

Stakeholder Implementation Committee Meeting – Delta Vancouver Hotel Downtown - July 11, 2019, 8:30 am

Members: Bob Bocking, Karen Campbell, Karen Elliott, Kevin Hanna, Matt Kennedy, Nikki Skuce (for Greg Knox), Carmen Holschuh, Denise Mullen, Anna Johnston (for Gavin Smith), Rob Stevens, Jennifer Ezekiel (on behalf of Geoff Morrison), Diana Walls (on behalf of Meera Bawa), Alicia (on behalf of Kai Horsfield), Jennifer Mundy (on behalf of Ward Prystay)

EAO Attendees: Scott Bailey, Nathan Braun, Paul Craven, Sheldon Foote, Mark Haines

Regrets: Gavin Smith, Greg Knox, Geoff Morrison, Meera Bawa, Kai Horsfield, Ward Prystay, Scott Lunny

Guests: Tara Frezza, Manager, Legislation at the Canada Environmental Assessment Agency; Regina Wright, Regional Director at the Canadian Environmental Assessment Agency; Seth Cain, Senior Policy Advisor at the Canadian Environmental Assessment Agency

Phone: Marla Orenstein, Ron Poole, Hannah Askew

Update on Engagement

- The first Indigenous Implementation Committee (IIC) meeting took place on July 10th. The IIC prioritized topics the group will focus on at future meetings; topics included: dispute resolution, shared decision making, consent and consensus, Indigenous-led reviews, funding, Indigenous knowledge, cooperation agreements, community engagement, the readiness decision, environmental assessment (EA) methods for effects assessment, class and strategic assessments, and assessing effects on Indigenous interests.
- A possible way to facilitate cross-over between the IIC and Stakeholder Implementation Committee (SIC) could be to seek interest from members of both committees on specific topics and hold separate meetings to discuss them.
- SIC meetings will resume in mid-late September. The EAO is still aiming to bring the *Environmental Assessment Act* (Act) into force in late fall.

Indigenous Knowledge (IK)

- A PowerPoint presentation (filename 3.0 - Indigenous Knowledge - PPT Presentation) was presented for discussion. Additional documents were distributed for review:
 - Filename 3.1 - Indigenous Knowledge - McKenzie Valley Review Board Guidelines
 - Filename 3.2 - Indigenous Knowledge - List of Sources
- Using IK in an EA will be a collaborative process among the EAO, the proponent, and the knowledge holder. This process and relationship will vary by project. The EAO's role is to facilitate an appropriate relationship between the knowledge holder and the proponent, and to help incorporate IK into an EA while respecting the desire to keep it confidential.
- What is considered “culturally appropriate” may vary among Indigenous nations. The EAO will not be defining this.

- Suggestion that IK agreements would need to be established separately between the IK holder and the EAO, and the IK holder and the proponent. Guidance will be needed to ensure consistency in these agreements. Any guidance on using IK will be continuously updated based on experience.
- To the extent it can be applied, IK will be used across the five pillars, and beyond section 25(1) of the Act. The Act requires the EAO to use the best available knowledge; this is not a competition of IK vs. western science, but an opportunity to consider all information that helps reach conclusions and plan ways to mitigate impacts.
- In practice, the ideal situation would be for the proponent to work directly with the Indigenous nation to ensure that knowledge is included in the application in a way that respects wishes for confidentiality. This underlines the importance of working with Indigenous nations in early engagement. If an Indigenous nation doesn't want to submit their information to the proponent, they can submit it directly to the decision maker. If the information would substantially inform the EA, there may be a need for the EAO to disclose it under specific circumstances and precautions. The Chief Executive Assessment Officer could impose a condition that IK provided to the proponent remain confidential. The EAO is still working out mechanisms to ensure IK is protected but useful, especially in situations where there is lack of trust.
- Desire for transparency must be balanced with the recognition that improper disclosure of information can cause harm. There will need to be some transparency about the fact that information was kept confidential for a valid reason, so as not to fuel skepticism about the process.
- It will be difficult to determine which parties the EAO will accept IK from. This relates to the discussion about citizen science and the value of early engagement. There must be documentation that all concerns have been heard.
- The EAO encourages committee members to send any practical issues they have encountered with IK in the past that may help inform solutions in the EA process to Chrystal Fenton. Suggestion from the committee to research work being done by the Mikisew Cree.
- Interest in hearing how the IIC sees IK applying to assessing climate change and effects on current and future generations.
- The EAO has been consulting with Indigenous nations in tandem with other agency consultation to avoid fatigue.
- The EAO should be aware when storing and sharing information internal to provincial government that Indigenous nations don't always trust other ministries.

New Federal/Provincial Cooperation Agreement

- A PowerPoint presentation (filename 4.0 - Impact Assessment Cooperation Agreement SIC IIC July) was presented for discussion. Additional documents were provided for review:
 - Filename 4.0 - New Federal-Provincial Cooperation Agreement - Draft Agreement
 - Filename 4.1 - New Federal-Provincial Cooperation Agreement - Impact Assessment Coop Agreement PCPs
- The federal-provincial cooperation agreement (Agreement) does not impact the ability to enter into trilateral agreements with Indigenous nations, which is addressed in section 3 of the

Agreement. If the EAO is leading a substituted project, the process for an Indigenous-led assessment is open (although it must meet obligations under a federal EA). Ultimately, a tripartite understanding would be the direction to take in that circumstance. The Kemess Underground project is an example of Indigenous nations contributing to sections of an assessment report on a BC-led substituted project. Woodfibre LNG is another example of a substituted EA that accommodated a unique process for the Squamish Nation.

- Requirements to meet substitution have changed slightly under the federal *Impact Assessment Act* (IAA), but the general nature of it is the same. There is a new mandatory public comment period on substitution requests, and the Minister must now post reasons for the decision in order to be more transparent. There is a new piece on cooperating on compliance post-decision, and there is a new amendment process which can also be coordinated with the EAO. Requests for substitution are still to be made as early as possible.
- The EAO and Canadian Environmental Assessment Agency (CEAA) have been collaborating on guidance and sharing information on all matters. The EAO and CEAA still work together on substituted projects, which is often a misperception. Federal experts are still engaged in substituted projects. There are some areas where the EAO can lead, and others that CEAA remains more active. As there are a lot of projects in BC, the federal and provincial governments work together to alleviate strains on the organizations. Suggestion from the committee to add some language on the benefits of working cooperatively in the Agreement.
- A new element in the Agreement is a joint permitting plan to be developed in the planning phase and updated throughout the EA. This will look ahead at future decisions and bring any issues or advice to the table early on. There is the potential for the plan to go beyond provincial and federal permits to include regional requirements.
- The committee hopes to see more federal experts participate on EAs, which helps with credibility.
- CEAA believes the IAA will come into force before the writ is dropped for the federal election; the new Fisheries Act may come into force at the same time.
- Funding for participants has yet to be finalized under both the Act and IAA.
- Local governments consulted with through the Union of BC Municipalities expressed the desire to see their jurisdiction explicitly represented in the Agreement, i.e. separate from the public or other jurisdictions.
- While the establishment of the Community Advisory Committee (CAC) is not included in the Agreement, one would need to be established to be consistent with the provincial process. CEAA would likely have a role on that committee.
- Suggestion to include coordination of community or indigenous committees' post-decision in section 12 of the Agreement.
- Whether a joint review panel is established on projects with potential transboundary effects would depend on what agreements BC has with neighboring states, the level of interest from neighboring states, and the severity of potential impacts. Transboundary effects would also be a factor in the federal Minister's decision on the substitution request.
- Compliance will continue to be coordinated between the provincial and federal governments. This can include either joint inspections or using the best-placed regulator to address issues.

Certificate Transfers

- A PowerPoint presentation (filename 6.0 - Certificate Transfers - PPT Presentation) was presented for discussion.
- There are circumstances in which separate components of the same project may be assessed separately. The components may both trigger under different thresholds and result in separate certificates, or they may come under threshold and not need an EA. Transfer of certificate would not exempt a project from needing an amendment if the project design is changed or expanded.
- Sometimes when a certificate is transferred to a new company, there is a change in consulting firm or prime contractor. Corporate knowledge can sometimes be lost (including retainment of Qualified Professionals). The EAO has found it is often necessary to lead new proponents through the responsibilities of the EAC; this is especially so when the EAC was acquired with many other assets and the company needs a bit more time and effort to understand their requirements.
- There has yet to be an instance where the EAO has not consented to a transfer. It is not the EAO's role to get involved in commercial transactions. The primary concern is ensuring the proponent understands they have obligations and can meet them. It also ensures that the EAO is aware of the current EAC holder. A problematic situation is when the sale pulls out one aspect of the project, splitting a certificate.
- The circumstance has yet to arise where a company with a poor reputation is looking to acquire an EAC. Hypothetically, these concerns could be a factor, but the EAO's role is assessing project effects; therefore, concerns about "bad companies" may be out of scope (this is not considered in an EA either). The EAO does have the authority to revoke a certificate as part of compliance actions.
- The EAO has not consulted Indigenous nations on certificate transfers in the past; they are simply notified. It is noted that impact benefit agreements don't often carry over to the new holder when a certificate is transferred.

Reviewable Projects Regulation

- A PowerPoint Presentation (filename 5.0 - SIC-QP-impartiality) was presented for discussion. Documents were provided for discussion and review:
 - Filename 5.0 - Characteristics of projects with recent EA Certificates V2
 - Filename 5.0 - GHG forest and other industries
 - Filename 5.0 - GHG mines
 - Filename 5.0 - GHG natural gas
 - Filename 5.0 - GHG petroleum refineries
 - Filename 5.0 - GHG power generation
 - Filename 5.0 - GHG waste disposal
 - Filename 5.0 - SIC RPR handout
 - Filename 5.0 - SIC-QP-impartiality
- The EAO is proposing 60 km for the linear threshold. The potential for significant adverse effects from smaller disturbances were not apparent when looking at other projects. The linear disturbance threshold would be triggered by the cumulative total of linear disturbances of a project.

- Thresholds are designed to identify projects with potential for significant adverse effects. However, the EAO currently has limited data to work off. The RPR can be amended when more data is received from regional assessments, consultation, information collected from other government agencies, and notifications. The EAO is not trying to bring in more projects with these thresholds, just projects that may have significant adverse effects.
- There is concern from the committee with the absence of cumulative effects being addressed through secondary thresholds. For example, if there are many small mines within a short distance, they are being reviewed individually through permitting but missing the bigger picture of the cumulative effect. There could be a threshold for proximity to other sub-threshold projects that would trigger an EA, or perhaps a mechanism at the permitting level that does this as well. The EAO suggested that regional EAs are a tool that may address this issue, and that EAs are inherently project-specific. There may be an opportunity through public- and indigenous-consultation to identify areas of concern and adjust thresholds in certain regions.
- Proximity to other developments can also be beneficial, as having developments concentrated in an industrial area preserves nature elsewhere. Could potentially have a trigger for projects proposed in undeveloped areas to encourage development in certain areas.
- The discussion paper will include questions raised on cumulative effects and land use planning, and the EAO will be open to suggestions on adjusting triggering mechanisms to address these issues.
- Suggestion to make notification thresholds broad to capture the information needed to adjust the other thresholds.
- The EAO did not find an acceptable approach to including a water disturbance threshold; however, there are existing triggers related to water use in the Act.
- Concern from the committee that the threshold for greenhouse gas (GHG) emissions may not be high enough to capture additional projects that aren't already being assessed. Considering EA certificates are now valid for up to 10 years, the 2030 target may be irrelevant. Suggestion to use 1% of the 2050 provincial GHG target, instead of 1% of 2030. Counterpart that in practice there would be a minimal difference in how many projects are brought in between by using the 2030 or 2050 target. Suggestion to use 1% of the 2050 target as a trigger for notification to collect the data instead.
- The EAO has been in discussions with the Climate Action Secretariat to narrow in on the correct GHG threshold that would bring in projects that would actually benefit from an EA. This is a dynamic area of government regulation with other strategies and tools being developed as well.
- Projects coming in under the new Act will be assessed with the lens of climate change and GHG emissions. There are other mechanisms in the EA process where GHG emissions are considered apart from the RPR; the readiness decision provides the opportunity to terminate a project that is inconsistent with government policy; management plans and conditions can also be used to reduce emissions.
- While climate change is not necessarily an issue an EA is designed to deal with, there is a lot of public pressure and concern on the topic. Need to be forthright with the public on what the new Act can and can't do to address it. When this goes out for public consultation, the Minister will need to show the full picture and speak to the other ways GHG emissions are being addressed in government.

- Important to tell the story of the objective behind the trigger, as well as the story of what happens when a project doesn't trigger. It is also important to communicate why certain concerns are left out of an EA when they are being addressed elsewhere.
- The new Act provides the benefit of tailoring EAs on a project-by-project basis. EAs can now be a lot more manageable and effective; this is a good message to send to proponents who are worried about smaller projects being brought into an overwhelming process. Better results are achieved when you focus on the elements that are most important. It is important for committee members to communicate this message to change this perception.
- Conclusion that there isn't enough data to sway the proposed threshold numbers either way. The EAO will make the proposals in the discussion paper and see if anything is heard in return that will influence the numbers.
- Need flexibility and discretion in terms of what factors may be considered at the readiness decision. Don't want to draw a firm line for what can or can't proceed, as this may change with time.
- The threshold for bringing in resorts should be higher when they are contemplated outside municipal boundaries, and lower for resorts contemplated inside municipal boundaries. Don't want to encourage developments outside of urban sprawl, as there is greater potential for adverse effects outside of an urban area. It is also easier to provide a resort with services such as fire and police protection, for example, when it is within the local government boundary. Resorts branch should be considering community plans and zoning. The 8,000-bed threshold would be fine for areas designated for tourism, but otherwise it is too high.
- Creston Valley is included in the prescribed protected areas as it is a unique area in BC where all activity is excluded.

Closing

- Additional documents were provided for review:
 - Filename 7.0 - Stakeholder Implementation Committee_KeyPointsSummary
 - Filename 8.0 - Stakeholder Implementation Committee - Proposed Fall Meeting Schedule
- The RPR discussion paper will be released for public engagement at some point in August with at least a 30-day comment period.
- Meeting notes will be distributed and processed once reviewed.
- The EAO will create and distribute an agenda for upcoming meetings. Items to be revisited by this committee include:
 - human environment guidance, to be distributed for comment
 - early engagement guidance (including initial project description and detailed project description); terms of reference for technical advisory committees and community advisory committees; process planning guidance; effects assessment guidance; readiness decision guidance; outcomes from the IIC (including guidance on IK); and direction on expertise (infused in other guidance), to be distributed for discussion and comment
 - mitigation effectiveness program and guidance; amendments and extensions; and RPR discussion paper, to be distributed.

- Upcoming meeting dates will be coordinated with the IIC and are tentatively scheduled for September 18, October 2, October 17, November 14, and December 11. Committee members are encouraged to send any timing conflicts with the proposed schedule to Chrystal Fenton.

Action Items

- The EAO encourages committee members to send in any practical issues they have encountered with confidential information or IK in the past that may help inform solutions in the EA process.
- Send any additional comments on the federal/provincial agreement to Kate Haines
- EAO to work with Mountain Resorts branch on the question of thresholds for resorts within/outside municipal boundaries.
- EAO to electronically distribute documents that were walked-in to this meeting.
- Members to send any potential timing conflicts for upcoming meetings to Chrystal Fenton.