



# Halfway River First Nation

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Nathan Braun, Executive Project Director  
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Via email: [Nathan.braun@gov.bc.ca](mailto:Nathan.braun@gov.bc.ca)

**Reference: BC Environmental Assessment Revitalization-HRFN Comments**

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Dear Mr. Braun:

The Halfway River First Nation is pleased to offer our thoughts and experiences gained through many years of being actively engaged in the current Environmental Assessment regulatory process. We have outlined some of our concerns with the current system and provided procedural recommendations that we feel will improve the process of reviewing and approving projects in BC, and that will better equip First Nations communities to participate in, and lead, the Environmental Assessment process. Given the immense development pressure we face near our community and throughout our traditional territory, we trust that the Environmental Assessment Advisory Committee will accept all comments and recommendations and will follow through with the preparation of an Intentions Paper by fall of 2018.

The current government has recently committed to reviewing and modernizing the Environmental Assessment process. Our concerns and recommendations are provided to assist the Environmental Assessment Advisory Committee, as part of their Engagement Phase and in association with the First Nations Leadership Council, in modernizing the provincial Environmental Assessment process and to help achieve the three stated objectives:

1. Enhance public confidence, transparency and meaningful participation;
2. Advance reconciliation with First Nations; and
3. Protect the environment while supporting sustainable economic development.

Given our geographic setting in BC, and the decades of intense industrial development activity within our traditional territory, we are very familiar with the provincial Environmental Assessment process. We have participated in, reviewed, and consulted on:

- Governance / Leadership (i.e., G2G);
- Technical working group and advisory committees;
- Community workshops and presentations;
- Development of application information requirements (AIR);
- Technical baseline studies;
- Reports and appendices for Environmental Assessment Certificates applications;

- Environmental Assessment Certificates and Permit Conditions;
- Management, Mitigation and Monitoring Plans;
- Closure and Reclamation Plans;
- Environmental Assessment Certificates exemption applications;
- Permits and related application requests (e.g. for tenure or licenses; site investigations, construction); and
- Ongoing consultation and engagement with proponents and Ministry regulators (MFLNRO&RD, BC OGC, BC EAO, BC MOE, DFO).

It is obvious from the abundance and diversity of recent reports and documentation on the shortcomings of the provincial environmental assessment processes, that there is immediate need for change in how development projects are screened, assessed, certified, constructed and monitored in British Columbia. Many of the authors and contributors within the documents present themes that are common to our experiences as we continue to navigate the provincial environmental assessment process.

In preparation for this response letter, a number of recent documents and websites pertaining to environmental assessment were referenced in order to better understand the context of the existing legislative framework. A myriad of available references relating to proposed environmental assessment reform, including requirements and commitments to address First Nations rights, were also reviewed. Some key documents and sources are outlined below.

- Environmental Assessment Act (accessed at: [http://www.bclaws.ca/civix/document/id/consol17/consol17/00\\_02043\\_01](http://www.bclaws.ca/civix/document/id/consol17/consol17/00_02043_01))
- Environmental Assessment Act - Reviewable Projects Regulation (accessed at: [http://www.bclaws.ca/Recon/document/ID/freeside/13\\_370\\_2002#section3](http://www.bclaws.ca/Recon/document/ID/freeside/13_370_2002#section3))
- BC EA Revitalization Site Homepage (access at: <http://www.eao.gov.bc.ca/revitalization/>)
- United Nations Declaration on the Rights of Indigenous Peoples (Accessed at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf))
- British Columbia – First Nations (2015) Proposed Commitment Document (accessed at [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/bc\\_-\\_fn\\_commitment\\_document\\_oct\\_1\\_2015.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/bc_-_fn_commitment_document_oct_1_2015.pdf))
- West Coast Environmental Law (2016) Federal Environmental Assessment Reform Summit Proceedings (accessed at: [https://www.wcel.org/sites/default/files/publications/WCEL\\_FedEnviroAssess\\_proceedings\\_fnl.pdf](https://www.wcel.org/sites/default/files/publications/WCEL_FedEnviroAssess_proceedings_fnl.pdf))
- First Nations Summit (2015) Proposed Commitment Document (accessed at [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/bc\\_-\\_fn\\_commitment\\_document\\_oct\\_1\\_2015.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/bc_-_fn_commitment_document_oct_1_2015.pdf))
- West Coast Environmental Law. (2018) Why it's time to Reform Environmental Assessment in British Columbia (accessed at <https://www.wcel.org/sites/default/files/publications/2018-01-bc-eareform-background-er-web-final.pdf>)
- Arnold, L. and Hanna, K. (2017) Best Practices in Environmental Assessment: Cases Studies and Application to Mining. Canadian International Resources and Development Institute (CIRDI) Report 2017-003

- Expert Panel for the Review of Environmental Assessment Processes. (2017) Building Common Ground - A new Vision for Environmental Assessment in Canada.
- Corfield and Associates Consulting Services. (2015) Understanding the Environmental Assessment Process for Energy and Mining Projects: A Toolkit for First Nations Communities.
- Lee, P and M. Hanneman. (2012) Atlas of land cover, industrial land uses and industrial-caused land change in the Peace Region of British Columbia. Global Forest Watch Canada Report #4 International Year of Sustainable Energy for All.

### **Core Concerns:**

Our core concerns with the current BC Environmental Assessment process are:

- Reviewable Projects scope, thresholds, and exemptions are too broadly defined;
- Methodology for assessment of cultural, social and environmental effects are weak;
- Lack of cumulative effects framework;
- Lack of independence in what is presently a ‘Proponent-led’ process;
- Lack of resources for First Nations and the public to effectively contribute and engage; and
- Lack of a precautionary approach.

We present a summary of each core concern, as well as our recommendations for improvement, below.

### **Reviewable Projects – scope, thresholds, and exemptions are too broadly defined:**

Currently, to qualify as a Reviewable Project under the *Environmental Assessment Act*, a proposed project, or a modification of an existing project must exceed the stated thresholds as identified in the following sections of the Reviewable Projects Regulations:

- Part 2 – Industrial Projects
- Part 3 – Mine Projects
- Part 4 – Energy Projects
- Part 5 – Water Management Projects
- Part 6 – Waste Disposal Projects
- Part 7 – Food Processing Projects
- Part 8 – Transportation Projects
- Part 9 – Tourist Destination Resort Projects

We believe the minimum thresholds that would trigger an Environmental Assessment, as outlined in the current Reviewable Projects Regulations, are too broadly defined. As a result, a lot of development is occurring without triggering a formal Environmental Assessment process. It is notable that the forestry (with exception of forest products manufacturing facilities) and agriculture industries are largely exempt from the provincial Environmental Assessment process, despite large changes to vegetation structure and composition across extremely large areas.

In light of the continued incremental effect of many projects within our traditional territory, we recommend that the thresholds be reassessed with the objective of increasing the scope and number of development projects that qualify as a Reviewable Project. We also recommend that the forestry and agricultural industries should no longer be exempt from the Environmental Assessment process. In addition to the project criteria under the Regulations, we believe that First Nations should play a role with the Environmental Assessment Office in the determination of whether a project is subject to an Environmental Assessment.

### **Assessment methodology is weak:**

Many areas within the technical assessment methodology framework can benefit from improvements to the current environmental assessment process.

- **Valued Component selection:** We are either not included or not given enough time to adequately participate in the selection of Valued Components. We find that the current Environmental Assessment approach allows Project Proponents to advise us about the Valued Components that have already been selected. In some cases, the communication from Project Proponents on the selection of Valued Components comes after the initiation of baseline data collection.

We recommend that we are actively and meaningfully engaged in the selection of Valued Components. This includes increased communication from Project Proponents ahead of Valued Components selection, meaningful inclusion during Valued Components selection, and ability, including Project Proponent funding, to actively and fully participate in baseline data collection.

- **Baseline field inventories and assessments:** We are either not included or not given enough time to adequately participate in baseline field inventories and assessments. During the completion of seasonal field programs, we often hear from Project Proponents that “we’d like to have you help on the studies but helicopter space is limited” or that “we’ll only be in your territory for one or two days”. We therefore lack the ability to actively participate and engage with environmental assessments taking place on our lands.

We recommend that we are actively and meaningfully engaged in baseline field inventories and assessments that take place on our lands. This includes communication from Project Proponents ahead of scheduled activities, meaningful inclusion during selection of sampling intensity and spatial extent of inventories and assessments, and the ability, including Project Proponent funding, to incorporate increased participate in inventories and assessments.

- **Study boundaries:** During development of effects assessments, project assessment boundaries (local and regional study or assessment areas) are inconsistently or arbitrarily developed; for example differing assessment buffers for ecosystem / vegetation valued components between projects that each assess a common valued component. .. We understand that Valued Components typically require differing assessment boundaries but feel too often that boundaries may be “conveniently” developed by Project Proponents to result in a pre-determined quantification of “no” or “low” magnitude residual effects. For example, effects within a 200-m assessment boundary will be less pronounced within a 250-m or 500-m boundary.

We recommend that the Environmental Assessment process base the establishment of study boundaries on the following: natural landscapes, watersheds, ecosystems, and seasonal movements of animals. Development of best management practices or valued component-specific guidelines for

spatial analysis would be helpful. We also recommend that we are actively and meaningfully engaged in the selection of study boundaries (i.e., within the preliminary, draft AIR phase).

- **Effects Assessment:** A common observation and key concern of many reviewers pertains to the assessment of effects and the determination of the magnitude, duration, and geographic extent of potential and residual effects. In many cases, potential residual effects are assumed to be fully mitigated through application of the recommended mitigation measures and, therefore, are not carried forth into a subsequent assessment of cumulative effects (described further below). When residual effects are scoped in, the breadth of assessment of cumulative effects can vary widely, from mere passing mention in a qualitative sentence or paragraph, to a thorough, well-researched and quantified analysis. For some projects, the residual effects are estimated to be significant prior to development, including effects to threatened caribou herds, and yet the project gets approved, with some form of compensation or offset measures applied to enhance or improve management efforts in another geographic area.

HRFN recognizes a single methodology is neither practical nor possible given the huge diversity in project types and nature of potential effects. However, some fundamental changes to selection of assessment parameters and approaches to reporting (i.e., reporting on effects at a local watershed level, or at the level of wildlife population units etc.) will benefit the process and help instill confidence that the protection of the environment remains a core pillar of the process.

Implementing standards for assessment of cumulative effects will help to reduce the diversity and discrepancy between projects.

In general, HRFN recommends that traditional ecological knowledge (TEK) be given more weight and consideration as a valuable assessment component in the effects assessment process.

#### **Lack of cumulative effects framework:**

Our traditional territory has been subject to an extensive level of industrial development over the past fifty years, with rapidly escalating negative changes in the environment and decreases in the abundance of wildlife and other natural resources. This is a matter of major concern to our people.

A spatial analysis of cumulative impacts, conducted by Lee and Hanneman (2012) in an area overlapping much of our traditional territory, assessed the extent of oil and gas development, coal and mineral development, forestry development, Crown land tenures and applications associated with agriculture, grazing, and utilities (including wind power). As of the analysis date, there were thousands of active well sites, coal and mineral tenures, and forestry cutblocks. There were thousands of kilometres of seismic lines and tens of thousands of kilometres of forest access roads. In addition to several major proposed oil and gas pipeline projects, there were hundreds of wind power tenures or tenure applications, large scale mining operations, and two large hydroelectric projects (W.A.C. Bennett and Peace Canyon dams). The additional effects from the recently approved BC Hydro Site C Clean Energy Project and related transmission networks are further eroding our values and diminishing our natural resources.

We are also suffering from the incidental, indirect impacts of development, such as the creation of access roads and the corresponding use of these road and trail networks by non-native hunters and recreational land users. This has resulted in increased competition for resources and cultural spaces.

Over the last decade, we have been inundated with development applications and related referral requests from oil and gas development, hydroelectric projects, mining, forestry, among others. In the face of this barrage, hundreds of thousands of individual permits and approvals have been granted, with minimal 'big picture' analysis of cumulative effect on our values.

We believe it is unlikely a Project Proponent will ever quantify the incremental effect of their project and assess it as *the* contributor that pushes a cumulative assessment across a threshold that could threaten their project's financial viability. Slight revisions to an assessment boundary or any host of other revisions to methodology can ensure the result can be conveniently described as 'negligible', 'minor', and 'not significant'.

Without a cumulative effects framework that is led by the provincial government and followed by all stakeholders, cumulative effects will continue to erode our values and diminish our natural resources.

We recommend that the BC Environmental Assessment Office:

- Decouple the assessment of cumulative effects from the Proponent-led effects assessment process;
- Consult with First Nations to understand and address their cumulative effects concerns;
- Work with First Nations, industry stakeholders and other regulatory partners to develop a cumulative effects assessment / mitigation framework. This framework must be led by the provincial government and followed by all stakeholders.

For example, in the forestry and landscape management and planning sectors, the selection of natural management boundaries - such as watersheds or forestry landscape units (i.e. used in land and resource management plans, or sustainable resource management plans) - are the basis within which a range of social, environmental, and economic values and thresholds are defined and assessed. Landscape and land use planning is subsequently conducted with an understanding of where and how much industry can impact the land.

- Develop and publish annual or biennial reports on the status of effects. Reporting on the incremental effects and analysis of the current state of thresholds will add clarity and transparency in the process and ensure that the status of development and areas of concern in terms of thresholds are well communicated.

#### **Lack of Independence:**

We believe that the current management framework, whereby the Project Proponent hires a firm to conduct an Environmental Assessment on their behalf, is inherently flawed. We question the ability of any firm hired by the Project Proponent to act in a truly independent manner. Further, at present the vast majority of assessments are conducted by a select few large environmental and engineering consulting firms. In some cases, these firms are based out of province with junior staff often conducting many of the critically important and foundational environmental and cultural field surveys.

We recommend that the Environmental Assessment Office should procure truly independent third-party firms with proven relevant, expert, and local knowledge to conduct environmental assessments.

We recommend that funding mechanisms be re-assessed in light of such a procedural change, as currently the proponent pays for the completion of the assessment, not the Environmental Assessment Office or appropriate regulatory agency.

#### **Lack of Resources:**

We face an increasingly overwhelming task of compiling and managing the large volume of applications for Environmental Assessment certificates, permits and other referrals. Larger projects may have benefit agreements or other financial structures in place to enable thorough review and consultation, but many other referrals and smaller projects are reviewed 'off the side of the desk', by our staff that often have many projects to track. Each of these projects has unique aspects with differing potential to affect a variety of social, cultural

and environmental values. We are concerned that smaller referrals too often go without review. Based on recent experiences with the Environmental Assessment Office, we believe that the current funding and resources allocated to the Environmental Assessment Office is critically inadequate, and has created a situation whereby the Environmental Assessment Office is unable to give sufficient reading, or to provide sufficient technical expertise at the review and approval level.

We recommend a mandatory requirement for Project Proponents to allocate to First Nations the capital resources in the early phases of a project in order to enable a meaningful assessment within the timelines required to provide meaningful review and comment.

In the technical realm, we feel that First Nations should be considered a key player in the completion and delivery of environmental effects assessments.

We feel there are many opportunities within the existing Environmental Assessment framework to provide First Nations with the responsibility and capacity to undertake key sections of the Environmental Assessment application, if not the entire assessment.

We also recommend that the current structure of the Environmental Assessment Office be assessed to ensure the reviewing agency and staff possess the proper technical skills and resources / capacity to authorize and approve projects.

#### **Lack of Precautionary Approach:**

While the precautionary principle has been incorporated into a variety of Canadian and provincial legislation, it continues to be so inadequately defined that there lacks a sufficient standard for enforceability and continues to create confusion.

For example, in the federal Species at Risk Act, there's a provision: "...if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty." Similarly, the Canadian Environmental Protection Act states that the Government shall apply the precautionary principle when exercising its powers and when interpreting certain assessments, results, and decisions. Very rarely, however, is the principle itself defined well enough to give it any level of enforceability.

The federal Canada Environmental Assessment Act (CEAA) states that a purpose of the Act is to 'ensure that projects are considered in a "careful and precautionary manner" before federal authorities take action, in order to ensure that projects do not cause significant adverse environmental effects.' However, without a strict definition, there remains too much uncertainty about the interpretation and application of the term 'precautionary', which decreases its effectiveness.

The current iteration of the BC Environmental Assessment Act does not explicitly mention the precautionary principle by name. Only through the inclusion of an explicit definition of the precautionary principle, with binding expectations on how and when the principle is to be applied, will the term carry sufficient legal weight. We recommend that any new iteration of the BC Environmental Assessment process include a strict definition of the 'precautionary principle', which should outline who must use it, when it must be used, and how it should be applied to projects.

The Halfway River First Nation trusts that the Environmental Assessment Advisory Committee will address our concerns and recommendations, and those of other BC First Nations, to collectively develop a more responsible, meaningful, and inclusive Environmental Assessment process.

We look forward to continuing dialogue and working together.

Sincerely,

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Chief Darlene Hunter  
Halfway River First Nation