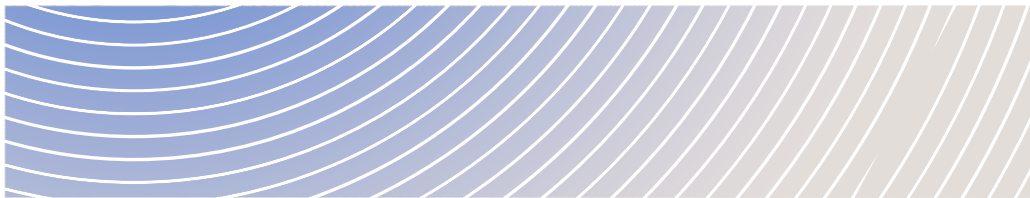


# Projects on federal lands and outside Canada

GUIDANCE DOCUMENT ON SECTIONS 81 TO 91 OF THE  
*IMPACT ASSESSMENT ACT*



December 2021



Impact Assessment  
Agency of Canada

Agence d'évaluation  
d'impact du Canada

Canada

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# Disclaimer

The approach in this guide is intended to assist authorities in implementing sections 81 to 91 of the *Impact Assessment Act*. Adoption of this approach is not mandatory, nor does it supersede or replace departments' or agencies' authority to put in place their own processes and requirements for proposed projects.

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# Introduction

When the [Impact Assessment Act](#) (the IAA) came into force on August 28, 2019, it created new requirements and processes related to environmental effects determinations for projects on federal lands and outside Canada. This document provides authorities with information to better understand the changes and their duties under the IAA. More specifically, this document focuses on requirements for non-designated projects<sup>1</sup> on federal lands and outside of Canada (sections 81-91).

Under sections 82 and 83, before taking action or making a decision that would enable a project to proceed in whole or in part, authorities must determine whether the project is likely to cause significant adverse [environmental effects](#) in the following circumstances:

- For projects on federal lands (section 82), where the authority
  - is the proponent and seeks to carry out the project,
  - provides financial assistance for the purpose of enabling the project to be carried out, or
  - exercises any power or performs any duty or function under any Act of Parliament other than the IAA (i.e. issues a permit, authorization, etc.).
- For projects outside of Canada (section 83), where the federal authority
  - is the proponent and seeks to carry out the project, or
  - provides financial assistance for the purpose of enabling the project to be carried out.

Authority includes a “federal authority” as defined under section 2 of the IAA and any other body that is set out in Schedule 4.

## OVERVIEW OF THE NEW REQUIREMENTS FOR AUTHORITIES UNDER THE IAA

**The overall approach for the review of projects on federal lands and outside Canada has not changed with the IAA, when compared to the former *Canadian Environmental Assessment Act, 2012 (CEAA 2012)*. What has changed is that the IAA includes additional provisions that aim to enhance the transparency and rigour of the environmental effect determination process:**

- The definition of “project” (section 81) still includes **physical activities** (e.g. construction) in relation to **physical works** (e.g. a road) **carried out on federal lands or outside Canada**, with added flexibility to include **physical activities**, through a Ministerial order made under section 87, not related to **physical works** (e.g. remediation of contaminated land).
- Authorities are required to post public notices on the [Canadian Impact Assessment Registry](#) (the Registry), which includes:

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<sup>1</sup> Meaning projects not designated in the schedule to the [Physical Activities Regulations](#) or designated in an order under section 9 of the IAA by the Minister. Those “designated projects” are subject to the impact assessment requirements even if they are proposed to be carried out on federal land.

- a Notice of Intent indicating their intention to make a determination of the environmental effects of a project, and inviting the public to provide comments (subsection 86(1)); and
  - a Notice of Determination setting out the determination (subsection 86(2)). This is posted after a minimum of 30 days from the posting of the Notice of Intent.<sup>2</sup>
- Determinations are to be made using a broader definition of “environmental effects” (section 81) and must be based on the consideration of a list of factors (section 84).
- A federal authority with specialist or expert information in relation to a project must provide that expertise upon request of the authority to facilitate the determination (section 85).
- Changes clarify that federal funding decisions related to projects on federal lands or outside Canada are subject to the requirements under the IAA, regardless of whether the power to provide funding is conferred under an Act of Parliament (sections 82 and 83).
- The Minister of the Environment (the Minister) may, by order, designate a class of projects if the Minister is of the opinion that the carrying out of a project that is part of the class will cause only insignificant adverse environmental effects (section 88).
  - Authorities seeking to carry out a project that is part of such a designated class will not be subject to the requirements under sections 82 or 83 of the IAA (subsection 88(2)).
- The Minister may, by order, designate a physical activity or a class of physical activities carried out on federal lands or outside Canada that is not in relation to a physical work and is not a designated project, but that, in the Minister’s opinion, may cause significant adverse environmental effects (section 87).
  - Authorities carrying out such a designated physical activity will be subject to the requirements under sections 82 or 83 of the IAA.
- If the Minister intends to designate a physical activity or a class of physical activities under section 87, or a class of projects under subsection 88(1),
  - the Impact Assessment Agency of Canada (the Agency) is required to post a notice inviting comments from the public (subsection 89(1)), and
  - the Minister is required to consider any comments received when deciding whether to make the designation (subsection 89(2)).
- In the event the Minister designates a physical activity, a class of physical activities or a class of projects, the Agency is required to post a notice that includes a description of the physical activity, the class of physical activities or the class of projects, and the Minister’s reasons for making the designation (subsection 89(3)).

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<sup>2</sup> The 30-day minimum between posting the Notice of Intent and the Notice of Determination refers to calendar days.



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## Objectives

This guidance document has two main objectives:

- to provide operational guidance for authorities seeking to better understand their responsibilities under sections 81 to 91 of the IAA; and
- to provide a starting point for collaboration among authorities, where more than one authority is responsible for a determination under section 82 or 83 of the IAA in relation to the same project.

This guidance document is advisory in nature. It is available as a resource to support the implementation of the provisions relating to projects on federal lands and outside Canada, found in sections 81 to 91 of the IAA. Adoption of this approach is not mandatory, nor does it supersede or replace departments' or agencies' authority to put in place their own processes and requirements for proposed projects.

The guidance and tools presented in this guide can be adapted to meet the needs of authorities. This guide can also be used as a starting point for authorities who wish to develop “class” templates so that projects potentially falling within a class can be examined efficiently by pointing to analysis and mitigation measures already identified in the template.

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## Who should use this guidance document?

This guidance document is intended for use by authorities responsible for implementing the IAA provisions relating to projects on federal lands and outside Canada. It will:

1. assist authorities in determining whether they are subject to sections 82 or 83 of the IAA in relation to a proposed project<sup>3</sup>; and
2. if so, assist them in determining whether the proposed project, if carried out, is likely to cause significant adverse environmental effects.

This guidance document may also assist project proponents in understanding the IAA requirements for projects on federal lands and lands outside Canada.

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## When should this guidance document be used?

This guidance document should be used prior to the authority taking action or making a decision that would enable a project to proceed.

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<sup>3</sup> The term “proposed activity” is used up until the proposed activity is established as being a “project” according to section 81 of the IAA (Step 1b).

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## How is this guidance document organized?

This guidance document is organized into three main parts:

### Context

The first section provides context, including background information related to statutory requirements, principles to guide determinations, and roles and responsibilities.

### Approach

The second section details a process for the authority to use to determine if it is subject to sections 82 or 83 of the IAA in relation to a proposed project and, if so, whether the proposed project is likely to cause significant adverse environmental effects.

### Appendices

At the end of this guidance document, authorities will find one appendix that include definitions for terms and concepts presented throughout, as well as additional information for projects outside Canada. In addition, the final appendix presents the forms that can be used by authorities.

## Context

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### Statutory requirements

To assist authorities in understanding the requirements under the IAA, the key legislative obligations are described in the following sections. Additionally, a list of definitions relating to sections 82 and 83 is presented in [Appendix A](#) (hyperlinks to definitions are also provided throughout this document).

The purposes of the IAA are set out in subsection 6(1) and include ensuring that projects to be carried out on federal lands or outside Canada are considered in a careful and precautionary manner in order to avoid significant adverse environmental effects.

Subsection 6(2) also sets out the overarching mandate under the IAA:

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*“The Government of Canada, the Minister, the Agency and federal authorities, in the administration of this Act, must exercise their powers in a manner that fosters sustainability, respects the Government’s commitments with respect to the rights of the Indigenous peoples of Canada and applies the precautionary principle.”*

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The IAA provisions for projects on federal lands and outside Canada do not establish specific criteria in terms of how authorities are to foster sustainability, respect the government's commitments with respect to the Aboriginal and treaty rights of Indigenous peoples of Canada, or apply the [precautinary principle](#) – although there are specific requirements for the consideration of adverse impacts that a project may have on the Aboriginal and treaty rights of Indigenous peoples as well as of Indigenous knowledge provided with respect to a project when making a determination pursuant to sections 82 and 83 of the IAA. Rather, subsection 6(2) constitutes an overarching mandate requirement that authorities should apply using their best judgement in light of the specific project circumstances.

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## Environmental effects and project (section 81)

The definition of “[environmental effects](#)” means “changes to the environment and the impact of these changes on Indigenous peoples of Canada and on health, social or economic conditions”. It is not the direct impacts of the project on Indigenous peoples and health, social and economic conditions that must be considered as part of the determination, but rather the impacts on Indigenous peoples and those conditions that are linked to the changes to the environment caused by the project.

For example, if a project produces a change in the environment (such as the loss of fish habitat), and the change has an impact on socio-economic conditions (jobs are lost as a result of fewer fish), then the socio-economic effect is an environmental effect within the meaning of section 81. If the source of the socio-economic impact is not the result of a change in the environment, but instead due to another change resulting from the project (for example, reallocation of funding as a result of the project), then the socio-economic impact is not considered an environmental effect under section 81.

For environmental effects that involve impacts on the Indigenous peoples of Canada, the impacts must be the result of the changes to the environment caused by the project, but need not necessarily be linked to health, social or economic conditions.

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**NOTE:** The Crown has both statutory and constitutional responsibilities related to consulting Indigenous peoples that it needs to satisfy. These responsibilities are interrelated, but attention needs to be paid to the different requirements associated with each and how they can be fulfilled. The Crown has a duty to consult and, where appropriate, accommodate Indigenous peoples where it contemplates conduct that may adversely impact potential or established Aboriginal or treaty rights. Whether an authority's contemplated action or decision that would enable a project to be carried out on federal lands triggers the Crown's duty to consult and the scope of any such duty must be determined by the authority on a case-by-case basis. Under subsection 84(1) of the IAA, when conducting an environmental effects determination, an authority must consider whether the project may have adverse impacts on Aboriginal or treaty rights and any Indigenous knowledge provided with respect to the project. Authorities should plan to consult Indigenous peoples and consider impacts on their rights and interests in a manner that fulfills both their responsibilities under sections 81 to 91 of the IAA and their duty to consult. For more information on the duty to consult, federal officials should refer to the [Aboriginal consultation and accommodation : updated guidelines for federal officials to fulfill the duty to consult](#). When contemplating taking an action or making a decision that could allow a project to proceed on federal land, it is important

for authorities to consider the Government of Canada's commitments to achieving reconciliation with Indigenous peoples. For further details on these commitments, authorities should refer to the [Principles respecting the Government of Canada's relationship with Indigenous peoples](#). The following [Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#) should also be consulted along with the Principles. For further information on ensuring the meaningful participation of Indigenous peoples in an environmental effects determination, authorities should refer to the relevant sections of the following Agency guidance: [Policy Context: Indigenous Participation in Impact Assessment](#) and the [Guidance: Collaboration with Indigenous Peoples in Impact Assessment](#). For Agency guidance on assessing impacts on rights for designated projects under the IAA, federal officials may refer to [Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#).

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#### Project “means

- (a) a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project or a physical activity designated by regulations made under paragraph 112(1)(a.2); and
- (b) a physical activity that is designated under section 87 or that is part of a class of physical activities that is designated under that section.”

For information on how to determine if an activity is a project under the IAA, please see [Step 1: Determine Initial Eligibility](#).

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## Determining the significance of environmental effects (sections 82 and 83)

An [authority](#) must determine whether the project, if carried out, is likely to cause significant adverse environmental effects before taking action or making a decision that would enable a project to proceed.

For projects located in whole or in part on [federal lands](#) (section 82), the determination of significance is strictly for the environmental effects associated with the portion of the project on federal lands. While the project is located, in whole or in part, on federal lands or outside Canada, the environmental effects may extend beyond the boundaries of those lands.

For projects on federal lands (section 82), the obligation to conduct an environmental effects determinations applies where the authority:

- is the proponent of the project and seeks to carry out the project;
- provides financial assistance for the purpose of enabling the project to be carried out, in whole or in part; or
- exercises any power or performs any duty or function under another Act of Parliament (i.e. issues a permit, authorization, etc.) that could permit the project to be carried out, in whole or in part.

For projects located outside Canada (section 83), the obligation to conduct an environmental effects determination applies where the authority:

- is the proponent of the project and seeks to carry out the project; or
- provides financial assistance for the purpose of enabling the project to proceed, in whole or in part.

There is no definition of the term “significance” in the IAA, therefore the common dictionary definition of the term applies: “the quality of being worthy of attention; importance.” Consequently, the definition of the terms “significant” and “insignificant” would align with this common dictionary definition:

- **Significant:** sufficiently important to be worthy of attention; important; and
- **Insignificant:** too small or unimportant to be worth consideration.

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## Factors to consider when determining the significance of adverse environmental effects (section 84)

When an authority makes a determination of whether the carrying out of a project is likely to cause significant adverse environmental effects, the authority must take into account the following factors (as per paragraphs 84(1)(a) to (e)):

- a) any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- b) Indigenous knowledge that is provided with respect to the project;
- c) community knowledge that is provided with respect to the project;
- d) comments received from the public under subsection 86(1); and
- e) mitigation measures that are technically and economically feasible, that would mitigate any significant adverse environmental effects of the project, and that the authority is satisfied will be implemented.

However, as per subsection 84(2), the determination does not include a consideration of factors (a) and (b) if the project is outside of Canada.

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## Public notice posted on the Registry (section 86)

Section 86 of the IAA requires a public notice to be posted on the Registry before and after making a determination:

- prior to making a determination under section 82 or 83, an authority must post a Notice of Intent (as per subsection 86(1)) indicating that the authority intends to make such a determination and inviting the public to provide comments regarding that determination; and

- no sooner than 30 days after the day on which it posts the Notice of Intent, the authority must post a Notice of Determination, including any mitigation measures taken into account in making the determination.

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## Ministerial Order under section 88

Section 88 of the IAA provides the Minister with the power to designate a class of projects for which an authority would not be required to make a determination under section 82 or 83, and would not be subject to related obligations (e.g. posting of public notices) if, in the Minister's opinion, the carrying out of the project will cause only insignificant adverse environmental effects. These classes of projects are listed in the [Designated Classes of Projects Order](#) (Ministerial Order).

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## Referral to Governor in Council (section 90)

If an authority determines that the carrying out of a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, the authority may refer the project to the Governor in Council (GIC). The GIC decides whether those effects are justified in the circumstances and must inform the authority of its decision, prior to the authority taking any action or making a decision that would allow the project to proceed. If an authority other than a federal Minister makes the determination, the referral must be made through the federal Minister responsible before Parliament for that authority.

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## Non-application in an emergency (section 91)

Under section 91 of the IAA, an authority is not required to make a determination on environmental effects prior to taking action or making a decision that would allow a project to proceed where:

- there are matters of national security in relation to the project;
- the project is to be carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*; or
- the project is to be carried out in response to an emergency, and the carrying out of the project without delay is in the interest of preventing damage to property or the environment or is in the interest of public health and safety.

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## Transitional provisions

Transitional provisions applicable to “projects” (as defined in section 66 of CEAA 2012) can be found in the *Physical Activities Regulations*, subsection 2(3) and section 4.

If an authority has indicated in writing that they have started to make a determination under section 67 or section 68 of CEAA 2012 prior to the coming into force of the IAA, the determination for that project would continue to be made under CEAA 2012. Sections 81–91 of the IAA, then, would not apply.

For projects considered [designated projects](#) under the IAA (i.e. they meet the thresholds in the *Physical Activities Regulations*), but were not designated projects under CEAA 2012, they will not be considered designated projects under the IAA if, prior to the coming into force of the IAA:

- an authority indicates in writing that they started to make a determination under section 67 of CEAA 2012; or
- a determination has already been made under section 67 of CEAA 2012.

Regarding the requirement to “indicate in writing” that an authority has started to make a determination under sections 67 or 68 of CEAA 2012, this would require some written evidence that *the determination had commenced*. In order to meet this requirement, the document would need to be project-specific. In other words, it would need to refer to the project in question for which a determination process was initiated. The transitional provisions do not prescribe a particular type of document or process, providing flexibility to take account of a range of different processes in place by different federal authorities, for example:

- a dated internal memo, note or form documenting the commencement of a determination; or
- a dated letter to a proponent notifying them that a determination has commenced.

## Roles and responsibilities

Many federal agencies and departments, and other authorities, are implicated by the requirements of the IAA in relation to projects on federal lands and outside Canada. To help ensure consistency in approaches across these different organizations, the following sections delineate their key roles and responsibilities.

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### Authorities

An authority is defined in section 81 of the IAA as a federal authority, and any other body that is set out in Schedule 4 of the IAA.<sup>4</sup>

A federal authority is defined in section 2 of the IAA as:

- a Minister of the Crown in right of Canada;
- an agency of the Government of Canada or a parent Crown Corporation, as defined in subsection 83(1) of the *Financial Administration Act*, or any other body established by or under an Act of

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<sup>4</sup> Authorities set out in Schedule 4 of the IAA are: a *Designated airport authority* as defined in subsection 2(1) of the *Airport Transfer (Miscellaneous Matters) Act*.

Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs;

- any department or departmental corporation that is set out in Schedule I, I.1 or II to the *Financial Administration Act*; and
- any other body that is set out in Schedule 1 of the IAA.<sup>5</sup>

In carrying out responsibilities under these provisions of the IAA, authorities may need to develop tools to gather information and support decision-making.

Authorities have the discretion to establish a process to determine whether a project, if carried out, is likely to cause significant adverse environmental effects, as appropriate to the project and context. The IAA creates certain process requirements. Section 81 defines environmental effects. Section 84 sets out factors that must be taken into account when making a determination. Section 86 creates requirements related to public participation and providing public notices.

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## Multiple authorities

It is likely that, for some projects on federal lands or outside Canada, more than one authority may have responsibilities under sections 82 and 83.

The *Federal Coordination Regulations* made under CEAA 1992, which required authorities to work together to ensure a coordinated approach to decision-making, are no longer in force. However, where multiple authorities are required to make a determination of significance of environmental effects on the same project, they are encouraged to work together in completing their analysis and/or producing a single report. It is up to each group of authorities working together to determine the approach they will take and how they would likely collaborate in their consultation approach. This best practice ensures that the public is provided with a single window to the assessment of a given project, regardless of how many authorities are required to make determinations.

While authorities are encouraged to work together in such cases, each authority must ensure that they meet their obligations under sections 81–91 of the IAA. This means that, even when working with others, each authority must meet the requirements for:

- posting public notices (i.e. the Notice of Intent and the Notice of Determination) on the Registry and ensuring that the minimum 30-day period between both notices is met; and
- completing a determination of adverse environmental effects, based on a consideration of all factors set out in section 84.

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<sup>5</sup> Federal authorities set out in Schedule 1 of the IAA are: a *Port authority* as defined in subsection 2(1) of the *Canada Marine Act*; a *Board* as defined in section 2 of the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*; and a *Board* as defined in section 2 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.



## Using project pages on the Registry

It is recommended that a single project page be created on the Registry for each project.

If two or more authorities are required to make a determination in respect of one project, they can agree to designate one of them as the lead authority for the purposes of the Registry. It is up to the authorities to decide which one would be the lead authority based on the context of the project (e.g. the authority with the most resources dedicated to the project, the authority most familiar with the type of project, or the one that has the most expertise, etc.).

The lead authority will be responsible for establishing, maintaining and posting project information and public notices (both the Notice of Intent and the Notice of Determination) on the Registry. Authorities should collaborate on contributing information to the Registry, through the lead authority (see additional information below under [Step 2: Post Notice of Intent](#)). When multiple authorities work together on a single project page, they should clearly document which authorities are involved by listing each one on the project page.

In the event that an authority is required to make a determination for a project but is unsure whether other authorities have responsibilities under sections 82 or 83 for the same project, having a clear understanding of the scope of the project and of the possible mandate and expertise of other authorities is a good place to start. The authority may wish to consult the Federal Lands Working Group Contact List and/or the Agency's Directory of Federal Expertise, which are both available by contacting the Legislative and Regulatory Affairs Division at the Agency.<sup>6</sup> Furthermore, when an authority embarks on a determination process, they may consider first conducting a search on the Registry to identify whether there is an existing project page for that specific project. We outline the three potential scenarios below.

### 1. If a project page already exists but it is not “completed”

If a project page already exists on the Registry and it has not been marked as “Completed” (meaning that the determination is not already made), any new authority that has responsibilities for that project should be added as an authority on the existing project page. It is the responsibility of the new authority to contact the authority or authorities already listed on the existing project page to request being added as an authority for the project.

It is also recommended that, as a best practice, any new authority joins the ongoing determination process to ensure that the public is provided with a single window approach (i.e. only one public notice and public comment period per project). As mentioned, each authority is obliged to ensure that there is a minimum 30-day period between the posting of the Notice of Intent and the posting of the Notice of Determination. When an authority is added to an ongoing determination process, the minimum 30-day period must be restarted to ensure that their obligations are met. For example, if authority Y joins an ongoing determination process led by authority X on day 10, a minimum of 30 days would have to be added to the determination process (resulting in a minimum total of 40 days between the postings of the notices).

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<sup>6</sup> The Legislative and Regulatory Affairs Division at the Agency can be contacted by e-mail at [regulations-reglements@iaac-aec.gc.ca](mailto:regulations-reglements@iaac-aec.gc.ca).

Adding the additional days ensures that authority Y meets their obligation to have a minimum of 30 days between both notices.

Though the single window approach is recommended, there may be circumstances (e.g. timeline limitations for the other authorities) where the 30-day minimum period between both notices cannot be met for the new authority (i.e. the timeline for the first authority cannot be extended). In such cases, the new authority would begin a new determination process for the project for which they would post a second Notice of Intent within the same project page. This would result in two active Notices of Intent within the same project page. To avoid confusion for the public, the title of each posting should clearly differentiate the notices from one another. For example, the Notice of Intent for authority X and Y should be titled “Notice of Intent—[Name of authority X]” and “Notice of Intent—[Name of authority Y]”, respectively. The same principle would apply for the posting of each Notice of Determination. Both simultaneous determination processes would continue as usual. The status of the project page will need to be updated to “Completed” following the posting of the last Notice of Determination.

Authorities should strive to work together and align their determination process in order to have only one set of public notices on the Registry per project. For information on how to post a second public notice within the same project page, authorities should refer to the Canadian Impact Assessment Registry User Guide for Authorities on Federal Lands and Outside Canada<sup>7</sup>.

## **2. If a project page exists, but it is “completed”**

If a project page already exists on the Registry but it has been marked as “Completed” (meaning that the determination was made), it is recommended that the new authority create a new project page that makes reference to the original project page in the “Project Summary” section.

It is possible that, as a result of the involvement of the new authority, the information that was included on the original project page (i.e. the one for which a determination was made) is no longer accurate. To ensure that the public is meaningfully consulted, it is recommended that the authority or authorities responsible for the previous determination process and original project page be added to the new project page and join the new determination process.

More often than not, however, the new authority would simply create a new project page and conduct its own determination process.

## **3. If no project page exists**

Lastly, if no project page exists, it is strongly recommended that the authority reach out to other authorities who may have responsibilities for this project (e.g. those that provide funding or a permit). This ensures that there is only one project page for the project. If other authorities cannot confirm that they have responsibilities or cannot be a part of the determination process at that moment, authorities should either wait for all to confirm or wait to begin the process at the same time as others. At the very least, the project page should list all authorities that *may* have responsibilities for the project in the “Project Summary”

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<sup>7</sup> Authorities who would like to request a copy of this document can do so by contacting the Agency’s Registry team at [registry-registre@iaac-aeic.gc.ca](mailto:registry-registre@iaac-aeic.gc.ca). Technical questions about the Registry can also be directed to this e-mail address.

section. This gives the public the most complete information available and lets them know there may be additional opportunities to provide comment.

## Working with Other Jurisdictions

Other [jurisdictions](#) may also need to conduct a project review or make decisions before the project can proceed. For example, a provincial government may be assessing portions of a project that are not on federal land under its environmental assessment legislation, and/or an Indigenous government may also be conducting its own assessment of the project. In these situations, authorities are encouraged to coordinate with the other jurisdictions involved, as appropriate. For example, the other jurisdictions could be invited to actively participate in the consideration of environmental effects, or provide input and information if relevant.

Coordination between authorities as well as other levels of government is important to:

- obtain expert knowledge from authorities and other levels of government that could contribute to the project review;
- coordinate findings and timing with other authorities that might have to make a determination for the same project;
- coordinate consultations with Indigenous peoples to consider potential adverse impacts on them and their Aboriginal and treaty rights, and to fulfill the duty to consult; and
- provide the public with a single window for the project review, and ensure that taxpayer dollars are being spent effectively.

A project committee can be an effective means of initiating an environmental effects determination process involving more than one authority. By convening a meeting at the outset of the project review, the project committee can clarify matters such as: information base, expectations, context, roles and responsibilities, planning for consultation, budget, schedules, opportunities for collaboration, potential for conflicting input, etc. A project committee would ensure that all potential issues are identified, and that appropriate parties are included in the review process.

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## Multiple similar projects

The obligation to conduct an environmental effects determination, and fulfill the related process requirements, is triggered with respect to each decision or action by an authority that enables a project to be carried out on federal lands or outside Canada. These obligations are not altered by the fact that an authority or federal authority may be making the same type of decision or taking the same type of action for similar projects.

If multiple projects are occurring on the same federal land, authorities should work together to identify any cumulative effects that are likely to result from the projects. If cumulative effects are identified, they should then be taken into account in each authority's respective determination.

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## Federal expert information or knowledge (section 85)

In order to determine whether a project, if carried out, is likely to cause adverse environmental effects, authorities may need to seek expert advice from federal departments or agencies. Under section 85 of the IAA, every federal authority in possession of specialist or expert information or knowledge with respect to a project must make that information or knowledge available to an authority upon the authority's request and within the specified time period.

For example, Fisheries and Oceans Canada might provide expert advice on whether a proposed project may cause adverse effects on fish and fish habitat. They might also advise on the type of information needed to assess those impacts and develop mitigation measures that avoid, reduce or offset the impacts. Similarly, Environment and Climate Change Canada (ECCC) may provide advice on ways to reduce emissions of greenhouse gases (GHGs).

The Agency has developed a Directory of Federal Expertise, which is available by contacting the Legislative and Regulatory Affairs Division at the Agency<sup>8</sup>, to help authorities identify those federal authorities that are able to provide specialist and expert information or knowledge.

## Principles to guide determinations

The statutory requirements outlined above give authorities the discretion to implement a determination process that is appropriate to the project and its context. A common set of principles, set out below, may guide authorities' implementation of the statutory requirements:

**ACCOUNTABILITY**—project reviews should clearly outline the federal authority responsible for ensuring environmental effects determinations are conducted and documented and results are reported.

**ANALYTICAL SOUNDNESS**—the research and analysis should be accurate and defensible, as well as based on the best available scientific information, Indigenous knowledge and community knowledge.

**APPLICATION OF PROFESSIONAL JUDGEMENT**—professional judgement should be applied at every step in this process to ensure environmental protection and sound decision making.

**APPROPRIATE LEVEL OF EFFORT**—the approach and depth of analysis should be commensurate with the likelihood of significant adverse environmental effects associated with carrying out the project.

**APPROPRIATE USE OF PRECEDENT**—decisions around similar projects should be taken into account to support consistency between analyses and decisions, and efficient use of resources by not duplicating work that has already been done.

**COOPERATION**—authorities are encouraged to work cooperatively with one another and others, as appropriate.

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<sup>8</sup> The Legislative and Regulatory Affairs Division at the Agency can be contacted by e-mail at [regulations-reglements@iaac-aec.gc.ca](mailto:regulations-reglements@iaac-aec.gc.ca).

**PRECAUTIONARY APPROACH**—actions to protect the environment and health are to be guided by the precautionary principle. The precautionary principle suggests that where there are threats of serious or irreversible damage, a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

**RESPECT FOR THE RIGHTS OF INDIGENOUS PEOPLES**—the Government of Canada is committed to:

- ensuring respect for the rights of the Indigenous peoples of Canada, as recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- fostering reconciliation and working in partnership with Indigenous peoples;
- implementing the *United Nations Declaration on the Rights of Indigenous Peoples*; and
- *Principles respecting the Government of Canada’s relationship with Indigenous Peoples*.

This includes when exercising powers and performing duties and functions in relation to the IAA.

**SUSTAINABILITY**—authorities should consider how a project:

- affects Canada’s ability to protect the environment;
- contributes to the social and economic well-being of the people of Canada; and
- preserves their health in a manner that benefits present and future generations.

**TRANSPARENCY AND A PARTICIPATORY APPROACH**—project information should be available and accessible to the public on the Registry and through other avenues and mechanisms as may be appropriate, unless subject to valid exceptions set out in the IAA. Meaningful public and Indigenous participation should be fostered throughout the environmental review process.

## Approach overview

Figure 1 below depicts a suggested approach to determining a project’s likelihood to cause significant adverse environmental effects. The approach is divided into six steps, with a number of associated sub-steps:

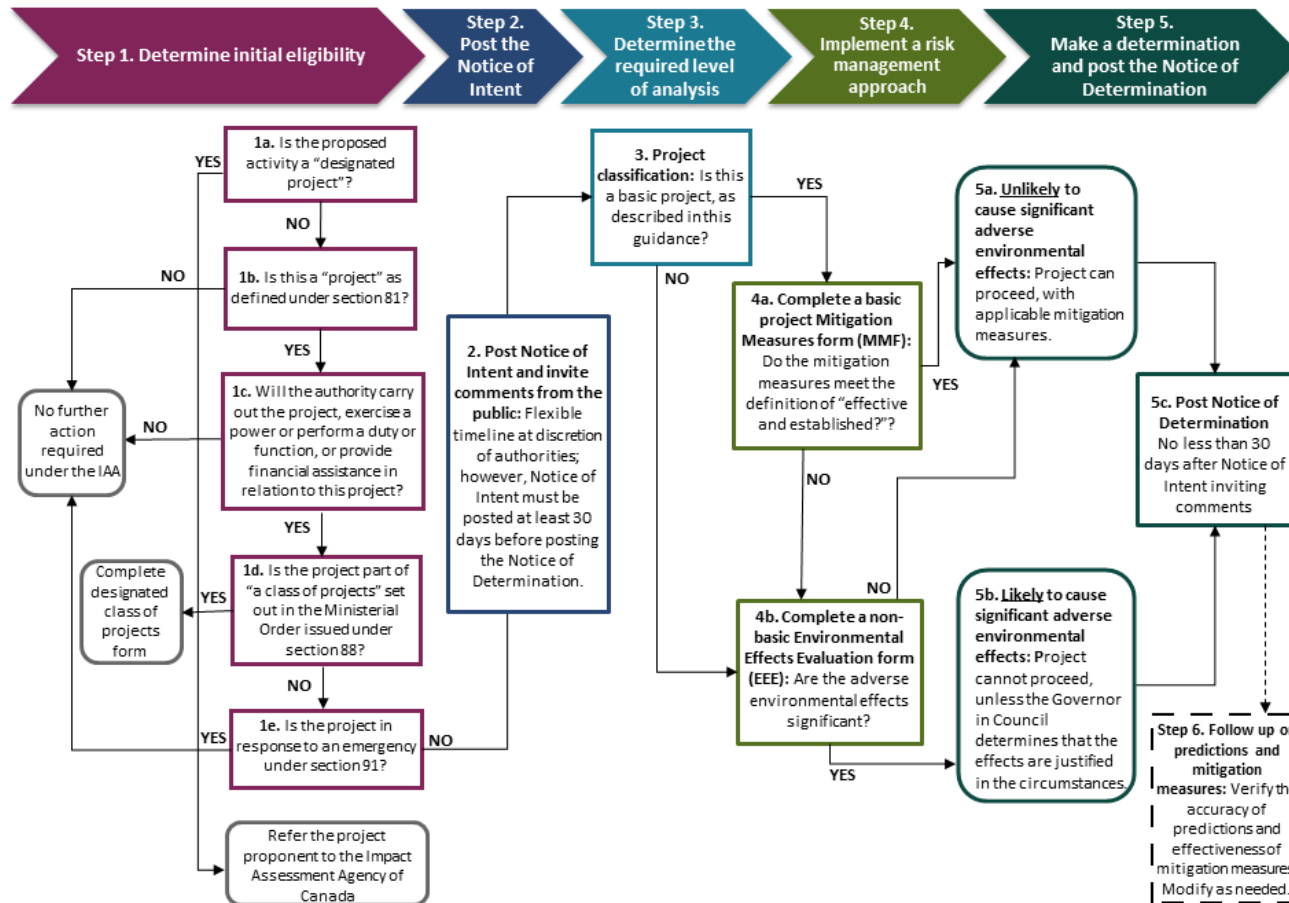
- Step 1: Determine initial eligibility
- Step 2: Post the Notice of Intent
- Step 3: Determine the required level of analysis
- Step 4: Implement a risk management approach
- Step 5: Make a determination and post the Notice of Determination
- Step 6: Follow up on predictions and mitigation measures

Some of these steps are supported by forms provided for authorities to use or adapt. A preview of these forms are available in Appendix C at the end of this document. Word format templates are available to authorities upon request to the Agency’s Legislative and Regulatory Affairs Division or via the working group MS Teams channel:

- Documentation relating to *Designated Classes of Projects Order* (Step 1d)
- Project Classification (Step 3)
- Basic Project Mitigation Measures (Step 4a)
- Non-Basic Project Environmental Effects Evaluation (Step 4b)

Specific suggestions for completing these steps and associated tools are available below. Authorities must decide how to apply these tools appropriately for each project. This approach helps ensure that the level of effort is commensurate with the level of potential environmental effects resulting from a project. The guide also lays out steps to avoid or minimize adverse effects. The guide includes “answer keys” at the end of select steps to confirm the conclusion and next steps.

Figure 1 : Approach to Making a Determination under Sections 82 and 83 of the IAA



Alternative text: A suggested approach to determining a project's likelihood to cause significant adverse environmental effects. The approach is divided into six steps, each with a number of associated sub-steps. The five arrows at the top of Figure 1 list each step: Step 1: Determine initial eligibility; Step 2: Post the Notice of Intent; Step 3: Determine the required level of analysis; Step 4: Implement a risk management approach; and Step 5: Make a determination and post the Notice of Determination. The associated sub-steps within Figure 1 present themselves as boxes below the arrows. These boxes include text with yes or no questions that lead to the next subsequent question.

### **Step 1: Determine initial eligibility**

Step 1 reads "Determine initial eligibility" for which there are a series of questions to answer, ranging from 1a to 1e based on a "YES" or "NO" response. Question 1a asks, "is the proposed activity a 'designated project'?" If the answer is "YES", the authority is to refer the project proponent to the Agency. If the answer is "NO", the authority must answer question 1b.

Question 1b asks, "is this a 'project' as defined under section 81 of the IAA?" If the answer is "YES", the authority must answer question 1c. If the answer is "NO", there is no further action required under the IAA.

Question 1c asks, "will the authority carry out the project, exercise a power or perform a duty or function, or provide financial assistance in relation to this project?" If the answer is "YES", the authority must answer question 1d. If the answer is "NO", there is no further action required under the IAA.

Question 1d asks, "is the project part of 'a class of projects' set out in the Ministerial Order issued under section 88 of the IAA?" If the answer is "YES", the authority must complete a designated class of projects form, which can be found in Appendix B. If the answer is "NO", the authority must answer question 1e.

Question 1e asks, "is the project in response to an emergency under section 91 of the IAA?" If the answer is "YES", there is no further action required under the IAA. If the answer is "NO", the authority is directed to Step 2: Post the Notice of Intent.

### **Step 2: Post the Notice of Intent**

The textbox corresponding to Step 2 reads, "Post Notice of Intent and invite comments from the public: Flexible timeline at discretion of authorities; however, Notice of Intent must be posted at least 30 days before posting the Notice of Determination". This box leads to Step 3: Determine the required level of analysis.

### **Step 3: Determine the required level of analysis**

The textbox corresponding to Step 3 reads, "Project classification: Is this a basic project, as described in this guidance document?" Whether the answer is "YES" or "NO", a form will have to be completed. The "YES" or "NO" response will establish which form to fill out in Step 4. If the answer to



the question in Step 3 is “YES”, the authority is directed to the textbox corresponding to Step 4a. If the answer is “NO”, the authority is directed to the textbox corresponding to Step 4b.

#### **Step 4: Implement a risk management approach**

The textbox corresponding to Step 4a reads, “Complete a basic project Mitigation Measures form (MMF): Do the mitigation measures meet the definition of effective and established? If the answer is “YES”, the authority is prompted to proceed to Step 5a. If the answer is “NO”, the authority is directed to the textbox corresponding to Step 4b.

The other form that authorities may refer to is the one outlined in the textbox corresponding to Step 4b which reads, “Complete a non-basic Environmental Effects Evaluation form (EEE): Are the adverse environmental effects significant?” If the answer is “YES”, the authority is prompted to proceed to Step 5b. If the answer is “NO”, the authority is prompted to proceed to Step 5a.

#### **Step 5: Make a determination and post the Notice of Determination**

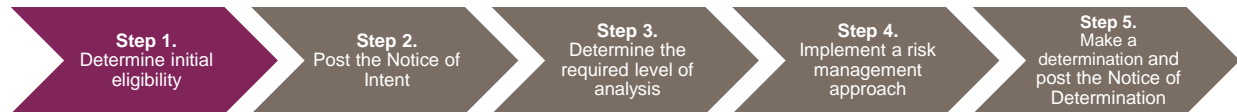
Depending on which form authorities were prompted to complete (the MFF at Step 4a or the EEE at Step 4b), there is a different route to get to Step 5, which involves making a determination and posting the Notice of Determination, if advised that the project can proceed.

If the outcome of the question in Step 4 prompted authorities to proceed to Step 5a, this textbox reads, “Unlikely to cause significant adverse environmental effects: Project can proceed with applicable mitigation measures.” However, if the outcome of the question in Step 4 prompted authorities to proceed to Step 5b, this textbox reads, “Likely to cause significant adverse environmental effects: Project cannot proceed unless the Governor in Council determines that the effects are justified in the circumstances.”

Boxes 5a and 5b both lead to a textbox corresponding to Step 5c which reads, “Post Notice of Determination: No less than 30 days after Notice of Intent inviting comments”. Following this textbox, authorities are directed to Step 6: Follow up on predictions and mitigation measures: Verify the accuracy and effectiveness of mitigation measures. Modify as needed.”

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## Step 1: Determine initial eligibility



Alternative text: Step 1, which is to determine initial eligibility, is highlighted within the broader suggested approach to determining a project’s likelihood to cause significant adverse environmental effects.

The first step is to determine whether a proposed activity triggers the requirement for a section 82 or 83 determination under the IAA. As depicted in Table 1 below, this step can be completed by answering five questions. Depending on how an authority answers each question, there is the potential for an “off-ramp” from the section 82 and 83 requirements. In such instances, the result is that sections 82 and 83 (along with related obligations) do not apply to the authority for the given activity. Where an authority is not the proponent of a proposed activity, it may request that the proponent provide it with any information it considers necessary to make a determination of initial eligibility.

**Please note:** The authority to conduct federal impact assessments and environmental effects determinations north of 60° has not changed under the IAA. The IAA does not apply in the Yukon,<sup>9</sup> and applies in limited circumstances in the Northwest Territories<sup>10</sup> and Nunavut.<sup>11</sup>

### Question 1a: Is the proposed activity a “designated project”?

Sections 82 and 83 of the IAA do not apply to designated projects identified in the [Physical Activities Regulations](#) or designated by the Minister under section 9 of the IAA.<sup>12</sup> [Designated projects](#) are subject to the impact assessment process under the IAA whether or not they are located on federal lands.

Please note: designated projects are not to be confused with the designated classes of projects set out in the [Ministerial Order](#) under section 88 of the IAA (refer to 1d. for more information).

### Question 1a Answer Key: Is the proposed activity a “designated project”?

	If you answered...	
	YES	NO

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<sup>9</sup> [Yukon Environmental and Socio-economic Assessment Act](#), s. 6.

<sup>10</sup> As per the [Mackenzie Valley Resource Management Act](#), the IAA only applies in the Mackenzie Valley in limited circumstances.

<sup>11</sup> As per s. 7 of the [Nunavut Planning and Project Assessment Act](#), the IAA does not apply to the Nunavut Settlement Area and the Outer Land Fast Ice Zone.

<sup>12</sup> Information about the impact assessment process for designated projects under the IAA can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html>

This means that...	The proposed activity is a designated project and is subject to the impact assessment process under the IAA. Sections 82 and 83 do not apply.	The proposed activity is not a designated project.
You should now...	Contact the Impact Assessment Agency of Canada. <sup>13</sup>  Should the Agency determine that an impact assessment is not required, the project would still be considered a designated project and sections 82 and 83 would not apply.	Continue to Question 1b.

## Question 1b: Is this a “project” as defined under section 81?

As set out in section 81 of the IAA, a project is:

- A physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project or a physical activity designated by regulations made under paragraph 112(1)(a.2); or
- A physical activity that is identified in a Ministerial Order made under section 87 (i.e. an inclusion list).

This step focuses on determining whether:

- the definition of a physical activity in relation to a physical work is met; or
- the proposed project is part of a class of physical activities included in a ministerial order under section 87.<sup>14</sup>

The requirements under section 82 would only apply to the part of the project located on federal lands. The consideration of environmental effects may, however, extend beyond the boundaries of those lands.

There are searchable databases that identify federal lands. For example, the [Directory of Federal Real Property](#) and the [Aboriginal and Treaty Rights Information System](#) can assist in determining if a project will take place on federal lands.

Figure 2 sets out the relevant elements for determining whether the definition of “project” is met. Furthermore, Table 1 provides descriptions and examples of activities that might be thought of as projects, but that do not actually meet the definition of “project” set out in the IAA.

<sup>13</sup> Contact information for each of the Impact Assessment Agency of Canada’s offices can be found here: [Contact the Impact Assessment Agency of Canada](#)

<sup>14</sup> Section 87 enables the Minister to designate, by order, a physical activity or class of physical activities that is not in relation to a physical work and is not a designated project, but, in the Minister’s opinion, may cause significant adverse environmental effects. At the time of publication of this guidance document, such an order has not been developed.



Figure 2: Project Criteria—Physical Activity in Relation to a Physical Work or Inclusion List



Alternative text: A graphic depicts three elements that make up the definition of a project. The first image is text within a circle that reads, “Physical Activity” which is followed by a plus sign. The second image is text within a circle that reads, “Physical Work or Ministerial Order” which is followed by another plus sign. The third image is text within a circle that reads, “Federal Lands or Outside Canada” which is followed by an equal sign. The last image is text with a circle that reads, “Project” to explain that, a project is defined as a physical activity that is carried out on federal lands or outside Canada in relation to a physical work.

Physical Activity	Physical Work	Federal Lands	Project
<p>A physical activity includes the carrying out of tasks or actions that involve a degree of physical effort, such as construction, modification, operation, expansion, abandonment and decommissioning.</p>	<p>A physical work includes structures that have been built by humans and that have a defined area and fixed location (i.e. has a local permanence).</p> <p>A “project” includes physical activities not in relation to a physical work that are designated by ministerial order (inclusion list) under section 87.</p>	<p>A project is proposed to be carried out, in whole or in part, on <a href="#">federal lands</a>, as defined by section 2 of the IAA (e.g. national parks, military bases, First Nation reserves, etc.), or outside Canada.</p>	<p>All three of these elements must be satisfied for a proposed activity to be considered a “project” under sections 81 to 91 of the IAA.</p>

**Table 1: Examples of Activities that are *not* Projects under the IAA**

	Physical activity + federal lands 	Physical work + federal lands 
<b>Description</b>	Physical activities <b>not</b> related to physical works on federal lands	Non-physical activities related to physical works on federal lands
	Tasks or actions not involving a fixed structure	Activities that do not involve any degree of physical effort but are carried out in relation to physical works
<b>Examples</b>	<ul style="list-style-type: none"> <li>• Bird banding in a migratory bird sanctuary</li> <li>• Remediation of contaminated soil not related to a physical work</li> <li>• Grazing cattle on federal lands</li> <li>• Pesticide spraying</li> </ul>	<ul style="list-style-type: none"> <li>• Acquisition of a federal building</li> <li>• Transfer of administration and control of federal real property</li> </ul>

As noted, to be considered a “project” under section 81, a physical activity must be carried out on “federal lands” or “outside Canada”. If the proposed divestiture of “federal land” by an authority would result in it no longer being “federal land”, any physical activity proposed to be carried out on that land would not be considered a “project” under section 81.

A “project” may involve a range of physical activities in relation to a physical work on federal land or outside Canada, including construction, operation, maintenance, abandonment, decommissioning, etc. In order to avoid having to conduct multiple determination processes involving a single physical work and in order to ensure a holistic review of the project and its potential environmental effects, it is practical to adopt a “project lifecycle” approach when scoping a section 82 or 83 determination review process.

**Question 1b Answer Key: Is this a “project” as defined under section 81?**

	If you answered...	
	YES	NO
This means that...	The authority may be subject to the requirements under sections 82 to 86 of the IAA with respect to the project.	The authority is not subject to sections 82 and 83 of the IAA because the physical activity does not meet the definition of “project.”
You should now...	Continue to Question 1c.	End the process because the authority has no further responsibilities under the IAA pertaining to this activity.

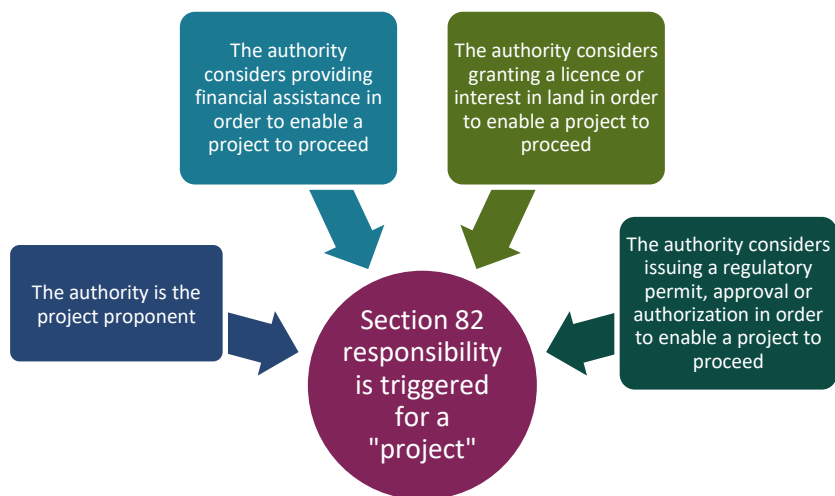
## Question 1c : Will the authority carry out the project, exercise a power or perform a duty or function, or provide financial assistance in relation to this project?

Another way of phrasing this question is, “Does the authority have a decision to make that could enable this project to proceed?” This might entail a range of possible involvement in a project, as detailed below, from project proponent to funder. Any authority playing an enabling role for a project is responsible for making a determination of significance under sections 82 or 83 (subject to steps 1d and 1d, below).

The following instances will trigger a responsibility under section 82 or section 83 (depicted in Figure 3 and Figure 4, below):

- **THE AUTHORITY IS THE PROJECT PROPONENT:** The project proponent is the authority that has overall control and responsibility for the project.
- **THE AUTHORITY PROVIDES FINANCIAL ASSISTANCE IN ORDER TO ENABLE A PROJECT TO PROCEED IN WHOLE OR IN PART:** This includes any amount of funding that allows the project to proceed, either in whole or in part, recognizing that other authorities and external parties will likely have a part to play in terms of allowing the project to be fully carried out. Funding that is part of a block or bulk funding to an organization (e.g. band council, multilateral international organization) and that is not specifically linked to a specific project does not trigger a section 82 or 83 responsibility.
- **WITH RESPECT TO SECTION 82, THE AUTHORITY EXERCISES ANY POWER OR PERFORMS ANY DUTY OR FUNCTION UNDER AN ACT OF PARLIAMENT THAT COULD PERMIT THE PROJECT TO BE CARRIED OUT IN WHOLE OR IN PART:** Examples of this include the issuance of licenses, interests in land, permits, approvals or authorizations. This applies in cases where the authority is the federal land administrator and must grant permission to another party to proceed with a proposed project on their land. This also applies where a regulatory authority must grant a permit or a license in order for the project to proceed either in whole or in part. Multiple regulatory authorities might need to issue permits or licences before a project can be fully carried out.

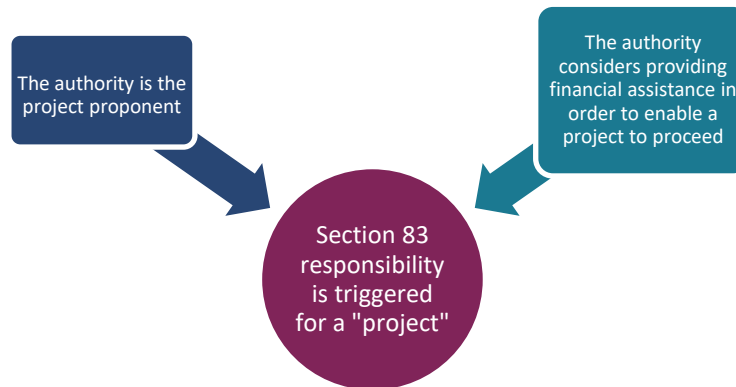
Figure 3: Section 82 Triggers



Alternative text: A graphic depicts the instances that would trigger a responsibility under section 82. In the middle of the image, there is text within a circle that reads, "Section 82 responsibility is triggered for a 'project'". Four textboxes with arrows pointing to the encircled text indicate all instances that trigger a responsibility under section 82 of the IAA. They are as follows:

- The authority is the project proponent
- The authority considers providing financial assistance in order to enable a project to proceed
- The authority considers granting a licence or interest in land in order to enable a project to proceed
- The authority considers issuing a regulatory permit, approval or authorization in order to enable a project to proceed

**Figure 4: Section 83 Triggers**



Alternative text: A graphic depicts the instances that would trigger a responsibility under section 83. In the middle of the image, there is text within a circle that reads, “Section 83 responsibility is triggered for a ‘project’”. Two textboxes with arrows point to the encircled text indicating all instances that trigger a responsibility under section 83 of the IAA. They are as follows:

- The authority is the project proponent
- The authority considers providing financial assistance in order to enable a project to proceed

As noted above, in some instances, there will be multiple authorities responsible for making a determination. In these instances, it is recommended that the authorities choose a lead authority to coordinate the efforts (for more information, refer to [“Multiple Authorities”](#)).

**Question 1c Answer Key: Will the authority carry out the project, exercise a power or perform a duty or function, or provide financial assistance in relation to this project?**

	If you answered...	
	YES	NO
This means that...	The authority triggers the requirements under sections 82 or 83 to determine whether the project is likely to cause significant adverse environmental effects.	The authority does not meet <i>any</i> of the criteria that trigger the responsibility to make a determination.
You should now...	Continue to Question 1d.	End the process because the authority has no further



		responsibilities under the IAA pertaining to this activity.
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## Question 1d : Is the project part of “a class of projects” set out in the Ministerial Order issued under section 88?

Under subsection 88(1) of the IAA, the Minister may designate classes of projects if, in the Minister’s opinion, the carrying out of a project that is part of the class is likely to cause only insignificant adverse environmental effects. On August 30, 2019, the *Designated Classes of Projects Order* (the Ministerial Order) came into force setting out such classes of projects. An authority seeking to carry out a project that is part of a class set out in that Order would not be subject to sections 82 and 83 of the IAA. Thus, authorities must determine whether or not the project is part of a “class of projects” set out in the Ministerial Order.

Please note: the designated classes of projects identified in the Ministerial Order are not to be confused with the designated projects identified in the [Physical Activities Regulations](#). For more information about the latter, please refer to “[1a. Is this a “Designated Project?”](#)” in this guidance document.

The designated classes of projects were carefully scoped to ensure that they only include projects that, if carried out, would cause only insignificant adverse environmental effects. Each class of projects in the Ministerial Order includes a description of the physical activities (e.g. construction, installation, maintenance, repair, decommissioning or abandonment) in relation to a physical work. Each class of projects includes limitations on the class such as a specified size threshold.

Schedule 1 of the Ministerial Order sets out classes of projects on federal lands, other than lands administered by Parks Canada and lands outside Canada. Schedule 2 sets out classes of projects on federal lands that are administered by Parks Canada.

The Ministerial Order also includes general limitations on the classes to provide additional safeguards. A project would *not* be part of a class set out in the Ministerial Order in the following circumstances:

- The project requires a permit or other authorization under the:
  - [Fisheries Act](#),
  - [Canadian Navigable Waters Act](#),
  - [Scott Islands Protected Marine Area Regulations](#), or
  - [Wildlife Area Regulations](#) under the [Canada Wildlife Act](#).
- The project involves the removal of any structure, or resource that is of historical, archeological, paleontological or architectural significance.
- The project causes damage to any structure, resource or site that is of historical, archeological, paleontological or architectural significance.
- The project may cause a **change**\* to the characteristics of a water body, to a migratory bird or nest (as defined in 2(1) of the [Migratory Birds Convention Act, 1994](#)), to wildlife species (as

defined in 2(1) of the [Species at Risk Act](#) that is listed in Schedule 1 of the Act), or its residence or critical habitat (as defined in subsection 2(1) of the *Species at Risk Act*).

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\* **NOTE:** In considering whether a specific project is covered under the Ministerial Order, authorities will have to consider whether the interaction between the carrying out of the proposed project and the environment will constitute a “change” to the components of the environment listed above. There is no definition of the term “change” in the IAA or in the Ministerial Order, so the ordinary meaning of the term would apply. Common dictionary definitions of “change” include concepts such as to alter, convert, make different, or transform. A “change” would not include trivial or fleeting interactions with the environment that do not result in an altered or different state of the listed components of the environment. Based on the facts of each project, authorities will have to determine whether the project will result in an alteration to or difference in the listed environmental components to constitute a “change.” When making this determination, authorities could take into account the probability of the change occurring, and whether a change will occur after implementing existing standard mitigation measures.

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## Documenting Projects that are Part of a “Class of Projects” set out in the Ministerial Order

There are no Registry obligations relating to projects that are part of a class of projects designated in the Ministerial Order and for which the authority is not required to make an environmental effects determination. Authorities may, however, choose to document any decision that a proposed project is part of a designated class of projects for evidentiary and good governance purposes. This also ensures that due-diligence is being exercised in the application of the Ministerial Order.

Since the Ministerial Order covers common and routine types of projects, documenting every single project designated therein might create an unnecessary administrative burden. However, some projects may require a more careful consideration of:

- the class criteria and limiting factors specified within the Ministerial Order; and
- any standard, or effective and established, mitigation measure that would need to be implemented.

The need for these additional considerations would depend on the nature of the project and the context in which it is carried out. For more information on what constitutes effective and established mitigation measures, please refer to the [“Project Classification”](#) section in this guidance document.

The form called *Documentation relating to Designated Classes of Projects Order (Step 1d)* in Appendix C provides guidance that could be used to document when an authority concludes that a project is within a class of projects set out in the Ministerial Order, in which case the authority is no longer required to complete a determination of environmental effects.

The form focuses on the following:

- project identification and description;
- corresponding class of projects set out in the Ministerial Order and an explanation of how the project fits within the class;
- a checklist to demonstrate that all criteria and limiting factors are satisfied;
- other relevant information such as use of standard, or effective and established mitigation measures; and
- authority sign-off.

For example, the template could be used to document that a project involving the replacement of a petroleum storage tank system located within [general area X] by [authority Y] is part of the class set out under subsection 8(1) of Schedule 1 of the Ministerial Order.

## Question 1d Answer Key: Is the project part of a “class of projects” set out in the Ministerial Order issued under section 88 of the IAA?

	If you answered...	
	YES	NO
This means that...	The authority is not required to conduct a determination under section 82 or 83.	The proposed project is not part of a designated class of projects.
You should now...	Refer to the form titled <i>Documentation relating to Designated Classes of Projects Order</i> for details on how to document this exclusion.	Continue to Question 1e.

## Question 1e: Is the project in response to an emergency under section 91 of the IAA?

Section 91 of the IAA identifies emergency circumstances under which an authority can proceed with a project on federal lands or outside of Canada without making an environmental effects determination. Authorities should use their best judgement in interpreting whether these circumstances apply in the context of a particular project.

For section 91 to exempt authorities from the requirements under section 82 or 83, one of the circumstances below would need to apply:

1. There are matters of national security in relation to the project:
  - The IAA does not provide a definition of national security, and so the ordinary meaning of the term applies.
  - There is some discretion left to authorities to interpret “in relation to which there are matters of” when considering the link between national security and the project.
2. A project is to be carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*:
  - A national emergency is defined under section 3 of the *Emergencies Act*. Under section 6 of the *Emergencies Act*, the GIC may make a declaration that special temporary measures are to be taken in response to certain national emergencies.
  - This would apply only where the GIC has made such a declaration, and where the project in question responds in some way to the national emergency.
3. A project is to be carried out in response to an emergency, and the carrying out of the project without delay is in the interest of preventing damage to property or the environment, or is in the interest of public health or safety:

- The IAA does not provide a definition of emergency, and so the ordinary meaning of the term applies.
- Authorities should first identify the emergency, and then determine whether the project responds to that emergency. If it does, authorities must then consider whether carrying out the project without delay is necessary to prevent damage to property or the environment or it is in the interest of public health or safety.
  - There should be a clear link between the delay and risks of damage to property, the environment, or impacts on health and safety. Specific risks that may arise if the carrying out of the project is delayed should be identified.

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As a best practice, even where section 91 applies, authorities should still consider environmental effects, apply mitigation measures and do follow-up monitoring in relation to projects, to the extent possible within the circumstances.

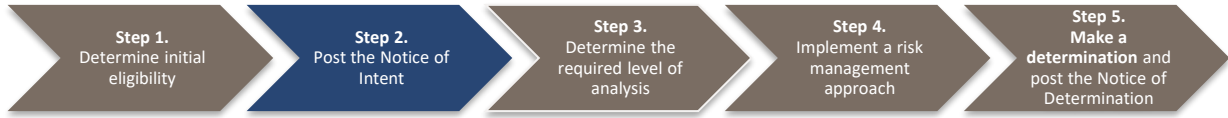
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### Question 1e Answer Key: Is the project in response to an emergency under section 91?

	If you answered...	
	YES	NO
This means that...	The project can be carried out without a determination being made under section 82 or 83 of the IAA.	A determination must be made under section 82 or 83 of the IAA before an authority can make a decision or take an action that would enable the project to proceed.
You should now...	End the process because the authority has no further responsibilities under the IAA pertaining to this project.  Where circumstances allow, the authority should consider environmental effects and implement mitigation measures.	Continue to <a href="#">Step 2</a> .

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## Step 2: Post the Notice of Intent



Alternative text: Step 2, which is to post the Notice of Intent, is highlighted within the broader suggested approach to determining a project's likelihood to cause significant adverse environmental effects.

The legislative requirements for public participation in determinations related to projects on federal lands or outside of Canada are outlined in sections 84 and 86 of the IAA. While authorities may always choose to do more, the IAA creates three requirements related to public participation. The authority must:

- Before making an environmental effects determination, post on the Registry a notice that indicates that it intends to make a determination and that invites comments from the public (subsection 86(1)) for a period of at least 30 days (subsection 86(2));
- Consider public comments when making the determination (subparagraph 84(1)(d)); and
- Notify the public of its determination by posting a Notice of Determination on the Registry that includes any mitigation measures taken into account in making the determination (subsection 86(2)) (for more information about this requirement, please refer to [Step 5: Make a determination and Post Notice of Determination](#) of this guidance document).

Key terms related to public participation, consultation, and the public outside Canada are defined in the box below.

**Public participation** is an essential part of an open, informed and meaningful process. Public participation is a general term for any process that involves public input in decision-making. It involves the process or activity of informing the public and inviting members of the public to provide input for decisions that may affect them. The focus of public participation is usually to share information with, and gather input from, members of the public who may have an interest in (or information on) a proposed project.

**Meaningful public participation** ensures that Canadians who may be affected or wish to participate have an opportunity to do so in a manner that suits the circumstances, the resources and time available, and the participants' needs. It means that they are provided with the information and appropriate timeframes that enable them to participate in an informed way. Meaningful public participation also means that public input informs and guides decision-making and allows those who participated to see that their input has been considered. By participating, the public can often make important contributions that can improve or adapt project design, lead to better outcomes, and assist with follow-up and monitoring.

**Consultations with Indigenous peoples:** The Crown has a duty to consult Indigenous peoples where it has knowledge of the potential existence of an Aboriginal or treaty right and contemplates conduct that may adversely impact that right. Consulting with Indigenous peoples is essential for understanding how a proposed project might impact them, their interests, and their Aboriginal and treaty rights, and for identifying measures to address these impacts and any related concerns.

Furthermore, subparagraph 84(1)(a) of the IAA requires an authority conducting a determination to consider a project's potential adverse impacts on rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Authorities should plan for and initiate consultations as early as possible in the process whenever a contemplated federal decision has the potential to impact Aboriginal and treaty rights.

With respect to satisfying the Crown's duty to consult, consulting with a potentially impacted Indigenous group may reveal a need to accommodate. Accommodation may take many forms. The primary goal of accommodation is to avoid, eliminate, or minimize the adverse impacts on potential or established Aboriginal or treaty rights. Accommodation may take the form of compensating the Indigenous community for those adverse impacts. In some circumstances, appropriate accommodation may be a decision not to proceed with the proposed activity.

The duty to consult lies with the Crown. However, to fulfill its duty, the Crown can rely on a proponent's engagement with Indigenous peoples, including information gathered and included in a project description. Information provided by project proponents will also inform the Crown's responses to issues and concerns raised about the project, as well as mitigation or other measures proposed or required to avoid, minimize or otherwise accommodate for potential adverse impacts to section 35 rights.

The Crown's preliminary assessment of the potential adverse impacts on the rights for each potentially affected Indigenous group is an important tool for informing the depth, breadth and level of effort required for the consultation process. Information requirements and assessment reporting are informed by how serious the project impacts are on the rights of a specific Indigenous group.

Officials are encouraged to refer to the [federal guidelines for consultation and accommodation](#)<sup>1</sup> for information on how to meet the duty to consult. Officials should also refer to the Government of Canada's [Principles respecting the Government of Canada's relationship with Indigenous peoples](#)<sup>1</sup> when preparing for consultation and for considering how a project may affect Indigenous peoples and their rights.

**Meaningful consultation** is a process that is:

- carried out as early as possible and in an efficient and responsive manner;
- transparent and predictable;
- accessible, reasonable, flexible and fair;
- founded in the principles of good faith, respect and reciprocal responsibility;
- respectful of the uniqueness of First Nation, Métis and Inuit communities; and
- includes accommodation (e.g. changing of timelines, project parameters), where appropriate.

Ensuring meaningful consultation requires considerations such as:

- timely sharing of detailed information about the activity;
- providing support, as required, to Indigenous groups to achieve the objective of meaningful participation in consultation processes;
- providing enough time for Indigenous groups to assess adverse impacts and present their concerns and for the Crown to be responsive to the concerns;

- promoting discussions with communities about impacts and ways these can be avoided or mitigated;
- providing meaningful and timely responses to questions and concerns;
- demonstrating genuine efforts to understand concerns and address them in a meaningful way;
- demonstrating that the Crown sought to balance Indigenous interests with other societal interests, relationships and positive outcomes for all partners.

To achieve this, departments and agencies should have access to financial, human and technological resources that can be used for consultation and accommodation activities.

Additional policy and guidance documents developed by the Agency, while focussed on the impact assessment process for “designated projects,” could be informative and can be found in the [Practitioner’s Guide to Federal Impact Assessments under the Impact Assessment Act](#), including:

- [Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#)
- [Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#)
- [Guidance: Collaboration with Indigenous Peoples in Impact Assessment](#)
- [Guidance: Indigenous Knowledge under the \*Impact Assessment Act\*. Procedures for Working with Indigenous Communities](#)
- [Policy Context: Indigenous Participation in Impact Assessment](#)

With respect to the public outside Canada, the IAA does not specifically include or exclude any member of the public from providing comments during public participation opportunities. Thus, an authority may provide public participation opportunities to both Canadians and non-Canadians, regardless of the location of the proposed project. For the assessment of projects undertaken outside Canada and any federal lands, the foreign operational environment, laws and policies may influence the use of discretion by authorities under the IAA with respect to public participation. Consequently, public participation methods used outside of Canada and any federal lands may differ from domestic participation and engagement methods.

## Invite comments from the public

Public participation in federal decision-making is contingent upon members of the public being aware that such opportunities exist. While posting a Notice of Intent on the Registry satisfies the minimum requirements of the Act, depending on the context, this action alone may not meet public expectations.

Authorities that use this guidance document as the foundation of their determination process should consider identifying the project as basic or non-basic when posting on the Registry. For more information about basic and non-basic projects, please refer to step 3 “[Project Classification](#)” in this guidance document. For authorities using their own process, they should also consider identifying the class of project being assessed using their own project classification when posting on the Registry.



For routine and less complex projects (basic projects), authorities could offer one or more of the following initiatives, in addition to the required Registry postings:

- posting notifications on relevant social media channels (e.g. Twitter, LinkedIn and Facebook); and/or
- proactive outreach to potentially interested and affected parties (via email, social media and/or phone calls), identified through a pre-existing stakeholder mapping or tracking process.

For complex projects (non-basic projects), authorities may wish to consider further public engagement activities including:

- webinars or in-person engagement opportunities for interested and affected parties;
- interviews or focus groups with specific parties known or anticipated to have strong views on the proposed project;
- creation of an online stakeholder engagement platform to enable complex, multi-dimensional, and multi-directional communication flows to gather feedback and knowledge about the proposed project.

Such efforts would be subject to the capacity of authorities to undertake such efforts above and beyond the minimum statutory requirements. In these instances, the authority would need to balance its desire to maintain and build public confidence in the assessment process with the limitations of time, budget and personnel.

For comments received by e-mail or other methods that do not allow for publishing on the Registry in real time (e.g. letters, in-person engagement opportunities and interviews), authorities may choose to post the comments publicly by adding them to the “Comment” section within their project page on the Registry. This is not, however, an obligation and if authorities wish to post comments publicly, they must comply with the *Privacy Act*. In the event of questions about obligations set out in the *Privacy Act*, authorities may consult their Access to Information and Privacy (ATIP) advisors. Furthermore, authorities may wish to include an automatic reply to be sent following the receipt of any email submission that informs the sender of such intention to post their comments on the Registry.

For detailed information on how to post a Notice of Intent, authorities should refer to the *Canadian Impact Assessment Registry User Guide for Authorities on Federal Lands and Outside Canada*.<sup>15</sup>

## Consider feedback from the public

Once the comment period closes and public feedback has been received, authorities will need to analyze the feedback and integrate it with the consideration of other enumerated factors to inform their determination, as mandated by subparagraph 84(1)(d) of the IAA. This suggests that authorities will need to develop processes for tracking and analyzing public feedback, and for providing an explanation for how feedback was considered in decision-making. Documentation to this effect (e.g. a summary table) would help officials respond to public inquiries about whether or not participant feedback was meaningfully

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<sup>15</sup> Authorities who would like to request a copy of this document can do so by contacting the Agency’s Registry team at [registry-registre@iaac-aeic.gc.ca](mailto:registry-registre@iaac-aeic.gc.ca).

considered. Authorities must comply with the *Privacy Act* if they wish to share any documentation that could potentially identify the author of a comment.

## Notice of Determination

Once public feedback has been considered, an adequacy assessment of the consultation process has been undertaken, and internal approvals have been sought, the authority must make the determination and post a Notice of Determination on the Registry. The posting must occur no earlier than 30 days after posting the Notice of Intent inviting public comment on their determination process. For more information about the Notice of Determination, please refer to [Step 5: Make a Determination and Post a Notice of Determination](#) of this guidance document.

## Timeline to fulfill obligations under section 84 and 86 of the IAA

Subsection 86(2) of the IAA requires authorities to provide a minimum of 30 days between posting the Notice of Intent and the Notice of Determination. Each authority will likely develop internal protocols for making a determination. Timelines will likely differ for routine versus complex projects. Provided an authority meets the minimum 30-day period between posting the Notice of Intent and the Notice of Determination, other decisions regarding timelines are at the authority's discretion, but should be reasonable. When determining timelines, authorities should factor in a reasonable timeframe for considering the public's input, along with the other enumerated factors, before making their determination. Authorities will also have to ensure there is sufficient time for the Crown to discharge its duty to consult and, where appropriate, accommodate any Indigenous groups whose Aboriginal or treaty rights may be adversely impacted by the proposed project.

**For basic projects**, which might occur on a routine basis, an authority could develop an internal decision-making protocol that enables the completion of the necessary steps within, but no earlier than, the minimum 30-day period.

**For non-basic projects**, which are generally more complex, it is recommended that authorities undertake a light scoping exercise prior to posting a Notice of Intent inviting public comment in order to:

- undertake a preliminary consultation assessment, to determine the effort required to fulfill the Crown's legal duty to consult potentially impacted Indigenous peoples. This should include an identification of:
  - issues relevant to Indigenous groups;
  - Indigenous knowledge provided; and
  - potential impacts on the exercise of Aboriginal and treaty rights;
- set the expected length of time for which the comment period will remain open; and
- set the expected deadline for a determination to be made and posted.

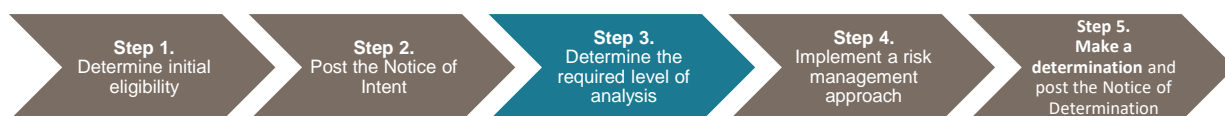
This will provide authorities with the flexibility to handle more complex projects on a case-by-case basis, while also providing each individual proponent clarity and predictability around the timelines for decisions

about their specific project. In determining the time limit, authorities should balance the objectives of meaningful public participation and timely decision-making, in keeping with the other purposes of the IAA such as protecting the environment, promoting sustainability and ensuring that projects are considered in a careful and precautionary manner.

For information on how to classify a project as **basic** or **non-basic** in order to inform the appropriate level of analysis that is required and the associated timeline for the environmental effects determination, please refer to the "[Project Classification](#)" section in this guidance document.

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## Step 3: Determine the required level of analysis



Alternative text: Step 3, which is to determine the required level of analysis, is highlighted within the broader suggested approach to determining a project's likelihood to cause significant adverse environmental effects.

Sections 82 and 83 of the IAA require an authority to make a determination of whether the carrying out of a project is likely to cause significant adverse effects, before taking an action or making a decision that enables a project to be carried out on federal lands or outside Canada.

Projects may differ substantially in terms of their complexity and the types and severity of environmental effects that might result. The type of information required from proponents to conduct an analysis will also vary, depending on the scope and complexity of the project. Step 3 provides guidance to help authorities gauge the level of effort that might be appropriate in relation to a determination, depending on a number of factors related to a project's complexity and potential effects. Authorities may also develop an alternative method of classification.

## Project classification

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**A NOTE ON TERMINOLOGY:** Many authorities use various terms with differing definitions when classifying the risk levels inherent in projects. In order to keep this document relevant across authorities and avoid confusion, this guide uses the terminology **basic** and **non-basic** to describe projects.

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Even though a project may be classified as a "basic project", if it has the potential to adversely impact Aboriginal or treaty rights, taking an action or making a decision that allows the project to proceed will trigger the Crown's duty to consult and, where appropriate, accommodate.

### Basic projects

Projects can be classified as **basic** if all of the following criteria are true:

- the proposed project and associated adverse environmental effects are well understood;
- the proposed project is likely to have relatively minor adverse environmental effects;
- the project is unlikely to adversely impact the Aboriginal or treaty rights of Indigenous peoples; and
- effective and established mitigation measures exist.

These projects are not likely to require additional in-depth analysis.

The form called Project Classification in Appendix C is available to assist authorities in classifying projects as either basic or non-basic. The flow chart (Figure 5) below provides an overview of the classification process. Additional guidance and explanations are included within the checklist.

For projects that may be classified as either basic or non-basic, some information will be needed about the project and its effects prior to conducting the analysis. In certain cases, the authority may be in possession of such information. In others, the authority may need to collect additional key information from the proponent.

The term "effective and established mitigation measures" differentiates between mitigation measures that are effective and established versus mitigation measures requiring closer analysis and planning.

Mitigation measures are considered effective and established if they meet all of the following criteria:

- measures have been implemented successfully before in similar situations;
- measures are well understood and are considered reliable;
- measures are technically and economically feasible; and
- measures fall in the category of **avoid** or **reduce**:
  - **avoid**: mitigation measure avoids the environmental effects altogether;
  - **reduce**: mitigation measure reduces the magnitude or duration of the impact.

Any and all mitigation measures required for basic projects should meet the above definition for effective and established. Where mitigation measures that do not meet this definition are required, projects should be classified as non-basic.

There may be some proposed projects that, if carried out, would cause only insignificant adverse environmental effects but are not part of a class of projects set out in the Ministerial Order under section 88. For these projects, the effort of completing a [basic project Mitigation Measures Form](#) (MMF) is not commensurate with the identified risk. The MMF is meant to be used by authorities in determining the significance of potential adverse environmental effects of a proposed basic project, as well as for outlining the associated mitigation measures.

For activities such as these, authorities may wish to develop tools with a lower level of recording burden. For example, an authority could develop a document describing classes of lower risk projects that it routinely carries out. The document could describe associated mitigation measures and associated environmental effects related to those lower risk projects. Employees could refer to this document to evaluate the significance and likelihood of adverse effects of projects in various classes. An authority may determine that significant adverse environmental effects are unlikely if the project characteristics align with the profile of a low-risk project.

It should be noted that all obligations on authorities in sections 82 to 86 of the IAA must still be met for basic projects, including the obligations to take into account the factors listed under subsection 84(1), and to post a Notice of Intent and Notice of Determination on the Registry site as per section 86.

## Non-basic projects

Projects are considered **non-basic** if they do not meet the description of a “basic” project outlined above. Non-basic projects typically have the following characteristics:

- the proposed physical activities and physical works are not well understood;
- there is uncertainty around the potential for adverse environmental effects arising from the proposed project; and
- the proposed project is likely to have residual adverse environmental effects associated with it after mitigation measures are implemented.

These projects require a more in-depth analysis, including the development of technically and economically feasible mitigation measures.

If the project has the potential to adversely impact the Aboriginal or treaty rights of Indigenous peoples, the Crown has a duty to consult and, where appropriate, accommodate. Authorities should plan to consult Indigenous peoples and consider the project's potential impacts on their Aboriginal and treaty rights and interests in a manner that fulfills both their responsibilities under sections 81–91 of the IAA and the Crown's duty to consult. For more information on the duty to consult, federal officials should refer to:

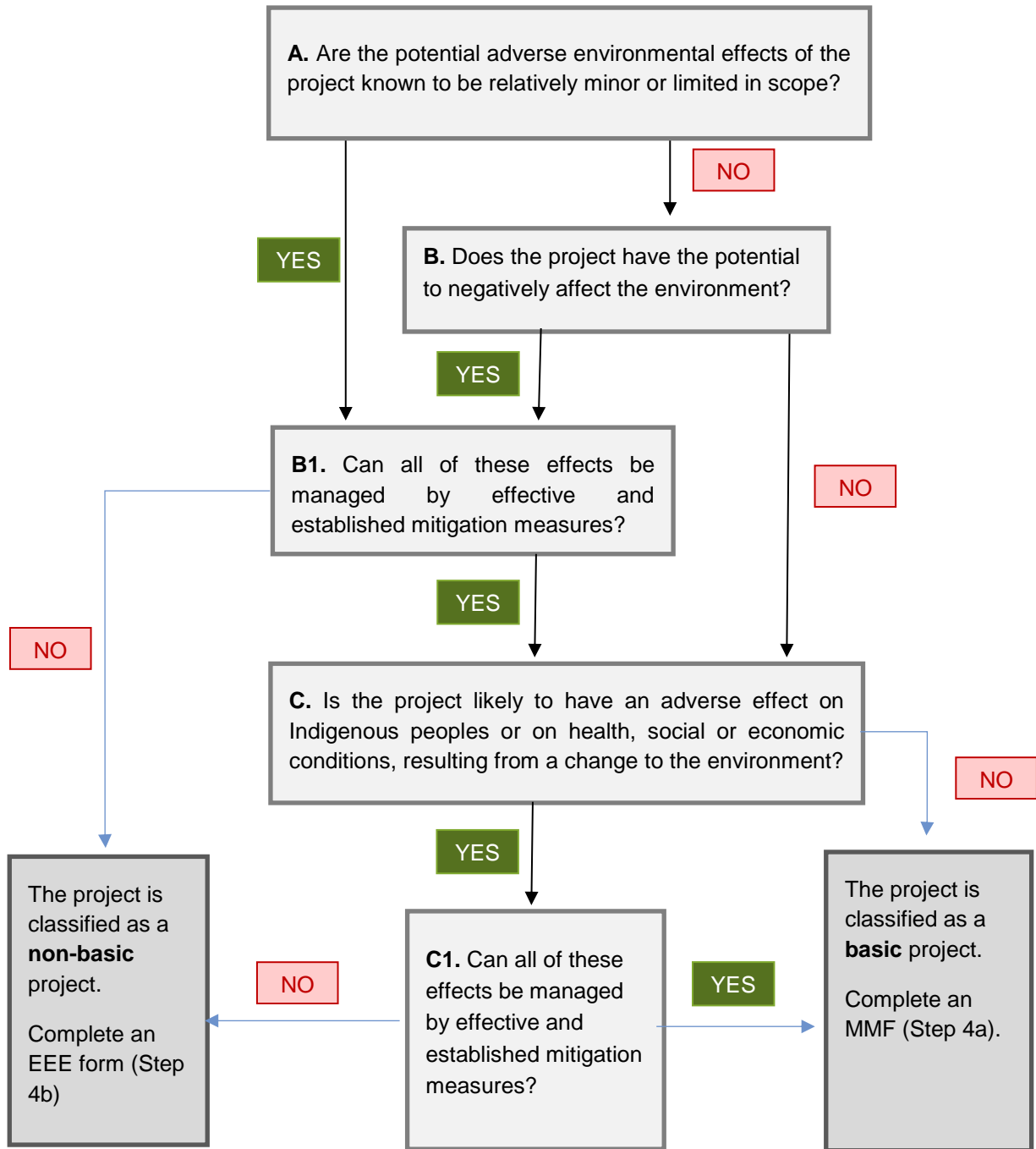
- [\*Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011.\*](#)
- [\*Principles respecting the Government of Canada's relationship with Indigenous Peoples\*](#)
- [\*Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples\*](#)

Although a project can be classified as either basic or non-basic, a consideration of the above criteria and characteristics can generate a more nuanced continuum of classification outcomes, supporting a risk-based approach.

For example, an authority may identify six potentially adverse environmental effects that are likely to be caused by the project, of which five can be addressed through effective and established mitigation measures. In this case, while the project as a whole would be categorized as non-basic, the level of analysis required on the part of the authority would differ for each of the six potentially adverse environmental effects. For the five effects where mitigation measures are effective and established, the level of effort would be similar to a basic project. A deeper analysis would be needed for the sixth effect, including the potential development of technically and economically feasible mitigation measures.

In this way, the tool is sufficiently flexible to allow authorities to apply an appropriate level of effort to reflect whether or not effective and established mitigation measures are available to address potentially adverse environmental effects.

Figure 5: Project Classification Flow Chart (see relevant form called Project Classification in Appendix C)



Alternative text: A graphic depicts the steps to determine whether your project is classified as basic or non-basic. The approach follows a series of “yes” or “no” questions to identify the project classification through a flow chart. In the end, authorities are prompted to complete either a basic project Mitigation Measures form (MMF) or a non-basic Environmental Effects Evaluation form (EEE).

The flow chart starts off with question A which asks “are the potential adverse environmental effects of the project known to be relatively minor or limited in scope?” If the answer is “YES”, the authority must

answer question B1: “Can all of these effects be managed by effective and established mitigation measures?” However, if the answer is “NO”, the authority must answer question B: “Does the project have the potential to negatively affect the environment?”

From question B, if the authority answers, “YES”, they are prompted to answer question B1: “Can all of these effects be managed by effective and established mitigation measures?” However, if the answer is “NO”, they authority is prompted to answer question C.

From question B1, if the answer is “NO”, then the project is classified as a **non-basic** project. The authority should complete an EEE form. However, if the answer is “YES”, the authority is prompted to answer question C.

Question C asks, “is the project likely to have an adverse effect on Indigenous peoples or on health, social or economic conditions, resulting from a change to the environment?” If the answer is “NO”, then the project is classified as a **basic** project. The authority should complete a MMF form. However, if the answer is “YES”, the authority is prompted to answer question C1.

Question C1 asks, “can all of these effects be managed by effective and established mitigation measures?” If the answer is “NO”, then the project is classified as a **non-basic** project. The authority should complete an EEE form. However, if the answer is “YES”, then the project is classified as a **basic** project. The authority should complete a MMF form.

**Note:** If the answer to any of these questions is “unknown,” the project should be classified as “non-basic.”



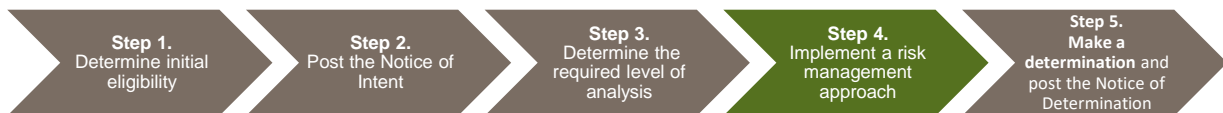
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**Use Your Judgement!** Do you agree with the outcome of Step 3? If not, why not? If you are not confident about your classification, it may be worth:

- contacting a colleague for a second opinion;
  - contacting an expert department for advice; and / or
  - erring on the side of caution and classifying the project as non-basic (Complete a [Non-Basic Project Environmental Effects Evaluation](#) (EEE) form).
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## Step 4: Implement a risk management approach



Alternative text: Step 4, which is to implement a risk management approach, is highlighted within the broader suggested approach to determining a project's likelihood to cause significant adverse environmental effects.

Based on the results of Step 3, projects will be classified as either basic or non-basic. Depending on their classification, the authority would then complete either a MMF (for a basic project) **or** an EEE (for a non-basic project). Both options are described below with supporting templates in Form 3 and 4 that authorities can use and adjust to meet their needs.

Sections 4.1 and 4.2 below are relevant for both basic and non-basic projects.

As noted throughout this Guide, where an authority contemplates taking an action or making a decision that would enable a project to be carried out on federal lands that could adversely impact Aboriginal or treaty rights, the Crown's duty to consult will be triggered. This legal duty has been imposed by the courts at common law to protect Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. The duty to consult is distinct from the legislative obligations under sections 82 to 86 of the IAA and must be satisfied prior to taking the action or making the decision that triggers the duty. These separate legal obligations overlap. For example, efforts by an authority to fulfill the Crown's duty to consult will assist in fulfilling statutory obligations related to conducting an effects determination, including the obligation to consider any adverse impact that the project may have on rights recognized and affirmed under section 35 and Indigenous knowledge provided with respect to the project under subsection 84(1) of the IAA. Steps 4 and 5 of this guide and the related forms focus on satisfying the statutory requirements related to conducting an effects determination. For assistance with determining whether the Crown's duty to consult is triggered and, if so, whether it is satisfied in the circumstances, authorities must refer to additional policies and guidance documents, including:

- [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#);
- [Principles respecting the Government of Canada's relationship with Indigenous peoples](#).
- [Policy Context: Indigenous Participation in Impact Assessment](#);
- [Guidance: Indigenous Participation in Impact Assessment](#);
- [Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#);
- [Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#); and
- [Guidance: Collaboration with Indigenous Peoples in Impact Assessment](#);

## 4.1. Environmental effects

Environmental effects as defined in section 81 of the IAA can be broken up into five broad categories: (1) changes to the biophysical environment, and the impact of those changes (2) on Indigenous peoples of Canada /or (3) on health, (4) social or (5) economic conditions. This is intended to make identifying environmental effects easier for authorities. Each category may be better understood by answering some clarifying questions. Please note: the lists of questions identified below are not exhaustive and additional questions that are context specific may need to be considered.

### Biophysical effects

In establishing the potential for significant adverse biophysical effects, authorities should consult the questions below. Answering “yes” to one or more of the following questions means the project has the potential (prior to mitigation measures) to cause adverse environmental effects, and will require the consideration of mitigation measures:

- Does the project have the potential to alter, disturb or destroy vulnerable natural features (e.g. habitat for endangered species, water source for a town, wetlands)?
- Does the project have the potential to release a polluting substance into the land, water or air?
- Does the project have the potential to alter landscape features (e.g. through resource extraction, deforestation, clearing of vegetation)?
- Does the project have the potential to affect wildlife species (flora and fauna), including migratory birds and species at risk and their critical habitat and residence?
- Does the project have the potential to result in the alteration of water level, quality, flow or management regime in a water body, or result in other important changes to surface or groundwater resources (including well water)?
- Does the project have the potential to cause sensory disturbances such as noise and/or vibrations?

## Socio-economic and health effects

Along with the biophysical effects, authorities are responsible for determining the likelihood of significant adverse health or socio-economic effects resulting from a change in the environment. In establishing the potential for significant adverse effects, the following guiding questions can be used.

### a. Health conditions

Does the project have the potential to affect human health as a result of changes to the environment that include, but are not limited to, potential changes in:

- air quality;
- noise exposure and effects of vibration;
- current and future availability (including consideration of quality and potential contamination) of country foods (traditional foods); and/or
- current and future availability (including consideration of quality and potential contamination) of water for drinking, recreational and cultural uses?

### b. Social conditions

Does the project have the potential to result in changes to the environment that may affect social conditions such as:

- services and infrastructure;
- land and resource use and recreation;
- navigation;
- community well-being; and/or
- structures, sites, or things of historical, archaeological, paleontological or architectural significance?

### c. Economic conditions

Does the project have the potential to result in changes to the environment that may affect economic conditions, including impacts on specific industries such as:

- forestry and logging operations;
- commercial, recreational and sport fishing, hunting, trapping;
- commercial outfitters;
- commercial, recreation and tourism; and/or
- agriculture, including predicted effects to livestock health and productivity?

As with biophysical effects, effective and established mitigation measures can be identified to inform the significance determination. Where there are no effective and established mitigation measures, more detailed analysis may result in the development of technically and economically feasible mitigation measures.

### Gender-Based Analysis Plus

The above sections provide some guiding questions about how to approach the consideration of environmental effects, but for certain projects, it may also be appropriate to consider environmental effects through a Gender Based Analysis Plus (GBA+) lens.

GBA+ provides a framework and a set of analytical questions to determine if there are different impacts for subsets of the population. For example, a GBA+ assessment can identify that some community members (such as people who eat country foods, children, the elderly, pregnant or breastfeeding women) who may be more affected by a potential contaminant.

The Agency has developed [Guidance: Gender-based Analysis Plus in Impact Assessment](#) specifically for impact assessments of designated projects. While the guidance is not directly applicable to the federal lands context, and there is no legislative requirement to conduct a GBA+ assessment, it provides some useful guiding questions that could assist authorities in considering the potential for effects on vulnerable groups.

### Impacts on Indigenous Peoples

The definition of environmental effects in section 81 of the IAA includes the impact of environmental changes on the Indigenous peoples of Canada. The above approach for analyzing health, social and economic effects should also be used to identify impacts on the health, social and economic conditions of Indigenous peoples. Some additional questions that can be used to identify impacts that may be specific to Indigenous peoples are provided below.

Does the project have the potential to result in changes to the environment that may affect:

- physical or cultural heritage;
- the current use of lands and resources for traditional purposes; and/or

- any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
- changes that result from impacts on the environment to the health, social or economic conditions of the Indigenous peoples of Canada?

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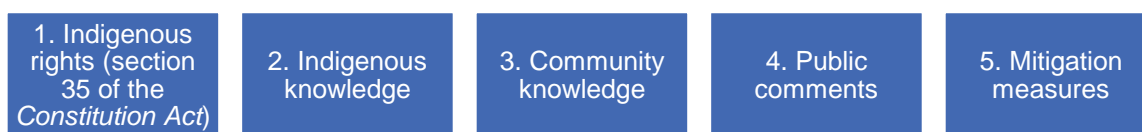
**CUMULATIVE EFFECTS:** In making an environmental effects determination, as a best practice, authorities should also consider the potential for cumulative effects. While an individual project may not have result in significant adverse environmental effects, it is possible that cumulative environmental effects may result from that project in combination with the environmental effects of other activities that have been, or will be, carried out. Land management plans or similar tools that are in place with respect to federal lands might be an effective mechanisms to consider and address cumulative effects.

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## 4.2. Consideration of factors

When making a determination under section 82, an authority must consider the five factors listed in subsection 84(1). For determinations under section 83 for projects outside of Canada, factors under paragraphs 84(1)(a) and (b), relating to the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982* and Indigenous knowledge, do not need to be considered.

**Figure 6: Factors under subsection 84(1) of the IAA**



Alternative text: A graphic depicts the five factors listed under subsection 84(1) of the *Impact Assessment Act*, which are described in detail below.

The factors are:

**1. Any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.**

Guiding principles related to this factor:

- The assessment of impacts on the Aboriginal or treaty rights of Indigenous peoples should be:
  - founded on recognition and implementation of rights of Indigenous peoples;
  - conducted in consultation with the affected Indigenous communities, through their representative body or collectivity, with the aim of reaching consensus on the content of the assessment; and
  - informed by the perspectives of the rights holders.
- The assessment of impacts on rights of Indigenous peoples must be informed by Indigenous knowledge, when provided in relation to the assessment, in accordance with federal policy and best practices.
- The specific context in which Aboriginal or treaty rights exist and may be exercised must inform the assessment of potential impacts from the outset.

- Understanding of how a proposed project may affect the ability of Indigenous peoples to exercise their Aboriginal or treaty rights requires an understanding of the baseline context in which those rights exist and may be practiced.
- A broad and holistic approach should be taken to understanding how a proposed project may impact the ability of a potentially impacted Indigenous group's ability to exercise an Aboriginal or treaty right.
- Community-defined thresholds and measures, where they exist, should be considered in the assessment.
- A combination of quantitative and qualitative measures may be necessary for a comprehensive and meaningful assessment of potential impacts on the Aboriginal or treaty rights of Indigenous peoples.
- The determination should be transparent in terms of both process and content, and conducted in a manner that fosters trust and contributes to meaningful consultation.

For more information on identifying and assessing impacts on the exercise of Aboriginal or treaty rights, please see [Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples and the Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#).

## 2. Indigenous knowledge provided with respect to the project

**Indigenous knowledge** is holistic and can provide invaluable insights related to:

- project design;
- knowledge of the environment, as well as social, cultural, economic, and health conditions, Indigenous governance, and resource use;
- the identification of valued components, indicators or measurement methods;
- the identification and assessment of changes to the environment;
- the identification of mitigation measures, not only in relation to impacts on Indigenous peoples, but more broadly;
- identification of impacts on Aboriginal or treaty rights; and,
- considerations for follow-up and monitoring.

Guiding principles related to this factor:

- The authority needs to:
  - understand the community context, respect community protocols on Indigenous knowledge, respect oral tradition, include a diversity of knowledge holders, and understand requirements related to Indigenous languages, if any.
  - consider providing capacity support for Indigenous knowledge work (e.g. for non-basic projects). For those more complex projects, the authority should consider methods for

- gathering Indigenous knowledge that are participatory, such as going out on the land with knowledge holders.
  - seek to understand how the Indigenous knowledge is related to the environmental effects of the project.
- Transparency must be applied in how Indigenous knowledge was considered and how it influenced the conclusions of the determination.

The obligation to not knowingly disclose confidential Indigenous knowledge without written consent under section 119 of the IAA does not apply to Indigenous knowledge provided to authorities conducting a determination under section 82. Before receiving confidential Indigenous knowledge, authorities should discuss with the Indigenous group how confidential Indigenous knowledge will be managed by the authority and the circumstances under which the authority may be legally required to disclose confidential Indigenous knowledge.

### 3. Community knowledge provided with respect to the project

Community knowledge refers to information held by community members or resource users—farmers, hunters, fishers and naturalists—who are familiar with the environment in a specific geographic area. Community knowledge is often developed through long-term association and interaction with the environment or a resource. Community knowledge can help inform the evaluation of environmental effects and the development of mitigation measures.

For example, anglers in a specific area may know where the best "fishing spots" are, and therefore may contribute to identifying potential fish habitat. Similarly, local naturalists' observations may help identify wildlife species that frequent the project area.

The Agency is developing procedural guidance with respect to the use of community knowledge. Although the guidance is focused on the impact assessment process for designated projects, it could be informative in other contexts. When completed, it will be available in the [Practitioner's Guide to Federal Impact Assessment under the \*Impact Assessment Act\*](#).

### 4. Comments received from the public under subsection 86(1)

Prior to making a determination, the authority must post a Notice of Intent on the [Registry](#) indicating the intention to make a determination and inviting input from the public. For more information about posting a Notice of Intent, please refer to [Step 2: Post Notice of Intent](#).

Guiding principles for public participation:

- Public participation will influence decision-making and participants will be able to see that their input was considered and how it influenced the determination.
- Public participation will be inclusive, transparent and open. All relevant documents and data will be made publically available, unless subject to valid exceptions such as ownership, security, privacy and confidentiality.
- Authorities must ensure that the general public can have a say prior to the authority making a determination under section 82 and 83. It is also important to ensure that the voices of those most affected by a project, or those with relevant expertise, are heard.



Agency guidance on public participation in the context of impact assessments for designated projects may also be helpful. See: [Public Participation in Impact Assessment](#).

**5. The mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.**

For the purposes of this guide, it is assumed that effective and established mitigation measures as described in [Step 3: Determine Required Level of Analysis](#) would also include the concept of technically and economically feasible.

**Technically feasible** means an action can be successfully implemented under the specific circumstances of the project and is either generally accepted, common, well documented or tested or, if relatively new, it has a high-estimated probability of successful implementation.

Examples of criteria to determine technical feasibility include:

- availability of energy sources;
- ability to implement in local climate;
- mode of operation;
- performance metrics;
- requirement for supporting infrastructure;
- inherent risks (e.g. safety);
- use of proven technology; and
- distance to main project site.

**Economically feasible** means that the costs associated with an action are not prohibitively high. In reviewing a proponent's views regarding the extent to which mitigation measures are economically feasible, the authority should consider, on a case-by-case basis and in the context of the particular project, different economic criteria.

Examples of economic criteria include:

- estimated costs (capital and operating);
- revenue;
- profit; and
- production forecasts.

The authority must be satisfied that the mitigation measures will be implemented. Authorities who make a determination on whether or not a project should be carried out on federal lands or outside Canada will, in most cases, issue a permit or authorization, and/or prepare some other form of agreement, to which mitigation measures can be linked. The proponent would have to implement mitigation measures in order not to contravene the terms of the authorization or agreement.

Where there is a potential for adverse impacts to the Aboriginal or treaty rights of Indigenous peoples, an authority might co-develop mutually acceptable, effective and established mitigation measures with the potentially impacted rights holders.

## Strategic Assessment of Climate Change

The Strategic Assessment of Climate Change (SACC) was published in its final form in 2020. It describes the climate change-related information requirements throughout the federal impact assessment process. The SACC will enable consistent, predictable, efficient and transparent considerations of climate change throughout federal impact assessments.

The SACC applies to designated projects under the IAA. The SACC also states that: “The principles and objectives underlying the SACC will be built into guidance for the review on non-designated project on federal lands and outside Canada under the IAA.” ECCC has developed a tool to provide guidance on the application of the SACC to the reviews of non-designated projects on federal lands and outside Canada, as referenced under section 82 and section 83 of the IAA. This will ensure that consistent consideration is given to climate change in the determination of adverse environmental effects for projects on federal lands and outside Canada, and tailor the application of the SACC to the potential impacts of the project. To request a copy of the tool, please contact the Agency at: [regulations-reglements@iaac-aeic.gc.ca](mailto:regulations-reglements@iaac-aeic.gc.ca).

When making a decision about whether the carrying out of a project is likely to cause significant adverse environmental effects, and subsequently when posting the Notice of Intent on the Registry, authorities should consider including information related to GHG emissions and carbon sinks of the project. This might include, for example, information on the project’s estimated GHG emissions and impacts on carbon sinks and any design measures and/or practices that will be taken to mitigate the project’s GHG emissions or impacts on carbon sinks. By including this information in the Notice of Intent the authority ensures that the public is provided with the information needed to meaningfully participate in the process. For more information about the SACC and the considerations stated above for inclusion in the Notice of Intent, please refer to the [SACC Web site](#) or email: [ec.escc-sacc.ec@canada.ca](mailto:ec.escc-sacc.ec@canada.ca).

### 4a. Complete a basic project Mitigation Measures form (MMF)

For authorities following this guidance document, a basic project Mitigation Measures form (MMF), or a similar form as implemented by individual authorities, should be completed for proposed projects classified as basic projects.

As projects falling into this category are generally those for which potential environmental effects are well understood and any required mitigation measures are effective and established, the focus of the MMF will be on:

- identifying any effective and established mitigation measures;
- recording and addressing any comments received from the public;
- considering any Indigenous knowledge received;

- identifying how mitigation measures relate to adverse impacts on Indigenous peoples and whether or not there are any residual impacts and/or impacts that are not addressed; and
- acting as a record of the determination of the significance of likely adverse environmental effects to demonstrate section 84 factors were considered and appropriate due diligence was undertaken.

## 4b. Complete a non-basic project Environmental Effects Evaluation form (EEE)

For authorities following this guidance document, a non-basic project Environmental Effects Evaluation form (EEE), or a similar form as implemented by individual authorities, should be completed for proposed projects which are classified as non-basic projects.

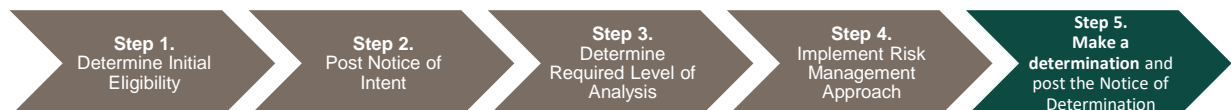
An EEE is designed to be a robust process for determining the likelihood of significant adverse environmental effects, and outlining required mitigation measures. The EEE includes sections relating to:

- the results of consultation and engagement and concerns raised;
- a checklist for identifying environmental effects;
- describing mitigation measures in relation to each environmental effect;
- considering any comments received from the public and any community knowledge received;
- considering any Indigenous knowledge received and if required, whether the duty to consult was satisfied; and
- providing a rationale for the determination, including a consideration of the factors set out in section 84.

Draft EEE documentation should be shared with potentially affected Indigenous groups to allow them to see the Crown's arguments as to the effective mitigation of potential impacts. Potentially affected Indigenous groups should be given an opportunity to inform the decision that would rely on the EEE.

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## Step 5: Make a determination and post the Notice of Determination



Alternative text: Step 5, which is to make a final decision and post the Notice of Determination, is highlighted within the broader suggested approach to determining a project's likelihood to cause significant adverse environmental effects.

Based on the results of Step 4, projects will be determined as either unlikely to cause significant adverse environmental effects or likely to cause significant adverse environmental effects.

## 5a. Unlikely to cause significant adverse environmental effects

The project has been deemed unlikely to cause significant adverse environmental effects and as such, the authority can carry out the project, exercise a power, perform a duty or function, or provide financial assistance that could permit or enable the project to proceed.

As outlined in section 4.2 of this guide, the authority must be satisfied that the mitigation measures will be implemented.

## 5b. Likely to cause significant adverse environmental effects

The project has been deemed likely to cause significant adverse environmental effects. The authority now has two options:

- the authority may choose not to make any decision or take any action that may permit or enable the project to be carried out; or
- the authority may refer the project to the GIC to determine whether the significant adverse environmental effects are justified in the circumstances. If the GIC determines that the effects are justified, the authority may proceed with the decision or action to permit or enable the project to be carried out (see section 90 of the IAA). All technically and economically feasible reasonable mitigation measures should be applied in these circumstances.

## 5c. Post Notice of Determination

Authorities must post their determination on the Registry no earlier than 30 days after posting the Notice of Intent. As outlined in the IAA, the Notice of Determination must also include information about any mitigation measures taken into account by authorities when making the determination (section 86(2)).

Authorities may also want to consider publishing summaries of what was heard from the public during the engagement period, along with the Notice of Determination. In the interest of transparency and continuous improvement, authorities may also want to consider including a formal response to the main themes that emerged.

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## Step 6: Follow-up on predictions and mitigation measures

Although the IAA does not require any specific follow-up programs in relation to projects on federal lands and lands outside Canada, authorities are strongly encouraged to follow up on predictions to check the accuracy of their assumptions and the effectiveness of mitigation measures. This is particularly important

where projects are not routine and where there is uncertainty about environmental effects. When making predictions about environmental effects or the effectiveness of mitigation measures, there is always a risk of error, unforeseen issues or changing circumstances. Therefore, consideration should be given to monitoring the potential effects and adopting mitigation measures as needed. Where Indigenous knowledge was received and where impacts on Aboriginal or treaty rights or impacts on Indigenous peoples were predicted, the authority should consider including the Indigenous communities in monitoring and follow-up.

It is up to individual authorities to develop or implement departmental or agency procedures.

# Appendix A: Definitions

## Terms and definitions

**Authority** is defined in section 81 of the IAA as a federal authority and any other body that is set out in Schedule 4 of IAA.

**Designated project** is defined in section 2 of the IAA as one or more physical activities that:

- (a) are carried out in Canada or on federal lands; and
- (b) are designated by regulations made under paragraph 109(b) or designated in an order made by the Minister under subsection 9(1).

It includes any physical activity that is incidental to those physical activities, but does not include a physical activity designated by regulations made under paragraph 112(1)(a.2).

**Environment** is defined in section 2 of the IAA as components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

**Environmental effects** are defined in section 81 of the IAA as changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions.

**Federal authority** is defined in section 2 of the IAA as:

- (a) a Minister of the Crown in right of Canada;
- (b) an agency of the Government of Canada or a parent Crown corporation, as defined in subsection 83(1) of the *Financial Administration Act*, or any other body established by or under an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs;
- (c) any department or departmental corporation that is set out in Schedule I, I.1 or II to the *Financial Administration Act*; and
- (d) any other body that is set out in Schedule 1.

It does not include:

- the Executive Council—or a minister, department, agency or body of the government—of Yukon, the Northwest Territories or Nunavut;
- a council of the band within the meaning of the *Indian Act*;
- Export Development Canada;
- the Canada Pension Plan Investment Board;
- a Crown corporation that is a wholly-owned subsidiary, as defined in subsection 83(1) of the *Financial Administration Act*;

- a harbour commission established under the *Harbour Commissions Act*; or
- a not-for-profit corporation that enters into an agreement under subsection 80(5) of the *Canada Marine Act*, that is not set out in Schedule 1.

**Federal lands** are defined in section 2 of the IAA as:

- (a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut;
- (b) the following lands and areas:
  - (i) the internal waters of Canada, in any area of the sea not within a province,
  - (ii) the territorial sea of Canada, in any area of the sea not within a province,
  - (iii) the exclusive economic zone of Canada, and
  - (iv) the continental shelf of Canada; and
- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands.

**Jurisdiction** is defined in section 2 of the IAA as:

- (a) a federal authority;
- (b) any agency or body that is established under an Act of Parliament and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (c) the government of a province;
- (d) any agency or body that is established under an Act of the legislature of a province and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (e) any body—including a co-management body—established under a land claim agreement referred to in section 35 of the *Constitution Act, 1982* and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (f) an Indigenous governing body that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
  - (i) under a land claim agreement referred to in section 35 of the *Constitution Act, 1982*, or
  - (ii) under an Act of Parliament other than this Act or under an Act of the legislature of a province, including a law that implements a self-government agreement;
- (g) an Indigenous governing body that has entered into an agreement or arrangement referred to in paragraph 114(1)(e);
- (h) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and
- (i) an international organization of states or any institution of such an organization

**Physical activity** can be understood as an activity in the life cycle of a project and includes construction, operation, expansion, decommissioning and abandonment.

**Physical work** can be understood as anything that has been or will be constructed (human-made) and has a fixed location. Examples include a bridge, building or pipeline. Natural water bodies, airplanes and ships are not physical works.

**Project** is defined by section 81 of IAA as:

- (a) a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project or a physical activity designated by regulations made under paragraph 112(1)(a.2); and
- (b) a physical activity that is designated under section 87 or that is part of a class of physical activities that is designated under that section.



# Appendix B: Projects outside Canada

## 1. What are some examples of projects outside Canada?

A federal authority (FA) may contribute funding to a project proposal such as a community development initiative. The FA may also be the proponent of a project proposal, for example, on embassy property.

## 2. What FAs will have responsibilities for projects outside Canada under the IAA?

Any FA that seeks to carry out a project or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, outside Canada. FAs that have an international mandate and have carried out environmental assessments or contributed funding to a project proposal in the past, under the former legislation, will likely still be carrying out or funding project proposals outside of Canada in the future under section 83 of the IAA.

## 3. If an FA is carrying out or providing financial assistance for a project outside of Canada, is there a requirement to conduct an impact assessment?

Projects outside Canada are not subject to an impact assessment as they are not included in the definition of “designated projects” under the IAA. However, a determination of whether or not the carrying out of a project is likely to cause significant adverse environmental effects would be required under section 83 of the IAA. In addition, the project would need to comply with local environmental laws and regulations of the jurisdiction outside of Canada where it would be carried out. Under local environmental laws, a requirement to assess the “environmental effects” of the project may also apply.

## 4. Are there timelines that FAs have to meet when carrying out a project outside Canada?

For projects outside Canada, the IAA requires a minimum 30 day period between the time an authority posts a notice of intention to make a determination and the posting of a notice of determination (section 86(1))

# Appendix C: Forms

# **Documentation relating to the *Designated Classes of Projects Order***

# Project Classification

# Basic Project Mitigation Measures

# **Non-Basic Project Environmental Effects Evaluation**