



FIRST NATIONS  
MAJOR PROJECTS  
COALITION

A large, high-quality photograph of a bald eagle perched on a thick, mossy tree branch. The eagle is facing right, with its white head and yellow beak clearly visible. The background is a dense forest with more mossy branches and a hint of water or mist in the distance.

# PRIMER FOR EFFECTIVE INDIGENOUS INVOLVEMENT IN BC ENVIRONMENTAL ASSESSMENT

MARCH 2023

# FIRST NATIONS MAJOR PROJECT COALITION

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March 2023

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As a living document, the FNMPIC expects this primer will be updated alongside the development of the EAO's guidance materials and as new information emerges.

For general EA support, contact the FNMPIC's Environmental Services Department

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# WELCOME

This primer provides BC Indigenous Nations with an introductory roadmap to the new BC environmental assessment process.

It aims to provide a target summary of “what’s most important” about the new legislation for Indigenous Nations, and how to maximize a Nation’s effectiveness in the EA process.

Through effective involvement in the new BC EA process, Indigenous Nations can better protect and advance their rights and interests.



# EXECUTIVE SUMMARY

**IN** late 2018, the BC government passed the *BC Environmental Assessment Act* (the Act). The new Act is intended to advance reconciliation with Indigenous peoples, enhance public confidence, protect the environment, and provide clear pathways to sustainable project approvals. A key objective of the new Act is advancing the implementation of the United Nations Declaration on the Rights of Indigenous Peoples by establishing a collaborative approach to the assessment of major projects.

The First Nation Major Projects Coalition (FNMPC) developed this *Primer for Indigenous Involvement in the BC Environmental Assessment Process* (the primer) as a tool to support effective Indigenous involvement within the new BC environmental assessment (EA) process.

**CHAPTER 1** introduces the FNMPC and sets out the purpose, focus, and limitations of the primer.

**CHAPTER 2** provides an overview of key changes to the BC EA process that are aimed at enhancing Indigenous involvement and the assessment of the effects of proposed major projects on Indigenous Nations. Specifically, this chapter introduces the new features of the BC EA process that are intended to promote early involvement by Indigenous Nations and set the stage for collaboration between all parties throughout the EA process. For Indigenous Nations, the most important process changes can be roughly grouped into two categories:

- Early engagement and process planning; and
- Collaborative processes.

In addition, several new substantive EA requirements and opportunities relevant to Indigenous Nations are discussed, including:

- Assessment of effects on Indigenous Nations and rights;
- Assessment of effects on culture;
- Inclusion of available Indigenous knowledge in the assessment of effects on both the biophysical environment and on people;
- Assessment of effects on social, economic, and health well-being; and
- Government-to-government process agreements to enable collaborative or Indigenous-led processes.



The FNMP developed this primer as a tool to support Indigenous Nations to advance their involvement within the new BC EA process.

**CHAPTER 3** provides an overview of the new eight-phase EA process, with brief discussion of each of these phases.

**CHAPTER 4** explores steps that Indigenous Nations can take to maximize their influence throughout the course of an assessment. The chapter focuses on two new dimensions of the new EA process where there are important opportunities for Indigenous Nations to maximize their influence:

- Early engagement phase; and
- Process planning phase.

For the Early Engagement phase, information and tips are provided with respect to preparedness for effective involvement in the EA process, including the opportunity for an Indigenous Nation to conduct all or part of an EA. For the process planning phase, each step in the development of the terms, roles, responsibilities, information requirements, and instructions for the conduct of the EA is explained with a focus on opportunities for Indigenous Nations to lead or partner on specific aspects of the EA.

**CHAPTER 5** provides a brief overview of the importance of securing resources for effective involvement in the EA process. The chapter provide tips for estimating the cost of involvement in an EA and how resources can be accessed through a combination of government and proponent funding.

**CHAPTER 6** discusses the introduction of consent decisions and consensus-seeking processes into the BC EA process, what they mean, how they work, and how Indigenous Nations can make the most of these new opportunities. In addition, a section within the chapter is dedicated to explaining when and how recourse to dispute resolution mechanisms can support the overall consensus-seeking and consent decision processes.

**CHAPTER 7** explores new mechanisms in the BC EA Act through which Indigenous Nations can take on the leading role in an EA. Under the Act, Nations may seek to carry out their own Indigenous-led studies or lead part or all of an EA. This chapter also explores opportunities for Indigenous Nations to pursue government-to-government collaborative arrangements for activities both during the EA (e.g., collaborative assessment) and post-EA (e.g., compliance monitoring activities).

**CHAPTER 8** provides Indigenous Nations with references to additional technical resources for supporting their involvement in the new BC EA process. The primer is intended to be an introduction, not a comprehensive technical document on the EA process. This final chapter provides links to additional technical support with respect to environmental assessment processes.

## Eight phases of the EA process



See Chapter 3 for a more detailed summary of the process.

# GLOSSARY OF IMPACT ASSESSMENT TERMS

IN THE GUIDE, YOU WILL FIND NEW TERMS IN **BOLD BLUE** DEFINED IN THE GLOSSARY (CLICK TO HYPERLINK).

**Application** Short for “The Application for an Environmental Assessment Certificate.” The proponent is required to submit an Application which includes a comprehensive assessment of the potential effects of its proposed project on people and the environment.

**Application Development and Review Phase** During this phase, the proponent has three years from the date of the Process Order to conduct and complete the studies and reports required for the Application. Following the submission of the Application by the proponent there is a 180-day review period where Indigenous Nations have an opportunity to assess the sufficiency of the Application against the requirement of the Process Order. A 30-day public engagement and comment period is included as part of this phase. The proponent may be required to prepare a revised application during this phase.

**Application Information Requirements** A document submitted as an appendix to the Process Order which gives direction to the Proponent on the information and associated studies that must be included in its Application, including any requirements for IK and any requirements to support Indigenous-led rights-based studies.

**Assessment of Cumulative Effects** The examination of how all past, present and likely future activities combine to impact an area or specific values (such as moose or salmon).

**Assessment Plan** A document submitted as an appendix of the Process Order which includes the procedural requirements of the EA, requirements for any Indigenous-led studies, the roles and responsibilities of all EA participants, the information request process, the consensus-seeking and issues resolution process, and any additional information a participating Indigenous Nation provided by an Indigenous Nation to support the assessment of effects on its rights.

**Assessment Report** A document describing the potential project effects on Section 25 assessment matters and assess whether a project is likely to cause significant effects, including how the assessment matters may be impacted. The Assessment Report will include Indigenous Knowledge which will help inform the conclusions and recommendations outlined in the document. The EAO and participating Indigenous Nations will seek consensus on the Assessment Report.

**British Columbia Environmental Assessment Office (BC EAO)** The office that administers the Environmental Assessment Act, including conducting environmental assessments of major projects in BC and providing provincial Ministers with advice to inform their decision on whether the project should proceed. The BC EAO is mandated to promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities, and support reconciliation with Indigenous peoples in BC.

**Chief Executive Assessment Officer (CEAO)** The Chief Executive Assessment Officer, head of the EAO, is appointed by the provincial cabinet, oversees the BC environmental assessment process including making recommendations (“the Recommendations”) to the provincial Ministers on whether to issue an EA certificate or not.

**Conditions** The enforceable requirements set out in the EA Certificate with which the project proponent must comply when carrying out the project, including mitigation measures and follow-up requirements.

**Consensus-Seeking** Processes that seek consensus around procedural and technical decisions that occur during each phase of the EA process. Consensus-seeking involves collaboration between the EAO and participating Indigenous Nations to understand and resolve issues.

**Consent Decision** A formal declaration to the Minister of an Indigenous Nation's support or lack of support with the EA Readiness Decision and/or the CEOA's final Recommendation. Consent decisions must be considered by the Ministers prior to making their decision. Where consensus is not reached on the consent decisions, there is recourse to dispute resolution.

**Cumulative Effects** Changes to environment, rights, culture, and/or society that are caused by the combined effects of past, present, and future actions.

**Detailed Project Description (DPD)** A document containing updated information about the designated project including an outline of how information collected during Early Engagement has been used to inform the document, and how the requirements in the Summary of Engagement have been addressed.

**EAO** See BC EAO on previous page.

**EAO Project Information Centre (EPIC)** An online database for projects undergoing EA, maintained by the BC EAO and designed to improve transparency, provide public access for anyone interested in a project or the EA process, and serve as a place to submit public comments during engagement periods.

**Early Engagement Phase** The first phase of the EA, lasting 90 days plus one year. During this phase, the proponent is requested by the EAO to submit an Initial Project Description (IPD) and an Engagement Plan (EP). Subsequently, the EAO will develop a Summary of Engagement, which will then inform the proponent's Detailed Project Description (DPD).

**Effects** Changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes.

**Effects Assessment** A detailed and technical assessment of a major project's potential positive and negative direct and indirect effects, and adverse cumulative effects. The effects assessment concludes with the drafting of the Assessment Report.

**Effects Assessment Phase** The fifth phase of the EA, lasting approximately 120 days. This phase involves the review of the EAO's draft Assessment Report and draft EA Certificate, including the proposed conditions and certified project description.

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

**Follow-up Strategy** Program for verifying the accuracy of the effects assessment and evaluate the effectiveness of mitigation measures for VCs where positive or negative residual effects or adverse cumulative effects are predicted or uncertain. This strategy may be informed by any information generated through ongoing or completed regional assessments.

**Government-to-Government Agreement** For the purposes of this guide, this term refers to agreements negotiated between an Indigenous Nation and the Government of BC under Section 41 of the Environmental Assessment Act for the purpose of collaboration in the BC EA processes. Government-to-government agreements may take the form of Section 41 agreements, process agreements, or collaboration agreements. These agreements are negotiated with the Minister of Environment and Climate Change Strategy.

**Initial Project Description (IPD)** Document prepared by the proponent that provides preliminary information about a proposed project and includes the prescribed information set out in the BC EAO's Initial Project Description Guidelines (set out under the EAO's Early Engagement Policy). Key information will include the project location, local communities and Indigenous groups who may be affected.

**Jurisdiction** Under the Act, the term “jurisdiction” is not defined. However, within the context of the Act and BC EAO guidance, it generally refers to: (1) an authority, an agency or body established under the authority of the federal government, the government of another province or territory, or a foreign government (e.g., State of Washington) with mandate and jurisdiction related to EA. In the case of a substituted EA, an example of another jurisdiction would be the Impact Assessment Agency of Canada; or (2) the inherent Indigenous governance and decision-making authority within the traditional territories and/or treaty areas of an Indigenous Nation, i.e., “Indigenous jurisdiction.”

**Ministers** “The ministers” refers to the Minister of Environment and Climate Change Strategy and the responsible minister based on the sector, e.g., the Ministry of Energy, Mines and Low Carbon Innovation.

**Mitigation Measures** Measures designed to eliminate, reduce, control or offset the adverse effects of a project.

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

**Planning Phase** A 120-day phase which defines the scope of concerns and issues the assessment will focus on, and the role and studies that each Nation will undertake during the assessment. Key components of the Process Planning phase include the development of the Process Order and the identification of representatives to sit on the Technical Advisory Committee (and/or Community Advisory Committee (CAC) if applicable).

**Precautionary Principle** In impact assessment, the precautionary principle refers to the need to err on the side of caution in face of uncertainties of knowledge and information by assuming that adverse effects posed by a new project or activities on the environment or people may be significant.

**Preliminary Understanding of Interests** The EAO’s initial description of an Indigenous Nation’s priorities, governance, potential impacts, and interests in the project area.

**Process Agreement** A type of agreement between the proponent and Nation that sets out the expectations for engagement for the EA, such as funding, collaboration, studies, engagement expectations, etc.

**Process Order** A project-specific Process Order is developed by the EAO during the Planning phase of an EA, with the EAO seeking consensus with participating Indigenous Nations. The Process Order defines the scope, procedures, methods, and timelines for the EA, as well as how provincial and Indigenous processes and decision-making will align. The Process Order includes three appendices: the Application Information Requirements, the Assessment Plan, and the Regulatory Coordination Plan.

**Proponent** A person or entity (federal authority, government, body, or company) that has proposed a major project or carries out a major project.

**Reasons for Decision** A public document issued at the end of the environmental assessment that sets out the justification for the Ministers’ decision to issue or not issue an EA Certificate. This will include supporting rationale, enforceable conditions for addressing potential adverse effects within provincial jurisdiction, and reasoning for when a decision is made that is contrary to the consent or lack of consent indicated by a participating Indigenous Nation.

**Residual Effects** The adverse effects of a project on a Valued Component or Right after efforts/actions to mitigate those effects are considered; or the effects of a project that cannot be mitigated.

**Reviewable Project** Reviewable projects are those which meet or exceed certain thresholds defined in the Reviewable Project Regulation (RPR), are designated by the Minister of Environment and Climate Change Strategy as requiring an EA, or projects where the proponent has applied to designate the project as reviewable. For further information, refer to the Reviewable Projects Regulation.

**Reviewable Projects Regulation (RPR)** Sets out the criteria for determining which projects should be required to undergo an environmental assessment (EA), by defining prescribed project categories and providing thresholds for each category that indicate the potential for adverse effects for their specific project type. These projects include, but are not limited to industrial projects, mine projects, energy projects, water management projects, waste disposal projects, transportation projects and tourist destination resort projects.

**Substitution** Process that allows another jurisdiction (see “jurisdiction”) to conduct the provincial assessment if conditions set out in the Act are met and the Minister approves of the process of the other jurisdiction.

**Summary of Engagement** A document prepared by the EAO for the proponent during the Early Engagement phase and following the acceptance of the Initial Project Description (IPD). The Summary of Engagement presents key issues and concerns identified in Early Engagement and in the IPD and may also include the preliminary understanding of Indigenous Nations’ interests in the project area, additional information or engagement requirements, potential critical issues that will require resolution, and key audiences the proponent must engage with during the EA.

**Sustainability** The ability to protect the environment and foster a sound economy and the well-being of British Columbians and their communities, and support reconciliation with Indigenous peoples in BC.

**Valued Component** Cultural, environmental, economic, health, social, and other elements of the natural and human environment that is identified as having scientific, social, cultural, economic, historical, archaeological or aesthetic importance. ■

## ACRONYMS AND ABBREVIATIONS

**The Act** Impact Assessment Act

**CAC** Community Advisory Committee

**CEAA 2012** Canadian Environmental Assessment Act, 2012

**CEAO** Chief Executive Assessment Officer

**DPD** Detailed Project Description

**EA** Environmental Assessment

**EAA** Environmental Assessment Act

**EAO** Environmental Assessment Office

**EPIC** Environmental Project Information Centre

**FNMPC** First Nations Major Project Coalition

**FPIC** Free, Prior and Informed Consent

**IA** Impact Assessment

**IA Process** Impact Assessment Process

**IBA** Impact and Benefits Agreement

**IK** Indigenous Knowledge

**IPD** Initial Project Description

**RIA** Rights Impact Assessment

**RPR** Reviewable Project Regulation

**SEIA** Socio-economic Impact Assessment

**TAG** Technical Advisory Committee

**TISG** Tailored Impact Statement Guidelines

**UNDRIP** United Nations Declaration on the Rights of Indigenous People

**VC** Valued Component

## CHAPTER 1

# INTRODUCTION

# INTRODUCTION

## Purpose of this Primer

Many changes occurred to British Columbia's environmental assessment (EA) process in 2018 that matter to Indigenous Nations. These changes offer greater opportunities within the EA process for Indigenous Nations to be better informed for the purposes of Indigenous decision-making related to proposed major projects. Gaining a solid understanding of the new process is essential for BC Indigenous Nations to take advantage of these new opportunities.

The FNMPC's *Primer for Indigenous Involvement in the BC Environmental Assessment Process* (the primer) is intended to provide BC Indigenous Nations with an introductory roadmap to the new BC EA process. It aims to provide a target summary of "what's most important" about the new legislation for Indigenous

**Changes to the EA process offer greater opportunities within the EA process for Indigenous Nations to be better informed for the purposes of Indigenous decision-making related to proposed major projects.**

Nations, and how to maximize a Nation's effectiveness in the EA process. Through effective involvement in the new BC EA process Nations can ensure that their views and concerns related to proposed major projects are considered and incorporated into project-related decisions. In this manner, Indigenous Nations can better protect and advance their rights and interests.

## About the FNMPC

The First Nation Major Projects Coalition (FNMPC) was established in October 2015 by Indigenous Nations that chose to establish a collective approach to proposed major resource projects in their territories.

The FNMPC's vision is for member Indigenous Nations to work collaboratively, cooperatively, and cohesively towards the enhancement of economic well-being for member Nations, understanding that a strong economy is reliant upon a healthy environment, supported by vibrant cultures, languages, and expression of traditional laws. A key purpose of the FNMPC is to safeguard the air, land, water, and medicine sources from the impacts of resource development by asserting its members' influence and traditional laws on environmental, regulatory, and negotiation processes.

The FNMPC provides on-request support to its member-Nations that are involved in EAs and project development on an individual basis. FNMPC members also work together to create shared approaches and strategies for best practices. The FNMPC is one of the largest, if not the largest, grassroots Indigenous service organizations providing environmental and economic supports in Canada.

## Limitations of this Primer

This primer is focused on:

- Providing Indigenous leadership with the most relevant information to understand the EA process; and
- Helping plan for a Nation's effective involvement in the BC EA process.

The primer does not go into detail about each of the specific EA process steps and should not be considered a *technical* guide. For those seeking greater technical details related to the BC EA process, Chapter 8 of the primer provides links to additional EA resources.

Changes to the BC EA process are relatively recent and no provincial EAs have yet been completed under the new process. While the majority of regulations and policies for the BC *Environmental Assessment Act, 2018* (the Act) have been developed, as of January 2023 a few were still in a state of development. Table 1, for example, lists various regulations, guides, and policies that are incomplete.

**Table 1. Pending regulations, guides and policies being developed by the EAO as of January 2023**

REGULATIONS	GUIDES	POLICY
<ul style="list-style-type: none"><li>■ Dispute Resolution Regulation</li><li>■ Capacity Funding Tariff</li><li>■ Regional/Strategic Environmental Assessment Regulation</li></ul>	<ul style="list-style-type: none"><li>■ Public Engagement Guide</li></ul>	<ul style="list-style-type: none"><li>■ Public Participation Funding Policy</li><li>■ Policy on Minister's Designation (of a Project as Reviewable)</li><li>■ Application Development and Review Policy</li></ul>

Hence, the implementation of some aspects of the new assessment process can be expected to change and evolve as regulations and policies are finalized. The primer has attempted to capture the most important aspects of the new legislation and policy documents affecting Indigenous Nations, while recognizing that the full scope of the BC EAO's policy and regulatory framework is still evolving. This primer focus on providing an overview of those aspects followed by tips on how to maximize the effectiveness of a Nation's participation. How these opportunities are applied in practice will depend on the collaborative efforts of Indigenous Nations, together with the EAO and proponents in the coming years.

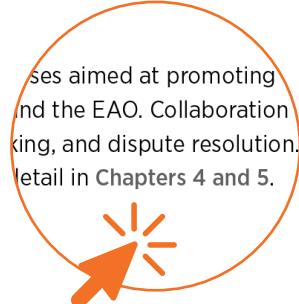


No provincial EAs have yet been completed under the new process, and a few policies are still in a state of development. Hence, the implementation of some aspects of the new assessment process can be expected to change and evolve.

## Document Overview

Following is a quick overview of the different sections of this *Primer for Indigenous Involvement in the BC Environmental Assessment Process*. Each section of the primer discusses a different theme of the new EA process and is presented as a chapter. Chapter headings are linked to each section in this document for easy navigation.

- **CHAPTER 2: The New BC EA Process.** This chapter discusses the need for the new EA process and identifies the changes most relevant to Indigenous Nations.
- **CHAPTER 3: Overview of the 8-Phase Process.** This chapter gives an overview of the eight phases in the EA process and identifies key aspects of each phase.
- **CHAPTER 4: Setting the Stage for Effective Involvement.** This chapter focuses on EA opportunities specific to Indigenous Nations and how to make the most of them.
- **CHAPTER 5: Resources for Effective Involvement.** This chapter focuses on how Indigenous Nations can secure the resources necessary to fully take advantage of the opportunities with the new BC EA process. The chapter also discusses arrangements that Indigenous Nations can seek to establish with the proponent and/or the BC EAO to support meaningful Indigenous involvement during the EA process.
- **CHAPTER 6: Consent Decisions and Consensus-Seeking.** This chapter provides an overview of processes throughout the EA process that involve Indigenous Nations and the province seeking consensus at key steps of the EA process, including decisions related to whether an EA should proceed, and the final decision on the project. This chapter also explains the function of a time-limited, non-binding dispute resolution process as a novel step to support the consensus-seeking process.
- **CHAPTER 7: Increasing Indigenous Control and Collaboration.** This chapter lists the different types of agreements that Indigenous Nations may enter in relation to the EA process and offers considerations for when entering an agreement.
- **CHAPTER 8: Further Support and Guidance.** This chapter provides a list of useful resources that elaborate on important EA-related topics and offer technical support.



ses aimed at promoting and the EAO. Collaboration, and dispute resolution. detail in Chapters 4 and 5.

In this document, bold text that refers to other chapters is hyperlinked to that section for easy navigation.

## CHAPTER 2

# THE NEW BC EA PROCESS

# THE NEW BC EA PROCESS

## Drive for Revitalization

### Indigenous Concerns with the Former Process

The changes to the Act reflect the Province's effort to address concerns that have long been expressed by Indigenous leaders about the former EA process. Table 2 on the following page compares some of these concerns with the proposed fix found in the new process.

At the end of the day, the limitations of the previous EA process left Nations feeling they had little control or influence over the conditions under which major projects could proceed within their territories. This led to numerous instances of approved projects that would directly interfere with the rights of, and negatively impact future plans and interests of Indigenous Nations. In turn, this led in some cases to legal challenges, and a loss of faith in the EA process and its ability to adequately address matters of utmost important to Indigenous Nations.

### Rationale for the BC Government

The current *BC Environmental Assessment Act* (the Act), passed into law at the end of 2018, came into effect in late 2019, with the intent “to ensure the legal rights of First Nations are respected, and the public’s expectation of a strong transparent process is met.” This “revitalization” process included an 18-month long engagement process with BC Indigenous Nations. Indigenous concerns and perspectives were considered in the drafting of the new Act, along with appropriate ways to manage Indigenous and treaty rights. Through this process, the Province sought to align the provincial EA Act with the Province’s commitments to:

- “Fully implement” the United Nations Declaration on the Rights of Indigenous Peoples (“the UN Declaration”);
- Implement the Truth and Reconciliation Commission Calls to Action;
- The Supreme Court of Canada *Tsílhqot'in* decision in the context of EA; and
- Sustainability.

The Province has designed the new EA process to reflect these commitments, with the EAO specifically tasked with supporting reconciliation under Subsection 2(2)(b)(ii) of the new Act. The changes to the provincial EA process are also aligned with Bill 41, BC’s *Declaration on the Rights of Indigenous Peoples Act*, that came into effect in November 2019.

**Table 2. Comparison of Opportunities in the New BC EA Process (2018) With Indigenous Concerns About the Former BC EA Process (2002)**

CONCERN FROM 2002 EA PROCESS	CHANGES IN NEW EA PROCESS
<ul style="list-style-type: none"> <li>■ Limited participation of Indigenous Nations, with exception of inclusion in an EA advisory committee.</li> </ul>	<ul style="list-style-type: none"> <li>■ Improved engagement, with focus on early engagement with affected Indigenous Nations, early identification of concerns, and required engagement processes throughout the EA by both the proponent and EAO.</li> </ul>
<ul style="list-style-type: none"> <li>■ Process allowed “unacceptable” projects to proceed to formal review and approval.</li> <li>■ Process made it possible to avoid EA if projects were below a triggering threshold.</li> </ul>	<ul style="list-style-type: none"> <li>■ Additional thresholds for reviewable projects, new considerations for designating a project, including potential for impacts on Indigenous rights and interests, the screening of “subthreshold” projects, and creation of new Readiness Decision to determine if a project is ready to proceed to an EA.</li> </ul>
<ul style="list-style-type: none"> <li>■ Proponent-driven process.</li> </ul>	<ul style="list-style-type: none"> <li>■ More opportunities for Indigenous participation, including the opportunity for Indigenous-led assessments or studies.</li> </ul>
<ul style="list-style-type: none"> <li>■ No explicit legislative requirements related to considering Indigenous rights and interests.</li> </ul>	<ul style="list-style-type: none"> <li>■ Explicit legislative requirements to assess effects to Indigenous Nations and their rights, for engagement and role of Indigenous Nations that are involved in the EA.</li> </ul>
<ul style="list-style-type: none"> <li>■ Inadequate funding for engagement or participation, mostly proponent-controlled.</li> </ul>	<ul style="list-style-type: none"> <li>■ EAO plays a more direct role in setting funding requirements for the costs for participation in the EA process.</li> </ul>
<ul style="list-style-type: none"> <li>■ EA limited to biophysical impacts, with little consideration of Indigenous cultural or health well-being.</li> </ul>	<ul style="list-style-type: none"> <li>■ Legislated requirement to consider cultural and health impacts, as well as rights-based impacts on Indigenous Nations. Additional requirements to consider in every assessment include disproportionate impacts to distinct human populations and effects to current and future generations. EAs must also consider Indigenous land use plans.</li> </ul>
<ul style="list-style-type: none"> <li>■ Impacts on Indigenous Nations and use of IK often lumped together.</li> </ul>	<ul style="list-style-type: none"> <li>■ Impacts to Indigenous Nations must be considered distinctly. Improved legislation and policy on the meaningful use of IK, including the opportunity for Nations to provide and interpret their own IK and specific confidentiality protections under Section 75 of the EA Act.</li> </ul>
<ul style="list-style-type: none"> <li>■ Absence of Indigenous Nations in decision-making.</li> </ul>	<ul style="list-style-type: none"> <li>■ More formal role for Indigenous Nations and a collaboration process with the EAO, including consensus-seeking at key milestones and the option for Nation’s to declare their consent or lack of consent to the Minister. The Minister is required to consider the consent or lack of consent provided by a Nation.</li> </ul>
<ul style="list-style-type: none"> <li>■ No requirement for understanding impacts on Indigenous Nations, nor for the involvement of Indigenous peoples in the effects characterization process.</li> </ul>	<ul style="list-style-type: none"> <li>■ Legislated requirement for the EAO to support reconciliation and recognition of Indigenous jurisdiction, including the assessment of impacts on Indigenous Nations and their rights. Nations have the option of conducting their own rights-based assessment.</li> </ul>

## Key Changes for Enhancing Indigenous Involvement

The Act contains new legislated requirements that were not part of the earlier assessment process. These provisions give BC Indigenous Nations a greater role in the EA process. This is reflected in all main stages of the EA: from planning, through to assessment, decision-making and the enforcement and compliance roles that accompany the lifecycle of an approved project. Key changes that enhance Indigenous involvement are described briefly below, and expanded on in later chapters.

1. Early engagement and process planning;
2. Collaborative processes;
3. Impact on Indigenous Nations and rights;
4. Cultural impact assessment requirements;
5. Inclusion of Indigenous knowledge;
6. Assessment of socio-economic and health impacts on Indigenous communities; and
7. Opportunities for Nation-to-Nation agreements.

### NEW FEDERAL IMPACT ASSESSMENT PROCESS

In 2017 and 2018, when the BC Government was developing the new BC EA Act, the federal EA process was also under review and renewal. The new BC Act allows the federal and provincial EA processes to align. This has made it easier for BC to substitute its process for a federal impact assessment and fulfill the provincial objective of “one project, one assessment.”



For more information on the federal Impact Assessment Act, see FNMPC's [Guide to Effective Indigenous Involvement in Federal Impact Assessment](#) and the Impact Assessment Agency of Canada's [website](#).



The new BC EA process places a lot more emphasis on early engagement and planning, including how Indigenous concerns and issues will be addressed throughout the EA process. The first three phases of the EA are now preparatory. They focus on identifying affected Indigenous groups, focusing the study on issues that actually matter to Indigenous Nations, and setting the terms for the assessment in collaboration with Indigenous groups. These three phases are discussed briefly below and expanded on in Chapter 3.

- **PHASE 1: EARLY ENGAGEMENT** — Prior to this phase, the proponent is expected to work with Indigenous Nation in preparing their [initial project description](#) and [engagement plan](#), prior to submitting them to the EA. During this phase, the proponent is expected to continue to work directly with Indigenous Nations, refining further ways to address issues of concern, in preparation of the [detailed project description](#). Indigenous Nations can also opt to participate in the EA as a “Participating Indigenous Nation” if they are concerned a proposed Project may affect their rights or interests. All Participating Indigenous Nations may express their concerns with the project during this phase and influence what valued components and Indigenous interests the proponent must describe and assess during the EA.
- **PHASE 2: EA READINESS DECISION** — This phase signals the end of the Early Engagement phase and the point at which the EAO seeks consensus with Indigenous Nations on whether to proceed with an EA for a proposed project. A key element of Indigenous involvement during this phase is assessing, in conjunction with the EAO, the adequacy of the proponent’s responsiveness to Indigenous concerns raised during early engagement and the adequacy of the detailed project description. It is also at this stage that a participating Indigenous Nation may provide their consent, or lack of consent, should the EAO decide to either exempt or terminate the Project from the EA process.
- **PHASE 3: PROCESS PLANNING** — If the outcome of the EA Readiness Decision is to proceed with an EA, then the Process Planning phase marks the formal commencement of the new project EA. During this phase, Indigenous Nations work with the EAO to set the scope of the EA, determine appropriate levels of engagement and participation, confirm any Indigenous-led studies, and identify resource needs for each Nations’ meaningful participation in the EA process.

The new BC EA process places a lot more emphasis on early engagement and planning of how Indigenous concerns and issues will be addressed through the process.

## KEY CHANGES: 2 Collaborative Processes

The BC EA process has incorporated new structures and processes aimed at promoting enhanced forms of collaboration between Indigenous Nations, the proponent, and the EAO. Collaboration in the new EA process takes three main forms: collaboration, consensus-seeking, and dispute resolution. These three forms are discussed briefly below, while expanded in greater detail in [Chapter 4](#) and [Chapter 5](#).

### Collaborative Approach

A key shift in the new EA process is the adoption of early engagement and process planning phases, where Indigenous Nations are invited to work with the EAO at a technical level to collaboratively identify critical concerns to be addressed during the EA, and the approaches for addressing them.

In addition, in order to support a more collaborative approach, the EAO is seeking to provide Indigenous Nations with participant funding during the first two phases of the EA, the Early Engagement and Readiness Decision phases. The funding amounts it will provide to Indigenous Nations will be determined on a case-by-case basis.

Capacity funding for the remainder of the EA process is expected to be provided *by the proponent* to all participating Indigenous Nations to ensure the participating Indigenous Nation is able to fully participate in the EA process to meet the obligations of the Environmental Assessment Act, 2018 (Act). These procedures do not address capacity funding for dispute resolution, which will be handled separately.

**Overall, the expectation is that for Indigenous Nations that face moderate to severe impacts from a proposed project, the combined funding of proponents and the EAO will be greater than under the previous EA system. However, communities will need to engage with both the proponent and the EAO as early as possible to ensure that adequate funding is provided.**

Overall, the expectation is that for Indigenous Nations that face moderate to severe impacts from a proposed project, the combined funding of proponents and the EAO will be greater than under the previous EA system. However, communities will need to engage with both the proponent and the EAO as early as possible to ensure that adequate funding is provided.

More information on Indigenous consideration about EA funding arrangements is provided in [Chapter 5](#).

### Consensus-Seeking

As an extension of a greater collaborative approach, the new EA process requires the EAO to seek consensus with Indigenous Nations at specific milestones in the process. This requirement is intended to motivate all parties to work together to reach consensus on approaches and conclusions at the end of each step of the process, before moving onto the next one. The requirement for consensus-seeking applies to most, but not all, phases of the EA process. More information on consent decisions and consensus-seeking in the BC EA process is provided in [Chapter 6](#).

## Dispute Resolution

The Act provides for a non-binding, time-limited dispute resolution mechanism whereby participating Indigenous Nations and the EAO can attempt to resolve disagreements that may arise during the EA process. This opportunity exists in all of the phases of the EA process, except the application development and review phase. This process supports the consensus-seeking process by providing a professional and independent mechanism for resolving impasses in the process.

## KEY CHANGES: 3 Impact on Indigenous Nations and Rights

The consideration of potential impacts to Indigenous Nations and their rights are specifically listed in the Act and required for all assessments. EAs must now assess:

- The effects of a project on Indigenous Nations and rights recognized and affirmed by Section 35 of the Constitution Act, 1982;
- Potential direct and indirect project impacts on Indigenous Nations, including economic, social, cultural and health effects and adverse cumulative effects;
- Effects on current and future generations; and
- Consistency with any relevant Indigenous land-use plans.

The Act allows a potentially impacted Nation the autonomy to carry out its own studies on the potential effects of a proposed project on its rights and well-being. These Indigenous-led assessments can be identified at the early planning phase of the EA to become part of the overall EA and considered on equal terms with materials submitted by the proponent.

The new EA process requires the EAO to seek consensus with Indigenous Nations at specific milestones in the process. This requirement is intended to motivate all parties to work together to reach consensus on approaches and conclusions at the end of each step of the process, before moving onto the next one.

## KEY CHANGES: 4 Cultural Impact Assessment Requirements

The BC EA process includes a new requirement to assess cultural effects. It also requires the assessment of cumulative effects and impacts to future generations. These additions make cultural impact assessment (CIA) an important aspect of the new EA process. As with rights-based studies, participating Indigenous Nations can notify the EAO of their intent to conduct their own studies to inform part of the assessment. Such an option may be advisable if serious cultural values are at risk from the project. This option is explored further in [Chapter 7](#).

The FNMPC has developed technical guidance that sets out best practices for Indigenous cultural impact assessment.<sup>1</sup> Indigenous Nations are encouraged to review these standards to ensure that cultural impact assessments are carried out in a culturally appropriate and meaningful way during an EA. For more information on the FNMPC's technical guidance for impact assessment, see [Chapter 8](#).



### INDIGENOUS KNOWLEDGE



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 the permission of the nation.”

*BC EAO Guide to Indigenous Knowledge in Environmental Assessments.*  
Version 1.0, Published April 2020: page 5.

1 See the FNMPC “Guidance Appendices to the Major Project Assessment Standard: Appendix 2: Indigenous Cultural Impact Assessment.”

## KEY CHANGES: 5 Inclusion of Indigenous Knowledge

Another substantial change with respect to Indigenous involvement is the now mandatory requirements for the use and consideration of Indigenous knowledge (IK). Assessment decisions are expected to make use of the best available IK. Indigenous Nations are also given more control over determining what meaningful and relevant IK is for an assessment, as well as identifying who appropriate knowledge holders are. Confidentiality clauses exist in the Act to protect any sensitive IK identified in the process.

The FNMPC has developed technical guidance for the inclusion of IK in major project assessments.<sup>2</sup> Indigenous Nations are encouraged to review these standards to ensure that Indigenous knowledge is considered in a culturally appropriate and meaningful way. For more information, see [Chapter 8](#).

## KEY CHANGES: 6 Assessment of Socio-Economic and Health Impacts on Indigenous Communities

The new Act requires a broad assessment of a Project's potential effects on community well-being. This includes the assessment of any potential indirect or direct impacts to social, economic, and health outcomes. As with cultural impact assessment, Indigenous Nations may request to conduct all, or part, of the assessment of social, economic and/or health effects of a Project on their own communities.

The FNMPC has developed technical guidance for assessing the effects of a major project on Indigenous socio-economic conditions and health. Indigenous Nations are encouraged to review these standards to ensure that these standards are met during the EA. For more information, see [Chapter 8](#).

### EAO DOCUMENT: *HUMAN AND COMMUNITY WELL-BEING GUIDELINES*

The EAO has developed a policy document on human and community well-being. This document also stresses the consideration of “differential effects” when completing well-being assessments—e.g., how a project will affect different segments of a population.

*BC EAO. 2020. Human and Community Well-Being: guidelines for assessing social, economic, cultural and health effects in environmental assessments in B.C. Version 1.0. Published April 2020.*

<sup>2</sup> See the FNMPCs “Guidance appendices to the Major Project Assessment Standard: Appendix 3: Indigenous knowledge integration into major project assessment.”

One way in which the Act supports reconciliation is through provisions for the development of Nation-to-Nation agreements. For example, Section 41 of the Act allows for Indigenous Nations to enter into an agreement with the Minister may establish legally enforceable procedures to cooperatively complete an assessment of and regulate a reviewable project. These forms of agreements are covered in more detail in Chapter 7.

The BC EA process has incorporated new structures and processes aimed at promoting enhanced forms of collaboration between Indigenous Nations, the proponent, and the EAO. Collaboration in the new EA process takes three main forms: collaboration, consensus-seeking, and dispute resolution.



## CHAPTER 3

# OVERVIEW OF THE 8-PHASE PROCESS

# OVERVIEW OF THE 8-PHASE PROCESS

The new provincial EA process has eight main phases, as shown in Figure 1 on the following page.

## Determining What Projects Require an EA

The new BC EA process has made some changes to the way it determines what projects require an EA.

### Triggering an EA

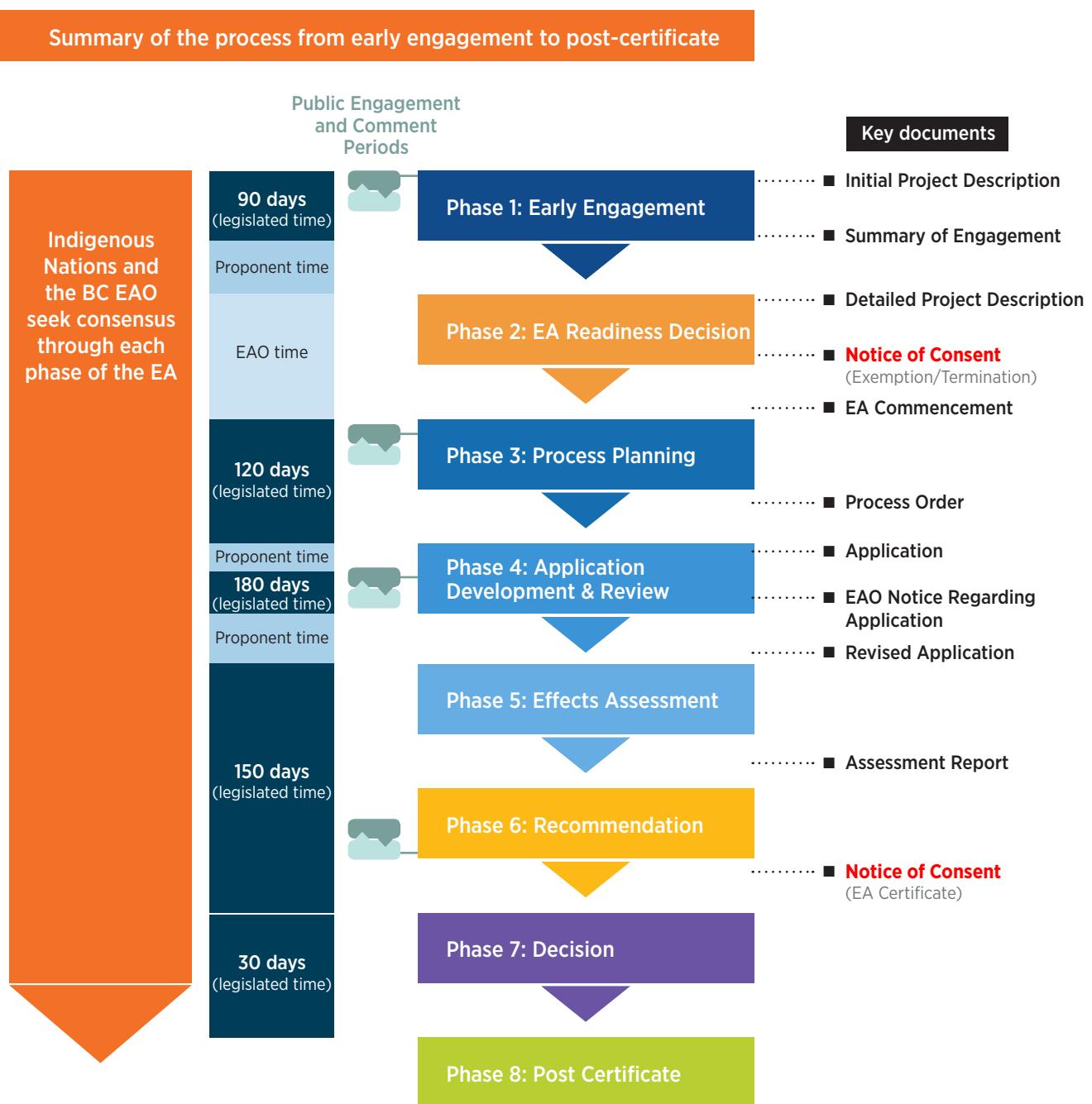
A project that undergoes an EA is called a “reviewable project.” Projects become reviewable in three ways:

1. **Reviewable Project Regulation** — This legislation details specific conditions and categories of work that automatically trigger an EA.
2. **Ministerial Designation** — A person or Nation can request a project to be reviewed; the Minister can self-designate a project; or the EAO can recommend a project for review following review of a project notification.
3. **Proponent ‘opt-in’** — The proponent can apply to the EAO to have their project undergo an EA.



The new BC EA process has made some changes to the way it determines what projects require an EA.

**Figure 1: BC Environmental Assessment Process**



Adapted from *EAO User Guide* – Version 1.02, April 23, 2021

Indigenous Nations can apply to the provincial Minister to designate a project as “reviewable.” Such a request must be made in writing and provide reasons for why the project should undergo a review.

### Project Notification

Most EAs are triggered based on the project’s size and scale of operations—if it exceeds a specific threshold. Under the former BC EA Act, the Reviewable Projects Regulations provided a list of projects types, and relevant thresholds of scale, that trigger a requirement for a proposed project to undergo an EA.

The new Act has retained the Reviewable Project Regulations, but with an important modification for project notifications. Proponents are now required to provide notice to the EAO when a proposed project is relatively close (within 15 per cent) to reaching a design or effects threshold that would automatically trigger an EA. This means that “sub-threshold” projects will be tracked by the EAO to see if they should undergo an EA. This reduces the likelihood of a project ‘going under the radar’ and not being assessed. Additional notification thresholds exist for the following categories:

- Federally reviewable under the Impact Assessment Act;
- Number of people employed;
- Greenhouse gas emissions;
- Transmission lines;
- Linear clearances; and
- Land clearances.

More information on how the EAO screens proposed projects for an EA is available in the EAO’s Project Notification Policy document, [gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/2018-act/project\\_notification\\_policy\\_v12\\_sept\\_20\\_2021\\_-\\_final.pdf](http://gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/2018-act/project_notification_policy_v12_sept_20_2021_-_final.pdf).

### Requesting an EA

Indigenous Nations can apply to the provincial Minister to designate a project as “reviewable.” Such a request must be made in writing and provide reasons for why the project should undergo a review. The Minister must consider the likelihood of the project affecting Indigenous rights and interests when making his/her decision. For more information, see the EAO’s Designation Policy that addresses the Minister’s power under Section 11 of the Act to designate or decline to designate a project as “reviewable” for the purposes of an EA.

The EAO has indicated it intends to publish its Designation Policy in 2023.

## Phase 1: Early Engagement

**TIMELINE:** 90 days + up to 1 year

This phase is the “on-ramp” to the environmental assessment process. Once a project is identified as potentially requiring an EA, the proponent is requested by the BC Environmental Assessment Office (EAO) to submit an [Initial Project Description](#) (IPD) and Engagement Plan (EP).

If both are deemed adequate by the EAO, the Early Engagement phase formally begins. This includes a formal 30-day comment period when Indigenous Nations can provide input on the documents. Key issues to raise in the comment period may include concerns about project design, siting, and alternative approaches to developing the proposed project. All the input received by the EAO during the comment period is used to inform a [Summary of Engagement](#) report that is developed in the first 90 days of the phase. This report includes preliminary listing of interests of participating Indigenous Nations within the project area, information gaps in the Initial Project Description (IPD) that must be addressed in the [Detailed Project Description](#) (DPD), and potential critical issues that will require resolution should the project proceed to an EA.

Once the Summary of Engagement is issued, the proponent then has up to one year to submit its Detailed Project Description.

During the proponent’s review time, the EAO will consult with participating Indigenous Nations, and may, in certain cases, prepare a Preliminary Understanding of Interests for one or more of the participating Nations. This will inform the scope and process of the EA in manner reflective of each Nation’s requirements.



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In this section,  
bold text in blue is  
hyperlinked to that  
term’s definition  
in the glossary.

### Phase 1 Documents

- [Initial Project Description](#) (IPD) — The proponent’s plain language description of the project, which will be used to inform stakeholders, Indigenous Nations, the public, and other government agencies.
- [Engagement Plan](#) (EP) — The proponent’s plan for how it will consult and communicate with Indigenous Nations, the EAO and other stakeholders during the Early Engagement phase.
- [Detailed Project Description](#) (DPD) — The proponent’s revised description of the project that is developed during the Early Engagement phase.
- [Summary of Engagement](#) — The EAOs summary of comments from the public comment period and the list of participating Indigenous Nations.
- [Preliminary Understanding of Interests](#) — The EAO’s initial description of an Indigenous Nation’s priorities, governance, potential impacts, and interests in the project area.

# Participating Indigenous Nation Status

The participation of an Indigenous Nation in the EA process is based on two factors:

1. A self-assessment and determination that its rights and interests may be affected by the project.
2. The EAO's acceptance of the Nation's rationale.

## What you get as a Participant

- Potential to lead part of or all of the effects assessment to your Nation and its rights;
- Access to capacity funding to cover costs associated with meaningful participation;
- Inclusion in consensus-seeking process with EAO and other participating Indigenous Nations;
- Access to dispute resolution;
- Provide feedback on what should be included in the scope of the EA;
- Help inform whether the proposed project is ready to proceed through the EA process, or to exempt or terminate a project;
- A seat at the Technical Advisory Committee;
- Identify consent or lack of consent for a project and have that decision considered by the Ministers prior to issuance of an EA certificate; and
- Opportunity to meet with the Minister if decisions are not in alignment with EAO recommendations.

## To become a “participating Indigenous Nation” a Nation must provide notice to the EAO of its intention to participate in the EA process

This must occur ideally within 60 days of the EAO publishing the Initial Project Description, which officially starts the EA process. There is flexibility for Nations to join later in the process, joining the EA after it has already commenced places a Nation at risk of losing opportunities to weigh in on the project description, raise initial concerns about and project, and be directly involved in planning the scope and information requirements of the EA.

### HOW THE EAO ASSESSES PARTICIPATION STATUS

1. Does the traditional territory overlap with or is close to the project area?
2. Is there is a reasonable possibility a Nation or its rights could be affected by project activities? or
3. Are there other justifications identified by a Nation?

## Key Aspects of Phase 1 for Indigenous Nations

- The EAO directs the proponent to contact potentially impacted Indigenous Nations regarding its proposed project during the development of its **Initial Project Description** (IPD). This should occur before the proponent submits any documents to the EAO. A Nation should contact the proponent directly if they are aware of a potential project that might affect its rights or interests and have not yet received notice from the proponent.
- Indigenous Nations are asked to provide input on the IPD, so that any potential “red flags” related to the project design and/or project location can be identified and sorted out *before the EA process begins*.
- Indigenous Nations must notify the EAO if they want to be participating Indigenous Nations. This must occur within 80 days of the EAO announcing the IPD and EP. Refer to description in **Chapter 4** for more detail.
- Nations should expect and demand the meaningful use and consideration of Indigenous knowledge during this phase. Use of a Nation’s IK should follow a Nation’s approved protocols. Refer to the FNMPGs Major Project Assessment Standard on the meaningful use of IK.
- Indigenous Nations can work with the proponent and EAO during this phase to identify interests and concerns related to the proposed project description before the EA actually begins. Outstanding issues can be identified and flagged for the EAO in follow-up discussions with the EAO and the proponent during the refinement of the Initial Project Description into a final “Detailed Project Description.”

## Phase 2: EA Readiness Decision

**TIMELINE:** Not regulated, anticipated to be 90 days

During this phase, the EAO determines whether it has received sufficient information to proceed to an EA, or alternatively, recommend to the Minister of Environment whether a proposed project should either:

- Proceed to next steps for approval without having to undertake an EA; or
- Be terminated entirely from consideration for approval.

The EAO’s recommendation will be based, in part, on issues and concerns raised by Indigenous Nations and the adequacy for the proponent’s responses during the Early Engagement phase.

This phase begins when the proponent submits its **Detailed Project Description** (DPD) to the EAO. The DPD will be reviewed by the EAO and participating Indigenous Nations for the adequacy of detail and sufficiency of engagement.

The outcome of discussions between the EAO and Indigenous Nations may require the proponent to undertake further engagement and revise the DPD, especially if missing important information. If sufficient information exists, the EAO will seek consensus with participating Indigenous Nations on how to proceed.

If the decision is to proceed to an EA, the EAO will publish a [Notice of Decision](#).

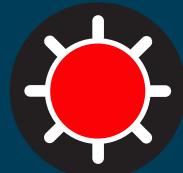
## Phase 2 Documents

- **Detailed Project Description** (DPD) – The proponent's revised description of the project with additional details on its design and how it has addressed or will address through the EA identified comments/concerns.
- **Notice of Decision** – A published decision by the EAO on how the project will proceed. This will include consensus-seeking, any recommendations from dispute resolution, key issues for the EA, and the reasons for the decision.

If the recommendation is to exempt the project from an EA or terminate the project from consideration entirely, the EAO will refer its recommendation to the Minister for a decision. Participating Indigenous Nations can express their consent or lack of consent for the recommendation. The Minister must take Indigenous Nations' views into consideration when making their decision.

## DECISION TO TERMINATE OR EXEMPT A PROPOSED PROJECT

A project can be **terminated** if it is found to have “extraordinarily adverse” effects to an Indigenous Nation and its Section 35 rights, is incompatible with government policy or a project that EAO has already said no to.



A project can be **exempted** if the EAO is convinced it can be managed without significant adverse environmental, economic, social, cultural or health effects or serious effects on Indigenous Nations or their rights. Exemption orders require the EAO to provide a formal rationale and establish any conditions that the proponent must follow.



## Phase 3: Process Planning

**TIMELINE:** 120 days

During this phase, the scope, procedures, and methods for carrying out the EA are developed. This includes how provincial and Indigenous processes and decision making will align.

A **Process Order** is developed to define the scope of the EA, which includes Indigenous Nations' interests. Critically important information is also included in three appendices to the Process Order:

1. The **Application Information Requirements** directs the proponent on how and what information should be collected for the assessment;
2. The **Assessment Plan** serves as a work plan for the EA and for the work of the Technical Advisory Committee; and
3. The **Regulatory Coordination Plan** outlines the primary provincial permits and authorizations required for the Project, correlations between EA process requirements and permitting requirements, and related Indigenous consultation requirements.

Together, the Process Order and its appendices constitute the “blueprint” for the EA process. All participating Indigenous Nations will have an opportunity to review “draft” versions of the Process Order, including its appendices, during a 30-day public engagement and comment period. At that time, Indigenous Nations will have an opportunity to request changes, including additional information requirements, that they deem necessary. The Process Planning phase ends once the EAO has considered both Indigenous and public comments, and then issues a final version of the Process Order.

For more information on the Process Planning phase and the Process Order, see **Chapter 4**.

## Phase 4: Application Development and Review

**TIMELINE:** Up to three years plus 180 days for review

During this phase, the proponent has up to three years to conduct and complete a major set of studies and reports – called “the **Application**” – that relate to the potential effects of the proposed project on people and the environment. The first half of this phase is called “Application Development”. The proponent, while conducting the studies for its Application as outlined in the Process Order, is expected to engage with, and/or collaborate with, Indigenous Nations.

Ideally, Indigenous-led studies occur during this phase while the proponent is developing its draft Application. The timelines and terms will be outlined in the Process Order.

Once the Application is received, a 180-day review period commences. Through this time, Indigenous Nations have an opportunity to assess the sufficiency of the Application against the requirements of the Process Order. A 30-day public engagement and comment period is included as part of this phase. In most cases, the EAO will request the proponent to prepare a [Revised Application](#) based on the results of the comment period and advice from Indigenous Nations, other government representatives on the TAC and the public.

In this case, the proponent has one year to complete its revisions, but in practice this period of time may be much shorter. If the Revised Application is approved, the EAO submits a [Notice of Application Acceptance](#).

## Phase 4 Documents

- [Application](#)—The Application for an Environmental Assessment Certificate (the Application) is a requirement placed on the proponent to undertake and document a comprehensive assessment of the potential effects of its proposed project on people and the environment.
- [Notice of Application Acceptance](#)—A formal acceptance by the EAO of the proponent's Application.

## Key Aspects of Phase 4 for Indigenous Nations

- Nations should stay engaged with the proponent and EAO as the understanding of project impacts develop and how those impacts may be managed or minimized.
- If a Nation conducts an Indigenous-led study, it should remain engaged with the EAO and the proponent, and seek agreement on the conclusions of its assessment.
- Nations should keep a broad view of rights-based impacts. Assessed impacts include effects on Indigenous interests, current and future generations, as well as consistency with any Indigenous Nation's land-use plan.
- Nations are strongly recommended to verify the proponent's use of Indigenous knowledge. Ideally, the proponent will seek a statement of support from respective Nations that their IK has been used and characterized properly.
- Although there is a consensus-seeking process related to the sufficiency of the Revised Application, unlike with other phases in the BC EA process, dispute resolution is not available at the end of this phase. Hence, it is recommended that the content of an Application that is required for a Nation's consent decision be clearly defined within a process agreement negotiated between the Proponent and a Nation at the beginning of the EA process.
- Nations should ensure all of their concerns are voiced and acknowledged during this phase. Outstanding concerns should be identified during the final comment period of phase 4, either in discussions with, or in submissions to the EAO.

## Phase 5: Effects Assessment

**TIMELINE:** Approximately 120 days

Building on the Application Development and Review phase, the Effects Assessment phase involves the review of the EAO's draft **Assessment Report** and draft EA Certificate, including the proposed **conditions** and certified project description — together often called “the referral package for Ministers.” Draft versions of these documents are developed by the EAO for review and input from participating Indigenous Nations and other members of the Technical Advisory Committee prior to their submission to provincial decision makers.

The Assessment Report will provide the EAO's conclusions with respect to adverse effects on the environment, people and Indigenous rights, and what additional measures must be taken to manage residual impacts.

The Assessment Report will include the EAO's recommendation to the Ministers on whether the project should be approved for development and granted an EA Certificate.

The draft Assessment Report and draft EA Certificate undergo a 30-day comment period, during which time Indigenous Nations can provide input and seek consensus with the EAO on the final conclusions, draft Conditions and final recommendation. The EAO will finalize these key decision documents prior to referring its conclusions and recommendations to the Ministers.

Should consensus not be reached on the conclusions of the draft Assessment Report and draft Conditions recourse to dispute resolution is available at the end of this phase.

### Phase 5 Documents

- **Assessment Report** — The final report from the EAO with reasons for decision on the EA.
- **Proposed Conditions** — Include proposed monitoring, mitigation, and offsetting measures designed to address the potential adverse effects of the project on people and the environment.
- **EA Certificate** — Issued at the end of EA if the Minister(s) responsible for the EA approve(s) the project. It includes the final certified project description and the conditions under which the project can proceed.

### Key Aspects of Phase 5 for Indigenous Nations

- The legislated timeline for both the Effects Assessment phase (Phase 5) and the Recommendation phase (Phase 6) is 150 days. It is estimated that the Effects Assessment phase would comprise approximately 120 days, including a 30-day public comment period on the draft versions of the Assessment Report and EA Certificate, leading to the substantial completion of the referral package.

- Dispute resolution is available to help Indigenous Nations seek consensus with the EAO on the draft Assessment Report, draft Conditions to the EA Certificate, and the Certified Project Description. **Note: There is also a subsequent and separate “consent decision” related to the EAO’s recommendation to the Minister on whether to issue an EA Certificate or not.**
- By the end of the Effects Assessment phase, Indigenous Nations should have a clear picture of the likelihood, nature and extent of project impacts on Indigenous rights and interests. This is the last formal opportunity within the EA process for a Nation to submit its views and concerns with the intent of influencing the Assessment Report and Conditions.
- Nations will have a final opportunity to share their perspectives with the EAO and to seek consensus on EAO’s recommendation to the Minister in the next phase.

## Phase 6: Recommendation

**TIMELINE:** Approximately 30 Days

In this phase, a formal set of recommendations (“the Recommendations”) to provincial ministers is prepared by the Chief Executive Assessment Officer of the EAO to support the ministers’ decision on whether or not to issue an EA certificate for the Project. The Recommendations include the following topics:

- The project’s consistency with the promotion of sustainability;
- Conclusions on the assessment matters under Section 25 of the Act;
- Duration of the certificate; and
- Reasons for the recommendation to issue an EA Certificate.

During this phase, the EAO will seek consensus with Indigenous Nations on the Recommendations.

### Phase 6 Documents

The Recommendations are included as part of the referral package for the ministers that also includes:

- Final Assessment Report, including how public comments were considered;
- A draft EA Certificate with proposed conditions and certified project description;
- Notices of consent or lack of consent from participating Indigenous Nations with respect to the Recommendations; and
- Other relevant information on agreements with participating Indigenous Nations over potential effects of the project on the Nation.

## Key Aspects of Phase 6 for Indigenous Nations

- The EAO will seek consensus with Indigenous Nations on the Recommendations. During this process, Nations can review the proposed Recommendations to verify how well their concerns were addressed and how their Indigenous knowledge was considered.
- Indigenous Nations have an opportunity to provide notice of providing or withholding their consent to the Recommendations.
- Dispute resolution is available to help reach consensus. A decision by the EAO or the Minister cannot be made until the dispute resolution facilitator provides a Dispute Resolution Report (“DR Report”). The Ministers must consider the DR Report in their decision and may explain how the DR Report was considered in their reasons for decision. Further, the Ministers must provide reasons when a decision is made that is contrary to the consent or lack of consent indicated by a participating Indigenous Nation to the Recommendations.

## Phase 7: Decision

### TIMELINE: 30 Days

In this phase, the Ministers determine whether a project should receive an EA Certificate and, if so, under what conditions.

- The Ministers’ decision to issue or not issue an EA Certificate must consider the [Assessment Report](#) and Recommendations, including the consent or lack of consent of participating Indigenous Nations.

### Phase 7 Documents

- Publication of the ministers’ decision to issue or refuse to issue an EA Certificate.

## Key Aspects of Phase 7 for Indigenous Nations

- Participating Indigenous Nations that did not reach consensus with the Chief Executive Assessment Officer (CEAO) on the Recommendations will be invited by the Minister(s) during the Decision phase to discuss concerns and attempt to reach consensus.
- As a result of this consensus-seeking process, participating Indigenous Nations may amend their decision on whether to consent or withhold consent on the project.

## Phase 8: Post Certificate

### TIMELINE: Life of the project

This phase lasts for the approved life of the project. It includes project monitoring, as well as compliance and enforcement activities, to ensure the project is complying with the conditions of the EA Certificate.

- Under Section 50 of the Act, Indigenous Nations can enter into agreements with the EAO with respect to compliance matters.
- For approved projects, the EA Certificate and project conditions are legally binding and last for the life of the project. The EA Certificate specifies the deadline, up to a maximum of 10 years, by which a project must be substantially completed or the certificate expires. If a project is not substantially started within that period, the proponent may apply for a one-time additional five-year extension. **Before deciding to extend an EA Certificate, the Chief Executive Assessment Officer (CEAO) must seek to achieve consensus, with respect to the application being considered, with participating Indigenous Nations.**
- Compliance and enforcement (C&E) Officers and other provincial agencies will conduct routine inspections of projects during construction, operations, closure, and post-closure monitoring.
- Where there is uncertainty or special concerns about potential residual effects of a Project, the EAO may require the proponent to produce **mitigation** effectiveness monitoring reports that report on the success of mitigation measures to manage adverse impacts.
- Amendment to the EA Certificate is required when a Certificate Holder (i.e., the project proponent) proposes to change ownership of the project or any aspect of the certificate (e.g. design, location, construction, operation, or decommissioning of the project). The EAO will seek consensus with participating Indigenous Nations for any amendments.

### Phase 8 Documents

- **Mitigation effectiveness monitoring reports**—Updated monitoring reports by the proponent on project effects on valued components or on the effectiveness of mitigation measures for high-risk activities.
- **Certificate Amendments**—Formal changes to the EA certificate.

### Key Aspects of Phase 8 for Indigenous Nations

- Indigenous Nations should engage with compliance and enforcement (C&E) officers to facilitate participation in C&E activities. Funding supports are available for C&E activities.
- Participating Indigenous Nations may seek agreements with the EAO to lead C&E activities.
- Nations with specific EA Certificate requirements should work with C&E officers to identify and report on these requirements.

## CHAPTER 4

# SETTING THE STAGE FOR EFFECTIVE INVOLVEMENT

# SETTING THE STAGE FOR EFFECTIVE INVOLVEMENT

**S**everal new aspects of the BC EA process relate specifically to the rights and interests of Indigenous Nations within the context of an EA. These new opportunities are intended to advance reconciliation with BC Indigenous peoples and encouraging greater Indigenous participation and contribution to decision-making.

This chapter discusses the opportunities that present themselves early in the EA process for Indigenous Nations to establish a strong footing as the terms of the process are put into place. The chapter is divided into two parts:

- Early Engagement phase; and
- Process Planning phase.

Making the most of these opportunities requires the formal participation of a Nation in the EA process, as discussed below.

## Tips for Maximizing Influence

- The best way to influence an EA process and the decision-making is to become an active participant in it. **Declare your intent to the EAO as soon as possible.**
- When notifying your intent to formally become a participant, be sure to identify the reason why your Nation's rights or interests may be affected by the proposed Project.
- **Dispute resolution** is available with respect to the EAO's determination of the scope of participating Indigenous Nations.

### BE PREPARED: RELY ON YOUR OWN EFFORTS

While the Act and new EA process represent a marked improvement for Indigenous Nations, Nations must still rely on their own efforts to take advantage of the new opportunities being presented. As with any government-to-government process, Nations should expect a common “push and pull” dynamic and will need to prepare and be ready to advance their concerns and interests from the very beginning of the EA process.

## Early Engagement Phase

### Preparation Begins Before an EA

The new BC EA Process incentivizes proponents to consult and engage with potentially affected Nations before an EA officially begins.

To take advantage of the new opportunities that this creates, some steps that Indigenous Nations can take ***prior to being approached by project proponent*** include:

- Consider what information would be helpful to your Nation to have ready for when a project is proposed in your Nation's territory.
  - This should include information related to your Nation's priorities, including stewardship values and plans within the Nation's territory. Developing a territory-wide land use plan is a valuable tool to support discussions with project proponents about potential locations and forms of development that are acceptable to your Nation.
  - Nations are encouraged to develop their own protocols for consultation, engagement and knowledge-sharing and to make them publicly available, where appropriate.
- Consider how your Nation's laws, rights, needs and interests, including decision-making processes, could be integrated and reflected in an environmental assessment (EA) process.

Some steps that Indigenous Nations can take ***after being contacted by a proponent*** about a proposed major project:

- Consider your Nation's capacity to meaningfully participate in the process. How much internal technical expertise is available to your Nation to undertake technical aspects of the EA, e.g., review of documentation? If the internal capacity is lacking, you may need to hire outside experts to facilitate your involvement. Start considering your participation needs and costs as early as possible, and communicate those to the EAO and proponent during the negotiation of EA-related funding arrangements.
- Consider what potential risks and opportunity a proposed project may pose to your Nation's future plans and interests. If the outcome of a proposed project may potentially have a large impact on your Nation, it is advisable to request funding and recognition from the proponent for your Nation to undertake its own studies.
- Consider whether a government-to-government agreement under Section 41 of the BC EA Act, and whether this would be helpful. Each Nation can apply to the Chief Executive Assessment Office of the EAO for funding to support the negotiation of an agreement.
- Identify capacity and engagement needs for the conduct of an EA in your Nation's territory to inform negotiations of a Process Agreement (i.e., funding, information sharing, timelines, protocols, etc.) with the proponent.
- Determine whether to issue principles and expectations for the conduct of the EA, to the proponent and/or Crown. This could be incorporated in a Process Agreement and/or a Nation-specific Engagement Plan with the proponent.

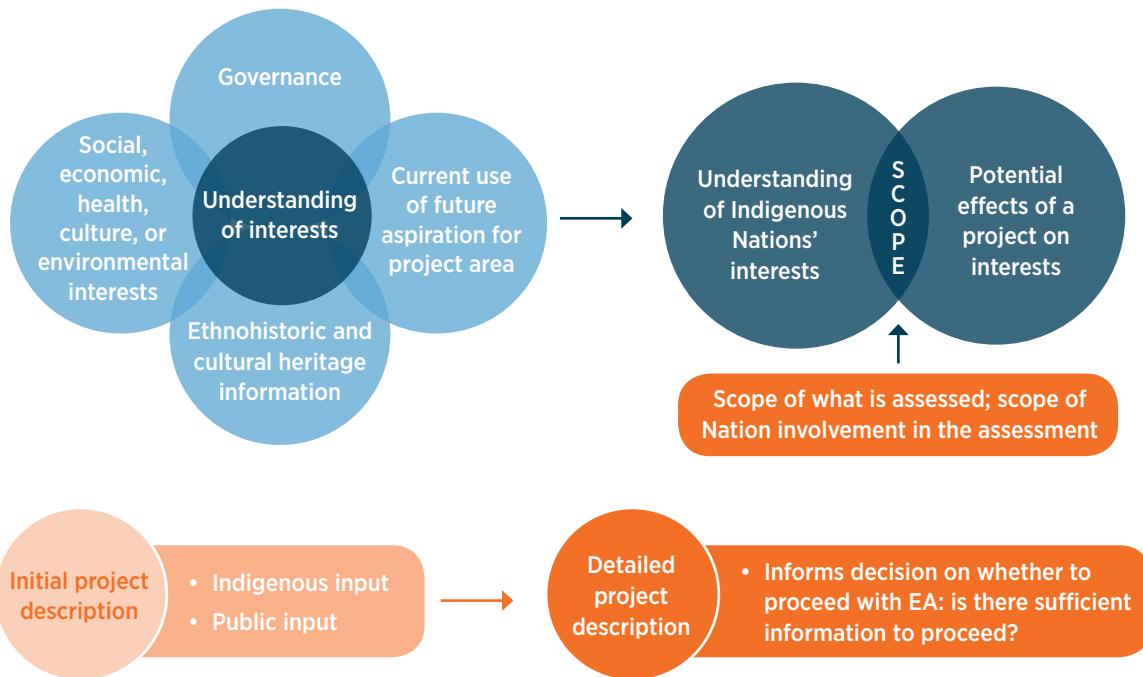
## Early Engagement on the Initial Project Description and Engagement Plan

The Early Engagement phase officially commences once the proponent's [Initial Project Description](#) (IPD) has been accepted for consideration. It is not technically the commencement of the EA, but rather a prelude to the EAO's decision on whether a proposed project should proceed to an EA. If a project doesn't proceed to an EA, it is either because the Minister decides to reject the Project outright from the start, or inversely, determines the project doesn't pose adverse risks to the environment and people.

During this phase, Indigenous Nations have the opportunity to comment, for the record, on any issues or concerns they may have with respect to the proponent's IPD and engagement plans. These comments may include requesting changes to the IPD that should be incorporated into the Detailed Project Description (DPD), as well as identifying any initial issues, including impacts to Aboriginal and treaty rights, that the Nations requests be addressed later in the process. In short, the Early Engagement phase is an important opportunity for Nations to identify any "red flags" with the project, e.g., whether a project is proposed within a "no go zone," and to convey these concerns to the EAO and the proponent.

While the proponent develops its DPD, participating Indigenous Nations and the EAO will engage to begin discussing the potential effects of the project on Indigenous rights and interests (see Figure 2). This preliminary understanding of interests will inform the scope of the EA's rights-based assessment.

**Figure 2: Progression of “Understanding of Interests” to “Detailed Project Description”**



Adapted from *EAO User Guide* – Version 1.02, April 23, 2021

## Tips for the Early Engagement Phase

- As early as possible, work internally to identify the rights, interests and valued components within your Nation's territory that may be affected and need assessing:
  - Submit this information to the proponent and EAO.
- Identify any knowledge gaps and study requirements to assess effects on Indigenous interests:
  - Communicate study and related cost requirements to the proponent and EAO; and
  - Be sure to assess the resource and time needs to undertake these studies and develop their scope ahead of time.
- Determine how and how often engagement should occur with the proponent and EAO, and identify your reasonable costs for engagement, which should be covered by the EAO and the proponent.
- Identify staff and/or consultants to lead the coordination of your Nation's involvement in the EA Process, and related cost requirements.
- Determine the scope of consensus-seeking activities between your Nation and the EAO, and estimate related costs for full involvement.

### Engaging with the proponent

- Proponents are likely—and encouraged—to reach out to potentially affected Indigenous Nations while developing their Initial Project description and Engagement Plan.
- If your Nation has not been contacted by the proponent and you are aware of the project, request engagement.
- Engaged Nations can identify their main project concerns early and work with the proponent to resolve them.
- Early engagement makes it easier for Nations to work with proponents in identifying both potential project benefits and potential pitfalls.

### Engaging with the EAO

- If your Nation is likely to be affected by a proposed Project, submit a declaration to be a participating Indigenous Nation in the EA process
- Indigenous Nations should get their concerns “on the record” by submitting comments during the first 30-day public comment period.
- Nations can influence the scope of the effects assessment by identifying rights and Indigenous interests concerns to the EAO, as well as to identify knowledge gaps in the proposed assessment.
- Assuming that it is likely that an EA will proceed, Nations should start considering and preparing the groundwork for any Indigenous-led studies they want to conduct as part of the EA.

## Readiness Decision: Should the Project Proceed to EA?

After reviewing the DPD, the EAO will seek consensus with participating Indigenous Nations on whether there is sufficient information to proceed to an assessment, or if a project warrants exemption or termination. Indigenous Nations should feel confident that their concerns have been considered during the Early Engagement phase. The DPD should describe the proponent's preliminary understanding of the potential impacts of the project on Aboriginal and treaty rights, and also of knowledge gaps that were identified during early engagement with potentially impacted Indigenous groups.

If there is doubt that your Nation's concerns have been taken seriously, this should be resolved with the EAO during the consensus-seeking process leading up to the Readiness Decision. Dispute resolution is available on serious matters where viewpoints do not align.

### Key Aspects of the EA Readiness Phase for Indigenous Nations

Indigenous Nations will seek consensus with the EAO on whether the project should proceed to an EA.

- Dispute resolution is available to help reach consensus. A decision by the Chief Executive Assessment Officer (CEAO) or Minister cannot be made until the dispute resolution facilitator provides a report.
- Indigenous knowledge must be considered by the CEAO or Minister in decision making under the Act including when deciding on EA Readiness.
- Participating Indigenous Nations can express their consent or lack of consent for a project being exempted or terminated from the EA process.



BIRKUS-VICTOR PHOTO

## Process Planning Phase

The Process Planning phase defines the scope of concerns and issues the assessment will focus on, and the role and studies that each Nation will undertake during the assessment. It is a critical stage that sets up the terms of reference and information requirements for the rest of the EA. Active involvement by your Nation during this crucial stage will increase the likelihood that your Nation's rights and interests will be assessed in a meaningful way. In turn, this makes it more likely that the assessment will identify measures to reduce potential adverse impacts and/or increase potential project benefits to your Nation.

Active engagement at this juncture allows participating Nations to influence the scope and terms of the assessment, including what information will be gathered in the EA, how it will be gathered, who must be engaged and how, and the timeline under which the EA process occurs.

Below are key components of the Process Planning phase.

### Process Order: Setting the Scope and Terms of the EA

The Process Order is a comprehensive planning document developed during the Process Planning phase that sets the scope and terms of the assessment.

The Process Order includes:

- The methods used to assess project effects, including potential effects on the rights and interests of Indigenous Nations;
- The Application Information Requirements that gives direction to the proponent on the information and associated studies that must be included in its Application, including any requirements for IK and any requirements to support Indigenous-led rights-based studies;.
- The **Assessment Plan** that includes:
  - The procedural requirements of the EA, including key documents to be produced, and the timelines for their development and review;
  - Requirements for any Indigenous-led studies, including the description of any custom methods or other information to complete a rights-based assessment, and whether/how the EAO and the Indigenous group will collaborate in the rights-based assessment;
  - The roles and responsibilities of all EA participants, including Indigenous Nations, the EAO, and the **Technical Advisory Committee** (TAC);
  - Information request process;
  - The consensus-seeking and dispute resolution (“issues resolution”) processes; and
  - Any additional information for a participating Indigenous Nation to provide to support the assessment of effects on its rights.

- Regulatory Coordination Plan that outlines the primary permits required for the Project, correlations between EA process requirements and permitting requirements, and related Indigenous consultation requirements.

This phase also includes:

- Identification of a representative to the Technical Advisory Committee (TAC) and, if applicable, the Community Advisory Committee (CAC).

## Key Aspects of the Process Planning Phase for Indigenous Nations

- Participating Indigenous Nations can share and develop their perspectives with other Nations and the EAO on all aspects of this phase through the consensus-seeking process.
- Participating Indigenous Nations may express their intent to the EAO to lead the assessment of rights-based impacts on their Nation or to conduct other Indigenous-led assessments of the EA.
- The terms of any Indigenous-led studies, including timelines and resource needs, will be developed with the EAO during this phase and become part of the process order.

### Tips for the Process Planning Phase

The Process Planning phase is a “make or break” phase, where the terms, roles, responsibilities, information requirements and instructions for the conduct of the rest of the EA are established, including all the aspects of the EA that an Indigenous Nation will either lead or be involved with.

Having funding in place before the Process Planning phase is critical to being prepared to hit the ground running when this phase commences. The timeline for the phase is only 120 days, which is virtually non-negotiable as there is no proponent time included into this phase.

Indigenous Nations should seek representation on the Technical Advisory Committee to ensure its perspectives are accounted for in the review of technical materials and interpretation of Indigenous knowledge.

By this phase of the EA, it is recommended that each Indigenous Nation have a negotiated process agreement in place with the proponent. Such an agreement is critical for providing a stable foothold in the process, in particular, the resources necessary to support the ongoing costs of community engagement, leadership meetings, staff time and technical support that arise throughout the assessment.

## CHAPTER 5

# RESOURCES FOR EFFECTIVE INVOLVEMENT

# RESOURCES FOR EFFECTIVE INVOLVEMENT

## Engagement with the Proponent—Why It's Important

The new EA process encourages a greater relationship between Indigenous Nations and the proponent, from the outset of the process. Adequate access to a meaningful consultation and assessment process is reflected in Principle 6 of the FNMPC's Major Project Assessment Standard: "First Nations will have access to adequate resources, information and time in order to inform their engagement and decision-making processes."

For the majority of First Nations, establishing a relationship with the project proponent will be critical to securing the resources required for meaningful involvement in the EA process. Key elements of the relationship include, but are not limited to:

- Informing proponents how they can modify their projects to minimize risk to Indigenous interests.
- Informing proponents how a project can be better designed to maximize benefits to Indigenous communities.
- Developing a process agreement that includes:
  - Funding requirements for process involvement;
  - Process requirements/protocols, including FPIC requirements and IK-sharing protocol;
  - Information sharing arrangements; and
  - Management of timelines.

Environmental assessments are highly technical and resource-demanding processes. They have rigid timelines and procedural requirements that can pose serious challenges for Nations to meaningfully participate. Nations with reduced resources or capacity may have a hard time voicing their concerns and feeling represented. Proponents typically have more resources and technical expertise to draw upon during the EA process. Collaboration with a proponent is a way of combining knowledge and interests to find solutions that work for both groups.

## EA Process Agreement with the Proponent

A project proponent is required to meaningfully engage with affected Nations throughout the EA process. The crucial phases for proponent engagement include the Early Engagement phase, the Process Planning phase, and the Application Development and Review phase. It is recommended that Indigenous Nations that are likely to experience substantial impacts from a project seek to collaborate with the proponent on the development of portions of the Application that are more relevant community concerns. For such involvement and engagement to be meaningful, capacity funding and process expectations should be clearly set out in agreements with the project proponent.

A common problem faced by Indigenous Nations in the past is the amount of time and effort that has been required to “chase down” an EA process agreement with the proponent. To avoid this problem, Nations should develop “advance engagement requirements” that can serve as an agreement or workplan template. Having a template in place will make it easier to develop an understanding of expectations with the proponent, contribute to a more balanced relationship, and be respectful of the Nation’s needs and limitations. These requirements can be made public or kept confidential depending on the Nation’s prerogative.

### Tips for Balanced and Fair Nation-Proponent Relationships

Listed below are some important considerations for ensuring that relationships between Nations and a proponent remain balanced and fair.

- Formal Contribution/Capacity Agreements should be developed between a proponent and affected Indigenous Nations.
  - The cost of negotiating an agreement should be the responsibility of the proponent since it is their project that a Nation is required to invest time into reviewing and participating in. **Preliminary funding should be provided by the proponent to help the Nation negotiate the process agreement.**
  - Nations are encouraged to have a legal or process advisor experienced in EAs and Indigenous rights when developing the agreement.
- Agreements with proponents should include provisions for:
  - **Indigenous protocols:** Agreement should follow any protocols that a Nation has in place—such as an Indigenous knowledge protocol, rights impact assessment protocol or engagement policy; and
  - **Scope of the Nation’s EA activities:** The agreement should clearly identify the scope of activities that the Nation will be undertaking during the EA (e.g., technical review of EA documents, community meetings, research studies, IK sharing).

- **Adequate funding for full involvement in all phases of the EA:**
  - The agreement should cover costs associated with a Nation's early participation in the assessment of project effects;
  - Participating in an assessment, including technical support (staff and consultants), internal and community meeting costs; and
  - The agreement should cover costs to support your Nation's research requirements (i.e., studies).
- **Timelines:**
  - The agreement should stipulate how timelines during the EA process will be managed, and the proponent's obligations to work cooperatively with the Nation; and
  - Nations require sufficient time to ensure meaningful consultation and engagement occurs. This means Indigenous Nations are given enough time to review documents, provide input, organize community meetings, and provide community-informed feedback.
- **Information sharing:**
  - The agreement should stipulate the terms around which information will be shared between the parties, including a requirement for respective timelines for information sharing prior to meetings.

## BC EAO Capacity Funding Versus Proponent Funding

### BC EAO Tariff to Recover Proponent Funding

The new Act enables the EAO to set up a tariff to require the proponent to defray the Nations' costs of participating in an assessment. The EAO has not yet established a tariff in consultation and cooperation with Indigenous Nations. If a tariff is established, it is assumed that if a proponent has already entered into a Process Agreement with a Indigenous Nation, use of the tariff system would not be required.

### Grant Funding for Early Engagement Phase

In addition, the EAO currently (January 2023) provides upfront capacity funding grants through its Indigenous Nation Interim Capacity Funding Program to support involvement during the Early Engagement and Readiness Decision phases.

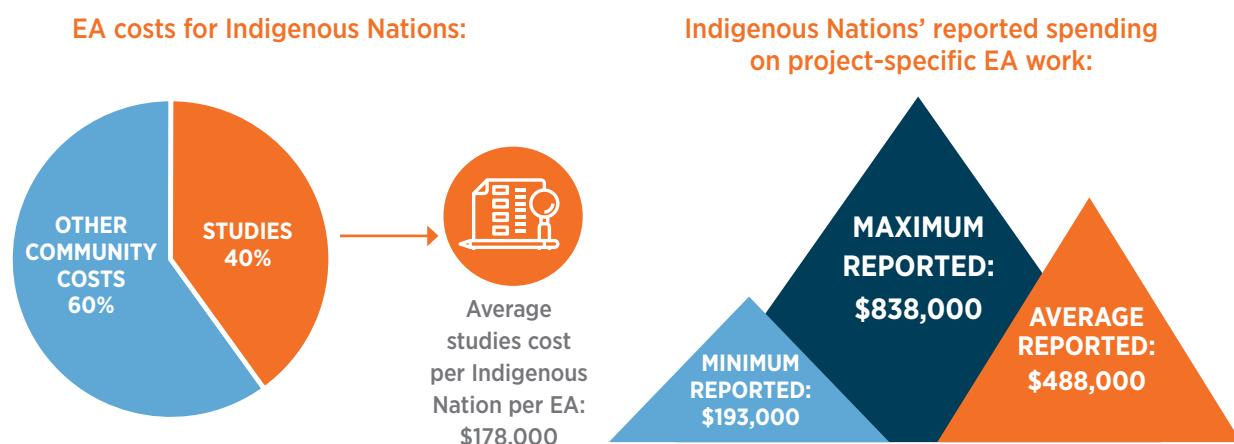
In general, the EAO expects proponents to fund all of its engagement with a Nation, as well as all aspects the Nation's involvement in all phases of the EA once the decision to proceed with an EA has been made (i.e., at the Readiness Decision phase). At the time of publication, the EAO's funding program was still under review.

**Note:** The EAO will provide additional funding for Indigenous participation in dispute resolution processes, as may be required, and for involvement in inspection activities during the Post-EA phase.

## Estimating the Costs of Involvement in an EA

Costs associated with an EA range from general staff time to studies, community meetings, technical consultants, legal costs and more (Figures 3 and 4). The costs can add-up quickly. In 2018, the FNMPC conducted a review of EA-related studies and engagement costs. The results of the report are summarized in the figure below. To request a copy of the report, or if you have any questions, please contact the FNMPC directly.

**Figure 3: Estimated Costs for a Nation's Effective Participation in a Formal EA Process**



**Figure 4: Key Cost Elements for a Nation's Effective Participation in a Formal EA Process**



From FNMPC Federal Impact Assessment Guide, page 56: figures 11 & 12.

## Tips for Estimating the Costs of Involvement

Prior to discussing funding requirements with a project proponent, it is important that each Nation to undertake its own estimate of the costs associated with its involvement in the EA. **It is recommended that this occurs immediately after declaring the intent to become a participating Indigenous Nation.**

- Upon receiving notification of the proponent's intention to submit its initial project description to the EAO, Nations should pursue pilot funding from the proponent to cover costs of initial engagement and negotiation of an EA process agreement.
- Participation costs should cover the full and meaningful participation of each Nation to support involvement at every phase of the EA process.
  - This should consider the Nation's capacity, extent of studies or assessments it intends to lead, and its expected level of participation.
- The risk of potential adverse impacts to Aboriginal and/or treaty rights should also be factored into the cost estimate. Greater risk or concern often translates into more information needs (studies) and greater participation costs.
  - Refer to the FNMPA "EA costing estimator" tool that can be made available upon request.
- Additional funding agreements—in the Post-EA Decision phase—may be required depending on a Nation's role in compliance and enforcement activities (see also **Chapter 5**). This would likely be negotiated follow the completion of the EA after the monitoring, mitigation, offsetting and follow-up program requirements for the Project have been identified and before the plans for the implementation of these programs have been finalized and implemented.



## CHAPTER 6

# CONSENT DECISIONS AND CONSENSUS-SEEKING

# CONSENT DECISIONS AND CONSENSUS-SEEKING

**T**he incorporation of consent decisions and consensus-seeking into the BC EA Act, and its potential to strengthen the position of Indigenous Nations throughout the course of assessments is one of the most significant shifts in the new EA process. The intention is for the parties to seek agreement at each step of the EA, and when the risk of conflict between the parties arises, to work together to resolve issues and achieve consensus on key recommendations and conclusions before the end of the EA.

The following sub-sections explain the nuances of the consensus-seeking process more carefully and identify ways in which Nations can maximize their influence.

## Giving or Withholding Consent

During the EA process, there are two opportunities for an Indigenous Nation to provide or withhold its consent occur prior to the EAO making its recommendation to the Minister:

- **Notice of consent at EA Readiness Decision** (end of Phase 2). If the project is recommended for exemption or termination by the EAO, participating Indigenous Nations can provide a notice of consent or lack of consent to the Minister.
- **Notice of Consent for final Recommendation** (end of Phase 6). During the preparation of the final Assessment Report, participating Indigenous Nations may express their consent or lack of consent on the recommendations by the Chief Executive Assessment Officer (CEAO) to the Ministers to issue or not issue an EA Certificate.

In both cases, the EAO will seek consensus with the participating Indigenous Nation on the recommendation to the Minister(s). In both instances, these “decision points” permit a Nation to make its own decision in accordance with its own laws, protocols and traditions, which then is brought forward by the EAO to be considered by the provincial Ministers. In this process, it is understood that a First Nation’s abstaining from a consent decision does not imply consent or lack of consent.

In cases where consensus is not reached on the two consent decisions, both consent decisions have recourse to dispute resolution. The Ministers must consider the consent decisions of Indigenous Nations prior to making their decision. If the Ministers’ decisions do not align with those of the participating Indigenous Nations, the Ministers must explain their decisions and seek an opportunity to consult with the participating Indigenous Nation. Provincial decision-makers are required to consider (via the EAO’s referral to Ministers) the outcome of dispute resolution, including outstanding issues, each party’s views on the issue, and the steps taken to resolve the issues.

Neither the EAO nor Minister can issue a decision until the dispute resolution process is completed. Should the dispute resolution process affect the agreed-upon timelines for the EA, the EAO may grant a time extension to that phase.

### Tips for Consent Decisions

- To maximize the impact of a Nation's notification of consent or lack of consent, Nations should focus on how the project will contribute to or detract from the ability to meaningfully practice Constitutionally-protected Aboriginal and Treaty rights, overall sustainability and well-being of Indigenous peoples, and the Crown's commitments to reconciliation with that Nation. The more detailed the reasons provided, the more weight they will carry.
- The Nation's notification would typically take the form of a formal letter from leadership stating its position for providing or withholding consent and including the reasons for the Nation's decision.

## Consensus-Seeking: What It Is and Isn't

Similar to Consent Decisions are the consensus-seeking processes that occur at a technical level during the EA process. Where they differ is that Consent Decisions relates to the largest decisions for the EA (whether to proceed with an EA for a project, and what the recommendations that inform the final EA decision), and the technical consensus-seeking process relate to intermediary steps where decisions on technical documents are at stake.

The EAO defines consensus-seeking processes as those that seek consensus around procedural and technical decisions that occur during each phase of the EA process. It should be noted that these processes inform, but are distinct from, the substantive “project approval” decisions that are made by a participating Indigenous Nation in accordance with its own laws and protocols, and by a Provincial Minister under the Act. Further, consensus-seeking processes may be informed by, but are in addition to, Indigenous participation in any Technical or Community Advisory Committee.

### CONSENSUS-SEEKING VS CONSENT

- Consensus-seeking involves collaboration between the EAO and participating Indigenous Nations to understand and resolve issues.
- Consent is a formal declaration to the Minister of a Nation's support or lack of support with the CEAOs recommendation.

In other words, consensus-seeking does not force any group to change or compromise its viewpoint or assessment of a project-related impact.

## Potential Outcomes of Consensus-Seeking

At the end of a consensus-seeking phase, the EAO and participating Indigenous Nations will have the opportunity to review any outstanding issues and make any necessary decisions. At key consensus-seeking milestones, if consensus is not reached, Nations may request to have unresolved issues referred to a dispute resolution process (see Figure 5 on the following page).

### Tips for Consensus-Seeking

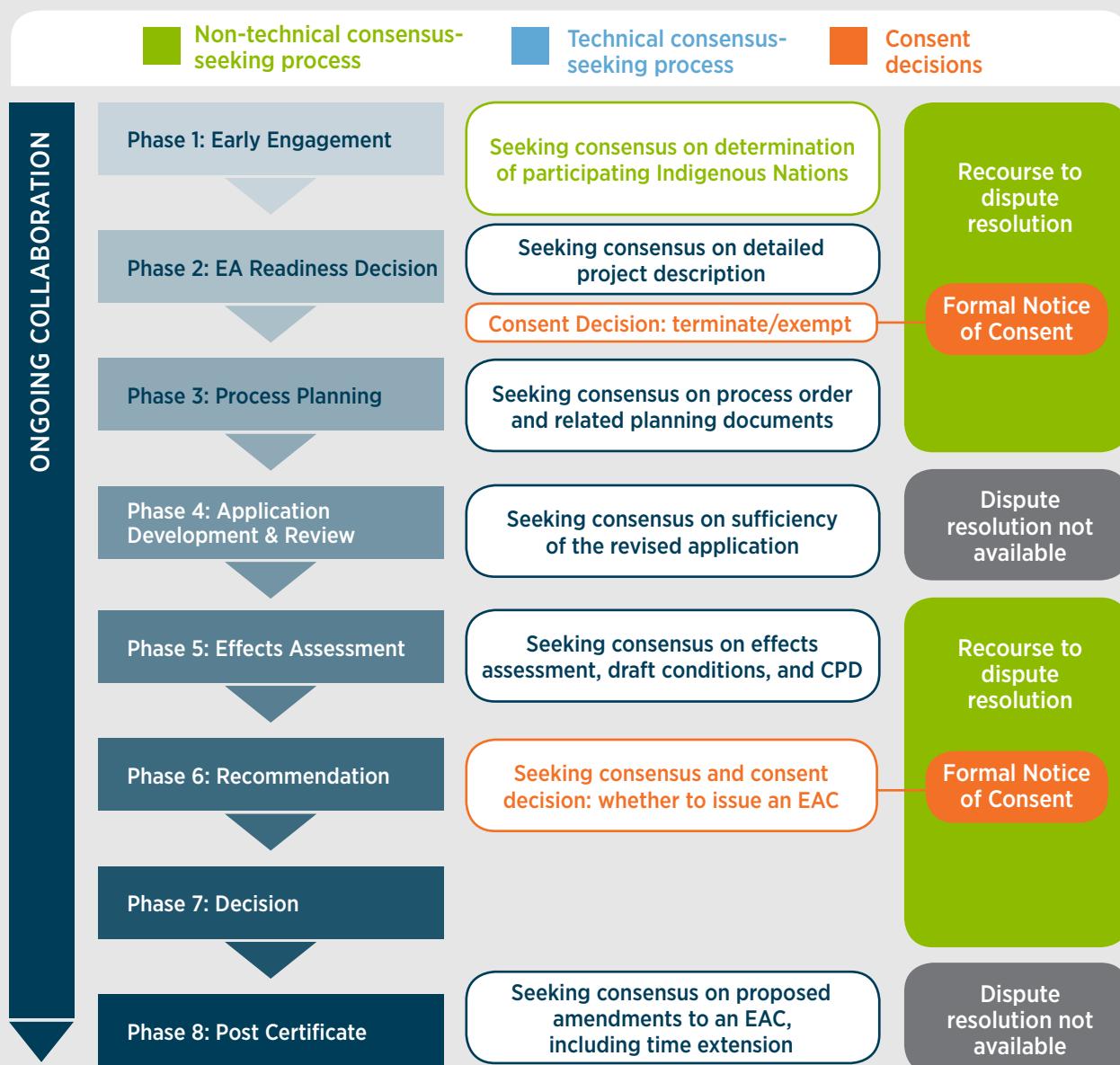
- **Consensus-seeking does not mean that Indigenous views must or will be adopted. Rather, it sets up a process where engagement with Indigenous Nations is held at important milestones in the process.** The process is not yet tested, but in theory it gives Indigenous Nations an advisory role to the EAO and informs the EAO of potential impacts to Constitutionally-protected Aboriginal and Treaty rights.
- Dispute Resolution is available at all but one of the technical consensus-seeking milestones during the EA (i.e., during review of the Revised Application for sufficiency). Dispute Resolution is also available during the Early Engagement phase to help resolve disputes between Indigenous Nations regarding the scope of Indigenous participation in the EA.
- Keep in mind the limitations of the dispute resolution process: The process is time-limited, non-binding, and at the end of the process there is no requirement to agree or compromise. The advantages are that it provides a relatively neutral forum for addressing disagreements if and when they arise throughout the process, providing the opportunity to address issues outside of a judicial arena.
- The EAO must consider impacts to Indigenous rights and Indigenous interests, both through the lens of the UN Declaration on the Rights of Indigenous Peoples and the common law duty to consult and accommodate. If an issue of concern relates to potential impacts to your Nation's rights, be sure to frame your concerns in terms that relate to the UN Declaration and the Crown's legal duty to consult and accommodate.
- Consider working with other Indigenous Nations in cases where your interests align. Having multiple Nations supporting similar approaches will make it more likely to see those points reflected in the EA process.

## Non-Binding Dispute Resolution

**WHAT IS DISPUTE RESOLUTION?** Dispute resolution is a voluntary tool to support consensus-seeking between the EAO and participating Indigenous Nations. It is a time-bound and non-binding process led by an independent facilitator.

**HOW DOES IT WORK?** Figure 5 presents an overview of the consensus-seeking process, highlighting when dispute resolution may occur. A Regulation for dispute resolution is still under development. However, at this point in time (January 2023), it is understood that the Regulation may include the powers and duties of the dispute resolution facilitator, clarification on what can be referred, matters that must be considered by the facilitator before making a report, and the time by which a report must be provided.

**Figure 4: Overview of Consensus-Seeking Process and When Dispute Resolution May Occur**



At a high level, key points important to know about the dispute resolution process include:

- Dispute resolution is available at key milestones in the EA to assist in consensus-seeking – both for Consent Decisions and for technical EA decisions. If the perspectives of your Nation and that of the EAO or other Nations are not in alignment, or if you feel your interests are not being respected, you can request third-party dispute resolution to help resolve the topic.
- Dispute resolution is available for the two Consent Decisions and, in addition, during three out of the four technical consensus-seeking processes where technical issues are resolved or documented for further discussion later in the EA process.
- A request for dispute resolution can be made by any participating Indigenous Nation or the EAO. The Chief Executive Assessment Officer (CEAO) must take part in a dispute resolution process if requested.
- It is anticipated that consensus-seeking will generally involve technical staff who work on behalf of participating Indigenous Nations and EAO staff. An Indigenous Nation requesting dispute resolution will designate its representative(s) to represent its interests.
- A decision by the EAO or Minister cannot be made until the dispute resolution process is concluded.
- When dispute resolution concludes, the CEAO determines how to move forward based upon the recommendations of the Dispute Resolution Facilitator (DR Facilitator). The CEAO or Minister must consider the DR Facilitator's report when making their respective decisions.
- The dispute resolution report is not necessarily guiding to or binding upon the EAO, the Minister, or participating Indigenous Nations. However, where the results of dispute resolution relate to the two Consent Decisions (i.e., the Readiness Decision and Recommendation Decision), notification of consent or lack of consent provided by participating Indigenous Nations must be considered by Provincial decision-makers when issuing a decision on the EA.
- The dispute resolution process does not limit any Indigenous rights or interests or in any way, or constrain an Indigenous Nation's ability to express its own findings in relation to impacts on its rights and interests.

## DISPUTE RESOLUTION

- It is important to note that there is no requirement in the Act that the EAO or Minister must agree with Indigenous Nations.
- Consensus-seeking and collaboration are pre-emptive tools to help identify and deal with issues as they arise.
- The dispute resolution mechanism that exists in the Act offers the opportunity for a deeper exploration on points of disagreement.
- The Act requires that the dispute resolution process and its results are documented.
- At the end of the day, the EAO and Minister can make decisions without consensus from or consent of participating Indigenous Nations.

## CHAPTER 7

# INCREASING INDIGENOUS CONTROL AND COLLABORATION

# INCREASING INDIGENOUS CONTROL AND COLLABORATION

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ne of the stated purposes of the new BC EA Act is to support reconciliation with Indigenous peoples in BC. The EAO is obliged by the Act to:

- Support the implementation of the UN Declaration of the Rights of Indigenous Peoples;
- Recognize the inherent jurisdiction of Indigenous Nations and their rights to participate in decision making in matters that would affect their rights—and to be represented in those decisions by their own chosen representatives;
- Meaningfully collaborate with affected Indigenous Nations; and
- Acknowledge Indigenous peoples' constitutional rights.

Section 25 of the Act further requires that assessment consider whether a proposed Project is consistent with any Indigenous Nation land-use plan. Taken together, there is much greater acknowledgement of the inherent rights of Indigenous Nations to participate as decision-makers on matters that affect them. One of the ways in which this goal is actualized is the legislated provisions for Indigenous Nations to carry out their own Indigenous-led studies or to run part or all of an EA.

This section explores the different types of agreements that Indigenous Nations may enter with the EAO with the potential to strengthen the ability of Indigenous Nations to take advantage of the new opportunities within the new EA process. The section closes with considerations for Indigenous leadership when entering an agreement.



## Collaborative Arrangements Between the EAO and Indigenous Groups

Collaborative EA agreements provide an opportunity for Indigenous Nations to take a leading role in assessing effects on their own interests, according to their own values and priorities, and to exert greater control over how the assessments are carried out or interpreted. Three key provisions in the Act enable Nations to enter into agreements with the EAO or Minister to lead and/or collaborate on aspects of the EA:

- Subsection 19 (4) – Indigenous-led study assessment;
- Subsection 41 (2) – Cooperation and Substitution Agreements; and
- Subsection 50 (1) – Compliance and Enforcements.

Agreements under Subsection 19(4) processes are specific to a single assessment, and relate to requests from Indigenous Nations to lead their own studies/assessments of a project's potential impacts on the Nation and its rights/interests. This may include, but not be limited to, the Indigenous-led studies related to Indigenous knowledge related to one or more valued components; culture impact assessment; socio-economic and health impact assessments; and rights impact assessments.

### NEGOTIATION FUNDING

**The EAO may provide funding for negotiation of an agreement and for developing guidance to implement the agreement.**

## Section 19(4): Indigenous-led Components of the Assessment

Process planning provisions in the new Act permits an Indigenous Nation to conduct its own Indigenous-led assessments, i.e., studies and assessments that inform subcomponents of the EA that are specific to how a proposed major project may affect the Nation's rights and its people. This includes issues of rights and title, as well as factors relevant to environmental, economic, social, cultural, or health.

- Using planning provisions, outlined under Subsection 19(4) of the Act, allows for Indigenous Nations and the EAO to agree to certain components of the EA, specific to potential effects on the Indigenous Nation, to be defined as Indigenous-led within the framework of the EA itself.
- The exact scope of the Indigenous-led assessment(s) and how it (or they) will be incorporated into the overall EA will need to be agreed to with the EAO. This will be identified in the Process Order.
- The Assessment Plan will establish the date the assessment must be completed, including any reviews by the EAO or proponent, identify any additional informational needs, and describe the methods to carry out the assessment.

There is nothing in the Act that stipulates a time limit to receive Indigenous-led studies. Through consensus seeking on the Process Order, the EAO would work with a Nation to confirm the timing of

the studies and this would be reflected in the Process Order. If there is confidential information in the reports, the EAO would work with the Nation to identify if and how the information could be shared with the Technical Advisory Committee (TAC) and proponent to inform the review and administrative fairness considerations.

After receiving a completed study, the EAO will engage with the respective Nation and seek to reach a common understanding and conclusions in respect to the potential effects of the Project on the Nation. If these conclusions do not align, both the Nation and the EAO will document their respective differing views for inclusion in the Assessment report. They may also decide that dispute resolution is appropriate to resolve any outstanding issues.

Factors to consider when determining which studies an Indigenous Nation will undertake include:

- The risks and impacts posed by the proposed project to the rights, health, socio-economic and cultural well-being of the Nation and deciding on how to manage these risks and impacts through the course of the assessment;
- The state of relevant information already in the possession of the Nation; and
- Information gaps that need to be addressed through supplementary studies, i.e., with knowledge holders who need to be interviewed and/or with technical experts that need to be hired to provide support.

## STRATEGIC & REGIONAL ASSESSMENTS

This primer deals with project-specific environmental assessments. Other types of assessment covered under the Act that Indigenous Nations can lead part or all of include:

- **Strategic Assessments:** an assessment of a policy, enactment, plan, practice or government procedure in order to make recommendations.
- **Regional Assessments:** an assessment of the environmental, economic, social, cultural and health effects of projects in a region of BC. Typically done to complement and improve understanding of provincial monitoring, land-use planning, and cumulative effects assessments.

The EAO is developing regulations and policy on the other types of assessment covered by the Act. Refer to the EAO resource page and guidance documents for updates.

## CONFIDENTIALITY: S. 75 OF THE ACT

- Any Indigenous Knowledge provided in confidence is protected under the Act and cannot be disclosed.
- Exceptions exist for materials that are public knowledge, by court order, for procedural fairness, or by direction of the Nation that provided it. The EAO will consult with the Nation when establishing appropriate conditions for any disclosures.

## EXAMPLES OF TYPES OF INDIGENOUS-LED STUDIES

### ARCHAEOLOGICAL AND HERITAGE STUDIES

- Document key archaeological resources for posterity
- Address conflicts between archaeological resources and proposed developments

### CULTURAL IMPACT ASSESSMENT STUDIES

- Establish cultural baseline, including values, laws and norms and change over time to date
- Assess possible impacts of a proposed development on tangible and intangible aspects of Indigenous culture

### CUMULATIVE EFFECTS ASSESSMENT

- Evaluate total impacts from all causes on your Values over time, to set context against which to assess project-specific change
- If pre-existing impacts are already significant, this can be a very powerful tool

### ECOLOGY STUDIES

- Identify ecological baseline and changes or declines in important animals, plants or other valued ecological entities
- Determine potential impacts of proposed development on key ecosystems

### HARVEST AND FOOD SECURITY STUDIES

- Count or estimate the number of animals by category taken by a specific group of Indigenous people during a specific time period
- Document harvesting patterns and techniques for future generations
- Identify food security challenges for a community

### HEALTH STUDIES

- Determine baseline health conditions and identify important health issues for a community.
- Strategically evaluate and assess the potential health effects of a proposed development

### INDIGENOUS KNOWLEDGE STUDIES

- Documents Indigenous knowledge related to land use, environmental knowledge, project and cumulative impact pathways, ecosystem relationships, including human-environment

### INDIGENOUS LAND USE STUDIES

- Describe important places for Indigenous community members
- Establish spatial interactions and impact pathways between community values and proposed project
- Community members can share perspectives on project-specific mitigation

### RIGHTS IMPACT ASSESSMENTS

- Assess potential adverse impacts of proposed development projects on the rights of Indigenous peoples
- Inform required rights impact assessment consideration under the BC EA Act (2018)

### SOCIO-ECONOMIC WELL-BEING AND IMPACT STUDIES

- Establish socio-economic baseline for factors such as health and well-being, wildlife harvesting and employment opportunities
- Identify and evaluate the potential socio-economic and cultural impacts of a proposed development on the lives and circumstances of a Nation and/or communities

## Section 41 Agreements

Under Section 41 of the Act, Indigenous Nations have the option of entering a government-to-government (“G2G”) agreement with the Minister to conduct all or part of an Indigenous-led environmental assessment, regional assessment, or strategic assessment. There are two types of Section 41 agreements: one that enables the substitution of another jurisdiction’s EA process for the BC EA process, and another that enables the cooperative completion of a BC EA process.

Subsection 41(2)(a) allows for an EA process that is led by another “jurisdiction,” such as an Indigenous Nation, to be substituted in place of a provincial assessment. In this case, a Nation(s) leads the entire EA process and is responsible for overseeing impacts to all potentially affected communities within BC, including the project’s fit with provincial sustainability goals. For many Indigenous Nations, this may not be a readily feasible option because of the significant resources and staffing capacity needed to meet the EA process requirements under the Act.<sup>3</sup>

In contrast, Subsection 41(2)(b) enables the BC EAO to undertake an assessment in cooperation with another jurisdiction, including an Indigenous Nation, and therefore may be relevant to any Nation that is seeking to lead “any aspect of an assessment.”<sup>4</sup> In general, this latter form of agreement is most feasible for Nations what wish to establish legally enforceable procedures for the cooperative conduct of an EA and be involved in the post-EA regulation of a reviewable project.

A decision on whether to enter agreement under Section 41 may take up to six months for the EAO to make. If this option is desired by a Nation, **it should submit its intent to lead an EA as early as possible and prior to the EA commencing.**

There are two types of Section 41 agreements: one that enables the substitution of another jurisdiction’s EA process for the BC EA process, and another that enables the cooperative completion of a BC EA process.

<sup>3</sup> Due to the broader lens and responsibility, section 41 of the Act sets out conditions that must be met before the EAO would consider substituting a provincial EA to another jurisdiction. This includes the EAO thinking the request is reasonable (e.g., 41(4)), and the Minister’s confidence that the Nation can complete all of the EAOs functions in conducting an EA under the Act (as per s.41(5). The arrangement must also respect the consensus-seeking process with other participating Indigenous Nations (as per s.41(6)).

<sup>4</sup> Section 41(1) of the Act says the “minister may enter into an agreement with respect to any aspect of an assessment or of an assessment under section 35 or 73 with” one or more Indigenous Nations. Section 35 and 73 relate to regional and strategic assessments respectively.

## Nation-Specific Requirements

The EAO seeks to work with Indigenous nations in flexible ways that meet the requirements of both the BC EA process and a nation's own EA process. While these conversations can often be addressed during the early engagement phase of an EA, in some cases the EAO and Indigenous nations work to clarify outside of an active EA process including regarding:

- Framing principles or procedures for collaboration and/or consensus-seeking at specific stages of the EA process;
- Nation-specific community engagement requirements;
- Nation-specific timeline considerations and information sharing requirements;
- Assessment requirements relevant to an Indigenous Nation's territory-based land use or stewardship plans;
- Nation-specific requirements, including but not limited to, the meaningful consideration of Indigenous knowledge and Indigenous-led studies, i.e., culture, rights, socio-economic and health, and connections to traditional territory;
- Specific Application Information Requirements for the proponent such as an increased focus on Indigenous social determinants of health, enhancing project benefits, or empowering vulnerable groups;
- Specific expertise requirements for the assessment; and
- Terms of collaboration with the EAO (or leading) on effects assessment relevant to Indigenous rights impacts, or in assessing environmental, economic, social, cultural, and health impacts.

During the early engagement phase of the EA, an Indigenous Nation may request the EAO to engage in developing a joint collaborative process that respects the Nation's own EA requirements. Further, in certain cases and at the discretion of the EAO, such arrangements may be formalized in bilateral agreements related to the implementation of Section 41 of the Act during an EA.

Outside of a specific proposed project, individual Indigenous Nations may seek to enter arrangements with the EAO that recognize and enable the governance requirements of the Indigenous Nation to be met through a collaborative EA process.

The Lake Babine – Province of British Columbia Environmental Assessment Collaboration Agreement, ratified in November 2021, provides for greater collaborative arrangements during a Provincial EA. The agreement was negotiated under s. 41 of the EA Act (2018) and is intended to clarify the conditions under which an EA may proceed on lands that are subject to the Lake Babine Foundation Agreement between the Province and the Lake Babine Nation.

## Collaboration Agreements

In previous years, prior to and following the new Act, the EAO and the Minister of Environmental and Climate Change Strategy (ECCS) have also entered into G2G “collaboration agreements” with Indigenous Nations, both in matters specific to individual EA and across EAs in general. A recent version of such an agreement, similar to a process agreement but negotiated under S. 41 of the EA Act, is the 2021 collaboration agreement between the Minister of ECCS and the Lake Babine Nation (see sidebar page 67). In this particular case, it can be seen that existing legislation permits for a range of potential agreements, some that apply across projects and that establish legally enforceable procedures for the collaborative conduct of an EA with a Nation’s territory.

## Agreements for Compliance and Enforcement

Agreements under Section 50 of the Act can provide Indigenous Nations with a formal role in compliance and enforcement activities following the approval of a project. This can include the EAO delegating its authority to conduct inspections, investigations, or enforcement powers to Indigenous governments in relation to projects within their territories.

A decision on whether to enter into a compliance and enforcement agreement may take up to six months for the Chief Executive Assessment Officer (CEAO) to make.

If this is a course desired by a Nation, it should submit its intent during the EA and preferably before the Effects Assessment phase (Phase 5) occurs.

### ABORIGINAL LIAISON PROGRAM

Nations interested in a compliance and enforcement role may also consider the EAO’s standard programming via the Aboriginal Liaison Program.

Indigenous members act as liaisons that participate in field inspections and training with EAO officers that are relevant to community priorities.

Funding opportunities to ensure monitoring and inspection tasks are provided.

If a Nation lacks the capacity and resources to conduct its own compliance and enforcement activities, the Aboriginal Liaison Program may offer another option for having a role in post-EA compliance monitoring.

## CHAPTER 8

# FURTHER SUPPORT AND GUIDANCE

# FURTHER SUPPORT AND GUIDANCE

The new Act and EA process provide new opportunities for Indigenous Nations to influence how major projects will be assessed and to take a lead role in assessing how a project may impact a Nation's territory and people, as well as the environment. This primer provides an overview of these opportunities, while providing some tips and resources to support First Nations in BC to make the most of these opportunities. However, the primer is not intended to be comprehensive technical document on the EA process or a set of step-by-step instructions on how a Nation should participate.

Environmental assessments are very complex and their outcomes can have a tremendous impact on Indigenous Nations. Additional resources are provided below for Nations looking for greater detail and technical support. These documents also contain useful links and references to other helpful sources.

## FNMPC Environmental Stewardship Technical Team

In addition to this primer, the FNMPC provides a range of services to Indigenous Nations for gathering additional technical support in advance of, and during, an environmental assessment.

The FNMPC's Environmental Stewardship Framework (ESF) guides its support of Nations engaged in an EA process. The framework is intended to:

*Support member First Nations to make their own decisions on Free, Prior and Informed Consent by providing a toolkit of policies, processes and implementation tools, and associated expert supports for the assessment of the environmental effects of major projects.*

In addition to this primer, the FNMPC provides a range of services to Indigenous Nations for gathering additional technical support in advance of, and during, an environmental assessment.

The ESF makes use of six core elements to support its mission:

- **CAPACITY TRAINING:** Capacity training for member groups so they can engage in major project assessment and improve their stewardship capacity.
- **EXPERTISE ON-DEMAND:** Expertise, on-demand, to support member groups in major project assessment and other environmental stewardship processes.
- **TOOLS AND METHODS SUPPORT:** Tools and methodological supports for member groups to freely access and use in major projects assessment and stewardship initiatives.
- **SUPPORT FOR NATION-SPECIFIC ASSESSMENT PROCESS DEVELOPMENT:** On-demand support for the development of Nation-specific assessment processes.
- **SUPPORT COALITION LEVEL RESEARCH/COMMENTS:** Support for the members in reviews and revisions to federal and provincial EA and other environmental management research and policy review.
- **STANDARD DEVELOPMENT:** Development and implementation of principles, criteria and guidance to support major project assessments, as well as identification of thresholds of acceptable change for specific environmental values (e.g., lands, water, air, wildlife).

## Major Project Assessment Standard and Guidance Appendices

Additional EA-related tools and resources developed by the FNMPC include:

- The **FNMPC Major Project Assessment Standard** (“Assessment Standard”) identifies member-developed and agreed upon principles, criteria, and other guidance and expectations to guide major project IAs. The purpose of the Assessment Standard is to ensure that IAs are conducted in accordance with the stewardship and governance rights and responsibilities of First Nations.
- **Guidance Appendices to the Major Project Assessment Standard:**
  - The Guidance Appendices to the Assessment Standard provide detailed guidance on the following area of major project assessments:
    - Indigenous socio-economic impact assessment;
    - Indigenous cultural impact assessment;
    - Indigenous knowledge integration into major project assessment;
    - Indigenous health impact assessment; and
    - Indigenous land use assessment.

The Guidance Appendices can be used as a checklist for any individual major project assessment, to ensure that a Nation’s requirements are being met. This will improve the chances that enough information is provided to allow Nations to make informed decisions during a major project assessment.

## Additional Tools

- **The Community Readiness Assessment tool:** This tool helps Nations identify capacity gaps in their ability to engage in major project assessments. This includes economic, environment and communications/outreach components. Support is available from the FNMPC to assess the Nation's readiness and capacity for involvement in a major project EA.

## Direct Technical Support Through the FNMPC's Environmental Stewardship Technical Team

The FNMPC offers direct technical support to member Nations on demand. Recognizing that First Nation communities often do not have the capacity to engage fully in all aspects of an EA process, the FNMPC can make specific subject matter experts available when requested. These technical experts are able to provide rapid appraisals in specific technical areas and support First Nations in flagging, scoping, and identifying priorities in relation to major project assessments.

Specific technical support that can be provided by FNMPC technical experts includes:

- Description of the regulatory process for the project in the existing legislated process, and identification of options within that process (e.g., focus on net gains rather than significant adverse effects);
- Support to Indigenous Nations in the interpretation and application of the FNMPC's Major Project Assessment Standard, and related guidance appendices, to the Nation's unique requirements and specifications.

For general environmental assessment support,  
contact the FNMPC at [EAsupport@fnmpc.ca](mailto:EAsupport@fnmpc.ca)

If your Nation seeks an EA Readiness Assessment,  
please email our EA Readiness team at  
[EAreadiness@fnmpc.ca](mailto:EAreadiness@fnmpc.ca)



- Independent, third party review of proponent-led EAs (review of scoping of values and issues, baseline data collection to date, any preliminary effects characterization);
- Ongoing support during the Project Description and Application preparation, including review and preparation of draft materials; and
- Independent reporting back to the FNMPC on the environmental “score” for the project, during the Major Project support determination process.

## BC EAO Guidance

To help assist Indigenous Nations, proponents, other government bodies and the public navigate the new provincial EA process, the EAO has developed a range of technical policy and guidance documents. Together, these provide detailed technical guidance related to each phase of the EA process, and how specific sections of the Act are interpreted and carried out. This includes the EAO’s guides to Indigenous Knowledge and consensus-seeking.

As noted in Chapter 1, the EAO is still in the process of finalizing a number of regulations, guides and policies (see Table 1 on page 15). Specific practices and expectations regarding these topics may change or evolve as materials develop.

The list below includes EAO technical guidance that are recommended for technical staff and consultants working for Indigenous communities.

- **For an overview of the process:**

EAO User Guide: Introduction to Environmental Assessment under the Provincial Environmental Assessment Act (2018)

- **For greater detailed explanation** of specific elements of the process, these are the “Top Eight” EAO technical guidance documents that are most relevant to Indigenous communities:

- Guide to Indigenous Knowledge in EA;
- Effects Assessment Policy;
- Guidelines for Assessing Human and Community Well-Being (Social, Economic, Cultural and Health Effects in EA);
- Guide to Consensus-Seeking under the EA Act 2018;
- Readiness Decision Policy;
- Early Engagement Policy;
- Process Planning Policy; and
- Indigenous Nation Guide to EAO Compliance and Enforcement.

## Guidance for the Federal Impact Assessment Process

The federal environmental assessment legislation has also seen a major transformation. Many aspects are similar to the BC EA process and support more meaningful Indigenous participation and influence on the impact assessment (“IA”) process. Moreover, it is expected that the majority of federal IAs carried out in British Columbia will be conducted by a “substituted” IA processes, whereby federal IA requirements are incorporated into, and addressed through, the BC EA process.

The Impact Assessment Agency of Canada (IAAC) has developed various helpful guidance documents for the federal IA process. Many of the assessment considerations and methods are similar between the federal and BC processes. Indigenous Nations can find useful reference material and supports at the Impact Assessment Agency of Canada’s website.

The main user guide for the federal IA process is the Practitioner’s Guide to Federal Impact Assessments under the Impact Assessment Act.

The FNMPC has additionally published a guideline for the federal IA process that focuses on Indigenous participation, Guide to Effective Indigenous Involvement in Federal Impact Assessment.



## International Association for Impact Assessment

The International Association for Impact Assessment (“IAIA”) is an international organization of assessment professionals that seeks to advance best practices and innovation in impact assessments. It provides a variety of resources for impact assessment guidelines, training, support, and best practices in environmental stewardship and sustainability. Check out IAIA’s resources on their website for more info.

Indigenous Nations seeking additional technical guidance in aspects of impact assessment process may wish to refer to the following materials:

- Social Impact Assessment: Guidance for assessing and managing the social impacts of projects; and
- Human health: Ensuring a high level of protection.

For Nations seeking assistance in conducting an impact assessment, the IAIA offers a practical guide on appropriate expectations and experience for impact assessment experts and professionals:

- Guideline Standards for Impact Assessment Professionals.

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