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Submitted via online comments

BC Environmental Assessment Office
836 Yates St
Victoria, BC V8W 1L8

**RE: COMMENTS ON ENVIRONMENTAL ASSESSMENT REVITALIZATION –
           DISCUSSION PAPER**

We are impact assessment practitioners and have conducted environmental assessments (EAs) and advised many different parties involved in EA, including First Nations, industry, public stakeholders, institutional intervenors, and the EAO. We approach this opportunity to "revitalize" the *BC Environmental Assessment Act* (BCEAA), as practitioners interested in making EA a better tool for decision making in BC for all parties involved.

1.0   GENERAL THOUGHTS

1.1   Focus on EA Scoping ("Process Planning") and Public Confidence

a. We support the proposed increased attention to an agreed-upon scope and process for each EA, including consensus-based decision-making with Indigenous nations. The scoping stage is a critical and important part of a trustworthy EA regime. Investment early in the process benefits all participants. Providing the time and capacity for participants to meaningfully engage in this early stage is essential to a successful EA that minimizes opportunity for conflict later in the assessment. The context and rationale for the early scoping in the introductory sections of the discussion paper are sound.

b. A key practice in gaining and maintaining public confidence is to ensure that the resolution of each issue (i.e., potential effect) and related decisions are clearly understood. The public should be disabused of the myth that EA is a deterministic practice, wherein, if done right, all assessor would arrive at the same conclusions. At the same time, each conclusion must be supported with a logical explanation that clearly identifies the information on which it relies (whether scientific, professional experience, precedents, etc.) as well as the uncertainties and underlying assumptions. This seems an obvious component of an EA regime but, in our experience, is rarely implemented consistently in current EAs. This revitalization can make progress to solidify the expectations of the use of the principles of organized reasoning in EA. We encourage EAO to consider how to use legislation to reinforce this practice.

1.2   Resourcing for a New Regime

a. There is a frequent theme of including more of everything good – more engagement, more plain language materials, more regional offices, more use of supporting information. It will be important that EAO or some partner agency be resourced to develop and implement this new direction. Strong legislated EA requirements will need to be partnered with necessary budget allocation to facilitate a trustworthy transition to an updated regime.

b. Public confidence in EA will depend on their trust in the capacity of the people involved in the EA on all sides of the table. For EAO, this should include staff training and access to external

resources for the proposed deeper engagement with public, indigenous groups, local government, and stakeholders. The quality of EA will partly depend on the effectiveness of the EA facilitators, communicators, mediators and negotiators.

c. Consider a research arm of EAO to support the cumulative effects assessment in meta-analysis and coordinated effects monitoring programs.

d. Ensure all First Nations involved in EA have access to capacity funding and resources required to participate as deeply as they wish, and according to the timelines proposed by the legislated changes. At a regulation or policy level, maintain forward focus that allows First Nations with less-developed administrative capacity to evolve their practice without being dominated by those with more turn-key readiness for the revitalization.

1.3   Managing Expectations and Earnest Consultation

a. As practitioners wanting to see this "revitalization" done well, we are concerned that these legislative changes are being done too quickly which risks not achieving the objectives. The discussion paper is too vague in places – even for a discussion paper. This risks undermining the intent of public confidence if those who wish to engage do not feel they were given enough content to consider. The future Intentions Paper should take the necessary time to provide details such as:

- There are assertions of improved certainty on project timelines, assessment triggers, and decision criteria. It would be beneficial and transparent for public confidence if EAO would explain *how* improved certainty will be achieved (e.g. that recognition of indigenous rights, title, and jurisdiction will increase process certainty and result in resilient outcomes for all; per p. 4, 2nd paragraph).

- The paper refers to "legislated decision criteria" in a few places but it is unclear what the scope of these would be. We support the idea of decision criteria but assume these would necessarily be generic enough to apply to many different types of project EAs. Consider different sets of criteria that apply to different types of EAs/projects. Clear criteria would help project proponents to understand the EA goals and assess if they can meet them. Other EA participants would benefit too. However, we do not want to see decision criteria become constraining to good EA practice. We as a society must recognize that each EA will be different and will need to balance different values. An overarching principle for decision criteria should be the use of clear logical and organized reasoning for conclusions. Surprisingly this is missing in many EAs. Defining these criteria is important enough to warrant further focused outreach and consultation.

- Explain the expectations with adopting UNDRIP into EA, as many people and groups will not understand the implications of what is being proposed here.

- Creating a time-bound alternative dispute resolution (ADR) process will be a cornerstone of this legislative change. The paper does enough to introduce this as a concept that sounds promising, but not enough detail to offer informed opinion on what EAO may be thinking, nor if this could be workable in legislation. We support this idea of having consensus on (a) readiness gate on whether to proceed to assessment; (b) end of process planning; (c) completeness check before entering the effects assessment review; and (d) on recommendations on whether to issue an EA Certificate. An ADR process would need to be amenable to each of these steps and associated timelines. We suggest that this warrants further focused outreach and consultation. We feel it is far more important to get this aspect of revitalization right, than it is to get it quickly.

- Revision of the *Reviewable Projects Regulation* deserves a dedicated outreach and consultation process. The public deserve to get some insight into the breadth of what EAO is considering in order to make specific comments.

b. Regarding the application the precautionary principle (p. 11), we suggest providing an applied definition of the precautionary principle in a new Act, because people often misuse it. It should clarify that the use of the precautionary principle does not imply inaction unless there is 100% predictability. Rather, focus on four central components: take preventive action in the face of uncertainty; shift the burden of proof to the proponents of an activity; explore a wide range of alternatives to possibly harmful actions; and increase public participation in decision making.

2.0   COMMENTS ON UPDATED PROCESS (P. 14 – 24)

2.1   What Projects Get Assessed? (p. 14)

a. "*Ensuring that all projects with potential to result in adverse effects are assessed*" could imply that every activity is assessed under BCEAA which is unlikely to be EAO's intention and seems misleading to the public without further detail of what is plausible. Specifically, this definition would need to address how the forestry industry would be reviewable under the Act, which is an "elephant in the room" that the public is likely interested in having addressed regardless.

b. The current production-based thresholds in *Reviewable Projects Regulation* seem arbitrary and could use supporting rationales, however they may get adjusted. We suggest considering legislation that enables wider consideration of projects that may currently undergo other permitting processes, with the intention that the EA process is better equipped to address issues (arguably, other permitting processes can be more cumbersome, inconsistent and lack the mechanisms to engage participants that need to be engaged to resolve issues).   An adaptable and scalable EA process could ensure appropriate rigour that is commensurate with the project's potential effects, considering the context. For example, a project should trigger an EA if it is located in an area with high concern to cumulative effects on certain VCs, whereas that same project may revert to a narrower permitting review if located in an area with low concern on cumulative effects. The *Reviewable Projects Regulation* thereby becomes spatial and flexible.

c. Further on spatially-based EA triggers, consider detailing how regional strategic assessments may link outcomes to a region-specific EA process. It may provide incentive for industry, all levels of governments and stakeholders to collaborate on regional plans by dictating the requirements for project EAs in their regions.

d. Consider defining how an EA is deferred to (substituted) or co-managed (harmonized) with another regulatory process (such as First Nations, federal or local government process as applicable).

2.2   Building Blocks (p. 16)

a. We strongly support the building blocks that are listed.

b. We suggest adding to this list a coordinated meta-analysis of regional environmental data to advance possibilities of cumulative effects management. The bullet on page 16 to advance the nascent Cumulative Effects Framework is positive but this revitalization efforts brings larger opportunities. A project can maximize its contributions to the body of knowledge in a region by developing operational monitoring that is useful at a meta-analysis level, and regionally

coordinated. Meta-analysis is most useful when multiple independent studies have comparable or at least coordinated efforts.

c.   We support the emphasis on improving the relationship between EA and permitting. This is a common stumbling block that creates mistrust and confusion. A new Act could specify the generic criteria for an issue to be deferable to a permitting process for issue resolution. It should strive to prevent the common scenario where substantive EA issues are deferred to a permitting process that is poorly equipped to resolve them.

2.3   Early Engagement (p. 17)

a.   The thrust here evidently is to draw out the key issues earlier in a process. In the "initial project description", EAO should facilitate the communication of objective information on the industry and project location that provides a factual basis for informed public commentary.

b.   We support timelines to this stage, and that they would be flexible based on the project details.

c.   EAO suggests that impact pathways on specific indigenous rights are starting to be identified. (e.g. "Indigenous nations identify if they have rights or title that could be impacted by a project proposal"). EAO should recognize that even to answer this question and formulate early impact pathways, a reconnaissance-level traditional use study (TUS) may be required, which would be a step forward in how TUS is gathered and used in EA. In our experience, there are often unrealistic expectations about the spatial land-use or oral history information that is readily available to First Nation offices.

d.   In response to the question "what features are needed to support an early understanding of project issues and opportunities?": In general: time and money and patience. Each of these is, however, an investment paid early in the process that reaps benefit at the end. We support EAO's efforts to grow these investments.

2.4   Readiness Gate (p. 18)

a.   We support this new step and that it has a consensus objective. This is an important step to prepare projects to be sufficiently advanced to move into the EA (and avoid conflict at the outset).

b.   We support that this offers a deep consideration at whether any given project should be exempt from EA and go to permitting, and thereby should require a clear and fair rationale for either decision.

c.   We support that "EAO […] identifies the key issues that require resolution during the assessment, which is posted publicly" and requires emphasis in new legislation or regulation. These should be stated in testable hypotheses, even if articulated in general language, and will form the basis for the EA study scoping that will ensue.

2.5   Process Planning (p. 19)

a.   The Assessment Plan is a positive evolution of the VC and dAIR process. A 6-month term to generate it is hopefully reasonable with the new emphasis on early engagement and the readiness gate. Emphasis on collaborative scoping will benefit the rest of the EA.

b.   We support the flexibility here and suggest that the new legislation lay out in a descriptive list the sorts of things that MAY be required in a Plan. The list in the second column of page 19 is good.

c. Proponents must be made aware that EA studies must be flexible throughout this term and that they take on high risk by jumping ahead with detailed baseline studies before the Assessment Plan is approved.

d. The Assessment Plan should clarify the scope of issues that the EA will resolve and which issues may be deferred to a permitting process. The Assessment Plan should also specify linkages between Intermediate Components and Valued Components (VCs). If a discipline is being used as an Intermediate Component to one or multiple end-point VCs, it must be shown at the planning stage how the data are relatable. A recent example to avoid is using wolverine habitat data conclusions from several thousand square kilometers to draw conclusions about fur-bearer harvest at a site-specific level.

2.6   Special Roles in EA (p. 20)

a. We support the option of a technical working group that may be used in a more advisory role, but as a platform that could be leveraged by - rather than separate and possibly redundant to - the main working group. A formal Technical Advisory Group could be a sub-group of the Working Group, organized as a small number of technical sub-leads based on project-specific VCs, responsible for consulting with members of the Working Group and condensing information. To ensure they have enough time for the job, they could be appointed independent representatives, with cost recovery from proponent in legislation. If government staff are appointed, adequate resourcing must be ensured.

2.7   Application Development & Review (p. 21)

a. In general, we support the iterative creation of an Application with a draft Application stage but with some flexibility:

- The timelines could be at the discretion of the Working Group (which would reward the submission of good EAs with quicker turnaround).

- It may not be necessary or helpful to have a formal review and approval stage of the baseline reports before the proponent is permitted to submit effects assessment chapters, assuming the Assessment Plan is specific enough.

- Consider re-focusing the review/approval to stagger the EA review to ensure that issues are addressed for indicators / sub-components before they are used as inputs into dependent VCs. Currently, EAs can get caught reviewing a house of cards from the top down only to find the foundational data are incongruent with the end point conclusions.

2.8   Effects Assessment and Recommendation (p. 22)

a. As mentioned above, an important initiative in EA improvement is to remove the frequent use of "black box" methods to assess effects whereby technical jargon and incomplete rationales are used to explain a conclusion. Organized reasoning should be a term familiar to all EA practitioners. As it is, the typical approach erodes public confidence and the ability of First Nations and others to participate meaningfully in the EA. Move to strengthen the transparency of the arguments used to assess effects by ensuring that conclusions are supported by clear, logical explanations of what is known, unknown and assumed. Consider formally adopting the principles of organized reasoning.

2.9   Decision (p. 23)

a. The key question posed in this page is "what factors/criteria should be applied in the decision to issue a certificate"?

- This is the crux of an EA as a planning tool. The discussion paper is vague about what is meant by "legislated decision criteria". As per above, we recommend additional consultation on this topic.

- Decisions ultimately are about balancing costs (impacts) against benefits. The weighting of these things is driven by values. Decision criteria should define what are tolerable impacts that could be approved if offset by sufficient benefits, versus intolerable impacts that cannot be approved regardless of benefits.

- Emphasize risk-based decision making, with tolerable risk defined with input from those who bear the risk.

2.10 Post Certificate (p. 24)

a. As per above, there is a huge opportunity to improve our cumulative effects management by investing in a research arm dedicated to integrating metadata from follow up monitoring programs. Over time, monitoring methods can be consolidated and standardized which makes the metadata analyses even more powerful and useful in project EAs.

b. Consider new regulation to enable the infrastructure for post-certificate monitoring data warehousing, and a legislated requirement for the province to issue yearly research reports using the metadata.

CLOSING

If you have any questions or require clarification, please contact Matt Hammond or Tyler Gray at 250-940-0769. We would be pleased to further explore the potential of this revitalization.

Per:

Matt Hammond, R.P.Bio   Tyler Gray, R.P.Bio.