

Proponent Handbook

Voluntary Engagement with
First Nations and Métis Communities
to Inform Government's
Duty to Consult Process

November 2013



Government
of
Saskatchewan

Ministry of Government Relations

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Government encourages proponents to engage early with First Nations and Métis communities, building relationships which will provide opportunities to discuss a full range of interests.

INTRODUCTION

Both public and private sectors realize that engaging First Nations and Métis communities early in a project development process can enhance project planning. For proponents, the outcome of early engagement can provide information that contributes to the development of a more comprehensive project proposal, facilitating project review.

Project proposals, submitted to government that have the potential to adversely impact Treaty and Aboriginal rights and traditional uses, will trigger government's duty to consult.

WHAT IS THE DUTY TO CONSULT?

The Government of Saskatchewan has a duty to consult with First Nations and Métis communities when contemplating decisions or actions that have the potential to adversely impact the exercise of:

- Treaty and Aboriginal rights, such as the right to hunt, fish and trap for food on unoccupied Crown lands and other lands to which First Nations and Métis have a right of access for these purposes; and
- Traditional uses of lands and resources, such as the gathering of plants for food and medicinal purposes and/or the carrying out of ceremonial and spiritual observances and practices on unoccupied Crown lands and other lands to which First Nations and Métis have a right of access for these purposes.

Government's commitment to consultation is explained in the First Nation and Métis Consultation Policy Framework (CPF) available at <http://www.gr.gov.sk.ca/Consult-Policy-Framework>.

HOW DOES PROPONENT ENGAGEMENT LINK TO THE DUTY TO CONSULT?

When a proponent submits a project proposal to government for authorization, government will assess whether the project triggers the duty to consult. Where the duty to consult is triggered, government has an obligation to ensure First Nations and Métis communities are appropriately consulted and accommodated in accordance with the CPF in advance of issuing authorizations.

Government's duty to consult processes are guided by the CPF. Proponents are advised to familiarize themselves with this document.

<http://www.gr.gov.sk.ca/Consult-Policy-Framework>

Many project proponents currently engage First Nations and Métis communities during project planning in advance of seeking project authorization. Where a proponent anticipates the duty to consult may be triggered, they may voluntarily collect and document relevant information in their project proposal to inform government's duty to consult process. This "voluntary proponent engagement" occurs before a project proposal is submitted, while "government's duty to consult" is assessed following the submission of a project proposal.



PURPOSE OF THE HANDBOOK

This Handbook, which applies to any proposed project associated with lands and resources¹:

- differentiates between "voluntary proponent engagement" and "government's duty to consult";
- provides advice on identifying potentially impacted First Nations and Métis communities, who to contact, how to build an understanding of the proposed project and time, depth of engagement and cost considerations;
- clarifies what information is relevant to inform government's duty to consult process;
- provides guidance on how to clearly document relevant engagement efforts in a project proposal; and
- clarifies how government will use the relevant information provided to inform its duty to consult.

¹ Other existing regulatory processes may also require the collection of First Nation and Métis land use information related to hunting, fishing and trapping for food and the carrying out of traditional uses. Projects that trigger an Environmental Assessment are subject to requirements detailed in the Proponents Guide: Consultation with First Nations and Métis for Saskatchewan Environmental Impact Assessment. For information visit: <http://www.environment.gov.sk.ca/EnvironmentalAssessment>.

THE VALUE OF VOLUNTARY PROPONENT ENGAGEMENT

Voluntary engagement gives proponents and First Nations and Métis communities an opportunity to:

- establish a working relationship to carry through the life cycle of the project;
- become fully informed of the nature, potential implications, and opportunities associated with the proposed project;
- identify a full range of interests, opportunities and issues, including the project's potential adverse impacts on a community's ability to hunt, fish and trap for food or to carry out traditional uses;
- pro-actively discuss project adjustments to address interests and issues; and
- control and manage project timelines with increased confidence.

In advance of submitting a project proposal a proponent may:

- consider the potential for their project to trigger government's duty to consult (**Appendix A**), and
- voluntarily collect and document relevant information in their project proposal to inform government's duty to consult process.

Prior to engaging communities, proponents are advised to contact the ministry, agency or Crown corporation responsible for project authorizations to discuss potentially impacted First Nations and Métis communities and relevant engagement plans. Government will work with proponents throughout the engagement process to provide information and assist when appropriate.

Where federal approvals are required, proponents are encouraged to contact the appropriate Government of Canada department or agency.

Government will accept relevant information and documentation from proponent engagement processes as part of their consultation record, and will rely on it along with other relevant information to inform government's duty to consult.

As much as possible, government's duty to consult process will not duplicate relevant proponent engagement, facilitating informed and timely decisions.

POTENTIALLY IMPACTED COMMUNITIES

Proponents who decide to initiate voluntary engagement should begin their engagement by identifying a list of potentially impacted First Nations and Métis communities in close geographic proximity to the proposed project.

The most up-to-date information can be found at:

- Aboriginal Affairs and Northern Development Canada; www.aadnc-aandc.gc.ca/eng/1100100010002/
- Federation of Saskatchewan Indian Nations; www.fsin.com/
- Métis Nation-Saskatchewan; www.mn-s.ca

The identification of traditional territories is also critical. Traditional territories refer to geographic areas within which First Nations and Métis communities historically exercised Treaty and Aboriginal rights and undertook traditional uses and continue to do so today.

Information or maps on First Nation and Métis traditional territories are not readily available and traditional territories may overlap, which means that:

- more than one community may need to be engaged;
- additional First Nations and Métis communities may identify an interest in the project area as information becomes public; and
- offsite impacts identified during the project authorization stage may impact more distant communities whose traditional territories fall within the project area.

Proponents should contact the responsible ministry, agency or Crown corporation, as early as possible, to discuss the list of communities they plan to engage.

WHO SHOULD BE CONTACTED?

Once a list of potentially impacted communities has been generated, proponents should contact the elected leadership of the First Nation(s) or Métis Local(s) to:

- seek their support and advice on engagement activities; and
- establish a community contact/liaison, such as a First Nation Land Manager, Band Administrator or Consultation Coordinator.

To ensure transparency, proponents should clearly communicate to First Nations and Métis communities that information gathered during community engagement will form a component of the project proposal submitted to government; therefore, the engagement is not ‘off the record’, also termed ‘without prejudice’.

GATHERING RELEVANT INFORMATION

Relevant information is shared and gathered through discussions with the community. The success of these discussions will depend on building an understanding of the nature and scope of the project in relation to the community and its members (see **Appendix B**). Although proponents do not always have final project details at the outset, they may still build an understanding of the proposed project by:

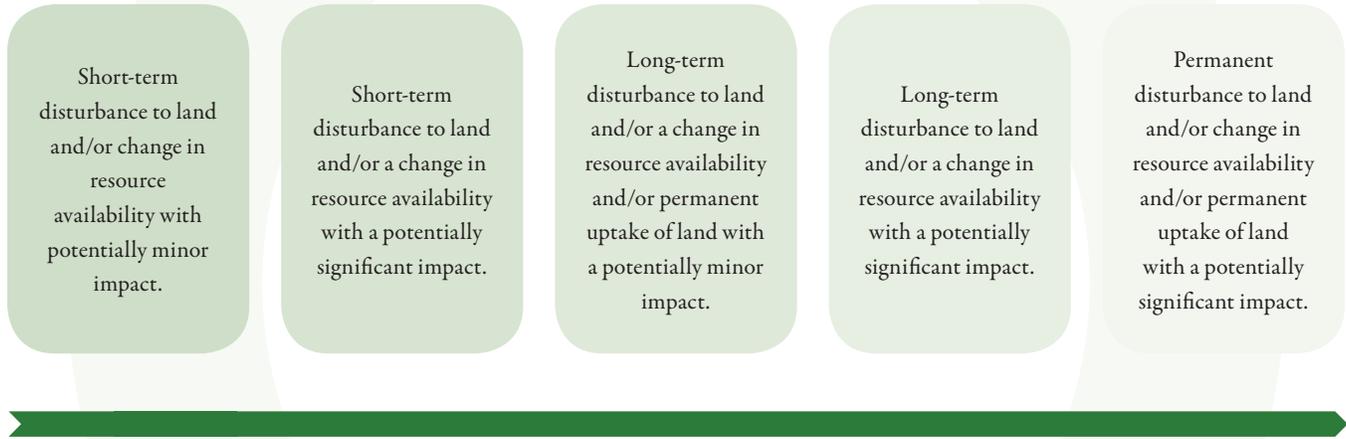
- ensuring information provided on the proposed project is complete, easy to read and includes:
 - names of proponent and contact people;
 - project details such as:
 - scope and location of the project, including maps,
 - type of work to be carried out,
 - the short, medium and long-term plans in the area,
 - any potential adverse impacts on the community's ability to access lands and fish and wildlife resources,
 - mechanisms to avoid, minimize or mitigate any potential adverse impacts to the community's ability to hunt, fish and trap for food or to carry out traditional uses,
 - relevant data, reports, studies and reviews, and
 - expected project and regulatory timelines.

Relevant information in a project proposal that will help inform government's duty to consult process includes:

- the engagement plan/process used to inform the community(s) about the project proposal;
- how the community(s) are using the land within the project area to hunt, fish and trap for food and carry out traditional uses;
- the project's potential to adversely impact the community's ability to hunt, fish and trap for food and carry out traditional uses; and
- how the project has been adjusted to avoid, minimize or mitigate adverse impacts identified by the community(s) on their ability to hunt, fish and trap for food and carry out traditional uses. For example, this might include adjusting the timing of certain activities or modifying the location or boundaries of the project.

TIME AND DEPTH OF ENGAGEMENT

In determining the time and depth of engagement, proponents should consider the projects potential to adversely impact a community's ability to hunt, fish and trap for food and carry out traditional uses. Engagement should be commensurate with duration and magnitude of the impacts. Proponents are encouraged to take the time necessary to ensure that the relevant issues are addressed in a meaningful way.



COSTS

Proponents are responsible for the costs associated with their engagement including the collection of information and any necessary adjustments to the project to avoid, minimize or mitigate potential adverse impacts on a First Nation or Métis community's ability to hunt, fish and trap for food and to carry out traditional uses in the project area.

If necessary, proponents may wish to provide support to First Nations and Métis communities to facilitate their participation in the engagement process.

DOCUMENTING RELEVANT ENGAGEMENT IN PROJECT PROPOSALS TO INFORM GOVERNMENT'S DUTY TO CONSULT PROCESS

Proponents should dedicate a section in their project proposal to summarize the relevant information gathered during engagement.

Engagement Summary

An Engagement Summary should be included for each First Nation or Métis community summarizing:

- name(s) of community contact(s)/liaison(s);
- potential adverse impacts to the First Nation or Métis community's ability to hunt, fish and trap for food and to carry out traditional uses in the project area;
- what actions have been integrated into the proposed project to avoid, minimize or mitigate potential adverse impacts to the community's ability to hunt, fish and trap for food and to carry out traditional uses;
- any outstanding issues or information gaps and why they are outstanding; and
- a list of any failed attempts to engage and why they were unsuccessful.

A template is provided in **Appendix C**, to assist proponents.

Detailed Engagement Log

For each First Nation or Métis community, proponents should document all engagement activities and include this information in the project proposal, or in an appendix. A suggested template is provided in **Appendix D**. Detailed information includes, but is not limited to, a list of:

- community contact(s)/liaison(s);
- dates and types of engagement activities, including all meetings with leaders, Elders, traditional users and community members;
- telephone conversations (who was involved, information discussed, actions items and results); and
- a list of all failed attempts to engage, including dates and times and efforts made to overcome this challenge.

Supporting materials include, but are not limited, to:

- written correspondence (e-mails, letters, handwritten notes);
- copies of meeting agendas, participant lists, meeting notes, presentations;

- studies conducted, reports and any other information provided to the community; and
- any other relevant information used to inform the community engagement.

A permanent record of all engagement and all supporting materials should always be kept by proponents for future reference and to provide to government if necessary.

MOVING FROM PROPONENT ENGAGEMENT TO GOVERNMENT CONSULTATION

Government is responsible and ultimately accountable for managing and implementing the duty to consult.



Upon receiving a project proposal

Government will review the project proposal to determine if the duty to consult is triggered. The duty to consult is triggered if the proposed project has the potential to adversely impact Treaty and Aboriginal rights and traditional uses.

Government makes this determination by asking the following questions:

1. Is the proposed project on unoccupied Crown lands or occupied Crown lands where the Crown permits a right-of-access for the purpose of exercising Treaty or Aboriginal rights and carrying out traditional uses?
2. Will the proposed project limit First Nations and Métis communities' right of access to unoccupied Crown lands or occupied Crown lands where the Crown permits a right-of-access?
3. If the proposed project is on private land is there a potential for off-site impacts on unoccupied Crown lands and occupied Crown lands where First Nations or Métis communities have a right-of-access?
4. If the proposed project is on private land is there a potential for off-site impacts on Indian reserve lands in the general vicinity?

5. Do the environmental impacts of the proposed project have the potential to adversely impact:
 - a. the fish and wildlife resources First Nations and Métis communities may use to exercise rights such as the ability to hunt, fish and trap for food to carry out traditional uses on unoccupied Crown lands, or occupied Crown lands where the Crown permits a right of access; or
 - b. the resources used by First Nations and Métis communities on unoccupied Crown lands, or occupied Crown lands where the Crown permits a right of access?

When a project triggers the duty to consult

Government will:

- consider proponent engagement information on the specific adverse impacts from the project on a community's ability to exercise rights such as the ability to hunt, fish and trap for food and to carry out traditional uses;
- consider accommodation measures that have been integrated into the project to avoid, mitigate or minimize adverse impacts on rights such as the ability to hunt, fish and trap for food and carry out traditional uses;
- identify environmental impacts that have not been mitigated that have the potential to adversely impact the resources used to exercise rights such as the ability to hunt, fish and trap for food and to carry out traditional uses; and
- assess the level of consultation and time frames using the Consultation Matrix in the CPF. The matrix can be found at <http://www.gr.gov.sk.ca/Consult-Policy-Framework>.

Provide Notification

Government will provide potentially impacted First Nations and Métis communities with notification that:

- seeks validation of the engagement information provided in the project proposal, and outlines government's understanding of the proponent's engagement activities, the specific adverse impacts identified by the community and accommodation measures;
- identifies government's assessment of potential adverse environmental impacts from the project on the resources used to exercise rights such as the ability to hunt, fish and trap for food and to carry out traditional uses, and how the project may affect the community's right of access; and
- requests a response within the timelines guided by the CPF, confirming the proponent's engagement activities and seeking additional or new information on the potential impacts of the project on the community's ability to hunt, fish and trap for food and to carry out traditional uses.

After the community responds, government will determine the need for further consultation and may:

- undertake additional consultations;
- assign procedural aspects of consultation to the proponent; or
- request that the proponent participate in follow-up consultations with government and First Nations and Métis communities.

Accommodate

Government will accommodate, where appropriate, by minimizing or avoiding potential adverse impacts to rights and traditional uses. Accommodation may include one or more of the following:

- attaching certain conditions to project approvals;
- requiring proponents to adjust the proposed activity;
- delaying making a decision or issuing an approval pending further consultations; or
- denying the application.

Changes to project activities requiring government authorization or new information received from First Nations or Métis communities on potential impacts to rights such as the ability to hunt, fish and trap for food and to carry out traditional uses, will initiate further assessment of government's duty to consult obligations.

SUMMARY

Early engagement allows the time necessary for proponents and First Nations and Métis communities to establish a working relationship to carry through the life cycle of the project and explore a full range of interests and opportunities.

This improved understanding can contribute to the development of a more comprehensive project proposal that can help inform government's duty to consult process, facilitating timely and informed decision making.

CONTACT INFORMATION

Proponents are encouraged to contact the responsible ministry, agency or Crown corporation as early as possible in the project development process. Proponents may also contact the Aboriginal Consultation Unit, Ministry of Government Relations for general inquiries relating to the CPF or the Proponent Handbook at:

Lands and Consultation Branch
Ministry of Government Relations

710 - 1855 Victoria Avenue

Regina, Sask. S4P 3T2

Toll free: 1-877-879-7099

Email: aboriginal.consultation@gov.sk.ca

GLOSSARY

The terms below are consistent with the First Nation and Métis Consultation Policy Framework. Additional terms related to government's duty to consult are outlined in the CPF at <http://www.gr.gov.sk.ca/Consult-Policy-Framework>.

Accommodation: Accommodation means avoiding or minimizing any adverse impacts on Treaty or Aboriginal rights and traditional uses. If avoidance is not possible accommodation to minimize impacts may include: attaching certain conditions to project approvals; requiring proponents to adjust the proposed activity; delaying making a decision or issuing an approval pending further consultations; or denying the application to conduct an activity.

Environmental Impacts: Specific impacts on the fish and wildlife resources and physical impacts to landscape, habitat and surrounding areas.

Proponents: Can include but are not limited to, industry, Aboriginal governments, municipalities, boards, private entities and individuals requiring an authorization for a project from government.

Responsible Ministry, Agency or Crown Corporation: Government of Saskatchewan ministry, agency or Crown corporation with responsibility for project authorizations.

Right-of-Access: First Nations and Métis communities can exercise their Treaty and Aboriginal rights to hunt, fish and trap for food and carry out traditional uses on unoccupied Crown land, including public water bodies and on occupied Crown land where there is a right-of-access to engage in the specific activity. A right-of-access for hunting for example will exist whenever licensed hunters are allowed onto occupied Crown land during hunting season. Lands that are leased by the Crown for agricultural or other purposes are considered to be similar to privately owned lands. First Nations and Métis communities can only access these lands to exercise their Aboriginal and Treaty rights to hunt, fish and trap for food or to engage in traditional uses with the consent of the lessee, but there is no "right" of access.

Traditional Uses: First Nation and Métis traditional uses of lands and resources, such as the gathering of plants for food and medicinal purposes and the carrying out of ceremonial and spiritual observances and practices on unoccupied Crown lands and other lands to which First Nations and Métis have a right of access for these purposes.

Treaty and Aboriginal Rights: Treaty and Aboriginal rights include First Nations and Métis communities' right to hunt, fish and trap for food on unoccupied Crown lands and other lands to which they have a right-of-access for those purposes.

APPENDIX A: IS MY PROJECT LIKELY TO TRIGGER GOVERNMENT'S DUTY TO CONSULT?

Upon submission of a project proposal, government determines whether the duty to consult is triggered. The duty to consult is triggered if the proposed project has the potential to adversely impact Treaty and Aboriginal rights and traditional uses. This table is intended to help proponents understand the relevant considerations.

Land Status and Right of Access	Yes/ No	Description
1. Will the proposed project limit right-of-access to a First Nation and/or Metis community on unoccupied Crown lands or occupied Crown lands where First Nation and Métis communities have a right-of-access to hunt, fish, and trap for food and carry out traditional uses?		
2. Is the proposed project on private land or Agricultural leased Crown land with off-site impacts that have the potential to adversely impact Treaty and Aboriginal rights, such as the right to hunt, fish, and trap for food and carry out traditional uses on: <ol style="list-style-type: none"> i. unoccupied Crown lands; ii. occupied Crown lands where First Nation and Métis communities have a right-of-access; or iii. Indian reserve land? 		
Disturbances to Land and Resources	Yes/ No	Description
3. Does the proposed project create a disturbance (e.g. excavation, construction, noise, traffic, tree removal) in or outside the project area that has the potential to adversely impact Treaty and Aboriginal rights, such as the right to hunt, fish, and trap for food and carry out traditional uses on: <ul style="list-style-type: none"> • land (e.g. wildlife habitat and spiritual/cultural/gathering sites); and/or • resources (e.g. fish, wildlife, and medicinal plants). 		

If you have answered yes to one or more of the above questions, the duty to consult may be triggered when this proposed project is submitted for review. Proponents are advised to contact the ministry, agency or Crown Corporation responsible for project authorizations as early as possible to discuss engagement plans.

*Updated June 2016

APPENDIX B: NOTES ON FACILITATING EFFECTIVE ENGAGEMENT

Effective engagement involves listening, communicating clearly, ensuring meaningful opportunities exist to engage with the community, and developing good working relationships between proponents and First Nations and Métis communities. The following section provides some tips on ways to build relationships and facilitate productive meetings. Information sources to support effective engagement are provided below.

During engagement avoid terms specific to government's duty to consult processes such as "notification" and "consultation" to avoid confusion.

Build a strong relationship by:

- engaging as early as possible and being open to project adjustments;
- conveying willingness to help the community understand the proposed project and consider all concerns;
- learning about, recognizing and respecting First Nations and Métis cultural activities, traditional practices and knowledge and uses of lands and resources;
- identifying your specific interest in discussing the proposed project's potential adverse impacts on the community's ability to hunt, fish and trap for food and to carry out traditional uses;
- understanding the importance of Elders, women and youth and ensuring their participation in engagement activities;
- acting with honour, openness, transparency and respect;
- developing an comprehensive but flexible engagement plan with the leadership with a clear focus and goals;
- providing opportunities to meet with leaders, Elders, traditional users and community members;
- encouraging community engagement in all phases of the project;
- discussing community priorities and recognizing that the community members may have broader interests in the project; and
- following up regularly and demonstrating an interest in the community through a regular presence.

Facilitate productive meetings by:

- asking about cultural practices prior to meeting with the community e.g. feasts, opening prayers, tobacco, chairing responsibilities, opportunities to speak;
- holding meetings in locations convenient for the community;

- being prepared to listen and allow time for meaningful discussion;
- committing to providing new information about the proposed project when available;
- allowing time for Elders and traditional users to share their knowledge in culturally appropriate ways, such as storytelling, often in traditional languages; and
- supporting translation services where necessary.

Information Sources

Best Practices

- Mineral Exploration Guidelines For Saskatchewan 2012, First Nation & Métis Community Engagement; www.environment.gov.sk.ca/mineralexploration

First Nation and Métis Contact Information

- Aboriginal Affairs and Northern Development Canada; www.aadnc-aandc.gc.ca/eng/1100100010002/
- Federation of Saskatchewan Indian Nations; www.fsin.com/
- Métis Nation-Saskatchewan; www.mn-s.ca

Maps

- Agricultural Crown Land Map Viewer; <http://www.agriculture.gov.sk.ca/CrownLand-Map>
- GeoSask; www.geosask.ca/Portal/
- Information Services Corporation; <https://www.isc.ca/MapsandPhotos/Maps>
- Ministry of Environment; <http://www.environment.gov.sk.ca/maps>

APPENDIX C: ENGAGEMENT SUMMARY FOR PROJECT PROPOSALS

An Engagement Summary should be prepared for each First Nation or Métis Community engaged. Based on the proponents understanding of how First Nations and Métis communities are using unoccupied Crown land, or occupied Crown land to which they have a right of access in the project area, to hunt, fish and trap for food and to carry out traditional uses, the engagement summary should contain information on:

- specific project activities identified by the community with the potential to adversely impact hunting, fishing and trapping for food and carrying out traditional uses;
- how the proponent has addressed the potential impacts;
- any outstanding issues the proponent was unable to address, indicating why the issue could not be resolved; and
- any information gaps, identified by the community.

Engagement Summary			
Date:		Project Contact:	
Project Name:		Organization	
First Nation or Métis community:			
First Nation or Métis community contact:			
<p>Describe how the project will adversely impact the First Nation or Métis community’s ability to hunt, fish and trap for food, and to carry out traditional uses.</p>		<p>Describe actions to avoid, minimize or mitigate specific adverse impacts to the First Nation or Métis community’s ability to hunt, fish and trap for food and to carry out traditional uses.</p>	
<p><i>e.g. Traditional plants are gathered on SE 1/4 where access road is proposed.</i></p>		<p><i>e.g. access road route changed to avoid SE 1/4 and SW 1/4.</i></p>	
Description of Outstanding issues		Comments / Proposed Actions	
Information Gaps identified by the community		Comments / Proposed Actions	

APPENDIX D: DETAILED ENGAGEMENT LOG

First Nation or Métis Community:					
Date	Activity (e.g. Letter, E-mail, Phone Call, Meeting)	Proponent contact	First Nation or Métis community contact	Purpose	Notes
01/05/2013	Letter	John Smith, Operations Manager	Chief A.L Taylor	Introduction	Chief Taylor provided outline of the proposed project and invitation to meet and discuss further.
02/16/2013	Meeting	John Smith, Operations Manager	Chief A.L Taylor Councilor - G.S Raymond	Follow up to January 15th letter on project overview	Discussion on proposed project and cursory overview of potential impacts, specifically concerns related to the local fishery.

