

**MEANINGFUL INVOLVEMENT OF ABORIGINAL  
PEOPLES IN ENVIRONMENTAL ASSESSMENT**

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**FINAL REPORT**



Submitted By:



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*CIER, the Centre for Indigenous Environmental Resources, is a national First Nation-directed environmental non-profit organization. We offer research, advice, and education and training to Indigenous communities, governments and private companies through our four program areas: Taking Action on Climate Change, Building Sustainable Communities, Protecting Lands and Waters, and Conserving Biodiversity.*

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## **Abstract**

This research explores, through a literature review and case study analyses, the experience of three First Nations in the federal environmental assessment (EA) process to assess if their experience could be characterized as a meaningful level of involvement. Two of the three First Nation community research participants indicated that the federal EA process did not meet their needs or expectations for an inclusive process that respects their unique place within the political, legal, cultural, economic, social, and environmental fabric of Canada.

The authors conclude that in order to achieve meaningful involvement in EA, special emphasis should be placed on understanding the contextual issues faced by Aboriginal peoples, such as lack of involvement in regional planning and decision making, and treaty and Aboriginal rights issues. Furthermore, much greater emphasis must be placed on involving Aboriginal peoples well before the EA begins and after it is completed.

CIER presents a framework for improving Aboriginal involvement in EA based upon the principles of capacity development, broad participation, effective communication, openness and transparency, Aboriginal values, Indigenous knowledge, community sustainability, and shared decision making. Each of the principles of the framework is illustrated by guidelines that make practical implementation suggestions to those involved in EA.



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The opinions expressed in this document do not necessarily reflect the opinions or perspectives of the Canadian EA Agency.

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## Executive Summary

This research explores the experience of three First Nations in the federal environmental assessment (EA) process in order to determine whether their experience could be characterized as a meaningful level of involvement. To understand the successes and difficulties of meaningful involvement of Aboriginal peoples in EA, the authors conducted a literature survey and case-study reviews of three EAs under the *Canadian EA Act* (the Act). The EAs pertained to the Namgis First Nation and the Orca sand and gravel project, the Tahltan and the NovaGold Galore Creek gold mining project, and the Union of New Brunswick Indians and the Emera natural gas pipeline project.

The research participants from two of the three First Nation communities told the interviewers that the federal EA process did not meet their needs or expectations for an inclusive process that respected their unique place in the political, legal, cultural, economic, social, and environmental fabric of Canada. The major barriers to meaningful involvement cited by the research participants were the failure of the process to include First Nations values and concerns, lack of capacity (including lack of training and information), lack of financial support for participation, the overwhelming demands placed by several concurrent EAs on existing resources, timeframes that are too restrictive for First Nations to be able respond or take part in the process, the need for outstanding land claims and issues related to Aboriginal rights in their territory to be resolved before developments are approved, the need for land use planning to guide development within the territory, and lack of EA procedural fairness.

The authors conclude that in order to achieve meaningful involvement by First Nations in EA, special emphasis should be placed on understanding the contextual problems faced by Aboriginal peoples, such as lack of involvement in regional planning and decision making, and treaty and Aboriginal-rights issues. Furthermore, much greater emphasis must be placed on involving Aboriginal people well before the EA begins and after it is completed.

This research presents a framework for improving Aboriginal involvement in EA; it is based upon the principles of capacity development, broad participation, effective communication, openness and transparency, Aboriginal values, Indigenous knowledge, community sustainability, and shared decision-making. The framework contains principles towards ensuring there is sufficient capacity in the community to engage effectively with all the demands of the EA process. Any broad-area planning (such as an economically driven policy decisions to promote forestry, mining, or hydro production in a region), project-related planning, and environmental-assessment activities must coincide with training and information for the Aboriginal communities that may be affected by these wide-reaching decisions. Thus, when projects are proposed and assessments are undertaken, the First Nations that may be affected can be in a reasonable position to take part adequately in the assessment and judge the suitability of the project.

The principles of broad participation, effective communication, and openness and transparency form the basis for a democratic process that facilitates community involvement. Ensuring the meaningful involvement of First Nation communities in EA requires a democratic process that respects and incorporates Aboriginal values.

Furthermore, the Act allows for different points of view and different forms of knowledge. Regarding Aboriginal peoples, this requires an understanding of both Indigenous knowledge and First Nations' customary approaches to participation and decision making, which are usually unique to each specific community and culture. Aboriginal peoples have significant contributions to make to EA because of their unique cultural perspective and long-term occupancy of the area under consideration for development. It is therefore necessary to design the process in a manner that ensures that Aboriginal peoples are engaged in ways that allow their knowledge to influence the outcome. The framework incorporates Aboriginal values, Indigenous knowledge, and community sustainability in order to bring the unique cultural perspective of First Nations into the assessment process.

Participants saw their involvement in all relevant decision making as fundamental to securing their meaningful involvement in EA. They saw this as the primary means of



ensuring that their values and perspectives have weight and are recognized in the choice of development options being considered. The scope of decision making begins early: for example, meaningful involvement is only possible if strategic EAs, land use planning or governmental policy decisions are also conducted with the full participation of Aboriginal peoples. The process requires that Aboriginal peoples be able make informed decisions that carry substantial weight. The final principle of the framework gives decision-making power to Aboriginal communities before, during, and after the EA.

Each principle is accompanied by guidelines that offer practical advice to environmental-assessment practitioners and government agencies on meaningful involvement of First Nations in EA. The guidelines can serve as a starting point from which First Nations themselves can define how they want to be engaged in EAs conducted within their territories.

Some examples are the following: In the pre-planning stage, First Nations values, vision for the future, and laws must be explicitly recognized and factored into regional planning processes and subsequent EAs. In the analysis stage, the cumulative effects of projects must be assessed at the landscape scale and examined from a holistic perspective that includes effects on human systems (social, cultural, and health). And, in the follow-up stage, First Nations direct involvement in the monitoring process must be made possible through access to education and training.

So far as practicable, the framework embraces both Indigenous and western participatory approaches.

This research project did not include the testing of the proposed framework. The authors urge others, in particular Aboriginal peoples, governments, and practitioners, to examine, consider, test, evaluate, modify, refine, and expand the framework.

## 1 Introduction

*For many years, Innu leaders have stated that in order to re-gain control over their lives they must be able to address and solve their own problems, and in order to do so they must have control over the processes that govern and shape their lives.... In order for CEAA to work for the Innu, and for many Canadians, there needs to be greater emphasis on public participation at all stages of the process. The process must be strengthened through provisions that allow Aboriginal communities to speak from where they are, and about what they know.... We need to make space in the process for different points of view and different systems of knowledge, and we need to ensure that the process works for affected communities. After all, they are the ones who will live with the impacts. (Head et al. 2000)*

On May 9, 1977, Mr. Justice Thomas Berger released a 240-page report in which he asserted that the involvement of First Nations was crucial in decisions about projects that may affect First Nations lands and rights, and in particular, that the land claims of the Aboriginal peoples of the Mackenzie Valley should be settled before there is any development of the area. Berger's report for the Mackenzie Valley Pipeline Inquiry (Canada 1977) described many ways of including Aboriginal peoples meaningfully in discussions about how a proposed project would affect those peoples and the environment (Puxley 2002). However, it has been difficult to meet that standard of involvement, particularly given certain limitations inherent in the *Canadian EA Act* (hereafter, "the Act")<sup>1</sup>. It has been over 30 years since the Berger Report (Canada 1977), and Aboriginal peoples still assert that a federal environmental assessment (EA) process that includes and

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<sup>1</sup> Recent decisions by the highest courts in Canada addressing various barriers to the meaningful involvement of Aboriginal peoples in EA are the following: *The Dene Tha' v. Minister of Environment et al.*, *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*. [Full references appear in the Reference list].

respects their unique place within the political, social, economic, cultural, legal, and environmental fabric of Canada remains elusive.<sup>2</sup>

We have tried to understand better the opportunities for improving the involvement of Aboriginal peoples<sup>3</sup> in EA and to set out a framework outlining those opportunities.

We considered it essential to rely solely on Aboriginal peoples' perspectives in conducting our research. The research plan mandated the direct and primary involvement of Aboriginal people and their sources of information. We chose two sources of Aboriginal viewpoints: Aboriginal authors of EA literature, and selected Aboriginal participants in three past EAs.

Unfortunately, however, the scarcity of academic literature by Aboriginal people about their involvement in EA created difficulties. Ultimately, the review was extended to include other academic and non-academic sources of information that we judged to be directly relevant to the experiences of Aboriginal peoples in EA.

We conducted personal interviews with 17 Aboriginal people in order to learn about their experiences of taking part in three EAs under the Act. The framework proposed in this report reflects an expansive view of the scope and extent of activities that should be considered to be within the purview of EA; it does so in order to represent accurately the points of view of the research participants. For example, although this report is not a legal analysis, to the extent practicable, we point out the links between EA and other, Crown obligations to Aboriginal peoples, such as those related to Aboriginal and treaty rights.

This report presents the findings of our literature research and three case studies that express Aboriginal opinions about their involvement in EA. Those studies deal with the Namgis First Nation and the Orca sand and gravel project, the Tahltan and the NovaGold Galore Creek mining project, and the Union of New Brunswick Indians and Mawiw Council and the Emera natural gas pipeline project. From these sources, we posit a

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<sup>2</sup> See for example, Assembly of First Nations (2000).

<sup>3</sup> See footnote 8 for an explanation of the terms "Aboriginal" and "First Nations" as used in this report. The terms are not interchangeable.

framework based on a number of principles with explanatory guidelines. As far as possible, the framework embraces both Indigenous and western participatory processes.

This research project did not include a testing of the proposed framework. We urge others, in particular Aboriginal peoples, governments, and practitioners, to review, consider, test, evaluate, modify, refine, and expand the framework.

### **1.1 Research Objectives**

The project had the following research objectives:

1. To understand the successes and difficulties of meaningful involvement in EA through interviews with key informants about three EAs under the Act involving Aboriginal people;
2. To identify barriers and constraints to engaging Aboriginal people in a meaningful and efficient way in EA processes;
3. To identify the main approaches to and methods for engaging Aboriginal peoples in a meaningful and efficient way in EA processes; and,
4. To develop a framework for meaningful involvement of Aboriginal peoples in EA processes.

## **2 Background**

Some information about involving Aboriginal peoples and their knowledge within EAs conducted under the Act does exist<sup>4</sup>; however, it is limited, and there has been no publicly accessible indication by Aboriginal peoples as to how useful or accurate it is.

Furthermore, there are indications that the federal EA process has not met the needs or expectations of Aboriginal peoples for an inclusive process that respects their unique place within the legal and political fabric of Canada (Arquette et al. 2002; Lawe et al. 2005).

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<sup>4</sup>See, for example, Canadian Environmental Assessment Agency (2004).

There are many obstacles to the meaningful involvement of Aboriginal people in EA; those range from the lack of capacity at the community level to take a large part in all aspects of the process (MacCallum et al. 2005) to the limitations of the Act itself.

Many of the elements and definitions contained in the Act are based upon unexpressed values that may be at odds with Aboriginal values. For example, the federal government describes EA under the Act as a process “to eliminate or reduce a project’s potential impact on the environment before a project begins.” (CEAA 2007). The Act itself (in section 4) lists a number of purposes for EAs, including the following:

- To avoid significant adverse environmental effects regarding proposed projects;
- To incorporate environmental factors into federal decision-making;
- To promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to EA; and,
- To promote sustainable development.

However, the use of a “significance” benchmark ( Winds and Voices Environmental Services 2000), the exclusivity of federal decision making regarding projects that may raise Aboriginal concerns, the narrow scope of potential relationship building imposed by the limitations of “communication and cooperation,” and the lack of a practical definition of “sustainable development” are all evidence of definitions that may not be shared by Aboriginal communities.

A further indication that Indigenous peoples are not fully involved is the fact that Indigenous knowledge regarding all potential impacts is not included in EAs. The Act does not require the assessment of the direct social, cultural, or economic impacts of a project but only those that are a consequence of a change in the biophysical environment. However, these direct impacts may be at the heart of Aboriginal concerns about proposed projects, and Indigenous knowledge may be available, not only to help identify possible environmental impacts, but also to assess the nature, scope, and acceptability of direct

impacts on Indigenous culture and society. The lack of opportunity to voice these concerns through the EA process results in the exclusion of Aboriginal peoples (Interviewee #1 2006) and is a fundamental flaw in many EAs.

However, involving Aboriginal peoples meaningfully in EA is a combined responsibility of government and Aboriginal peoples, and is largely dependant on the will to do so (Puxley 2002). In this regard, First Nations are expressing their needs clearly. Recently, the Woodland Cree First Nation, in response to Shell Canada's Carmon Creek Oil Sands project, called on the governments of Alberta and Canada to "prevent the Peace River area from becoming another Fort McMurray." The Woodland Cree specifically requested:

- a regional planning process to look at the cumulative effects of oil sands and other resource developments on the Woodland Crees' treaty rights, their members, the environment, and human health; and an examination of mitigation measures to prevent a repetition of the situation in Fort McMurray;
- local and regional health-effects studies to collect baseline information on the health of the Woodland Cree, area residents, and wildlife (especially those species used for food);
- a comprehensive and inclusive study of the effects of present and proposed oil and gas and other developments on wildlife populations used for food;
- an investigation by professional health experts to ascertain the extent and causes of pervasive health problems, especially respiratory illnesses, among members of the Woodland Cree First Nation;
- studies by water-resource experts on damage done by oil sands and other developments to bodies of water, especially Cardotte Lake, in the Woodland Crees' traditional territory;
- comprehensive, meaningful, and direct consultation by Alberta and Canada with the Woodland Cree First Nation; and,

- a joint Canada-Alberta EA review panel for Shell's Carmon Creek Application.

Our research tried to develop a principle-based method of involving Aboriginal peoples in EA on the basis of their expressions of what would constitute a meaningful process. The concerns of the Woodland Cree First Nation, as just one example, reflect many of the issues raised in this report, and their recommendations are in keeping with those which we present. Through this approach, set out in a framework for involvement, different values and the world views they are based on can be described and discussed, and their implications for an EA can be understood better by the participants and decision-makers. The result should be better decisions.

### **3 Relevance of Aboriginal Participation to EA and CEEA Priority Area**

*Conventional arguments for sustainability gains hold that significant decision-making processes including EAs should integrate short- and long-term perspectives, human and biophysical considerations, and local as well as broader knowledge. These levels of integration should occur within a framework of social equity, cultural integrity, and empowered political participation. (Hunsberger et al. 2003)*

All the participants in EAs - governments, proponents, members of the public, and Aboriginal peoples - need to understand better how to involve Aboriginal peoples meaningfully in EAs. Aboriginal peoples have significant contributions to make to EA because of their unique cultural perspective and long-term occupancy of the area under consideration.<sup>5</sup> However, to enable their perspectives and knowledge to be brought to bear during the assessment, it is necessary to design a process which ensures that Aboriginal peoples can truly influence the outcome and which is not a superficial attempt at inclusion (Interviewee #1 2006).

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<sup>5</sup> That this is so is recognized in the Act, which encourages responsible authorities to incorporate traditional knowledge into EAs, and requires EAs to consider the potential impacts of the project or activity on the traditional use by Aboriginal peoples of lands and resources (s. 2).

This research specifically addresses the CEA Agency's need for research into the meaningful involvement of Aboriginal people in EA. It is relevant to the Agency's primary priority area of "meaningful involvement" because it discusses how to engage Aboriginal peoples better in all stages of EA. The collaborative approach to EA needs to be understood better so that proponents, the public, and Aboriginal peoples can take part successfully, efficiently, and in a timely manner. This approach can improve the EA process as well as the outcome.

Finally, this research helps to clarify the relationship between EA and Crown consultation processes. The government (as the Crown) has a legal responsibility to ensure that Crown consultation has taken place as one way of demonstrating that it has minimized or avoided the infringement on Aboriginal rights when Crown decisions are being made.<sup>6</sup> Recent decisions by the Supreme Court of Canada<sup>7</sup> have noted that appropriate consultation can be required at the strategic level of decision-making. Often the duty to consult has not been carried out by the Crown at that time or even later in the decision making process (i.e., at the project-assessment or approval stages). Furthermore, courts have held that consultations during EAs may, in certain circumstances, fulfill the Crown's consultation requirements. Thus, in order for the Canadian government to discharge its dual responsibilities under section 35 of the Constitution (regarding treaty and Aboriginal rights) and the Act and to build successful relationships between the Crown and Aboriginal peoples, it is essential that all those involved in EAs under the Act understand how to involve Aboriginal peoples meaningfully. This report will help practitioners by analyzing the characteristics of successful and unsuccessful ways of engaging Aboriginal people in various stages of EAs. It will help to improve the practice of EA by presenting a

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<sup>6</sup> See *Tsilhilqot'in Nation v. British Columbia*, *Musqueam Indian Band v. BC (Min. Sust. Res. Mgmt.)*, *Halfway River First Nation v. BC*, *R. v. Delgamuukw*, *R. v. Van Der Peet*, and *R. v. Sparrow*.

<sup>7</sup> *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, *Dene Tha' v. Minister of Environment et al.*, *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, *Haida Nation v. BC (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*.



framework, based upon the experiences of First Nations<sup>8</sup> that have been involved in EAs, for engaging Aboriginal peoples in the various stages of the EA process. Knowing how best to do that can make the process more efficient, reduce project costs and delays, and improve the quality and credibility of EA.

#### **4 Research Methods**

The research design for the project involved:

1. a literature survey; and,
2. a case-study review of three EAs that involved First Nation communities.

##### **4.1 Literature Survey**

The literature survey focused on the following:

1. determining Aboriginal involvement in EA in Canada, in particular, the successful and problematic elements, techniques, and issues surrounding their involvement. The purpose of this element of the review was to understand more fully Aboriginal views of their involvement in EA;

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<sup>8</sup> The research intended to examine the meaningful involvement of Aboriginal peoples in EA in Canada; however, all the case studies involved First Nations only. Therefore, the results and the subsequent framework are intended for involving a First Nation audience. The reader is urged to be cautious when deciding the extent to which this research can be applied to First Nations that were not the subject of the research or to Aboriginal peoples in general. (The latter are defined in section 35 of the Canadian Constitution as including not only First Nations, but also the Inuit and Métis.). The findings of the research are meant as a guide only. Practitioners and others using this research should always take great care to work directly with Aboriginal communities to determine their specific needs and the extent to which this framework may be useful. Further research and testing may show that our findings and conclusions may be applicable to Métis and Inuit groups as well.

2. analyzing selected EAs that involved Aboriginal people to ascertain whether they contained evidence (such as statements or indications) of principles that can lead to meaningful Aboriginal involvement in EA; and,
3. reviewing previous CIER primary research on relevant issues - such as the scope of the Crown's duty to consult and Aboriginal views about determinations of "significant environmental effect" - in order to understand better the principles and values that are most important to Aboriginal peoples.

The literature survey found little relevant literature by Aboriginal authors about meaningful involvement of Aboriginal peoples in EAs. Other literature, from both national and international sources, provided references to the theory and practice of EA, which while not directly relevant, did suggest means of improving the process. This literature contributed substantially to the framework we propose.

#### 4.2 Selection of Case Studies

The CEAA provided a list of EAs that, in the opinion of its regional staff, demonstrated meaningful involvement of First Nations (see Table 1). One of the studies we used was chosen from that list.

Table 1: EAs Recommended by the CEAA

EA	CEAR Ref. No.	First Nation
<b>Eastmain 1A &amp; Rupert River Diversion (Que.)</b>	FEAI No. 35636	Grand Council of the Crees of James Bay & Northern Quebec
<b>Victor Diamond Project (Ont.)</b>	FEAI No. 40568	Attawapiskat First Nation
<b>Wuskwatim Hydroelectric Project (Man.)</b>	FEAI No. 31130	Nisichawayasihk Cree Nation

<b>Kitimat LNG Terminal (B.C.)</b>	05-03-10430	Haisla First Nation
<b>Deltaport Third Berth Expansion (B.C.)</b>	04-03-3734	Tsawassen First Nation
<b>Galore Creek Copper-Gold-Silver Mine (B.C.)</b>	05-03-8858	Iskut First Nation
<b>Chemainus Wells Project (B.C.)</b>	FEAI No. 41404	Halalt First Nation

In addition, we chose two other cases reviewed from the Canadian EA Registry (CEAR) and the EA literature. (See Table 2.)

**Table 2: EAs Added by CIER**

<b>EA</b>	<b>CEAR Ref. No.</b>	<b>First Nation</b>
<b>Orca Sand and Gravel</b>	04-03-5332	Namgis First Nation
<b>Emera Pipeline</b>	06-08-17667	Union of New Brunswick Indians

In our selection of the case-study projects, our goal was to choose projects where the First Nations themselves described their involvement in the EA as meaningful. In addition, preference was given to projects done within the past five years and, ideally, after the 2003 amendments to the Act. We also tried to choose projects that offered a variety of:

- geographical locations;
- sectors (e.g., mining, pipeline, quarrying and hydroelectric); and,
- classes of EA (i.e., screening, comprehensive study and panel review).

In addition, we tried to choose projects that demonstrated a variety of elements of First Nation involvement in the EA. For example, we specifically tried to include at least one project that:

- incorporated Indigenous knowledge or an Indigenous knowledge study in the assessment;
- involved First Nations in monitoring;
- placed an emphasis on public participation and/or consultation;
- included a social-impact assessment; and,
- involved the negotiation of an Impacts and Benefits Agreement.

From these criteria, a detailed decision-making matrix was developed to assist in organizing information from the project case studies (see Appendix A). A final and decisive factor in the choice of case studies was whether the communities in question were able to participate under the time constraints of the interview schedule. Table 3 summarizes the characteristics of the three EAs that the research team chose for the case-study analyses.

**Table 3: Characteristics of EAs Chosen for Case-Study Review**

<b>Project</b>	<b>Orca Sand and Gravel</b>	<b>Galore Creek Mine</b>	<b>Emera Pipeline</b>
<b>CEAR Reference No.</b>	04-03-5332	05-03-8858	06-08-17667
<b>Type of EA</b>	Comprehensive study	Comprehensive study	Panel review
<b>Nature of Development project</b>	Mineral extraction and	Open-pit copper-gold-silver mine	Liquefied natural gas pipeline

	marine terminal		
<b>Location</b>	Vancouver Island	NW of Terrace, B.C.	New Brunswick
<b>Proponent</b>	Polaris Minerals	Nova Gold	Emera Pipeline
<b>Responsible Authorities</b>	Transport Canada, Fisheries and Oceans Canada, Indian Affairs and Northern Development Canada	Transport Canada, Department of Fisheries and Oceans, Natural Resources Canada	National Energy Board, the Canadian Transportation Agency, Fisheries and Oceans Canada, Environment Canada, Transport Canada
<b>Federal Authority</b>	Transport Canada, Fisheries and Oceans Canada, Indian Affairs and Northern Development Canada	Environment Canada	National Energy Board, the Canadian Transportation Agency, Fisheries and Oceans Canada, Environment Canada, Transport Canada
<b>Other EA required</b>	British Columbia provincial EA	British Columbia provincial EA	New Brunswick provincial EA
<b>First Nation or First Nation organization involved and interviewed</b>	Namgis First Nation	Iskut First Nation, Tahltan Central Council	Union of New Brunswick Indians

### 4.3 Interview Process

As part of the case-study analysis, we interviewed representatives of two First Nation communities and one First Nation political territorial organization. All participants had direct experience with the subject EAs.

The research team drew up a list of questions (see Appendix B for an abbreviated list of interview questions) according to three broad themes:

1. Project history and project-specific details (questions dealt with the interviewee's previous experience with EA, the First Nation's previous experience with EA, First Nation's capacity at the time, chronology of events, scope of First Nation's relationship with Responsible Authorities involved).
2. Interviewee's detailed experiences in the pre-environmental-assessment stage (stage before the Act is triggered), the EA stage (the process prescribed by the Act), and the post-environmental-assessment stage (after the process under the Act is complete). This included questions about the interviewee's conceptions of the relevance and utility of the scope of those stages.
3. Overall assessment by interviewee of whether he or she considered his or her involvement in the EA to have been meaningful (questions focused upon specific successes and failures of the EA process, desired community-specific principles, and guidelines for future meaningful involvement).

The people interviewed were First Nations community members, band employees, employees of First Nations representative organizations, political leaders, representatives of traditional and hereditary governments, elders, technicians, and consultants. We interviewed a total of 17 people.

1. Five Namgis First Nation personnel were interviewed about the Orca Sand and Gravel project;
2. Two personnel from the Union of New Brunswick Indians were interviewed about the Emera Pipeline project;

3. Eight members of the Tahltan were interviewed about the Galore Creek Mine project. Two people with expert experience with the Galore Creek project were also interviewed.

The interviews each lasted about two hours, and one or two follow-up conversations were conducted by telephone. Each in-person interview was conducted by a lead interviewer, with an additional researcher present and responsible for taping and transcription. Follow-up interviews were conducted by the lead researcher only, who was also responsible for taking notes. All notes and in-person interview recordings were transcribed and were reviewed for accuracy by the research team.

The interviews were conducted in discussion-style format.<sup>9</sup> Discussions were generally comprehensive and not limited to the specific environmental-assessment projects that were the focus of our research. This allowed the researchers to gain a fuller understanding of the First Nation's involvement and perspectives given that each First Nation participant had numerous people who were involved in the assessment, each with some responsibility for an aspect of the co-ordination of a response or involvement with the EA. Often, they gave us information that demonstrated the link between their more comprehensive responsibilities and those directly related to the EA.

All research participants spoke of the project in question, their experience with EA generally, and broader but related issues—Aboriginal title, consultation policy and internal capacity, and so on—that had a direct effect upon their First Nation's experience with EA.

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<sup>9</sup> Interviews that are conducted as a series of questions asked by the researcher can be perceived as very disrespectful by the research participant and can make the researcher appear insensitive to the need to understand the context within which the EA occurred. It is our view that interview-based research is often more successful if it is conducted as a conversation. Thus, we engaged in a broad discussion with research participants, based upon open-ended questions posed by either the research team or the First Nation.

Interviewees requested various levels of anonymity. Results are therefore anonymous, aggregated, or reported as the response of a particular First Nation or organization rather than an individual.

#### **4.4 Assessment of “Meaningful Involvement”**

To assess whether involvement was meaningful, we used two criteria: first, whether the research participants themselves stated that in their view they were meaningfully involved, and second, whether we found positive evidence in the participants’ responses to questions based on the following themes, which correspond to the principles identified through the literature survey: Was capacity built during or in anticipation of the EA?

- Was effective communication used throughout the EA?
- Was broad participation a part of the EA process?
- Was the EA open and transparent throughout?
- Were Aboriginal values involved in the EA?
- Was community sustainability identified as a priority of the EA?
- Was Indigenous knowledge valued in the EA?
- Was the First Nation involved in the decisions throughout the EA?

### **5 Research Findings**

#### **5.1 Case-Study Findings**

Of the three case studies we analyzed, only Namgis First Nation participation in the Orca Sand and Gravel project EA met both tests of meaningful involvement. In the other two case studies, the First Nations at first said they had been meaningfully involved; however, as the interviews proceeded, they expressed considerable discontent with the process mandated by the Act. As a result, we concluded that the Galore Creek and Emera Pipeline EAs did not involve the research participants meaningfully.



## **5.1.1 ORCA Sand and Gravel Project on Namgis First Nation Territories**

*The Namgis want to tell their own story...power is held by who tells the story.*

Interviewee #2, Namgis First Nation

### **5.1.1.1 Project History and Details**

The Namgis First Nation is located on Cormorant Island off the north coast of Vancouver Island. The Namgis' traditional territory extends onto Vancouver Island and includes the mouth of the Nimpkish River. The Namgis have been successful in developing the social infrastructure of their community over the past 20 years. Currently, they are involved in a treaty negotiations process with British Columbia and are developing a bio-regional atlas and a land use plan for their territory.

Kwakiutl First Nation, located on Vancouver Island near Port Hardy, was also involved in discussions with the proponent, Polaris Minerals, and it applied for and received some participant funding from the CEAA to take part in the EA. The experiences of this First Nation were not, however, within the scope of our research. The Namgis First Nation did not apply for participant funding from the CEAA because of what it considered to be inadequacy of funding available (Interviewee #2 2006).

The ORCA sand and gravel project consists of a gravel mine, processing plant, and marine ship-loading terminal. The EA of the project began officially on August 10, 2004, and the comprehensive study was accepted on November 10, 2005. The federal and responsible authorities for the project were Transport Canada, Fisheries and Oceans Canada, and Indian and Northern Affairs Canada. The process was harmonized to include a federal and a British Columbia provincial EA.

### **5.1.1.2 First Nation Involvement in EA Pre-CEAA Stage**

**High-Level Strategic Planning:** The Namgis First Nation entered the B.C. treaty process in 1997 as part of the Winalagalis Treaty Group. It is negotiating independently and is in

Stage 4 of the six-stage process, that is, it is currently negotiating an agreement in principle (British Columbia 2007).

**Regional Planning:** Under the B.C. treaty process, Namgis First Nation established an 11-member natural-resource team, which also works on economic development and planning (Interviewee #2 2006). The Namgis has a land use plan and have done a significant amount of mapping showing important cultural areas and those deemed suitable for economic development. They worked with EcoTrust Canada, an environmental non-governmental organization focused upon building the conservation economy, to do some marine monitoring. The Namgis employ a full-time staff member to work through the records and maps of the area made by the anthropologist Franz Boaz. The Namgis told us they were ready from a capacity perspective to undertake an economic project of the scale of the Orca Sand and Gravel project. They indicated that that they had a high level of capacity to undertake environmental studies relating to the project at the time the project began.

**Project Preplanning:** The proponent, Polaris Minerals, asked for an agreement with the First Nation before exploring in its territory, the initial Exploration Agreement. The agreement development process involved co-operatively identifying values, such as traditional-use areas, with the result that those areas were protected. The Namgis First Nation also had veto power over the project up to the conceptual stage (that is, the pre-feasibility-study stage).

**Project Feasibility:** A strong commitment to relationship building was instrumental to the success of this stage (Interviewee #2 2006). Very early in the pre-planning stage of the project, Polaris Minerals approached the Namgis First Nation and acknowledged the Namgis as the original owners of the land. Over the course of about three years (and before the beginning the EA), Polaris and the Namgis were building a relationship of trust, which allowed for an open and respectful EA process.

#### ***5.1.1.2.1 CEEA Stage***

Community involvement was a major component of the EA; it was designed according to the Namgis First Nation's needs, which included a discussion of their vision of sustainability for the region. The members were able to express their concerns (for example, impacts of the proposed project on fish health, surface and groundwater quality, and so on), Polaris Minerals responded by presenting possible mitigation measures and study results at subsequent meetings. Communication was transparent and information was readily available. Plain-language presentations were given, and translations were made into the local language. All Polaris study findings were promptly reported to the Namgis at community meetings in the longhouse.

The Namgis First Nation was involved in drafting the terms of reference of the EA, hiring consultants to undertake the EA, and proposing mitigation measures to address project impacts.

The opportunity to build capacity was also a key factor in the success experienced by the Namgis First Nation because it enabled them to analyze and control the process rather than have it controlled by outside experts. The Namgis developed a project team with internal resource people, supplemented with specialists who provided critical expertise the Namgis did not possess. They also hired a consultant to oversee the EA process for them. This consultant oversaw the hiring of consultants and specialists for a peer review of the Polaris EA report.

Indigenous knowledge and Aboriginal values were incorporated into the project EA through Polaris working directly with Namgis First Nation members and the First Nation being given the resources by Polaris to conduct independent traditional-use studies.

Half the employees of the ORCA project are members of the First Nation. Polaris Minerals agreed to fund comprehensive training over three to five years, after which time the Namgis First Nation was required to find additional training funds. A joint personnel committee was established to oversee hiring.

#### ***5.1.1.2.2 Post-CEAA Stage***

**Assessment of Effects Prediction:** The Namgis First Nation is conducting a monitoring program to assess the effects of the operation on nearby abalone and salmon spawning habitat. The Namgis negotiated the option of slowing down or stopping production at critical ecosystem periods, such as during the salmon run, on the basis of their monitoring results. The ecosystem concerns are brought to the attention of the Orca Sand and Gravel Board, which includes Namgis First Nation member, Interviewee #3. The project also uses the Global Reporting Initiative<sup>10</sup> in order to ensure that transparent and comparable details about the economic, environmental, and social performance of the project are publicly available.

**Decommissioning and Long-Term Legacy:** The long-term future of the site was planned thoroughly. The First Nation ensured that the ORCA project would involve ongoing reclamation of the extraction-pit area. A Namgis hereditary chief sits as Chairman of the Board of the Orca Sand and Gravel project and has a direct responsibility for ensuring that the reclamation is completed.

### **5.1.1.3 Overall Assessment of Meaningful Involvement of First Nation**

The ORCA Sand and Gravel Project demonstrates that meaningful involvement of First Nations in EA is not only achievable but also desirable for all parties—the First Nation, the developer, and the regulatory authorities.

All research participants deemed their involvement in the project to be meaningful. The indicator questions in Section 4.4 were answered largely by direct involvement with the proponent, Polaris Minerals. Extensive abalone restoration and conservation of *t'lakstan* (a popular edible seaweed), harlequin ducks, and salmon were all undertaken by the Namgis First Nation with financial and personnel assistance from Polaris Minerals. The CEO of Polaris was personally involved in decisions affecting underwater restoration.

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<sup>10</sup> The Global Reporting Initiative, as provided on its website, is ‘the world’s most widely used sustainability reporting framework.... This framework sets out the principles and indicators that organizations can use to measure and report their economic, environmental, and social performance.’

The Namgis members we interviewed reported that the roles of the federal and provincial government agencies in the EA were minimal and not related to the success of Namgis involvement. They referred to limited funding from the CEAA in the past and poor communication with the responsible authorities. They did not request participant funding from the CEAA. As regards the protection of wildlife, the community developed its own standards, which went beyond those of the Department of Fisheries and Oceans (an responsible authority for the project). The Namgis considered the existing standards to be inadequate.

The ORCA project was the first partnership between the Namgis First Nation and a major developer. Ultimately, the Namgis negotiated a community-development fund (created by contributions from the developer and based upon a negotiated sum per tonne of gravel), which is managed by the Namgis First Nation. This fund enabled the community to pursue the economic diversification it needs.

The persons interviewed cited the following aspects of their involvement in the ORCA project EA as crucial to their overall success:

1. the First Nation's ability to work with consultants to develop the terms of reference of the EA and identify the community values, and to conduct its own traditional-use studies;
2. the defining by the Namgis First Nation of the scope and method of their participation; and,
3. the respect demonstrated by Polaris Minerals, through many actions, for the Namgis First Nation and their concerns.

Although beyond the scope of the EA one other reason that the project was ultimately acceptable to the Namgis First Nation was that Polaris empowered them economically by providing a 12% equity position in the project (Interviewee #4 2006). (See Appendix C for more information on this case study.)

## **5.1.2 Galore Creek Copper-Gold-Silver Mine Project on Tahltan Territory—Iskut First Nation**

*It's hard to participate in the process if you don't know what's going on.  
(Interviewee #5 2006)*

### **5.1.2.1 Project History and Details**

The Galore Creek project, as proposed by NovaGold Resources Inc., consists, among other things, of the construction and operation of a copper-gold-silver open-pit mine approximately 350 km northwest of Terrace. The proposed project also includes an access road, an ore-concentrate slurry pipeline, an electrical transmission line, a processing plant, an airstrip, waste-rock storage, and supporting infrastructure. The project was subject to a comprehensive study assessment under the Act and in accordance with the Canada–British Columbia Agreement for Environmental Assessment Cooperation. The federal authority for the project was Environment Canada. The Responsible Authorities were Natural Resources Canada, Transport Canada, and Fisheries and Oceans Canada. On July 17, 2007, the comprehensive study was accepted, the EA requirements having been met (with the exception of a follow-up program).

The Iskut First Nation is a member of the Tahltan Nation. The three main Tahltan communities are Dease Lake First Nation, Telegraph Creek First Nation, and Iskut First Nation. Both the Iskut Band Council and the Telegraph Creek Band Council (also known as the Tahltan Band Council) are members of the Tahltan Central Council (located in Dease Lake). The Tahltan Central Council Board comprises 13 people: three executives and 10 family representatives, one from each of the 10 Tahltan families. These families have traditional leaders, and these representatives are not elected but chosen by consensus by the individual families. Political relationships between the three communities vary, but at the time of the interviews they were strained as a result of disagreements about decisions made by the Tahltan Central Council regarding proposed mining in the Klappan region, the traditional hunting lands of the Iskut First Nation.

Tahltan Nation territories are located in northwestern British Columbia; they include the sacred headwaters of the Stikine, Skeena, and Nass rivers. This area is currently a hot spot for mining exploration and development, a number of mines being in operation and a further 10 proposed projects being in various stages of EAs. In British Columbia there are 140 registered mining exploration projects, of which 90 are taking place within the Tahltan territory (Interviewee #6 2006).

### **5.1.2.2 First Nation Involvement in EA Stages**

#### **5.1.2.2.1 Pre-CEAA Stage**

**High-Level Strategic Planning:** To revitalize the economy, the government of British Columbia and the mining industry planned to open a number of new mines before 2010 (Interviewee #7 2006). With over 90 of the 140 exploration projects in B.C occurring on Tahltan territory (Interviewee #8 2006), the Iskut First Nation expressed the opinion that they should have been involved in the high-level discussions affecting their land, their lives, and their rights. That the Iskut were never given that opportunity was viewed by their elders as a form of collusion between the government and the mining industry (Interviewee #1 2006).

**Regional Planning:** The community requested that a cumulative-impact assessment be conducted, citing transportation-related concerns. The road in and out of Iskut is Highway 37, a narrow, mostly paved stretch of winding road that curves along mountain valleys and at one point drops down a series of switchbacks to a crossing on the Stikine River. Community members report that there are often wild animals on the road, and that it can be quite difficult to avoid or pass them because of the soft shoulders and lack of guardrails. Consultants predicted that, when Galore Creek was in full operation, there could be 50 more trucks a day on Highway 37 (or a truck every 30 minutes). If the Red Chris, Nova Gold, and Kucho Creek projects were all in operation at the same time, there could be more than 400 trucks a day on the highway 37 (or a truck every four minutes assuming the mines operated 24 hours a day).

A cumulative impact assessment on the social and cultural status of the Tahltan was also requested by the Tahltan. The Tahltan community of Telegraph Creek has very low unemployment (only 4%) (Interviewee #9 2006) because many of its members already work for existing mines. Thus the benefit to the community in terms of employment would be low and almost non-existent as subsequent projects were developed. The community said it preferred mines to be developed sequentially to allow for continual profits from resource extraction and employment for many generations (Interviewee #10 2006). The Iskut have reported, however, that high-paying mining jobs have disadvantages for their community in that students graduating from high school choose those jobs instead of pursuing higher education or jobs in fishing, guiding, or eco-tourism. “The mine acts as a magnet, sucking the potential of the peoples from the community” (Interviewee #11 2006). In addition, without higher education, these employees rarely move beyond entry-level positions in the mining sector. Community members also said that the lack of professional Tahltans (such as doctors, nurses, and teachers) is a problem. The Chief and Council in Iskut also point out that the typical cycle of labour for the mines, that is, two weeks working and two weeks off, has a disruptive, negative effect on families and the community at large.

**Project Pre-planning:** As soon as NovaGold had bought the necessary land concessions, it began talks with the Tahltan Central Council. The research participants reported that the Tahltan found the company representatives to be personable people (Interviewee #5 2006), resulting in some involvement of the community from the outset.

However, the relationship was poorly defined in that it did not clarify the various roles of the communities (such as the Iskut First Nation), the broader political organizations (such as the Tahltan Central Council), or development-related entities (such as the Tahltan Development Corporation).

The Iskut Chief and Council also cited a problem that they referred to as “project-splitting.” An example they gave was related to the EA for a proposed coal-bed methane project in the Klappan, an area sacred to the Iskut Tahltan. This assessment looked only at the mine itself and never at the fact that project design included an on-site coal-fired



power plant capable of exporting unused electricity, which could facilitate the development of other mines (including the proposed Galore Creek project) (Interviewee #7 2007). Despite the possible connections, the EA process did not allow the First Nation to discuss these larger issues (Interviewee #1 2006).

**Project Feasibility:** The Tahltan were able to influence certain design aspects of the Galore Creek Project. For example, they were able to show that the proposed road corridor was too close to important rivers. The Tahltan then worked with the proponent to choose a lower-impact, more northerly route. In addition, on the basis of Tahltan advice, the final project design incorporated a pipeline to carry slurry in order to minimize truck traffic.

A certain percentage of the monitoring jobs were designated for Tahltan workers, but no training or capacity building to prepare them for such employment was negotiated.

#### ***5.1.2.2.2 CEAA Stage***

The EA for the Galore Creek project made strides in developing the internal capacity of the Tahltan. With funding from the B.C. government and NovaGold, the Tahltan communities developed the Tahltan Heritage and Resources Environmental Assessment Team (THREAT). THREAT has 23 members, 90% of whom are Tahltan, possessing a variety of environmental expertise. THREAT was created by the Tahltan Central Council as the mechanism to review and respond to the large number of EAs being conducted for proposed projects in Tahltan territory. THREAT's function is to help the First Nation leaders analyze the many elements of an EA in separate, manageable sections according to individual expertise. The Iskut First Nation was awarded \$30,000 by the CEA Agency to help with the costs of its involvement in the Galore Creek process; however, Iskut First Nation staff time was not funded.

NovaGold gave frequent presentations to the communities, thereby making the process more involving and meaningful, although the research participants reported that the presentations were often too technical for most community members.

#### ***5.1.2.2.3 Post-CEAA Stage***

**Assessment of Effects Prediction:** There was no involvement of Tahltan in the follow-up and monitoring of the proposed project.

**Decommissioning and Long-Term Legacy:** The participants told us that the legacy of the mines and the ability of the Tahltan to continue to use the land as well as maintain their culture were not studied sufficiently in the EA process.

### **5.1.2.3 Overall Assessment of Meaningful Involvement of First Nation**

Interviewee #10, suggested that in order for the EA process to be meaningful to her people, the individual communities, as well as the broader political representatives, must be approached and involved at the beginning of the pre-CEAA stage. Although there were early communications with the proponent, she felt that by the time that Iskut became involved in the process, the decision to go ahead with the Galore Creek project had already been made—mining in Tahltan territory had been deemed a priority by the B.C government. The Iskut eventually accepted the project as a means of obtaining financial aid that would help them participate in other EAs of current or planned projects in their traditional territory.

Interviewee #10 said that the impression that a First Nation's involvement is a token gesture is disempowering and leads to blockades and stand-offs. Companies in the region are not asking permission to explore. In fact, the first time anyone knew that work was to be undertaken in the Klappan region was when the equipment arrived to begin building an access road.

The Tahltan leadership therefore accepted the Galore Creek project as the “best of the worst” since it enabled the their Central Council to establish an EA team and get promises of resources that would allow them to conduct a land use study and baseline assessments. They believed that this would put them in a better position to respond effectively to the other 10 EAs that were taking place in their territory at the same time. The Tahltan Central Council has committed to doing land use studies only in the areas that mining companies identify as of interest for projects and when those companies promise to give the Tahltan the financial resources for the study. Thus the Tahltan people are concerned

that they are able to document only what will be lost as a result of project development. There is no money for a larger study that would provide a complete view of the region and upon which the Tahltan could base sound decisions pertaining to EAs.

Although the Galore Creek project was of some benefit to the Tahltan, the EA for this project fell short of involving First Nations meaningfully, according to the research criteria, in that:

- it only minimally incorporated Tahltan values and beliefs in the assessment;
- a lack of money and internal capacity prevented the Tahltan from being more fully engaged in the EA;
- the project failed to assess adequately the cumulative effects of 10 other mining developments taking place in Tahltan territory at the same time;
- the concerns raised by the elders of Iskut First Nation over what they believe might be significant damage to their culture and traditional ways resulting from this level of development were not addressed; and,
- there was a lack of involvement by the First Nation in decisions about the project or the assessment.

The Galore Creek project was ultimately cancelled owing to the high cost of development.

(See Appendix D for more information on this case study.).

### **5.1.3 Emera Pipeline Project, Union of New Brunswick Indians and Mawiw Council**

*If government can't do their fiduciary duty to protect our rights then we have to step forward.*

Interviewee #12, Union of New Brunswick Indians

### **5.1.3.1 Project History and Details**

The Emera Pipeline Project involves the construction and operation of a 30-inch-diameter pipeline that will extend for 145 km from a liquefied natural gas (LNG) terminal at Mispec Point, New Brunswick, to a point on the international border near St. Stephen, New Brunswick. On May 4, 2006, the CEAA announced a pilot project that would substitute the National Energy Board process for an EA by a CEAA review panel. On May 31, 2007, the NEB panel's findings were accepted by the federal government, thereby allowing the responsible authorities to take a course of action that would enable the project to be carried out. The National Energy Board, Canadian Transportation Agency, Department of Fisheries and Oceans, Environment Canada, and Transport Canada were the federal authorities. The responsible authorities were the National Energy Board, the Canadian Transportation Agency, the Department of Fisheries and Oceans, and Transport Canada. The project was also assessed by the government of New Brunswick.

### **5.1.3.2 First Nation Involvement in EA Stages**

#### ***5.1.3.2.1 Pre-CEAA Stage***

**High-Level Strategic Planning:** Together the Union of New Brunswick Indians (UNBI) and Mawiw Council represent all 15 New Brunswick First Nations, which include both Micmac and Maliseet communities. These First Nations have a long history of developments occurring within their traditional territories, and they have not been involved in any strategic planning, assessment, or decision-making about these developments. It is important to note that, the historic “peace and friendship treaties” signed in this region between First Nations and colonial governments before Confederation did not involve a transfer of land title from the Micmac and Maliseet (Isaac 2001). As a result, in the opinion of the UNBI, it is extremely likely that proposed projects could impinge upon the protected uses and Aboriginal rights of the First Nations.

UNBI reported that in general in New Brunswick, government representatives tend to characterize First Nations and their representatives as stakeholders, or public-interest

groups. This lack of recognition of the authority of First Nations governments and their representative bodies was troubling to UNBI.

**Regional Planning:** The EA did not identify community sustainability as a priority. UNBI felt that there should be discussions about economic development for the region and that the rights of the First Nations should be considered before development proceeds.

**Project Pre-planning:** The proponent funded a Traditional Ecological Knowledge Study. However, its scope was limited to the region directly around the proposed project and did not involve all First Nations that might be affected (despite the possibility that rights were held by all 15 First Nations in the area).

The proponent negotiated and signed Impacts and Benefits Agreements with First Nations within the immediate territory only.

Other than this, UNBI was not made aware of, nor was it involved in, other project pre-planning discussions.

**Project Feasibility:** UNBI was not made aware of, nor was it involved in, project feasibility discussions.

#### ***5.1.3.2.2 CEAA Stage***

Access to information was a critical issue in this EA. UNBI is of the view that communication was not effective and that the process intensified a pre-existing power imbalance between the First Nations, on the one hand and, on the other, the proponent and the federal government, since the government agencies controlled the distribution of information. For example, UNBI charged that the way in which notice documents were distributed had the effect of excluding numerous First Nations. It thought the process was not transparent enough and the participation not broad enough. Only the First Nations closest to the proposed project received notification documents, whereas UNBI is of the view that all 15 New Brunswick First Nations have land title rights and therefore all should have received of all relevant information.

Aboriginal values were included in the EA process only insofar as both Mawiw Council and UNBI were given opportunities to discuss cultural and heritage issues when the route of the pipeline was being chosen.

UNBI was highly critical of the timing of assessment processes, UNBI and its member communities often being brought in at a late stage. The proper timing of the initial engagement of the First Nations and their representative organizations was of great importance for UNBI, which would have preferred enough time to build the capacity to respond to development activities. Although UNBI received \$44,000 from the participant's funding program for the project, it says it suffered from an ongoing lack of scientific, legal, and other technical support. Project-specific participant funding, which it received, is welcome and helpful, but is too little to meet the participation needs of the 15 First Nations that might be affected by the project. Thus, lack of financial resources prevented UNBI from being in a position to respond effectively or to hire consultants to conduct professional reviews of development activities on behalf of 15 First Nations, not all of which had the same interests nor the capacity to engage and respond. UNBI said that without long-term, consistent financial support, it cannot obtain the expertise needed to evaluate the many projects taking place in the province that may affect its member communities.

#### ***5.1.3.2.3 Post-CEAA Stage***

**Assessment of Effects Prediction:** UNBI was not included in the monitoring and follow-up of the project. It has expressed the desire for its own environmental monitoring process.

**Decommissioning and Long-Term Legacy:** UNBI was not included in any decommissioning and long-term legacy discussions about the project (if there were any).

#### **5.1.3.3 Overall Assessment of Meaningful Involvement of First Nation**

Despite the inclusion of a Traditional Ecological Knowledge Study, some consultation with First Nations, and signed Impacts and Benefits Agreements, the process fell short of UNBI's expectations for meaningful involvement. UNBI pointed to lack of funding,

capacity, transparency, and real decision-making power as decisive shortcomings. From UNBI's perspective, the two biggest issues that needed to be addressed were capacity building within UNBI and its member First Nations and the recognition of First Nation rights as the basis for First Nation involvement in EAs. The capacity issues that remained outstanding were:

- Access to scientific and other technical advice and support to aid in developing community understanding of the EA process generally, and in particular the processes under the Act, which the First Nations found difficult to navigate since the process varies with the type of assessment and specific project;
- funding for developing the capacity to conduct an independent review of technical reports; and,
- development of plain-language documents.

(See Appendix E for more information on this case study.)

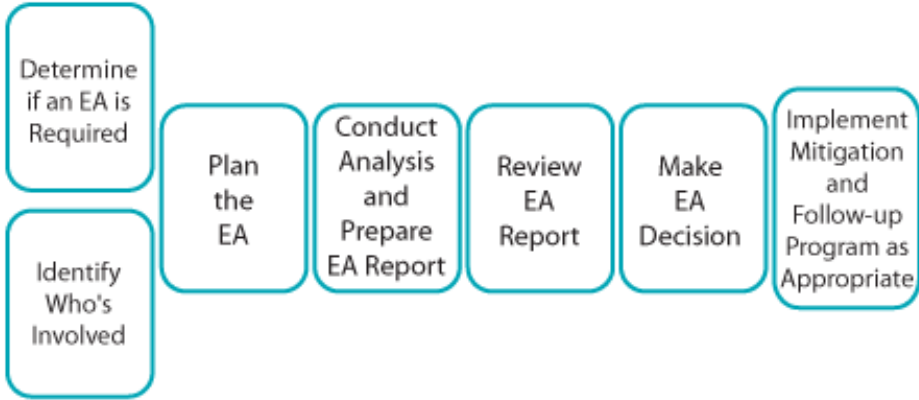
## **5.2 Findings of Literature Review**

### **5.2.1 The Wider Context of EA under the Act**

Although First Nations and those with the responsibility to conduct an EA may be able to reach general agreement on the purposes of EA, such as those provided for in the Act, all the research participants commented that the scope of the EA in which they had participated was too narrow. Even though the representatives of all three case-study communities confirmed that they knew that EAs under the Act are project- and activity-specific, they also expressed the desire for an expanded process that, in one way or another, took into account the broader community issues that might be affected by the proposed project.

The EA process prescribed by the Act is represented by the CEA Agency (2007) in the following diagram (see Figure 1).

Figure 1: CEAA Six-Step EA Process

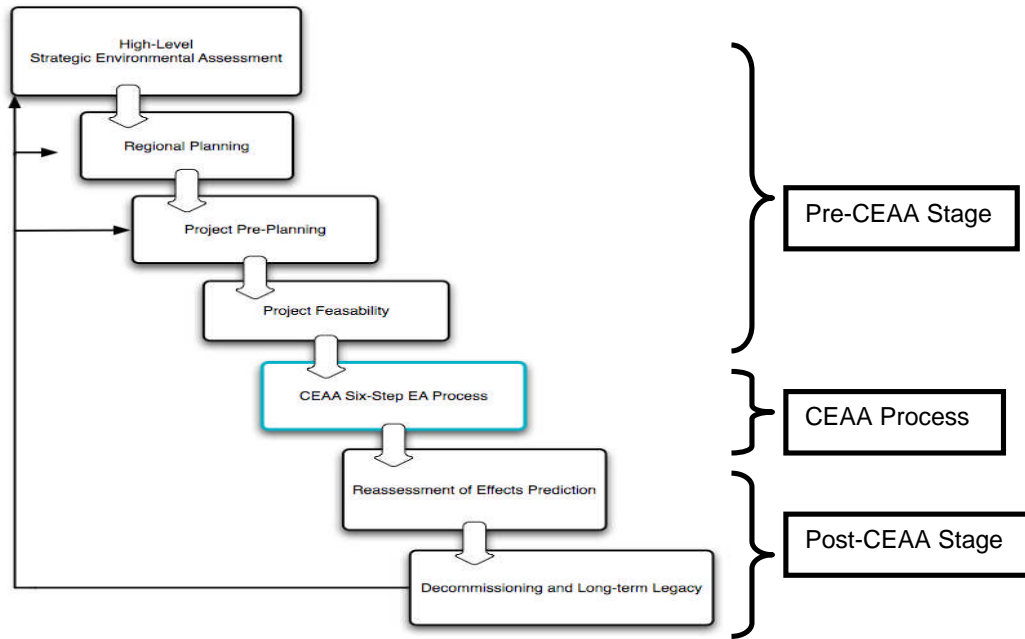


Source: Canadian EA Agency (2007).

However, the objections made by the research participants pertained to actions taken and decisions made before and outside (which we will call “the pre-CEAA stage”) the CEAA six-step process (the “CEAA process”) and those made after and outside the CEAA process (the “post-CEAA stage”). These stages are illustrated in Figure 2.

Figure 2: Expanded EA Process Suggested by Research Participants





The research participants reported that they had been excluded from many actions and decisions by various actors or decision makers at each of the above stages of the EA.

They objected particularly to actions and decisions taken, such as the following, during the pre-CEAA and post-CEAA stages:

- political directions regarding social, environmental, economic goals (Interviewee #6 2006);
- general governmental policy directions (Interviewee #13 2006);
- identification of regional planning goals and needs, and the best mechanisms for meeting those needs (Interviewee #10 2006; Interviewee #2 2006);
- proponent market analysis, financial feasibility decisions, assessment of regulatory climate and requirements, determination of environmental limitations; assessment of Aboriginal rights issues, limitations, or requirements; determination of possible project alternatives (Interviewee #7 2007; Interviewee #11 2006);

- proponent’s statements about the scope of project (Interviewee #7 2007); and,
- a variety of decisions that may be made within the assessment of impacts on Aboriginal and treaty rights and how these decisions are related to the EA decisions; assessment of whether there is justification for any impacts on Aboriginal or treaty rights; decisions about accommodation measures proposed; and the provision for funding to First Nations to assess potential impacts on their protected uses (Interviewee #9 2006).

The research participants believed that the pre-CEAA and post-CEAA stages were integral elements of the EA process, even though the Act does not include them in the process (Interviewee #10 2006; Interviewee #2 2006; Interviewee #12 2006). Thus, meaningful involvement of the research participants in EA would require their full involvement in all stages. In particular, UNBI representatives believed that it would be very important, given the diverse scope and nature of their concerns and the potential for many First Nations’ rights to be impinged upon, that they and all their member communities have the opportunity to take part in all stages and elements of the process (including some in which the general public may not be able to take part) (Interviewee #12 2006).

### **5.2.2 Relationship between Public Participation under the Act and Consultation Requirements of the Crown**

First Nations have unique Aboriginal (or “inherent”) treaty and land title rights, which are recognized and affirmed in the Constitution of Canada (in section 35(1)). Thus, they are not general public stakeholders whose involvement and issues related to the protection of Aboriginal or treaty rights can be addressed through standard public-participation methods. The Namgis First Nation representatives were strongly of the view that these processes are inadequate since they generally do not give any meaningful decision-making or negotiating power to the public participants (Interviewee #2 2006). The legal direction developed over time through the courts about the protection of Aboriginal and treaty rights demands that First Nations be considered as equitable partners within a process that recognizes that they have real and tangible rights which require

accommodation by the Crown (*Tsilhilqot'in Nation v. British Columbia* 2007). Projects cannot be approved without the equitable participation of First Nation peoples in decisions, and the accommodation of their rights (*Haida Nation v. BC* 2004). In cases where such rights may be harmed by a development, First Nations can expect to be consulted according to the Supreme Court of Canada's standards for consultation (which are one of the key aspects of the accommodation process).

Furthermore, section 2 of the Act demands that potential impacts on the current use of lands and resources for traditional purposes by Aboriginal peoples must also be considered as a special category of impacts within the EA process. This creates another layer of responsibility to ensure that Aboriginal peoples have meaningful opportunities to describe their uses of lands and resources (some of which may also be protected Aboriginal rights) and to participate in the development of measures to minimize environmental harm to these uses.

However, this research shows that two related processes overlap:

- situations where the federal government, as a responsible authority and/or federal authority, may need to interact with the First Nation through the conduct of an EA; and,
- situations where the government, as Crown, may need to engage in a process of negotiation and accommodation with the First Nation because there may be impacts on First Nation rights as result of a proposed government decision.

The same decision that prompts the need for one process may also prompt the need for the other. For example, many EAs (from screenings through to panel reviews) may involve a project that has the potential to cause environmental harm to “the use of lands and resources by Aboriginal peoples.” This use may also be a protected Aboriginal or treaty right under section 35(1) of the Constitution (Arquette et al. 2000). We suggest that this duality could create difficulties and uncertainty:

- The link between the need to identify potential impacts on “the use of lands and resources by Aboriginal peoples” and the implications for the findings and

decisions of the EA when an impacted use is a protected Aboriginal or treaty right is not clear to responsible authorities, federal authorities, proponents, or EA practitioners.

- The implications of this link for all stages of the EA and related issues, such as levels and purpose of funding, schedule and timing, notice requirements, and most important, the focus of the participation or involvement opportunity (such as the necessary level of involvement in decision making) are undefined.
- The relationship between the scope and criteria of a final project decision under an EA and those of decisions that are required through an Aboriginal rights-related justification and accommodation process<sup>11</sup> is unclear.
- The requirements for First Nation involvement when there may be an impact on a protected use but the EA does not require public involvement. For example, the vast majority of EAs (that is, screenings) do not mandate any form of public participation, and therefore, First Nations do not have to be informed of, or involved in, a screening-level assessment.<sup>12</sup> *There is no mandatory involvement of*

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<sup>11</sup> This is the process, as set out in *R. v. Sparrow* and expanded upon and clarified through many subsequent cases, that must be followed by the Crown (both federal and provincial) before it makes any decision that affects the treaty or Aboriginal rights of First Nations, Inuit, or Métis peoples in Canada. This process is founded upon the fiduciary obligations of the Crown to Aboriginal peoples, and it creates the requirement for the Crown to accommodate and address concerns and interests regarding the effects of its decision on Aboriginal and treaty rights.

<sup>12</sup> When one is considering the experience of First Nations with federal EAs under the Act, it is important to recall the very limited opportunity First Nations have to become engaged in EAs and to present issues of concern to their community members (the most significant and troubling of which tend to be related to potential impacts on Aboriginal and treaty rights). Under the Act, public participation is mandatory only for comprehensive studies and panel reviews (for example, see s. 21 of the Act). On the basis of information obtainable through the CEA Registry, from October 2003 to July 26, 2007, there were 14 panel reviews and 33 comprehensive studies, including “current/ongoing,” “completed,” and “cancelled” EAs. In comparison, there were 21,080 screenings, and of those, only 74 involved formal public participation (the

*First Nations in screenings under the Act, even if First Nation rights may be affected.*<sup>13</sup>

Recent Supreme Court of Canada's decisions regarding Aboriginal rights have been made in the context of EA.<sup>14</sup> Despite the Crown's additional duty to consult in many situations subject to EA, the current process by which First Nations are informed of an impending EA that may consider effects on their (possibly protected) uses of lands and resources is through the public-participation requirements contained in the Act and related policies. As discussed earlier, although recent Supreme Court cases have clarified that a properly constituted EA may be used to satisfy the Crown's fiduciary obligation to consult,<sup>15</sup> the links at all levels of projects and assessments (including screening reviews, comprehensive studies, mediations, and panel reviews) have not yet been defined. This gap must be closed in order for the EA process to involve First Nations effectively and meaningfully.

J. Interviewee #11 of the Iskut First Nation expressed concern that choices, values, and assumptions related to EA are excluded from open discussion and debate in the CEAA EA process. He sees that those peoples most affected by the decisions are partially or fully excluded from the process where the choices are made. This tendency is identified in the literature. For example, the Act does not require the assessment of direct social, cultural, or economic effects of a project, but only those that are a consequence of a

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majority of these in relation to screenings for projects occurring in national parks). The vast majority of assessments therefore gave First Nations little or no opportunity to become involved.

<sup>13</sup> The Act does not require the involvement of Aboriginal peoples in an EA process on the basis of the potential impact of a project or activity on their rights. The Act defines "environmental effect" to include any effect of or any environmental change caused by a proposed project on the current use of lands and resources for traditional purposes by Aboriginal persons. This may not capture potential impacts on Aboriginal or treaty rights.

<sup>14</sup> See *Dene Tha' v. Minister of Environment et al.*, *Mikisew Cree First Nation v. Canada*, *Haida Nation v. BC*, and *Taku River Tlingit First Nation v. British Columbia*.

<sup>15</sup> See *Haida Nation v. BC* and *Taku River Tlingit First Nation v. British Columbia*.

change in the biophysical environment. Aboriginal peoples have, however, stressed the importance of such considerations since well before the Act was enacted (Puxley 2002). Nevertheless, the consequences of a proposed project or activity for humans tend not to receive as much consideration as the consequences for the biophysical world (Yap 2003). The Berger Inquiry, which looked at the effects of the proposed Mackenzie pipeline, was “the first systematic and effective consideration of human impacts in an EA and project decision-making” (Yap 2003). Since the Berger Inquiry, social-impact assessment has evolved, and yet because of a lack of expertise, resources, time, or baseline information, it still does not receive much consideration in EAs (Yap 2003). This can result in a limited scope of review that does not adequately consider the social, cultural, and health effects of a proposed project (Storms 2006).

In the Act, such key terms as “significant” and “justifiable” are undefined, indicating that EA under the Act is not governed purely by objective rules and procedures. For example, “environmental effects” are defined by the Act (s. 2) as any changes in the environment as a result of the project (and vice versa), and they include any changes in health, socio-economic conditions, current use of lands and resources by Aboriginal peoples, and to structures or sites of significance (including historical significance) that flow from those environmental changes. EA under the Act is concerned with identifying those changes, whether positive or negative, and minimizing negative effects through mitigation measures. The final decision in an EA involves determining whether the significant remaining, non-mitigable negative effects or changes of a project are justifiable in the circumstances (presumably because of public benefits such as sustainable development) (ss. 20 and 37 of the Act). However, uncertainty and judgment are involved in deciding:

- how the project is delineated or defined;
- how the scope of the EA will be defined;
- whether possible mitigation measures are economically viable;
- whether an effect is significant;

- on the part of the government, whether a significant impact is justifiable under the circumstances; and
- whether the involvement of the public has been substantive and full and is reflected in the decisions made in and after the EA.

Given those uncertainties, EA can be described as a value-laden decision-making tool that relies on science and other disciplines and concerns (Lawe et al. 2005; Hardi and Zdan 1997). The EA decision-making process includes the underlying values, choices, and assumptions of the decision maker (Arquette et al. 2002; Lawe et al. 2005). However, EA as a process does not tend to recognize Aboriginal values or allow fully for the inclusion of Indigenous knowledge within the assessment (Lawe et al. 2005; Arquette et al. 2002). Aboriginal peoples often say they consider themselves part of the environment and not separated from it, as in the common western conception (Battiste 2000). That “environment” can be defined differently by cultures with different world views (Yap 2003) creates fundamental challenges for the involvement of Aboriginal peoples in EAs.

While Indigenous knowledge is a source of knowledge being relied upon increasingly in the arena of EA, it is faced with some overwhelming obstacles to achieving an acceptance equal with western science. Although research, land use planning, land claims, occupancy maps, resource management, EA, and education now often make use of Indigenous knowledge, the decision-making and research methods themselves continue to be dominated by the methods of western science (McGregor 2000). Much of what is studied in Indigenous knowledge research is that which is deemed important, relevant, or manageable by the dominant society (McGregor 2000). “How Indigenous Knowledge is conceptualized, defined, gathered, documented, and applied is all derived from the framework of the dominant society. There is very little that is Aboriginal about it, except that Aboriginal peoples are the objects being studied” (McGregor 2000).

Added to the difficulties that Aboriginal people have in applying their knowledge in a meaningful way in EA is the fact that the extent of their involvement can vary widely, owing to the discretion given the Responsible Authority over public involvement

contained within the Act.<sup>16</sup> That can be seen in the Galore Creek project and the Red Chris project EAs. Both projects are located in northwestern British Columbia, within the traditional territories of the Tahltan Nation. In 2006 the Iskut First Nation (a member of the Tahltan Nation) was involved in the EA of the Galore Creek project. At the same time, however, the Red Chris project, which is 16 km north of the Iskut First nation, was being discussed in the Federal Court of Canada, which was deciding whether the Department of Fisheries and Oceans and Natural Resources Canada had acted illegally in shielding the proposed copper and gold mine from a comprehensive-study level of EA, including public consultation, and thereby providing no opportunity for Aboriginal involvement (Interviewee #7 2007).

Despite whatever differences may exist between the two projects, First Nations' traditional territories are concerned in both cases. Given this, the lack of consistency in opportunities for Aboriginal peoples to voice any concerns they may have is troubling and does little to make them trust the process. In order for Aboriginal people to be involved meaningfully in EAs, they must understand the system and trust in how it works (Interviewee #10 2006). Interviewee # 10, stated that the long-term certainty surrounding EA decisions can be assured only if First Nations are full participants in a more comprehensive process, certainly when the projects or activities are planned to take place within, or near, their traditional territories. She said that because their conception of a more broadly based EA process involves incremental decisions that may affect their lands, resources, and cultures, First Nations need to be involved throughout every aspect or stage of EAs in a variety of ways, and especially as decision makers. With such an approach, the community in essence becomes a partner in the project with real decision-making power, which could be in relation, not only to the EA, but ideally to the proposed project or activity as well. Such a partnership will involve First Nations in all aspects of decision-making related to EAs, including final approval or rejection of the project.

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<sup>16</sup> For example, under s. 18(3) of the Act, Responsible Authorities have a discretionary power to decide whether to permit the participation of any members of the public, including Aboriginal people, in screening-level EAs.



### 5.2.3 Aboriginal Involvement in EA

Within the process prescribed by the Act, some research participants reported that they had been excluded from involvement in decisions made and actions taken regarding many aspects of EA. Those included decisions as to the scope of a project, the scope of the assessment, public participation and availability of funding, project approvals, the scope of monitoring, and follow-up needs and requirements (Interviewee #10 2006; and Interviewee #12 2006.).

The Iskut First Nation, the Tahltan Central Council, the Namgis First Nation, and the UNBI have direct experience with EA from having taken part, in some fashion, in assessments conducted under the Act or provincial legislation. In general, First Nations have been involved in EA in the following three ways:

1. First Nations may be involved in a number of ways as external participants. They may, for example, take part in a proponent's EA (for example, by serving on proponent-led advisory committees), participate in governmental Technical Advisory Committees, be publicly funded interveners, participating in the process as members of the general public.<sup>17</sup>
2. First Nations may undertake projects that trigger an EA; in other words, the First Nation is the project proponent (and as such must engage its members and others who may be affected in public participation).<sup>18</sup>
3. First Nations may be involved in developing their own EA processes in relation to self-government processes or treaties.<sup>19</sup>

The International Association of Public Participation (2007) has developed a set of core values for public participation. The United States Environmental Protection Agency relies upon a subset of these core values when describing "meaningful involvement" as an

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<sup>17</sup> This was the situation in the *Taku River* case.

<sup>18</sup> See for example, the Wuskwatim Hydroelectric development referred to in Table 1.

<sup>19</sup> See, for example, the James Bay and Northern Quebec Agreement, which sets out one such process.

environmental-justice issue. In 2000, the Assembly of First Nations defined meaningful participation in the EA process to include:

- “meaningful consultation,” as described by the Supreme Court of Canada and other Canadian courts;
- a role in choosing what class of EA will take place;
- involvement in research design and implementation;
- involvement in the design and implementation of monitoring programs; and,
- the authority to decide whether or not, or under what conditions, a project is approved.

Since this report was first proposed, the awareness of the critical need for Aboriginal participation in EAs has grown and its scope has expanded from that proposed by the Assembly of First Nations in 2000. This is largely a result of numerous clarifications made by the Supreme Court of Canada regarding the government’s duty to consult and accommodate the rights and interests of Aboriginal peoples when a proposed government decision may affect those rights.

Meaningful involvement, in relation to public participation, should be seen as a “best practice.” The fundamental elements of “meaningful involvement” include:

- the right of those who are affected by a decision to be involved in the decision making; and,
- the right of those who may be affected by a decision to be sought out and their involvement facilitated by the decision makers.

The participants said that simply ensuring that those two principles are adhered to would significantly improve the practice of EA in Canada by involving First Nations meaningfully.

The CEAA (2006) has issued a Ministerial Guideline setting out the scope of public involvement in screening-level EAs, and specifically mentioning the possible role of Aboriginal peoples. This guideline, though non-binding, affirms that “meaningful public participation reflects the principles of accessibility, impartiality, transparency, consistency, efficiency, accountability, fairness, and timeliness” (section 1.3).<sup>20</sup>

#### **5.2.4 Respect for Aboriginal World Views**

“Meaningful involvement” demands that there be a place in the process for different points of view and different forms of knowledge, in particular, Indigenous knowledge (Lawe et al. 2005). This requires an understanding of all aspects or forms of Indigenous knowledge, including First Nations’ customary approaches to participation and decision making, which tend to be unique to each specific community and culture. Ultimately, meaningful involvement of First Nations in EA will require EA processes to incorporate Indigenous knowledge and customary approaches throughout the process, especially in the decision making (Lawe et al. 2005). A research participant from UNBI felt that the Indigenous knowledge of his community did not have a significant place in the EA process (Interviewee #12 2006).

#### **5.2.5 Resources and Capacity**

The research participants told us that their communities did not have the money or human resources to be meaningfully involved in EAs. All case studies involved some application for participant funding, and in two of the three cases the applications were successful (although none of the applicants received as much as they had requested).<sup>21</sup> All respondents said that participant funding added positively to their involvement in that it allowed increased involvement; without resources they would have found it impossible to participate. However, they found that the funding provided through the CEAA’s

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<sup>20</sup> Note that the participation of the public (including Aboriginal peoples) in screenings is not mandatory; that is, it is a discretionary decision of the Responsible Authority.

<sup>21</sup> As mentioned in section 5.1.1.1, another First Nation not the subject of this study, the Kwakiutl First Nation, received 37% of its request for participant funding. The Iskut First Nation received 60% of its request, and UNBI received 88%.

participant funding program would need to be increased and made available much earlier in the process in order to make significant changes in a First Nation's capacity to participate. The funding must be available for uses that may be required by the First Nation, such as for the protection of its rights.<sup>22</sup> In the cases studied, the most significant levels of financial resources were provided by the proponent of the project, and therefore the First Nation participants felt dependent upon the goodwill of the party to whom they were most opposed, at least at the time of the EA.

### **5.3 Findings Conclusion: Summary from Case Studies of Barriers to Meaningful Involvement of First Nations in EA**

The literature and case-study research revealed many barriers to meaningful First Nations involvement in EA, the greatest being:

1. the lack of Aboriginal involvement in high-level strategic planning and visioning for the region in question;
2. the unrecognized and unmet need for wide-area planning and land use planning, to guide development in the territories in question and for this to take place before there are development projects in the area;
3. a failure to include First Nations values and concerns, especially as they pertain to culture and spirituality (Lawe et al. 2005.);
4. a lack of capacity, including lack of training and information, and a lack of financial support for participation (MacCallum et al. 2005);
5. poor communication, such that information does not reach community members who are affected by the development (Interviewee #1 2006);

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<sup>22</sup> Although this issue may arise as a result of the possible environmental effect of a proposed project as defined through the federal EA process, these issues have been considered to be outside the responsibility of the CEAA and certainly they were outside the activities eligible for participant funding in the EAs that were the subject of this study.

6. situations where too many projects are taking place at the same time and where the resources of the First Nation are stretched too thin (Interviewee #10; Interviewee #9 2006);
7. timeframes that are too tight for First Nations to respond and become engaged in an EA or development process;
8. the need for outstanding land claims to be resolved and the inherent rights of First Nations in relation to their territory to be recognized before a development is approved; and,
9. EA procedures, such as project-splitting and overly narrow project and EA scoping, leading to alienation of First Nations issues from the process (Interviewee #7, 2007)

## **6 Implications for EA Practice**

### **6.1 Background**

The Berger Inquiry proved that it is possible to involve the Aboriginal community in a meaningful way. Berger engaged Aboriginal citizens in making critical decisions about their future and, to ensure that their views were heard, gave them the resources to research and prepare their community evidence. That process strengthened the communities that took part contributed to their political empowerment, and, most important, the conclusions of the Inquiry were not predetermined (Puxley 2002).

The research shows that there is still a need for a principle-based approach to improving Aboriginal involvement in EA. One possible source for a set of principles to guide Aboriginal involvement, in addition to the needs expressed by the research participants, is the Act itself: the preamble of the Act places an emphasis on supporting sustainable development. However, progress made towards sustainable development EAs is difficult to identify, partly as a result of the multitude of definitions of sustainable development that exist (Hardi and Zdan 1997). This uncertainty led to the development of the Bellagio principles as a means of linking the theory and practice of EA in a sustainable-

development context (Hardi et al. 1997). The following principles were devised by an international group of measurement practitioners and researchers from five continents to “establish a vision of sustainable development and clear goals that provide a practical definition of that vision in terms that are meaningful for the decision-making unit in question” (Hardi and Zdan 1997):

- guiding vision and goals;
- holistic perspective;
- essential elements;
- adequate scope;
- practical focus;
- openness;
- effective communication;
- broad participation;
- ongoing assessment; and,
- institutional capacity.

## **6.2 Framework for Meaningful Involvement of Aboriginal Peoples in EA**

The Bellagio principles indicate a possible practical mechanism for bringing this process together in a standardized form. The framework presented below is based on the Bellagio principles and other information from the literature survey, the case study interviews, and the authors’ experience and is also explained through guidelines for specific tangible actions that can be taken by practitioners.<sup>23</sup> Of critical importance is that the principle-

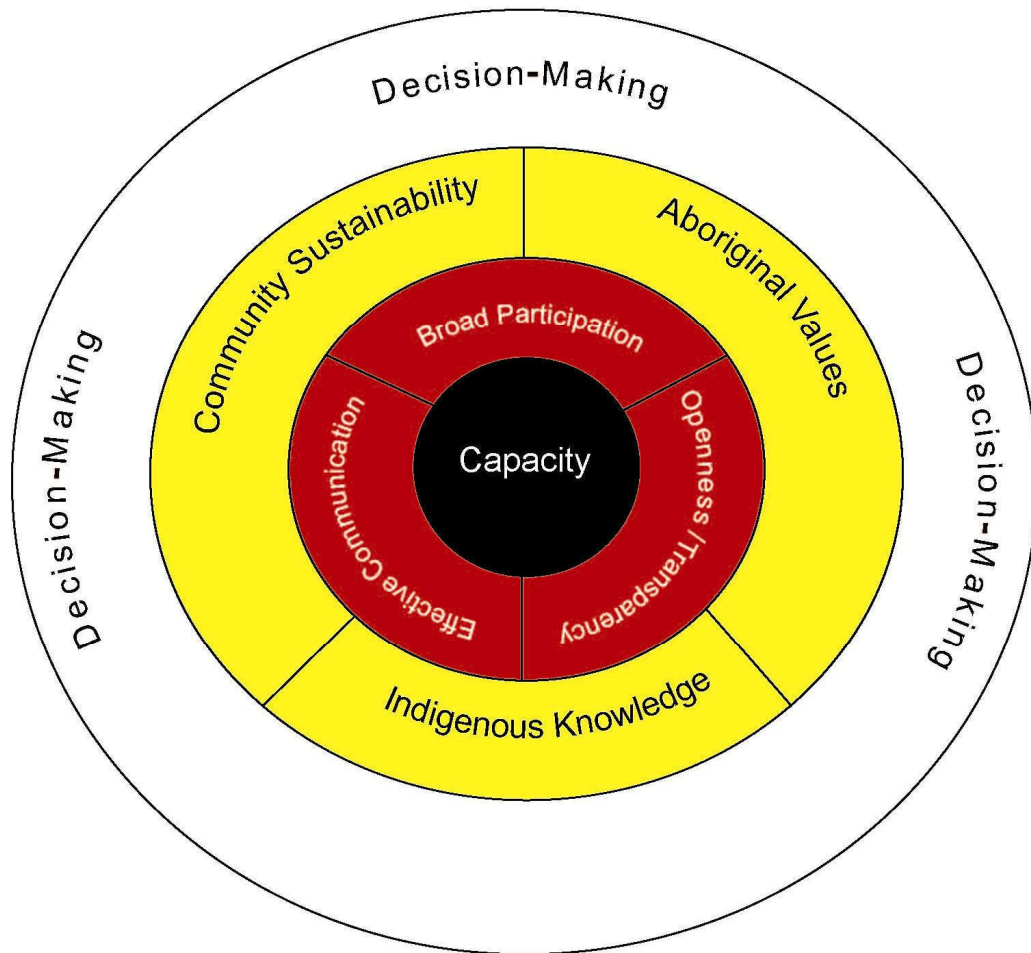
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<sup>23</sup> Vanclay (2003) advises that core values and principles need to be translated into specific tangible actions (guidelines) that can be applied by practitioners.

based approach builds on itself, in that all actions taken under it should generally be taken in every stage of EA in order to involve Aboriginal peoples meaningfully.

Figure 3 is a graphic conception of our proposed framework for involving Aboriginal communities meaningfully in EA. At its core, the framework is based upon a real capacity in the community to engage effectively with the EA process and satisfy all its needs in that regard. Moving outward, the elements of broad participation, effective communication, and openness and transparency come together to form the basis for the democratic process that facilitates community involvement. The third layer of the framework incorporates Aboriginal values, Indigenous knowledge and the affected communities' conceptions of long-term community sustainability in order to bring the unique cultural perspectives of First Nations into the assessment process. The final and outer layer of the framework requires that throughout the entire EA process, decision-making power be given to First Nations that may be affected by the project.

Figure 3: Framework for Meaningful Involvement of Aboriginal Peoples in EA



The circle form was chosen because it strongly illustrates the multi-layered requirements if Aboriginal peoples to be meaningful participants in EAs. Each layer builds upon a foundation of *capacity* within the First Nation or available to it and adds the elements of the preceding layer to arrive ultimately at a position where First Nations have genuine *decision-making power* within the assessment process.

The framework reflects two main themes: the need for a genuinely democratic process (one that embraces *effective communication, openness, and transparency, and broad*



*participation*) along with the opportunity to incorporate *Aboriginal values*, visions for the *sustainability* of their community and lands, and their *knowledge*. These elements need to be present and active at every stage of the assessment if First Nations are to be involved meaningfully in EA.

### **6.3 Principles of Meaningful Involvement of First Nations in EA**

*Is it going to be development designed by the community, or is it going to be development that's foisted on a community?*

(A farmer at the Alpac panel hearings in Gismondi, 1997)

This question was asked by a farmer during the Alpac development panel hearings in Alberta, and it is the question that should lie at the heart of EA (Gismondi 1997). The principles described in this section are the basis for ensuring that Aboriginal peoples are equal participants in EAs and ultimately in establishing the development vision for their territories.

#### **6.3.1 Capacity Principle**

Insufficient capacity frequently prevents First Nations from meeting the demands of the EA. Owing to the lack of trained personnel, combined with a shortage of money, First Nations are often unable to participate effectively, or at all, in the assessment. First Nations are often overwhelmed with technical documents that they do not have the background or training to evaluate. Without the ability to respond to the technical demands of an assessment, it is impossible for First Nation communities to be equal participants with industry and government in an EA. Although many small rural communities may face this challenge, First Nations' unique cultures, demographics, frequent lack of power over the allocation of their budgets, language barriers facing many elders, and the possession of unique, protected rights under the Canadian Constitution are additional reasons to ensure that they have the capacity to participate.

In many cases where First Nations are given the funding necessary to take part in an EA, they often hire consultants to do the necessary work, frequently as a result of schedule

demands (there is a need to respond quickly to notices, etc.) or low funding levels (since there is not enough money to build the capacity within the community, someone who already has the necessary expertise must be retained). Consequently, even when financial resources are made available to the First Nation, its participation in an EA may not develop a community's own capacity. The long-term consequence of using outside consultants furthers the dependence of First Nations and hampers their progress towards effective self-governance.

This situation might be remedied by focusing, when a project is not imminent, upon longer-term initiatives, such as general training in the purpose and process of EA, and support for:

- Participation in pre-planning activities (including the development of an integrated community vision and plan);
- Assessment and documentation of their use of lands and resources for traditional purposes;
- Development of a social, economic, cultural, and environmental data baseline;
- Legal analysis identifying ways of protecting n traditional uses, and general training in Aboriginal rights and consultation processes;
- Participation in scientific and social scientific studies related to EA;
- Determination of the possible effects of the project on their community members, rights, livelihoods, lands, and resources;
- Participation in governmental and proponent decisions throughout all stages of the EA; and,
- Development of monitoring and follow-up programs, and participation in implementation, analysis, and reporting of the results of those programs.

It is only through the development of the skills, experience, and training of as many local people as possible and their full participation in the EA that the voice of the community itself can be heard within the assessment process. This should be of primary importance to a proponent that understands the benefits of operating a project where the local community is supportive. The results can often be long-term stability through the life of their project, access to a local, trained workforce that understands the project, and the ability to demonstrate sound corporate citizenship.

### **6.3.2 Effective-Communication Principle**

Effective communication is a key part of any strategy designed to bring First Nations into the EA process. In addition to open and regular communication between the First Nation, project proponents, government, and regulatory agencies, there must be ongoing and effective communication within the First Nation itself. First Nation leadership and staff must ensure that the community is fully informed throughout all stages of the EA.

Ensuring that communication materials meet the needs of the First Nation audience is fundamental. Frequently, the information produced throughout the EA process is highly technical, filled with jargon, and incomprehensible to all but a few technical specialists. Information that is for general community distribution must avoid technical language and give a clear and complete picture of the possible effects of the project. Information that is well presented, clear, and straightforward is of benefit to all the participants, but it is essential for First Nations since they may be entering a process that could involve a discussion of impact on their protected uses of lands and resources for traditional purposes.

Information must be clear and direct as to the intent of the process, scope of the process (that is, which issues the process can or cannot address), and links to other processes that may exist at the federal, provincial, or municipal level, in particular those processes that the First Nation may already be involved in.

An important first step towards ensuring that First Nations understand the project is a detailed description of the project. Generally speaking, descriptions of the scope of the

project and of the EA are essential for all members of the First Nation, even if some of them have been involved in the pre-project planning and discussions. A preliminary overview of the likely primary and secondary effects (both positive and negative) of the project must be given to the First Nation leadership and the general community as early as possible in the assessment process. Without an adequate understanding of the scale and potential effects, of a project, First Nations will not likely have a complete picture of the project's physical and social impacts, and also the impacts that the project may have upon traditional land and water use and the associated protected rights.

The distinction between primary and secondary effects (that is, those effects that flow from the primary effects) in the federal EA process is highly problematic. Although the Act does not allow EA analysis to consider direct social or cultural effects, these effects must nonetheless be considered at some stage. This is imperative given that First Nations have rights that are based upon their cultures and cultural activities and that may be affected by the Crown's decision to approve the project. Despite the fact that Act does not address these impacts, the Crown must address them or risk failing to discharge its responsibilities regarding treaty and Aboriginal rights. Therefore, the process used to articulate these impacts must be planned for early in an EA, even if they are resolved through separate mechanisms outside the process.

First Nations—both the leadership and the general membership—must be fully informed about all aspects of a project at all stages of the EA so that they can make an informed decision on whether or not to support the project. It is very important to design communications mechanisms at the outset that define the responsibilities and mechanism for sharing information and achieving effective ongoing communications.

### **6.3.3 Broad-Participation Principle**

A prerequisite for a democratic process is wide public participation (Wharton 2006). For First Nations to be meaningfully engaged in EA, their involvement and decision making cannot be the exclusive domain of the leadership and consultants. There must be broad participation from their “public,” that is, the community at large. Young people, women, elders, and other representative of the wider community must have the opportunity to be

informed and active participants if First Nations are to be involved in ways that are representative of their communities. The participation of a wide array of community members allows for the inclusion of the various opinions that may be present in the community, including, for example, traditional values and knowledge, which may not be held by the younger or more current leaders of the community.

Much First Nation participation in EA is characterized by little involvement of the their wider community. Community members are often disempowered by the technical language and complex procedures that are common in EAs. First Nation leadership and their consultants frequently conduct the business related to the EA outside of the community, in urban centres, making it difficult for local people to be active participants in the EA. A lack of opportunities for meaningful participation at the local level and poor communication with the wider community often result in the majority of Aboriginal peoples being merely token participants.

For First Nation communities to become meaningfully involved in EAs, there has to be broad participation in all stages from within First Nation communities, in addition to the full participation of community leaders and representatives. The basic premise of all public participation is that the public should have a say in the actions that may affect their lives. Not only must the First Nation public have a say, but their contribution must also ultimately influence the decisions taken. This fundamental premise of democratic participation must shape how First Nation communities are engaged within the EA process.

#### **6.3.4 Openness and Transparency Principle**

Openness and transparency must be hallmarks of EAs. The methods and data (including raw data developed by the proponent) that are used in the process should be available to all. In addition, all judgments, assumptions, and uncertainties in the data and the interpretations of the data must be stated explicitly. Not only must the information generated throughout the assessment process be available and open for review and challenge by all involved, but also the process itself must be both accessible and comprehensible to the First Nation communities.

The underlying assumptions, values, and motivation of those preparing the information for EA must be stated explicitly. This is of particular importance to First Nation communities, which may have very different value systems. In the discussion of “significance of environmental impact,” for example, the view of non-Aboriginal and Aboriginal participants may be predicated upon fundamentally opposing ideas and beliefs. Therefore, the underlying assumptions, values, and motivation must be made explicit at all stages of an EA, from pre-project planning through to the final decisions about the project.

The EA must be open and transparent in order for members of First Nation communities to obtain information and recognize the opportunities for participation. In addition, an open and transparent process allows First Nation peoples to understand how the assessment process works, who the stakeholders are, and what is being discussed. Frequently EA work is done behind closed doors by industry, government, and consultants who rarely venture into a First Nation community. The local First Nations may have only a vague idea, if any, about what is happening with a project undergoing an EA.

Openness and transparency are essential for building trust and confidence in the EA process. The final decision will be supported more fully by a First Nation if the local people feel that the process was accessible, responsive, and comprehensible.

### **6.3.5 Aboriginal-Values Principle**

If First Nation communities are to be meaningful participants in EA, it is essential that the assessment process incorporate and reflect Aboriginal values. First Nation communities may have values that are very different from contemporary Canadian society. These values may form part of a larger world view—particularly in more traditional communities—that differs fundamentally from that of industrial society. Since each First Nation is unique, individual First Nation communities may have values and perspectives that are very different from those of other First Nations. In order to fulfill the requirement of meaningful involvement, it is the responsibility of those practising EA to ensure that

the distinct cultural values of the First Nation communities involved are reflected throughout the assessment work and ultimately in the final decision.

As a consequence of having different values, First Nation communities may attach much more importance to elements of their physical or social environments that would be the case in non-Aboriginal society. For example, the destruction of a berry-picking area—though it may not be viewed by the larger society as a particularly significant result of the project—may be a major impact from the perspective of local Aboriginal peoples for whom berry picking serves important social and economic functions. Meaningful and authentic engagement of First Nations in EA requires that the assessment practitioners be willing to understand the unique values and worldview of the First Nation community they are working with. The practitioners must also ensure that the community's values inform and shape the assessment work.

### **6.3.6 Community-Sustainability Principle**

In relation to EA, the principle of community sustainability requires that the proposed project be compatible with the First Nation community's values, aspirations, and objectives for its traditional territories.

The concept of community sustainability emphasizes the benefits the entire community may realize from a project as opposed to the benefits that individuals alone may receive. First Nations may measure the benefit of a project quite differently from a non-Aboriginal community. Traditional Aboriginal values of balance and harmony, for example, may be seen as more important indicators of a project's success than conventional economic indicators. To involve First Nations meaningfully in EA is to consider what constitutes a beneficial development from the perspective of the community.

For example, large-scale oil and gas developments may not be suitable for a community that wants to maintain its lands for eco-tourism and traditional use. To engage First Nation communities in meaningful ways in the assessment process, it is necessary to consider how the proposed project may help the community reach its own development objectives.

First Nation communities often suffer the negative impacts of development projects while other Canadians primarily enjoy the benefits. Hydroelectric development, for example, may cause profound environmental and social damage to nearby northern Aboriginal communities while delivering the benefits of inexpensive power to non-Aboriginal communities in the south. The need to minimize the adverse effects of a project on local First Nation communities must be given equal consideration with the desire to create benefits for the larger Canadian society.

### **6.3.7 Indigenous-Knowledge Principle**

The inclusion of Indigenous knowledge in EA is a fundamental part of ensuring that First Nation communities are meaningful participants in the process. Indigenous knowledge refers broadly to the large body of knowledge that Aboriginal peoples may have. Much of that knowledge may be distinct from western science.<sup>24</sup> There is no single definition for any of this term, as perhaps is reasonable since it will take on different meanings depending on the specific understanding of the First Nation, which is in turn based on its unique culture, language, and geography. However, after reviewing several Canadian and international definitions, we drew up the following list of common tenets of Indigenous knowledge:

- Indigenous knowledge is a holistic paradigm that acknowledges the physical, emotional, spiritual, and mental well-being of peoples;
- Indigenous knowledge is a complex and sophisticated system of knowledge drawing on centuries of wisdom and experience and associated with long-term occupancy of a certain place;
- Indigenous knowledge is acquired through experience and observation and from the land or spiritual teachings, and is handed down from one generation to another;

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<sup>24</sup> We have chosen to use the term “Indigenous knowledge,” because we consider it to be a more accurate term than either traditional knowledge (which may imply that the knowledge is static) or traditional ecological knowledge (which may imply that the knowledge is both static and related solely to ecology).



- Indigenous knowledge is dynamic and constantly grows and changes with new information;
- Indigenous knowledge includes knowing and understanding proper protocols and values of conducting oneself within the cultural norms of an Indigenous society;
- Indigenous knowledge is unique to different Indigenous communities, reflecting the cultural diversity of Indigenous peoples; and,
- Indigenous knowledge includes, and is attached to, the cultural, linguistic, and spiritual, ways of Indigenous peoples and their sources of food.<sup>25</sup>

The inclusion of Indigenous knowledge in EA must guide the impact analysis, and Indigenous knowledge must be factored into as much of the work as possible if the outcomes of the assessment process are to reflect First Nations' involvement.

To ensure that Indigenous knowledge is incorporated into EA, practitioners must involve those holding the knowledge directly in the assessment work. For example, a fisheries study would need to involve local Aboriginal peoples who are experienced fishers. Assessment practitioners must understand that Indigenous knowledge is not a product of formal education but rather that it emerges from long experience. Indigenous knowledge is a different way of knowing and one that must be given equal consideration with western science if the assessment is to reflect the knowledge and understandings of Aboriginal people.

If EA work is done well and follows the principles outlined in this report, Indigenous knowledge should naturally emerge. Providing opportunities for local people to take part in the assessment work, along with incorporating local values and cultural perspectives, will allow for the expression of the unique knowledge that local Aboriginal peoples have. EA needs to incorporate Indigenous knowledge in ways that allow the unique understandings of Aboriginal peoples to shape the assessment itself rather than being

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<sup>25</sup> For a more detailed academic assessment of the range of knowledge encompassed within these terms, please refer to Stevenson (1997).

presented as just more data. Indigenous knowledge should not be used only to fill data gaps but should also be applied in more fundamental ways to guide the decisions.

It is important to note that the inclusion of certain aspects of Indigenous knowledge in an EA may require some form of agreement with the First Nation concerned. The purpose of such agreements is usually to ensure that the knowledge and knowledge holders are respected; to ensure that ownership of the knowledge remains with the community and knowledge holders; and to make it clear that any information that is shared cannot be used out of this specific context. The last point is crucial because Indigenous knowledge must be understood to be contextual, developed and adapted over time, and as such should not be treated as transferable data.

The discussions about the significance of impacts, in particular, must recognize the unique knowledge of local First Nations peoples if Indigenous knowledge is to be incorporated into EA in ways that have real meaning.

### **6.3.8 Decision-Making Principle**

The final principle of meaningful involvement concerns decision-making. Unless First Nations help to make the decisions in an EA, they are not meaningful participants. For First Nations to be genuinely involved, they must be active participants in the decisions made at every stage of the comprehensive approach to EA illustrated in Figure 2 above.

When projects are first conceived and planned, First Nations need to be present and engaged. Frequently, however, they are brought into the process well after major decisions about the project have been made. First Nation communities must be equal participants in the decision-making bodies established through the assessment process—particularly when the projects are intended to take place within their traditional territories.

It is a fundamental element of democratic life that people have a voice in the decisions that affect their lives and their territories. Unfortunately, that principle is absent from much of contemporary EA, for First Nations communities are rarely participants in significant decisions.

First Nations must take part in all decisions, including the final decision whether or not to proceed with a project<sup>26</sup>. That decision is often made by a regulatory body with no involvement from the local First Nation communities that will be directly affected by the project. In some circumstances, this could mean that First Nations have the right to decide against a project in their traditional territories, and that this decision would be respected by the courts.

#### **6.4 Guidelines for Meaningful Involvement of First Nations in EA**

The following guidelines are deduced from the broad principles outlined in the previous section. The guidelines are presented in relation to each stage of an EA and a specific principle. The introduction to each set of guidelines includes supporting examples from the case studies and literature to illustrate further the principle or successful approach.

The purpose of these guidelines is two-fold. First, they are an attempt to give practical advice to EA practitioners and government agencies about meaningful involvement of First Nations in EA. Second, these guidelines can serve as a starting point from which First Nations themselves can develop guidelines for how they want to be engaged in EAs taking place within their territories.

The guidelines are broadly applicable throughout Canada. Rather than provide specific guidance on the culturally acceptable methods, practices, and norms of each First Nation (which would be improper even if it were possible), they recommend that practitioners work directly with the affected First Nation or Aboriginal community to identify these methods. Given the amazing diversity among First Nations cultures and communities in Canada, it would be impossible to propose methods that would be suitable for all. Generally, where specific recommendations are made, they pertain to participatory,

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<sup>26</sup> The final decision whether to proceed with a project is made by the project proponent after the EA process has been completed and the Minister has made a determination as to whether the project is likely to result in significant adverse environmental effects. Assuming that decision has been made in the negative, then, under these principles, First Nations would continue, after licensing, to be involved in the decisions made by the proponent.

inclusive, or integrated approaches and the adapting of these processes to meet the specific needs of the local First Nations.

For purposes of providing detail in the sections that follow, we have further divided the three-stage EA process discussed above into five stages:

- project and assessment pre-planning;
- project and assessment planning;
- conducting the EA of the proposed project;
- making the environmental-assessment decision; and,
- follow-up after the EA decision

The framework provides detailed information about the application of each principle in each of these five EA stages.

#### **6.4.1 Pre-Planning**

It is essential that First Nations be involved in the EA at the earliest planning stages, even when the project is still just an idea. This is what the research team refers to as the “pre-planning” stage.

There are at least two different processes that may consider information about a proposed project. The first ascertains whether a proposed project fits within the vision of development of a region, which is usually set out in a regional plan. However, many regions do not have these regional or wide-area plans, or if they do, they have been developed without the involvement of First Nations. Since participation in the development of a regional vision is likely to be of great importance to many First Nations given their use of or rights to many lands in Canada, meaningful involvement in later EA processes may be severely hampered if First Nation concerns are not discussed and negotiated in this pre-planning stage. Addressing this issue could involve facilitating or supporting the development of a strategic EA or regional land use plan.

A study of 36 federal panel reviews in Canada revealed that most deliberations were concerned only with mitigating the negative effects of the project and that consideration of the underlying development issues was consistently discouraged (Gismondi 1997). However, it is important that participants agree that a proposed project is well-suited to the area within which it is proposed. The Orca Sand and Gravel project case study demonstrated the benefits of allowing for the discussion of these underlying, or big-picture, development issues, and particularly of exploring a First Nation definition of sustainability. Certainly, this requires a longer timeline than is generally the case in most pre-planning scenarios.

The second process involves the planning related to the project itself. This consists primarily of determining the vision and need for the project and obtaining a broad picture of the scope of the project. In order that the final project concept fits within a consensus vision of a development plan for the region, it is important that the discussion of possible alternatives to the project also take place at this pre-planning stage. The First Nations may be of the view that there are more effective ways to achieve both regional development goals and project-specific goals.

If First Nations are excluded from this stage in the pre-planning process or if their involvement is not reflected in the decisions that are made about the direction for development of the region or the nature and scope of the project, it will be exceedingly difficult to have meaningful involvement of First Nations in any EA that follows. In the case of the Orca Sand and Gravel project, the Namgis First Nation was directly involved in the design of the project during its earliest conceptual planning stages. During the three years when the project was being designed, the project proponent and the community were learning to collaborate in a way that allowed the development to proceed in accordance with community values.

Table 4 lists detailed guidelines for ensuring meaningful involvement of First Nations in these pre-planning stages according to the principle-based framework presented in Sections 5.3 and 5.4.

**Table 4: Guidelines for Meaningful Involvement of First Nations in the Pre-Planning Stages**

<p>Building Capacity</p>	<ul style="list-style-type: none"> <li>• Work with First Nation(s) to determine community needs for successful involvement and possible conflicting community processes, events, and needs.</li> <li>• Develop capacity-building plan related to the EA and based on relevant community needs.</li> <li>• Provide funding from proponent or government for participation of First Nation(s) in the pre-planning stage.</li> <li>• Commit or secure funding for First Nation(s) for capacity-building activities throughout the EA.</li> <li>• Provide opportunities for education and training of First Nation(s) on EA in general.</li> <li>• Provide opportunities for education and training that will enable the First Nation(s) to engage in the conduct of the EA and to take part effectively in the EA over time, such as by:             <ul style="list-style-type: none"> <li>○ taking part in research initiatives of the proponent</li> <li>○ conducting research needed by the First Nation(s) for                 <ul style="list-style-type: none"> <li>▪ a study of traditional uses</li> <li>▪ a comprehensive data baseline</li> <li>▪ a comprehensive community plan</li> </ul> </li> </ul> </li> </ul>
<p><b>Effective Communication</b></p>	<ul style="list-style-type: none"> <li>• With the First Nation(s) that may be affected, consider using of a Communications Agreement and Information-Sharing Agreement</li> </ul>

	<p>about ongoing communication and the protection and sharing of information, even at the pre-planning stages.</p> <ul style="list-style-type: none"> <li>• Since regional planning decisions can affect First Nation(s) rights, title, and traditional uses of territory, co-ordinate planning with other planning or initiatives related to EA that may affect the final EA.</li> <li>• Communicate clearly all aspects of current planning for the project. These could include (even if they are preliminary and subject to confidentiality constraints) the expected timeframes, scope of project, related project activities, partnerships, further research needed, the proposed EA scope, etc.</li> <li>• Propose discussions with First Nation(s) about the scope and methods for achieving ongoing, community-wide involvement in pre-planning processes.</li> </ul>
<p><b>Broad Participation</b></p>	<ul style="list-style-type: none"> <li>• Ensure that all members of the First Nation(s) community are informed of the developments planned for the territory and that they are given the opportunity (through various mechanisms or levels of involvement) to take part in pre-planning activities <ul style="list-style-type: none"> <li>○ Work with the First Nation(s) to develop a strategy for involving all community members, recognizing that Aboriginal and treaty rights are held collectively by nations and exercised by individuals.</li> </ul> </li> <li>• Provide a mechanism for ensuring and demonstrating that community feedback (perspectives, values, information) has had an influence on what issues are being considered in the pre-planning process.</li> </ul>

<p><b>Openness and Transparency</b></p>	<ul style="list-style-type: none"> <li>• Clarify all requirements and standards that apply to the proposed project (legislative, regulatory, and policy), and foundational or conceptual assumptions, particularly those related to project and assessment decision-making.</li> <li>• Share all relevant information about the proposed project, the scope and conduct of the EA, and the potential impacts (to the extent that they are known or can be predicted)</li> </ul>
<p><b>Aboriginal Values</b></p>	<ul style="list-style-type: none"> <li>• Ensure that First Nation(s) values, vision for the future, and laws are explicitly recognized and that they influence all stages of the project and EA development process (including pre- and post-EA stages).</li> <li>• Engage the First Nation(s) directly in pre-planning discussions of the community’s own definition of sustainability, including its environmental, social, cultural, and economic objectives.</li> <li>• Ensure that First Nation(s) have the opportunity to apply their values in the definition and selection of alternatives to the project and in alternative formulations of the proposed project.</li> </ul>
<p><i>Community Sustainability</i></p>	<ul style="list-style-type: none"> <li>• Ensure that regional planning incorporates the First Nation(s)’ own definitions of sustainability for their community and their territories.</li> <li>• If the First Nation(s) have not developed a vision of sustainability, assist them develop a tool to accomplish this, such as a comprehensive community plan.</li> </ul>
<p><i>Indigenous Knowledge</i></p>	<ul style="list-style-type: none"> <li>• Provide opportunities for Indigenous knowledge-holders, or those who can represent the knowledge-holders, to be directly involved</li> </ul>



	<p>in the regional planning and project pre-planning, both as sources of information and as decision makers.</p> <ul style="list-style-type: none"> <li>• Draw up, at the earliest stage, an agreement on the terms of sharing and using all information and data (including all Indigenous knowledge) gathered or shared before, during, and after the EA.</li> </ul>
<b><i>Decision Making</i></b>	<ul style="list-style-type: none"> <li>• Involve the First Nation(s) directly in defining and agreeing to a formal decision-making process to be used at each stage of the EA.</li> <li>• Develop a partnership agreement that formalizes the roles and expectations of all parties to the EA, including the First Nation(s), the proponent, and government agencies.</li> </ul>

#### **6.4.2 Planning the EA**

This stage includes determining the scope of the EA and considering alternatives. It is also at this stage that the terms of reference of the EA are written; and that in turn involves making important decisions about how the assessment will be conducted. A key principle is to allow, early in the EA, for public debate about what environmental-assessment or project-related research is needed for a fully informed decision, when this research should be done, and when the results are needed (Gismondi 1997). Involvement of First Nations at this stage is crucial in order to ensure that their perspectives and values are reflected in the direction set for the assessment activities to follow.

Shapcott's research with the Haida revealed that the EA in that case was of limited value to those people because it was imposed rather than developed jointly through negotiation. According to Margot Hearne of the Islands Protection Society in Masset, British Columbia, the key to making EA a meaningful process for First Nations is to ensure they are involved in designing the assessment, including the terms of reference (Shapcott 1989).

Thirty years ago, before the Act, the Berger Inquiry established a process for engaging local peoples in the design of an EA and demonstrated that such a goal is both desirable and achievable. First Nations and those affected by the planned Mackenzie Valley Pipeline project were given an opportunity to explain their concerns and to make suggestions about the procedure for the hearings and what subjects the Inquiry should consider. From this emerged the framework for the rest of the Inquiry, which included the structure of the Inquiry itself, ground rules, procedures, topics, and issues (Gamble 1978).

In the case of the Orca Sand and Gravel project, Namgis First Nation was able to significantly expand the scope of the assessment to include a consideration of alternatives, such as for the location of the marine terminal. Through the community consultation, Namgis members were able to express their values and have an important influence on the development of the project. Community concerns were reflected throughout the EA, and specific studies were done in response to those concerns. One such study concerned the effect of the project on the local harlequin duck population.

Namgis First Nation was also involved directly in drafting the terms of reference for the EA and subsequently in choosing the consultants hired to conduct the assessment. Most significantly, Polaris Minerals, as the project proponent, asked for approval from Namgis First Nation before exploring in Namgis territory. This involved a process of negotiating with the First Nation to identify community values and areas of traditional use. The agreement also stated that Namgis First Nation had a veto power over the entire project during the initial development up to the conceptual or pre-feasibility stage. In other words, a “no-development” alternative was not only considered, but the First Nation had the power to make that decision.

Some time later, a major hydroelectric developer approached Namgis First Nation with plans to dam a river in the Namgis’ traditional territory. The Namgis rejected this development and told the developer that the First Nation would only accept a “run-of-the-river”<sup>27</sup> hydro development project. Fortunately for all parties, the proponent approached

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<sup>27</sup> ‘Run-of-the-river’ hydro development projects are those whereby the natural flow and elevation drop of a river are used to generate electricity. Run-of-river plants use little, if

the Namgis early enough in its planning that it could seriously consider the Namgis’ counter suggestion. Ultimately, it was determined that a “run-of-the-river” development provided an equivalent return on investment, and the project now being developed is in accord with Namgis’ sustainability vision for their territory.

Table 5 lists general guidelines to help project proponents, EA practitioners, and government agencies involve First Nations meaningfully in planning the EA according to the principle-based framework presented in Sections 5.3 and 5.4.

**Table 5: Guidelines for Meaningful Involvement of First Nations in the Planning Stage of EA**

<p><b>Building Capacity</b></p>	<ul style="list-style-type: none"> <li>• Work with First Nation(s) to provide opportunities to build their capacity related to the technical and administrative aspects of the planning process at this stage in an EA.</li> <li>• Provide the necessary funds to enable First Nation(s) to independently assess any project or assessment materials (such as research or feasibility reports) that may exist at this stage.</li> <li>• Provide necessary funds to allow First Nation(s) to develop a reasonable scenario of alternatives.</li> </ul>
<p><b>Effective Communication</b></p>	<ul style="list-style-type: none"> <li>• Work with First Nation(s) to develop and implement a communication and engagement strategy to ensure that the membership remains up to date and fully informed about the negotiations and planning, research, implementation of the EA, and the project itself.</li> </ul>

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any, stored water to provide water flow through the turbines. Instead, dams may span the entire breadth of the river or may use diverted water so as to avoid constricting the entire river.

	<ul style="list-style-type: none"> <li>• Consider using a variety of methods of communication appropriate to the community (local TV and radio spots, posters, etc.).</li> <li>• Ensure that plain-language communications materials (free of technical terms and jargon) are available to complement the more technical publications.</li> <li>• Give the community clear and comprehensive explanation of the decisions that need to be made at this stage of the project and the information necessary for that decision to be made.</li> </ul>
<b><i>Broad Participation</i></b>	<ul style="list-style-type: none"> <li>• Foster broad community participation by using a variety of locally acceptable outreach methods with due consideration to accessibility issues and the time of meetings and sessions. For example, consider other administrative demands being made on the community, such as elections, reporting, hunting, and cultural activities.</li> <li>• Ensure that the recognized leaders of the First Nations (i.e., traditional governments, Indian Act or other federally legislated governments, or self-governing nation leadership) are committed to participating.</li> <li>• Ensure that input is received from the widest possible cross-section of First Nation(s) communities, such as elders, women, youth, and those who use or harvest plants or wildlife from the lands and waters in the communities' territories.</li> </ul>
<b><i>Openness and Transparency</i></b>	<ul style="list-style-type: none"> <li>• Ensure that the scope of the assessment is comprehensive and that the rationale for the choices made about the scope of the assessment are stated and discussed openly, and then communicated clearly.</li> </ul>

	<ul style="list-style-type: none"> <li>• Ensure that the inclusion and subsequent assessment of alternatives is comprehensive, that it includes a “no-development” option.</li> <li>• Demonstrate how the negotiations and discussions with the First Nation(s) have changed the proposed scope and elements of the assessment.</li> </ul>
<b><i>Aboriginal Values</i></b>	<ul style="list-style-type: none"> <li>• Ensure that First Nation’s values, including their priorities and/or concerns, are identified and reflected in the scope of the assessment, including the scope and importance of treaty and Aboriginal rights and traditional-use activities, and the impacts upon those activities.</li> <li>• Ensure that First Nation(s) values play a key role in the determination of the assessment framework and methods (such as the decision whether to use a “keystone-species” or “cultural-significance” approach, or some other analytical approach).</li> <li>• Involve all groups in First Nation(s) communities directly to ensure that the full range of values (some of which may be in disagreement with others) is identified and considered at this stage.</li> </ul>
<b><i>Community Sustainability</i></b>	<ul style="list-style-type: none"> <li>• Involve First Nation(s) directly to ascertain their vision of community well-being, including defining which indicators will be used to monitor and assess community well-being throughout the life and any long-term legacy of the project.</li> <li>• Engage First Nation(s) directly in scoping the assessment and examining alternatives to the project from the perspective of the community’s definition of sustainability, including environmental, social, cultural, and economic, and health objectives.</li> </ul>

<p><b><i>Indigenous Knowledge</i></b></p>	<ul style="list-style-type: none"> <li>• Include Indigenous-knowledge holders directly in this stage of the assessment according to local protocols or policies.</li> <li>• Provide opportunities for Indigenous knowledge and species of importance to First Nation(s) to be identified and included in the assessment.</li> </ul>
<p><b><i>Decision Making</i></b></p>	<ul style="list-style-type: none"> <li>• Ensure First Nation(s) are represented on project- or assessment-related policy and decision-making bodies with clear decision-making responsibility (such as, within government, technical advisory committees and committees that report their recommendations directly to the final decision maker).</li> <li>• Involve the First Nation(s) on all research teams (thereby involving them fully in the determination of research methods).</li> <li>• Negotiate with the First Nation(s) on the scope of the assessment and alternatives to be considered before beginning the next stage of the EA.</li> </ul>

### **6.4.3 Conducting the EA**

The next stage in the EA is the actual assessment, including the impact analysis, the cumulative-effects assessment, and the introduction of mitigation measures in response to potentially significant environmental effects.

One way in which First Nations can be involved in this stage is through their involvement in setting the direction of specific research, usually (but not only) those related to Indigenous knowledge and community impacts. The Tahltan responded to the Nova Gold project by creating the Tahltan Heritage and Resources Environmental Assessment Team (THREAT) through funding provided by the project proponent and the provincial government. THREAT enables the Tahltan to do its own research and to conduct policy, scientific, and technical reviews of projects.

A number of researchers have pointed to the important contribution that Indigenous knowledge can make to an EA and have concluded that engaging Indigenous-knowledge-holders as active participants in the project by including them on the team of experts is invaluable (Emery 2000; Sallenave 1994; Stevenson 1997; Usher, 2000). In the Orca Sand and Gravel Project, the Namgis First Nation was able to incorporate Indigenous knowledge through its involvement on the technical committee established for the assessment.

The Namgis was also involved in the Orca Sand and Gravel project in ways that allowed them to directly influence the mitigation measures chosen in response to the environmental-impact analysis. These measures included a process for marine drilling that involved taking the wastewater and tailings, which would ordinarily be dumped in the ocean, and using them to fill the hollow cavity of the pilings. Through measures such as these, the Orca Sand and Gravel project established new “best practices” for marine drilling. Other mitigation measures introduced by the Namgis ranged from the use of double-hulled sound-blanketed holds to reduce potential impact on marine mammals as a new standard for all ships using the marine terminal, to technological innovations, such as redesigned lighting in an area of salmon migration to prevent to this culturally important species from being harmed by light pollution.

The involvement of Namgis First Nation in the Orca Sand and Gravel project also gave the Namgis the opportunity to influence decisions about fish habitat compensation measures. They improved the decisions by including measures aimed at a preferred edible species of seaweed (*t'lakstan*) and the culturally important and endangered abalone.

Guidelines for meaningful involvement of First Nations in the impact analysis and assessment stage of an EA are described in Table 6.

**Table 6: Guidelines for Meaningful Involvement of First Nations in the Impact-Analysis Stage of EA**

<b>Building</b>	<ul style="list-style-type: none"> <li>• Provide sufficient resources for First Nation(s) to be directly involved in the development and implementation of impact-</li> </ul>
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<p><b>Capacity</b></p>	<p>assessment studies.</p> <ul style="list-style-type: none"> <li>• Ensure that everyone involved in the assessment, including consultants, has a solid understanding of, and experience with, incorporating First Nations’ values, views on community sustainability, and Indigenous knowledge into the environmental-impact analysis.</li> <li>• Ensure that the analysis provides for equal consideration of social, cultural, economic, health, and environmental sustainability.</li> <li>• Ensure that the community has adequate resources to conduct an independent review of the EA.</li> </ul>
<p><b>Effective Communication</b></p>	<ul style="list-style-type: none"> <li>• Ensure that the results of all impact-assessment studies are reported to the First Nation(s) leadership and membership in the way agreed upon.</li> </ul>
<p><b>Broad Participation</b></p>	<ul style="list-style-type: none"> <li>• Enhance participation by holding meetings in the community or in places where the majority of participants are most comfortable.</li> <li>• Provide opportunities for community members to consider the results and to have their concerns considered within the analysis.</li> <li>• Ensure that the First Nation(s) are given opportunities to help decide what follow-up assessment is needed and/or to choose acceptable mitigation measures.</li> </ul>
<p><b>Openness and Transparency</b></p>	<ul style="list-style-type: none"> <li>• Make explicit all judgments, assumptions, and uncertainties in the data, models, and interpretations used for the impact analyses and the mitigation measures.</li> </ul>



<p><b>Aboriginal Values</b></p>	<ul style="list-style-type: none"> <li>• Take an interdisciplinary or integrated approach to impact; i.e., accord as much significance to environmental, social, cultural, and health impacts to First Nation(s) in the assessment as to the economic factors driving the project.</li> <li>• Ensure that both direct and indirect impacts are considered and that this analysis is applied equally to social, cultural, health, economic, and environmental impacts.</li> <li>• Ensure that potential impacts on treaty and Aboriginal rights and traditional use activities are explained and considered in the assessment (even if they have to be resolved through a separate process directly between the Crown and the First Nation(s)).</li> <li>• Ensure that the cumulative impacts of projects are assessed at the wide-area, landscape scale and are examined from a holistic perspective that, in addition to environmental effects, includes potential impacts to human systems (social, cultural, economic, and health).</li> <li>• Work with the First Nation(s) to design mitigation measures that are acceptable and in accordance with the First Nation(s) values and community interests.</li> </ul>
<p><b><i>Community Sustainability</i></b></p>	<ul style="list-style-type: none"> <li>• Work with the community to determine culturally appropriate indicators for measuring impacts, including social, cultural, economic, health, and environmental impacts, on community sustainability. Incorporate community definitions of sustainability and health and assess the impacts holistically (rather than separately, and in isolation from one another).</li> <li>• Work with the community to identify culturally appropriate</li> </ul>

	measures for mitigating the impact on the community.
<b>Indigenous Knowledge</b>	<ul style="list-style-type: none"> <li>• Work with the First Nation leaders or representatives to involve community members who possess Indigenous knowledge or can represent holders of Indigenous knowledge on technical committees.</li> <li>• Integrate Indigenous knowledge into the assessment by using values, processes, and knowledge to guide the analysis, conclusion, judgments, and decisions.</li> <li>• Use Indigenous knowledge to establish indicators of significance and other key determining factors (such as cumulative effects and effectiveness of mitigation measures) in the EA.</li> </ul>
<b>Decision – Making</b>	<ul style="list-style-type: none"> <li>• First Nation(s) should be present on all research teams. (This would necessitate involving them fully in the production, analysis, interpretation, and reporting of results.)</li> <li>• Ensure that the First Nation(s) take part in the selection of all researchers and consultants.</li> <li>• Ensure that the First Nation(s) have full and continual access to the researchers and consultants involved in the assessment. Provide opportunities for all community members to discuss their research and conclusions with those researchers and consultants. Ensure there are representatives of the First Nation(s) on decision-making bodies and that their procedures allow for the full participation of such representatives. Give opportunities for the broader First Nation(s) communities to have input into all decisions.</li> <li>• Ensure that the First Nation(s) are in agreement with the results</li> </ul>

	of the impact analysis and proposed mitigation measures before concluding this stage of the assessment.
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#### **6.4.4 Making the Decision on the EA**

There are a number of stages of an EA where decisions must be made, all of which should in some way involve any First Nation that may be affected by the project. Meaningful involvement of First Nations in these decisions will be possible only if they have taken part in the decisions made at the earlier stages. The decisions made in the final stages may include at least the following, each of which may be made by a different body either within the federal government or outside it:

- evaluating the sufficiency of the EA document itself;
- evaluating the efficacy of the proposed mitigation measures and the risk and consequences if those measures fail;
- evaluating the significance of remaining post-mitigation negative impacts;
- evaluating whether the remaining significant impacts are justified; and,
- approving the project, including setting the terms of the approval, i.e., the conditions).

The ideal situation is one in which development projects are broadly acceptable to the members of those communities likely either to benefit from the project or be harmed by it (Vanclay 2003). As we argued earlier in this report, the first step in meeting such an ideal is to build the capacity for the community to be able to express its acceptance or rejection of a project from an informed position. It is also necessary to ensure that the information available for a First Nation to use in making such a decision includes their own values, their knowledge, and a vision for their community that will allow it to decide the significance of the potential impacts and the project overall. Finally, to meet such an ideal the final decision(s) should be made jointly by the First Nation and the government decision makers.

That procedure may involve some sharing of decision-making power with the First Nation. Often the objection is made that the legislated decision makers, such as the Minister, may not legally allow First Nations to be involved in their decisions since that would amount to delegating their decision-making authority, which a Minister is not permitted to do. However, it is a permissible exercise of a Minister's decision-making authority to engage in a negotiation with First Nations in order to reach an acceptable conclusion regarding any of the decisions listed above.

Involvement of First Nations in the final decisions may also mean redefining the basis for making such a decision. For example, the Act does not require an EA to consider the direct social or cultural impact of a proposed project. Similarly, there is no requirement to use Indigenous knowledge when determining significance or when making a decision about the recommendations within the EA. However, a recognition of Indigenous knowledge will likely prove to be a significant issue for the First Nation and the basis for their decision on the EA; therefore, approaching the decision from this basis is essential even if it is not mandatory under the Act.

If one were to attempt to apply the framework and principles outlined in previous sections at this stage of an EA without having applied them during the previous stages, it would be exceedingly difficult to come to a consensus decision on the EA and the project. That may explain why it was so difficult to find examples of EA where First Nations describe their involvement as meaningful. It also suggests that all efforts should be made to begin to involve First Nations at the earliest possible stage.

Ultimately, the outcome rests upon whether all parties agree that approval of the project will enable them to realize their vision for the future. In the case of the Orca Sand and Gravel project, the Namgis said they were involved throughout the project in a truly meaningful way. At the point when a decision was to be made about the EA and the project, it was a relatively straightforward process because the community's concerns had substantially been addressed and their input into the project was evident at all stages of the process.

Guidelines for meaningful involvement of First Nations in making decisions at this stage of the EA are shown in Table 7.

**Table 7: Guidelines for Meaningful Involvement of First Nations in the Decision Making Stage of EA**

<p><b>Building Capacity</b></p>	<ul style="list-style-type: none"> <li>• Provide mechanisms and resources for the First Nation(s) to understand the types of decisions that are necessary to complete the EA process, including those required by the federal authorities, those required by the Minister responsible for the Act, and those that may be required by the First Nation(s).</li> <li>• Provide mechanisms and resources for the First Nation(s) to obtain legal or other expertise, if necessary, to build their capacity to take part in deliberations about the decisions that need to be made (i.e. licensing terms, determination of significance, and “significance justified in the circumstances,” etc.)</li> </ul>
<p><b>Effective Communication</b></p>	<ul style="list-style-type: none"> <li>• Ensure that project impacts and the method used to assess their significance are presented in clear language and communicated widely according to community protocols.</li> </ul>
<p><b>Broad Participation</b></p>	<ul style="list-style-type: none"> <li>• Ensure that all interested First Nation(s) members are given an opportunity to understand, discuss, and challenge the findings of the EA and, if the project is approved, the terms of the approval, monitoring programs, and follow-up programs.</li> </ul>

<p><b>Openness and Transparency</b></p>	<ul style="list-style-type: none"> <li>• Make explicit all judgments, assumptions, and uncertainties that were used to determine significance and that will be relied upon when the terms of the project approvals are decided.</li> <li>• Ensure that all post-approval requirements are subject to strict rules mandating timely and full disclosure of all monitoring and follow-up reports.</li> <li>• Ensure that all project approval terms and agreements reached with the First Nation are complied with and reported on.</li> </ul>
<p><b>Aboriginal Values</b></p>	<ul style="list-style-type: none"> <li>• Ensure that all impacts identified by the community, including cultural, social, and economic, and health impacts, as well as potential impacts to treaty and Aboriginal rights and traditional-use activities, are heavily weighted factors used to make the overall decision(s) on the project.</li> <li>• Ensure that the First Nation(s) take part in assessing the significance of adverse environmental effects that cannot be mitigated, or in deciding whether those effects may be justified in the circumstances.</li> </ul>
<p><b>Community Sustainability</b></p>	<ul style="list-style-type: none"> <li>• Ensure that final decisions about the significance of adverse environmental effects and, if the project is approved, the terms under which the project is licensed give primacy to First Nation(s) community sustainability, especially if the project may affect their protected uses of lands and resources.</li> </ul>
<p><b>Indigenous Knowledge</b></p>	<ul style="list-style-type: none"> <li>• Rely upon the information provided by First Nation(s) when determining significance, assessing the likelihood proposed mitigation measures, designing follow-up programs, and making</li> </ul>

	the licensing and permit decisions for the project.
<b>Decision Making</b>	<ul style="list-style-type: none"> <li>• Ensure that all agreements have been reached with the First Nation(s), including all necessary agreements about “impacts and benefits” or accommodation of concerns related to protected use of their lands and resources (if applicable), before the final decision whether to approve the project is made.</li> <li>• Involve the impacted First Nation(s) as joint decision makers in the decisions about significance and project licensing and permits.</li> </ul>

#### 6.4.5 EA Follow-Up

It is necessary to follow up on the EA to ensure that the impacts prove to be within the range predicted, to evaluate the effectiveness of the mitigation measures, to adapt mitigation measures to repond to any unexpected impacts, and to stay in touch with the communities, including First Nations, that are directly affected by the project. In Canada, that kind of follow-up has been less than ideal, with longitudinal studies of economic and community impacts having seldom been done (Gismondi 1997). However, there are real benefits to be had from effective follow-up, for it becomes possible to track the cumulative effects of more than one project, to assess changes in local quality of life, and to respond to these detected changes with adaptive design and management strategies—if the design of the follow-up program involves adopting a broad temporal, geographic, and topical scope through ongoing monitoring and compliance assurance, watershed analysis, and integration of social and ecological variables (Hunsberger 2003). Furthermore, if the local community is involved in deciding the purpose, scope, and priorities of follow-up activities, the results will be locally more acceptable (Hunsberger 2003).

For example, the Lutsel K’e First Nation has been involved in designing and carrying out a monitoring program that assesses changes in local quality of life and, in so doing, contributes to First Nations’ cultural preservation. The Nihat’ni monitoring program was established to give significance to information gathered while people are involved in

traditional practices and land uses in Lutsel K'e, thus providing an incentive to continue these activities. The program also contributes to the passing on of traditional knowledge, and respect for that knowledge, from elders to younger members of the community. Finally, it leads to political empowerment through increased community influence over the benefits and mitigation measures of local industrial development (Hunsberger 2003).

New Brunswick First Nations, through their representative organizations like the Union of New Brunswick Indians and Mawiw Council, have also looked to environmental-assessment follow-up as a chance to be meaningfully involved. With the Emera Pipeline project, the First Nations were worried about possible damage to sacred sites and areas with archaeological importance to them. As a result, they worked with a pipeline company to develop a monitoring program that used people who possessed Indigenous knowledge to help assess the development route.

In general, the principles adopted through the assessment continue to apply during the follow-up. In the case of the Orca Sand and Gravel project, the Namgis First Nation's involvement in the development has continued after the EA, through a variety of means, including participation in ongoing decision-making and eventual involvement in the project as a co-proponent. A Namgis member who is a hereditary Chief of the Tsawataineu has been appointed to the Board of Directors for Orca Sand and Gravel, where he currently serves as the Chairman.

**Table 8: Guidelines for Meaningful Involvement of First Nations in the Follow-up Stage of EA**

<i><b>Building Capacity</b></i>	<ul style="list-style-type: none"> <li>• Ensure that First Nation(s) can build the capacity to (co-) implement and assess the monitoring and follow-up throughout project implementation.</li> </ul>
<i><b>Effective Communication</b></i>	<ul style="list-style-type: none"> <li>• Provide First Nation(s) community leaders and membership with regular and on-going information during the construction, implementation, and decommissioning stages of the project.</li> </ul>



<p><b><i>Broad Participation</i></b></p>	<ul style="list-style-type: none"> <li>• Provide opportunities for the First Nation(s) community members, including young people, elders, and holders of Indigenous knowledge, local businesses, etc., to take part in the monitoring and follow-up.</li> <li>• Ensure that all interested members of the First Nation(s) have an opportunity to understand, discuss, and challenge the findings of the monitoring and follow-up programs.</li> </ul>
<p><b><i>Openness and Transparency</i></b></p>	<ul style="list-style-type: none"> <li>• Ensure that the methods, data, and assumptions used in the monitoring program are explained clearly to the First Nation(s) leaders and members and understood by them.</li> </ul>
<p><b><i>Aboriginal Values</i></b></p>	<ul style="list-style-type: none"> <li>• Ensure that First Nation(s) values are used in the design of monitoring programs, including in the decision as to what and how to monitor.</li> <li>• Ensure that impacts to First Nation(s)' rights, including title and traditional-use activities, are monitored and assessed according to First Nation(s) design.</li> </ul>
<p><b><i>Community Sustainability</i></b></p>	<ul style="list-style-type: none"> <li>• Involve First Nation(s) in the design of monitoring programs, including the identification of relevant social and cultural indicators and community-based economic and environmental indicators.</li> </ul>
<p><b><i>Indigenous Knowledge</i></b></p>	<ul style="list-style-type: none"> <li>• Use an integrated approach to monitoring in which Indigenous knowledge is used for design, indicators, assessment, and evaluation.</li> <li>• Use Indigenous knowledge in designing the adaptation measures</li> </ul>

	to be taken in response to monitoring and assessment.
<b><i>Decision Making</i></b>	<ul style="list-style-type: none"> <li>• Involve First Nation(s) directly involved in follow-up through membership in planning and decision-making bodies established for this purpose.</li> </ul>

## 7 Conclusions

*Canada would do well to recognize that many core First Nation values are consistent with the core values contained in the Canadian environmental impact assessment regime. If fairly and respectfully involved, First Nations have a positive and balanced contribution to make in fulfilling the intent of the process, as set out in the Preamble to the Canadian EA Act, and to the long-term integrity of the process itself. (B.C. Aboriginal Fisheries Commission (British Columbia 2000))*

We conclude that in order for Aboriginal peoples take part meaningfully in EA, special emphasis should be placed on understanding the issues faced by Aboriginal peoples, such as lack of involvement in regional planning and decision making, significance of Indigenous knowledge and the importance of the underlying value-base of that knowledge, and treaty and Aboriginal-rights issues. Furthermore, much greater emphasis must be placed on fully involving Aboriginal peoples in the stages that take place well before the formal EA begins and after it is completed. As the Orca Sand and Gravel project demonstrates, the significant benefits to be had from the meaningful involvement of First Nations in developments and EAs within their territories include the minimization of project risks and the realization of national sustainable-development objectives.

If First Nations are to be meaningful participants in the Canadian EA system, it will require a fundamentally new approach. Processes that could engage and empower First Nation communities must be articulated and accepted. Across Canada today, First Nations are increasingly involved in planning and managing their lands and resources. Similarly, they expect to be fully involved, not only EAs, but also in the preceding deliberations,

discussions, and decisions that form the foundation of subsequent EAs. Although the scope of those discussions, the roles of all participants, and the relationship of these discussions to mandatory project decisions are generally not clear to the public or First Nations, these discussions do take place. A fundamentally different approach would recognize the need of First Nations to have a real voice in these discussions and also in all post-project phases.

The expectation is that these processes will be built on First Nations' principles and reflect First Nations' values and vision for their territories. Although this study describes a possible conceptual framework, more research, of the following kinds, is needed in order to move closer to the goal of involving Aboriginal peoples meaningfully in EA.

### **7.1 Capacity Needs**

At least three areas of capacity development need to be considered. First, it is crucial to understand the capacity needs, not only of First Nations, but also of their representative organizations. It is also essential to understand the relationships among those bodies, their areas of responsibility and authority, and their ability or need to work in partnership or in isolation with one another.

Second, First Nations should be partners in research to determine the exact scope and nature of their capacity needs. These needs can run from the need for personnel (such as skilled administrators, community organizers, technicians and technical interpreters, Indigenous-knowledge holders and interpreters, and scientific and legal advisers) to technology and infrastructure needs. If these needs are met only through the provision of project-specific resources, which by their nature are short-term, they are not likely to be enough. It is important to adopt a co-ordinated way of developing the ongoing capacity to be ready to engage in all aspects of EA, including project-specific, non First Nation-driven EA.

Third, how best to build the necessary capacity given the roles and responsibilities of the various players should be researched immediately. It is necessary to elaborate the best methods to create improved understanding of and access to the EA process by Aboriginal

peoples, and their governments and organizations, so that these organizations can be comfortable and effective when participating in the EA process.

## **7.2 EA Decision-Making and Governance**

Research is needed to improve EA decision-making and understand its connection to Aboriginal governance. First, more needs to be understood about Indigenous governance structures (including traditional, *Indian Act*, self-government, and *First National Land Management Act* forms of governance, etc.) and how Indigenous peoples and their governments can assess the environmental, social, economic, and cultural impacts of proposed decisions, activities, and projects under these different forms of governance.

Second, research is needed into how all forms of Indigenous governance structures can work with non-Indigenous governments to develop a harmonized EA process for projects that are proposed on First Nations traditional territories.

Third, the types, scope, and timing of decisions (by a proponent, a government, or a First Nation) that may be made before, during, and after the CEAA six-step EA process need to be analyzed and clarified. Developing a framework for defining the values behind decisions (for example, the link to existing government policy) that are made at each stage is essential if those who may share different values are to be engaged.

Transparency is important, and research should be conducted in this area. Furthermore, an important first step would be to understand how each of those decisions may be related to Aboriginal and treaty-rights protection processes, such as consultation. Understanding possible mechanisms for involving Indigenous peoples (as implementers of rights), their governments (as representatives of nations) and their organizations that are responsible for providing certain services to Indigenous peoples, could assist with structuring more effective EA processes involving these entities.

In the same way that government, industry, and assessment practitioners must ensure that the conditions exist for involving Aboriginal communities meaningfully in the EAs, so too must First Nations be able to ensure that the conditions exist in their own communities to promote the meaningful participation of their own members. If

Aboriginal nations have a clear vision of community sustainability and have been full participants in regional planning so that they were able to integrate that vision into the development future of the region (and presumably their traditional territories), then project-specific EA becomes more predictable and focused, and participants can be clear as to the scope of their participation. In this way participation in EA becomes much more effective.

It is interesting that First Nations are still demanding from current EA processes and outcomes what the Berger Inquiry was able to give them 30 years ago. Given that there have been few times in the post-Berger period when First Nations have been meaningfully involved in EAs conducted under the Act, our framework is meant to serve as a link between the EA theory and practice and to advocate for an integrated sustainability-based approach to the conduct of EAs. We urge others, in particular Aboriginal peoples, governments, and practitioners, to review, consider, test, evaluate, modify, refine, and expand the framework in the hope that involvement of Aboriginal people in EA can be made significantly more meaningful.



**Appendix A: Case Studies Matrix**





**CEAA MEANINGFUL INVOLVEMENT OF FIRST NATIONS IN ENVIRONMENTAL ASSESSMENT PROJECT CASE STUDY MATRIX**

First Nation		Attawapiskat	Haisla	Tsawassen	Iskut	Halalt FN	James Bay Crees	Nisichawayasihk Cree Nation +	'Namgis & Kwakiutl	Union Of New Brunswick Indians	Membertou FN	
Location	Province	Ontario	British Columbia	British Columbia	British Columbia	British Columbia	Quebec	Manitoba	British Columbia	New Brunswick	Nova Scotia	
Environmental Assessment	Project Name	Victor Diamond Mine	Kitimat LNG Terminal	Deltaport Third Berth Expansion	Galore Creek Gold-Silver-Copper Mine	Chemainus Wells Project	Eastmain 1A & Rupert River Diversion	Wuskwatim	ORCA Sand & Gravel (Polaris Minerals + Namgis FN)	The Emera Pipeline Project	Sydney Tar Ponds and Coke Ovens Site Remediation	
	Type (Panel, Comp, Screening)	Comp Study	Comp Study	Comp Study	Comp Study	Comp Study	Joint Panel Review	Comp Study	Comp Study	Panel review	Joint Panel Review	
	Proponent	DeBeers	Kitimat LNG Inc. (Gavelstone LNG)	Vancouver Airport Authority	NovaGold Resources	District of Cowichan	Hydro-Quebec	Manitoba Hydro in partnership with Nisichawayasihk Cree Nation	ORCA Sand & Gravel (Polaris Minerals + Namgis FN)	Emera pipelines	Environment Canada and Sydney Tar Ponds Agency	
	Project Description	Construction, operation and closure of open-pit diamond mine and related infrastructure facilities located 90 km west of AFN. Mine has a 12-year operating life and includes on-site processing. Project includes winter road upgrades and power transmission lines, auxiliary facilities in AFN and Moosonee.	Construction of a LNG port terminal and natural gas pipeline lateral, location is on-reserve (Indian Reserve #6 Big Cove) at a fed govt designated industrial park. Physical works and activities associated with the construction, operation, and decommissioning of marine facilities; the vessel path out to the existing shipping lane, LNG terminal and storage facilities; pipelines and directly associated facilities (natural gas and natural gas liquids lines), and supporting facilities and infrastructure.	Construction at Roberts Bank port facility, 35 km S of Vancouver	NovaGold Resources proposing to construct & operate a copper-gold-silver open pit mine approx. 350 km NW of Terrace, BC. Project includes processing plant and waste rock storage, etc.	District of Cowichan proposing to construct a GW supply system for the community of Chemainus	Rupert River diversion including 4 dams, spillway, 50 dikes, 2 diversion bays (395 km <sup>2</sup> ), control structure, canal network (12 km) to redirect flow from RR watershed to Eastmain watershed plus construction of powerhouse	Eastmain 1A on Eastmain River plus addition of powerhouse at the Sarcelle site at outlet of Poinaca reservoir + transmission line relocation, permanent access roads and workcamps.	Construction of a 200 MW Hydro Generation Station on the Bumbwood River north of Nelson House.	Project includes a gravel mine and marine terminal/ship loading facility with a capacity to handle vessels >25,000 DWT. Also construction of a processing plant to wash and size gravel and limited crushing, settling ponds, stockpile area, water supply, site access, power supply are part of project.	The Emera Pipeline Project involves the construction and operation of a 30-inch diameter natural gas transmission from Canaport™ Liquefied Natural Gas (LNG) facility at Mispec Point, NB near Saint John, New Brunswick, to an export point at the Canada-US border near St. Stephen, New Brunswick. On May 4, 2006 CEEA announced a pilot project to substitute the National Energy Board process for an environmental assessment by a review panel.	The proposed remediation project consists of several components: controlling surface water (at the tar ponds and coke ovens) and groundwater (at the Coke Ovens); removing and destroying selected contaminants from both sites; treating in-place selected contaminants at both sites; containing remaining contaminants at both sites; site surface restoration and landscaping at both sites; and developing long-term monitoring and maintenance plans for both sites
	Key Aspect of FN Involvement	IBA, TK, SIA	Consultation	Traditional Knowledge	Unknown	Unknown	Self-Government, Impacts & Benefits Agreement	NCN partner w proponent	Namgis = Proponent, Consultation	Governance	Unknown	
	CEAR Ref. No.	FEAI # 40568	05-03-10430	04-03-3734	05-03-8858	FEAI # 41404	FEAI #35636	FEAI # 31130	Unknown	06-08-17667	05-05-8989	
	RAs	DFO, NRCan, TC, HRSDC (INAC as FA)	TC, EC	DFO, EC	NRCan, TC, DFO	Western Economic Development Canada	DFO, TC	DFO, TC	DFO, TC, INAC	National Energy Board, the Canadian Transportation Agency, Fisheries and Oceans Canada, Environment Canada, and Transport Canada	PWSSC, EC, TC	
	Other Jurisdictions Harmonized Process?	Province of Ontario	Government of BC	Canada Port Authority EA Regs.	Unknown	Province of BC	Province of Quebec, JBNQA process	Province of Manitoba	Province of BC	New Brunswick provincial EA	Province of Nova Scotia	
	EA Start Date	April 14/03	March 9/05	Unknown	Dec. 12/05	July 2/03	2002	Nov. 28/01	Aug. 10/04	Unknown	Jan. 31/05	
	Comp/Panel Start Date	Unknown	Nov. 2/05	Dec. 17/04 (always)	June 29/06	Unknown	Panel Feb. 14/03	Unknown	Jan. 13/05	04-May-06	May 2/05	
EA Decision Date	Aug. 19/05	Aug. 1/06	Unknown	NOT COMPLETED	NOT COMPLETED	NOT COMPLETED	June 21/06	Nov. 10/05	Unknown	NOT COMPLETED		
CEAA Participant Funding?	Unknown	No	Yes	Iskut Band Council - \$30,000.00	Unknown	Unknown	Unknown	Kwakwilt - \$14,980.00	Unknown	\$44,000.00	Unknown	
Participant Funding from Proponent?	Unknown	Assume yes	Yes	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Business/Partnerships/Other	Other	Unknown	Haisla FN and Kitimat LNG Inc. signed "precedent-setting" partnership agreement April 26/06	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Two long-term agreements with Maritimes & Northeast Pipeline (M&NEP) and Brunswick Pipeline.	Unknown	
First Nation	Nation/Confederacy	Mushkegowuk	Unknown	Unknown	Unknown	Unknown	Eeyou Ashtchee/James Bay Crees	Unknown	Unknown	Maliseet and Micmaq	Unknown	
	Treaty/Non-treaty	Treaty 9	Unknown	Unknown	Unknown	Unknown	JBNQA	Unknown	Unknown	Treaty of 1693	Peace & Friendship	
	PTO/Independent	Nishnawbe-Aski Nation	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	UNBI represents twelve First Nation communities in New Brunswick.	Union of Nova Scotia Indians	
	Language group	Cree (Swampy)	Unknown	Unknown	Unknown	Unknown	Cree/Eeyou Ashtchee	Unknown	Unknown	Maliseet and Micmaq	Mikmaq	
	Remote/Rural/Urban	Remote	Unknown	Urban	Unknown	Unknown	Remote	Remote	Unknown	Urban	Rural/Urban	
	FN Government?	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Would be dealing with CCRA	Unknown	Unknown	Unknown	Stable, Chief Terence Paul, ISO 9001 designated administration
Environment Staff?	Suzanne Barnes, Lands and Environment Director	Unknown	Unknown	Unknown	Unknown	Unknown	Cree Regional Authority Environment Officer	Unknown	Unknown	Ronald Perley	Unknown	
Other Affected FNs	Other FNs	Weenusk (Peawanuck), Fort Severn, Moose Cree (Moose Factory), Fort Albany, Kashechewan, Taykwā Tagamou (New Post), MoCrebec	Unknown	Unknown	Unknown	Unknown	Waskaganish, Nemaska, Mistissini plus Wemindji, Chisasibi, Waswanipi, Ouje-Bougoumou	Unknown	Kwakwilt	Union of New Brunswick Indians, Mawiw Council, Tobique First Nation	Unknown	
Notes		None	Haisla Chief Steve Wilson: "This agreement is a good example of reconciling Haisla Aboriginal rights and title interests with the business of Kitimat. We have created an entire process on consultation and accommodation that sets the standard for how relationships between FN, industry and govt should be defined."	None	None	Comp Study Report submitted Feb. 4/05, EA currently under review, Halalt FN comments (2005/02/21) posted on provincial site) indicates no trust in EA office or meaningful consultation	Nov. 24/06 Quebec Issues Certificate of Authorization for construction of Eastmain 1 powerhouse and diversion of the Rupert River YET CEEA Panel Review still under review; unanimous recommendation Oct. 31/06 by COMEX review committee (bipartite Quebec-Cree). Also Benefits Agreement and vote by Crees in 2002 i.e. done deal. Also, major issues with consultation revealed by researcher for Crees. Panel rec: considering the "major and irreversible changes to the Rupert River, the proponent sponsor a commemorative work. " Rupert River flow to be decreased by 72%, 52% @ mouth, Hg levels to increase, banks and shoals exposed. Feb. 7/02 Quebec & Crees agreement concerning a new relationship but Dec. 8/04 (DOC 1012-EN) Crees and Quebec disagree as to scope of, or application of, the assessment and review process for project so went with single process under CEEA and JBNQA.	None	Extensive public consultation program over a 3-year period. Specifically referenced aim to meet the legal duty to consult and accommodate any infringement of Aboriginal rights and title. Follow-up program has been implemented to verify the accuracy of the EA and/or determine the effectiveness of mitigation measures, program to start Oct/06 and end Oct/35.	None	Environment Canada and the Sydney Tar Ponds Agency developed the proposed cleanup plan, drawing on hundreds of engineering and scientific studies, and on public consultations carried out since 1996. The remediation strategy consists of several components.	
Agency Recommended?	Yes/No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	
Rating	Identify First Choices, etc.	FIRST	FIRST	THIRD	THIRD	LAST	LAST	LAST	FIRST	THIRD	SECOND	



**Appendix B: Interview Questions (Abbreviated)**



## **First Nation Interview Checklist (Abbreviated)**

### **1. Project History and Project-Specific Details**

- List EA, start date, level and approval date or current stage if EA not approved yet. Any concerns regarding level of EA from First Nations perspective, e.g. comprehensive study vs. panel review
- Who was the authority(s) having jurisdiction—who was the lead agency on the EA (“lead responsible authority”)?
- Who were the responsible authorities and what type of decision were they making (e.g., approving the EA; approving a permit, etc; providing funding; etc.)?
- What other government “expert” authorities were involved in the project, and did you have access to their expertise?
- Did the Crown discuss the project in relation to its constitutional duty to consult? Ask for brief overview of how that worked with EA process.
- When was your First Nation notified of the project, by whom (govt. or industry), and generally were you satisfied with how you were notified and involved in the project?
- Did you enter into any form of agreement with government or industry in relation to the EA (e.g. consultation agreement)?
- Were you provided with a clear description of the project approval procedure and how the EA fits within it?
- Did you receive any funding to aid you in participating, e.g., CEAA participant funding, provincial, other federal (e.g., INAC), funding from the

proponent or industry? How important was this to your involvement in the EA?

- Was any other First Nations or any of your representative organizations involved in the EA (e.g., Tribal Council, Treaty Org., PTO)? If so, what was their role and what did they bring to the process that was important for your First Nation?
- Did the project involve negative impacts to, or infringement on your Aboriginal and/or treaty rights, including title rights? If so describe.

## 2. Key Steps in Meaningful Involvement

- **Scope of Assessment:** Was the scope of the assessment comprehensive from your First Nation's perspective; i.e., did it include all phases of the project, accidents and malfunctions, secondary projects, decommissioning or site reclamation, and any aspect\* of particular importance to your First Nation  
\*If so, describe.
- **Project Alternatives:** What alternatives were considered? Did the EA look at alternatives from the perspective of location, process/treatment technology (best available technology economically feasible—BATEA), and whether the project is actually needed, etc.?
- **Terms of reference (TOR) for EA:** Did your First Nation review the TOR for the EA, and were your concerns or comments addressed?
- **Indigenous Knowledge (IK) Study:** Did the EA include an IK study? If so, who conducted it, was the scope acceptable, who determined which knowledge holders to involve, how were the findings incorporated into the EA, who determined the significance of the findings, did the results have any impact on the overall project plan or the EA decision?
- **Cumulative-Effects Assessment:** Was your First Nation involved in the cumulative-effects assessment? Was this assessment adequate or comprehensive from your First Nation's perspective? What other developments were considered?
- **Determining Significance:** Was your First Nation involved in the determination of significance of each of the effects assessed, and/or was the determination acceptable to your First Nation—did it violate any of your cultural specific values/principles/laws?

### **3. Overall Assessment of Meaningful Involvement**

- How would you describe your involvement in the EA? (I.e., what separates involvement from tokenism? E.g., were the decisions already made, or through your involvement were you unable to influence the process? What else? Transparent and accessible process? Adequate time? Holistic definition of environment to include social and cultural concerns?)
- Did you feel your First Nation was meaningfully involved in the EA process?
- What were the key ways your First Nation was meaningfully engaged in the EA?



**Appendix C: Case Study No. 1 — Namgis First Nation and the Orca Sand and Gravel Project**



## QUICK FACTS

**Location:** Alert Bay, Cormorant Island, B.C.  
**Population:** 695  
**Main Industries:** Fishing, tourism, forestry, mining, planning, manufacturing, construction, health care, energy  
**Languages:** English, Kwakwaka'wakw

## LOCATION



Map from Google Map



Gravel conveyor-

## OTHER FACTS

### Eulachon (oolichan)

The eulachon (a tiny fish) were harvested traditionally and remain important to Namgis for making oil known as *t'lina*.

### Franz Boaz

Early exploration by anthropologist Franz Boaz led to a wealth of written accounts of the area, along with pictures and maps. This information is being collated by NFN to support land claim agreements and in land use planning.

### Jacques Cousteau

According to Cousteau, the combination of crystal-clear water and abundant reef life make the waters around Namgis the second-best place for scuba diving place in the world.

## CASE STUDY NO. 1: NAMGIS FIRST NATION AND THE ORCA SAND AND GRAVEL



Namgis First Nation  
Hatakas'la - Farewell

© CIER

## PROJECT DESCRIPTION

Namgis First Nation and Polaris Minerals became partners in the ORCA sand and gravel project, which consists of a gravel mine, a processing plant, and a ship-loading terminal. The environmental assessment of the project began officially on August 10, 2004.

## HISTORY OF NAMGIS

*"The Namgis want to tell their own story...power is held by who tells the story."*  
Interviewee #2, Namgis First Nation

Traditionally Namgis First Nation (NFN) was located at the mouth of Nimpkish River; its first contact with Europeans was with Captain George Vancouver in 1792. Today, NFN is found in Alert Bay, where it moved "to work in the salmon canneries and, for better or worse, become part of the European-style wage economy and the abundance of manufactured goods it offered" (NFN web page, 2007).

St. Michael's Residential School in Alert Bay was the last residential school to close in Canada, in 1975. This legacy, along with an incident of medical malpractice that resulted in the death of community members in the 1980's, led to a determination by Namgis to build their own social infrastructure. NFN have spent the last 25 years developing that quite successfully. They have managed to have a provincial hospital built on-reserve along with building their own school, recreation centre, council building, long house, dental clinic, treatment centre, and new sewage system.

By 2000 the social infrastructure was completed. At this point the Namgis turned their attention to economic development, planning, and non-treaty initiatives such as agreements with government (BC parks – true co-jurisdiction) and forestry companies (planning). The ORCA sand and gravel project and the Brookfield Power run-of-the river Hydro Project are truly unique projects born out of the years of hard work and exhaustive land use planning.



Gravel pile - CIER



ORCA site- CIER



Local Art - CIER

## THE ENVIRONMENTAL ASSESSMENT

### Namgis' role in the ORCA sand and Gravel project:

Namgis was involved in the EA process through the drafting of the Terms of Reference, hiring of consultants, and proposing mitigation. With respect to the Terms of Reference, this included the addition of certain studies at the request of NFN.

Community consultation was also a major component of the EA. Polaris involved the Namgis in identifying the site for the development. The membership expressed their concerns e.g. fish, open pit mining, impacts to the river, and groundwater. At subsequent meetings, Polaris responded by presenting mitigation measures and studies. The ORCA project represented the first partnership between Namgis FN and a major developer. Ultimately, Namgis negotiated a 12% ownership share and a community development fund (x dollars per tonne of gravel), which is managed by NFN. There were agreements negotiated between Polaris and NFN, including an Exploration Agreement, Partnership Agreement, and Benefits Agreement.

Namgis also entered into the B.C. Treaty Process and worked closely with the environmental organization EcoTrust Canada (e.g. on marine monitoring). Under the Treaty Process, Namgis established an 11-member natural-resource team, which also works on economic development and planning.



## INDIGENOUS KNOWLEDGE (IK)

### Positive way in which IK was involved in the EA

Namgis brought to the attention of marine biologists a species of seaweed important to their people as a traditional food. *T'lakstan*, a single-cell seaweed, has a peculiar life cycle in that it remains hidden for 11 months of the year, growing large fronds just every May. It grows only on granite rock, which is a rare substrate in the region. The path of the gravel conveyor was shifted at the request of Namgis to avoid colonies of the seaweed on the beach, and Polaris shipped in granite rock from down the coast as further compensation.

## KEYS TO SUCCESS

### Developing a relationship with Namgis:

Polaris Minerals stated at the outset that it wanted to recognize Namgis as the original owners of the land. They spent approximately 2 to 3 years developing a relationship before the environmental assessment began.

When Polaris approached the community, their first questions were:

1. What impact will the project have on fish?
2. What impact will the project have on Namgis rights?
3. Who is the company?
4. What do they want from us?

Key aspects of the ORCA EA from NFN perspective:

1. NFN sat down with consultants to develop the Terms of Reference and identify the community values; NFN conducted traditional-use studies independently;
2. NFN specified for Polaris the consultation approach; and,
3. The NFN team, not outside experts, controlled the process.

## KEY PLAYERS

### Involved in the project were:

**Namgis First Nation:** Doug Aberley, Gary Ulstrup, George Speck

**Polaris Minerals:** Marco Romero (CEO)

**Local Biologist:** Mike Berry

**EA specialist:** Tony Pearse

**Responsible authorities:** DFO, Transport Canada, INAC

**Federal EA Coordinator:** CEAA

## PROJECT FACTS

**Project description:** Namgis has partnered with Polaris Minerals Co. to build and operate a large-scale sand and gravel pit west of Port McNeill. The aggregate is exported by sea to urban centres along western North America. Namgis owns 12% and Polaris 88% of the Orca Sand and Gravel Limited Partnership.

**Jobs created:** 27

**Project lifetime:** 30 years

**EA scope:** Both provincial and federal EAs were done

## MEANINGFUL INVOLVEMENT IN THE ENVIRONMENTAL ASSESSMENT

### Positive examples of Namgis First Nation (NFN) involvement in the EA process:

- Polaris sought an agreement with NFN before exploring in their territory.
- NFN had veto power over the project up to the conceptual stage (i.e., pre-feasibility study stage).
- Employment on the ORCA project is 50% First Nation, with Polaris agreeing to fund comprehensive training over 3 to 5 years.
- George Speck, a Namgis band administrator and hereditary chief of the Tsawataineuk has a seat on the ORCA Board of Directors as Chairman.
- NFN expanded scope of ORCA assessment—ensured that impacts considered from watershed perspective
- NFN was involved in selection of consultants hired for EA.
- NFN received funding to make independent review of EA possible.
- NFN conducted Indigenous-knowledge/traditional-use studies.



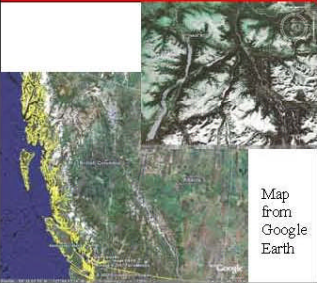
**Appendix D: Case Study No. 2 — Tahltan Iskut First Nation and the Galore Creek  
Project**



**QUICK FACTS**

**Location:** Iskut, Dease Lake, telegraph Creek British Columbia  
**Population in Iskut:** 283  
**Main Industries:** Mining, tourism, construction  
**Languages:** English, Tahltan

**LOCATION**



Map from Google Earth



Telegraph Creek - CIER

**OTHER FACTS**

**The Klappan:** Sacred headwater of the Stikine, Skeena and Nass rivers. Mineral exploration companies have been denied access to this region by a blockade for the last three years, spearheaded by Iskut Elders. Nine Elders were arrested in 2005. The largest opposition is to Royal Dutch Shell, which plans to drill for coal-bed methane. Elders claim the land for important cultural purposes and traditional harvesting.

**Parks:** There are two federal parks on Tahltan land, the Spatsizi and Mnt. Edziza, and one provincial park, the Spatsizi Headwaters. These areas are known as the Serengeti of North America due to their massive amounts of wildlife.

**CASE STUDY #2: TAHLTAN - ISKUT FIRST NATION AND THE GALORE CREEK PROJECT**



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**PROJECT DESCRIPTION**

The Galore Creek project as proposed by NovaGold Canada Inc. includes the construction and operation of a copper-gold-silver open-pit mine. The proposed project is planned to include an access road, ore concentrate slurry pipeline, transmission line, processing plant, airstrip, waste rock storage, and supporting infrastructure.

**TAHLTAN HISTORY**

Tahltan history and politics are very complex. It is thought that the Tahltan moved inward from the coast, but remained highly dependent on salmon. Tahltan territory includes main communities Iskut, Dease Lake, and Telegraph Creek, which are represented by the: Iskut Band Council, Tahltan Band Council, and Tahltan Central Council (3 executive and 10 hereditary family leaders). An Elders Society, The Kablona Keepers, operate out of Iskut. The Tahltan control a vast swath of land in northwestern B.C.

In 1838 the Scottish explorer and fur trader Robert Campbell was one of the first outsiders to enter Tahltan Territory. Anthropologists George Emmons and James Teit followed. Gold was discovered on the Stikine River in 1862, followed by the Cassiar Gold Rush of 1874, and the Klondike Gold Rush in 1898, bringing Europeans into their territory. The Tahltan never signed a treaty and have been undergoing land claim processes since the signing of the 1910 Declaration of the Tahltan Tribe in Telegraph Creek.

The Tahltan people are presently faced with a wave of mining development and exploration throughout their traditional territory. In addition to the mines that are currently operating in their territory, there are 10 projects in various stages of the environmental assessment process on their lands, and 90 of 140 mining exploration projects in British Columbia are currently taking place within Tahltan territory (Interviewee #6, 2007).



Road to telegraph Creek - CIER



Blockades -CIER



The Stikine River - CIER



**THE ENVIRONMENTAL ASSESSMENT**

**Tahltan role in the Galore Creek Project:**

**Cumulative effects:** The Tahltan have 10 projects in various stages of EA. However there is no effort to evaluate the combined power of these projects as a force of change in a relatively remote northern community. The Elders of Iskut have expressed concern that the traditional ways will be permanently degraded should all of the projects occur at once. The Nova Gold project EA executive summary section on cumulative impacts included the Schaft Creek, Red Chris, and Kutcho Creek metal mines, the Mount Klappan coalmine and the Forrest Kerr hydroelectric facility. Referring to impacts on wildlife, a concern held by the Iskut Elders, the Nova Gold report, prepared by RESCAN, 2005, states *“Although the probability of occurrence and magnitude of these potential cumulative effects are unknown, the contribution of the Galore Creek Project to any cumulative effects will be negligible.”* There is no mention though of the access road leading to the development of other holdings in the region such as the copper canyon holdings 5 km away. Focus on cumulative effects was insufficient according to Interviewee #10.

**Socio-economic impacts:** Other projects developing alongside Galore Creek include Red Chris, Mount Klappan Coal Project, Kutcho Creek and Schaft Creek. The social impacts of development in the Tahltan territory need to be balanced. With a population of only 283 people in Iskut and Galore Creek offering about 600 jobs then as the second or third projects come on line there will be virtually no benefits from employment. All Tahltan who are able and want jobs in the mining sector will already have them. In turn, outside workers will need to be imported - bringing with them, their traditions and customs - and the Tahltan run the risk of becoming minorities in their own territory.



Galore Creek-Photo by RESCAN

**CAPACITY ISSUES**

**How lack of capacity effects meaningful involvement in EA:**

Lack of financial support by CEAA to attend to 10 concurrent EA's was one of the reasons that Nova Gold was deemed acceptable to the Tahltan -in order to obtain enough funding to prepare for other EA's. It was accepted as the “best of the worst” and allowed the TCC to “practice” and to get some commitments for a land use study and baseline assessments.

**LIMITATIONS**

**Barriers to meaningful involvement in the EA:** A lack of financial resources and internal capacity has prevented the Tahltan communities from being more fully engaged in assessing the proposed mining developments. Internal division within the Tahltan has resulted in a less than unified response to the mining companies and their proposed activities. While the Tahltan Central Council has been active in exploring potential agreements with various mining companies, Tahltan Elders have been arrested blockading mining exploration activities. All parties noted a lack of effective communication. The case of the Tahltan and mining development raises numerous issues that influence the effectiveness of the environmental assessment process. Some of these issues – the absence of a land use plan, community division, lack of internal capacity, aboriginal rights and title - rest outside of the formal environmental assessment process but impact heavily on the assessment process itself. The experience of the Tahltan speaks to the need for the consideration of the context in which the environmental assessment process occurs to ensure that the assessment process itself is both equitable and meaningful for the aboriginal communities involved.

**KEY PLAYERS**

**Involved in the project were:**

- Proponent:** Nova Gold
- Tahltan:** Marie Quock, Rhoda Quock, Curtis Rattray, Eileen Doody, Nalaine Morin
- Responsible authorities:** Transport Canada, DFO, Natural Resources Canada
- Federal EA Coordinator:** CEAA

**OTHER PROJECTS**

**There are 10 projects currently under the EA Review on Tahltan territory:**

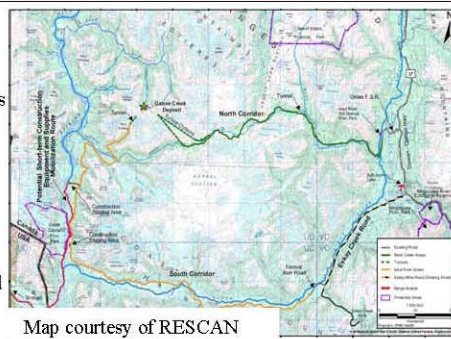
- Galore Creek Mine - Nova Gold;
- Red Chris Mine bcMetals and Red Chris Development Corp;
- Mount Klappan Coal -Fortune Minerals;
- Kutcho Creek Western Keltic Mines Ltd;
- Klappan Coal Bed Methane Shell Oil;
- Rok Coyote Eddon - Firesteel Resources,
- Schaft Creek Copper - Fox Metals Inc;
- Forrest Kerr Hydroelectric project;
- Foremore Mine Roca Mines Inc;
- GJ (Kiniskan) Canadian Gold Hunter

**MEANINGFUL INVOLVEMENT**

**Positive examples of Tahltan involvement in the EA process:**

**Alternatives:** Tahltan members decided after reviewing the proposed road access Nova Gold site that it was too close to important rivers. Tahltan members designed and proposed the more expensive northern route, which includes two long tunnels. The new route also includes a pipeline to carry slurry in order to minimize vehicle traffic.

**THREAT** (Tahltan Heritage and Resources Environmental Assessment Team): is made up of 23 Tahltans (90%) are Tahltans. Partially funded by Nova Gold to review EAs in separate sections according to individual expertise. Nova Gold formed a relationship early and were personable people and accessible. Nova Gold gave info packages and made presentations but often at a too technical level.



Map courtesy of RESCAN



**Appendix E: Case Study No. 3 — Union of New Brunswick Indians and the Emera Pipeline Project**



### QUICK FACTS

**Location:** New Brunswick  
**Population:** Mi'kmaq and Maliseet  
**Main Industries:** Fisheries, oil and natural gas  
**Languages:** English, Maliseet, and Micmaq

### LOCATION



### OTHER FACTS

UNBI represents 12 First Nation communities in New Brunswick:

**UNBI Aboriginal Natural Resources Committee:**

Their primary responsibility shall be to protect, preserve and promote the Aboriginal people while at the same time exploring and monitoring development, conservation, employment and business opportunities in connection with the development of natural resources.

**February 8, 2007** the Union of New Brunswick Indians (UNBI) held an official signing ceremony ratifying two long-term agreements with Maritimes & Northeast Pipeline (M&NP) and Brunswick Pipeline.

### CASE STUDY #3: Union of New Brunswick Indians and the Emera Pipeline Project



Photo by CIER

### PROJECT DESCRIPTION

The Emera Pipeline Project involves the construction and operation of a 30-inch diameter natural gas transmission from Canaport™ Liquefied Natural Gas (LNG) facility at Mispec Point, NB, near Saint John, New Brunswick, to an export point at the Canada-US border near St. Stephen, New Brunswick. On May 4, 2006 CEEA announced a pilot project to substitute the National Energy Board process for an environmental assessment by a review panel.

### HISTORY

The Union of New Brunswick Indians (UNBI) represents the Maliseet and Micmaq peoples of New Brunswick. One of the duties of the UNBI is to respond to development proposals that may impact their member communities. UNBI has been a participant in various environmental assessment processes, including the assessment of the Emera pipeline and the assessment of the recent refurbishment of the Point Lepreau Nuclear Generating Station. UNBI's experience with the federal environment assessment process raises many questions about the effectiveness of current federal environmental assessment legislation.

### LOOKING FORWARD

UNBI is looking to carry out the following specific tasks:

- Develop liaison opportunities with companies and federal or provincial government departments and agencies operating in the natural resources sector.
- Monitor all regulatory processes governing the development and exploration for natural resources.
- Explore potential business opportunities through independent or coventure or partnership arrangements.
- Develop training programs and employment opportunities related to natural resources development.
- Advise staff on developing a working relationship with government departments and agencies and private or public corporations.
- Assist in and monitor negotiations with government departments and agencies and private or public corporations with a view to maximizing benefits for our people.

**THE ENVIRONMENTAL ASSESSMENT**

UNBI staff observe that the environmental assessment process is heavily weighted against effective First Nation involvement. “We have no power” was a common description given by staff regarding UNBI’s position within the assessment process. Much of UNBI’s participation in assessment hearings was seen to be tokenism with little, if any, real involvement or decision-making power. UNBI staff complained that within the assessment process, UNBI communities are treated primarily as intervenors in the process rather than as peoples with longstanding nation-to-nation relationships with the federal government. According to the experience of UNBI, issues of aboriginal title are often ignored or not given their proper weight within the assessment process

**CONSULTATION PROCESS**

The federal environmental assessment was also characterized by UNBI as being unresponsive to the particular situation of its member communities. As an example, UNBI suggests that consultation policies need to be flexible to accommodate local conditions, particularly in New Brunswick, where the First Nations communities never formally ceded their lands. UNBI was also highly critical of the timing of assessment processes, with UNBI and its member communities often being brought in at a late stage of the assessment. The proper timing of the initial engagement of the First Nations and their representative organizations was an issue of high importance for UNBI.

**OBSTACLES**

As recounted by UNBI staff, one of the central obstacles that their organization has faced when dealing with the federal environmental assessment legislation has been a lack of capacity. UNBI staff report that they are not able to do a proper job of responding to the numerous development proposals and environmental assessments that arrive in their office. A lack of financial resources, particularly when UNBI has been engaged in the federal environmental assessment process, has been the primary restraint. As one of the staff observed, “how can a person do an effective job with that kind of funding?” A lack of resources has meant UNBI has been unable to respond to many of the development activities being carried out in their territory. The lack of financial resources prevents UNBI from employing the necessary technical staff to provide a professional review of ongoing development. Without long-term financial support UNBI cannot obtain the expertise needed to evaluate the many projects taking place in the province that may impact its member communities.

**KEY PLAYERS**

UNBI: Ronald Perley

**Responsible Authorities:**  
National Energy Board,  
The Canadian  
Transportation Agency,  
Environment Canada,  
Fisheries and Oceans  
Canada and Transport  
Canada

**Federal EA Coordinator:**  
CEAA

**PROJECT FACTS**

- Current EA’s:**
- A review of the Point Lepreau solid radioactive waste management facility modifications
  - Brunswick Pipeline Project (Emera Pipeline)

**MEANINGFUL INVOLVEMENT**

UNBI staff had very little positive to say concerning their experiences with the federal environmental assessment process. Their experiences have been marked by a crippling lack of capacity, token participation, and an assessment process that does not respond to the unique situation of First Nation communities.

Positive direction for meaningful involvement, work together to:

- Evaluating environmental Impacts, Mitigation and Compensation for Loss of Traditional Resource Harvesting Activities
- Develop environmental monitoring process
- Seek employment and business opportunities for First Nations
- Create employment training and scholarship opportunities for First Nations?
- Maintain relationships with, and offices within, the provincial representative First Nation Organizations
- Establish a protocol for discovery of archaeological sites

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