

Environmental Governance Under Land Code

Presented to

BC Links to Learning

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Training, Mentorship &
Professional Development



Introduction

- Welcoming and Overview
- The Framework Agreement & Land Code
- Environmental Site Assessments (ESAs)
 - Phase I, Phase II and beyond
- Contaminated Sites Management
- Environmental Management Plan (EMP)
- Environmental Law Development
- Environmental Governance Tools
- Questions & Closure



First Nations Land Management (FNLM) Resource Centre (RC) and Lands Advisory Board (LAB)

A First Nations organization dedicated to serving and supporting First Nations communities who want to re-establish control over their lands, natural resources, and environment through the historic government-to-government *Framework Agreement on First Nation Land Management*.

RC was established by the LAB to undertake its technical responsibilities to First Nations, through:



Interested Nations

The Framework Agreement

The *Framework Agreement* was launched in the 1990's by a small group of First Nation Chiefs and it is a Government-to-government agreement through which the federal government recognizes First Nation self-government authority over their reserve lands, natural resources and the environment.

It identifies the jurisdiction assumed by First Nations, which includes decision-making authority as well as the power to design and enforce laws over reserve lands and resources.

The *Framework Agreement* is ratified by enacting a Land Code; once a Land Code is enacted, the land management provisions (approx. 44 sections) of the *Indian Act* no longer apply.

1996

Replaces 44 land management-related sections of the Indian Act



Restores First Nations land governance.
Canada no longer has the power to manage or administer First Nations lands.



Our History

Land Code – Authorities & Responsibilities



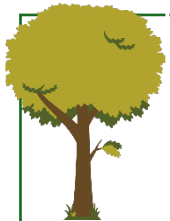
First Nation Land Governance



First Nation Laws



Community Meetings and Approvals



Protection of Land



Accountability – Conflict of Interest & Finance



Land and Natural Resources Administration



Interests and Licences in Land

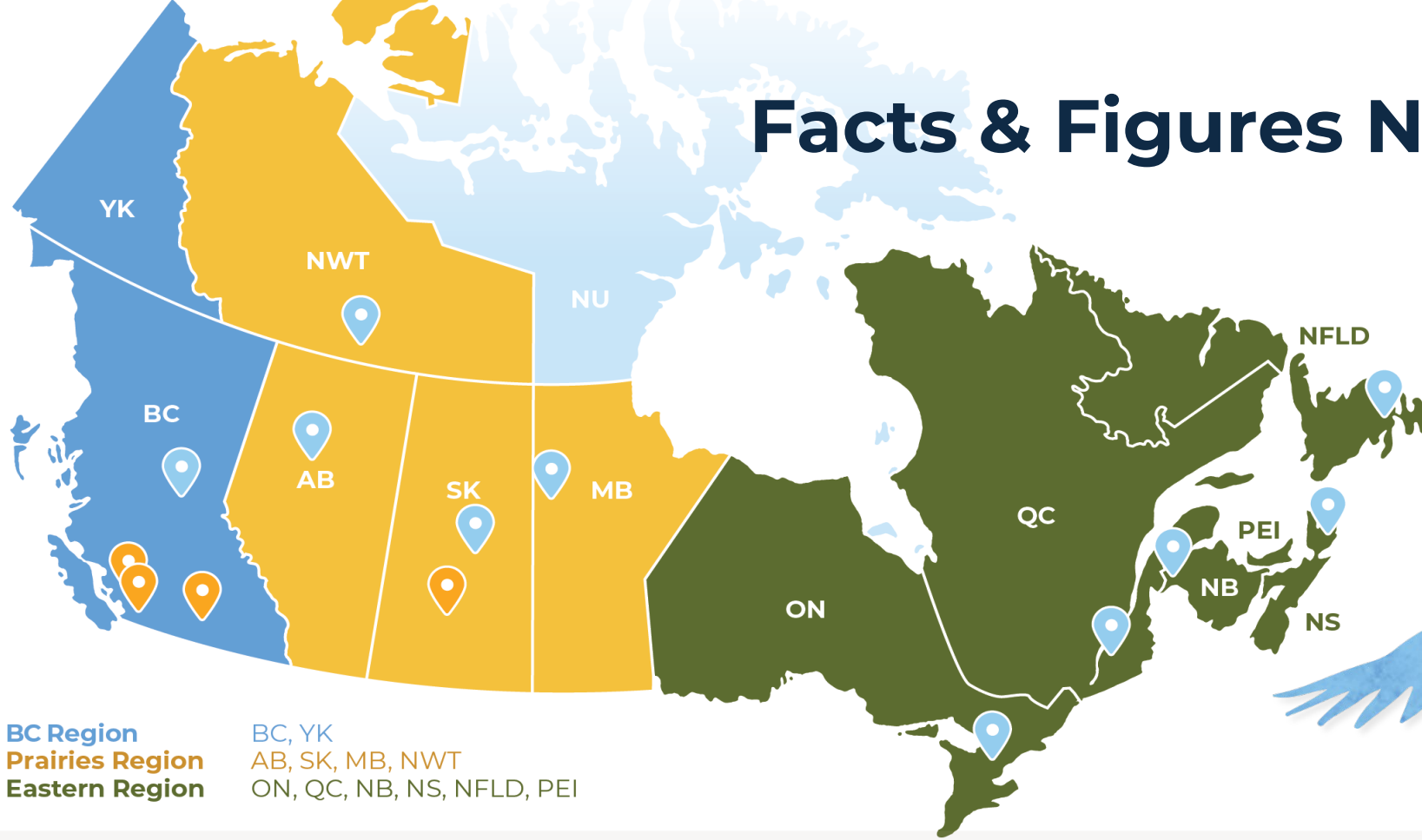


Dispute Resolution



Other Matters

Facts & Figures November 2024



- **BC Region** BC, YK
- **Prairies Region** AB, SK, MB, NWT
- **Eastern Region** ON, QC, NB, NS, NFLD, PEI

122

Operational First Nations

have established land codes through the *Framework Agreement*

213

Signatory First Nations

across Canada are in various stages of land code development and implementation

10

Provinces / Territories

are home to operational First Nations

4

First Nations

have moved on to full self-government or treaty after ratifying their land codes

1,200,000+

Acres of First Nation Land

have been removed from the colonial *Indian Act* lands system

1 in 3

First Nations

in Canada are a signatory to the Framework Agreement or have expressed formal interest to become a signatory



List of Signatory Nations

Environmental Governance Under Land Code

Environmental Governance includes the conservation, protection, and management of the environment and natural resources and can be accomplished through...

- Drafting, enacting, and enforcing environmental laws
- Creating applicable policies, processes, plans, and guidelines
- Monitoring the quality and quantity of First Nations Lands & Resources



Environ Govrnce Tools

Land Code First Nations Governance Examples



Henvey Inlet First Nation

Developed Environmental Assessment and Protection laws.



Photo Credit: Henvey Inlet, 2011



Bingwi Neyashi Anishinaabek

Developed Environmental Management Plan and Environmental Protection Law.



Photo Credit: Bingwi Neyashi Anishinaabek



Tzeachten First Nation



Developed Environmental Management Plan and Implemented Recycle Zone.

Photo Credit: Tzeachten First Nation

Environmental Acronyms

ESA

Environmental Site Assessment

- Looks at past land uses and activities to help identify areas of potential environmental concerns
- Identifies, tests and remediates areas of environmental concern on First Nation reserve lands.
- Typically completed in 3 phases (Phase I, II and beyond).
- Executive Summary of the Phase I ESA included in the Individual Agreement with Canada.

EMP

Environmental Management Plan

- Planning tool to identifies key environmental issues and priority areas on reserve lands.
- Proposes strategies to address the identified environmental issues and priority areas.
- Developed with extensive community engagement and feedback from members
- Includes an implementation plan to create an action plan for the Nation's Lands Office

EP

Environmental Protection

- Sets the maximum acceptable levels of a particular substance in the environment before it is considered a contaminant (Standards or Criteria) - Alternative to CCME and CSR Standards
- First Nation EP laws must meet or beat provincial standards and penalties.

EA

Environmental Assessment

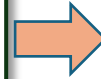
- Predicts the potential environmental, social and cultural effects of a project before it occurs.
- Proposes mitigations measures to reduce or eliminate the predicted effects.
- Includes public consultation with the community members.
- A tool used for decision making by the First Nation.

Phase I ESA Process & RC Support

Request for Proposal (RFP)

Contains the terms of reference, areas of interest, notable concerns, tasks, schedule of activities, and distributed to list of qualified consultants.

The RC can review and comment on the RFP to ensure it includes all Phase I ESA tasks.



Consultants Proposals

Consultant(s) prepare and submit proposals to JMC for review.

The RC can evaluate proposals received and make recommendations to the FN on preferred consultant.

Draft Phase I ESA Report

Consultant conducts assessment, prepares and submits report to JMC.

The RC can review and comment on the draft Phase I ESA report to ensure completeness, and review ISC comments on draft report.



Finalization of Phase I ESA Report

Consultant finalizes report and sends to JMC with any recommendations for Phase II or follow up work with attached cost estimates.

The RC can review the final report to ensure JMC comments on the draft report have been incorporated into the final version.

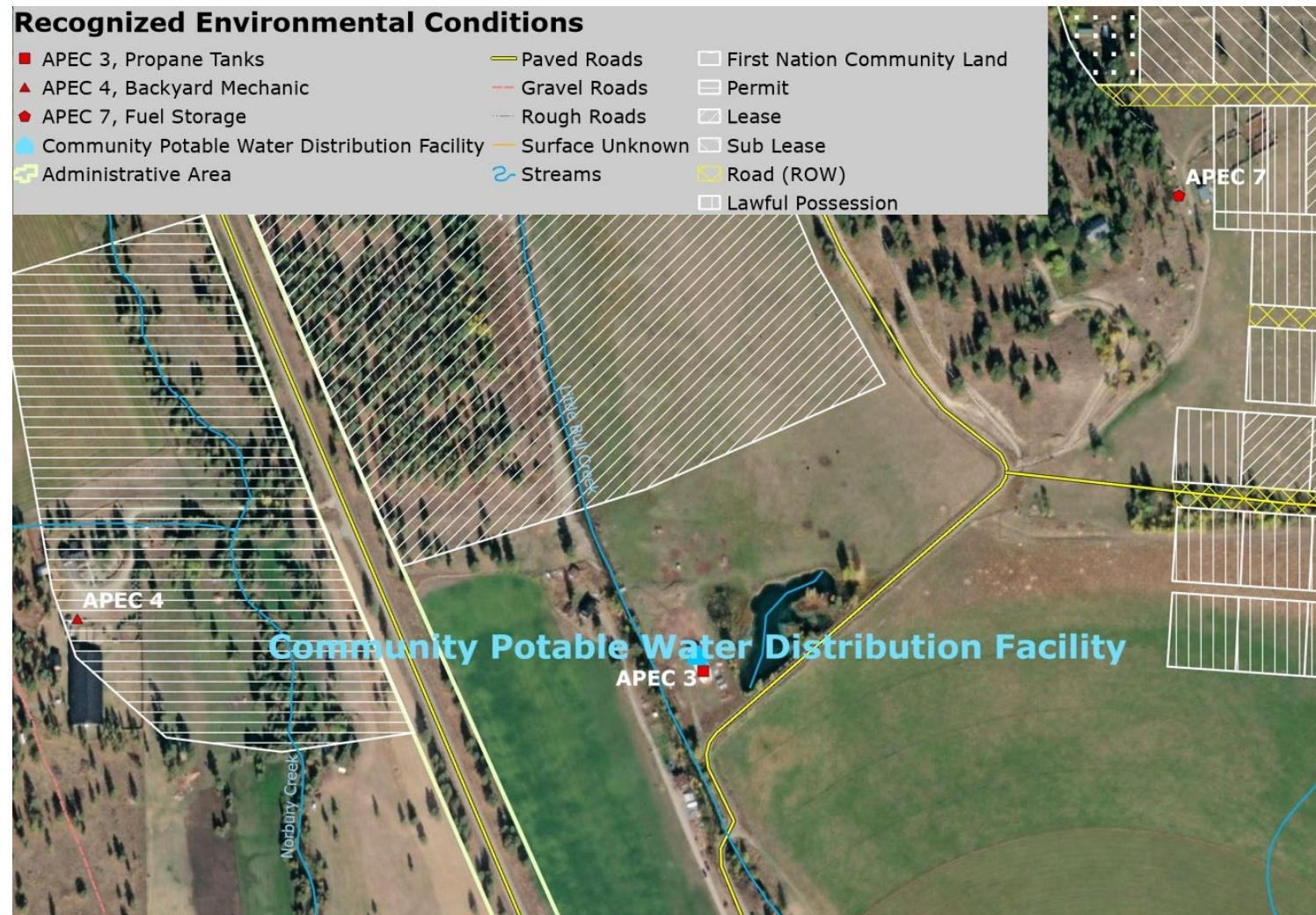


**Results of Phase I ESA
Included in Individual
Agreement with Canada**

Phase I Environmental Site Assessments (ESAs)

Recognized Environmental Conditions

■ APEC 3, Propane Tanks	— Paved Roads	□ First Nation Community Land
▲ APEC 4, Backyard Mechanic	— Gravel Roads	□ Permit
● APEC 7, Fuel Storage	— Rough Roads	□ Lease
Community Potable Water Distribution Facility	— Surface Unknown	□ Sub Lease
Administrative Area	Stream	□ Road (ROW)
		□ Lawful Possession



- Community Consultation and Knowledge Sharing (maps)
- Regulatory Record Searches
- Historical Information Review
- Site Visit(s) and Investigating areas of interest of concern
- Mapping Lands, Structures and Areas of Potential Concern
- Report Preparation

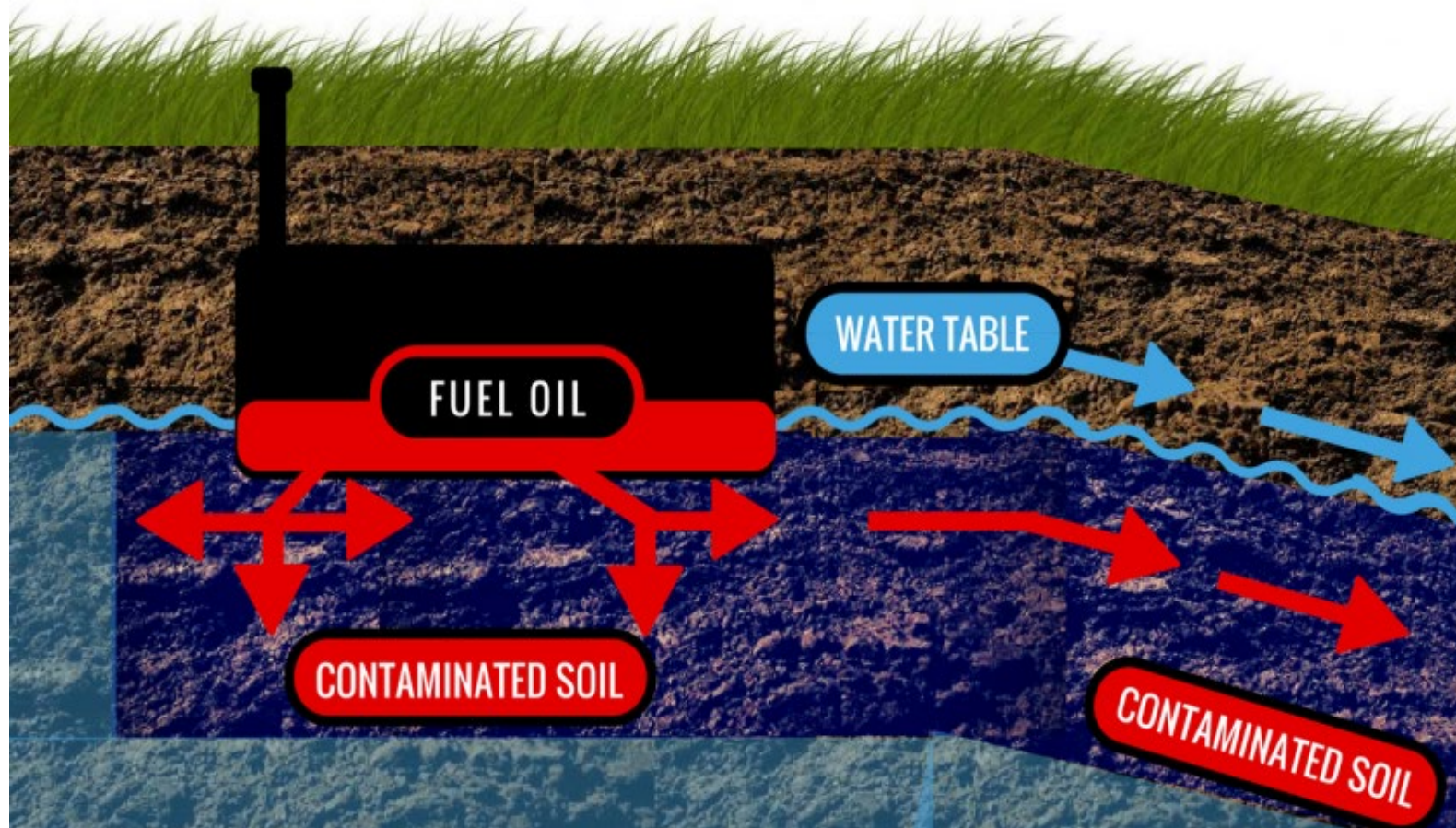
Phase II Environmental Site Assessments (ESAs)

- Collect soil and/or groundwater samples from APEC locations
- Samples analyzed for contaminants of concern
- Results are compared to applicable human and ecological standards
- Soil and GW contamination is overlaid on community lands
- GIS is crucial in identifying impacts and risk to human or ecological health



Contaminated Site Management

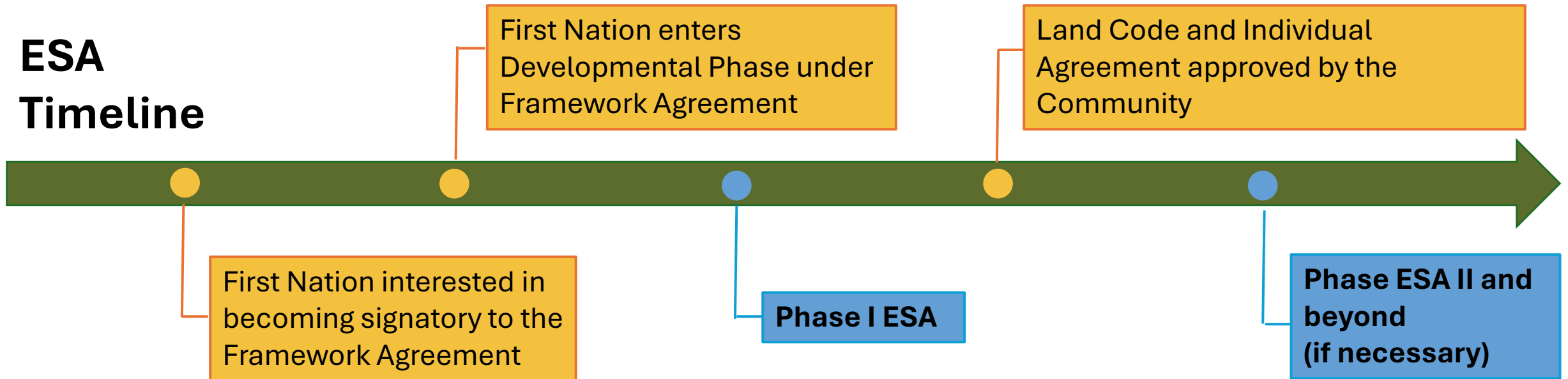
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- Accurate data helps identify the extent and nature of soil, water, and air impacts
- Risk Management is used when determining, monitoring, and reducing potential impacts to human and ecological health
- Remediation is the removal or treatment of known contaminants

ESAs and the Framework Agreement

ESA Timeline



- Once a First Nation becomes a signatory to the Framework Agreement, the Phase I ESA is conducted during the Land Code Developmental Phase.
- The results of the Phase I ESA are included in the First Nations Individual Agreement with Canada.
- This is Canada's official acknowledgement of the existing environmental conditions of the First Nations reserve lands.

Environmental Site Assessments

Environmental Site Assessments (ESAs) confirm the absence or presence of contamination.

- Looks back at past land uses and activities to determine the existing condition of a specific study area.
- Identifies, tests and remediates areas of environmental concern.
- ESAs are typically completed in 3 phases (Phase I, II and beyond).
- Results of the Phase I ESA contribute to a First Nation's Individual Agreement with Canada.

Phase I

Identifies Areas of Potential Environmental Concern (APECs)

- Records Review
- Site Visits
- Community Meetings and Interviews

Potentially contaminating activities might include fuel/chemical storage tanks, landfills, historical spills, etc.

Phase II

Confirms Areas of Environmental Concern (AECs)

- Environmental Sampling & Analysis
- Comparison to federal & provincial environmental standards and guidelines based on land and water use

Beyond the Phase II

Manages or Remediates Contamination

- Contamination delineation
- Exposure pathways, conceptual models & risk assessment
- Containment or remediation works, as necessary

* Depending on the circumstances it may not be necessary to complete all ESA phases.

Environmental Management Planning

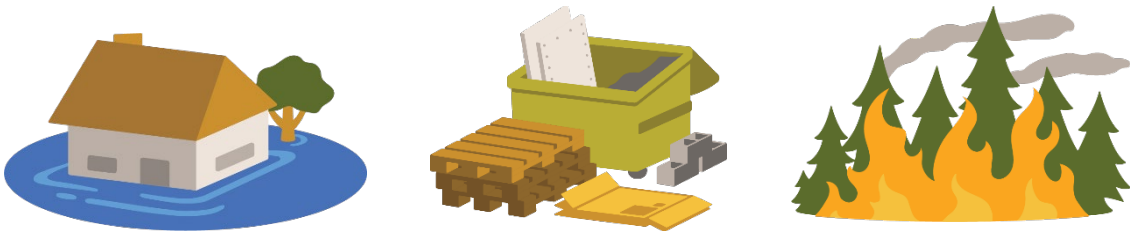


Environmental Management Planning

Environmental Management Plan (EMP) - A planning document that defines a First Nation's approach to important environmental issues and organizes actions to achieve specified environmental goals.

- EMPs are developed with extensive community engagement
- Includes an implementation plan that forms the work plan for a First Nation's Lands & Environment Department
- There is no requirement to prepare an EMP but, it helps direct environmental management on reserve lands
- RC Support through EMP Development and Implementation Funding

An EMP identifies important environmental issues



An EMP specifies tools to address the identified issues



Environmental Management Planning Example

Land and Water Contamination

Description of issue

- Contaminated runoff from automotive mechanic operations

Potential Responses

Laws and Regulations

Develop an Environmental Protection law to outline enforceable rules to prevent and respond to contamination

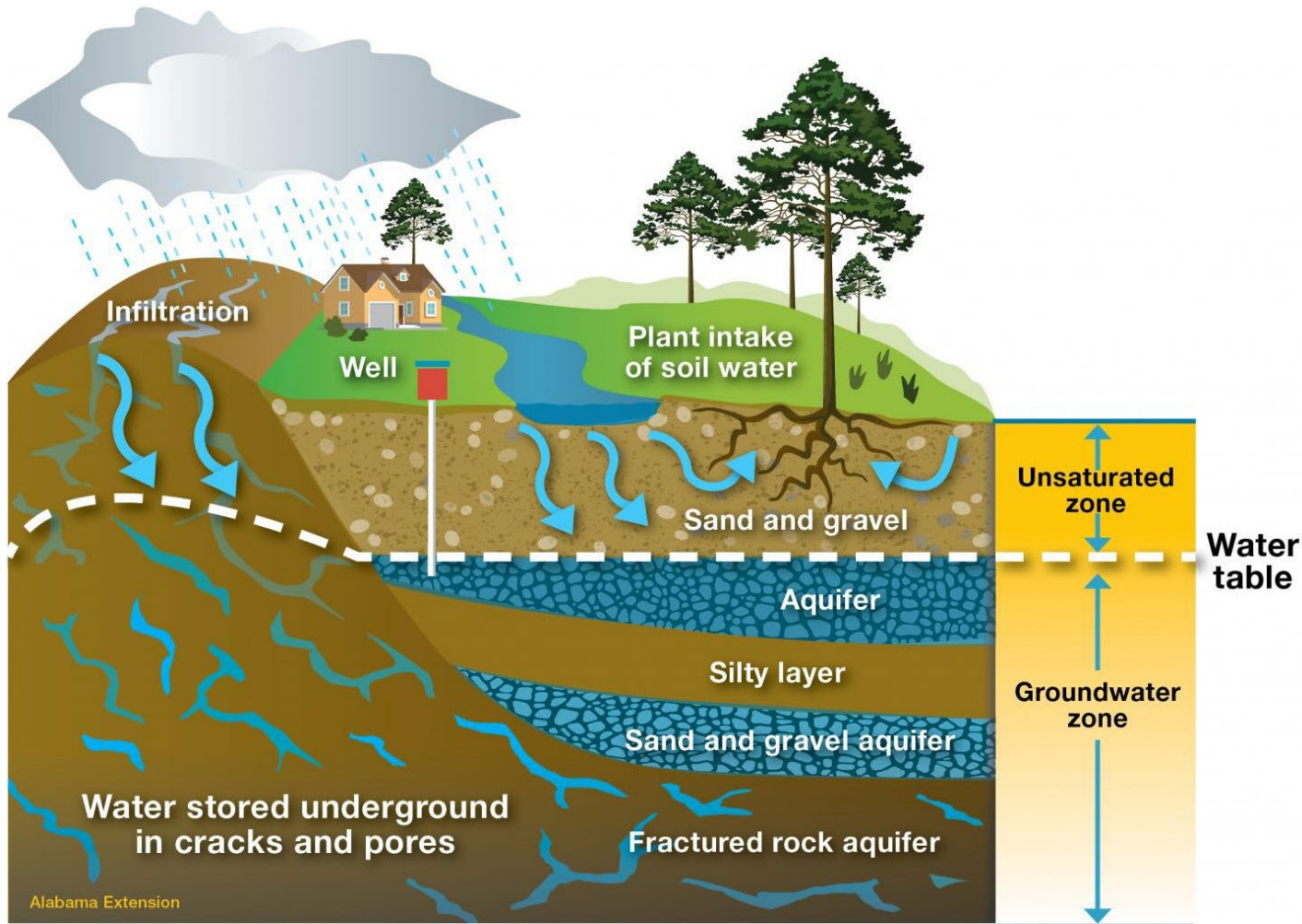
Engagement and Education

Use outreach to explain the new law and methods of reducing contaminated runoff

Programming

Develop hazardous waste collection programs to provide members with an appropriate disposal method (i.e. waste oil & other automotive fluids)

Groundwater Protection



DESCRIPTION OF LAYERS IN AN AQUIFER

Confining Layer – a layer of material with low permeability that bounds an aquifer and limits flow of water

Unconfined Aquifer – an aquifer that is connected to the surface so its upper surface can rise and fall

Unsaturated Zone – the portion of the subsurface above the groundwater table.

Saturated Zone – encompasses the area below ground

Confined Aquifer – aquifers in which an impermeable dirt/rock layer exists that prevents water from seeping into the aquifer from the ground surface located directly above

Artesian Well – a well from which water flows under natural pressure without pumping

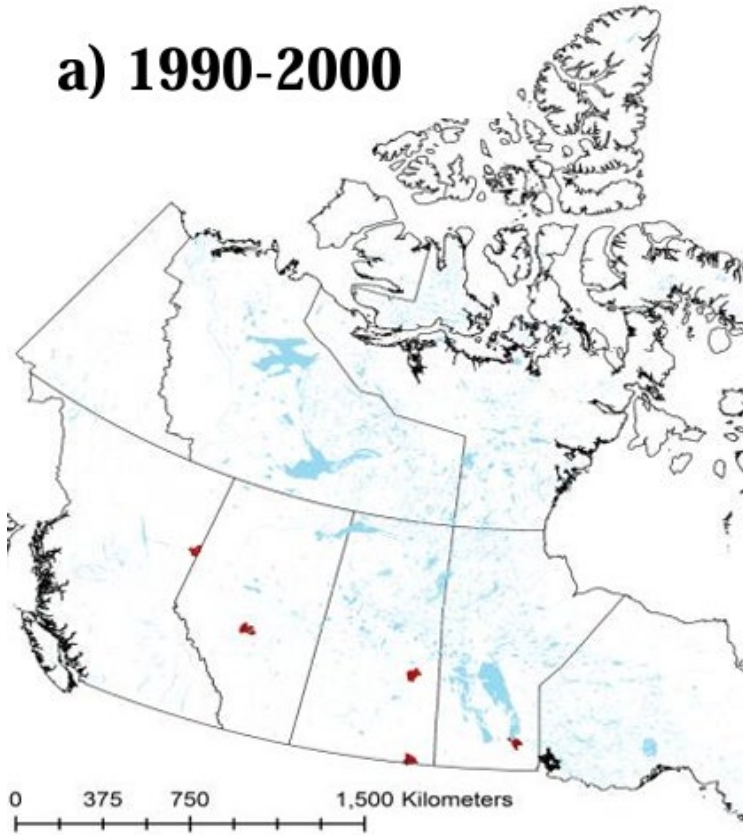
Permeability – a measure of the degree to which the pore spaces are connected

Porosity – measured as a fraction of the volume of voids over the total volume

Consolidated Rock – rock that is firm and coherent, solidified, or cemented

Invasive Species and Species at Risk

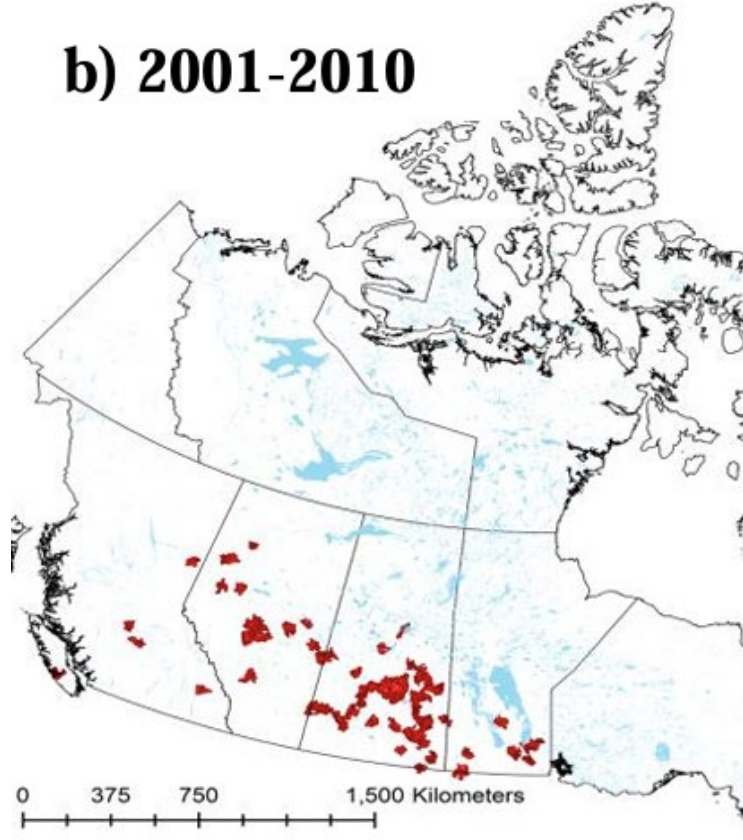
a) 1990-2000



Watersheds with Wild Pig Presence Detected

- Wild Pig Presence
- Waterbodies

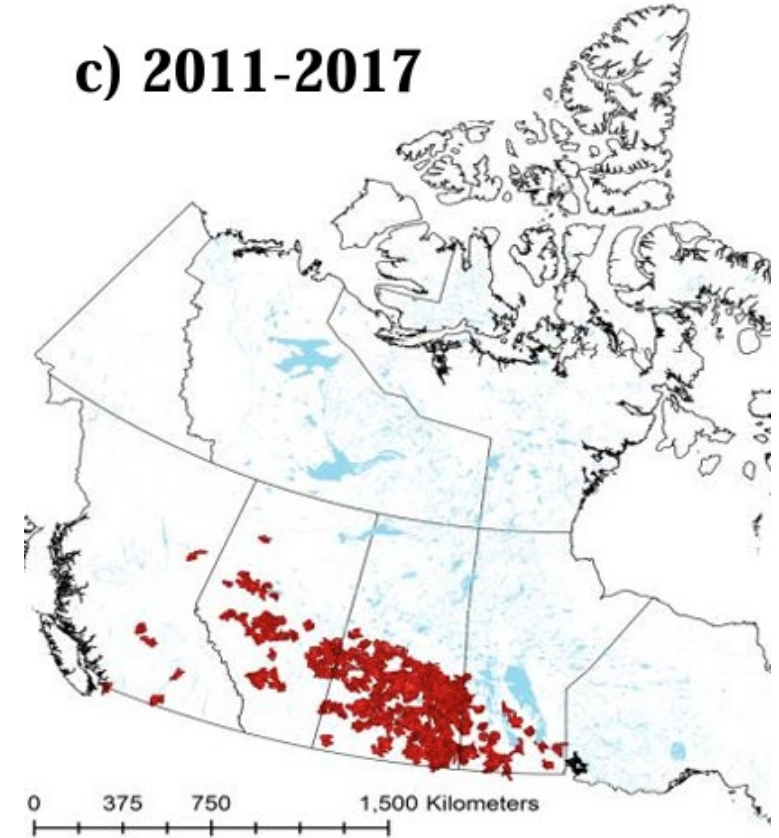
b) 2001-2010



Watersheds with Wild Pig Presence Detected

- Wild Pig Presence
- Waterbodies

c) 2011-2017



Watersheds with Wild Pig Presence Detected

- Wild Pig Presence
- Waterbodies

EMP Development & Implementation RC Support

Webinars, Workshops & Online Courses

- Online courses available on our website:



Online Courses

Technical Assistance & 1 on 1 Support

- Technical support for designing and conducting First Nations' EMPs
- Review and comment on draft EMPs
- Support specific community issues and questions that may arise



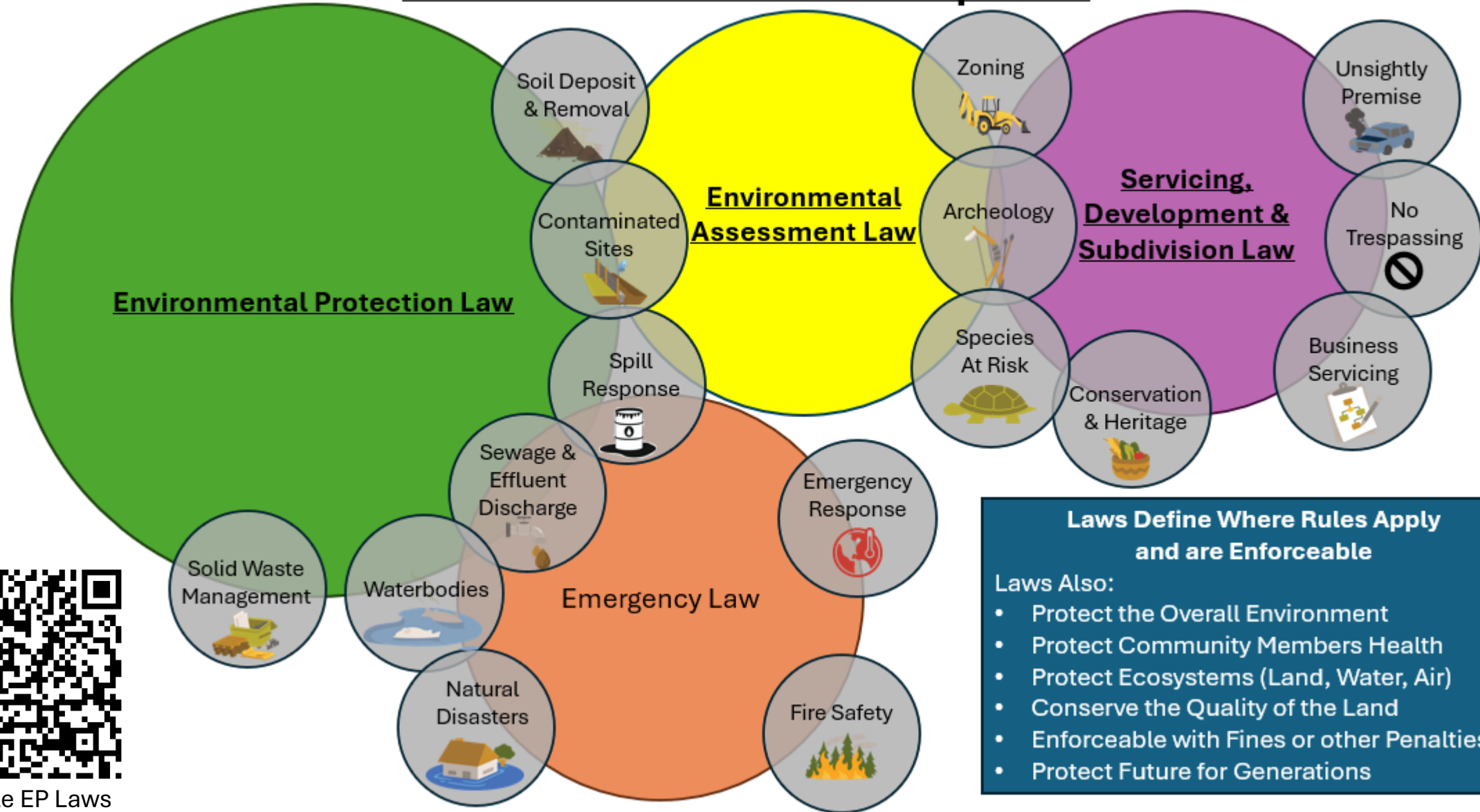
Sample EMP Materials

- Sample EMPs that have been created by other First Nations are available online.



Example EMPs

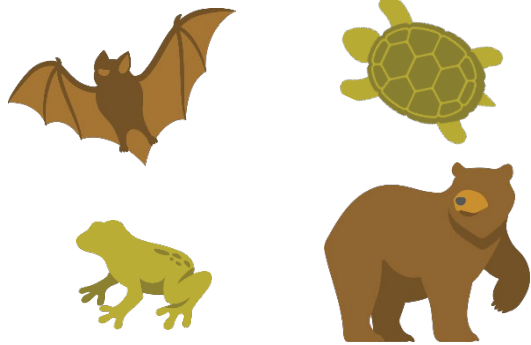
Environmental Law Development



Example EP Laws

Applicable Federal Environmental Laws

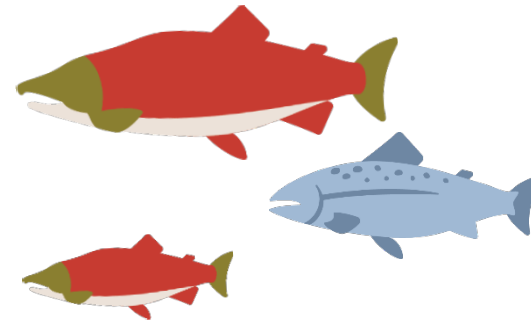
Under the Framework Agreement, some federal environmental laws will continue to apply on First Nations lands. Some examples include:



Species at Risk Act



Migratory Birds Convention Act



Fisheries Act



Canadian Environmental Protection Act

*Limited Applicability

Environmental Law Enforcement Powers

Under the Framework Agreement, First Nations' have the authority to enforce their Land Code and their First Nation laws including their environmental laws. First Nations have the power to:

Appoint justices of the peace

Establish Offences

Establish comprehensive enforcement procedures

Provide for fines, imprisonment, restitution, community service and alternative means to achieve compliance

Carry out inspections, searches, seizures, sampling, testing and production of information

Provide for collection of non-tax debts, fees or charges owed to the First Nation

Environmental Law RC Support

Assist with determining where laws are required

Provide sample laws

Review draft laws*

Assist with enforcement provisions & administrative sections

Work with federal/provincial agencies to promote recognition of Land Code First Nation environmental laws

* RC support for environmental laws does not replace the need for a First Nation to retain independent legal counsel.

Environmental Protection (EP) Laws

Environmental Protection

Efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce risks to environment and human health.

First Nations EP Laws can help to address:



Hazardous Substances



Solid Wastes



Fuel Storage and Tank mgmt.



Spill Response



Environmental Emergencies

- First Nations' EP laws set the maximum acceptable levels of a particular substance in the environment before it is considered a contaminant (Standards).
- Standards are based on the media impacted (e.g., soil, groundwater, surface water, air)
- Consider the intended/current land use (agricultural, residential, commercial etc.) and water use (potable vs. non-potable).
- First Nation EP laws need to meet or beat provincial standards and penalties.

Note: First Nations still need to seek independent legal counsel on their laws

Environmental Protection (EP) Laws

First Nations EP Laws Should:

- Meet or beat provincial standards and penalties.
 - Ensures First Nations' reserve lands receive the same protection as lands off-reserve.
 - Under Indian Act, it's easier to contaminate First Nations land than provincial land.
(\$100 maximum fine for illegal dumping under Indian Act)
- Ensure you are setting standards that do not largely exceed provincial guidelines which could limit economic opportunities (i.e., land development)
- Align with the goals for land-use in your community (residential vs industrial).
- Considers the information gained from ESA process.

RC Support for developing EP Laws:

Provide sample laws	Review draft laws
Assist with enforcement provisions & administrative sections	Assist with ensuring that FN EP laws meet or beat provincial standards & punishments

Environmental Assessment (EA) Laws

Environmental Assessment (EA)
Predicts the potential environmental, social and cultural impacts of a project before the project occurs.

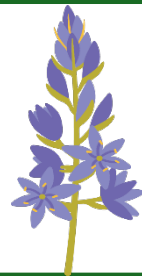
- EAs include mitigation measures to reduce/eliminate predicted effects
- EAs includes public community consultation
- EAs are a decision-making tool used by the First Nation Lands Managers

First Nations EA Laws can (and should) consider what's important to your community. For example:

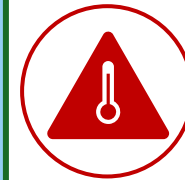


Culturally Significant Areas

i.e., Archaeological sites, harvesting sites, spiritually significant sites



Traditional Plants, culturally significant wildlife and Medicines



Climate Change

i.e., Incorporation of a climate risk & vulnerability assessment

Environmental Assessment (EA) Laws

First Nations EA Processes and Laws Should:

- Outline a process that suits the First Nation's capacity & concerns.
- Include clauses that require proponents to cover EA costs (including community consultation & independent reviews).
- Consider cultural impacts, climate change, and any other factors that are important to the First Nation.
- Ensure the EA provides sufficient details to make a determination on the significance of adverse environmental effects from the project.

RC Support for developing EA Laws:

Assist with developing/implementing policies & procedures under Interim EA Process

Provide sample laws

Review draft laws

Assist with enforcement provisions & administrative sections

Testing proposed EA processes in FN draft EA laws.
Ensures the proposed process will work within their administrative structure.
Includes public consultation, and will provide sufficient information to make an informed decision

Climate Change Protections

First Nations laws, policies and plans can help mitigate and adapt to **climate change**.

Land Use Plan & Zoning Law

- Defines allowable or prohibited developments that occur on your lands.
- Land Use Plans can include policies to reduce greenhouse gas (GHG) emissions from activities.

Environmental Management Plan (EMP)

- Provides direction on how to address environmental issues (contamination, climate change etc.).
- For example, the issue of air quality and the developing laws that seek to reduce GHG emissions.

Environmental Assessment (EA)

- First Nations EA processes and laws can assess the carbon footprint of a project
- Can require that proponents to perform a climate risk and vulnerability assessment
- Summarize information on the ecological impacts related to developments on First Nation lands.

Enforcement & Ticketing Laws

- Provides the ability to issue tickets for violations of First Nation Laws (i.e., Illegal Dumping)

Environmental Protection (EP)

- EP laws can consider GHG emissions to be a hazardous waste (with exemptions) and require permits from the Lands Department for GHG emitting activities

Resource Centre Support to Land Code First Nations

Land Code Governance Support



**First Nation
Requests
Support**



**RC Support
Services**



Resource Centre Learning Tools, Support & Funding



Training & Workshops



Resources & Knowledge Sharing



RC NETWORKING OPPORTUNITY

Wednesday
December
4th

15 Minute
Sessions

1-on-1
Opportunity

10:45am
until
12 pm

A stylized illustration of a landscape. In the foreground, a moose stands on a yellowish-green hill. Behind it, there are rolling hills, a forest of green trees, and two yellow wind turbines. In the background, there are blue mountains. The entire scene is set against a dark blue background.

Thank You

Questions?



Training, Mentorship &
Professional Development



