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SENT VIA EMAIL

Terrence Hubbard
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Impact Assessment Agency of Canada
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Dear Terry,

Given the enactment of new environmental assessment legislation by our government in 2019, I'm writing to describe how projects under the *Canadian Environmental Assessment Act (2012)* (CEAA 2012) that are substituted to the B.C. *Environmental Assessment Act (2002)* (2002 Act) will continue to meet federal requirements should the projects transition to the current B.C. *Environmental Assessment Act (2018 Act)*.

Background

The 2018 Act came into force on December 16, 2019. The legislation contains transition provisions, which allowed for proponents of proposed projects with a Section 11 Order under the 2002 Act (defines the project's scope, procedures, and methods) to specify whether they wished to continue their EA under the 2002 Act or transition the EA to the 2018 Act. The transition provision also states that if an EA that continues under the 2002 Act is not completed within three years after the date of the section coming into force (December 16, 2022), the EA must be completed under the 2018 Act.

The EAO understands that while the *Canadian Impact Assessment Act* came into force in 2019, its transition provisions allow proposed projects under CEAA 2012 to continue as if CEAA 2012 had not been repealed.

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Project Status for Substituted EAs under CEAA 2012

There are seven EAs that are substituted to the BC EA process under CEAA 2012. Proponents of six proposed projects provided notice to the Environmental Assessment Office (EAO) that they wished to continue the EA for their proposed project under the 2002 Act. Two of these proposed projects have completed their EAs and have now been referred for the Ministers' decision. The remaining EAs will not be completed by December 16, 2022 and will be required to complete under the 2018 Act. For one of these proposed projects, the EAO is actively planning the transition, while the other four projects remain inactive.

The table below provides further information on the current status of each project.

Project	Status
1. Sukunka Coal Mine	The EAO has completed its EA of the application for an environmental assessment certificate for the proposed Project. The EA has now been referred to provincial decision-makers and provided to the Impact Assessment Agency of Canada (the Agency) to inform the federal decision.
2. Tilbury Marine Jetty	The EAO has completed its EA of the application for an environmental assessment certificate for the proposed Project. The EA has now been referred to provincial decision-makers and provided to the Agency to inform the federal decision.
3. Delta Grinding Facility	Active EA, but will not transition in advance of December 16, 2022. EA will be completed under the 2018 Act.
4. Arctos Anthracite	Inactive EA, will not transition in advance of December 16, 2022. EA must be completed under 2018 Act.
5. Aley Mine	Inactive EA, will not transition in advance of December 16, 2022. EA must be completed under 2018 Act.
6. Ruddock Creek Mine	Inactive EA, will not transition in advance of December 16, 2022. EA must be completed under 2018 Act.
7. Carbon Creek Coal Mine	Inactive EA. Proponent did not provide notice to continue under 2002 Act. EA must be completed under 2018 Act.

Application of CEAA 2012 to Substituted Projects

When an EA transitions from the 2002 Act to the 2018 Act, any orders issued under the 2002 Act that set out the scope, procedures and methods for the EA carry forward. All of the proposed project EAs listed above have these orders, which include language for fulfilling substitution and CEAA 2012 requirements. Unless an item is rescinded or varied via a transition order under the 2018 Act to accommodate the EA under the 2018 Act, the item carries forward. Thus, the requirements of CEAA 2012, including those factors in subsection 19(1) and 34(1), will continue to be applied to the EA. The EAO does not intend to rescind or vary

any requirements related to CEAA 2012 as part of a transition order, but the EAO will contact the Agency should that situation arise.

For further information, Table 1 describes how the requirements of subsection 19(1) of CEAA 2012 will be addressed by substituted EAs that transition from the 2002 Act to the 2018 Act. The table also describes how the EAO intends to address the subsection 34(1) conditions that were considered by the former federal Ministers of Environment and Climate Change before approving the substitution requests.

If you have any questions, please contact me at Elenore.Arend@gov.bc.ca or at 778 974-3009.

Sincerely,

<Original signed by>

Elenore Arend
Chief Executive Assessment Officer and Associate Deputy Minister

Attachment: Table 1

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Table 1: How CEAA 2012 Requirements will be Addressed by the BC 2018 EA Act

CEAA 2012	BC 2018 EA Act	EAO Policy
<p>19(1)(a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;</p>	<p>Section 25¹ Required Assessment Matters</p> <p>(2) The following matters must be considered in every assessment:</p> <p>(a) positive and negative direct and indirect effects of the reviewable project, including environmental, economic, social, cultural and health effects and adverse cumulative effects;</p> <p>(c) risks of malfunctions or accidents;</p>	<p>n/a</p>
<p>19(1)(b) the significance of the effects referred to in paragraph (a);</p>	<p>n/a</p>	<p>The EAO Assessment Report will describe 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.</p> <p>The proponent is not required to evaluate or make significance determinations on potential project effects.</p>
<p>19(1)(c) comments from the public — or, with respect to a designated project that requires that a certificate be issued in accordance with an order made under section 54 of the National Energy Board Act, any interested party — that are received in accordance with this Act;</p>	<p>Section 2 Environmental Assessment Office</p> <p>(1) The Environmental Assessment Office is continued as an office of the government.</p> <p>(2) The purposes of the office are</p> <p>(b)(i)(B) facilitating meaningful public participation throughout assessments,</p> <p>Section 23 Public engagement</p>	

¹ Section 25 matters apply to all EAs that transition to the 2018 Act, no matter what step in the process they transition to.

	<p>23(1) The chief executive assessment officer may conduct public comment periods in addition to those referred to in sections 13 (4), 19 (5), 27 (2) (a) and 28 (2) (b) and carry out other public engagement activities in relation to a project.</p> <p>Section 27 Application for environmental assessment certificate</p> <p>(2) Within 180 days of receiving an application under subsection (1), the chief executive assessment officer must</p> <p>(a) publish an application received under subsection (1) for 30 days and invite comment from the public on the application,</p> <p>Section 28 Effects Assessment</p> <p>(2) On completion of the assessment, the chief executive assessment officer or assessment body, as applicable, must do all of the following:</p> <p>(b) publish the documents referred to in paragraph (a) for at least 30 days and invite comment from the public on those documents;</p> <p>(c) consider the public comments received and prepare final versions of the documents referred to in paragraph (a), adjusting those documents as the chief executive assessment officer or assessment body, as applicable, considers appropriate.</p> <p>Section 29 Decision on application for environmental assessment certificate</p> <p>(4) Subject to subsection (5), on receipt of a referral under subsection (1), the ministers</p> <p>(b) may consider any other matters that they consider relevant to the public interest in making their decision on the application</p>	
<p>19(1)(d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the designated project;</p>	<p>Section 29 Decision on application for environmental assessment certificate</p>	<p>We ask the proponent for this information in the application.</p>

	<p>(4) Subject to subsection (5), on receipt of a referral under subsection (1), the ministers</p> <p>(c) must, within 30 days of receiving the referral,</p> <p>(i) issue an environmental assessment certificate to the proponent and attach any conditions to the certificate that the ministers consider necessary, including, without limitation, conditions respecting payments to be made for initiatives to mitigate effects of the project, or</p> <p>(ii) refuse to issue the certificate to the proponent.</p>	<p>See the EAO's Application Information Requirements Guidelines.</p>
<p>19(1)(e) the requirements of the follow-up program in respect of the designated project;</p>	<p>Section 29 Decision on application for environmental assessment certificate</p> <p>(4) Subject to subsection (5), on receipt of a referral under subsection (1), the ministers</p> <p>(c) must, within 30 days of receiving the referral,</p> <p>(i) issue an environmental assessment certificate to the proponent and attach any conditions to the certificate that the ministers consider necessary, including, without limitation, conditions respecting payments to be made for initiatives to mitigate effects of the project, or</p> <p>(ii) refuse to issue the certificate to the proponent.</p>	<p>Environmental Assessment Certificate Policy</p>
<p>19(1)(f) the purpose of the designated project;</p>	<p>n/a</p>	<p>Purpose/objective of the project included in the proponent's project description and application. Included in policy for 2002 and 2018 Act.</p>
<p>19(1)(g) alternative means of carrying out the designated project that are technically and economically feasible and the environmental effects of any such alternative means;</p>	<p>Section 25 Required Assessment Matters</p> <p>(2) The following matters must be considered in every assessment:</p>	<p>n/a</p>

	(i) alternative means of carrying out the project that are technically and economically feasible, including through the use of the best available technologies, and the potential effects, risks and uncertainties of those alternatives;	
19(1)(h) any change to the designated project that may be caused by the environment;	<p>Section 25 Required Assessment Matters</p> <p>(2) The following matters must be considered in every assessment:</p> <p>(j) potential changes to the reviewable project that may be caused by the environment;</p>	n/a
19(1)(i) the results of any relevant study conducted by a committee established under section 73 or 74 ; and		
19(1)(j) any other matter relevant to the environmental assessment that the responsible authority, or — if the environmental assessment is referred to a review panel — the Minister, requires to be taken into account.	<p>Section 25 Required Assessment Matters</p> <p>(2) The following matters must be considered in every assessment:</p> <p>(k) other prescribed matters.</p>	Items may be included in an order or application information requirements.
34 (1) The Minister may only approve a substitution if he or she is satisfied that	See below	n/a
34 (1)(a) the process to be substituted will include a consideration of the factors set out in subsection 19(1);	The 19(1) factors are included in the Section 11 order for a project. The Section 11 order continues to be in place after an EA transitions to the 2018 Act. However, items in the order can be rescinded or varied in the proposed project's transition order.	n/a
34(1)(b) the public will be given an opportunity to participate in the assessment;	<p>Public participation depends on where in the process the EA transitions to. The transition order may rescind or vary items in the Section 11 order.</p> <p>If, for example Delta Grinding transitions to Application Development there would be a PCP on the Application and then the draft Assessment Report, EAC and conditions. See Section 23 of the 2018 Act.</p>	

	<p>Section 22 also applies where a Community Advisory Committee must be considered.</p>	
<p>34(1)(c) the public will have access to records in relation to the assessment to enable their meaningful participation;</p>	<p>Section 40 Project information centre</p> <p>40 (1) For the purpose of facilitating public access to information, data and records relating to assessments conducted under this Act, the project information centre is continued and must be administered and maintained by the chief executive assessment officer.</p> <p>(2) The chief executive assessment officer may determine</p> <p>(a) which information, data and records or classes of information, data and records relating to any matter under this Act are to be available to the public through the project information centre,</p> <p>(b) in which form or format the records or classes of records are to be available, and</p> <p>(c) the time during which the records are to be available.</p>	<p>The EAO's Posting Policy</p> <p>The EAO's EPIC Posting Guide</p>
<p>34(1)(d) at the end of the assessment, a report will be submitted to the responsible authority;</p>	<p>Section 28 Effects assessment</p> <p>28(1) Without limiting sections 19 or 24, on accepting a revised application for review under section 27, the chief executive assessment officer or assessment body, as applicable, must</p> <p>(2) On completion of the assessment, the chief executive assessment officer or assessment body, as applicable, must do all of the following:</p> <p>(a) prepare the following:</p> <p>(i) a draft assessment report;</p>	

	<p>Section 29 Decision on application for environmental assessment certificate</p> <p>29 (1) Subject to subsection (2), on completion of the requirements set out in section 28 (2) (c), the chief executive assessment officer or assessment body, as applicable, must refer the proponent's revised application for an environmental assessment certificate to the ministers for a decision under subsection (4) of this section.</p> <p>(2) A referral under subsection (1) must be made no later than 150 days from acceptance of a proponent's revised application and be accompanied by all of the following:</p> <p>(a) the final versions of the documents referred to in section 28 (2) (c);</p>	
<p>34(1)(e) the report will be made available to the public; and</p>	<p>Section 28 Effects assessment</p> <p>(2) On completion of the assessment, the chief executive assessment officer or assessment body, as applicable, must do all of the following:</p> <p>(a) prepare the following:</p> <ul style="list-style-type: none"> (i) a draft assessment report; (ii) a draft environmental assessment certificate, with certificate conditions and project description; <p>(b) publish the documents referred to in paragraph (a) for at least 30 days and invite comment from the public on those documents;</p>	
<p>34(1)(f) any other conditions that the Minister establishes are or will be met.</p>	<p>n/a</p>	<p>Any conditions included in an order under the 2002 Act carry forward when the EA transitions to the 2018 Act unless varied or rescinded.</p>