

Proponents Guide



Consultation with First Nations and Métis in Saskatchewan Environmental Impact Assessment

Guidelines for Engaging and Consulting with First Nations
and Métis Communities in Relation to Environmental Assessment
in Saskatchewan

June 2014

FOREWORD

This document is a guideline only. It is a work in progress by the Ministry of Environment's Environmental Assessment Branch and subject to change. In all cases, proponents must ensure that the project complies with all applicable provincial and federal legislative and regulatory requirements. Proponents must ensure that all applicable environmental approvals are identified and obtained before starting construction.

LIST OF ACRONYMS

Acronym	Meaning
the Act	<u>The Environmental Assessment Act</u>
CPF	Government of Saskatchewan First Nation and Métis Consultation Policy Framework (CPF)
DTC	Duty to consult
EA	Environmental Assessment
EA Branch	Environmental Assessment Branch
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
the Minister	Minister of Environment
the ministry	Ministry of Environment
TOR	Terms of Reference

TABLE OF CONTENTS

FOREWORD.....	1
LIST OF ACRONYMS	2
TABLE OF CONTENTS.....	3
1 Introduction	4
2 Environmental Assessment Branch Duty to Consult	5
2.1 Notification to the Proponent and First Nations and Métis Communities	6
3 Role of the Proponent.....	7
3.1 General Role of the Proponent	7
3.2 Terms of Reference and Consultation Plan for an Environmental Assessment	8
4 Assessing Consultation Activities	9
5 Other Resources and Contact Information	10

Appendix A – Flow Diagram of EA Process and Duty to Consult

This document has been prepared by the Environmental Assessment Branch.

For further information, please contact environmental.assessment@gov.sk.ca, or visit www.saskatchewan.ca/environmentalassessment.

1 Introduction

The purpose of this guide is to inform proponents of the Government of Saskatchewan's duty to consult (DTC) in relation to environmental assessment (EA) in Saskatchewan and provide information on the Ministry of Environment's (ministry) requirements for consultation with First Nations and Métis communities. *The Government of Saskatchewan First Nation and Métis Consultation Policy Framework* (CPF) establishes the Government of Saskatchewan's policy on consultation with First Nations and Métis communities. The ministry must meet its DTC in a manner that is consistent with the CPF. The CPF can be accessed online by searching "[Consultation Policy Framework](#)" at www.saskatchewan.ca.

First Nations and Métis engagement and consultation is required throughout multiple stages of the EA process, from the screening stage to the decision by the Minister of Environment (the Minister). The general EA process is depicted in Figure 1.



Figure 1. Environmental Assessment Process Overview

This guide will:

- inform the proponent about the DTC within the EA framework;
- provide guidance on how the Environmental Assessment Branch (EA Branch) will assign procedural aspects of consultation processes to proponents; and
- explain the benefits of early proponent engagement with First Nations and Métis communities in the EA process.

The Environmental Assessment Act (the Act) requires that a proponent receives the approval of the Minister before proceeding with a development that is likely to have significant environmental implications. The DTC is assessed by the EA Branch for projects requiring an environmental impact assessment (EIA). When the Minister's decision of a development leads to actions that have the potential to adversely impact the exercise of Treaty and Aboriginal rights and the pursuit of traditional uses, the ministry has a DTC with First Nations and Métis communities in advance of the decision. While the Government of Saskatchewan is responsible and ultimately accountable for managing and implementing the DTC, the proponent will be assigned procedural aspects of consultation to help ensure a direct, efficient and timely exchange of information among all parties and contribute to a meaningful and effective process of consultation. The DTC in the EA process diagram, provided in Appendix A, outlines proponent consultation during the EA process.

The consultation process involves providing information and meeting with potentially-impacted First Nations and Metis communities; listening, documenting, responding and following up on comments and concerns raised by the communities in relation to the proponent's proposed development.

This process helps to ensure that:

- relevant information from First Nations and Métis communities is included in the EA process;
- proponents provide the ministry with sufficient information to assess the proponent's consultation efforts; and
- potential adverse impacts to rights and traditional uses have been identified and, where reasonable, avoided or minimized.

The ministry recognizes the benefits of having the proponent engage with First Nations and Métis communities in the early stages of project development. If the DTC has not yet been triggered, or may not be triggered, proponents are encouraged to develop positive relationships with First Nations and Métis communities when considering development projects that may affect these communities. Early engagement can ensure the exchange of appropriate and relevant information among parties, ensure potential adverse impacts are avoided or minimized, reduce the potential for costly delays during regulatory processes, and facilitate beneficial relationships among government, First Nations and Métis communities and industry.

The *Proponent Handbook - Voluntary Engagement with First Nations and Métis Communities to Inform Government's Duty to Consult* provides guidance on early engagement and the opportunity for proponents to gather relevant information to inform government's DTC process. The Proponent Handbook can be accessed by searching "[Proponent Handbook](#)" at www.saskatchewan.ca.

2 Environmental Assessment Branch Duty to Consult

Once the project is determined to be a development under the Act, the EA Branch will determine if the DTC is triggered in relation to the EA Process by considering if:

- the proposed project has the potential for adverse environmental impacts on the resources that First Nations and Métis use to exercise their Treaty and Aboriginal rights and the pursuit of traditional uses; and/or
- the proposed project has the potential to limit First Nations and Métis right of access to those resources.

Environmental Impacts and Rights of Access are defined as follows:

- Environmental Impacts – impacts on fish and wildlife, habitat, landscape or feature of the environment in the surrounding area.
- Right of Access - Treaty or Aboriginal right to access land, public water bodies and resources to carry out activities associated with hunting and fishing for food and pursuing traditional uses. These include unoccupied Crown land, public water bodies and occupied Crown land that is open at any time of the year to non-Aboriginal people for hunting or fishing, with the exception of agricultural leased land.

When determining if consultation is required, the EA Branch will consider:

- information compiled from previous consultations regarding the proposed development;
- the project's technical proposal;
- information previously provided to the EA Branch for other proposed developments that document sites that First Nations and Métis use to exercise Treaty and Aboriginal rights, and carry out traditional uses; and
- existing land-use plans that indicate areas where First Nations and Métis currently exercise their Treaty and Aboriginal rights and traditional uses.

2.1 Notification to the Proponent and First Nations and Métis Communities

The EA Branch will notify the proponent if the DTC has been triggered. The notification will:

- provide information on procedural aspects of consultation with First Nations and Métis communities that have been assigned to the proponent by the EA Branch; and
- include an initial list of First Nations and Métis locals that the proponent must contact.

The EA Branch will notify potentially-impacted First Nations and Métis communities that the DTC has been triggered and the proponent has been directed to undertake procedural aspects of consultation that will assist the government in fulfilling its DTC.

As set out in the CPF, consultation is required with First Nations and Métis communities whose traditional territory coincides with the geographic area where the adverse impacts may occur. In determining which First Nations and Métis communities are to be consulted in relation to an EIA, the EA Branch may consider:

- the proponent's proposal;
- information compiled from previous consultation concerning the proposed development;
- consultation activities previously undertaken by other ministries and branches in the project area
 - Ministry of Government Relations, Lands and Consultation Branch;
 - Ministry of Environment Landscape Stewardship Branch, Aboriginal Affairs Section;
- any information and documents provided to the ministry or other agencies and ministries from Aboriginal communities (i.e. community specific traditional use studies (TUS), maps and consultation boundaries and land-use plans);
- Canadian Environmental Assessment Agency; and,
- Aboriginal Affairs and Northern Development Canada website.

Additional factors that may contribute to determining which communities will be consulted include:

- consultation agreements between the Province of Saskatchewan and Aboriginal communities; and
- *The Canada-Saskatchewan Agreement on Environmental Assessment Cooperation.*

3 Role of the Proponent

Ultimately, it is the proponent that is best-positioned to inform First Nations and Métis communities of the details concerning the proposed development. The proponent can effectively describe the project, identify technical issues and consider how to adjust the proposal and the Environmental Impact Statement (EIS) to address issues identified during consultation activities. The EA Branch will rely on the proponent's work with potentially-impacted First Nations and Métis communities throughout the EA process to assist in fulfilling the province's DTC.

3.1 General Role of the Proponent

The following procedural aspects of consultation will be assigned to the proponent:

- provide detailed project information to First Nations and Métis communities to ensure they are reasonably informed as to the nature of the proposed activities and are aware of any potential environmental impacts, including the short and long term plans for the area;
- arrange meetings, by mutual agreement, with First Nations and Métis communities elected officials, or authorized designate, to discuss appropriate means of consultation, recognizing community specific requirements;
- consult with First Nations and Métis communities to identify and discuss specific potential adverse impacts of the project on First Nations and Métis' ability to exercise their right to hunt, fish and trap for food and carry out traditional uses;
- consider the views of First Nations and Métis communities and, where necessary, work with the communities to avoid or minimize adverse impacts on First Nations and Métis ability to hunt, fish and trap for food and carry out traditional uses;
- document the consultation efforts and include the following in the EIS consultation report:
 - attempts to contact and steps taken to consult with First Nations and Métis communities;
 - community concerns related to specific potential adverse impacts on Treaty and Aboriginal rights and traditional uses;
 - how the concerns identified were considered and, where appropriate, addressed by the proponent;
 - any outstanding issues the proponent was unable to address and reasons why;
 - any agreements developed with the communities;
 - other relevant information related to community discussions; and
- if requested, participate in follow-up consultations between the EA Branch and First Nations and Métis communities.

Proponents are encouraged to maintain communication with the EA Branch throughout the consultation process for assistance and support. This will help avoid unnecessary delays in the EA process.

As per the CPF, the proponent is responsible for costs associated with undertaking the procedural aspects of consultation assigned to them.

3.2 Terms of Reference and Consultation Plan for an Environmental Assessment

When a proponent receives notification from the EA Branch that the project is a development under the Act, the proponent will be asked to provide a draft Terms of Reference (TOR) for the EIS. The intent of the TOR document is to outline the specific studies that will be conducted and the information that will be obtained as part of the EIA. The TOR will also outline how information and data gathered will be presented and evaluated in the EIS.

When a DTC has been triggered, the proponent will include in the TOR a plan for consultation with potentially-impacted First Nations and Métis communities. The draft consultation plan should set out in detail how the proponent will implement the procedural aspects of consultation that have been assigned as identified in the consultation notification letter. The detail and depth of consultation outlined within the consultation plan should correspond with the potential for significant impacts. As set out in the CPF, the significance of the impacts is based on:

- the duration or length of time of the potential adverse impact on the exercise of Treaty and Aboriginal rights and traditional uses; and
- the magnitude or extent of the potential adverse impacts on Treaty and Aboriginal rights and traditional uses.

The EA Branch will review the consultation plan and may request additional information to be included. This will be communicated by letter to the proponent. If additional information is required, the TOR can only be approved when the consultation plan is resubmitted with the requested information.

For more information on TOR, refer to the *Guidelines for the Preparation of the Terms of Reference* at www.saskatchewan.ca/environmentalassessment.

Proponents are encouraged to incorporate relevant ecological, traditional or other knowledge in the presentation of information within the EIS. Common methods for working with First Nations and Métis communities to gather and present such information include conducting project-specific traditional knowledge and/or use studies. Information-gathering exercises should be undertaken prior to submitting an EIS to ensure all relevant information is included.

NOTE: New information regarding potential adverse impacts or the extent of potential adverse impacts on Treaty and Aboriginal rights and traditional uses that were not anticipated in earlier stages of the EA process may require the re-assessment of the consultation process. This may result in additional consultation activities, additional communities to be consulted or an adjustment of the extent of accommodation required.

4 Assessing Consultation Activities

When the draft EIS has been submitted, the EA Branch will assess the adequacy of the proponent's efforts to consult with First Nations and Métis communities and if reasonable efforts were made appropriate to the specific circumstances (i.e. the significance of the potential impact to Treaty and Aboriginal rights and traditional uses). As part of this review, the EA Branch will consider the consultation report provided by the proponent in the EIS as well as portions of the EIS that describe and discuss potential impacts to Treaty and Aboriginal rights and the pursuit of traditional uses. The following questions will guide this assessment:

- was leadership engaged initially and throughout the consultation process – how was this accomplished;
- was the process collaborative – was there direct consultation;
- was sufficient information provided in an understandable manner;
- were the communities given reasonable time and opportunity to express their concerns and interests;
- was sufficient time given to consider the impact of the project;
- did the proponent support the community's capacity to participate (Support may include, but is not limited to, actions such as providing project information in a non-technical manner, translating documents and presentations into local languages where needed, ensuring that knowledgeable personnel or experts are available to explain technical details and answer questions);
- were concerns responded to during the discussions;
- what are the impacts of the project and how were these addressed;
- where necessary, did the proponent attempt to avoid or minimize any adverse impacts on Treaty or Aboriginal rights and traditional uses;
- where avoidance of adverse impacts is not possible, were accommodations made to minimize adverse impacts, which may include:
 - commitments to mitigation techniques during construction, operation and decommissioning;
 - commitments to ongoing impact monitoring, construction and operation timing;
 - land protection measures; and
- are there any outstanding issues and why are they outstanding?

Where necessary, the EA Branch may suggest or require that additional consultation be undertaken.

The EA Branch will conduct a final assessment after completion of the public review period of the EIS. This will allow the EA Branch to follow up with potentially-impacted First Nations and Métis communities to confirm details of consultation efforts, as described in the proponent's consultation report, and to determine if any outstanding concerns still exist.

Upon conclusion of the EA Branch's assessment of consultation, proponents may be advised that:

- consultation efforts undertaken are satisfactory and no further actions are required prior to a decision being made by the Minister;

- consultation efforts undertaken are not satisfactory and additional consultation efforts are required prior to a decision being made by the Minister;
- proponent participation in follow-up consultation discussions between the ministry and First Nations and Métis communities for the EA process is requested by the ministry; or
- proponent participation in ongoing consultations with the ministry and First Nations and Métis communities regarding the proposed project at the regulatory phase may be requested, should the Minister approve the project.

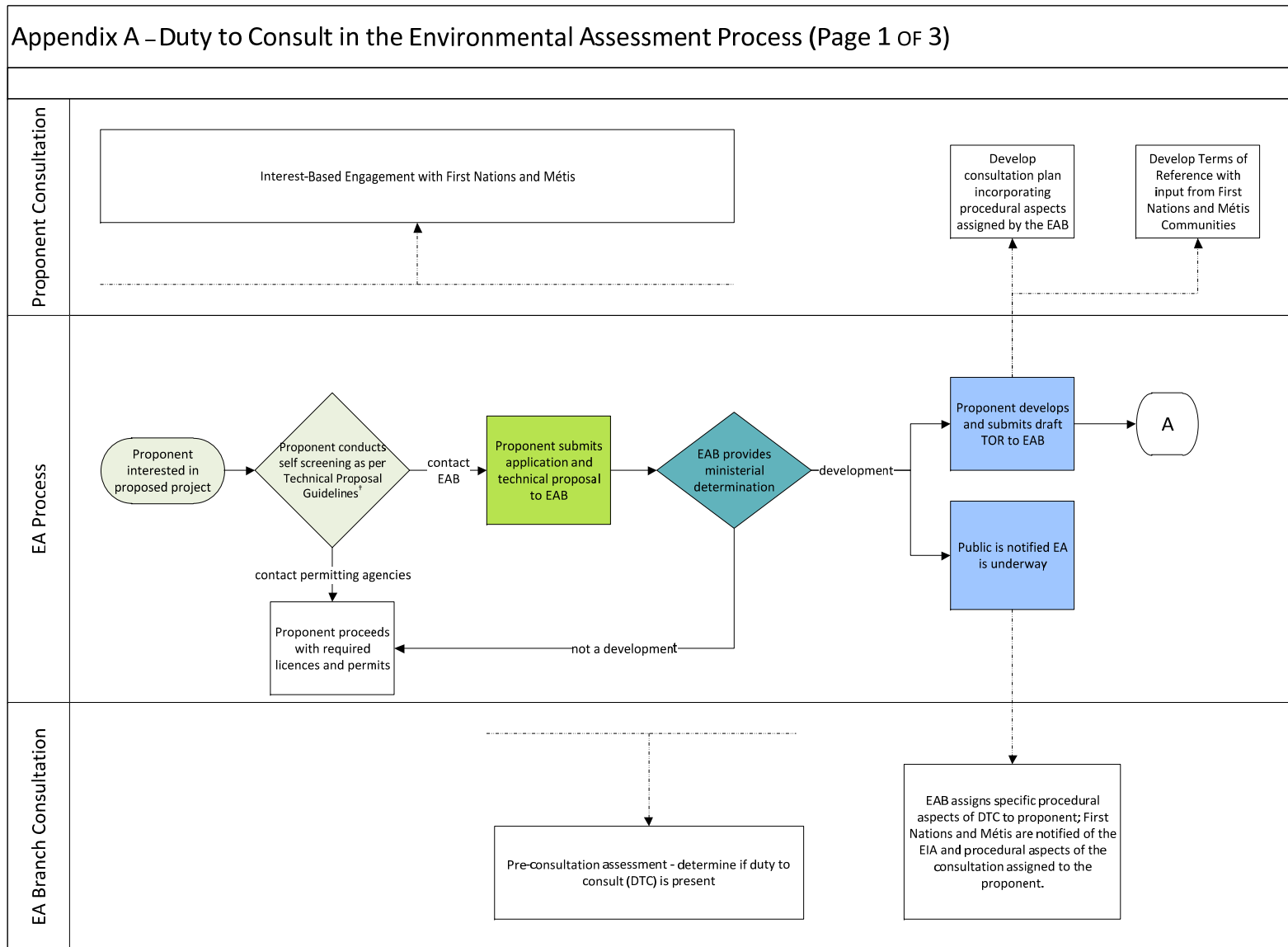
5 Other Resources and Contact Information

This document is published by the Minister of the Environment under the authority provided by The Environmental Assessment Act.

Proponents are advised to contact the ministry for further explanation and clarification of any uncertainties regarding the information provided in this document. Proponents will also benefit from review of other resource materials concerning EA in Saskatchewan at www.saskatchewan.ca/environmentalassessment.

Environmental Assessment Branch staff and other ministry officials are available to advise on any matters related to EA in Saskatchewan. For further information regarding EA in Saskatchewan, please contact:

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Appendix A – Duty to Consult in the Environmental Assessment Process (Page 2 of 3)

