

# EAO User Guide

INTRODUCTION TO ENVIRONMENTAL ASSESSMENT UNDER THE  
PROVINCIAL ENVIRONMENTAL ASSESSMENT ACT (2018)

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**EAO**

Environmental  
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The Environmental Assessment Office (EAO) User Guide is a *working document* and does not include all the regulations, policies and guides that are being developed to support the new *Environmental Assessment Act (2018)*. To see the status of regulation and policy development, see **Figure 1** ([EA Revitalization Regulation and Policy Development Table](#)). The EAO will update the guide as further regulations, policy, and guidance are developed following implementation of EA Revitalization.

Any comments or suggestions on the User Guide can be emailed to [eaoinfo@gov.bc.ca](mailto:eaoinfo@gov.bc.ca) and include “EAO User Guide” in the subject line.

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## INTRODUCTION TO THE EAO USER GUIDE

The *Environmental Assessment Office User Guide*<sup>1</sup> helps proponents and environmental assessment (EA) participants understand an overview of the British Columbia EA process led by the Environmental Assessment Office (EAO). This guide covers the revitalized process under the [Environmental Assessment Act \(2018\) \(the Act\)](#). The User Guide for the *Environmental Assessment Act (2002)* (the former Act) can be found [here](#).

The [EA Revitalization](#) process resulted in changes to EA legislation, regulation, policies, and practices that meet three objectives:

- Enhances public confidence and meaningful participation;
- Advances reconciliation by implementing the standards set out in the UN Declaration, the Truth and Reconciliation Commission Call to Actions, and the *Tsilhqot'in* decision in the context of EA; and
- Protects the environment while offering clear pathways to sustainable project development.

The EAO's approach to collaboration with Indigenous nations is to engage and work with our Indigenous nation partners as governments, with their own jurisdiction and authority and establish a collaborative approach to evaluate a potential project. Part of that engagement and work as governments is building a shared understanding of the connection of the Indigenous nation to the lands and resources in issue, grounded in the Indigenous nation's history, culture, and tradition, and situating the project proposal within how the Indigenous nation has determined its priorities and visions into the future.

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<sup>1</sup> **DISCLAIMER** - This guide is not intended to provide legal advice or direction. The guide provides summary information for convenience only and should not be used as a substitute for the Environmental Assessment Act, its regulations, or policy. The procedures described in this guide may be deviated from, based on specific project circumstances through conversations with the EAO.

## User Guide Navigation

The User Guide is organized into two parts:

1. [A general introduction to environmental assessment in B.C.](#)
2. [A more detailed explanation of the environmental assessment process for individual projects.](#)

Throughout the User Guide, you'll find symbols that highlight an important part of each phase of the B.C. EA Process. A key for these symbols is below:



**Legislated timeline**

**\*Timelines are bolded**



**Proponent time**



**Phase Milestones**



**Public comment period occurs**



**Consensus-seeking opportunity**



**Availability of dispute resolution**



These green guide boxes will provide links to further resources relevant to sections of the User Guide. The hyperlinks will be underlined.

To see all EA Revitalization resources, check out the [EAO's website](#).

To see project-related documents, check out the [EAO Project Information Centre](#) or EPIC.

## EA REVITALIZATION REGULATION & POLICY DEVELOPMENT

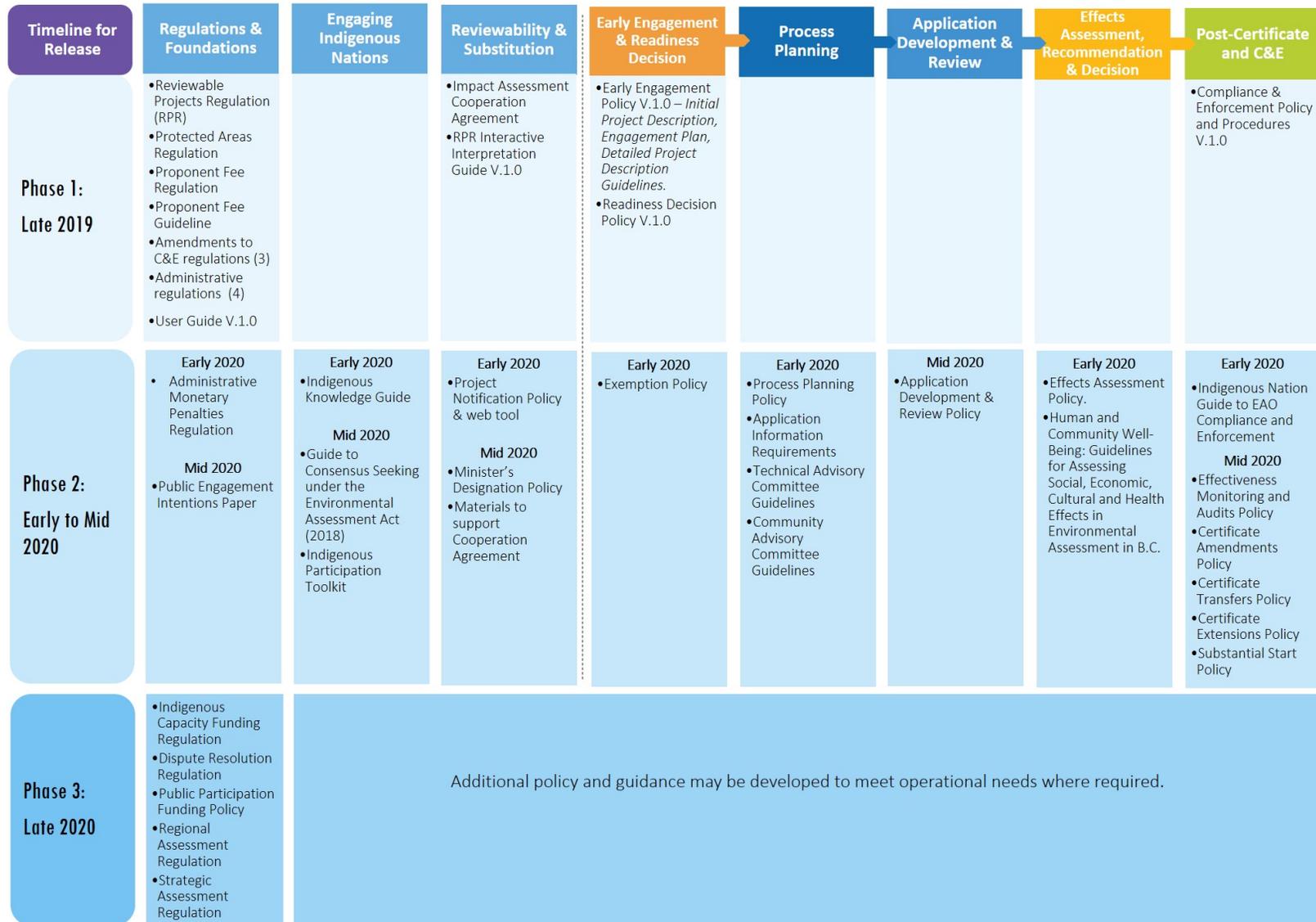


Figure 1 Phase development timelines of regulation, policy, and guidance to support the Environmental Assessment Act (2018).

## DEFINITIONS OF KEY TERMS

**Assessment matters:** Topics listed in the *Environmental Assessment Act* (2018) (the Act) under [section 25](#) that must be addressed in every assessment.

**Compliance and Enforcement:** A branch of the EAO that does routine inspections of regulated parties and projects to see if they meet the legally binding requirements of the Act, its regulations and any Environmental Assessment Certificates (EA Certificates) or Exemption Orders. If a regulated party or project is found to be out of compliance, enforcement actions can be taken to resolve non-compliance.

**Consensus:** An outcome or approach 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 an assessment based upon full consideration of the project.

**Consensus Seeking:** Cooperation between the EAO and representatives of a participating Indigenous nation in order to achieve consensus on process decisions or recommendations. Processes that seek consensus inform, but are distinct from, a decision by a participating Indigenous nation to indicate their consent or lack of consent. Processes that seek consensus inform, but are distinct from, a decision by a legislated decision maker under the Act; or may be informed by, in addition to, Indigenous participation in any Technical or Community Advisory Committee.

**Consent:** Indigenous nations can express their consent or lack of consent within the EA process at the Readiness Decision stage (when the EAO intends to recommend Termination or Exemption), or as a component of the recommendations to the Ministers regarding whether to issue an EA Certificate at the conclusion of an EA process. Minister(s) are legally required to consider the consent or lack of consent of participating Indigenous nations.

### Effects:

**Effect pathway:** cause-effect linkage between a project and component of the biophysical or human environment.

**Direct Effect:** results of a cause and effect relationship between the project and a component of the biophysical or human environment.  $A \rightarrow B$

**Indirect Effect:** result from a change that a project may cause that is often one step removed (secondary) from a project's activities due to complex relationships among components.  $A \rightarrow B \rightarrow C$

**Positive Effect:** a result that is desirable or beneficial.

**Negative Effect:** a result that is undesirable or adverse.

**Cumulative Effect:** a project's negative result(s) combined with those of other past, present, and reasonably foreseeable future projects and activities.

**Residual Effect:** a result that remains, or are predicted to remain, after applying mitigation measures to avoid, minimize, restore, or offset a project's effects.

### Abbreviations

**The Act:** Environmental Assessment Act

**C&E:** Compliance and Enforcement

**CAC:** Community Advisory Committee

**CEAO:** Chief Executive Assessment Officer

**DPD:** Detailed Project Description

**EA:** Environmental Assessment

**EAO:** Environmental Assessment Office

**EPIC:** EAO's Project Information Centre

**FPIC:** Free prior informed consent

**IAAC:** Impact Assessment Agency of Canada

**IPD:** Initial Project Description

**RPR:** Reviewable Project Regulation

**TAC:** Technical Advisory Committee

**UN Declaration:** United Nations Declaration on the Rights of Indigenous Peoples

**VC:** Valued Component

**Environmental Assessment:** A decision-making tool to help identify and evaluate the effects associated with the construction, operation, and decommissioning of a proposed project to inform provincial decision makers approval (or not) of a project, whether it can proceed to permitting, and what additional conditions should be imposed on it.

**Environmental Assessment Certificate:** A legally binding authorization that identifies a project's facilities and activities, and how the project must be carried out from start to finish. EA Certificates also state how mitigation measures to avoid, minimize, restore or offset a project's effects must be implemented. The holder of the EA Certificate must design, build, operate and, if applicable, decommission the project as described. Once a project has an EA Certificate, it can continue to other types of required permitting processes prior to construction and operation.

**Environmental Assessment Office:** The office that administers the *Environmental Assessment Act*, including the conduct of environmental assessments of major projects in British Columbia and providing provincial Ministers with advice to inform their decision on whether the project should proceed.

**Exemption Order:** Despite being a Reviewable Project, a project may meet criteria to be recommended for exemption from the environmental assessment process. Upon this recommendation, the Minister may issue an Exemption Order, which is a legally binding authorization that states what facilities and activities can occur without the need for an environmental assessment.

**Participating Indigenous nation:** An Indigenous nation that has indicated they would like to participate in the environmental assessment of a project and seek consensus with the EAO during the process.

**Participants:** includes Indigenous nations, the public, proponents, provincial and federal agencies, local government (including municipalities and regional districts), the Technical Advisory Committee, the Community Advisory Committee and any other group participating in a project EA.

**Proponent:** the legal entity that owns the project. For example, a proponent could be a city, a private company, or crown corporation.

**Project footprint:** Area where the physical activities of a project will occur resulting in direct disturbance.

**Public Engagement and Comment Period:** An opportunity for those affected by or interested in a proposed project to participate in in-person and online events or activities that are meant to inform or collect input from the public.

**Monitoring:** Different types of monitoring are conducted by the certificate holder, Independent Environmental Monitors, and the EAO's Compliance and Enforcement division. Monitoring could also be done by an Indigenous nation.

**Effects monitoring:** a process of measuring and interpreting changes to the biophysical or human environments to identify a project's effects and test the predictions made in the environmental assessment.

**Compliance monitoring:** a process of determining if the EA Certificate holder is in compliance with the Act, its regulations and any applicable EA Certificates or exemption orders.

**Mitigation:** in the Act, mitigation is defined as actions to offset the potential adverse effects of a project. After predicting what a project's effects may be, mitigation applies measures to avoid, minimize, restore or offset project effects. The first three categories – avoid, minimize, and restore – try to prevent or reduce effects on a given value or component. Examples could be changing the timing of a noisy activity to *avoid* nesting periods for birds or shielding outdoor lights to create less light pollution (*minimize*). Offsetting is used to directly or indirectly address an effect that remains after measures to avoid, minimize, and restore have been applied. Offsetting may include direct physical measure such as habitat enhancement or financial mechanisms.

**Reviewable Project:** An activity and/or facility that are described in regulation that has or may have negative effects to the biophysical and human environments, the economy, culture, or health and is required to undergo an environmental assessment. These projects need an EA Certificate or Exemption Order to continue.

# PART ONE: ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA

## 1.0 INTRODUCTION TO EA

Environmental Assessment (EA) is a decision-making tool used to identify, mitigate, and evaluate the potential impacts of a major project before decisions are made. EA is conducted across Canada by provinces, territories, co-management boards, the federal government, and Indigenous nations to determine whether a proposed major project should proceed, and if so, under which terms and conditions.

Projects are typically reviewable if they meet or exceed certain project design or effects thresholds defined in the [Reviewable Projects Regulation](#) or if they are required to undergo an assessment by the Minister of Environment and Climate Change Strategy. Typically, large industrial, mining, energy, water management, waste disposal, transportation, and resort developments require an EA in British Columbia. Reviewable projects are assessed for their potential:

- Effects on Indigenous nations and rights recognized and affirmed by section 35 of the *Constitution Act, 1982* (collectively referred to Indigenous Interests);
- Positive and negative direct and indirect effects, including environmental, economic, social, cultural, and health effects ([Figure 2](#));
- Adverse cumulative effects; and
- Other assessment matters under [section 25](#) of the *Environmental Assessment Act*.

To see the different pathways for a project to become reviewable, see:

[Part 2 – 4.0 When is a project reviewable?](#)

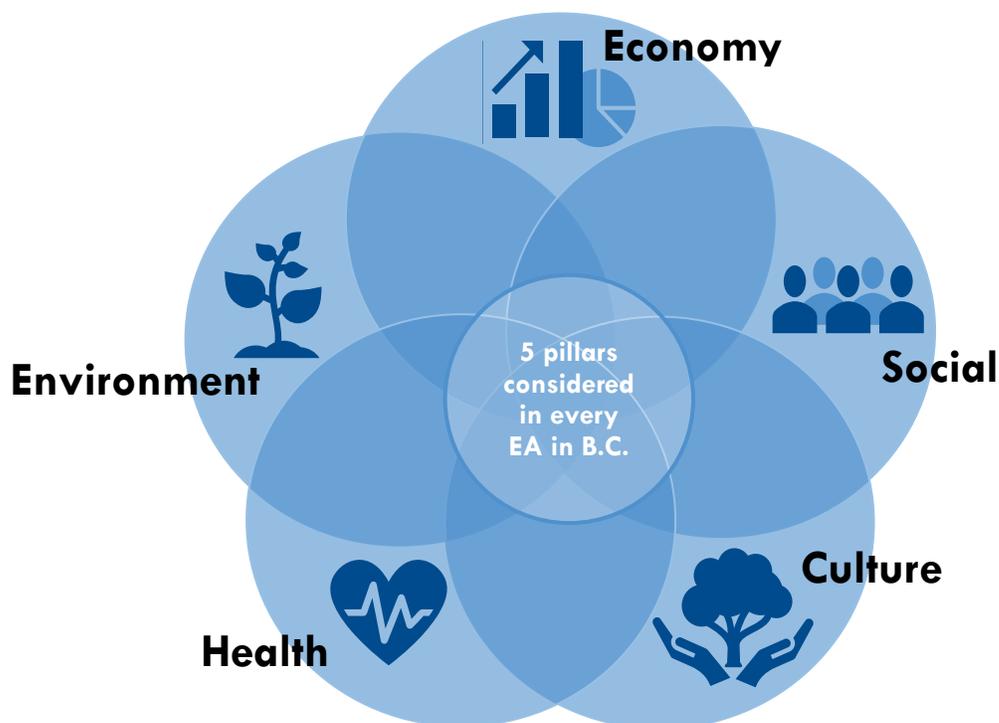


Figure 2 Five pillars considered in every environmental assessment.

The EA process includes opportunities for participation by Indigenous peoples<sup>2</sup>, provincial and federal government agencies, local government<sup>3</sup>, and the public. For example, [Early Engagement](#) provides an opportunity to identify issues, interests, and concerns of Indigenous nations, participants, and the public that can inform project design, siting, and alternative approaches to developing the project early on. This creates an opportunity to identify key issues before the project proceeds to an EA or identify the issues that will need to be resolved in the EA process. Starting in Early Engagement, the goal is to engage collaboratively with Indigenous nations as partners and governments, with their own governance frameworks, jurisdictions and authorities to collaboratively develop a shared and more comprehensive understanding of Indigenous nation's interests, governance and connection to the land and establish appropriate collaborative approaches to evaluate a potential project. Then, at the [Readiness Decision](#) phase, the EAO works with participating Indigenous nations through a consensus-seeking process to determine whether to commence the EA or recommend exemption or termination.

## 1.1. The Environmental Assessment Office

The Environmental Assessment Office (EAO) was established in 1995 to administer the EA process under the *Environmental Assessment Act* and its regulations, including verifying and enforcing compliance with the conditions of EA Certificates.

The EAO has two purposes under [section 2](#) of the *Environmental Assessment Act* (2018) (the Act):

1. Promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities. This means carrying out assessments that:
  - Are thorough, timely, transparent, and impartial;
  - Facilitate meaningful public participation;
  - Use the best available science, Indigenous knowledge and local knowledge in decision making; and
  - Coordinates assessments with other agencies and governments, including Indigenous nations where appropriate.
2. 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 that would affect their rights;
  - Collaborating with Indigenous nations on EA reviews; and
  - Acknowledging Indigenous peoples' rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

## 1.2. EAO's Project Information Centre (EPIC)

The EAO maintains EAO's Project Information Centre ([EPIC](#)) to improve transparency of the provincial EA process and to provide public access to project data and information. EPIC is the place to find project information and documents, submit public comments during engagement periods, and keep up to date with EA activities and updates.

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<sup>2</sup> The term Indigenous peoples is a collective name for the original peoples of North America and their descendants; often Aboriginal peoples is also used. The Canadian Constitution recognizes three groups of Aboriginal peoples: First Nations, Inuit, and Métis. For federally substituted environmental assessments, EAO may engage with Inuit and Métis but this consultation is understood to be conducted on behalf of the Government of Canada.

<sup>3</sup> Local governments include both municipalities and regional districts.

### 1.3. Substitution and Coordination

Major projects in B.C. often require both federal and provincial EAs. ‘One Project, One Assessment’ is the principle that describes a single EA process that supports separate and independent provincial and federal decisions. This approach supports transparency, predictability, efficiency, and minimizes the duplication of efforts.

Cooperation and substitution are enabled under the Act and the federal [Impact Assessment Act](#) but are operationalized through a Cooperation Agreement signed by the EAO and the Impact Assessment Agency of Canada (IAAC) (successor to the Canadian Environmental Assessment Agency). The [Cooperation Agreement](#) signed in 2019 replaces the Memorandum of Understanding on substitution signed in 2013 and the 2008 agreement on coordinated assessments. It establishes a framework to enable coordinated engagement and sets a goal for common requirements for information and joint issuance of documents. This agreement supports the legal responsibility of each jurisdiction to make separate decisions under their acts.

Cooperation with the IAAC can involve:

- **Substituted process:** A substituted process is a single assessment followed by two separate decisions. The EAO prepares an Assessment Report on behalf of B.C. and Canada. Each government makes their own decisions whether to grant approval based on the considerations defined in each respective Act. Both Canada and B.C. retain their duty to consult and, where appropriate, accommodate Indigenous peoples.
- **Coordinated process:** Occurs when substitution is not requested or is not approved. The EAO and IAAC complete their own assessments under their respective legislative frameworks but coordinate the conduct of the EA to the greatest extent possible. Key aspects of a coordinated assessment include: single or coordinated information requirements, aligned timelines, joint public commenting periods, and the release of independent decisions at the same time.
- **Joint Review Panel:** Both Canada and B.C. jointly appoint panel members and agree on terms of reference for an independent panel to conduct the impact assessment.



More information about Cooperation:

- [Impact Assessment Cooperation Agreement](#)
- Policy & Guidance to support Cooperation Agreement (Available Mid 2020)

### 1.4. Regulatory Continuum

Major projects require multiple authorizations from provincial and/or federal agencies throughout the life of the project. In the context of EA, the regulatory continuum is a ‘Team B.C.’ approach to agencies working together to ensure the transition from EA to permitting is efficient by transferring information, minimizing duplication of technical review, working across agencies on collaborative processes with Indigenous nations, coordinating conditions, and coordinating multi-agency compliance and enforcement activities. [Figure 3](#) shows an example of the regulatory continuum for mining projects in B.C.

A coordinated process can enable efficiencies across agencies by identifying where issues are best addressed along the regulatory continuum and how information generated in the EA can support subsequent permitting. Information on permitting is provided in the Initial Project Description, which informs the Permitting Plan that is developed as a component of the Process Order. A final document is prepared, along with the EA Certificate, outlining the issues carried forward for further consideration during the review of permit applications to inform condition development and other means of issue resolution.

The goal of carrying issues forward is to ensure permitting participants are aware of issues raised during the EA, how they were addressed, and whether additional considerations are required for draft permits, authorizations and licences. Additionally, if specific changes to the project are required as a result of subsequent permitting, a permitting statutory decision maker may recommend amendments to the EA Certificate. This integrated process helps ensure an efficient review, where the best-placed government regulator retains primary oversight of the important issues for a project.

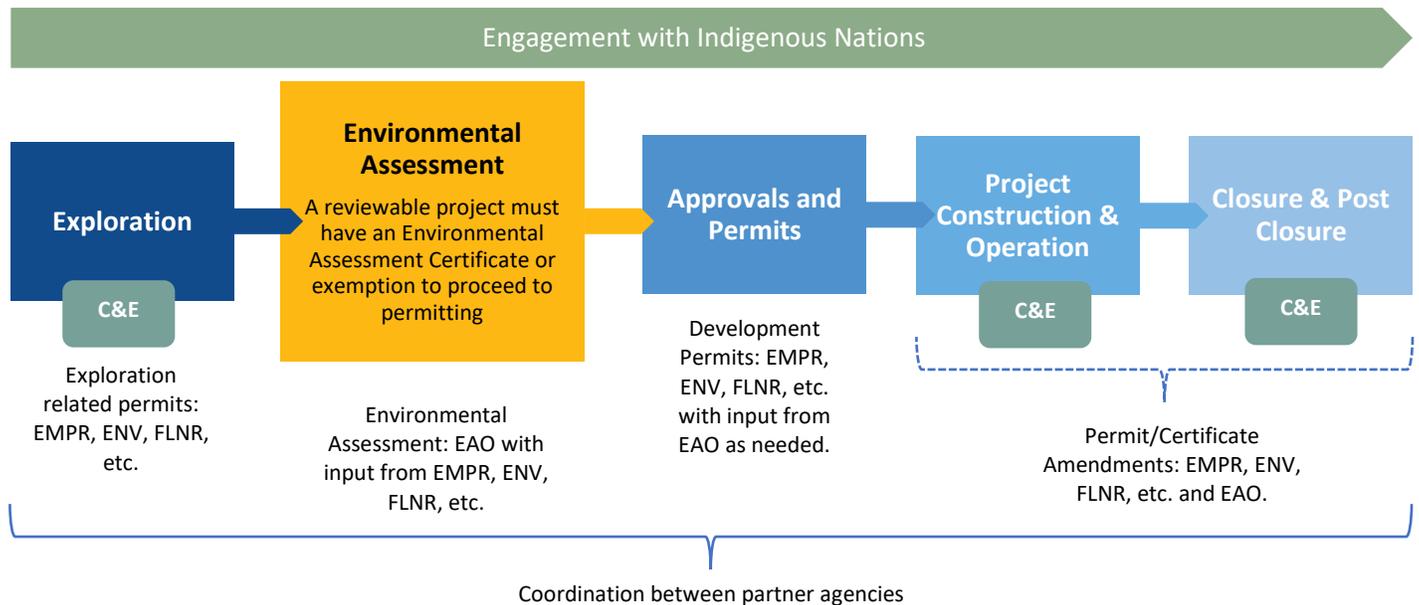


Figure 3 Example of the regulatory continuum for mining projects in B.C. The EAO works with Ministry of Energy, Mines & Petroleum Resources (EMPR), Ministry of the Environment and Climate Change Strategy (ENV), Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), and other partner agencies to consider the shared interests of all regulatory agencies, to ensure thoughtful development of EA and permit conditions, and coordinate compliance and enforcement (C&E) efforts.

## 1.5. Other Types of Assessment

The Act established other types of assessments that can be carried out including:

- [Class Assessments](#)
- [Regional Assessments](#)
- [Strategic Assessments](#)
- Indigenous-led Assessments through [Section 41 Agreements](#)

The EAO will be engaging on the development of regulation, and policy and guidance to set the scope, conduct, and function of these other types of assessments as part of [Phase 3 of policy development](#).

### 1.5.1. Regional Assessments

Regional Assessments are assessments of the environmental, economic, social, cultural and health effects of projects in a region of B.C. Regional EAs are enabled under the Act to complement, not duplicate, provincial monitoring, land-use planning, and cumulative effects assessments. Upon Minister direction, a regional assessment can be used to fill information

gaps and provide direction for future project-specific EAs. Before undertaking a Regional Assessment, the Minister must seek to achieve consensus with Indigenous nations whose section 35 rights could be affected by the assessment on the direction of and terms of references for the Regional Assessment.

### 1.5.2. Strategic Assessments

The Minister can order, on behalf of the government, a strategic assessment of any policy, enactment, plan, practice or procedure of the government to make recommendations. Before ordering a Strategic Assessment, the Minister must seek to achieve consensus on the order and the terms of reference for the assessment with Indigenous nations whose section 35 rights could be affected by the assessment.

### 1.5.3. Class Assessments

Class Assessments are a streamlined EA process to assess the potential environmental, economic, social, cultural, or health effects of a specified category or group of reviewable projects. Under [section 34](#), the class assessment would be required to address the assessment matters in [section 25](#) and the Chief Executive Assessment Officer (CEAO) must seek to achieve consensus with Indigenous nations whose section 35 rights could be affected by the assessment.

Class Assessments were possible under the 2002 Act; however, no class assessments have been conducted in B.C. to date. Class Assessments have been used by the federal government and in Ontario and Newfoundland. Typically, a class assessment is applied to routine or recurring projects that are well-defined, with anticipated impacts that are predictable or well understood, and relatively easily managed through standard mitigation measures. For example, Ontario has used class assessments for municipal infrastructure projects like landfills. The use of partial or full class assessments in B.C. will be an evolving practice that will be deployed to meet operational and public needs.

## 2.0 ENGAGING INDIGENOUS NATIONS IN EA

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*The Environmental Assessment (EA) process in B.C. is designed to advance reconciliation with Indigenous peoples by implementing the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action, and the Supreme Court of Canada Tsilhqot'in decision in the context of EA.*

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### 2.1. Consensus

The Act establishes one of the purposes of the EAO is to support reconciliation with Indigenous peoples in B.C. by:

- Supporting the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration);
- Recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making in matters that would affect their rights;
- Collaborating with Indigenous nations in relation to reviewable projects, consistent with the UN Declaration; 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.

The EAO will seek to engage with Indigenous governments according to their jurisdictions and authorities through collaborative approaches to assessing proposed projects in support of Indigenous and provincial decision-making. A goal of this engagement is to build shared understanding of the Indigenous nation's history, culture, traditions and connection to the land and resources. This includes how the Indigenous nation has determined its priorities, visions, governance and land use planning aspirations into the future.

Free, prior and informed consent is an integral aspect of the UN Declaration (Article 32(2)) and it is important to understand how free, prior and informed consent is applied to EA. Respectful of the nation's own Indigenous laws, traditions and right of self-determination, the EA process is designed to ensure that any decision taken on the question of consent by an Indigenous nation is free, prior and informed. It is an objective that all EA Participants should be working to achieve, by working together in good faith and making best efforts to achieve mutually acceptable solutions that are built upon consensus.

Free, Prior and Informed Consent (FPIC) is a key component of the UN Declaration and is not achieved at a single point in time, but rather is defined and strengthened throughout the entire EA process through consensus. In order to provide a clear and fair process to all participants, the EAO has developed terminology for consensus and consent that was developed through the collaborative process of policy development that informed the Act. Participating Indigenous nations may have their own approaches to consensus seeking or terminology that is specific to their nation. EAO will seek to understand and align approaches and terminology where possible, as different understandings of seeking consensus may lead to diverging views on whether consensus has been reached.

### Consensus

An outcome or approach 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 an assessment based upon full consideration of the project.

### Seeking Consensus

Seeking consensus is undertaken through cooperation between the EAO and representatives of a participating Indigenous nation in order to achieve consensus on process decisions or recommendations. Seeking consensus through the EA is foundational to obtaining free, prior, and informed consent. Processes that seek consensus inform, but are distinct from, a decision by a participating Indigenous nation to indicate their consent or lack of consent. Processes that seek consensus inform, but are distinct from, a decision by a statutory decision maker under the Act; or may be informed by, in addition to, Indigenous participation in any Technical or Community Advisory Committee.

### Consent

Indigenous nations can express their consent or lack of consent within the EA process at the Readiness Decision stage (when the EAO intends to recommend Termination or Exemption), or as a component of the recommendations to the Ministers regarding whether to issue an Environmental Assessment Certificate at the conclusion of an EA process. Minister(s) are legally required to consider the consent or lack of consent of participating Indigenous nations.

## 2.2. Participating Indigenous nations

Under the Act, all Indigenous nations that may be adversely affected by a project can opt to be a participating Indigenous nation. Indigenous nations will have an opportunity to indicate their intention to participate in an EA as participating Indigenous nations during [Early Engagement](#). Alternatively, Indigenous nations may choose to refrain from identifying as

participating Indigenous nations under the Act. In these cases, the EAO must still fulfill its constitutional obligations to consult these Indigenous nations and will continue to engage with the nations according to these obligations. This may require that some procedural components of consultation be delegated to the proponent. Details regarding consultation with Indigenous nations who are not participating Indigenous nations will be defined in the Process Order developed during the [Process Planning](#) phase.

Broad procedural rights are granted and affirmed to participating Indigenous nations throughout the Act in alignment with the UN Declaration and the reconciliation purpose of the EAO. These rights include:

- A clear process for seeking consensus;
- Opportunities to communicate consent or lack of consent at key milestones;
- An opportunity for the nation to carry out the components of the effects assessment that pertain to their nation and its rights ([section 19\(4\) Assessments](#));
- Access to facilitated dispute resolution; and
- Representation on Technical or Community Advisory Committee(s).

### 2.3. Assessing effects on Indigenous Interest

In every EA, the effects of a project on Indigenous nations and section 35 rights must be assessed. The EAO and a participating Indigenous nation will work together, as early as possible, to develop an understanding of the nation's unique connection to the proposed project area including past and future uses of the area and interests that may be affected by the proposed project ([Understanding of Interests](#)). The Understanding of Interests will be reflective of the nation's governance requirements and will inform the scope of the EA process including the scope and nature of the assessment and what the focus of the consensus seeking requirements of the Act will be at each EA phase.

Participating Indigenous nations can carry out their own assessment of potential effects of the project on the nation and its section 35 rights. See [section 7.2 of this guide on Collaborative Effects Assessment options](#).

### 2.4. Indigenous Knowledge in EA

The Act establishes that one of the purposes of the EAO is to use the best available science, Indigenous knowledge, and local knowledge in decision making under the Act. The Act also establishes confidentiality provisions to increase trust in how the EAO handles Indigenous knowledge and to try to prevent potential harm to Indigenous knowledge holders, Indigenous community members, and cultural resources.



Resources on engaging Indigenous nations:

- Indigenous Knowledge Guide (Available Early 2020)
- Guide to Consensus Seeking under the *Environmental Assessment Act* (2018) (Available Mid 2020)
- Indigenous Participation Toolkit (Available Mid 2020)

A key question that will inform the approach to collaboration with Indigenous nations is:

***How will we structure processes and mechanisms between our governments to ensure that Indigenous relationships to the lands are resources that are the subject of a potential project are fully part of guiding an assessment from early engagement through project decision?***

The EAO acknowledges that historically the EA process has been largely driven by western knowledge systems. Supporting reconciliation with Indigenous peoples in B.C., including through the respectful recognition of Indigenous governance, jurisdiction and decision making, is central to the purpose of the EAO under the new Act. Given the key role Indigenous knowledge plays in the governance and decision making of Indigenous nations, the EAO is working with Indigenous nations to understand how best to define the requirements and approaches for the consideration of Indigenous knowledge within the EA process in a respectful manner. This is occurring within the broader context of the collaborative framework of the new Act grounded in recognition and upholding the standards of the UN Declaration. The goal of this is to make more informed decisions about major projects in British Columbia and to ensure assessments more effectively inform Indigenous decision making and support Indigenous governance of their territories.

Indigenous knowledge is not static or homogenous. It is difficult to define because it takes many forms and dimensions and cannot be universally defined. Individual nations will define what they consider to be Indigenous knowledge and the appropriate use of their knowledge in an EA process that they are participating in. Indigenous nations have different perspectives on what constitutes Indigenous knowledge for their nation and Indigenous knowledge is often holistic, place based, relational, intergenerational and can be embodied in tangible or less tangible forms.

Indigenous knowledge can be both traditional and contemporary, beyond what is narrowly conceived as ‘traditional ecological knowledge.’ Indigenous knowledge is broad and can include knowledge that is connected to place about the biophysical world, how a community uses and manages their relationship with the environment, and the values and preferences of the community regarding what they consider significant or valued components of the environment and what they feel is the ‘significance’ of impacts on those values including spirituality and cultural values.

The inclusion of Indigenous knowledge within the EA process is an important component in meeting the reconciliation objectives of the Act, supporting the implementation of the UN Declaration (see Article 31) and recognizing the governance and decision-making requirements of Indigenous nations. Indigenous knowledge is included in the EA process to provide provincial and Indigenous decision makers and participants greater knowledge and understanding of the environment in which a project is proposed, the potential impacts of that project, and the significance of those impacts. This helps to support Indigenous governance of their territories and helps provincial decision makers to be more effectively informed by Indigenous perspectives.

Within the context of EAs, the EAO understands Indigenous knowledge generally to be a unique way of knowing that is held by Indigenous knowledge holders that pertains to the area within which a project may occur including how that project may interact with the environment and people.

### *Principles Guiding the Application of Indigenous Knowledge to Environmental Assessment in B.C.*

1. **Relationship-based** – Relationships with Indigenous nations and Knowledge Holders are foundational
2. **Respect** – Indigenous knowledge and western knowledge are equally valid as distinct ways of knowing
3. **Iterative, Interconnected and Broad Application** – Indigenous knowledge should be applied throughout the EA process
4. **Acknowledgement of Context** – Indigenous Knowledge must be understood in the context it was given
5. **Transparency** – Procedural fairness and transparency must be maintained for all participants
6. **Permission of Use** – Indigenous knowledge should only be used with appropriate permission and according to the governance, laws, policies, and practices of the Indigenous nation

### 2.4.1. Confidentiality

Under [section 75](#) of the Act, any Indigenous knowledge provided to the EAO in confidence by an Indigenous nation must not knowingly be, or be permitted to be, disclosed without written consent. There are additional protections under the Freedom of Information and Protection of Privacy Act (FOIPPA [section 16](#) and [18](#)) if public disclosure of the information could reasonably be expected to harm the relations between the Province and Indigenous governments or if the disclosure of the information could be harmful to the conservation of sites with anthropological or heritage value.

However, Indigenous knowledge may be disclosed (with conditions for further disclosure) if the knowledge is publicly available, by court order, by the Chief Executive Assessment Officer if disclosure is deemed necessary for procedural fairness or in prescribed circumstances. Additionally, Standing Memorandums of Understanding can specify how Indigenous governance applies to EAs including regarding the use of Indigenous Knowledge.

## 2.5. Dispute Resolution



The Act includes opportunities for time-bound, non-binding dispute resolution to support consensus seeking. A participating Indigenous nation or the Chief Executive Assessment Officer may refer matters to a dispute resolution facilitator described in [section 5](#) of the Act. Throughout [Part Two](#) of the User Guide, you'll find the icon to the right and an explanation of where dispute resolution is available in each phase of the EA process.

## 3.0 THE PROVINCIAL FRAMEWORK FOR EA

### 3.1. Environmental Assessment Act

The [Environmental Assessment Act \(2018\)](#) (the Act) and regulations under the Act establish the legal framework for provincial environmental assessments of proposed major projects in B.C. The Act has several foundational elements that are important for proponents and participants to know, each are discussed below.

### 3.2. Provincial decision makers

The Minister of Environment and Climate Change Strategy is responsible for making a decision at two phases of the EA process:

1. During the [Readiness Decision](#), if the project is referred to the Minister by the Chief Executive Assessment Officer for exemption or termination, the Minister may issue the order or refer the project back to the EAO.
2. At the end of an EA during the [Decision](#) phase, the Minister and the Responsible Minister (who is responsible for activities in a project's sector) decide whether to issue or refuse an EA Certificate. Some examples of the Responsible Minister by section are listed in [Table 1](#) below and find the full list for each sector [here](#).

The Minister(s) must consider participating Indigenous nations' decisions and other decision factors set out in the Act.

Table 1 Examples of the Responsible Minister for some categories of reviewable projects.

| Category of Reviewable Projects                     | Responsible Minister  | Alternate Responsible Minister                                  |
|---|---|---|
| Energy projects & Mine projects                     | Energy, Mines & Petroleum Resources                             | Forest, Lands, Natural Resources Operations & Rural Development |
| Tourists Destinations                               | Forest, Lands, Natural Resources Operations & Rural Development | Municipal Affairs and Housing                                   |
| Waste Disposal Projects & Water Management Projects | Municipal Affairs and Housing                                   | Forest, Lands, Natural Resources Operations & Rural Development |

As head of the EAO, the Chief Executive Assessment Officer (CEAO) plays a key role throughout the EA process. The CEAO administers many parts of the Act including (but not limited to):

- The decision to proceed to an EA or refer the project to the Minister for an EA by assessment body, exemption or termination;
- Extending or imposing EA timelines;
- Terminating an EA under certain conditions (i.e. Detailed Project Description not submitted by proponent in 1 year);
- Establishing a Community Advisory Committee for a project;
- Referring the proponent’s Application and the recommendations at the conclusion of the EA to the Ministers for decision; and
- Amending EA Certificates.

### 3.3. Public Engagement

Public engagement is a central part of the EA process to both inform the public and to understand what is valued, to provide input on potential effects, and to understand the consequences of those effects. The Act sets out several legal requirements for public engagement:

- Proponents must submit an Engagement Plan and Initial Project Description (IPD) during Early Engagement.
- The CEAO must hold a minimum of four public engagement and comment periods throughout the process and may only hold fewer if the public has not demonstrated sufficient interest.
- The CEAO must establish a community advisory committee, unless there is insufficient community interest.
- The CEAO must maintain EAO’s Project Information Centre ([EPIC](#)) to facilitate public access to information.

Beyond the legal requirements, one of the stated purposes of the EAO identified in [section 2](#) of the Act is to facilitate meaningful public participation throughout all stages of an EA. Through discussion and information sharing, public engagement can inform a proponent’s project design and assessment of a proposed project, and provide EA decision makers with community knowledge, interests, or concerns regarding proposed projects undergoing an EA.

#### EAO’s Principles of Public Engagement

- Transparency
- Responsive & Tailored Engagement
- Public Expertise
- Evaluation & Improvement
- Centralized Approach
- Inclusive & Accessible Engagement
- Feedback Loop

Four legislated comment periods are held at the following phases in the EA process:



- [Early Engagement](#) – on the Initial Project Description submitted by the proponent.
- [Process Planning](#) – on the draft Process Order.
- [Application Development and Review](#) – on the Application submitted by the proponent.
- [Recommendation](#) – on the draft Assessment Report and draft Certificate.



Public Engagement Intentions Paper  
(Available Mid 2020).

For each phase, documents are posted on [EPIC](#) for public comment and appropriate engagement activities are undertaken which may include online tools or in-person events. During Early Engagement, the proponent's public engagement activities will be outlined in a proponent's Engagement Plan. The public will have an opportunity to comment on the proponent's IPD and the DPD will incorporate and reflect public feedback received. The [Process Order](#) will outline proponent and the EAO's roles for public engagement during the rest of the EA. Public engagement will use new outreach and engagement tools that allow the EAO to design engagements using tailored and responsive methods that are appropriate to the participants involved and the information required.

### 3.4. Environmental Assessment Certificate

Reviewable projects may be granted an EA Certificate upon completion of an EA. Reviewable projects must obtain an EA Certificate (or exemption order when it is determined that a review is not required) before undertaking any activity – construct, operate, modify, dismantle, or abandon all or part of the facilities – associated with the project. Both certificates and exemptions are legally binding and contain conditions that must be followed for the life of the project to mitigate potential adverse effects. An EA Certificate is a pre-requisite for authorizations or approvals under other provincial or federal statutes.

An EA Certificate will:

- Describe the permissible infrastructure and activities of a projects through a Certified Project Description.
- Describe the conditions of 'how' the project will be implemented throughout the life of the project.
- Specify the deadline for the holder of the certificate to substantially start the project not more than 10 years after the issue date, with the possibility of a one-time, 5-year extension upon request and at the Chief Executive Assessment Officer's discretion.

If the project is substantially started, the certificate remains in effect for the life of the project, subject to cancellation or suspension. Despite the expiry of a certificate, any condition respecting decommissioning or reclamation activities remain in effect.

### 3.5. Compliance

An EA Certificate holder must develop a project in compliance with its EA Certificate or exemption order. Ongoing monitoring, compliance inspections, and enforcement actions (when required) ensure that projects are designed, built, operated, and decommissioned or reclaimed in compliance with its certificate, the Act, and its regulations. Compliance and Enforcement is coordinated with other permitting agencies along the regulatory continuum.

The EAO and the Minister of the Environment and Climate Change Strategy have a range of tools available to address non-compliance, ranging from orders to cease or remedy to administrative monetary penalties. More details and links to resources can be found in the [section 11.0 of this guide, Compliance & Enforcement](#).

## 3.6. Regulations under the Act

### 3.6.1. Reviewable Project Regulation

Proposed projects are reviewable if they meet or exceed certain thresholds defined in the Reviewable Project Regulation (RPR). This regulation identifies project design and effects thresholds, and notification criteria for prescribed categories. There are thresholds for both new projects and modifications to existing projects. Reviewable projects are generally those with a higher potential for significant adverse effects. More information on how a project becomes reviewable is available in [section 4.0 of this guide, when is a project reviewable?](#)

### 3.6.2. Protected Areas Regulation

The Protected Areas Regulation lists specific classes of B.C. protected areas for two purposes. First, any new project in a reviewable category must undergo an EA if they overlap with a listed protected area and would have significant adverse effects on the area. Second, the CEAO may recommend a project for early termination if they consider that a project will have extraordinarily adverse effects on a listed protected area. Only the Minister will be able to terminate an assessment based on this recommendation.

### 3.6.3. Fee Regulation

The Fee Regulation creates a fee structure for conducting an EA and post-certificate services. The model is a “fee for service” framework with funds collected from project proponents at key EA process milestones. After a certificate is issued, holders pay for compliance and enforcement services as they are required.



To find regulations under the *Environmental Assessment Act(2018) (the Act)*including:

- Reviewable Projects Regulation
- Protected Areas Regulation
- Fee Regulation & Proponent Fee Guideline
- Amendments to C&E regulations (3)
- Administrative regulations (4)
- Administrative Monetary Penalties (Available Early 2020)

[Click here](#)

# PART TWO: THE B.C. ENVIRONMENTAL ASSESSMENT PROCESS

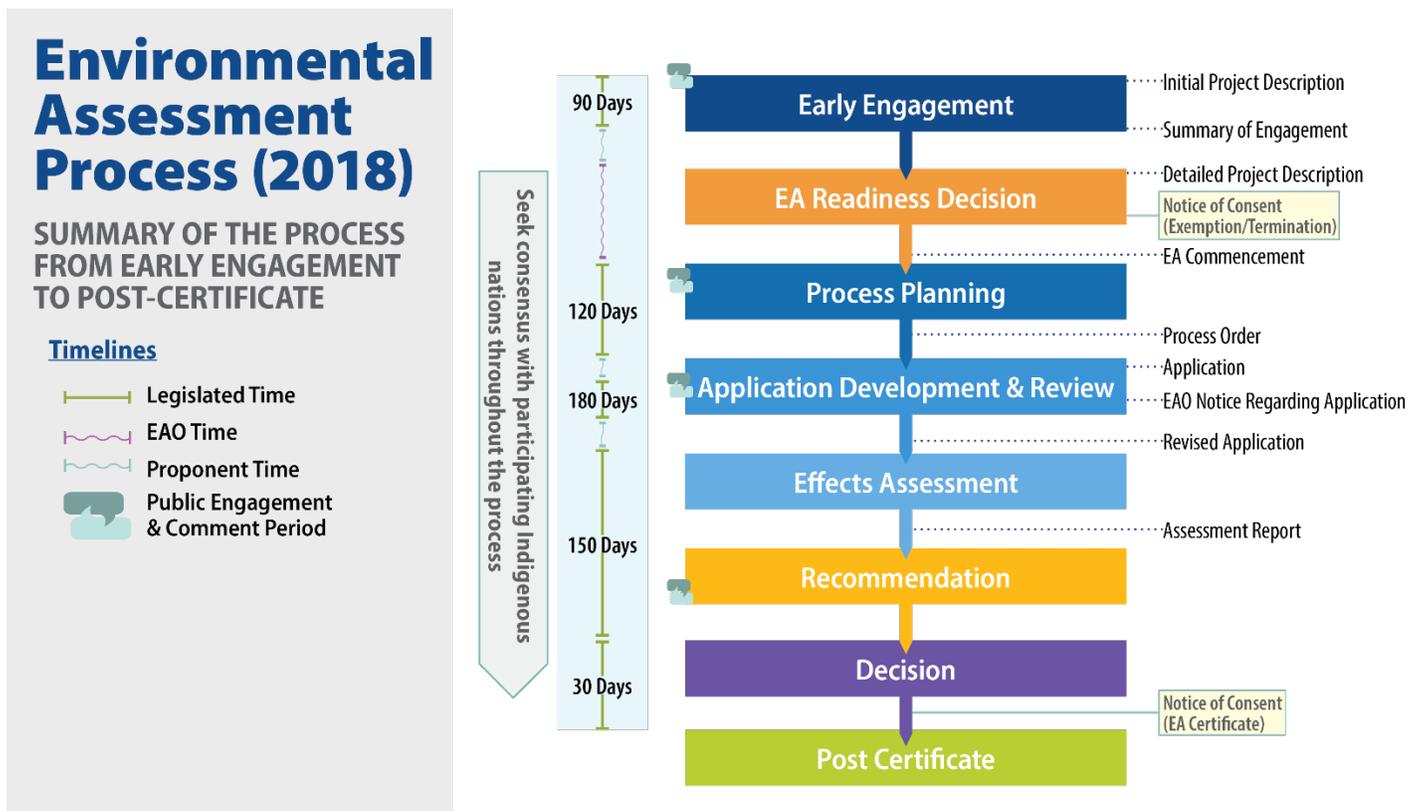


Figure 4 Provincial Environmental Assessment process in B.C.

Figure 4 presents an overview of the provincial Environmental Assessment (EA) process and includes the legislated timelines for each phase, where the proponent has time to prepare and submit documents, and where there is no legislated timeline for the Readiness Decision. The schedule for an EA is strongly influenced by the proponent’s timing in gathering and providing information necessary, at the required quality, to conduct the assessment, and the level of engagement undertaken with participating Indigenous nations and EA participants during the development of materials.

The following sections provide a general overview of each phase of a *typical, individual project assessment* conducted by the EAO. The Act does provide options for collaborative effects assessments with Indigenous nations, discussed in [7.2 of the User Guide](#).

Part Two of the User Guide will identify and explain:

- What happens at each phase of the environmental assessment;
- Timelines for each phase;
- The role of Indigenous nations, the public, advisory committees, and local government; and
- Key decision points where Indigenous nations may express their consent or lack of consent.

## 4.0 WHEN IS A PROJECT REVIEWABLE?

A proposed project becomes reviewable in three ways:

1. **Reviewable Project Regulation (RPR)** – a broad range of major projects (both new projects and modifications of existing projects) are reviewable if they meet at least one of the criteria in **Figure 5**.
2. **Ministerial designation** – the Minister of Environment and Climate Change Strategy has the authority to require an EA for projects that are not reviewable under the RPR. Projects are designated by the Minister in three ways:
  - Through a request to designate a project that is not substantially started and not reviewable under RPR ([section 11\(5\)](#));
  - By the Minister’s own initiative ([section 11\(7\)](#)); or
  - Through a referral from the CEAO after a review of a project notification ([section 10\(4\)a](#)).

When making a decision on designation, the Minister must consider whether the project could have effects on an Indigenous nation and their section 35 rights; if the project is in a category of the RPR, whether the effects of the project will be equivalent to or greater than the potential effects of a project in the same category that is reviewable; and whether an EA of the project would be consistent with the sustainability and reconciliation purposes of the EAO. If the project is subject to another prescribed regulatory process, the Minister can make the designation only if the Minister is satisfied the designation is in the public interest.

3. **Proponent ‘opt-in’** – a proponent may apply to the Chief Executive Assessment Officer (CEAO) to designate a project as reviewable that is not reviewable under the thresholds set in the RPR or was not designated by the Minister as reviewable. The reasons for seeking to opt-into the EA process will vary but one example could be a proponent of a project that has high public interest but is sub-threshold. If the CEAO accepts the application, the project becomes reviewable ([section 12](#)).



An Interactive version of the RPR Interpretation Guide is available [here](#) (Prezi works best in Chrome or Firefox).

A pdf version is available [here](#).

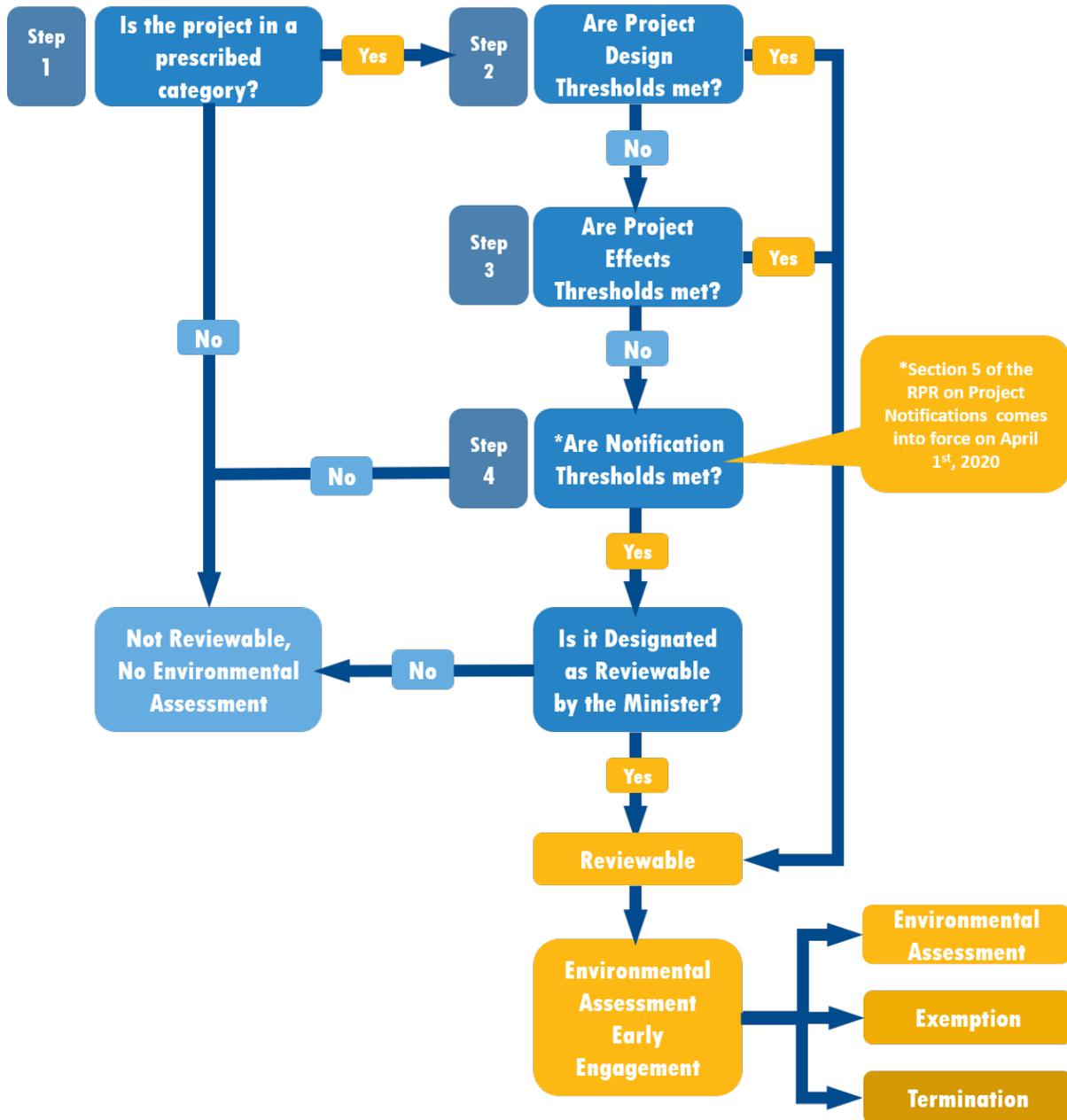


Figure 5 Reviewable Project Regulation model

#### 4.1.1. Project Notification

[Section 10 of the Act](#) and [section 5 of the RPR](#) require proponents of certain projects to submit a notification of their intention to develop those projects. This allows the EAO to better track projects that should be potentially considered for an EA despite being below the reviewability threshold and, when appropriate, bring projects to the Minister’s attention so

it can be determined if the project should enter the EA process. Notification is required for projects that meet any one of the notification thresholds listed in [Table 2](#).

Table 2 Notification Thresholds in the Reviewable Projects Regulation.

| Notification Category       | Notification threshold for New Projects  |
|-----------------------------|--|
| Federally Reviewable        | Reviewable under the federal <a href="#">Impact Assessment Act</a> and not wholly located on federal land or a reserve   |
| Design & effects thresholds | A project that would meet the project design or effects thresholds if those thresholds were reduced by 15% – For example, the threshold for a new mineral mine is a facility with a production capacity of greater than 75,000 tonnes/year of ore. A facility that proposes to produce greater than 63,740 tonnes/year but less than 75,000 would be required to notify EAO.   |
| Workforce                   | A project that would result, at the peak of construction or operations, in the <b>employment by the proponent of 250 or more employees or contractors who work more than 30 hours per week on an annual basis at the project facilities</b>  |
| Greenhouse Gases            | A project that emits <b>125,000 tonnes per year or more of one or more greenhouse gases</b> directly from project facilities determined in accordance with <a href="#">Part 3 of Greenhouse Gas Emission Reporting Regulation</a> .<br><br>*A modification to an existing project that emits <b>125,000 tonnes per-year or more</b> is required to notify EA, <i>only for the first time an expansion of a given project exceeds this threshold.</i>   |
| Transmission Lines          | A transmission line greater than <b>230 kV</b> and greater than <b>40 km</b> in length   |
| Linear clearance            | Projects that include the clearance of <b>40km or more</b> of land is to be developed for an electrical transmission line, transmission pipeline, railway, public highway or resource road, if the land is <u>not</u> alongside and contiguous to an area of land previously developed for one of <u>those purposes</u> .<br><br>This threshold applies to project categories that are <u>not</u> primarily linear in nature (e.g. mines) but have linear elements <u>associated</u> with the project (e.g. a road required to access a proposed mine).<br><br>This threshold does not apply to project categories that are primarily linear in nature, as their project design thresholds are already based on a measure of linear disturbance (e.g. electrical transmission lines, transmission pipelines, public highways, and railways). |
| Land clearance              | Projects that include the clearance of <b>450 ha or more</b> of clearance, unless the clearance has been authorized by the minister, or delegate, under the <a href="#">Resort Timber Administration Act</a> .<br><br>This threshold does <u>not</u> apply to project categories that are primarily linear in nature, as their project design thresholds are already based on a measure of area disturbance (e.g. electrical transmission lines, transmission pipelines, public highways, and railways).   |

Proponents are obligated to self-identify whether their proposed project would require notification to the EAO no later than **15 days** after applying for the required authorizations listed in the [Reviewable Project Transition Regulation](#). Proponents are encouraged to notify as early as possible to provide certainty around whether the project will require an EA. The timing of notification relevant to other permitting requirements will be dependent on sector but should generally be after the proponent has done sufficient exploratory work and feasibility studies to know the project is proceeding.



Once a proponent has submitted a Project Notification to the EAO, the CEO has **60 days** to:

1. Refer the project notification to the Minister for consideration under [section 11](#).
2. Require further review of the notification, including any actions or consultation that must be carried out by the proponent before a decision can be made.

3. Decide that no further review of the project notification is required. The project may then proceed to permitting.

More information about the process for reviewing Project Notifications will be available prior to section 5 of the RPR coming into force on April 1, 2020.

## 5.0 EARLY ENGAGEMENT

*The Early Engagement phase is the start of the regulatory process with the EAO and provides an opportunity for all participants to better understand the project and establish a foundation for the rest of the Environmental Assessment (EA). Early Engagement is an important preparatory phase where meaningful conversations among participants begin about the proposed project to identify engagement approaches, potential interests, issues, and concerns early in the EA process and chart a path for resolution. Indigenous nations interested in participating in the EA process as participating Indigenous nations must provide notice during Early Engagement. The EAO begins working with participating Indigenous nations to customize consensus seeking approaches with each nation for the rest of the EA process.*



The EAO has **90 days** from when the Initial Project Description is accepted to produce a Summary of Engagement, including a list of participating Indigenous nations.



- Starts when an Initial Project Description and Engagement Plan are accepted.
- Indigenous nations identify if they intend to participate in the assessment of the project within **80 days**.
- The EAO holds a minimum **30-day** Public Engagement and Comment Period on the Initial Project Description.
- The EAO and Proponent undertake specific engagement activities.
- Ends when the Summary of Engagement is published, and the list of participating Indigenous nations is confirmed



Proponents have up to **1 year** after the publication of the Summary of Engagement to submit a Detailed Project Description.

The Early Engagement phase is an opportunity to establish an important foundation for the remainder of the process – both in terms of establishing relationships between the proponent, Indigenous nations, the public, local government, provincial and federal government agencies, and stakeholders, as well as starting to understand the key issues and interests. Communication and information sharing undertaken by a proponent in advance of the Early Engagement phase can help to build relationships with all EA participants in relation to their proposed project and support a more efficient Early Engagement phase. Input from participants may inform the development of the Detailed Project Description (DPD) as well as project design, siting, and alternative approaches to developing the proposed project.

The primary objectives of Early Engagement are to:

- Identify and start to engage all relevant EA participants;
- Identify key questions and issue early and chart a path for potential resolution;
- Identify participating Indigenous nations and gain an understanding of their interests, issues, questions, and process and information needs.
- Prepare for and inform the Readiness Decision.

## 5.1. Initial Project Description & Engagement Plan

The Early Engagement phase begins with the submission of a proponent’s Initial Project Description (IPD) and Engagement Plan to the EAO. Proponents are strongly encouraged to discuss the IPD and Engagement Plan with Indigenous nations, local government, and provincial and federal government agencies prior to submission to the EAO to better understand how interested parties want to be engaged during the EA process. It is recommended that drafts of both documents are shared with Indigenous nations in advance of filing with the EAO.

The Early Engagement phase starts with the EAO’s approval of the IPD and Engagement Plan and the posting of the documents to [EPIC](#). The IPD should provide enough information for interested parties participating in the EA to build an understanding of the project and provide input into the project. The IPD is meant to have a flexible and accessible format that contains plain language and understandable information, including visual graphics where appropriate. Indigenous nations may use the IPD to gain an initial understanding of potential direct and indirect project effects or interactions with their Indigenous interests to inform their decision of whether to notify the EAO of their intention to be a participating Indigenous nation.

The EAO provides general guidance to proponents on what information should be included in the IPD but how the information is presented is at the proponent’s discretion. Generally, the IPD contains project information including:

- An Executive Summary;
- General information and contacts;
- Project information including: purpose; rationale; project status and history; proposed project timing, location, activities and components, including which components are flexible and which are not;
- Legislative and regulatory context;
- Maps of the project and its location including project footprint, known or proposed components, transportation corridors (if applicable), and overlap with communities or locations of interest to the public or Indigenous nations;
- The identification of potentially affected Indigenous nations and their interests;
- Early understandings of the biophysical and human environment setting;
- Emissions, discharges, and waste;
- Public and environmental safety;
- Alternative means of carrying out the project;
- Effects of the environment on the project;
- Land and water use;
- Land use plans;
- Project interactions; and
- If an exemption is sought for the project, this intention must be clearly stated in the IPD.



### Early Engagement Resources:

- [Early Engagement Policy](#) – includes Initial Project Description, Engagement Plan, and Detailed Project Description Guidelines
- Exemption Policy (Available Early 2020)

The Engagement Plan should include a summary of all engagement conducted prior to the start of Early Engagement and outline the proponent’s proposed engagement for the entire Early Engagement phase. The Engagement Plan should lay out the proponent’s proposed process and approach to communication and information sharing between the proponent, the

EAO, Indigenous nations, the public, local government, provincial and federal government agencies, and stakeholders during Early Engagement. The scope of engagement will vary between projects and should be informed by the potential project effects and the location of the project in relation to Indigenous nations and the public, or areas of importance to Indigenous nations or the public. Indigenous nations may have additional engagement requirements. Proponents should refer to the [EAO's website](#) or contact the EAO or Indigenous nations directly to obtain further information specific to a project.



Once an IPD and Engagement Plan are accepted by the EAO, a **30-day** public engagement and comment period is held. During this time, the EAO will also undertake engagement. The EAO will provide an overview of the EA process, highlight how the public can participate throughout the process, and how input will be considered in each phase. Engagement activities will be tailored to the local context and on a project-specific basis. The EAO will seek input from the public on key concerns or interests in the project based on the IPD, to understand what's important to them, and to identify how the project could impact local communities. The EAO will also seek input on how the public wants to be engaged throughout the rest of the EA, including if a [Community Advisory Committee](#) is appropriate for the project. The proponent will be required to demonstrate how feedback was incorporated or rationale if feedback was not incorporated when preparing their Detailed Project Description.



Public Engagement Intentions Paper  
(Available Mid 2020).

## 5.2. Indigenous nations

Starting in Early Engagement, the EAO will work with participating Indigenous nations to establish a collaborative working relationship and process for the EA of the proposed project, that respects and seeks to align where possible, their own governance frameworks, jurisdictions and authorities. A central part of this collaborative engagement is building a shared and comprehensive understanding of the nation's culture and unique connection to the lands and resources that are subject to a proposed project including situating the project proposal within the nation's priorities and visions into the future. Through these understandings, the EAO and the Indigenous nation can work through a range of potential decisions about the assessment process for a proposed project and determine how the EAO and the Indigenous nation make those decision together. The EAO will work with Indigenous nations to build these processes and mechanisms together, in ways that reflects the unique and individual needs of a nation.

### 5.2.1. How Indigenous nations are involved in Early Engagement

*Prior to submitting an IPD and Engagement Plan to the EAO, the proponent should identify Indigenous nations:*

- Whose traditional territory overlaps with or is close to the proposed project are; or
- That have a reasonable possibility for their nation or their rights to be affected by project-related direct or indirect effects.

Proponents may refer to the EAO's Effects Assessment Policy for more information on determining the scope of project components and project related effects. Proponents may identify the potentially affected Indigenous nations through the provincial [Consultative Areas Database](#), discussions with the EAO and other provincial government agencies, and through direct



Resources on engaging Indigenous nations:

- Indigenous Knowledge Guide
- Guide to Consensus Seeking under the *Environmental Assessment Act* (2018)
- Indigenous Participation Toolkit (Available 2021)

engagement with Indigenous nations. The Indigenous nations identified should be provided an opportunity to be involved in the development of the IPD and Engagement Plan. Proponents should demonstrate in the IPD how they have addressed or intend to address questions or concerns raised by Indigenous nations during engagement on the draft IPD.

Upon receiving an IPD, the EAO will notify all Indigenous nations whose interests could reasonably be expected to be affected by the proposed project. This will include Indigenous nations whose traditional territory overlaps with or is close to the project area or there is a reasonable possibility a nation or its rights could be affected by project-related direct or indirect effects.

Indigenous nations who wish to participate in an EA as participating Indigenous nations must notify the EAO of their intention by email or letter within **80 days** of the start of Early Engagement. Participating Indigenous nations are afforded specific procedural rights within the Act, discussed in [section 2.2 of the User Guide](#).

Where the CEAO has concerns regarding the notification rationale from an Indigenous nations and consideration thereof, an opportunity will be given to the Indigenous nation to address those concerns. The CEAO, under [section 38](#) of the Act, may extend the time limit for the EAO's Summary of Engagement to allow for this consideration. Following a consideration of that input, the EAO will provide notice of whether or not the CEAO has determined that there is a reasonable possibility the Indigenous nation or its rights could be adversely affected by the proposed project. This notice will outline the reasons for the determination.



If consensus is not reached on the determination, then the EAO or Indigenous nation can trigger dispute resolution under the Act.

The EAO must provide notice to the proponent within **90 days** of IPD acceptance which Indigenous nations will participate in the EA as a participating Indigenous nation. Some Indigenous nations may choose to not be participating Indigenous nations under the Act. In these cases, the EAO must still fulfill its constitutional obligations to consult these Indigenous nations and will continue to engage with them according to these obligations.

### 5.2.2. Preliminary Understanding of Interests

A preliminary Understanding of Interests will be developed by the EAO and participating Indigenous nations during Early Engagement and may be refined through the process as needed. The development of an Indigenous nation's Understanding of Interest is meant to develop the scope and process of the EA to be reflective of the nation's governance requirements. Engagement in the assessment may differ between different participating Indigenous nations depending on the nation's priorities, governance, potential impacts, and interests in the project area. The EAO will work with Indigenous nations to:

- Identify specific procedural requirements of the Indigenous nation for EAs including Indigenous decision-making requirements (processes and information requirements);
- Identify any processes or governance agreements developed between Indigenous nations for working together in areas of overlap or shared territory;
- Develop a deep understanding of a nation's unique connection to, and past and future uses of, the area potentially affected by the proposed project and Indigenous legal frameworks that governs this use; and
- Apply the outcomes of these collaborative discussions towards consensus on an EA process that is reflective of the nation's governance requirements for its constitutionally protected Aboriginal and treaty rights and effects to broader interests of a nation that could be affected by the project.

**Figure 6** outlines the potential inputs that could be considered when developing an understanding of a participating Indigenous nation's interests.

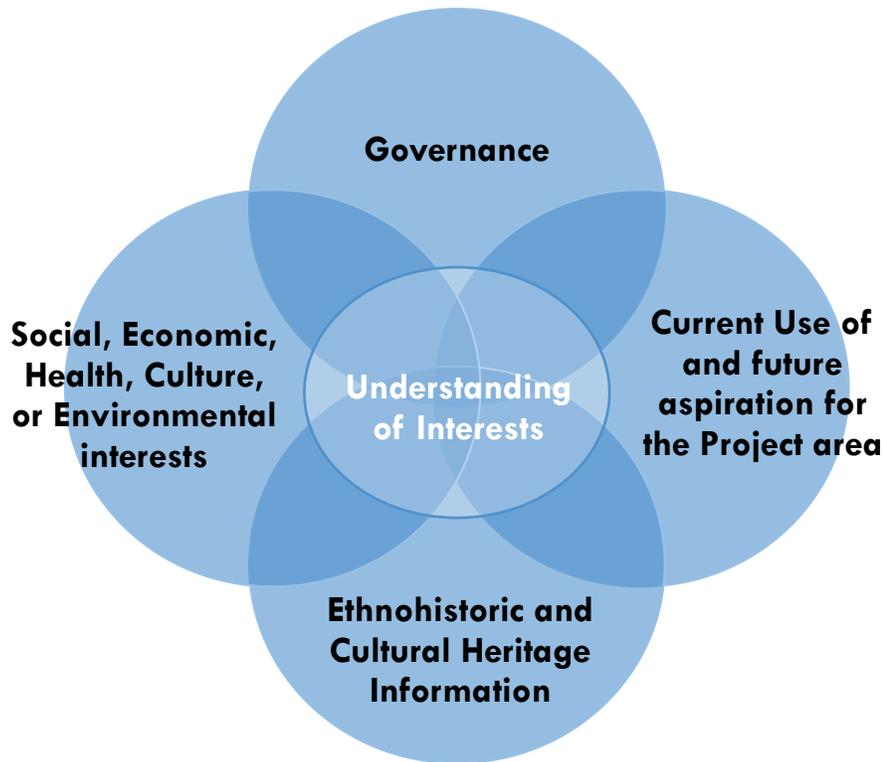


Figure 6 Potential inputs considered when developing an understanding of a participating Indigenous nations' interests.

The EAO will work with participating Indigenous nations to identify how they wish to share information and work together through Early Engagement, and the subsequent EA if the proposed project proceeds to Process Planning. The preliminary Understanding of Interests may be included in the Summary of Engagement issued to the proponent at day 90 of Early Engagement. This information will help inform the proponent in the preparation of their Detailed Project Description (DPD) and will support consensus seeking between the EAO and Indigenous nations regarding the adequacy of the DPD.

Figure 7 demonstrates how an Understanding of Interest will scope the assessment and a nation's involvement. The understanding of Indigenous interests will inform the EA in the following ways:

- Identifying the Indigenous interests that will be included in the effects assessment during the EA;
- Developing the types of information and study requirements to assess effects on Indigenous interests;
- Determining the engagement participating Indigenous nations will have in the EA process, including in the Technical Advisory Committee;
- Informing the structure of the Indigenous nation component of the EAO's Assessment Report;
- Determining the scope of consensus seeking activities between participating Indigenous nations and the EAO; and,
- Informing decision making in considering the perspectives of different Indigenous nations who may be affected by a proposed project.

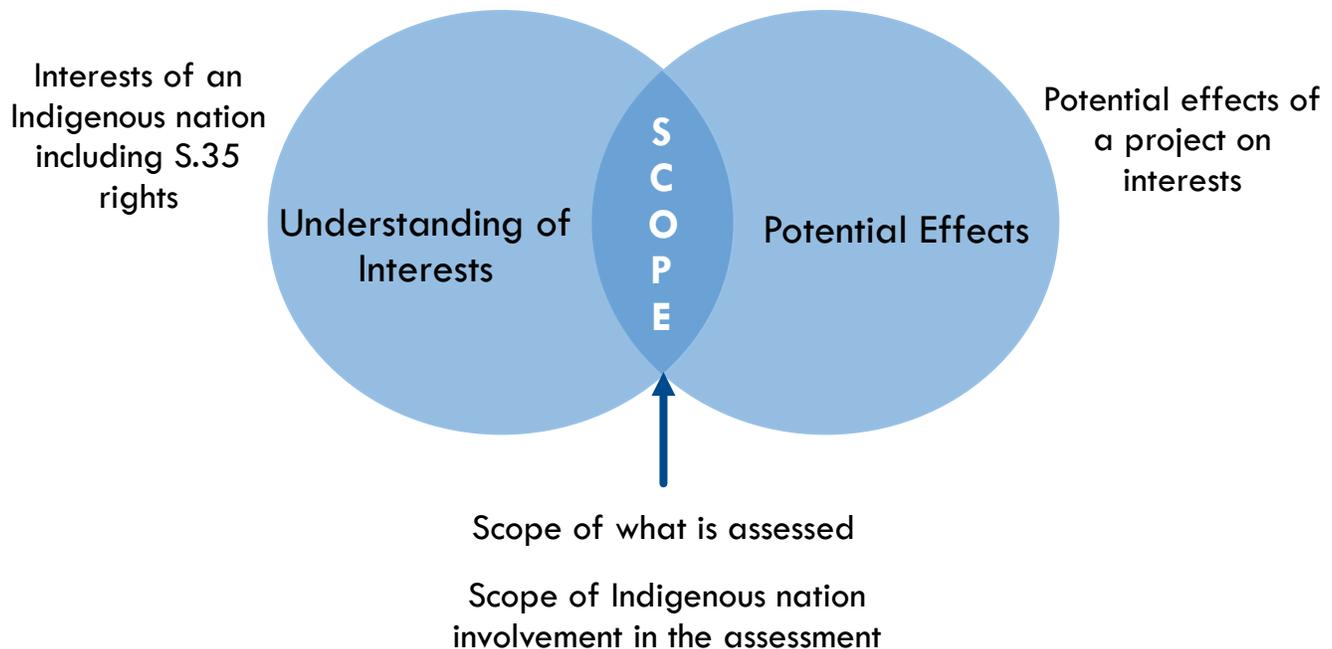


Figure 7 Determining the scope of an assessment.

During the Process Planning phase, the Understanding of Interests can be further refined so that the appropriate information and study requirements are identified and included in the Process Order. The engagement that the proponent is required to undertake with Indigenous nations in the preparation of their Application will also be identified by the Process Order.

### 5.3. Applying Indigenous Knowledge to Early Engagement

#### 5.3.1. Prior to submitting an Initial Project Description

Proponents should engage in discussions with appropriate Indigenous nations as early as possible to determine if there is relevant Indigenous knowledge available to be considered in the project design and to inform the EA process and methodologies. Discussions should occur prior to submission of an IPD. This may provide an opportunity for the proponent to consider design modification or mitigations at an early stage to meet these concerns and may help avoid delays related to deficiencies or information requests later in the EA process.

#### 5.3.2. During Early Engagement

During Early Engagement, proponents should engage Indigenous nations regarding project design and EA process requirements including study requirements. Proponents should ensure the Indigenous nation has high resolution maps of the project area as well as shapefiles. This assists Indigenous nations in understanding the areas of their territory the project

#### Proponents may want to consider:

- Providing Indigenous cultural training for their staff or contractors.
- Organizing community-specific training with the Indigenous nation to provide a foundational understanding to set expectations for working together and to support understanding Indigenous knowledge.
- Providing Indigenous nations with as much early support and notice as possible given the significant amount of work for Nations to coordinate internally with knowledge holders (and acknowledging that Nations may be engaging with multiple proponents at the same time).

will interact with and helps Indigenous nations identify the specific Indigenous knowledge holders that may need to be engaged.

The EAO will engage participating Indigenous nations to begin discussions regarding information and procedural requirements. A preliminary understanding of the area guided by Indigenous knowledge can help the EAO develop a process that will meet the needs of Indigenous participants.

These conversations should continue throughout the Early Engagement phase. Gaps in the Indigenous knowledge can also be identified at this point with the Indigenous nation to inform study and information collection during the Application Development process.

Any Indigenous knowledge provided should be considered and included in the DPD according to any requirements, including around confidentiality, prescribed by the EAO.

## 5.4. Summary of Engagement

A Summary of Engagement is prepared by the EAO for the proponent within **90 days** of accepting the IPD. The Summary presents key issues and concerns identified in Early Engagement and in the IPD, which ultimately informs the development of the DPD and subsequent [Process Planning](#). The Summary of Engagement will include:

- A summary of comments received during the public comment period; and
- The Indigenous nations that are participating Indigenous nations.

The Summary of Engagement may also identify:

- The preliminary understanding of Indigenous nations' interests in the project area (to be further refined in Process Planning);
- A summary of the issues and concerns identified to date;
- Additional information or engagement requirements for the DPD, including requirements identified by participating Indigenous nations; and,
- Information needed for the Process Planning phase, should the project proceed, including potential critical issues that will require resolution and key audiences the proponent must engage with during the EA.

The Summary of Engagement, along with all engagement conducted by the proponent, helps to inform the DPD.

## 5.5. Detailed Project Description



After the EAO has published the Summary of Engagement, the Proponent has up to **1 year** to submit a DPD. The DPD should clearly outline how information collected during Early Engagement has been used to inform the document as well as how the requirements in the Summary of Engagement have been addressed. The DPD should contain enough information to inform the EA Readiness Decision while providing a degree of certainty about project design (its activities and components) to inform Process Planning which sets the scope, methods, and information requirements for the EA.

## 6.0 EA READINESS DECISION

*Using the foundation provided by the Early Engagement phase, a decision will be made on whether a project should proceed to an EA during the Readiness Decision. Typically, the early engagement phase will provide that enough information is available to confirm readiness to start an EA, with key issues identified for resolution later in the EA process. Occasionally, a project may be terminated or exempted from an EA, by a Minister's decision. Participating Indigenous nations have an opportunity to provide a notice of their consent or lack of consent if the recommendation is to exempt or terminate the project from the EA process.*



The timeline for a decision will vary and there is **no legislated timeline** for this phase.

- Where all substantive issues that are relevant to the decision have been clearly and transparently addressed by the proponent in advance, the decision may be made within days or weeks.
- In cases where issues have largely been addressed, but the EAO must engage parties, the EAO will aim to complete this phase within 60 days.
- Where substantive outstanding issues remain, there is a greater likelihood that the decision may take longer, or the proponent may be directed to revise their DPD.

Variables include: the ability of the proponent and the EAO to address issues during Early Engagement to the extent necessary to advance the EA; extent of engagement between the proponent, participating Indigenous nations, and other participants in the development of the DPD; whether dispute resolution is triggered; and whether the EAO directs any additional engagement.



- *Starts* when the Detailed Project Description is submitted.
- The EAO and participating Indigenous nations seek to achieve consensus on the options available under the act (see [Table 3](#)).
- If the recommendation is to exempt or terminate the project, participating Indigenous nations will have the opportunity for expression of consent or lack of consent.
- *Ends* when a decision is made.

There are several decision options: five available to the CEAO and four available to the Minister of Environment and Climate Change Strategy. Each, and how a referral by the CEAO feeds into the Minister's decision, are shown in [Table 3](#).



The EAO will seek consensus with participating Indigenous nations on the decision or referral. If the project is recommended for exemption or termination, participating Indigenous nations can provide a notice of consent or lack of consent to the Minister.



Dispute resolution is available if consensus is not reached on the following options:

- proceed to a typical EA process conducted by the CEAO;
- refer to the Minister with recommendation that the EA be conducted by an assessment body;
- recommend that the Minister exempt the project from the requirements for an EA; or
- recommend that the Minister terminate the project from the process.

If dispute resolution is triggered, a decision cannot be made until the dispute resolution facilitator provides a report. The provincial decision maker (CEAO or Minister) must, in the reasons for decision, reference how the facilitator's report was considered in the decision-making.

Table 3 EA Readiness Decision Options

| Step 1 – The CEAO may:  | Step 2 – If the project is referred to the Minister, the Minister may decide to:  |
|---|---|
| Require a revised DPD due to deficiencies.  | -   |
| Refer to the Minister with a recommendation to terminate.                           | Terminate the project from the process.   |
| Refer to the Minister with a recommendation to exempt.                              | Exempt the project from the EA requirement (project then proceeds to permitting). |
| Refer to the Minister with a recommendation that an assessment body conduct the EA. | Proceed to an EA by assessment body.  |
| Proceed to an EA.   | Refer the project back to the EAO.  |

### 6.1. Applying Indigenous knowledge to the Readiness Decision

The provincial decision maker (CEAO or Minister) will consider Indigenous knowledge when deciding on EA Readiness. Indigenous knowledge can inform consensus seeking at this stage by informing Indigenous participants who engage in consensus seeking activities or by informing the Detailed Project Description submitted by the Proponent.

### 6.2. Decision options in more detail

#### 6.2.1. Require a revised DPD

If insufficient information is provided, the proponent can be directed to address deficiencies in a revised DPD and to potentially conduct further engagement.



#### 6.2.2. Proceed to an EA

If the DPD contains enough information to tailor the Process Order or is not a candidate for exemption or termination, the project may proceed to a typical EA process, or be referred to the Minister for an EA by assessment body. The EAO will publish a notice of decision on [EPIC](#) once a determination is made to proceed with an EA. This notice will address consensus seeking with participating Indigenous nations, any recommendations from dispute resolution, identify the key issues to be addressed in the EA, and the reasons for the decision.

#### 6.2.3. Exemption

The project may be referred to the minister with a recommendation that an Exemption Order be issued, if the CEAO, considering practical means of preventing or reducing to an acceptable level any potential adverse effects of the project, considers that the project:

- Will not have a significant adverse environmental, economic, social, cultural or health effect; or
- Will not have serious effects on an Indigenous nation or its rights.

Participating Indigenous nations will be provided an opportunity to submit a notice of consent or lack of consent prior to referral to the Minister.

A proponent is required to identify that an exemption is sought at the beginning of the Early Engagement Phase in the IPD to ensure all parties are made aware of this intent and can provide feedback. The IPD must provide sufficient evidence that there is no potential for significant adverse effects (without the conducting of a full assessment) and clearly explain the rationale used to reach these conclusions. The DPD will require any additional information to inform the consideration of an exemption request.

The referral to the Minister will address:

- The potential for significant adverse effects;
- Whether consensus was reached with participating Indigenous nations;
- Results from public engagement;
- Applicable regional or strategic assessments;
- Consistency with any land-use plans;
- Whether another assessment will be or has been conducted; and
- Whether potential effects can be adequately addressed along the regulatory continuum.
- The referral may also include any recommendations for any conditions of the Exemption Order.

The Minister must provide reasons where the Exemption Order is issued, but a participating Indigenous nation provided a notice indicating lack of consent.

#### 6.2.4. Terminate

The project may be referred to the Minister for termination based on a positive finding in one of more of the following:

- extraordinarily adverse effects generally or to an Indigenous nation or their section 35 rights;
- extraordinarily adverse effects on a prescribed protected area;
- the project is clearly incompatible with government policy (on the advice of a minister); or
- if relevant, the proponent has not demonstrated adequate changes to a project that was previously declined or terminated.

In addition to the criteria above, the Minister will also consider the sustainability and reconciliation purposes of the EAO. The EAO's engagement with relevant government agencies (provincial, federal and local), Indigenous nations and the public during Early Engagement would identify the potential of the project to result in extraordinarily adverse effects, incompatibility with a government policy or whether the proposed project has previously been refused.

The referral will address the applicable decision criteria as well as provide a reason for the recommendation, any notice of consent or lack of consent provided by a participating Indigenous nation, results from public engagement, applicable regional or strategic assessments, and consistency with any relevant land-use plan. The referral may also include recommendations for conditions of a termination order.

Additional engagement may be conducted on a potential termination decision including public engagement. Proponents will be provided an opportunity to be heard, through a written submission for inclusion in the referral materials, in advance of the termination referral being made to the minister.

The Minister must provide reasons where the Termination Order is issued, but a participating Indigenous nation provided a notice indicating lack of consent.

## 7.0 PROCESS PLANNING

*Process Planning formalizes how the EA must be carried out, including: identifying the required information; defining who does what, when, and how; and determining how participants work together for the rest of the EA and future engagement approaches (including public engagement). Each Process Order is customized to reflect the project and uses the foundation built in the Early Engagement and the Readiness Decision phases to set the scope, procedures, and methods of the EA.*



### 120 days



- Starts with the notice of decision to proceed to an EA.
- A project-specific Process Order is developed in a consensus seeking process with participating Indigenous nations.
  - The scope, procedures, methods, and timelines for the EA are set, as well as how provincial and Indigenous processes and decision-making will align.
- A Technical Advisory Committee and, where required, a Community Advisory Committee, are established. The Committees provide input on the draft Process Order.
- A Public Engagement and Comment Period is held on the draft Process Order for a minimum of **30 days**.
- Ends when a Process Order is issued.



### 7.1. Process Order

A Process Order defines the scope of the project and the EA. The Process Order is prepared by the EAO through a consensus-seeking process with participating Indigenous nations and the proponent, with feedback from the public, the Technical Advisory Committee (TAC), and Community Advisory Committee (CAC).

The main body of the Process Order defines the project facilities and activities that are in scope of the EA, including a confirmed Understanding of Indigenous Interest, and the procedures and methods for carrying out the effects assessment of assessment matters defined in [section 25](#) of the Act. Each Process Order is customized based on a standard order to reflect the scope and circumstances of the project and will include 3 appendices:

1. Assessment Plan
2. Permitting Plan
3. Application Information Requirements

The Process Order appendices identify what information must be provided, how the information must be gathered, who must be involved in the EA and how they are to be engaged, and the timing of each phase.



Consensus is sought with participating Indigenous nations on the details of the Process Order including Information Requirements, Assessment Plan and Permitting Plan. This includes any requirements for Indigenous knowledge and any requirements to support 19(4) assessments (see [7.2 Collaborative Effects Assessment Options](#)).



Dispute resolution is available to assist participating Indigenous nations and the EAO to reach consensus on the Process Order.



The EAO conducts a public engagement and comment period of at least **30 days** on the draft Process Order. The public will have the opportunity to provide input on the Process Order, including for example, whether the scope of the EA is appropriate, or the information requirements capture the valued components that are important to the public. The EAO will seek feedback on how communities want to be engaged throughout the rest of the EA – including the techniques, timing, day of week, venue, etc. – and set the requirements in the Assessment Plan.

The tools used in public engagement will depend on the needs of the affected community and the public, as identified during Early Engagement. The public engagement period will at a minimum consist of an online comment period on the draft Process Order including its three appendices; Other in-person activities may include public open houses, community workshops, and meetings with interested individuals or organizations.

## 7.2. Collaborative Effects Assessment Options

In some cases, participating Indigenous nations may identify portions of the effects assessment that they would like to conduct themselves. The are options enabled by the Act that support collaborative effects assessment processes for assessing the potential effects of a project on an Indigenous nation and their section 35 rights ([section 25\(1\)](#)). They include:

1. Standard EA – EAO works collaboratively and seeks consensus with participating Indigenous nations to conduct assessment.
2. Participating Indigenous nations leads assessment – an assessment under [section 19\(4\)](#).
3. Participating Indigenous nation leads assessment with custom methods and additional information – an assessment under [section 19\(4\)](#).

The first two options would generally employ standard EA methods and the information sources for the EA are the Application prepared by the proponent and any supporting studies or other inputs required by the Process Order and Information Requirements. Where the two options differ is who leads drafting of the assessment chapter on the effects on an Indigenous nation and their rights. For both options, co-drafting the assessment is an option. In both options, the process would seek consensus on the characterization of effects, conclusions, recommendations, etc.

In the third option, participating Indigenous nations may employ a unique, culturally appropriate method to assess effects on their interests if the interests warrant a culturally specific approach. This may include information requirements or source not required in the Application; however, the EAO cannot guarantee the provision of information from the proponent unless it is required by the Process Order or required by a subsequent information request approved by the EAO. The EAO would seek consensus with the Indigenous nation on these approaches and inputs to incorporate requirements into the Process Order, Assessment Plan, and Information Requirements as required. The EAO will seek consensus on conclusions and will document any outstanding points of disagreement in the Assessment Report.

During Process Planning, the EAO will confirm the components of the EA that pertain to an Indigenous nation's interests and rights that the nation will carry out. The scope of 19(4) assessments are flexible; the goal is to ensure that 19(4) assessment conclusions can be appropriately considered with the broader assessment that reports on all of the [section 25](#)

### Section 19(4) of the Environmental Assessment Act states:

If a participating Indigenous nation notifies the CEAO of the nation's intent to carry out an assessment with respect to the potential effects of the project on the nation and on its rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, the CEAO, in the order made under subsection (2), must specify

- (a) the portion of the assessment to be carried out by the nation, and
- (b) the date by which the assessment by the nation must be completed.

assessment matters and recommendations to the provincial decision maker while also ensuring the 19(4) assessment effectively informs Indigenous decision makers.

### 7.3. Applying Indigenous Knowledge to Process Planning:

The EAO uses Indigenous knowledge, in part, to help identify issues to be addressed in the EA and to determine the likely geographic area of the impact. As part of the Process Planning phase, the proponent may be required to conduct further studies or information gathering exercises as a part of the EA to ensure the EAO and Indigenous decision makers are fully informed by relevant Indigenous knowledge.

Any requirements of this sort will be developed through a consensus-based process with the Indigenous nation. Indigenous knowledge information requirements will then be specified in the Process Order. The Process Order will contain steps that Indigenous nations must take to request additional information requirements during the Application Development phase, which will be subject to consensus seeking on a case by case basis.

If an Indigenous nation wishes to submit information directly to EAO or does not wish to submit Indigenous knowledge to the EA, then EAO may specify this in the Process Order for clarity and to address administrative fairness particularly in relation to information that may materially impact the decision. If an Indigenous nation or knowledge holder does not want to share additional Indigenous knowledge, the EAO cannot impose this requirement on them. In this case, the proponent is expected to report on the reasons the Indigenous nation or knowledge holder chose not to provide additional information.



Dispute resolution is available to assist participating Indigenous nations and the EAO to reach consensus on the Process Order.

### 7.4. Assessment Plan

The Assessment Plan defines the roles and responsibilities of each participant and sets the procedures and deliverables, including timelines and steps to support a participating Indigenous nations' decision-making, for each phase of the EA. This includes:

- Roles and responsibilities of the proponent, the EAO, participating Indigenous nations, and other participants including local government or independent experts;
- Obligation to establish the Technical Advisory Committee and Community Advisory Committee;
- Documents to be produced for review and timelines for their development;
- How the assessment of impacts on participating Indigenous nations and their rights will be conducted, including [section 19\(4\) assessments](#);
- Participants to be engaged in the development and review of the deliverables and associated timelines;
- Who will be engaged in the EA and how (i.e. the means and timelines for public engagement as well as engagement with the Advisory Committees);
- Information request process;



Process Planning resources:

- Process Planning Policy
- Application Information Requirements
- Technical Advisory Committee Guidelines
- Community Advisory Committee Guidelines

- Issues resolution process; and,
- Outcomes of each phase of the EA.

## 7.5. Application Information Requirements

The Application Information Requirements sets the information a proponent is required to provide in their Application for a certificate to support both Indigenous and provincial decision makers. The Requirements provide clear direction to the proponent on what to assess (matters listed in section 25 of the Act, see [What is Assessed](#) below) and how to assess it. This may include information requirements specific to [19\(4\) assessments](#). There are standard information requirements that are customized for individual projects (and sectors, e.g. mining specific requirements). For each assessment matter listed in [section 25](#), there are information requirements related to:

- Valued components and assessment boundaries;
- Methods;
- Direction for the submission of data to provincial data warehouses (including submissions standards);
- Relevant guidance, policies and frameworks (i.e. Cumulative Effects Framework);
- Requirements, data, and methods to assess impacts on Indigenous nations and their rights;
- Other information required to assess matters listed in section 25 of the Act;
- Engagement summaries; and,
- Characterizations of residual and cumulative effects including mitigations with linkages to management plans, proposed Certificate conditions, and other permitting.

## 7.6. Permitting Plan

The Permitting Plan identifies the required permits for the project and outlines how the information generated in the EA will support subsequent permitting processes. The plan identifies:

- The primary permits required for the project;
- The proponent's expected timelines for the submission of permit applications;
- A table identifying to what extent specific topics or issues will be addressed in the EA and/or a subsequent permitting process including a brief explanation of how; and
- Indigenous and public engagement activities associated with subsequent permitting.

The list of permits is submitted in Early Engagement by the proponent; the EAO confirms the list and the engagement activities associated with the permits with the agencies responsible for issuing the permits. The Permitting Plan is updated throughout the assessment to reflect issues that have been resolved or are outstanding. At the end of the EA, a second permitting document is produced to identify the issues that will be carried forward into subsequent permitting processes.

## 7.7. Technical Advisory Committee

A Technical Advisory Committee (TAC) is established for each EA to review the proponent's application and to advise the EAO and participating Indigenous nations on technical matters related to the assessment. The TAC is the forum for the detailed, independent, technical review of all the proponent's documents and technical studies.

In practice, the TAC will be formed during Early Engagement. The terms of reference for a TAC are formalized during Process Planning and are tailored to the project effects, the issues and interests identified in Early Engagement, and the required technical expertise for the assessment. Membership typically includes participating Indigenous nations, local government, representatives from provincial and federal agencies, and subject matter experts. Roles and responsibilities may vary somewhat between TAC members. For example:

- Participating Indigenous nations on the TAC may provide an Indigenous perspective, Indigenous knowledge, and/or specialized technical or scientific expertise.
- Representatives from local government may choose to participate in the TAC and CAC, and may provide local knowledge, local community or local government perspective, and/or specialized technical expertise.
- Provincial and federal regulatory agency members will provide subject matter expertise and a linkage to the provincial and federal regulatory continuum, pro-actively addressing regulatory issues during the EA, and carrying forward key outcomes and discussions of permitting-level issues through to any subsequent permitting processes.
- The terms of reference outline the specific technical areas that must be represented on a TAC based on the project and will reflect the values and topics being studied in the project's EA.

TAC members are expected to provide advice within their mandate or area of competency only and are expected to follow a code of conduct around impartiality, communications, attendance, performance, advising only within areas of competency, and conflict of interest.

The TAC is expected to function as a single reviewing body. Assessment matters ([section 25](#) of the Act) require the integration of information across disciplines, particularly for the assessment of the effects on biophysical factors that support ecosystem function and of the effects on current and future generations. Although TAC members will represent specific areas of expertise, their responsibilities include communicating with TAC members working in other disciplines to ensure that the results of their review are clear to TAC members whose review topics may be affected by the outcome of that review. The effective and rigorous completion of the EA is a collective responsibility of TAC members.

## 7.8. Community Advisory Committee

As described in the Act, the purpose of a Community Advisory Committee (CAC) is to advise the EAO on the potential effects of the proposed project on a community. The EAO convenes a CAC, a small group of community representatives, to identify potential issues and provide input related to effects on the community during an EA. The CAC can provide local knowledge on the community, the environment, and the use of the proposed project area. It can also provide information on other ways the EAO can gain input from communities to support engagement approaches and opportunities for community input to be integrated into the EA process. A CAC is a venue for the community to have their input and concerns reflected in the EA process.

### TAC Guiding Principles:

1. **Impartiality:** TAC members provide expert advice that is not biased toward a particular EA decision outcome.
2. **Use of best available science, Indigenous knowledge, and local knowledge.**
3. **Collaboration:** TAC members will work together across areas of expertise.
4. **Rigor:** the TAC produces work that is consistently high quality, thorough, and accurate, within the scope of the EA.
5. **Transparency:** TAC meeting notes, data and documents reviewed by the TAC, and TAC member peer review comments will be clearly documented and publicly accessible, with appropriate provisions to safeguard Indigenous knowledge and commercial interests.

One or more CAC may be established for an EA during the Process Planning phase. The option to form a CAC will be available for every EA, unless the EAO determines during the Early Engagement phase that there is insufficient community interest. The EAO will use the information gathered during the Early Engagement phase to identify the community's interest in establishing a CAC and determine the appropriate structure and membership.

A CAC will have terms of reference that are adapted to the local context and clearly define its role, scope, and objectives. Membership on the committee is based on nomination and selection which will include a combination of open applications and EAO invitations to members. Potential members could include individuals and groups including:

- Representatives from local government;
- Indigenous nation representatives;
- Community service organizations and clubs;
- Business associations and business owners (including small businesses);
- Local industry representatives;
- Educational institutions;
- Conservation organizations (e.g., historic or environmental);
- Land-based resource production associations (e.g., farmers, loggers, miners);
- Directly impacted land owners and land tenure holders; and
- Other active and involved community members.

## 8.0 APPLICATION DEVELOPMENT & REVIEW

*During Application Development, the proponent works with participating Indigenous nations and EA participants to develop their Application for an EA Certificate. Early feedback on data collection or analysis can help to identify and resolve key issues, reducing the potential for delays later in the process.*

*During Application Review, the EAO, participating Indigenous nations, Technical Advisory Committee, and Community Advisory Committee review the Application, and direction is provided to the proponent on revisions that should be reflected in the revised Application. The direction includes the results from public engagement in the Application and any matters regarding advice provided by the Technical Advisory Committee or Community Advisory Committee.*



*Application Development:* A proponent has **3 years** from the date the [Process Order](#) is issued to develop an Application (or the CEAO may terminate the process).



*Application Review:* **180 days**



- *During Application Development*, a proponent conducts technical studies and engagement established in the Process Order to develop an Application for an EA Certificate.
- *Application Review starts* when the proponent submits an Application.
- During the Application Review, the EAO, participating Indigenous nations, and the Technical Advisory Committee review and comment on the Application. The proponent will respond to comment received, as directed by the EAO.
- The EAO may issue more information requests to the proponent on more substantive or challenging issues.



- A minimum **30-day** Public Engagement and Comment Period is held on the Application. The nature and extent of public engagement is set in the Process Order and is informed by previous engagement, input from local government, and the Community Advisory Committee.
- A notice is issued to the proponent to produce the revised Application as required.
- *Ends* when the revised Application is accepted through a consensus seeking process with participating Indigenous nations that issues have been adequately addressed by the proponent.



The revised Application must be submitted within **1 year** of the EAO directing the proponent to prepare the final version.

## 8.1. Application Development



The proponent is responsible for preparing their Application as instructed in the Process Order but will engage the EAO, participating Indigenous nations, and Advisory Committee members to provide feedback during application development. The Assessment Plan specifies the expected timelines for delivery of documents (e.g. study or modelling plans or reports) and draft chapters. The Assessment plan will also establish which draft chapters of the Application require review by the TAC members, participating Indigenous nations or other participants (such as the CAC) prior to submitting the draft to the EAO. When receiving reviewer feedback, proponents must document responses to feedback and/or the changes made to address the feedback.

## 8.2. What is Assessed?

The proponent's application must address the project's potential effects in relation to each phase of the project. Under [section 25](#) of the Act, the following matters must be assessed in every EA:

- The effects of a project on Indigenous nations and rights recognized and affirmed by section 35 of the *Constitution Act, 1982* (collectively referred to as Indigenous Interests);

The following matters must be considered in every EA:

- Positive and negative direct and indirect effects including environmental, economic, social, cultural, and health effects;
- Adverse cumulative effects;
- Risks and uncertainties associated with those effects including any interaction between effects;
- Risks of malfunctions or accidents;
- Disproportionate effects on distinct human populations including populations identified by gender;
- Effects on biophysical factors that support ecosystem function;
- Effects on current and future generations;
- Consistency with any land-use plan of the government or an Indigenous nation that is relevant to the EA and any applicable Regional or Strategic Assessments;
- Greenhouse Gas Emissions including the potential effects on the province being able to meet its targets under the *Greenhouse Gas Reduction Targets Act*;
- Alternative means of carrying out the project that are technically and economically feasible including using the best available technologies, and the potential effects, risks, and uncertainties of those alternatives;
- Potential changes to the reviewable project that may be caused by the environment; and,

- Other prescribed matters (if prescribed in regulation).

### Assessing Effects on Indigenous Interests

The Act requires the assessment of the effects of a project on Indigenous Interests in all environmental assessments (Section 25(1)). In many cases, the EA methods outlined in EAO guidance will provide the foundational approach for assessing the effects on Indigenous Interests. There may, however, be additional information or procedural requirements for specific Indigenous nations that may need to be accommodated in the approach to effects assessment. It is important to work closely with the Indigenous nation to determine the scope of Indigenous Interests that must be assessed to ensure that the EA process more effectively meets the needs of both provincial and Indigenous decision makers. Proponents should initiate discussions with Indigenous nations regarding their views on the appropriate assessment methods to be used regarding potential impacts to Indigenous Interests during Early Engagement. The EAO will also be ensuring these discussions occur with Indigenous nations through the course of the EA process.

#### 8.2.1. What is a Valued Component?

EA in B.C. provides a process for identifying, mitigating, and evaluating the potential effects of a project that may occur during the life of a proposed project. One methodology typically used to assess some of the section 25 assessment matters is a values-based framework to promote a comprehensive, yet focused, understandable, and accessible assessment of potential effects. Valued components (VCs) are used to organize an effects assessment so that the most important potential effects are identified, assessed, and mitigated.

**Valued Components** are defined by the EAO as components of the biophysical and human environment that are considered by the public, Indigenous nations, the proponent, government agencies, or scientists and other technical specialists involved in the EA process to have scientific, ecological, economic, social, cultural, archeological, historical, or other importance.

#### 8.2.2. Selecting Valued Components

VCs vary by project, industry, and geographic region to reflect the distinct values and priorities that reflect the environmental, economic, social, cultural, and health context of the communities, Indigenous nations, and region where the project will take place. The Early Engagement phase will allow for the identification of key issues; however, proponents may be able to start this discussion even earlier to understand the key values and interests of government, Indigenous nations, participants, and the public. The information gained during issues scoping will inform not only the selection of VCs but also the determination of the scope of the assessment during Process Planning. VC and indicator selection will in part determine the type of data that will be required to support the assessment, and the methods that may be required to collect it. The selection of VCs and their assessment boundaries involves:

- Issues scoping informed by the Early Engagement phase;
- Identifying candidate VCs;
- Evaluation of those candidates; and
- Selection of appropriate VCs finalized in the Process Order.

### 8.2.3. Effects Assessment

The proponent's Application must assess and describe the project's potential positive and negative direct and indirect effects, and adverse cumulative effects on the assessment matter for each phase of the project and as required by the Process Order. The basic process for each VC is outlined in [Figure 8](#). However, when developing an Application, the proponent is not required to evaluate or make significance determinations on potential project effects.

While the VC methodology is commonly used in EA, a VC framework may not be appropriate for all assessment matters; some matters may require a more qualitative approach. For example, the *Assessing Rights and Title Impacts model (ARTI)* was developed in response to Indigenous nations seeking a more qualitative approach to conclusions (weighing residual impacts) than what could be informed by the VC model. The ARTI model seeks to incorporate intangible effects such as spiritual and experiential and requires strong collaboration with Indigenous nations. The *Environmental Assessment Policy* (linked in the green guide box) provides a detailed overview of the VC framework as well as an overview of other methods that may be appropriate to conduct an EA for each assessment matter.



Effects Assessment resources:

- Human and Community Well-Being: Guidelines for Assessing Social, Economic, Cultural and Health Effects in Environmental Assessment in B.C.
- Effects Assessment Policy



Figure 8 Summary of Valued Component EA Methodology

### 8.3. Applying Indigenous Knowledge to Application Development and Review

During *Application Development*, the Application may be required to include the following information:

- An outline of the steps taken by the proponent to work with Indigenous nations to incorporate Indigenous knowledge (including a summary of any agreements on the use of Indigenous knowledge);
- A statement indicating that the Indigenous nation supports the characterization and application of any Indigenous knowledge contained in the Application and consents to its public disclosure;
- Information outlining how Indigenous knowledge informed project design, the effects assessment, and proposed mitigation measures;

- A plan for future cooperation between the proponent and the Indigenous nation to further apply Indigenous knowledge into project implementation including monitoring and management plans; and
- Any other requirements outlined in the Process Order.

Indigenous knowledge may be applied to all aspects of the EA. It should not be limited only to section 25(1) impacts to Indigenous nations and section 35 rights; rather, it should be applied throughout the assessment to the consideration of all assessment matters under section 25 as applicable and as acceptable to the Indigenous nation and within the scope of the EA. The application of Indigenous knowledge may also be required through the consensus seeking requirements set in the Process Order.

*During Application Review*, the EAO will engage Indigenous nations directly to confirm that the Application requirements have been met as outlined in the Application Information Requirements. If there is missing information, the proponent may be directed to address the information deficiencies prior to accepting a revised Application.

## 8.4. Application Review

Application review begins when the proponent submits an Application. The EAO reviews the Application in collaboration with participating Indigenous nations and seeks consensus to determine if the Application meets the requirements of the Process Order and provide direction to the proponent on how to prepare the revised Application. Considerations include the reviews conducted by the TAC and CAC and results from public engagement on the Application. Application review may result in information requests generated by Advisory Committee members, the EAO, or participating Indigenous nations that have associated review and response periods. The proponent is responsible for responding to the information requests within the timelines set out.



The Application is posted to [EPIC](#) and the EAO conducts a public engagement and comment period of at least **30 days** to inform the direction given to the proponent. Public engagement activities will be informed by the Process Order based on appropriate means and tools for local communities. The public can provide feedback on the characterization of potential effects and the proposed mitigation measures, identify outstanding concerns, and share experiences with public engagement so far.

### 8.4.1. Direction to the proponent for Revised Application

Direction is issued to the proponent on how to prepare the revised Application including the results of public engagement and matters respecting advice provided by the TAC and CAC.



Once the notice is issued, the proponent has up to **1 year** to submit their revised Application for Effects Assessment.



Once the revised Application is received, the EAO and participating Indigenous nations seek consensus on whether the proponent has adequately responded to the issue identified in the Application and whether the revised Application contains enough information to complete the effects assessment.

Once the revised Application is accepted, a notice of Application acceptance is published

## 9.0 EFFECTS ASSESSMENT & RECOMMENDATION

*An effects assessment of the project is conducted, resulting in development of a draft assessment report and draft EA certificate (with conditions). These drafts reflect engagement with participating Indigenous nations, the Technical Advisory Committee, and the Community Advisory Committee. Before referral to provincial decision makers, the public will have an opportunity to comment on the draft Assessment Report that describes the potential effects of the project and the draft EA Certificate and associated legally binding conditions the proponent must follow for the life of the project, should a certificate be issued.*

*Recommendations to inform provincial decision makers are also prepared. Participating Indigenous nations have the opportunity to provide notice of their consent or lack of consent on the recommendation to provincial decision makers.*



**150 days** - Combined timeline for completing the Effects Assessment and the referral package for the Ministers.



- Starts when the revised Application is accepted.
- Through a consensus-seeking process with participating Indigenous nations and with input from the Technical and Community Advisory Committees, the following is produced:
  - A draft Assessment Report; and,
  - A draft EA Certificate with conditions and certified project description.



- A minimum **30-day** Public Engagement and Comment Period is held on the draft materials.
- Concurrently, the EAO and participating Indigenous nations will seek consensus on the recommendation to Ministers on whether the project is consistent with the promotion of sustainability by protecting the environment and fostering a sound economy and well-being of British Columbians and their communities.
- Participating Indigenous nations can express their consent or lack of consent to issuing the EA Certificate.
- Ends when the referral package for provincial decision makers is finalized, including:
  - The final Assessment Report including how public comments were considered;
  - An EA Certificate with conditions and certified project description, should Ministers choose to issue an EA Certificate;
  - The recommendations in [section 29\(2\)b](#);
  - Notices of consent or lack of consent to issuing the Certificate from participating Indigenous nations; and,
  - Information, if any, on any arrangement reached with a participating Indigenous nation over potential effects of the project on the nation.

### 9.1. Effects Assessment

Effects of a project on Indigenous nations and section 35 rights must be assessed in every assessment and [Section 25\(2\)](#) assessment matters must be considered in every assessment. The EAO conducts the effects assessment of the project consistent with the approach set out in the Process Order based on the revised Application and any additional information received from the proponent and other parties during Application Review. The EAO and participating Indigenous nations seek consensus on the Assessment Report and draft EA Certificate, including the proposed conditions and certified project

description. The Assessment Report will describe the potential project effects on section 25 assessment matters and assess whether a project is likely to cause significant effects, including how the assessment matters may be impacted.

If a participating Indigenous nation elects to conduct a 19(4) assessment, the EAO and the participating Indigenous nation should engage throughout the assessment and seek to reach agreement on the conclusions of that assessment. In some cases, the EAO may need to document its views in response to the conclusions in the 19(4) assessment if there are points where the EAO and a participating Indigenous nation do not reach consensus or where the methods in the 19(4) assessment diverge significantly from the methods for the broader EA.

The proposed conditions are developed with consideration of the issues raised throughout the EA and throughout public engagement, the mitigations proposed, subsequent permitting processes, and results of the effects assessment. The Technical and Community Advisory Committees will



also be engaged in drafting the report and draft certificate. This process may involve multiple rounds of comment periods, clarification sought from the proponent, and meetings.

The EAO and participating Indigenous nations seek consensus on the effects assessment, draft EA Certificate with conditions and certified project description.



Dispute resolution, if triggered, is available to help seek consensus on the effects assessment.

## 9.2. Applying Indigenous knowledge to the Effects Assessment & Recommendations

The EAO will work collaboratively with the Indigenous nation when considering Indigenous knowledge in the EA.

Consensus-seeking processes between the EAO and Indigenous nations, will allow for Indigenous nations to provide input into mitigation measures and recommended conditions.

If there are conflicts between Indigenous knowledge and other western science-based information, the EAO will engage the Proponent and the Indigenous nation to better understand the difference and where possible, seek to remedy the difference through a consensus-based process.

Knowledge will be respected and treated on its own right, taking into consideration factors such the length of observation of Indigenous knowledge. However, disagreement between knowledge systems could be an opportunity for establishing



adaptive management for the topic of disagreement. If a resolution is not attained regarding how Indigenous knowledge and western science-based knowledge inputs are reconciled in the EA, the EAO or a participating Indigenous nation may trigger dispute resolution.

When dispute resolution concludes, the EAO determines how to move forward based upon the recommendations provided by the Dispute Resolution Facilitator. Reasons for this decision will be documented in the Assessment Report. In some cases, the EAO and the Indigenous nation may agree to present the information without seeking remedy for differences. In this case, the different perspectives will be presented to the decision makers with an explanation on how the information informed the overall conclusions of the EAO.



### Effects Assessment resources:

- Human and Community Well-Being: Guidelines for Assessing Social, Economic, Cultural and Health Effects in Environmental Assessment in B.C.
- Effects Assessment Policy

### 9.3. Recommendation



Once a draft Assessment Report and proposed EA Certificate are complete, the draft materials are posted to [EPIC](#) for a public engagement and comment period for at least **30 days**. The engagement approach will be identified in the Assessment Plan.

Towards the conclusion of the Effects Assessment and Recommendations phase, participating Indigenous nations have an opportunity to express their consent or lack of consent on the recommendations to decision makers. Consistent with the nation's own governance and procedural requirements, a notice of consent or lack of consent must be provided by the authorized representative of the participating Indigenous nation. To assist decision makers in responding to the notice, it is recommended that this notice include the reasons for consent or lack of consent.

If a participating Indigenous nation does not provide a notice of consent or lack of consent, it should not be interpreted as the participating Indigenous nation consenting to the project.



The EAO and participating Indigenous nations will seek consensus on the recommendation to Ministers on whether the project is consistent with the promotion of sustainability.



Dispute resolution is available to help seek consensus on the recommendation to issue or refuse the Certificate.

#### 9.3.1. Preparing the Referral Package for Ministers

A referral package will be prepared for the provincial decision makers that addresses the matters identified in [section 29\(2\)](#) of the Act including:

- The Assessment Report and EA Certificate with conditions and a certified project description.
  - Including a list of issues to be further addressed at permitting.
- Recommendations on:
  - Whether the project is consistent with the promotion of sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities;
  - The assessment matters referred to in [section 25](#) of the Act;
  - The duration of the EA Certificate, if issued; and
  - Reasons for the recommendations.
- Notification, if any, of a participating Indigenous nation's consent or lack of consent to issuing an EA Certificate and the reasons for that consent or lack of consent.
- Information, if any, on any arrangement reached with a participating Indigenous nation over potential effects of the project on the nation.

## 10.0 DECISION

***Once the referral package is submitted to provincial decision makers, the Ministers must consider the Assessment Report, the Chief Executive Assessment Officer's recommendations, the sustainability and reconciliation purposes of the EAO and any other matters they consider relevant to the public interest. If the recommendation does not align with a notice of consent or lack of consent, Ministers must offer a meeting to that participating Indigenous nation.***

*Ministers can decide to issue a certificate, or refuse to issue a certificate, and are required to publish reasons for their decision. If the Ministers' decision does not align with the notice of consent or lack of consent, reasons must be provided.*



30 days



- Starts when the referral package is submitted.
- Ends when Minister of Environment and Climate Change Strategy and the Responsible Minister (the Ministers) decide to issue or refuse an EA Certificate and publish reasons for the decision.

## 10.1. Applying Indigenous knowledge to the decision phase

The EAO will seek consensus with participating Indigenous nations regarding the Assessment Report and recommendations to provincial decision makers. This includes seeking consensus on the portrayal of Indigenous knowledge that is included in the Assessment Report and how it informs the conclusions and recommendations including recommended EA Certificate conditions.

## 10.2. Decision Factors

Within **30 days** of receiving the referral package, the Ministers can make two decisions:

1. To issue an EA Certificate and attach any conditions to the certificate that the Ministers consider necessary (including conditions respecting payments to be made for initiatives to mitigate effects of the project), or
2. Refuse to issue the EA Certificate to the proponent.

When deciding on whether a project should receive a certificate, the Ministers must consider the factors in [section 29\(4\)](#) including:

- The materials in the referral package;
- The sustainability and reconciliation purposes of the EAO; and,
- Other prescribed matters, if any.

The Ministers may consider:

- Any other matters that they consider relevant to the public interest.

If the recommendation is contrary to the consent or lack of consent indicated by participating Indigenous nations, the Ministers must, before deciding, offer to meet with the nation that provided the notice. If the offer is accepted within 3 days of being made, the Ministers will provide notice to the proponent that a meeting is taking place. Minister will attend the meeting to try to achieve consensus with the participating Indigenous nation on the decision.

Whatever the decision, reasons for the decision must be published. The Ministers must provide reasons when a decision is made that is contrary to the consent or lack of consent indicated by a participating Indigenous nation.

## 11.0 COMPLIANCE & ENFORCEMENT

*The Compliance & Enforcement branch of the EAO conducts compliance inspections of regulated parties and projects, and, where required, uses enforcement to ensure that projects are designed, built, operated, and decommissioned or reclaimed in compliance with the legally binding requirements of the Act, its regulations and any EA Certificates or Exemption Order.*



Compliance and enforcement continue throughout the **life of the project**.



If an EA Certificate or Exemption Order is issued, procedures are established to ensure a smooth transition to post-certification permitting and other follow-up activities.

### 11.1. Compliance & Enforcement

Compliance and Enforcement (C&E) occurs throughout the life of a certified project. C&E Officers, in coordination with other provincial agencies, conduct routine inspections of projects to ensure regulated parties meet the legally binding requirements of the EA Certificate or Exemption Order.

Holders typically obtain permits and authorizations from other regulatory agencies after receiving a certificate or order. Compliance verification is therefore a shared responsibility with partner agencies. The EAO works closely with provincial and federal agencies with jurisdiction on major project sites to clarify compliance roles and responsibilities.

EAO C&E engages with Indigenous nations to identify and report on EA Certificate requirements specific to each nation and works with nations to facilitate participation in compliance activities conducted by EAO C&E.

The EAO C&E, the CEAO or the Minister have several administrative enforcement measures (administrative sanctions) that can be taken in cases of non-compliance, including:

- Notice of non-compliance
- Warning
- Violation ticket
- Orders to prevent, cease or remedy
- Administrative monetary penalties
- Compliance agreements
- Suspension, cancellation and amendment of a EA Certificate or Exemption order

In cases where administrative enforcement measures have not been effective, and/or the non-compliance is severe enough to warrant stricter penalties, EAO C&E or the Minister may pursue judicial sanctions through Supreme Court Orders or prosecution including:

- Supreme Court Order
- Penalties
- Creative sentencing
- Court order to comply
- Restitution



Compliance & Enforcement (C&E) resources:

- [C&E Homepage](#)
- [Compliance & Enforcement Policy and Procedures](#)
- Indigenous nation Guide to EAO Compliance and Enforcement (Available 2021)

## 12.0 POST-CERTIFICATE

*If an EA Certificate is issued, post-certificate activities include mitigation effectiveness reporting and may include audits, certificate amendments, extensions, and transfers.*



Post-certificate activities may occur throughout the **life of a project**.

### 12.1. Mitigation Effectiveness Monitoring Reports

The CEAO may require proponents to conduct effectiveness monitoring and submit effectiveness monitoring reports on a timeline specified by the CEAO. During [Application Development and Review](#), in consultation with the proponent, participating Indigenous nations, the Technical Advisory Committee and the Community Advisory Committee, the EAO will set specific reporting criteria will be established for 5-10 of the highest risk potential adverse effects identified during the EA. To do this, the EAO will conduct a risk ranking exercise based on the residual effect characterization in the application to initially risk rank the potential adverse effects. These will then be discussed during the EA with the proponent, Indigenous nations, the TAC and the CAC to determine which potential adverse effects should be subject to mitigation effectiveness monitoring. Reporting criteria and timelines will be developed, and the proponent will be required to conduct monitoring to identify if mitigations for the potential adverse effects are achieving the desired outcomes identified during the EA.

If an EA Certificate is issued and the holder submits an annual mitigation effectiveness report under [section 30](#), the report may be selected for audit under [section 74](#). The EAO will analyze the reports to draw conclusion on the effectiveness of mitigation measures to inform development of future certificate conditions. If adaptive management approaches identified within the certificate conditions are not sufficient to achieve the desired mitigation outcome, certificates can be amended by the CEAO in response to the results of a mitigation effectiveness report or audit.

### 12.2. Certificate Amendments

Amendments to EA Certificates are required for any proposed changes to the project that will require a variation from what was certified. Under [section 32](#) of the Act, the holder of an EA Certificate or Exemption Order may apply to the CEAO for an amendment. An application for an amendment is necessary when a holder proposes to change ownership of the project or any aspect of the certificate (e.g. design, location, construction, operation or decommissioning of the project).

The CEAO can amend an EA Certificate or Exemption Order without an application from the certificate holder for these reasons:

- The amendment was recommended by another person, board, tribunal or agency issuing a permit under another enactment related to the project;
- Based on the results of a mitigation effectiveness report;
- In the case of an EA Certificate that has a substantial start deadline of 5 years or more, the fifth anniversary of issuance of the certificate; or,
- Upon application for an extension to the substantial start date of an EA Certificate.

#### Amendment vs. RPR thresholds for modification

Amendments apply to certified projects (those that have received an EA Certificate or exemption order).

RPR modification thresholds apply only to uncertified projects (i.e. constructed before 1995 or constructed after 1995 but below new project RPR thresholds).



Before deciding on the amendment, the CEAO must seek to achieve, with respect to the amendment, consensus with participating Indigenous nations. If the amendment was recommended as the result of a permitting process under another enactment, the CEAO can only amend the certificate if they are satisfied that the applicable person, board, tribunal, or agency sought to achieve, with respect to the amendment, consensus with participating Indigenous nations.

### 12.2.1. Typical Amendment Process

1. The certificate holder contacts the EAO to confirm whether an amendment is required and what additional information is necessary. The “scale” of the amendment is determined – simple, typical or complex.
2. Procedures for the amendment are established.
3. The certificate holder gathers the required information, undertaking any studies and/or public or Indigenous nation engagement that is required.
4. The certificate holder submits the application. The EAO works collaboratively with participating Indigenous nations and may set up a TAC or undertake public engagement. In all cases, a technical review is conducted.
5. A draft report is prepared, working with participating Indigenous nations, for review by the certificate holder (and TAC members).
6. Once the report is finalized, a decision is made whether to grant the EA Certificate amendment.



#### Post-Certificate resources:

- Effectiveness Monitoring and Audits Policy
- Certificate Amendments Policy
- Certificate Transfers Policy (Available 2021)
- Certificate Extensions Policy (Available 2021)
- Substantial Start Policy (Available 2021)

### 12.3. Certificate Duration



An EA Certificate must specify a deadline (**up to a maximum of 10 years** from the date of issue) for the project to be substantially started or the certificate expires. A certificate holder may apply for a one-time extension for a period of up to **5 years** and must include reasons for the extension. This applies no matter under which Environmental Assessment Act an EA Certificate was issued.

The time limit is in place to ensure that certificate conditions do not become outdated as a result of changes over time in government policy, technical standards, scientific information, legal/regulatory expectations, and other factors. EA Certificate extensions cannot be granted after the expiry of the certificate. In the case of an expired EA Certificate, any conditions related to reclamation or decommission remain in effect, and new conditions related to reclamation or decommissioning may be added.

When considering this application, the CEAO considers the rationale for requiring an extension, the certificate holder’s compliance record, and new or changed potential significant adverse effects.



Before deciding to extend the EA Certificate, the CEAO must seek to achieve consensus, with respect to the application being considered, with participating Indigenous nations.

If, in the reasonable opinion of the Minister, the project has been substantially started, the EA Certificate remains in effect for the life of the project. If, in the reasonable opinion of the Minister, the project has not been substantially started at the 10-year mark or by the end of the 5-year extension period, the EA Certificate expires.

Despite the expiry of an EA Certificate, the Act provides that conditions related to decommissioning or reclamation remain in effect, and that the Minister may issue an order to the former EA Certificate holder respecting decommissioning of the project and reclamation activities. New provisions have also been added to the Act to address some practical realities where certificate cancellation would be an appropriate course of action, despite that the project has been substantially started, on request of a certificate holder or if the project is not operational on the 20th anniversary of EA Certificate issuance.

## 12.4. Certificate Transfers

The Act includes new provisions for transfers of certificates and exemption orders. It applies to all projects with an EA Certificate or exemption order, no matter when the EA Certificate or order was issued. Any conditions included in EA Certificates or orders issued before 2018 setting out the circumstances under which that certificate or order may be transferred are cancelled under [section 78\(4\)](#) and replaced with [section 33](#) of the Act.

Where an EA Certificate or order has been issued for a project, the Act requires anyone operating or constructing all or any part of the project to do so in accordance with the certificate or order. The EAO must know who holds the certificate or order at all times because:

- The EAO must have a primary contact for all compliance and EA Certificate administration issues;
- Certain enforcement powers under the Act can only be enforced against holders; and
- Only the holder has the authority under the Act to make certain requests, such as for amendments, extensions and cancellations of EA Certificates.

The EAO will transfer an EA Certificate or order to a new holder on application from the current holder under appropriate conditions and requirements. Transfer of certificates and exemption orders *will not require* an amendment to the EA Certificate or order if the new holder will be in control of 100% of the project. Transfer of significant interest requires an amendment.

### What does ‘substantially started’ mean?

The Act does not define substantially started but case law directs the provincial decision maker to focus less on the money expended and more on what has taken place physically on the site.

Determinations are made on a case-by-case basis and case law is always evolving, meaning direction is subject to change. To have been substantially started, a project needs to be started “in its essentials in a real and tangible way.” - *Taku River Tlingit First Nation v. British Columbia (Minister of Environment)*, 2014 B.C.S.C 1278.