



AFN Impact Assessment Webinar Series

Impact Assessment on Federal Lands

September 10, 2024 1-3pm EST

Assembly of First Nations Environment, Lands & Water Branch



Environmental Effects Determinations

- *Impact Assessment Act* (IAA) (ss. 81-91) includes requirements for assessment of non-designated projects on federal lands, including reserve lands and some protected areas.
- Environmental effects determination requirements are triggered when a federal authority contemplates taking action or making a decision that would enable a project to proceed.
- Federal authorities must consider certain factors and find that a project “is not likely to cause significant adverse environmental effects” or justify those significant adverse environmental effects.
- Projects can be exempted from the environmental effects determination requirements if they are listed in the *Designated Classes of Projects Order* (Ministerial Exemption Order).



Federal Authorities

- IAA contains overarching requirements but does not establish specific processes for how federal authorities do environmental effects determinations. They may adopt their own processes.
- There are over 75 federal authorities.
- Indigenous Services Canada (ISC) administers the environmental effects determination process on reserve lands through the Environmental Review Process (ERP).
- Parks Canada administers environmental effects determination process in National Parks, National Wildlife Areas, and other protected areas through their impact assessment process.



ISC ERP

- Reasons why an ERP would be triggered:
 - ISC is proponent;
 - ISC providing financial assistance for project;
 - ISC must provide statutory authorization for project.
 - Categories for statutory authorizations: finance; lands; quarries; mining; waste disposal; logging; oil and gas; hydroelectric.
- ERP may be harmonized with or in parallel to a First Nation's if they have First Nation Land Management Framework agreement and Land Code.



ISC ERP Steps

- The proponent must inform the FN about their proposal and submit an ERP Project Description Form to the regional ISC office.

Step 1: determine if ERP is required;

Step 2: identify level of review;

Step 3: analysis of environmental effects;

Step 4: Consideration of factors outlined in IAA at s. 84(1);

Step 5: Decision and implementation.



ISC Determinations Based on ERP

- For each environmental effect identified, must be mitigation measures.
- Effects to remain after mitigation measures are evaluated for significance.
- If ERP determines there will be significant environmental effects after mitigation measures, ISC cannot provide support for project unless Cabinet decides that they are justified.



Current Exemptions

- Classes of projects listed on the Designated Classes of Projects Order (Ministerial Exclusion Order) are exempted from environmental effects determination requirements.
- Indoor projects, wells for certain purposes; buildings of a certain size; infrastructure related to buildings; utility infrastructure; above ground storage tanks for petroleum products.
- Except if the project would cause a change to a water body.
- Except if the project would disturb known or suspected subsurface contamination.



Proposed Changes

- The Minister of ECCC and IAAC are proposing to repeal and replace the Ministerial Exclusion Order to add additional classes of projects; make small changes to existing classes; and make minor changes to the general conditions that apply to all classes of projects.
- General Conditions:
 - Replace exception for projects that would alter a water body with conditions to allow activities near water. Require an environmental effects determination if project would change water level, alignment of water course, characteristics of a wetland, or involve the release of “deleterious substances.”
 - Replace exception for projects that would disturb suspected or known subsurface contamination. Projects that meet Ministerial Exemption Order entry on sites listed as “closed” on Federal Contaminated Site Registry can be exempt.



Proposed Changes (continued)

- Changes to existing classes:
 - Expand wells class; add certain structures; increase size thresholds for buildings; add works related to buildings of a certain size; remove size threshold for modification on works related to buildings; remove requirement that some projects be related to a building; increase threshold for changes to water pipelines, telecommunication lines near roads, railways, airport pavement; add additional utility infrastructure entries of certain sizes, etc.
- New classes:
 - Underground petroleum storage tank of a certain size; expansion of runway at airport for certain purpose; expansion of railway or road by a certain amount; installation of small portions of transportation infrastructure (curbs, guardrails, etc.); projects of certain size and criteria in or near water.



Discussion Questions

1. Do you have examples of impact assessments or environmental effects determination processes for projects on your reserve land that demonstrates a need to change requirements and/or processes?
2. Do you have concerns with the existing exemptions?
3. Do you have concerns with the proposed exemptions?
4. Are there any types of projects on reserve lands proposed for exemption you feel should continue to require an environmental effects determination?
5. Are there any additional types of projects on reserve lands that should be excluded from environmental effects determination requirements, specifically ISC's ERP?



Parks Canada Impact Assessment

- The *Parks Canada Directive on Impact Assessment* (2019) provides direction for the process Parks Canada will apply to its environmental effects determinations to non-designated projects, which Park Canada refers to as impact assessments.
 - Refer to Guide to the Parks Canda Process under the Impact Assessment Act.
- Minister of ECCC and IAAC are also proposing changes to the Ministerial Exclusion Order sections exempting projects in National Parks and other protected areas administered by Parks Canada.



Examples of Existing Exemptions

- Many entries include a condition about either (land based projects) not involving fill of a water body, changes to septic fields, or removal of vegetation with heavy equipment or (water based projects) not involving dredging, increasing work's footprint above high water mark, or creating diversion channel.
- General
 - Indoor projects;
 - maintenance or changes to transportation infrastructure, some trails, fish ladders, retaining walls;
 - operation or changes to underground electrical transmission or related infrastructure;
 - maintenance or removal shoreline stabilization, other in water infrastructure.
- Specific to Historic Canals and National Marine Conservation Areas
 - new shoreline stabilization or other in/near water infrastructure;
 - Maintenance of water related transportation infrastructure.
- Specific to National Parks and National Historic Sites:
 - Buildings or other structures on developed land accessible by road (other than in Banff);
 - In Banff, changes to buildings on developed lands.



Proposed Changes

General:

- Add repair of telecommunication lines and repair of water treatment systems with a footprint of less than 1000m² on developed lands.
- Add removal of prefabricated structures (not in Banff).
- Expand wells to include those to assess building suitability.

Historic Canals or National Marine Conservation Areas:

- remove condition that works not involve an increase in projects footprint below the high-water mark.

National Parks and National Historic Sites:

- remove abandonment of works.



Proposed Changes

- Expand to include exemptions listed for National Parks and National Historic Sites to also include those in National Urban Parks and those National Parks without zoning.
- Add category for National Wildlife Areas and exempt the following:
 - Operation, maintenance, repair of works;
 - Projects within a building;
 - Buildings less than 1000m² on developed land or less than 100m² on undeveloped land;
 - Geotechnical wells;
 - Removal or replacement of parking lots or water quality infrastructure less than 1000m²;
 - Fencing less than 100m;
 - Removal or replacement of up to 100m of road;
 - Changes or removal of marine navigation aids or structures for berthing and mooring less than 1000m².



Discussion Questions

1. Do you have examples of impact assessments or environmental effects determination processes for projects in protected areas (particularly those managed by Parks Canada) that demonstrates a need to change requirements and/or processes?
2. Do you have concerns with the existing exemptions?
3. Do you have concerns with the proposed changes to the exemptions?



Thank you