

First Nation and Métis Consultation Policy Framework Engagement Summary

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Background

Released in 2010, the *First Nation and Métis Consultation Policy Framework* (CPF)¹ set out the government's commitment to fulfilling its legal duty to consult and accommodate First Nations and Métis communities in advance of decisions or actions that have the potential to adversely impact the exercise of:

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

The CPF includes the roles and responsibilities of the Government of Saskatchewan, First Nations and rights-bearing Métis communities, proponents and other levels of government when there is a duty to consult. The goal is to facilitate mutually beneficial relationships among the Government of Saskatchewan, First Nations, Métis and industry that contribute to a growing provincial economy.

Feedback on the CPF

In the summer and fall of 2022, the Government of Saskatchewan engaged with the leadership of First Nation and Métis communities and organizations, industry associations, project proponents and municipal organizations to discuss the CPF. The purpose of the engagement was to gather feedback on the successes, strengths and opportunities for improvement to the current CPF.

All Saskatchewan First Nations and Métis Locals and organizations, industry partners representing forestry, mining, agriculture and exploration and commodities as well as municipal organizations were invited to participate, with individual invitations made by mail and email.

The engagement process was launched with a virtual presentation on July 26, 2022, to provide the participants with an additional avenue to offer information regarding the scope of the engagement and clarify its purpose. The Ministry of Government Relations then followed up by phone and email to First Nation and Métis communities and organizations, industry associations and municipal organizations to provide more information about the engagement and secure their participation.

Engagement teams were formed and included third-party facilitators, note-takers, consultation advisors from the Ministry of Government Relations and subject matter experts from the Ministries of Agriculture, Environment, Energy and Resources, Government Relations, and Parks, Culture and Sport.

Engagement sessions with First Nations and Métis locals and regions included in-person meetings in communities, including several on reserve, in Regina, Saskatoon, Prince Albert and La Ronge, and virtually when requested. Industry engagement sessions included virtual and in-person meetings in

¹ Information about the *First Nation and Métis Consultation Policy Framework* engagement may be found on the Government of Saskatchewan's Public Engagement [website](#).

Prince Albert and Saskatoon. Sessions with municipal organizations occurred virtually and in person in Prince Albert.

By the end of the formal engagement period on December 2, 2022, 31 per cent of First Nations and 38 per cent of Métis locals had participated in a session. Thirty-five engagement sessions were held involving 22 First Nations, three Tribal Councils, 37 Métis locals, seven MN-S regional offices, four Indigenous organizations, 39 companies and industry associations and three municipal organizations.

Participating companies included 14 from the exploration sector, 10 from the commodities sector, five from the forestry sector and 10 from general industry. Municipalities were well represented, with participation from the Saskatchewan Urban Municipalities Association (SUMA), Saskatchewan Association of Rural Municipalities (SARM), and New North.

Participants also had the opportunity to provide feedback through an online survey or by submitting written comments. A public engagement website was also created to provide information about the CPF Engagement process and opportunities for feedback. Nine written submissions were received and 16 surveys were completed (four from communities, one from industry, and 11 from the public).

Throughout the engagement process, important feedback was received about the CPF, including suggestions on how to strengthen the content of the policy and its implementation. That feedback has been summarized into five themes.

Themes of CPF Review Engagement

The feedback from the engagement process is grouped by the following themes:

- Preserve land to practice Aboriginal and Treaty Rights;
- Build strong relationships;
- Improve transparency and communications throughout the CPF process;
- Improve policy, processes and implementation of the CPF; and
- Build greater capacity.

Preserve Land to Practice Aboriginal and Treaty Rights

It was acknowledged by participating communities that there is a desire to work with industry, to secure economic benefits and business opportunities for their communities, and to build strong, vibrant and sustainable communities while protecting land and waters. Communities described how culture, language and their way of life are intertwined with the land. Several participants said that there is decreasing land on which to practice Aboriginal and Treaty rights.

Communities stated that they see a slow erosion of accessible land due to the sale and leasing of Crown lands in southern Saskatchewan. Northern participants shared that the loss of land to practice Aboriginal and Treaty rights is not only impacting communities below the Northern Saskatchewan Administrative District (NSAD) due to the selling and leasing of Crown land but communities in the NSAD are experiencing the loss of land due to a large number of developments in the north.

In southern Saskatchewan, it was stated there is limited land to practice rights, and if land exists, there is fear of practicing those rights. A similar sentiment was expressed in northern Saskatchewan concerning the impact of the number of development activities.

Several First Nation participants stated they are close to only being able to hunt on their reserve, “waiting for a moose to walk across their front lawn,” as they have less and less access to their traditional territories to hunt. Métis communities told the engagement teams that once these lands are sold, it impacts their generation and the next seven generations because the lands will not be available to practice their rights and culture.

Communities stated that selling and leasing of Crown lands should always trigger the duty to consult process. However, Ministry of Agriculture representatives who took part in the engagement sessions noted that they review each parcel of Crown land prior to lease or sale to determine if there is a duty to consult under the Consultation Policy Framework. First Nation and Métis people expressed that some lands appear vacant and could be used to practice rights or used in the Treaty land entitlement process to acquire shortfall acres, that Treaty land entitlement First Nations should have the first opportunity to purchase any vacant Crown land available for sale.

The cumulative effects of development activities were repeatedly identified as an emerging priority for First Nations and Métis and not acknowledged by the CPF process. Communities referred to the “Blueberry case” (Yahey v British Columbia, 2021 BCSC 1287) in which the British Columbia Supreme Court ruled that cumulative impacts from resource developments within the Blueberry First Nation’s territory infringed their Treaty rights.

While some First Nations indicated they prefer relationships over litigation, many also indicated they would pursue litigation if their rights continue to be impacted. Participants stated that since the courts have acknowledged the rights and interests of First Nation and Métis people, the government cannot ignore it; all parties must find a way to work together to accommodate these rights.

Some community participants and industry raised that the CPF should reflect the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

Build Strong Relationships

Participants – First Nation communities and organizations, Métis locals and regions, industry representatives and their associations – emphasized the importance of strong relationships as they are crucial throughout the engagement and consultation process.

Communities strongly feel that there is an imbalance of power between the government and First Nation and Métis communities. It was explained that the community has input, but no recognized decision-making power and authority, and government officials have the power to veto decisions.

An example of a large project was provided – Gardiner Dam. First Nation and Métis participants shared that they did not feel consulted when the project was being developed and was left out of management discussions like those around water levels, which has an impact on their community daily. They felt that these actions had created a divide between the communities and the government, with a lack of trust being the main barrier to having a good relationship.

Some participants indicated that decisions were made with little to no input from the community or that they were treated as an afterthought. Many of the First Nation and Métis communities shared that they find themselves in a complicated and uneasy relationship with the government, hampered by the barriers created by past experiences, as noted above.

Some First Nation and Métis communities stressed they are hesitant to participate in consultations due to concerns about their rights and interests being compromised. Also, they feel the duty to consult process is disrespectful as consultation is not treated as a nation-to-nation relationship.

Communities stated that some government ministries and industries resisted engaging with First Nation and Métis communities, contributing to the erosion of trust between the parties. The communities stressed that the more effective approach is to acknowledge the rights of First Nations and Métis locals and their interests during the consultation process; find ways to work together as partners; and consider their knowledge of the natural resources.

Communities shared that face-to-face meetings are key to building relationships, especially early. It is crucial to establish good communication and transparency from the beginning and maintain open dialogue. There is a desire from many communities for government officials to always be present during the entire consultation and engagement process, at information-sharing meetings and during community events and visits. They said that open dialogue allows for a transparent process that will help create trust and forge strong relationships that can help lead to positive outcomes.

Industry participants recognize that having good relationships is needed and that building relationships takes time, must be intentional, and is essential for a successful consultation process. They stated there are no shortcuts to building strong relationships, but it will ultimately be worth the effort.

Industry, who regularly engage with First Nations and Métis, shared that they have long relationships with communities and consider them very important. They have seen successes where capacity has been built, which, in turn, helps the duty consult process. It was expressed that receiving feedback from a community helps strengthen relationships, but that turnover in those community contacts impacts building those relationships.

The significance of cultural understanding was shared by all participants, but a reoccurring statement was for government to understand Aboriginal and Treaty rights. The team heard from First Nation and Métis participants that meaningful consultation could not occur until the government understood their rights. This understanding would provide government officials with greater knowledge on how projects are truly impacting communities.

Participants want the government to understand communities' views on the land title, what the Treaty represents, and the concepts of cede and surrender. Participants suggested it would be helpful not only for the government officials to learn the viewpoint of the community on the history of the province, but also for industry representatives who interact with the communities. A community shared with the team that they felt they were not acknowledged "in their own house".

Communities emphasized that the road to reconciliation and rebuilding the relationship is a long and challenging. They stated that it is through understanding that mutually beneficial relationships are established.

During an engagement session, it was shared by a First Nation participant said that they hope one day they will be able to work with the government positively, towards a brighter future.

Improve Transparency and Communications Throughout the Process

Participants – First Nations, Métis, industry and municipal organizations – indicated that there is a need for better communication throughout the consultation process.

Participants indicated respectful communication is needed between all parties. First Nation and Métis communities told the engagement team that government and industry field staff are ineffective at engaging with communities. An example of respectful communication included that timely responses need to be reciprocal. If a reply is expected in thirty days from a community, they want the government to respond to their correspondence in 30 days. The onus to respond quickly to timelines should not be one-sided.

Communities shared their desire for a nation-to-nation relationship and the need for senior leadership from the government to attend meetings, but also the need for consistent “contact people” in government, with a preference for a single point of contact.

The changing of personnel in ministries was frustrating as all parties needed to “start over again” to build a new relationship. It was raised that leadership changes happen within First Nation and Métis communities as well, so it is important for government and industry to be aware of these changes to ensure communications and notifications are not missed.

All participants spoke of wanting greater transparency around how government makes decisions and what information they consider when making those decisions. Communities stated that they give information on how their rights will be impacted and do not receive follow-up communication except to hear that a project has been approved. This has led to a perception that the consultation process is not meaningful and that developments will occur regardless of the community's input.

Citing recent challenges with community engagement on small modular reactors and the Lake Diefenbaker Irrigation Project, communities shared that early and greater engagement could help to create a more fair and just relationship between all parties.

Improve Policy, Process and Implementation

Participants emphasized that awareness, education, and training are needed by all parties involved in the duty to consult.

Some communities and industry members expressed that they do not understand the CPF process and may misinterpret it or misunderstand what actions are required to fulfill the duty to consult. There is confusion over the role of government, the part of a proponent, and the requirements for companies and municipalities in the engagement and consultation processes.

Fundamental CPF materials could be improved. Several communities desired for easily accessible online materials written in plain language. They also expressed they found saskatchewan.ca difficult to navigate to find resources on duty to consult.

There are questions about the application of the CPF: there were diverse opinions from Métis participants regarding how a rights-bearing community should be identified, whether it is at the Métis local level or the Métis regional level, and for some whether it is at the provincial level with the Métis Nation-Saskatchewan. Northern municipalities, given the high population of Indigenous people, inquired about their role in duty to consult. Municipal organizations talked about the need to provide training for rural municipalities, so they understand their role in consultation or engagement. They also suggested providing examples of the duty to consult, education on engagement, and tools for relationship building.

Specific challenges were identified around notifications and timelines for communities to respond, as per the CPF:

- Government-led processes require community leaders to act immediately. Timelines for the community's internal processes should be considered as well as other pressing; and emergency matters within the community that take precedence;
- Response timeframes for the duty to consult should allow time for council discussions, consideration of potential impacts of the activity outlined in the notification letter, and for staff to apply for funding and reach out to land users. They feel more time would help enable First Nations and Métis communities to be fully informed and able to provide meaningful input into development projects;
- Communities expressed that more outreach is needed than just a notification letter;
- Government needs to make an effort to call and visit communities. Officials need to put effort into following up to ensure letters were received and understood;
- Companies want to be informed of when notification letters go out and to whom.

Industry participants expressed frustration that their engagement efforts do not appear to be used to inform government's decisions in the duty to consult process. They also expressed frustration with the extensions provided to communities in the consultation process, which often make timeframes unpredictable and may result in project delays. Some indicated that longer, predictable timelines were preferable. Industry also asked for greater clarity on which communities will be consulted so they can plan their engagement to support that work better.

Feedback was provided on the specific tool utilized during duty to consult processes:

- Communities and industry shared that the CPF Matrix, which is used by government officials to define the level of consultation needed for a project, could be more transparent. First Nation and Métis communities are seeking clarity on how the CPF Matrix considers their input and that provided by the industry. Industry indicates that, at times, the duty to consult is triggered at a higher level than it seems required;
- Communities noted that CPF Matrix levels one through three are most often used, even when communities feel the level should be higher due to impacts on their Aboriginal and Treaty rights. They see this as possibly due to the inconsistent application by government officials.

The lack of data sharing was raised during engagement sessions:

- First Nation and Métis communities shared that having traditional land use maps would be a benefit. These maps can be stored in GIS databases and can be added to, as information is gathered, from land users. This information can then be compared to digital vector files for geographic information and attributes (shapefile) of project areas to provide an initial assessment by communities.
- Some communities shared that a central tracking system for information related to duty to consult such as activities, notification letters, and other relevant information would be beneficial.
- Communities requested access to information on the permits granted in a specific area and access to Environmental Impact Statements and their related data.

First Nation and Métis communities shared that when they disagree with a government decision, there is no appeal or dispute resolution mechanism, and judicial reviews are their only option. Communities expressed that they do not want to go to court over these issues. Not only are there financial costs, and it takes several years to resolve, but there is also an emotional toll on a community.

All parties discussed that they would benefit from awareness and training on duty to consult process. Communities and industry alike felt that training would help all parties understand the CPF and engagement and better navigate the process.

Build Greater Capacity

Throughout the engagement process, participants highlighted the importance of having staff, technical knowledge, and financial capacity for *all* parties involved in duty to consult. Participants indicated this was particularly important for First Nations and Métis communities to ensure meaningful engagement with industry and consultation with the government.

There are varying levels of community capacity with staff who fully understand the CPF and they stated that low participation is a direct result of a lack of this capacity. While some First Nations have dedicated staff for duty to consult, the responsibility for the management of the duty to consult processes most often rests with Chiefs who are managing competing pressures. Duty to consult in Métis communities falls to the Presidents of the Métis locals who are volunteers. An industry representative shared that they have observed how communities are overwhelmed as community leaders must prioritize the day- to-day business of their communities.

All parties engaged noted the volume of notification letters communities are asked to respond to and the tight timelines to respond to them. With a high turnover rate among those who take up the tasks, knowledge of processes and past actions is often lost.

Suggestions to improve community capacity included offering training and workshops to communities, providing resources for communities to hire dedicated staff, and supporting traditional land use studies.

The observation also shared that government staff lack time and resources to effectively undertake their consultation obligations. Industry sees the turnover of government staff working on the duty to consult

as impacting them negatively. They also feel there is a need for government to fulfill a facilitator role at times to aid in building positive relationships.

Throughout the engagement process, industry participants shared the importance of building industry capacity supporting junior companies on early engagement, providing best management practices on how to do voluntary proponent engagement, and providing guidance on who to call and talk with communities.

First Nation and Métis communities and industry discussed the importance of consistent, predictable, stable grant funding to provide long-term capacity for First Nation and Métis communities to participate in engagement and consultations. It was shared that the funding available through the Consultation Participation Fund – Fast Track Grants is not enough to meet the need as it is project-based and does not allow longer-term capacity building and planning. Communities receive no funding from any other sources to support their participation.

Also noted was that Fast Track Grant amounts available for each project have remained the same since 2012 and do not represent the actual costs incurred, particularly in northern and remote communities. Large, complex projects can involve multiple meetings with government officials, community meetings, site visits, and require expert assistance. Funding CPF project work means shifting dollars away from critical programs by the community.

Participants also shared that the Fast Track Grant program is administratively heavy and inefficient. It requires a community to be notified of the duty to consult, leadership to discuss and decide to apply for funding and then complete the application, often taking weeks.

Suggestions were made about opportunities to improve the Fast Track Grant program, including examining the scope and criteria for what is covered under the fund, increasing the maximum funding amounts, providing tiered project funding and greater capacity funding.

Next Steps

The Government of Saskatchewan is thankful to all those who participated in the engagement process and provided us with feedback to inform revisions to the CPF. The information received during the engagement has informed our review of the CPF and the updated provincial policy.