

Guidelines for First Nation Land Management Phase I Environmental Site Assessments

Conduct of Phase I Environmental Site Assessments (ESA) of First Nation Reserve Lands during the Developmental Stage of the Framework Agreement on First Nation Land Management (FA)

I. Purpose of this Guide is to:

- To promote cooperation among First Nations, Indigenous Services Canada (ISC) and the First Nations Land Management Resource Centre (RC).
- To describe the agreed-upon practice for conducting Phase I ESAs based on current availability of funding, consistent across all regions of Canada.
- To recommend the process available to ISC, the RC, and the First Nation for supporting dispute resolution.

II. Phase I ESAs are conducted for the following reasons:

- To support fulfilment of section 6.3 (b) of the FA:
 - *6.3 The Minister will provide...(b) All existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land.*
 - This requirement applies to information in Canada's possession and is not limited to an individual federal department.
- To provide the First Nation and Canada with a snapshot of the existing environmental conditions of the First Nation's reserve lands at a particular point in time and recommendations for further study (e.g. areas to be included in a Phase II ESA), prior to the change in land management jurisdiction from Canada to the First Nation. A summary of Phase 1 ESA findings is included in the First Nation's Individual Agreement with Canada.

III. Phase I ESA Guidelines

In order to complete Phase I ESAs in an efficient and timely manner, Phase I ESAs are based on a records review, community meetings, interviews, and site visits. Phase 1 ESAs do not include sampling activities.

Scope of the Phase I ESA

- To assemble information as specified in CSA Standard Z768-01 (R2016) and identify the following:
 1. No evidence of contamination
 2. Suspected evidence of contamination (Areas of Potential Environmental Concern, or APECs)

3. Confirmed evidence of contamination (Areas of Environmental Concern, or AECs), and
 4. Other environmental issues (requiring the implementation of environmental best management practices or other measures).
- To assemble information without assigning responsibility or liability for existing environmental issues on reserve lands, consistent with the provisions in the FA. Phase I ESAs do not change the liability provisions set out in the FA.
 - To include all First Nation reserve lands and waters, including, but not limited to:
 - Community lands, Certificate of Possession (CP) interests, other member allotments, other allocated lands, and residential areas
 - Commercial and industrial lands.
 - To also include off-reserve activities that could effect on-reserve environmental quality.

The attached Sample Statement of Work (SOW) will be used to guide the content and approach to preparing Phase I ESAs.

IV. Joint Management Committee

Phase I ESA conduct will be overseen by a Joint Management Committee (JMC).

- As agreed to by the parties, the JMC usually consists of one representative from the First Nation and one representative from ISC. In instances when the parties may have differing number of participants to the JMC, there remains an equal voice in decision making between the First Nation and ISC. If requested by the First Nation, the RC may participate as a non-voting participant supporting the First Nation in any or all actions undertaken by the JMC.
- Funding will be provided by ISC to the First Nation to support the First Nation's role as project coordinator, and to pay invoices received from the Assessor and other costs associated with conduct of the Phase I ESA.
- By consensus, the JMC may determine its own rules of conduct including timing, project cost, decision-making and the sharing of confidential information. The JMC will also oversee and give direction with respect to contracting processes, consistent with the guidelines outlined in this document.
- Changes to the SOW and direction to Assessors are completed based on JMC consensus.
- The JMC will also make best efforts to align input to the Assessor on draft versions of the Phase I ESA reports.

ISC is responsible for:

- Working in partnership with the First Nation, and the RC as appropriate, to develop a Phase I ESA Statement of Work (SOW) based on the attached sample.

- Participating in the proposal review process and selection of an Assessor, reviewing draft reports, and any other technical matters, as necessary, related to the conduct and completion of the Phase I ESA.
- Providing the First Nation and Assessor with access to all records in its possession regarding the environmental condition of the First Nation reserve lands and supporting the Assessor, if required, in accessing records held by other federal departments.
- Expediting the acquisition of Phase I ESA funding through their departmental funding mechanisms.
- Providing technical support, as requested, to the First Nation in relation to the conduct of the activities associated with the Phase I ESA.

The RC is responsible for:

- Working in partnership with the First Nation, and ISC as appropriate, to develop a Phase I ESA Statement of Work (SOW) based on the attached sample.
- Participating in the proposal review process and selection of an Assessor, reviewing draft reports, and any other technical matters, as necessary, related to the conduct and completion of the Phase I ESA.
- Providing technical support, as requested, to the First Nation in relation to the conduct of the activities associated with the Phase I ESA.
- At the request of the First Nation, the RC shall be present in any or all JMC discussions.

The First Nation is responsible for:

- Finalizing a Phase I ESA SOW with the members of the JMC.
 - Identifying potential candidates for Assessors with members of the JMC.
 - Acting as the point of contact between Assessors and the JMC.
 - Distributing a call for proposals.
 - Receiving and distributing proposals to the members of the JMC.
 - Participating in the selection of an Assessor.
 - Receiving Phase I ESA funding from ISC and disbursing those funds to pay approved project costs.
 - Managing the project in accordance with the SOW and in collaboration with ISC through the JMC.
 - Reviewing and commenting on draft materials.
- Providing approval of the final ESA Phase I report.

Further information on specific roles and responsibilities is found in Annex A.

V. Other Matters

Contracting

- It is incumbent on the JMC to ensure clarity and consensus when developing/adopting contracting principles and processes.
- In order to be eligible to conduct the Phase I ESA, Assessors must have the necessary qualifications to meet the CSA standard.
- Decisions on contracting should consider Treasury Board contracting principles (e.g., use of and transparency in competitive processes).
- In rare cases, the JMC may agree to sole-source award the conduct of the Phase I ESA to a qualified Assessor in exceptional circumstances (e.g., when a contract is of very low-value and/or when a competitive process unduly impacts other deadlines in the developmental phase)

Updating an ESA

- Prior to a vote, previously completed Phase I ESAs may need to be updated, revised, or expanded using the SOW in response to the following circumstances:
 - The Phase I ESA is more than five years old;
 - New information is obtained that identifies previously unknown potential contamination or other findings overlooked in the Phase I ESA;
 - Activities with the potential to cause environmental problems on First Nation lands occur after a Phase I ESA is completed but before a Land Code is implemented;
 - The ESA was completed for purposes unrelated to preparing a Land Code; or
 - Other situations as agreed on by the JMC

Dispute Resolution

Disputes, if they occur, should be resolved by the parties to the dispute in a timely fashion to avoid undue delays in the conduct and completion of the Phase I ESA.

At the request of ISC, the RC or First Nation, senior officials from ISC (Director, Headquarters) and the RC (Executive Director) will be available to support dispute resolution where there is a disagreement. Participation of First Nation leadership in dispute resolution will be welcomed at the request of the First Nation.

Annex A: Environmental Site Assessment Joint Management Committee Responsibilities

R- Responsible, I- Informed, A- Assist, *- Upon FN Request L- Lead

ISC: Indigenous Services Canada

FN: First Nation

JMC: Joint Management Committee

RC: First Nations Land Management Resource Centre

		Responsibilities	ISC	FN	RC
Phase I ESA	1	Develop a Phase I ESA Statement of Work (SOW) based on the attached sample.	R	R	A*
	2	At the request of the First Nation, the RC shall be present in any or all JMC discussions.	I	L	A*
	3	Finalizing a Phase I ESA SOW with the members of the JMC.	R	R_(L)	A*
	4	Identifying potential candidates for Assessors.	R	R_(L)	A*
	5	Distributing a call for proposals.	I	R	I*
	6	Receiving and distributing proposals to the members of the JMC.	I	R	I*
	7	Participating in the proposal review process and selection of an Assessor, reviewing draft reports, and any other technical matters, as necessary, related to the conduct and completion of the Phase I ESA.	R	R_(L)	A*
	8	Acting as the point of contact between Assessors and the JMC.	I	R	I*
	9	Expediting the acquisition of Phase I ESA funding through their departmental funding mechanisms.	R	I	
	10	Receiving Phase I ESA funding from ISC and disbursing those funds to pay approved project costs.	I	R_(L)	I*
	11	Providing the First Nation and Assessor with access to all records in its possession regarding the environmental condition of the First Nation reserve lands and supporting the Assessor, if required, in accessing records held by other federal departments.	R	I	I*
	12	Providing technical support, as requested, to the First Nation in relation to the conduct of the activities associated with the Phase I ESA.	A*	L	A*
	13	Reviewing and commenting on draft materials.	R	R_(L)	A*
	14	Providing approval of the final ESA Phase I report.	R	R_(L)	I