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Related to NWAC'S Engagement on

# Designated Classes of Projects Order

Feedback Report October 2024



Native Women's  
Association of Canada

L'Association des  
femmes autochtones  
du Canada





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# About the Native Women's Association of Canada

Founded in 1974, the Native Women's Association of Canada (NWAC) is a National Indigenous Organization (NIO) representing Indigenous women, girls, Two-Spirit, transgender and gender-diverse people (WG2STGD+) in Canada and is inclusive of First Nations on and off reserve, status and non-status, disenfranchised, Métis, and Inuit. NWAC engages in national and international advocacy for policy reforms that promote equality for Indigenous WG2STGD+.

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NWAC was founded on the collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Indigenous WG2STGD+ within their respective communities and Canadian societies.

Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the well-being of all Indigenous women, girls, Two-Spirit, transgender, and gender-diverse people, as well as their families and communities.

NWAC works on a variety of issues such as employment, labour and business, health, violence prevention and safety, justice and human rights, environment, early learning childcare, and international affairs. To develop our policy reports and recommendations, we consult with Indigenous WG2STGD+ through in-person/virtual engagements across the country.

NWAC has long supported Environmental sustainability and in extension, climate action and conservation, in efforts to advocate and protect the natural environment.















## PART ONE:

# Proposed Amendments to the *Impact Assessment Act of Canada*

The Impact Assessment Agency of Canada (IAAC) convened a series of discussion dialogues to engage Indigenous peoples, stakeholders as well as the public on the proposed changes to three regulatory initiatives under the *Impact Assessment Act* (IAA), namely:

1. Review of *Physical Activities Regulations*
2. The Designated Classes of Projects Order
3. *Indigenous Impact Assessment: Co-Administration Agreement Regulations*

The *Designated Classes of Projects Order* also known as the Ministerial Exclusion Order or the Order sets out the classes of ***non-designated projects*** on federal land and outside Canada. The only relates to project that will cause minimal negative environmental effects and therefore not require an impact assessment.



## NWAC's Engagement on the *Designated Classes of Projects Order*

The Native Women's Association of Canada (NWAC) hosted an engagement session via Zoom on September 24, 2024, from 2:00-4:00pm eastern standard time (EST). The goal of this session was to allow Indigenous women, girls, Two-Spirit, transgender, and gender-diverse (WG2STGD+) to share their perspectives, knowledge and lived experiences on the proposed changes to the *Designated Classes of Projects Order*.

The session began with a presentation by the IAAC on its proposed changes to the *Designated Classes of Projects Order*. This was then followed by a group discussion with the participants asking questions and giving feedback on their perspective.

## Indigenous Participation

**Thirty-four (34)** participants signed up, however only **twenty (20)** attended the session from across Canada. Unfortunately, there were no participants from Alberta (AB), British Columbia (BC), Newfoundland and Labrador (NL), Nunavut (NVT), Northwest Territories (NWT), Prince Edward Island (PEI), or Yukon (YT).



## About the Report

This report represents the feedback, i.e., questions and comments of participants, and NWAC's recommendations related to the IAAC's engagement session on the *Designated Classes of Projects Order*. The questions and comments from participants are supplemented by responses and recommendations from NWAC. NWAC's responses relate directly to the section outlined in the Canada Gazette, Part I, Volume 158, Number 30: Order Designating Certain Excluded Classes of Projects. These responses and recommendations are backed by **case study evidence** on the Impact Assessment process in Canada.

## Limitations

The IAAC published Part 1, Volume 158, Number 30: Order Designating Certain Excluded Classes of Projects in the Canada Gazette, the official publication of the Government of Canada. Each section of the Order invites public comments. Unfortunately, during engagement, the discussion did not always follow a structured format based on the Order. However, the responses presented in **part two** below, address the **sections** of the Canada Gazette that directly and indirectly impact **Indigenous WG2STGD+ people**.





## PART TWO:

# Regulatory Impact Analysis Statement

## 1. Background

### Concern:

- The effectiveness of the IAA in addressing the long-term implications of projects, particularly those deemed “low risk” seems inadequate. Even minor projects can have **cumulative effects** that can disrupt traditional practices and cultural heritage and in turn significantly affect Indigenous ways of life<sup>1</sup>.
- While the focus on prevention is commendable, true prevention necessitates a deeper commitment to respecting Indigenous rights and knowledge. Indigenous communities hold invaluable insights about the land, and their contributions must be prioritized in decision-making processes<sup>2</sup>. Therefore, it is important to integrate Indigenous knowledge systems into environmental assessments to address Indigenous rights<sup>3</sup>.



## Recommendation

- The Native Women's Association of Canada urges the IAAC to ensure that future changes to the Ministerial Exclusion Order involve meaningful engagement with Indigenous communities.
- Recognizing that Indigenous rights and interests must be central to decision-making is essential. It is not merely about compliance; it is also about fostering genuine partnerships that honour the relationship with the land and promote sustainable futures for all<sup>4</sup>.

<sup>1</sup> Stephen R. J. Tsuji, "Canada's Impact Assessment Act, 2019: Indigenous Peoples, Cultural Sustainability, and Environmental Justice," *Sustainability* 14, no. 6 (March 16, 2022): 3501, <https://doi.org/10.3390/su14063501>.

<sup>2</sup> United Nations, "United Nations Declaration on the Rights of Indigenous Peoples," United Nations Declaration on the Rights of Indigenous Peoples, September 13, 2007, <https://doi.org/10.1353/hrq.2011.0040>.

<sup>3</sup> Deborah McGregor, "Lessons for Collaboration Involving Traditional Knowledge and Environmental Governance in Ontario, Canada," *AlterNative: An International Journal of Indigenous Peoples* 10, no. 4 (November 2014): 340–53, <https://doi.org/10.1177/117718011401000403>.

<sup>4</sup> Deborah McGregor, "Coming Full Circle: Indigenous Knowledge, Environment, and Our Future," *The American Indian Quarterly* 28, no. 3 (2004): 385–410, <https://doi.org/10.1353/aiq.2004.0101>.



## 2. Description

### Concern:

- While the proposal to repeal and replace the Ministerial Exclusion Order aims to add new classes of projects, NWAC emphasizes the risk of limiting engagement opportunities for Indigenous WG2STGD+ people in the process decision-making when determining which new classes should be added.
- The criteria for excluding projects based on minimal environmental interaction overlooks the potential for **cumulative** and **feedback** effects on Indigenous lands and resources. Existing case evidence shows that even low-risk projects can significantly impact traditional practices and Indigenous community well-being<sup>5</sup>.
  - For example, in response to the development of a **Low Impact Shipping Corridor** in the Arctic local communities were concerned that shipping, especially in the winter, would disrupt otherwise stable sheets of ice creating significant impacts on hunting, travel and on marine animals<sup>6</sup>

### Recommendation

- NWAC advises that all changes to the Ministerial Order prioritize Indigenous voices to ensure meaningful engagement in the assessment process. True sustainability must involve dialogue that respects Indigenous relationships with their lands and waters<sup>7</sup>.

<sup>5</sup> Lauren E. Eckert et al., "Indigenous Knowledge and Federal Environmental Assessments in Canada: Applying Past Lessons to the 2019 Impact Assessment Act," ed. Nicole L. Klenk, *FACETS* 5, no. 1 (January 1, 2020): 67–90, <https://doi.org/10.1139/facets-2019-0039>.

<sup>6</sup> Jackie Dawson et al., "Infusing Inuit and Local Knowledge into the Low Impact Shipping Corridors: An Adaptation to Increased Shipping Activity and Climate Change in Arctic Canada," *Environmental Science & Policy* 105 (March 1, 2020): 19–36, <https://doi.org/10.1016/j.envsci.2019.11.013>.

<sup>7</sup> Giorgia Magni, "Indigenous Knowledge and Implications for the Sustainable Development Agenda," *European Journal of Education* 52, no. 4 (September 19, 2017): 437–47, <https://doi.org/10.1111/ejed.12238>.











# 3. Regulatory Development

## Concern:

- There are limitations to the federal environmental assessment legislation related to modern treaties and self-government agreements. Changes to the Ministerial Exclusion Order could limit opportunities for Indigenous communities to comment on potential environmental impacts, potentially affecting their rights due to inadequate **consultations/response times** and the potential for **increased development pressures**<sup>8</sup>.
- While Indigenous groups were consulted prior to the implementation of the *Ministerial Exclusion Order*, there is no mention of consultations with Indigenous people during the Initial Input 2020-2021 or preliminary consultation with authorities 2022-2023. If this were the case, then it might represent an infringement on Indigenous rights<sup>9</sup>.

## Recommendation

- While low-risk projects may have **insignificant effects** on the environment from a **Western science viewpoint**, gaining an **Indigenous view** from all potentially affected communities is vital. This approach represents an important step towards **reconciliation** because it ensures that Indigenous ideas are included in every stage of policy development.
- Free, prior and informed consent is a constitutional right for Indigenous communities and is not to be undermined or treated as optional in any decision-making processes that affect their lands, resources, or rights<sup>10</sup>.
- Therefore, consideration should be given to excluding projects that might have even minor effects on Indigenous communities.

<sup>8</sup> United Nations, "Twelfth Session Report | United Nations for Indigenous Peoples," Un.org, 2014, <https://www.un.org/development/desa/indigenouspeoples/unpfi-twelfth-session.html>.

<sup>9</sup> Rachel Arsenault et al., "Including Indigenous Knowledge Systems in Environmental Assessments: Restructuring the Process," *Global Environmental Politics* 19, no. 3 (August 2019): 120-32, [https://doi.org/10.1162/glep\\_a\\_00519](https://doi.org/10.1162/glep_a_00519).

<sup>10</sup> Legislative Services Branch, "Consolidated Federal Laws of Canada, United Nations Declaration on the Rights of Indigenous Peoples Act," <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>, June 21, 2021.

## 4. Regulatory Analysis

### Benefits and Costs

In the IAA Gazette under benefits and costs states that “The proposed changes to the Ministerial Exclusion Order are also expected to benefit third parties that operate on federal lands, including businesses, by minimizing delays related to decisions about their projects. There are no incremental costs associated with the proposed changes to the Ministerial Exclusion Order.”

### Concern:

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- However, minimizing delays by decreasing the time related to the decision-making process, could infringe the rights of Indigenous people because it does not take into consideration their governing processes.
- Also, in an effort to **minimize delays** the IAAC may not have fully considered the potential infringements related to the right to free, prior and informed consent (FPIC)<sup>11</sup>.
- Third parties, including businesses, often hold a position of advantage within the prevailing colonial framework, which tends to prioritize their interests. Indigenous knowledge and ways of life are frequently perceived as “foreign” by those outside these communities, resulting in their marginalization and dismissal in decision-making processes<sup>12</sup>.

### Recommendation

- The Native Women’s Association of Canada recommends that in considering **minimizing delays** in the interest of maximizing benefits and costs, the IAAC considers the potential impacts of excuded projects on Indigenous lands, under the right of FPIC.

<sup>11</sup> Amy Hickey, “An Unsuitable Integration: The Duty to Consult and Environmental Assessments in Canada,” <https://unbscholar.dspace.lib.unb.ca>, 2018, <https://unbscholar.dspace.lib.unb.ca/server/api/core/bitstreams/34c665b9-bc7c-4511-be41-e0be2d5a4683/content>.

<sup>12</sup> Stephen C. Ellis, “View of Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision Making,” *Ucalgary.ca* 58, no. 1 (2005), <https://journalhosting.ucalgary.ca/index.php/arctic/article/view/63451/47388>.

# Gender-Based Analysis Plus

## Concern:

- The **declaration** in the **Gazette** under Gender-based analysis, i.e., “No impacts based on gender and other identity factors have been identified for this proposal. Based on this definition and the results of the gender-based analysis plus (GBA+), it is expected that excluding projects with only insignificant adverse environmental effects from the requirements of the IAA will have no GBA+ impact.” However, the IAAC should be mindful that even project with minor effects might have implication on the health, social and economic conditions of Indigenous WG2STGD+ people because they are often marginalized and undervalued<sup>13</sup>.

## Recommendation

- NWAC as one of the leading Indigenous Organizations representing Indigenous WG2STGD+ people recommends that a **Culturally Relevant Gender-Based Analysis Plus (CRGBA)** be included as the appropriate framework for determining the impacts of excluded projects on the **health social and economic wellbeing** of Indigenous WG2STGD+ people because Gender-Based Analysis Plus (GBA+) may fail to critically address and assess the impacts of colonial systems of power, privilege, and oppression that shape it.
- NWAC’s position is that “The implementation of a **CRGBA framework** should be viewed as an opportunity to challenge the assumption that all people are affected by policies and programming in the same way. Furthermore, CRGBA provides a foundation to better advocate for the safety, empowerment, and self-determination of First Nations, Inuit, and Métis women, girls, Two-Spirit, and genderdiverse people in all of the work that we do.”
- The current approach, i.e., **Gender-Based Analysis Plus** seems to treat Indigenous WG2STGD+ people as a subgroup alongside other racial or ethnocultural groups, rather than focusing on and analyzing the distinct effects of colonization on Indigenous experiences<sup>13</sup>.

<sup>13</sup> NWAC, “Culturally Relevant Gender-Based Analysis: A Roadmap for Policy Development” (Native Women’s Association of Canada, n.d.).





## 5. Implementation, Compliance and Enforcement, and Service Standards

### Concern:

16

- The absence of compliance measures raises the risk that a Ministerial Order project could result in significant adverse environmental effects after its completion. This scenario ultimately places the burden on the local community to address the environmental damage caused<sup>14</sup>.

### Recommendation

- Implement compliance and enforcement measures to ensure respect for Indigenous rights and meaningful consultation. The lack of such strategies raises concerns about Indigenous communities' ability to protect their lands and resources.
- Guidance provided to authorities must include directives for engaging with Indigenous communities, ensuring their rights and traditional knowledge are central to decision-making processes. A commitment to uphold free, prior, and informed consent is essential to ensure that Indigenous voices are actively included in discussions affecting their communities<sup>15</sup>.

<sup>14</sup> Genevieve M. Perron, "Barriers to Environmental Performance Improvements in Canadian SMEs," <https://www.researchgate.net>, 2005, [https://www.researchgate.net/profile/Genevieve-Perron-2/publication/228758330\\_Barriers\\_to\\_Environmental\\_Performance\\_Improvements\\_in\\_Canadian\\_SMEs/links/02e7e5385d5e2d9612000000/Barriers-to-Environmental-Performance-Improvements-in-Canadian-SMEs.pdf](https://www.researchgate.net/profile/Genevieve-Perron-2/publication/228758330_Barriers_to_Environmental_Performance_Improvements_in_Canadian_SMEs/links/02e7e5385d5e2d9612000000/Barriers-to-Environmental-Performance-Improvements-in-Canadian-SMEs.pdf).

<sup>15</sup> Government of Canada, "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples," [Justice.gc.ca](https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html), September 1, 2021, <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>.









## PART THREE:

# General Comments

The comments in this section do not directly address the guiding questions presented by the Impact Assessment Agency of Canada (IAAC). However, they have been included to reflect some of the general concerns raised by participants during the discussion session.

## Explicitly Defining Terms

### Concern:

- The absence of clear definitions for “significant” and “insignificant” adverse environmental effects creates ambiguity in interpretation. This can result in differing opinions on the severity of these effects, leading to inconsistencies in how they are assessed and addressed.

### Recommendation:

- It is recommended that the IAAC develop clear, standardized definitions through a collaborative process involving environmental experts, Indigenous communities, and policymakers.
- When dealing with multiple parties, as much as is possible, people should know in advance what the law demands of them, what the law grants to them and what sorts of behaviour they can expect from officials. It is therefore important that drafters frame the law as simple and as clear as possible<sup>16</sup>.

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<sup>16</sup>Esther Majambere, “Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting,” *Commonwealth Law Bulletin* 37, no. 3 (September 2011): 417–26, <https://doi.org/10.1080/03050718.2011.595140>.



## Prioritize Indigenous Perspectives

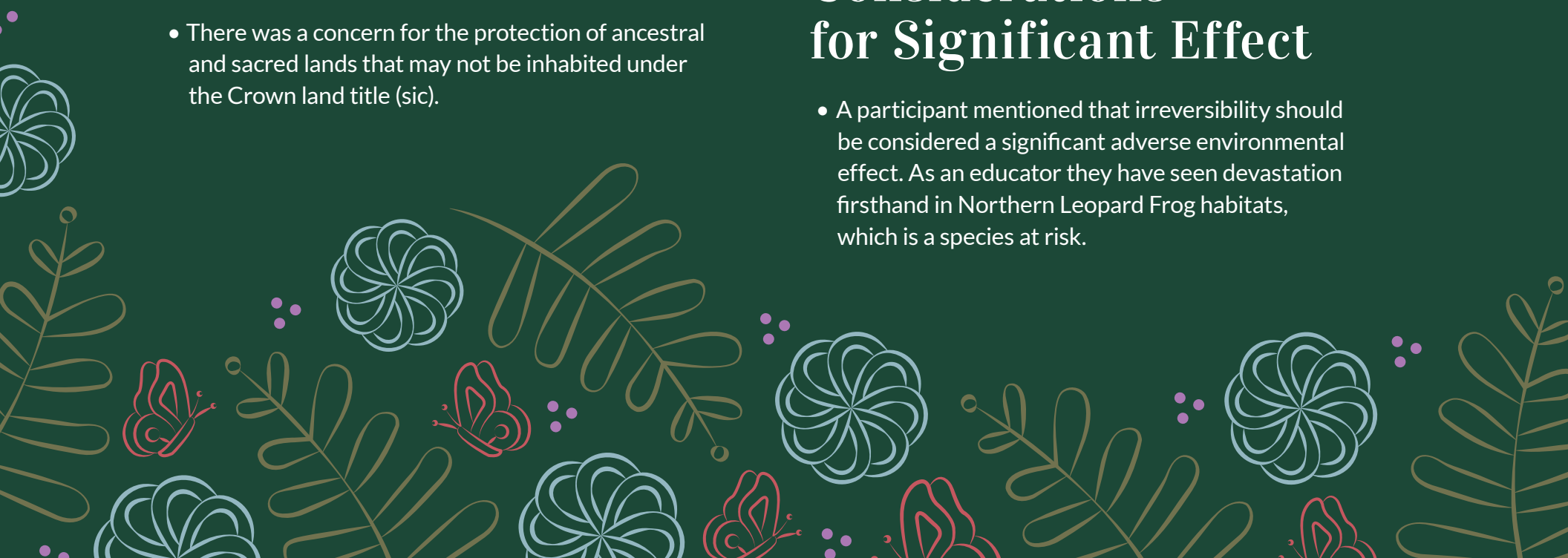
- A participant made a comment concerning the priority of Indigenous perspectives to ensure views and opinions about any prospective projects is meaningfully considered.
- Another participant mentioned *"If there is a project that affects Indigenous lands, where it is significant or not significant, according to the definitions you put out, that it should not be considered at all."* The idea that there should not be projects on Indigenous lands (ancestral, sacred, or territories) is strongly held within many communities.
- There was a concern for the protection of ancestral and sacred lands that may not be inhabited under the Crown land title (sic).

## Inclusion of Traditional Knowledge

- A participant wanted confirmation on whether Indigenous traditional knowledge was included during the determination period for projects. Western science is at an advantage as it is already part of the system.
- Indigenous peoples are the ones living on and with the land. There is a connectedness that Western science doesn't take into consideration.

## Considerations for Significant Effect

- A participant mentioned that irreversibility should be considered a significant adverse environmental effect. As an educator they have seen devastation firsthand in Northern Leopard Frog habitats, which is a species at risk.





## Interconnectedness of Environments

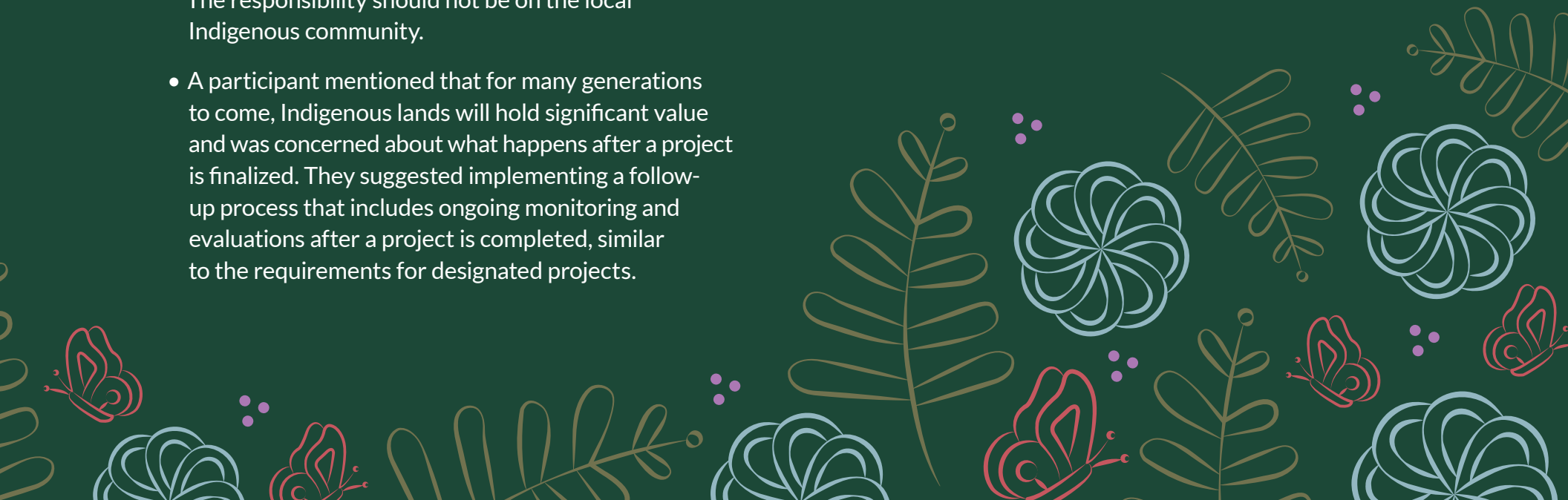
- A contributor pointed out that all environments are connected and asked what rules or policies exist to protect areas that might be affected indirectly from negative impacts.

## After the Completion of a Project

- Any long-term effects of a project that are discovered after its completion must be managed responsibly, even after the original developers are no longer involved. The responsibility should not be on the local Indigenous community.
- A participant mentioned that for many generations to come, Indigenous lands will hold significant value and was concerned about what happens after a project is finalized. They suggested implementing a follow-up process that includes ongoing monitoring and evaluations after a project is completed, similar to the requirements for designated projects.

## Defining the Exclusions (grouping of projects)

- A participant was concerned about the possibility of an organization grouping multiple projects on the exclusion list together in order to avoid triggering an impact assessment.
- A contributor suggested defining classes based on different types of environments. As such the Ministerial List should include projects in environments that may be impacted but would amount to insignificant effects.
- There was concern about adding projects to the list that may not have significant initial effects but ultimately result in long-term impacts that are negligible.





# Undeveloped Lands

## Concern:

22

- One participant indicated that rural federal lands tend to hold medicinal plants that are sensitive to disturbance. The smaller excluded projects can still have an impact on these environments. The participants were worried about this being overlooked.
- Another participant was concerned about the dynamics of an environment and the ecosystems within it as they are constantly changing. If you do not monitor, you can not manage<sup>17</sup>.

## Recommendation:

- Prior to starting a project, during the determination phase, local Indigenous communities should be consulted about the land. Traditional knowledge of medicinal plants and their uses, and the migration patterns of wildlife is very important when determining how significant the impact could potentially be which will in turn allow for informed decision making<sup>18</sup>.
- Multi-seasonal monitoring of the environments, prior to the final determination and after the project (if implemented), would allow for a holistic view of the ecosystem's dynamics, enabling a better understanding of seasonal variations, species interactions, and the overall health and resilience of the habitat<sup>19</sup>.

<sup>17</sup> Kim-Ly Thompson, Trevor C. Lantz, and Natalie C. Ban, "A Review of Indigenous Knowledge and Participation in Environmental Monitoring," *Ecology and Society* 25, no. 2 (2020), <https://doi.org/10.5751/es-11503-250210>.

<sup>18</sup> Helen C. Wheeler and Meredith Root-Bernstein, "Informing Decision-Making with Indigenous and Local Knowledge and Science," *Journal of Applied Ecology* 57, no. 9 (September 2020): 1634–43, <https://doi.org/10.1111/1365-2664.13734>.

<sup>19</sup> Stephen J Woodley and James Kay, *Ecological Integrity and the Management of Ecosystems* (Delray Beach, FL: St. Lucie Press, 1993).





# Storage Tank Systems

## Concern: Storage Tank Systems

- A participant questioned the reasoning for adding underground storage tanks to the exclusion list. First, the land must be disturbed to bury the tank and then be covered again. Secondly, storage tanks that contain drinking water tend to be more contaminated compared to water piped from a water treatment plant<sup>20</sup>.

## Recommendation:

- It should be explicitly stated that the underground tanks are not to be used for drinking water due to the higher chance of contamination. Drinking water storage tanks should be aboveground<sup>15</sup>.

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<sup>20</sup> Geethani Eragoda Arachchilage Amarawansa, Francis Zvomuya, and Annemieke Farenhorst, "Water Delivery System Effects on Coliform Bacteria in Tap Water in First Nations Reserves in Manitoba, Canada," Environmental Monitoring and Assessment 193, no. 6 (May 14, 2021), <https://doi.org/10.1007/s10661-021-09114-x>.

<sup>15</sup> Government of Canada, "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples," Justice.gc.ca, September 1, 2021, <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>.



## Engagement with Indigenous Communities

- A participant at the engagement session was curious about whether there is a distinction about working specifically with Indigenous WG2STGD+ people as they are the ones who hold a sacred connection to and significant knowledge about the environment and water.
- As a follow-up, there was a question regarding who decides which participants are involved during the consultations. Most consultations include Indigenous band councils and governments which are deemed to be full representation however, this is not inclusive. Numerous Indigenous governments are modelled after on colonial governance systems and do not continually reflect view of women, girls, Two-Spirit, and gender-diverse people<sup>21</sup>.
- This powerful statement was made by a contributor:  
“I hope that we can be mindful of that reality because, as women, we feel it. We know that Mother Earth is sick, and we know she is not well. We are concerned. That is why most of us are involved and getting involved in science because we are Indigenous scientists. We are seeing those changes happening out there, but we have nowhere or the resources to be able to participate.”

<sup>21</sup>Susan Manning et al., “Strengthening Impact Assessments for Indigenous Women,” 2018, <https://www.canada.ca/content/dam/iaac-acei/documents/research/Stengthening-Impact-Assessments-for-Indigenous-Women-November-2018.pdf>.









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