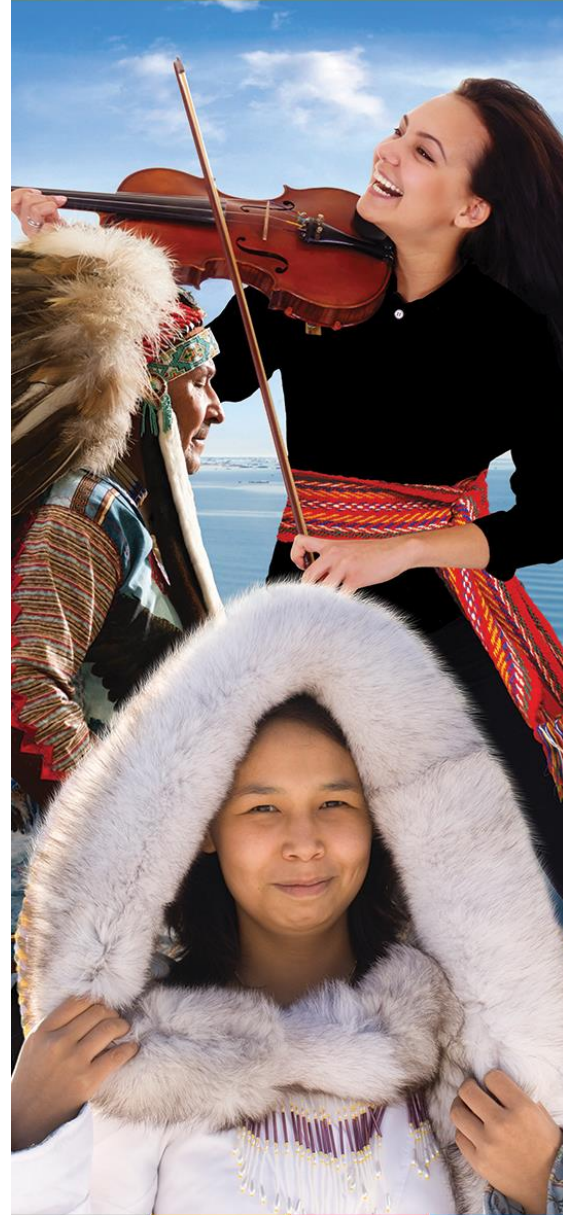




Canadian Environmental Assessment Act, 2012 (CEAA 2012)

Indigenous and Northern Affairs
Canada (INAC) Environmental Review
Process (ERP)

MARCH 2017



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Environmental Requirements for Leasing of Reserve Lands

- Two separate and distinct Environmental processes must be completed prior to the issuance of leases on reserve lands:
 1. **Environmental Assessment Process:** Indigenous and Northern Affairs Canada Environmental Review process
 2. **Environmental Site Assessment Process:** Phase I Environmental Site Assessment conducted in accordance with CSA Standards (Canadian Standards Association)



Environmental Assessment and INAC's ERP

- The *Canadian Environment Assessment Act, 2012 (CEAA 2012)* is a federal law that requires federal authorities, such as INAC, to consider the environmental effects of proposed projects before taking any actions that would allow a project to proceed.
- Specifically, Section 67 of CEAA 2012 requires that INAC must conduct an environmental review to determine whether a project is likely to cause significant adverse environmental effects before making any decision that would allow a project to proceed, and Section 71 requires that projects reviewed by INAC are reported to parliament annually.
- As such, INAC has established an Environmental Review Process (ERP) to satisfy its legal requirements under CEAA 2012. For this process, the onus is on the applicant to provide sufficient project detail to INAC to allow for an environmental review by way of the Project Description form and a Site Map.



Guiding Principles of the Environmental Review Process

- Encourage collaboration between all parties involved, resulting in an efficient and transparent process
 - Engagement with stakeholders and indigenous groups continues on the policies, with the ultimate goal of an effective and reliable evergreen process for all parties involved.
 - During an environmental review, affected parties are engaged and where needed, the legal Duty to Consult with Aboriginal groups is met.
- Level of review is proportionate with the project's potential level of risk
 - The Process applies environmental assessment best practices to project proposals and their specific potential risk. For example, projects with negligible risk and/or easily mitigated environmental effects will be fast-tracked.
- Ensure that due diligence is exercised and environmental effects are considered thoroughly prior to the issuance of any authorizations
 - INAC applies the Process to all authorizations, regardless of whether they are statutory or not (e.g., funding).

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INAC's Environmental Review Process



- Suite of nationally-consistent procedural tools and policies.
- **Small to medium-sized projects** reviewed in a timely and predictable way, with depth of review matched to project's level of risk and complexity.
- Other federal laws continue to apply on reserve (e.g. *Fisheries Act, Species at Risk Act, Canadian Environmental Protection Act*).



When does the ERP Apply?

Statutory Authorization
(*Indian Act* permits/leases, ministerial loan guarantees)

INAC is the proponent

INAC Funding



- *Construction*
- *Renovation*
- *Installation*
- *Decommissioning*



First Nation reserve land

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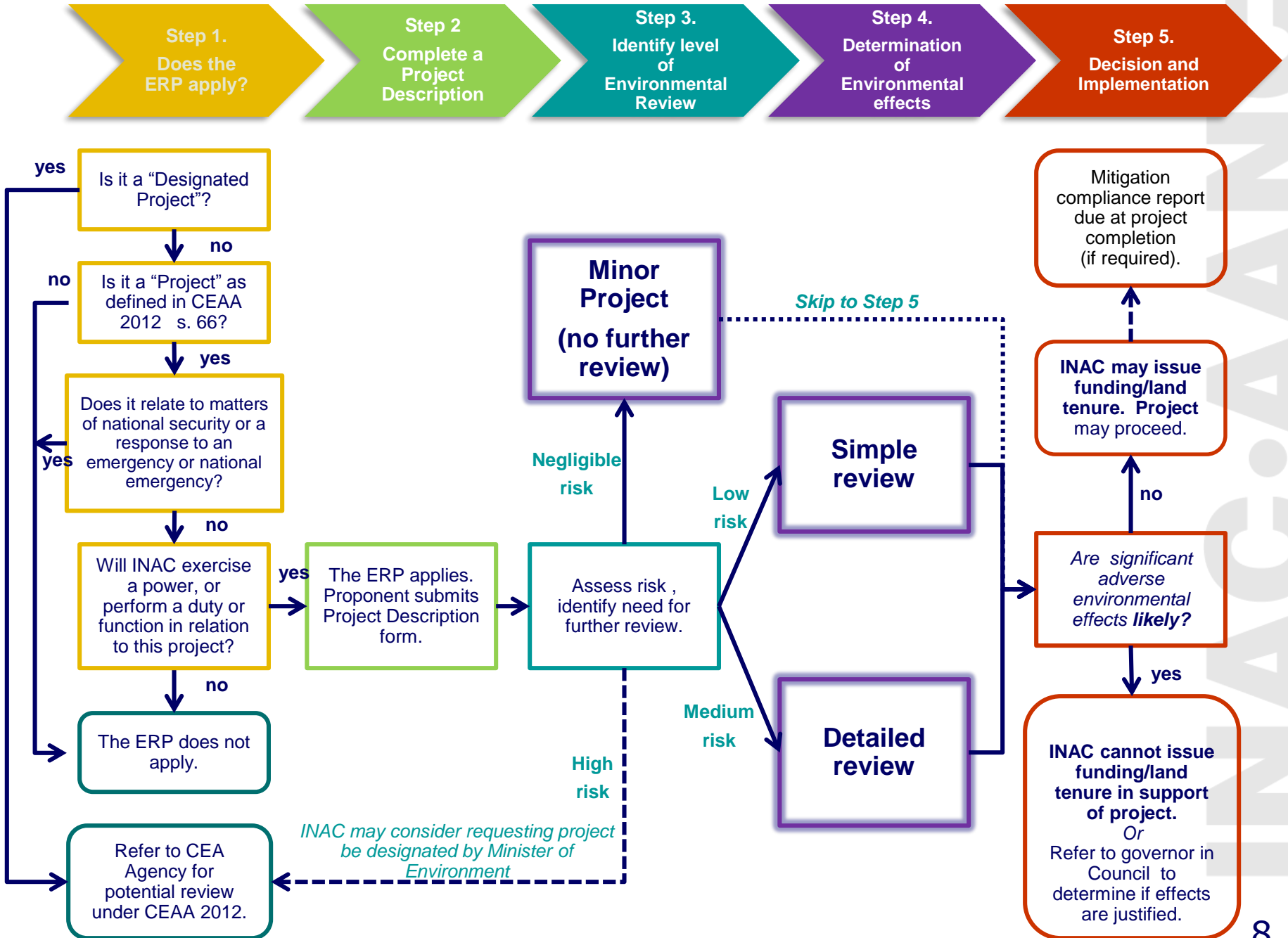
When does the ERP apply? (continued)

INAC Programs

- **Community Infrastructure Directorate**
 - Capital Facilities and Maintenance Program
 - Proposal-based - Capital investments in infrastructure
 - Formula-based - First Nations Infrastructure Investment Plan (FNIIP)
 - Ministerial Loan Guarantee (MLG) Program - housing
- **Lands and Economic Development Directorate**
 - Lands and Economic Development Services Program (LEDSP)
 - Community Opportunity Readiness Program (CORP)
 - Strategic Partnerships Initiative (SPI)
 - Contaminated Sites Management Program (CSMP)
 - Lands Operations - permits, leases
- **Governance, Individual Affairs and Government Relations Directorate**
 - Indian Moneys - issuance of band funds



Overview of the Environmental Review Process





INAC's Environmental Review Process			CEAA
Minor Projects – Negligible Risk	Simple Review – Low Risk	Detailed Review – Medium Risk	Designated Projects - High (and/or potential for public concern)
<ul style="list-style-type: none"> • Small-scale or routine "projects" with low/negligible environmental risk • Well-understood, predictable environmental effects that can be managed with generic mitigation measures and/or standard best practices • No need for further environmental review past the Project Description form • Effects can be managed through standard mitigation measures and/or best management practices. 	<ul style="list-style-type: none"> • Insufficient information (i.e. impacts to Species at Risk, etc.) • Project on the Minor Projects List has a greater than Negligible Risk potential • Project is not on the Minor Projects List • Mitigation measures must be identified for project components where potential environmental risk is identified. • Any additional recommendations (e.g., tank registration requirements) provided by the environment officer must be implemented. 	<ul style="list-style-type: none"> • The project is large or complex, and risk and potential effects are not readily known. • A detailed assessment of potential environmental effects is required. • Requires additional supporting studies to make decisions 	<ul style="list-style-type: none"> • Referral for designation pursuant to s.14(2) of CEAA 2012 Projects with (a) too much risk to environment, (b) too many unknown variables or effects, or (c) too much public concern • Minister of Indigenous Affairs and Northern Development refers the project to the Minister of Environment and Climate Change Canada for official "designation" • Undergoes environmental assessment under the CEA Agency instead • Any project with high environmental risk, for which there is a high level of public and/or Aboriginal concern
<p>Examples:</p> <ul style="list-style-type: none"> • Construction of a single house • Renovations of an existing structure (e.g. community facility) • Installation of an underground fuel storage tank • Upgrades to existing roads 	<p>Examples:</p> <ul style="list-style-type: none"> • Construction of a waste water/sewage treatment plant • Construction of a residential sub-division • Construction of a gas station 	<p>Examples:</p> <ul style="list-style-type: none"> • Construction and operation of a waste incinerator • Construction and operation of an aquaculture operation • Construction of an all-season highway • Any project with potential environmental risk for which there is a high level of public and/or Aboriginal concern 	
<p>Tools :</p> <ul style="list-style-type: none"> • Minor Projects List • Minor Building Construction Best Management Practices • Project Description Form (initial intake form) 	<p>Tools :</p> <ul style="list-style-type: none"> • Simple Environmental Review Form • Mitigation Measures Compliance report 	<p>Tools :</p> <ul style="list-style-type: none"> • The Guide to Completing a Detailed Environmental Review Report 	

- All available on ERP Intranet Site at <http://intranet/prev-prev/eng/1405104809367/1405104911304> including the Proponent's Guide to INAC's Environmental Review Process





When does the ERP NOT apply?

- NOT considered a “project”:
 - Housing or other loan repayments
 - Purchase or repair of vehicles and equipment
 - Paper studies
 - Conferences

.....therefore, the ERP doesn't apply!!
- However, INAC environment officers may input into feasibility studies, and terms of references to advise on environmental legislative requirements and best practices.
- If in doubt, consult your INAC environment officer!
- Indian Oil and Gas Canada – they adopted the ERP process and modified it to meet its specific needs when issuing authorizations, in conjunction with the provincial oil and gas regulators.
- Self-governing First Nations apply their own processes as departmental authorizations are limited.





INAC Stats for South of 60

- For 2015-2016
 - **1,184 projects reviews**
 - 1,094 minor projects
 - 86 simple reviews
 - 4 detailed reviews
- Most projects:
 - Maintenance,
 - upgrades,
 - construction of community infrastructure



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Preparing Effective Project Descriptions

- Greatest delays in reviewing projects are because of poor project descriptions without adequate detail.
- Common information left out include:

➤ PROPONENT NAME & CONTACT INFO

➤ INFRASTRUCTURE INFORMATION

- Identification of all proposed works/activities
- Building size(s) (f² or m²)
- Type of heating system (i.e. diesel, electric, propane, wood)
- Type/size of fuel tank(s) (if applicable)
- Type of water (piped, well)
- Type of sewage (piped, septic)



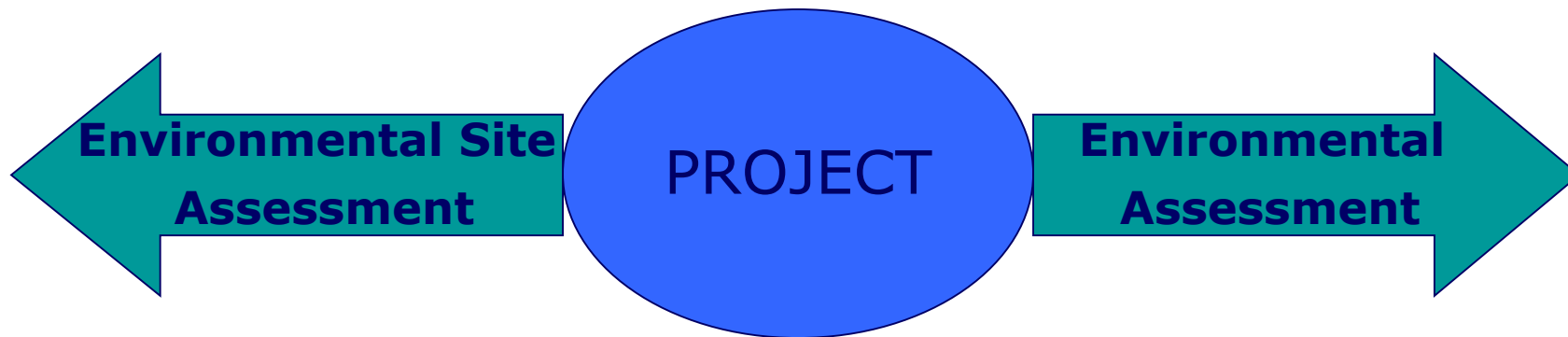
Summary

- The ERP ensures projects and activities on “**federal lands**” do not result in adverse environmental effects.
- The ERP is a streamlined process that matches the **level of review to the environmental risk** of a project.
- If the environmental review concludes that the project is **unlikely to cause significant adverse effects**, INAC may issue funding and/or regulatory authorization (e.g., permit, lease) in support of the project.
- INAC’s environment officers can provide **advise on environmental legislative requirements and best practices**.





Environmental Site Assessment



Purpose: To protect the “project” from the environment

- Follows CSA Z768 Standard
- Required for most land transfers
- Examines past and present land conditions
- Allows for a baseline for comparison at the end of the lease period

Purpose: To protect the environment from the “project”

- Canadian Environmental Assessment Agency, Environmental Review Process, First Nation Review Process
- Examines future environmental effect of the projects before proceeding with the project
- Projects should not cause significant adverse environmental effects or economic damage on or outside the proposed area

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Environmental Site Assessment Policy Context

- An ESA is required prior to issuing a land instrument involving First Nation lands
- The Phase I ESA is conducted for all leasing activities to determine the current conditions of the lands prior to leasing, determining the baseline
- An ESA is conducted at the end of the term of the lease to determine the final condition of the land
- Any contamination or damage to the land during the lease tenure will be the proponents responsibility to remediate to base line condition as per the Government of Canada's Polluter Pays Principle

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Phase I ESA – The Basics

- The terms of reference for the conducting of the Phase I ESA shall be based on the Canadian Standards Association guidelines and standards for Phase 1 Environmental Site Assessments Z768-01
- CSA Definition: Phase I Environmental Site Assessment – the systematic approach by which an assessor seeks to determine whether a particular property is or may be subject to actual or potential contamination
- A Phase I ESA completed to the Standard does not involve the investigative procedures of sampling, analyzing, and measuring

Components:

- i. Records Review
- ii. Site Visit
- iii. Interviews; and
- iv. Evaluation of information and reporting



Phase I ESA – Records Review

Purpose:

- Provide the assessor an in-depth understanding of the site history
 - Provide knowledge of a range of possibilities with respect to contamination, and
 - Provide documentable facts with respect to actual contamination
- **Mandatory Records Review**
 - Air Photos
 - Property Use Records
 - Title Search and Assessment Rolls
 - Prior environmental studies
 - Company Records
 - Regulatory – spills, prosecutions/orders, hazardous materials storage
 - **Optional Records Review**
 - Maps – soils, topographic
 - Public Health
 - Etc.



CERTIFICATE OF TITLE



Saskatchewan Ministry of Environment

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Phase I ESA – Site Visit

Purpose:

- Substantiate information found through the Records Review
- Directly observe the subject property and to record all observations
- Document Property Use – of the subject property as well as the adjacent properties
 - Hazardous Materials
 - Storage Tanks
 - Odours
 - Water, Wastewater and Sewage Systems
 - Stains
 - Stressed Vegetation
 - Drainage





Phase I ESA – Interviews

Purpose:

- Corroborate or augment the information gathered in the Records Review.
- Corroborate information from the site visit or provide information useful in planning the site visit
- Questions should be derived to obtain information about current and past activities and events that may affect the environmental conditions at the subject property

WHO?

- Site Personnel/Occupants
- Government Officials
- Community Members
- Third Parties





Phase I ESA – Evaluation of Information and Reporting

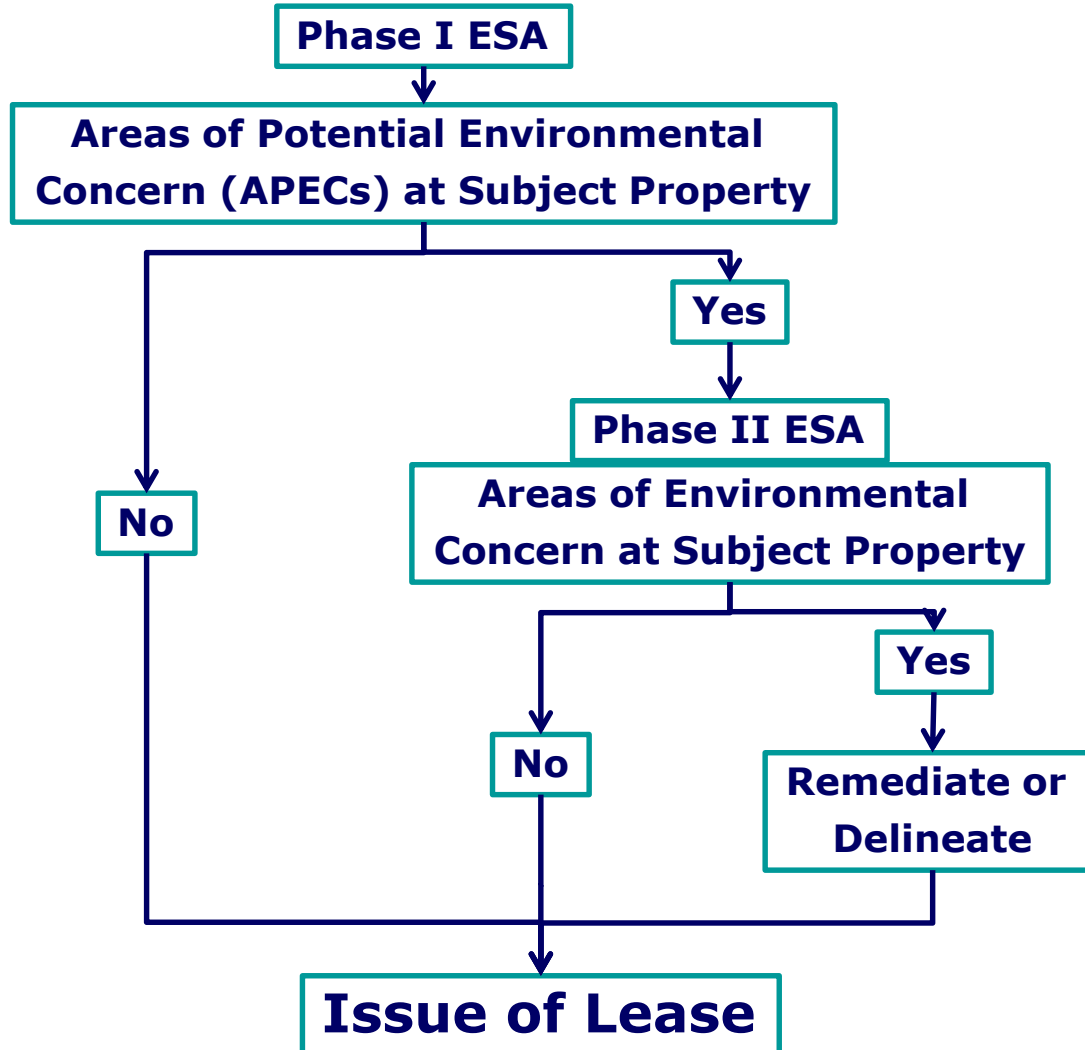
Purpose:

- Documentation if there are any areas on the subject property that are Areas of Potential Environmental Concern (APECs)?
- Written report required
- All deviations to the standard or limitations must be clearly stated
- Conclusions:
 - No evidence of Contamination
 - Evidence of Possible Contamination
 - Evidence of Actual Contamination





Further Work Required?



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Stale-Dating of ESAs

Environmental Site Assessments for
leasing purposes stale date after

1 year of issuance



Summary

- Phase I ESA is required prior to the issuance of any lease
- The cost of the Phase I ESA is borne by the proponent
- All Phase I ESAs stale date 1 year after issuance
- A closing ESA must be conducted prior to the expiration of the lease





Questions?

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