Kitselas First Nation and British Columbia reach Environmental Assessment Agreement

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On April 20, 2023, the Kitselas First Nation (Kitselas) and the Province of British Columbia entered into an Environment Assessment Agreement.

The agreement is the second of its kind signed under s. 41 of the *Environmental Assessment Act*, S.B.C. 2018, c. 15. The agreement creates unique processes for Kitselas to participate in environmental assessments for projects that are proposed in the traditional territory of the Kitselas, which stretches from the Pacific Ocean to the Skeen River Valley. The agreement also applies where there is a reasonable possibility that a project may impact Kitselas interests.

One of the purposes of the agreement is to establish a government-to-government framework that describes how the Environmental Assessment Office (EAO) and Kitselas will collaborate on environmental assessment processes. The agreement contemplates the Province seeking consent from Kitselas in the review of major projects, in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), while retaining the Province's ultimate responsibility for deciding whether to approve a project and on what condition.

The agreement supplements the standard environmental assessment process under the act in several ways:

- **Capacity funding**: The EAO will provide Kitselas with capacity funding to participate in the processes under the agreement.
- **-Bilateral collaboration**: For an environmental assessment, Kitselas and the Province may establish a Project Specific Working Group (PWSG), consisting of EAO members, Kitselas technical staff, and any additional person identified by the Implementation Committee under the Agreement.
- **Kitselas input in assessments**: Under the Agreement, Kitselas can decide if it consents to a recommendation by the EAO on whether to proceed with an assessment under s. 16 of the Act. If a project proceeds to assessment, the PWSG will develop a "Project Specific Work Plan" for processing an environmental assessment. Before providing a final recommendation to the Minister for a specific project, the EAO will share the draft assessment report,

environmental assessment certificate, and sustainability report with Kitselas for at least 30 days to review.

Movement towards government-to-government agreements in B.C.

The Province has recently reached other agreements with First Nations on decision-making in environmental assessments. In 2021, Lake Babine Nation and the Province entered into an Environmental Assessment Collaboration Agreement under s. 41 of the Act. Also, on June 6, 2022, the Tahltan Nation and the Province signed the first consent-based decision-making agreement for the Eskay Creek Revitalization Project.

This agreement builds upon a commitment in the Province's 2022 UNDRIP Action Plan to negotiate "joint decision-making and consent agreements …that include clear accountabilities, transparency and administrative fairness between the Province and Indigenous governing bodies."

If you have any questions about the Environmental Assessment Agreement, or broader issues relating to environmental assessments and Indigenous law matters, please reach out to any of the authors or key contacts listed below.

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