

“Capacity Building for First Nations in British Columbia, Canada”

A discussion of:

- The BC-based, First Nations Environmental Assessment Technical Working group and
 - First Nations Environmental Assessment Tool Kit

Presented by:

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The FNEATWG is a group of EA practitioners that are committed to enhancing First Nations participation and representation with Environmental Assessments that are conducted within BC. . The group is comprised of EA practitioners from First Nations, BC and Canada who have experience in Environmental Assessments within BC. The group is unique in BC and has certainly proven that good things can come from cooperation among FN, BC and Canada.

To meet the overall capacity-building goal the FNEATWG has 5 main objectives that are laid out in the Terms of Reference. These are:

The FNEATWG:

1. Advises First Nations, First Nations organizations, the EAO and government agencies on issues relating to environmental assessment, including First Nations, provincial and federal EA processes;
2. Develops and recommends on initiatives and strategies to assist First Nations, the EAO and government agencies in facilitating and supporting effective First Nations environmental assessment practices;
3. Provides a forum for First Nations, First Nations organizations, the EAO, government agencies and industry for the purpose of information sharing, improving communications and commenting on EA-related initiatives of mutual interest;
4. Facilitates sharing of information and networking on environmental assessment practices and policies between First Nations governments, First Nations organizations and government agencies;
5. Supports the development of Environmental Assessment professional and technical capacity within First Nations governments and organizations;

The TOR also contains rules for participation and lays out the requirements for decision-making.

The main project and focus for the FNEATWG this past couple years has been to design and develop a Tool Kit of resources to assist First Nations to participate effectively in Environmental Assessments conducted within their territories that are in British Columbia.

For those of you that are unaware, most of the lands in BC are the subject of unresolved land claims and the courts in BC and Canada, through several court cases, have affirmed the concept of aboriginal rights and title in relation to those lands. In addition, the courts have set clear requirements for “crown” to consult substantively with First Nations whose Aboriginal or treaty rights may be affected by their issuance of permits or authorizations. This has placed obligations on government and proponents and has led to a clear legal requirement for the Federal and Provincial Crown and has

provided First Nations with another opportunity to get involved with land and resource management within their territory.

To assist First Nations as they work toward the goal of protecting their interests the FNEATWG has developed the First Nations EA Tool Kit. The tool kit is contained in a 1-½ inch binder and includes 13 sections. Each section focuses on “effective FN representation” within legislated environmental assessments conducted within BC.

Tool Kit Highlights:

Sections 2, 3, 4, and 5 are focused on actual EA process steps. Section 2 – EA basics provides a road map for “typical” steps in EA’s conducted within BC and each section provides specific guidance to FN regarding the potential mechanisms available to them within each step of the process. Specific sections BCEAA and CEAA provide guidance regarding activities a FN may undertake to ensure effective identification, articulation/documentation and representation of their interests within EA s conducted in BC.

Tool Kit Overview:

Section 1 – Introduction

- Acknowledgment and Table of Contents.
- **Important to note that this work builds on the work of many aboriginal leaders, organizations and numerous others who have worked to have aboriginal rights and title recognized in BC. Court cases, direct action initiatives, technical studies, etc.**

Section 2 – Environmental Assessment (EA) Basics

- Description of benefits and limitations of EA
- Overview of EA and description of basic components

Section 3 – Environmental Assessment from a First Nation Perspective

- Information about potential strategies for effective participation
- Describes Canada’s Common Law regarding consultation with FN with Aboriginal or treaty rights.
- Discussion of First Nation developing their own:
 - FN Consultation Policy
 - FN EA process/guidelines/policies
- Potential funding sources

Section 4 – BC’s Environmental Assessment Process

- EA Process prescribed by BCEAA
 - When is a review required and stages of the BCEAA process
- Description of FN Consultation requirements and strategies for effective participation
- Strategies for protecting FN interests
- Discussion of post-certificate activities

Section 5 – Canada's Environmental Assessment Process

- CEAA most likely triggered for “on-reserve” projects
- CEAA triggers – if Canada has a role in a project either as funder, proponent, administrator or regulator.
- Overview of CEAA process and
- Opportunities and requirements for consultation

Section 6 – Joint Review Processes

- Discussion of BC Canada Harmonized review and
- FN and BC or Canada joint or cooperative reviews

Section 7 – Traditional Knowledge and Environmental Assessment

- Describes a process for gathering traditional knowledge (TUS)
- Identifies potential funding sources
- Discusses reasons and options for FN to include TK in EA's within their territories

Section 8 – Reviewing an Environmental Assessment Report

- Suggests steps and strategies for FN when reviewing an EA report
- Important to review report to ensure FN interests and concerns are addressed in project review recommendations and in any subsequent decision or authorization

Section 9 – Follow-up Programs

- Discussion of the “follow up” concept and how it relates to overall Environmental Management,
- Discussion of the relationship between f/u and monitoring and compliance,
- Description of different types of f/u programs,
- Opportunities for FN participation and
- Description of what to look for when reviewing an EA f/u program

Section 10 – Development Agreements

- Development agreements can be an effective tool for managing a FN/proponent relationship for projects in their territory.
- Discussion of benefits and limitations of the agreements
- Steps to consider when negotiating and agreement and
- Provides some examples of other development agreements.

Section 11 – Detailed Case Study – Voisey's Bay Nickel Mine

- History and overview of harmonized FN, Federal and provincial EA process
 - Project description,
 - Innu and Inuit land and historical use
 - Different phases of review including Panel activities, Innu and Inuit activities and a discussion of the panel recommendations.

Section 12 – Detailed Case Study – Tulsequah Chief Project

- History and overview of a not so harmonized EA process (includes the Taku River Tlingit First Nation and BC and Canada)
- Overview and outcomes of 2 reviews and decision related to TCP
- Overview of 3 court cases
- Current project status

Section 13 – Glossary and other references

- Index, photo credits, information sources.

Tool Kit development approach and short-term work plan:

This tool kit has been developed by the FNEATWG. It has been developed through a cooperative writing effort among FNEATWG members with assistance from independent consultants.. Most important, it has been written so that it focuses on the “First Nation” perspective of EA participation. It is important to note that although government funding and input were important in the success of this project. It is not another government -(only) generated approach to assist FN in dealing with another government process. It has been created to assist First Nations, by individuals who have experience representing First Nation interests within EA processes and by many who have dealt with First Nation in treaty negotiations or government-to-government consultations. All involved that the tool kit was needed and would prove useful and beneficial for First Nations, regulatory bodies and proponents alike – but was created to fill a need identified by First Nation representatives of the FNEATWG.

In March 2004 the FNEATWG launched a pilot project for the tool kit. It included 2 workshops open to all FN in BC (we could only accommodate 50). We had 23 participants in the Vancouver session and 27 in PG. The workshops demonstrated that Tool Kit will be a useful tool for First Nations and provided an opportunity to get their input and comment on the Tool Kit before it went to final production and distribution. So far the feed-back has been very positive and improvements are currently being made to the tool kit based on the pilot-launch phase for completing the tool kit. During IAIA 2004 the First Nations EA Tool Kit is at the printer and will be distributed to all First Nations who have land interests in BC in June 2004.

FNEATWG should have a website and web based version of the tool kit by the fall of 2004.

To get more information about the FNEATWG or to get a copy of the Tool Kit please contact Susan M. Carlick at 250 651 2188 – scarlick@trtfn.com or Bill Green at 250 417 3474.