

# First Nation and Métis Consultation Policy Framework



August 2023

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On August 11, 2023, the Ministry of Government Relations announced the revised First Nation and Métis Consultation Policy Framework (CPF). **Implementation of the updated CPF is targeted for January 2024.** All CPF participants will receive notification as the 2024 policy is implemented. **The current duty to consult policy remains in effect until that announcement.**

More information on the CPF review and revised CPF are available at [saskatchewan.ca](http://saskatchewan.ca)

## 1. Introduction

The Government of Saskatchewan is committed to its constitutional obligations arising from section 35(1) of the *Constitution Act, 1982*, including a duty to consult and accommodate, as appropriate, with First Nations and rights-bearing Métis communities in advance of actions or decisions that may adversely impact Aboriginal or Treaty rights. The Government of Saskatchewan also acknowledges it must uphold the Honour of the Crown in all its relationships.

Integrating the goals and aspirations of First Nation and Métis people in Saskatchewan is vital to strengthening communities, reconciling relationships, and improving social and economic outcomes for First Nation and Métis throughout the province. Together with First Nation, Métis and industry partners, we will work to advance initiatives that promote partnership-building, innovation, strong relationships, and emphasize economic reconciliation. This on the basis of good governance, justice, equality and democracy; respecting human rights, incorporating non-discriminatory practices and working with our partners in good faith.

The Government of Saskatchewan *First Nation and Métis Consultation Policy Framework, 2023* (Consultation Policy Framework) presents the Government of Saskatchewan's policy on the duty to consult with First Nations, and Métis communities for use by First Nations, Métis communities, Government ministries, agencies, Crown corporations, municipalities and proponents.

The Consultation Policy Framework supports the province's objectives to advance reconciliation, promote investment, and enhance First Nation and Métis communities' participation in Saskatchewan's growing economy.

The Consultation Policy Framework includes the following sections:

- Duty to Consult Policy;
- Duty to Consult as Applied to Lands and Resources;
- Context for the Duty to Consult; and
- Building Relationships.

The Consultation Policy Framework provides direction to Government ministries, agencies and Crown corporations to consistently implement the consultation policy across Government.

In accordance with this Policy Framework, the Government of Saskatchewan is responsible for determining whether a duty to consult is triggered and if so, the depth of consultation required. In the case of asserted rights, the Government is also responsible for determining whether there is a credible basis for the claim.

Although the focus of this policy is on consultation as it applies to Aboriginal and Treaty rights associated with lands and renewable resources, it does not exclude application to other Aboriginal and Treaty rights.

This policy replaces the *First Nation and Métis Consultation Policy Framework* released in 2010. The Government of Saskatchewan will continuously review this policy and make updates as needed to ensure consistency with case law, legislation and/or policy.

## 2. Duty to Consult Policy

### Policy Statement

The Government of Saskatchewan will consult with and accommodate, as appropriate, First Nations and rights-bearing Métis communities in advance of decisions or actions which may adversely impact Aboriginal and Treaty rights.

### Policy Goal

The goal of this policy is to facilitate mutually beneficial relationships among the Government of Saskatchewan, First Nations, Métis and industry that contribute to a growing provincial economy.

### Objectives

- To respect and protect Aboriginal and Treaty rights by ensuring, through the consultation process and subsequent decisions, that negative impacts on these rights and uses are avoided, minimized or mitigated and rights are accommodated, as appropriate;
- To advance the process of reconciliation between Aboriginal and non-Aboriginal peoples and their respective claims, interests and ambitions; and
- To promote certainty, predictability and a stable, secure investment climate for the residents of Saskatchewan, including First Nation and Métis communities.

### Guiding Principles

#### Integrity and Good Faith

The duty to consult is grounded in the honour of the Crown. The Government will approach consultations with an open mind, conduct itself with integrity during consultation processes and deal in good faith with First Nations and Métis people. The Government will listen to and respond to First Nations and Métis concerns respecting potential impacts on Aboriginal or Treaty rights and consider them when making decisions.

#### Respect

Consultation with First Nation and Métis communities will be undertaken in a spirit of mutual respect and trust. For example, cultural practices, such as opening prayers, will be respected and traditional knowledge will be taken into consideration. As the holders of Aboriginal and/or Treaty rights, the Government does not consider First Nation and Métis to be “stakeholders.”

#### Government’s Duty

On matters subject to provincial jurisdiction, the duty to consult lies with the Government of Saskatchewan. The Government will not delegate the duty to project proponents or other third parties, although proponents have an important role in the procedural aspects of consultation processes. In

certain circumstances the government may delegate certain procedural aspects. Government retains final decision-making authority; First Nations and Métis do not have a veto over decisions.

### **Reciprocal Responsibility**

There is a reciprocal responsibility on First Nation and Métis communities to participate in the consultation process in good faith, to make their concerns respecting potential impacts on Aboriginal and Treaty rights known and to respond to the Government's attempts to consult.

### **Transparency and Accountability**

Consultation processes will be transparent, accountable, timely and results based.

### **Communication**

Communications between the Government of Saskatchewan and First Nation and Métis communities with potentially impacted rights will be clear, open and honest. The Government of Saskatchewan will endeavour to write technical information in plain language and provide translation if necessary.

### 3. Duty to Consult as Applied to Lands and Resources

#### A. Application of the Duty to Consult

##### Policy Application

This policy applies to Government decisions and actions that have the potential to adversely impact the ability to exercise:

- Aboriginal and Treaty rights for example 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, for example 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.

##### Decisions Subject to the Duty to Consult Policy

The duty to consult may be triggered by Government decisions and actions that have the potential to adversely impact the exercise of Aboriginal and Treaty rights and pursuit of traditional uses. The decisions and actions that will be assessed by Government for potential consultation obligations include, but are not limited to, the following:

###### *Legislation, Regulation, Policy and Strategic Plans*

Creating a new or amended piece of legislation, regulation, policy or strategic plan that may have the effect of limiting or altering the use of Crown lands and renewable resources.

###### *Fish and Wildlife Management*

A decision that may limit or alter the quality and quantity of fish and wildlife or the right of access to these resources.

###### *Resource Extraction*

A decision related to the harvesting and processing of timber or the permitting and licensing of Crown surface lands for extraction and production of minerals.

###### *Land Reservations*

Any action that has the effect of restricting the use of unoccupied Crown lands and other lands to which there is a right of access.

###### *Land Use Planning*

Land use planning activities that provide a long-term framework for Government decisions.

### *Lease, Grant or Sale of Unoccupied Crown Land*

Decisions related to the long-term lease, grant or sale of unoccupied Crown Land, provided that the land has been vacant for at least 12 months.

### *Changes to Public Access*

A decision that will have the effect of changing public access to Crown lands and renewable resources.

### *Environmental Approvals*

A decision where an activity has the potential to negatively impact the environment.

## **Matters Not Subject to the Duty to Consult Policy**

Matters that do not trigger the duty to consult include, but are not limited to, the following:

### *Past Actions*

The Government does not consider the duty to consult to be retroactive and therefore will not consult on decisions it made in the past.

### *Private Land and Leased Crown Agricultural Land*

Private landowners and lessees of Crown administered lands have the right to control access to their private or leased lands. Aboriginal and Treaty rights and traditional uses can only be exercised on these lands with the permission of the landowner or lessee. Accordingly, decisions related to projects occurring on private lands or leased Crown lands are not subject to consultation under this policy unless the project on private land or leased administered land has off-site impacts and the potential to adversely impact Aboriginal and Treaty rights and traditional uses on unoccupied Crown lands, occupied Crown lands where the Crown permits access or Indian Reserve lands in the general vicinity.

### *Aboriginal Title*

The Government does not accept assertions by First Nations or Métis that Aboriginal title continues to exist with respect to either lands or resources in Saskatchewan. Accordingly, decisions claimed to adversely affect Aboriginal title are not subject to this policy.

### *Mineral Dispositions*

The issuance of mineral dispositions under *The Crown Minerals Act* is not subject to this policy. These dispositions do not provide the disposition holder with a right of access to lands for purposes of mineral exploration and development. This policy will, however, apply where the Government is contemplating surface land use decisions related to mineral exploration and development that may have an impact on Aboriginal and Treaty rights and traditional uses.

### *Commercial Use of Resources*

Commercial uses of resources by First Nations and Métis people, such as commercial trapping and fishing, are not subject to this policy. However, the importance of these pursuits is recognized by the Government and ministries will be guided by Section 5 of this policy (Building Relationships) when its decisions or actions have the potential to adversely impact these commercial activities of First Nations and Métis.

### *Emergency Situations*

In emergency situations, such as flooding and forest fires, or where public health and safety and/or infrastructure are at immediate risk and response time is of the essence, consultation on potential impacts on Aboriginal and Treaty rights and/or traditional uses may not be feasible. The first priority is to address public safety. First Nation and/or Métis communities will be consulted on impacts to rights if time permits.

### *Heritage Finds/Archeological Sites*

Archaeological sites, as defined under *The Heritage Property Act*, are not subject to this policy but are subject to *The Heritage Property Act*. For information about this Act, contact the Heritage Conservation Branch in the Ministry of Parks, Culture and Sport.

## **Roles and Responsibilities**

### *The Provincial Government*

The Government of Saskatchewan has administration and control over land and natural resources that were transferred from Canada to Saskatchewan under the *Natural Resources Transfer Agreement, 1930*, and will exercise its authority in the interests of all residents of Saskatchewan.

The Government is responsible and ultimately accountable for managing and implementing the duty to consult. The Government's consultation obligations will not be delegated to project proponents. The Government, however, may assign procedural aspects of the consultation process to proponents, such as hosting information-sharing meetings. The Government may also provide advice to proponents and First Nations and Métis leadership on this policy and its implementation.

The Saskatchewan ministries and/or agencies responsible for renewable resource management and for authorizing activity on the surface of the land generally have responsibility for implementing the duty to consult. Crown corporations are usually proponents who secure authorizations from provincial ministries and, as such, the Government may assign procedural aspects of the consultation process to them. In instances where Crown corporations have a duty to consult, they will abide by this policy.

Within the Government of Saskatchewan, the Ministry of Government Relations has a centralized coordination and advisory role to support collaboration and decision making, and consistent application of the policy among ministries, agencies, and Crowns. The Ministry of Government Relations will also serve as a consistent point of contact in government for communities and industry that need guidance on duty to consult processes and who to contact within ministries.

The Ministry of Justice is responsible for providing legal advice to Saskatchewan ministries on the duty to consult.

### *The Federal Government*

The federal government's policy on the duty to consult is different from the province's policy and the province's views on the duty to consult are not always in alignment. The federal government will have a duty to consult and accommodate as appropriate, as a result of federal decisions and actions that have the potential to adversely impact Aboriginal and Treaty rights. To ensure consultations in Saskatchewan are effective and efficient where jurisdictions overlap or where there is a joint responsibility, provincial ministries will endeavor to work with their federal counterparts to develop and implement joint processes.

### *First Nations and Métis Rights-Bearing Communities*

First Nations and Métis are responsible for participating in the consultation process in good faith and in a timely manner, making their concerns known about adverse impacts on Aboriginal and Treaty rights and/or traditional uses and responding to the Government's attempts to consult. First Nation and Métis participation in project proponent engagement will serve to build relationships with the proponent and provide an opportunity to learn about the project as early as possible.

### *Project Proponents*

Project proponents have an important and direct role in the consultation process. Through their engagement efforts proponents can bring significant value to the duty to consult process.

Where an adverse impact on Aboriginal or Treaty rights and/or traditional uses is identified, proponents will be expected to work with Government and the parties. Proponents are expected to collaborate with Government in the provision of project information to potentially impacted First Nation and Métis communities. The information must be clear, accurate and complete, and in plain language where possible. Proponents may also be expected to participate in Government meetings with potentially impacted First Nation and Métis communities to discuss potential impacts of the proposed activity.

Successful consultation depends, in part, on early meaningful engagement of project proponents with First Nation and Métis communities. Proponents are encouraged to engage early with First Nation and Métis leadership and community in the process and to build relationships with the affected First Nation and Métis communities. Establishing relationships with First Nation and Métis communities in advance of pursuing development of specific projects has proven to be an effective tool and can enhance the consultation process. Government officials will work with the project proponent to help identify potentially impacted First Nation and Métis communities.

Proponents are responsible for the costs associated with their engagement in consultation processes and procedural aspects that may be assigned to them by Government, as well as any necessary adjustments or actions to project activities required to avoid, minimize or mitigate adverse impacts on Aboriginal and Treaty rights and traditional uses. Any changes to the proposed project based on the proponent engagement will be submitted to the Government.

Relevant information and documentation from early engagement and outreach efforts by the project proponent will be considered to inform government's duty to consult process and can serve to enhance the consultation process and help the government identify potential impacts to Aboriginal and Treaty rights. Consultation timelines may be shorter when an Indigenous engagement report demonstrating early engagement has been received from the project proponent.

### *Municipalities*

Municipalities are established by provincial legislation and exercise powers delegated by the Provincial Government. Municipalities may have a duty to consult whenever they independently exercise their legal authority in a way that might adversely impact the exercise of Treaty and Aboriginal rights and/or traditional uses on unoccupied Crown land or other lands to which First Nations and Métis have a right of access. In cases where the municipality is the proponent of a development, the Government can assign procedural aspects of the consultation to the municipality, as it may with any other proponent.

### **Funding for Consultation**

The Government recognizes that First Nations and Métis may require assistance to engage in meaningful consultations. The First Nations and Métis Consultation Participation Fund, administered by the Ministry Government Relations, enables eligible First Nations and Métis entities to participate in consultations where the Provincial Government has determined that it has a duty to consult. More information can be found at: <https://www.saskatchewan.ca/residents/first-nations-citizens/duty-to-consult-first-nations-and-metis-communities>.

### **Existing Processes for Consultation**

Consultations undertaken in accordance with legislative requirements or regulatory processes, such as environmental assessment or land use planning, may be relied upon by the Crown to satisfy, in whole or in part, the duty to consult. In many cases, the duty to consult is carried out on a continuum from one decision-making stage to another, within ministries and across ministries.

## B. Duty to Consult Guidelines

### Purpose

The purpose of the Duty to Consult Guidelines is to provide consistent direction to all parties, with the objective of having meaningful consultations. The Guidelines will also provide those ministries, agencies and Crown corporations that have consultation obligations with sufficient guidance to develop operational implementation procedures specific to their unique mandate and activities.

### Consultation Process

#### *Step 1: Pre-Consultation Assessment*

#### **Determining if Consultation is Required**

The threshold for triggering the duty to consult is low. The nature, scope and intensity (depth) of the consultation required will vary according to the potential impact on Aboriginal and Treaty rights and/or traditional uses, arising from a Government action or decision.

When determining if consultation is required, and the subsequent level of consultation activity that may be appropriate, Government will consider:

- If the action or decision being contemplated has the potential to adversely impact an Aboriginal and/or Treaty right and/or traditional use;
- The duration or length of time the potential adverse impact may persist;
- The physical extent of the potential adverse impact; and
- The intensity of the potential adverse impact to rights and/or traditional uses.

Indigenous engagement reporting from project proponents may be used as part of these considerations. Information shared by First Nation and Métis communities during engagement can also be considered.

Where no appreciable or discernable impacts to Aboriginal and Treaty rights and/or traditional uses can be identified the duty to consult is not triggered.

The Duty to Consult Assessment Chart (*Figure 1*) is intended to guide Government's assessment on the depth of the level of consultation needed. The levels are intended to serve as guidelines. However, sometimes the appropriate level may not fit the categories provided. In those cases, officials can adjust the level of consultation to address the specific circumstances.

If it is not clear whether an action or decision triggers a duty to consult, Government ministries and agencies are advised to begin assessment as a Level 1 consultation as outlined in the Duty to Consult Assessment Chart, until more information is obtained.

When the action or decision under consideration is the amendment, renewal, extension, or transfer of an existing disposition, only potential new adverse impacts on Aboriginal and Treaty rights and traditional uses will be considered in determining if consultations are required and what depth of consultation is required.

Where the renewal or extension is provided for in the original disposition or no changes to the authorized activity are contemplated, consultations will not trigger.

### **Identifying Potentially Impacted First Nations and Métis Rights-Bearing Communities**

Government will make best efforts to consult with First Nations and rights-bearing Métis communities whose traditional territories coincide with the geographic area where an adverse impact may potentially occur. Traditional territory refers to the geographic area within which First Nations and Métis people historically exercised Aboriginal and Treaty rights and undertook traditional uses and continue to do so today. There may be circumstances in which more than one First Nation and/or Métis community must be consulted owing to overlapping traditional territories.

Aboriginal and Treaty rights are collective rights held by a community of people. Consultations must therefore be with to the elected leaders or representatives of First Nation and Métis communities. For the purpose of these guidelines, the Government recognizes the Chief and Council of a First Nation, the President of a Métis Nation - Saskatchewan Local or their authorized designates. Regional or provincial First Nations and Métis entities may be consulted only if the elected leadership has delegated this authority through its constitutional decision-making process, and the consulting ministry has a written, signed copy of the authorization and has provided a copy to the Ministry of Government Relations.

<b>Figure 1: Duty to Consult Assessment Chart</b>			
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>Potential Impact of Decisions or Actions on Aboriginal and Treaty Rights and Traditional Uses</b>	Small project area, short term to long-term disturbance to land, and/or minor change in resource availability. OR Large project area, short-term disturbance to land, and/or minor change in resource availability.	Small to medium project area, short term to long-term disturbance to land, and/or a moderate change in resource availability. OR Large project area, long term disturbance to land, and/or minor change in resource availability.	Medium to large project area, permanent disturbance to land, and/or major change in resource availability and/or permanent uptake of land.
<b>Completed Permit Application* Timeline to Written Notification Sent</b>	Government will send written notification to identified communities within 6 calendar days of receiving completed permit application.	Government will send written notification to identified communities within 6 calendar days of receiving completed permit application.	Government will send written notification to identified communities within 14 calendar days of receiving completed permit application.
<b>Written Notification</b>	Written notification that Duty to Consult has been triggered is sent through registered mail. The registered letter is deemed received within 5 days of being sent.		
<b>Intent to participate and funding application</b>	Confirmation of intent to participate in consultation from community leadership, and funding application for consultation efforts to be received within 30 calendar days after the letter has been deemed received.		
<b>Follow up</b>	Follow-up inquiry with community to seek response if needed.	Follow-up inquiry with community to seek response if needed.	Follow-up inquiry with community to seek response
<b>Funding Application Process</b>	GR will process the application for funding received from communities within 7 calendar days. Funding agreements to be issued prior to funded consultation activity.		
<b>Community Consultation Response Due</b>	45 calendar days from the confirmation of intent to participate or notification of funding approval (whichever comes last), consultation efforts and responses are due. Consultation efforts will include an offer to meet.	60 calendar days from the confirmation of intent to participate or notification of funding approval (whichever comes last), consultation efforts and responses are due. Consultation efforts will include an offer to meet.	70 calendar days from the confirmation of intent to participate or notification of funding approval (whichever comes last), consultation efforts and responses are due. Consultation efforts will include an offer to meet.
<b>Consultation Complete - Government Response on Outcome of Duty to Consult</b>	Government will report the outcome of the duty to consult to communities and proponents simultaneously within 10 calendar days.  Typically, government project decisions including permit approvals, will be communicated to communities and proponents within this timeline.	Government will report the outcome of the duty to consult to communities and proponents simultaneously within 15 calendar days.  Typically, government project decisions including permit approvals, will be communicated to communities and proponents within this timeline. There may be additional regulatory requirements, occasionally extending project decision timelines.	Government will report the outcome of the duty to consult to communities and proponents simultaneously within 20 calendar days.  Government project decisions will be communicated to communities and proponents according to the governing regulatory process timelines (e.g.: Environmental Impact Assessments, Forest Management Plans, other regulatory requirements).

**\*\*“Completed Permit Application” indicates the application has been submitted with all required materials and accepted by the ministry as completed.**

## *Step 2: Consultation*

### **Providing Notice**

Notification will be provided in writing to the leadership of the First Nation and Métis communities that may potentially be adversely affected by a Government decision or action, or their delegates as noted above. Notification must be as early as possible and in advance of the decision to be made and may require the active participation of the proponent. Notification is required at all depths of consultation.

Notification should provide clear, complete, and understandable information and include the following:

- Description of the decision or action that Government is contemplating that could adversely impact Aboriginal or Treaty rights;
- The extent, and likely duration of the impact on rights and traditional uses;
- Specific questions about the information being requested on impacts to Aboriginal and Treaty rights and traditional uses;
- Identification of a timeline for response from the community and the anticipated timeline for Government reporting on the Duty to Consult outcome following notification;
- An assessment of likely impacts on the environment and/or renewable resources; and
- Identification of any mechanisms that will be applied to mitigate potential impacts.

### **Considering the Response**

The First Nations and/or Métis response to Government's notification may help confirm the Government's preliminary assessment of the potential impact of the proposed decision or action on Aboriginal and Treaty rights and traditional uses. In this case, a decision will be made to proceed, subject to appropriate mitigative measures.

Alternatively, the response may provide Government with better understanding of potential impacts on Aboriginal and Treaty rights and traditional uses. Specific steps can then be taken to avoid, minimize or mitigate the impacts of its decisions or actions on those rights and uses. The Government response to concerns expressed by First Nations and/or Métis about potential impacts to the exercise of specific rights and/or traditional uses will be unique to the particular facts of the situation.

Consultation may result in new information being identified. That information will then be applied to reassess the impact or extent of the potential impact and may elevate the depth of consultation required. Such reassessment may result in new consultation activities and adjustments to associated timelines.

### **Adjusting Anticipated Timelines**

The granting of an extension for any extenuating circumstances will be determined by project officials on a case-by-case basis. Generally, only one extension, not exceeding 30 days will be granted. Some examples of extenuating circumstances include if a First Nation or Métis community is temporarily displaced because of an emergency situation; tragedy in the community; funerals; or elections. The ministry or ministries involved

in fulfilling the Duty must inform all parties involved about this extension, including explaining to the proponent that the community is experiencing extenuating circumstances, and the impact on the timelines.

### **Accommodating**

An outcome of consultation could be actions to accommodate Aboriginal and Treaty rights and/or traditional uses. Accommodation means that the Government and the proponent will use what they have learned about impacts to rights and traditional uses during the consultation process to minimize or avert the adverse impacts by avoiding, changing, or amending the plan or action. In the event that a plan or development requires alteration, the proponent will be responsible for costs. Accommodation may include one or more of the following:

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

In instances where a Government decision or action results in a significant, unavoidable infringement on Aboriginal or Treaty rights, financial compensation may be required for loss of use or access to exercise the right. Government will determine compensation on a case-by-case basis and will not address past actions.

### **Reporting Back**

Government will report back to the First Nation and Métis leadership who participated in consultation as to the outcome of the consultation. The report will, when appropriate, also report on the project decision and the rationale for the decision, how First Nations and/or Métis concerns regarding impacts to Aboriginal and Treaty rights and traditional uses were taken into consideration and, where relevant, what form of accommodation was used to avoid or minimize impacts to those rights.

Reporting back is required at all levels of consultation as outlined in the Duty to Consult Assessment *Chart Figure 1*. Throughout the consultation, Government will provide periodic updates to proponents regarding the progress of consultations and any changes to the anticipated timelines. Government will advise communities of project decisions as they are provided to proponents.

## 4. Context for the Duty to Consult

This section provides background information to assist the reader to understand the policy content and Government direction.

### Treaty Context

Treaties are living, breathing documents that continue to bind us to promises made generations ago.<sup>1</sup> There are seven different Treaties applicable in Saskatchewan – Treaty Nos. 2, 4, 5, 6, 7, 8 and 10. The earliest of these Treaties, No. 2, was entered into in 1871. The purpose of the Treaties was to forge a new relationship between the Crown and First Nations and to open up the West for developments, like the construction of the transcontinental railway and agricultural settlement. The terms of each of these Treaties are similar. According to their written text, in exchange for giving up their title to the land, the First Nations received promises of reserve lands, guaranteed hunting, fishing and trapping rights, annual payments and other commitments. The oral histories of the First Nations offer a different view of the intent of the Treaties. It is not the purpose of this Policy to attempt to resolve these differences.

### Treaty Rights Pertaining to the Duty to Consult

From the Province's perspective, the Treaty right that is most often engaged in connection with the duty to consult is the Treaty right to hunt, fish and trap for food. While the wording of this clause varies slightly from Treaty to Treaty, the clause in Treaty No. 6 is representative. It provides as follows:

*Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefore by the said Government.*<sup>2</sup>

The Government recognizes that there is a duty to consult in connection with the “taking up” or sale of Crown land as a result of the Supreme Court's decision in *Mikisew Cree, 2005 SCC 69*.

These rights may be exercised on unoccupied Crown lands and other lands to which First Nations have a right of access for hunting, fishing and trapping throughout the Province by virtue of the provisions of paragraph 12 of the *Natural Resources Transfer Agreement (NRTA)* of 1930. The NRTA was the legal instrument that transferred administration and control of Crown lands from Canada to Saskatchewan. The duty to consult requires consultations with those First Nations whose traditional territories are potentially impacted by a proposed decision.

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<sup>1</sup>Speech from the Throne, 2007, Province of Saskatchewan, December 2007.

<sup>2</sup>Treaty 6, Indian Claims Commission: <http://www.indianclaims.ca/publications/treaties-en.as>

## **Aboriginal Rights**

While Treaty rights are enshrined in agreements between the Crown and First Nations, Aboriginal rights reflect the fact that Aboriginal communities existed in North America prior to the arrival of Europeans. Aboriginal rights encompass the customs, practices and traditions that were an integral part of the distinctive cultures of these communities prior to their first contact with Europeans and which continue to have this significance in their cultures today. Even though distinctive Métis communities did not arise until after contact between Europeans and First Nations, Métis also possess Aboriginal rights. These rights are determined by examining the customs, practices and traditions that were an integral part of the distinctive culture of Métis communities at the date when a European or Canadian government asserted effective control over the area and which continue to have this significance in the culture today. Aboriginal rights have always existed as part of the common law in Canada. Aboriginal rights were given constitutional status by section 35(1) of the *Constitution Act, 1982*. The courts have recognized that Métis have Aboriginal rights to hunt, fish and trap for food exist in some parts of the Province, such as in Northern Saskatchewan.

The Government recognizes that it has legal obligations to consult with rights-bearing Métis communities. The Métis held Aboriginal right that is most often engaged in connection with the duty to consult is the Aboriginal right to hunt, fish and trap for food. One of the challenges associated with meeting the duty to consult for the Métis is the lack of consensus on the definition of a rights-bearing Métis community. To date, the courts suggest that these communities should be defined on a regional basis, as opposed to an individual community or a province-wide basis. The Government will consult with Métis leadership in communities or regions where Métis' Aboriginal rights have already been recognized, such as in Northern Saskatchewan. Where Métis Aboriginal rights have not yet been recognized, the decision to consult will be made on a case-by-case basis. Government will take into account the strength of the claims supporting the asserted rights and the extent of the potential impact on the exercise of the asserted rights.

## **Asserted Rights**

The Supreme Court recognized in *Haida Nation* that governments may be required to consult with First Nation and Métis communities when governments have knowledge, real or constructive, of asserted rights, even if governments do not recognize the rights being asserted. In these cases, consultations may be required where the Government determines that there is a credible basis for the asserted right and the community is actively pursuing recognition of the right either through negotiations or litigation. The degree of consultations required in these cases will depend upon the strength of the claim supporting the asserted right as well as the extent of the potential adverse impact from the proposed government action.

## 5. Building Relationships

The Government of Saskatchewan recognizes the importance of building and maintaining strong relationships with First Nations, Métis communities, and industry. These relationships are crucial for the effective and meaningful fulfillment of Government's duty to consult. Building and maintaining these relationships requires ongoing contact, proactive communication, building trust, transparency, building cultural competency in Government, and valuing the relationship in and of itself.

Ministries will make best efforts to meaningfully engage First Nation and Métis communities in decision-making processes related to policies, programs and legislation that have the potential to impact communities and where they may have an interest or where First Nations have jurisdiction on-reserve. Government understands for areas where there is greater historical and cultural significance that increased efforts from officials to build trust and understanding will be made. There also may be situations where either the sensitive nature of a proposed policy change or its broad application may prevent the Government from engaging with any community in advance.

The primary objective in undertaking engagement is to ensure that Government policies, plans and actions will effectively meet their intended goals and objectives. This is done by working with the groups to better understand the nature of the policy issue and how it should be resolved. Engagement comes in many forms, such as information-sharing meetings, public meetings, advisory groups, surveys and polls and focus groups. In many cases, there is benefit in going beyond this kind of engagement to creating partnerships for joint action to solve an issue or act on an opportunity.