

FIRST NATIONS ENVIRONMENTAL ASSESSMENT TOOLKIT

SECTION 1 – INTRODUCTION TO THE TOOLKIT



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Section 2 – Environmental Assessment Basics

Section 3 – Environmental Assessment from a First Nation Perspective

Section 4 – Consultation and Accommodation

Section 5 – British Columbia’s Environmental Assessment Process

Section 6 – Canada’s Environmental Assessment Process

Section 7 – Joint Review Processes

Section 8 – Applying *CEAA* on Reserves

Section 9 – Traditional Knowledge and Environmental Assessment

Section 10 – Reviewing Environmental Assessment Reports

Section 11 – Follow-up Programs

Section 12 – Development Agreements

Section 13 – Detailed Case Study – Voisey’s Bay Nickel Mine

Section 14 – Detailed Case Study – Tulsequah Chief Project

Glossary, References and Index

DISCLAIMER

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Cover photo courtesy of Tourism Victoria

The purpose of this toolkit is to assist First Nations in British Columbia who are engaged or interested in EAs being conducted for proposed projects or developments. This toolkit is designed primarily for First Nations leadership, employees and communities. It is intended to provide information and practical advice that will help First Nations participate effectively in EA processes. It is hoped that this toolkit will help your First Nation develop strategies and decision-making processes that benefit your community and result in favourable outcomes from EAs.

WELCOME

Welcome to the **Second Edition** of the First Nations Environmental Assessment Toolkit. This toolkit was developed by the First Nations Environmental Assessment Technical Working Group (FNEATWG).

FNEATWG is committed to helping First Nations increase their capacity to engage effectively in environmental assessment processes. You may contact FNEATWG by e-mail at ccrffc@cyberlink.bc.ca or coordinator@fneatwg.org

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▶ WELCOME

Welcome to the second edition of the First Nations Environmental Assessment Toolkit.

The purpose of this toolkit is to assist First Nations in British Columbia (BC) whose Aboriginal rights and title, treaty rights, or other interests may be affected by a project undergoing an EA. This toolkit is designed primarily for First Nations leadership, employees and communities. It is intended to provide information and practical advice that will help First Nations participate effectively in EA processes. It is hoped that this toolkit will help your First Nation develop strategies and decision-making processes that benefit your community and result in favourable outcomes from EAs.

▶ BACKGROUND

This toolkit was developed by the First Nations Environmental Assessment Technical Working Group (FNEATWG), an informal organization of EA practitioners in BC. FNEATWG participants include representatives from several BC First Nations and provincial and federal government agencies. FNEATWG is focused on increasing the effectiveness of First Nation's practice and participation in provincial and federal EA processes.

One of FNEATWG's goals is to create products and tools that will assist all parties in the following EA related areas:

- consultation and accommodation
- capacity requirements and capacity development
- traditional knowledge and community based approaches to EA
- cumulative impact assessment
- socio-economic benefits
- development agreements/impacts and benefits agreements

The First Nations Environmental Assessment Toolkit is intended to be a useful tool to address these complex and inter-related issues.

▶ SCOPE OF THE TOOLKIT

The information in the toolkit is presented by topic and is also illustrated through case studies and experiences of First Nations in various types of EA processes in BC and other regions of Canada.

This toolkit describes the basics of environmental assessment and specific aspects of the regulatory process for:

- BC provincial environmental assessments under the British Columbia *Environmental Assessment Act (BCEAA)*

- federal environmental assessments under the *Canadian Environmental Assessment Act (CEAA)*
- joint review processes that occur when an environmental assessment is required by more than one regulatory authority

It describes opportunities for First Nation participation in these regulatory processes and potential strategies for ensuring that your issues are addressed and your community's perspective is considered. It also provides guidance to First Nations for interacting effectively with project proponents and regulatory agencies during and after EAs for proposed projects. Some of the areas covered include consultation and accommodation, funding for participation, using and protecting traditional knowledge in an EA, negotiating agreements with proponents and government agencies and approaches to reviewing EA reports.

This toolkit is not meant to be in-depth training on EA practices but instead to provide relevant information on which to base strategies and to form your own questions about a proposed development. The intent of this toolkit is to help you to build capacity and confidence in your participation, to know where to go to find additional information and to identify situations where legal or technical assistance would be beneficial.

PERSPECTIVE

The toolkit is neutral on the issue of proposed projects. The intent of the toolkit is to provide information that will assist First Nations in understanding EA processes and in asking questions that can help them to assess the acceptability of a project from their First Nation's perspective. Asking relevant questions will help to ensure that First Nations are better informed for making decisions relative to proposed developments.

This document is written primarily from a First Nation perspective. However, it also provides information on the perspectives of other participants in the EA process including project proponents, government regulators and decision-makers.



Transmission line site tour – Nature's Trust lands on the Nanaimo River Estuary.
Photo courtesy Kathleen Johnnie, FNEATWG Co-chair.

THEME

The underlying theme of this toolkit is full engagement in any EA process relevant to your community. Through effective participation, your First Nation can influence the EA process and outcome. By understanding the EA process, legislation, participating actively and having effective strategies, you are more likely to accurately represent your First Nation's interests.

HOW TO USE THE TOOLKIT

QUICK TIP

Consider making additional copies of this toolkit so that each toolkit user can personalize their copy.

STRUCTURE OF THE TOOLKIT

The toolkit is available in hardcopy and on CD. It consists of 14 sections:

- Section 1 – Introduction to the Toolkit
- Section 2 – Environmental Assessment Basics
- Section 3 – Environmental Assessment from a First Nation Perspective
- Section 4 – Consultation and Accommodation
- Section 5 – British Columbia’s Environmental Assessment Process
- Section 6 – Canada’s Environmental Assessment Process
- Section 7 – Joint Review Processes
- Section 8 – Applying *CEAA* on Reserves
- Section 9 – Traditional Knowledge and Environmental Assessment
- Section 10 – Reviewing Environmental Assessment Reports
- Section 11 – Follow-up Programs
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- Section 13 – Detailed Case Study – Voisey’s Bay Nickel Mine
- Section 14 – Detailed Case Study – Tulsequah Chief Project
- Glossary, References and Index

Each section covers a main topic and is generally written so that an individual section is informative without having to be familiar with the entire toolkit. However, EA processes are complex and many topics are inter-related. Within each section references are provided to different sections of the toolkit where you can find related or complementary information.

TABLE OF CONTENTS

The main table of contents at the beginning of this document is your guide to various topics covered in the toolkit. Use this to find the topic you want quickly. Each section in the toolkit also has its own table of contents.

If you are using a CD or online version of this toolkit, click on page or section references to link directly to related topics. If you are using the hard copy version, check the table of contents within each section to find the correct page number.

INDEX

Another way to find information is to use the index at the back of the toolkit. The index lists the section and page numbers for key topics discussed in the toolkit.

GLOSSARY

The glossary at the back of the toolkit contains definitions for the various terms used in the toolkit.

ABBREVIATIONS

There are many abbreviations and acronyms used in the toolkit – for example, environmental assessment is often abbreviated to EA. Abbreviations are provided in brackets the first time they are used in each section. There is also a complete abbreviation list in the glossary.

SIDEBAR BOXES

The toolkit uses sidebar boxes to highlight certain points and provide related information. Sidebar boxes include quick tips, key definitions (these are also included in the glossary) and shaded boxes with more detailed information on specific topics.

ADDITIONAL INFORMATION

Sources for additional information on the key topics presented are listed in a text box at the end of each section. The additional information lists include useful documents and links to websites. The references section at the back of the toolkit provides additional information including documents and links to relevant court cases and websites.

CHECKLISTS

Checklists are presented at the end of some sections. Blank checklist forms can be photocopied and used as guidelines when you are participating in specific aspects of an EA.

CASE STUDIES

Case studies are included to illustrate the concepts being discussed. They give examples of First Nation's experiences in various aspects of the EA process. Short case studies appear in full-page shaded boxes in the main sections of the toolkit.

There are also two detailed case studies that illustrate the experiences of participating Aboriginal groups and lessons that can be learned from their experiences:

- Detailed Case Study – Voisey's Bay Nickel Mine (Section 13) describes a harmonized Innu-Inuit-federal-provincial review of a proposed project.
- Detailed Case Study – Tulsequah Chief Project (Section 14) describes the experience of a First Nation in a joint federal-provincial review of a proposed mine re-opening.

NOTES

Throughout the toolkit there is space to take notes – in some of the margins and at the end of sections. You are encouraged to personalize your toolkit by adding your own notes, highlighting sections that are important to you and adding other reference materials to your binder.

QUICK TIP

This toolkit is a resource for you. Consider adding your own notes, highlighting sections and adding other reference materials to your binder. Also consider using flags to mark sections that will be accessed repeatedly.

▶ TOPICS OF INTEREST TO TOOLKIT USERS

The primary users of this toolkit are expected to be First Nations EA practitioners who need to assess, or to participate in the assessment of, a proposed project on or adjacent to their lands. This could include staff who are representing a First Nation in EA processes, community leadership and community members.



Orca breaching. Photo courtesy Tourism Victoria.

This toolkit may also be useful to provincial and federal regulatory agency personnel, project proponents and consultants. It can provide some useful information to proponents and consultants as they work to engage First Nations in an EA process.

This toolkit focuses on EA practice in the province of British Columbia. However, many parts of the toolkit have been shown to be useful to indigenous organizations and communities in other jurisdictions in Canada and around the world.

The following lists of topics are starting points for different groups of users (if you are using the CD version, click on underlined words to connect directly to the section).

MAIN TOPICS

If you have a broad topic in mind, check the following sections:

- What are environmental assessments and how are they done? (Section 2)
- First Nation approaches to EA and project decision-making (Section 3)
- legal issues like consultation and accommodation (Section 4)
- BC EA process (Section 5)
- federal EA process (Section 6)
- joint review processes (Section 7)
- conducting EA on reserves (Section 8)
- use of traditional knowledge in EA (Section 9)
- suggestions for reviewing EA reports (Section 10)
- follow-up programs (Section 11)
- development agreements or impacts and benefits agreements (Section 12)
- Voisey's Bay Mine Case Study (Section 13)
- Tulsequah Chief Project Case Study (Section 14)

FIRST NATION LEADERSHIP

The following key sections of the toolkit may prove to be beneficial starting points for First Nation's leadership:

- The common law duty of the Crown to consult with First Nations (Section 4)
- EA strategies (Section 3, page 11)
- Engaging the proponent (Section 3, page 13)
- Funding opportunities (Section 3, page 8)
- Assessing capacity (Section 3, page 6)
- Negotiating development agreements (Section 12)
- Case studies (Sections 13 and 14)

FEDERAL AND PROVINCIAL REGULATORY AGENCY PERSONNEL

The following sections of the toolkit may prove helpful for regulatory agency personnel:

- understanding what First Nations need to achieve in an EA (Section 3, Section 12)
- understanding the need for First Nations to negotiate their role in an EA (Section 5, page 14 and Section 7, page 9)
- understanding the capacity needs of First Nations to participate in an EA (Section 3, page 6)
- using traditional knowledge in an EA process (Section 9)
- understanding funding needs for a participating First Nation (Section 3, page 8)

PROPONENTS AND CONSULTANTS

The following sections of the toolkit may prove helpful for proponents and consultants:

- understanding what First Nations need to achieve in an EA (Section 3 and Section 12)
- understanding a First Nation's need to have certainty about the environmental acceptability of a project before supporting it (Section 3, page 11)
- understanding a First Nation's objectives for benefiting from a project (Section 3, page 11 and Section 12)
- the need for participating First Nations to have expert technical assistance (Section 3, page 17)
- understanding the experience of First Nations in participating in EAs (Section 13 and 14)
- using traditional knowledge in an EA process (Section 9)
- the meaning of consultation in the common law (Section 4)
- First Nation consultation requirements in *BCEAA* (Section 5, page 10)
- First Nation considerations in the context of *CEAA* (Section 4, page 27)

FEEDBACK

FWEATWG welcomes your comments and suggestions about the toolkit. Our contact information is on page 9.

▶ THE FUTURE

Environmental assessment is here to stay. It has developed quickly in Canada and will continue to change and evolve. A number of trends and initiatives are emerging that are beyond the scope of this toolkit, but are likely to become more significant in the future. Some of these issues are:

QUICK TIP

All URLs (website addresses) in this edition of the toolkit have been updated and verified prior to printing.

However, some may fail to connect for various reasons and many will inevitably be changed over time. When this happens, try copying and pasting the entire address into the address line on your browser or “Google” the exact title of the document you are trying to access.

STRATEGIC ENVIRONMENTAL ASSESSMENT

Strategic environmental assessment refers to considering the environmental impact of policies, plans and programs before they are implemented as public policy. The intent is to conduct the business of government in ways that minimize environmental impact. The process is recognized in Section 49 of the BC *Environmental Assessment Act* and further information is available from the Canadian Environmental Assessment Agency at http://www.ceaa.gc.ca/016/index_e.htm.

SOCIAL IMPACT ASSESSMENT

Social impact assessment (SIA) refers to analyzing, monitoring and managing the social consequences of development. SIA is often carried out as part of, or in addition to, environmental impact assessment, but the relationship is not yet well developed in North America. A discussion paper from the International Association for Impact Assessment (IAIA) is available at http://www.iaia.org/Members/Publications/Guidelines_Principles/SP2.pdf.

RAPID ENVIRONMENTAL ASSESSMENT IN DISASTERS

Rapid environmental impact assessment processes are being developed by international aid agencies in an attempt to quickly assess and minimize the impact of response efforts to large scale environmental emergencies. A project report entitled *Rapid Environmental Impact Assessment: A Framework for Best Practice in Emergency Response* is available at <http://www.abuhrc.org/rp/publications/Pages/wpdsm.aspx> (look for Working Paper 3 on this web page).

BEST PRACTICES

The BC New Relationship Trust has commissioned a report on “Best Practices for First Nation Involvement in Environmental Assessment Reviews of Development Projects in British Columbia”. The report presents detailed recommendations and perceptions about aboriginal involvement in EA as well as information on legal developments and other issues. When published it will be available at <http://newrelationshiptrust.ca>

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to other aboriginal governing institutions or groups. We simply recommend that “First Nation” be read in the context of the topic being considered, and that you make further inquiries if necessary.

ABORIGINAL AND TREATY RIGHTS

While recognizing that the terms “Aboriginal rights” and “Treaty rights” are arguably not mutually exclusive we also recognize that they do represent very different interests. We therefore normally refer to both throughout this toolkit. In the same way, we also recognize that “Aboriginal title” is actually an “Aboriginal right” which makes the term “Aboriginal rights and title” redundant. However we normally use the full term to acknowledge that Aboriginal title may be subject to different considerations than other Aboriginal rights. Thus the terms “Aboriginal rights and title or treaty rights” and “Aboriginal rights and title and treaty rights” appear in context throughout the toolkit.

It is also important to remember that environmental assessment is intended to assess impacts on interests that may include, but are not restricted to, rights and title. A precise definition of rights and titles is therefore not always necessary.

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NOTES ON TERMINOLOGY

FIRST NATION

Throughout this Toolkit, we use the term “First Nation” while fully recognizing that it often has no precise meaning and is in fact, becoming less precise over time. In practice, a First Nation will usually be a Band or group of Bands under the *Indian Act*, but in some circumstances the term could refer



BC ocean and mountain view. Photo courtesy of Tourism Victoria.

