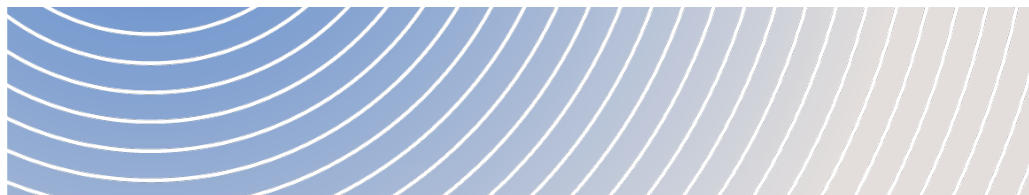




Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

Impact Assessment Cooperation Agreement Between Canada and British Columbia



August 2019

Canada^{ca}



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Impact Assessment Cooperation Agreement Between Canada and British Columbia

WHEREAS Canada and British Columbia have each established robust processes for the assessment of the impacts of certain types of projects;

WHEREAS Canada and British Columbia are committed to promoting high-quality impact assessments that are informed by rigorous science and Indigenous knowledge and community knowledge, and that lead to sound decisions;

Whereas Canada and British Columbia are committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

WHEREAS Canada and British Columbia desire reconciliation with Indigenous peoples, and wish to work collaboratively with Indigenous peoples to conduct impact assessments;

WHEREAS Canada and British Columbia are committed to complying with their respective treaty obligations, and working collaboratively with their treaty partners;

WHEREAS Canada and British Columbia wish to establish a framework that will facilitate and implement the principle of one project, one assessment within which the Parties can cooperatively exercise their respective powers and duties under the *Impact Assessment Act* (the "Canada Act") and the *Environmental Assessment Act*, SBC 2018, c. 51 (the "BC Act"), while retaining the power to make their own decisions regarding projects;

WHEREAS Canada and British Columbia agree that substituted impact assessments provide benefits to proponents, Indigenous peoples and the public by reducing workload and streamlining participation while ensuring that the expertise of both governments is applied;

WHEREAS Canada and British Columbia agree that all participants benefit from timely and predictable impact assessment processes that are established early in the consideration of a project;

WHEREAS Canada and British Columbia recognize that transparency and accountability are essential attributes of impact assessment processes; and

THEREFORE, and in contemplation of and preparation for the potential for the Canada Act and the BC Act coming into force, the Parties agree to cooperate in the conduct of impact assessments in accordance with the following provisions.



1. Definitions

In this agreement,

"Agency" means the Impact Assessment Agency of Canada;

"EAO" means the Environmental Assessment Office continued under section 2 of the BC Act;

"impact assessment" means an assessment of the effects of a project conducted in accordance with the BC Act or the Canada Act";

"impact assessment reports" means the impact assessment report required under subsection 28(2) of the Canada Act and the assessment report under subsection 29(1)(a) of the BC Act;

"impact assessment required decisions" means the decisions required under section 16 of the Canada Act and section 16 of the BC Act;

"Indigenous peoples" includes Indigenous nations as referenced in the BC Act;

"project" means a project that meets the definition of a designated project in section 2 of the Canada Act and the definition of a reviewable project in section 1 of the BC Act; and,

"Technical Advisory Committee" means the committee referred to in section 21 of the BC Act.

2. Application of this Agreement

(1) The Parties agree that neither Canada nor British Columbia concede any jurisdiction, right, power, privilege, prerogative or immunity by entering into this agreement.

(2) This agreement does not create or alter any power or duty under any enactment of Canada or British Columbia, and is not intended to direct or fetter any person having such powers or duties.

(3) Should a proposed project be located on or cross a boundary with another province or territory with a portion of the project located within British Columbia, the Parties would seek to apply the principles and approaches contained herein in cooperation with the other province or territory.

3. Collaborating with Indigenous peoples

(1) The Agency and the EAO will work together to coordinate cooperation and collaboration with Indigenous peoples throughout impact assessments.

(2) The Agency and the EAO will coordinate communication with Indigenous peoples in order to explore with them the potential of entering into agreements or arrangements pertaining to impact assessments, where those Indigenous peoples have powers or duties in relation to, or have interests in collaborating with the Parties on impact assessments.

(3) The Agency and the EAO will work together with their treaty partners to ensure compliance with Canada and British Columbia's treaty obligations in respect of impact assessments.

(4) For certainty, nothing in this agreement is intended to limit the ability of either of the Parties, the Agency or the EAO, to collaborate, or enter into agreements or arrangements, with Indigenous peoples respecting impact assessments.



4. Early Notification

(1) The Agency and the EAO agree to notify each other once aware of a project that may require an impact assessment pursuant to both the Canada and BC Acts, in order to begin planning for the early engagement and planning activities, to begin engaging Indigenous peoples, and to begin consideration of mechanisms for cooperation on the impact assessment, and in particular agree as follows:

(2) When

(i) the Agency receives information that a project may reasonably be expected to require an impact assessment under the Canada Act; or

(ii) the EAO receives information that a project may reasonably be expected to require an impact assessment under the BC Act;

the Agency, in the case of a project referred to under subsection 4(2)(i), or the EAO in the case of a project referred to under subsection 4(2)(ii), will notify the other of the information.

(3) The Agency and the EAO will notify each other of planning for and engagement with Indigenous peoples as early as possible, including engagement scheduled to occur prior to receipt of an initial project description, seeking to coordinate engagement where appropriate in the circumstances.

(4) The Agency and the EAO will notify each other of any process under section 11 of the BC Act or section 9 of the Canada Act to require a project to be assessed under those Acts.

(5) If, under the Canada Act or the BC Act, a Party intends to undertake a regional assessment within British Columbia, or a strategic assessment, that Party will notify the other so that they may discuss the potential to collaborate with respect to the assessment.

5. Cooperation During Early Engagement

(1) The Agency and the EAO agree to establish a joint early engagement process from the time an initial project description is submitted by a proponent until the impact assessment required decisions are made, to enable coordinated engagement, to facilitate common requirements for documents, and to facilitate joint issuance of documents, and in particular agree as follows:

(2) The Agency and the EAO will coordinate key deliverables and activities during early engagement of impact assessments. In particular, the Agency and the EAO will, whenever appropriate:

(i) consolidate requirements for the initial project descriptions into a single guidance document;

(ii) coordinate public engagement following receipt of initial project descriptions provided by project proponents to the Agency and the EAO, and in particular coordinate a joint public comment period with respect to the initial project descriptions;

(iii) coordinate engagement with Indigenous peoples following receipt of initial project descriptions, including the identification of Indigenous peoples to be engaged and the timing and means of engagement;

(iv) coordinate engagement with local governments and federal and provincial authorities following receipt of initial project descriptions; and



(v) prepare a single document that sets out comments received from the public, Indigenous peoples, local governments, federal and provincial authorities, and other jurisdictions following the engagement referred to in subsections 5(2)(ii), (iii) and (iv) within 90 days of the acceptance of an initial project description.

(3) The Parties agree that, to facilitate a joint early engagement process, the timelines from submission of the initial project description to the receipt of the detailed project description should be harmonized, and will use to the extent appropriate, or recommend use of, legislative and regulatory and administrative powers, including subsection 18(3) of the Canada Act and subsection 38(1)(a) of the BC Act.

6. Notification with Respect to Deciding to Proceed with Impact Assessment

(1) The Agency and the EAO will seek to coordinate the timing of their impact assessment required decisions, and agree to notify each other of their decisions within 10 days of a decision being made.

7. Substitution

(1) Where substitution of an impact assessment is being considered, the Parties agree to a principled, project-by-project and timely approach to decision-making regarding substitution, and commit to a substituted impact assessment process that meets the legislative requirements of both Parties and promotes effective impact assessment decision-making, and in particular agree as follows:

(2) The Parties will take into account any agreements, treaties or arrangements with Indigenous peoples in making and considering a substitution request.

(3) Should another jurisdiction, such as an Indigenous jurisdiction pursuant to section 2 of the Canada Act, having powers, duties or functions related to the assessment of a project covered by this agreement, express interest in or formally request substitution of its process for either Canada or British Columbia's impact assessment process, the Agency and the EAO will coordinate their discussion with the other jurisdiction in order to inform decision-making.

(4) The BC Minister or delegate will endeavour to make a substitution request under subsection 31(1) of the Canada Act to allow the Agency to seek comments on the request as part of the public comment period following the receipt of an initial project description. In the event that a substitution request is made following the beginning of the public comment period, the Agency will seek to commence a public comment period on the request for substitution as early as practicable after receipt of the request.

(5) The federal Minister will make all reasonable efforts to provide a timely response to the request, aiming to respond within 10 days of the impact assessment required decisions and no later than the time at which notice of commencement is provided under section 18 of the Canada Act.

(6) In providing advice to the federal Minister on a substitution request, the Agency will identify effects within federal jurisdiction, such as the potential for transboundary environmental effects or changes to the environment that may affect federal lands, that the federal Minister may wish to consider in determining:

(i) whether the British Columbia assessment process is an appropriate substitute in the context of that project;



- (ii) whether he or she should specify any additional conditions to address the federal jurisdictional interests, prior to determining whether the British Columbia assessment process is an appropriate substitute; and
 - (iii) whether referral of the impact assessment to a review panel is in the public interest.
- (7) Before recommending that the federal Minister establish any conditions referred to in subsection 33(1)(i) of the Canada Act, the Agency will discuss the proposed conditions with the EAO.
- (8) In making a substitution request, the BC Minister or delegate will address the following matters:
- (i) the factors set out in subsection 22(1) of the Canada Act;
 - (ii) the opportunity for federal authorities that are in possession of relevant specialist or expert information or knowledge to participate throughout the impact assessment;
 - (iii) the opportunity for the Agency to participate in consultation and engagement activities with Indigenous peoples during the impact assessment;
 - (iv) the opportunity for the public to participate meaningfully in the impact assessment, including an opportunity to provide comments on a draft report, as set out in a process order under section 19 of the BC Act;
 - (v) access the public will have to records in relation to the impact assessment, subject to section 13 of this Agreement;
 - (vi) consultations with Indigenous peoples that may be affected by the carrying out of the project to be assessed, including Indigenous peoples identified by the Agency, to be set out in the process order under section 19 of the BC Act; and
 - (vii) the report to be submitted to the federal Minister at the end of the impact assessment including subsections 33(2) and 33(2.1) of the Canada Act.
- (9) Any consultation conducted by British Columbia with Métis or organizations representing Métis within British Columbia under a substituted impact assessment is understood to be conducted on behalf of the Government of Canada and should not be construed in any way as an acknowledgement by British Columbia that it owes a duty of consultation or accommodation to Métis within British Columbia under section 35 of the *Constitution Act*, 1982.
- (10) For clarity, the Parties acknowledge that Canada and British Columbia each retain the responsibility to ensure that the duty to consult and, where appropriate, accommodate has been satisfied, including determining the Indigenous peoples to be consulted and determining the scope, content and adequacy of consultation, and that their respective treaty obligations have been satisfied and complied with in respect of impact assessments.
- (11) The Agency and the EAO will establish general guidance that outlines the roles and responsibilities of each throughout the process, which will be made available to the public.
- (12) For certainty, once an assessment is substituted to the EAO, the process and timelines under the BC Act apply to the assessment.
- (13) For each substituted impact assessment, the Agency and the EAO will jointly prepare a permitting plan as set out in subsection 18(1)(b) of the Canada Act. If a joint permitting plan is not appropriate in the circumstances, the Agency will prepare a federal permitting plan and the EAO will make the plan public.
- (14) In the case of a substituted impact assessment, the EAO agrees to share information and knowledge about the project with the Agency, as required, throughout the impact assessment process and post impact-assessment decision, subject to section 13.

(15) If the Agency requires additional information under section 35 of the Canada Act, it will endeavour to make a request within 45 days of receiving the report referred to in that section.

8. Coordinated Impact Assessments

(1) Where an impact assessment is not substituted under section 7, the Agency and the EAO agree to cooperate during planning (that is, from the impact assessment required decisions to the posting of the notice of commencement under the Canada Act and the process order under the BC Act) and during the impact assessment (for the purpose of this paragraph being the period from the process leading to the proponent finalizing its Impact Statement under the Canada Act and its application under the BC Act to the finalization of the impact assessment reports) to enable coordinated engagement, to facilitate common requirements for documents, and to encourage joint issuance of documents and coordinated timing of decisions, and in particular agree as follows:

(2) Where the Agency and the EAO undertake coordinated impact assessments, they will, for each project, seek to:

(i) harmonize the timelines for planning activities, including where appropriate making use of legislative and regulatory provisions and administrative powers, including subsection 18(3) under the Canada Act and subsection 38(1)(a) under the BC Act;

(ii) harmonize the timelines for the impact assessment, including where appropriate making use of legislative and regulatory provisions and administrative powers, including subsections 28(5), (6) and (7) of the Canada Act and subsection 38(1)(a) of the BC Act;

(iii) jointly prepare an impact assessment cooperation plan that sets out the actions that they will take in respect of the impact assessment of the project, which will include:

a) the establishment of a joint technical working group for the project; and

b) a schedule of the steps for the coordinated undertaking of the activities covered in subsections 8(2)(i) and (ii);

(iv) coordinate the development and implementation of planning of the assessment process, including, at the federal level, the Public Participation, Indigenous Engagement and Partnership, and Permitting plans, and the process order at the provincial level;

(v) discuss Agency participation, where appropriate, should BC establish a community advisory committee under section 22 of the BC Act;

(vi) coordinate engagement with Indigenous peoples throughout the assessment process;

(vii) coordinate the development of their respective requirements for information that a project proponent must provide for the conduct of an impact assessment, with the goal of setting out joint requirements to the extent possible, and otherwise aligning requirements;

(viii) coordinate public engagement on the proponent's information and on the assessment report under the BC Act and the impact assessment report under subsection 28(2) of the Canada Act, referred to hereafter as the impact assessment reports;

(ix) jointly prepare a single document that meets the requirements of the impact assessment reports, unless the Chief Executive Assessment Officer of the EAO or delegate and the President of the Agency or delegate agree that joint preparation of the assessment reports is not practicable or appropriate in the circumstances; and

(x) jointly prepare a document that summarizes the impact assessment reports, where practicable.

9. Joint Review Panels

(1) Where one Party is considering referring an impact assessment to a review panel, that Party agrees to consider the interest of the other Party in making this decision and, when referring an impact assessment to a review panel, the Parties agree to endeavor to establish a joint review panel, and in particular agree as follows:

(2) Where the Agency or the EAO is considering recommending referral of an impact assessment to a review panel, it will immediately notify the other and consult on the possible establishment of a joint review panel to conduct the impact assessment of the project.

(3) Should another jurisdiction, such as an Indigenous jurisdiction pursuant to section 2 of the Canada Act, having powers, duties or functions related to the assessment of a project covered by this agreement express interest in a joint review panel, the Agency and the EAO will coordinate their discussion with the other jurisdiction in order to inform decision-making.

(4) If the Parties agree to establish a joint review panel for the impact assessment of a project, the Parties agree that they will, as early as possible, enter into an agreement respecting the establishment and conduct of the impact assessment by the joint review panel that will include provisions respecting:

- (i) activities preceding the appointment of the joint review panel;
- (ii) the appointment of members;
- (iii) the establishment of a secretariat;
- (iv) the joint review panel's terms of reference;
- (v) consultation and engagement of Indigenous peoples;
- (vi) any financial assistance to be provided to participants;
- (vii) timelines for submitting the joint review panel report;
- (viii) the decision-making process; and
- (ix) any other matter that the Parties agree is necessary for the conduct of the work of the joint review panel.

(5) If the Parties agree to establish a joint review panel for the impact assessment of a project, the Agency and the EAO intend to share the costs of the joint review panel, the details of which will be outlined in a project-specific cost-sharing agreement.

(6) Prior to final decisions being made with respect to the impact assessment, the Parties will discuss the impact assessment report prepared by the joint review panel.

(7) When a project contains activities regulated under the *Canadian Energy Regulator Act* or the *Nuclear Safety and Control Act*, and hence must be referred to a review panel under the Canada Act, the Parties agree to consider establishing a joint review panel for the conduct of the impact assessment.

(8) The Agency and the EAO will work with the Canadian Energy Regulator to determine how an integrated review panel conducted jointly with the EAO would be undertaken for activities regulated under the *Canadian Energy Regulator Act*.



10. Coordination of Potential Conditions

(1) Agency and the EAO agree to jointly review potential conditions for the decision statement under the Canada Act and the certificate under the BC Act to minimize duplication and regulatory burden, and to align reporting and notification requirements, terminology and definitions, and deadlines, to the extent possible, and in particular agree as follows:

(2) Regardless of the assessment process, the Agency and the EAO will seek feedback from one another on the potential conditions referred to in subsections 28(2)(a)(ii) and (b) of the BC Act and section 64 of the Canada Act and, where practicable, coordinate the opportunity for proponents, Indigenous peoples, and the public to review potential conditions.

(3) The Agency and the EAO will work to ensure that their respective potential conditions provide similar requirements with respect to:

(i) reporting;

(ii) notification; and

(iii) deadlines with respect to obligations set out in conditions.

(4) The Agency and the EAO will seek to establish a process to develop and review potential conditions for decision statements and draft environmental assessment certificates in order to meet the objectives referred to in subsection (1) of this section.

(5) The Agency and the EAO will seek to ensure that a decision statement under the Canada Act and an environmental assessment certificate under the BC Act, where appropriate, contain similar descriptions of the applicable project.

11. Coordination of Decision-Making Phase

(1) Recognizing that the decisions under the BC and Canada Acts are separate, the Agency and the EAO will keep each other informed regarding the timing of the respective decisions, and will coordinate the announcement of decisions under section 29 of the BC Act and section 65 of the Canada Act, to the extent practicable.

12. Post-Decision Activities

(1) The Agency and the EAO agree to coordinate post-decision activities, including follow-up, and compliance verification and enforcement activities, as well as consideration of project changes or amendments, and in particular agree as follows:

(2) The Agency and the EAO will coordinate their follow-up, and compliance verification and enforcement activities (the post-decision activities) with respect to projects covered by this agreement. In particular the Agency and the EAO will, to the extent possible:

(i) coordinate their post-decision activities with Indigenous peoples that have powers or duties in respect of the projects;



- (ii) share information with each other with respect to post-decision activities; and
- (iii) discuss the potential for the federal Minister to designate officials of the Government of British Columbia as enforcement officers for the purposes of the administration and enforcement of the Canada Act.

(3) The Agency and the EAO will jointly consider the use of Indigenous and community-based monitoring bodies, where appropriate.

(4) The Agency and the EAO will promptly notify each other if either of them receives notification of proposed changes to an approved project. The Agency and the EAO will work together to review the proposed changes and the implication of those changes for decision statements and certificates, or other impact assessment or regulatory actions. Where both the Agency and the EAO are contemplating recommending changes to a decision statement or certificate for a project, the Agency and the EAO intend to do so in a joint fashion and also work to coordinate the timing of decisions in respect of the amendments and extensions, to the extent practicable.

(5) If the Agency or the EAO becomes aware that a project is not likely to have substantially started within the period established by the federal or provincial Minister, it will notify the other

13. Information Sharing

(1) The Agency and the EAO will develop a plan to identify opportunities to streamline the collection and public dissemination of information through their respective public registries while ensuring each jurisdiction's legislative requirements are satisfied.

(2) The Agency and the EAO will work together with Indigenous peoples with respect to the sharing and protection of Indigenous knowledge, including consulting with Indigenous peoples regarding the sharing of Indigenous knowledge between the Agency and the EAO.

(3) The Agency and the EAO will seek to share information and establish appropriate information-sharing processes during the impact assessment process in accordance with the applicable restrictions associated with privacy, confidentiality and security.

14. Participant Funding

(1) The Agency and the EAO will work to coordinate funding for participation in impact assessment, to the extent practicable, including the provision of funding to Indigenous peoples to support their participation in impact assessments.

15. Policy and Guidance Development

(1) The Agency and the EAO will share information and collaborate, where possible, on best practices related to the conduct of impact assessments.

(2) The Agency and the EAO will work toward developing guidelines that cover the impact assessment requirements of both Canada and BC.



16. Impact Assessment of Transboundary Effects

(1) Where Canada has obligations pursuant to an international agreement related to impact assessment, or BC has obligations pursuant to an agreement with a neighbouring jurisdiction related to assessment, the Agency or the EAO will notify and discuss these with the other.

(2) Where the Agency and EAO agree that a project subject to this agreement may cause adverse effects on another jurisdiction, the Agency and the EAO will ensure that the potentially affected jurisdiction is informed and provided with appropriate opportunities to participate in the impact assessment.

(3) Where Canada becomes aware of potential transboundary effects in British Columbia relating to a project in another jurisdiction, the Agency will promptly notify the EAO of the potential transboundary effects and any opportunities to participate in the conduct of the impact assessment.

(4) Where the federal Minister receives a request, under subsection 9(1) of the Canada Act, for designation of a project situated in British Columbia with potential transboundary effects on another province, territory, Indigenous jurisdiction pursuant to section 2 of the Canada Act or country:

(i) the Agency will promptly notify the EAO of the request and any potential transboundary effects; and

(ii) the Agency and the EAO will discuss the project, the transboundary concerns, and any impact assessment of the project, including opportunities for cooperation.

17. General Provisions

(1) This Agreement has no effect until both the Canada Act and the BC Act are in force.

(2) Where a project commences before the coming into force of the Canada Act or the BC Act, the Agency and the EAO will cooperate on the assessment of that project in the spirit of this Agreement.

(3) A working committee appointed by the designated offices referred to in section 18 of this Agreement will be established to oversee the implementation of this agreement and evaluate the efficiency and effectiveness of the cooperative impact assessments undertaken in accordance with the agreement.

(4) This agreement may be revised at any time by mutual consent.

(5) The Agency and the EAO agree to meet to review progress and discuss the potential amendment of this Agreement within six months after the fifth anniversary of the taking effect of this agreement and to further meet every five years following the first meeting.

(6) Following consultations between the Parties, this agreement may be terminated by either Party six months after written notice is provided to the other Party. In the event of termination, the Parties will provide transitional arrangements for projects already involved in a cooperative impact assessment if the arrangements are mutually agreed upon. The Agency and the EAO will notify proponents, local governments, government departments and agencies, Indigenous peoples, and the public in the event of termination.

(7) The President of the Agency and the Chief Executive Assessment Officer of the EAO may, by mutual agreement outline operational procedures or other policy guidance related to the implementation of this agreement.



18. Designated Offices

- (1) The designated offices referred to in subsections (2) and (3) of this section 18 are responsible for:
- (i) administering this Agreement;
 - (ii) facilitating consultation and cooperation between the Parties in relation to impact assessment matters generally;
 - (iii) providing information about the respective impact assessment process, policies and procedures of Canada and BC; and
 - (iv) coordinating and facilitating federal-provincial contact and communication with proponents, government departments and agencies, Indigenous peoples and the public on coordinated impact assessments and assessment matters generally.
- (2) The designated office for Canada is the Impact Assessment Agency of Canada Vancouver office.
- (3) The designated office for British Columbia is the Environmental Assessment Office in Victoria.

The Honourable Catherine McKenna
Minister of the Environment (Canada)

The Honourable George Heyman
Minister of Environment and Climate Change
Strategy (British Columbia)

Date:

Date: