

Guide to Indigenous Knowledge in Environmental Assessments

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EAO

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

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GLOSSARY

Participants: includes Indigenous nations, proponents, provincial agencies, local communities, the public, the Technical Advisory Committee, the Community Advisory Committee, and any other group participating in an environmental assessment process for a project.

Participating Indigenous nations: means an Indigenous nation that provides notice to the chief environmental assessment officer under s. 14 (1) of the *Environmental Assessment Act, 2018*, and has not, in relation to the project, been provided with a notice by the chief environmental assessment officer under s. 14 (2).

Western Knowledge: Knowledge system based on a European worldview that have been the foundation for current Canadian and provincial legislation, policy, regulation, and institutions (Kapell, 2019).

Indigenous Knowledge: is the knowledge described in Section 1.1 of this Guidance.

Note: The Environmental Assessment Office acknowledges that Indigenous nations may have their own terminology and definitions with respect to their knowledge.

1.0 BACKGROUND

The *Environmental Assessment Act*, 2018 (the Act) establishes that one of the purposes of the Environmental Assessment Office (EAO) is to use the best available Indigenous Knowledge, science, and local knowledge in decision-making under the Act (s. 2(2)(b)(i)(C)). The Act also establishes confidentiality provisions under s. 75 regarding the handling of Indigenous Knowledge and prevention of potential harm to Indigenous Knowledge holders, Indigenous community members, and cultural resources.

This document provides guidance to EA Participants to support the inclusion of Indigenous Knowledge in the EA process in accordance with guiding principles, requirements for confidentiality and the opportunities for consideration of Indigenous Knowledge at different stages of the EA process, including through decision-making and during post-EA certificate activities.

This Guide applies to the use of Indigenous Knowledge under the Act and is meant to complement any guidelines and policies that Indigenous nations may have regarding the use of their own knowledge.

1.1 What is Indigenous Knowledge?

The knowledge of Indigenous peoples may take many forms and dimensions. Often, the knowledge held by Indigenous nations is broad, holistic, place based, relational, intergenerational and can be embodied through tangible or less tangible forms. Engagement with Indigenous communities across British Columbia has demonstrated the diverse nature of Indigenous Knowledge and the ways to describe it.

The United Nations describes local and Indigenous Knowledge as:

The understandings, skills and philosophies developed by Indigenous nations with long histories of interaction with their natural surroundings. This local knowledge informs decision-making about fundamental aspects of day-to-day life. This knowledge is integral to a cultural complex that also encompasses language, systems of classification, resource use practices, social interactions, ritual, and spirituality. These unique ways of knowing are important facets of the world's cultural diversity and provide a foundation for locally appropriate sustainable development.¹

Within the context of EAs, Indigenous Knowledge is 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 in the region. Indigenous Knowledge not only informs how projects should be delivered and their relationship to the land, but also informs Indigenous decision-making.

In terms of the EA process, Indigenous Knowledge may include specific, direct observations, experiences about the biophysical world that can be complementary to scientific data (e.g. fisheries data collected over many years) and is not limited to “traditional ecological knowledge”. It may be embedded in a governance context including information regarding community practices, language, teachings, laws, relationships, and rituals; and can also be the values and preferences of the community regarding what they consider important or valued components of the environment and what they feel is the “significance” of impacts on those values, including spirituality and cultural values.

For the purposes of the Act, Indigenous Knowledge is the subset of an Indigenous nation’s knowledge that the nation decides, through representatives chosen by themselves in accordance with their own procedures, is appropriate to be used in an EA. Use of this Indigenous Knowledge outside of the EA process that it was intended for, would require permission of the nation. See section 3.0 of this Guide for additional information on permission of use.

¹ UNESCO, 2017

1.2 Why is Indigenous Knowledge included in the Act?

The inclusion of Indigenous Knowledge within the EA process is an important component in supporting the reconciliation objectives of the Act, supporting the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (*UN Declaration*, see Article 31) and recognizing Indigenous governance, jurisdiction and decision-making.

In British Columbia, Indigenous Knowledge is also included in the EA process to provide provincial and Indigenous decision-makers and Participants with 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 to Indigenous communities.

The use of best available Indigenous Knowledge is valuable to EA processes and decision-making. For example, the use of Indigenous Knowledge in EA processes can be:

- foundational to an Indigenous nation's effective governance of their territory.
- comprised of large and long-term sets of observations about the environment collected over multiple generations which can add an important historical perspective and improve understanding of baseline conditions and variability, including the extent of potential cumulative impacts to a Nation and its interests.
- critical in the early stages of the EA process to help identify Indigenous interests, information and process requirements (for more information, reference the Early Engagement Policy and Process Planning Policy, found [here](#));
- beneficial for identifying links between seemingly unrelated components of the environment and providing a more holistic understanding of the environment and relationships among all beings, their habitats, and their spiritual and cultural contexts;
- helpful for predicting and understanding potential impacts to valued components, specifically related to the local Indigenous nations (for more information reference the Effects Assessment Policy, found [here](#));
- helpful for increasing the accuracy by which impacts can be predicted and measured and for contributing to determinations of significance of potential impacts and certificate conditions due to the understandings Indigenous Knowledge holders have of their environments;
- valuable to help proponents understand and improve the environmental sustainability of a project and avoid or mitigate impacts to sensitive areas such as culturally important sites and resources; and
- important in informing the design and implementation of monitoring plans by helping to identify monitoring priorities, appropriate indicators and the potential use of knowledge holders as valuable observers and collectors of monitoring data.

2.0 PRINCIPLES GUIDING THE USE OF INDIGENOUS KNOWLEDGE IN ENVIRONMENTAL ASSESSMENTS

There are six principles that should guide the application of Indigenous Knowledge within the EA process:

1. **Respect** – Indigenous Knowledge and western knowledge are equally valid as distinct ways of knowing that can work together
2. **Relationship Based** – Relationships with Indigenous nations and knowledge holders are foundational
3. **Iterative, Interconnected and Broad Application** – Indigenous Knowledge should be applied throughout the EA process
4. **Acknowledgement of Context** – Indigenous Knowledge to be understood within the context it was given
5. **Transparency** – Fairness and transparency must be maintained for all Participant
6. **Permission of Use** – Indigenous Knowledge must be used with appropriate permission and according to the governance, laws, policies, and practices of the Indigenous nation

2.1 Respect – Indigenous Knowledge and western knowledge are equally valid as distinct ways of knowing that can work together

For respectful interactions with Indigenous Knowledge, Indigenous Knowledge and western knowledge should be viewed as both equally valid and distinct ways of knowing that do not always align, overlap, or necessitate validation from the other. In most cases, both Indigenous and western knowledge can work to complement and enhance each other to create a more fulsome understanding of multi-faceted natural and cultural ecosystems. Indigenous Knowledge has not always been a distinct requirement of the EA process through legislation and in the past, western science knowledge has been portrayed more prominently in the EA process. Therefore, increased efforts by EA Participants and practitioners are needed to elevate the prominence of Indigenous Knowledge and ensure its consideration throughout EA processes.

Similarly, Indigenous Knowledge holders should be treated as well-regarded experts in their respective communities and with equal respect as western science experts. Indigenous Knowledge holders may convey their knowledge in their own language and through storytelling. The respect of the knowledge holder and the source of the story provides its legitimacy. Validating the credentials of knowledge holders and the credibility of their knowledge is thus an inherent role of the Indigenous nation and its representatives, not of an external third party.

The consensus-seeking process under the Act provides the opportunity for both western and Indigenous Knowledge to be considered in an assessment within a shared ethical space, without the need to integrate or validate each way of knowing. Considering information from different knowledge systems can create an enriched understanding in an assessment process which can serve as a starting point for further knowledge generation within or across knowledge systems. Additionally, further research (e.g. collaborative monitoring or adaptive management programs) may be a way to address any divergences between knowledge systems.

2.2 Relationship Based – Relationships with Indigenous nations and knowledge holders are foundational

Applying Indigenous Knowledge is more than just incorporating information into applications and assessments. Indigenous Knowledge also informs how parties work together during an EA and over the life of a project.

Proponents and the EAO should always act in a manner that demonstrates that they are one guest of many on the territories of Indigenous nations. The EAO encourages Participants to develop trust-based relationships with Indigenous nations as a first step in working together. An important part of building trust with Indigenous nations is seeking to understand the unique and rich history and traditions that are foundational to their connection to the land.

Participants should be aware of and recognize that time and effort are required to build trust-based relationships and for Nations to work with their knowledge holders. This awareness and effort will support a new recognition of the value of Indigenous Knowledge in decision-making.

Participants should be mindful to respect traditional activities (e.g. seasonal practices on the land base) and protocols that may overlap with the process and timelines of an EA or project. These traditional activities and protocols are also important for knowledge holders to maintain their connection to the land and responsibilities such as intergenerational knowledge transfer. Participants should be aware of and respect the practical, social, and spiritual needs and processes of knowledge holders to the extent possible and should seek to reconcile these with assessment timelines. It should be recognized that for many Indigenous cultures, relationships form an integral part of the effective dissemination of knowledge. Without relationships, this knowledge cannot be transferred effectively or accurately.

2.3 Iterative, Interconnected and Broad Application – Indigenous Knowledge should be applied throughout the EA process

Indigenous Knowledge cannot be compartmentalized or limited to one phase of an EA. The application of Indigenous Knowledge should be part of an iterative process based on building bridges between different knowledge systems.

Indigenous Knowledge informs the knowledge and experience of Indigenous participants in the EA and can provide meaningful input as to how to conduct an EA process, how to evaluate impacts, and how decisions are made by Indigenous nations. Maintaining relationships and dialogue to ensure EAs are effectively informed by Indigenous Knowledge spans all phases of conducting an EA, from Early Engagement to post-EA certificate decision activities.

2.4 Acknowledgement of Context – Indigenous Knowledge to be understood in the context it was given

To be understood, Indigenous Knowledge should be received in the proper context.

Language is an integral part of an Indigenous Knowledge system and is the most fundamental way that cultural information is communicated and preserved. Any discussion regarding Indigenous Knowledge should also consider language. In some instances, Indigenous Knowledge can only be communicated by Indigenous Knowledge holders in their language or in a culturally sensitive setting, and this setting plays an important role to the context and meaning of the information. Indigenous Knowledge may not be easily translated and therefore the role of the knowledge holder is essential to its interpretation throughout the process. The active involvement of knowledge holders in the presentation and interpretation of the knowledge may be one way of ensuring that the context and meaning of the knowledge is being maintained.

The knowledge of Indigenous nations is often taught orally between community members and contains spiritual, or other culturally specific elements that can be challenging to understand by people outside of that culture. This method of learning makes the knowledge adaptive and dynamic. Knowledge is generally shared personally, based on cultural ways of behaving, and relating. The Indigenous nation, in deciding what information is appropriate to be used as Indigenous Knowledge in the EA, should also decide who its chosen representative is and how it would like that information to be used in the EA.

The EAO and Participants may only receive Indigenous Knowledge as a second-hand translation and in a way that makes it difficult for Participants to easily recognize the pertinent points. Therefore, the context of Indigenous Knowledge can sometimes be lost when Indigenous Knowledge is documented for an EA. It can be challenging to translate concepts that are unique to Indigenous nations to a western-thinking audience. The methods of applying the Indigenous Knowledge to an EA should be determined with the Indigenous nation themselves to provide a clear description of the context within which the knowledge was provided, while ensuring the information presented remains relevant to the project being assessed.

Indigenous nations, through representatives chosen by themselves, and the knowledge holder (as appropriate and as determined by the Indigenous nation), should remain involved, not only in the gathering of Indigenous Knowledge, but also in applying the Indigenous Knowledge in the EA process including the preparation of the information for decision-makers. Working collaboratively and respectfully with the chosen representative of the Indigenous nation can help identify linkages between these different ways of knowing and can ensure that Participants are better able to understand each knowledge system.

2.5 Transparency – Fairness and transparency must be maintained for all Participants

Transparency within the EA process is important to maintain trust in the fairness of both the process and decision-making. The EAO recognizes that while the Act seeks to consider Indigenous Knowledge in a meaningful way throughout the EA

process and decision-making, it must also meet its obligations for fairness and transparency. The EAO, in collaboration with Indigenous nations, will balance the need for confidentiality identified by Indigenous nations with the requirement for Participants to be aware of information that has materially informed decision-making. The EA process should:

- Provide an appropriate level of information to ensure that all parties are fully informed regarding EA decisions made by the EAO;
- Provide adequate time to the EAO, proponents and Indigenous nations to respond to and consider Indigenous Knowledge;
- Ensure that Indigenous Knowledge holders always have a right to define when and how their information is shared with the EAO, including working with the EAO to consider confidentiality provisions under the Act and requirements of other applicable legislation (i.e. the *Freedom of Information and Protection of Privacy Act* (FOIPPA) and *Information Management Act*); and
- Ensure that Indigenous Knowledge is used in a fully transparent manner and Indigenous Knowledge holders understand how their information has informed EA decision-making.

The process for submitting Indigenous Knowledge confidentially and legislation applicable to disclosure is discussed in Section 3.0.

2.6 Permission of Use – Indigenous Knowledge must be used with appropriate permission and according to the governance, laws, policies and practices of the Indigenous nation

Respect for Indigenous governance, rights, laws, policies, and practices is a central component of reconciliation. Participants should seek to understand and respect Indigenous Knowledge governance, laws, policies, and procedures when requesting access to and using Indigenous Knowledge.

All EA Participants should recognize that an Indigenous nation's knowledge belongs to the knowledge holders and their communities. Many Indigenous nations have internal requirements for the management and use of their knowledge. For the purposes of an EA, it is the decision of the Indigenous nation, through their chosen representative, regarding when and how their knowledge is provided within the EA process as Indigenous Knowledge. When considering sharing Indigenous Knowledge, the Indigenous nation should bear in mind the confidentiality provisions of the Act, the requirements of Provincial law, and the obligation on the EAO to conduct a process that is procedurally fair.

Gaining permission to access Indigenous Knowledge should not only be viewed as a point in time but rather the ongoing, active participation of the Indigenous nation in the gathering, application, and interpretation of Indigenous Knowledge. There may be specific processes that an Indigenous nation requires for accessing and applying their knowledge, such as meeting with knowledge holders on the land in a culturally appropriate setting.

Ultimately, individual Indigenous nations will need to determine what knowledge they consider to be appropriate for use as Indigenous Knowledge in an EA process and who their chosen representative is to bring forward the Indigenous Knowledge on their behalf. It should be recognized and respected that there may be knowledge that an Indigenous nation chooses not to share through the EA process, for example information that may be particularly sensitive or information that is not possible to share but informs the opinions and perspectives that an Indigenous nation brings forward regarding the project. If an Indigenous nation does not want information disclosed publicly but wishes it to still be considered, then they can either work with the Proponent to present the data in aggregated format to preserve the confidentiality of specific places or attributes, or they can submit the information directly to the EAO. The confidentiality considerations and requirements of Indigenous Knowledge is discussed in Section 3.0.

3.0 INDIGENOUS KNOWLEDGE PERMISSIONS AND CONFIDENTIALITY

3.1 Indigenous Knowledge Permissions

Some Indigenous nations have adopted formal policies and guidelines that govern the use and access of their Indigenous Knowledge. If a proponent includes Indigenous Knowledge within their application, even if the information is publicly available, they should provide notice that they have permission, from the Indigenous nation's chosen representative, to use the knowledge in accordance with applicable Indigenous laws, policies, and customs. If Indigenous nation policies do not exist, the proponent should still seek permission to use information provided by knowledge holders and should work closely with Indigenous nations to ensure Indigenous Knowledge is applied appropriately. The EAO may request confirmation from the Indigenous nation that the information has been used appropriately.

In some cases, Indigenous nations, through their chosen representative, may request the proponent enter arrangements to access an Indigenous nation's knowledge. The EAO encourages proponents to enter arrangements with Indigenous nations regarding the use of Indigenous Knowledge.

EAO is open to different approaches of receiving Indigenous Knowledge throughout the EA process while ensuring that EAO can maintain a clear record that can be relied on throughout and beyond the EA. In some circumstances where information may be particularly sensitive, the EAO may consider entering arrangements requested by Indigenous nations to ensure protection of Indigenous Knowledge, if such arrangements do not contradict the requirements of Provincial law, including s. 75 of the Act, and the principles of administrative fairness.

3.2 Confidential Indigenous Knowledge and Disclosure

The Act and the FOIPPA provide protection for Indigenous Knowledge shared with the EAO.

Indigenous Knowledge Confidentiality During EA Processes

Section 75(1) of the Act gives Indigenous nations the opportunity to provide Indigenous Knowledge to the Minister(s), the Chief Executive Assessment Officer (CEAO), or a dispute resolution officer in confidence. According to s. 75(1) and subject to s. 75(2), this knowledge must not knowingly be, or be permitted to be, disclosed to any other party without written consent.

The effectiveness of the application of Indigenous Knowledge will be dependent upon the correct parties having access to the information at the correct stages of the EA process. Fairness obligations also require the proponent to be aware of information informing a decision that affects them.

Prior to receiving Indigenous Knowledge from an Indigenous nation, EAO staff will work with the Indigenous nation to determine which information contains confidential Indigenous Knowledge and who may access the information. Indigenous nations should identify the parties who may access confidential Indigenous knowledge when submitting the information to the CEAO. The Indigenous nation may also request that the CEAO apply conditions to the disclosure of confidential information to an identified party.

For the purposes of a specific project, the EAO recommends that an Indigenous nation give permission to the following parties to access confidential Indigenous Knowledge:

- Project Leads (Executive Project Directors and Project Assessment Directors);
- Project Support Staff (Project Assessment Officers and Analysts);
- Administrative Staff (Administrative Assistants and Records Analysts);
- Technical Support Staff (for managing SharePoint and the Electronic Document and Records Management System that stores confidential information); and,
- Ministry of Attorney General Legal Counsel (for the purposes of advising on the project).

Over the course of an EA, the EAO may identify that additional parties may need to access the confidential Indigenous Knowledge for fairness purposes. In these cases, the EAO will engage the Indigenous nation to seek consent for these additional parties to access the information. The EAO will work with the Indigenous nation to identify ways to disclose information in a form and manner that maintains necessary levels of confidentiality. In some cases, with the consent of the Indigenous nation, the CEAO may order, under section 75(2), information to be disclosed to a third party and may impose conditions upon that disclosure in order to provide additional protections and prevent unauthorized distribution or use of the information by the third party. If agreement cannot be reached, the EAO may not be able to meaningfully use the information if there are outstanding fairness issues. In these circumstances, it is important for agreement to be reached prior to completing a phase of the Act or decision that relies upon the application of the confidential Indigenous Knowledge.

Indigenous nations may also request the withdrawal of confidential Indigenous Knowledge from consideration or redact certain sensitive details from disclosure. If Indigenous Knowledge is withdrawn, any subsequent processes and decisions would not take the information into account. If a decision or phase of the Act has already passed that relied upon Indigenous Knowledge, the EAO may not be able to withdraw Indigenous Knowledge from consideration and would need to retain a permanent copy of the information for record keeping purposes.

Although the EAO is generally required by the *Information Management Act* to retain information submitted to the EAO, the withdrawal of Indigenous Knowledge from the EA process would end its further distribution in that process and would therefore be a further safeguard for the protection of Indigenous Knowledge that is of a particularly sensitive nature.

Freedom of Information Requests

A request for disclosure of information may also be made under FOIPPA. FOIPPA includes broad protection for information held by the Province that may affect an Indigenous nation if disclosed.

Mandatory Protections for Indigenous peoples:

Section 18.1 of FOIPPA is a mandatory exemption from Freedom of Information (FOI) requests if certain criteria are met. Information subject to an FOI request cannot be disclosed if the disclosure could reasonably be expected to harm the rights of an Indigenous people to maintain, control, protect or develop their cultural heritage, traditional knowledge, traditional cultural expressions, or manifestations of sciences, technologies, or cultures. This protection applies to all Indigenous Knowledge received by the EAO and is not limited to Indigenous Knowledge received in confidence. This information may only be released to an FOI applicant with the written consent of the Indigenous nation.

Discretionary Protections:

Even if section 18.1 of FOIPPA does not prohibit the disclosure of the information, section 16 of FOIPPA establishes that the head of the relevant public body may refuse to disclose information to an FOI applicant if the disclosure could reasonably be expected to:

- harm the relationship between the Province and an Indigenous governing entity;
- reveal information received in confidence from an Indigenous governing entity; or
- harm the conduct of negotiations relating to Indigenous self-government or treaties.

If information meets the criteria of section 16, the head of the relevant public body would need to seek consent from the Executive Council of the British Columbia government to disclose the information. This protection is not limited to Indigenous Knowledge and may apply to any information held by the Province in relation to an Indigenous governing entity. There is no time limit for how long this protection applies.

Conservation of Heritage Sites etc.

In addition to the above protections under sections 16 and 18.1 of FOIPPA, section 18 of FOIPPA also allows the head of the relevant public body to refuse to disclose information to an FOI applicant if disclosure could reasonably be expected to result in damage to, or interfere with the conservation of:

- fossil sites, natural sites, or sites that have anthropological or heritage value,
- an endangered, threatened, or vulnerable species, subspecies or race of plants, vertebrates, or invertebrates, or
- any other rare or endangered living resources

Disclosure to Other Government Agencies

Indigenous Knowledge that is held by the EAO will not be disclosed to other agencies without the consent of the Indigenous nation, subject to section 75(2) of the Act. Requests for the sharing of Indigenous Knowledge by other agencies will be redirected to the Indigenous nation who disclosed the information to the EAO.

In some cases, the EAO and Indigenous nations may enter into arrangements to allow for the disclosure of Indigenous Knowledge to other provincial agencies in a more streamlined manner. This may be a formal arrangement in an agreement or a verbal or written consent from the Indigenous nation to disclose the information to another government agency. This disclosure of information can help subsequent permitting processes; therefore, the EAO recommends that Indigenous nations share information to those permitting agencies directly.

4.0 SUBMITTING INDIGENOUS KNOWLEDGE

Indigenous nations may generally take one of three approaches to submit Indigenous Knowledge pertaining to an EA. The decisions regarding whether to submit Indigenous Knowledge into the EA process and how to provide it, are made by the Indigenous nation through their chosen representatives. The EAO will work with Indigenous nations and knowledge holders if additional steps are required beyond what is listed here:

4.1 Submit Indigenous Knowledge directly to the EAO

Submission of Indigenous Knowledge may take the form of a separate submission to the EAO, such as a traditional use study, or another source of information that the Indigenous nation would like considered. With this option, Indigenous Knowledge can be submitted in writing, orally, as a video, or in another manner agreed to by the Indigenous nation and the EAO and under some circumstances (see Section 3.0) can remain confidential.

If the Indigenous nation wishes for the information to remain confidential, the Indigenous nation should clearly state that the information is confidential under s. 75 of the Act and should also be protected from disclosure under s. 16, 18 or 18.1 of FOIPPA. Information shared in confidence with the EAO will also need to be shared with proponents, and potentially others, in accordance with administrative fairness if this information may materially impact a decision.

Indigenous nations may also choose to disclose information to the Proponent in a format that is suitable to be made publicly available and then submit additional confidential details to EAO as a supplementary submission if necessary. Note that requests for confidentiality must come from the Indigenous nation and its chosen representative. Any Indigenous Knowledge that requires confidentiality should thus be submitted through the body that legally represents an Indigenous nation.

4.2 Work with the proponent to reflect Indigenous Knowledge in an application

Indigenous nations may also opt to work directly with the proponent to ensure its application is informed by Indigenous Knowledge. If a proponent wishes to submit an application that includes or considers Indigenous Knowledge, the EAO may seek confirmation from the Indigenous nation that:

- The information is being provided in alignment with the Indigenous Knowledge policies and protocols of the Indigenous nation;
- The Indigenous nation has provided permission for its use and public disclosure; and,
- Indigenous Knowledge has been appropriately characterized within the application.

If an Indigenous nation does not want information disclosed publicly but wishes it to still be considered, then they can either work with the proponent to present the data in aggregated format to preserve the confidentiality of specific places or attributes, or they can submit the information directly to the EAO.

4.3 Work with the EAO to reflect Indigenous Knowledge in assessment without disclosing the information

Indigenous nations may want Indigenous Knowledge to be considered within the EA process without submitting all the details in writing to EAO. In these cases, the EAO can work with the Indigenous nation to review the information confidentially and to determine how the information will be discussed with the proponent and reflected in the Assessment Report, which is the report that presents the findings of the project assessment and informs both Indigenous and provincial decision-makers. In some cases, the EAO may draft sections of the Assessment Report with the Indigenous nation to ensure the information is portrayed accurately. The EAO may determine that the proponent must be involved to ensure that the proponent is aware of any information that may influence the decision on their application. The EAO may impose conditions under s. 75 of the Act to support preventing the information from being disseminated further. Information provided in this manner may still need to be referred to in general terms in the Assessment Report or other referral materials. The EAO will however work with the Indigenous nation to ensure the information is appropriately characterized to not bring harm to the Indigenous nation's interests.

5.0 APPLYING INDIGENOUS KNOWLEDGE

The following EA stages reflect the provincial EA process; however, it is acknowledged that there may be additional steps required by Indigenous nations.

5.1 Prior to Submitting an Initial Project Description

EA Participants should engage in discussions with Indigenous nations and Indigenous Knowledge holders as early as possible, ideally before submitting an Initial Project Description, to build relationships, understand any governance requirements or community protocols and determine the best approaches for working with Indigenous Knowledge during the EA. These conversations should be approached with cultural humility and the goal of collective learning. Early conversations may provide the opportunity to help influence project design, inform choices of methods for the assessment, help to identify gaps in knowledge, including any studies an Indigenous nation would like to pursue, familiarize Participants with cultural protocols and expectations, and most importantly, set the stage for a respectful relationship throughout the EA process.

Early discussions may occur prior to submission of the Initial Project Description, if possible. This early engagement may provide the opportunity for the proponent to consider design modifications or mitigations at an early stage to help avoid issues of significance to a Nation, thus helping to avoid delays related to deficiencies or information requests later in the EA process.

Proponents should also consider requiring Indigenous cultural training for their staff or contractors and organize community-specific training with the Indigenous nation to provide a foundational understanding to set expectations for working together and to support understanding Indigenous Knowledge.

Participants should acknowledge that engaging throughout an EA, including engaging with knowledge holders, is a significant workload for Indigenous nations, and that Indigenous nations may be engaging with multiple proponents at the same time. Every project is different and may draw upon the knowledge of different community members. Proponents should engage with Indigenous nations as early as possible to determine what is required to work respectfully with the community and provide as much notice as possible to facilitate more effective incorporation of Indigenous Knowledge into the EA process.

In some cases, the EAO may have arrangements with Indigenous nations regarding the conduct of an EA in their territory. In these cases, there may be defined requirements regarding the use of Indigenous Knowledge.

5.2 Early Engagement Phase

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 shape files. This assists Indigenous nations in understanding the areas of their territory the project 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, supported by Indigenous Knowledge, can help the EAO develop a process that will meet the needs of Indigenous participants.

Gaps in Indigenous Knowledge can also be identified at this point by the Indigenous nation, which will inform study and information collection during the application development process. Indigenous nations may also indicate that they want to take on their own studies to inform the project.

While the EAO may ask questions and seek clarification, it is the responsibility of the Indigenous nation to determine whether specific information should be considered when assessing effects on their Nation. It is therefore important for Participants to be mindful of the processes and timelines that Indigenous nations need to follow to meet their own governance, review, and approval processes. Through discussions during Early Engagement, Participants can help to ensure processes and timelines are aligned to the extent possible.

If Indigenous Knowledge is provided, it should be considered in the Detailed Project Description according to any requirements made by the CEAO and as expressed through Indigenous engagement. For more information, see the Early Engagement Policy, found [here](#).

The Detailed Project Description should include:

- A statement indicating that the Indigenous nation supports the characterization and application of any Indigenous Knowledge contained within the Detailed Project Description, if applicable;
- Information outlining how Indigenous Knowledge informed project design; and,
- A preliminary summary of the studies that have been or will be conducted to support the EA. This may include studies that will be conducted by the Indigenous nation.

5.3 EA Readiness Decision

The Provincial decision-maker (CEAO or Minister) will consider Indigenous Knowledge when deciding on which of the options under s. 16(2) and 18 under of the Act should be exercised:

1. Require that the proponent prepare a revised DPD;
2. Proceed to an EA;
3. Refer to the Minister with recommendation that an assessment body conduct the assessment under s. 24;
4. Recommend that the Minister exempt the project from the requirement for an EA; or,
5. Recommend that the Minister order that the project may not proceed (i.e. terminate the project from the process).

Indigenous Knowledge can inform consensus-seeking at this stage. For more information, see the Readiness Decision Policy and the Guide to Consensus-Seeking under the *Act*, found [here](#).

5.4 Process Planning

As part of the Process Planning phase, the EAO may place requirements, through the Process Order, on the proponent to prepare studies or conduct information gathering 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.

Where an Indigenous nation wishes to submit information directly to EAO, in confidence and subject to the confidentiality provisions in Section 3.0, the EAO may include provisions in this regard in the Process Order. The Process Order will assist Participants in understanding how such knowledge will be handled, and to ensure that the EA process is fair, particularly in relation to information that may materially impact decision-making. If an Indigenous nation or knowledge holder does not want to share its knowledge in an EA, that decision rests with the Nation. However, where a proponent is aware of the reasons the Indigenous nation chose not to provide the information, the EAO will expect that the proponent will inform the EAO of those reasons.

If an Indigenous Knowledge study is going to be conducted, proponents, Indigenous nations and knowledge holders are encouraged to work together to:

- Determine the community protocols and expectations regarding the conduct of an Indigenous Knowledge study to determine how and under what terms any Indigenous Knowledge research should be conducted and how it can be subsequently used;
- Determine how permission will be obtained from a participating Indigenous nation or knowledge holders (if applicable), through the Indigenous nation's chosen representative;
- Identify how and what Indigenous Knowledge may be useful for project design, EA process, impact prediction and mitigation;
- Determine expectations for handling, sharing, and incorporating Indigenous Knowledge studies; and,
- Identify possibilities for scoping the study in a manner that may also contribute to broader goals and priorities of the Indigenous nation.

Indigenous Knowledge studies may be a requirement of the Process Order of an EA and may require consideration in capacity funding discussions between the proponent and the Indigenous nation.

5.5 Application Development

The following requirements are outlined in the standard Application Information Requirements (AIR) Guideline and are confirmed through a consensus-seeking process with participating Indigenous nations when the AIR is approved through a Process Order:

- An outline of the steps taken by the proponent to work with Indigenous nations to ensure the application is informed by relevant Indigenous Knowledge, including a summary of any arrangements with the Indigenous nation regarding the use and application of Indigenous Knowledge;
- A statement indicating that the Indigenous nation supports the characterization and application of any Indigenous Knowledge contained within the application and gives permission for its public disclosure;
- Information outlining how Indigenous Knowledge informed project design, the assessment, and proposed mitigation measures; and,
- A plan for future cooperation between the proponent and the Indigenous nation to further consider Indigenous Knowledge into project implementation (for example monitoring and management plans).

Indigenous Knowledge that is included in an application should be in a manner that the Indigenous nation agrees is appropriate and sufficient. In many cases, an Indigenous nation may wish to present information in a non-specific form that protects Indigenous resources and places from harm. In some cases, the EAO may seek clarification on generalized Indigenous Knowledge with the Indigenous nation.

Indigenous Knowledge, where applicable, may be applied throughout the assessment to those matters referenced in s. 25 of the Act, as applicable, within the scope of the EA, as acceptable to the Indigenous nation and as required in the Process Order.

5.6 Application Review

The EAO will engage Indigenous nations directly to confirm that the information requirements have been met as outlined in the AIR when reviewing an application made under s. 27(1) of the Act. The CEAO may not accept an application if it does not contain the required information, including Indigenous Knowledge requirements.

5.7 Effects Assessment

The EAO will work collaboratively with the Indigenous nation when considering Indigenous Knowledge in the effects assessment. If there are differences 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, reconcile the difference through a collaborative process. Indigenous Knowledge will be respected and treated on its own merits. However, differences between knowledge could be an opportunity for establishing adaptive management approaches.

Consensus-seeking processes between the EAO and Indigenous nations will allow for Indigenous nations to work with the EAO on appropriate mitigation measures and recommended conditions.

The EAO will work with the Indigenous nation when referencing Indigenous knowledge in the Assessment Report to ensure the information is portrayed in a manner suitable for disclosure to the public.

5.8 Recommendation and Decision

A component of the consensus-seeking process during the Recommendations Phase is to ensure that any Indigenous Knowledge is appropriately characterized in the referral materials (Assessment Report, Certified Project description and proposed conditions) and CEAO recommendations. See the Guide to Consensus-Seeking under the Act, found [here](#), for more information on consensus-seeking processes and requirements under the Act.

5.9 Post-EA

The draft certificate prepared at the end of an EA process may include conditions related to the Indigenous Knowledge provided during the process, including post-EA activities such as monitoring programs. Indigenous nation participation in

post-certificate activities is important given the level of information Indigenous Knowledge holders have about the environment where the project will operate. Recommended conditions may provide for the inclusion of appropriate Indigenous nation representatives, including Indigenous Knowledge holders or experts, in project implementation over the life of the project.

Establishing and maintaining trust-based relationships over the life of a project (including for example through arrangements that span the life of the project) are essential to facilitate ongoing dialogue and application of Indigenous Knowledge to a project, including to subsequent permitting processes. It should be recognized that the application of Indigenous Knowledge during an EA process can help inform subsequent regulatory processes and the life of the project.

APPENDIX A – REFERENCES

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