

# MAJOR PROJECT ASSESSMENT STANDARD

Member-Developed Principles, Criteria, and Expectations to Guide  
Major Project Environmental Assessments

# FIRST NATIONS MAJOR PROJECTS COALITION



## LIST OF ACRONYMS USED IN THIS STANDARD

<b>Coalition or FNMPC</b>	<b>First Nations Major Projects Coalition</b>
<b>ESF</b>	<b>The Coalition's Environmental Stewardship Framework</b>
<b>FPIC</b>	<b>Free Prior and Informed Consent</b>
<b>The Standard</b>	<b>The Coalition's Major Project Assessment Standard</b>
<b>UNDRIP or the Declaration</b>	<b>United Nations Declaration on the Rights of Indigenous Peoples</b>

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## INTRODUCTION

The First Nations Major Projects Coalition (the Coalition) was established in October 2015 by a group of British Columbia First Nations who chose to work together in relation to major resource projects proposed for their territories, to promote economic benefits maximization and minimize negative effects on their lands and resources. The membership has since expanded to include over 50 Indigenous groups in five provinces and one territory.

The First Nations in the Coalition participate on an individual basis, but share the belief that more can be achieved by working together. The Coalition is a support institution; it does not make decisions on behalf of its member Nations.<sup>1</sup>

### ***MAJOR PROJECTS COALITION'S ENVIRONMENTAL STEWARDSHIP FRAMEWORK***

The Coalition's Environmental Stewardship Framework was developed using the broad Stewardship Vision developed by member Nations to support member Nations in accessing the tools they may need in ways that make a difference in protecting their lands, waters and way of life. The Stewardship Vision is to:

- Promote **Free, Prior and Informed Consent** and adherence to the United Nations Declaration on the Rights of Indigenous Peoples;
- Ensure **respect for** Aboriginal rights, Aboriginal title and treaty rights;
- Involve affected First Nations in the assessment and management of environmental, social, economic and cultural change over the **entire life of projects**;
- Ensure **ecological integrity and human well-being are maintained and promoted** as understood in an Indigenous worldview;
- Include a priority focus on **total cumulative effects loading in major project assessments**;
- **Take the long view** of environment, economy and society - planning seven generations or more into the future;
- Promote **precautionary decision-making** balancing economic, social, cultural and ecological values; and

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<sup>1</sup> The terms "Coalition members" and member Nations" are used interchangeably in this Standard to represent member Nations of the Coalition.

- Promote balancing of **science, Indigenous knowledge,<sup>2</sup> and wise counsel** in decision-making.

The Environmental Stewardship Framework (ESF in the figure below) includes six elements to support its mission:

1. Capacity training for member Nations so they can engage in major project assessment<sup>3</sup>;
2. Expertise, available on-demand, to support member Nations in major project assessment;
3. Tools and methods for member Nations to access and use in major project assessment;
4. On-demand support for the development of Nation-specific assessment processes;
5. Support for member Nations in reviews and revisions to federal and provincial environmental assessment processes, policy and legislation;
6. *This Major Project Assessment Standard - A set of membership endorsed principles, criteria and guidance on requirements for major project assessments.*



<sup>2</sup> Throughout this Standard, the term Indigenous knowledge is used. It is synonymous with traditional knowledge.

<sup>3</sup> In this standard, the terms “major project assessment” and “environmental assessment” are synonymous.

## ***THE COALITION'S MAJOR PROJECT ASSESSMENT STANDARD***

Major Project Coalition members have expressed concerns about the inadequate focus of federal and provincial environmental assessment processes for major projects; the Coalition's Major Project Assessment Standard ("the Standard") is in direct response to these concerns.

The member Nations have agreed that it is no longer acceptable to have the requirements of major project assessments largely determined by the Crown and proponents of major projects. The stewardship and governance rights and responsibilities of First Nations – recognized by the United Nations, Crown commitments, and the customary laws of our people - demand the First Nations themselves identify applicable requirements.

The Standard is an aspirational document identifying members' requirements for assessment of environmental effects of major projects, including:

- Expectations Proponents of major projects will be held to; and
- Expectations for the conduct of Crown environmental assessment processes.

The Standard provides Coalition member-developed and agreed upon principles, criteria, and other guidance and expectations to guide major project environmental assessments. It has:

- Nine guiding Principles; and
- Over 100 Criteria and sub-criteria providing expectations of what it will take to adhere to the spirit and intent of each principle.

The Standard addresses engagement, funding, scoping, assessment, and other requirements. It recognizes that for our member Nations, the purpose of major project assessment is to protect the biophysical and human environmental resources relied upon by our member Nations for the meaningful practice of Aboriginal or treaty rights and exercise of title, and to promote Indigenous economic development and reconciliation.

The Standard was adopted via a vote of the Caucus of the Coalition on March 6<sup>th</sup>, 2019, and can be revised in the future via a similar process.

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*This Standard differs from other Canadian environmental/major project assessment guidance in that it was developed by and for affected First Nations, and it is explicitly designed to promote major project assessment conducted through an Indigenous worldview.*

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## ***Using The Major Project Assessment Standard***

This Standard:

- Informs **Proponents** of the Principles and Criteria their Project-specific engagement and assessment will be expected to adhere to and provides guidance to assist them;
- Informs **Crown agents** of the Principles and Criteria Coalition members will use to gauge the adequacy of the Crown assessment and associated consultation and accommodation processes;
- Is used by **Coalition members** as a checklist of acceptable/required practices expected of Proponents during engagement in a major project assessment; and
- Is used at the **Coalition** level to inform the membership whether the Proponent and Crown are meeting the Coalition's Standard.

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*We strongly encourage Proponents or the Crown to actively work with affected First Nations to interpret their degree of adherence to the Principles and Criteria in this Standard in specific Major Project Assessments; dialogue and meaningful engagement directly with the affected First Nation(s) is the best path toward Consent. Uni-lateral interpretation by the Crown or proponents is very likely to lead to failure.*

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**Proponents** seeking to develop major projects in the territory of one or more Coalition members should familiarize themselves with all the Principles and Criteria. The first point of contact for Proponents should always be the affected First Nations, not the Coalition. Proponents are expected to contact affected member Nations about how the Standard will be applied in relation to their proposed Project. Member Nations may then choose to contact the Coalition if capacity and expertise is needed to support engagement with the Crown and/or the proponent in the specific major project assessment.

**Agents of the Federal and Provincial Crowns** should familiarize themselves with the requirements of the Standard and build them into their assessment processes.

**Coalition members** will seek to coordinate their assessment process requirements to the extent possible with assessment processes being conducted by the Crown; reciprocity in this regard is expected from the Crown. Upon request by one or more member Nations, the Coalition may provide support in interpreting whether a specific Project meets the spirit and intent of this Standard. Member Nations reserve the right to request the Proponent and/or Crown cover the cost of completing this compliance audit process.



The Standard is a technical support tool to “**raise the bar**” for the meaningful inclusion of Canadian indigenous groups in major project assessment. It is a public document that can be used in dialogue with the Crown, Proponents and other Nations. It is also designed to be flexible enough that member Nations (and other Nations choosing to use the Standard) can use it in many different ways to support their consent determination process, while still engaging in major project assessment according to their own laws, values, and capacities.

As such, it is up to individual Nations to determine whether, in a specific context, the Standard is being “met”, and what to do if the Standard is not being met. Example uses of the Standard include as a checklist for:

- Early engagement with the Crown and Proponents on the scope and conduct of a major project assessment;
- Development of a Nation’s own assessment standards, studies or terms of reference for projects in its territory; and/or
- Checking the adequacy of work done in an ongoing environmental assessment.

The Coalition’s Environmental Stewardship Technical Team will be available on demand to support member Nations in applying the standard in relation to specific projects or processes. In addition, implementation and topic-specific guidance documents will be developed and available to members to help interpret the principles and criteria of the Standard.

This is a living document. The Coalition reserves the right to revise and expand on these Principles and Criteria, under the direction of the member Nations and in light of emerging best practice of major project assessment.

The Coalition may also develop additional operational interpretation guides, checklists, and other documents to support the interpretation of this Standard. The most up-to-date version of the Standard will be accessible on the “Environment” page of the Major Project Coalition website at [www.fnmpc.ca](http://www.fnmpc.ca).

## ***LIMITATIONS***

The Coalition's Organizing Principles require that:

- Our shared work will be Nation-based, working together, on a government-to-government, Nation-to-Nation basis;
- The direction for our work comes from member Nations;
- The independence of member Nations will not be compromised in our efforts; and
- Our activities and initiatives will be without prejudice to Aboriginal and Treaty Rights and Title.

Limitations on the applicability of this Standard are thus as follows:

- Use of this Standard is voluntary. Members of the Coalition can choose to use some or all of the Standard to the extent that they reflect the Nation's values and concerns.
- Individual First Nations retain their governance role and responsibilities within their territories. The Coalition provides tools, materials, and advice to member Nations, but is not a decision-making body in its own right. Any final decision on consent is in the hands of the First Nation(s) whose territories and rights are likely to be impacted by the Project in question. Thus the Standard is a tool, not a template, to support Nation-specific decision-making.
- This Standard does not replace any environmental assessment/regulatory processes led by the Crown or First Nations authorities, or any parallel process one or more member Nation adopts for major project assessment.
- This Standard does not speak to specific case-by-case Nation-to-Nation Crown consultation and accommodation requirements, which are the purview of individual Nation-to-Nation relations.<sup>4</sup>
- This Standard does not define specific information requirements for any individual major project assessment, which must be defined on a case-by-case basis.

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<sup>4</sup> Specific Principles and Criteria herein, however, do identify expectations re: the implementation of Canadian and Provincial government commitments to reconciliation and UNDRIP/FPIC.

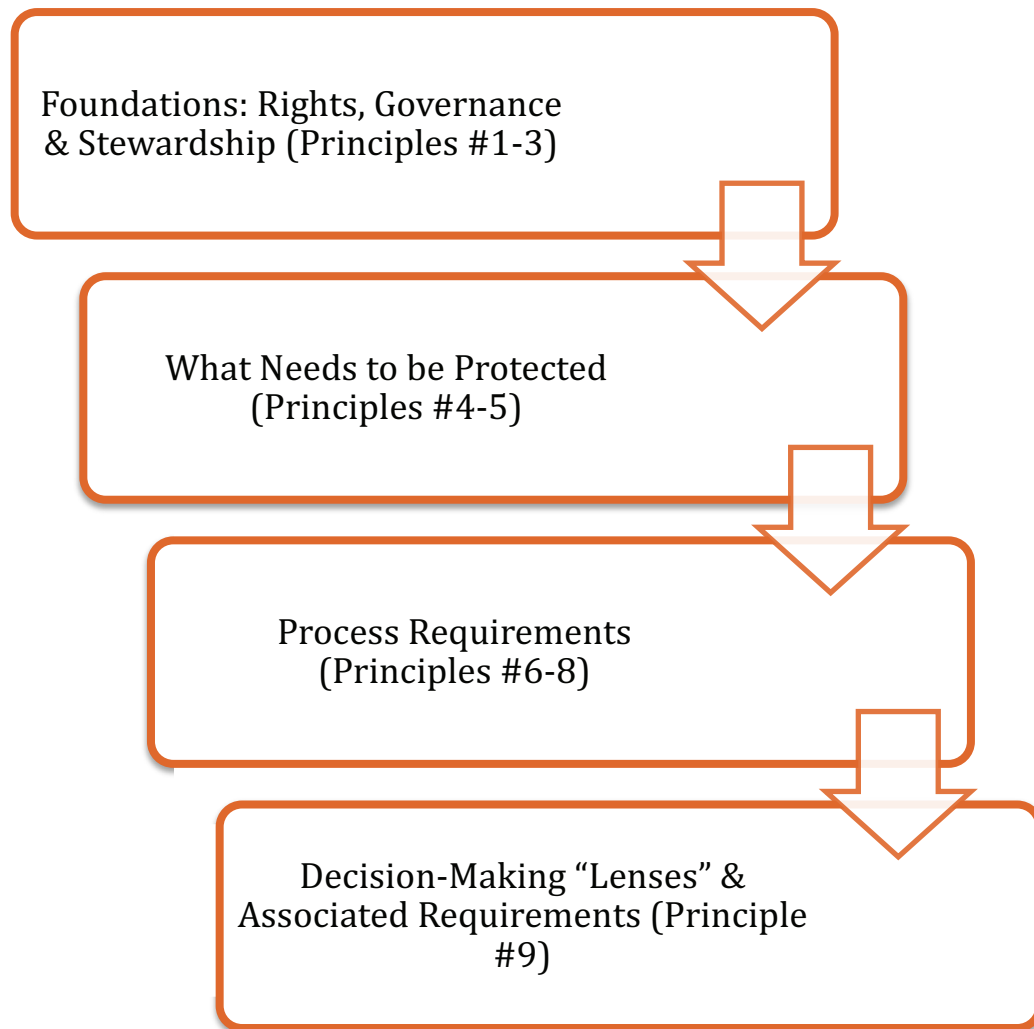
## The Coalition's Major Project Assessment Principles and Criteria

The Coalition's Major Project Assessment Standard is framed by nine Principles and over 100 related Criteria and sub-criteria for conducting effective and meaningful project-specific environmental assessment.

**Principles** are the highest organizational level for Major Project Coalition expectations in relation to major project assessment. The spirit and intent of each of the nine Principles is laid out in general terms in the preamble section for each principle.

At the heart of these Principles is the requirement for recognition that First Nations are the owners of the lands and resource of their territories. In keeping with UNDRIP and Section 35 of the *Constitution Act*, these Nations have recognized rights and are asserting the jurisdictional authority to manage and protect their lands and resources within their territories. Each of the Principles is designed to make sure this fundamental reality is recognized and enforced in relation to major project assessment and decision-making.

**The nine principles cover the following four main themes:**



## ***PRINCIPLES***

**The following high-level principles will be adhered to in major project assessment:**

- 1. First Nations Rights will be respected, maintained, and promoted.*
- 2. First Nations will be fully engaged in assessment and decision-making for major projects, integrating their laws, norms and values.*
- 3. First Nations stewardship and governance rights and responsibilities will be respected and adhered to throughout the major project life cycle.*
- 4. Ecological values and services will be maintained and if necessary, restored.*
- 5. Impacts to Indigenous culture, socio-economic conditions, health, rights, title and traditional use will be properly assessed and managed to the satisfaction of the affected First Nations.*
- 6. First Nations will have access to adequate resources, information, and time in order to inform their engagement and decision-making processes.*
- 7. The major project assessment scope and process will adhere to agreed upon high quality practices and reflect First Nations values.*
- 8. All projects will be assessed using a focus on total cumulative effects loading and best practice of cumulative effects assessment.*
- 9. Adequate information will be provided to inform consent decisions made through First Nations' Worldviews.*

Linked to these nine guiding Principles are over 100 Criteria (labeled 1.1, 1.2, etc.) and sub-criteria (labeled 1.6(a), 1.6(b), etc.) that identify what it will take to meet the spirit and intent of each Principle.

These **Criteria** are laid out in further detail below each principle. Criteria are the operational/implementation aspects of a Principle; the things that need to be done in order to meet the spirit and intent of a Principle.

Additional topic-specific **Guidance** that will further assist in interpreting principles and criteria will be developed and adopted in the future.

## **PRINCIPLE 1 - FIRST NATIONS RIGHTS WILL BE RESPECTED, MAINTAINED, AND PROMOTED**

Canada's Indigenous peoples have priority Aboriginal and in some cases treaty rights recognized and affirmed under the *Constitution Act, 1982*. In addition, Canada's commitments to fully implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP or the Declaration), and cases like *Tsilhqot'in*, require a shift of the focus of major project assessment from aboriginal consultation to consent-based decision making which should be based on the principles of free, prior and informed consent for all affected First Nations.

While the United Nations Declaration is the responsibility of the Crown to uphold and implement via consultation, accommodation and reconciliation with First Nations governments, Proponents will need to live up to heightened engagement, information provision and process requirements that are necessary pre-conditions for First Nations to provide free, prior and informed consent.

In order to adhere to Principle 1, major project assessment requires:

- 1.1** Demonstration of adherence to the standards and expectations of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>5</sup>
- 1.2** Respect for and adherence to final First Nation decisions on the acceptability of the Project, specifically the provision or withholding of consent.
- 1.3** Implementation through binding legal instruments of all consent "conditions" identified by Indigenous groups through the course of the assessment as essential mitigation, monitoring and follow-up measures.
- 1.4** Recognition of affected First Nations as decision-makers on major projects.
- 1.5** Priority Aboriginal and treaty rights as per Section 35 of the *Constitution Act, 1982*, are demonstrably weighted highly/preferentially in major project decision-making.
- 1.6** A broad and Indigenous agreed upon definition of what constitutes Aboriginal and/or Treaty rights (including incidental rights) and title be adopted for the purposes of the assessment and, subsequently, an assessment of effects on First Nations' rights and title conducted with the full

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<sup>5</sup> To assist in demonstrating what needs to be adhered to, this Standard uses the language of the United Nations Declaration itself in a variety of places. Important to Criteria 1.1 is Article 32(2), which requires: "States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

involvement of the affected First Nation(s), with adequate information provided to inform the assessment.

- 1.7** Proponent and Crown respect for First Nations' self-defined territorial boundaries, including where overlap occurs between two or more First Nations.<sup>6</sup>

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<sup>6</sup> Article 26 of the United Nations Declaration covers rights to land: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use."

## **PRINCIPLE 2 - FIRST NATIONS WILL BE FULLY ENGAGED IN ASSESSMENT AND DECISION-MAKING FOR MAJOR PROJECTS, INTEGRATING THEIR LAWS, NORMS AND VALUES**

There is a need for Indigenous perspectives, values, and principles to be recognized and utilized in major project assessments and decisions. In past and current major project assessment processes, First Nations have too often been relegated to the sidelines, with little more than the provision of initial baseline information and refusable advice to a government-led, primarily Proponent-driven process.

First Nations perspectives are required in part because they have expertise and knowledge of the land and their understanding of potential impacts need to be taken into account. In addition, given the subjective nature of decisions on what is acceptable and “how much is too much”, it is critical to recognize that Indigenous laws, norms, worldview and values are required in the estimation of effects on the people and their territories. All major project assessment processes need to build mechanisms to facilitate meaningful Indigenous engagement.

First Nations also have a fundamental right to engage in decision-making on major projects.<sup>7</sup> Due consideration and meaningful incorporation of First Nations views, processes and decision-making in the planning of major projects will lead to increased process certainty. It will also increase the likelihood of provision of free, prior and informed consent.

In order to adhere to Principle 2, major project assessment requires:

- 2.1** Respect for decisions made by individual First Nations or the Coalition (at the request of one or more Member First Nations) to declare the project in question a major project, and adherence to the engagement, process and information requirements issued by Coalition members for the life of the assessment until consent decisions are made on whether the Project should proceed and if so, under what conditions.
- 2.2** Involvement of affected First Nations in all initial activities, including planning, design, alternatives and siting/routing assessments, and scope of assessment decisions, as early as possible and before initial project submissions are made to the Crown.

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<sup>7</sup> Article 27 of the United Nations Declaration requires that states “States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.” (emphasis added). Article 18 also states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights...as well as to maintain and develop their own Indigenous decision making institutions.”



**2.3** Engagement is run according to the protocols identified by individual First Nations, including provision of evidence that all protocol requirements pertaining to community engagement, community research, intellectual property, and Indigenous knowledge collection and management have been met.<sup>8</sup>

2.3 (a) Affected First Nations will be provided the opportunity to provide feedback in advance of consultation/engagement records being filed.

**2.4** The Crown and the Proponent respect and support affected First Nations' rights to make their own determination of the seriousness/significance of project and cumulative effects on critical values such as culture, traditional land use, and rights and title.

**2.5** First Nations are engaged in a meaningful assessment of the alternative means to undertake a project (e.g., routing, siting, chosen technology), and alternatives to the project, prior to the filing of an application for the preferred alternative. This may include but would not be limited to:

2.5 (a) Identification of both Proponent criteria and First Nations criteria with which to assess alternatives. These criteria must go beyond technical and economic feasibility (e.g., potential for rights and title infringement), be weighted in a transparent fashion, and assessed for each alternative.

2.5 (b) Collection and review of adequate information to compare the benefits and risks of each alternative, including detailed information on comparative costs of each alternative.

2.5 (c) In any case where two or more potential project components and/or routes are being promoted as viable alternatives by the Proponent, those components/routes will be subject to fulsome effects characterization across all applicable Valued Components—carried through to the effects assessment phase for comparative analysis.

2.5 (d) Joint assessment of alternatives between the Proponent and affected First Nations.

2.5 (e) If a Proponent brings forward an Application without having conducted the requisite alternatives assessment, the First Nations

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<sup>8</sup> Article 31 of the United Nations Declaration states that “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.” See Appendix 3 on incorporation of Indigenous knowledge into major project assessment.

may require the above-noted steps to occur prior to moving forward with the full assessment of the preferred alternative.

**2.6** (See also Principle #9) Determination of the acceptability of a major project needs to be made through a First Nations cultural perspective/worldview), which may incorporate cultural laws, norms, and land use protocols, and other community-appropriate tools/methods.

2.6 (a) Decision-making frameworks that explicitly include Indigenous lenses as defined by the First Nations themselves may include but will not be limited to:

- Adoption of the precautionary principle – in cases of uncertain outcomes, a high degree of precaution will be used in determining project acceptability and extensive mitigation and monitoring may be required;
- Land use zoning and authorization requirements set by First Nations; and
- Written and oral Indigenous laws and norms used by the Nation(s) to define significance or acceptability.

### **PRINCIPLE 3 – FIRST NATIONS STEWARDSHIP AND GOVERNANCE AUTHORITIES WILL BE RESPECTED AND ADHERED TO THROUGHOUT THE MAJOR PROJECT LIFE CYCLE**

Indigenous groups have stewardship rights and responsibilities recognized under UNDRIP<sup>9</sup> and customary law and commitments by the Crown, and must be engaged in the management and monitoring of projects on their territories. The United Nations Declaration recognizes that governance and control is critical not only to meet land stewardship responsibilities: “control by Indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.”

First Nations communities must therefore be meaningfully involved in development and implementation of environmental management and monitoring plans, through the life of the Project until reclamation and restoration efforts are completed to their satisfaction.

In order to adhere to Principle 3, major project assessment will require:

- 3.1** Respect for all First Nations’ governance and stewardship authorities – including recognition and engagement of hereditary, elected and other leadership and associated decision-making processes.
- 3.2** Recognition of and adherence to the rules and procedures of any First Nation-led major project assessment process, which may run alongside any provincial or federal process.
- 3.3** Affected First Nations have the right to call for joint development and conduct of any of the stages or activities of the assessment process (e.g. application completeness review, effects significance etc.) with Crown agencies, or to independently develop/conduct their own. These key assessment activities include, but are not limited to:
  - Identification of assessment information requirements, including required Valued Components and indicators;
  - Review of the completeness and adequacy of Proponent impact assessment filings;
  - Decisions to stop the assessment clock (and when to start it again) when further information is required;
  - Rounds of Information Requests and adequacy of Proponent responses;

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<sup>9</sup> Article 18 of the United Nations Declaration states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision making institutions.”

- Technical sessions and or mitigation meetings; and
  - Estimation of effects significance/acceptability on Valued Components and of the Project as a whole.
- 3.4** Respect for First Nations governance and stewardship rights and responsibilities during project implementation, and adherence to First Nation protocols, plans, and policies for the management, monitoring, and restoration of lands and water in their territories. This may include but would not be limited to:
- 3.4 (a) Substantive recognition that the affected First Nation(s) are the traditional stewards of the land, including specific plans for how the Nation(s) will be engaged accordingly throughout the major project life cycle;
  - 3.4 (b) Upon request by an affected First Nation, inclusion in the scope of assessment whether the Project will contribute to or negatively impact on First Nations governance/stewardship;
  - 3.4 (c) Adherence to and assessment of Project-specific and cumulative effects on any specific air, water, wildlife or other quantitative standards or objectives set by a First Nation (see also Criterion 4.2); and
  - 3.4 (d) Explicit assessment of Project effects on ability to adhere to First Nations land use plans and end land use goals for Project-affected locations.
- 3.5** Recognition and acceptance that affected First Nations must have a central role in, and be adequately resourced to, develop and implement appropriate, specific and effective mitigation, follow-up and monitoring measures as a requirement of consent. This may include, upon First Nation(s) request, but will not be limited to:
- 3.5 (a) a central role for affected First Nations in ongoing mitigation and monitoring through the full extent of the project life cycle (e.g., a Guardian Program);
  - 3.5 (b) Pre, During, and Post construction Indigenous environmental monitoring (including compliance monitoring) mechanisms; and
  - 3.5 (c) Establishment of detailed project closure and reclamation/restoration plans with First Nations involvement, including integration of First Nation(s) end land use goals into restoration planning.
- 3.6** Continual meaningful engagement of affected First Nations, including providing adequate resources and time to engage in all regulatory phases for the full life cycle of the major project.

## **PRINCIPLE 4 – ECOLOGICAL VALUES AND SERVICES WILL BE MAINTAINED AND IF NECESSARY, RESTORED<sup>10</sup>**

*Note: Given that cumulative effect on ecosystems are of high concern and meaningful Project-specific assessment needs to include a properly scoped cumulative effects assessment, this Principle is closely tied to Principle 8 on cumulative effects assessment.*

First Nations' well being and way of life, values and spirituality, and way of seeing the world, cannot be separated from the resources and environment that sustain them. The natural world is First Nations' home; First Nations have both the right and the responsibility to protect it as the highest value. First Nations live in and with the natural environment and measure change over long time spans, in a holistic way (values based on complex cultural-ecosystems rather than discrete Valued Components), using Indigenous knowledge, and make decisions in a highly protective, precautionary manner. The major project assessment and decision-making processes need to embrace these values.

One of the key purposes of major project assessment is environmental protection. All member Nations agree there is a need in our territories to increase the level of protection of biological diversity and natural environments; to preserve and maintain First Nation ceremonial and cultural access; increase food security; ensure that any development or use of the resources occurs in a sustainable manner; and ensure that land, water and cultural resources are not degraded in the long-term by short-term economic development. Projects that seek Coalition members' consent must show convincing evidence that the environment will not be altered in ways that are unacceptable to the affected First Nations.

In order to adhere to Principle 4, major project assessment will require:

**4.1** Meaningful engagement of First Nations in the identification and assessment of project effects on ecological values and services, with adequate consideration of both science and Indigenous knowledge. Particular emphasis will be placed on ecosystems, wildlife and fish species important to First Nations' harvesting and cultural rights practices.

4.1 (a) Indigenous knowledge data collection plays a key role in identifying the state, change over time, and vulnerability of the biophysical environment. This may require increasing the number of sensory values and indicators (e.g., tastes, smells, visual landscape, soundscape) included in data collection and assessment, and

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<sup>10</sup> "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources" (Article 29 of the United Nations Declaration).

supporting First Nations-led traditional knowledge studies on the ground during early planning phases for the proposed Project.

- 4.2** Adherence to the concept of ecosystem-based management,<sup>11</sup> including appropriate recognition of ecological risks and adherence to First Nation-identified thresholds of acceptable change in their territories (including but not limited to policies, standards, thresholds and management prescriptions for ecosystem values including water quality, water quantity, air quality, acoustic quality, etc.). *This requirement must be considered in combination with the linked requirement that proposed projects not unduly impact on the “sufficiency of resources” required by Indigenous peoples for meaningful Indigenous rights and traditional use practices, as per Criterion 4.10(b).*
- 4.3** Evidence of effective protection of rare and threatened species, ecosystems and habitats from any disturbance. Determination of what constitutes effective protection should be a joint exercise with First Nations involved, and may include but would not be limited to a recovery trajectory that brings a threatened species back within the range of natural variation in the affected area.
- 4.4** High value conservation sites (ecological and cultural) are identified in concert with the affected First Nations and maintained intact, with appropriately sized protective buffers placed around them.
- 4.4 (a) For greater clarity, the presence or absence of pre-defined Crown conservation areas is not adequate evidence of the location and distribution of high value conservation sites. Affected First Nations will have their own that need to be brought to the table.
- 4.5** Where losses of/degradation to important cultural areas or high-value ecological values are unavoidable or have already occurred and where restoration is necessary, affected First Nations must be involved in identifying compensation areas in their territory, and in the identification and implementation of scientifically defensible and socially acceptable habitat compensation ratios.
- 4.5 (a) Recovery objectives will be consistent with the need to maintain the healthy abundance of resources that support the meaningful exercise of rights.
- 4.6** Naturally occurring native species are maintained, and regional and local losses of biological diversity prevented.

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<sup>11</sup> Ecosystem-based management is an adaptive approach to managing human activities that seeks to ensure the coexistence of healthy, fully functioning ecosystems and human communities by prioritizing the maintenance or re-establishment of ecological functions within a natural range of variation, basing decisions on whether and how projects should proceed on this requirement.

- 4.7** Where regional protection of habitats is low (e.g. less than 30-50%),<sup>12</sup> a “futures foregone” analysis incorporating multiple scenarios must be conducted to ensure opportunities for protection are not lost as a result of the project.
- 4.8** Natural watercourses, water bodies, riparian zones and their connectivity are maintained and/or restored. Negative impacts on water quality and quantity will be avoided, and any that occur will be subject to proven effective mitigation.
- 4.8 (a) Where Coalition members have adopted water management policies and standards, they are fully committed to and built into project conditions.
- 4.8 (b) Water that supports species and risk and high value Indigenous harvested species, will likely require heightened standards.
- 4.9** That the assessment demonstrably and compellingly identify the size of the zone of influence around Project-related physical works and activities within which ecological indicators may be adversely affected by the Project, specific to each Valued Component.
- 4.10** An assessment of change over time to date for both habitat distribution and resource (water, wildlife, fish, vegetation) values important to First Nations, through the development of a pre-industrial or pre-contact baseline, prior to the assessment of Project-specific effects.
- 4.10 (a) This assessment of change over time in the pre-project circumstance will utilize scientific and traditional knowledge inputs.
- 4.10 (b) The sufficiency of these resources to support Indigenous peoples’ meaningful Indigenous rights and traditional use practices will be subject to appropriate cumulative effects assessment, as defined further under Principle 8.
- 4.10 (c) This assessment will include discussion of the uncertainty and reliability of the information, including comment on range of natural variation (seasonal or yearly variation of population size or habitat use).
- 4.11** Ecosystem resilience being assessed, including effects of multiple climate change scenarios on each biophysical Valued Component, and ensure that the maintenance or restoration of ecosystem resilience would be a key performance metric for the Project to meet.
- 4.12** Management triggers and thresholds based on science and traditional knowledge of what is required to retain biophysical and cultural/use/rights

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<sup>12</sup> Coalition members consider an area “protected” only if it has strong mechanisms to maintain ecological integrity (e.g. provincial parks or similarly protected areas).

values. The actual effectiveness of chosen thresholds to protect ecology and Indigenous rights must be assessed and demonstrated.

**4.13** Where local site damage will occur, provision of sufficient information to allow for evaluation of the likelihood of success of restoration/reclamation plan(s).

4.13 (a) Evidence will be provided that all restoration/reclamation plans have been vetted and agreed to by the affected First Nations;

4.13 (b) Restoration goals will emphasize efforts to return to historical conditions prior to disturbance, and where this is not possible, suitable mitigation requirements, including appropriate offsets, will be established;

4.13 (c) Restoration/Reclamation plans will be consistent with best practices and culturally appropriate ecological principles of the affected Nations.”

4.13 (d) Prioritization of the engagement of affected First Nation(s) in the implementation of restoration/reclamation activities; and

4.13 (e) An accurate and detailed estimate of full restoration/reclamation costs will be provided, and evidence that adequate funds will be set aside to cover these full costs.

**4.14** Demonstration of meaningful involvement of affected First Nations in the development and implementation of all Environmental Management Plans.



**PRINCIPLE 5 – IMPACTS TO INDIGENOUS CULTURE, SOCIO-ECONOMIC CONDITIONS, HEALTH, RIGHTS, TITLE AND TRADITIONAL USE WILL BE PROPERLY ASSESSED AND MANAGED TO THE SATISFACTION OF THE AFFECTED FIRST NATIONS**

Article 8 of the United Nations Declaration recognizes that “Indigenous peoples... have the right not to be subjected to... destruction of their culture”. That fundamental right remains at critical risk for many Canadian Indigenous groups and must be a central focus of major project assessment.

First Nations people have to deal with more than just change brought about by one new project. Indigenous cultural continuity has been subject to externally imposed changes both purposeful and incidental since contact, and these combined forces threaten Indigenous cultures’ very survival. The weight of history since contact lies heavy on the shoulders of Indigenous peoples.<sup>13</sup> This means that First Nations’ ability to take advantage of new projects is not the same as non-Indigenous peoples, with systemic barriers still impeding our full engagement. Indigenous people are also more vulnerable to additional “shocks” to our society, culture, economy and ecology from the construction and operation of major projects.

Both changes on the land and in the community merit close attention in major project assessment. Aboriginal traditional use of lands and resources needs to be a major focus of major project assessment.<sup>14</sup> First Nations’ economy, society, culture, health and overall well being also relies heavily on the health of the natural world (“on the land”), which can be subject to rapid change from major projects in ways very different from changes “in the community”. The combination of these factors make First Nations the people most sensitive to change and a fundamental principle of good practice for environmental assessment is to focus on those most vulnerable to change.

In order to adhere to Principle 5, major project assessment will require:

- 5.1** That Indigenous people are recognized as those most sensitive to social, economic and cultural change, which demands a priority focus on gathering data and assessing change on affected First Nations.
- 5.2** The assessment of potential adverse and beneficial effects on socio-economic, health, culture, traditional use, and Indigenous rights is undertaken with a

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<sup>13</sup> The preamble to the United Nations Declaration recognizes that “Indigenous peoples have suffered from historic injustice as a result of... their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”.

<sup>14</sup> Article 20 of the United Nations Declaration states that “Indigenous peoples have the right... to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.”

level of effort and expertise at least equivalent to that applied to the assessment of biophysical values.

5.2 (a) Social, economic, traditional use, health and cultural data collection will start as early as possible – generally at the same time as starting baseline data collection on the biophysical environment.

- 5.3 Respect for decisions by - and provision of adequate funding for - affected First Nations that choose to conduct their own traditional use, culture, rights, health, and socio-economic impact assessments.
- 5.4 Demonstrable adherence to best practice guidance for socio-economic impact assessment related to Indigenous peoples and Indigenous cultural impact assessment.
- 5.5 Demonstrable adherence to best practice guidance for Indigenous health impact assessment. This will include adoption of a “population health/social determinants of health” approach to assessment of health impacts, rather than relying solely on a technical Human Health Risk Assessment approach.<sup>15</sup>
- 5.6 Process steps that provide adequate opportunities for First Nations to identify “what matters most” for their well-being and quality of life “on the land”, “in the community”, and “in the workplace” during scoping, and these First Nations values, Valued Components and indicators are fully integrated into the assessment.
- 5.7 The conduct of rigorous baseline and trend-over-time conditions assessment to establish social, economic and cultural vulnerability and resilience for each affected First Nation.
- 5.8 Assessments of Project-specific and cumulative socio-economic, traditional use, rights, and cultural impacts are conducted separately for each individual First Nation.
  - 5.8 (a) Potential for psycho-social impacts will be assessed using best practice well recognized in the environmental assessment literature.
- 5.9 Risk perception is recognized as an important impact pathway that has demonstrable, measurable outcomes related to First Nations’ use of Project-affected areas, and therefore, is an essential component of the assessment of project effects on traditional use/Indigenous rights.
- 5.10 Data collection and assessment of effects on traditional use of lands and resources is rigorous, adequately financially supported, conducted by or

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<sup>15</sup> Article 24 of the United Nations Declaration deals with health issues, stating that “1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals... 2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”

otherwise sanctioned by the affected First Nation, and assessed from the perspective of the culture holders themselves.

5.10 (a) Recognition that multiple factors influence the ability and willingness to harvest from an area, and all are taken into consideration by Indigenous peoples when making decisions on whether and where to harvest. Assessment will include considerations of cumulative and project-specific changes to a large number of resources and factors that guide individual and communal decisions on where, when, what and whether to practice traditional harvesting activities.

- 5.11** Recognition that vulnerable sub-populations (often including elders, women, and youth) merit special focus in the assessment, including adherence to best practice for gender impact assessment.<sup>16</sup>
- 5.12** Adequate evidence of the affected First Nations' ability to take advantage of economic benefits from a Project as part of the socio-economic effects assessment including identification of potential barriers, meaningful efforts to overcome those barriers, and evidence of previous success from other projects of these measures contributing to Indigenous benefits.
- 5.13** Affected First Nations are meaningfully involved in the development and implementation of an agreeable Human Environmental Monitoring Program/Socio-economic Monitoring Plan.

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<sup>16</sup> Article 21(2) of the United Nations Declaration requires special emphasis on most vulnerable sub-populations, stating that improvement of social and economic conditions requires "particular attention... to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities".

## **PRINCIPLE 6 – FIRST NATIONS WILL HAVE ACCESS TO ADEQUATE RESOURCES, INFORMATION, AND TIME IN ORDER TO INFORM THEIR ENGAGEMENT AND DECISION-MAKING PROCESSES**

First Nations have the right to full and adequate funding and adequate time to conduct and complete their assessment of and decisions on major project acceptability. First Nations are inundated with many proposed projects and developments in their territories. Resources and funding inequities leave First Nations disadvantaged in comparison to proponents and other levels of government in their ability to engage in major project assessment. Therefore, First Nations require additional human resources, skills and training and financial capacity to adequately engage in regulatory assessment processes, and to conduct independent research.

In addition, First Nations must be provided with all relevant information about the Project and the environment it would be situated in, well in advance of making any informed consent decisions. Proponents are expected to provide adequate information necessary about the Project and baseline environment conditions critical for First Nations, alone or in combination with the Crown, to estimate the implications and acceptability of impacts on First Nations values, rights and interests.

In order to adhere to Principle 6, major project assessment will require:

- 6.1** Financial resources for Aboriginal communities to meaningfully participate in decision-making processes are identified at the earliest scoping stages of the process. Where First Nation-specific capacity constraints are identified at the outset of a major project assessment,<sup>17</sup> Proponents and the Crown will help build this capacity prior to the start of the assessment process.
- 6.2** Full provision of adequate funding and adequate time for First Nations to engage in the major projects assessment processes, including cost of data collection and analysis. Funding requirements apply to pre-assessment steps as well, so project funding must be made available from the outset.<sup>18</sup>
- 6.3** That affected First Nations have funding to access independent third party review of Proponent materials, including representation on any topic-specific technical committees to review a Project.
- 6.4** That decision-making on major projects cannot be made until the Proponent provides adequate information to the affected First Nation(s) about the

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<sup>17</sup> The Coalition will, upon request in advance, help First Nations gauge their capacity to engage in major project assessment.

<sup>18</sup> The Coalition does not have a position on which party – the Crown or the Proponent – should provide what proportion of funds for affected First Nations; simply that the total costs for affected First Nations need to be covered.

Project and its potential effects on the environment. The First Nation will determine the adequacy of this information.

6.4 (a) First Nation requests for additional information at any time in the process will be meaningfully responded to. First Nations' information requests to the Proponent are treated as equivalent to those of the Crown, and responded to in a timely and meaningful manner.

**6.5** Materials pertaining to the Project and its assessment are written and communicated in a way that is accessible and understandable to all participants.

6.5 (a) The onus is on the Proponent to make its materials user friendly; advance communication with affected First Nations is crucial to this process.

6.5 (b) First Nations will, upon request, be provided resources to assist in making Project Descriptions and Application/Environmental Impact Statement materials accessible and understandable to community members, and socializing these materials at the community level.

**6.6** Application materials fully describe, and assess the potential impacts of, all main and ancillary physical works and activities required for the Project, including their location and nature. Where two or more alternative locations are contemplated, adequate information on each must be provided.

6.6 (a) Where the proposed Project requires a substantial workforce in rural or small town areas, the Proponent may be required to file full and accurate details on workforce requirements, including housing requirements, housing management, workforce management systems, and to examine potential effects of the workforce and its housing arrangements on Indigenous communities.

**6.7** Recognition of the right for affected First Nations to determine (and as necessary and with reasons, revise) the appropriate pace and schedule of various assessment and decision-making steps and the right to be able to stop the process until critical information gaps are filled.

**PRINCIPLE 7 – THE MAJOR PROJECT ASSESSMENT SCOPE AND PROCESS WILL ADHERE TO AGREED UPON HIGH QUALITY PRACTICES AND REFLECT FIRST NATIONS VALUES.**

Many past assessment problems, including lack of reflection of First Nations perspectives and assessments that are too narrow in scope, have occurred due to failings in the scoping phase of a major project assessment. Involving First Nations before the work begins increases the chance to avoid significant problems in the process.

Major Project assessment requires an adequate information base for the First Nation(s) to make informed decisions, even if that information is not readily available at the start of the assessment process. Fieldwork to fill data gaps in both traditional knowledge and science may be critical; desktop data collection may be inadequate.

Decisions on the scope and focus of assessment and the adequacy of materials filed by the Proponent must include affected First Nations. In particular, a fundamental shift is required from the current utilization of traditional knowledge in Crown-led assessment processes, from mere provision of baseline information and some “local colour,” to recognition that traditional knowledge is an entire way of thinking and knowing about the world, valuable as a decision-making tool in its own right.

A holistic assessment is required. Major project assessment will include holistic assessments of effects on ecosystems and effects on Indigenous people of changes that occur “on the land” and “in the communities”.

In order to adhere to Principle 7, major project assessment will require:

- 7.1** That the scope of a major project assessment be defined as early as possible with dedicated inputs from affected First Nations, and agreement of affected First Nations on the scope of issues, scope of assessment, and scope of the Project.
- 7.2** Prior to initiating studies, draft scope of assessment plans and proposed methodologies will be provided for affected First Nations’ review, and the Crown and Proponents will be open to the inclusion of First Nations identified Valued Components and scope of assessment/methodology requirements.
- 7.3** That Indigenous knowledge be incorporated into every step of the major project assessment process, and treated as an equally legitimate and critical decision-making lens as Western science.
- 7.4** First Nations-vetted baseline and trend-over-time studies are conducted prior to the filing of a Proponent’s Application/Impact Statement. They must include assessment of change to date from prior industrial activities; First

Nations will not accept a temporal scope of assessment that starts from current day, especially where there are already damaged baseline conditions.

- 7.5** The Scope of Development/Project are appropriate, avoiding project splitting,<sup>19</sup> and capture all likely effects-causing physical works and activities.
- 7.5 (a) This includes automatic inclusion into the scope of development and scope of assessment effects on all transportation/shipping routes related to a major project.
- 7.5 (b) Lack of direct control (by the Proponent) over one or more of the physical works or activities required for the Project to proceed, does not exempt those physical works and activities from the scope of development.
- 7.6** That direct, indirect, induced and cumulative effects pathways are all considered in the effects assessment.
- 7.7** Calls by affected First Nations for a “Key Line of Inquiry” approach to assessment - in which greater time, funding and focus are placed on priority Valued Components identified by affected First Nations - are respected and adhered to.
- 7.8** Evidence of the use of jointly agreeable practices and standards is provided for any analyses involving modelling, complex study design, or statistical analysis. Evidence will include peer-reviewed studies and case studies of the effects of similar projects.
- 7.9** Provision of sufficient evidence to permit evaluation of the likely effectiveness of all committed to mitigation, follow-up and monitoring plans, policies and programs; high level conceptual plans will not be accepted as valid evidence of mitigation success.
- 7.9 (a) Sufficient evidence may include consideration of applicability of different methods in the specific receiving environment, modeling of outcomes, and evidence from case studies of successful (and unsuccessful) implementation of mitigation methods.
- 7.9 (b) First Nations will be directly involved in the assessment of the adequacy of committed-to mitigations, and subsequent approval of mitigations.
- 7.10** That First Nations be meaningfully included in the assessment of potential effects from accidents and malfunctions, and in the development of management and response plans for all potential accidents and malfunctions.
- 7.10 (a) Assessment of potential effects of accidents and malfunctions will include detailed information regarding worst-case scenarios,

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<sup>19</sup> Project splitting refers to the practice of attempting to avoid an environmental assessment of a large project by splitting applications down into smaller pieces, or conducting an environmental assessment only on the first phase of what is proposed to be a much larger project.

including how far effects will travel and how long they will be measureable, and evidence of the Proponent's ability to avoid or manage accidents and malfunctions.



## **PRINCIPLE 8 – ALL PROJECTS ASSESSMENTS WILL IDENTIFY TOTAL CUMULATIVE EFFECTS LOADING, AND FOLLOW BEST PRACTICE OF CUMULATIVE EFFECTS ASSESSMENT**

Our member Nations will not accept cumulative effects assessments that are not tied to an appropriate time in the past before major human caused changes starting impacting the land. First Nations take a holistic view of effects – one project adds just another layer to the existing weight of recent history that has led to alienation from and loss of resources relied on by Indigenous peoples, loss of territory, and adverse effects on culture and rights of Indigenous peoples. Understanding losses to date and whether too much has already occurred, is critical context that will be one of the main, and mandatory, elements of any major project assessment.

Cumulative effects assessment is therefore a critical element of any major project assessment. Projects need to be assessed at a large landscape level that considers the implications of the sum total of cumulative impacts from past, present and future activities. The significance of total cumulative effects must be examined against past conditions or lesser-disturbed conditions, and not the current or accumulated state, which may represent a “damaged baseline”. The full nature and extent of a Project’s impacts to rights (among other considerations) cannot be adequately assessed unless cumulative effects are properly incorporated into the assessment.

The total cumulative effects loading to date should be established prior to the assessment of effects in the Project Case. Doing so helps establish the resilience and vulnerability of a Nation to further change.

In order to adhere to Principle 8, major project assessment will require:

- 8.1** Demonstration of a similar rigour and level of effort in cumulative effects assessments as in Project-specific effects assessments, within each major project assessment.
- 8.2** Provision of adequate funding, time and resources to establish a satisfactory past (where possible, pre-industrial or in some cases pre-contact or pre-treaty) baseline to be adopted as the standard upon which to measure change for all values, including biophysical and Indigenous rights practice related values. This work may be conducted by the Proponent with guidance from First Nations, or upon request, by the First Nation(s) themselves.
  - 8.2 (a) Consideration of historic impacts to date and the causal factors of adverse change shall not be limited to industrial development (all causes of change, including for example government policy and immigration, will be considered).
- 8.3** The geographic scope of cumulative effects assessment will take into consideration:

8.3 (a) Mobility of values (e.g. herds of wildlife, fish stocks etc.).

8.3 (b) The full extent of traditional territory of First Nation(s).

**8.4** Jointly agreed upon fragmentation/integrity measures (for example, road and water crossing density, abundance of older forest, etc.) will be used at the landscape scale to assess the current scale and future implications of land use changes. See also Principle 4.

**8.5** Cumulative effects assessment will include an assessment of trends over time and alterations in the pace of change (e.g. acceleration or deceleration of land fragmentation and alienation) for each value, in order to establish the degree of vulnerability to future change, of the value in question.

**8.6** Incorporation of thresholds identified by First Nations against which cumulative change and their significance/seriousness can be assessed.

**8.7** Cumulative effects assessment integrates multiple realistic scenarios of future development and climate change, not merely “reasonably foreseeable” projects.

**8.8** Integration of upstream and downstream cumulative effects of linked projects (for example, upstream gas field effects tied to a pipeline).

8.8 (a) In cases where projects are linked, a regional or strategic assessment may be required.

**8.9** Proponent’s applications include expanded cumulative effects context sections providing an accurate representation of total cumulative effects loading on each Valued Component to date.

**8.10** Avoidance of a “project contribution” approach to cumulative effects assessment and significance determination; cumulative effects methodology must be based on a Valued Component-centred approach.<sup>20</sup>

**8.11** Proponent’s applications must include expanded cumulative effects context sections as part of the profiling of baseline conditions, so that the question of total cumulative effects loading on each Valued Component prior to the Project Case can be determined, and the question of whether there is a pre-existing significant cumulative adverse effect even before the Project is put in place, can be a critical part of the assessment.

8.11 (a) If pre-existing significant adverse effects are encountered, greater precaution is required before allowing new development to occur.

**8.12** Decision-making in relation to cumulative effects will consider:

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<sup>20</sup> The “project contribution” approach to cumulative effects assessment inappropriately suggests the significance of cumulative effects can be estimated by the proportion toward total cumulative effects the Project itself will cause. The appropriate measure is in fact the total sum of all cumulative effects on each value from all sources, and whether they are acceptable/manageable.

8.12 (a) The overall capacity of an area or region to sustain resource values in the face of all human activities;

8.12 (b) The sustainability of Valued Components over time in the face of the full range of human-generated stresses, including predicted effects of climate change;

8.12 (c) The sum total of human-caused, externally imposed changes on Indigenous peoples since contact.

## **PRINCIPLE 9 – ADEQUATE INFORMATION WILL BE PROVIDED TO INFORM CONSENT DECISIONS MADE THROUGH FIRST NATIONS’ WORLDVIEWS**

*NOTE: Principle 9 is direction to Proponents and assessment bodies on what information it may be critical to provide to member Nations in order to inform their decision-making. It must not be read as direction to independent member First Nations on how they will make decisions. Each First Nation has the right to impose its own lenses of decision-making.*

Major projects have the capacity to fundamentally alter Indigenous well being and way of life, for better and worse. This question of balancing benefits and risks, and what is acceptable, must be central to major project decision-making.

Avoidance of additional significant adverse impacts on an already damaged biophysical and human environment is no longer enough. Projects must demonstrably show that they will contribute beneficially overall to the things that matter most to affected First Nations, and that they will contribute to the path of reconciliation of Indigenous and non-Indigenous interests. Evidence of net gains to Indigenous peoples, and contribution to reconciliation,<sup>21</sup> will be part of the assessment process. Impact equity in all its forms will be assessed.

Generally speaking, member Nations will not provide consent until their worldviews can be applied diligently and confirmed in an appropriate community forum for decision-making.

In order to adhere to Principle 9, major project assessment will require the following:

- 9.1** Engagement of individual affected First Nations about what information they will need to inform their decisions, and provision of that information in the format and extent sought by the Nation.
- 9.2** Provision of adequate information about the proposed project to support informed First Nations’ consent decisions, potentially including but not limited to:
  - 9.2 (a) Information showing “net gains”: the Project must contribute to overcoming a current high damage situation more than adding to it,

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<sup>21</sup> The Truth and Reconciliation Commission defines reconciliation as: “an ongoing process of establishing and maintain respectful relationships. A critical part of this process involves repairing damaged trust .... and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions....” From: The Truth and Reconciliation Commission of Canada. 2015. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, at pp. 16-17.

measured on balance across a variety of values, with priority weighting for values that matter most according to First Nations;

9.2 (b) “Futures foregone”: adequate information about alternative potential uses of the affected land base to inform First Nations’ determinations whether any priority desired futures will likely not occur if the project proceeds.

9.2 (c) Information on whether and how the Project will contribute a net benefit to Nation-building (or re-building) efforts over the long term, based on priority values defined by the First Nation(s).

9.2 (d) Information on likely “impact equity” and “distributional equity” between Indigenous and non-Indigenous sub-populations. This information will inform a First Nation’s determination of whether the bulk of adverse changes are placed on the shoulders of Indigenous people without an equally proportionate amount of benefit to the same group.

9.2 (e) Information that shows the burden of adverse effects will not be passed on to future generations.<sup>22</sup>

9.2 (f) Information as to whether the Project meets some or all of the following key goals and objectives of reconciliation:

- It has secured the informed consent of the Indigenous Nation;
- It supports Indigenous land stewardship rights and responsibilities;
- It contributes to the offsetting of historic and current land alienation;
- It contributes to cultural continuity and cultural resilience;
- It increases First Nations’ access to economic development opportunities;
- It does not contravene any Indigenous laws and norms of the affected First Nation(s).

**9.3** Project plans that require unavoidable environmental harm must include adequate compensation/offsets for adverse effects on Treaty rights,

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<sup>22</sup> The United Nations Declaration itself recognizes the critical role of inter-generation equity as a concept and a lens for making wise decisions. Article 25 states “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” Generally speaking, decisions about land use and development will prioritize support for projects that contribute to future generations having more rather than less ability to enjoy priority values and access their traditional territory.

Aboriginal rights and title, and adverse effects on biophysical and human environmental values.

9.3 (a) All forms of compensation/offset may be considered; individual First Nations have the right to weight them according to their own values.

9.3 (b) Offsets may include (but are not limited to) capacity building programs, cultural protection/continuity programs, habitat restoration, education, training, employment and procurement opportunities, infrastructure, and financial considerations.

9.3 (c) The Project overall must not pose a threat of irreparable environmental or socio-cultural harm, measured in a precautionary fashion. To this end, First Nations have the right to identify unacceptable trade-offs, and the Proponent and the Crown will respect these limits.

## GLOSSARY OF TERMS

**Adverse Effects:** Any bad change that makes any element of the environment (for example, wildlife or fish) worse or more at risk; sometimes called negative effects. The opposite are beneficial (or positive) effects.

**Affected First Nation:** Any Indigenous group that self-identify that they may be adversely or beneficially affected (or both) by a proposed Project.

**Ancillary Works:** Infrastructure (buildings, roads, camps) and activities (digging borrow pits, obtaining materials from quarries) used to support the main construction activities of a development. An example of an ancillary work would be the building of a work camp to house workers for the construction of a pipeline.

**Baseline:** What the environment is like before the proposed project. This is used to compare with what the area might be like after the project and help determine the project impacts. First Nations typically push for a “pre-industrial baseline”, meaning assessment of change since before major industrial activities started occurring in their territory. The current EA system more typically requires a “present day” or “damaged” baseline, which can hide effects from the past.

**Biophysical:** The biological or “living” and physical elements of the environment excluding humans. Example: water, wildlife, plants.

**Completeness review:** Review of a Proponent’s application in environmental assessment process to verify/check that it provides all of the necessary information.

**Conditions:** Rules put in place for how a project is managed (for example, times when construction can occur and maximum noise levels).

**Crown (Government):** The governing body, for example the federal and provincial governments.

**Cumulative Effects Assessment (CEA):** CEA looks at how all past, present and likely future activities have and will, combine to impact an area or a specific value (for example, moose or salmon). Good cumulative effects assessment focuses on total effects on the value, not merely the contribution of one project.

**Ecological Integrity:** The ability of the ecosystem to support and maintain natural ecological processes and diverse plants and wildlife.

**Ecosystem-Based Management:** This approach recognizes the connections within an ecosystem rather than just focusing on a specific species or a small, specific location. Humans are included in the ecosystem.

**Ecosystem Resilience:** The ability of an ecosystem or natural area to recover from harm or a disturbance. An area with low ecosystem resilience could be irreversibly damaged by a development.

**Environmental Assessment:** A process that looks at the potential harm and benefits that may occur to the environment and people (health, socio-economics, culture, traditional harvesting) because of a project. This process also looks at management steps that can be taken to lower the harms and increase the benefits of a project. An environmental assessment helps make a decision about whether the project should happen, and with what conditions in place. Synonymous in this Standard with the term “major project assessment”.

**Environmental Management (Stewardship):** Taking care of and protecting the environment over time.

**Environmental Management Plans:** Plans meant to both reduce or avoid impacts from the construction, operation, and closing of a development and enhance the positive benefits.

**Environmental Monitoring:** Collecting data about the environment that can be used to track changes over time; this can be scientific data or traditional knowledge observations of change. Environmental monitoring is also a term used when observing change during industrial project activities such as construction and operations.

**Environmental Standards:** Rules set for: a. how environmental change is assessed; b. what environmental conditions are acceptable in an area or on a resource (e.g., maximum metals in water); and/or c. how projects must be managed to avoid creating unacceptable environmental conditions.

**Fragmentation / Integrity Metrics:** Criteria or factors used to measure changes in landscape patterns. For example: Linear disturbance, a fragmentation metric, can be used to measure how much a forest is broken up into pieces by pipelines and seismic lines.

**Free, Prior and Informed Consent (FPIC):** This is a principle that shows that an Indigenous community has a right to give or withhold its consent to projects on their lands, and the right to full and advance provision of information to make this decision, endorsed by the United Nations (and more recently, Canada).

**Futures Foregone Analysis:** Study/identifications of the possible future uses of the land lost because of a development.

**Gender Impact Assessment:** An environmental assessment tool used to understand the potentially different effects a development may have on men and women.



**Impact Equity:** Ensuring that those most adversely impacted by a development receive commensurate benefits.

**Indicators:** Measurable or observable phenomena used to determine the condition of a Valued Component. For example, if surface water quantity is a VC, than water depth in lakes or volume of water flow in a river (in cubic metres per second) could be used as indicators.

**Indigenous Knowledge:** Aboriginal knowledge that comes from experience and interactions with the land over long periods of time, passed down between generations. Also known as traditional knowledge.

**Indigenous (Aboriginal and Treaty) Rights:** Priority rights of Indigenous peoples of Canada, as protected under Section 35 of the *Constitution Act, 1982*.

**Land Use Planning:** The setting of formal rules for what areas can have what activities, including rules about the type of industrial activity allowed (if any).

**Mitigation:** Any action designed to reduce, avoid or compensate for a bad change. For example, restoration of fish habitat after a stream crossing by a pipeline.

**(Range of) Natural Variation:** The expected natural change or fluctuation in data for the environment. The number of caribou in a herd will change by the season so it does not make sense to count the number of caribou in that herd only in winter because of the herd's natural variation.

**Net Gains:** Traditional environmental assessment was about avoiding significant (e.g., large and unmanageable) adverse effects on people and the environment. The "Net Gains" approach requires not merely this avoidance of large bad changes, but that the Proponent show their Project is likely overall to provide more benefits than bad changes. For the purpose of this Standard, Net Gains to Indigenous peoples – more good than harm – must be shown in a major project assessment.

**Population Health:** The health of a group of people in a specific area (e.g., a community). The "population health" approach recognizes that it is not only the physical environment, but also economic, social and cultural factors that influence – for better or worse – the health of distinct populations groups such as Indigenous people in Canada.

**Precautionary:** Not assuming, in the absence of evidence, that nothing dangerous or bad will happen from an action. A precautionary approach requires as fully as possible understanding how a project will affect the environment before development is started, and where there is uncertainty, increasing the amount of protections and monitoring in place.

**Proponent:** The person or organization/company that seeks to develop a project.

**Regulatory (Process):** The process of development is controlled or standardized through issuance by government of permits and licences with specific rules that must be followed.

**Riparian zones:** The area of transition between a river or stream and the land.

**Sensory Disturbance:** Changes to the environment that are observably different from natural conditions (for example, strong smells, strange tastes, increased noise), and impact on people or wildlife.

**Sustainability / Sustainable Development:** Development that meets the needs of the present, but will still allow future generations to be able to meet their own needs.

**Thresholds of Acceptable Change:** The limit of change that is considered acceptable by a group of people. For example, the number of new roads that are built in an Indigenous group's territory.

**Thresholds of Manageable Change:** The maximum amount of change that could be allowed before there would be changes to the environment that would impact adversely on ecosystem values. Unlike "acceptable change" thresholds, these are generally based on science rather than values.

**Valued Components (VC):** Values that are important (for example, to the community, to scientists, to the economy) and need to be evaluated before a project is approved, they become the focus of an environmental assessment. For example: air quality, wildlife habitat, and cultural heritage may be Valued Components, among many other possibilities.

**Western Science:** Knowledge that relies on the scientific method and research and scientific laws.

**Zone of influence:** The area of land around a project where environmental values may be impacted.





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