

POLICY 8. Environmental Assessment

POLICY 8-1 Interim Environmental Assessment Process 1

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POLICY 8-1 Interim Environmental Assessment Process

Purpose

***The first step of any project is to fill out an [Application for Use Form 5-01-1](#) which entails a Project Description.**

Until ʔaqam enacts its own Environmental Assessment Law, Policy 8, which outlines the ʔaqam Interim Environmental Assessment Process, must be consulted each time Council takes action or makes a decision within the scope of the *ʔaqam Amended Land Code*, that may have an environmental effect on the land, as defined in this Policy section.

In terms of Environmental Assessment, the phrasing of the *Framework Agreement on First Nation Land Management* (Framework Agreement) uses the ‘trigger’ approach, and section 25.4 states;

The First Nation’s environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating or funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

Section 8.1 of the *Individual Agreement on First Nation Land Management between St. Mary's Indian Band (ᑭᐱᑭᐱᓄ) and Her Majesty the Queen in Right of Canada (Individual Agreement)* states:

- 8.1 *As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to projects on St. Mary's First Nation Land until the coming into force of First Nation laws enacted in relation to that subject.*

In accordance with Annex "F" of the Individual Agreement, ᑭᐱᑭᐱᓄ has elected to implement an interim environmental assessment process consistent with the *Canadian Environmental Assessment Act 2012 (CEAA 2012)*. Section 6 of Annex "F" of the Individual Agreement states:

If the First Nation elects to use a process that is consistent with CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012:

- (a) If the project is a "designated project" as defined in CEAA 2012, the First Nation shall conduct an environmental assessment of that project in accordance with a process that is consistent with that of CEAA 2012.*
- (b) If the project is a "project" as defined in section 66 of CEAA 2012, the First Nation shall not carry out the project on First Nation Land, or exercise any power or perform any duty of function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on First Nation Land, unless the Council of the First Nation determines that the carrying out of the project

 - (i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or*
 - (ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.**

In keeping with the requirements of *Framework Agreement* and *Individual Agreement*, and to ensure consistency with CEAA 2012, the objectives of this policy are to:

- (a) provide information on the manner in which ᑭᐱᑭᐱᓄ will fulfill its responsibilities with regard to environmental assessment;
- (b) offer information on *when* and *how* an environmental assessment or review must be conducted for projects occurring on ᑭᐱᑭᐱᓄ lands;
- (c) assist Council in identifying potentially adverse environmental, cultural, community, social or economic effects that may arise as a result of Council making a decision or exercising its powers, duties or functions under the *ᑭᐱᑭᐱᓄ Amended Land Code* or any other ᑭᐱᑭᐱᓄ law;
- (d) provide an opportunity to improve developments by avoiding or reducing identified adverse effects and cumulative effects; and
- (e) assist Council in engaging the community about the environmental implications of projects before they occur.

Legal Authorities

The relevant authorities are:

- (a) Section 8 and Annex “F” of the *Individual Agreement on Land Management between St. Mary’s Indian Band and Her Majesty the Queen in Right of Canada*;
- (b) Sections 23, 25, 26 and 27 of the *Framework Agreement*;
- (c) Section 8.1 and Annex “F” of the *Individual Agreement*;
- (d) *Canadian Environmental Assessment Act*, S.C. 2012, c.19, s.52, and its Regulations; and
- (e) Forthcoming ʔaqam Environmental Management Plan.
- (f) Paragraphs 6(3)(c), 20(1)(b) and 20(2)(c), and Sections 21 and 40 of the *First Nations Land Management Act*

Roles and Responsibilities

Role of Council

Council is responsible for fulfilling the duties assigned to the Minister of the Environment under CEAA 2012 for all projects and designated projects occurring on ʔaqam land, in addition to what is laid out in Policy 1.

In particular, under this policy, Council is responsible for making decisions on whether a project or designated project, taking into account the implementation of any mitigation measures they consider appropriate:

- (a) is not likely to cause significant adverse environmental effects;
- (b) is likely to cause significant adverse environmental effects; or
- (c) is likely to cause significant adverse environmental effects, and those effects are justified in the circumstances.

This decision must be made by Council before they may exercise any duty or power under the *ʔaqam Amended Land Code* that would allow the project or designated project to proceed.

Role of the Lands Department

The Lands Department is responsible to ensure that all policy requirements laid out in the manual are met, which include but are not limited to this Policy application. The lands department is responsible for making a determination on whether a physical activity is considered a project or a designated project under CEAA 2012 and this Policy, and whether this Policy applies.

Role of the Lands Committee

The Lands Committee is responsible for the following in addition to what is laid out in Policy 1:

- 1) Assist the Lands Department and Council with any matter related to the environmental review and assessment processes set out in this policy.
- 2) Respond to environmental review related requests from the Lands Department or Council, and where necessary to consult with ʔaqamnik on environmental review and assessment related issues.

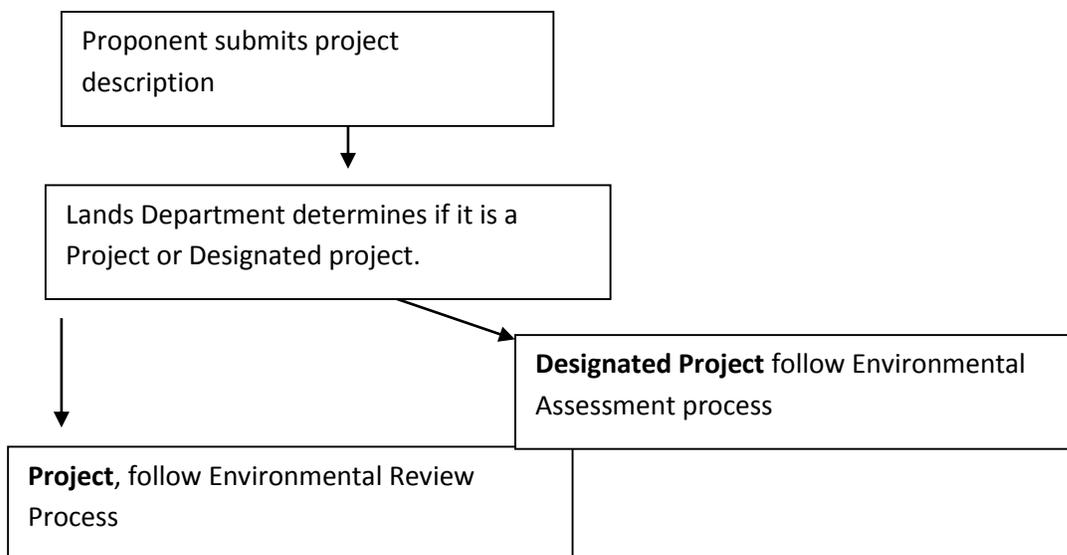
- 3) The Lands Committee may make recommendations to the Lands Department and Council on matters related to environmental reviews and assessments under this policy.

Role of the Proponent

The Proponent is responsible for providing information regarding their proposed project to the Lands Department early in the planning stages. The proponent is also responsible for any costs associated with an environmental review or assessment, and for following any recommendations or approvals provided by Council with respect to their proposed project. This may include but are not limited to Permits, Mitigation Measures and conditions.

Policy

The following diagram represents a high level overview if the policy sequence.



Environmental Reviews and Assessments

There are two key review streams for projects occurring on ?aqam lands:

- 1) **Environmental Review** for a **Project**, and;
- 2) **Environmental Assessment** for a **Designated Project** (consistent with *CEAA 2012*)

Section 66 of CEAA 2012 defines ‘project’ as “a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and is not a designated project”.

Designated projects include one or more physical activities that are listed in the *CEAA 2012 Regulations Designating Physical Activities* (**Appendix B** to this Policy). These are generally larger scale projects known to be likely to result in adverse environmental effects.

The key differences between an Environmental Review for a project and an Environmental Assessment for a designated project are the scope and scale of the review. In principle both processes seek to predict environmental effects of proposed initiatives before they are carried out. Broadly, both processes will do the following:

- i) identify potential adverse environmental effects;
- ii) propose measures to mitigate or avoid adverse environmental effects, and
- iii) predict whether there will be significant adverse environmental effects, after mitigation measures are implemented.

DETERMINING IF AN ENVIRONMENTAL ASSESSMENT OR REVIEW IS REQUIRED

First, the proponent submits a project description in the Application For Use Form 5-1-1

Lands Department Determines Whether an Environmental Review or Assessment is Required

To determine whether a proposed activity is part of a **designated project**, the Lands Department must ask whether it is in relation to a physical activity that is designated under the *Regulations Designating Physical Activities* (**Appendix B** to this Policy). To do this, the Lands Department must refer directly to the *Regulations Designating Physical Activities* (Regulations) and compare those categories of physical activities described in the Regulations with those activities being proposed to be carried out on ʔaqam lands. If an activity being proposed to be carried out on ʔaqam lands falls within one of the categories of physical activities described in the Regulations, then the activity is connected to a **designated project** and an **environmental assessment** is required (see Environmental Assessment of a Designated Project section of this Policy for information on conducting an Environmental Assessment).

To determine whether a power, duty or function of Council is in relation to a **project**, the Lands Department must consider whether it is in relation to a physical activity that will be carried out on ʔaqam lands (and that is not a **designated project**). If it is in relation to a physical activity that will be carried out on ʔaqam lands that is not listed in the Regulations, then it is a **project** and an environmental review may be required (see Environmental Review of Projects section of this Policy for information on conducting an Environmental Review).

Projects Unlikely to Cause Significant Adverse Environmental Effects

In general, the following types of **projects** or activities will be considered unlikely to cause significant adverse environmental effects, and no environmental review is required:

- (a) administrative actions that will not, or do not affect ʔaqam lands or resources (i.e., transfer of a lease, permit or other interest that will not result in any physical changes to a previously approved project or activity occurring on the land);
- (b) Emergency repairs or actions needed on an urgent basis to avoid or respond to emergencies

- (c) Responses to accidents or threats to public health
- (d) Any other type of project or activity, as designated by Council, that will not result in adverse environmental, cultural, community or economic effects. There is currently not an ᐃaᓄam specific exemption list. A Forthcoming list, upon approval by Council may be placed as a Schedule.

If the Lands Department determines that a project is consistent with a project type unlikely to cause significant adverse environmental effects, as outlined above, written notice of this determination must be provided to Council and the Proponent within 20 days of making such a determination. When cases for Exceptions are made, per the above list and Schedule, a BCR should be prepared by the Lands Committee. The BCR should make reference to this EA Policy 8 and the projects unlikeliness to cause significant adverse environmental effects.

If the Lands Department determines that a proposed activity is not in relation to a project or designated project, this Policy does not apply, and no environmental review or assessment is required. The Lands Department must provide written notice to Council and the Proponent within 20 days of making such a determination.

Note: at this policy stage, the above information should have been taken to the Lands Committee. This is to ensure that there is a check in stage with the Committee before moving forward with more an environmental review thus costing time and energy for ᐃaᓄam and the proponent.

Project – Environmental Review Process

Where a **project** requiring an environmental review is proposed to be carried out on ᐃaᓄam lands, the proponent is prohibited from proceeding with any aspect of the **project** on ᐃaᓄam lands that would have an effect on the environment, unless:

- (a) an environmental review has been completed;
- (b) Council has passed a Band Council Resolution stating that:
 - (i) the **project** is unlikely to cause any significant adverse environmental effects, or
 - (ii) the **project** is likely to cause significant adverse environmental effects, but those effects are justifiable in the circumstances; and
- (c) the proponent agrees to comply with any conditions in the Band Council Resolution that relate to mitigating measures.

Notice to Proponent – Environmental Review Required

Once the Lands Department has determined that a proposed activity is a project requiring an environmental review in accordance with this Policy, the Lands Department must provide written notice to the proponent indicating that an environmental review is required. This notice will also include a list of additional information that is required to complete the environmental review. It is the proponent's responsibility to provide the requested information to the Lands Department well in advance of the proposed project start date to allow sufficient time for review.

Information that must be provided by the proponent for an environmental review includes the following.

- I. Project Information:
 - a. Project title and proponent contact details
 - b. Proposed start and expected completion date of the project and describe all components of the project over the entire life cycle of the project, including site preparation, construction, operation, decommissioning, and site restoration or rehabilitation
 - c. Include any physical works or activities accessory to the principle project (for example, if the project creates waste, include information on the proper disposal of that waste; or if certain utilities need to be established or decommissioned for the project, include those ancillary works).
 - d. Identify all permits, licences or approvals (including any provincial or municipal requirements when applicable) that need to be obtained for the project and any other important characteristics of the regulatory environment.
 - e. Maps of the area, showing the project location in relation to existing activities, topographic features, watercourses and water bodies
 - f. Copies of drawings, plans, maps showing the project location and any key features referred to in the remainder of the document.
- II. Land Description:
 - a. All surface water bodies (lakes, rivers, streams, wetlands, bogs, etc.) in or within 30 m of the study area.
 - b. Identify all drinking water wells or aquifer recharge zones (i.e., a land area into which water can infiltrate into and replenish an aquifer relatively easily) and the depth to groundwater, if known.
 - c. Soil type and topography, slope and any special landforms within the specified project area.
 - d. Describe the land use (e.g., zoning, current and past land uses and ownership) at the project site and any existing and planned resource use within the boundaries or surrounding areas of the site that may be affected by the proposed project (e.g., farming, forestry, mining, commercial fisheries, wildlife populations and/or distribution, trapping/hunting, location of traditional plants, water resources).
- III. Flora and Fauna
 - a. Identify any plant and animal species that are listed under the federal *Species At Risk Act* that have the potential to be present in the project area (the *Species At Risk* registry managed by Environment Canada provides information on listed species at risk and their habitat.).
 - b. Identify any migratory birds – as populations and as individuals – and their habitats, eggs and nests that have the potential to be present in the project area.
 - c. If the project involves in-water works or is sited near water, identify any fish species that have the potential to be present in the project area and identify the type and location of fish habitat
 - d. Describe the vegetation in the area (such as forests, marshes, grass fields, cultivated fields) as well as in the adjacent areas.

- e. Describe animals in the area (aquatic species, amphibians, reptiles, birds, mammals) as well as in the adjacent areas.
 - f. Identify any significant sensitive natural areas (e.g., wetlands, overwintering or calving areas, spawning grounds, etc.) in the project area.
- IV. Traditional/Cultural Uses
- a. Identify any traditional, historical, archeological and/or cultural use areas in the project area.
- V. Consultation and Public Participation
- a. Indicate if consultation with the community has occurred, and the results of that consultation.
 - b. Indicate if the project has potential to cause off-reserve environmental effects
- VI. Environmental Effects and Mitigation
- a. Indicate any potential effects from the project to:
 - i. Surface and groundwater quality, flow, or movement; any resulting sedimentation or erosion; and any pollution from operations or accidental spills.
 - ii. The land surface (e.g., clearing of trees, shrubs, or ground vegetation), any unique and sensitive features (e.g., wetland or park), or adjacent properties
 - iii. Any plant or animal species, including those listed under the federal *Species At Risk Act* that have the potential to be affected in the project area
 - iv. Any migratory birds – as populations and individuals – or their habitats, eggs and nests
 - v. Any fish or fish habitat
 - vi. Air quality (from chemical emissions or dust/odours) and on noise-sensitive receptors (e.g., schools, daycares, nursing homes, residences, places of worship, hospitals, etc.)
 - vii. Any potential concerns that the project may raise in the community or general public (e.g., effects on local businesses, institutions/public facilities, physical or cultural heritage resources, or the current use of lands and resources for Aboriginal traditional purposes.
 - b. If any potential effects are identified, list applicable mitigation measures proposed to be implemented during the life of the project to minimize or avoid those effects.
 - i. Contact Environment Canada for guidance on appropriate mitigation measures for impacts to migratory birds, such as timing restrictions
 - ii. Contact the Department of Fisheries and Oceans for advice on appropriate mitigation measures and/or *Fisheries Act* authorizations. Authorizations may also be required if the project involves blasting in or near water, killing fish by means other than fishing, or creating a barrier to fish migration. Environment Canada is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act* which prohibit the deposit of deleterious (harmful) substances to water containing fish.
- VII. Comments and Other Information
- a. Provide any other information you feel is pertinent for the Lands Department to know about the project.

- b. Identify any key best practices or mitigation measures you plan to implement during the project.

If the fish, fish habitat, aquatic species listed under the *Species At Risk Act* or migratory birds are likely to be present in the project area, include a plain language professional opinion (maximum 3,000 words) regarding the potential changes and the likelihood that those changes will occur as a result of the **project** to:

- (i) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*,
- (ii) aquatic species as defined in subsection 2(1) of the *Species at Risk Act*,
- (iii) migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*,

Lands Department: Conduct Environmental Review and Prepare Environmental Review Report

Based on the information provided by the proponent, the Lands Department is required to prepare an Environmental Review Report. The environmental review report must make reference to those criteria set out in the *Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects* (**Appendix A** to this Policy). If additional information or technical specialists are required to prepare the Environmental Review Report, the Lands Department may require that the proponent provide them with the necessary information or means for obtaining specialist advice.

The Lands Department must ensure that the environmental review report contains the following information:

- (a) The project name, location and proponent name and contact information
- (b) A brief description of the proposed project, existing environment, and potential environmental effects
- (c) the Lands Departments recommendation on whether the environmental effects of the project are **adverse**;
 - a. information to assist Council in determining whether the environmental effects are **adverse**, including information on the quality of the existing environment compared to the predicted quality of the environment once the **project** is completed,
- (d) the Lands Departments recommendation on whether the environmental effects of the project are **significant**;
 - a. information to assist Council in determining whether the environmental effects are **significant**, including information on:
 - the magnitude/severity of the adverse environmental effects and information on whether they are minor or catastrophic,
 - the extent that the **project** might contribute to cumulative environmental effects;
 - the geographic extent of the adverse environmental effects, including whether they are localised to a small geographic area or widespread;

- the duration and frequency of the adverse environmental effects, such as whether they are long term or frequent;
 - any known future adverse environmental effects and the likelihood of such effects arising;
 - the degree to which the adverse environmental effects are reversible or irreversible; and
 - the degree to which the environment has already been adversely affected by human activities, or the fragility of the environment as a result of human activities;
- (e) the Lands Departments recommendation on whether the environmental effects of the project are **likely**;
- a. information to assist Council in determining whether the environmental effects are **likely**, which involves information on the probability of such effects occurring; and
- (f) the Lands Departments recommendation on whether the environmental effects of the project can be adequately **mitigated**;
- a. information to assist Council in determining whether the environmental effects of the project can be **mitigated**, including any mitigation measures that are included in the proposed **project**, and any mitigation measures that the Lands Department recommends for the proposed **project**. For each adverse environmental effect that is identified, there should be mitigation measures proposed to address that effect.

Mitigation measures include (in order of preference):

- (a) measures that avoid the impact all together, such as changing the timing of the project being carried out so as to avoid spawning or migration periods or changing the area in which the project will be carried out so that an environmentally sensitive area will not be impacted.
- (b) measures that reduce the magnitude or duration of the impact of environmental effects, such as:
- (i) the use of biodegradable materials instead of plastics and metals;
 - (ii) the use of appropriate sediment and erosion control measures during construction and until all disturbed areas are adequately stabilized or revegetated
 - (iii) using alternative construction and designs to minimize the footprint and impact of the proposed project on sensitive habitat areas
 - (iv) isolating the work area and preventing works from disturbing areas outside of the immediate project area
 - (v) the development of safe crossing sites for animals so that their migration patterns are minimally affected,
 - (vi) finding ways to use less energy, less water or to recycle, or
 - (vii) finding ways to minimize greenhouse gas emissions.
- (c) measures that repair the situation after environmental effects occur, such as:
- (i) regeneration of degraded soils,
 - (ii) the creation of protected zones or parks to support the natural rehabilitation of the environment or the return of wildlife to an effected area, or

- (iii) the containment and clean-up of an incident involving hazardous substances being released into the environment.
- (d) measures that compensate for environmental effects through other means, such as:
 - (i) the replacement of habitat that will be lost (e.g. tree planting),
 - (ii) awards of financial compensation for lost economic, cultural or ceremonial opportunities as a result of the environmental effects, or
 - (iii) the gifting of alternative tracts of land to ḥaqām as reserve lands, or to be held for the use and benefit of ḥaqām through an ḥaqām trust or corporate entity,

Lands Committee Recommendation

Within twenty (20) days of the environmental review report being completed, the Lands Department must:

- (a) deliver a copy of the environmental review report to the Lands Committee;
- (b) obtain a recommendation from the Lands Committee on any additional factors that should be included in the environmental review
- (c) obtain a recommendation from the Lands Committee on any additional mitigation measures that should be implemented to avoid, reduce, repair or compensate for adverse environmental effects; and
- (d) obtain a recommendation on whether the environmental review report should be accepted by Council as complete.

Comments from ḥaqām Directors and Chief Operating Officer

Within twenty (20) days of the environmental review report being completed, the Lands Department must:

- (a) provide a copy of the environmental review report to the director of each ḥaqām department and the Chief Operating Officer; and
- (b) obtain from the director of each ḥaqām department and the Chief Operating Officer, any comments or concerns they have regarding a change that may be caused to the environment that would affect ḥaqām's:
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) current use of lands and resources for traditional purposes, or
 - (iv) structures, sites or things that are of historical, archaeological, paleontological or architectural significance.

Council Project Determination: Significant Adverse Environmental Effects

In making a determination on whether a **project** is likely to cause significant adverse environmental effects, Council must consider:

- (a) the environmental review report from the Lands Department;
- (b) the recommendation from the Lands Committee;

- (c) all comments and concerns raised by directors of ʔaqam Directors; and
- (d) all proposed and recommended mitigation measures

Council must, as soon as practical after receiving the above, make a decision by Band Council Resolution that either refers the project to a full environmental assessment in the same form and manner as is required for a **designated project**, or sets out one of the following:

(a) *We, the Council of ʔaqam, have determined that [subject to [name of proponent]'s compliance with the following mitigating measures,] the [project name] is not likely to cause significant adverse environmental effects as defined in the Canadian Environmental Assessment Act, 2012:*

(i) *[list any required mitigating measures]*

We have further determined that [proponent's name] may proceed with the [project name] conditional on the above-mentioned mitigating measures being complied with and the following approvals being granted:

(i) *[list any required approvals....]*

(b) *We, the Council of ʔaqam, have determined that despite the proposed mitigating measures, the [project name] is likely to cause significant adverse environmental effects as defined in the Canadian Environmental Assessment Act, 2012.*

We have further determined that those effects are justified in the circumstances as follows:

(i) *[list circumstances that justify the significant adverse environmental effects],*

Therefore, [proponent's name] may proceed with the [project name] conditional on the following mitigating measures being complied with and approvals being granted:

(i) *[list any required mitigating measures and approvals....]*

(c) *We, the Council of ʔaqam, have determined that despite the proposed mitigating measures, the [project name] is likely to cause significant adverse environmental effects as defined in the Canadian Environmental Assessment Act, 2012. We have further determined that those effects are not justified in the circumstances. Therefore, [proponent's name] may not proceed with the [project name].*

Council Exercise of Power, Performance of Duty or Function

If Council passes a Band Council Resolution setting out that Council has determined the **project** is unlikely to cause significant adverse effects, or that the **project** is likely to cause significant environmental effects but those effects are justified in the circumstances:

(a) Council may proceed with exercising its powers or performing its duty or function under the *ʔaqam Amended Land Code*, any other ʔaqam law or otherwise, in relation to the **project**, and

(b) the Lands Department may proceed with its responsibilities in regard to Council exercising such powers or performing such duties or functions.

If Council determines that a **project** is likely to cause significant adverse environmental effects and that those effects are not justified in the circumstances, Council must not exercise any of its powers or perform any of its duties or functions under the *ʔaḡam Amended Land Code*, any other ʔaḡam law or otherwise, in relation to the **project**.

If Council refers a project to a full environmental assessment in the same form and manner as is required for a **designated project**, the project cannot proceed until a formal decision has been made under that process.

Designated Project: Environmental Assessment

Provide Proponent a Copy of This Policy and Obtain Designated Project Description

Where an Application for Use of ʔaᓄam Lands contains a **designated project**, the Lands Department must:

- (a) provide the proponent with a copy of this Policy; and
- (b) obtain from the proponent a description of the **designated project** that includes all information required under the *Prescribed Information for the Description of a Designated Project Regulations* (**Appendix C** of this Policy).

Within ten (10) days of receiving the **designated project** description, the Lands Department must compare the **designated project** description to the information required under the *Prescribed Information for the Description of a Designated Project Regulations* and determine whether the **designated project** description is complete or further information is required from the proponent.

If the Lands Department determines that the **designated project** description is incomplete or does not contain sufficient details to determine whether an environmental assessment of the **designated project** is required, the Lands Department must, within ten (10) days of receiving the **designated project** description, provide the proponent with a written notice setting out the information that is required to be submitted to the Lands Department before the **designated project** description will be considered complete.

Designated Projects

Where a proposed **designated project** is to be carried out on ʔaᓄam lands, the proponent is prohibited from proceeding with any aspect of the **designated project** on ʔaᓄam lands that would have an effect on a component of the environment within ʔaᓄam lands, unless:

- (d) an environmental assessment has been completed; and
- (e) Council has passed a Band Council Resolution stating that:
 - (iii) the **designated project** is unlikely to cause any significant adverse environmental effects, or
 - (iv) the **designated project** is likely to cause significant adverse environmental effects but those effects are justifiable in the circumstances; and
- (f) the proponent agrees to comply with any conditions in the Band Council Resolution that relate to mitigating measures.

If Designated Project Rejected

If Council provides the Lands Department instructions to reject having a designated project on ʔaᓄam lands, the Lands Department must advise the proponent that their Application for Use of ʔaᓄam Lands has been rejected.

Community Land Code Meeting

If Council directs that, subject to funding provided by the proponent, a ʔaᓄam community lands code meeting be held to consult with ʔaᓄamnik on whether to proceed with an environmental assessment on a designated project, the Lands Department must:

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- (a) advise the proponent that:
 - (i) a ʔaqam community lands code meeting must be held, at the proponent's expense, so Council can consult with ʔaqamnik on whether to proceed with an environmental assessment of the **designated project**, and
 - (ii) the proponent must attend part of the ʔaqam community lands code meeting to explain the purpose and components of the **designated project** to all ʔaqamnik who attend the meeting;
- (b) obtain the agreement of the proponent and adequate funding from the proponent to hold a ʔaqam community lands code meeting; and
- (c) in consultation with Council and the proponent, set a date for when the ʔaqam community lands code meeting will be held.

Council must provide written notice of a ʔaqam community lands code meeting to all eligible voters at least ten (10) business days before the date of the meeting by:

- (a) either:
 - (i) delivering or mailing the written notice to all eligible voters at their last known addresses, or
 - (ii) publicising the written notice in an ʔaqam newsletter that is delivered or mailed to all eligible voters at their last known address; and
- (b) posting the written notice in a public area of all ʔaqam administration offices.

A written notice of a ʔaqam community lands code meeting must include:

- (a) the date, time and location of the ʔaqam community lands code meeting;
- (b) a summary of the **designated project** description;
- (c) notification that a full copy of the **designated project** description may be obtained by ʔaqamnik at the ʔaqam administration building or at the ʔaqam community lands code meeting;
- (d) an invitation for ʔaqamnik to provide written comments to Council on whether members are in support of conducting an environmental assessment of the **designated project** as a first step to determining whether to have the designated project on ʔaqam lands;
- (e) the return date by which ʔaqamnik shall provide written comments to Council, which date must be at least twenty (20) business days from the date of the ʔaqam community lands code meeting; and
- (f) the ʔaqam community lands code meeting may be advertised or referred to in the written notice by the name of the **designated project** being discussed.

At a ʔaqam community lands code meeting, either Council or the Lands Department must:

- (a) make copies of the **designated project** description available to all ʔaqamnik who attend the meeting;
- (b) ensure that the purpose and provisions of the **designated project** are explained by the proponent to all ʔaqamnik who attend the meeting;
- (c) invite questions and comments by ʔaqamnik who attend the meeting; and
- (d) ensure the questions and comments by ʔaqamnik are documented for all members of Council to consider.

As soon as practical before the Council meeting following the twentieth (20th) business day after a ʔaqam community lands code meeting in relation to a **designated project**, the Lands Department

must compile all questions and written comments that have been provided by ʔaqamnik and provide each member of Council a copy of those comments.

Council Decision

At the Council meeting following the twentieth (20th) business day after a ʔaqam community lands code meeting in relation to a **designated project**, Council must provide instructions to the Lands Department on whether to:

- (a) reject having the designated project on ʔaqam lands; or
- (b) direct that an environmental assessment be conducted on the **designated project**.

If Designated Project Rejected

If Council provides the Lands Department instructions to reject having a designated project on ʔaqam lands, the Lands Department must advise the proponent that their Application for Use of ʔaqam Lands has been rejected.

If Environmental Assessment Directed: Negotiate Agreement with Proponent

As soon as practical after Council directs that an environmental assessment be conducted on a **designated project**, the Lands Department must:

- (a) speak directly with the proponent;
- (b) confirm whether the proponent wishes to:
 - (i) pursue the required environmental assessment as part of the application for use of ʔaqam lands process, or
 - (ii) abandon their application for use of ʔaqam lands;
- (c) if the proponent wishes to pursue the environmental assessment as part of the application for use of ʔaqam lands process, enter into a written agreement with the proponent in relation to the conduct and costs of the environmental assessment, including:
 - (i) the name of the agreed upon independent environmental assessment specialist who will develop the terms of reference,
 - (ii) the name of the agreed upon independent environmental assessment specialist who will conduct the environmental assessment; and
 - (iii) that the proponent will pay all costs associated with:
 - (A) ʔaqam's development of terms of reference for the environmental assessment,
 - (B) conducting the environmental assessment, and
 - (C) the drafting of a report to Council that meets the requirements set out in the terms of reference; and
- (d) if the proponent wishes to abandon their application for use of ʔaqam lands, document in the Lands Department file to which the application relates that the proponent has made such a decision.

Notice of Commencement of Environmental Assessment

Where Council enters into an agreement with a proponent in relation to the costs of an environmental assessment, the Lands Department must ensure that a notice of commencement is posted on the ʔaqam website, and in a conspicuous spot at the ʔaqam administration office, as follows:

[ʔAQAM / NAME OF PROPONENT]
NOTICE OF COMMENCEMENT OF ENVIRONMENTAL ASSESSMENT

[Proponent's Name] has commenced an environmental assessment process for the [Name of **Project**] proposed by [Name of Proponent] and that environmental assessment process will be conducted in compliance with the ʔaq̓am Environmental Review and Assessment Policy, which is consistent with the *Canadian Environmental Assessment Act*.

The [Name of **Project**] proposed to [enter summary description of the **project**].

The first step in the environmental assessment process is for ʔaq̓am to ensure terms of reference are developed that set out the requirements for how the environmental assessment must be conducted and information that must be included in the environmental assessment report. The terms of reference will be made available to ʔaq̓amnik.

At the end of the environmental assessment process, [proponent's name] will submit an environmental assessment report to ʔaq̓am that includes the findings and conclusions of the environmental assessment with respect, at minimum, to the following factors:

- the environmental effects of the [name of **project**], including the environmental effects of malfunctions or accidents that may occur in connection with the [name of **project**] and any cumulative environmental effects that are likely to result from the **designated project** in combination with other physical activities that have been or will be carried out;
- the significance of the environmental effects of the [name of **project**];
- comments from ʔaq̓am departments, the Lands Committee and ʔaq̓amnik with respect to the environmental effects of [name of **project**] and the impact of those environmental effects on ʔaq̓am's:
 - health and socio-economic conditions,
 - physical and cultural heritage,
 - current and future use of lands and resources for traditional purposes,
 - or
 - interests in any structure, site or thing that is of historical, archeological, paleontological or architectural significance to ʔaq̓am;
- mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the [name of **project**];
- the purpose of the [name of **project**];
- alternative means of carrying out the [name of **project**] that are technically and economically feasible and the environmental effects of such alternative means;
- any other matter relevant to the environmental assessment that is specifically directed by Council.

ʔaq̓am has the option of requiring that the environmental assessment report be reviewed by an independent environmental assessment specialist. Prior to Council's review of the environmental assessment report and decision on whether the [Name of **Project**] will be allowed to be carried out on ʔaq̓am lands, the report will be made available to ʔaq̓am departments, the Lands Committee and ʔaq̓amnik, each of whom will have an opportunity to provide their comments.

For further information regarding the [Name of **project**], please contact:

[Name of Contact Person at Lands Department]

ʔaq̓am Lands Department

7470 Mission Road

Cranbrook, BC V1C 7E5

Telephone: [250 426 5717]

Email: [email address]

Draft Terms of Reference

Within thirty (30) days of the notice of commencement, the proponent must ensure that draft terms of reference:

- (a) are developed by the agreed upon environmental assessment specialist at the expense of the proponent;
- (b) set out the process that must be followed in producing the environmental assessment report and the content that must be required in the environmental assessment report; and
- (c) are compliant with the *Canadian Environmental Assessment Act*.

The draft terms of reference must require the following information to be included in the environmental assessment report:

- (a) the probable environmental effects of the **designated project**, including the environmental effects of malfunctions or accidents that may occur in connection with the **designated project** and any cumulative environmental effects that are likely to result from the **designated project** in combination with other physical activities that have been or will be carried out;
- (b) the significance of the environmental effects of the **designated project**;
- (c) comments from ʔaqam departments, the Lands Committee and ʔaqamnik with respect to the environmental effects of **designated project** and the impact of those environmental effects on ʔaqam's:
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) current and future use of lands and resources for traditional purposes, or
 - (iv) interests in any structure, site or thing that is of historical, archeological, paleontological or architectural significance to ʔaqam;
- (d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the **designated project**;
- (e) the purpose of the **designated project**;
- (f) alternative means of carrying out the **designated project** that are technically and economically feasible and the environmental effects of such alternative means; and
- (g) any other matter relevant to the environmental assessment that is specifically directed by Council.

Finalizing Terms of Reference

The proponent must work with the Lands Department and Council to finalize the terms of reference.

Council may require in the terms of reference that the proponent, at the proponent's expense, hold an open house, workshop or other community meeting to present the draft environmental assessment report to ʔaqamnik.

Council must approve the terms of reference.

Delivery of Terms of Reference to Proponent

The Lands Department must deliver to the proponent a copy of the terms of reference.

Draft Environmental Assessment Report

Within one hundred (100) days of receiving a copy of the terms of reference, the agreed upon independent environmental assessment specialist must prepare a draft environmental assessment report that is in compliance with the terms of reference and that identifies and assesses the environmental effects of the **designated project** and the measures proposed to mitigate those effects.

Review of Draft Environmental Assessment Report

Within sixty (60) days of the Lands Department receiving the draft environmental assessment report, the Lands Department must:

- (a) review the draft environmental assessment report to verify that it clearly provides the information required by the terms of reference;
- (b) if necessary, require additional information to be added to the draft environmental assessment report to clarify the potential environmental effects and proposed mitigation measures; and
- (c) confirm that the draft environmental assessment report is complete.

Environmental Assessment Report Comment Period

Once the Lands Department confirms that the draft environmental assessment report is complete, the Lands Department must:

- (a) deliver a copy of the draft environmental assessment report to each ʔaqam department and to the Lands Committee:
 - (i) inviting them to provide written comments to the Lands Department respecting the draft environmental assessment report within twenty (20) days of receiving the draft environmental assessment report,
 - (ii) setting out the person at the Lands Department to whom comments should be addressed and the methods of delivery that will be allowed; and
 - (iii) setting out the date and time by which comments must be received to be considered in the screening, and
- (b) post a copy of the draft environmental assessment report on the ʔaqam website and in a conspicuous spot at the ʔaqam administration office:
 - (i) inviting ʔaqamnik to provide written comments to the Lands Department respecting the draft environmental assessment report within twenty (20) days of the draft environmental assessment report being posted,
 - (ii) setting out the person at the Lands Department to whom comments should be addressed and the methods of delivery that will be allowed; and
 - (iii) setting out the date and time by which comments must be received to be considered in the final environmental assessment report; and
- (c) at the proponent's expense, hold a ʔaqam community lands code meeting in accordance with section 10 of the *ʔaqam Amended Land Code* and subsections 7(6) to 7(11) of this Policy to present the draft environmental assessment report to ʔaqamnik.
- (d) if required under the terms of reference, the proponent must, at the proponent's expense, hold an open house, workshop or other community meeting to present the draft environmental assessment report to ʔaqamnik.

Finalization of Environmental Assessment Report

Within thirty (30) days of the draft environmental assessment report comment period coming to an end, the Lands Department must provide to the proponent and the agreed upon independent environmental assessment specialist who is responsible for conduct of the environmental assessment with:

- (a) all written comments from ʔaqam departments, the Lands Committee and ʔaqamnik, regarding the draft environmental assessment report; and
- (b) a list of suggested edits and comments from the Lands Department to be made to the draft environmental assessment report.

Within thirty (30) days of receiving the list of suggested edits and comments from the Lands Department to be made to the draft environmental assessment report, the independent environmental assessment specialist who is responsible for conduct of the environmental assessment must:

- (a) finalize the environmental assessment report, incorporating all information provided by the Lands Department; and
- (b) provide the final environmental assessment report to the Lands Department.

Report to Council

Within five (5) days of receiving a final environmental assessment report from the independent environmental assessment specialist who is responsible for conduct of an environmental assessment, the Lands Department must:

- (a) review the environmental assessment report and draft a written recommendation to Council on whether, in the opinion of the Lands Department, the environmental assessment report indicates the presence of **likely, significant** and **adverse** environmental effects;
- (b) compile a copy of the following documents and provide them to Council, for their consideration:
 - (i) the **designated project** description;
 - (ii) the terms of reference;
 - (iii) the final environmental assessment report;
 - (iv) the Lands Departments written recommendation on whether the environmental assessment report indicates the presence of **likely, significant** and **adverse** environmental effects; and
 - (v) all written comments from ʔaqam departments, the Lands Committee and ʔaqamnik on the draft environmental assessment report.

Determination of Likely, Significant, and Adverse Environmental Effects

Within three hundred and sixty-five (365) days from the date that a notice of commencement is delivered to ʔaqam departments and the Lands Committee, and posted on the ʔaqam website and in the ʔaqam administration office, Council must make a decision by Band Council Resolution that sets out one of the following:

- (a) We, the Council of ʔaqam, have determined that subject to [name of proponent]'s compliance with the following mitigating measures, the [**designated project** name] is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*:
 - (i) [list any required mitigating measures]

We have further determined that [proponent's name] may proceed with the [**designated project** name] conditional on the above-mentioned mitigating measures being complied with and the following approvals being granted:

(i) [list any required approvals....]

(b) We, the Council of ʔaᓄam, have determined that despite the proposed mitigating measures, the [**designated project** name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*;

We have further determined that those effects are justified in the circumstances as follows:

(i) [list circumstances that justify the significant adverse environmental effects],

(ii) [list...],

Therefore, [proponent's name] may proceed with the [**designated project** name] conditional on the following mitigating measures being complied with and approvals being granted:

(ii) [list any required mitigating measures and approvals....]; or

(c) We, the Council of ʔaᓄam, have determined that despite the proposed mitigating measures, the [**designated project** name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*;

We have further determined that those effects are not justified in the circumstances.

Therefore, [proponent's name] may not proceed with the [**designated project** name].

Delivery of Band Council Resolution

Where Council has passed a Band Council Resolution regarding an environmental assessment decision in relation to a **designated project**, the Lands Department must ensure that a copy of the Band Council Resolution is provided to the proponent as soon as is reasonably practical.

Implement Mitigation Measures and Obtain Additional Approvals

After Council has passed a Band Council Resolution that sets out the approval of a **designated project** with regard to an environmental assessment, the proponent must obtain all other necessary approvals from ʔaᓄam in relation to the **designated project** before commencing the **designated project** on ʔaᓄam lands.

The Lands Department must ensure that all mitigation measures identified in a Band Council Resolution that approves an environmental assessment are either:

(a) completed by the proponent prior to the commencement of the **designated project**; or

(b) incorporated as conditions into all leases, licences, permits, easements and all Council authorizations in relation to the **designated project**.

Resources

Besides this policy, consult the following resources:

all policies in this Manual that relate to the type of land instrument being requested to which the project or designated project relates;

ʔaᓄam Amended Land Code;

Canadian Environmental Assessment Act, S.C. 2012, c. 19, s. 52;

Regulations Designating Physical Activities, SOR/2012-147;

Prescribed Information for the Description of a Designated Project Regulations, SOR/2012-148;

Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects, Canadian Environmental Assessment Agency Publication, 1994

Fisheries Act, R.S.C., 1985, c. F-14;

Species At Risk Act, S.C. 2002, c. 29;

Migratory Birds Convention Act, S.C. 1994, c. 22.

APPENDIX A: REFERENCE GUIDE: DETERMINING WHETHER A PROJECT IS LIKELY TO CAUSE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

<https://www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/determining-project-cause-significant-environmental-effects-ceaa2012.html>

APPENDIX B: REGULATIONS DESIGNATING PHYSICAL ACTIVITIES

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-147/page-1.html>

APPENDIX C: PRESCRIBED INFORMATION FOR THE DESCRIPTION OF A DESIGNATED PROJECT REGULATIONS

<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-148/index.html>

POLICY 8-2 Environmental Site Assessments

Purpose

This policy provides the Lands Department with an overview of ᐱᐱᐱ'ᐱ Environmental Site Assessment policies and procedures.

Roles and Responsibilities

See Policy 1 and Policy 8.1

Legal Authorities

The relevant authorities are sections 32.1 and 32.2 of the *ᐱᐱᐱ Amended Land Code* conditions.

Policy

Phase I Environmental Site Assessments

A Phase I Environmental Site Assessment (CSA Standard Z768-94) is used to identify actual and potential site contamination and it involves the evaluation and reporting of existing information collected through the following means:

- (a) a detailed search, review and analysis of historical property use, occupancy records and aerial photographs of the subject lands;
- (b) a geology, hydrology, topography analysis to determine the type of soil, depth of water tables, direction and flow of ground water and other physical attributes to determine whether there may be any environmental hazards entering or leaving the subject lands;
- (c) a visual assessment of the subject lands and its adjacent lands to identify any storage locations of hazardous materials that may impact on the environmental quality of the subject lands; and
- (d) gathering of information from individuals who have historical knowledge of the subject lands' use.

Phase II Environmental Site Assessments

A phase II Environmental Site Assessment (CSA Standard Z769-00) is used to confirm and describe the magnitude and quantification of a risk of, or to demonstrate the absence of, contamination on a property identified through a Phase I Environmental Site Assessment procedure.

Unlike Phase I Environmental Site Assessments, Phase II Environmental Site Assessments always involve investigative procedures, such as:

- (a) sample collection and analysis of soil, groundwater, surface water, sediment and vapour;
- (b) in depth chemical analyses of samples of contaminants of concern;

- (c) groundwater elevation surveys to establish flow directions and velocities;
- (d) field and laboratory data interpretation;
- (e) comparative analysis of site-specific samples with regulatory criteria; and
- (f) a comprehensive factual report.

Environmental Site Assessment Required

The Lands Department may require that a Phase I or Phase II Environmental Site Assessment be completed:

- (a) in circumstances where the Lands Department has reason to believe that contamination may exist on the parcel of ʔaqam lands being proposed for the licence, permit or lease, by and at the expense of a proposed licensee, permittee or lessee, before the execution of that licence, permit or lease; and
- (b) in accordance with the terms of a licence, permit or lease if such terms are provided for, before Council consents to that licence, permit or lease being renewed, transferred, assigned, or cancelled, by and at the expense of a licensee, permittee or lessee.

Confirmed Contaminated Sites

The Lands Department must ensure that ʔaqam does not create, grant, dispose, or approve the transfer or assignment of a contaminated site without negotiating into the land instrument specific remediation and contaminated site risk management conditions prior to executing the transaction.

Process

During the negotiation of a licence, lease, permit or easement over ʔaqam lands, the Lands Department must consider whether it is necessary and reasonable to require that an Environmental Site Assessment be completed as a pre-condition to execution.

Where an interest holder requests that Council approve the renewal, transfer, assignment or cancellation of a land instrument, the Lands Department must consider whether it is necessary and reasonable to require that an Environmental Site Assessment be completed as a pre-condition to the renewal, transfer, assignment, or cancellation.

If the Lands Department determines that an Environmental Site Assessment is necessary and reasonable, the Lands Department must proceed with the following steps:

- (a) collect existing environmental information related to the site (if available);
- (b) decide who is responsible for funding the Environmental Site Assessment;
- (c) draft the terms of reference for the Environmental Site Assessment, which must set out the type of Environmental Site Assessment required and that the Environmental Site Assessment must be completed by a certified environmental site assessor;
- (d) obtain a copy of the completed Environmental Site Assessment report for the relevant ʔaqam lands department file(s); and
- (e) use the results of the Environmental Site Assessment report to draft terms and conditions that will be mandatory before a licence, permit, easement or lease is executed, renewed, transferred, assigned or terminated over the ʔaqam lands to which the report relates. Such terms

and conditions may relate to the remediation of a contaminated site or the development of a risk management strategy to address the contamination issue.

References

Besides this policy, consult the following resources:

- (a) Phase I Environmental Site Assessment CSA Standard Z768-94;
- (b) Phase II Environmental Site Assessment CSA Standard Z769-00; and
- (c) the Associated Environmental Site Assessors of Canada Inc. website.

