

Environmental Assessment Office USER GUIDE

*An Overview of
Environmental Assessment in
British Columbia*

January 2018



Environmental
Assessment Office

RECORD OF CHANGES

Change	Date
Updated web links	January 23, 2018
Coastal FN decision	January 23, 2018
Considerations for use of section 31 provisions	January 23, 2018
Collaborative approach to EA in support of First Nations reconciliation	January 23, 2018
Link to joint CEAA/EAO fact sheet on cumulative effects	January 23, 2018

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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 or regulations. The procedures described in this guide may be deviated from, based on specific project circumstances.

INTRODUCTION TO THE GUIDE

The *Environmental Assessment Office User Guide* helps both proponents and participants understand the British Columbia environmental assessment process facilitated by the Environmental Assessment Office (EAO).

The main guide is organized into two main parts:

1. A general introduction to environmental assessment in British Columbia, and
2. A more detailed explanation of the environmental assessment process.

Part One – Environmental Assessment in British Columbia

Part one includes a brief introduction to environmental assessment and its purpose. It discusses EAO's role and how it works with its federal counterpart, the Canadian Environmental Assessment Agency. The section describes the legal framework for environmental assessments in British Columbia including the *Environmental Assessment Act* and related regulations.

Part Two – The Environmental Assessment Process

Part two forms the bulk of this guide. It explains the environmental assessment process steps and what to expect in the pre-application, application and post-certification stages. The guide focuses on the typical process that most assessments follow, while also covering special circumstances and additional considerations that may arise.

EAO will update this guide to reflect changes in policy and practice. Please e-mail any comments or suggestions to eaoinfo@gov.bc.ca and include "EAO User Guide" in the subject line.

PART ONE – ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA

Introduction to Environmental Assessment

Environmental assessments are conducted across Canada by provinces, territories and the federal government to assist in determining whether proposed major projects should proceed and, if so, under which terms and conditions. Proposed projects are reviewable if they meet or exceed certain thresholds defined in the [Reviewable Projects Regulation](#).

Environmental assessment in BC provides an integrated process for identifying, mitigating and evaluating the potential significant adverse environmental, economic, social, heritage, and health effects that may occur during the life of a reviewable project. It also ensures that the issues and concerns of the public, First Nations, stakeholders, and government agencies are considered.¹

EAO leads the review of major projects and prepares an assessment report detailing the findings of each review. The report, along with the project application, is referred to two government Ministers (one of which is the Minister of Environment) who decide on whether to issue an environmental assessment certificate, subject to any identified legally binding conditions. Additional details of how a reviewable project may be undertaken are addressed through the permitting process.

Large industrial, mining, energy, water management, waste disposal, food processing, transportation and resort developments typically require an environmental assessment in British Columbia.² No one may construct or operate a reviewable project except in accordance with a valid environmental assessment certificate. For an explanation on how a project becomes reviewable, see part two, “Determining if a Proposed Project is Reviewable.”

Opportunities for participation by government agencies, First Nations, local governments, stakeholders and the public is a key element of an environmental assessment. Participants help to identify information requirements and potential adverse effects before the final project design and construction decisions are made.

The Environmental Assessment Office

The Environmental Assessment Office was established in 1995 to administer the environmental assessment process under the *Environmental Assessment Act* and its regulations and to verify and enforce compliance with the conditions of environmental assessment certificates.

Additional information on the review process as well as documentation pertaining to a specific project can be accessed through EAO’s Project Information & Collaboration System (or [EPIC](#)).

Environmental assessment provides an integrated process for identifying and evaluating the potential significant adverse environmental, economic, social, heritage and health effects of a proposed

Participation by government agencies, First Nations, local government, stakeholders and the public is a key element of environmental assessments.

¹ The term “First Nations” refers to both status and non-status “Indians” under the *Indian Act*. For federally substituted environmental assessments, EAO may consult with other Aboriginal groups (Inuit and Metis people) in addition to First Nations.

² Projects that do not require an environmental assessment under the *Environmental Assessment Act* may still require other permits or approvals.

Working with the Federal Government

Often major projects in BC require both federal and provincial environmental assessments. The Environmental Assessment Office and Canadian Environmental Assessment Agency work together by either: 1) entering into a substitution agreement to allow the provincial process for a proposed process to be substituted for the federal process; or 2) working together in a coordinated way to complete the review of a proposed project.

Substitution is a tool enabled by the [Canadian Environmental Assessment Act, 2012](#) that allows the Environmental Assessment Office to conduct a single environmental assessment of a proposed project that meets the requirements of both federal and provincial legislation. In 2013 EAO and the Canadian Environmental Assessment Agency signed a [Memorandum of Understanding](#) that establishes expectations, roles and procedures for implementing substitution of environmental assessments in BC. Under substitution, EAO prepares an environmental assessment report on behalf of both BC and Canada. The respective federal and provincial ministers then make their own decisions regarding the significance of the proposed project's environmental effects, the adequacy of Aboriginal consultation,³ and whether to grant approval.

For projects that require both a federal and a provincial environmental assessment, EAO and the Canadian Environmental Assessment Agency work closely together on the review process.

Under coordination, EAO and the Canadian Environmental Assessment Agency conduct separate reviews but align process steps, consultation activities, public comment periods, and other activities to the extent possible.

The *Environmental Assessment Act* also allows BC to enter into agreements to accept an environmental assessment undertaken by another jurisdiction as "equivalent" to its own. These agreements avoid the need to conduct duplicate and overlapping environmental assessments, while still allowing specialists from each government to provide substantive input into a comprehensive environmental assessment process.

In 2010 EAO and the National Energy Board entered into an [agreement](#) which states that EAO will accept the National Energy Board's environmental assessment of a proposed project (that otherwise would have to be reviewed under BC's *Environmental Assessment Act*) as an equivalent assessment. The EAO undertakes a process that includes consideration of the National Energy Board's assessment and consultation with Aboriginal groups, and informs a provincial decision by Ministers.

For further information regarding these agreements and other federal-provincial information, see the [substitution](#) page on EAO's website.

The Legal Framework for Environmental Assessment

Environmental assessments in British Columbia occur within a legal framework that includes three main sources:

1. The *Environmental Assessment Act*,
2. Regulations under the *Environmental Assessment Act*, and
3. Common law regarding First Nation consultation.

³ Federal substituted projects may include consultation with Metis and Inuit groups in addition to First Nations.

Environmental Assessment Act

The BC *Environmental Assessment Act* is the main legal framework for the province's environmental assessment process for proposed major projects. The *Act* is supported by several regulations, including the Reviewable Projects Regulation, as well as a variety of policy, procedure and technical guidelines.

The *Environmental Assessment Act* has several key elements that are important for proponents and participants.

The Environmental Assessment Certificate

An environmental assessment certificate is required before any physical activity (e.g. construction, operations, etc.) is undertaken on a reviewable project unless the project has been exempted from an assessment (see part two, "Exemption from Assessment Requirements"). This certificate is also required before authorizations or approvals can be provided by other provincial agencies.

An environmental assessment certificate is generally required before any physical activity is undertaken on a reviewable project.

All certificates contain a deadline of between three and five years from the date of issuance for the project to be substantially started. If the project is not substantially started by this deadline, the holder of the certificate can apply for one extension of the deadline for up to five years. If the project has not, in the Minister's opinion, substantially started by the new deadline, the certificate expires. If the project is substantially started before the certificate expires, the environmental assessment certificate remains in effect for the life of the project, unless it is suspended or cancelled by the Minister of Environment for reasons of non-compliance. More information is available in part two, "Certificate Extension."

Decision-makers

Decision making authority under the *Environmental Assessment Act* rests mainly with the Minister of Environment and one other responsible minister as well as EAO's Executive Director. In addition, decisions on the scope and process of an assessment are made throughout the environmental assessment process by project leads who are delegated certain authority under the *Environmental Assessment Act*.

Compliance

Under the *Environmental Assessment Act*, a project must be developed in compliance with the environmental assessment certificate. Under the terms of their certificates, proponents are required to track compliance and report regularly on their progress. Through this tracking procedure, EAO is able to determine the progress being made in meeting the conditions of the certificate. EAO also undertakes compliance investigations both proactively and in response to third-party complaints.

EAO has a range of tools available to address non-compliance. Each case is assessed on an individual basis and appropriate action is taken (as explained further in part two, "Compliance and Enforcement"). In addition to a range of progressive disciplinary actions, the Minister of Environment has broad powers to order that the project's construction or operation cease, either partly or completely, until the holder of the certificate has complied with the certificate's terms. The *Environmental Assessment Act* defines offences and specifies maximum fines and imprisonment times for those offences. The Minister of Environment may also suspend, cancel or amend a certificate for a variety of reasons.

Environmental Assessment Act Regulations

The *Environmental Assessment Act* has six related regulations. These regulations have the same force of law as an act, but relate to more detailed and technical matters.

Reviewable Projects Regulation

Proposed projects are reviewable if they meet or exceed certain thresholds defined in the [Reviewable Projects Regulation](#). This regulation identifies thresholds for industrial, mining, energy, water management, waste disposal, food processing, transportation and tourist destination resort projects. Reviewable proposed projects are generally those with a higher potential for adverse environmental, economic, social, heritage or health effects.

The regulation includes thresholds for both new projects and the modification of existing projects. In a few cases it also applies to the decommissioning of existing facilities. More information on the ways a project becomes reviewable is available in part two, “Determining if a Project is Reviewable.”

Prescribed Time Limits Regulation

The [Prescribed Time Limits Regulation](#) requires that certain stages of the environmental assessment process be carried out within specified time limits. Some time limits apply to the EAO, such as timelines for evaluating (screening) and reviewing a proponent’s application. Others apply to the proponent’s actions, such as the time by which required information must be provided to EAO.

Public Consultation Policy Regulation

The [Public Consultation Policy Regulation](#) identifies opportunities for public input during the environmental assessment process. It addresses matters such as providing public notice, ensuring access to information, establishing public comment periods, and holding open house forums.

Concurrent Approval Regulation

The [Concurrent Approval Regulation](#) outlines a process that allows a proponent to apply for concurrent review of other provincial approvals (e.g. licences and permits) for a proposed project that is undergoing an environmental assessment. This allows for the timely issuance of other required approvals if an environmental assessment certificate is granted. Where EAO allows for the concurrent review of permit applications, authorizations are generally made within 60 days of the issuance of an environmental assessment certificate.

Environmental Assessment Fee Regulation

The [Environmental Assessment Fee Regulation](#) outlines the fees associated with environmental assessments and other related services including certificate exemptions, extensions and amendments, and inspections of certified projects. Fees provide partial recovery of costs incurred by EAO in delivering quality assessments and services. For further information on cost and types of services associated with a fee, see the [EAO Fee Schedule](#) and [EAO Fees Guidelines](#).

Transition Regulation

The [Transition Regulation](#) sets out rules for projects that were granted certain provincial permits and authorizations prior to December 30, 2002, and would have otherwise required an environmental assessment when the new *Environmental Assessment Act* came into force on this date.

Common Law Guiding First Nation Consultation

The environmental assessment process leads to a decision on whether to issue an environmental assessment certificate to a proponent. Accordingly, it calls forth the duty to consult and where appropriate accommodate First Nations when a decision or activity could impact treaty rights or asserted or established Aboriginal rights and title. EAO is committed to working constructively with First Nations to ensure that the Crown fulfills its duties of consultation and accommodation.

In the case of asserted Aboriginal rights and title, the scope of consultation is based on an assessment of the strength of claim, and the seriousness of potential impacts upon the asserted rights. In the case of proven Aboriginal rights or treaty rights, the scope of consultation is based on the seriousness of the potential impact on the rights.

While the Province is responsible for ensuring adequate and appropriate consultation and accommodation, it may delegate procedural aspects of consultation to proponents. Procedural delegation can benefit the environmental assessment process as proponents are often in a better position to explain their proposals and address the concerns of First Nations. In addition, early and meaningful engagement with First Nations provides proponents with greater opportunities to develop plans that avoid impacts to Aboriginal interests and are more responsive to the broader interests and values of First Nations.

Procedural aspects generally refer to the direct engagement component of consultation which involves sharing and discussing information. This includes:

- › Providing information about the proposed project to First Nations early in the planning process;
- › Obtaining and discussing information with First Nations about specific Aboriginal interests that may be impacted;
- › Considering modifications to plans in order to avoid or mitigate impacts to Aboriginal interests; and
- › Documenting engagement including specific Aboriginal interests that may be impacted and any modifications to address concerns, and providing this record to EAO.

Procedural delegation does not include authority to make decisions with regard to the Crown's duties to consult and accommodate, such as:

- › The strength of a First Nation's claimed Aboriginal rights or title;
- › Whether Crown decisions regarding a proposed project represent potential infringements of treaty rights; or
- › The adequacy of the Crown's duty to consult and accommodate.

Similarly, in the case of treaty First Nations or established Aboriginal rights and title, procedural delegation does not include making legal determinations about whether Crown decisions regarding the proposed project represent potential infringements of the terms of the treaty or Aboriginal right and title.

For further guidance see on consulting with First Nations, see the following BC government webpage: <http://www2.gov.bc.ca/gov/topic.page?id=8CF98F756A984198AFD80AEAOE472F05>.

The Environmental Assessment Office is [enhancing the environmental assessment process](#) to provide additional opportunities for Aboriginal groups to engage in that process. Through collaboration, the Environmental Assessment Office seeks to deepen engagement with Aboriginal groups, and is one way that British Columbia is demonstrating its commitment to reconciliation with First Nations.

PART TWO – THE ENVIRONMENTAL ASSESSMENT PROCESS

Introduction

This section of the guide will explain:

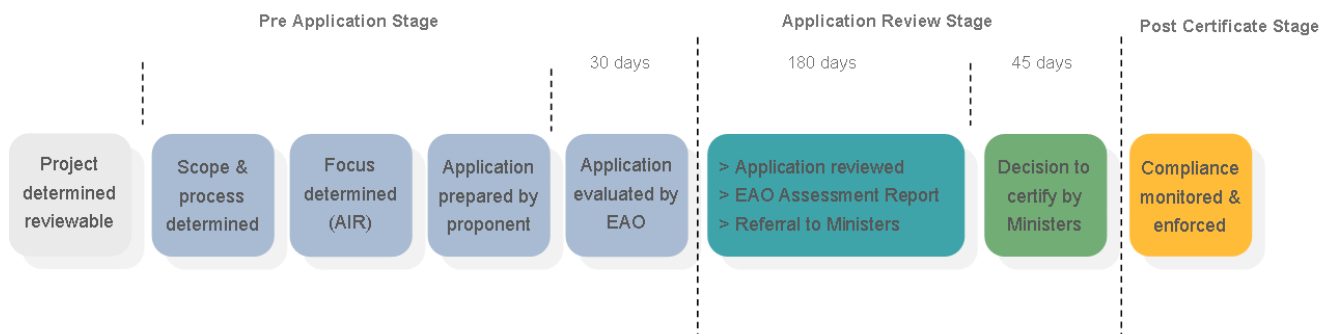
- › What happens at each step of the environmental assessment;
- › Timing of each step;
- › How First Nations, the public, and stakeholders are engaged; and
- › Special situations or other considerations.

The Environmental Assessment Process

The environmental assessment process consists of a “pre-application” and an “application review” stage followed by a post certificate stage. Timeframes vary by project, however, a typical environmental assessment takes at least 16 to 20 months to complete. The schedule for an environmental assessment is strongly influenced by the proponent’s timing in gathering and providing information necessary to conduct the assessment.

The following figure illustrates the stages and related steps. While the process is generally linear, some steps can occur concurrently. In some circumstances, a project can return to an earlier step, for example, if additional information is required for an assessment.

Figure 1 - Environmental Assessment Process Chart



Pre-Application Stage

Determining the Need for an Environmental Assessment

Determining if a Proposed Project is Reviewable

Projects become reviewable in three ways:

1. **Reviewable Projects Regulation** – a broad range of major projects are automatically reviewable if they meet certain thresholds (such as area or production volume) under the Reviewable Projects Regulation.
2. **Ministerial Designation** – the Minister of Environment has the authority to require a review of projects that are not automatically reviewable under the Reviewable Projects Regulation. In this situation, the minister must determine that the proposed project may have significant adverse effects and that it is in the public interest for the project to undergo an environmental assessment.
3. **Proponent "opt-in"** – a proponent may request that EAO designate a project that otherwise would not be reviewable as a reviewable project. If EAO agrees, the project becomes reviewable.

When a proponent considers developing a major project in British Columbia, they should first contact EAO to discuss how the *Environmental Assessment Act* may apply. EAO has staff who act as the main contact for various industry sectors in BC (e.g., metal mining, transportation, energy) and can provide information and guidance regarding EAO's role and the regulations' applicability. You can find [project sector lead](#) contact information online.

If the proposed project is not reviewable, the proponent should contact the appropriate permitting agencies to discuss any authorizations the project may require.

Project Description

If a proposed project is reviewable, the proponent will submit a *project description* to the EAO sector lead. It is important that the project description contains enough information to allow EAO to confirm if the project requires an environmental assessment. For guidance on writing a project description, proponents may refer to [the Guidelines for Preparing a Project Description for an Environmental Assessment in British Columbia](#).

For proposed projects expected to require a federal environmental assessment, the Canadian Environmental Assessment Agency also requires a project description. Proponents should consult the federal [Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act, 2012](#) for more information. Usually a single project description can be developed that will meet the requirements of both EAO and the Canadian Environmental Assessment Agency.

To facilitate public access to information and records relating to assessments, EAO posts project descriptions to EAO's Project Information & Collaboration System (or [EPIC](#)).

Requirement for an Environmental Assessment

If EAO determines that a reviewable project may have significant adverse environmental, economic, social, heritage or health effects, the project lead issues a legally binding order requiring the project to undergo an environmental assessment. Most reviewable projects fall under this category and will require an environmental assessment certificate before the proponent may proceed with physical construction.

When the section 10 Order is issued, EAO notifies government agencies, potentially-affected First Nations, and local governments. It also posts the order and project description on [EPIC](#).

Other Assessment Scenarios

Exemption from Requirement for an Environmental Assessment Certificate

The *Environmental Assessment Act* allows the Executive Director of EAO to exempt a proposed project from the requirement for an environmental assessment certificate if they consider that a reviewable project will not have a significant adverse environmental, economic, social, heritage, or health effect. The decision takes into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project. The Executive Director may attach conditions to the exemption order and proponents are responsible for complying with these conditions. Note that fees apply at the time an exemption order is made. Proponents may refer to the [Guidance on Requesting a Certificate Exemption for more information](#).

When a proponent is considering developing a major project in BC, they should contact EAO to discuss the proposed project and potential environmental assessment process.

Once an order confirms the need for an assessment, the proponent must have an environmental assessment certificate before proceeding with construction of the project.

Alternate methods for assessment

The Minister may require that an assessment be conducted by a commission, a public hearing panel, or any other method or procedure considered appropriate. The Executive Director may also approve a class assessment that addresses the potential impacts of a specified category of reviewable projects.

Varying assessment process for emergency or other circumstance

Section 31 of the *Environmental Assessment Act* provides the opportunity to vary the Act or Regulations. An order under section 31 is an extraordinary remedy, requiring compelling information concerning the existence of the “emergency or other circumstance,” and the public interest in the order. Section 31 does not set out the criteria for making an order under it, but the kind of information that would be required would include, but not necessarily be limited to, the following:

- That the situation constituting the “emergency or other circumstance” is real and imminent;
- That all alternative avenues to address the situation have been explored and exhausted;
- The seriousness of the consequences, should the situation arise;
- That there are no other available options to address the consequences, should they occur; and,
- That the nature and extent of the effects that may arise from the actions being requested to address the situation will not be adverse, or at least will be less than the impact of the situation occurring.

The working group advises EAO about technical issues related to the assessment of a proposed project, and plays a vital role in establishing information requirements for the environmental assessment and helping to assess the adequacy of any proposed mitigation measures.

Scope and Process for Review Determined

Working Group Formed

The project lead forms an advisory working group made up of provincial, federal and local government staff with the mandates and skill sets relevant to the review of a proposed project. The working group also includes representatives of potentially-affected First Nations. Should a project have potential trans-boundary effects, officials from neighbouring jurisdictions may be invited to participate. The working group provides technical advice to EAO about the potential direct and cumulative adverse impacts (environmental, economic, social, heritage and health) associated with a proposed project. The working group is the principal forum for the technical review.

The proponent is not a member of the working group but is expected to regularly attend working group meetings to provide information and explain aspects of the project. The proponent is responsible for collecting the majority of the information that will be included in the application for an environmental assessment certificate. The proponent seeks advice and guidance from working group members about the information it should collect, ways to avoid potential adverse effects, and strategies to mitigate those effects that cannot be avoided. Proponents should document and summarize all consultations, including the date, time, location, participants, issues and concerns, commitments in response to concerns, sharing of information, changes in project design, and any other relevant information.

Procedural Order (Section 11 Order)

The [section 11](#) order is a legal document that sets out the scope, procedures, and methods for the environmental assessment.

The section 11 order may specify:

- › The facilities, components and activities at the main site(s) of the proposed project, as well as off-site facilities and activities;
- › Potential effects to be considered in the assessment, including potential cumulative effects;
- › Information required from the proponent;
- › Information to be obtained from persons other than the proponent;
- › Persons, organizations and First Nations to be consulted by the proponent or EAO during an assessment, and the means by which they will be provided notice;
- › Opportunities for persons and organizations to provide comments during the assessment; and
- › The time limits for steps in the environmental assessment.

The order may also provide guidelines regarding proponent applications for concurrent permitting.

Note that the first instalment of assessment fees will be levied at the time the section 11 Order is issued.

Consultation with First Nations

Generally within days of issuing a section 10 order, the project lead will contact First Nations to discuss their participation in the environmental assessment.

The section 11 order may direct the proponent to consult specified First Nations and report back to EAO. The proponent's role is to: explain the project's technical aspects; to learn about First Nations' interests, rights and uses in the proposed project area; and to develop mitigation strategies or accommodation measures to reduce or eliminate impacts to asserted or established Aboriginal rights and title or treaty rights.

EAO will also engage in direct consultations with First Nations as appropriate. The consultation approach will be outlined in the section 11 order and in correspondence directed to individual First Nations. For further description of the roles and responsibilities of EAO and the proponent, see the [Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process](#).

EAO is responsible for ensuring that the Crown's duty to consult with First Nations is fulfilled through EAO's own consultation and engagement undertaken by a proponent at the direction of EAO. At the time a proposed project is referred to ministers for decision, EAO provides them with its assessment of the adequacy of consultation and any proposed accommodation based on the strength of any asserted or established Aboriginal rights or title or treaty rights and the seriousness of potential adverse effects to those Aboriginal interests.

The section 11 order sets out the scope, procedures and methods for the environmental assessment and outlines the approach to consultation with the public and potentially affected First Nations.

Proponents may be delegated procedural aspects of First Nation consultation through a section 11 Order. The Province retains the overall responsibility to ensure that the Crown's duty to consult with First Nations is satisfied.

Confidentiality

EAO does not generally accept documents on a confidential basis. This is due to EAO's commitment to administrative fairness and transparency, and the need to avoid situations where the public or other interested parties are not aware of, and do not have an opportunity to respond to, information that may potentially affect their interests.

There are limited exceptions to this principle. This might include identifying a particularly sensitive cultural site which public disclosure of might be reasonably expected to have significant adverse impacts on a First Nation. More information on requests for confidentiality specific to Aboriginal Interests is included in section 8 of the [Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process](#).

Application Information Requirements

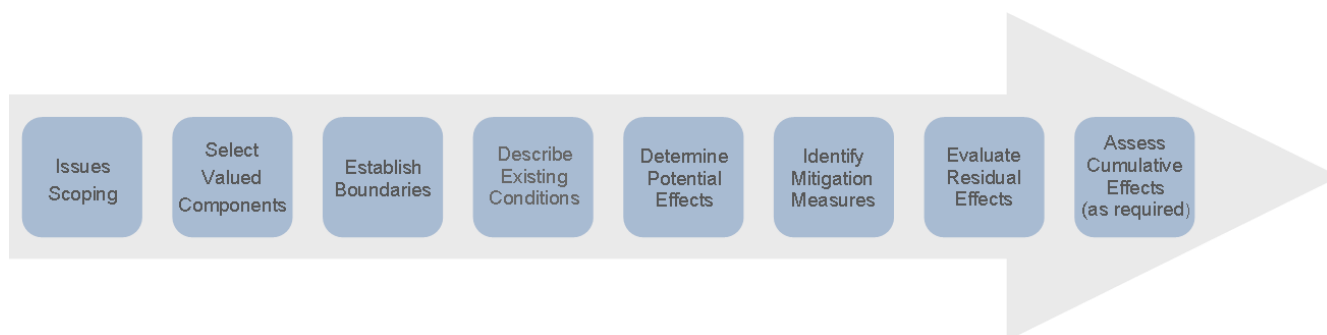
Valued Components Framework

Valued components provide the foundation of environmental assessments in BC. Valued components are aspects of the natural and human environment that have scientific, ecological, economic, social, cultural, archaeological, historical or other importance. Examples of valued components included in environmental assessments are fish and fish habitat, water quality, species at risk, communities and infrastructure, archaeological resources, and noise. The valued components selected for a proposed project guide the focus of the environmental assessment.

EAO's [Guideline for the Selection of Valued Components and Assessment of Potential Effects](#) outlines best practices and typical methodological steps in an environmental assessment including:

- › Best practice in issues scoping to inform the selection of appropriate valued components;
- › The role of assessment boundaries in defining the scope or limits of the assessment;
- › Description of existing conditions to enable potential interactions between a proposed project and valued components and effects (including cumulative effects) to be identified, understood, and assessed;
- › Tools to facilitate the identification and evaluation of potential interactions between a proposed project and valued components to support an assessment that focusses on those interactions of greatest consequence;
- › Types of mitigation and how these should be considered to avoid or reduce potential adverse residual effects to an acceptable level;
- › Steps in evaluating the residual effects remaining after the implementation of mitigation; and
- › Factors to consider when determining the need for cumulative effects assessment.

Figure 2 - Summary of Methodological Steps



If a project is expected to result in a residual adverse effect to a valued component, the cumulative effects to that valued component must be assessed considering all past, present and reasonably foreseeable projects and activities. The significance of any cumulative effects must also be evaluated. Further guidance on cumulative effects assessment can be found on the [Canadian Environmental Assessment's website](#), BC's [Cumulative Effects Framework](#) page, and in this [joint fact sheet on cumulative effects](#).

Draft Application Information Requirements

The application information requirements specify the information, including the valued components, that is needed to conduct an environmental assessment and that must be provided by the proponent in its application.

The application information requirements generally contain the following core elements:

- › Description of the project, including all key project elements;
- › Plans for consulting with First Nations and the public;
- › Project setting and characteristics, including a description of a wide range of baseline studies that the proponent will undertake;
- › Scope of the assessment, including potential effects and valued components that will be considered;
- › Methodology for assessing impacts and mitigating effects;
- › Assessment of the potential significant adverse effects, including proposed mitigation measures and residual effects;
- › First Nation information requirements; and
- › Summary of proposed environmental and operational management plans.

The draft application information requirements are initially prepared by the proponent, following guidelines provided by EAO. To facilitate this process, EAO has developed an [Application Information Requirements Template](#) which provides a framework for identifying the information to be collected and the analysis to be conducted in an environmental assessment. EAO circulates the draft application information requirements to the working group and First Nations for review and comment. All issues raised by government agencies, First Nations, local governments, stakeholders, and the public are tracked by the proponent. The proponent must also respond to the concerns, and EAO assesses the adequacy or acceptability of responses. The tracked issues and proponent responses are posted on [EPIC](#). The final application information requirements require approval by EAO.

First Public Comment Period

While EAO encourages proponents to directly engage First Nations and the public early in their project scoping and planning, the section 11 order requires a formal public comment period. The first public comment period is conducted on the valued components selected for the proposed project and/or to the draft application information requirements.

The Application Information Requirements outline the issues to be addressed in the assessment and the information that the proponent must include in the application.

Public input on the draft application information requirements should focus on the issues to be included in the assessment and the information required to address those issues.

Public input at this stage is sought on the issues that should be included in the assessment of the proposed project and the information required to address those issues. Written comments that are received during the public comment period are shared with the proponent for analysis and response, and posted on the [EPIC](#) site. To provide information and gather feedback from nearby residents and businesses, EAO may also hold one or more open houses in communities located close to a proposed project.

Application Prepared and Submitted

After EAO issues the application information requirements, the proponent proceeds with completing the studies and compiling the required information.

The time required to complete an application varies and depends upon a number of factors including the project's complexity, research and study design, and proponent preparation. Some proponents have years of data when they enter the environmental assessment process, while others may still be in the early stages of collecting information.

In order to be accepted for formal review, the application must address all the issues outlined in the application information requirements. It will include the proponent's baseline data of the study areas as well as the analysis of the potential environmental, social, health, heritage, and economic effects of the project. Much of the application will focus on the mitigation measures or compensation strategies the proponent is prepared to take to avoid or minimize potential significant adverse effects.

The application must contain all information set out in the application information requirements in order for EAO to formally accept it.

As part of its application, the proponent must also prepare a report on the public and First Nations consultation activities that they have completed and how they plan to consult during the review of their application. More information on consultation reports is available in section 13 of the [Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process](#). For additional resources on consulting with First Nations, see the following BC government webpage: <http://www2.gov.bc.ca/gov/topic.page?id=8CF98F756A984198AFD80AEAOE472F05>.

Once the proponent finishes preparing the application, it is submitted to EAO and evaluated for completeness (discussed below). Proponents are advised to consult [EAO's electronic submission guidelines](#) before submitting their application.

Note that the second fee installment for an environmental assessment will be levied at the time the application is submitted for evaluation. For proponents subject to a section 11 Order before April 14, 2014 (when the Fees Regulation came into effect), a single fee installment is payable at this stage. For more information, see the [EAO Fee Schedule](#) and [EAO Fees Guidelines](#).

Concurrent Permitting

The *Environmental Assessment Act* allows proponents to request that the review process for other provincial approvals (e.g. licences and permits) be undertaken at the same time as the review of the application for an environmental assessment certificate. This option usually requires that proponents have detailed project design information for the relevant component of the project available at the environmental assessment stage. Concurrent permitting can allow for timelier issuance of other required provincial approvals in the case that an environmental assessment certificate is approved. The deadline for applying for concurrent permitting is either specified in the section 11 Order, or is according to the deadline laid out in the [Concurrent Approval Regulation](#). Where concurrent permitting is granted, a permitting agency must (with limited exceptions) make a decision within 60 days of the ministers issuing an environmental assessment certificate.

Special Case: Inactive Projects

Some projects that enter the environmental assessment process become inactive. Often this is because the proponent changes plans and decides to discontinue or delay efforts to move the project forward based on any number of factors including changing economic conditions.

Once EAO specifies the application information requirements, the proponent has three years to submit its application. If EAO does not receive an application within that time period, it may suspend or terminate the assessment. Monitoring this time period is the proponent's responsibility. If a proponent is nearing the end of the three year period and still intends to submit an application, they should write the project lead and declare their intention to pursue the project. The letter should include a specific plan to address the delays by a specified date. If a proponent can demonstrate that they have taken reasonable efforts to fulfill their requirements under the assessment process and/or there are good reasons for the delay, EAO may consider extending the time limit. Further details are available in EAO's [Guide to Withdrawal and Termination for Proponents](#).

Application Evaluated for Completeness

After receiving a proponent's application, EAO evaluates the application to ensure it contains all the information outlined in the application information requirements. EAO also assesses the adequacy of the consultation already carried out by the proponent, and the plans for engaging with First Nations and the public during application review. Under the Act, EAO has 30 days to complete this evaluation and determine whether or not the application can be accepted. EAO involves the working group and First Nations in this process. If the application is not accepted due to deficiencies regarding the application information requirements, the proponent has the option to address the deficiencies and then revise and resubmit the application.

Application Review Stage

Application Review

Once an application is accepted, EAO has a maximum of 180 days to complete its review. This time limit begins when EAO has notified the proponent that the application has been accepted for review and the proponent has provided all the requested copies. EAO requires the proponent to distribute copies to other review participants, including the working group and First Nations.

After the final application is received and review of the application begins, EAO posts the application on [EPIC](#) so that members of the public and interested parties can review it. The application is also often placed in local public facilities (such as libraries) near the proposed project's location.

During the 180-day application review stage, the working group plays a key role. EAO seeks technical input from working group members on subjects relevant to their organization's mandate. EAO may establish and chair sub-groups to deal with key technical issues (e.g. fisheries or water quality) as necessary. The proponent is not a member of the working group, but attends meetings when invited to discuss substantive technical issues. In this stage, EAO staff work to ensure that critical matters are fully understood and evaluated, with the goal of avoiding or minimizing significant adverse effects. EAO strives to facilitate consensus among working group members, First Nations, and the proponent on issues or concerns. EAO is also responsible for determining the potential for significant adverse effects of the proposed project on valued components.

Once the application has been accepted for review and the proponent has provided all requested copies of the application, EAO has 180 days to complete its review.

Working group members are responsible for providing timely advice to EAO in a number of areas including key environmental assessment documents (e.g. selection of valued components, application information requirements, application and EAO's assessment report), policy direction of other government agencies, and issues that may be raised by the public.

Second Public Comment Period

Shortly after the application is placed on [EPIC](#), EAO generally initiates a second public comment period, typically between 30 to 60 days.

One or more EAO-led open houses may be held during the comment period. These are often conducted in the same communities where a public open house was previously held on the application information requirements. During these open houses, members of the public have an opportunity to review the application and ask questions of EAO and the proponent. While open houses are held in communities in proximity to the proposed project, written comments are invited and received from all interested parties and individuals.

EAO generally initiates a second public comment period, typically between 30 to 60 days, during the application review stage.

Written comments that are received during the public comment period are shared with the proponent and posted on [EPIC](#). EAO does not record or post verbal comments received during open houses.

The proponent must ensure it maintains a record of all written comments from the public, agencies, and First Nations. The proponent must also provide EAO with a report summarizing the issues raised and its responses. Proponent responses may include clarifying information in the application or further actions that the proponent plans to take to address the issues or concerns raised. EAO typically requires this report within two to three weeks of the public comment period closing. Once complete, EAO posts the proponent's public consultation report on [EPIC](#).

Special Case: Timeline Suspensions

EAO may suspend the 180-day application review time limit if the proponent requests a suspension or if EAO requires additional information from the proponent to complete the assessment. The maximum time EAO may suspend a review is three years. During a suspension, the EAO, proponent, working group and other interested parties can continue to identify and address issues and, if necessary, consider supplementary technical information. Further details are available in EAO's [Guide to Suspensions and Extensions of Time Limits](#).

The Assessment Report

EAO begins drafting the assessment report during the 180-day review period. The report documents the procedures and findings of the proposed project's application, including the extent to which concerns have been addressed by the proponent and whether any issues remain outstanding. EAO shares the draft assessment report with the proponent, the working group, and First Nations and seeks their input on EAO's analysis of the project's residual effects.

The assessment report documents EAO's assessment of the proposed project's application, including the extent to which concerns have been addressed by the proponent and whether any issues remain outstanding.

The assessment report also contains information regarding First Nations' consultation including an explanation of whether, and for what reasons, EAO has concluded that the Crown's duty to consult and accommodate has been met.

Where a First Nation does not agree with the draft assessment report's conclusions, the First Nation has the opportunity to prepare its own submission which EAO can provide directly to the ministers when it submits the assessment report.

In addition to the assessment report, EAO may provide the ministers with:

- › Recommendations and reasons from the Executive Director regarding whether to issue an environmental assessment certificate; and
- › A draft environmental assessment certificate (in the event the ministers decide to issue it).

The draft environmental assessment certificate includes two schedules. Schedule A, or the certified project description, describes the project design including project components and their locations. Schedule B, or the table of conditions, establishes specific measures that the proponent must implement to prevent or mitigate significant adverse environmental, social, economic, health or heritage effects, as well as potential adverse effects to First Nations interests, rights, or title. These schedules are legally binding on the proponent if the ministers issue a certificate. The draft certificate also contains periodic reporting requirements and specifies a deadline by which the proponent must have substantially started the project (explained in more detail below under "Certificate Extensions").

Ministers' Decision

The Executive Director submits the assessment report and his or her recommendations to the Minister of Environment and one other responsible minister for decision.

After the ministers receive the assessment report and related documents, they have 45 days to make a decision. They must consider the assessment report and the documents that accompany it, and may consider any other matters they determine are relevant to the public interest when they make their decision. A key factor the ministers will consider is whether the Province has satisfied its legal duty to consult with and, to the extent appropriate, accommodate First Nations.

When making their decision, the ministers have three choices:

- › Issue an environmental assessment certificate with any conditions they consider necessary;
- › Refuse to issue the certificate; or
- › Require further study or assessment.

Once the decision is publicly issued, EAO posts the ministers' decision along with the assessment report, the executive director's recommendations and, if issued, the environmental assessment certificate on [EPIC](#). A notice of the decision is also posted on EAO's homepage under the "News" section.

Post-Certification

If an environmental assessment certificate is issued, EAO establishes procedures to ensure a smooth transition to post-certification permitting and other follow-up activities.

Once the post-certification process is underway, other agencies will begin to consider the more detailed permits and authorizations the project requires. These agencies must also ensure the Crown's duty to consult with First Nations is discharged with respect to their decisions. EAO works with the permitting agencies to ensure that they understand, and have the benefit of, consultations already undertaken by EAO through the environmental assessment process. The permitting agencies can rely on consultation undertaken by EAO, as documented in the assessment report, and complement this with permit-specific consultation as necessary.

At this stage, any concurrent permitting requirements apply. Where a proponent has been granted concurrent permitting, the *Environmental Assessment Act* and [Concurrent Approval Regulation](#) provide that the relevant permitting agencies must, within 60 days of the issuance of an environmental assessment certificate, do one of the following:

- › Issue the approval;
- › Refuse to issue the approval, indicating the reasons for the refusal; or
- › Specify a later date on which the proponent may expect a decision, indicating the reasons for the postponement.

Compliance and Enforcement

Compliance and enforcement are integral to an effective environmental assessment process. An environmental assessment certificate contains legally binding conditions with which the certificate holder is required to comply. EAO's compliance and enforcement program is responsible for verifying compliance with the certificate throughout the pre-construction, construction, operations and if applicable, decommissioning phases of a project.

Examples of compliance activities undertaken by the compliance and enforcement team include:

- › Assisting in the drafting of certificates to ensure that all conditions are measurable and enforceable (as detailed in EAO's [Environmental Assessment Certificate Policy](#));
- › Developing compliance management plans for certified projects;
- › Overseeing self-reporting by certificate holders, as well as monitoring by third parties (e.g., independent environmental monitors or qualified professionals);
- › Responding to complaints and providing information about EAO's compliance program;
- › Conducting inspections and investigations; and
- › Taking enforcement action in cases where non-compliance has been identified.

Note that there are fees associated with inspections and reviewing proponent self-reports. Further details can be found in the [EAO Fee Schedule](#).

When information from an inspection, certificate holder self-report, public complaint or partner agency indicates that a certificate requirement may have been breached, EAO compliance staff conduct an investigation to collect the evidence necessary to determine if enforcement action is warranted.

EAO takes all reports of potential non-compliance seriously. Upon learning of a potential non-compliance, EAO will conduct an initial review to assess its validity and determine whether a more in-depth review or immediate enforcement action is required.

EAO's compliance and enforcement program verifies that certified projects are carried out according to their environmental assessment certificate.

Concerns or suspected non-compliance relating to a certified project can be reported by emailing eao.compliance@gov.bc.ca

Non-compliance occurs in situations where:

- › A certificate holder is not operating in accordance with the Certified Project Description, the conditions of its certificate, a compliance agreement or a Minister’s Order;
- › A reviewable project is being constructed or is operating without a certificate or an exemption order; or
- › Certificate holders have provided false or misleading information to EAO.

Responding to non-compliance is often a complex process and very few cases will have identical circumstances. EAO compliance staff, in conjunction with partner compliance agencies where applicable, assess each case of non-compliance and determine the most appropriate action to take or to recommend to the Minister. These include advisories, warnings, stop work orders and sanctions pursued through the courts, as detailed in [EAO’s Compliance and Enforcement Policy and Procedure](#).

In cases of alleged non-compliance, EAO will provide certificate holders with an opportunity to review and respond to any evidence used to determine if they are in compliance.

Certificate Extension

The [Environmental Assessment Act](#) requires that an environmental assessment certificate specify a deadline (between three and five years) by which time the certificate holder must have, in the reasonable opinion of the Minister, substantially started the project. If a project will not be substantially started by the certificate deadline, a certificate holder may apply for a one-time extension of the certificate for a period of up to five years. The time limit is in place to ensure that certificate conditions do not become outdated as a result of changes in government policy, technical standards, scientific information, legal/regulatory expectations and other factors over time.

Certificate holders are responsible for tracking their own certificate expiry date and applying for an extension at least nine months prior to the expiry date. EAO will issue an invoice on receipt of the extension application (see the [EAO Fee Schedule](#) for further details).

If a certificate extension is granted, the project must be substantially started by the new deadline or the certificate expires. At the time of an extension, the Minister of the Environment has the authority to add new conditions, if required, to address issues raised during the extension process.

The term “substantially started” is not defined in the Act. Each situation is assessed in light of all relevant facts. Pertinent factors include, but are not limited to, the following:

- Has there been a significant investment of time, effort, and resources to physically develop one or more main project elements?
- Does the activity amount to a significant or important step to develop the overall project, or is the activity considered ancillary, secondary, or temporary?
- Would the proponent have undertaken the activity regardless of the project?

Additional guidance, provided by the BC Supreme Court in 2014 [*Taku River Tlingit First Nation v. British Columbia (Minister of Environment)*] includes the following:

- The Act’s definition of “project” is “intended to address primarily physical activities affecting the land environmentally, as contrasted with bureaucratic activities, for example, which do not.”⁴

⁴ The Act defines “project” to mean any: (a) activity that has or may have adverse effects, or (b) construction, operation, modification, dismantling or abandonment of a physical work.

- “The decision maker should focus less on the permits which have been granted and the money expended, and more on what has taken place physically at the site.”
- “Temporary structures at the site, if they will soon be removed followed by remediation, are less important to consider than structures which will be in place for the duration of the project.”
- To have been substantially started, the project needs to be started “in its essentials in a real and tangible way.”
- To be considered as part of the substantially started determination, activity must have occurred after the certificate was issued and before the expiry date in the certificate.

If an extension is required, the certificate holder must submit a formal request in writing to the Executive Director of EAO. Before submitting a request, EAO recommends that certificate holder contact the relevant sector lead to discuss the extension process and required information. EAO will circulate the extension application to the appropriate regulatory agencies, First Nations and other governments for input on the potential for new adverse effects. Further details are available in Guidance on Requesting a Certificate Extension and Guidance on Substantially Started Determinations.

Amending the Certificate

At some point, environmental assessment certificate holders may require an amendment to their certificate. Amendments are required for proposed changes to the design, location, construction, operation or decommissioning of a project. An amendment may also be required if a certificate holder wishes to transfer the certificate to a new holder. EAO will issue an invoice on receipt of an application.

Applications for an amendment must be submitted by the certificate holder to the Executive Director. Before submitting an amendment application, EAO encourages certificate holders to speak with the relevant EAO sector lead to clarify the type of information that EAO requires in the application. This may vary depending on the nature of the amendment request, which can range from administrative changes to substantive redesigns of the project.

When EAO receives an amendment application, the Executive Director (or his/her delegate) will establish a process for considering the application. Where appropriate, the process will involve consulting with working group members and First Nations. EAO may also require the certificate holder to respond to and propose further conditions regarding issues that arise from the amendment application. In addition, EAO may require some form of public consultation.

Once EAO gathers all the relevant information, the Executive Director reviews the application and related information and may either make a decision or refer it to the Minister of Environment for a decision.

Where a decision is made to amend a certificate, the Executive Director or the Minister of Environment may attach terms and conditions that he or she considers necessary. Information on amendments is posted to EPIIC.

Further details are available in EAO’s Guide on Seeking an Amendment to an Environmental Assessment Certificate.

A certificate holder must apply for an amendment if there are proposed changes to the design, location, construction, operation or decommissioning of a project. An amendment may be required before a certificate is transferred to a new holder.

EAO CONTACT INFORMATION

If you have any questions or comments about the assessment process, EAO's services, or require additional information, please contact us at:

Environmental Assessment Office

PO Box 9426 Stn Prov Govt

Victoria BC V8W 9V1

Email: eaoinfo@gov.bc.ca

<http://www.eao.gov.bc.ca/>

