

Environmental Assessment and Saskatchewan's First Nations: A Resource Handbook

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i. About the Handbook

This handbook was developed to assist in building capacity and improving the overall understanding of environmental assessment (EA) within the First Nations communities of Saskatchewan. It was developed by the International Institute for Sustainable Development (IISD) under contract with the Prince Albert Model Forest (PAMF). The content is based on the inputs collected at the first meeting of the PAMF Aboriginal Caucus which was held on May 15, 2008, in Prince Albert, Saskatchewan. The training module is intended to be a training tool and community resource for First Nations interested in participating in EA.

ii. About the Aboriginal Caucus

The Aboriginal Caucus was created by the Board of the PAMF in an effort to bring all Aboriginal partners to a common table to share ideas, discuss concerns and formulate solutions. The development of the Aboriginal Caucus was made possible by PAGC funding through INAC Lands & Environment Assistance Program. The goal of the Caucus is to highlight First Nations issues, while seeking to engage First Nations members of the PAMF in a meaningful way. The Caucus is intended to address the need for ongoing and direct involvement with Aboriginal partners and also serve as the learning platform that will guide Aboriginal training, understanding and participation in the forest resource sector. This handbook is the first initiative of the PAMF Aboriginal Caucus.

iii. About the Prince Albert Model Forest

The PAMF is a non-profit partnership of forest users who are committed to enhancing the sustainability of Saskatchewan's forests through research, education and the equitable sharing of forest resources. The partnership is representative of industry, governments and First Nations. The PAMF is 367,000 ha of mixed-wood forest, located 70 kms north of Prince Albert, Saskatchewan, Canada.

The vision of the PAMF is to demonstrate "...the spirit of Sustainable Forest Management through the power of working together" (Prince Albert Model Forest 2005). The mission is "to work towards Sustainable Forest Management through the development and testing of new forest management tools, sharing of our successes, developing linkages, and expanding the partnership" (Prince Albert Model Forest 2005).

The partners of the PAMF are:

- Canadian Institute of Forestry
- Federation of Saskatchewan Indian Nations
- First Nation Island Forest Management Inc.
- Lac La Ronge Indian Band
- Montreal Lake Cree Nation
- Prince Albert Grand Council
- Prince Albert National Park
- Resort Village of Candle Lake
- Saskatchewan Environment
- Saskatchewan Forest Centre
- Saskatchewan Forestry Association
- Saskatchewan Research Council
- Weyerhaeuser

The goals of the PAMF partnership are:

- to ensure a sustainable and predictable supply of forest-based ecological, social and economic benefits through the management of forest ecosystems and people; and
- to raise awareness of and commitment to the concepts of sustainability, integrated resource management and ecosystem management among forest users, researchers and managers at the local, regional, national and international levels (Prince Albert Model Forest 2005).

Web site: <http://mfiqlx.sasktelwebhosting.com/home.html>

iv. About the International Institute for Sustainable Development

IISD is a Canadian-based not-for-profit organization with a diverse team of more than 150 people located in more than 30 countries. Through our dynamic portfolio of projects over the years, we have partnered with hundreds of organizations throughout the world. As a policy research institute dedicated to effective communication of our findings, we engage decision-makers in government, business, non-governmental organizations and other sectors in the development and implementation of policies that are simultaneously beneficial to the global economy, the global environment and to social well-being.

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List of Abbreviations

Canadian Environmental Assessment Agency	CEAA
Environmental Assessment	EA
Environmental Impact Assessment	EIA
Environmental Impact Statement	EIS
Saskatchewan Environmental Assessment Review Panel	SEARP
Statement of Concern	SoC
Supplementary Information Requests	SIRs
Environmental Assessment Branch	EAB
Project Specific Guidelines	PSGs
Terms of Reference	ToR
Proposed Terms of Reference	pToR
Final Terms of Reference	fToR
Project Disclosure Document	PDD
Notice of Application	NoA
Indigenous Knowledge	IK

Environmental Assessment

is the process to predict the impacts of a proposed project on the natural environment and human society before the project can be carried out.

1.0 What is Environmental Assessment?

Environmental Assessment (EA) is the process to predict the impacts of a proposed project on the natural environment and human society before the project can be carried out. The purpose of the EA is to avoid or minimize adverse environmental effects before they occur and incorporate social and environmental factors into decision making. The EA process examines both the direct and indirect social and environmental impacts of a proposed project.

When a proposed project has the potential to

impact First Nations people directly or indirectly, cultural impacts must also be considered in the EA. The following are examples of some of the common impacts examined in a typical assessment:

Environmental Impacts

- Land
- Water
- Air
- Biodiversity

Social Impacts

- Population
- Quality of life
- Health
- Infrastructure
- Employment and business opportunities

Cultural Impacts

- Treaty and Aboriginal Rights
- Indigenous knowledge
- Land use
- Lifestyles, language and customs

Direct Impact – A river diversion for the construction of a hydro power plant could directly result in the destruction of fish habitat causing a decline in fish population.

Indirect Impact – A decline in fish population could result in closure of an outfitting operation causing loss of jobs. Thus, the river diversion could indirectly cause the loss of jobs.

The functions of the EA are to identify the possible environmental effects; propose measures to mitigate adverse effects; and, predict whether there will be significant adverse environmental effects, even after the mitigation is implemented. By considering environmental effects and mitigation early in the project planning cycle, EA can yield many potential benefits, such as:

- ensuring that the likely environmental effects of a project are identified and avoided, minimized or mitigated at an early stage;
- minimized risk of environmental disasters;
- increased protection of the environment, socio-economic conditions, human health, traditional use of lands and resources;
- the sustainable use of natural resources;
- improved project design;
- reduced project costs and delays;
- increased government accountability; and
- an opportunity for public participation.

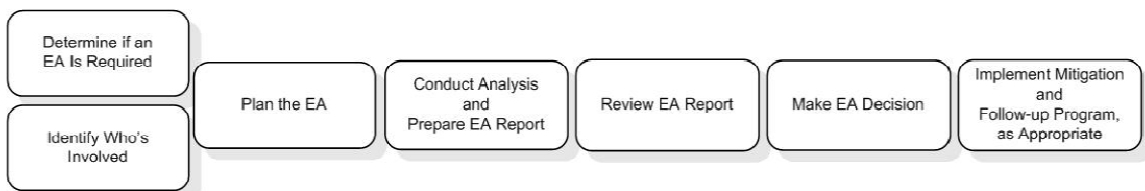
EA is an effective tool to assist in decision-making about resource development, but like most things in life, not all processes are perfect. The potential limitations of EA include:

- predictions made during an EA may rely on incomplete information that is subject to many unforeseen variables;
- there is often inadequate attention paid to determining if actual impacts correlate with predicted impacts (i.e., follow-up);
- there may be uncertainty associated with mitigation measures; and
- the significance of environmental effects cannot be predicted with 100% certainty and different groups may have different interpretations of significance.

2.0 What Are the Roles of Governments in Environmental Assessment?

There are six main phases common to both the provincial and federal EA processes (see Figure 1). In the first phase, there must be a determination of whether an EA is required and, if so, determination of who will be involved. The second phase requires project scoping and the development of Terms of Reference (ToR) or Project Specific Guidelines (PSGs) that are used to structure analysis and reporting. The next phase is the formal assessment of the project. The project Environmental Impact Assessment (EIA) – the methodology – is conducted and an Environmental Impact Statement (EIS) – the documentation – is prepared to identify and describe the potential impacts of the proposed project and the measures that will be taken to mitigate those effects. The fourth phase is the technical review of the EIS by the appropriate regulator or regulating authorities. The fifth phase is the decision on whether to approve the project. The final phase is follow-up. The extent and requirements of this phase vary depending on the project and the requirements of the regulator.

Figure 1. Main Phases in Environmental Assessment (CEAA 2003)



2.1 The Divisions of Power

The divisions of power between the federal and provincial governments were first formally outlined in the *British North America Act of 1867* (now *The Constitution Act, 1867*), which, with amendments, forms the Constitution of Canada.

In 1930, after much debate, the federal government transferred its control of natural resources to the Prairie Provinces under the Natural Resources Transfers Act. The Act was passed by Parliament granting Manitoba, Saskatchewan and Alberta jurisdiction over their Crown lands and natural resources, a right they had been denied when they entered into Confederation. The federal government did, however, retain jurisdiction in matters involving movement across provincial or international borders (air, land and water) and for matters of national importance such as uranium development. The federal government also

Natural Resource Transfer Act, 1930

<http://www.fnmr.gov.sk.ca/documents/lands/nrta1930.pdf>

inserted the clause to declare certain “works and undertakings” to be “for the general advantage of Canada” in granting the federal government the power to regulate them—Peace Order and Good Governance (POGG).

In 2005, Canada and Saskatchewan signed an agreement to cooperate on EA which helps to further clarify the roles of both of the parties in EA processes.

19 (1) *The Lead Party for the purposes of the cooperative environmental assessment will generally be determined as follows:*

- a) Canada will be the Lead Party for projects on federal lands where federal approvals apply;*
- b) Saskatchewan will be the Lead Party for projects on lands within its provincial boundary, not covered under clause 19(1)(a) of this Agreement where provincial approvals apply; and*
- c) If a project is located on lands under both federal and provincial jurisdiction, the Lead Party will be determined by mutual agreement of the Parties.*

Canada – Saskatchewan Agreement on Environmental Cooperation 2005

Study/Discussion Question 3

Provide five examples of projects that would require a provincial EA, and five that would require a federal EA?

2.2 The Duty to Consult

The roles for governments in EA specifically relating to First Nations interests have largely been defined by the courts. The duty to consult is a priority issue for First Nations in Canada. The duty arises from the Crown's obligations not to infringe on the Aboriginal and Treaty rights of Canada's First Nations people. Those rights are defined in Section 35 of the *Constitution Act*. The infringement of First Nations interests from an activity does not arise from a project itself, but may arise from the government's approval of the project pursuant to legislation and regulation. The following Supreme Court of Canada cases have helped to define the government's duty to consult.

The Constitution Act, 1982

Section 35 – Rights of the
Aboriginal Peoples of Canada

http://laws.justice.gc.ca/en/const/annex_e.html#l

- [Mikisew Cree First Nation v. Canada \(2005\)](#)
The Supreme Court of Canada made it clear that, while governments have the power under treaties to authorize land uses which infringe on treaty rights, the exercise of that power imposes on the governments a duty to consult where the taking up of land adversely affects those rights.
- [Haida Nation v. B.C. \(2004\)](#)
The Supreme Court of Canada made it clear that government, not industry, is obligated to negotiate with Aboriginals about land use—even when ownership of that land remains in question. As well, Aboriginals are entitled to provide input but they have no veto power. The Court emphasized that the consultation process requires the practice of good faith and reasonableness by all parties.
- [Delgamuukw v. British Columbia \(1997\)](#)
The Supreme Court of Canada made it clear that aboriginal title is a right to the land itself—not just the right to hunt, fish or gather—and that when dealing with Crown land, the government must consult with and may have to compensate First Nations whose rights are affected. Furthermore, Aboriginal title has the additional protection of being a constitutional right.
- [R. v. Sparrow \(1990\)](#)
The Supreme Court of Canada made it clear that Aboriginal rights under section 35(1) of the Constitution Act, 1982 are protected under the Constitution of Canada and cannot be

infringed without justification on account of the government's fiduciary duty to the Aboriginal peoples of Canada.

In May 2006, the Government of Saskatchewan released *The Government of Saskatchewan Guidelines for Consultation with First Nations and Métis People: A Guide for Decision Makers*. Shortly after it was released the document was placed under review. The new January 2008 document entitled *Government of Saskatchewan Interim Guide for Consultation with First Nations and Métis People* has been released in the interim to guide government employees and decision-makers on Aboriginal consultation. The box to the right contains a list of the elements that the government of Saskatchewan is committed to meeting in their consultations with First Nations and Métis people about projects that have the potential to impact Aboriginal or Treaty Rights.

The Government of Saskatchewan Guidelines for Consultation with First Nations and Métis People: A Guide for Decision Makers
<http://www.pdac.ca/pdac/advocacy/aboriginal-affairs/sask-guidelines-for-consultation.pdf>

Government of Saskatchewan Interim Guide for Consultation with First Nations and Métis People
<http://www.fnmr.gov.sk.ca/documents/policy/consultguide.pdf>

Government of Saskatchewan Interim Guide for Consultation with First Nations and Métis people

For the purposes of this policy, consultation may be summarized as consisting of all of the following elements:

1. **Notification** to the community being consulted, in an appropriate manner and in sufficient detail, when the government is contemplating conduct that could adversely affect Treaty or Aboriginal rights and is proposing to consult on that matter.
2. A reasonable period of **time to allow the community being consulted to prepare its views** and present those views to the government.
3. A **presentation** by, and a discussion with, the community being consulted respecting its views on the issue under consideration.
4. **Full and fair consideration** by the government of the views presented to it.
5. **Reporting back** to the community being consulted of the direction chosen by government, the use made of the information provided and the efforts undertaken to avoid or minimize any adverse affect on Treaty or Aboriginal rights.

Source: Government of Saskatchewan, January 2008.

3.0 What Are the Roles of the Proponent in Environmental Assessment?

3.1 Proponent's Role

Legislation requires that the proponent receive approval before proceeding with a project that is likely to have significant environmental implications. In order to receive approval the proponent must engage in the EA process and demonstrate in the end that the project is in the public's interest. The EA process generally requires the proponent to do the following:

- develop project proposal;
- invite public participation;
- conduct the EIA;
- write the EIS;
- address SIRs; and
- proceed with required licences, permits and environmental protection measures.

3.1.1 Project Proposal

The proponent must submit a project application for their proposed project from which the regulator will make a decision on whether an EIA is required.

Table 1. Sample Outline of a Detailed Project Description

I. GENERAL INFORMATION
<p>General</p> <ul style="list-style-type: none">▪ The name and nature of the project.▪ The proposed location of the project.▪ A copy of the distribution list of the parties who received the project description.▪ Information on consultations already held on the project with federal authorities, provincial or municipal governments, Aboriginal peoples, the public, etc.▪ Information on other EA regimes to which the project has been or could be subjected (i.e., provincial, territorial, land claim EA processes, etc.)
<p>Contacts</p> <ul style="list-style-type: none">▪ The name of the proponent.▪ The name of any co-proponent, such as a federal government department or agency.

- The name and coordinates (address, telephone, fax, e-mail) of two contact(s) from whom federal authorities can obtain more information.

Federal Involvement

- Information identifying any federal government department or agency that is, or may be, providing financial support to the project.
- Ownership of the land to be used or required by the project and, in particular, whether any federal land is involved.

Authorizations Required

- Information relating to federal permits, licences and authorizations that the proponent believes must be obtained for the project to proceed.
- Information on applicable provincial and municipal permits.

II. PROJECT INFORMATION

Project Components/Structures

- The main components of the project, including any permanent and temporary structures, associated infrastructure, associated construction and type of equipment used.
- production capacity and the size (e.g., length of road, acreage used) of the main components of the project.

Project Activities

- The construction, operation and decommissioning phases, and the timing and scheduling of each phase.
- Schedule (e.g., time of year, frequency and duration).
- Site plans or sketches with project location, features, project activities described on a map.
- Engineering design details (e.g., temporary diversion works, dam).
- Identification of requirements for off-site land use.

Resource/Material Requirements

- The production process(es) to be used in the project.
- The project's raw materials, energy and water requirements and sources, and associated infrastructure (e.g., access roads, pipelines).
- Excavation requirements and quantity of fill to be added or removed.
- Identification of any toxic or hazardous materials to be used or by-products to be generated by

the project.

Waste Disposal

- The nature of any solid, liquid or gaseous wastes likely to be generated by the project, and of plans to manage these wastes.
- Disposal procedures for any toxic or hazardous materials to be used or any by-products to be generated by the project.

III. PROJECT SITE INFORMATION

Project Location

- The location of the project, including a legal land description or geographical coordinates (latitude/longitude or the Universal Transverse Mercator system).
- A map indicating the location of the project including the project site, the site layout of the main components of the project, and the environmental features that could be affected by the project.

Environmental Features

- A summary of the physical and biological components in the area likely to be affected by the project (e.g., terrain, water, air, vegetation, fish and wildlife including migratory birds and species listed under the *Species at Risk Act*).
- Information on whether the project may affect fish or fish habitat, and navigable waters (see section 4) or any unique or special resources not already identified.

Land Use

- Current and past land use(s) (e.g., agricultural, recreational, industrial) at the project site and in the adjacent area.
- Potential contamination of the site from past land use.
- Proximity of the project to Indian reserves and lands used currently or traditionally by Aboriginal peoples.
- Proximity to important or designated environmental or cultural sites, (e.g., national parks, heritage sites and other protected areas).
- Proximity to residential and other urban areas.

IV. REQUIREMENTS RELATED TO FISH, FISH HABITAT AND NAVIGABLE WATERS

The following information should also be provided for components of the project to be undertaken or

activities that will occur in a water body or within 30 metres of a water body.

Environmental Features

- Description of freshwater or marine environmental features in the area (e.g., water bodies including the name of the watercourse, coastal areas, etc.).
- Proximity to water bodies (both freshwater and marine).
- Physical characteristics of the waterway (e.g., length, width, depth, seasonal flow and fluctuations).
- Information on freshwater and marine fish and fish habitat (e.g., fish presence and species)
- Qualitative and quantitative description of the fish habitat.
- Information on natural site features and characteristics (e.g., wetlands).
- Photos or video(s) of the site.

Use of Waterway

- Existing use of the waterway (e.g., kind, size and frequency of vessels, description of existing obstructions in the waterway).
- Information on commercial, recreational or Aboriginal/subsistence fisheries.

3.1.2 Public Participation

The following text from the Canadian Council of Ministers of the Environment *SUB-Agreement on Environmental Assessment* section 4.3.0 sets out the acceptable guidelines for public participation:

4.3.0 The Parties involved in an assessment will facilitate public participation where consistent with their policies and legislation, which may include access to information, technical expertise, and participation at public meetings. Participant funding will also be made available by any Party which requires participant funding by law or policy.

4.3.1 The provisions for public participation in environmental assessments under 4.2.0 shall include the following notifications and opportunities:

- a) *timely public disclosure of the project proposal and, where provided for in legislation or agreed to by the Parties involved in an assessment, an opportunity for members of the public to comment on a proposed Terms of Reference for the assessment;*

- b) an opportunity for members of the public to participate in public consultations required by a Terms of Reference, as part of the preparation of an environmental assessment report;*
- c) public notification of the availability of the environmental assessment report and an opportunity for members of the public to comment on the completeness of environmental information;*
- d) where discretion is available to the Parties involved in an assessment under their laws on the need for a public hearing, the public will be notified and given the opportunity to comment on the need for a public hearing; and*
- e) if a public hearing is held, an opportunity for members of the public to participate in the hearing.*

3.1.3 First Nations Consultation

The Crown has the responsibility, not third parties, to initiate consultation and to discharge the duty to consult to the required degree. In practice, however, it is common for the Crown to delegate some of the responsibility to fulfill the duty to resource developers, or to require resource developers to consult as part of the regulatory process. As the project proponent is often the best source of information, First Nations and the Crown often prefer the proponent to be involved in the consultation process.

Proponents are well served by participating in the process because it is the proponent's project that is at risk if the Crown's consultation proves inadequate. Thus, a proponent should develop a reasonable and effective plan of action to assess and address aboriginal interests in relation to its proposed project. A proponent should also attempt to work closely with the Crown and provide the Crown with as much information as possible. The following steps are generally taken by developers:

1. identify Aboriginal and Treaty Rights;
2. identify potential infringements;
3. take action to avoid or mitigate infringements; and
4. thoroughly document the consultation process.

Study/Discussion Question 5

What do you feel are the necessary components of adequate consultation for the proponent of a proposed project? What expectations do you have?

3.1.4 Environmental Impact Assessment

An EIA is the methodology for EA. The EIA is conducted by the proponent according to the ToR issued by the regulator. The common components of the ToR include but are not limited to, the following information elements:

- description of the proposed project;
- description of the purpose of the proposed project;
- summary of applicable laws, regulations, policies, management plans, approvals, national and international environmental agreements;
- description of the existing environment, related to the proposed project and the significance of potential environmental effects of the proposed project;

- identification and evaluation of the direct, indirect, cumulative and transboundary environmental effects of the proposed project, including risk of accidents and malfunctions;
- identification and evaluation of alternative means of carrying out the proposed project;
- public sector project—identification and evaluation of alternatives to the proposed project including not proceeding with the proposed project;
- description of public consultations, the results of those consultations, and the effect of that public input on project planning and on the assessment report;
- other information identified by processes used to solicit concerns from governments or the public about the environmental effects of the proposed project;
- identification and evaluation of measures for mitigation and monitoring of impacts, and those impacts which cannot be mitigated; and
- capacity of renewable resources that are likely to be affected by the proposed project to meet the needs of the present and those of the future.

The degree to which elements are emphasized or the detail required in an assessment will vary among classes of projects and for individual assessments.

3.1.5 Environmental Impact Statement

An EIS is the documentation of the proponent's environmental conclusions and commitments arising from the project EIA. Since the EIS is public document, the executive summary must be written so that non-specialists can understand it. An EIS includes the following information:

- executive summary;
- statement of project objectives;
- identification and description of project alternatives;
- rationale for selection of the preferred option;
- detailed project description of the preferred option;
- description of the existing environment;
- description and evaluation of the predicted impacts;
- identification of, and commitment to mitigation and enhancement measures and appropriate post-Environmental Impact Assessment (EIA) studies (Compliance Schedule); and
- documentation of the public participation program.

3.1.6 Supplementary Information Requests

SIRs arise out of technical reviews of the project EIS and EIA. The requests are generally made by government and other stakeholders on points for clarification on a particular aspect or aspects of the proponents EIS. Both the regulator and the SoC filers have the opportunity to engage in SIRS when providing their comments on the EIS, EIA and technical review.

3.1.7 Approvals, Licences and Permits

In Saskatchewan, Minister's approval of the project is required before the issuance of any licences or permits. Approvals can contain conditions which require the proponent to:

- monitor activity of the project;
- measure performance;
- validate predictions contained in the EIS;
- report actual performance versus predictions; and
- mitigate where required.

Licences and permits are obtained through application to the responsible authority and requirements differ depending on the requirements of the project.

4.0 What is the Role for First Nations Communities in Environmental Assessment?

The role of First Nations is that of advocacy on behalf of their communities and the generations that are yet to come. The current structures of the EA process do not provide for consistent guidelines for notification of First Nations that may be affected by proposed developments on their lands or adjoining lands. As advocates, First Nations will need to organize themselves for effective action by appointing staff whose job it is to monitor development activities on their community's lands and adjoining lands as well as monitoring any changes that could signal the need for investigation of violations of environmental stewardship.

A necessary support for this effective action is the mapping, data collection and inventory of community-held knowledge about the community's lands, including use, occupancy and resources. This knowledge may require developing technical expertise to properly gather and compile this information and may even require the hiring of outside help to assist with these activities.

Finally, information that has been collected must be treated with utmost respect in the interests of appreciation of those who have willingly shared information and in the interests of preserving and accessing this information for immediate and future use.

It is important that First Nations engage in an exhaustive and inclusive consultation process with their respective communities and commit the time and resources to carry out this process. This community information is essential to setting priorities and protocols for making decisions about proposed development projects and deciding whether or not to participate in an EA process.

The information gathered in the community consultation process is crucial to producing a strong, cohesive and well-informed position around the EA process. Information from the community consultation, along with technical and legal expertise will be used to compile the community's submissions at the start of the EA process. EA submissions require time, monitoring and diligence to respond to requests for feedback and information.

The nature and strength of the position put forth in the EA process is significant to achieving the

Investment in thorough community consultation will assist with a well-informed EA position that will inevitably determine the strength and nature of revenue sharing and impact benefit agreements negotiated with government and industry.

outcomes desired by the community, whether that be to halt the proposed project or to give consent to the project and enter into revenue-sharing and benefit agreements with industry and/or government. That is, if shortcuts are taken in the community consultation process and little effort is put into position papers (SoC, etc.), communities cannot expect to have much success or satisfaction with reaching agreements for benefits and revenue-sharing.

4.1 Role of First Nations in Crown Consultation Process

The courts have repeatedly recognized that there is a corresponding obligation on Aboriginal groups claiming Aboriginal or Treaty Rights to identify their rights, to act in good faith, to participate in the consultation process and to try to reach a mutually satisfactory solution.

While the government must advise Aboriginal communities of the proposed project, each Aboriginal community has the obligation to provide the evidence necessary to assess the nature of the right affected. This obligation includes outlining any claims with clarity, as well as focusing on the scope and nature of the Aboriginal rights being asserted and on the alleged infringements.

Further, Aboriginal peoples have an obligation not to frustrate attempts by the Crown to consult with them. The group cannot refuse to be consulted or remain silent during consultation to preserve the right to complain about unaddressed concerns at a later stage. As well, Aboriginal groups who start the EA process must continue to see it through to the finish in order to preserve the right to have any grievances addressed that are not mitigated during the EA process.

4.2 Where Are First Nations Involved?

First Nations need to become involved at the early onset of any EA process that will be directed at their community lands. The EA process may be one that involves only Saskatchewan or may involve Canada, separately or jointly with the province.

Early involvement by First Nations means developing the skills and capacity to monitor development activity on a province-wide basis, while paying particular attention to one's own regional area. However, the best way to be alerted to possible types of development activity is to be aware of what is happening in other areas, including that of Manitoba and Alberta as resource development occurs across these provincial boundaries.

4.3 What Capacity is Needed?

Staff will need to be hired and trained in each First Nation in order to monitor development activity as well as environmental concerns. Currently land managers or councillors take on these roles but are not able to give these tasks the due diligence they require, given the demanding roles that they already have to fulfill.

Staff will need to acquire skills in seeking information regarding current development proposals, analyzing development proposals, understanding the EA processes and requirements for various types of development activities, writing statements of concern, communication skills in working with existing community staff, community members, proponents and government and recognizing when technical and legal assistance must be hired.

4.3.1 Storage of Information

The collection of community information, scientific data and maps is a time-consuming and costly undertaking. Some information that is collected may not be able to be collected again at a future date if records are lost or destroyed due to the passing of Elders and other individuals who hold that information. As well, the costs of hiring outside assistance uses up resources that may not be available again to repeat the collection of information at a later date. Thus, it is good to invest in planning for a balanced approach to storing information for its preservation and access to the data.

Organization and cataloguing of the material is crucial to storing information so that communities have an inventory of the material in their possession and know which materials have been loaned out and where they are located.

The Saskatchewan Council for Archives and Archivists has a service available to assist Aboriginal communities with setting up a community archives to store and organize materials. To access this service, each community would be required to pay an annual membership fee of \$45.00 to \$50.00, depending upon whether staff are volunteers or paid.

This membership would provide an on-site visit from an Archives Advisor and access to federal grant applications to assist with setting-up an archive in the community, which would be under the community's control. For more information, please contact Cary Issak in Regina at (306) 780-9414 or at scaa@sasktel.net.

5.0 What Opportunities Are There for First Nations to Participate in Environmental Assessment?

Effective participation requires diligence and planning. Each First Nation will need to set goals and objectives around proposed development projects, taking into consideration sustainability for community members and protection for community lands.

It will be necessary to gain a solid understanding of the proposed project and anticipate the positive and negative effects that will have immediate effects as well as future impacts. Determining these effects will be easier with assistance from community members. A visioning process that engages the community will help to set goals and objectives; these may need to be revisited and revised as more knowledge is gained about the proposed development project.

It is important to assess the proposed project from the perspective of each First Nation as it is at this community level that the decision to participate in an Environmental Assessment process is made. The context for making this decision will likely include the goals and objectives set by the community in its visioning process; the anticipated effect on the environment; and the risk to Aboriginal and Treaty Rights, culture and future generations.

A First Nation considering a proposal may anticipate different outcomes than government or the industry proponent. It is important to gain respect for the strength of the community's decision as well as the expertise and knowledge that inform the First Nation's decision, even in the face of indifference or pressure to set aside concerns.

It is equally important for First Nations communities to recognize when they need to call on legal and technical expertise to assist in getting through the EA process. Legal expertise is needed when negotiating any contract or agreement with proponents or government, hiring researchers and technical experts and when preparing for hearings or court action. Technical expertise can assist when communities do not have expertise or time to evaluate technical aspects of an EA or a project proposal; the proposal involves new or unproven technology or when the community is lacking information it needs to address concerns.

Engage the proponent in a relationship by encouraging a community meeting as soon as possible after the submission of the proposal to make the proponent aware of the community's intent to participate in the EA process; to access written and oral information about the proposed project and to request funding for land use and occupancy studies, Indigenous knowledge studies and assessment of environmental impacts on lands and resources. Ask the

proponent to hold community information sessions and make site visits to become familiar with the community and the lands being considered for the proposed development.

5.1 Opportunities for Input

Public participation is an important part of the EA process. Public interests are a factor very early on in the process. One of the criteria used to determine whether or not an Impact Assessment is required for a particular project is, in fact, whether the project is likely to cause widespread public concern because of potential environmental changes. This generally means that a developer is asked to engage the local community, at least, in early discussions about their proposed project as they prepare their project proposal. There are a number of opportunities for the public, including First Nations people, to have input into EA. Those opportunities include:

- providing comments on the pToR;
- submission of SoC;
- providing comments on the EIS and EAB Review of EIS; and
- engaging in SIRs.

5.1.1 Terms of Reference

A project ToR, also referred to as project specific guidelines, is a document produced by the regulator outlining the process and information requirements necessary to satisfy the legislated requirements for an environment impact assessment. The pToR is a public document and, as such, the public has the right to comment on it. First Nations communities can comment on the pToR to ensure that their interests and concerns are examined in the EIA.

For example if the pToR made no mention of the incorporation of Indigenous Knowledge (IK) when determining baseline conditions, a First Nations community could raise that point in their comments and provide explanation on how IK must be examined in order to establish accurate baseline conditions.

5.1.2 Environmental Impact Statement and Saskatchewan Environmental Assessment Branch Technical Review

With the completion of the EIA (the methodology), the proponent must submit an EIS (the written report) for review by the Saskatchewan EAB. The EAB may also call upon the SEARP to assist in the review. SEARP is standing panel of representatives from provincial ministries and agencies with environmental and socio-economic interests or responsibilities. With the completion of the technical review, both the EIS and the review are released for public comment for a specified period of time. Typically for EIS and technical review, a period of 30 to 60 days is given to prepare comments.

5.1.3 Statement of Concern

When the NoA for a proposed project is released along with the EIS and EIA, there is a call for objections on the proposed project during a specified period of time. Any person(s) who will be directly affected by the proposed project must submit a written statement of concern outlining the reasons they are objecting the project to the Regulator. The SoC is usually submitted with a written review of the EIS and EIA.

Saskatchewan Environmental Assessment Review Panel (SEARP) Ministries and agencies

- Advanced Education, Employment and Labour
- Agriculture
- Energy and Resources
- Enterprise and Innovation
- Environment
- Finance
- First Nations and Métis Relations
- Health
- Highways and Infrastructure
- Municipal Affairs
- Saskatchewan Water Corporation
- Saskatchewan Watershed Authority
- Social Services
- Tourism, Parks, Culture and Sport

5.1.4 Supplemental Information Requests – Responses

The proponent is required to respond to all questions and request for additional information or clarification of explanation arising from the review of the EIS. In the instance that the SIR responses fail to address the question(s) further responses or meetings to discuss may be required, and/or the parties may agree to disagree on certain issues.

5.1.5 Other Opportunities for Input

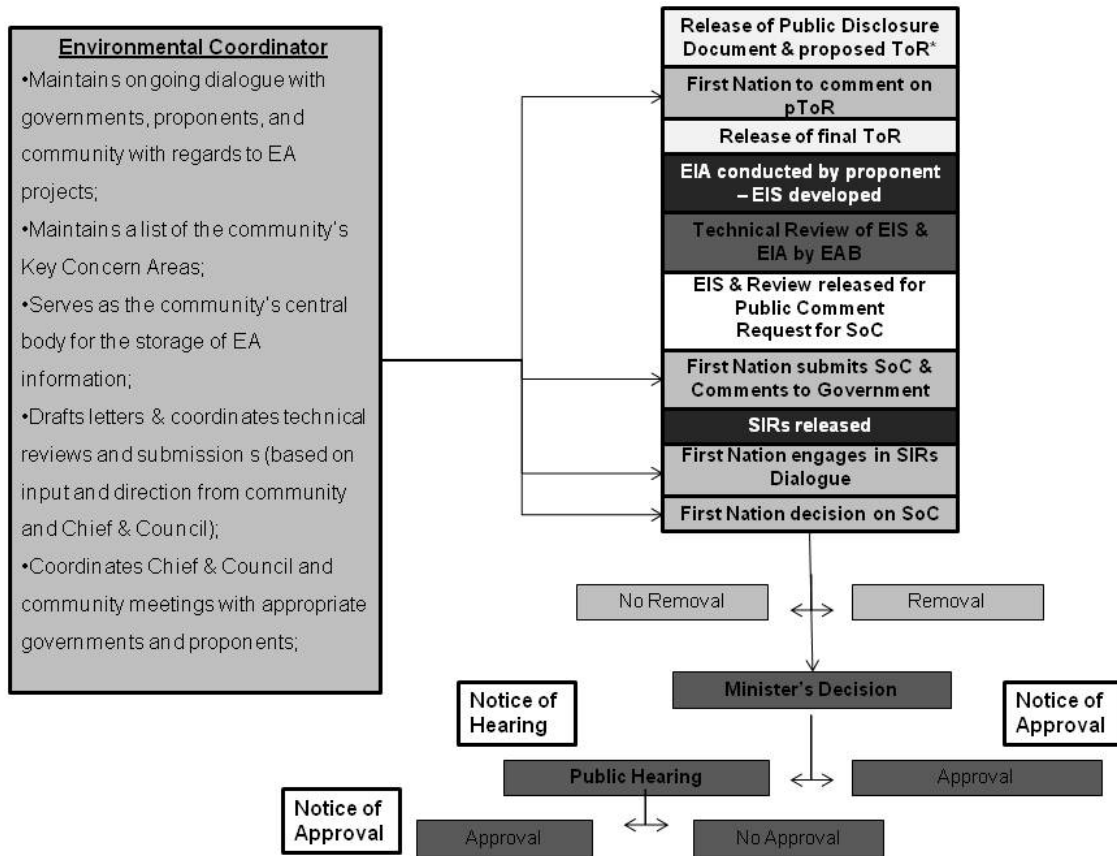
In many cases, there are also other non-legislated opportunities in which communities can make a request to be involved. Over the past five years, First Nations in Northern Alberta have started to become engaged with government and industry by having input into:

- project approval conditions;
- licensing approvals;
- approval Renewals;
- monitoring and compliance reports; and
- reclamation and closure plans.

These non-legislated opportunities are evidence of what can result from relationship building efforts with governments and developers. Building relationships does not mean that both parties agree on everything, it just means that both are willing to listen to each other and maintain an ongoing dialogue. An ongoing dialogue is beneficial to First Nations communities, as it facilitates advanced notice of new project filings, amendments to existing projects, upcoming renewals, etc. to help First Nations understand what will be coming and enable communities to engage in proactive planning.

Figure 2 provides an illustration of all the opportunities for First Nations to participate in EA. The figure also identifies the need for capacity and the roles that an envisioned *Environmental Coordinator* would need to play in order to be engaged in the process and protect the interests of the community.

Figure 2. First Nations Environmental Assessment Participation Process



The white boxes represent the issuance of public notices. The light grey boxes are opportunities for First Nations to have input into the process. The black boxes illustrate the proponent's release of project documents. The dark grey boxes are the points at which government releases documents and/or decisions on the proposed project.

6.0 What are the Governments' Environmental Assessment Processes?

As noted in section 2, the roles of both the federal and provincial governments with regards to EA differ based on legislation and jurisdiction. This section provides an overview of the individual roles governments according to their separate legislation. The section also looks at the joint assessment roles that may be triggered where regulations and/or jurisdictions can overlap.

Saskatchewan Environmental Assessment Act (1980. Chapter E-10.1)

Legal basis for the provincial
environmental assessment

www.qp.gov.sk.ca/documents/English/Statutes/Statutes/E10-1.pdf

6.1 Saskatchewan Environmental Assessment

In 1976, the Province of Saskatchewan introduced a provincial EA process, *The Environmental Assessment Act*. The Act was formally received in 1980 making it the legislative basis for provincial EA and the primary decision-making process for development planning in the province. The purpose of the provincial EA is to ensure that development proceeds with adequate biophysical, social, cultural and economic safeguards and in a manner that is understood by and broadly acceptable to the residents of Saskatchewan. A provincial EA is mandatory when proposed development projects, operations or activities trigger any of the following:

- impacts on any unique, rare or endangered feature of the environment;
- provincial resource use conflicts;
- unregulated releases of pollutants or by-products;
- widespread public concern because of environmental changes;
- impacts of new resource-use technology; and
- significant environmental impacts from this or associated projects (Government of Saskatchewan 2007).

The Act assigns power to the provincial Minister of the Environment and EA coordination is managed through the EAB. Technical support for the EAB consists of a standing panel of representatives from provincial ministries and agencies –SEARP.

Two EA process diagrams follow this sub-section. Figure 1 (source: Saskatchewan Environmental Assessment) is a simplified flowchart which looks at the main phases of the

Environmental Assessment process in Saskatchewan. Figure 2 (source: Saskatchewan Environmental Assessment) is more descriptive and illustrates specific stages, roles, timelines and routes a proposed project may undergo.

Figure 3. The Saskatchewan Environmental Assessment Process – Simplified

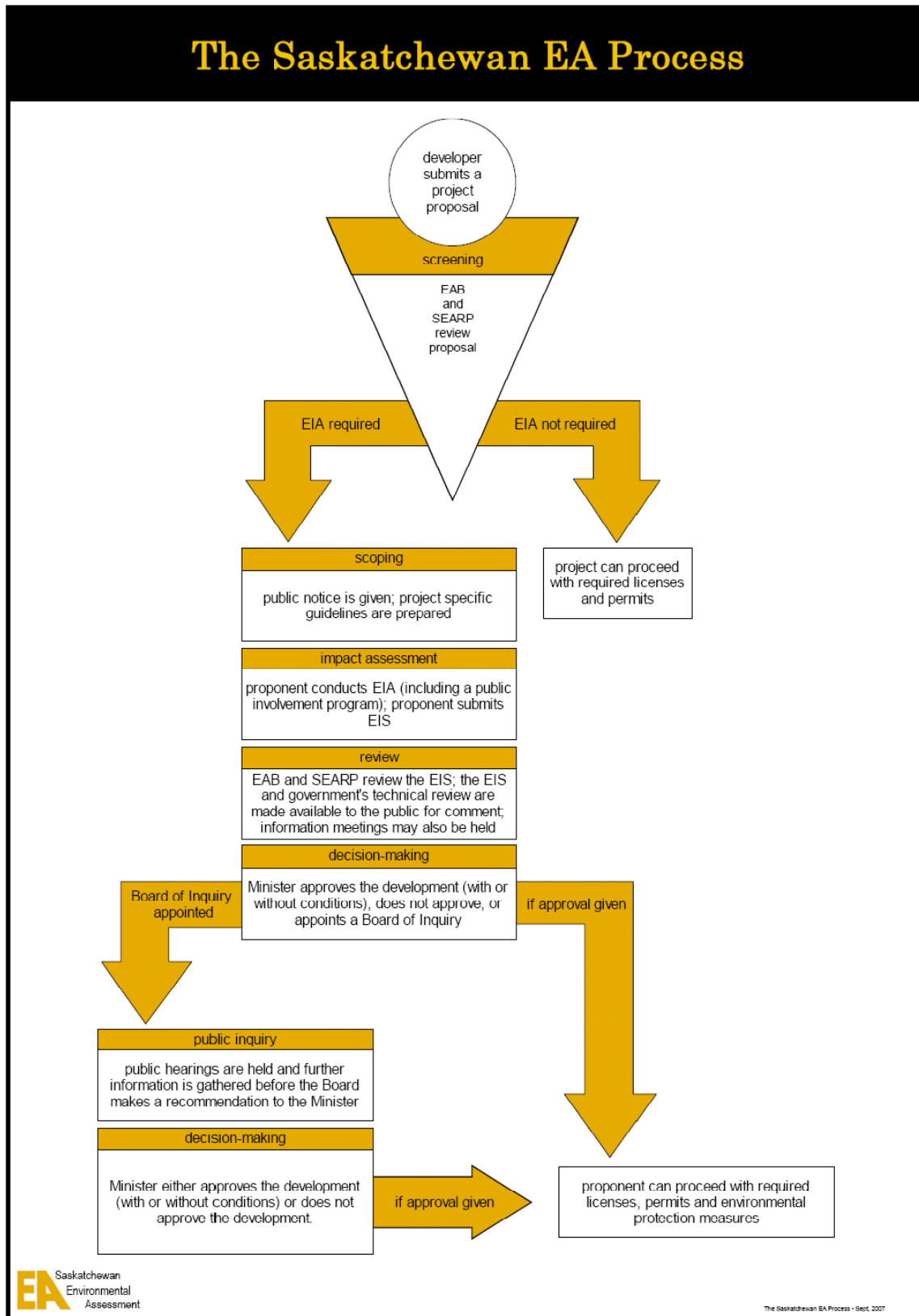
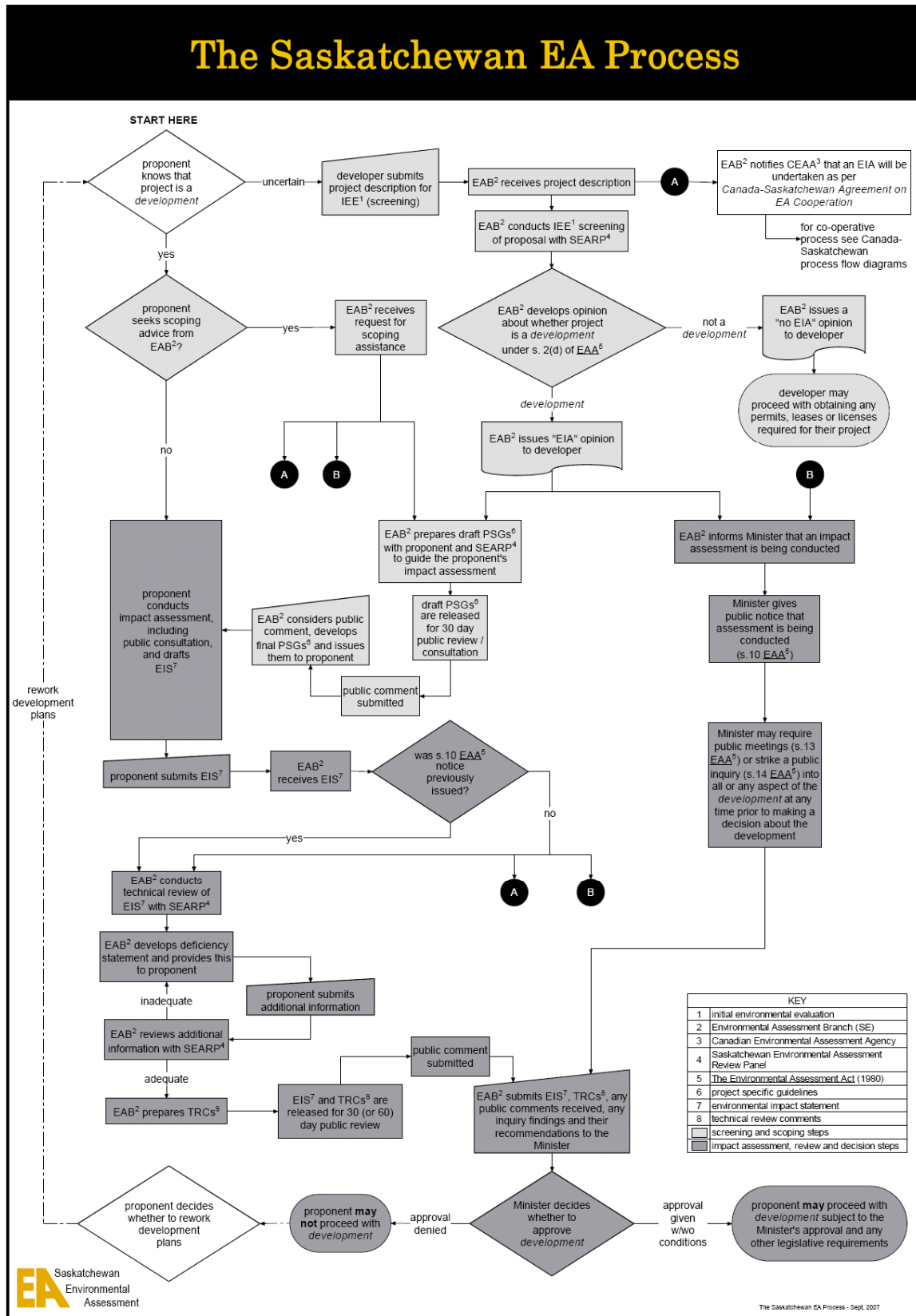


Figure 4. The Saskatchewan Environmental Assessment Process



6.2 Federal Environmental Assessment Process

The *Canadian Environmental Assessment Act* is the legislative basis for the federal practice of EA. The Act came into force in 1995 making the Minister of the Environment responsible for the administration of the Act. The Canadian Environmental Assessment Act applies to the federal government where there are specific federal decisions or approvals that must be made or granted in support of a proposed project.

Federal Lands

Refers to ...*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*

- a. *the following lands and areas, namely,*
 - I. *the internal waters of Canada,*
 - II. *the territorial sea of Canada,*
 - III. *the exclusive economic zone of Canada, and*
 - IV. *the continental shelf of Canada, and*
- b. *reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and are subject to the Indian Act, and all waters on and airspace above those reserves or lands.*

Environmental Assessment Act (1980. Chapter E-10.1)

Legal basis for Saskatchewan's provincial Environmental Assessment process

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/E10-1.pdf>

The purpose of the Act is to:

- ensure that the environmental effects of projects are reviewed in a careful and precautionary manner before federal authorities take action in connection with them so that projects do not cause significant adverse environmental effects;
- encourage federal authorities to take actions that promote sustainable development;
- promote cooperation and coordinated action between federal and provincial governments on EA;
- promote communication and coordination between federal authorities and Aboriginal peoples;
- ensure that development in Canada or on federal lands does not cause significant adverse environmental effects in areas surrounding the project (including other countries); and,
- ensure that there is an opportunity for public participation in the EA.

When the federal authority exercises one or more of the following duties, powers or functions in relation to a project the Act is triggered:

- proposes a project as its proponent;
- grants money or other financial assistance to the proponent for the purpose of enabling a project to be carried out;
- grants an interest in land to enable a project to be carried out (i.e., sells, leases, or otherwise transfers control of land); or,
- exercises a regulatory duty in relation to a project.

The federal government has a role to exercise regulatory duty with regards to the following:

- *Fisheries Act* – Authorization is required for the harmful alteration, disruption or destruction of fish habitat.
- *Navigable Waters Protection Act* – Projects potentially affecting navigability through the construction or alteration of works on, over, under, through or across a navigable waterway.
- *Canadian Transportation Act* – May apply to certain projects where a rail line crossing or relocation is contemplated.
- *Canadian Environmental Assessment Act* – where federal money may be provided
- *Indian Act & Natural Resources Act* – projects that are located on or require access through federal lands such as national parks, First Nations reserves or national defence bases.

The Act identifies four different types of assessments that may be required for the review of a proposed project. Each of the four types are explained in the paragraphs that follow.

1. Screenings are conducted for projects where the environmental effects are well understood and mitigation measures to prevent or minimize effects are well known and reliable. The Majority of EAs conducted under the Act are screening level EAs (Canadian Environmental Assessment Agency 2007). Projects undergoing a screening are generally relatively simple and straightforward. An example of projects that might undergo a screening would be construction of a new bridge or installation of a culvert. Screenings are carried out by a wide variety of officials across the country (e.g., Department of Fisheries and Oceans, Parks Canada, Coast Guard) and for a wide variety of projects. Therefore, there is some variation in the way they are done.

Examples include: agricultural permits, mineral exploration and small industrial projects.

2. Comprehensive Studies are done for projects likely to result in significant adverse environmental effects. The Comprehensive Study List, established by regulation, is intended to

deal with projects that are large scale, complex and environmentally sensitive and frequently generate significant concern for First Nations and other communities. Examples of proposed projects on the Comprehensive Study List include:

- large mining projects;
- large industrial plants such as pulp and paper mills;
- major electrical generation projects;
- large oil and gas developments; and
- major pipelines.

3. Mediations are a voluntary process of negotiation, where an impartial mediator helps interested parties resolve their differences. Under the Act, the Minister of the Environment can appoint a mediator if the environmental effects of a project are uncertain or potentially significant—or if First Nations or public concern warrants it. The minister will consult with the responsible authority and the parties to determine if mediation is a suitable course of action. Mediation can be used independently or in combination with panel reviews to address specific issues. There are no examples for mediations as consensus, in most cases, as consensus amongst all parties is often not possible.

4. Panel Reviews are conducted by an impartial panel of experts. A panel review can only be established by the Minister of the Environment. The panel solicits input from a wide variety of groups and individuals and involves many opportunities for public input. A panel review includes public hearings where the proponent, government regulators, First Nations, the public and other interested parties can present their evidence, concerns and information. The Minister of the Environment may refer a project to a review panel when: *“...it is uncertain whether the project is likely to cause significant adverse environmental effects; or the project is likely to cause significant adverse environmental effects and it is uncertain whether these effects are justified in the circumstances; or public concerns warrant it (CEAA 2003).”*

Examples include: MacKenzie Gas Pipeline project.

6.3 Joint Review

A joint review may occur when a proposed project triggers an EA under more than one regulatory jurisdiction. When a project requires a decision from the federal government and another level of government, they may choose to conduct the assessment through a joint review panel to save time and money rather than conducting two separate EA (Canadian Environmental Assessment Agency 2007).

The most common type of joint review in Saskatchewan is the federal-provincial review. A federal-provincial review occurs when the proposed project triggers both the Saskatchewan Environmental Assessment Act and the Canadian Environmental Assessment Act. The joint cooperation of both governments is enshrined in the Canada-Saskatchewan Agreement on Environmental Assessment Cooperation, amended and signed in 2005. This bilateral agreement is the result of the Canada-Wide Accord on Environmental Harmonization 1998, which provides a framework of common environmental management principles and mechanisms (Canadian Environmental Assessment Agency 2005).

Canada-Saskatchewan Agreement on Environmental Assessment Cooperation

Under the agreement, projects that require an environmental assessment by both the Government of Canada and the Government of Saskatchewan will undergo a single assessment, administered cooperatively by both governments. One government takes the lead in administering the assessment, but both governments participate as full and active partners. The renewal is a continuation of the 1999 Canada-Saskatchewan Agreement on Environmental Assessment Cooperation and includes minor revisions to clarify certain aspects of the process and changes to CEAA.

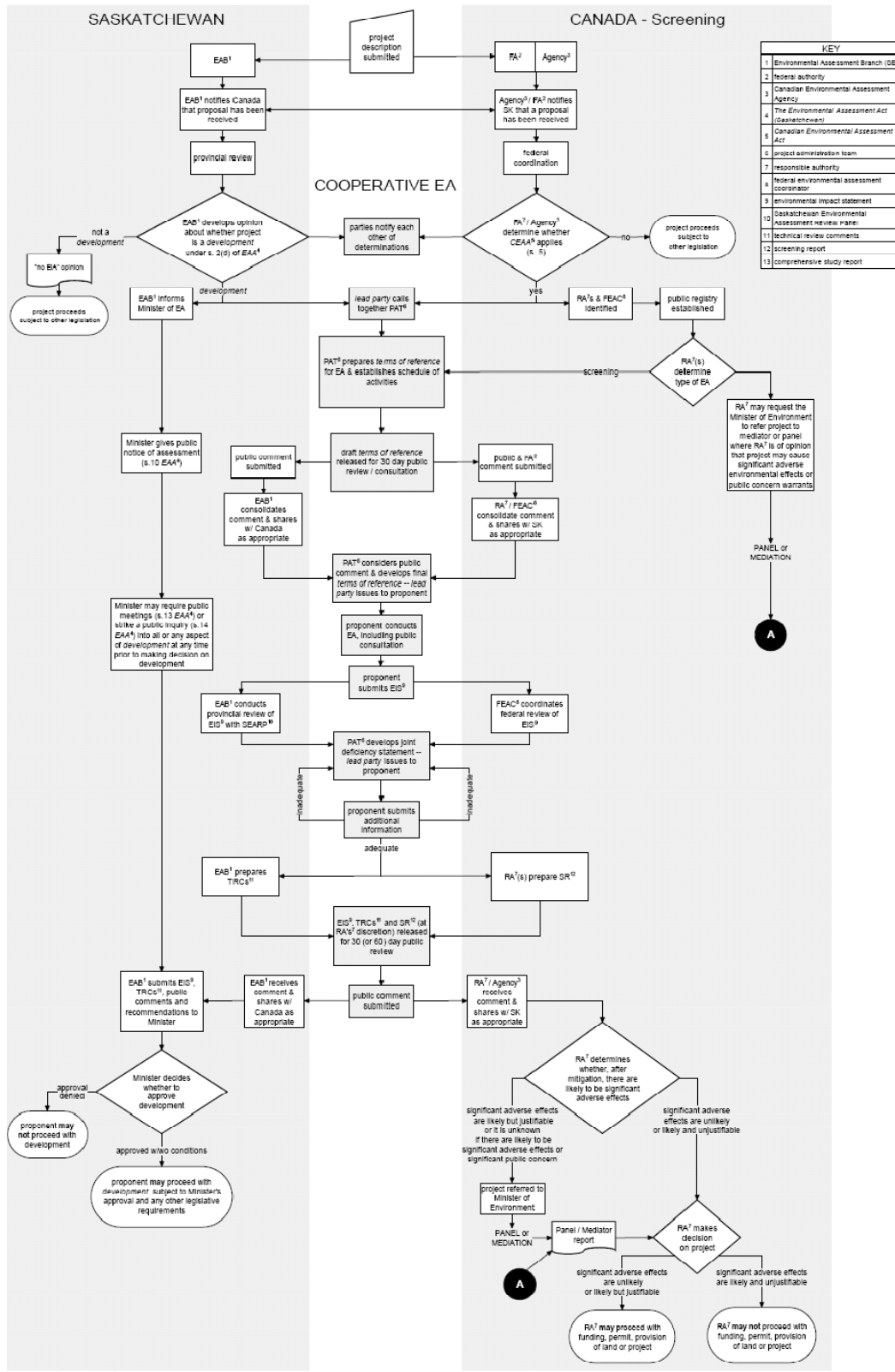
(Canadian Environmental Assessment Agency 2005)

Canada-Wide Accord on Environmental Harmonization

The Canada-Wide Accord on Environmental Harmonization provides a framework of common environmental management principles and mechanisms for developing further sub-agreements and bilateral agreements regarding specific areas identified for harmonization or cooperation. It envisions governments working together to achieve the highest possible level of environmental quality for all Canadians.

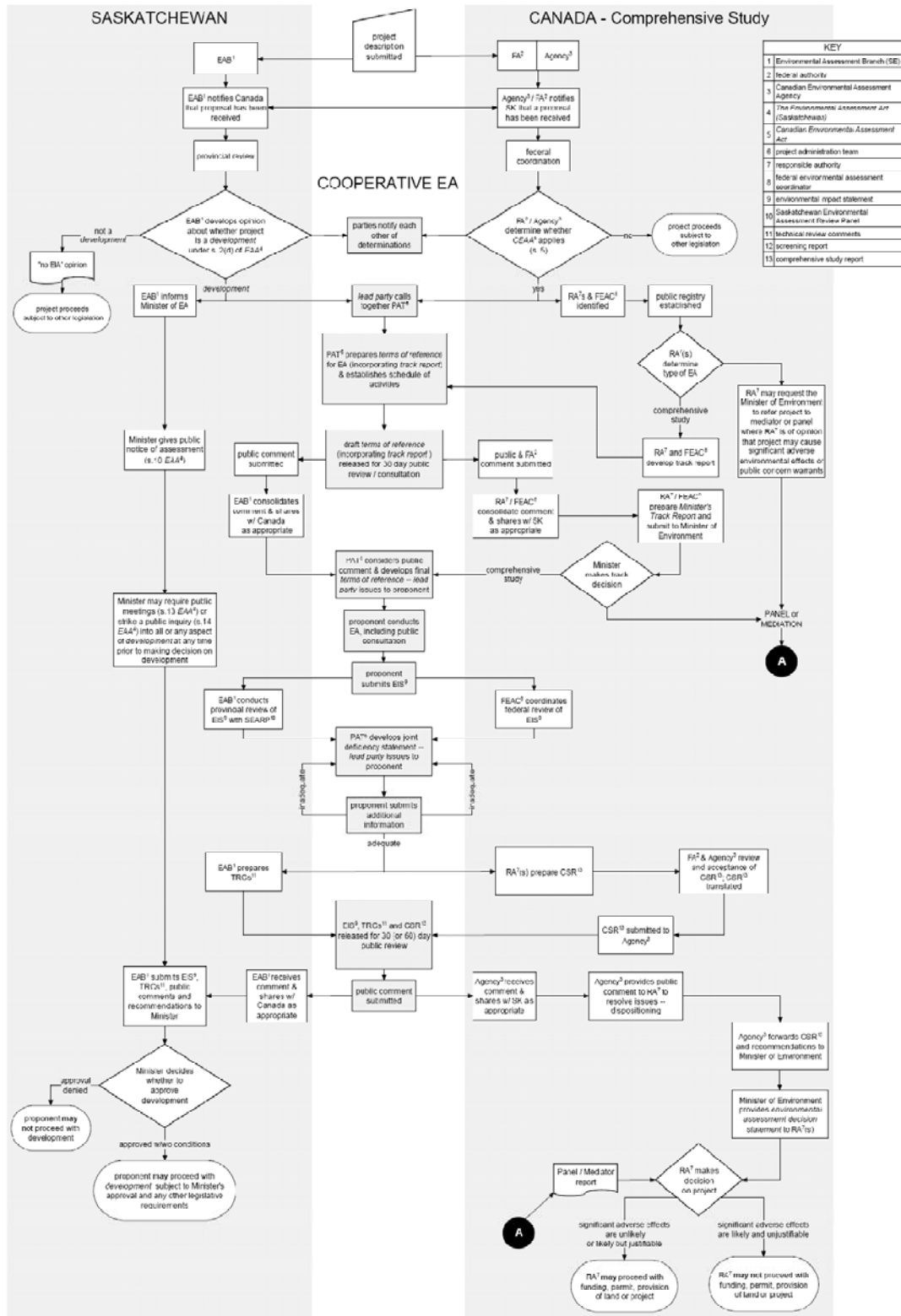
(Canadian Environmental Assessment Agency 2005)

Figure 5. Canada-Saskatchewan Joint Environmental Assessment Screening Process



Canada - Saskatchewan Cooperative EA Process - April 25, 2005

Figure 6. Canada-Saskatchewan Joint Environmental Assessment Comprehensive Study Process



Canada - Saskatchewan Cooperative EA Process - April 25, 2005

7.0 Resources

7.1 Accessing Information about New Projects and Projects Already Under Review

7.1.1 Provincial Internet Sites

- Environmental Assessment Notices
<http://www.environment.gov.sk.ca/Default.aspx?DN=5c6ba5bc-f58c-44fb-b8b0-53382ff2a8cd>
 - Section 10 of The Environmental Assessment Act requires the Minister responsible for the Act to give notice that an EA is being conducted.
 - Section 11 of The Environmental Assessment Act requires the Minister responsible for the Act to make the EIS, EIA and the conclusions of the technical review available for public review.

- Documents Available for Public Comment
<http://www.environment.gov.sk.ca/Default.aspx?DN=87e1fb9a-79c0-4595-acbd-2882ad2311a2>
 - ToR or PSGs, developed by the EAB are provided to proponents to guide them in the conduct of their EIS.
 - When the technical review of a proponent’s EIS has been completed, Section 11 of The Environmental Assessment Act requires the Minister responsible for the Act to make the EIS, EIA and the conclusions of the technical review available for public review.

- Project Information
<http://www.environment.gov.sk.ca/Default.aspx?DN=41b56f8e-b563-4457-91ae-02a984317ee6>

This page contains the EA interactive map application and the EA Quarterly Report as well as project specific information about developments with ministerial decisions and those with decisions still pending. (Project information is available for only those projects for which digital information was provided.)

- Public Notice Bulletin Board
<http://www.er.gov.sk.ca/Default.aspx?DN=4385,3692,3384,2936,Documents>

New Minister’s Orders and Public Notices issued under The Oil and Gas Conservation Act are posted weekly on this site.

- What’s New – Oil & Gas

<http://www.er.gov.sk.ca/Default.aspx?DN=6e5845a0-a84b-4575-ab34-ef86a38f5f55>

This page contains news and general information about Saskatchewan's oil and gas industry.

- What's New – Mineral Resources

<http://www.er.gov.sk.ca/Default.aspx?DN=c072593e-bb3f-4ca1-90ca-3e6e0b74da09>

This page contains news and general information about Saskatchewan's mineral industry.

7.1.2 Federal Internet Sites

- Canadian Environmental Assessment Registry

http://www.acee-ceaa.gc.ca/050/index_e.cfm

The Registry aims to help the public find information and records related to EAs conducted under the Canadian Environmental Assessment Act. It also provides timely notice about the start of an EA and opportunities for public participation.

For more detailed information on the registry you can view the Guide to Environmental Assessment Registry at: http://www.acee-ceaa.gc.ca/012/012/index_e.htm.

7.1.3 Newspapers

In order to inform the public of the proposed project a NoA is issued in at least one newspaper with general circulation in the area where the proposed activity is to be located. The public notice usually contains the following information:

- the location of the proposed activity, referring to the municipality and the legal description;
- brief details of the proposed activity;
- notice that a person who is directly affected by the proposed activity may submit a written statement of concern to the Director, and the date by which the SoC must be submitted; and
- the locations where information about the proposed activity may be obtained or is available for public inspection.

Notices will also appear in the paper to identify the release of the following documents for public comment:

- Proposed ToR or PSGs
- Final ToR or PSGs
- EIS

If a Public Hearing is proposed, a notice will appear in the newspaper outlining relevant information for public participation. With the conclusion of the Public Hearing and the final decision made on the proposed project, the regulator will publically release the decision report outlining the decision and related conditions of approval.

7.2 Apply for Participant Funding

7.2.1 Provincial Funding

Participant funding for Environmental Assessment in Saskatchewan is administered through Sections 18 & 19 of the Government Organizations Act.

Grants

18(1) Subject to subsection (2), a minister may, for any purpose relating to any matter under his administration or for which he is responsible, make grants on any terms or conditions that he may prescribe, to any person, agency, organization, association, institution or body within or outside Saskatchewan. (2) A minister shall obtain the approval of the Lieutenant Governor in Council before making any grant under subsection (1) that is in excess of \$50,000 in any fiscal year.

1986-87-88, c.G-5.1, s.18; 1996, c.28, s.4.

Financial assistance

19 A minister may, for any purpose relating to any matter under his administration or for which he is responsible, provide financial assistance by way of grant, loan, guarantee or other similar means, in accordance with any terms or conditions that are prescribed in regulations made by the Lieutenant Governor in Council, to any person, agency, organization, association, institution or body within or outside Saskatchewan.

1986-87-88, c.G-5.1, s.19.

Participant(s) seeking funding from the provincial government must draft a letter for consideration of funding to the Minister of the Environment. The letter should include a breakdown of the funds requested and how they will be allocated (i.e., travel, research, etc). It is then up to the discretion of the Minister to determine whether the participant will receive

funding providing it is not in excess of \$50,000. If the amount requested is in excess of \$50,000, the Minister must obtain approval from the Lieutenant Governor in Council before granting the funding.

7.2.2 Federal Funding

Federal funding for participation in EA is administered through the CEAA. Funding is available for individuals and non-profit organizations interested in participating in EA.

Participant funding is available, for comprehensive studies, review panels and assessments by joint review panels, to help ensure that the interested party's views are considered. Limited funding can cover eligible expenses, such as travel costs and fees for experts.

Application can be made for funding if you:

- are directly interested in the project, such as those living or owning property in the project area;
- can provide community knowledge or Aboriginal traditional knowledge relevant to the EA;
- are planning to provide expert information relevant to the anticipated environmental effects of the project.

For more detailed information on participant funding you can access the CEAA Participant Funding Program Guide for an overview of the participant funding program, directions on how to complete your funding application, and the participant funding application form at:

http://www.acee-ceaa.gc.ca/012/013/Participant-Funding_e.pdf

8.0 Checklist for First Nations Participation in Environmental Assessment

The following checklist was adapted, from the First Nations Environmental Assessment Toolkit developed by the British Columbia based First Nations Environmental Assessment Technical Working Group, to identify the requirements and needs of Saskatchewan's First Nations when engaging in EA. This checklist can be used as a guideline to assist you in coordinating your participation in specific aspects of EA. Please refer to *Figure 2. First Nations Environmental Assessment Participation Process* for further identification of the stages that First Nations can have input into the process.

8.1 Funding For Participation

Investigate potential funding sources:

- Project proponent
- Government of Saskatchewan, Minister of Environment (for provincial or joint federal-provincial assessment)
- Canadian Environmental Assessment Agency participant funding program (for CEAA comprehensive studies, mediations, panel reviews and joint federal-provincial reviews)
- Department of Indian and Northern Affairs Canada
- Non-Governmental Organizations
- Environmental-Aboriginal Guardianship through Law and Education (EAGLE)
- Sierra Legal Defense Fund
- Tides Canada
- Consider alliances with non-governmental organizations and other First Nations in applying for funding

Budget Considerations

- Staff to coordinating your First Nation's involvement in the EA including:
 - coordinating community meetings and information sessions;
 - coordinating technical and legal advisors as needed;
 - coordinating First Nation decision-making meetings;
 - fundraising for EA participation;
 - coordinating and fundraising for additional studies; and
 - travel for meetings.
- Development agreement negotiations

- Participation in field studies associated with the EA
- Reviewing studies conducted by the proponent or government agency in relation to the project
- Participating in and conducting traditional use and traditional knowledge studies
- Site visits (can be a substantial cost if project location is isolated)
- Honorariums or wages for First Nations representatives, administration costs, office space, etc. ... if new role created

8.2 Strategies For Effective Participation

Consider including the following strategies:

- Identify your First Nation's goals and objectives
- Conduct a project assessment from your First Nation's perspective
- Engage the proponent
- Work with government agencies
- Build strategic alliances
- Get expert legal assistance when needed. Situations to consider legal help include:
 - when you are negotiating agreements or contracts including:
 - interim agreements with a proponent
 - development agreements or, impacts and benefits agreements with a proponent
 - revenue-sharing arrangements with a proponent
 - EA participation agreements with federal or provincial agencies
 - hiring technical experts
 - hiring researchers to conduct studies such as traditional knowledge, traditional land use, socio-economic or other community-based studies
 - when considering how to protect your traditional knowledge and other important community information
 - if you need advice about statutory or procedural issues
 - to help you prepare for hearings or review panels
 - if your First Nation is considering challenging an EA decision through a court action
- Get expert technical assistance when needed. Situations to consider technical help include:
 - if you do not have the time or the expertise to evaluate a technical aspect of the EA or project application
 - when there is potential for significant community economic, social, health or cultural impacts
 - when there is potential for significant impacts to your First Nation's land use patterns and harvesting activity

- when the EA predicts impacts on key aspects of the environment such as wildlife and fish habitats
- when there are aspects of the environmental impact assessment that you feel are lacking
- information or do not provide information to alleviate your community's concerns or protect your First Nation's interests
- the proposed project has new or unproven technology
- consider dispute resolution, when needed
 - negotiation
 - judicial review

8.3 Preparing Submissions

Consider including the following in your written submissions:

- the potential impacts of the proposed project on your First Nation's territory and traditional uses of your land
- the potential impacts of the project on your First Nation's Aboriginal rights and title, future land use planning
- the potential impact of the proposed project on the sustainability of your First Nation
- issues regarding potential environmental, economic, social, health and cultural impacts of the proposed project
- issues or suggestions that you may have identified with respect to any mitigation plans that have been developed by the proponent
- specific comments on the proponent's written submissions
- studies that you want considered in relation to potential impacts, such as impacts on water-bodies, air quality, wildlife
- community economic objectives (clear articulation of whether the project contributes to or diminishes those objectives) in relation to the proposed project
- alternatives to the proposal to be assessed or considered
- any cumulative impacts (induced by the project directly or indirectly) of concern

8.4 Engaging The Proponent

Consider discussing the following in your initial meeting with the proponent:

- how the proponent can assist your First Nation in participating effectively in the EA, including access to information regarding the project and funding required
- what options are being considered by the proponent for designing the proposed project and its operations

- what information the proponent can provide to your First Nation at present and during the course of the EA
- potential requirements for your First Nation and the proponent to cooperate to conduct traditional knowledge or traditional use studies funded by the proponent
- opportunities for your First Nation to direct, conduct or participate in baseline studies, such as fish or wildlife studies that recognize and incorporate your First Nation's local and traditional knowledge
- the importance of fish and wildlife to your culture and the potential impacts of the project to your First Nations Aboriginal rights and title

Consider asking the proponent to provide information forums for community members. Here are some possible ways:

- open houses
- community meetings
- meetings with specific groups in the community (e.g., Leadership, Elders, First Nation businesses)
- site visits
- written project descriptions

If you are negotiating an interim agreement with a proponent consider including the following:

- communication protocol (set of rules)
- funding and protocols for traditional knowledge studies and traditional use studies
- provisions for access to relevant First Nation information by the proponent under terms and conditions acceptable to both parties, and the converse
- provisions for the First Nation government to make a conditional decision about the environmental acceptability of the proposed project
- provision of clear and certain acknowledgement from the proponent entering into the agreement does not prejudice the ability of the First Nation to oppose the project
- a negotiating protocol for a longer-term development agreement
- provision for individual First Nation members or private businesses to take advantage of existing employment or business opportunities that the proponent may offer during the project assessment period or before it is permitted or licensed to proceed

9.0 After The Environmental Assessment

Once approval has been given to a proposed project, First Nations participation in the EA process continues through participation in follow-up programs. This participation provides opportunities to monitor the ongoing effects of the project but also offers opportunities for continuing meaningful relationships with industry and government to work together to care for the environment.

Good communication is essential to successful monitoring and resolving issues as they arise; there may be unanticipated effects that will need to be addressed in a timely fashion. As well, there may be delays in implementing risk/mitigation measures and these will need to be addressed on an ongoing basis to ensure they are implemented.

There will likely be a significant amount of paperwork generated by monitoring reports and correspondence which need to be stored and kept for later reference should disputes arise that need to be settled by negotiation or by legal means. A paper trail is essential to establishing facts and sorting out events.

9.1 Opportunities to Engage

First Nations may list their active and ongoing participation in the monitoring process as one of their concerns early in the EA process. One of the ways to engage government and the proponent is to have regular meetings to monitor a project's progress where the focus is not on economic profits and benefits but on the environment and the condition of the community's lands. There should also be opportunity to meet more frequently as needs arise; for example, in the case of adverse or unanticipated effects. These two conditions of engagement could be built into the terms and conditions of approval. Frequent engagement strengthens relationships and keeps the community in the focus of government and industry rather than marginalizing the community as an obstacle to be dealt with or ignored.

9.2 Community Monitoring Process

When project proposals are approved for development, they are often given permission to proceed under certain terms and conditions. The form of terms and conditions may take different forms. The project may be monitored to ensure that it is complying within allowable limits of the regulatory permits that were issued and that risk management measures are being implemented. Monitoring may be also carried out that follows the progress of the project to make sure that the effects of the project do not exceed what was intended when the approval

was given. Finally, monitoring may be done to measure impacts and make adjustments to the project to minimize risks.

Ongoing participation is essential to maintain best practices that continue to protect the environment. First Nations live on the land and are on the front lines for monitoring environmental health. Changes are more quickly noticed by people who maintain a close relationship with the environment; industry and government may not have this close relationship or familiarity with the region and may not realize the significance of small changes or may take no notice of these slight changes. Therefore, First Nations play a key role in the monitoring process for development projects and will need to ensure that people with these monitoring skills and knowledge are included in the process. These individuals may be actual users of the land who work with others with scientific training for monitoring; together, this team can provide a strong base to protect community lands and resources.

Continuing the process may be somewhat overwhelming and communities may be unsure about a long-term commitment due to lack of resources. One way to relieve some of the concerns is to consider how other communities have approached the situation.

The following Web sites may be helpful to consult:

- **The Rainy River Watershed Program**

<http://rainyriver.firstnation.ca/watershed>

In the mid-1980s, after witnessing nearly a century of abuse followed by a few years of improving water quality in the Rainy River, Elders and other community members decided to reappropriate their stewardship role. In 1998, they established the Watershed Program and eventually expanded their ecological projects off the reserve into their traditional territory-the Rainy River Watershed-both in Canada and the United States (128 km by 64 km; 80 miles by 40 miles).

- **First Nations Environmental Assessment Technical Working Group**

<http://www.fneatwg.org/toolkit.html>

FNEATWG is committed to helping First Nations increase their internal capacity to engage effectively in EA processes. The purpose of this toolkit is to assist First Nations in British Columbia (BC) whose Aboriginal rights and title and treaty rights may be affected by a project undergoing an EA.

- **Mikisew Cree First Nation Industry Relations Corporation**

<http://www.mcfnirc.org>

Here you will find information on the IRC, updates on industry and government projects, and reminders for Mikisew Cree community events.

- **Taiga Net – Community-Based Monitoring**

<http://www.taiga.net/coop/community/index.html>

Community researchers conduct interviews with local experts each year. Observations about fish, berries, caribou, unusual animal sightings, weather conditions, and other aspects of the environment and communities, are pulled together.

- **Environment Canada Ecological Monitoring and Assessment Network**

<http://www.eman-rese.ca/eman/deliver-monitoring.html>

The Ecological Monitoring and Assessment Network (EMAN) is made up of linked organizations and individuals involved in ecological monitoring in Canada to better detect, describe and report on ecosystem changes. The network is a cooperative partnership of federal, provincial and municipal governments, academic institutions, Aboriginal communities and organizations, industry, environmental non-government organizations, volunteer community groups, elementary and secondary schools and other groups/individuals involved in ecological monitoring.

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Appendix A – Project Disclosure Document

Environmental Impact Assessment Notice

Section 10 of The Environmental Assessment Act (Saskatchewan)

Athabasca Potash Inc. – Burr Potash Project

Athabasca Potash Inc. is proposing to build a new potash mine 26 km north of Lanigan. It will include transportation and utility access, underground facilities, surface processing, management infrastructure and tailings management.

Athabasca Potash Inc. needs approval under The Environmental Assessment Act before proceeding and must develop an Environmental Impact Statement for the public and the Ministry of Environment to use to evaluate the project's environmental implications.

Draft project-specific guidelines identifying key issues to be addressed in the Environmental Impact Statement are available for review and comment. **Comment on the guidelines should be received by July 2, 2008.**

More information and copies of the project-specific guidelines are available on the Ministry of Environment's website at www.environment.gov.sk.ca (click on Programs and Services/Environmental Assessment/Notices/Section 10/2008-005) or by contacting:

Ann Riemer
Environmental Assessment Branch
Ministry of Environment
Phone: (306) 787-5793



**Saskatchewan
Ministry of
Environment**

Dailies:

Saturday, May 17, 2008 in:

Regina Leader Post

Saskatoon Star Phoenix

PA Daily Herald

Appendix B – Notice of Application

PUBLIC NOTICE

Under The Oil and Gas Conservation Act

Other Areas – Waste Water Disposal

The Ministry of Energy and Resources has received an application from Los Altares Resources, for approval of a plan to dispose of salt water, fresh water and crude oil based produced fluids and completion/workover fluids by injection into the Birdbear Formation through the well (11) 1-29-30-23 W3M.

Objections to this application, complete with supporting technical data, received in writing by the undersigned at 200 - 2101 Scarth Street, REGINA, SK, S4P 2H9, on or before May 30, 2008 will be considered. A copy of the objection must be provided to the applicant.

Persons directly affected may obtain a copy of the application from Mr. Cliff Weibe, Los Altares Resources, 600 603 - 7th Avenue SW, CALGARY, AB, T2P 2T5.

Dated at Regina, Saskatchewan, May 7, 2008.

Trevor Dark, Assistant Deputy Minister
Petroleum and Natural Gas
Saskatchewan Ministry of Energy and Resources

Appendix C – Statement of Concern



MIKISEW CREE FIRST NATION Industry Relations - IRC
208-9715 Main Street
Fort McMurray, AB T9H 1T5
Phone: (780) 714-6500 Fax: (780) 715-4098

August 12, 2005

Mr. Ernie Hui
Director, Northern Region
Alberta Environment
AENV Regulatory Approvals Center
Main Floor, 9820 – 106th Street
Edmonton, AB T5K 2J6

Fax: 780-422-0154

**Re: AEUB Application No. 1398411
EPEA Application No. 004-20809, Water Act File No. 60330
Albian Sands Energy Muskeg River Mine Expansion Project**

Dear Mr. Hui:

We have read the Notice of filing for the above-mentioned proposed project and wish to submit the following as Mikisew Cree First Nation's (MCFN) statement of concern. A list of MCFN's preliminary concerns about the project has been provided in this letter and a more detailed report will follow upon completing the technical review of the application.

The MCFN leadership and membership are concerned about the cumulative effects of oil sands development on our environment, culture and traditional land uses. These effects are putting the future of the MCFN at risk. Comprising approximately 2400 members, or 55% of the First Nations people living within the Regional Municipality of Wood Buffalo, the MCFN is directly affected by oil sands development.

The Albian Muskeg River Mine Expansion Project (Project) is located within the MCFN's traditional land use area and lands outlined in Treaty 8 acquired through Treaty Land Entitlement. Oilsands development has restricted the MCFN's ability to carry on its traditional way of life and to exercise its treaty rights that include hunting, fishing and trapping. The loss of these traditional activities has social, physical, and economic impacts upon the people and their culture.

It is MCFN's inherent right and responsibility to protect and preserve the environment for the use and benefit of future generations. These rights are protected by Treaty 8 and entrenched by s. 35(1) of the *Constitution Act*. Construction and operation of Project will contribute to the significant cumulative infringement of those rights. The federal and provincial governments have a fiduciary obligation to justify this infringement and uphold the honour of the Crown, including a duty to consult meaningfully and accommodate the MCFN.

The MCFN have procured the services of Management Solutions and Environmental Systems (MSES) to conduct an independent technical review of the Environmental Impact Assessment (EIA) for the Project. Please find below a list of preliminary concerns identified in the review.

Cross discipline concerns with the Muskeg River Mine Expansion Project EIA

- 1) Across the disciplines presented in the EIA, there is evidence to suggest that some of the data, analysis and related impact statements are incomplete, unclear or based upon questionable assumptions.
- 2) There is a distinct lack of clarity as to how the EIA and related monitoring information contributes to the regional planning process with respect to development or how it advances the monitoring and understanding of cumulative effects to the regional ecosystem. Across disciplines, participating in regional forums (i.e. CEMA, RAMP, WBEA) for establishing timely guidelines to address and manage cumulative effects associated with oilsands development is insufficient because these environmental organizations are not effective in producing guidelines.
- 3) Some of the proposed mitigation and reclamation strategies are not clearly defined and thoroughly explained, or they do not instill confidence in their ability to recreate ecosystem elements or mitigate potential impacts.
- 4) In some sections of the EIA, there is an absence of thorough and robust referencing of peer-reviewed literature and textbook information. There tends to be an overstated reliance on previous EIAs and related non-peer reviewed literature. These documents have been questioned in the past with respect to their quality of data, prediction confidence and methodology.

Discipline specific concerns with the Muskeg River Mine Expansion Project EIA

The following remarks are “major” findings that discipline reviewers have identified as being shortcomings of the EIA or points that require further clarification.

Hydrology

- Absence of concern for potential oil spills or leaks that may affect the Athabasca River and water bodies further downstream.
- The aquatic RSA does not include Lake Athabasca as a major water body that could or already has been affected by oil sands activity.
- Lack of discussion on how reported changes to hydrology and habitat may affect the Mikisew Cree.

Hydrogeology

- Insufficient detail and explanation about the chemical significance of groundwater discharge into the Muskeg River.
- Lack of detail in explaining how disturbance of surface flows will affect Kearn Lake and in turn, affect its ability to recharge groundwater systems.

- Lack of discussion about the potential changes to regional groundwater aquifers (e.g. increase in naphthenic acids) and to the interaction between surficial and groundwater sources.

Water Quality

- The definition of Base Case implies that the current EIA is responsible only for incremental effects contributed by the Muskeg River development, regardless of other developments in the area. This contradicts the CEMA goal of managing cumulative effects. A pre-development baseline provides a more accurate representation of the magnitude and significance of the combined effects caused by the Muskeg River development, existing oilsands projects and any future oilsands applications.
- Aquatic modeling approaches that incorporate both process and observation errors into analysis of time series of data do exist. Yet the assessment only focused on observation error and dismissed process error. This is insufficient as greater insight might be gained in the modeling by considering both process and observation error.

Fish and Fish Habitat

- 40% of the Muskeg and Jackpine mine sites have currently been excavated. Is sediment toxicity in lower Jackpine Creek “natural” or could it be attributed to mining activity to date and exist as an actual artifact of it?
- Disagreement with the proponent that PAH’s (and other hydrocarbons) contribution to surface and ground water from oil sands mining will be “negligible”. Exposing oil sand deposits to rain will mobilize hydrocarbon into groundwater and surface water sources, and eventually concentrate it in the fauna throughout the food web.

Vegetation/Biodiversity

- Old growth forests are predicted to change by 58%. Impact description criteria states any value greater than 20% is considered of *high magnitude*. Why then are changes to old growth forests considered *moderate*?
- Were ecosystems shifts considered within the EIA with respect to prediction confidence and reclamation success?

Wildlife

- Given that: 1) regional understanding of wildlife requirements is lacking; 2) integrated regional planning is necessary; and 3) there is large-scale regional development; with what confidence can the proponent suggest that post-project reclamation will be effective to sustain regional wildlife populations?
- An abundance of wildlife surveys have been carried out in the Alberta Oil Sands Region, yet the proponent only chose moose and black bear for Population Viability Analysis (PVA). How can the proponent claim to have the best available information, and yet only choose two species that are not appropriate for PVA?

Climate Change

- Have climate change impacts on river hydrology been incorporated into the effects of the project or cumulative effects?

- Why is it predicted under climate change that the mean annual runoff decreases by 2065, yet the low flow increases?

Socio-economic and Traditional Ecological Knowledge

The following points are the salient concerns raised by the reviewer with respect to the potential impacts of the project on traditional lifestyle and socioeconomic elements.

Overarching Concerns

- Reclamation standards have not been established from an aboriginal perspective. This is an industry-wide deficiency that needs to be addressed through a culturally sensitive value based consultation process.
- Human health problems that arise from a decreased level of physical activity (associated with changes in traditional lifestyle) and changes in diet have been ignored by the EIA.
- The cumulative effects of oil sands projects on traditional social and economic opportunities (e.g. loss of language, changes in traditional harvesting opportunities) have not been thoroughly addressed in the EIA. Although often identified as the resource that addresses cumulative effects, CEMA is not mandated to address the cumulative socio-economic effects associated with oilsands development. Its main focus is on the management of cumulative environmental effects. A comprehensive assessment detailing the effects of oil sands on First Nation traditional, socio-economic and cultural activities is needed.

Concerns associated with specific socio-economic and traditional knowledge issues

Traditional Ecological Knowledge

- The TEK values and issues of aboriginal communities such as the Metis, Athabasca Chipewyan and the Mikisew Cree have not been addressed in the EIA. TEK should have the same significance and value as Western science.

LSA/RSA

- LSA and RSA boundaries for TEK studies have been based upon the traplines of Fort McKay. Traditional land uses by other First Nations of the region have been glaringly ignored.

Competitive Activities

- The resource use section is considered apart from the traditional land use section, and it is not incorporated into the calculation of losses. Competitive hunting, fishing and recreation activities have large effects on the traditional land use of an area.

Contracting

- Contracting opportunities for MCFN owned and operated businesses need to be made available through the life of the project. These have not been clearly identified in the EIA.

Liability and Remediation

- The liabilities associated with the proposed remediation practices in the EIA have not been presented or included in the analysis. Given the uncertainties in the biophysical assessment and predictions on reclamation success, this point needs particular attention.

As this process moves forward the Mikisew IRC will continue to share details of our concerns with all appropriate parties.

Mikisew's input into the EIA process is valuable in assisting with the implementation of appropriate methods to make clear and verifiable impact predictions, as the accuracy of these predictions is of paramount importance to the Mikisew and other stakeholders.

In closing, I trust this meets with your satisfaction, should you have any questions please contact me at 780-714-6500.

Respectfully,

Melody Lepine
Director, MCFN IRC

cc: MCFN Chief & Council
Christa Foley, MCFN IRC
Sherwin Shih, MCFN IRC
Sarah Filleul, MCFN IRC
Judy Smith, Shell Canada Ltd.
Lee Nehring, Albian Sands Energy Inc.
Prowse Chowne LLP