislate timelines for key components of the EA process, including decision making and alternative dispute resolution.

Legislated timelines also support the appropriate allocation and deployment of government resources to support the assessment process.



In support of the 'one project, one assessment' goal of Substitution under the draft Impact Assessment Act, BCSSGA recommends that timelines be clearly defined, and allow for the alignment and cooperation with other jurisdictions, such as Canada's draft IAA.

The Discussion Paper proposes several timelines. In addition to the timelines contained in the Paper, BCSSGA suggests that the 120 timeframe for Early Engagement proposed by the Environmental Assessment Advisory Committee also be embedded into the legislation.

BCSSGA also suggests that the administration of the timelines be within the authority of EAO and that the flexibility to suspend the timelines under pre-determined circumstances be available to the proponent or EAO under pre-agreed terms.

Concerns about capacity and impacts on fees and competitiveness

BCSSGA understands the inclusive approach to engaging Indigenous nations and the public in the EA process are factors in advancing reconciliation and improving public confidence.

Our members express universal concern about the cost implications of this expanded engagement, as well as the likelihood that funding obligations will extend to include multiple assessments by Indigenous nations that have demonstrated interest in the project. Exacerbating this concern is the potential for third party verification of the proponent's studies to be compound the cost burden on proponents.

BCSSGA understands that the fee structure fails to recover the majority of costs associated with the current EA process. Consideration of additional procedural measures, coupled with the need to augment the capacity within EAO, raises significant questions about the competitiveness of BC as a jurisdiction to invest in large capital projects.

BCSSGA is therefore concerned about the cost burden to its members, as well as the impacts these increased costs will have on our members' customers, who may seek to invest their capital in other jurisdictions.

Alignment with Provincial and Federal Regulatory and Legislative Initiatives

As noted earlier, BCSSGA notes the importance of aligning the revitalized provincial EA with the Federal process, which is further advanced in its proceeding. This alignment should consider process, timelines and approaches including the implementation of UNDRIP. Unlike the Federal government, the Provincial government has not yet finalized its strategy to implement UNDRIP, which adds vulnerability to the execution of the revitalized provincial EA.

Furthermore, with numerous legislative, regulatory and operational initiatives underway across provincial ministries that will affect access to the land and natural resource decision making, BCSSGA reiterates the importance of a coordinated and thoughtfully sequenced approach across provincial ministries and mandates.

BCSSGA wishes to acknowledge the tremendous effort and commitment of EAO staff to undertake the Revitalization process within such an aggressive timeline, and to incorporate input



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from a diverse range of stakeholders. BCSSGA hopes that the foregoing comments will contribute to a productive outcome that supports the socio-economic and environmental interests of all British Columbians, now and into the future.

Thank you again for accepting BCSSGA's comments on the Environmental Assessment Discussion Paper and considering them in the development of the upcoming Intentions Paper.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek Holmes'.

Derek Holmes
President
BC Stone, Sand and Gravel Association
president@gravelbc.ca
t. 778.726.4653
m. 604.345.4382

cc: Honourable George Heyman, Minister of Environment and Climate Change Strategy
cc: Honourable Bruce Ralston, Minister of Jobs, Trade and Technology, acting Minister of Energy, Mines and Petroleum Resources
cc: Kevin Jardine, Associate Deputy Minister, Environmental Assessment Office
cc: Peter Robb, Assistant Deputy Minister, Ministry of Energy, Mines and Petroleum Resources