

Environmental and Social Impact Assessment and Review Procedure

James Bay and Northern Quebec Agreement Section 22

Department of Environment and Remedial Works
CREE NATION GOVERNMENT

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Environmental and Social Impact Assessment and Review Procedure

James Bay and Northern Quebec Agreement Section 22

Eeyou Istchee is protected by an environmental and social protection regime established under Section 22 of the James Bay and Northern Quebec Agreement (JBNQA). It protects the rights and guarantees foreseen under the Hunting, Fishing and Trapping Regime (JBNQA, Section 24), the Cree people, their economy and the wildlife resources upon which they depend.

Section 22 also establishes an environmental and social impact assessment and review procedure (“ESIA procedure”). It is designed to make sure the impacts of development projects are assessed at the preliminary stage before an irrevocable decision is made. Projects shall be planned and developed in compliance with the Section 22 ESIA procedure¹.

Which projects must get an authorization under the ESIA Procedure?

Do all projects need to go through the ESIA procedure? The response is no. It is the responsibility of the proponent to verify whether their project is listed under Schedule 1 or 2 of the JBNQA Section 22.

- Projects listed under Schedule 1 are required to go through the ESIA procedure.
- Projects listed under Schedule 2 are automatically exempt from the ESIA procedure.

Once you have a business case, it is highly recommended to verify early on in your project planning if the project is listed or not in either of the Schedules. When a project is listed under Schedule 2, no action is needed as part of the ESIA Procedure.

¹ Section 22 is embedded in the Quebec *Environmental Quality Act* under Title II “Provisions Applicable to the James Bay and Northern Québec Region.”

Schedule 1

Projects automatically subject to assessment and review

- All new major mining operations excluding explorations;
- Siting and operation of major sand and gravel pits and of quarries;
- **Energy Production:**
 - a) Hydro-electric powerplants and their associated works;
 - b) Storage and water supply reservoirs;
 - c) Transmission lines of ≥ 75 kV;
 - d) Extraction and processing of energy yielding materials;
 - e) Fossil-fuel fired power generating plants $> 3,000$ kW.
- **Forestry and Agriculture:**
 - a) Major access roads built for extraction of forest products;
 - b) Pulp and paper mills or other forestry plants;
 - c) In general, any significant change in land use substantially affecting > 25 miles² (> 64.7 km²).
- **Community and Municipal Services:**
 - a) New major sewage and wastewater collection and disposal systems;
 - b) Solid waste collection and disposal, including land fill and incineration;
 - c) Proposals for parks, wilderness areas, ecological reserves or other similar land classifications;
 - d) New outfitting facilities for more than thirty (30) persons, including networks of outpost camps;
 - e) New communities or significant expansion of existing communities.
- **Transportation:**
 - a) Access roads to and near Native communities;
 - b) Port and harbour facilities;
 - c) Airports;
 - d) Railroads;
 - e) Road infrastructure for new development;
 - f) Pipelines;
 - g) Dredging operations for navigation improvements.

Schedule 2

Projects automatically exempt from assessment and review

- Any development within the limits of non-Native communities not directly affecting the wildlife resources outside these limits;
- Small hotels, motels, service stations and similar structures on provincial or lesser highways;
- Structures intended for dwellings, wholesale and retail trade, garages, offices or handicrafts and car parks;
- Fossil-fuel fired power generating systems <3,000 kilowatts;
- The following immoveables: teaching establishments, banks, fire stations, immoveables intended for administrative, recreational, cultural, religious, sports and health purposes and immoveables and equipment used for telecommunications;
- The construction, modification, restoration, relocation or putting to another purpose of control and transformer stations of ≤ 75 kV and transport and electric power transmission lines of a voltage of ≤ 75 kV;
- The construction and extension of a pipe main of ≤ 30 cm in diameter to a maximum length of 5 miles (8 km);
- Preliminary investigation, research, experiments outside the plant, survey and technical survey works prior to any project, work or structure;
- Forestry development when included in governmental approved management plans, subject to the provisions of paragraph 22.3.34 of Section 22;
- Municipal streets and sidewalks built in accordance with municipal by-laws, and operation and maintenance of roads and highway structures;
- Repairs and maintenance on existing municipal works;
- Temporary hunting, trapping, harvesting camps; outfitting facilities for ≤ 30 people;
- Small wood cuttings for personal and community use;
- Borrow pits for highway maintenance purposes.

> When a project is not listed in either Schedule 1 or 2, it falls in the “grey zone”. These projects must go through an assessment in order to determine if a comprehensive review is required or if it can be exempt from review. Example of “grey zone” projects include:

- Drinking water supply systems, including water intakes and wells, and drinking water treatment plants²
- Boat ramps³
- Bank stability projects
- Decontamination and storage of contaminated soil
- Bridges
- Wind farms
- Marinas
- Advance mining exploration
- Weather stations
- Asphalt plant

> When a project is listed under Schedule 1 or in the “Grey zone”, the proponent must send a Preliminary Information to the Administrator (see 2nd Step in Assessment process below).

> When a project is exempt from review, it does not exempt the proponent from obtaining any other permits required by any act or regulation (local, provincial, or federal).

Who is the Decision Maker?

> On Category I land

The Cree Regional Administrator is the person required to make a final decision on the assessment and review of development projects. This function is under the responsibility of the Director of the Environment and Remedial Works Department within the Cree Nation Government.

> On Category II and III lands

The decision makers are the Provincial or Federal Administrator, depending on the nature of the project (provincial or federal jurisdiction).

The *Administrator* decides, after receiving the recommendation of the Assessment and Review Committees, based on the environmental and social impact considerations, whether or not the development project should proceed. If so, then on what terms and conditions, including mitigation or follow-up measures.

² Only the construction and extension of a pipe main of <30cm in diameter to a maximum length of 5 miles is automatically exempted



³ Boat ramps intended to enable Cree people to exercise their right to harvest (JBNQA; par.24.3.1 and 24.3.13) by providing easier access to family traplines could be exempted from impact assessment.

Who are the Assessment and Review Committees?

The Cree have representation via the Regional Administrator and on three committees established under Section 22. These committees are responsible for evaluating and reviewing environmental assessments.

Authority/Body	Affiliation/Composition	Responsibilities
Cree Regional Administrator	Director - Department of the Environment and Remedial Works, CNG	<ul style="list-style-type: none"> Issue the <i>Directives</i> to proponents for their preparation of environmental and social impact assessment study After assessments, decide on the subjection or exemption of projects from reviews and the scope of the review After reviews, decide on project exemption, authorization (or not) and issue conditions *Considering a project's nature or location, one or more Administrators may have to make the above decisions for a given project
Provincial Administrator	Deputy Minister - Ministère de l'Environnement et de la Lutte contre les changements climatiques	
Federal Administrator	President - Impact Assessment Agency of Canada	
Evaluating Committee (COMEY)	2 x Cree Nation Government 2 x Québec Government 2 x Federal Government	<ul style="list-style-type: none"> Assesses the <i>Preliminary Information</i> provided by proponents and recommends to the relevant Administrator if reviews are needed (or not) May organize public information sessions and consultations for projects under assessment(discretionary) If need be, draft the <i>Directive</i> (provides recommendations on the contents of the ESIA study and on the scope of reviews to the Administrator)
Provincial Review Committee (COMEX)	2 x Cree Nation Government 3 x Québec Government	<ul style="list-style-type: none"> Review ESIA study provided by proponents; Organize formal public information sessions and hearings for projects under review (discretionary); Provide recommendations on project authorizations (or not), and on conditions and/or mitigations applicable to the project (as the case may be) to the relevant Administrator; Assume an ongoing follow up on project authorizations and conditions.
Federal Review Panel - South (COFEX-South)	2 x Cree Nation Government 3 x Federal Government	

JBNQA S.22 Environmental and Social Impact Assessment Process Diagram

Assessment Procedure	Review Procedure
Step 1 <input type="checkbox"/> Proponent verifies if their project is listed under Section 22 Schedule 1 or 2	Step 7 <input type="checkbox"/> Proponent prepares Environmental Impact Statement (EIS) per the <i>Directive</i> and submits it to Administrator
Step 2 <input type="checkbox"/> If project is listed under Schedule 1 or is not listed under Schedule 2 (grey zone project), the proponent submits preliminary information on proposed project to Administrator*	Step 8 <input type="checkbox"/> Administrator sends EIS to review body(ies) (COMEX/COFEX-South)
Step 3 <input type="checkbox"/> Administrator transmits preliminary information to COMEV	Step 9 ** <input type="checkbox"/> Review body(ies) examines EIS and transmits recommendation to Administrator
Step 4 ** <input type="checkbox"/> COMEV assesses project and transmits its recommendation to the Administrator (may include recommendation on <i>Directive</i>)	Step 10 <input type="checkbox"/> Administrator makes a decision and notifies proponent
Step 5 <input type="checkbox"/> Administrator makes a decision and notifies proponent.	Step 11 <input type="checkbox"/> Proponent is informed of Administrator's decision
Step 6 <input type="checkbox"/> Proponent receives Administrator's decision (Attestation of Exemption or a <i>Directive</i>)	 Authorization that the proponent may proceed <u>or</u> authorization not given and the proponent may not proceed Conditions that proponents must respect may relate to monitoring, closure and public engagement
 Proponent conforms to Administrator's decision (may proceed without review or prepares Environmental Impact Statement for the review per the <i>Directive</i>)	Step 12 <input type="checkbox"/> Monitoring and Follow-Up Studies – May repeat steps 7-11

** Steps in which public consultations occur by COMEX, COMEX and COFEX-S. Those do not replace ongoing public engagement and participation initiatives that proponents should undertake on their own.

Throughout the ESIA process, there are various opportunities offered by either the proponent and/or Review Committees for Cree involvement. Cree knowledge, concerns, priorities and expectations regarding the project must be considered. Cree people can express issues related to the project by various platforms. Active involvement will improve the project and influence the final decision.

Who is working on the ESIA process for the Cree Nation Government?

The Environmental and Social Impact Assessment Unit (“ESIA Unit”) within the Environment and Remedial Works Department is composed of 3 professionals. They work in close collaboration with the Department’s professionals and Units: environmental management advisor, mining engineer, wildlife biologists, Land Use Planning, Protected Area and GIS Units. They also collaborate with many Cree Nation Government Departments such as Capital Works Services, Commerce and Industry, Social and Cultural Development, Apatisiwin Skills Development, and other Cree entities such as the Cree Trappers Association, the Cree Health Board and the Aanischaaukamikw Cree Cultural Institute.

The ESIA Unit also works in close collaboration with all Cree communities. We inform local representatives of new projects and the ESIA procedure. We support the communities according to their needs at each stage of the procedure.

The Cree Nation Government ESIA Secretariat is assured by the ESIA Unit, which means we receive copies of all the correspondence related to the ESIA procedure. We have a working relationship with the Ministère de l’Environnement et de la Lutte aux changements climatiques (MELCC) and the Impact Assessment Agency of Canada (IAAC). The ESIA Unit’s role is define in the following table.

Includes	Does not include
<ul style="list-style-type: none"> • Informing the Cree local representatives of new project Preliminary Information and other documents submitted. • Reviewing the documentation received and preparing assessment or comments for Cree Nation Government representatives on the Evaluating Committee and Review Committee. • Assisting the Cree Nation Government representatives sitting on COMEV/COMEX/COFEX-S in the organization of local public hearings with respect to the ESIA process. • Providing support to local proponent to inform them of the ESIA process. • Consulting with the Cree local representatives and people affected by the project to make sure their questions and concerns are addressed by the proponent. • Assuming an ongoing follow up on project authorizations and collaborating with the environmental monitoring and follow-up committees created under the ESIA process or Impact Benefit Agreements. 	<ul style="list-style-type: none"> • Providing consultation services for the planning of a project. • Sitting as members on the pre-planning project feasibility. • Executing studies and preparing environmental impact statement for review. • Performing pre-evaluation reviews of the documents for conformity. • Providing intervenor funding.

Other Laws and Regulations

It is the responsibility of the proponent to make sure they obtain any other authorization required by any act or regulation, or, if applicable, those that may be required under Title I of the Environmental Quality Act. Under the Governance Agreement, the Cree Nation Government and the Cree communities may make laws for the protection of the environment. The proponent has the responsibility to comply with those, if any.

All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Territory to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section (JBNQA Section 22 art. 22.2.3).

For more information:

Evaluating Committee Website:	https://comev.ca/en/
Provincial Review Committee Website:	https://comexqc.ca/en/
Preliminary Information Form:	Preliminary Information for Projects (gouv.qc.ca)
James Bay Advisory Committee on the Environment:	Best-Practice Guidance for Project Proponents by JBACE 2019

If you have any questions about the ESIA Procedure, please contact:

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