



# Guide to Involving Proponents When Consulting First Nations



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The Province of British Columbia has a duty to consult and where required, accommodate First Nations whenever a decision or activity could impact treaty rights or asserted or established aboriginal rights and title ("Aboriginal Interests"). This duty stems from Canadian common law as expressed in court decisions.

In the case of asserted aboriginal rights and title, the scope of consultation is based on an assessment of the strength of claim, and the seriousness of potential impacts upon the asserted rights. In the case of proven aboriginal rights or treaty rights, the scope of consultation is based on the seriousness of the potential impact on the right.

The *Updated Procedures for Meeting Legal Obligations When Consulting First Nations* (the Consultation Procedures) describe the Province's approach to consulting and accommodating First Nations. In Step 5 of the Preparation Phase, the Province determines who will engage First Nations for consultation purposes, which may include involving the proponent. The Province and First Nations may also negotiate area specific agreements which shape how consultation and accommodation will take place.

While the Province is responsible for ensuring adequate and appropriate consultation and accommodation, it may involve the proponent in the procedural aspects of consultation to proponents. Proponent engagement with First Nations can facilitate effective and timely information exchange and may include the modification of plans to mitigate and avoid impacts to Aboriginal Interests. It can also contribute to some of the Province's broader objectives, including partnerships and relationship building with First Nations.

### **Purpose**

The purpose of this document is to provide operational guidance to Provincial decision makers and staff respecting the role of proponents in consultation. It is to be used in conjunction with the Updated Procedures for Meeting Legal Obligations When Consulting First Nations.

Staff will work with proponents to ensure that Provincial and proponent activities are coordinated.

Under the *Forest and Range Practices Act* and the *Environmental Assessment Act*, the Province has statutory authority to require proponents to share information with First Nations about proposed projects. Please refer to these statutes for further guidance.

## **Responsibilities**

### *Provincial decision makers*

Provincial decision makers with authority to make decisions about provincial land or resources are responsible for ensuring that the consultation and accommodation record is complete and that that consultation and any accommodation are appropriate for the circumstances.

### *Proponents*

Any party preparing for or making an application to government, including industry, local governments, federal agencies and Crown corporations are encouraged to engage First Nations as early as possible when seeking a decision. Proponents who are involved in consultation should document their engagement activities, share their consultation record with provincial staff, and advise staff of any issues that arise.

### *First Nations*

There is a reciprocal responsibility of First Nations to participate in the consultation process in good faith, to make their concerns regarding impacts on their Aboriginal Interests known and to respond to government's effort to consult.

## Proponent Questions and Answers

### *Why is the BC Government required to consult First Nations regarding my application?*

The courts have determined that the Crown has a legal duty to consult First Nations and seek to address their concerns *before* potentially impacting treaty rights or asserted or established aboriginal rights and title (“Aboriginal Interests”). This duty stems from a constitutional obligation arising from the recognition of aboriginal and treaty rights in the *Constitution Act, 1982*.

### *Can the BC Government delegate the “procedural aspects” of consultation to me?*

The Supreme Court of Canada in *Haida* (2004) said that government could delegate the procedural aspects of consultation to proponents. If a proponent has indicated a willingness to undertake the procedural aspects of consultation, the Province may rely on these efforts. The Province, however, is ultimately responsible for ensuring adequate consultation and accommodation where appropriate.

### *What is meant by “procedural aspects” of consultation?*

Generally, the “procedural aspects” refers to the direct engagement component of consultation that involves sharing and discussing information. More specifically, it includes:

- Providing information about the proposed project to First Nations early in planning process;
- Obtaining and discussing information about specific Aboriginal Interests that may be impacted with First Nations;
- Considering modifications to plans to avoid or mitigate impacts to Aboriginal Interests; and
- Documenting engagement, specific Aboriginal Interests that may be impacted and any modifications to address concerns and providing this record to the Crown decision maker.

### *Why would the BC Government want to involve me in the “procedural aspects” of consultation?*

Proponents are often in a better position to explain their proposals and address any First Nation concerns. Early and meaningful engagement provides greater opportunities for developing plans that avoid impacts to Aboriginal Interests and are more responsive to the broader interests and values of First Nations.

### *What will the BC Government do when I am undertaking the procedural aspects of consultation?*

The BC Government is ultimately responsible for ensuring adequate consultation and accommodation, where appropriate. The government will provide information, as required, to support the proponent’s role in the consultation process.

### *As a small operator, will I be required to undertake the procedural aspects of consultation?*

Government staff consider a number of factors in determining whether to involve the proponent in consultation including the capacity of the proponent to manage engagement activities. Small operators with limited resources may not be asked to undertake procedural aspects of consultation.

### *What is an Aboriginal Interest?*

Aboriginal Interests refers to claimed or established treaty rights or aboriginal rights (including title). Aboriginal rights are practices or traditions integral to a First Nation culture at the time of contact. Examples include fishing, hunting and gathering plants. Aboriginal title is a subcategory of aboriginal rights that is a unique interest in land that encompasses the right to exclusive use and occupation of land for a variety of purposes. Treaty rights are held by a First Nation in accordance with the terms of a historic or modern treaty agreement with the Crown.

### *The Guide refers to both engagement and consultation. What is the difference between the two terms?*

Although these terms are generally used interchangeably, for the purposes of this guide, the terms consultation and engagement are used to help distinguish between the Province’s and the proponent’s roles in the consultation process respectively.

## Consultation Procedures

### Phase One: Preparation

1. Identify First Nation
2. Identify treaties or process agreement(s)
3. Review readily available information
4. Consider consultation levels
5. Decide who will engage First Nation

### Phase Two: Engagement

1. Provide information and seek input
2. Engage First Nation(s)
3. Complete consultation at appropriate level

### Phase Three: Accommodation

1. Assess consultation and need to accommodate
2. Identify accommodation options
3. Propose accommodation measure and attempt to reach agreement

### Phase Four: Decision and Follow-Up

1. Assess consultation and accommodation record
2. Provide decision to First Nation
3. Ensure implementation of accommodations

## The Approach: Pre-Application Stage

### A. Possible proponent engagement related activities prior to submission of a project application

Proponents are encouraged to engage with First Nations as early as possible in the planning stage to build relationships and for information sharing purposes. Engagement early in the planning stage provides opportunities to identify any concerns by First Nations about the proposed development/activity and may increase the likelihood of successful consultation outcomes. As well, proponents are often in a better position to provide information about their proposed activity directly to the First Nation.

The following activities may be recommended to proponents in the pre-application phase:

Early Planning:

- Searching the Province's Consultative Areas Database to identify which First Nations to engage (<http://geobc.gov.bc.ca/>); and
- Obtaining information about the First Nations in the proposed project area including relevant information regarding culture, history, economy, and political/governance structures.

Planning:

- Advising Provincial government staff of intentions to engage with First Nations;
- Informing and involving First Nations in the planning phase of their proposed project;
- Learning about the First Nation's Aboriginal Interests and other interests in the area and planning accordingly; and
- Keeping First Nations advised of milestones, including application submission dates.

Provincial government staff may provide information that may assist the proponent to focus engagement efforts based on an initial scan of Aboriginal Interests in the proposed project area. Proponents should be made aware that as the Province receives further information about Aboriginal Interests, the scope of consultation and accommodation, where required, may change.



Provincial government staff may encourage the proponent to explore options to avoid or mitigate impacts to Aboriginal Interests, particularly once there is a good understanding of the nature of potential impacts on Aboriginal Interests. The Province will consider avoidance and mitigation measures undertaken by the proponent when assessing whether Aboriginal Interests have been adequately accommodated.

To assist proponents in becoming aware of any agreements between the Province and First Nations that establish processes that guide consultations (e.g., Strategic Engagement Agreements, Forest & Range Consultation Revenue Sharing Agreements, Final Treaty Agreements or Reasonable Opportunity Agreements), Provincial government staff may provide proponents with the government website address which lists these agreements <http://www.gov.bc.ca/arr/treaty/key/default.html>. This information will enable the proponent to understand how the Province will carry out consultation under specific agreements. Proponents are encouraged to check the website on a regular basis or to talk with Provincial government staff to become informed of new agreements as they are completed.

### Proponent Questions and Answers

#### *How do I determine with which First Nations to contact?*

The Province has developed the Consultative Areas Database (CAD) to identify First Nations interests in the land base. CAD is an online, interactive mapping tool that allows First Nations, the general public, industry and other levels of government to draw a point, line or polygon in iMapBC and generate a list of First Nations with contact information for the area queried. See <http://geobc.gov.bc.ca>. As First Nation territory boundaries may change from time to time, proponents are encouraged to periodically review the website to identify any changes that may be relevant to their project.

#### *There are multiple First Nations with interests over the location of application. How do I engage with all of them?*

Contact all First Nations with Aboriginal interests in the area where the proposed activity is to take place (based on CAD). Follow up with those First Nations who respond to your initiatives to meet about your application. Depending on responses from First Nations, Provincial staff may provide advice as to how to focus your engagement efforts.

#### *What information do I provide in my letter/or first meeting with a First Nation about my project?*

The letter/conversation may include:

- Details about the project/activity including location, how it could happen, timing, potential impacts that may affect both land and resources and maps;
- List all authorizations and their timing that will be required;
- Request for information about First Nations concerns including Aboriginal Interests that may be impacted by the proposed activity; and
- A request to meet.

For any assistance required to write letters or prepare for meetings with a First Nation, contact the agency responsible for your application.

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3. Complete consultation at appropriate level

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## Application Stage

### B. Considering the role of the proponent

The following matters are to be considered when determining the appropriate level of engagement of the proponent in a consultation process:

- the nature of the proposed activity;
- the nature of Aboriginal Interests potentially impacted ;
- the capacity of the proponent to manage engagement activities;
- the capacity of the proponent to provide information relating to the details or context of the proposed activity;
- the opportunity for the proponent to incorporate appropriate avoidance or mitigation measures into the project design and/ or implementation;
- any processes required under agreement with First Nations;
- the willingness of the proponent to be involved in a consultation process; and
- the willingness of First Nations to engage with the proponent.

The proponent is responsible for advising the Province about its willingness to be involved in the consultation process.

### C. Advising First Nation(s) of proponent's role

Where the Province considers it appropriate to involve proponents in the procedural aspects of consultation and the proponent has not already proceeded to engage with the First Nation, the Province may advise the First Nation(s) that the proponent will be engaging with them regarding the proponent's proposed activity. Provincial government staff may provide the following to First Nation information regarding the nature and timing of the proposed activity and required decisions;

- government contact information respecting consultation for the proposed activity and the decision maker;
- assurance that the Province retains accountability and responsibility for assessing and ensuring adequate consultation and accommodation, where required; and,
- notification that the proponent's engagement activities may be documented and form part of the consultation record that will be considered by the decision maker.

Where a First Nation does not wish to engage with the proponent, the Province will seek to understand any concerns. To address concerns and build relationships:

- the Province, proponent and First Nation may meet to share information about the First Nations concerns and, the proponent's interests and proposed activities; and,
- the Province resuming all or part of the consultation process.

### D. Proponent engagement activities

Once the Province has made a determination with respect to the potential involvement of the proponent in the procedural aspects of consultation and the proponent indicates a willingness to be involved in the consultation process, Provincial government staff may provide the proponent with the following:

- any assistance needed to identify which First Nations to engage (information available through the Consultative Areas Database - <http://geobc.gov.bc.ca/>);
- any information that may assist the proponent in focusing their engagement efforts, which may include;
  - *non-confidential information about the First Nation's Aboriginal Interests learned from the review of readily available information in Phase One;*
  - *information about Aboriginal Interests that may be impacted by the proposed activity and possible avoidance or mitigation measures;*
- information regarding expectations for documenting engagement activities and outcomes, including any measures taken to accommodate First Nation concerns;
- further information as may be requested from the proponent in order to assist in completing the consultation process; and
- updates respecting the status of the consultation process, which may include summaries of key issues or concerns expressed by the First Nation.

Provincial staff may remind proponents that they do not have the authority to make decisions with regard to the Crown's duties to consult and accommodate including:

- the strength of a First Nation's claimed aboriginal rights, including title;

- whether Crown decisions regarding a proposed project represents potential infringements of Aboriginal or Treaty rights; or
- the adequacy of the Crown's duty to consult and accommodate.

Proponent engagement activities may include:

- participating in meetings with Provincial representatives and First Nations;
- participating in their own meetings with First Nations;
- providing information to First Nations about the proposed activity, how it could happen, where it could occur (maps) and what the potential impacts may be to lands and resources;
- obtaining or discussing First Nations concerns which may include information about Aboriginal Interests that may be impacted by the proposed activity, how the proposed activity may impact identified Aboriginal Interests; and
- discussing possible mitigation options to address impacts to Aboriginal Interests.

### *Proponent Record Keeping*

Proponents should be encouraged to document all attempts to engage with relevant First Nations and provide a record of their engagement efforts to the Province so it may be considered during the decision-making process. The engagement record may include:

- a communications log;
- a summary of engagement activities and outcomes;
- descriptions of Aboriginal Interests and any potential impacts identified; and
- descriptions of any modifications implemented or other avoidance or mitigation measures that may have been made in the pre-planning, planning or engagement stages.

The Province may request updates from the proponent regarding the status of engagement activities with the First Nation and may request copies of relevant documentation between the proponent and the First Nation.

## Proponent Questions and Answers

*What do I do if the First Nation does not want to engage with me or does not respond?*

Where this happens, contact the agency responsible for administering your application for further guidance. Proponents are encouraged to indicate their willingness to talk to the First Nation about their application to ensure that the proposed activity is understood and that there is a meaningful opportunity to discuss any concerns. It is valuable for proponents to build relationships before projects are proposed.

*How does the refusal of a First Nation to engage with a proponent affect the consultation process and the timing of decisions on an application?*

Where a First Nation refuses to engage with a proponent, the Province will continue to consult that First Nation directly. While proponent engagement can promote timely decisions, the refusal of a First Nation to engage with a proponent may not necessarily impact the consultation process or the timelines for decisions on applications. First Nations have a reciprocal responsibility to participate in the consultation process in good faith, to make their concerns regarding impacts on their Aboriginal Interests known and to respond to government's effort to consult.

*When should capacity funding be provided to a First Nation and what is an appropriate level of funding?*

There is no obligation for a proponent to provide capacity funding to a First Nation as part of the consultation process, nor will the Province direct that such funding be provided by a proponent to a First Nation. Nevertheless, to help support the consultation process, which may lead to ways to avoid or minimize potential impacts to Aboriginal Interests resulting from a proposed activity, a proponent may choose to provide funding as part of a business arrangement with a First Nation. The Province does not provide advice to proponents regarding capacity funding arrangements with a First Nation.

*What should I do if a First Nation wants to charge a fee to meet? An invoice was sent to me in response to my meeting request to discuss my application.*

Proponents should continue to try to engage the First Nation to share information about the application and to encourage the First Nation to provide technical information relevant to the proposed activity. As noted in the previous Question and Answer, there is no obligation for a proponent to provide capacity funding to a First Nation as part of the

consultation process, however, if a proponent has the means, the offer of capacity funding can help support the consultation process which may lead to ways to avoid or minimize potential impacts to Aboriginal Interests resulting from a proposed activity. If the First Nation refuses to meet or respond to correspondence, document your efforts and contact the agency responsible for administering your application.

*How can a proponent determine if an economic related request by a First Nation is reasonable?*

The responsibility for assessing the acceptability of an economic request from a First Nation rests with the proponent. Should a proponent wish to consider entering into an economic arrangement with a First Nation, a proponent could assess the reasonableness of the request on a number of variables including, but not limited to, the nature and scope of the project, the financial capacity of the proponent, and the opportunities and benefits afforded to both the First Nation and the proponent through such an arrangement.

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### Phase Four: Decision and Follow-Up

1. Assess consultation and accommodation record
2. Provide decision to First Nation
3. Ensure implementation of accommodations

## E. Accommodating Aboriginal Interests

While the duty to consult and accommodate, where appropriate, rests with the Province, proponents can assist the Province in meeting this obligation by considering ways to address concerns or mitigate impacts to Aboriginal Interests.

Below are some general measures which the Province may consider in its assessment of whether accommodation has been adequate in the circumstances:

- avoiding the impact to the identified Aboriginal Interest;
- modifying the proposal to mitigate potential impacts to Aboriginal Interests (e.g., altering the footprint or location of the proposed activity);
- changing the timing of proposed activities;
- requirements for impact or environmental monitoring; and
- other mitigation strategies.

If proponents have proposed measures to address potential adverse effects to Aboriginal Interests, decision makers may consider incorporating such measures as conditions of the authorization.

Where applications or projects have been modified by a proponent for reasons or purposes other than to address First Nation concerns, such modifications will not, in most cases, be considered a mitigation or accommodation in relation to potential impacts on Aboriginal Interests.

## Proponent Questions and Answers

### *What is accommodation?*

Courts have defined accommodation in its broadest sense as adapting, harmonizing or reconciling Aboriginal and Crown interests – essentially taking steps to avoid or minimize impacts on Aboriginal Interests. Accommodation measures seek to balance First Nations' concerns reasonably with the potential impact of the decision on Aboriginal interests with other societal interests. Consultation that excludes the consideration of accommodation in any form to address concerns would not be meaningful. The duty to consult, however, will not always lead to a legal duty to accommodate.

### *How does the Province determine whether accommodation is required for a project?*

Whether accommodation is necessary and what form it will take is informed by the information gathered during the consultation process including:

- review of readily available information;
- information learned during engagement with the First Nations(s);
- the Province's progressive understanding of the nature of the Aboriginal Interests that might be impacted;
- the seriousness of the potential impacts on Aboriginal Interests;

- broader societal interests and objectives of the Crown; and
- any other relevant avoidance or mitigation measures that have been employed by government or the proponent.

Accommodation may be required when this information suggests that there is an established treaty or aboriginal (including title) right or where a strong case for a claimed aboriginal right (including title) exists and the proposed decision may adversely affect such Aboriginal Interests in a significant way.

### *What is my role and the Province's role in developing accommodation measures particularly in the pre-application phase of the project?*

Responsibility for accommodation rests with the Province, however proponents can assist in fulfilling this obligation by exploring options to avoid or mitigate potential impacts on Aboriginal Interests particularly once there is a good understanding of the nature of potential impacts on Aboriginal Interests. The Province will consider avoidance and mitigation measures undertaken by the proponent in its assessment of whether Aboriginal Interests have been adequately addressed and where appropriate, accommodated.

### *As a small operator, how do I know that the accommodation measure discussed with the First Nations during the pre-application engagement is reasonable?*

The Province is responsible for ensuring that the level of accommodation is appropriate to the circumstances (i.e. nature of the Aboriginal Interests and the seriousness of the impact on such Aboriginal Interests). If the proposed decision or activity will have minimal to no impact on the land or resources and any corresponding Aboriginal Interest, then accommodation will not generally be required. The agency responsible for your application is responsible for making the determination of the adequacy of accommodation and for sharing that determination with the First Nation and the proponent.

### *What if a First Nation requests an accommodation measure that is broader than the impacts of the decision?*

The Province is responsible for determining the adequacy of accommodation measures, where required to address potential impacts to Aboriginal Interests arising from the proposed decision or activity.



### *Partnerships/Other Relationship Building Opportunities*

In some cases, discussions between the First Nation and proponent may lead to partnerships or other mutually beneficial opportunities (i.e. employment opportunities, direct awards for contract services, revenue sharing etc.), the scope and purposes of which are determined by the parties and not the Province. The Province does not require that agreements or other business arrangements be reached; however, the Province recognizes that such arrangements may form relationships between the proponent and the First Nation that makes good business sense. Such relationships may help move the proponent's overall business interests and facilitate certain business and other processes that result in timely business operations and decisions. These types of partnerships are considered positive and contribute to the objectives of the New Relationship. Where these arrangements/agreements are in effect, the Province, to the extent that their terms are publicly known, may choose to assess how an agreement/business arrangement may contribute to accommodation.

## **Proponent Questions and Answers**

*Does the Province expect proponents to enter into economic agreements with First Nations as an accommodation measure?*

Proponents are not required to enter into economic agreements with First Nations. While the Province encourages proponents to explore benefit sharing agreements with First Nations, such agreements, if pursued, are undertaken because the parties consider them to be in their mutual interest.

These economic agreements may be considered as a potential accommodation by the Province where such measures may be relevant to addressing potential adverse impacts of the proposed activity or project to Aboriginal Interests.



## Consultation Procedures

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### Phase Four: Decision and Follow-Up

1. Assess consultation and accommodation record
2. Provide decision to First Nation
3. Ensure implementation of accommodations

## F. Reviewing the proponent's engagement record

After First Nations have been given the opportunity to engage with the proponent, the Province will review the proponent's engagement record and verify any outcomes with First Nations, including identification of Aboriginal Interests that may be impacted, the nature of the impacts, and any proposed avoidance, mitigation or other measures to address the First Nations' concerns.

To determine what further role the proponent may have in consultation the following are some key questions:

- Has the proponent's engagement record been received? If so, is it complete?
- Have all potentially affected First Nations been contacted respecting the project and consulted? And if not, why not?
- Has the proponent provided all the information that the First Nation has requested?

If the proponent's engagement record appears incomplete, Provincial government staff may seek clarification from the proponent. Where there are outstanding issues, Provincial government staff may consider whether it is appropriate to continue to involve the proponent or for the Province to complete the outstanding components.

Having regard for the depth of consultation and the status of the consultation process, the Province will consider the proponent's engagement record when determining what further steps are required to fulfill the Crown's duty to consult and accommodate, where required. The Province may keep the proponent apprised of key aspects of the progress of consultations and may share any relevant information gathered during the Province's consultation process.

## Proponent Questions and Answers

### *What is an initial view of strength of claim?*

An “initial view” of strength of claim is a colloquial term used by staff to describe the process (undertaken prior to engagement with the First Nation) in which information known to government about a First Nation’s claimed aboriginal rights or title is reviewed and analyzed. The purpose of this ‘internal’ process is to gain a general understanding of the strength supporting the claim to aboriginal right and/or title. Any conclusions from this undertaking are used to internally gauge the scope of consultation and any accommodations that may be required for a consultation process under consideration.

### *What is an ethno-historic report?*

An ethno-historic report is a collection of historical, ethno-historical and archeological information that is readily available to the Province, which is used to inform an initial view and/or preliminary assessment of aboriginal rights and title claims. The reports are focused on information relating to the occupation of land and the use of specific resources at the legally relevant time periods. The Province shares these reports only with the subject First Nation.

Like other government information, the reports are subject to the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

### *What is a preliminary assessment of strength of claimed Aboriginal rights?*

A preliminary assessment of strength of claim is government’s estimate of the strength of the claimed aboriginal right and/or title as it concerns a specific decision after the First Nation has had an opportunity to outline its claims or comment on any initial views of the strength of

known claims provided by government. It is a component of determining the required scope of consultation and any accommodation and whether that level of consultation (and accommodation) has ultimately been fulfilled prior to making a decision.

The assessment is “preliminary” until there is a declaration made by a court regarding whether the aboriginal right and/or title has been proven, or the matter has been settled in a treaty.

A preliminary assessment by a ministry official is not a legal opinion and does not determine the existence of a rights and/or title claim, a determination only a court can make.

A preliminary assessment of strength of claim combined with a preliminary assessment of the seriousness of potential impacts of a proposed project informs the scope of consultation and any accommodation that is required.

### *How does the Province determine that consultation is complete?*

The Province will review the consultation record to determine whether the process has been adequate given the required depth of consultation. If further consultation or accommodation is required, the Province will continue its consultation efforts and may discuss additional accommodation measures with First Nations. In making a decision on the application, the decision-maker will consider whether consultation and accommodation has been adequate having regard for applicable legal principles and other relevant information such as provincial policies or agreements with First Nations. The First Nation and the proponent will be advised of the decision.

## G. Implementation

The decision maker is responsible for ensuring any accommodations are implemented. Where accommodations are to be implemented after a decision has been made, it may be necessary to follow up with proponents to ensure that any accommodation related conditions of authorizations are fulfilled.

## Resources

Updated Procedures for Meeting Legal Obligations When Consulting First Nations

Government's procedures for meeting its legal obligations to consult First Nations on proposed land resource decisions.  
[http://www.gov.bc.ca/arr/reports/down/updated\\_procedures.pdf](http://www.gov.bc.ca/arr/reports/down/updated_procedures.pdf)

Building Relationships with First Nations: Respecting Rights and doing Good Business

To foster better relationships between business and First Nations, the Ministry of Aboriginal Relations and Reconciliation has released a guide called Building Relationships with First Nations: Respecting Rights and Doing Good Business. This plain-language guide provides practical advice on strategies to help businesses develop strong working relationships with First Nations.  
[http://www.gov.bc.ca/arr/consultation/down/workingwithfirstnations\\_document.pdf](http://www.gov.bc.ca/arr/consultation/down/workingwithfirstnations_document.pdf)

Proponents Guide to First Nation Consultation in the Environmental Assessment Process

This guide is intended to clarify the roles and responsibilities of the Provincial Crown and Proponents in First Nation consultation throughout an environmental assessment (EA) process, setting the stage for successful relationships between government, proponents and First Nations.  
<http://www.eao.gov.bc.ca/>

Proponent Guide to Major Mines Projects

This guide is intended for proponents of major mine projects preparing to apply for multiple permits, licences or other authorizations to construct and operate a mine in the Province of British Columbia.  
[http://www.for.gov.bc.ca/ftp/major\\_projects/external!/publish/web/mining/Proponent\\_Guide\\_Major\\_Mine\\_Projects.pdf](http://www.for.gov.bc.ca/ftp/major_projects/external!/publish/web/mining/Proponent_Guide_Major_Mine_Projects.pdf)

Guide to Coordinated Authorizations for Major Mines

This guide is targeted primarily at provincial government staff involved in the review of applications for major mine authorizations. However, it is expected to be useful to other participants in the process, including First Nations, federal government agencies, international jurisdictions, local and regional governments, mine proponents and the public.  
[http://www.for.gov.bc.ca/ftp/major\\_projects/external!/publish/web/mining/Mines-Guide.pdf](http://www.for.gov.bc.ca/ftp/major_projects/external!/publish/web/mining/Mines-Guide.pdf)

Clean Energy Production in BC: An Interagency Guide Book for Proponents

This guidebook brings together statutory, regulatory, and procedural information from resource-based ministries and agencies involved with the review of Clean Energy Projects.  
[http://www.for.gov.bc.ca/Land\\_Tenures/documents/publications/clean\\_energy\\_guidebook.pdf](http://www.for.gov.bc.ca/Land_Tenures/documents/publications/clean_energy_guidebook.pdf)

Consultative Area  
Database (CAD)

The Province's Consultative Areas Database is an online interactive map that allows the general public, industry, other governments and First Nations to identify First Nations who have interests in a specific area. This tool is not definitive and should be used in conjunction with government advice.

<http://geobc.gov.bc.ca/>

Ministry of Aboriginal  
Relations and Reconciliation

The Ministry of Aboriginal Relations and Reconciliation initiates and promotes innovative approaches to Aboriginal policy and is the Province's representative for all treaty negotiations. Explore its website for useful information and links.

<http://www.gov.bc.ca/arr/index.html>

Judgments of the Supreme  
Court of Canada

<http://www.scc-csc.gc.ca/decisions/index-eng.asp>

First Peoples Language  
Map of B.C.

<http://maps.fphlcc.ca/>

Aboriginal Engagement  
in the Mining and Energy  
Sectors Report

<http://www.nrcan.gc.ca/mineraux-metaux/sites/www.nrcan.gc.ca/minerals-metals/files/files/pdf/abor-auto/stu-etu-eng.pdf>

Atlas of Canada –  
Aboriginal Peoples

<http://www.aadnc-aandc.gc.ca/eng/1290453474688/1290453673970>

First Nation Profiles (Aboriginal  
Affairs and Northern  
Development Canada)

<http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/index.aspx?lang=eng>

## Appendix A: Consultation Phases

Project Phases	Government's Role	Range of Potential Roles of the Proponent in Consultation
<b>Phase 1: Preparation – Planning Phase</b>		
<b>Early Planning</b>	<ul style="list-style-type: none"> <li>■ The Province may assist with identifying First Nations and provide information respecting where to focus engagement efforts.</li> </ul>	<ul style="list-style-type: none"> <li>■ Searching the Province's Consultative Areas Database to identify which First Nations to engage (<a href="http://geobc.gov.bc.ca/">http://geobc.gov.bc.ca/</a>).</li> <li>■ Obtaining information about the First Nations in the proposed project area including relevant information regarding culture, history, economy, and political/governance structures.</li> </ul>
<b>Planning</b>	<ul style="list-style-type: none"> <li>■ The Province may encourage the proponent to explore options to avoid or mitigate impacts to Aboriginal Interests.</li> <li>■ The Province will confirm with proponents the website address where they can obtain a list of relevant agreements between the Province and First Nations that establish processes that guide consultations (e.g., Strategic Engagement Agreements or Forest &amp; Range Consultation Revenue Sharing Agreements). This information will enable the proponent to understand how the Province will carry out consultation under specific agreements. <a href="http://www.newrelationship.gov.bc.ca/agreements_and_leg/engagement.html">http://www.newrelationship.gov.bc.ca/agreements_and_leg/engagement.html</a></li> </ul>	<ul style="list-style-type: none"> <li>■ Advising Provincial staff of intentions to engage with First Nations.</li> <li>■ Informing and involving First Nations in the planning phase of their proposed project.</li> <li>■ Learning about the First Nation's Aboriginal Interests and other interests in the area and planning accordingly.</li> <li>■ Discussing possible mitigation options to address potential impacts to Aboriginal Interests.</li> </ul>
<b>Submitting Application to Government</b>		<ul style="list-style-type: none"> <li>■ Keep First Nation advised of milestones, including application submissions dates.</li> </ul>

Consultation Process	Government's Role	Range of Potential Roles of the Proponent in Consultation
<b>Phase 1: Preparation – Application Phase</b>		
<ol style="list-style-type: none"> <li>1. <b>Identify First Nation</b></li> <li>2. <b>Identify treaties and process agreements</b></li> <li>3. <b>Review readily available information</b></li> <li>4. <b>Consider a level of consultation</b></li> <li>5. <b>Decide who will engage First Nation(s)</b></li> </ol>	<ul style="list-style-type: none"> <li>■ The Province will make a determination with respect to the potential assignment of the procedural aspects of consultation to the proponent.</li> <li>■ The Province may provide the following to the proponent: <ul style="list-style-type: none"> <li>● any assistance needed to identify which First Nations to engage (information available through the Consultative Areas Database <a href="http://geobc.gov.bc.ca/">http://geobc.gov.bc.ca/</a>);</li> <li>● any information that may assist the proponent in focusing their engagement efforts, which may include: <ul style="list-style-type: none"> <li>▸ non-confidential information about the First Nation's Aboriginal Interests learned from the review of readily available information in Phase One;</li> <li>▸ information about Aboriginal Interests that may be impacted by the proposed activity and possible avoidance or mitigation measures;</li> <li>▸ information regarding the documenting of engagement activities and outcomes, including any measures taken to accommodate First Nation concerns, to allow such information to be included in the consultation record;</li> <li>▸ further information that may be requested from the proponent in order to assist in completing the consultation process; and</li> <li>▸ the status of the consultation process, which may include summaries of key issues or concerns expressed by the First Nation.</li> </ul> </li> </ul> </li> <li>■ As appropriate, the Province will advise the First Nation that the proponent will engage with the First Nation in the consultation process.</li> <li>■ Where a First Nation does not wish to engage with a proponent/industry, government will continue to consult with the First Nation.</li> </ul>	<ul style="list-style-type: none"> <li>■ Indicate to the Province a position on whether to accept the assignment of some or all the procedural aspects of consultation.</li> <li>■ Verify with the Province which First Nations have Aboriginal Interests.</li> <li>■ Provide to the Province any information about Aboriginal Interests learned from early engagements.</li> </ul>

Consultation Process	Government's Role	Range of Potential Roles of the Proponent in Consultation
<b>Phase 2: Engagement</b>		
<p><b>1. Provide information and seek input</b></p>		<ul style="list-style-type: none"> <li>■ Participating in meetings independently or with government representatives and First Nations.</li> <li>■ Participating in their own meetings with First Nations.</li> <li>■ Providing information to First Nations about the proposed activity, how it could happen, where it could occur (maps) and what the potential impacts may be to lands and resources.</li> <li>■ Obtaining or discussing information about specific Aboriginal Interests that may be impacted by the proposed activity, how the proposed activity may impact identified Aboriginal Interests, and where else the activity or use can be practiced.</li> <li>■ Discussing possible mitigation options to address Aboriginal Interests.</li> </ul>
<p><b>2. Engage First Nation(s)</b></p>	<ul style="list-style-type: none"> <li>■ The Province will remain informed of engagements between proponents and First Nations, seeking clarification and confirmation where required.</li> </ul>	<ul style="list-style-type: none"> <li>■ Proponents are encouraged to document all engagements and attempts to engage, the identification of Aboriginal interests and concerns and any mitigation measures implemented or planned.</li> <li>■ Proponents are encouraged to address concerns respecting potential impacts to Aboriginal interests. Mitigation measures may include: avoidance, minimizing or altering the site footprint; changing the timing of the proposed activity; environmental monitoring and other mitigation options.</li> <li>■ Respond to concerns and information requests from the First Nation.</li> </ul>
<p><b>3. Complete consultation at appropriate level</b></p>	<ul style="list-style-type: none"> <li>■ If the proponent's engagement record appears incomplete, Provincial staff may seek clarification from the proponent. Where there are outstanding issues, Provincial staff may consider whether it is appropriate to continue to involve the proponent or for the Province to complete the outstanding components.</li> </ul>	<ul style="list-style-type: none"> <li>■ Provide an engagement record to the Province, including:</li> <li>■ Descriptions of specific Aboriginal interests and any potential impacts</li> <li>■ Descriptions of any modifications implemented for accommodation purposes;</li> </ul>

Consultation Process	Government's Role	Range of Potential Roles of the Proponent in Consultation
<b>3. Complete consultation at appropriate level (con't.)</b>	<ul style="list-style-type: none"> <li>■ The Province will review the proponent's engagement record and verify any outcomes with First Nations, including identification of Aboriginal Interests that may be impacted, the nature of the impacts, and any proposed avoidance, mitigation or other measures to address the First Nations' concerns.</li> </ul>	<ul style="list-style-type: none"> <li>■ A communications log, copies of correspondence meeting notes, attempts to communicate, etc; and,</li> <li>■ Summaries of engagement activities and outcomes.</li> <li>■ Provide further information to First Nations about the project or clarify information about Aboriginal Interests as required.</li> </ul>
<b>Phase 3: Accommodation</b>		
<b>1. Review consultation and need to accommodate</b>	<ul style="list-style-type: none"> <li>■ The Province is responsible for assessing requirements for accommodation.</li> <li>■ The Province will advise the proponent if further information or accommodations are required.</li> </ul>	
<b>2. Identify accommodation options</b>	<ul style="list-style-type: none"> <li>■ The Province may request the proponent to consider and explore accommodation options with government staff and First Nations.</li> </ul>	<ul style="list-style-type: none"> <li>■ Work with the Province and First Nations to identify and undertake avoidance or mitigation measures to address potential impacts to Aboriginal Interests where required.</li> </ul>
<b>3. Propose accommodation and attempt to reach agreement</b>	<ul style="list-style-type: none"> <li>■ The Province is responsible for proposing an accommodation measure to the First Nation and for attempting to reach agreement with respect to the accommodation proposal.</li> </ul>	
<b>Phase 4: Decision and Follow-up</b>		
<b>1. Assess consultation and accommodation record</b>	<ul style="list-style-type: none"> <li>■ Having regard for the depth of consultation and the status of the consultation process, the Province will consider the proponent's engagement record to determine what further steps to fulfill the Crown's duty to consult and accommodate where required.</li> <li>■ The Province may keep the proponents apprised of the progress of consultation and may share relevant information gathered during the Province's consultation process.</li> </ul>	
<b>2. Provide decision to First Nation</b>	<ul style="list-style-type: none"> <li>■ Government will provide the decision on the application(s) to the First Nation and the proponent.</li> </ul>	
<b>3. Ensure implementation of accommodations</b>	<ul style="list-style-type: none"> <li>■ Government will monitor for compliance and enforcement of any accommodations.</li> </ul>	<ul style="list-style-type: none"> <li>■ Where required, proponents/industry will implement any accommodations.</li> </ul>









