

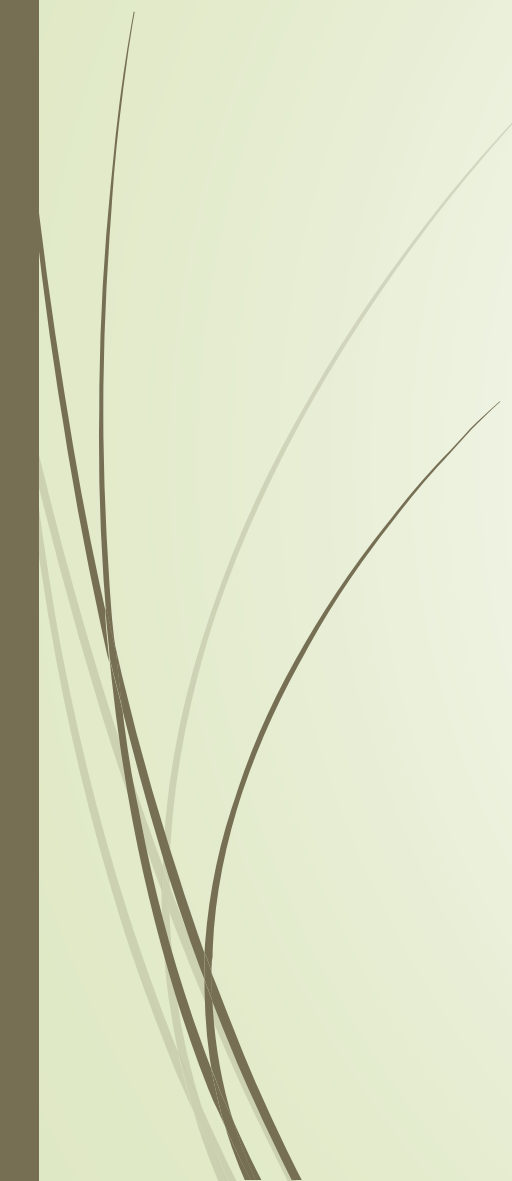
Review of the Federal Environmental Assessment Process: Presentation to the Expert Panel

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Overview

- Introduction
 - Procedural Concerns
 - Use of ATK/TEK
 - Costs of participation
 - Consultation
 - Questions
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Introduction




- ▶ Tsawwassen First Nation implemented our *Final Agreement* on April 3, 2009
- ▶ British Columbia's first urban treaty
- ▶ Tsawwassen First Nation owns and controls 724 hectares of land, adjacent to the Salish Sea, beside the mouth of the Fraser River
 - ▶ Treaty provides for self-government, with significant law-making authority
 - ▶ Hunting, fishing, gathering rights across territory
 - ▶ Rights of participation in EA processes
 - ▶ Involved in the review of several major projects at the moment
 - ▶ Current major projects include TMEX, RBT2, GMTRP, VAFDC, PBR
 - ▶ Previous major projects include DP3, PMH1



Procedural concerns

- ▶ Treaty First Nations are different than Indian Act Bands
 - ▶ Changes to legislation or review process must not interfere with the solemn agreements that the Crown has made
 - ▶ First Nations should be engaged by proponents before a Project Description is submitted for review
 - ▶ Otherwise, First Nations may miss chance to comment on project scope, and scope of review
 - ▶ Natural resources that are referenced in treaties should be identified as Valued Components in any review
 - ▶ EA process should not be used to measure the legitimacy of territorial claims
 - ▶ Must consider how changes to federal process will integrate with provincial, FN, Regional and municipal processes



Use of Traditional Ecological Knowledge

- ▶ Regulators and proponents hold to a different worldview
 - ▶ Government and industry often view of the nature of knowledge in a way that is vastly different than that of aboriginal communities
 - ▶ Scientific and socio-economic analysis is done using “Western” worldview
 - ▶ Reviews often lack not only aboriginal knowledge, but the right people to interpret it
 - ▶ Some aspects of TEK or ATK not suitable for capture in a written form
- ▶ “Cumulative Impacts”
 - ▶ Changes in baseline mean that the measure of impacts is “incremental”, not cumulative
 - ▶ Projects should be measured against the state and “carrying capacity” of the unimproved environment
 - ▶ If we do not know how much carrying capacity for change remains within an ecosystem, we will approve of some project in the future that will cause aspects of that ecosystem to fail
 - ▶ Projects should create “net positives” for the environment



Costs of participation

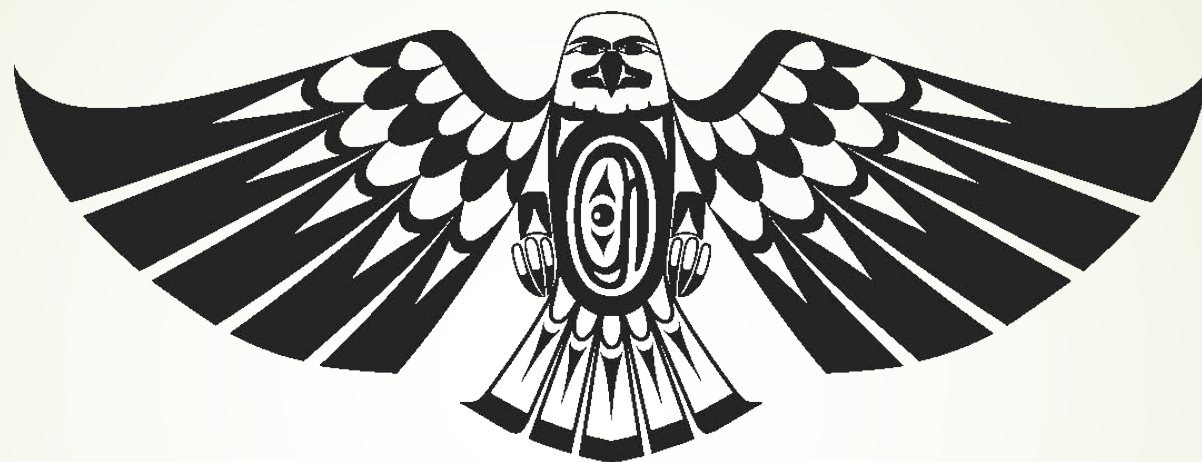
- ▶ PFP Amounts don't often cover the actual costs of technical and legal work
 - ▶ FN's have to use their own revenues, effectively subsidizing the review
 - ▶ Aboriginal people may become so burdened in participating in reviews, that they lose out on opportunities to participate in their communities economic, cultural and social activities
- ▶ Funds received from Accommodation Agreements, or programs such as the *Oceans Protection Plan* should not be counted as "Own Source Revenue"
 - ▶ These agreements create obligations for First Nations that are not contemplated by treaty agreements



Consultation



- ▶ Delegation of the procedural elements of consultation onto proponents is problematic
 - ▶ Proponents often do not have a grasp of the Crown's treaty obligations
 - ▶ Often rely on Traditional Use Studies
 - ▶ This system doesn't acknowledge the dynamic nature of TEK
 - ▶ Some communities have been 'studied to death'



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