

ENVIRONMENT

Common Environmental Acronyms:

<p>EA Environmental Assessment</p>	<ul style="list-style-type: none"> • Predicts the potential environmental, social and cultural effects of a project before the project occurs • Proposes mitigation measures to reduce or eliminate the predicted effects • Includes public consultation • A tool used for decision making by the First Nation
<p>ESA Environmental Site Assessment</p>	<ul style="list-style-type: none"> • Identifies, tests and risk manages or remediates areas of environmental concern on First Nation reserve lands • Typically completed in Phases (Phase I, II and beyond) • Results of the Phase I ESA contribute to the First Nation's Individual Agreement with Canada
<p>EMP Environmental Management Plan</p>	<ul style="list-style-type: none"> • Planning tool that identifies key environmental issues on reserve • Proposes strategies to address key environmental issues • Developed with extensive community engagement • Includes an implementation plan that forms the basic work plan for a First Nation's Lands and Environmental Department
<p>EP Environmental Protection</p>	<ul style="list-style-type: none"> • Sets out the maximum acceptable levels of a particular substance in the environment before it is considered a contaminant (standards or criteria) • First Nation EP laws meet or beat provincial standards and punishments

What is an Environmental Assessment (EA) under the Framework Agreement?

An EA is a decision-making tool that can be used by First Nations to predict the potential environmental, social and cultural effects of a project early on, before any work occurs. EA's also identify mitigation measures to reduce or eliminate adverse effects from the project, and typically include opportunities for community and public engagement.

EA decisions should be based on whether or not the project is likely to result in adverse effects, considering mitigation measures, and whether or not those effects are justified under the circumstances. A First Nation should only issue permits, approvals, land instruments, funding, etc., necessary for a project to proceed AFTER they have determined, through their EA process, that the project is not likely to result in adverse environmental effects or that those effects are justifiable.

The Framework Agreement Requirements for Environmental Assessments (EAs)

Section 25 of the Framework Agreement states that a First Nation will make its best efforts to develop an environmental assessment process within 1 year (or another agreed-upon time frame) after their land code comes into force.

Section 25 of the Framework Agreement also highlights 6 key specifications around environmental assessments, which are:

1. The Individual Agreement between the First Nation and Canada sets up an “interim” EA process
2. The First Nation’s environmental assessment process will be consistent with Federal legislation
3. EA triggers (First Nation approving, regulating, funding, or undertaking a project on reserve)
4. EA occurs as early as possible
5. Use of the First Nation EA process whenever possible

The ability of Canada and the First Nation to harmonize their EA processes with the provinces where they agree to participate.

Annex “F” – Interim Environmental Assessment Process

This section provides that until the First Nation has developed its own Environmental Assessment laws and procedures (law or process, depending on when the individual agreement was developed), the interim Environmental Assessment process outlined in [Annex F](#) will apply.

The chart below contrasts the updated (2022) Annex F with the original version:

Original Annex F	Updated Annex F (2022)
<ul style="list-style-type: none"> • Environmental assessment expenses are the responsibility of the First Nation or project proponent. • It is important to note that the Council of the First Nation will have a duty from the time the Land Code comes into force to ensure an Environmental Assessment is conducted for every project on First Nation land. • If Canada is conducting an Environmental Assessment for a particular project, a First Nation can adopt Canada’s Environmental Assessment rather than conducting their own. • Annex F stipulates that an operational First Nations’ Environmental Assessment process must be consistent with the Canadian <i>Environmental Assessment Act</i> (CEAA)* (but consistency has not been 	<ul style="list-style-type: none"> • It is important to note that a First Nation will have a duty from the time the Land Code comes into force to ensure an Environmental Assessment is conducted for projects occurring on First Nation land, in circumstances where federal environmental assessment legislation would require one. • A First Nation may adopt an environmental assessment conducted by Canada or a province, but must still make their own environmental assessment decision. • The interim process is intended to be broadly consistent with requirements of the federal assessment process (as outlined in the federal <i>Impact Assessment</i>), without imposing requirements only appropriate to federal departments (e.g., posting notices on a federally controlled website).

<p>defined in either the Framework Agreement or the Individual Agreement with Canada).</p> <ul style="list-style-type: none"> • Regardless of which federal Environmental Assessment law a First Nation elects to be consistent with, Council must first decide on whether or not a project is likely to result in significant adverse environmental effects, and if so, whether those effects are justified under the circumstances before they take any action that would allow a project to proceed. • The Individual Agreement with Canada typically states that the Interim Environmental Assessment process applies until the First Nation enacts its law on Environmental Assessment. • Future amendments to the Framework Agreement will consider removing all references to specific federal environmental assessment legislation. 	<ul style="list-style-type: none"> • Regardless of how a First Nation conducts an Environmental Assessment, the First Nation must decide on whether or not a project is likely to result in significant adverse environmental effects, and if so, whether those effects are justified under the circumstances, before taking any action that would allow the project to proceed. • Annex F outlines the interim environmental assessment process, which applies until the First Nation develops their environmental assessment process. • A First Nation may harmonize their environmental assessment process with Canada and the province. • Environmental assessments are to be conducted in the early stages of the project. • The First Nation’s environmental assessment decision will depend upon the results of the environmental assessment study, feasible mitigation measures, and public consultation. • Environmental assessment expenses are the responsibility of the First Nation or project proponent. • It is the responsibility of the First Nation to ensure any approved mitigation measures and follow-up actions identified in the environmental assessment are carried out.
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Sample 10 Step EA Process

Here is the start of the 10 step EA process. The following information is provided for guidance purposes only. First Nations may elect to use an alternative approach to making an EA determination under their EA process or law.

<p>1. Project Initiation</p>
<p>Proponent submits a project description to First Nation Lands Department. To assist proponents in preparing a project description, the First Nation may want to consider developing a template or form that clearly outlines the information that must be submitted for the project description.</p>
<p>2. First Nation determines if an EA is required.</p>
<p>3. Proponent Notification</p>

<p>First Nation notifies proponent:</p> <ul style="list-style-type: none"> a) If no EA is required, First Nation notifies proponent that they can proceed with their project. b) If an EA is required, First Nation notifies proponent that an EA is required and proceeds with the EA Process.
<p>4. Community consultation on the project.</p>
<p>First Nation posts public notice notifying membership that a potential on-reserve project is undergoing an EA and that Council will be required to make an EA decision (include project description in the public notice). Notice should instruct Members to contact the First Nation Lands Department if there are any concerns.</p>
<p>5. EA criteria</p>
<p>First Nation provides the EA criteria (factors to be considered in the EA Report*) to the proponent.</p>
<p>6. Proponent prepares EA report.</p>
<p>Proponent, at their own expense, prepares the EA based on the First Nation’s EA criteria (proponent may need to contract an environmental consultant to complete the EA) and submits the EA Report to the First Nation for review.</p>
<p>7. Review of EA report</p>
<p>First Nation reviews EA report provided by the proponent. If necessary, the First Nation may want to request assistance from a technical specialist to assist in this review (the First Nation may want to consider specifying in their EA process that the proponent is responsible for costs associated with hiring a technical specialist to complete the review).</p>
<p>8. Community consultation on EA report</p>
<p>First Nation posts a copy of the EA report for community review with a deadline for comments to be submitted.</p>
<p>9. EA decision</p>
<p>Based on the EA report, results of community consultation and any other recommendations from the First Nation’s committees and departments, the First Nation makes an EA determination.</p>
<p>10. Notice of EA decision</p>
<p>First Nation advises the proponent and posts public notice to the membership of the EA decision and any conditions for the proponent.</p>

RESOURCES

Chart: [Developing an Environmental Assessment Process](#)

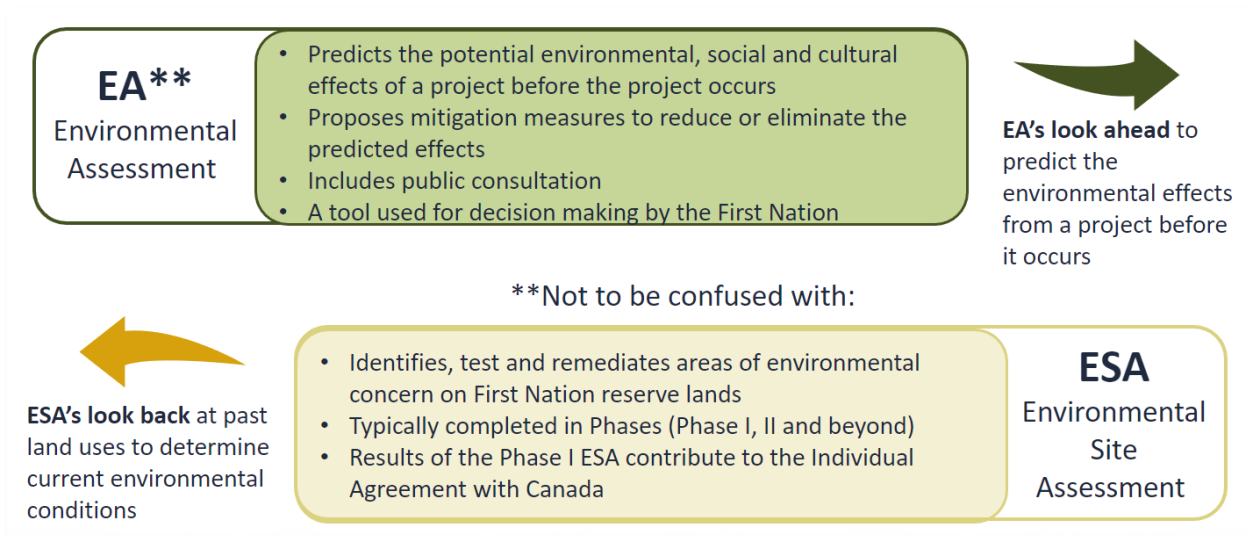
Package: Examples of [Environmental Assessment Laws](#)

TMPD Workshop: [Environmental Management under Land Code](#)

Package: [Examples of Subdivision, Development & Servicing Laws](#)

What is an Environmental Site Assessment (ESA)?

Environmental Site Assessments (ESAs) are not to be confused with EAs. The key difference is that **EAs look ahead** into the future to try to predict the environmental effects of a project before the project occurs. **ESAs look back** at past land uses and activities to determine the existing environmental conditions of your land.



An ESA is a process used to determine whether contamination exists on a particular parcel of land and is usually conducted in phases prior to a change in land ownership. Its purpose is to identify potential or existing environmental contamination liabilities.

During the developmental process, Phase I ESAs are conducted on a First Nation's Reserve Lands to help fulfil Canada's requirements under the Framework Agreement to provide the First Nation with all existing information in their possession regarding the environmental condition of the First Nation's Land. A summary of Phase 1 ESA findings is included in the First Nation's Individual Agreement with Canada.

Under the Framework Agreement, Canada remains responsible for any acts or omissions in relation to First Nation Land that occurred before the Land Code came into force.

Understanding the environmental conditions of Reserve lands is critical for First Nations to make informed decisions for land management.



What is an Environmental Management Plan (EMP)?

An EMP defines a First Nation’s approach to important environmental issues and organizes actions to achieve specified environmental goals.

The two main purposes of an EMP are:

1. Identify key environmental issues.
2. Specify responses to those issues.

An EMP is developed with extensive community engagement and includes an Implementation Plan to help guide a First Nation’s Lands and Environment Department in work planning for the next ~5 years.

Main Steps in EMP Development

Prepare to prepare the EMP
<ul style="list-style-type: none"> • Assess internal capacity, retain consulting support, prepare budgets
Analyze issues and conditions
<ul style="list-style-type: none"> • Review reports, discuss with knowledgeable staff and community members, conduct fieldwork
Prepare draft EMP
<ul style="list-style-type: none"> • Describe issues & responses, outline the implementation program
Review and finalize EMP
<ul style="list-style-type: none"> • Community and legal review and comment
Adopt and implement EMP
<ul style="list-style-type: none"> • Council adoption, community celebration, initiate specified actions

RESOURCES:

Guidebook: [A Guide to Preparing Environmental Management Plans for Operational First Nations](#)

Package: Examples of [Environmental Management Plan \(EMP\)](#)

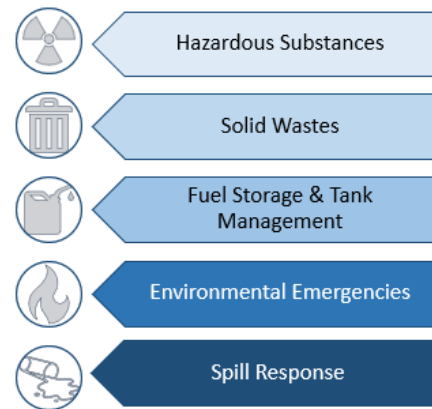
What is Environmental Protection (EP)?

Environmental Protection is defined as the efforts made to identify, remediate, and prevent contamination of soil, water, and air and to reduce associated risks to environmental and human health and safety.

Environmental Protection

- Sets out the maximum acceptable levels of a particular substance in the environment before it is considered to be a contaminant (standard or criteria)
- Standards or criteria are based on the media impacted (e.g., soil, groundwater, surface water, air) and the intended or current land or water use

EP Laws can address:



RESOURCE:

Package: Examples of [Environmental Protection Laws](#)

For more information, please reach out to your Land Code Governance Advisor.