



A Model Environmental and Sustainability Assessment Law

(without annotations)

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Brenda Heelan Powell

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The Environmental Law Centre (Alberta) Society

The Environmental Law Centre (Alberta) Society is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. Its vision is an Alberta where the environment is a priority, guiding society's choices.

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[Canadian/ Provincial] Environmental and Sustainability Assessment Act

An Introductory Note

It should be noted that, for reading ease, the Model Environmental and Sustainability Law contains a federal model and a generic provincial model in one document. Differences between the federal and the provincial models are highlighted in red text.

The generic provincial model may need to be customized to accommodate particular provincial concerns and legislative regimes; however, the general concepts of the generic provincial model law would still be applicable.

Preamble

Whereas the Government of [Canada / the Province] seeks to create a positive social, cultural, economic and environmental legacy for current and future generations of [Canadians/ the Province], and

Whereas the Government of [Canada / the Province] acknowledges that environmental and sustainability assessment is internationally recognized as an effective tool for moving towards sustainability,

The Government of [Canada / the Province] enacts this legislation to facilitate the planning and design of undertakings in a manner that makes a positive contribution to sustainability.

Part 1

Interpretation

Definitions

1. **“adaptive management”** means a systematic approach to addressing the uncertainties associated with mitigation measures which specifies, in advance, an expected range of uncertainties and offers a corresponding range of mitigation measures to be triggered and adjusted in response to actual impacts subsequently revealed by monitoring data.

“Agency” means the [Canadian / the Provincial] Environmental and Sustainability Assessment Agency established by this Act.

“code of practice” means a set of requirements - developed as a form of strategic environmental and sustainability assessment - which governs the planning, design aspects and follow-up program for a specific, defined class of project in specified, defined circumstances with particular regard to considering the cumulative impacts of numerous similar, small-scale projects.

“cumulative effects” means those changes to social, cultural, economic, environmental and interactive components caused by an undertaking in light of existing background conditions, the range of possible additional stresses on valued ecosystem components and the potential future activities that will be foreclosed by approving the undertaking in combination with past, present and reasonably foreseeable future human activities including those changes that cross jurisdictional boundaries.

“ecological services” means the social, cultural, economic, environmental and interactive benefits arising from the vital resources and ecological processes provided by a healthy ecosystem.

“enhancement” means augmentation of a likely positive social, cultural, economic, environmental or interactive effect of an undertaking to improve its positive contribution to sustainability.

“environment” means the components of the Earth and includes:

- a. air, land and water,
- b. all layers of the atmosphere,
- c. all organic and inorganic matter,
- d. all living organisms,
- e. the interacting natural systems that include the above components, and
- f. social, cultural, economic, environmental and interactive features or conditions affecting the lives of individuals or communities.

“environmental and sustainability assessment” means assessment of an undertaking having regard to social, cultural, economic and environmental components to determine if the undertaking will make a positive contribution to sustainability.

“environmental effect” means any change to the environment caused by a project or a government plan, policy or program and includes short term and long term, direct and indirect, and cumulative changes to:

- a. human health and socio-economic conditions and trends,
- b. physical and cultural conditions and trends,
- c. the current use of lands and resources for traditional purposes by Aboriginal persons, or
- d. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

“federal government” means the Crown in Right of Canada and includes:

- a. all ministers appointed to the Governor in Council and their departments and agencies, and

- b. Crown corporations and other corporate bodies established in Canada whose board members are appointed by the Crown in Right of Canada or ministers of the Governor in Council.

“federal lands” means

- a. lands that belong to Her Majesty in right of Canada or that Her Majesty in right of Canada has the authority to dispose of, and all waters on and airspace above those lands except those lands that are under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut,
- b. the internal waters of Canada, in any area of the sea not within a province,
- c. the territorial sea of Canada, in any area of the sea not within a province,
- d. the exclusive economic zone of Canada,
- e. the continental shelf of Canada, and
- f. reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*, and all waters on and airspace above those lands.

“follow-up program” means a program designed to monitor, evaluate and manage the entire life-cycle of project or other undertaking for which a certificate of environmental and sustainability assessment has been issued.

“life-cycle” means all stages of an undertaking including planning, construction, operation, modification, expansion, decommissioning and abandonment.

“meaningful and effective public participation” means the factual ability of members of the public to engage in the environmental and sustainability assessment process and to contribute to decision-making under this Act and requires, at minimum:

- a. notice of a matter to be decided be provided in sufficient form and detail to allow the preparation of public input on the matter,
- b. full and convenient access to information,
- c. a reasonable period of time to prepare public input,
- d. an opportunity to present public input,
- e. fair consideration of public input by the Agency and, if applicable, the Review Panel, and
- f. explicit consideration of information, comments and evidence provided by the public in the decisions made by the Agency and, if applicable, the Review Panel.

“Minister” means the Minister of the [Environment /Provincial Equivalent].

“mitigation” means the elimination of a likely adverse social, cultural, economic, environmental or interactive effect of an undertaking, through physical or operational technically feasible means to a point where the undertaking makes a positive contribution to sustainability but does

not include restitution, compensation, monitoring, follow-up programs, adaptive management or future plans to determine courses of action.

“policy” means a general course of action which guides ongoing decision-making.¹

“plan” means a purposeful, forward looking strategy or design that elaborates and implements policy.

“program” means a coherent, organized agenda or schedule of commitments, proposals instruments or activities that elaborates and implements policy.

“project” means a physical work or physical activity including construction, operation, modification, expansion, decommissioning, abandonment or other endeavour in relation to that physical work.

“project environmental and sustainability assessment” means the process wherein sustainability objectives and criteria direct a review of purposes and alternatives to a proposed project to determine whether or not that project is likely to make a positive contribution to sustainability.

“proponent” means the person, body or government that proposes the undertaking.

“provincial government” means the Crown in Right of the Province and includes:

- a. all ministers appointed to the Lieutenant Governor in Council and their departments and agencies, and
- b. Crown corporations and other corporate bodies established in the Province whose board members are appointed by the Crown in Right of the Province or ministers of the Lieutenant Governor in Council

“provincial land” means all lands located in the Province, with the exception of federal lands, including all waters on and airspace above those lands.

“record” means any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.

“regional environmental and sustainability assessment” means environmental and sustainability assessment of the interactions among all human activities - including past, current and reasonably foreseeable future undertakings - and natural systems within the geographical

¹ The definitions of “plan”, “policy” and “program” are adapted from Barry Sadler, *International Study of the Effectiveness of Environmental Assessment (Final Report), Environmental Assessment in a Changing World: Evaluating Practice to Improve Performance* (Ottawa: Canadian Environmental Assessment Agency and International Association for Impact Assessment, 1996).

scope of the assessment with a particular regard to considering cumulative effects and to establishing regional thresholds of change to provide guidance for the planning and assessment of specific undertakings.

“strategic environmental and sustainability assessment” means assessment at a high level to provide a strategic framework for subsequent environmental and sustainability assessment of more specific undertakings, including projects, and includes:

- a. assessment of options for a [federal/ provincial] government plan, policy or program to determine whether or not that plan, policy or program is likely to contribute positively to sustainability,
- b. a proposed Code of Practice, or
- c. environmental and sustainability assessment on a regional basis.

“sustainability” means planning and development that acknowledges the inherent limitations of the environment, that is socially, culturally, economically and environmentally sound, and that meets the needs of the present without compromising the ability of future generations to meet their own needs.

“thresholds of change” means the limit of tolerance of an environmental component to an effect and that, if exceeded, results in an adverse response by that environmental component.

“undertaking” means a project or a [federal/provincial] government policy, plan or program.

2. This Act is binding on Her Majesty in right of [Canada / the Province].

Part 2

Purposes and Guiding Principles

3. The purpose of this Act is to allow only those undertakings that make a positive contribution to sustainability. To achieve this purpose, this Act:
 - a. provides the framework for consideration and decision-making on undertakings that may have an impact on sustainability,
 - b. ensures that consideration of undertakings involves consistent, comprehensive and integrated attention to all factors affecting sustainability,
 - c. ensures that undertakings in [Canada/the Province] do not have direct adverse social, cultural, economic, environmental and interactive effects on other jurisdictions,
 - d. encourages cooperation and coordinated action between and among federal, provincial, territorial and aboriginal governments with respect to consideration and decision-making on undertakings that may have an impact on sustainability,

- e. encourages meaningful and effective public participation in the conception, planning, approval and implementation of undertakings that may have an impact on sustainability,
 - f. fosters and facilitates innovation to achieve sustainability in [Canada/the Province], and
 - g. [Federal] ensures compliance with Canada's international commitments, including treaty obligations, customary international law and international principles of environmental protection and sustainability.
4. The implementation of this Act is guided by the following environmental principles:
- a. The precautionary principle which requires that, if there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.
 - b. The principle of pollution prevention requires the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes and promotes continuous improvement through operational and behavioural changes.
 - c. The principle of inter-generational equity requires that undertakings to meet the needs of the present must not compromise the ability of future generations to meet their own needs.
 - d. Public participation is essential to the environmental and sustainability assessment process and will be facilitated by ensuring transparency in process and decision-making and by providing full access to information.
 - e. The principle of integration which requires looking for ways to meet human needs and, at the same time, reduce environmental impacts of human activities.
 - f. This Act must be implemented in a manner that is constantly improving, that reflects and contributes to evidence-based best practices, and that is open, transparent and accountable.

Part 3

Applicability of the Act

5. The environmental and sustainability assessment process applies to all undertakings that may have a significant impact on [Canada's/ the Province's] progress to sustainability, the prospects for sustainability globally or both.

Strategic Environmental and Sustainability Assessment

6. The goals and purposes of strategic environmental and sustainability assessment are to:
- a. design, plan and implement government policies, plans and programs in a manner that contributes positively to [Canada's/the Province's] progress to sustainability,

- b. provide a strategic framework for subsequent environmental and sustainability assessment of specific undertakings, including projects, through the use of government plans, policies or programs, codes of practice, and regional environmental and sustainability assessments,
 - c. facilitate other initiatives which situate environmental assessment in a larger system that identifies broad sustainability needs, goals and indicators, monitors conditions and trends and evaluates responses to options, and
 - d. facilitate the use of information garnered from environmental and sustainability assessments and follow-up programs in the continuous review and adjustment of broadly identified sustainability needs, goals and indicators.
7. (1) The Agency must conduct a screening to determine whether a strategic environmental and sustainability assessment is required in the following circumstances:
- a. the [federal/provincial] government is proposing a plan, policy or program that may have important impacts on sustainability,
 - b. the government of another Canadian jurisdiction, including an aboriginal government, is proposing a regional environmental and sustainability assessment or a joint plan, policy or program that involves the government of [Canada/the province],
 - c. a non-governmental body is proposing a Code of Practice, regional environmental and sustainability assessment or a government plan, policy or program that may have important impacts on sustainability, and
 - d. a participant in an environmental and sustainability assessment of a project identifies one or more high level, strategic issues in the course of the project-based assessment which would benefit from authoritative direction developed by a strategic environmental and sustainability assessment.
- (2) The Agency must encourage and facilitate strategic environmental and sustainability assessment between and among federal, provincial, territorial and aboriginal governments on a cooperative and coordinated basis.
8. The Minister must initiate at least one strategic environmental and sustainability assessment on a matter of [national/provincial] importance on which government plans, policies or programs are lacking or obsolete.
9. The Minister – on his or her own initiative, at the request of the Agency or in response to a petition made under this Act – has the authority to require an environmental and sustainability assessment of any other [federal/ provincial] government plan, policy or program.
10. The Minister – on his or her own initiative, at the request of the Agency or in response to a petition made under this Act – has the authority to require an environmental and sustainability assessment on a regional basis.

11. The Agency - on its own initiative, at the request of the Minister or in response to a petition made under this Act – has the authority to develop Codes of Practice applicable to a particular class of projects which will consequently be exempt from environmental and sustainability assessment.

Environmental and Sustainability Assessment of Projects

[Federal]

12. (1) The Agency must conduct a screening of any anticipated project or class of project that:
 - a. is located on federal lands or may impact on federal lands,
 - b. is proposed by the federal government,
 - c. is funded by the federal government, or
 - d. the federal government may exercise a power or perform a duty under an Act of Parliament, other than this Act, that would permit the undertaking to proceed,to determine whether an environmental and sustainability assessment is required.
- (2) The Agency must conduct a screening of any anticipated project or class of project that may affect a matter of national concern to determine whether an environmental and sustainability assessment is required.
- (3) A project or class of project affects a matter of national concern where the project:
 - a. is located within Canada and may have transboundary impacts within Canada or outside Canada,
 - b. may impact on matters related to multilateral agreements or international treaties that promote environmental stewardship or progress towards sustainability,
 - c. may impact on an at risk, threatened or endangered species,
 - d. may impact on threatened or endangered ecological communities,
 - e. may impact on species that are migratory or that have transboundary distributions,
 - f. may have a significant impact on Canada's contribution to climate change, or
 - g. may impact on Canadian fisheries, marine areas or navigable waters.
- (4) Any project or class of project that is included in regulations made under this Act is deemed a matter of national concern and must undergo an environmental and sustainability assessment.

[Provincial]

12. (1) The Agency must conduct a screening of any project or class of project that may affect a matter of provincial concern to determine whether an environmental and sustainability assessment is required.
- (2) A project, whether located on public or private land, affects a matter of provincial concern where the project:
- a. is located on public lands or may impact on public lands,
 - b. is proposed by the provincial government,
 - c. is funded by the provincial government,
 - d. may impact on a federally or provincially listed at risk, threatened or endangered species located within the province,
 - e. may impact on threatened or endangered ecological communities located within the province, or
 - f. may have a significant impact on the province's contribution to climate change.
- (3) Any project or class of project that is included in regulations made under this Act is deemed a matter of provincial concern and must undergo an environmental and sustainability assessment.
13. (1) The Minister – on his own initiative, at the request of the Agency or in response to a petition made under this Act – may require an environmental and sustainability assessment of any project located within [Canada/the Province].
- (2) If the Minister determines that the project is likely to have a significant impact on sustainability, then he or she must require an environmental and sustainability assessment of that project.

Exclusion from Environmental and Sustainability Assessment

14. An environmental and sustainability assessment is not required for undertakings:
- a. carried out in response to a national emergency for which special temporary measures are being taken under the [Emergencies Act, R.S.C. 1985, c. 22 (4th Supp.)/ Provincial Equivalent], or

- b. carried out in response to an emergency and carrying out the project forthwith is in the interest of preventing damage to property or the environment or is in the interest of public health or safety.

Part 4

The Environmental and Sustainability Assessment Process

- 15. (1) The proponent of an undertaking that is subject to this Act must ensure that the undertaking undergoes an environmental and sustainability assessment beginning at a development stage which is early enough to allow effective consideration and evaluation of purposes and alternatives.

(2) The proponent is responsible for preparing an environmental and sustainability assessment prior to submitting its proposal for formal environmental and sustainability assessment under this Act.

(3) When preparing an environmental and sustainability assessment, the proponent has a duty to provide public notice of the proposed undertaking and to consult with such persons as may be interested in the proposed undertaking.
- 16. The Agency may develop guidelines or other materials to assist proponents with meeting their obligations for public notice, consultation and preparation of environmental and sustainability assessments under this Act.

Factors to be Considered

- 17. Every strategic environmental and sustainability assessment conducted under this Act must consider and address the following factors:
 - a. the purpose of the strategic initiative and its justification in light of sustainability objectives,
 - b. the need for a strategic undertaking with the identified purpose,
 - c. alternatives to be examined in the selection and design of a strategic undertaking with this purpose,
 - d. the specific sustainability-based criteria adopted for evaluation,
 - e. the social, cultural, economic, environmental and interactive effects of those alternatives,
 - f. the relative merits of those alternatives judged in light of these effects and the sustainability criteria and the justification for selection of the preferred alternative for the undertaking,
 - g. the measures that will maximize the social, cultural, economic, environmental and interactive benefits of the strategic undertaking,

- h. the measures that will mitigate any adverse social, cultural, economic, environmental and interactive impacts of the strategic undertaking,
- i. comments made by members of the public and other interested parties,
- j. community knowledge and aboriginal traditional knowledge,
- k. other relevant project or strategic environmental and sustainability assessments, and
- l. specific guidance for decision-making regarding on-going, anticipated and potential undertakings in the strategic area; means by which the guidance may be delivered and considered; and time limits and exceptions to its authority.

18. Every environmental and sustainability assessment of a project conducted under this Act must consider and address the following factors:

- a. the purpose of the project level assessment,
- b. the need for a project with the identified purpose,
- c. the specific sustainability-based criteria adopted for evaluation,
- d. alternatives for serving the purpose and need that are technically feasible at the time of the assessment, including the alternative of not proceeding with a project; a comparative evaluation of those alternatives in light of the social, cultural, economic, environmental and interactive effects using the sustainability-based criteria; and justification for selection of the preferred alternatives as the proposed project,
- e. alternative means of carrying out the project that are technically feasible at the time of the assessment, and the social, cultural, economic, environmental and interactive effects of those alternative means,
- f. a comparative evaluation of those alternatives in light of their social, cultural, economic, environmental and interactive effects, including:
 - i. the effects of malfunctions or accidents that may occur in connection with the project,
 - ii. a cumulative effects analysis of the effects of the project in combination with past, present and reasonably foreseeable future human activities having regard to an appropriate range of future development scenarios, and
 - iii. for projects with potentially limited life expectancies, the legacy effects of the project including lasting positive and negative effects, the extent to which the project will avoid lasting damage, remediation or perpetual care obligations, and will contribute to sustainable livelihood opportunities,

considered using the sustainability-based criteria and justification for selection of the preferred alternative means in the design of the project,

- g. the measures that are technically feasible at the time of the assessment to maximize the social, cultural, economic, environmental and interactive benefits of the project,
- h. the measures that are technically feasible at the time of the assessment that would mitigate any adverse social, cultural, economic, environmental and interactive impacts of the project,

- i. the capacity of renewable resources that are likely to be affected by the project to meet the needs of the present and those of the future,
- j. comments made by members of the public and other interested parties,
- k. community knowledge and aboriginal traditional knowledge,
- l. relevant regional environmental assessments and strategic environmental assessments, and
- m. monitoring and follow-up measures required throughout the entire life-cycle of the project.

The Environmental and Sustainability Assessment Process

19. The environmental and sustainability assessment process for all undertakings subject to the Act consists of several stages:
- a. Screening,
 - b. Initial Assessment,
 - c. Environmental and Sustainability Assessment Review,
 - d. Decision-making by Agency or Panel Review, and
 - e. Follow-up and Monitoring.
20. Sustainability-based criteria must be applied throughout the environmental and sustainability assessment process. These criteria include:
- a. selection of appropriate sustainability oriented purposes and reasonable options for consideration in the assessment,
 - b. identification of valued cultural, social, economic and environmental components,
 - c. identification of means to enhance positive effects on sustainability, in addition to the means to avoid and mitigate negative effects on sustainability,
 - d. consideration of the nature and significance of uncertainties inherent in predicting effects, mitigations and enhancement,
 - e. determination of the relative merits of the alternatives prior to the selection of a preferred alternative as the undertaking and the justification of the selection of the preferred alternative,
 - f. identification of appropriate conditions for approval of an undertaking including post-decision follow-up program design and implementation, and
 - g. creation of guidance, both substantive and process, for subsequent undertakings.

Screening

21. (1) All undertakings subject to this Act must undergo screening, except those undertakings which appear in regulations made under this Act or are directed by the Minister, both of which must proceed directly to the initial assessment stage.

(2) The Agency must provide public notice of each undertaking that is submitted for screening.

(3) The purpose of the screening stage is to establish whether or not an undertaking has the potential for more than insignificant negative impacts on the environment or sustainability.

(4) If an undertaking does not have the potential to create more than insignificant negative impacts on the environment or sustainability, the Agency shall issue a written decision to that effect. The written decision shall include any design or follow-up elements required to ensure that the undertaking does not have the potential to create more than insignificant negative impacts on sustainability. No further steps in the environmental and sustainability process are required for the undertaking to proceed although permits, approvals, licences or other decisions may be required under other federal, provincial or territorial Acts or regulations.

(5) If an undertaking complies with a Code of Practice established by the Agency, the Agency shall issue a written decision to that effect. No further steps in the environmental and sustainability assessment process are required for the undertaking to proceed.

(6) If an undertaking has the potential to create more than insignificant negative impacts on the environment or sustainability, then the undertaking must proceed through all steps in the environmental and sustainability assessment process.

(7) The screening decision of the Agency is subject to judicial review.

Initial Assessment

22. (1) The purpose of the initial assessment is to establish:

- a. The scope of the undertaking to be subject to environmental and sustainability assessment.
- b. The appropriate level of assessment.
- c. The appropriate body to conduct the assessment. The assessment may be conducted by the Agency or by Panel Review.
- d. The scientific standards, methodologies and terms of reference to be used through the assessment process.
- e. The strategic level gaps that need to be addressed.

(2) The Agency must provide public notice of each undertaking that is submitted for initial assessment.

(3) If appropriate, the Agency may conduct an initial meeting with the proponent, federal, provincial, territorial and/or aboriginal representatives, and other interested parties to discuss the items in s. 22(1).

(4) The Agency will release a written decision, with reasons, addressing the items in s. 22(1). If appropriate, the Agency will also outline the process to coordinate with [federal], provincial, territorial, Aboriginal and foreign governments.

(5) The initial assessment decision of the Agency is subject to judicial review.

Environmental and Sustainability Assessment Review

23. Every environmental and sustainability assessment of an undertaking under this Act must:

- a. focus on maximizing progress towards sustainability,
- b. aim to select the option which enhances sustainability benefits, while avoiding or mitigating significant negative effects and minimizing trade-offs, and
- c. consider and deliberate on all relevant cultural, social, economic and environmental aspects as components of complex and dynamic ecosystems.

24. (1) The environmental and sustainability assessment review may be conducted by the Agency or by Review Panel.

(2) The environmental and sustainability assessment must proceed by Review Panel where:

- a. there is significant public concern about the proposed undertaking,
- b. another jurisdiction intends to hold a public hearing on the same undertaking,
- c. the undertaking involves complex scientific or other evidentiary matters that would benefit from a public hearing, or
- d. the undertaking is designated by regulation as requiring a Review Panel.

(3) Where a matter is referred to a Review Panel, the Agency shall:

- a. consult with the appropriate federal, provincial, territorial and aboriginal authorities to appoint members of the panel, and

- b. appoint as members of the panel persons who are unbiased and free from conflict of interest, who have knowledge or experience relevant to the undertaking and who have experience with adjudication.

(4) Where a matter is referred to a Review Panel, the Agency may direct that the panel review be conducted jointly with a panel review established by another federal, provincial, territorial or Aboriginal authority.

25. When conducting an environmental and sustainability assessment under this Act, the Agency or the Review Panel, as the case may be, shall:
- a. ensure that information required for the assessment is obtained and made available to the public in a timely fashion,
 - b. maximize the transparency and accountability of the deliberations, and
 - c. facilitate and provide opportunity for meaningful and effective public participation.
26. The Agency, the Review Panel or the Joint Review Panel, as the case may be, may direct non-disclosure of evidence, documents or other material evidence when the review panel is satisfied that such disclosure would cause specific and direct harm to the environment, to a commercial interest or an Aboriginal interest.
27. The Review Panel or the Joint Review Panel, as the case may be, may summon any person to appear as a witness before the panel to give evidence, oral or written, and to produce documents or other material evidence necessary to conduct the environmental assessment.
28. The Review Panel or the Joint Review Panel, as the case may be, may direct that evidence, documents or other material evidence are privileged when the review panel is satisfied that such disclosure would cause specific, direct and substantial harm to a witness.

Decision-Making

29. (1) The Agency, the Review Panel or the Joint Review Panel, as the case may be, must prepare a report setting out the rationale and conclusions related to the environmental and sustainability assessment. The report must include:
- a. a decision as to whether or not a certificate of environmental and sustainability assessment will be issued for the undertaking,
 - b. if a certificate of environmental and sustainability assessment is to be issued, all design, enhancement, mitigation, monitoring and follow-up measures required for the undertaking,
 - c. explicit justification of the decision, including elaboration of the decision criteria and trade-off rules applied in the review,

- d. explicit consideration of information, comments and evidence provided by the public, including establishing that the undertaking meets the needs and addresses the concerns of the public, and
- e. if Aboriginal interests are involved, consideration of whether or not the process and decision are sufficient to meet the Crown's obligations for consultation and accommodation of Aboriginal interests.

(2) If the report relates to a strategic environmental and sustainability assessment, it must provide clear substantive and process guidance for subsequent undertakings covered by the assessed policy, plan or program, code of practice, or region.

30. If the Agency or the Review Panel determines that the undertaking subject to environmental and sustainability assessment is not likely to make a positive contribution to sustainability, then a certificate of environmental and sustainability assessment will not be issued by the Agency and the undertaking cannot proceed.

31. If the Agency or the Review Panel determines that the undertaking subject to environmental and sustainability assessment review is the most desirable option and likely to make a positive contribution to sustainability, then a certificate of environmental and sustainability assessment will be issued by the Agency. The certificate of environmental and sustainability assessment must include, as conditions:

- a. all design aspects, including enhancement, mitigation and avoidance measures, that are necessary to make the undertaking a positive contribution to sustainability, and
- b. a follow-up program which clearly sets out the obligations and responsibilities of the proponent and the relevant government agencies or bodies.

Follow-up Programs

32. (1) For each undertaking for which a certificate of environmental and sustainability assessment is issued, a follow-up program must be established and conducted by the proponent to monitor and address the potential social, cultural, economic, environmental and interactive impacts of the undertaking.

(2) The follow-up program must be proposed and assessed in the course of the environmental and sustainability assessment process.

(3) The follow-up program as described in the certificate of environmental and sustainability assessment constitutes an enforceable condition which must be met by the proponent and incorporated into licences, approvals, permits or other authorizations issued by the [federal/provincial] government.

33. (1) The follow-up program must consist of:

- a. plans and mechanisms to collect and evaluate data for the purposes of monitoring potential social, cultural, economic, environmental and interactive impacts of the project,
- b. plans and mechanisms to evaluate and compare collected data with standards, predictions and expectations set forth in the environmental and sustainability assessment report, and
- c. plans and mechanisms to make decisions and take appropriate action in response to collected data and its evaluation.

(2) The follow-up program must be designed to address the entire life-cycle of the undertaking. In circumstances prescribed by regulation, the follow-up program may continue beyond the end of the undertaking in order to monitor, evaluate and manage continuing adverse social, cultural, economic and environmental effects.

(3) In designing follow-up programs, there must be consideration of the results of follow-up monitoring and response from previous, similar undertakings.

(4) At the time of issuance, the certificate of environmental and sustainability assessment may explicitly require adaptive management where there are unavoidable uncertainties in the event that proposed mitigation measures are not working as predicted. This means that, if data collected and evaluated during the follow-up program demonstrate that mitigation measures are not working to mitigate adverse social, cultural, economic, environmental and interactive impacts as anticipated, mitigation measures may be modified in accordance with collected data and evaluation. Adaptive management may only be allowed where the undertaking and associated mitigation measures are designed for adaptation.

34. (1) The proponent of the undertaking must ensure that all data collected and evaluated during the course of the follow-up program are provided to the Agency. The Agency must publish these data and make them publicly available on the Agency's registry.

(2) If data collected and evaluated during the course of the follow-up project indicates that mitigation measures are not working to mitigate adverse social, cultural, economic, environmental and interactive impacts as anticipated, then:

- a. The proponent may advise the Agency of its decision, along with supporting evidence, to adaptively modify mitigation measures. The Agency must publish this decision and make it publicly available on the Agency's registry.
- b. The Agency, the Minister or a member of the public may request adaptive modification of the mitigation measures in accordance with the follow-up program. The Agency must publish this request and make it publicly available on the Agency's registry.

(3) If appropriate, the Agency may direct a process which includes opportunity for meaningful and effective public participation for consideration of the proponent's decision in subsection (2)(a) or of the request in subsection (2)(b) above.

Judicial Review

35. The decision of the Agency or the Review Panel to not issue or to issue a certificate of environmental and sustainability assessment is subject to judicial review.
36. The conditions set forth in a certificate of environment and sustainability assessment may also be subject to judicial review.
37. Any person who
- a. made submissions, written or oral, in the environmental and sustainability assessment process,
 - b. had intervenor status in the environmental and sustainability assessment process,
 - c. is directly affected by the decision to issue or not issue a certificate of environmental and sustainability assessment,
 - d. is directly affected by the undertaking, or
 - e. represents a genuine public interest related to the undertaking
- may seek judicial review of decisions made under this Act.
38. An application for judicial review in connection with any matter under this Act shall be refused where the sole ground for relief established on the application is a defect in form or a technical irregularity.
39. No action lies or shall be commenced against a member of a Review Panel for or in respect of anything done or omitted to be done, during the course of and for the purposes of the environmental and sustainability assessment by the Review Panel.

Part 5

Public Participation in the Environmental and Sustainability Assessment Process

40. (1) Meaningful and effective public participation is an essential element of the environmental and sustainability assessment process and there should be a level of public engagement equal to public interest.

(2) The Agency and, if applicable, the Review Panel must ensure that there is an opportunity for meaningful and effective public participation throughout the environmental and sustainability assessment process, especially with regard to:

- a. the identification of need, purposes and potential alternatives from which to select the undertaking,
- b. determining the scope of the environmental and sustainability assessment,
- c. selection of relevant cultural, social, economic, environmental and interactive components for assessment,
- d. specification of the sustainability-based criteria for the evaluations and decisions,
- e. comparative analysis of the anticipated and potential effects of the alternatives,
- f. selection of the preferred alternative for the undertaking,
- g. determination of whether or not the proposed undertaking is the most desirable option and is likely to make a positive contribution to sustainability and, where appropriate, what conditions need to be imposed in any approval, and
- h. development of the follow-up program, including the possibility of adaptive management.

41. The process for public participation in the environmental and sustainability assessment process must include:

- a. Public notice of the initially defined purposes, need and alternatives for a proposed undertaking and the potential for assessment prior to any decision being made in relation to the undertaking under the Act.
- b. Additional public notice of the proposed undertaking at the commencement of each step of the environmental and sustainability assessment process.
- c. An opportunity for any member of the public to provide written comments to the Agency and, if applicable, the Review Panel at each step of the environmental and sustainability assessment process.
- d. An opportunity for any member of the public to attend and participate in informal conferences, meetings or information sessions held by the Agency or, if applicable, the Review Panel.
- e. An opportunity for members of the public to participate in written or oral hearings before the Agency and, if applicable, the Review Panel. Members of the public entitled to participate in such hearings include those persons who are directly affected by the proposed undertaking, those persons who represent a genuine public interest related to the proposed undertaking and those persons who have relevant information or expertise related to the undertaking. The Agency and, if applicable, the Review Panel may extend rights to participate in written or oral hearings to other persons.

42. (1) The Agency and, if applicable, the Review Panel must ensure public notice is provided:

- a. by general notice via posting on the website of the Agency and the Registry, and

- b. by direct notice to those members of the public who may be directly affected by the proposed undertaking, those members of the public whom the proponent knows to have concern or interest in regard to the undertaking, and those members of the public who the Agency or, if applicable, the Review Panel knows to have concern or interest in regard to the undertaking.

(2) The Agency or, if applicable, the Review Panel may also provide general public notice via traditional forms of advertising such as newspapers, radio and television, posting in public buildings or other prominent locations, mass direct mailings, holding open houses and so forth.

43. The Agency and, if applicable, the Review Panel may decide to conduct informal conferences, meetings or information sessions where:

- a. members of the public have demonstrated a desire for access to the environmental and sustainability assessment process,
- b. there is a need to facilitate the participation of the members of the public, particularly to manage potential conflict in a non-adversarial setting,
- c. there is a potential to exchange information and to engage in a constructive dialogue, and
- d. there is a need to clarify roles and issues in the environmental and sustainability assessment process.

44. In the course of written or oral hearings conducted by the Agency or, if applicable, the Review Panel, public participants must be granted the opportunity to:

- a. explain and answer questions pertaining to that participant's written submissions to the Agency or, if applicable, the Review Panel,
- b. attend all public sittings of the Agency or, if applicable, the Review Panel, and
- c. exchange information and proposals with the proponent, the Agency, the Review Panel (if applicable) and other participants.

45. (1) The proponent of the undertaking –either on its own initiative or at the direction of the Agency – may develop and conduct its own public engagement programs.

(2) The Agency may develop guidelines or other materials to assist proponents with developing and conducting public engagement programs.

(3) Public engagement programs developed and conducted by the proponent do not discharge the requirement of the Agency and, if applicable, the Review Panel to provide an opportunity for meaningful and effective public participation throughout the environmental and sustainability assessment process.

Public Participation Funding

46. The Agency must establish a public participation funding program to facilitate public participation throughout the entire environmental and sustainability assessment process, including participation in monitoring follow-up programs.
47. (1) Notice of the public participation funding program shall be provided in conjunction with notice of commencement of the screening or, if the undertaking is included in regulations to the Act, commencement of the initial assessment step.
- (2) A person or group of persons that intends to participate in the environmental and sustainability assessment process may apply to the Agency for participant funding at any point in the environmental and sustainability assessment process or in the follow-up program.
- (3) The application for funding shall be in a form and contain such information as the Agency may require.
48. (1) Participant funding shall be provided to any applicant whom the Agency determines:
- a. has clearly demonstrated an interest in the social, cultural, economic, environmental and/or interactive effects of the undertaking,
 - b. if the applicant is a group of persons, has an established record of concern or demonstrated a commitment to the interest that it represents,
 - c. the representation of the applicant's interest would contribute to and assist the Agency and, if applicable, the Review Panel in the environmental and sustainability assessment of the undertaking,
 - d. the applicant does not have sufficient financial resources to enable adequate representation of its interest, and
 - e. the applicant has a clear proposal for its use of any funding that may be provided and has appropriate financial controls to ensure that any funding is used for the purposes for which it is given.
- (2) If the Agency determines that an applicant does not meet the requirements set out in 48(1), it may still determine that the applicant should be granted participant funding.
49. (1) The level of participant funding must be sufficient to enable meaningful and effective public participation in the environmental and sustainability assessment process and in monitoring the follow-up program.
- (2) In determining the level of participant funding, the Agency shall have regard to the reasonable need for legal fees, expert fees and undertaking independent studies.

Public Participation Assistance

50. (1) The Agency shall establish a program to provide education and guidance to those persons interested in participating in environmental and sustainability assessments and in monitoring follow-up programs.
- (2) The program shall include training on the availability and the use of opportunities for public participation provided by the Act.
- (3) The program shall include interpretation, educational and other material necessary to understand information in environmental and sustainability assessment reports and decisions.

Petitions

51. Any person resident in [Canada/the Province], who is 18 years or older, may petition the Minister to conduct an environmental and sustainability assessment of a proposed undertaking.
52. The petition for environmental and sustainability assessment must
- a. state the name and address of the petitioner,
 - b. state the proposed scope of the environmental and sustainability assessment, and
 - c. state the rationale for requesting an environmental and sustainability assessment.
53. (1) The Minister must, within 120 days of receipt of the petition, either submit the matter to the Agency for an environmental and sustainability assessment or deny the petition with reasons.
- (2) If the Minister determines that the undertaking is likely to have a significant impact on sustainability, then he or she must require an environmental and sustainability assessment of that project.

[Canadian/Provincial] Environmental and Sustainability Assessment Registry

54. (1) There is hereby established a registry entitled the [Canadian/Provincial] Environmental and Sustainability Assessment Registry which shall consist of an internet site and physical environmental and sustainability assessment files.
- (2) The purpose of the registry is to facilitate public access to records relating to environmental and sustainability assessments, to provide notice of those assessments in a timely manner and to provide information about and generated by follow-up programs.
- (3) The registry must be maintained and operated in a manner that ensures convenient public access.

(4) The Agency must ensure that the following records and information are maintained in the registry and published on the internet site:

- a. any public notice that is issued by the Agency or the review panel,
- b. all petitions submitted to the Minister under the Act,
- c. any decisions made by the Minister pertaining to petitions made under the Act,
- d. a description of all undertakings submitted to the Agency for screening or pre-assessment,
- e. screening decisions issued by the Agency,
- f. pre-assessment decisions issued by the Agency,
- g. all information, comments and submissions provided by the proponent in the course of the assessment process,
- h. all information, comments and submissions received from the public or other participants in the course of the assessment process,
- i. environmental and sustainability assessment reports issued by the Agency or by Review Panels,
- j. certificates of environmental and sustainability assessment issued by the Agency,
- k. all data collected and evaluated in the course of follow-up programs established pursuant to the Act,
- l. all decisions, and supporting evidence, to adaptively modify mitigation measures,
- m. all requests for investigation under the Act,
- n. all enforcement actions taken pursuant to the Act,
- o. any information that could be obtained pursuant to the *Access to Information Act, R.S.C. 1985, c. A-1/provincial equivalent*,
- p. any information prescribed by regulations made pursuant to the Act, and
- q. any other information that the Agency considers appropriate.

(5) In order to facilitate the creation of substantive and process guidance for subsequent undertakings, records and information maintained in the registry shall not be destroyed or deleted at any time.

Part 6

Multi-Jurisdictional Cooperation and Coordination

55. (1) Cooperation and coordinated action between federal, provincial, territorial and aboriginal governments is essential to advancing progress towards sustainability.

(2) In order to ensure cooperation and coordinated action, the [federal government must work with provincial, territorial and aboriginal governments/ the provincial government must work with the federal government, other provinces, territories and aboriginal governments located in

the province] to develop agreements which harmonize environmental and sustainability assessment goals and processes. In particular, regard must be had to:

- a. creating predictable sharing of assessment responsibility among the governments,
- b. promoting efficient administration of assessment processes among the governments, and
- c. following the highest standards and best practices from among the governments, including the highest levels of public participation and funding.

(3) The [federal government must work with provincial, territorial and aboriginal governments/ the provincial government must work with the federal government, other provinces, territories and aboriginal governments located in the province] to conduct regional and strategic environmental and sustainability assessments to address issues that may impact on sustainability on a multi-jurisdictional basis.

(4) Nothing in this Act or in harmonization agreements negotiated pursuant to this Act abrogates or derogates from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under s.35 of the *Constitution Act, 1982*.

Sustainability Effects on other Jurisdictions

56. Where an undertaking is likely to cause direct social, cultural, economic, environmental or interactive effects on another jurisdiction, the Minister shall:
- a. direct that an environmental and sustainability assessment of the undertaking be conducted under the Act,
 - b. notify that other jurisdiction of the potential for direct social, cultural, economic, environmental or interactive effects no later than the notification to members of the [Canadian/ Provincial] public, and
 - c. permit members of the public of that other jurisdiction to participate in the environmental and sustainability assessment process as though they were members of the [Canadian/ Provincial] public.

Part 7

[Canadian/ Provincial] Environmental and Sustainability Assessment Agency

57. (1) There is hereby established an agency to be called the [Canadian / Provincial] Environmental and Sustainability Assessment Agency.
- (2) The Minister is responsible for the Agency.

58. The Agency is responsible for:

- a. advising and assisting the Minister in performing the duties and functions conferred on the Minister by this Act,
- b. administering the environmental and sustainability assessment process and any other requirements established by this Act and its regulations,
- c. coordinating the environmental and sustainability assessment process with federal, provincial and territorial authorities and Aboriginal peoples dealing with the same undertaking,
- d. promoting, monitoring and facilitating compliance with this Act,
- e. ensuring an opportunity for meaningful and effective public participation in the [federal/provincial] environmental and sustainability assessment process,
- f. ensuring an opportunity for meaningful and effective public participation in the development of regulations, policies and other guidance pertaining to the Act which includes, but is not limited to, establishing a Regulatory Advisory Committee comprised of stakeholders which shall meet at least once each calendar year, and
- g. requiring and providing guidance for full and fair application of core sustainability decision criteria and trade-off rules.

59. In addition to its powers for conducting environmental and sustainability assessments and decision-making under this Act, the Agency has the power to:

- a. undertake studies or conduct research relating to environmental and sustainability assessment,
- b. advise persons on matters relating to environmental and sustainability assessment,
- c. prepare guidelines or other documents relating to environmental and sustainability assessment, and
- d. require that persons or bodies provide information to the Agency or, if applicable, the Review Panel respecting environmental and sustainability assessments performed under this Act.

60. In order for the Agency to recover its costs related to the environmental and sustainability assessment of an undertaking, the proponent must pay to the Agency any costs incurred for services prescribed by regulation provided by a third party in the course of the assessment and any amounts prescribed by regulation that are related to the exercise of its responsibilities in relation to the assessment, including the provision of participant funding.

61. (1) The Agency is required to submit an annual report to the Minister on its activities, and on the implementation and administration of the Act.

(2) The report must include a statistical summary of all environmental and sustainability assessments conducted under the Act.

(3) The report must include a record and assessment of public participation programs.

(4) The annual report must be made publicly available and published on the Agency's registry.

62. The Agency will be subject to audit in accordance with the *[Auditor General Act, R.S.C. 1985, A-17/ Provincial Equivalent]*

Part 8

Regulations

63. The Minister may make regulations

- a. to designate items subject to cost recovery pursuant to section 60 of this Act,
- b. providing delineation of the core sustainability criteria and trade-off rules,
- c. directing that certain undertakings must undergo environmental and sustainability assessment,
- d. directing that certain undertakings must undergo environmental and sustainability assessment by Review Panel,
- e. establishing criteria for the selection of indicator data to be used in follow-up programs,
- f. prescribing anything that, by this Act, is to be prescribed, and
- g. generally, for carrying out the purposes and provisions of this Act.

Part 9

Offences and Penalties

64. A prosecution for an offence under this Act may not be commenced more than 2 years after the later of the date on which the offence was committed or the date on which evidence of the offence first came to the attention of the Agency.

65. A person who takes actions designed to advance an undertaking without a required certificate of environmental and sustainability assessment is guilty of an offence.

66. A person who fails to comply with the conditions set out in a certificate of environmental and sustainability assessment is guilty of an offence.

67. A person who commits an offence is liable:

- a. In the case of an individual, to a fine of not more than \$250,000 or to imprisonment for a period of not more than 5 years or to both, or
 - b. In the case of a corporation, to a fine of not more than \$1,000,000.
68. No person shall be convicted of an offence if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission.
69. Where the person is convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence monetary benefits accrued to the offender, the court may order the offenders to pay, in addition to the fines in section 67, a fine in an amount equal to the court's estimation of the amount of those monetary benefits.
70. When a person is convicted of an offence under this Act, in addition to any other penalty that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having all or any of the following effects:
- a. prohibiting the offender from doing anything that may result in the continuation or repetition of the offence,
 - b. directing the offender to take any action the court considers appropriate to remedy or prevent any harm to cultural, social, economic or environmental components that results or may result from the act or omission that constituted the offence,
 - c. directing the offender to publish, in the prescribed manner and at the offender's cost, the facts relating to the conviction,
 - d. directing the offender to notify any person aggrieved or affected by the offender's conduct of the facts relating to the conviction in the prescribed manner and at the offender's cost;
 - e. directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section,
 - f. directing the offender to submit to the Minister any information with respect to the conduct of the offender that the court considers appropriate in the circumstances,
 - g. directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action that was carried out or caused to be carried out by the Government and was made necessary by the act or omission of the offender,
 - h. directing the offender to perform community service, or
 - i. requiring the offender to comply with other conditions the court considers appropriate in the circumstances.
71. Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.
72. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the

commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

Investigations

73. Any 2 persons resident in Canada, who are 18 years or older and who are of the opinion that an offence has been committed under this Act, may apply to the Minister to have an investigation of the alleged offence conducted.

74. The application for investigation must be accompanied by a solemn declaration that

- a. states the names and addresses of the applicants,
- b. states the nature of alleged offence and the name of each person alleged to be involved in its commission, and
- c. contains a concise statement of the evidence supporting the allegations of the applicants.

75. (1) On receipt of an application for investigation, the Minister shall acknowledge receipt of the application and shall investigate all matters that the Minister considers necessary for a determination of the facts relating to the alleged offence.

(2) Within 90 days after receiving the application, the Minister shall report to the applicants on the progress of the investigation and the action, if any, proposed to be taken in respect of the alleged offence.

(3) The Minister may discontinue an investigation if the Minister is of the opinion that the alleged offence does not require further investigation.

(4) Where the investigation is discontinued, the Minister shall:

- a. prepare a written statement indicating the reasons for discontinuance of the investigation, and
- b. send a copy of the statement to the applicants and to any person whose conduct was investigated.

Part 10

Administrative Matters

76. (1) Five years after the coming into force of this section, a comprehensive review of the provisions and operation of this Act shall be undertaken by [such committee of the Senate, of

the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or both Houses of Parliament as the case may be, for that purpose/ such committee of the Legislative Assembly as may be designated or established by the Legislative Assembly of the Province.]

(2) The comprehensive review shall provide opportunity for meaningful and effective public participation and for public engagement.

(3) The committee referred to in (1) shall submit a report on the review to [Parliament/the Legislative Assembly], including a statement of any changes that the committee recommends.

77. Transitional Provisions

78. Consequential Amendments

79. Coming into Force

Federal Project Regulations

Projects and Classes of Projects for which an Environmental and Sustainability Assessment is Required

The regulations could identify:

- (1) Large scale projects which require an environmental and sustainability assessment by panel review.
- (2) Smaller scale projects for which an environmental and sustainability assessment is required but which may proceed by an agency or panel assessment as determined by the initial assessment.
- (3) Small scale project for which a code of practice applies (or, initially, should be developed)

The regulations could identify particular **types of activities/projects** for which assessment will be required. As well, the regulations could identify **particular impacts** associated with an activity or project (e.g., contribution of greenhouse gases at or above a set threshold) which will trigger the requirement for an assessment.

Provincial Regulations

Projects and Classes of Projects for which an Environmental and Sustainability Assessment is Required

1. The construction, operation or reclamation of a plant, structure or thing for the manufacture or processing of:
 - a. ethylene or ethylene derivative,
 - b. benzene, ethyl benzene or styrene,
 - c. chlor-alkali,
 - d. chemical fertilizer products,
 - e. petroleum products, or
 - f. explosives.
2. The construction, operation or reclamation of a plant, structure or thing for the manufacture or processing of pulp and paper products.
3. The construction, operation or reclamation of a plant, structure or thing for the production, manufacture or processing of:
 - a. natural gas, its products or its derivatives;
 - b. coal;
 - c. heavy oil;
 - d. oil sands; or
 - e. minerals.
4. The construction, operation or reclamation of a plant, structure or thing for the surface storage of brine associated with hydrocarbon storage facilities.
5. The drilling, construction, operation or reclamation of a well other than water well located within 200 m of a water well or surface water body, under a water body or in a protected area.
6. The construction, operation or reclamation of a pipeline or battery for oil or gas operations.
7. Oil or gas exploration operations that may result in surface disturbance.
8. The construction, operation or reclamation of a gas production project that uses multi-stage hydraulic fracturing.
9. The construction, operation or reclamation of a plant, structure or thing for the generating of thermal electric power or steam.

10. The construction, operation or reclamation of a plant, structure or thing for the generating of hydro-electric power.
11. The construction, operation or reclamation of wind-power generation facilities.
12. The construction, operation or reclamation of a plant, structure or thing for the storage, treatment, processing or disposal of hazardous waste.
13. The construction, operation or reclamation of a waste management facility.
14. The construction, operation or reclamation of a mine, quarry or pit.
15. The construction, operation or reclamation of a transmission line or telecommunication line.
16. The construction, operation or reclamation of an all-season highway, railway or aircraft landing strip.
17. The construction, operation or reclamation of facilities for recreational or tourism purposes – in or adjacent to Ecological Reserves, Provincial Parks, Wilderness Areas, Wildland Provincial Parks, Natural Areas, Heritage Rangelands and Provincial Recreation Areas - that is expected to attract more than 250,000 visitors per year.
18. The construction, operation or reclamation of livestock operations for which a permit is required under the *Agricultural Operation Practices Act*, R.S.A. 2000, A-7.
19. Any activity, diversion of water, operation of a works or transfer of an allocation of water under a licence for which an approval, licence or an approval of transfer of an allocation of water under the *Water Act*, R.S.A. 2000, c. W-3 is required.
20. The creation or renewal of forest management agreements.
21. The development of any plan, policy or program pertaining to land use management, including regional land use planning under the *Alberta Land Stewardship Act*, S.A. 2009, c. A-26.8 and urban development policies.
22. The development of any plan, policy or program pertaining to the sale, lease or other disposition of public lands, including mines and minerals.