

Proposed Amendments to the *Designated Classes of Projects Order* (Ministerial Exclusion Order)

ASSEMBLY OF FIRST NATIONS WORKSHOP - SEPTEMBER 10, 2024



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

Canada

Background:

Federal Lands Requirements

- Sections 81 to 91 of the IAA set out requirements to determine whether non-designated projects on federal lands or outside Canada are likely to cause significant adverse environmental effects.
- Federal lands include federal crown lands, such as:
 - **First Nation Reserves**
 - National Parks, Protected Areas, National Wildlife Areas
 - National Defence lands
 - Lands managed by offshore authorities and most port and airport authorities



Background:

Federal Lands Requirements

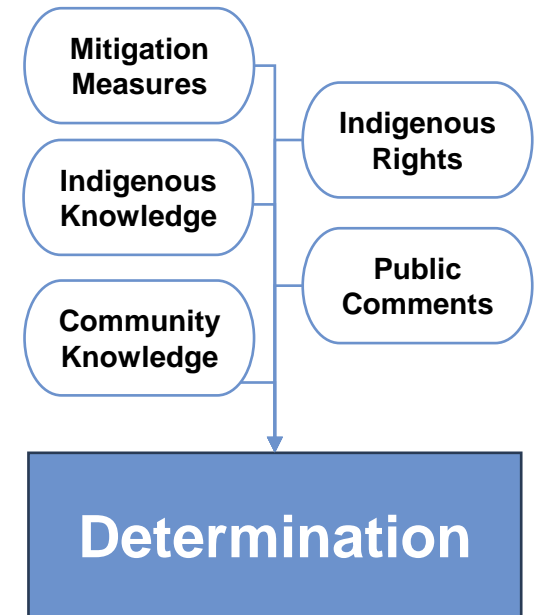
- The requirements are aimed at ensuring the federal government considers environmental effects of projects on lands under federal jurisdiction.
- Therefore, these provisions apply to federal “authorities”, including federal departments and agencies, crown corporations and port and airport authorities
 - Requirements do not apply to the government of Yukon, the Northwest Territories or Nunavut, or a council of the band within the meaning of the *Indian Act*.
- These obligations apply when authorities:
 - are the **proponent** of the project and seek to carry out the project;
 - provide **financial assistance** for the purpose of enabling the project to be carried out, in whole or in part; or
 - exercise any other power or performs any duty or function under another Act of Parliament (i.e. **issue a permit, authorization**, etc.) that could permit the project to be carried out, in whole or in part.
- Indigenous Services Canada (ISC) is typically an authority responsible for reviewing projects on First Nation reserves.



Background: Federal Lands Requirements

- The IAA establishes process requirements:
 - [Section 84](#) sets out factors that must be considered in a determination.
 - [Section 86](#) creates requirements related to public participation and posting public notices on the registry.
- Authorities have the discretion to establish their own environmental effects determination process for meeting the IAA requirements.
- Impact Assessment Agency of Canada (IAAC) does not oversee these processes, but provides support to authorities, sharing guidance and best practices.

Factors to consider in determination



Federal Lands Project Examples on the Registry

Canada.ca > Impact Assessment Agency of Canada > Canadian Impact Assessment Registry

Registry Menu Sign-in

i On June 20, 2024, the *Budget Implementation Act, 2024*, received Royal Assent and brought into force amendments to the *Impact Assessment Act (IAA)*. These changes were made in response to the Supreme Court of Canada's decision on the constitutionality of the IAA. Check out the [Impact Assessment Agency of Canada website](#) over the coming weeks and months to see the updates to procedures, policy and guidance documents.

Canadian Impact Assessment Registry


Find information on potential and current projects, regional and strategic assessments and projects on federal lands and outside Canada.


Leave text box blank or use keywords (e.g. project title, location or reference number).


Search results options: Show Map Last 30 Days


Need help? Watch our [Tutorial Video](#).

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Explore the Canadian Impact Assessment Registry here:
<https://iaac-aeic.gc.ca/050/evaluations>

- [Smith's Landing First Nation Phase 1\(a\) Housing Development](#) – a residential subdivision project including land grading, access road construction, installing septic tanks, and building storm water ditches and culverts. (Authority: Indigenous Services Canada).
- [New Telecommunication Towers on the Waywayseecappo First Nation Reserve](#) – construction of 120ft tall telecommunication towers (5GHz and 60 GHz) to provide wireless internet service to the community. (Authority: Innovation, Science and Economic Development Canada)
- [Big Horn Reserve Water System](#) – upgrades to the water treatment and distribution infrastructure including clearing vegetation, removal of topsoil, grubbing, and re-grading to extend distribution lines, construct a new water treatment plant, and upgrade existing infrastructure. (Authority: Indigenous Services Canada)

Volume of Federal Lands Projects

- Approximately **1000 projects per year** on federal lands and outside Canada require a s.82/83 determination.
- Majority of projects are related to **buildings and property, ports and harbours, water management** and various “other” (e.g., parking lots, gardens, docks, telecom cables and towers)
- **5 authorities responsible for 75%** of determination processes:
 - Indigenous Services Canada (about 25% of projects)
 - Fisheries and Oceans Canada
 - Parks Canada
 - Department of National Defence
 - Transport Canada



ISC s.82 Process: The Environmental Review Process (ERP)

Under section 82, ISC must review non-designated projects on reserve lands for which it supports:

- If ISC is the proponent
- If ISC is providing financial assistance
- If ISC is issuing a statutory authorization (e.g., permits, leases, licenses)

The ERP kicks off when s.1 & 2 of the [Project Description form](#) is completed, signed and submitted to the ISC Regional Office.

Types of projects reviewed by ISC include (but are not limited to):

- Community infrastructure projects (e.g., roads, bridges, water and wastewater infrastructure, schools, health centers, Band offices, Children and Family Services buildings)
- Economic development projects (e.g., gas stations, business centers, commercial parks)
- Renewable energy projects (e.g., wind and solar farms)

Step 1: Determine if the ERP applies



Step 2: Identify level of environmental review



Step 3: Analysis of environmental effects



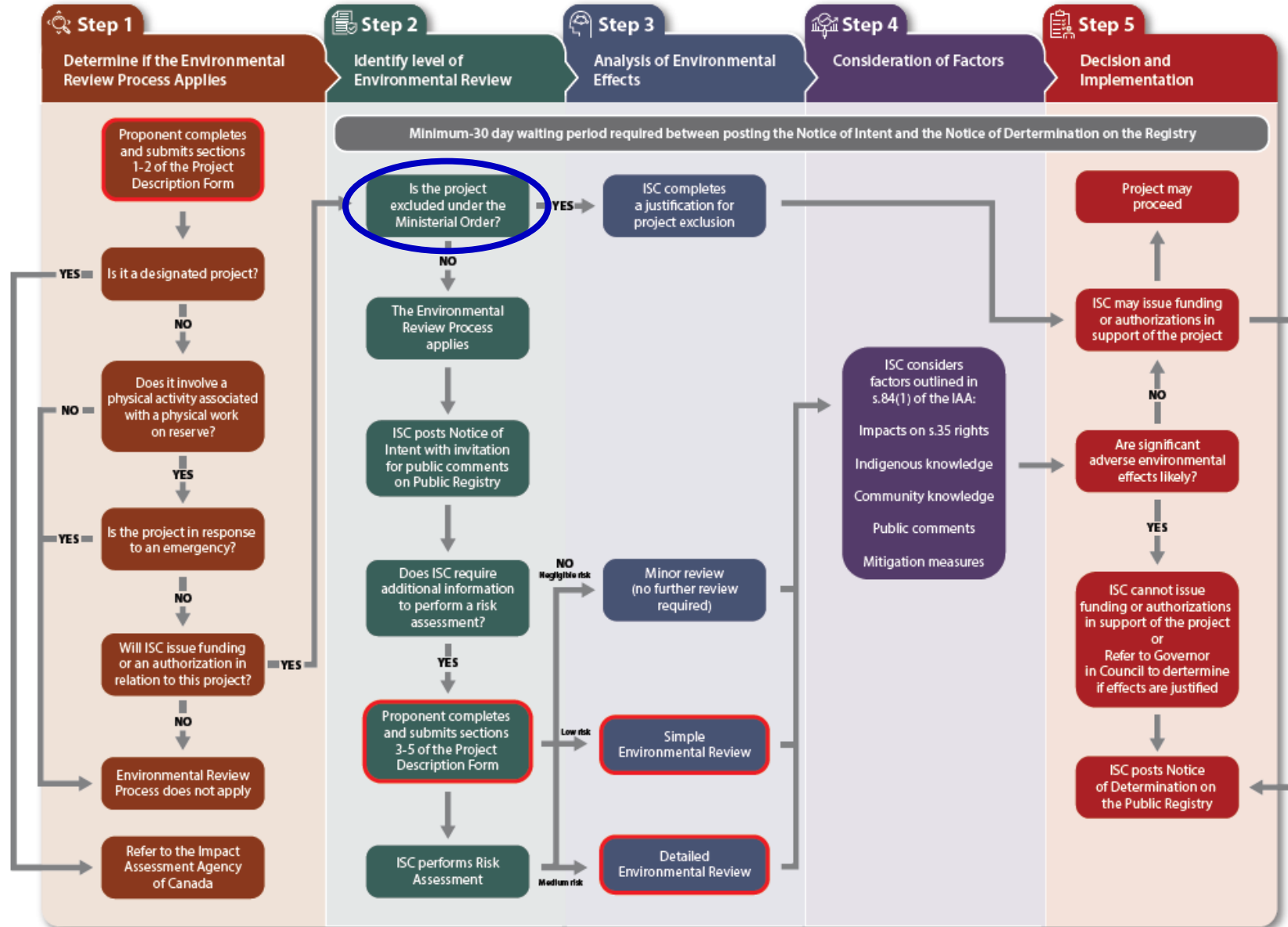
Step 4: Consideration of factors



Step 5: Decision and implementation



Indigenous Services Canada's Environmental Review Process



First Nation Involvement in the ERP

First Nations and Band Councils initiate the ERP when submitting the project proposal and Band Council Resolution (BCR) to ISC. Additional project information is collected in the PD form and signed off by a First Nation representative (e.g., the Director of Public Works/or Infrastructure, Band Managers, Director of Finance, etc.).

The ERP is driven by project timelines established by the community. The ISC Regional Environment Specialist will work with the First Nation representative and others throughout the process to meet these timelines as best as possible.

If ISC is funding a project on lands managed by First Nations under the Framework Agreement on First Nations Land Management Act, ISC is still required to make a s.82 determination in accordance with the IAA.

- ISC Regional Environment Specialists will work with the First Nation to minimize duplication and follow the "1 project, 1 review" principle.
- If the First Nation has an EA process, ISC will default to it, while still discharging ISC responsibilities under the IAA (i.e., posting on Registry, consideration of s.84 factors, etc.)



Ministerial Exclusion Order



What is the Ministerial Exclusion Order?

- Official title is the *Designated Classes of Projects Order*
- The Minister has the power to exclude classes of projects from requiring an environmental effects determination if they will cause only insignificant adverse environmental effects.
 - Without the Ministerial Exclusion Order, an environmental effects determination would be required for even the smallest projects, like changing a lightbulb, touching-up paint on a building, or repairing a fence.
- The current Order came into force in 2019 and has the following structure:
 - [General limiting conditions](#) – provide overarching environmental protection including to water, migratory birds, and species at risk. Even if listed in the Order, projects are not eligible for exclusion if they do not meet these initial conditions.
 - Specific classes of project and further limiting conditions are listed in different schedules.
 - Currently lists about 50 project classes, including buildings, lighting systems, fences, and telecommunication lines



Ministerial Exclusion Order and the Project List

Ministerial Exclusion Order

Non-designated projects

Insignificant effects

Potential for adverse effects
in federal jurisdiction



Project review required on federal
lands and outside Canada
Non-designated projects

Project List
Designated projects



Projects that are Currently Excluded for Review – Examples Relevant to On Reserve

ISC requests that proponents fill out sections 1 and 2 of the Project Description form to confirm exemption.

Examples of current exempt projects include (but are not limited to):

- Building renovations that do not increase the footprint
- Individual housing projects
- Utility lines along roadways (e.g., small cell towers, hydroelectric cables)
- Water and wastewater upgrades
- Small solar projects (i.e., charging stations, building upgrades)



Amending the Ministerial Exclusion Order

- Changes to the Ministerial Exclusion Order are proposed to help **improve process efficiency for low-risk projects** and enable resources to be directed where there is greater value.
- Proposed amendments are based on extensive research and consultations with responsible authorities and subject-matter experts since the Order came into force in 2019.
- Projects had to meet strict criteria to be considered for exclusion (i.e., cause only insignificant adverse environmental effects):

Magnitude:	Negligible	Low – High
Geographic Extent:	Very small	Small – Large
Frequency:	Once / rare	Occasional – Constant
Duration:	Short	Medium – Long
Reversibility:	High	Moderate – Irreversible



Proposed Amendments: General

- The changes provide greater clarity and address some important gaps where projects have only insignificant environmental effects.
- **New title:** Changed from “*Designated Classes of Projects Order*” to “*Order Designating **Certain Excluded** Classes of Projects*”
 - To help further differentiate the Order from the Project List and to help clarify that the Order identifies project classes that are **excluded** from requirements under the IAA.
- **Addition of Schedule 3 for National Wildlife Areas**
 - Currently no projects in National Wildlife Areas can be excluded
 - Amendments allow exclusion of a small set of very low-risk projects, including building trails, installing smaller buildings on developed lands, or repairing power lines.



Proposed Amendments:

Updated general limiting conditions

Changes to Water Bodies

- Current limiting conditions make any project ineligible for exclusion if it “causes a change to any characteristic of a water body”.
- Proposed changes to this limiting condition instead specify that projects that cause a change to the water level, alignment of a watercourse, or any characteristic of a wetland cannot be excluded.

Other New General Limiting Conditions

- Projects that release any deleterious substance (as defined under the *Fisheries Act*) cannot be excluded
- Projects that involved any activities that are prohibited in Marine Protected Areas cannot be excluded.



Proposed Amendments: New and Updated Excluded Classes

New Classes

- **Catch all** for structures under 25m² (if in water, 10m²)
- Navigational aids **for air and marine transportation**
- Underground **petroleum storage tank systems** up to 5,000L
- Low-voltage **electrical transmission lines**

Amendments to existing classes

- **Buildings:** increased threshold for well-known building types from 1,000m² → 1,500m²
- **Expansion:** for many classes of projects, expand works by 1,000m²
- **Utility Infrastructure:** increased threshold for the modification, removal, and replacement of utility infrastructure outside of existing rights-of-way

Proposed Amendments:

Existing project types that could be excluded

[Roof Replacement - French River Dams Office](#) – complete roof and ventilation replacement of the French River Dams office located in the Dokis First Nation Reserve (Authority: PSPC).

[Revitalization of Dene Tha' First Nation's Cultural Spaces](#) - revitalizing existing Tea Dance Circles to provide access to safe cultural spaces for community members including girls, women, and 2SLGBTQQIA+ people (Authority: CIRNAC).

- Similar projects could possibly be excluded under Part 2 Building Classes, s. 11, “The modification of any building, special purpose building, prefabricated structure or tent pad”

[Muscowpetung Powwow Arbour](#) – construction of Powwow Arbour with a total structure diameter estimated to be approximately 150 feet (45m) (Authority: ISC).

- Similar projects could possibly be excluded under Part 2 Building Classes, s.9(1)(b), “On developed land, the construction, installation, decommissioning, removal, replacement, moving or demolition of any special purpose building that has a footprint of no more than 1500 m²”

[Seabin Installation at Main Street Dock](#) – installation of a Seabin that acts as a floating garbage bin skimming the surface of the water by pumping water into the device (500 x 500 x 1800 mm and it weighs 55 kg) (Authority: Vancouver Fraser Port Authority)

- Similar projects could possibly be excluded under Part 1 Non-specific classes, s.5 “The construction, installation, expansion, modification, decommissioning, removal, replacement or moving of an in-water structure that has a footprint of no more than 10 m²”

Impact of Ministerial Order Exclusion Amendments for Projects on Reserve

Based on past on-reserve projects posted on the Registry, the Ministerial Order amendments will allow for more projects to be exempted from a full review.

Some noticeable changes include:

- Increased footprint threshold for **building expansions** by 1,000m² on developed land and 100m² on undeveloped land;
- Increased footprint thresholds for **special purpose buildings** to 1,500m² on developed land and 500m² for undeveloped land;
 - Residential accommodations
 - Medical (*hospital, health centre*)
 - Education (*schools*)
 - First response (*fire, paramedic, police*)
 - Community oriented (*arts, culture, religion, sports*)
- Increased footprint thresholds for **water pipelines** to modify, decommission, remove, replace within existing footprint up to 1,000 m;
- Increased footprint threshold for **telecommunication lines** and new class for **electrical transmission lines <130kV**
 - Build new or lengthen to 100 m length
 - Modify, removal, replacement, decommissioning up to 1,000 m



How to Participate

- Text of amended Ministerial Exclusion Order and Regulatory Impact Analysis Statement posted on *Canada Gazette* Part I website for comment until October 10, 2024
- Share your feedback about proposed amendments using *Canada Gazette* commenting feature ([link](#))
- **Next Steps:** IAAC will review and consider all feedback and publish finalized amendments to Ministerial Exclusion Order in *Canada Gazette* Part II



Appendix A – Examples of ISC Environmental Review Triggers under s.82 of the *Impact Assessment Act*

The list of examples should not be considered exhaustive. Always best to confirm with the ISC regional environment specialist, if unsure.

A. ISC is the project proponent
B. ISC is providing financial assistance to the project:
Funding from ISC programs (community infrastructure, housing, economic development), with the exception of block funding
C. ISC is issuing a statutory authorization in support of the project:
Issuance of a permit for occupation or use of First Nation land (<i>Indian Act</i> , s. 28(2))
Lease to a third party of land allotted to a band member (<i>Indian Act</i> , s. 58(3))
Disposal of sand, gravel, clay or other non-metallic substances, or the taking of these materials, on or under First Nation lands (<i>Indian Act</i> , s. 58(4)(b))
Issuance of a permit or lease for the exploration or development of minerals (<i>Indian Mining Regulations</i> , ss. 5(2), 6(1))
Issuance of a permit to operate a garbage dump, dispose of or store waste, or burn waste on First Nation lands (<i>Indian Reserve Waste Disposal Regulations</i> , s. 5)
Issuance of a permit to First Nation members to cut timber for sale (<i>Indian Timber Regulations</i> , s. 5(1))
Issuance of a licence for cutting and removing timber from First Nation lands (<i>Indian Timber Regulations</i> , s. 9) or varying the terms of a timber licence (s. 22(1))
Issuance of surface leases and rights-of-way (<i>Indian Oil and Gas Regulations</i> , s. 73(3)) or exploratory work on First Nation lands that requires an exploratory licence (<i>Indian Oil and Gas Regulations</i> , s. 29(1))
Oil and gas exploration on First Nation lands that requires a right of entry (<i>Indian Oil and Gas Regulations</i> , s. 30)
Issuance of lease to commence production of crude bitumen (<i>Indian Oil and Gas Regulations</i> , 1995, s. 39(1))
Amendment of a lease or permit to provide for production of crude bitumen (<i>Indian Oil and Gas Regulations</i> , 1995, s. 39(3))
Taking of lands by local authorities (<i>Indian Act</i> , s. 35(1))
Authorization from the Minister to enter on, use, occupy, take and acquire any lands that may be required for a hydroelectric project. (<i>Dominion Water Power Act</i> , s. 7(1))
Authorization from the Governor in Council necessary to bring about the joint development and operation of a hydroelectric project, where such is economically desirable (<i>Dominion Water Power Act</i> , s. 9)
Licences, authorizations and approvals under sections 8(1), 12(2), 21, 25(2), 40(1), 46, 49(3), 50, or 69(3) of the <i>Dominion Water Power Regulations</i>



Appendix B - ISC Contact Information

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