



Canadian Environmental Assessment Act

How to Determine if the Act Applies



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Canadian Environmental Assessment Agency
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Guide Overview

Purpose of guide

This guide has been prepared by the Canadian Environmental Assessment Agency (the Agency) to provide guidance on:

- determining when an environmental assessment is required under the *Canadian Environmental Assessment Act* (the Act); and if so
 - what type of environmental assessment is appropriate.
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Focus of guide

The guide focuses on a federal authority's decision regarding whether it is required to conduct an environmental assessment under the Act.

This decision may be made as part of a larger coordination process under the *Federal Coordination Regulations*; therefore, this guidance may be considered in conjunction with the Agency's federal coordination guides.

Intended users of guide

The guide has been prepared for:

- managers in federal authorities who may be required to ensure that an environmental assessment is conducted, in respect of a project, under the Act;
 - environmental assessment practitioners responsible for determining the need for an environmental assessment;
 - other jurisdictions that may have an interest in a project that may be required to undergo an environmental assessment under the Act; and
 - proponents of projects that may be required to undergo an environmental assessment under the Act.
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Applicability of guide to regulated bodies

This guide is primarily intended to provide direction on the duties of federal authorities under the Act; however, where processes prescribed in regulations are compatible with the Act, regulated bodies may also wish to refer to this guide for direction.

Contents of guide

This guide contains the following parts:

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Related guidance

For guidance on the responsibilities and activities to be undertaken in conjunction with this decision, see the guide entitled [Federal Coordination: Identifying Who's Involved](#).

For guidance on the responsibilities and activities to be undertaken after this decision, see the guide appropriate for your project:

- [Screenings](#);
- [Comprehensive Studies](#); or
- [Procedures for an Assessment by a Review Panel](#).

Disclaimer

This guide is intended for information purposes only. It should not be perceived as a substitute for the *Canadian Environmental Assessment Act* or the regulations. In the event of any inconsistency between this guide and the Act or regulations, the latter would prevail. Individuals with specific questions about the legislation are urged to seek legal advice.

Additional guidance

If, after consulting this guide, you need further advice or information, please contact the [Canadian Environmental Assessment Agency office](#) in your region.

Part 1. Preparing to Determine if the Act Applies

Introduction to Part 1 This part gives an overview of the process used to determine if an environmental assessment is required under the Canadian Environmental Assessment Act (the Act).

It also outlines the information that should be available to make the determination.

Contents of Part 1 This part contains the following sections:

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1.1 Overview of the Determination Process

Introduction to the Act

The Act is a federal law that requires federal decision makers (called [responsible authorities](#)) to consider the environmental effects of certain types of proposed projects before making any decisions or exercising any powers in relation to the proposed project.

When does the Act apply?

The Act applies to public and private sector proposed projects where there are specific federal decisions or approvals that must be made or granted.

The Act applies to a proposed project when *all four* of the following criteria are met:

1. the proposed project meets the definition of “project” under the Act;
2. the project is not excluded from having to undergo an environmental assessment;
3. the project will necessitate an action or decision of a federal authority; and
4. the specified federal decision “triggers” an obligation to ensure that an environmental assessment is conducted.

Each of these will be explained with examples in [Part 2. When Does the Act Apply?](#)

Need for project description

Those responsible for determining the need for an environmental assessment under the Act will need basic information about the proposed project, compiled in a project description, including:

- a summary description of the project;
- information indicating the location of the project and the areas potentially affected by the project;
- a summary description of the physical and biological environments within the areas potentially affected by the project; and
- the mailing address and phone number of a contact person who can provide additional information about the project.

In most cases, this information will be obtained from a project description prepared by the proponent.

For more information, see [1.2 The Project Description](#).

**Need for
involving others**

Other federal departments, the Agency and other jurisdictions may have an interest in the proposed project. The federal authority reviewing the project description may need to inform or involve these other bodies, either during the review of the project information or after it determines that it is required to undertake an environmental assessment.

For more information, see [1.3 Identifying Interested Federal Authorities](#).

1.2 The Project Description

Introduction to the project description

Compiling project information in a project description is an integral component of an environmental assessment. It provides an overview of the project-related information at the outset of the assessment.

Use of the project description

A project description has two important functions. It will help to:

- *Identify decision-making responsibilities.* A clear, thorough project description will assist a federal authority in determining, as early as possible in the project's planning phase, whether it has a decision-making responsibility with respect to the proposed project and therefore is required to undertake an assessment.
 - *Promote efficient coordination.* The federal authority receiving a project description will use it to identify other federal authorities that may have an interest in the project. Early identification and notification of other appropriate federal authorities help to ensure that the environmental assessment is well coordinated among federal participants, and that the proponent is informed in a timely manner of federal environmental assessment requirements.
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Related guidance

For information on preparing a project description, please see the [*Operational Policy Statement on Preparing Project Descriptions under the Canadian Environmental Assessment Act*](#).

For additional information on how the project description can be used to identify federal authorities and promote coordination, please see the guide entitled [*Federal Coordination: Identifying Who's Involved*](#).

1.3 Identifying Interested Federal Authorities

Introduction to identifying federal authorities

Depending on the proposed project, a number of federal authorities, (either responsible authorities or expert federal authorities), and other jurisdictions may be involved in the environmental assessment. The project description can be used by these parties to determine whether their involvement is required. Once the appropriate parties are identified, their participation should be coordinated in an efficient manner.

This section briefly discusses the need for a federal authority to involve other federal authorities and other jurisdictions in an environmental assessment. Also, this section briefly describes the [Federal Coordination Regulations](#).

The need to involve others

The participation of various federal authorities and jurisdictions must be coordinated in many environmental assessments. For example:

- Often, more than one federal department or agency will determine that it has a decision-making role on a proposed project undergoing a screening or comprehensive study.
- Other federal departments may have a responsibility to offer expert advice or knowledge to the responsible authority.
- Projects may be subject to a cooperative assessment with another jurisdiction.

Coordination among these participants, from the start, promotes greater certainty, efficiency, predictability and timeliness in environmental assessments involving the federal government.

Federal Coordination Regulations

The [Federal Coordination Regulations](#) were established to ensure that:

- the federal environmental assessment process is timely and predictable; and
- only one federal environmental assessment is carried out for a project.

The regulations establish, for federal authorities, clear procedures and time lines for:

- reviewing a project description to determine if it requires an environmental assessment under the Act;
- notifying the proponent of its decision on the need for an environmental assessment;
- notifying, as appropriate, other federal authorities that are likely to exercise a power, duty or function or are in possession of specialist or expert information or knowledge with respect to the project; and
- responding to a notification received from another federal authority.

Reference

Sections 3-7 of the [*Federal Coordination Regulations*](#).

Related guidance

For more information about the identification and coordination of federal authorities, please refer to the guide entitled [*Federal Coordination: Identifying Who's Involved*](#).

1.3 Identifying Interested Federal Authorities

Part 2. When Does the Act Apply?

Introduction to Part 2 This part will guide managers or staff in a federal authority when determining the need for an environmental assessment under the Act.

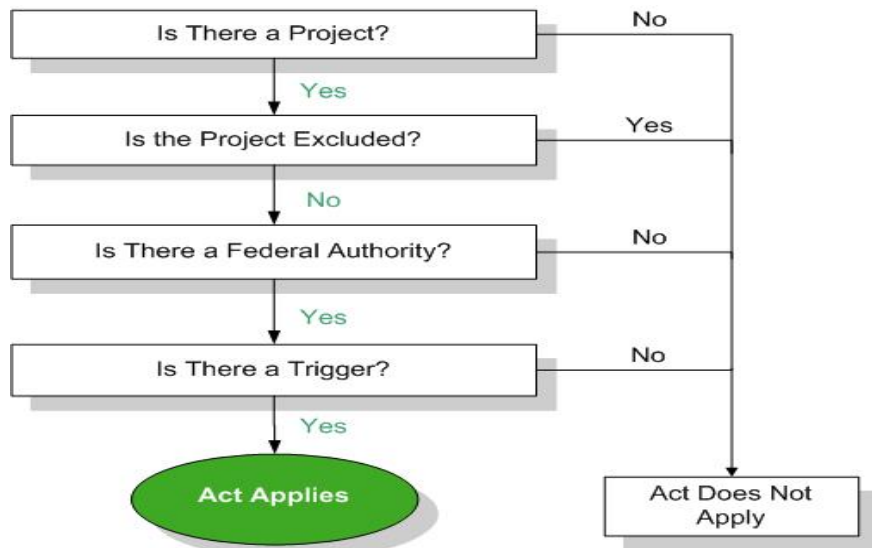
Contents of Part 2 This part contains the following sections:

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Decision chart for determining if the Act applies Specifically, there are four questions to answer when determining whether an environmental assessment is required under the Act. The four questions should be addressed in sequence.

The decision chart provides an overview of the sequence and implications of decisions at each step. Each decision point is discussed in detail in the subsequent sections.

Figure 1: Decision Chart



2.1 Is There a Project?

Question #1: Is there a project? To determine whether an environmental assessment is required under the Act, the first task is to determine whether there is a proposed project as defined by the Act.

Definition of a project Under the Act, a project is defined as:

- any proposed undertaking in relation to a physical work; or
- any proposed physical activity not relating to a physical work that is set out in the [Inclusion List Regulations](#) of the Act.

Undertaking in relation to a physical work The first category of the definition, an *undertaking in relation to a physical work*, covers most projects that fall under the Act.

A “physical work” is something that has been or will be constructed (human-made) and has a fixed location. Examples include a bridge, building or pipeline. Non-examples include airplanes or ships at sea.

“Undertakings” associated with the physical work include activities during all steps of the life cycle of the physical work. Examples include construction, operation, modification, decommissioning or abandonment.

Physical activities not relating to a physical work The second category of the definition of project covers physical activities not relating to a physical work. These are listed in the [Inclusion List Regulations](#). Examples include low-level flying, pesticide spraying by air in national parks or dredging.

This category seeks to bring into the environmental assessment process certain activities that have the potential for significant adverse environmental effects.

Examples See [2.1.1 Examples of Projects](#).

Next steps

The next steps are as follows.

If the proposal...	then...
meets the definition of a “project” under the Act	proceed to 2.2. Is the Project Excluded?
does not meet the definition of a project under the Act	no environmental assessment is required under the Act. Document your decision.

References

[Subsection 2\(1\)](#) of the Act and the [Inclusion List Regulations](#).

2.1.1 Examples of Projects

Examples of undertakings in relation to a physical work

Examples of undertakings in relation to a physical work include:

Undertakings such as...	Relating to physical works such as...
Demolition	a bridge
Repair or maintenance	a dam
Construction	a multi-lane highway
Modification and operation	a natural gas pipeline
Decommissioning	a nuclear power generating station
Installation	a radio communication antenna

Examples of physical activities not relating to physical works

Examples of physical activities not relating to a physical work include:

Physical activities such as...	Relating to non physical works such as...
Remediation	contaminated land
Alteration	a shoreline in a national park
Dredging for navigation	a natural water body
Dumping of substances prescribed by the <i>Canadian Environmental Protection Act</i>	an ocean
Prospecting for minerals	lands subject to the <i>Indian Mining Regulations</i>

Note: These examples all relate to land or water, but not to physical works, and can all be found in the [Inclusion List Regulations](#).

2.2 Is the Project Excluded?

Question #2: Is the project excluded? To determine whether an environmental assessment is required under the Act, the second task is to determine whether an identified project can be exempt from the requirement to conduct an environmental assessment under the Act. The Act does not apply to proposed projects that are excluded.

Definition of excluded “Excluded” means that no environmental assessment is required under the Act.

Exclusions under the Act A project may be excluded from the need to undergo an environmental assessment if it meets any of the following conditions from [section 7](#):

- it is described on the [Exclusion List Regulations](#) of the Act;
- it is in response to a national emergency for which special temporary measures are being taken under the [Emergencies Act](#); or
- it is in response to an emergency, and it is important to carry out the project immediately in the interest of preventing damage to property or the environment or in the interest of public health or safety.

Note: Under [subsection 7\(2\)](#), an assessment is not required when a federal authority provides financial assistance and the details of the project(s) expected to receive federal funding are not known.

This section applies to [section 54](#) agreements to transfer funds to a non-federal recipient (such as a province, foreign state or international organization) when the agreements include requirements for the recipient to conduct assessments of the environmental effects of projects, once the essential details are known.

Exclusion List Regulations

The [Exclusion List Regulations](#) are the most common means of excluding projects from an environmental assessment.

These regulations list undertakings in relation to a physical work that are considered to have an insignificant impact on the environment, such as simple renovations and routine operations.

Many of the exclusions are set by thresholds or conditions, such as distance to the nearest water body, or the size of building.

See [2.2.1 Examples of Exclusions from the Exclusion List Regulations](#).

Next steps

The next steps are as follows:

If the project ...	then...
does not meet any of the criteria for exclusion	proceed to 2.3. Is There a Federal Authority?
meets one of the criteria for exclusion	no environmental assessment is required. Document your decision.

References

[Subsections 7\(1\)](#) and [7\(2\)](#) of the Act and the [Exclusion List Regulations](#).

2.2.1 Examples of Exclusions from the *Exclusion List Regulations*

**Examples of
exclusions from
the *Exclusion
List Regulations***

1. The proposed demolition of an existing building with a floor area of less than 1,000 m² that would not:
 - a) be carried out in or on or within 30 m of a water body;
 - b) involve the likely release of a polluting substance into a water body; and
 - c) be carried out within 30 m of another building.

 2. The proposed expansion or modification of an existing sidewalk, boardwalk or parking lot that would not:
 - a) increase the area of the sidewalk, boardwalk or parking lot by more than 10 per cent;
 - b) be carried out in or on or within 30 m of a water body; and
 - c) involve the likely release of a polluting substance into a water body.

 3. The proposed construction, expansion or modification of a domestic or farm water supply well, pump house, water-tank loading facility or dugout on agricultural land that would not:
 - a) be carried out in or on or within 30 m of a water body; and
 - b) involve the likely release of a polluting substance into a water body.

 4. The proposed modification of an existing wharf, other than a floating wharf, or of an existing breakwater that is accessible by land, where the modification would not:
 - a) be carried out below the high-water mark of the breakwater or wharf;
 - b) involve dredging; and
 - c) involve the likely release of a polluting substance into a water body.
-

2.3 Is There a Federal Authority?

Question #3: Is there a federal authority? To determine whether an environmental assessment is required under the Act, the third task is to determine whether there is a federal authority involved with the proposed project. There must be a federal authority involved for the Act to apply.

Definition of federal authority In the context of the Act, the term federal authority refers to a federal body (e.g., a department or agency) that may have expertise or a mandate relevant to a proposed project.

Federal authority is defined by the Act in [subsection 2\(1\)](#). The *Financial Administration Act* (schedules I and II) and regulations of the *Canadian Environmental Assessment Act*, (e.g., the *Federal Authorities Regulations*), are used to support this definition.

Ministers, departments, departmental corporations and agencies of the Government of Canada are federal authorities. Any other body created by statute and accountable through a minister to Parliament may also be a federal authority.

Types of federal authorities

The types of federal authorities are as follows:

Type of federal authority	Examples	See the Act
Ministers... <i>a Minister of the Crown in right of Canada</i>	<ul style="list-style-type: none"> The Minister of the Environment The Minister of National Defence 	Subsection 2(1) “federal authority”, paragraph (a)
Departments... <i>any department or departmental corporation set out in Schedule I or II to the Financial Administration Act</i>	<ul style="list-style-type: none"> Fisheries and Oceans Canada Health Canada Natural Resources Canada Industry Canada 	Subsection 2(1) “federal authority”, paragraph (c)

<p>Agencies...</p> <p><i>an agency of the Government of Canada or other body established by or pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs</i></p>	<ul style="list-style-type: none"> • Canadian International Development Agency • National Energy Board 	<p>Subsection 2(1) “federal authority”, paragraph (b)</p>
<p>Prescribed bodies...</p> <p><i>any other body that is prescribed pursuant to regulations (e.g., the Federal Authorities Regulations).</i></p>	<ul style="list-style-type: none"> • Canada–Newfoundland Offshore Petroleum Board • Canada–Nova Scotia Offshore Petroleum Board 	<p>Subsection 2(1) “federal authority”, paragraph (d)</p>

Bodies prescribed by regulations

Certain bodies are not federal authorities under the Act. However, some of the bodies listed below may be required to conduct environmental assessments if specific regulations are passed for that purpose.

Examples of bodies which are not federal authorities

The following are not federal authorities under the Act:

- the Executive Council of — or a minister, department, agency or body of the government of — the Yukon, the Northwest Territories or Nunavut;
- a band council within the meaning of the [Indian Act](#);
- certain harbour commissions;
- Crown corporations that are wholly owned subsidiaries as defined in subsection 83(1) of the [Financial Administration Act](#)*;
- port authorities established under the [Canada Marine Act](#);
- provincial government bodies;
- individual members of the public; and
- private sector organizations.

* *Note:* After June 11, 2006, Crown corporations will be subject to the requirements of the Act or to a tailored process created by regulations, unless otherwise excluded.

Next steps

The next steps are as follows:

If the project ...	then...
involves a federal authority	proceed to 2.4 Is There a Trigger?
does not involve a federal authority	no environmental assessment is required under the Act (unless specific regulations have been passed for that purpose for that body). Document your decision.

Reference

[Subsection 2\(1\)](#) of the Act.

2.4 Is There a Trigger?

Question #4: Is there a trigger? To determine whether an environmental assessment is required under the Act, the fourth task is to determine whether a federal authority may take an action which triggers the Act. There must be a triggering decision or action by a federal authority for the Act to apply.

Definition of “trigger” A trigger occurs when a federal authority exercises one or more of the following duties, powers or functions in relation to a project:

- proposes a project as its proponent;
 - grants money or other financial assistance to the proponent for the purpose of enabling a project to be carried out;
 - grants an interest in land to enable a project to be carried out (i.e., sells, leases, or otherwise transfers control of land); or
 - exercises a regulatory duty in relation to a project, such as issuing a permit or licence, that is covered under the [Law List Regulations](#).
-

The four triggers The triggers for an environmental assessment are determined as explained in the following table. For some projects, more than one trigger may apply.

If a federal authority...	and...	then an environmental assessment of the project is required due to the...
is the proponent of the project	does any act or thing that commits the federal authority to carrying out the project in whole or in part	proponent trigger. Paragraph 5(1)(a)
makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent	it is for the purpose of enabling the project to be carried out in whole or in part	funding trigger. Paragraph 5(1)(b)
has the administration of federal lands and sells, leases or otherwise disposes of those lands or any interests in those lands, or transfers the administration and control of those lands or interests to a province	it is for the purpose of enabling the project to be carried out in whole or in part	land trigger. Paragraph 5(1)(c)

issues a permit or licence, grants an approval or takes any other action specified in the Law List Regulations	it is for the purpose of enabling the project to be carried out in whole or in part.	<i>Law List Regulations</i> trigger. Paragraph 5(1)(d)
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Examples of triggers

Examples of triggers for an environmental assessment are provided below.

Trigger	Example
Proponent	Public Works and Government Services Canada proposes to construct a building for office space.
Funding	Infrastructure Canada agrees to fund municipal infrastructure projects, but is not directly involved in the construction activities.
Land	The Department of National Defence grants a license of occupation to a private developer to allow the construction of a watermain through DND property.
<i>Law List Regulations</i>	Fisheries and Oceans Canada issues a permit under the <i>Navigable Waters Protection Act</i> to allow a new bridge to be built across a river.

Next steps

The next steps are as follows.

If there is ...	then...
a trigger under the Act	an environmental assessment is required under the Act. Proceed to Part 3. What Type of Environmental Assessment is Required?
not a trigger under the Act	no environmental assessment is required under the Act. Document your decision.

Reference

[Subsection 5\(1\)](#) of the Act and the [Law List Regulations](#).

Part 3. What Type of Environmental Assessment is Required?

Introduction to Part 3 This part will guide managers or staff in a federal authority in determining the type of environmental assessment they will require for a specific project under the Act.

Contents of Part 3 This part contains the following sections:

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Part 3. What Type of Environmental Assessment is Required?

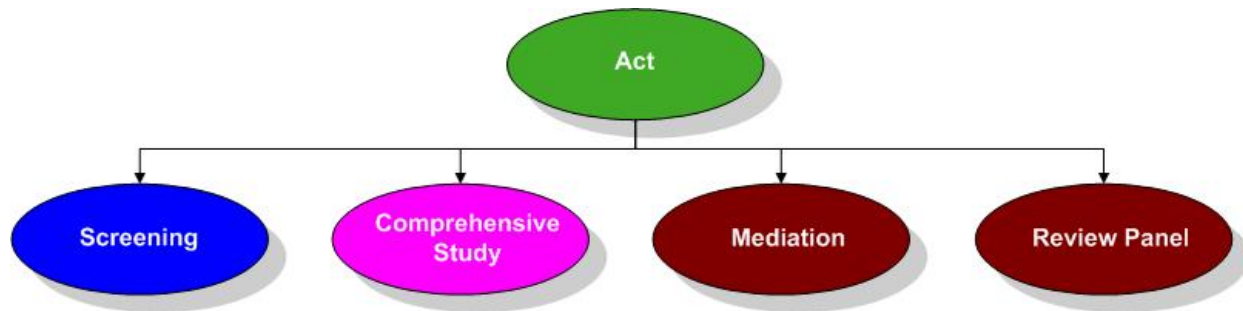
3.1 Types of Environmental Assessment

Types of environmental assessments

Depending on the nature of the project, and the significance of possible environmental effects, the type of assessment required will vary.

There are four types of environmental assessment under the Act:

Figure 2: Types of Environmental Assessment



Self-directed environmental assessments

Under the concept of self-assessment, federal authorities are required to ensure that environmental assessments are conducted for each project and to ensure that the results are incorporated into their decisions.

The majority of federal projects requiring an environmental assessment will undergo either a [screening](#) or a [comprehensive study](#). Both are considered “self-directed” environmental assessments, in the sense that the responsible authority is responsible for ensuring the assessment is conducted in accordance with the Act.

If the significance of the environmental effects of a project is uncertain or significant effects are likely, or if public concern warrants, an assessment by a [mediator](#) or an independent [review panel](#) may be required. Since these assessments are not conducted by the responsible authority, they are not considered to be self-directed.

Screening Most projects are assessed relatively quickly under what is known as a screening type of assessment.

A screening systematically documents the anticipated environmental effects of a proposed project, and determines the need to modify the project plan or recommend further mitigation to eliminate or minimize these effects.

Screenings are conducted for projects which are not on the [Comprehensive Study List Regulations](#) and have not been identified as requiring mediation or an assessment by a review panel.

The screening of some routine projects may be streamlined through the use of a [class screening](#) report. This kind of report presents the accumulated knowledge of the environmental effects of a given type of project and identifies measures that are known to reduce or eliminate the likely adverse environmental effects. The Agency declares such reports appropriate for use after it takes into account comments received during a period of public consultation.

Comprehensive study Projects identified on the [Comprehensive Study List Regulations](#) must be assessed as a comprehensive study under the Act, or be referred to a review panel or mediator.

Typically, these proposed projects are large-scale, complex projects that are likely to have significant adverse environmental effects. Consequently, a comprehensive study is a more stringent type of environmental assessment than a screening. For example, public participation and implementation of a follow-up program are mandatory in a comprehensive study, whereas they are discretionary in a screening.

A comprehensive study can eliminate the need for a review panel or mediation in situations where, taking into account any applicable mitigation measures, a project is deemed to have:

- insignificant environmental effects and does not generate a great deal of public concern; or
- unjustifiable and significant environmental effects.

As such, a comprehensive study serves as a useful, proactive environmental assessment tool which can reduce the number of larger projects requiring an assessment by a review panel or mediation.

Mediation Mediation is a formal type of environmental assessment available under the Act. It is a voluntary process of negotiation in which an independent and impartial mediator, appointed by the Minister of the Environment after consultations with the interested parties, helps the parties to resolve their issues.

Mediation is characterized by a non-adversarial, collaborative approach to solving problems and generating agreements where consensus is possible. Like assessments by review panels, it is an advisory, rather than a decision-making process.

Review panel A review panel is appointed with the objective of reviewing and assessing, in an impartial and objective manner, a project that may have the potential for causing significant adverse environmental effects or where public concern warrants. Such projects may be referred by the responsible authority to the Minister of the Environment for review by a panel.

An assessment by a review panel is an advisory rather than a decision-making process. A review panel submits recommendations to the Minister of the Environment and to the responsible authority. The latter, in turn, must seek Cabinet approval of the government's response to the review panel's recommendations.

3.2 Determining Type of Environmental Assessment

Determining the type required

The method of determining the type of environmental assessment required is described below.

If the proposed project...	then the required environmental assessment is a...
does not fall into any of the categories below...	screening .*
is in the Comprehensive Study List Regulations ...	comprehensive study .
has been referred directly to a mediator or a review panel because: <ul style="list-style-type: none"> • there is uncertainty about whether the project is likely to cause significant adverse environmental effects; or • the project is likely to cause significant adverse environmental effects and it is uncertain whether these effects are justified in the circumstances; or • public concerns warrant it, ... 	mediation or assessment by a review panel , as determined by the Minister of the Environment.

Referral to a mediator or a review panel

Note that, under the circumstances listed above, both screenings and comprehensive studies can be referred to a mediator or a review panel during their conduct.

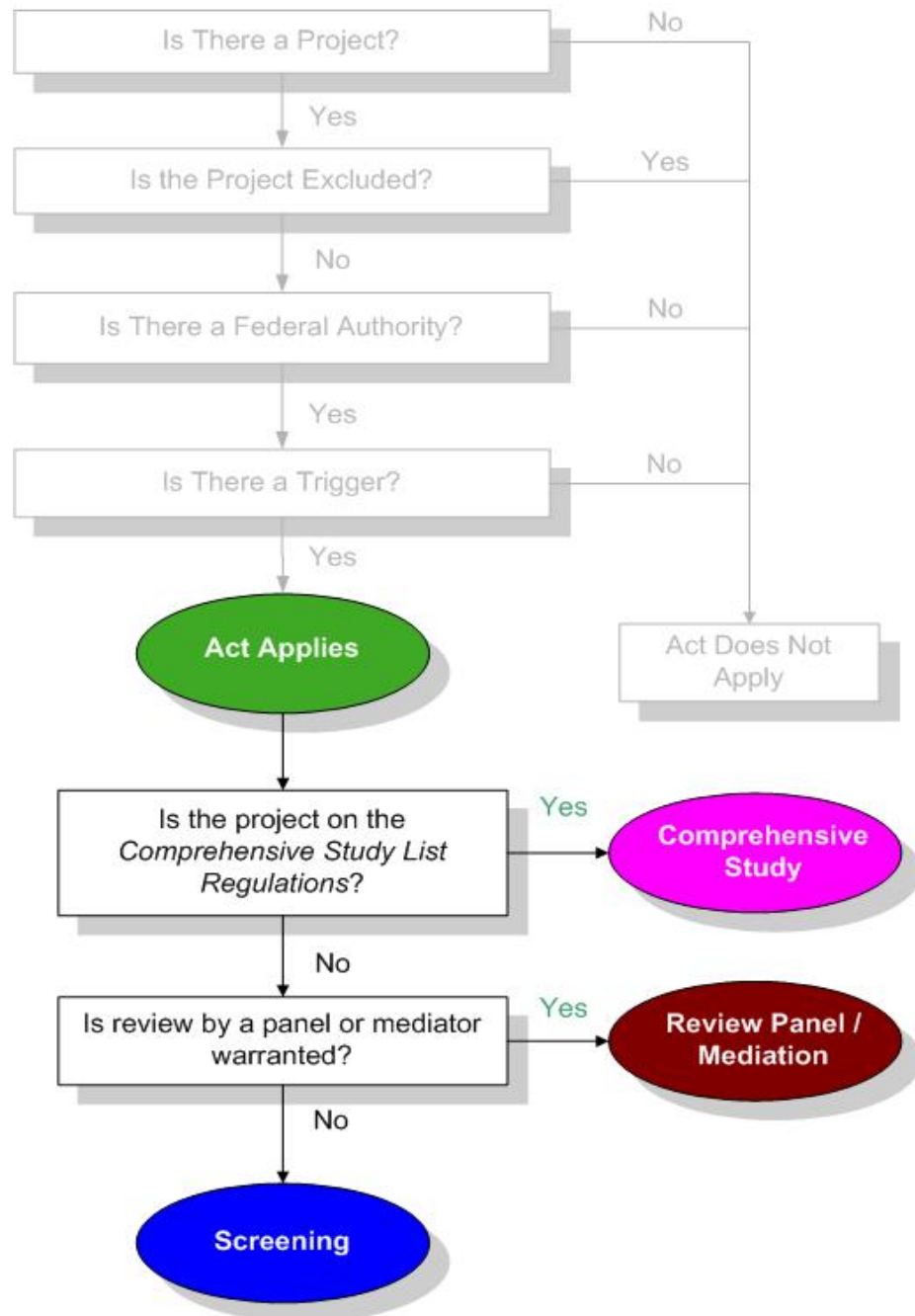
***Class screenings**

If a class screening has been declared for your type of proposed project, then you may be able to use a replacement or model class screening report for your project.

For a list of declared class screening reports, please contact the [Canadian Environmental Assessment Agency office](#) in your region.

Decision chart The decision chart provides an overview of the sequence and decisions at each step.

Figure 3: Decision Chart for Determining Type of Environmental Assessment



Next steps The next steps are as follows:

If a...	then...
screening is required	continue to the guides entitled <i>Federal Coordination: Identifying Who's Involved</i> and <i>Screenings</i> .
comprehensive study is required	continue to the guides entitled <i>Federal Coordination: Identifying Who's Involved</i> and <i>Comprehensive Studies</i> .
mediation is required	contact the Agency.
review panel is required	contact the Agency and see the guide entitled: <i>Procedures for an Assessment by a Review Panel</i> .

References [Section 14](#) of the Act, the [Comprehensive Study List Regulations](#), and the [Federal Coordination Regulations](#).
