

May 11, 2018

The Honourable George Heyman
Minister of Environment and Climate Change Strategy
Room 112 Parliament Buildings
Victoria, BC V8V 1X4
ENV.Minister@gov.bc.ca

RE: Mining Association of British Columbia Comments on BC Environmental Assessment Revitalization

Dear Minister Heyman:

The Mining Association of British Columbia (MABC) appreciates this opportunity to submit our comments and recommendations for your consideration in relation to the revitalization of British Columbia's Environmental Assessment (EA) process.

MABC supports British Columbia's objectives of increasing the public's understanding and confidence of how decisions about resource development are made in British Columbia, of working in partnership with Indigenous peoples to advance reconciliation and ensure their legal rights are respected, and to supporting sustainable investment, job creation and economic growth for British Columbians across the Province. The outcome of this revitalization should be a straightforward, transparent and fair process that allows for beneficial projects to proceed.

MABC is the voice of mining in British Columbia, representing operating metallurgical coal, metal and industrial mineral producers, as well as advanced development companies in the province. Our mandate is to encourage the safe development and operation of mining and related facilities across B.C. As Canada's largest producer of copper and steelmaking coal, British Columbia is an essential component of Canada's commitment to a lower carbon future. Additionally, British Columbia's mining companies are among the lowest GHG emission-intensive in the world.

MABC's members include some of this province's most iconic operating companies who directly employ thousands of British Columbians and indirectly support thousands of supplier and support jobs in every region of the province. In 2017, the mining industry contributed \$11.7 billion to British Columbia's economy and \$859 million in payments to government. Mining is the largest private sector employer of Indigenous people in Canada, and a major partner to Indigenous businesses. Many First Nations in British Columbia share directly in mineral tax revenue from mines operating within their traditional territories, as well as sharing the benefits of mining through innovative Impact Benefit Agreements that our member companies enter into directly with First Nations.



All new major mines in British Columbia are subject to an EA under British Columbia's *Environmental Assessment Act* (Act) and represent the single largest private industry sector that is subject to project reviews under British Columbia's Act. Proportionately, mining projects represent 28% of all projects reviewed by the Environmental Assessment Office (EAO), a close second to all forms of electrical power generation, both public-sector and private-sector.

British Columbia's existing EA process is widely recognized as an exemplary project assessment mechanism for its rigorous, transparent, inclusive, time-bound and measured evaluation of multiple impacts, and its diligent application, monitoring and enforcement of project conditions. This is affirmed in British Columbia EAO's cooperation with other jurisdictions, notably the substitution that British Columbia's EA process currently enables under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). MABC believes that a broad understanding of the existing EA process accomplished by a commitment to a comprehensive public education campaign would augment public confidence in the province's decision-making.

Our members are interested in undertaking future projects in British Columbia, so their prospects for continued investment and community-building in the province are crucially linked to the procedural certainty and fairness of the provincial and federal assessment processes. Adding to level of complexity for industrial development in British Columbia is the multitude of inter-dependent legislation and regulations being developed concurrently, yet independently, of this revitalization project.

Given the importance of the design and implementation of this legislation to our members and to the wellbeing of British Columbia, MABC and our members have committed significant amounts of time and resources to actively participate in the engagement opportunities available to us - be it through our experienced delegate on the Environmental Assessment Advisory Committee, our direct member engagement session with the EAO, through our affiliations with the Business Council of British Columbia, and our bi-weekly conference calls with EAO staff.

At the conclusion of this active engagement, MABC and our members have many lingering questions, comments and concerns regarding the revitalization process, the Conceptual Model and its implementation. The following points represent our greatest priorities.

IMPLEMENTING UNDRIP REQUIRES A PROVINCIAL APPROACH

MABC acknowledges the mandate given by Premier Horgan to all of his Ministers to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) within the scope of their respective mandates. We further understand that the Ministry of Indigenous Relations and Reconciliation has established a Reconciliation Transformation and Strategies Division to establish a clear, cross government vision for the implementation of UNDRIP.



Prior to advancing an important legislative or regulatory agenda that is intrinsically linked to the implementation of UNDRIP, MABC encourages the Province to finalize and openly share their over-arching strategy or principles for implementing UNDRIP. This will provide all Ministries with the necessary framework within which to conceive and articulate program or policy changes, to enable a transparent and informed engagement by stakeholders, and clarity regarding the role of Indigenous groups and communities in the Province's legislative and regulatory processes.

The absence of clear guidance could potentially hinder the EA revitalization process. Specifically, it creates the opportunity for misaligned expectations regarding participation, decision making and the potential for non-project related disputes to be embedded into the regulatory processes – to the detriment of the functioning process that is being sought, and to the proponent, the project, Indigenous communities and the public.

TIME CONSTRAINTS FOR REVITALIZATION JEOPARDIZE INTEGRATED DECISION MAKING

MABC wishes to acknowledge the outstanding commitment and professionalism of EAO staff, as well as members of the Environmental Assessment Advisory Council and Indigenous communities in striving to engage fully and constructively on all aspects of the EA process, as set out in the Conceptual Model.

MABC remains concerned that the objective of expediency is detrimental to the constructive outcome of this process, and the goal of establishing confidence in the Province's decision making. Universal throughout each of MABC's engagement forums, is the disappointment with not being able to conceptualize alternatives to the proposed Model, nor to engage in full discussion to identify solutions to the material concerns with the existing process due to time constraints.

In addition to alignment with the Province's strategy for the implementation of UNDRIP, there is crucial need for integration with the ambitious and inter-dependent legislative and regulatory agenda concurrently underway in British Columbia, including wildlife management planning, Species at Risk legislation, Professional Reliance, Land Use planning, Mining Jobs Task Force, Rural Development Strategy and others.

This integrated approach to planning and governance is challenged by the time constraints placed upon this initiative.

INTEGRATED REGULATORY CONTINUUM

The review and permitting of all mining projects in British Columbia involves a complex regulatory review and oversight continuum that spans at least 3 ministries: Ministry of



Environment, Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the Ministry of Energy, Mines and Petroleum Resources.

MABC strongly encourages EAO and the Ministry to engage fully with each of their regulatory counterparts in other Ministries to share the objectives of the revitalization, the proposed methodologies and approaches to the revitalization, and the implementation of the concepts set out in the Conceptual Model. This will serve to reduce the existing duplication of process, optimize efficiency and support the integrated approach to assessment, regulation and compliance and enforcement of mining and other industrial development projects in the Province.

PROCEDURAL FAIRNESS

Investor confidence and the attractiveness of British Columbia as a jurisdiction to invest in long-life capital projects is a priority for the Province and MABC. While elements of the Conceptual Model offer clarity, our members are very concerned about the potential for a project to be prohibited from proceeding through the EA process, as determined at the Readiness Test stage. This would obscure procedural fairness and create detrimental uncertainty for capital investment in beneficial exploration and mining projects in British Columbia.

CLEAR DECISION MAKING & DISPUTE RESOLUTION

To provide clarity for proponents and their investors, each decision stage requires clear definitions of the parties who are to be involved in the decision making, what criteria will be used to make the determination of a project's 'readiness' or 'final decision', and within what timeframe these decisions will be made.

Additionally, mechanisms to resolve disputes amongst the decision-makers should also be contemplated, without prejudice to the proponent.

Such disagreements may occur between Indigenous groups and the Province, or they may occur among Indigenous groups. To enable the implementation of UNDRIP while managing disruption for any party to this process, the Readiness Test and Final Decision stages of the process should include a clear, efficient and time-bound dispute resolution mechanism.

Crucially, the absence of consensus should not jeopardize a proponent's ability to proceed through the EA process as a result of the failure of the decision-makers to reach agreement.

SUBSTITUTION

Half of all mining projects in British Columbia are also subject to federal assessments under CEAA 2012. The majority of our members have extensive experience with the Act,



and CEAA 2012, and strongly support procedural measures under the revitalized Act that will align with the proposed federal *Impact Assessment Act (Bill C-69)* to enable substitution to continue.

MABC is hopeful that these considerations will be reflected in the Discussion Paper that is being produced to achieve our shared goals of clear, integrated and more predictable processes, improved attractiveness of British Columbia as a destination for mining investment, advancing reconciliation with Indigenous peoples, and protecting the socio-ecological health and economic wellbeing of British Columbians.

MABC appreciates the opportunity to submit our comments; I would be pleased to meet with you at your convenience to discuss further.

Sincerely,



Bryan Cox
President and CEO

cc: Hon. Michelle Mungall, Minister of Energy, Mines and Petroleum Resources
Hon. Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations and Rural Development
Hon. Scott Fraser, Minister of Indigenous Relations and Reconciliation
Dave Nikolejsin, Deputy Minister, Energy, Mines and Petroleum Resources
Mark Zacharias, Deputy Minister, Environment and Climate Change Strategy
Tim Sheldan, Deputy Minister, Forests, Lands, Natural Resource Operations and Rural Development
Doug Caul, Deputy Minister, Indigenous Relations and Reconciliation
Kevin Jardine, Associate Deputy Minister, Environmental Assessment Office

