



Business Council of  
British Columbia

February 29, 2012

**Via email:** [mitigate@gov.bc.ca](mailto:mitigate@gov.bc.ca)

(Original to Follow by Mail)

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Dear Mr. Hoyt:

Thank you for the opportunity to participate in the February 10, 2012 workshop to review the current working version of the Ministry's proposed Environmental Mitigation Policy (EMP). It was a worthwhile conversation and a timely re-engagement in the current policy development process. We encourage you to continue to work with business stakeholders over the coming months to ensure that the province establishes a practical and appropriately scoped framework.

In terms of the Business Council's January 31, 2011 comments, the current version of the policy only vaguely addresses the issues we raised at that time. We remain worried that there will be added process, costs and delays to project development in BC from implementation of the policy framework, which remains, at the moment, quite conceptual. We are also concerned about the Ministry's capacity to deliver the policy effectively and efficiently.

We understand the provincial framework will align with existing Department of Fisheries and Oceans "no net loss" policy, which has been problematic since its inception. Comments made by Ministry staff that the policy will "improve ecological resilience" suggest an approach that goes beyond mitigation towards "net gains". The Business Council does not support a "net gains" approach to environmental management. There is too much uncertainty, it implies "in perpetuity" and therefore it does not have any



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liability limitations, which will affect business competitiveness. In addition, at the moment the framework does not include a transparent, multiple accounts trade-off scheme to enable sensible and balanced decisions. That said, we were pleased to learn that there will be no new legislation or regulations developed to implement the framework.

The following additional concerns have been raised as part of the review of the two documents posted on the Ministry's website.

#### Presentation and Definitions:

- The procedures document could be combined, easily, with the policy document, as there is quite a bit of repetition, which creates the potential for misinterpretation.
- Terminology like "up front" information requirements needs to be defined. What are the constraints, and how will provincial staff know when "enough is enough"?
- We encourage the Ministry to seek input from business interests on the baseline definitions of environmental, social and economic values to make sure they are realistic and can be used effectively in a trade-off framework. For example, government revenue is considered a "value" when it is really a product of decisions that either increase or decrease revenue based on the use of natural resources.

#### Scope:

- The Business Council is pleased to that the Ministry is looking at triggers and we support the idea of exempting certain activities. In this regard, the Ministry must pay close attention to how it deals with ongoing operating permitting requirements (i.e., brownfield versus greenfield developments).
- It is important that the information requested is appropriate for the stage of development (e.g., detailed engineering drawings should not be requested for conceptual projects that may need Investigative Use Permits to "prove" an idea). As well, the current version of the policy does not address the degree of review expected based on project size.
- The policy appears to apply to all activities and development projects on Crown land, with few constraints and little guidance on the "how to", other than general notes on known practices and the avoid-mitigate-offset hierarchy of management. However, some sectors, notably forestry, mining and oil and gas already have



regulatory frameworks (*Forest and Range Practices Act, Oil and Gas Activities Act, Mining Act* and regulations) that address the intention of the EMP.

- The Ministry should recognize that there are some acceptable residual costs and that the policy is not a zero sum game.
- The question of exhausting mitigation before moving to offsetting is not defined, or clarified, and is tied closely to the answer to the question posed above on when enough is enough.
- The Ministry should be clear about the definition of Cumulative Effects (CE) and any overlaps/integration with the mitigation policy and environmental assessment. In terms of the former, Ministry staff have described the CE Framework as enabling redress of historical impacts within a new project, which could make current businesses responsible for impacts they did not have any part in creating. As for the latter, the mitigation policy is a form of environmental assessment but without the same constraints.

#### Decision Making Authority:

- The policy should be clear about how trade-offs between environmental, social and economic values are made. At the moment this and references to statutory decision-makers (SDM) are too vague. Furthermore, in the absence of clarity around how trade-offs are made, SDMs may find themselves in awkward situations where there are dueling-biologist opinions over what is appropriate mitigation or not. Who decides in this scenario?
- The current draft gives provincial staff substantial discretion without corresponding constraints. This creates timing, cost and scope risks for all permitting processes. Furthermore, it will be critical to demonstrate consistent application of the policy across permitting processes.
- The Business Council is encouraged that the policy is voluntary, but we note that the wording is not really clear on this point. The voluntary nature of the policy may be forgotten during implementation, and the voluntary nature of a mitigation measure is undermined once it is incorporated into permits/license terms.

#### Tools:

- The policy should recognize the usefulness of adaptive management (i.e., experimentation), but within cost and time constraints. At some point, if the chosen mitigation option is not working, a proponent needs to have the flexibility to choose a different approach or abandon the effort.



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- The Business Council supports the idea of “trialing” the policy implementation and would like to see the business community involved in the design of these trials. We encourage the Ministry to include an evaluation procedure that ensures the practical lessons learned can be easily identified. We would also like to see three levels of trials: small project, mid-sized development, large industrial development.
- Values are usually place-based, at different scales, and derived, in part, from the social and cultural identity of a place. The Ministry has noted that there will be provincial and regional values with common indicators but different benchmarks/objectives. The policy needs to be clear about the differences and how these are to be reconciled, or this alone will undermine certainty.
- At the moment environmental-economic-social values are considered in isolation except by a decision maker. This is highly inefficient and could be more process intensive and costly for project proponents. For example, if there is a “hard” environmental offset required but positive economic and/or social reasons to proceed, how is that documented? Which account takes precedent?

We have decided not to provide line-by-line comments on the policy and procedures documents as these appear still to be largely conceptual. We would welcome the opportunity to provide this level of detailed review at some future point.

Please feel free to contact Denise at [denise.dalmer@bccbc.com](mailto:denise.dalmer@bccbc.com) or 604-696-6583, if you have any questions.

Yours sincerely,

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