

Environmental Assessment Revitalization Engagement

Tsimshian Nations (Gitxaala, Gitgaát Kitselas, Kitsumkalum, Lax Kw'alaams, Metlakatla)

March 26, 2018, 9:00am – 4:00pm

Prince Rupert, BC

Attendees:

James Witzke – Tsimshian Environmental Stewardship Alliance

James Herbert - Gitxaala

Chris Apps - Kitselas

Janine Lemire - Gitgaát

Carolann Brewer - Lax Kw'alaams

Ross Wilson - Metlakatla

Erin Mutrie - Metlakatla

Carmen Tattersfield – Kitselas

Nicole Wallace – Kitsumkalum

Quinton Ball – Kitsumkalum

Ricardo Toledo – EAO

Nathan Braun – EAO

Mark Haines – EAO

Lindsay Walton – EAO

Final Summary Notes:

EAO met with representatives of six Tsimshian Nations for a full day session to discuss improvements to the BC Environmental Assessment process. The following is a summary of comments that were heard by EAO that specifically reference challenges with the current EA process or recommendations on potential improvements to the EA process.

Role of the Environmental Assessment Office

- After an environmental assessment (EA), projects are broken down into disjointed permits and there is often little connection to the EA. First Nations are often the ones making the connections between permits and with the Environmental Assessment Office (EAO). The EAO needs to be a steady hand over permitting agencies.
- Consider making the EAO a regulator for the total lifecycle of a project.

Early Engagement

- Planning with First Nations during early engagement should include what information requirements are required. Without such early engagement to inform project design, it will be harder to get to yes.

- Economic and technical feasibility should be a component of the proponent's planning process and incorporated into the project description. Many projects are "dead in the water" before they even start. Early engagement would help to ensure project proposals are responsible and feasible.
- The EAO should not open the door to an EA until a proponent is working with First Nations to plan the EA process. Requirements of early engagement need to be enforceable.

Decision Making

- There should be consequences for when there is not consent on a project. Need to frame the EA process as supporting both the provincial Ministers' decision and First Nation community decisions. Purpose of the EAO should be to facilitate informed decision-making for provincial Ministers and First Nations leadership. Changing the narrative to frame First Nations as decision makers needs to be a consistent message coming from regulators.
- The current waterfall approach to EAs where there is one major decision at the end of a long and expensive process leads to conflict between the proponent and First Nations because proponents are asked to invest a significant amount of money without any certainty as to whether a project will proceed or not. Decision "gates" would help the level of investment by a proponent reflect the level of certainty. Start with simple concepts and then move to more complex as you move through the process.
- The EA process needs an official First Nations liaison that is responsible for keeping First Nation decision makers apprised of the process.
- Move away from "consultation" and towards "co-stewardship". Need for proponents to understand that First Nations communities have to live with the impacts of projects, and need to see more of the benefits.
- First Nations and the Province should be sitting on the same side of the table, collaborating based on their respective authorities.
- Consent is about an ongoing relationship with First Nations, not just a gate a proponent can walk through at a single point in time, or about dumping information on First Nations. Consent is about ensuring First Nations are fully informed about a projects potential impacts and benefits so that First Nations can manage project impacts through the life of a project.
- Need for the EAO to better define how cumulative effects inform decision makers.
- Need clarity on how First Nation decisions will inform provincial Ministers' decision on an EA. There also needs to be a formal opportunity for First Nation and Provincial decision makers to meet including the ability for First Nations to ask for additional information.
- Dispute resolution processes could assist when consensus is not reached.

Regional and Strategic Environmental Assessments

- Project-by-project approach to impact assessments do not work. A regional lens is needed to determine what can and cannot happen. Need for cumulative effects and strategic impact assessments. Proposed projects need to exist within a broader understanding of the region for EAs to work properly. EAs for LNG projects proposed in the region would have been much easier if a

regional EA was done prior to project-specific EAs as the regional context would be better understood to inform the suitability of the region for a project and to inform project design.

- Strategic and regional assessments should identify society's overall tolerance of risk before specific projects are assessed.
- Instead of passively waiting for projects to be proposed, the Province could assess the potential for projects in a region and request proponents to bid for the opportunity by submitting the best project design to meet specific provincial, regional and First Nation's objectives.
- Land Use Planning needs to be improved to better inform Environmental Assessments.

Traditional Knowledge and Information Requirements

- Information requirements needs to meet the needs of First Nation decision makers (informed decision making).
- EA is an evaluation tool. Confidence in the information is paramount.
- Parties need to collaboratively determine methodology and who does the work. There is a lack of trust in consultants hired by the proponent. If First Nations at the table when determining who does the work then this would improve trust in the results of any studies that are conducted.
- Need better information requirements on health and social impacts of proposed projects.

Post-Environmental Assessment Certificate/Compliance Monitoring

- First Nations need to be involved through the life of a project. Role in ongoing stewardship.
- No one is drawing the line between a mitigation in the table of conditions and its effectiveness. First Nations need to know who to talk to when a mitigation is not working.

Capacity Funding

- When funding is fragmented and uncertain, it is hard to be effective. It's hard to gear up and train people within a First Nation if you don't know what you are training them for. Capacity funding needs to come from the government *and* the proponent. First Nations need some base capacity funding from government for early phases (such as negotiating collaboration agreements and to ensure offices maintain a base level of operations and institutional knowledge). There should be a base level of capacity funding for this process that is clearly spelled out by EAO.
- Different First Nations have different capacity requirements. These costs need to be negotiated in good faith with proponents. First Nations should be able to negotiate capacity with proponents based upon specific project capacity requirements.

Strength of Claim

- Need to find a different way to determine which First Nations are involved in EAs. Often the work conducted for an EA helps a First Nation better understand their rights and title. Starting with a strength of claim assessment can hinder First Nations from participating.

- A separate conversation is required to revamp the Strength of Claim process (how its done, what is taken into consideration). Strength of claim process as currently undertaken does not seem transparent to First Nations.

Environmental Assessment Revitalization Process

- Concerned about how information is transmitted regarding the EA Revitalization process. First Nations rely on the EAO to ensure info is carried forward to the Environmental Assessment Advisory Committee and the Minister of the Environment and Climate Change Strategy.
- We want assurance that the information we present will be brought forward.
- If EA Revitalization discussion paper is collaboratively drafted with the First Nations Energy and Mining Council (FNEMC), we want to make sure our concerns do not get lost as Tsimshian Nations are not actively engaged in FNEMC.
- We need more notice than what has been provided to attend EA Revitalization events.
- Need to better understand how EA Revitalization work parallels or plugs into bigger reconciliation pieces being undertaken by government.