



Blueberry River First Nations

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VIA EMAIL: Ricardo.Toledo@gov.bc.ca

BC Environmental Assessment Office
Attn: Ricardo Toledo 2nd Floor 836 Yates St
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Victoria BC V8W 9V1

Dear Mr. Toledo:

Re: Comments on BC Environmental Assessment Revitalization Discussion Paper

We write to provide Blueberry River First Nations (“Blueberry”) comments on the BC Environmental Assessment Revitalization Discussion Paper (“the Discussion Paper”) related to proposed changes to provincial environmental assessment (“EA”) legislation, regulation, and policies.

The failings of the current EA process are borne out in our territory, the cumulative impacts crisis we face, and the resulting diminishment and loss of our way of life. This is in part a result of the failings of the EA process and the role that process plays in the Province’s failure to manage our land in a way that ensures protection of treaty rights. To cure this serious problem, shared decision-making with respect to projects and activities that affect our land, water and way of life is needed.

To assist in bringing Blueberry’s perspectives and recommendations forward, we have identified key issues and concerns stemming from Blueberry’s experience with the provincial EA process over the past several years and resulting impacts on our territory and rights. To improve in the future we need to closely examine past failings. Blueberry has examined the Discussion Paper from the overarching perspective of whether the problems in the current system are likely to be overcome through the proposed changes. To do so, this submission draws from Blueberry’s experience of involvement in six different EAs between 2013 and 2018, as well as seven BC EA exemption processes in Treaty 8 territories between 2011 and 2015. From prior correspondence on these files, it should be self-evident that we have often come away from the Provincial EA process disappointed, frustrated, and without adequate protections for our lands, waters, wildlife and way of life.

The current review and revision process holds the promise to bring some change. It will not do so, however, until the focus of the EA process moves from a “proponent driven” process to a focus on the protection of our lands and waters and the joint responsibilities and rights of the decision-makers -- the governments that represent Indigenous Nations, including Blueberry, and British Columbia, and British Columbia, respectively.

About Blueberry River

Blueberry River First Nations is one of four Dane-zaa (or Beaver) communities of the Peace River area in northeast British Columbia. The primary Blueberry Indian reserve is located on the Blueberry River, approximately 80 km northwest of Fort St. John, B.C. Our second reserve is located at the confluence of the Blueberry and Beaton rivers.

Dane-zaa people have been living in the northeast of British Columbia and the northwest of Alberta for millennia. The traditional territory of the Dane-zee was once rich in wildlife due to the diversity of habitats available. Blueberry’s Dane-zaa ancestors travelled seasonally around the Peace River country, a pattern of land use that continued well into the 20th century. From early European contact in the late 1800s to 1942 when the Alaska Highway opened, Dane-zaa people continued to subsist mainly on hunting and trapping.

On June 21, 1899, Treaty No. 8 (the “Treaty”) was made between Her Majesty the Queen and the Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country. On May 30, 1900, 46 members of the Beaver Indians from Fort St. John, the ancestors of Blueberry, adhered to the Treaty.

In addition to the written terms of the Treaty, the federal Treaty commissioners made oral promises to Blueberry ancestors, including the promise that there would be no forced interference with our “traditional mode of life” and that we would be as free to hunt and fish after the treaty as if we had never entered into it. Blueberry’s way of life consists of much more than simply hunting, fishing and trapping. Our ancestors lived full lives on the land, earning a livelihood, supporting a vibrant community and passing on their culture and way of life to their children while out on the land.

The Crown-authorized industrialization of our territory – from agriculture to forestry, the damming of the Peace River three times and oil and gas extraction – has dramatically altered our territory, destroying our way of life and infringing our treaty rights. The Crown’s failure to manage this industrialization to ensure the protection of biodiversity, ecosystem health and treaty rights has resulted in the Crown’s breach of Treaty. To move forward, a new approach to managing development and impacts of the same in our territory is desperately needed. Reform and revitalization of the EA process is an essential component of that change.

Structure of Blueberry’s Submission

Our response to the Discussion Paper has focused on evaluating the extent to which twenty (20) issues previously raised by Blueberry in the course of BC EAs are addressed through the proposed changes to the provincial EA process. Where gaps remain, we have suggested additional measures that should be undertaken. These issues are examined in Appendix A to this submission.

The twenty issues are organized under the following eight key themes:

- Shared decision making with Blueberry River First Nations;
- Cumulative effects assessment, including consideration of cumulative effects at an scale meaningful to ecosystems and our treaty rights (e.g. watershed level scale);
- Treaty and aboriginal rights impact assessment, including the ability of Blueberry River to conduct its own, independent, assessments;
- Adequacy of funding, time and opportunity to engage;
- Addressing over-reliance on secondary or approximate data (assessment by proxy and generic mitigations);
- Appropriate use and integration of Traditional Knowledge and Use Studies (TKUS) into EAs;
- Assessment of effects on tangible and intangible culture (including cultural heritage); and
- Socio-economic and health impact assessment relevant to indigenous communities.

Key Issues

Below are our views on the four (4) highest priority issues with the provincial EA process and how those issues might be reformed. For detailed recommendations on all twenty issues, we refer you to the attached table (Appendix A).

1. Cumulative effects

Central to Blueberry's concerns with the existing provincial EA process has been the Crown's failure to meaningfully involve our government and members in decision-making in respect to industrial development in our territory or in strategic planning in relation to the future of our territory. The cumulative impacts of development in our territory, including but not limited to oil and gas exploration and development, forestry, mining, hydroelectric power generation and agriculture, has placed our ability to exercise our treaty rights into serious jeopardy. The cumulative impact of industrial development has also severely impacted the ability of Blueberry members to transfer traditional knowledge to the next generation because the lands and waters necessary to facilitate that transfer have so heavily disturbed that they can no longer support our way of life. The existing Provincial EA process has continuously failed to properly integrate consideration of total cumulative effects loading on Blueberry territory and values, contributing to the critically degraded condition of our cultural landscape.

The Discussion Paper has made brief reference to cumulative effects assessment, but in doing so appears to suggest that existing regional EA processes being undertaken the Province (e.g., Cumulative Effects Framework processes) will likely be sufficient to meet the cumulative effects assessment needs of Project EAs. Moreover, the Discussion Paper makes no reference to mechanisms that would trigger the requirements for a regional EA (including indigenous calls for one), at what level such assessments would take place, how they would be funded and how meaningful First Nations participation would be enabled. Given the lack of utilization by the Crown of its prerogative under Section 20 of the *BC Environmental Assessment Act* ("BCEA") to call for class EAs, most especially of extensive gas sector activities in Treaty 8 territory, and failure to work with the

federal government to undertake regional studies as provided for under Section 74(1) of the *Canadian Environmental Assessment Act, 2012*, a trigger mechanism (with dedicated funding) is critical to ensure that the adoption of regional EA into the new EA legislation translates into meaningful action, rather than an ignored or underutilized gesture. Hence, it is with concern that we note that the recommendations in the EA Advisory Committee (“EAAC”) specific to funding priorities and triggering mechanisms for regional EA have largely been ignored in the Discussion Paper.

A new approach to cumulative effects assessment is needed, within both a project and regional assessment context, which includes the following elements:

- Cumulative effects assessment – both at the level of Project EA and Regional EA – must be included as non-discretionary requirements within the new EA Act (unlike the current BCAA that leaves consideration of cumulative effects in an EA at the discretion of the Executive Director);
- Legislative provisions must be made for clear trigger mechanisms and participation funding for regional EA;
- Blueberry must be able to collaborate in determining scales of assessment that are appropriate for assessing effects on biophysical, socio-economic, cultural VCs, as well as on Blueberry’s treaty rights;
- Cumulative effects assessment must be VC-focused and include consideration of the total effects loading on each VC being assessed;
- Application of watershed-level analysis for cumulative effects assessment of ecology VCs and individual First Nations’ territorial-level assessment for impacts on traditional use, occupancy, and Treaty rights practices;
- Recognition of and implementation of ecosystem based management;
- Explicit consideration of ecosystem health, old forest (including appropriate serial stage and management of patch size), peaceful enjoyment of the land, and biodiversity;
- Regional (or watershed) EA results can and must inform Project-based cumulative effects assessment, but cannot be used as a replacement for a project-specific cumulative effects assessment (and where there are gaps in regional EAs or knowledge from regional initiatives, this not be used as an excuse to limit the scope of Project-specific cumulative effects assessment). However these assessments must be undertaken on an ecologically meaningful scale that do not water down or eliminate significant impacts that exist at a scales meaningful to our ecosystems and treaty rights practices; and
- The use of management thresholds and triggers established through regional and strategic EA processes, or otherwise agreed to between the Province and indigenous governments, during the Early Engagement phase (for decision at the Readiness Gate prior to the commencement to the EA) to inform parties of whether a specific area within Blueberry territory is a “no-go zone” for new projects, and/or whether a project may not be viable to advance into the EA process.

The specific requirements for undertaking cumulative effects assessment during Project EA, and its relationship to regional EA and land-use planning processes, will need to be specified.

2. Shared Decision-making

New arrangements that ensure Blueberry has a shared decision-making role in the management of industrial development in our territory are essential to any new approach to EA that seeks to advance reconciliation. Proposals in the Discussions Paper for new consensus-based decision-making processes within the EA process (e.g., the decision-gate system), with associated alternative dispute resolution (“ADR”) processes, constitute a good start, but currently are vaguely worded and require further definition. For the decision-gate system to be a solid foundation for implementing the UN Declaration, it must be entrenched in legislation and associated regulation.

In addition, for Blueberry, any new legislation should ensure proper alignment between new decision-making processes envisioned for the EA process in general, and EA-specific Agreements with First Nations. Legislation must be amended to recognize Treaty First Nations, such as Blueberry, as having the option to choose whether to work within the existing BC EA process, or operate as a separate jurisdiction that may undertake its own independently-led EA, as may be most appropriate for a particular project proposal.

Decision-Gate System

The proposed decision-gate system, if properly implemented, has the potential to greatly improve the EA process. In particular, Blueberry recommends that the Early Engagement Planning phase include specific reference to existing processes and key documents related to land use planning, ongoing restoration work and “no-go” zones and other designations established through land use planning (e.g. biodiversity conservation areas, riparian zones). As noted above, the Readiness Gate at the end of the Early Engagement phase should ensure that projects that are ill-suited to Blueberry territory, or critical areas within the territory, are stopped from proceeding to EA; and for EAs that proceed, the final versions of the Assessment Plan and the Application Information Requirements that are prepared during the Process Planning phase must receive Blueberry’s consent.

Further, the proposed decision-gate system should be expanded to include additional decision gates at the following information/decision milestones throughout the EA:

- Project exemption;
- Application “readiness” for Review;
- Sufficiency of Information during Application Review, including responses to information requests;
- Conclusions and Recommendations of Assessment Report (separate from Project decision);
- Decision; and
- Amendment to EA Certificate.

Blueberry's consent should be sought with respect to each decision.

Additionally, Blueberry expects specific decision-making processes required for new project reviews within Blueberry territory to be subject to further implementation discussion.

Critically important, Blueberry must be involved at the outset from a planning perspective to ensure land-use designations, critical areas, and sites of cultural importance are avoided, and planning incorporates rights/interests in order to avoid or minimize impacts through project design.

Additionally, Blueberry requires a process that provides for full ecological restoration targets, including appropriate mitigation/offsetting ratios and recognizing such ratios that may be established through land use planning or bilateral agreements.

New criteria for reviewable projects

Blueberry supports the proposal in the Discussion Paper for the development of a new framework and criteria for the reviewable projects regulation. As the determination of which projects go to EA is a process of critical importance, and one where Blueberry and BC have fundamentally disagreed in past cases, we request additional consultation on this specific proposal once draft criteria has been developed. However, our initial view is that any new project that poses the potential to have adverse effects on our rights, through direct project effects or cumulative effects, must be considered as a candidate for EA. In this regard, Blueberry must have the authority within the new system to designate near-threshold projects, proposed within our territory, as reviewable projects.

3. Access to a meaningful process: Appropriate funding and timeline mechanisms

In our view, the Discussion Paper has not adequately tackled the two issues of funding and timelines. In previous EAs, without adequate resources and time allowed for review and comment, Blueberry's access to the EA process has been greatly compromised. In order to fully implement the UN Declaration, the principle of Free, Prior and Informed Consent must guide legislative changes that would ensure that funding is sufficient to enable First Nations' full participation in technical review and decision-making, and that timeline mechanisms place the quality and substance of the assessment over arbitrary deadlines which almost always work against, rather than for, the interests and rights of indigenous peoples.

The question of fixed timelines continues to be a concern that the Discussion Paper sheds little new light on. As noted above, Blueberry supports the proposed decision-gate process for ensuring the quality and sufficiency of work conducted within each EA phase, but seeks clarification that decision-gates will not be over-ridden by legislated timelines. For greater certainty, should legislative timelines be included it is recommended that additional regulations be developed to clarify how the two respective mechanisms (including the associated ADR process) would function. For example, reference to a "time bound" ADR process, without further detail, does not bring us comfort. If timelines are legislated they should be developed in direct consultation with First Nations and ensure that mechanisms are provided to allow for extensions in appropriate circumstances – for example to ensure decisions in First Nation-led EAs line up with decisions made by the EAO or to provide more time to resolve important issues through dialogue or provide for data gaps to be filled with necessary studies.

The lack of clarity regarding funding mechanisms is also a concern, especially given that funding received two key recommendations from the EAAC. The recommendations in the EAAC report specifically state that:

- R11: Funding for indigenous governments should be scaled to promote the capacity for full participation throughout all the stages of the EA process including the ability to promote opportunities for joint and/or independent decision making.
- R28: Capacity building, including advisory services and stable sources of funding should be provided not only by proponents, but also by the province, to enable independent judgments to be made by indigenous governments, local governments and public interest organizations.

Given this gap in the Discussion Paper, Blueberry would like to see the subject of funding for EA receive far more consideration in the Province's follow-up *Intentions Paper*. Without a new approach that is applied consistently across Projects, as well as funding amounts being substantially increased from current inadequate levels, the problem of insufficient funding will continue to plague the EA process in this province.

To be meaningful, funding must ensure Blueberry has the in-house capacity necessary to engage in all phases of the EA process – including Early Engagement. Annual funding – rather than for different stages of an EA – would allow Blueberry to employ and retain staff who could work on projects from the initial proposal and design phase, throughout all stages of the EA, and ultimately assist with the development and approval of management plans and ultimately compliance and enforcement. EA funding is currently inadequate and is only provided once a project description has been filed and Application Information Requirements are being developed. By this point, key decisions often have already been made and short timelines and late funding make it difficult for Blueberry to retain appropriate assistance or effectively engage.

4. EA methodologies, including incorporation of ecosystem-based management

Although we recognize that the Discussion Paper was drafted to address high-level procedural matters, left off the table has been the substantial questions of assessment methodologies, in particular in relation to the assessment of effects on the human environment and Aboriginal/Treaty rights. Blueberry strongly recommends that new legislation direct the EAO to coordinate with First Nations in the co-development of guidance for assessment of effects on Indigenous peoples and the ecological resources we rely on and empower shared decision-making based on Nation-led assessments. Key areas for co-development, include but are not limited to the following:

- Implementation of ecosystem-based management in all aspects of EA;
- Rights-impact assessment methodologies that ensure meaningful consideration of ecosystem health and peaceful enjoyment of our territory;
- Avoidance and mitigation planning to develop project-specific measures;
- Appropriate integration and use of TKUS information;
- Appropriate integration of Indigenous Knowledge and principles of ecosystem health and ecosystem-based management into biophysical assessments and acceptable thresholds for change;

- Assessment of intangible and semi-tangible elements of indigenous culture;
- Indigenous socio-economic impact assessment; and
- Indigenous health impact assessment that focuses on social determinants of health and population health frameworks, and incorporates risk perception in a meaningful way.

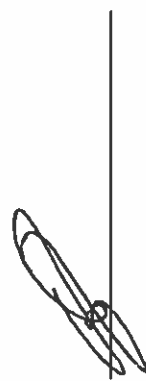
For more information on methodological concerns of highest priority to Blueberry, see the sections in the table below under the themes:

- Theme 3: Rights impact assessment;
- Theme 5: Over-reliance on secondary or approximate data (assessment by proxy and generic mitigations);
- Theme 6: Appropriate use and integration of Traditional Knowledge and Use Studies (TKUS) into EA;
- Theme 7: Tangible and intangible culture (including cultural heritage); and
- Theme 8: Socio-economic and health impact assessment.

Conclusion

Blueberry appreciates the opportunity to provide our initial views on proposed changes to the BC EA process. Please note that the issues identified in this submission must be read as a preliminary list of concerns only. A full exploration of issues, concerns and proposals for addressing them would be the subject of additional consultation and dialogue.

Sincerely,



Councillor Wayne Yahey
Blueberry River First Nations

Table 1: Blueberry River First Nations Issues with Current BC EA Process

Issue #	Concern with Current BC EA Process	Has Concern been addressed in the Discussion Paper?	Additional Actions/Steps Required
Theme 1: The Need for Shared Decision-Making			
1	<p><i>Lack of meaningful decision-making role</i></p> <ul style="list-style-type: none"> Blueberry has been excluded from a meaningful decision-making role in all previous EAO processes to date. For example, impact thresholds (when they have been set at all) have been set by either the Project proponent or the EAO, with the result that they do not reflect the input of Blueberry members and projects are regularly approved against Blueberry's strong objections. Blueberry has been excluded from a meaningful decision-making role in post-certificate monitoring, compliance and enforcement. 	<p>Partially.</p> <p>The Discussion Paper's ("DP") proposal for consensus decision-gates, with recourse to a dispute resolution process, is a good start, but lacks substantial definition regarding its implementation.</p> <p>From Blueberry's perspective, the DP's more important contribution is the proposal to introduce EA-related agreements as key "building blocks" serving to recognize and formalize First Nations as "co-regulators" of the EA process, including specific details related to First Nations decision-making, studies, and capacity funding. The DP does not provide any specific details regarding the content of the proposed EA-related agreements.</p>	<p>In general, Blueberry strongly supports restructuring the existing EA process to ensure that for projects within Blueberry territory, Blueberry has a key role in decision-making, including with respect to project approval. A new EA process must be responsive, rather than dismissive, to Blueberry's issues, concerns and information requests. These structural changes (i.e., the decision-gate system with associated ADR processes) must be entrenched in legislation and regulations.</p> <p>The legislation should also ensure First Nations are empowered to undertake their own, independent, assessment of impacts on their territory and treaty rights, including the development of Blueberry specific avoidance measures or other project conditions that can be recognized by, and incorporated into, Crown decision making.</p> <p>Additionally, an EA agreement between Blueberry and the Province could set out the specific implementation details and requirements of project-specific and regional assessment falling within Blueberry territory.</p>
2	<p><i>Lack of control over adequacy of information provided during EA</i></p>	<p>Partially.</p>	<p>A legislated decision-gate system, with associated ADR measures, should be extended</p>

Issue #	Concern with Current BC EA Process	Has Concern been addressed in the Discussion Paper?	Additional Actions/Steps Required
	<p>In the past, the EAO has allowed the EA process to continue without Blueberry's requests and concerns being adequately incorporated into key EA documents (e.g., Assessment Plan, AIR, draft Application, responses to IRs, Assessment Report, Conditions, etc.).</p> <p>Ministers and Approval of Management Plans, etc.).</p>	<p>The DP contains a proposal for incorporating consensus-based "decision-gates" into the EA process that could, if properly implemented, would give First Nations greater influence over determining the sufficiency of information provided during the EA. That is, First Nations could trigger an Alternative Dispute Resolution ("ADR") process where disagreement exists over the status of key documents or Information Requests ("IR").</p> <p>However, the DP does not clearly indicate that First Nations would have decision-making authority in relation to the sufficiency of key EA documents, such as the Application Information Requirements ("AIR") or draft Application, or the proponent's responses to Blueberry's information requests.</p>	<p>to include a requirement for consensus of First Nations and the EAO on the sufficiency of key EA documents (e.g., Assessment Plan, AIR, draft Application, responses to IRs, Assessment Report, Conditions, etc.).</p> <p>The legislated ADR mechanism is required in the event of disagreement between the parties on the adequacy of information provided by the Proponent (e.g., the sufficiency of the Proponent's response to information requests). The EA timeline ("the EA clock") must be paused while an ADR process is underway.</p> <p>The legislation should also ensure First Nations are empowered to undertake their own, independent, assessment of impacts on their territory and treaty rights. This would provide Blueberry with control over the adequacy of information provided during the EA.</p> <p>In addition to any legislated provisions, an EA-related Agreement will need to contain measures identifying key decision-points through the course of an EA where Blueberry consent is required.</p>
3	<p><i>Non-responsiveness to Blueberry information requests</i></p> <p>Repeated failure of EAO to respond to Blueberry requests for more information and data regarding environmental baselines, socio-economics and health.</p>	<p>Indirectly. The decision gate system could be used to ensure sufficient information is collected and utilized by the Proponent in its Application. The DP proposes an "early review" step during the Application Development phase that provides the Technical Working Group an opportunity to provide feedback and request changes to the draft Application. Further, a consensus</p>	<p>A project EA application should not proceed to Application Review until all information requests have been adequately addressed and incorporated into the impact assessment. In the event that resources to collect necessary information is not made available, impacted First Nations should be given the opportunity to stop the EA clock while the proponent is responding to the request information.</p>

Issue #	Concern with Current BC EA Process	Has Concern been addressed in the Discussion Paper?	Additional Actions/Steps Required
4	<p><i>Avoidance, Mitigation, Accommodation or Compensation measures</i></p> <p>In past EAs, Blueberry has not been meaningfully included in the development and implementation of mitigation measures in the territory and avoidance, accommodation and compensation of impacts is largely, if not entirely, ignored. Avoidance of impacts should be given priority over mitigation, and where avoidance is not possible impacts should be mitigated to the extent possible. This has not been the case in past EAs.</p> <p>Instead, generic mitigation measures, proposed as environmental management plans, are treated in provincial EAs as acceptable proxies in place of detailed project-specific plans setting out how project effects will be mitigated or otherwise managed. Additionally, Blueberry has been excluded from a central decision-making role in the implementation and follow-up programs related to mitigations.</p>	<p>decision gate is proposed at the end of the Application Development phase, where the Technical Working Group must agree that the draft Application is adequate in order to proceed to Application Review.</p>	<p>The legislation should also ensure First Nations are empowered to undertake their own, independent, assessment of impacts on their territory and treaty rights. This would empower Blueberry to ensure adequate information is gathered with respect to all aspects of their own EA.</p>
		<p>Partially. The DP states, “Early review during the development of the application increases certainty as all parties seek agreement on key areas such as baseline requirements, modelling approaches, assessment results, and mitigation measures.” In Blueberry’s view, the DP should go farther in requiring the Proponent to work collaboratively (i.e., through mitigation planning sessions) with Blueberry (and other impacted First Nations) to identify and develop feasibility assessment of the most relevant and effective mitigation options.</p>	<p>As noted above, direct consultation with Blueberry related to decision-making at key decision-gates, including those relevant to mitigation.</p> <p>In addition, legislation and/or associated regulations should set out a collaborative process, during Application Development, for identifying appropriate, relevant and feasible mitigation measures, including drafting adequately detailed mitigation plans (including feasibility evaluation) and prioritizing avoidance wherever possible. Where impacts cannot be avoided, mitigation should be combined with accommodation and compensation measures to ensure there is no overall diminishment of Blueberry’s lands and waters (e.g. through appropriate mitigation ratios, restoration elsewhere in the territory etc.)</p> <p>The legislation should also ensure First Nations are empowered to undertake their own, independent, assessment of impacts on their territory and treaty rights. This would empower Blueberry to develop appropriate avoidance, mitigation, accommodation or compensation measures.</p>

Issue #	Concern with Current BC EA Process	Has Concern been addressed in the Discussion Paper?	Additional Actions/Steps Required
5	<p><i>Exemptions of projects from EA requirements</i></p> <p>The executive director of the EAO is empowered under the BC EA Act, at his or her discretion, to exempt any project that is listed on the provincial Reviewable Project Regulation ("Reviewable Project") from a provincial EA without first obtaining consent by impacted First Nations. Between 2011 and 2015, Blueberry was directly affected by seven project exemptions that occurred within Treaty 8 territories in north-east BC¹. In addition, the EAO has recently <i>retroactively</i> exempted the Progress Town Down which was constructed within our territory (illegally impounding water for oil and gas operations) without an EA, and in the face of Blueberry's repeated concerns about diminishing water quality and quantity.</p>	<p>There are a number of gaps in the DP regarding exemption decisions.</p> <p>First, there is no indication that an exemption decision would require the consent of affected First Nations. Rather, the DP merely indicates that "criteria" would be required. This gap suggests that the EAO intends to preserve its sole discretion and would simply continue the EAO's existing exemption process.</p>	<p>Additionally, an agreement between Blueberry and the Province is required to set out the specific implementation details and requirements of project-specific and regional or watershed level assessments falling within Blueberry territory.</p> <p>Either through legislation or agreement, Blueberry's consent should be required prior to the Minister of Environment exempting a Reviewable Project from a provincial EA.</p> <p>Further, through a similar legal mechanism Blueberry authority must be recognized to refer "sub-threshold" project proposals (e.g., Peace Region Electricity Supply Project) into the EA determination process at the front end of the EA system. And any refusal by the Minister to send an "Indigenous referral" to EA will need to be accompanied by reasons for decision and subject to a formal ADR process which can be activated by affected First Nations.</p>
Theme 2: Cumulative effects assessment			
6	<p><i>Lack of baseline/use of "damaged" baseline</i></p>	<p>No.</p> <p>No new proposals exist in the DP related to</p>	<p>An EA specific agreement between Blueberry and the Province should include methodological requirements for assessing</p>

¹ The following projects proposed in northeast BC were exempted from a provincial EA either against the expressed wishes of Treaty 8 First Nations, or without adequate consultation: (1) Satum 15-27 Sweet Gas Plant; (2) Encana 4-26 Refrigeration Project; (3) Encana 8-21 Refrigeration Project; (4) Air Liquide Liquid Nitrogen Plant; (5) Dawson Liquids Extraction Project; (6) Debolt Saline Water; and (7) Progress Town North Gas Plant.

Issue #	Concern with Current BC EA Process	Has Concern been addressed in the Discussion Paper?	Additional Actions/Steps Required
	<ul style="list-style-type: none"> • Existing levels of cumulative effects on Blueberry's rights and interests are not acknowledged. The reality of what our members see and experience on the ground every day must be considered. • The EAO and/or proponent mischaracterize and invariably underestimate the total cumulative effects context in which the Project is proposed. • The EAO has ignored, downplayed or misinterpreted available information about the cumulative impacts context in our territory, including a number of available studies. 	<p>revising the effects assessment methods to account for a pre-disturbance (or pre-industrial) baseline for the assessment of cumulative effects and proper characterization of the current condition of Blueberry's rights and interests and the resources they rely upon within Blueberry traditional territory.</p>	<p>project-specific and cumulative effects on our treaty rights and critical Valued Components (VC), such as wildlife and wildlife habitat, and traditional land and resource use. The application of best practices, such as adequately evaluating the total cumulative effects loading as the starting point of any effects assessment, would be required for any project assessments in Blueberry territory.</p> <p>Further, it is recommended that the EAO co-develop, with First Nations, a renewed cumulative effects assessment methodology for project assessment in BC, and issue guidance on this topic to proponents.</p>
7	<p><i>Effects of induced development</i></p> <p>The EAO has excluded potential effects of induced development (i.e., gas well infrastructure (roads, water withdrawals, feeder pipes, frac sand mines, work camps, fugitive emissions)) in its assessment, and cumulative effects assessment of pipelines. One result is that the Crown has not properly informed itself of the full scope of adverse effects on our treaty rights that will result from these Projects and from induced development associated with the Project.</p>	<p>No.</p>	<p>An EA agreement between Blueberry and the Province must include methodological requirements for assessing cumulative effects on our treaty rights and critical VCs. This methodology will include a requirement for the consideration of induced development scenarios for any project assessments in Blueberry territory on a watershed level basis. This requirement would also be included in the Assessment Plan developed by all parties to the EA during the Process Planning phase.</p> <p>Further, it is recommended that the EAO co-develop, with First Nations, a renewed cumulative effects assessment methodology for project assessment in BC, including consideration of induced effects, and issue</p>

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8	<p><i>Cumulative effects assessment (CEA) information and methods requirements</i></p> <p>EAO requires unclear or inexact information of the Proponent regarding cumulative effects assessment (“CEA”) and does not ensure that the Proponent will provide sufficient information for parties to conduct informed third-party review of the Application.</p>	<p>Indirectly. The decision gate system could be used to ensure appropriate methodological approaches and sufficient information is utilized by the Proponent in its Application. The DP proposes an “early review” step during the Application Development phase that provides the Technical Working Group an opportunity to provide feedback and request changes to the draft Application. Further, a consensus decision gate is proposed at the end of the Application Development phase, where the Technical Working Group must agree that the draft Application is adequate to proceed to Application Review.</p>	<p>guidance on this topic to proponents.</p> <p>In the development of an EA-specific agreement, EAO must work with Blueberry (and other Nations) in the development of specific requirements related to the assessment of cumulative effects that will be applied as mandatory information and methods requirements for all EA Certificate applications.</p> <p>For purposes of implementation, Blueberry will require the Assessment Plan and AIR to specify the assessment requirements tailored to each project.</p>
9	<p><i>VC-focused CEA</i></p> <p>Applicants in BC EA often take on a “project-contribution” approach to cumulative effects assessment (“CEA”) rather than a VC-focused approach. The result is that the total cumulative stresses are not meaningfully examined due to the failure to consider the total existing pressures on VCs (i.e., legacy effects, historical trends, existing habitat fragmentation, and historical events). To properly understand cumulative effects from past and present projects and activities, and to establish the current trajectories of specific VCs, it is critical to adopt a pre-industrial or similar baseline as a starting point for the assessment.</p>	<p>No. The DP does not address the need for specific changes in the methodologies applied by the EAO for impact assessment.</p> <p>However, the DP proposes a decision gate at the end of Process Planning that would provide First Nations with consensus decision-making authority over the Assessment Plan. Reference is also made to the establishment of “relationships and agreements with Indigenous nations in advance of EA project proposals to support decision making in regional and project EAs.”</p> <p>In addition, reference is made to the Province’s Cumulative Effects Framework</p>	<p>EAO must work with Blueberry (and other Nations) in the development of specific requirements related to project-specific and regional CEA, including VC-focused assessment, that will be applied as mandatory information requirements for all EA certificate applications. Further, during Process Planning, the specific application of appropriate CEA methodology should be incorporated into the Assessment Plan (i.e., as part of the AIR which is included as an Annex) or be enshrined in guidance/regulations.</p> <p>This includes a focus on total cumulative effects rather than Project’s contribution in every instance, and the need to use a pre-</p>

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		(CEF), as well as regional and strategic assessment, informed project-specific cumulative effects assessment. Unlike the “project contribution” CEA methodology currently allowed by the EAO in Project-specific EAs, the CEF applies a VC-centered approach.	industrial baseline rather than a current, damaged, baseline. It is also essential that the EA require that the Proponent <i>must</i> consider historic trends-over-time.
Theme 3: Rights impact assessment			
10	<p><i>Transparency of rights impact methodology</i></p> <p>Currently, there is no transparent methodology (if any) applied in the Crown’s determination of the potential severity of impacts on Blueberry rights and interests. Recent EAs have not adequately assessed Blueberry treaty rights and interests and as a result they have invariably been unacceptably infringed upon. The Crown’s reliance on bio-physical proxies and assessments that have been unilaterally conducted by Project proponents, fails to meaningfully or adequately assess impacts on Blueberry’s unique rights and interests.</p>	Not directly, but the DP suggests that future EA processes could normalize a collaborative Crown-First Nation approach to the assessment of impacts to rights. In addition, the proposed decision gate system could facilitate the adoption, as part of the Assessment Plan, of a transparent methodology for the assessment of impacts on rights. In addition, proposed arrangements/agreements could require the use of best practices for rights impact assessment agreeable to both levels of government.	A full assessment of Project-specific impacts on Blueberry interests that goes beyond a “biophysical proxy” argument and incorporates a full slate of factors that may impact on Blueberry members’ willingness and ability to meaningfully practice our treaty rights in Project-affected areas. The agreed upon methods behind such an assessment must be enshrined in regulation, EA agreement(s), or both and should allow Blueberry to conduct an independent assessment of potential impacts on <i>our</i> rights and interests based on appropriate information and community consultation.
Theme 4: Adequacy of funding, time and opportunity to engage			
11	<p><i>Inadequate timeline for review</i></p> <p>In Blueberry’s experience with BC EA there has been:</p>	Partially. Timelines (or ranges of time) have been proposed for each phase, however, lack of clarity exists on the flexibility of timelines to allow for additional time for projects with greater complexity, size or impact or to address outstanding concerns or information gaps.	Blueberry opposes rigid, standardized “one-size-fits-all” timelines for phases of the EA process. Timelines can serve as guidelines and objectives, but should not be overly-rigid and structured to “ride roughshod” over the

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	<ul style="list-style-type: none"> • Insufficient time to review documents, develop information requests/responses and prepare comments; • Insufficient time for internal community meeting with members who hold collective rights; and • Insufficient (or no) time to conduct studies critical to understanding project impacts on Blueberry rights and interests. 	<p>Significantly, the DP proposes that timelines (and other procedural elements of the EA) would be “clearly articulated in collaboratively developed Assessment Plans.” (p. 13) The Assessment Plan, in turn, as a key document produced by the Technical Working Group during the Process Planning phase, would be subject to a consensus decision gate.</p>	<p>substantial work of impact assessment which is necessary to inform Free, Prior and Informed Consent.</p> <p>Fundamentally, decision-gates should function to “stop the clock” if a Proponent has not provided adequate information or analysis to understand project-specific and cumulative effects or if outstanding concerns remain that could be resolved through collaboration or additional study.</p> <p>Blueberry seeks to have the “decision-gates” system specified in legislation (or regulation). There must be a decision-gate at the end of each phase where critical documentation (e.g., scoping, application, information requirements, assessment report, conditions, etc.) are finalized and approved.</p> <p>Alternatively, in lieu of legislated decision-gates at key EA decision points, a “Stop-Clock” mechanism must be provided for or negotiated through an EA-specific agreement that would enable Blueberry (and the EAO) to pause the EA to ensure sufficient time is afforded during each phase of the EA under certain circumstances.</p> <p>Blueberry strongly supports the EAAC’s proposal that timelines be collaboratively managed through a project-specific agreement (i.e., the Assessment Plan) between all members of the Technical Working Group.</p>

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12	<p>Inadequate Capacity Funding for EA participation and Nation-led studies</p>	<p>No. The DP has not directly addressed the significant gaps in the amounts and timing of capacity funding during provincial EAs. Indirectly, the DP refers to cost-recovery mechanisms and potential independent entities for the disbursement of capacity funding. In addition, EA-specific agreements are mentioned as potential mechanisms for addressing key procedural requirements across EAs.</p>	<p>An EA-specific agreement between Blueberry and the EAO is required to ensure that sufficient capacity funding is provided to ensure meaningful participation in all phases of the EA, as well as the funding of necessary studies specific to Blueberry rights, socio-economic conditions, culture and health.</p> <p>Blueberry supports a better approach to funding, managed by an independent entity as proposed by the EA Advisory Committee (R11), to ensure upfront funding is made available during Early Engagement and throughout the EA.</p> <p>Ideally, funding would be provided on an annual basis to ensure Blueberry has the ability to retain appropriate in-house capacity and engage in all phases of an EA (from project design to compliance and oversight). Further, funding must be scaled to enable meaningful participation in all assessment processes and decision-making. Where this does not occur, EAO must provide the funding shortfall or place the EA on hold until adequate funds are made available.</p> <p>Blueberry objects to a cost-recovery model as a lack of upfront certainty would require Blueberry to take on significant financial risk in incurring costs that may not be recouped, effectively excluding participation.</p>

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Theme 5: Over-reliance on secondary or approximate data (assessment by proxy and generic mitigations)			
13	<p><i>Use of non-project specific information as a proxy of project effects</i></p> <p>Blueberry has objected in the past of Proponent using an inadequate proxy metric of the results of other studies not specific to the Project location, particularly in relation to estimation of effects on traditional land and resource use. The inappropriate use of proxies ignores numerous cultural and social impacts (e.g. inability to transmit culture) which adversely affect treaty rights and the unique rights and interests that are not uniformly practiced across the territory that stand to be affected by each project.</p>	<p>No. The DP does not address the need for specific changes in the methodologies applied by the EAO for impact assessment. See comments above regarding importance of a decision-gate related to the Assessment Plan during the Process Planning phase.</p>	<p>Specific consultation is needed related to assessment approaches and methodologies. In general, Blueberry will be seeking a process where the scope and approach to assessment, as set out in the Assessment Plan and AIR, is subject to Blueberry consent or undertaken by Blueberry through an independent assessment lead by the Nation. In addition, the EAO should co-develop, with First Nations, new guidance for the assessment of impacts to rights and traditional land use.</p> <p>In instances where the community does not support the use of proxy data, Project-specific studies must be undertaken for understanding the specific and unique project effects.</p>
14	<p><i>Biophysical proxies</i></p> <p>The EAO conflates (and allows Proponents to conflate) impacts on biophysical valued components ("VC"), such as wildlife and wildlife habitat, with impacts on Blueberry treaty rights and the VC of traditional land and resource use. Given the multitude of factors that influence the willingness and ability of our members to travel on and harvest from our traditional lands, a proposed project can still affect the ability of our members to meaningfully exercise their hunting and trapping rights, even if the EAO has concluded that the project will not have significant adverse effects</p>	<p>No. See comment 12 above.</p>	<p>As noted above, specific discussions between the Province and Blueberry are required related to assessment approaches and methodologies, including the possibility of a Nation-specific independent assessment.</p> <p>In addition, the EAO should co-develop, with First Nations, new guidance for assessing impacts on rights based activities and culture, including a multi-criteria approach to any consideration of effects on rights-based TLU that rejects the "biophysical proxy" approach too frequently used in BC EAs. The EAO should adopt (and require Proponents to adopt, or excise the assessment of effects on TLU and rights from the hands of Proponents) a</p>

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	<p>on wildlife and these impacts may vary across different scales and parts of our territory.</p>		<p>methodology that considers cultural, social and economic factors related to the exercise of rights including preferred areas, preferred times, preferred means and preferred species (among multiple other factors that need to be integrated into any assessment of effects on Treaty rights). This cannot be adopted on a “case-by-case” basis; it must be recognized and affirmed by the Crown as the proper way to conduct effects assessment.</p>
<p>Theme 6: Appropriate use and integration of Traditional Knowledge and Traditional Land Use (TK/TLU) Studies into EAs</p>			
15	<p><i>Project-specific TK/TLU studies</i></p> <p>Blueberry’s experience with provincial EA has found several pervasive limitations in regards to TK/TLU studies that are conducted by Proponents:</p> <ul style="list-style-type: none"> • Failure to require project-specific TK/TLU studies and inappropriate substitution of dated and incidental TK/TLU data that was not taken or interpreted for the particular project, project area, or First Nation. • Failure to appropriately, if at all, incorporate project specific data into impacts assessment. • Lack of meaningful consultation and incorporation of TLU studies. Prevalence of informal, ad-hoc data-collection, e.g., reliance upon only 	<p>No. The DP suggests the option of Nation-led studies, but no measures are proposed to make this a standard approach that receives consistent funding across different EAs.</p>	<p>As a critical component of assessing impacts on rights-based activities, First Nation-led TK/TLU studies have become recognized by most EA practitioners as a compulsory requirement. However, their funding and timing (and even, utilization) is inconsistent across EAs and primarily subject to decision-making by the Proponent. Further, TK/TLU studies typically gather baseline information about rights that stand to be impacted by fail to assess impacts on those same rights. This is often because funding is not provided by proponents until <i>after</i> Applications have been filed with the EAO and the assessment is underway.</p> <p>For the revitalized EA system it is recommended that new legislation recognize Nation-led assessments (not just studies), and procedures set out in regulations for ensuring adequate funding and timing of same. Having this requirement set out in legislation and/or</p>

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	<p>incidental observations, inappropriately collected from Blueberry field assistants working on biophysical surveys.</p>		<p>regulation will create certainty and reduce unnecessary timelines delays.</p> <p>Additionally, as part of an EA-specific Agreement, Blueberry will require Blueberry-led TK/TLU studies, along with assessment of those impacts on TK/TLU to be fully funded and conducted early in the EA process (i.e., prior to finalization of the draft Application) by Blueberry to ensure that information is meaningfully incorporated into the EA process – either through an Nation-led independent assessment that empowers Blueberry to make our own assessment of how the project stands to affect our rights and interests (and appropriate conditions to avoid, mitigate, accommodate or compensate for those impacts) or through Proponent’s drafting of the Application and EAO’s development of project conditions.</p> <p>Additionally, the Assessment Plan for any EA will require Blueberry’s input into an appropriate methodology.</p>
<p>Theme 7: Tangible and intangible culture (including cultural heritage)</p>			

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16	<p><i>Intangible cultural heritage not considered or assessed</i></p> <p>Cultural heritage extends beyond archaeological sites and include, amongst other things, cultural landscapes, cultural keystone places and cultural transmission.</p>	<p>No. The DP does not address the need for specific changes in the methodologies applied by the EAO for impact assessment. See comments above regarding importance of a decision-gate related to the Assessment Plan during the Process Planning phase.</p>	<p>As noted above, specific discussions between the Province and Blueberry are required related to assessment approaches and methodologies.</p> <p>The assessment of cultural practices and transmission, including, ongoing practice, experience on the land, and trust in resources as potential key indicators, must be considered in EAs. Blueberry strongly supports legislative changes that require the assessment of culture as well as socio-economic factors. Indigenous Nations will need to be involved in developing practitioner guidelines for cultural impact assessment and empowered to undertake their own, independent, assessments of these impacts.</p>
17	<p><i>Lack of Blueberry involvement in the management and protection of Archeological Sites</i></p>	<p>No. The DP does not address the need for specific changes in the methodologies applied by the EAO for impact assessment. See comments above regarding importance of a decision-gate related to the Assessment Plan during the Process Planning phase.</p>	<p>See comments above regarding the need for further consultation and specific EA agreements.</p> <p>Blueberry requests the EAO standardize an Archeological Protocol to ensure Blueberry is (and other affected indigenous groups are) involved in the management and protection of archeological sites:</p> <ul style="list-style-type: none"> • Above and beyond the <i>Heritage Act</i> preservation • As full partners, with full access to finds • In a way that is consistent with the primary goal of avoidance of disturbance of our ancestors and cultural heritage, and when that can't be achieved it

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			<p>becomes 100% recovery of archaeological resources impacted</p> <p>Shared development of protocols for management, how sites are excavated, how artifacts are managed, and repatriation of our history into the hands of our Nation, are all essential.</p>
Theme 8: Socio-economic and health impact assessment			
18	<p><i>Effects on community health</i></p> <p>Blueberry has found the following limitations in community health assessments conducted during BC EAs:</p> <ul style="list-style-type: none"> • Failure to require adequate information with respect to First Nations communities' country food production and consumption rates and the effects of perceived risk on harvesting and consumption; • A focus on technical human health risk assessments that calculate contamination probabilities only and ignore traditional knowledge and risk perception effects; • Ignoring social determinants of health; and • Pooling of indigenous and non-indigenous sub-populations into the assessment, despite the much greater 	No. See comment 16 above.	<p>As noted above, specific discussions between the Province and Blueberry are required related to assessment approaches and methodologies and to ensure Blueberry is empowered to undertake its own, independent assessment of impacts on community health and wellbeing, including the development of Blueberry specific avoidance measures or other project conditions.</p> <p>In addition, Blueberry will need to be heavily involved in developing and approving practitioner guidelines for the assessment of indigenous community health. Human and ecological health data must be utilized to create sufficient baseline data and to determine potential effects, and mitigation measures, the Project. Furthermore, indigenous community-specific indicators (including social and cultural indicators) must be utilized in order to be suitable for evaluating the overall health of indigenous communities</p>

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	<p>risks facing and demonstrated impacts on indigenous peoples.</p> <p>The impacts on industrial development on our community's health are severe – as documented in various socio-economic studies submitted to the EA in various EAs over the past several years, and as acutely reported in Amnesty International's report Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast BC which documents how Blueberry, and other Nations in the northeast, bear a greater burden of the adverse effects of industrialization, including disproportionately high rates of violence against our women and girls.</p>		
19	<p><i>Effects on traditional land-based economies</i></p> <p>Blueberry has found the following limitations BC EA assessments of effects on community economic conditions:</p> <ul style="list-style-type: none"> • Failure to fully account for a project's effects on existing economies, including traditional economies. • Failure to require proponents to undertake a detailed economic analysis of project impacts on the ability of local economies to diversify, for example by undermining traditional economies that rely on vibrant eco-systems. • The focus of Proponent's emphasizes the economic benefits of the proposed Project on a provincial and national 	No. See comment 16 above.	<p>As noted above, specific discussions between the Province and Blueberry are required related to assessment approaches and methodologies and to ensure Blueberry is empowered to undertake its own, independent, assessment of impacts on community health and wellbeing, including the development of Blueberry specific avoidance measures or other project conditions.</p> <p>Indigenous Nations will need to be heavily involved in developing and approving practitioner guidelines for the assessment of indigenous land-based economies.</p> <p>EAO should require proponents to work collaboratively with First Nations to undertake Nation-specific SEIAs that consider the impact of the project on the sustainability of</p>

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	<p>scale, to the neglect of local community economies.</p>		<p>local, small-scale economies, including potential adverse effects (e.g., opportunity costs) of a project on the economic well-being of Blueberry members.</p>
20	<p><i>Distribution of benefits and costs</i></p> <p>Failure to require assessments to consider the disproportionate distribution of Project benefits and burdens between First Nations and non-First Nations communities.</p>	<p>No. See comment 16 above.</p>	<p>As noted above, specific discussions between the Province and Blueberry are required related to assessment approaches and methodologies.</p> <p>For the revitalized EA system it is recommended that new legislation recognize the importance of Nation-led assessments, and procedures set out in regulations for ensuring adequate funding and timing of studies. Having this requirement set out in legislation and/or regulation will create certainty and reduce unnecessary timelines delays that would come with cases of non-compliance by proponents.</p> <p>Nation-specific, Nation-led socio-economic impact assessments (with corresponding mitigation and follow-up requirements) are required that take into consideration the relative disparities between First Nations and non-First Nations in opportunities to benefit from a project and adverse impacts that are experienced.</p>