

July 27, 2018

Kevin Jardine
Associate Deputy Minister
Environmental Assessment Office, Government of British Columbia

Via web: www.projects.eao.gov.bc.ca and email: eaoinfo@gov.bc.ca; kevin.jardine@gov.bc.ca

Dear Mr. Jardine,

Re: AME Submission re Environmental Assessment Revitalization

The Association for Mineral Exploration (AME) has been committed to collaboratively engaging through multiple channels to provide comments, raise concerns and make constructive recommendations as it relates to the revitalization of the provincial Environmental Assessment Act.

AME is the lead association for the mineral exploration and development industry based in British Columbia. Established in 1912, AME represents, advocates and promotes the interests of almost 5,000 members who are engaged in mineral exploration and development in BC and globally. AME encourages a safe, economically strong and environmentally responsible industry by providing clear initiatives, policies, events and tools to support its membership in delivering responsible projects that advance reconciliation and provide benefit to all British Columbians.

AME believes that incremental improvement to an already world class legislative framework for Environmental Assessment can improve transparency and public confidence, further the goals of reconciliation, give formal evidence to implementation of the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, and improve predictability and confidence for industry but that changes should be carefully analyzed for cost and capacity implications for all parties involved.

In addition, AME strongly recommends that changes being contemplated to the Environmental Assessment Act, regulations, policies and standards need to be coordinated between multiple mandates of the Provincial government, while also respecting the changes being considered by the Canadian Environmental Assessment review, which is further ahead in the process.

AME supports the principles within the *United Nations Declaration on the Rights of Indigenous Peoples* and our industry leads the way in implementing those principles through relationships, partnerships and mutual economic benefits. As such, our industry has long been working towards consensus decision making as the goal. However, we submit that if consensus is not reached, the Province must remain the ultimate decision maker and recognize that lack of support from one or multiple Indigenous groups does not constitute a veto.

On the following pages, please find our final comments related to the Discussion Paper, published in June. We remain under the assumption that an Intentions Paper will be produced in late summer with legislation to begin drafting shortly after. AME expects to further comment on the Intentions Paper in order to assist in the drafting of legislation.

Thank you for meaningfully considering this submission; we look forward to carrying on the conversation.

Regards,



Edie Thome
President & CEO
Association for Mineral Exploration

AME COMMENTS ON ENVIRONMENTAL ASSESSMENT REVITALIZATION DISCUSSION PAPER

AME recommendations respond to the *Environmental Assessment (EA) Revitalization Discussion Paper*, and they are made under the assumption that regulations, policies and standards need to be coordinated between multiple mandates of the Provincial government, while also respecting the changes being considered by the Canadian Environmental Assessment review. In addition, these comments are made with the assumption that early engagement with Indigenous groups will contribute to better projects and that the ultimate decision-making authority within the bounds of the Act will remain with the Crown and will be fairly administered.

MEASURES THAT AME SUPPORTS

Proponents are easily able to determine if their proposed project requires an assessment.

Easily determining the requirement for inclusion in the Environmental Assessment process is a critical improvement for the process and will provide clarity for stakeholders and Indigenous groups as well as proponents. We caution that this process must be undertaken in tandem with regulations under the proposed federal *Impact Assessment Act*. We encourage the Environmental Assessment Office (EAO) to provide clear thresholds that may be considered in the Intentions Paper.

Commitment to fixed timelines.

Legislated timelines are a feature of the existing EA process that has allowed projects to move somewhat predictably through the current EA process. Improved predictability will increase investor confidence; we urge the EAO to specify timelines in the Intentions Paper so that these may be evaluated for adequacy by proponents, stakeholders and Indigenous groups.

One project, one process.

BC has built the concept of “one project, one process” into the current EA process in conjunction with the current *Canadian Environmental Assessment Act, 2012* through a Memorandum of Understanding. We welcome the continuation of this feature being aligned with the proposed federal *Impact Assessment Act* in order to reduce duplication of costs and time for proponents.

Projects currently under assessment under the current EA Act will continue under the existing process.

Continuity between legislative processes is important, and this feature mirrors proposed federal legislation. This grandfathering feature will be extremely important in maintaining investor confidence and certainty for the 15 proponents active in mineral exploration and development projects that are already involved in the current EA process.

Increased accessibility to information regarding the EA process.

Readily available and understandable information on the current EAO website can be improved; our expectation is that transparency regarding publicly available information will build confidence in the process and provide data about each project. Similarly, we expect that an increased role of EAO in engaging communities in both the process and project information will also help with understanding and informed decision making.

MEASURES OF CONCERN TO AME

Lack of clarity exists regarding single statutory decision maker.

The proposed EA revitalization suggests multiple decision makers. We need confirmation of our understanding that the province is the single, accountable decision maker. We reiterate that if consensus between parties cannot be reached, the Province must remain the ultimate decision maker and recognize that lack of support from one or multiple Indigenous groups does not constitute a veto.

Dispute resolution and appeals process for proponent needs to be outlined.

Although the role of alternative dispute resolution in regard to differing decisions of Indigenous nations and public governments is mentioned, a dispute resolution and appeals process should be available to the proponent as well and outlined in the Intentions Paper.

New features are not timed, outlined or costed.

AME appreciates continual improvement to the EA process, but consequences of change – either intended or unintended – need to be considered. New features such as the readiness gate and dispute resolution processes need further detail and piloting, and it should be made clear that the province remains the ultimate statutory decision maker in determining that engagement has been sufficient, that the project description is suitably robust, and that allowing the project to proceed to EA is in the public interest.

We are concerned that if these new features are not carefully and collaboratively designed, these mechanisms may extend project timelines and increase costs for all parties. In particular, we are concerned regarding additional costs to proponents for funding Indigenous and local groups to participate in EA processes. Critical to the success of these changes include the careful consideration of timing and capacity within the EAO, the local and Indigenous groups and the proponent to fulfill the intent of the recommendation.

Reconciliation Commission precedes provincial framework for reconciliation.

AME supports reconciliation and the principles within the *United Nations Declaration on the Rights of Indigenous Peoples* but because UNDRIP principles should be applied consistently, direction needs to be fully designed through a provincial framework before any new legislation, regulation or policy is created. Creating a commission before having a framework in place creates uncertainty that a commission may have its structure changed under future legislation, which will create uncertainty for proponents, stakeholders and Indigenous groups, and potentially undermine investor confidence.

Role of EA within regulatory continuum is not emphasized.

The EA process is only a portion of the regulatory continuum. The efficacy of an EA process will determine the success of future exploration as well as define the mines of the future. With mineral exploration and mining being a globally competitive industry, it is vital that the role and potential effects of the EA process on other stages of the project life cycle be considered, and these need to be broadly communicated to stakeholders and Indigenous groups.

CONCLUSION

AME believes that incremental improvement to an already world class legislative framework¹ through a revitalized *Environmental Assessment Act* can improve transparency and confidence, further reconciliation, give formal evidence to implementation of the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*. However, we note that any changes need to be timed and outlined, as additional time, processes and uncertainty may detract from investor confidence in turn leading to a loss of opportunities for social and economic development.

We look forward to the consideration of our recommendations in the Intentions Paper so that we may further assist in drafting fair and progressive legislation and building continued certainty for BC's mineral exploration and development industry, while advancing reconciliation.

¹ MineHutte rankings (www.minehutte.com) – BC ranked #1 globally - for hard, regulatory risk in 2017 as outlined in the World Risk Report published by Mining Journal in conjunction with Fasken, and #2 in 2018.