

Indigenous Participation in Environmental Assessment

Involvement in the process:

1. Before a Project is proposed

- Consider how my nation's laws, rights, needs and interests including decision-making could be integrated and reflected in an environmental assessment (EA) process
- Consider whether a government-to-government agreement with the Province will be helpful regarding how the EA will be conducted (some funding available to support the negotiation of an agreement)
- Identify capacity needs for the conduct of an EA in my nation's territory
- Consider what information would be helpful to my nation to have ready for when a project is proposed in my nation's territory to identify key issues/ red flags regarding a proposal, e.g. development of a territory-wide land use plan

3. EA Readiness Decision

- Engage my community as needed to inform my nation's recommendation and decision making
- Work with the EAO and seek consensus at the technical level on a recommendation on whether the project is ready to proceed to an EA
- Decide on the appropriate path for the proposed project and communicate consent or lack of consent to path proposed by the EAO

Once Project is Proposed:

2. Early Engagement

- Proponent may be the first party to contact my nation about a proposed project
 - Communicate key issues and interests regarding the project proposal
 - Identify what type of community engagement with my nation would be appropriate for the proposal
- Receive funding from the EAO to review the Initial Project Description
- Review the Initial Project Description, and identify key issues, concerns and interests regarding the project proposal
- Engage with my community to solicit input on my nation's issues and interests regarding a project proposal
- Meet with the EAO to discuss the proposed project, the EA process and my nation's issues and interests
- Consider and identify to the EAO how my nation wants to be engaged in the EA: work with the EAO as a participating Indigenous nation; conduct the assessment of impacts to my nation's rights; or conduct the entire assessment
- Consider my nation's issues and interests and what would be the appropriate path for the proposed project (i.e. proceed to EA, proceed directly to permitting, not proceed as proposed, or address key issues in a revised Initial Project Description)

Obtaining free, prior and informed consent is an integral aspect of the United Nations Declaration on the Rights of Indigenous Peoples. The new EA process is designed to ensure that any decision taken on the question of consent by an Indigenous nation is free, prior and informed. Respectful of their own Indigenous laws, traditions and right of self-determination, a key objective of the new EA process is to create the opportunity for Indigenous nations to make a decision on consent. It is an objective that proponents, the Province and Indigenous nations should be working to achieve. The new EA process facilitates that objective throughout the process.

The EAO will work together and seek consensus with Indigenous nations at a technical level throughout the entirety of the EA process, and there will also be key decision points where Indigenous nations may express their consent, lack of consent or abstain from deciding on behalf of their communities. It is hoped that in the majority of cases - by working together - it will be possible to reach consensus on major issues so that the decisions of Indigenous nations and the Ministers align. Dispute resolution may also assist in this process. Where decisions do not align, Ministers will be legally required to provide reasons.

If a Project Enters EA:

4. Process Planning

- Identify if my nation's interests can be best addressed in a consensus seeking process with the EAO, an Indigenous led EA, or an independent panel
- Seek consensus with the EAO on the Process Order, which sets out how the assessment will proceed, including:
 - Identifying required Indigenous knowledge for the assessment
 - Identifying my nation's community engagement requirements
 - Identifying information requirements and valued components, including methods of data collection
 - Identifying needed expertise, including experts for the Technical Advisory Committee
 - Developing an assessment plan
 - Setting the procedures and timelines for the assessment
- Engage with my community on the draft Process Order, or other aspects
- Meet and discuss with the proponent whether my nation wants to collaborate on certain areas (e.g. in the development of the Application chapter on impacts to rights)

Continues 

Key Terms:

Consensus

An outcome that:

- Is actively supported by all participating Indigenous nations and the EAO; or,
- Is not objected to by a participating Indigenous nation, while reserving their right to ultimately indicate their consent or lack of consent for a project after assessment.

Seeking consensus

Cooperation between the EAO and representatives of participating Indigenous nations to achieve consensus on process decisions or recommendations. Processes that seek consensus:

- Inform, but are distinct from, a decision by an Indigenous nation to indicate their consent or lack of consent
- Inform, but are distinct from, a decision by a statutory decision-maker under the Act
- May be informed by, but are in addition to, Indigenous participation in any Technical Advisory Committee

Consent-based

A process where:

- Indigenous nations have the opportunity to make a decision based on their own laws, traditions and right to self-determination
- Minister(s) must legally consider the issue of consent where it has been decided on by Indigenous nations
- Minister(s) are required to address consent in their legally required reasons for decision document

5. Application Development & Review

- Collect Indigenous knowledge for inclusion in the assessment
- Collaborate with the proponent on the development of Application chapters, if desired
- Participate in the Technical Advisory Committee if desired
 - Review and provide comments on proponent developed information to support assessment: baseline data, study and modelling methods, initial results, draft Application chapters
 - Review and respond to proponent responses and revisions to documents
 - Participate in meetings to review and discuss proponent developed information to support assessment
 - Review and provide comment on draft meeting summaries
- Engage my community as needed (e.g. by issue/ topic, on assessment products such as draft Application)
- Seek consensus with the EAO in the administration of the EA if desired
 - Participate in regular meetings with the EAO to review the status of information and process
- Identify any issues regarding the process including information collection or analysis
- Develop information requests to address identified issues
- Review and provide comments on the complete draft Application
 - Identify issues that require resolution in the EA
 - Identify issues that require further resolution in the subsequent permitting stage of the project
 - Review and respond to proponent responses to information requests
- Seek consensus with the EAO on whether the final Application is ready for acceptance and the project can move to the Effects Assessment phase
- Enter into an agreement with permitting agencies for the permitting phase of the project

7. Recommendation

- Work with the EAO on the recommendation of whether to issue an EA certificate
- Engage my community as required or identified

6. Effects Assessment

- Develop the draft Assessment Report, and EA certificate including project description and proposed conditions with the EAO
 - Write, review and/or provide comments on draft Assessment Report chapters including impacts of the project on my nation's rights and interests
 - Identify issues that require resolution at the EA stage through an EA certificate condition
 - Seek consensus on recommendations
 - Identify issues that can be further addressed in permitting
- Participate in the Technical Advisory Committee
 - Review and provide comments on draft Assessment Report and EA certificate including project description and proposed conditions
 - Participate in meetings to review and discuss referral products
 - Review and provide comment on draft meeting summaries
- Engage my community as required or identified

8. Decision

- As a participating Indigenous nation, decide on whether to communicate consent or lack of consent to an EA certificate being issued