

Designation Application Requirements

SECTION 11 – MINISTER’S POWER TO DESIGNATE A PROJECT AS REVIEWABLE

VERSION 1.0

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EAO

Environmental
Assessment Office

This document provides information to help environmental assessment participants and the public better understand British Columbia's environmental assessment process. It is not advice and does not replace requirements of the *Environmental Assessment Act* (2018) (the Act) or its regulations or bind any decision-maker.

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1.0 INTRODUCTION

The purpose of the *Environmental Assessment Act* (the Act) is to assess the effects of major projects in British Columbia (B.C.). The [Reviewable Projects Regulation](#) sets out the criteria for determining which projects should be required to undergo an environmental assessment, by defining prescribed project categories and providing thresholds for each project type. The prescribed thresholds serve to indicate that projects exceeding those criteria have the potential to cause significant adverse effects. Projects that fall into a prescribed category and meet the thresholds specific to its category require an assessment under the *Reviewable Projects Regulation*. These are called **reviewable projects**.

For projects that do not meet the thresholds to become reviewable, Section 11 of the Act provides an opportunity for any person to apply to the Minister of Environment and Climate Change Strategy (Minister) for a project to be considered reviewable, and thus require an environmental assessment process.

The primary user of this document is intended to be anyone who may be considering submitting a designation application. The purpose of this document is to help applicants understand the requirements of the Act, the information that is necessary for the decision maker to evaluate designation applications, and the typical process to review applications. Project proponents (i.e., parties that propose development projects), Indigenous nations, other review participants, and the public may also use this document to understand Section 11 of the Act.

It is important to note that environmental assessment is one part of a comprehensive regulatory framework of authorizations and permitting for regulating and overseeing the environmental and other effects of resource development activities throughout B.C.

Find more information about the environmental assessment process on the Environmental Assessment Office's [Guidance Documents webpage](#) for the 2018 Act, including an [Information Bulletin on Provincial Permitting and the Environmental Assessment Act](#).

2.0 MINISTER'S POWER TO DESIGNATE

Section 11 of the Act states that the Minister may designate an 'eligible project' as reviewable. An eligible project means a project that is not substantially started and is not a reviewable project.

The Environmental Assessment Office (EAO)'s [Substantial Start Determination Policy](#) describes some key considerations for whether a project has been substantially started are whether:

- Construction has started on key components;
- Project activities were or are being carried out; or,
- The project was, or is, in operation.

If a project is determined to be 'eligible' and is designated as reviewable under Section 11:

- The project requires an Environmental Assessment Certificate (Certificate) before it can proceed, meaning that the proponent of a reviewable project must not construct, operate, modify, dismantle or abandon the reviewable projects or activities, unless the proponent first obtains a Certificate;
- The option to exempt the project from requiring a Certificate, during the Readiness Decision of the environmental assessment, is not available under [Section 16\(3\)](#) of the Act; and,
- The proponent may proceed to the Early Engagement phase of the environmental assessment process (find more information in the [Early Engagement Policy](#)).

If the decision maker declines the designation application under Section 11, the proponent can continue with project permitting activities with other agencies.

3.0 DESIGNATION APPLICATION PROCESS

Section 11 of the Act states that any person may submit an application for an eligible project to be designated as reviewable.

3.1. Preparing an Application

Under Section 11(3), an application must:

- Be in writing;
- State why the applicant wishes the eligible project to be designated as a reviewable project; and,
- Include any other information the Minister requires.

To ensure the evaluation of designation applications proceeds in a timely and efficient manner, the Chief Executive Assessment Officer (CEAO)¹ has established the following requirements for designation applications.

3.1.1. Designation Application Requirements

The following requirements must be included in any application to designate an eligible project as a reviewable project under Section 11 of the Act.

3.1.1.1. Applicant Information

- Applicant name;
- Contact details, including address, email address, telephone number, and primary contact information (if different than the applicant); and,
- If the applicant is an Indigenous nation or a member of an Indigenous nation.

3.1.1.2. Project Information

A description of the project that is the subject of the application, including:

- Project name;
- Proponent name (i.e., the person or entity proposing the project) and contact information;
- Project location;
- Descriptive information about the project (such as, type of activity or facility and timing of construction or operations);
- Applicable project category under the *Reviewable Projects Regulation* (such as, mine, oil and gas facility, etcetera);
- If the project is a new project or a modification to an existing project; and,
- Links to any relevant documents about the project.

3.1.1.3. Rationale

A clear statement in which the applicant requests that the Minister designate a project as reviewable, and a rationale for that request, must be included.

To structure your rationale as to why a project should be designated, include at least the following factors the statutory decision maker must consider in their decision:

- Whether the project could have effects on an Indigenous nation and their rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;

¹ Through delegation under Section 72 of the Act.

- If the project is within a prescribed category of the [Reviewable Projects Regulation](#) (that is, a project or activity listed in the tables of the *Reviewable Projects Regulation* including Industrial, Mines, Energy, Water Management, Waste Disposal, Transportation, or Tourist Destination Resort Projects),² and whether and how the potential effects of the project could be the same, or greater than, the potential effects of a project in the same category that meets the reviewability thresholds;³ and,
- Whether an assessment of the eligible project is consistent with the purposes of the EAO set out in [Section 2](#) of Act (see box below).

3.2. Submitting an Application

Purposes of the Environmental Assessment Office (EAO)

The Act identifies the reconciliation and sustainability purposes of the EAO under [Section 2](#) as:

- Promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities by:
 - Carrying out assessments in a thorough, timely, transparent, and impartial way, considering the environmental, economic, social, cultural and health effects of assessed projects;
 - Facilitating meaningful public participation throughout assessments;
 - Using the best available science, Indigenous knowledge and local knowledge in decision making under the Act; and,
 - Coordinating assessments with other governments, where appropriate, including Indigenous nations, and with other provincial ministries and agencies.
- Support reconciliation with Indigenous peoples in British Columbia by:
 - Supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
 - Recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making in matters that would affect their rights, through representatives chosen by themselves;
 - Collaborating with Indigenous nations in relation to reviewable projects, consistent with the United Nations Declaration on the Rights of Indigenous Peoples; and,
 - Acknowledging Indigenous peoples' rights recognized and affirmed by Section 35 of the *Constitution Act*, 1982, in the course of assessments and decision making under this Act.

A designation application may be submitted via email to the Minister at ENV.Minister@gov.bc.ca with a copy of the application being sent to the EAO at EAOinfo@gov.bc.ca. Applications may also be submitted to the Minister's office by mail to the following address, although email is the preferred method:

PO Box 9047 Stn Prov Govt
Room 112 Parliament Buildings
Victoria, BC V8W 9E2

² The Minister can accept an application for a project that is not in a prescribed category of the *Reviewable Projects Regulation*, however, the Minister is not able, or required, to consider this factor for projects that are not in a prescribed category because there would not be a reviewable project to compare the effects to.

³ The intent of the *Reviewable Projects Regulation* is to set thresholds that serve as proxy for significant adverse effects and sub-threshold projects are assumed to likely not result in significant adverse effects. Therefore, it is required and important for applicants to provide specific reasons why the project would result in the same or greater effects than a reviewable project.

3.2.1. Privacy Notice Statement

The personal information collected in the application is being collected by the EAO for the purposes of assessing an application to the Minister responsible for the Act to designate an eligible project as reviewable and is collected pursuant to Section 26(c) of the *Freedom of Information and Protection of Privacy Act*. The application will be posted to and publicly accessible on the [EAO's Project Information Centre \(EPIC\)](#). Any personal information included in the application will be redacted from the public version. Please avoid including any personally identifiable information about yourself or others in the project information and reasons sections of the application. Should you have any questions about the collection of this personal information, please contact:

EAOinfo@gov.bc.ca

EAO Corporate Services - Records
Environmental Assessment Office
836 Yates Street,
Victoria, BC V8V 1L8

3.2.1. Repeat Requests

If a request to designate a project as reviewable has already been reviewed by the EAO and it was determined an environmental assessment is not required, a new application will only be considered if there are material changes to the proposed project. This could include new information on potential negative effects that were not previously available, or a material change in circumstances, such as substantial project design changes. Multiple designation applications to the Minister regarding the same project will be reviewed in the same process, where possible.

3.3. Evaluation by the EAO

The EAO carries out the evaluation of designation applications. It is important to note that this evaluation is based on the information available, and the designation application evaluation process is not intended to conduct an assessment of impacts, as would happen in an environmental assessment of a reviewable project. Once an application is received, the application is published on [EPIC](#). Personal identifiable information as per the *Freedom of Information and Protection of Privacy Act* may be redacted prior to posting (see [section 3.2.1](#)).

The EAO will review the designation application for completeness. If the application does not include all of the required information, referred to in [section 3.1.1](#), the decision maker may reject the application and may request that the applicant provide additional information. . The applicant may respond and resubmit the application.

Once the application is complete, the EAO will conduct a process for considering the designation application. Figure 1 below presents an overview of the review process for a designation application. Because designation applications may vary in the level of detail about the proposed project or the potential for effects, the extent of information-gathering or engagement conducted by the EAO to inform the report may vary.

When does the 30-day review period begin?

The 30-day review period begins on the day the complete application is received. If it is deemed incomplete by the decision maker, the 30 days begins when the application is re-submitted.

OVERVIEW OF THE DESIGNATION APPLICATION PROCESS

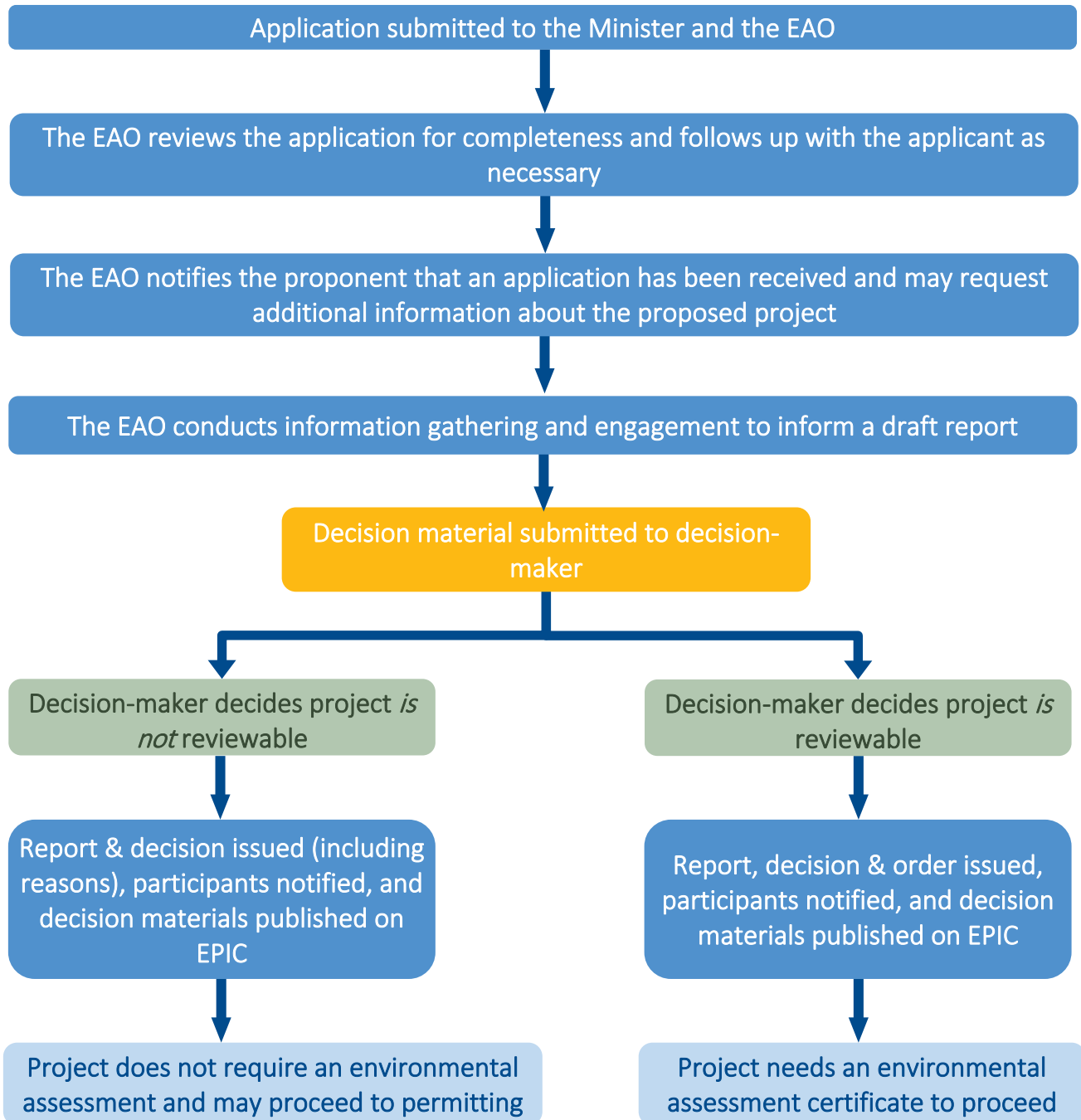


Figure 1: Overview of the review process for designation applications under Section 11 of the Environmental Assessment Act (2018).

The EAO's review process generally includes:

- Gathering relevant information regarding the proposed project's components, activities, and potential effects, as available, from the applicant;
- Notifying the proponent and requesting additional information about the proposed project (through an order under [Section 11\(8\)](#)), if required;
- Determining and implementing appropriate engagement processes with Indigenous nations that may be affected by the proposed project, local governments, relevant federal and provincial permitting agencies, and other persons who could be impacted by the designation decision;
- Developing an understanding of any potential effects of the proposed project on social, economic, human health, environmental or cultural values;
- Evaluating the designation application in consideration of the factors set out in [Section 11\(4\) of the Act](#); and,
- Developing an understanding of previous or current local, provincial, and/or federal government permits or authorizations needed for the project.

After completing the review process, the EAO will prepare materials for the decision maker, including the application and a report documenting the review process, an analysis of factors required by Section 11(4) of the Act, comments from participants, and if appropriate, a recommendation for decision. The EAO may share the draft report with the applicant, Indigenous nations, the proponent, and potentially other interested persons for comment and may also conduct follow-up meetings.

3.3.1. How this Process Relates to Project Notifications

[Section 10](#) of the Act requires proponents of projects in the prescribed categories of the *Reviewable Projects Regulation* to submit a project notification to the EAO if they meet the notification thresholds set in [Section 5](#) of the *Reviewable Projects Regulation*. The CEAO may refer the project notification to the Minister for consideration to designate as reviewable. The process for submitting and reviewing project notifications can be found in the [Project Notification Policy](#).

Nothing precludes the submission of a designation application for a project that has undergone or is undergoing the project notification process. Information collected by the EAO during the project notification process may also be used to inform a designation application decision.

3.4. Decision and Notifications

The Minister's powers and duties under Section 11 have been delegated to the CEAO under Section 72 of the Act, meaning that the CEAO can make the decision on designation applications.

Once finalized, the application and referral materials are referred to the CEAO or the Minister for a decision to:

- Designate the project as reviewable; or,
- Decline to make a designation.

If the decision-maker declines to make a designation, they must provide reasons for the decision. The decision and any reasons will be communicated in writing to:

- The applicant;
- The proponent;
- Any Indigenous nations and local governments that have been engaged; and,
- Any relevant permitting agencies.

3.4.1. Time Limit Extensions

Under [Section 38](#) of the Act, the CEAO or Minister may, if they consider it appropriate in the circumstance, extend a time limit under the Act including providing an extension even if the time limit has already expired. The 30-day time limit for a decision on a designation application may be extended on a case-by-case basis to allow the EAO additional time to conduct the following (but not limited to these) examples:

- Seek out additional technical information from the proponent through an order under Section 11(8);
- Gather information from other agencies with respect to their own permitting processes for the project; or,
- Engage further with Indigenous nations.

The duration of the extension may vary depending on the specific application and activities required.