

# A BRIEF INTRODUCTION TO THE ENVIRONMENTAL ASSESSMENT PROCESS

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The EA Process is complex, with many individual steps. The overall purpose of the process is for the BC Environmental Assessment Office (the EAO) to look at the details of the project, the potential risks of the project, and the benefits of the project, and to weigh them against each other to determine whether the project is in the best interest of BC. Each step involves different groups, with each one having a specific purpose and involving specific discussions and products. To take part meaningfully, it can be helpful to understand exactly what the purpose of each step is and what happens at that point.

The federal government has its own Impact Assessment process, which is broadly similar to the EAO one. The BC and federal governments have agreed that the process is similar enough that the EAO can run a “substituted” EA process, in which federal departments take part in the process run by the EAO rather than run a separate federal Impact Assessment. Most EAs in BC are substituted processes, although occasionally there will be parallel (both agencies run their own process) or joint (the agencies run one process together), instead.

## STEPS OF THE EA PROCESS

### STEP 1. EARLY ENGAGEMENT

**Who is involved?:** This part of the process is led by the Proponent (the company that is proposing the project), and involves conversations with the Proponent, the EAO and Indigenous groups that they have identified as being potentially impacted. The public will also have potential to comment. There is a 90 day time limit to this step of the process.

**What is happening?:** During this part of the process, there might not be an complete project description with details. The idea is to have discussions about plans and potential issues or concerns before the project plan is finalized. The EAO will inform the Proponent of what information they expect to see in the Detailed Project Description.

**What products are produced?:** A detailed Project Description that will be the basis for the environmental assessment (EA) going forward, and a Summary of Engagement that contains the

conversations that the Proponent and the EAO have had with each other and Indigenous groups and any decisions or agreements reached, as well as concerns raised.

## STEP 2. READINESS ASSESSMENT

**Who is involved?:** This is led by the BCEAO, who will engage with Indigenous groups.

**What is happening?:** The BCEAO will decide if the project will enter the EA process. It is determining if the project description is sufficiently detailed, if the information the Proponent is ready to assess impacts of the project, and whether the project requires an EA in the first place

**What products are produced?:** The EAO will provide a decision notice to the Proponent. The notice will either permit the project to move into the EA phases, instruct the Proponent to change the Detailed Project Description, give the project an exemption from needing to go through the EA process, or inform the Proponent that their project will be terminated without an EA.

## STEP 3. PROCESS PLANNING

**Who is involved?** The process is led by the EAO. It also involves the Proponent, Indigenous groups, the federal Canadian Impact Assessment Agency, local governments, the public, and possibly outside experts. There is a 120 day time limit to this phase

**What is happening?** This step is for determining how the EA will be carried out. The EAO will determine who will be involved in the EA and how, what information the Proponent will need to provide about the risks of their project (including which potential impacts should be considered, and what baseline data is needed), who will sit on Technical and other Working Groups, and timelines. At this point, there is the potential for Indigenous groups to propose to conduct parts of the EA themselves, or to inform the EAO that they will be conducting their own, separate EA on the project. Indigenous groups may be requested, or may offer to provide their Indigenous Knowledge and information on aspects like Indigenous Traditional and Current Use, or to collaborate on authoring a chapter on impacts to their Nation.

**What products are produced?** The EAO will produce a Process Order that lays out the roles of various parties, the information required to be in the Application (called the Application Information Requirements), and other process issues. This is also the stage where potentially impacted Indigenous groups can be designated as Participating Indigenous Nations and thus have an enhanced role in the EA process.

## STEP 4. APPLICATION DEVELOPMENT AND REVIEW

**Who is involved?** The Proponent leads this part of the process. They develop an EA Application that will be reviewed by the EAO, federal agencies, local governments and Indigenous groups. There will be a public comment opportunity. The EAO, and potentially Indigenous groups if in a collaborative process, leads the review. There is a 180 day time limit to this step of the process.

**What is happening?** This step is developing the EA Application. The Application is the “meat” of the EA process. In the Application, the Proponent describes the project in detail and provides their own assessment of what the impacts of the project will be. The EAO, Indigenous groups, and other government groups review the Application and compare it against the Application Information Requirements. Importantly, *this is not the step where the actual impacts and their significance are discussed in detail*. Rather, this is where it is determined if there is enough information to have that discussion in the next step. This *is* the right time to point out gaps in the baseline data that will make it so that impacts cannot be determined, or if important impacts have not been discussed or have been incorrectly scoped.

**What products are produced?** The EAO will provide feedback to the Proponent requesting revisions to the Application. The Proponent will then revise the Application and provide a final version.

## STEP 5. EFFECTS ASSESSMENT

**Who is involved?** The EAO, or the EAO and Indigenous groups if a collaborative process, lead this process. The Proponent, federal agencies, local government (e.g. municipalities, Northern Health), and the public are also involved. This step has a 150 day time limit.

**What is happening?** This is where the potential impacts of the project on all the components of the environment, the economy, communities, and Indigenous rights are discussed. All involved groups are able to provide comments or disagreements with the various parts of the Application, including the Proponent’s characterization of impacts. The EAO will engage directly with Indigenous groups through requesting written submissions and through meetings. The Proponent may meet directly as well. Other government agencies will also provide their advice to the EAO. The public will be provided opportunities to send in their own submissions. Technical Advisory Committees and Community Advisory Committees of experts will meet and further discuss specific points.

Indigenous groups can be expected to be asked specifically about impacts to Rights and Title, or other interests, and to communities. The Application will likely contain a chapter specific to each Nation that may be potentially impacted, outlining impacts to “interests” and concerns raised by the Nation. They will also be requested to provide advice for Conditions, which are the conditions the Proponent must abide by and things they must do if they get their EA Certificate approved and go forward with the project.

**What products are produced?** The EAO will request that impacted Indigenous groups officially consent or deny consent for the project. The EAO will then provide a report in which they either agree or disagree with the Application on what the impacts of the project will be, and provide their own summary of impacts. The report will be based off of the input of all the other parties (including Indigenous groups). They will assess the project based on criteria laid out in legislation, including risks, benefits, sustainability, impacts to Indigenous groups, and others. They will recommend binding Conditions that the project must follow if they are approved. Indigenous groups, the Proponent, and the public will all have the opportunity to respond to this report before the next step.

## STEP 6. THE MINISTER'S DECISION

**Who is involved?** This step is almost entirely undertaken by the Minister. However, the Minister must offer to meet with Indigenous groups if they intend to approve a project that has not been given Indigenous groups' consent. This step has a 30 day time limit.

**What is happening?** The Minister alone makes the choice, but should be informed by the input from the EAO, Indigenous groups, sustainability, and reconciliation, as well as "any other matters of public interest".

**What products are produced?** The Minister will issue or refuse to issue an approval of the Application, and must state their reasons. If the Minister did not align with Indigenous groups' consent or non-consent, the Minister must give their reasons. If approved, the approval will contain a list of Conditions that are legally binding for the Proponent.

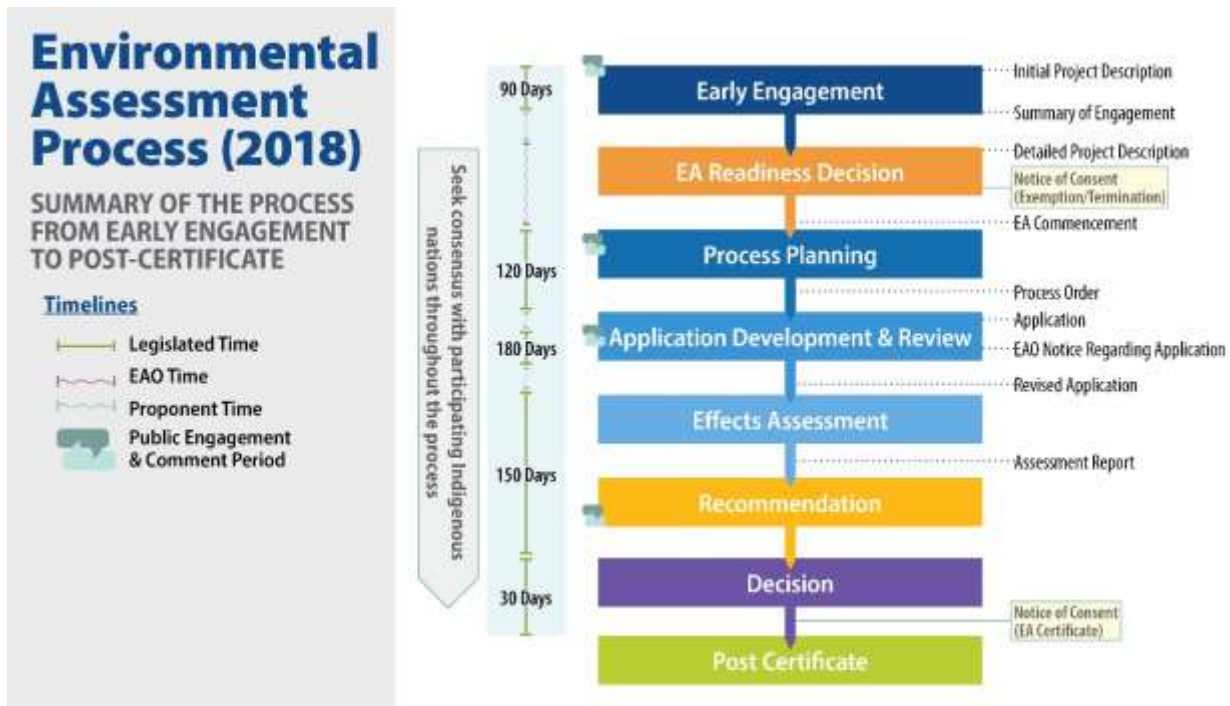
## STEP 7. POST CERTIFICATE

The project works continue post-certificate, including:

- **Fisheries Act permitting** – the proponent must get a permit for any destruction or damage to fish habitat or works that might injure or kill fish. Most large projects include some of these. The proponent must apply for these permits, and that permit usually includes an Offsetting Project in which fish habitat is restored or created to compensate for the harm. Indigenous groups will be engaged with about these permits and Offsetting Projects.
- **Construction monitoring** – Indigenous groups may be involved in monitoring construction, in reviewing monitoring reports, or in auditing construction
- **Certificate amendments** – the Proponent may request to amend their certificate if their plans for the project change. This could include a route change for a pipeline, or a design change for a mine. The Proponent will apply to the EAO and the EAO will likely engage with Indigenous groups regarding whether the amendment will be granted. There is not an

opportunity to reverse the initial EA decision, only to grant or not grant the company the right to amend their certificate. One component of the discussion will be whether the change is significant enough that the project should re-do the EA process rather than receiving an amendment, although it must be a substantial change for this to be the case.

- **Substantial Start decision** – the Proponent must start the project within 10 years of receiving their Certificate, or else potentially lose their opportunity. For this decision, the EAO will look at the work the Proponent has undertaken to start the project and decide whether it is “substantially started”. This decision looks primarily at the actual, physical, “shovels in the ground” work that the Proponent has done, and aspects like buying, selling, permitting, and reporting are not sufficient to substantially start a project. The project does not have to be completed, only started. Impacted Indigenous groups will be consulted on a substantial start decision.
- **Certificate extension** – if the Proponent has not been able to substantially start the project within 10 years, they may apply for an extension of up to 5 years. At this point, the EAO can either approve an extension, deny an extension, or approve an extension but with added Conditions. Note: certificates approved prior to 2018, under an older version of the Environmental Assessment Act, were only valid for 5 years with an additional 5 year extension option. Some projects approved during that period are still operating under that Act and may not be eligible for an extension to 15 years.



*Infographic of the steps and timeline of the process, taken from the EAO website.*

## CAPACITY FOR TAKING PART IN AN EA

EAs can be very difficult to take part in for First Nations due to capacity limitations. EAs involve large amounts of very technical information, and important, complicated decisions for First Nations decision makers. EAs take a maximum of about 18 months from early engagement to decision, but often faster timelines are set. That means that a lot has to happen in a short time period and there is sometimes little notice ahead of time. The EAO or the Canadian Impact Assessment Agency usually provide some funding for engagement, but that is not always sufficient to take part to the extent that First Nations would wish.

It can be helpful to understand the various roles and tasks involved in taking part in an EA for a First Nation. While tasks don't have to be divided this way, this is a fairly typical description of tasks that First Nations may want their representatives or employees to undertake

## TECHNICAL EXPERT ROLES

The EA is a technical process and usually there is a number of technical experts involved on behalf of the First Nation.

- **Collecting baseline data.** Often, First Nations want to be involved in data collection to ensure that it is valid. This can either involve working with the Proponent to collect the baseline data for the Application, or collecting additional baseline data independently, if the Proponent's baseline data is not considered sufficient or trustworthy. Best practice is for a minimum of two years of field data collection, but more than two is preferable.
- **Reviewing and responding to documents.** A large EA will involve tens of thousands of pages of technical reports, memos, the Application, and other associated documents. First Nations will be invited to review and comment on these documents, which usually requires technical experts. The experts will read the documents, and assess the methods used, the quality of the baseline data, the methods used to assess impacts, and may bring in Indigenous knowledge or a Nation's own data to compare. They will then write up their own technical opinions of the documents they are reviewing to provide to the EAO. These comments are often required on a tight timeline of a few weeks.
- **Take part in Technical Working Groups.** These Working Groups meet periodically to discuss technical issues and concerns in detail. They will usually be subject-focused, for example focused on Fish or Wildlife. These Working Groups include First Nations' experts, technical experts from the Proponents, and the relevant federal and provincial scientists. The discussions at these Working Groups will inform the EAO's final report.
- **Presenting to communities and leadership.** Ideally, technical experts will be presenting their findings to leadership and/or communities to keep them informed and to allow them to make informed decisions regarding the project. It also allows them to ensure that the statements they make on a technical level reflect the priorities and concerns of the community. However, given the tight timelines involved in the process, it can be very

difficult to have enough time to schedule meetings to have these discussions while meeting EAO deadlines.

Often, technical experts already employed by Nations do these jobs on top of their usual workloads. This can limit the amount that they can take part, as fully reviewing a large EA can be almost a full-time job for the active review period. Short term employees or contractors are sometimes hired to provide extra help, or to provide advice in subject areas where the Nation may not have any experts on staff.

## LEGAL EXPERT ROLES

Legal experts can be very valuable in the process. They can guide First Nations on how to engage effectively in the process, provide First Nations decision makers with information regarding potential impacts to Rights and Title, and can give advice on how best to pursue goals for the process.

## FIRST NATIONS LEADERSHIP ROLES

Leadership and decision-makers for the Nation have the most important roles in the process. While technical and legal experts can provide information on the potential risks of the project and on how to achieve goals and objectives, they cannot determine whether a project's risks are acceptable, or what those goals should be. Leadership and communities must make those decisions.

Leadership can take the risks identified by the technical experts and weigh that against potential project benefits to determine whether the project should be supported or not. Leadership can identify goals and objectives to direct legal experts. Proponents and the EAO often meet with leadership to discuss project benefits, concerns, and other issues. Staying informed about the project and taking part in these many types of discussions can be a time consuming job.

## FIRST NATIONS INDEPENDENT ENVIRONMENTAL ASSESSMENTS

Both the BC Environmental Assessment Act and the federal Canada Impact Assessment Act have provisions to allow Indigenous groups to co-manage all or parts of the EA by working with the EAO, to co-develop the EA Application by collaborating with the Proponent, or to undertake their own, separate EA.

Leading the BC EA or undertaking a full, separate EA are huge undertakings that require very high capacity. An independent EA of the KGHM-Ajax-Abacus Mine by the Stk'emlupsemc te Secwepemc Nation in 2014 required 42 panel members and over 80 subject experts, as well as substantial support staff. While some independent EAs, like the one carried out by the Squamish Nation for the Woodfibre LNG project, are paid for by the Proponent, they require many experts that must be employed or contracted. EA Applications written by Proponents for large projects routinely involve 50+ staff members and produce tens of thousands of pages of documents covering topics as

diverse as fish, geology, health impacts, sociological impacts, climate modelling, engineering reports, and malfunction risk modelling.

However, a co-management process, or an independent EA that is limited to the most important issues for the Nation may be more manageable. The Squamish Nation process for the assessment of Woodfibre LNG included the assessment of:

- Impacts to marine environment;
- Impacts to terrestrial and freshwater environment;
- Impacts to lands in which Squamish has formal governance and/or defined management objectives;
- Impacts to use and occupancy in the impacted region;
- Impacts to transmission of culture and history; and
- Impacts to growth and revitalization of the Squamish language.

However, a Nation wishing to undertake even a limited independent assessment of a large project that touches only on the parts that are most likely to impact the Nation will likely need to employ or contract experts in:

- Fish
- Aquatic habitats
- Hydrology
- Hydrogeology
- Wetlands
- Plants and terrestrial biomes
- Wildlife
- Birds
- Archeology
- Sociology
- Cultural and Traditional Knowledge experts
- Community liaisons
- First Nations and western law
- Air quality
- Climate change
- Economic experts

And potentially experts on other topics, depending on the project being assessed. There will also need to be support staff to coordinate and manage the project, as well as systems like a GIS (mapping) referral system to provide support. While possible, it is a large undertaking that requires considerably support and capacity.

## ADDITIONAL REFERENCES

The EAO has created a guide for Indigenous Nations engaging in EAs here:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental->



[assessments/environmental-assessment-process/guidance-materials/indigenous-nation-guidance](#) and it has good descriptions of the steps in more detail, plus links to actual policy documents.

There is also a useful primer for effective EA engagement authored by the First Nations Major Projects Coalition <https://fnmpc.ca/wp-content/uploads/Sept-13-2023-FNMPC-Primer-for-BC-EA-FINAL.pdf>

For more information on Indigenous-led EAs, the UBC Centre for Environmental Assessment Research has created an introductory document: <https://ok- Cear.sites.olt.ubc.ca/files/2023/01/Indigenous-Led-Impact-Assessment-An-Introduction-CEAR-UBC.pdf>

There is a good description of the Squamish Environmental Assessment process from the legal firm who assisted with it here <https://www.ratcliff.com/wp-content/uploads/2020/10/The-Squamish-Nation-Assessment-Process-Getting-To-Consent-Ratcliff.pdf>