

Squamish Nation Environmental Assessment Process

AARON BRUCE LAW



Assembly of First Nations

November 28, 2024

aaronbrucelaw.com

SQUAMISH NATION PROCESS

- Background
 - Proposal to develop LNG project in heart of territory (2013)
 - Lack of confidence and trust in provincial and federal project assessment
 - Developed legally binding process based on Squamish Nation values, laws, worldview
 - Squamish consent required

SQUAMISH NATION PROCESS



Framework
Agreement



Assessment of
Project



Squamish EA
Certificate



Coordination with
Other Governments

FRAMEWORK AGREEMENT

- Framework Agreement
 - No legislation, binding process through contract law
 - the Squamish Process will be separate from the fed/prov EAs
 - Squamish will have different & additional information requests of proponents
 - Confidential process
 - Squamish commitments
 - Predictability and fairness

ASSESSMENT: INFORMATION

- Purpose
 - to understand scope of assessment, values to be protected, laws to be applied, initial community concerns
- Types of Information
 - **Community engagement:** workshops, focus groups, knowledge holders
 - historical materials
 - Xay Temixw LUP and G2G agreements
 - New research & studies conducted to address gaps

ASSESSMENT: METHODOLOGY

- Methodology
 - Squamish defined “valued component”
 - Inter-connected guiding topics
 - Guiding Topics, include impacts on:
 - Marine environment
 - Terrestrial and freshwater environment
 - Lands governed by Squamish
 - Use and occupancy
 - Transmission of culture and history
 - Growth and revitalization of Squamish language
 - Impact on one GT means impact on whole VC because of the interconnectedness

ASSESSMENT: REPORT

- Confidential
- Included
 - Community specific environmental, cultural, and safety concerns
 - Potential mitigations and conditions
 - All community views on project (Appendix)
- Squamish Council review recommendations
 - Opportunity to request more information
 - Approved for community presentation
- Community engagement and feedback
- Council send 25 conditions to proponents with requirement to enter EA Agreement

AGREEMENT/ CERTIFICATE

- What does the agreement/certificate do?
 - Makes 25 conditions legally binding
 - Sets out a fair process for proponents to satisfy conditions
 - Creates consent-based decision-making process
 - Legal & equitable remedies for non-compliance
 - Rescind Certificate
 - Injunction
 - Specific Performance
 - Technical Review DR Process
 - Expert Panel
- Quasi-regulatory process done contractually
- Economic Benefits 25th Condition
 - Maintains negotiation leverage because must be satisfactory to Squamish or no Certificate

EXAMPLE:
SEAWATER
COOLING

- Community: No impacts on herring or herring food (High Standard)
- Probability that will impact on
- Condition:
 - Require more info to prove zero impact or propose alternative
 - Proponent propose air cooling technology as alternative & Squamish agree that condition satisfied
- Change in project design forced WLNG to submit amendment applications to BC and Canada

COORDINATION WITH OTHER GOVERNMENTS

- Process
 - EAO revised the Section 11 Order to recognize the Squamish Process
 - Access to the information used in the Crown Processes
 - Timing of Squamish & Crown decisions
 - Squamish attempted to develop shared decision-making process, but EAO/CEAA reluctant
- Gov-to-Gov Agreement
 - With BC, not EAO/CEAA
 - Restrictions on expansion, future use
 - Marine Use Planning, Emergency Response
 - Economic benefits and lands
- Implementation
 - SN Notice of Compliance
 - Coordination on enforcement/compliance
 - Management plans and authorizations

CONCLUDING REMARKS

- Basis for Squamish Process is inherent right to govern and emerging law regarding Indigenous consent
- Creates an opportunity for the SN to manage its title lands in a way consistent with its laws and community aspirations
- Allows the SN to collect information it finds relevant and necessary to make an informed decision
- In the absence of legislation, creative way for SN to develop a project review process that has legally binding terms of participation and mechanisms to enforce compliance.
- Provides an opportunity for the other levels of gov't and SN to engage in a shared decision-making process.
- Provides industry with fair and predictable process.

THANK YOU

aaronbrucelaw.com

AARON BRUCE LAW