

# First Nations Consultation Guidelines

## Sustainable Resource Management Planning

July 2004



BRITISH  
COLUMBIA

Ministry of Sustainable Resource Management  
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# Section 1: Introduction

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## 1.1 Introduction to the Guidelines

### Applying the Provincial Consultation Policy to Sustainable Resource Management Planning

Sustainable Resource Management (SRM) planning is the consolidated approach of the Ministry of Sustainable Resource Management (MSRM) to strategic land and resource planning at the landscape level on provincial Crown lands. SRM planning simplifies an array of past processes, including local, watershed, and landscape unit planning. The objective of SRM planning and SRM Plans (SRMPs) is to balance economic development and environmental conservation in order to provide resource management certainty, expedite resource development approvals, and stimulate sustainable resource-based economic development. SRMPs are also an important tool for addressing First Nations' interests.

These guidelines are consistent with the *Provincial Policy for Consultation with First Nations* (2002) (see Appendix II), and were developed to assist MSRM planning staff, regional directors and other MSRM decision makers (who are referred to globally throughout these guidelines as "MSRM staff") to implement that policy. MSRM staff engaged in consultations with First Nations and/or decision making regarding aboriginal interests should ensure they are familiar with both documents.

Both the *Provincial Policy for Consultation with First Nations* and these guidelines deal with the province's approach to consultation with First Nations on aboriginal rights and/or title that have been **asserted** but have not been proven through a court process. These potentially existing aboriginal rights and/or title are referred to in both documents as "**aboriginal interests**." Neither document deals with the province's approach to consultations with First Nations on treaty rights.

*The preferred approach to consultation is to involve First Nations directly in the SRMP process.*

*Engaging First Nations in consultation at the beginning of the planning process, so that plans are developed with their input, is a better approach than trying to alter the plans later.*

## 1.2 Using the Guidelines

**These guidelines are effective immediately.** They set out requirements to ensure that MSRM staff satisfy the province's consultation obligations to First Nations (see section 2), and include advice on how MSRM staff can involve First Nations in SRMP processes and attempt to address their interests (see section 3 and Resource D: Electronic Consultation Resources).

The **objectives** of these guidelines are:

- to ensure MSRM staff satisfy the province's consultation obligations to First Nations as it relates to planning
- to increase First Nations participation in SRM planning processes.

The **target audience** for these guidelines is MSRM staff who:

- are just beginning an SRMP and need assistance in engaging First Nations in the planning process
- are having difficulty formally engaging First Nations in the planning process
- are engaged in decision making regarding aboriginal interests
- require guidance on meeting the province's legal obligations for consultation.

The guidelines apply to consultations with First Nations during the development and approval of SRMPs, but not to the implementation of SRMPs (which is the responsibility of other agencies).

The guidelines apply to new SRMPs, and to SRMPs that are underway. For SRMPs that are underway, consultation should begin immediately, and follow the procedures set out in this document.

Although these guidelines were developed specifically for SRMPs, the requirements they set out can also be applied to First Nations consultations regarding other strategic land and resource planning processes undertaken by MSRM.

The need to consult with First Nations is not an impediment to doing a job; it is part of the job itself.

## 1.3 Why MSRM Staff Must Consult

MSRM staff must consult on the development and approval of SRMPs because:

- aboriginal rights, including aboriginal title, are recognized and affirmed in the Constitution Act, 1982, which takes precedence over provincial statutes. A court case is required to prove the existence of aboriginal rights; however, even in the absence of recognition of rights through the courts, it is the province's responsibility to avoid unjustifiably infringing upon aboriginal rights that may exist.
- the implementation of strategic plans, including SRMPs, may have the potential to infringe on aboriginal interests
- consultation is a key part of land and resource use planning.

*The province is committed to building good relationships with First Nations. Transparent consultation processes, and the recognition that First Nations may have unique constitutional rights and are more than another stakeholder, are critical to building these relationships.*

## 1.4 Principles of Meaningful Consultation

MSRM staff must ensure that consultation with First Nations is:

- diligent
- reasonable
- meaningful
- carried out in good faith
- carried out with the intention of considering and addressing aboriginal interests.

MSRM staff should apply the following principles during SRMP consultation to ensure consultation efforts meet the above criteria:

- consultation should be started as early as possible, ideally as soon as an SRMP is being proposed
- consultations should be conducted "in person" whenever possible
- correspondence must be straightforward, understandable (e.g., use of non-technical terms), and neutral
- the planning process must be clearly defined in writing (e.g., what is being proposed; how and when it is proposed to happen; where it is proposed to happen, and what the possible impacts on the land or resources will be)
- First Nations should be provided with a summary of any documentation of traditional or other aboriginal uses for an area and given an opportunity to offer additional information
- all evidence of aboriginal interests that is available to the Crown on "reasonable enquiry,"<sup>1</sup> should be considered in addition to information provided by the First Nation through the consultation process

<sup>1</sup> The nature of evidence available to the Crown on "reasonable enquiry" is discussed in section 2.3 under the heading "The Consultation Stages."

*Be careful not to interpret a lack of response from a First Nation as a lack of interest in the planning process. Failure to respond may be indicative of barriers and obstacles that First Nations face when dealing with the province.*

- First Nations should be given a reasonable period of time to prepare its responses on the matter, and an opportunity to present such responses to MSRM. Optimally, the First Nation and MSRM will agree on the time required
- MSRM should give full and fair consideration of any views presented by the First Nation
- First Nations should be given an explanation of how information they provided to MSRM through the consultation process was dealt with by MSRM decision makers, and an explanation of all decisions made as a result of their input in the planning process
- all First Nations in an SRM planning area should be consistently followed up with and sent a notice and explanation informing them of final plan decisions.



# Section 2:

## Step-by-Step Guide to Meeting the Province's Legal Obligations

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### 2.1 Background

As outlined in the *Provincial Policy for Consultation with First Nations*, the province has a legally enforceable obligation to consult on sound claims of aboriginal rights and/or title when making land and resource decisions that could lead to impacts on claimed rights and/or title. It is important for the province to attempt to address aboriginal interests. The scope and depth of the province's consultations must be proportional to the soundness of the aboriginal interests that are at issue. Where sound claims of aboriginal rights and/or title are made out that, if subsequently proved, are likely to be infringed upon by a provincial government decision with respect to land or resources, the province must seek to address and/or reach workable accommodations of the aboriginal interests.

In order to properly assess the possibility that a sound claim of aboriginal interests exists, MSRM staff may require legal and/or research advice from the Ministry of Attorney General (MAG). MSRM staff requiring legal advice must make their requests to the manager, Interagency Management Committee (IAMC) for their region. The manager, IAMC will arrange for legal advice from MAG.

MSRM planning staff should contact the manager, IAMC when:

- assistance is required in any of the consultation stages outlined below
- a First Nation is corresponding through, or dealing with consultation, through its lawyer
- the plan involves an area with legally proven aboriginal rights or sound claim
- an SRMP itself, or a particular SRMP issue/value, becomes particularly contentious with a First Nation and may require an issues alert
- a potential proposal, agreement, and/or accommodation may set a precedent for addressing aboriginal interests
- legal advice from MAG is required.

MSRM staff must record all contact, or attempted contact, when consulting with a First Nation about an SRMP. This record will be essential for proving due diligence if required for court proceedings. Include all letters, faxes (including fax transmission reports), telephone calls, site

*MSRM staff must make good faith efforts to consult with First Nations throughout the planning process and must ensure that the province has met its consultation obligations.*

*Remember that time spent recording today can save a lot of time and effort in the future.*

visits, meetings, exchanges of information, workshops, formal and informal meetings, along with all other contacts, whether a response was received. Follow the Template for Record of Consultation and other templates contained in Resource J to ensure all information about the consultations is documented.

## 2.2 Overview of the Consultation Process

Consultation with First Nations is mandatory, but the required depth of consultation will be determined primarily by the strength of the claim, and secondarily by the nature of the SRMP being contemplated for approval.

The *Provincial Policy for Consultation with First Nations* sets out a number of consultation stages. These stages broadly correspond to key steps in the development and approval of SRMPs, as illustrated in the table on the following page.

Most MSRM planning staff involved in SRMP development will be responsible for only the first three consultation stages noted in the table: the Pre-consultation Assessment and stages 1 and 2. Their assessments and recommendations at these stages should be forwarded to the regional director or other MSRM decision maker for consideration.

The regional director or other MSRM decision maker must be directly involved in stages 3 and 4 consultation activities and decisions. Stages 3 and 4 arise only when the province has assessed the soundness of a First Nation's claim of aboriginal rights or title, and it appears likely that aboriginal interests may be infringed upon by the implementation of an SRMP if the aboriginal interests were subsequently proven in court to be aboriginal rights or title. The manager, IAMC must also be consulted in decision making under stages 3 and 4.

## 2.3 The Consultation Stages

All consultation processes with First Nations on SRMPs must be consistent with the *Provincial Policy for Consultation with First Nations* and proceed through the necessary stages to ensure that the province's consultation obligations are satisfied.

The scope of the consultations that MSRM is required to undertake with each First Nation with aboriginal interests in an SRM planning area, and the degree to which MSRM must seek to address and/or seek workable accommodations, is proportional to the soundness of those aboriginal interests. However, it is important to note that MSRM staff do not have the legal capacity to – and must not – make

Provincial policy consultation stage	SRMP planning step*
Pre-consultation assessment	<b>Step 1:</b> Preparing to plan <b>(a)</b> Regional planning strategy
<b>Stage 1:</b> Initiate consultation <b>(a)</b> Consultation activities <b>(b)</b> Considering aboriginal interests	<b>Step 2:</b> Plan initiation <b>(a)</b> Appoint planning project coordinator <b>(b)</b> Assemble planning team <b>(c)</b> Define plan area <b>(d)</b> Develop terms of reference <b>(e)</b> Initiate the project <b>(f)</b> Confirm participants, partners, etc. <b>(g)</b> Review terms of reference/communication strategy <b>(h)</b> Confirm issues <b>(i)</b> Assess available information <b>(j)</b> Determine mapping needs <b>(k)</b> Identify local knowledge <b>(l)</b> Gather data
<b>Stage 2:</b> Consider the potential impact on aboriginal interests	<b>Step 3:</b> Plan development <b>(a)</b> Establish baseline <b>(b)</b> Scenario development <b>(c)</b> Scenario analysis <b>(d)</b> Draft plan and recommendations <b>(e)</b> Scenario approval
<b>Stage 3:</b> Consider if any potential infringement is legally justified	<b>Step 4:</b> Plan evaluation <b>(a)</b> Identify additional information for evaluation <b>(b)</b> Carry out social, economic, and environmental assessments <b>(c)</b> Conduct public review and comment
<b>Stage 4:</b> Attempt to further address and/or accommodate aboriginal interests	<b>Step 5:</b> Plan approval, implementation, and maintenance <b>(a)</b> Revise plan based on public feedback <b>(b)</b> Plan approval <b>(c)</b> Legally establish relevant portions of the plan <b>(d)</b> Implementation <b>(e)</b> Plan maintenance
	<b>Step 8:</b> Final draft
	<b>Step 9:</b> Advertise for review and comment
	<b>Step 10:</b> Approvals
	<b>Step 11:</b> Regional director establishes objectives
	<b>Step 12:</b> Plan maintenance

legal determinations of the existence of aboriginal interests or existence of aboriginal rights and/or title (please refer to Appendix I for confidential legal advice on assessing the soundness of a claim). To properly assess the possibility that a sound claim of aboriginal interests exists, MSRM staff may require legal and/or research advice from the MAG, obtained via the manager, IAMC. MSRM staff should seek this advice once it becomes apparent that advice on assessing soundness is needed; for example, if consultations need to proceed beyond stage 1, MSRM staff may need advice from the MAG.

The main stages of the *Provincial Policy for Consultation with First Nations* are discussed below. They are also summarized in the chart contained in section 2.4. As discussed below, some stages, notably stages 2, 3 and 4 may not be necessary if practical solutions have satisfactorily addressed aboriginal interests.

## **Pre-consultation Assessment**

### **Research First Nations interests in the SRMP using all resources reasonably available**

A pre-consultation assessment must be undertaken to evaluate the nature of the land and resources within an SRM planning area and the nature of the aboriginal interests in these lands and resources. The pre-consultation assessment is intended to ensure that all First Nations that assert aboriginal rights within the SRMP are consulted, and to identify the areas of the SRMP affected by aboriginal interests.

At the pre-consultation stage and other early phases of the consultation process, MSRM staff will generally find it useful to access the consultative areas database (web address: [http://maps.bcgov/apps/cbd/html/Ministry/min\\_main.jsp](http://maps.bcgov/apps/cbd/html/Ministry/min_main.jsp)). See Resource D: Electronic Consultation Resources for a description of the consultative areas database. This database depicts the province's understanding of the geographic areas within which First Nations have expressed an interest in being consulted on proposed land and resource activities.

In undertaking pre-consultation assessments, and at other stages of the consultation process, MSRM staff must consider all evidence of aboriginal interests in an SRM planning area that is available to the Crown on "reasonable enquiry," including information made available to MSRM staff by First Nations. Evidence available to the Crown on "reasonable enquiry" may include information about aboriginal interests held by other provincial agencies or information available from secondary ethnographic sources. MSRM staff should access the consultative areas database and other sources of information identified in Resource D: Electronic Consultation Resources as a starting point for gathering reasonably available information about potential aboriginal interests in an SRM planning area. These external sources of information will be particularly

important when a First Nation does not engage in the consultation process. These external sources are discussed in greater detail under the next consultation stage, “1(A): Consultation Activities.”

The aboriginal interests that must be considered are claims of aboriginal rights or title that have been asserted, but not proven through a court process. Pre-consultation assessments must be undertaken for each First Nation that may have aboriginal interests in an SRM planning area. To ensure that this occurs, MSRM staff should research all Indian Reserves, asserted traditional territories, existing treaties, treaty negotiations, statement of intent boundaries, specific claims, aboriginal communities, and any other information source for First Nations who may have aboriginal interests in the SRM planning area. The consultative area database will help to identify all the First Nations that must be consulted for each SRM planning area.

Since most SRMPs will involve extensive lands and resources, it is highly unlikely that a pre-consultation assessment will result in a determination that it is not necessary to consult with any First Nations for an entire SRM planning area. In rare circumstances, it may be concluded that consultations are not required for certain sub-areas within an SRM planning area. Where MSRM staff are unsure about the need for consultation, it is best to err on the side of inclusion and proceed to the next stages of the consultation process.

For more information on the pre-consultation assessment stage of the consultation process, refer to Appendix II for a link to the online version of the *Provincial Policy for Consultation with First Nations* (pages 23–24).

If it is determined on the basis of the pre-consultation assessment that development and approval of an SRMP will require consultations with one or more First Nations, MSRM staff should proceed to the next stage of the consultation process.

## Stage 1: Initiate Consultations

### (A) Consultation Activities

#### **Determine effective means and appropriate representatives for First Nations consultations**

MSRM staff must identify and consider all aboriginal interests in an SRM planning area. The objectives of this stage of the consultation process are to:

1. Identify the most appropriate method or methods for gathering and exchanging information needed to consider aboriginal interests in the development and approval of an SRMP.
2. Ensure First Nations receive all relevant and reasonably available information as early as possible in the development of an SRMP, including information about the nature of the decision that may eventually be made regarding its approval.

3. Encourage First Nations to identify any aboriginal interests in relation to the proposed SRMP and to describe and to provide any available evidence that shows the basis of any claims that have been made.
4. Consider all evidence of aboriginal interests in the SRM planning area that is available to the Crown on "reasonable enquiry."

There is a range of consultation methods that may be applied for gathering and exchanging information needed to consider aboriginal interests, including telephone calls, letters and faxes, site visits, informal meetings, information exchanges, formal meetings, and/or workshops. Consultation methods may vary from situation to situation, depending upon such factors as the preferences of the First Nation, the way MSRM has consulted with the First Nation in the past, and remoteness. It is important that the consultation method employed is appropriate for gathering the type of information needed to consider aboriginal interests in the SRM planning process. See Resource H: Types of Consultation Methods, for a list of consultation methods and their advantages and drawbacks.

Once MSRM staff have identified appropriate method(s) of consultation, it is necessary to determine the appropriate point of contact for each First Nation. The consultative areas database is a useful starting point:

- Determine if the First Nation in question prefers to consult at the band, tribal council, or some other level. Consultation should initially be conducted at the band level, unless the band government explicitly states, in writing, that they have authorized another organization to act for them with respect to consultation on aboriginal interests.
- Many bands/tribal councils have a resource management/referral person who deals with consultation.

If necessary, consider the following:

- If the Chief or council member does not respond to your inquiries, try contacting the band manager or tribal council administrator (to get you onto the agenda of a meeting, for example).
- Ask someone (e.g., from another agency, the municipality or regional district, another band, another regional office who deals with another part of the traditional territory) who has a good working relationship with the First Nation to make an introduction on your behalf (either via telephone or at a meeting).

### **Consult with First Nations to understand the nature of First Nations interests in the lands and resources within the SRM planning area.**

The following information should be sought from First Nations and other sources, for consideration at the next stages of the consultation process:

- Are any First Nations asserting aboriginal rights or title over lands or resources in the SRM planning area? What is the nature of the assertion and on what information is it based?
- Does the SRM planning area include, or is it adjacent to, Indian reserves, former settlements or village sites?
- Does the SRM planning area include areas of traditional use or archaeological sites? If a traditional use study (TUS) was done, what does it indicate about traditional uses of the lands and resources in the SRM planning area?
- Do First Nations have overlapping aboriginal interests over land or resources in the SRM planning area? If so, do the overlaps conflict?
- Are any lands within the SRM planning area subject to a specific claim? Refer to: [http://www.ainc-inac.gc.ca/ps/clm/pis2\\_e.pdf](http://www.ainc-inac.gc.ca/ps/clm/pis2_e.pdf).
- Does the SRM planning area include known fishing, hunting, trapping, gathering, or cultural sites?

Where consultation with a First Nation does not produce adequate information about aboriginal interests, or where a First Nation does not engage in the consultation process, MSRSM staff must consider all evidence of aboriginal interests in the SRM planning area that is available to the Crown on reasonably enquiry. This may include taking the following steps:

- Access the consultative areas database and other sources of information identified in Resource D: Electronic Consultation Resources).
- Contact the Archaeology and Recreation Inventory, Archaeology and Registries Services Branch, for a list of archaeological sites in the SRM planning area.
- Check if any TUS under the provincial TUS program were completed in the plan area (refer to <http://extranet.for.gov.bc.ca/eScripts/PTUD/TUS/tusdata.asp>).
- Review the TUS database for TUSs conducted outside of the provincial TUS program for the years 1987–1997.
- Consult other historical and/or ethnographic materials.
- Contact other ministries/agencies to see if they have already compiled any information for the First Nations in the area.
- Contact the manager, IAMC to request legal advice from MAG on the First Nations interests in the SRM planning area.
- Check with Indian and Northern Affairs to see if there is a specific claim within the planning area. Refer to: [http://www.ainc-inac.gc.ca/ps/clm/pis2\\_e.pdf](http://www.ainc-inac.gc.ca/ps/clm/pis2_e.pdf).



*Respect the autonomy of each First Nations community and do not make assumptions about one community based on information about, or preferences of, other groups.*

*See Resource K: Contacts, for a list of government agencies that may be able to offer assistance on whom to contact in a specific First Nation, or provide an introduction to the First Nation.*

For more information on the consultation activities stage of the consultation process, refer to Appendix II for a link to the online version of the Provincial Policy for Consultation with First Nations (pages 25–26).

Once MSRM staff have identified all First Nations that may have aboriginal interests in an SRM planning area, and gathered relevant information needed to consider aboriginal interests in the development and approval of an SRMP, MSRM staff should proceed to the next stage of the consultation process.

### **(B) Considering Aboriginal Interests**

#### **Assess whether it is possible that aboriginal interests exist in the SRM planning area**

At the “considering aboriginal interests” stage of the consultation process, MSRM staff must assess the possibility that a sound claim of aboriginal rights or title exists that may subsequently be proven in court to be existing aboriginal rights or title. It is necessary to assess the possibility that a sound claim of aboriginal interests exists in order to determine whether, or how far, MSRM is legally required to consider aboriginal interests and seek ways of addressing and/or accommodating aboriginal interests in the development and approval of an SRMP.

MSRM staff must refer to the general indicators outlined below in order to assess the possibility that a sound claim of aboriginal interests exists. In doing so, they must take into account both information provided by First Nations about their aboriginal interests in the SRM planning area through the consultation process, and evidence of aboriginal interests in the SRM planning area that is available to the Crown on reasonable enquiry.

A combination of the following factors may indicate the possibility that aboriginal interests are sound. If these factors are present, MSRM may be legally required to consider aboriginal interests and seek ways of addressing and/or accommodating aboriginal interests in the development and approval of an SRMP:

- Title to the land has been continuously held in the name of the Crown.
- Indicators of aboriginal interests in the land exist that become evident from consultation and/or external evidence of First Nation use and occupation of the land, such as:
  1. land near or adjacent to a reserve or former settlement or village sites;
  2. undeveloped land such as parcels outside an urban area and adjacent to known fishing, hunting, trapping, gathering, or cultural sites;
  3. land in areas of traditional use or archaeological sites;
  4. land used for aboriginal activities;



5. notice of interest/aboriginal rights and/or title from a First Nation, even where made to another ministry or agency of the Crown; and
6. land subject to a specific claim.

A combination of the following factors may reduce the possibility that aboriginal interests exist, and may indicate that MSRM is not legally required to consider aboriginal interests and seek ways of addressing and/or accommodating aboriginal interests in the development and approval of an SRMP:

- little indication of historical aboriginal presence in the area (e.g., land is distant from current or historical reserves or settlement areas with no known aboriginal interests)
- land presently alienated in fee simple to third parties (length of occupation and the continuation of that interest will be important)
- land presently alienated on a long-term lease to third parties
- land within an area where the aboriginal interests of the First Nation in question have been exchanged for, or modified to be, treaty rights. Note that this factor does not lessen the need to consult, but will likely alter the focus of the consultation from aboriginal interests to treaty rights.
- land developed in manner that precludes the exercise of aboriginal rights or the enjoyment of aboriginal title as a right of present possession
- land within an urban area, or surrounded by lands that have been developed in a manner that precludes the exercise of aboriginal rights or the enjoyment of aboriginal title as a right of present possession
- no indication that a First Nation has maintained, or continued to assert, despite any interference resulting from European settlement, a substantial connection or special bond with the land since 1846
- land that was abandoned by the First Nation prior to 1846
- in the case of claimed aboriginal title, competing or conflicting aboriginal title claims to the same area by distinct First Nations (e.g., mutually exclusive overlapping claims). Such overlapping claims may point, however, to a higher possibility that aboriginal rights may be at issue in respect of those lands.

MSRM staff undertaking assessments based on the factors above should also contact other provincial ministries to determine if they have received internal advice and/or made assessments regarding the possibility that particular First Nations may have sound aboriginal interests. Consistency across government in assessing and responding to aboriginal interests is essential.

Assessments of the possibility that a First Nation may have a sound claim of aboriginal rights or title in an SRM planning area should be forwarded to the regional director or other MSRM decision maker. MSRM staff should also advise the regional director or other MSRM decision maker if there are any First Nations that may have an interest in the SRM planning area that have refused to engage in the consultation process.

For a more complete list of these indicators, see the “Decision Maker’s Rationale Template” contained in Resource J: Templates.

For more information on the “considering aboriginal interests” stage of the consultation process, refer to Appendix II for a link to the online version of the Provincial Policy for Consultation with First Nations, (pages 27–30).

*Be careful not to assume that a lack of information about sites in an area means that there is no potential that the area was/is not used for traditional aboriginal practices.*

If the assessment indicates that there is a reasonable probability that those aboriginal interests may be proven subsequently to be existing aboriginal rights and/or title, MSRM staff should proceed to the next stages of the consultation process. In the event that there is a limited possibility of the presence of aboriginal interests in the SRM planning area, it remains preferable that MSRM consult with any First Nations present in the area and pursue practical solutions to concerns expressed by First Nations, as discussed below.

## Stage 2: Considering the Impact on Aboriginal Interests

### Assess if the SRMP may result in an infringement of aboriginal interests.

As discussed below under “Practical Solutions for Addressing First Nations Interests in Stages 1 and 2 of the Consultation Process,” MSRM executive encourages MSRM staff to avoid the assessments required under this stage of the consultation process, where possible, by attempting to address aboriginal interests through operational planning or other practical and reasonable solution. In the absence of solutions of this kind, proceed with the consultation activities under this stage of the consultation process.

At the “considering the impact on aboriginal interests” stage of the consultation process, MSRM staff must consider if the approval of an SRMP may result in an infringement of possible aboriginal interests identified in stage 1, that is of aboriginal rights and/or title that may be proven subsequently over lands in the SRM planning area.

In order to make this assessment, MSRM staff must review the details of the SRMP under consideration for approval, taking into account the following:

1. Would implementation of the SRMP potentially interfere with aboriginal activities on the land?
2. Does implementation of the SRMP provide for involvement of, or direct economic benefits to, First Nations which appear to have strong possibility of a sound claim of aboriginal title?

3. Would implementation of the SRMP change or damage the nature of the land or the availability of resources (e.g., fish or wildlife), and to what extent?
4. Would implementation of the SRMP result in resource extraction, is the resource renewable or non-renewable, and what effect will it have on the ability of First Nations to exercise asserted aboriginal rights?
5. Would implementation of the SRMP result in any of the land being sold to third parties as part of this activity?
6. Would implementation of the SRMP result in long-term leases or tenures being provided to third parties: are these leases or tenures renewable, and would their renewal involve further changes to the land or further extraction of resources?

In assessing a proposed SRMP based on these considerations, MSRM staff should keep in mind that, if approved, the SRMP will provide guidance and direction to operational decision makers in other agencies responsible for implementing the SRMP, and that these other agencies may be required to carry out further consultations with First Nations in issuing tenures or leases, or in making decisions that may have the effects described above.

See Resource J: Templates for a decision maker's rationale template that will assist decision makers in at this stage of the consultation processes.

For more information on the "considering the impact on aboriginal interests" stage of the consultation process, refer to Appendix II for a link to the online version of the *Provincial Policy for Consultation with First Nations* (pages 30–32).

If practical solutions have been found that address all of First Nations concerns, MSRM staff are not required to proceed with the remaining stages of consultation. However, if there appears to be a likelihood that approval of an SRMP may result in an infringement of aboriginal interests should they be proven subsequently in court to be existing aboriginal rights and/or title, MSRM staff should proceed to the next stage of the consultation process.

**PRACTICAL SOLUTIONS FOR ADDRESSING FIRST NATIONS INTERESTS IN STAGES 1 AND 2 OF THE CONSULTATION PROCESS**

MSRM Executive encourages MSRM staff to attempt to address aboriginal interests at stages 1 and 2 of the consultation process by proposing practical solutions that are put forward as reasonable arrangements for seeking to address asserted, but unproven, claims of aboriginal rights or title. Practical solutions do not require the province to assess the soundness of the aboriginal rights or title claims and may therefore enable MSRM staff to avoid stages 3 and 4.

In addition, MSRM staff may find it useful at stages 1 and 2 of the consultation process to develop practical solutions to address other aboriginal issues which it may be necessary to resolve in order to complete an SRMP in a timely manner (e.g., a First Nation's interest in economic opportunities associated with land and resource planning).

There is a range of practical solutions available to attempt to address aboriginal interests and issues at stages 1 and 2 of the consultation process, including:

- practical planning solutions (discussed below);
- informal arrangements, protocols or formal agreements to address, for example, a First Nation's potential role in the SRMP planning process, and outline the nature and conditions of a First Nation's participation in an SRMP; and
- the provision of economic benefits.

The following considerations may assist MSRM staff in developing practical planning solutions:

- It is easier to identify practical planning solutions when the First Nation is participating in the development of the SRMP;
- Practical planning solutions can be tailored to meet the preferences of different First Nations;
- Encourage First Nations to identify, and prioritize, the parts of the SRMP planning area that they do, or do not, have an interest in;
- Encourage First Nations to identify, and prioritize, the SRMP planning values that they do, or do not, have an interest in;
- Ask the First Nation how it would like to be consulted about the prioritized areas and values, and the preferred frequency of that consultation;
- Share electronic data with the First Nation, where appropriate; and
- Advise the First Nation that the SRMP is "a living document," that may be changed or refined to reflect their community's specific concerns by amendments to the SRMP or at the implementation stage.

Similarly, there are different forms of practical planning solutions that could be pursued during stages 1 and 2 of the consultation process to address aboriginal interest and issues. For example:

- If an area or value is of particular concern to a First Nation, adjusting the boundaries of the SRMP;
- Relocating or modifying management areas within the SRMP, where possible;
- Recommending restrictions on resource use in selected areas; and/or
- Extending SRMP timelines, if appropriate, to facilitate additional consultations;

Note that practical solutions for addressing aboriginal interests, including practical planning solutions that can only be implemented with the assistance of other agencies, must be developed with the involvement of those agencies.

Note also that practical solutions, including practical planning solutions, could set a precedent for other agencies similarly engaged in addressing aboriginal interests. When practical solutions have interagency implications, the Deputy Ministers Committee on Natural Resources and the Economy (DMCNRE) must be advised.

Once MSRM staff have developed practical solutions to address aboriginal concerns, it is important to seek written or verbal recognition from the relevant First Nations confirming that the solutions address their concerns and that they agree with the objectives of the SRMP. Recognition by First Nations should be documented in the SRMP to ensure that the SRMP will not be contested.

Further, if practical solutions are indeed found to address First Nations concerns, then MSRM staff are not required to proceed with the remaining stages of consultation.

*Creativity can go a long way toward identifying practical planning solutions to aboriginal interests. Time and thought invested in the early stages of the consultation process may help ensure a timely approval of the SRMP.*

### **Stage 3: Consider if Potential Infringement Could Be Legally Justified**

As discussed above, the regional director or other MSRM decision maker must be involved in stages 3 and 4 consultation activities and decisions. Stages 3 and 4 only arise when the province has assessed the soundness of a First Nation's claim of aboriginal rights or title, and it appears likely that aboriginal interests may be infringed by the implementation of an SRMP if the aboriginal interests were subsequently proven in court to be aboriginal rights or title. The manager, IAMC and MAG must also be consulted in decision making under stages 3 and 4.

At stage 3, the regional director or other MSRM decision maker, the manager, IAMC and MAG will consider whether the circumstances surrounding any potential infringement of aboriginal interests as a result of the implementation of the SRMP is compelling and substantial enough to justify the potential infringement, and whether the Crown will be able to meet its fiduciary obligations in the event that the aboriginal interests are subsequently proven to be existing aboriginal rights and/or title.

Where aboriginal rights and/or title possibly exist but have not yet been proven through a Court process, assessment of the adequacy of consultation at this stage requires that MSRM decision makers consider whether consultation was carried out diligently and meaningfully in a manner that attempted to address and/or accommodate aboriginal interests in a manner proportional to the soundness of those interests.

See Resource J: Templates for a decision maker's rationale, which sets out the factors that must be considered at this stage of the consultation process.

For more information on this stage of the consultation process, refer to Appendix II for a link to the online version of the Provincial Policy for Consultation with First Nations (pages 32–35).

If the likely infringement of aboriginal interests (should those interests be proven subsequently to be existing aboriginal rights and/or title) appears not to be justified, proceed to the next stage of the consultation process.

### **Stage 4: If Potential Infringement May Not Be Justifiable, Make Further Attempts to Address and/or Accommodate Aboriginal Interests**

The regional director or other MSRM decision maker will complete stage 4 in consultation with the manager, IAMC and MAG, if it appears that the possible infringement examined during stage 3 may not be justifiable.

At stage 4, the regional director or other MSRM decision maker, with input from the manager, IAMC and MAG, can choose to have staff

attempt to negotiate a resolution of the issue with the First Nation asserting the interest, or can request that another provincial agency seek to negotiate a resolution.

This stage may involve attempts to address and/or accommodate those interests through arrangements such as: a memorandum of understanding, treaty related measure, economic measure, land transfer, land designation, consultation protocol, information sharing agreement, economic/employment capacity building, research studies, or participation on advisory boards, stewardship committees, and local economic development committees.




It is critical that accommodation measures for any First Nation be consistent across government. Any proposed accommodation must be developed from a corporate perspective, and with the involvement of all agencies that may have a role in its implementation.

Where a proposed accommodation may set a precedent for addressing aboriginal interests, direction must be sought from DMCNRE.

For more information on the “attempt to address and/or accommodate aboriginal interests” stage of the consultation process, refer to Appendix II for a link to the online version of the *Provincial Policy for Consultation with First Nations* (pages 35–36).

## 2.4 Chart: Summary of Consultation Stages

The following chart presents the four primary stages a planner can expect to complete in consulting with a First Nation on an SRMP and in considering aboriginal interest.

Pre	<b>PRE-CONSULTATION ASSESSMENT</b> <b>Decision:</b> Assess whether consultation is required		 Provincial Policy Stages
	Evaluate the nature of aboriginal interests in the lands and resources within the SRMP area: ✓ Consider any information about aboriginal interests provided by First Nations ✓ Consider all evidence available to the Crown on "reasonable enquiry"		 MSRM Guidelines  Key Tasks and Decisions
1A	<b>INITIATE CONSULTATIONS: (A) CONSULTATION ACTIVITIES</b> <b>Task:</b> Identify appropriate methods of gathering and exchanging information needed to consider aboriginal interests in the development and approval of the SRMP		
	Identify First Nations interests and contacts: ✓ Research FN interests in the activity area ✓ Assess the level of consultation (band, council, etc.) Record ALL contact with an FN about a plan and/or decision, including: ✓ Actual contact with a FN by consultation mediums ✓ Attempt contact with an FN by consultation mediums	Determine first contact: 1st – Chief or council member 2nd – Band Manager, Tribal Council Administrator 3rd – Resource Management/referral contact 4th – Government contact with knowledge of FN	
1B	<b>INITIATE CONSULTATIONS: (B) CONSIDERING ABORIGINAL INTERESTS</b> <b>Decision:</b> Assess the possibility that a sound claim of aboriginal interests exists		
	<b>Task:</b> Attempt to address aboriginal interests by developing PRACTICAL PLANNING SOLUTIONS Assess the <b>possibility</b> that a sound claim of aboriginal interests may exist, based on a combination of the following factors: 1. Title to the land has been continuously held in the name of the Crown. 2. Indicators of aboriginal interests in the land that result from consultation and/or external evidence of First Nation use and occupation of the land, such as: (a) land near or adjacent to a reserve or former settlement or village sites; (b) land in areas of traditional use or archaeological sites; (c) land used for aboriginal activities; (d) notice of interest/aboriginal rights and/or title from a First Nation, even where made to another Ministry of agency of the Crown; (e) land subject to a specific claim. 3. Undeveloped land such as parcels outside an urban area and close to known fishing, hunting, trapping, gathering or cultural sites. Also consider factors listed in consultation guidelines which may reduce the possibility that aboriginal interests exist.		
2	<b>CONSIDER THE IMPACT ON ABORIGINAL INTERESTS</b> <b>Decision:</b> Assess whether implementation of the SRMP would result in infringement of possible aboriginal rights and title		
	<b>Task:</b> Attempt to address aboriginal interests by developing PRACTICAL PLANNING SOLUTIONS Assess whether approval of the SRMP may result in an infringement of possible aboriginal rights or title, taking into account the following: 1. Would the SRMP potentially interfere with aboriginal activities on the land? 2. Does the SRMP provide for involvement of, or direct economic benefits to, First Nations which appear to have strong possibility of a sound claim of aboriginal title? 3. Would the SRMP change or damage the nature of the land or the availability of resources (e.g. fish or wildlife), and to what extent? 4. Would the SRMP result in resource extraction, is the resource renewable or non-renewable, and what effect will it have on the ability of First Nations to exercise asserted aboriginal rights? 5. Would the SRMP result in any of the land being sold to third parties as part of this activity? 6. Would the SRMP result in long term leases or tenures being provided to third parties: are these leases or tenures renewable, and would their renewal involve further changes to the land or further extraction of resources? If practical planning solutions have been found, there is no need to proceed through stages 2 to 4.		
3	<b>CONSIDER IF POTENTIAL INFRINGEMENT COULD BE LEGALLY JUSTIFIED</b> <b>Decision:</b> Regional Director or other MSRM decision maker must consider whether there may be legal justification for potential infringement of aboriginal interests as result of the approval of the SRMP		
	Regional Director or other MSRM decision maker must consult the Manager, IAMC and MAG		
4	<b>IF POTENTIAL INFRINGEMENT MAY NOT BE JUSTIFIABLE, MAKE ADDITIONAL ATTEMPTS TO ADDRESS AND/OR ACCOMMODATE ABORIGINAL INTERESTS</b> <b>Decision:</b> Regional Director or other MSRM decision maker must assess need to develop measures to address and/or accommodate aboriginal interests		
	Regional Director or other MSRM decision maker must consult Manager, IAMC and MAG		

# Section 3:

## Important Considerations

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*First Nations should be encouraged to become involved in strategic planning in order to ensure that their interests are taken into account in the planning and management of their asserted traditional territory and potential future treaty land.*

### 3.1 Establishing Relationships with First Nations

In attempting to establish relationships based on trust with First Nations, it is important for MSRM staff to appreciate that First Nations have an oral tradition and that standard bureaucratic methods and practices may not be appropriate for First Nations consultation processes.

Most First Nations want to meet with provincial representatives face-to-face. Although this approach takes more time and effort, if completed early in the process, it may help to foster a better relationship and consultation environment.

Consider the following to help to build a relationship with a First Nation:

- Approach someone (from another agency, the municipality or regional district, another band, another regional office who deals with another part of the asserted traditional territory) who already knows the First Nation who can make introductions on your behalf (either via the telephone or at a meeting).
- Invite the First Nation into the process – sometimes an invitation is more welcoming than requesting their presence at a meeting.
- Learn as much as possible about each First Nation within the planning area.
- Visit the band/tribal council office, if possible, so that individuals dealing with SRMP issues on behalf of the First Nation can become more comfortable with MSRM staff.



## 3.2 Principles for Meeting with First Nations

- Attempt to reach an agreement or common understanding with the First Nation on a set of operating principles before beginning the consultation process.
- Structure meetings to allow for discussion of issues, recognizing that the oral tradition may require additional time.
- Establish a format and forums for ongoing communication.
- Allow diverse thoughts to be shared and consider everyone's input while bearing in mind that it is ultimately the aboriginal interests expressed by the First Nation's government that must be assessed.
- Demonstrate an open attitude toward First Nations issues, values, and objectives.
- Include the community in as many aspects of the decision making process as possible.
- Facilitate learning by other stakeholders about the First Nations community and their issues, including respect for First Nation traditional ecological knowledge and spiritual/cultural areas.
- Look within the First Nation community for knowledge and respect the integrity of its oral tradition.
- Be clear, direct, and forthright: "We are developing an SRMP and we don't really know what's going to be in it yet, but we would like to have your community involved in the development of the plan from the beginning."
- Using a variety of methods to consult with community leadership or membership is critical. Different strategies resonate with different people.
- Don't expect immediate follow-up or volunteered responses to information requests; be prepared to solicit these responses.

*Remember that First Nations have unique and dynamic cultures. MSRSM staff should be open to and respectful of this when conducting business with First Nations.*

*For more suggestions on how to engage First Nations see Resources E, F and G.*

### Consultation is a Two-way Street

The courts have recognized that consultation is a two-way street that requires First Nations to participate in consultation processes. The courts have also indicated that First Nations cannot attempt to stall a project by foregoing participation in a consultation process until the final stages of that consultation.

If, however, a First Nation chooses not to participate in consultation, MSRSM staff must attempt to meet with them (and provide a follow-up letter). At this meeting, MSRSM staff may wish to communicate:

- the benefits to participation with respect to protecting their aboriginal interests
- that to have a say in how its asserted traditional territory may be used in the future, consultation on SRMPs provides an invaluable

*Explain the downsides of not participating in the SRMP consultation process in a non-threatening way. Whether a First Nation participates or not in the consultation process, MSRM staff must consider all evidence of aboriginal interest that is available on reasonable enquiry.*

*Include all communication (written or verbal) regarding the attempts to establish the province's position on consultation in Resource J: Record of Consultation template.*

opportunity for the First Nation to have input into the very early stages of proposed land and resource use

- that if the First Nation wants input into the management of lands that it may have identified as potential future treaty settlement land, participation in the SRMP consultation process provides an opportunity for the First Nation to provide input, at an early stage of the land and resource use planning process.

**Keep in mind that, whether or not a First Nation participates in a consultation process, MSRM staff must consider evidence of aboriginal interests that is available on reasonable inquiry.**

### **Communicate the Province's Position**

First Nations may inform MSRM staff that they do not consider telephone calls, letters, or meetings to be consultation. MSRM staff **must** establish that it is the province's position that all of these elements form part of the consultation record by:

- clearly stating in person (and in a follow-up letter) that from the province's perspective, First Nations involvement at the planning level provides more timely and effective means of information sharing and of understanding aboriginal objectives, interests, and concerns with respect to a particular area
- clearly stating in person (and in a follow-up letter) that it is the province's position that " \_\_\_\_\_ " (list all the methods of consultation being used for the plan) are a part of the consultation process
- if possible, attempting to resolve potentially tense situations regarding the differing perspectives on consultation through discussion or negotiation (in these situations, MSRM staff should seek advice from the manager, IAMC).

### **Involving Industry in Consultations with First Nations**

Industry (e.g., forest licensees, mineral tenure holders, tourism operators) often has an interest in ensuring that consultation with First Nations has positive outcomes. While industry can assist MSRM staff with information exchange, communications and consultations, MSRM is ultimately responsible for ensuring that consultation obligations are fulfilled.

In circumstances where industry has agreed to assist or participate in consultations, MSRM staff must advise First Nations that efforts undertaken by industry will be considered by MSRM, along with other relevant information, in the consultation process.

MSRM staff must consider the following when involving industry in the consultation process:

- When involving industry in information exchange/communication, MSRM staff should verify that the First Nation is satisfied with industry's role in the exchange.
- Where industry is involved in consultations with a First Nation, MSRM is still responsible for ensuring that consultation obligations are met.
- MSRM should provide the proponent with the necessary guidance.
- First Nations may forego industry's involvement in the information exchange/communication process and elect to deal directly with provincial representatives. In this situation, MSRM staff should deal directly with the First Nation.

*See Resource I for more details on industry's potential role in consultation.*

# Resource A:

## First Nations–Provincial Cooperation and Engagement

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There are a number of ways in which the provincial government may engage with First Nations. Consultation is one approach and is the focus of these guidelines. However, in addition to consultation there are other approaches by which the provincial government may engage with First Nations. These are briefly discussed below.

**1. Accommodation:** The courts have been clear that the Crown has a legal duty to consult First Nations where their aboriginal rights may be affected and to seek to address or accommodate sound claims of aboriginal rights or title. One way to seek to address or accommodate aboriginal interests is through accommodation agreements. Accommodation agreements with First Nations may include transferring economic benefits, engaging First Nations in land-use planning processes, and seeking First Nations' input on resource management decisions. Such agreements help government meet its legal obligations and enhance certainty over the use of Crown lands and resources. Efforts are focused on creating predictable day-to-day economic activity on Crown lands, increasing access to provincial lands and resources, and facilitating economic development.

The Treaty Negotiations Office is responsible for providing overall coordination and support to line ministries and Crown agencies when appropriate. Ministries, including Sustainable Resource Management, are responsible for producing operational guidelines to implement the policy, and to negotiate and implement approved accommodation measures.

**2. Collaborative management:** Arrangements made between the Province and First Nations to involve First Nations in provincial land and resource management processes.

**3. Treaty:** A negotiated agreement between government and a First Nation that defines the rights and responsibilities of aboriginal peoples and the federal and provincial governments, and the relationships among them. The negotiation process may address far-reaching issues, such as land ownership, governance, wildlife and environmental management, financial benefits and taxation. Treaties are final agreements which have been ratified by all parties.

Note that the Provincial Policy for Consultation with First Nations and these ministry-specific guidelines do not apply to treaty rights. Consultation requirements with the Nisga'a, for example, are delineated in the Nisga'a Final Agreement. Future treaties will also delineate any consultation that may be required.

**Treaty settlement land:** The area of land that will be owned and managed by a First Nation pursuant to a treaty. The precise legal status of treaty settlement land and the extent of First Nation jurisdiction on it are the subject of negotiations and will be specified in each treaty. Some areas within treaty settlement lands will be held in private ownership, or otherwise designated for uses incompatible with public access. Other areas will accommodate public access as provided for in treaties.

**Treaty-related measures:** The Treaty-related Measures (TRMs) initiative is intended to provide a set of tools for both federal and provincial negotiators to strategically address issues faced at the treaty tables. TRMs are used to accelerate the treaty process by informing negotiations and addressing First Nations' concerns about, for example, the alienation of lands and resources during treaty negotiations. Each TRM is intended to remove hurdles to the negotiations, and therefore the linkages between the TRM and the acceleration of the negotiation process should be clear and agreed to by all parties, and the expected impacts should be obvious. They will be linked to negotiated provisions, or represent a portion of an anticipated feature or cost of a future treaty agreement.

# **Resource B: Sustainable Resource Management Plans and the Consultation Process**

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## **How to Make SRMPs Relevant to First Nations Communities**

### **What are SRMPs?**

SRMPs are intended to balance economic development and environmental conservation. SRMPs take direction from regional or sub-regional planning process. SRM planning is based on watershed boundaries, and produces objectives that are site-specific, results-based, set in an economic and ecosystem context, and are operationally relevant.

### **How do First Nations communities benefit by being involved in an SRMP?**

Participation in an SRM planning process may provide First Nations communities with opportunities:

- for an exchange of information with the province
- to achieve their cultural and economic goals
- to build their own strategic land and resource plans or maps depicting broadly defined land use zones (such as claimed moose hunting areas, medicinal plant gathering areas, or shellfish harvesting zones that some First Nations may prefer to site-specific TUS and archaeological-type data) that can be matched to the SRMP and integrated into it, where appropriate.

### **How to encourage First Nations communities to engage in an SRM planning process?**

The following may assist MSRM staff to facilitate First Nations involvement in SRM planning processes:

- Provide First Nations an opportunity to express their own priorities within an SRMP.
- Attempt to co-develop a process for seeking to reconcile land and resource use priorities.
- Respect the autonomy and uniqueness of each First Nations community.
- Look within the First Nations community for knowledge and expertise.

- Explain that SRMPs are longer term adaptive plans that support issues/values important to First Nations.
- Discuss how not participating may have implications for the First Nations community.

## Demonstrate How the SRMP “One-window” Approach to Planning Saves First Nations Time and Resources

SRM planning is the consolidated approach of MSRM to strategic land and resource planning at the landscape level on provincial Crown lands. SRM planning simplifies and coordinates an array of past processes, including local, watershed and landscape unit planning.

MSRM staff can use the following table to explain to First Nations how the new SRM planning system can consolidate consultations that would have to be conducted by individual provincial agencies within an SRM planning area.

Pre-SRMP system	SRMP system
Agricultural development area plans	Included in SRM planning
Area-based management of the forest sector	SRM planning is part of this management
Crown land plans	Replaced by SRM planning
Forest industry certification	SRM planning supports certification
Innovative forest practices agreements, results-based code pilots, enhanced forest management pilot projects	Will help develop SRMPs
LRMPs	Potential to change and maintain through SRM planning
Living rivers strategy	SRM planning supports this strategy
Mining	Addressed in SRM planning through a “two-zone” model
Results based code	SRM planning supports the new code
Wildlife management strategy	SRM planning incorporates this strategy and other conservation strategies
Working forest	SRM planning helps the implementation

## How to Consult Efficiently During the SRMP Process

Over time SRMPs are expected to integrate various issues and values in the planning area. In most cases, it will not be possible to deal with all issues simultaneously. In addition, the priorities to be addressed in an SRM planning area may change over time. Initially, SRM planners may deal only with one or two issues or values for the planning area.

For these reasons, MSRM staff may need to consult with First Nations several different times to discuss all the issues/values for the same SRM planning area. This presents challenges both for MSRM staff, when attempting to integrate all the issues/values, and for First Nations, who may feel frustrated by repeated consultations. To help ease First Nations frustrations, MSRM staff should:

- communicate that SRMPs are an ongoing process
- identify geographic areas of significance with the SRMP as soon in the planning process as possible
- ask First Nations which may have an interest in the SRM planning area how they would like to be consulted
- explain to First Nations that consultation on different issues/values will occur at different times so they know what to expect
- explain that different MSRM staff with different expertise may be visiting over time to deal with different issues/values as they are being addressed (offer to introduce new staff)
- if possible, provide the First Nation with a general timeline for each value that will be consulted on.

The following may assist MSRM staff to efficiently address First Nations concerns:

- Determine the First Nation's most significant concerns with the values/issue currently being planned for, and try to deal with those first. (In this way, the consultation processes that require the most time will be completed up-front, and the First Nation may be willing to consult on less significant issues via the telephone, faxes, or letters.) Next, ask the First Nation how it would prefer to be consulted on these priorities:
  - *how* they would like to be consulted about the prioritized values for these most important concerns
  - the preferred *process*
  - the preferred *person* to contact about each value (e.g., a fisheries person, timber person, or does one person act as the contact for all values?)
  - the preferred *frequency* of consultation (e.g., every two weeks; once a month; after each new next draft is completed; after the maps are drafted).



- Learn from early consultation sessions. Ask each First Nation what has and hasn't worked for them, and if they would like to shorten the time spent on consultation in the future (and if so, how would they suggest that happen?).
- Maintain a record of all First Nations interests/concerns identified over the course of the SRM planning process, and use to determine possible patterns that may help future consultations run more efficiently.

## What to do if a First Nation Chooses Not to Engage in the Planning Process

Some First Nations communities may choose not to participate in an SRM planning process. When this occurs, MSRM staff must undertake the following to ensure due diligence:

- Fully document all efforts to contact, consult and establish a working relationship with the First Nation (use the template for record of consultation and other templates contained in *Resource J*).
- Ensure that the First Nation has been provided with an explanation of MSRM's consultation process and the First Nation's role in this process.
- Seek assistance of other MSRM staff, or staff from other agencies, who have good working relationships with representatives of the First Nation.
- Document why the First Nation refuses to engage in the process.
- Request a formal written reply from the First Nation that is refusing to engage in the process stating that it will not participate and why.

# Resource C:

## Questions and Answers

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The following questions and answers can assist MSRM staff to address issues that may arise when consulting with First Nations on an SRMP.

- Q:** *How do I respond when a First Nation asserts that their participation in an SRM planning process, or in information exchange and/or consultation processes associated with an SRM planning process, “is not consultation”?*
- A:** “The province regards participation by the First Nation in the development and implementation of the land use plan as an opportunity both to share information with the province about their interests in the planning area and for the province to attempt to address these interests. In this sense, the province regards First Nations’ involvement in planning processes as a form of consultation. At the same time, the province remains committed to carrying out such further consultation as may be required to meet its obligations to First Nations respecting specific land and resource development proposals.”
- A:** “The province regards First Nations’ involvement in planning processes as a form of consultation.” This planning process may not meet all the province’s obligations to consult, but it can help us build an information base to ensure your interests are identified and considered.”
- A:** “First Nations’ involvement in SRM planning process is an effective way to share information about the First Nations interests, concerns and objectives with respect to the SRM planning area. In this sense, the province regards First Nations’ involvement in planning processes as a form of consultation.”
- Q:** *How do I respond when a First Nation asserts that it will not engage in consultations on an SRMP until it has a formal consultation agreement with MSRM?*
- A:** “Is there another way to address your consultation concerns that we can work on together right now?”
- A:** “Do we need a formal agreement to talk about this?”
- A:** “We will consider your request for a formal consultation agreement.”

- Q:** *How do I respond when a First Nation asks if the information and comments it provides through the consultation process are guaranteed to be reflected in the SRMP?*
- A:** “I cannot make this guarantee, but MSRM will certainly attempt to incorporate your input, address your interests, and consider your recommendations, within the targets, goals, and limitations of the SRMP.”
- Q:** *How do I respond when a First Nation asserts that the province is not authorized to carry out land and resource planning in its asserted traditional territory?*
- A:** “The province maintains that it does have authority to undertake land use planning on provincial Crown lands. The province will ensure that appropriate consultations take place when decisions that have the potential to infringe aboriginal rights or title are made by the Crown.”
- A:** “A general refusal to participate in an SRM planning process makes it difficult for MSRM to attempt to address any interests or concerns your community may have with the proposed SRMP.”
- Q:** *How do I respond when a First Nation asserts that it opposes any provincial government land and resource planning processes in its asserted traditional territory until it has concluded a treaty?*
- A:** “The province is not prepared to cease all land and resource planning processes pending conclusion of a treaty.”
- Q:** *How do I respond when a First Nation asserts that it lacks capacity to participate in consultations associated with an SRMP and/or that it will not participate until the province provides it with financial assistance to develop the necessary capacity?*
- A:** “If there is any way we can make the consultation process easier for you, we would be happy to help in ways that we can. We are open to your suggestions and to working with you to make the process as easy and efficient as possible.”
- A:** “Unfortunately, MSRM does not have funding to assist your community with capacity development. We would be happy to assist you to pursue potential sources of capacity funding (e.g., TNO or the federal government may have funds for this purpose).”
- Q:** *How do I respond when a First Nation asserts that it opposes the recommendations contained in a draft SRMP?*
- A:** “MSRM would like to know more about your specific concerns so that we can attempt to address them in the final version of the SRMP.”

**Q:** *How do I respond when a First Nation asserts that it charges a fee for consultation referrals?*

**A:** “Unfortunately, MSRM does not have any funds to pay First Nations to respond to referrals on SRMPs. However, if there is any way we can make the consultation process easier for you, we would be happy to help in ways that we can. We are open to your suggestions and to working with you to make this as easy and efficient as possible.”

**Q:** *What do I do when a First Nation asserts that it will not participate in consultation processes on an SRMP?*

**A:** Advise the First Nation that it is difficult for MSRM to attempt to address their interests and concerns if they do not participate in the consultation process. Also, advise the First Nation that you would be happy to meet with them to listen to discuss alternatives or options for consulting with them. In addition, for due diligence purposes, ensure that you document all your attempts to consult with the First Nation.

**Q:** *How do I inform a First Nation that has not responded to repeated attempts to consult that the SRMP is being developed without their input?*

**A:** Advise the First Nation that it is difficult for MSRM to attempt to address their interests and concerns if they do not participate in the consultation process. Also, advise the First Nation that you would be happy to meet with them to listen to discuss alternatives or options for consulting with them. In addition, send the First Nation a letter referencing the previous attempts MSRM has made to engage them in the consultation process (e.g., letters, faxes, telephone calls, site visits) and ask if they need additional time to respond to any of these efforts. Indicate in the letter that MSRM would like a response from the First Nation in xx days, so that we can attempt to address their interest and concerns. Offer to meet with representatives of the First Nation at their offices to discuss the draft SRMP and options for consulting. Point out to the First Nation that, in the absence of their involvement in the consultation process, MSRM will have to assess the First Nation’s interests based on other available information, and that MSRM would much prefer to receive information regarding their interests directly from the First Nation. Finally, for due diligence purposes, ensure that you document all your attempts to consult with the First Nation.

# Resource D:

## Electronic Consultation Resources

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### Provincial Government Electronic Consultation Resources

MSRM staff undertaking consultations with First Nations should access the following electronic databases. Where appropriate, MSRM staff should record in these databases information about their consultation activities with First Nations.

#### Consultative Areas Database

[http://maps.bcgov/apps/cbd/html/Ministry/min\\_main.jsp](http://maps.bcgov/apps/cbd/html/Ministry/min_main.jsp)

The consultative areas database is useful for initial consultation purposes, and in particular at the pre-consultation stage and stages 1 and 2 of the consultation process.

The consultative areas database was developed by MSRM in cooperation with other ministries and LWBC. It is intended to assist staff and decision makers in line ministries and agencies to carry out their consultation responsibilities.

The consultative areas database depicts the Province of British Columbia's understanding of the geographic areas within which First Nations have expressed an interest in being consulted on proposed land and resource activities. Information contained in the database about consultative boundaries was collected from a variety of sources, including First Nations, operations staff in various ministries and traditional use studies. The accuracy of this boundary information has not been verified through ethnographic research, nor in many cases has it been reviewed and confirmed by First Nations. For this reason, the database is intended as a consultation guide only. It is recommended that users err on the side of caution in relying on it for information about the outer extents of consultative boundaries.

As indicated on the consultative areas database web site, there are a small number of First Nations for which consultative boundaries have not been established.

The consultative areas database is not intended to create, recognize, limit, or deny any aboriginal rights, including title, that First Nations may have or impose any obligations on British Columbia or alter the legal

status or resources within the province or the existing legal authority of British Columbia. It is for internal government use only and should not be made available anyone not employed by the provincial government. A public version may be provided at some future date.

The consultative areas database has additional layers which show Indian reserves, BC Treaty Commission statement of intent boundaries, and provincial agency administrative areas, base maps such as cities, transportation corridors, and water bodies to assist users in identifying the relevant First Nations.

The following options are available to query the consultative areas database or view boundaries:

- **Query consultative area map** – Use an interactive map to zoom into an area of interest and query the map directly for information about which First Nations to contact for consultation purposes.
- **Search by organization name** – Search for contact information using the name of the First Nation as the search parameter.
- **View consultative areas map** – Download a provincial map in PDF format showing all the consultation boundaries. This map is not interactive and has been designed for printing/plotting purposes.
- **Additional reference maps** – Download provincial maps in PDF format showing Indian band office locations or British Columbia Treaty Commission statement of intent boundaries. These maps are not interactive and have been developed for printing/plotting purposes. The maps have been posted on the site for reference purposes only and are not intended for use in the context of consultation.
- **Download GIS data** – Download consultative boundary files in ESRI shape or microstation format. These files are for GIS users and do not include base mapping files.
- **E-mail list options** – Add your name to an email distribution list to be made aware of any boundary or contact information changes as they occur.

## Other Useful Links

There are a number of other electronic sources of information that MSRM undertaking consultations with First Nations may find it useful to access.

*Guide to Aboriginal Organizations and Services in British Columbia*  
[http://www.mcaaws.gov.bc.ca/aboriginal\\_dir/aboriginal\\_guide.pdf](http://www.mcaaws.gov.bc.ca/aboriginal_dir/aboriginal_guide.pdf)

*Traditional Use Study Information*  
<http://extranet.for.gov.bc.ca/eScripts/PTUD/TUS/tusdata.asp>

*First Nations' Community Profiles*  
<http://sdiprod2.inac.gc.ca/FNProfiles/>

*Specific Claims*  
[http://www.ainc-inac.gc.ca/ps/clm/bcm\\_e.pdf](http://www.ainc-inac.gc.ca/ps/clm/bcm_e.pdf)

# Resource E: Running a Successful Consultation Meeting

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The consultation process should be clearly explained to First Nations representatives in person, and should illustrate how information provided by them will, or will not, be considered in planning and decision making processes. The following suggestions are intended to assist staff to achieve this goal.

## Before

Bear the following points in mind in order to keep meeting expectations and agendas realistic:

- Accept that people may have other priorities in their personal and community lives.
- Remember that an initial meeting may just be about introductions and listening and that subsequent meetings may have to be scheduled to discuss the planning process.
- Do not be disappointed at low turnouts for meetings and demonstrate pleasure at the attendance you do receive.
- Recognize that community members attending the meetings may not be the decision makers.
- Prepare in advance for lengthy discussions and several consultative visits.
- Understand that open forum meetings increase the likelihood of meetings shifting off of topic.
- Realize that drop-in meetings can be effective.

The following considerations illustrate why it is important for MSRM staff to be flexible when scheduling meetings with First Nations:

- Be aware of the specifics of the school life in the community. If there is a school holiday, people tend to spend time away from the offices and with families.
- Band offices usually close on the days on and around the death of a community member, funerals, and statutory holidays. Some offices close early, or may not open, on Fridays.
- Summer is generally reserved for family and travel; do not expect people to be available to meet at this time.
- Many communities close their band offices over the lunch hour.

As a result, MSRM staff should:

- request a copy of the community calendar (if one exists) to help plan meetings around scheduled ceremonial activities
- plan for alternative meeting dates and times, and prepare for last minute changes to participants, locations, meeting times, and length of meetings
- allow for opening and closing prayers, lunch, coffee breaks, and reviewing of information when establishing the timing and/or agenda of a meeting
- provide reports or meeting agendas in advance, but anticipate that they may not be read prior to the meeting; build time into meetings to allow for people to review your material before you start
- advertise community meeting times in advance
- call the band office before leaving for a meeting to ensure it will be going ahead.

Also consider the following when arranging meetings with First Nations:

- Consider bringing a 'gift' to community meetings or events. This might include coffee, tea, donuts, bagels and cream cheese, fruit, for example.
- If possible, arrange transportation to meetings, especially for elders, if a good community turn-out is needed (or if specific individuals are required to attend the event).
- Get inside help – employ a community member to help organize meetings.

## During

Probably the single most important thing to remember during any meeting with First Nations is to be respectful, not only of their cultural perspectives and world views, but also of their community's priorities. Other important considerations include:

- First Nations are intelligent and informed people, and do not speak down to them.
- Avoid arguing or insisting that you are correct.
- Hand shakes and eye contact are okay.
- Provide as much information as possible.
- Exhibit self-deprecating humour where appropriate.
- Expect to bear the brunt of jokes.
- Do not be surprised by comments and/or jokes about the government, non-native people, colonial history, for example. Comments such as these are not generally intended to be personal attacks.



A very practical consideration for any meeting with First Nations is the need to provide visual aids that First Nations can refer to or have with them during internal meetings at their office. Take as many visual aids to meetings/workshops as possible to see which ones people feel most comfortable with when talking about their land and resource issues, including:

- maps
- charts
- PowerPoint presentations
- overheads
- photographs
- aerial/orthographic photographs
- satellite images
- flowcharts.

The following suggestions will help MSRM staff to prepare the most useful visual aids:

- Maps should have as many place names, water features, and topographical features as possible to help orient people “on the ground.” (Staff who work with maps in their jobs tend to forget that some people are not particularly comfortable translating two dimension features of a map to the three dimensional world).
- Provide hard copies of all PowerPoint slides and/or overhead presentations.
- Develop speaking notes in bullet format and use for charts, overheads or PowerPoint slides. Leave a copy of all bullet points with the First Nation for future reference.
- Blow up, draw out, or develop a PowerPoint slide/overhead for all relevant charts and take them to meetings/workshops. Alter any charts if necessary to accurately reflect the interests of a First Nation in a particular region. Go through each of the steps point-by-point and explain how each box relates to each other. Leave a copy of each flow chart used during the meeting with the First Nation for future reference.

Try to keep meetings “on topic,” but be respectful and tactful in doing so. Sometimes First Nations will use meetings with government staff as an opportunity to ask questions about other provincial initiatives/issues. The following suggestion may assist in keeping the discussion “on topic:”

- Admit when MSRM staff at the meeting do not have the authority to deal with a particular issue/concern. Follow up with a supervisor and report back to the First Nation.
- Work with TNO and other agencies (at all government levels) to get questions answered that First Nations have posed that can not be answered by MSRM staff, for example:
  - “I believe that LWBC (or whomever) is dealing with that. I’ll give them a call and get one of their staff to call you.”

- "I think that someone at TNO may be able to help with that."
- "I think the regional district has someone on staff that has just been hired to do that job. I'll find out who it is and get him or her to call you."

Follow through with promises to get answers from another agency.

- If a First Nation requests a formal consultation protocol, explore alternate ways to address their interests. It may be appropriate to propose:
  - "Is there another way to address your consultation needs that we can work on together right now?"
  - "Let's just talk about this for now."
  - "Do we need a formal agreement to talk about this?"

## After

It is very important for staff to follow up on action items committed to during meetings with First Nations. Following through on promises made during meetings goes a long way to building trust between the province and First Nations.

Following a meeting, you should also:

- prepare short report summaries following the meeting
- record action items from the meeting and demonstrate how the items are being addressed, and include the information in the report summary
- keep a copy of report summaries as part of the consultation "paper trail," and send a copy to the First Nation for their records
- provide follow-up information through regular emails, faxes and/or phone calls (check to make sure that the community checks its email regularly before using that method for follow-ups)
- provide copies of photographs, maps, tapes, reports, for example, to all project participants (as appropriate) that the First Nations requested during the meeting.

# Resource F: Preferred Consultation Language

The following table provides examples of statements that should be avoided when meeting with, or writing to, First Nations. These statements tend to be “red flags” that raise suspicions with the group with whom you are attempting to establish a constructive working relationship, and may lead to defensive responses that undermine First Nation participation in a planning process. The table also includes examples of preferred language for use in these situations.

Avoid	Preferred language
I will call you on Monday at 9:00 am; please have everything finished as I need to finish up my report.	I will give you a call next week to see how you are doing, answer questions, or help out in any way I can.
We hope to make a decision regarding the “_____” plan in 60 days.	We would like a response back from you within 60 days so that we have time to consider your input in our “_____” plan.
A plan is already set and cannot be modified.	The general areas and percentages have been established, but we may be able to move some categories around within the plan (e.g., will work well for OGMAs and Goal 2 Parks).
Showing draft number on a document when consulting.	Omit the draft number and simply put the word DRAFT on the document to be distributed. Also, inform the First Nation that “even draft 15 is still just a draft and carries no more weight than draft 1” and “your input can still change the plan.”
That has already been decided.	We would like your input on “_____”; and “We think we can manage your issues by_____”
We’re hoping this will meet your needs and that you will support the process.	Does this plan meet your needs? Are you able to support this process? Is there another process that will work better for you?
We want to meet with you bi-monthly.	How would you like us to get your input into our planning process? Would you like us to meet? (if yes) How often would you like to meet – every “x” weeks, when we have the next draft of the maps ready (etc.)?
You may regret not participating in the SRM planning process in the future.	If you want to have input into lands and resources planning, we recommend that you participate. If you want your interests regarding possible future treaty lands heard, we recommend that you participate.
It is to your detriment not to participate in the SRM planning process.	If you don’t tell us what your interests or concerns are, we can’t incorporate them in the plan.
Your presence is requested at a meeting to be held on “___” to discuss your issues with the “___” SRMP.	I would like to take this opportunity to invite you to a discussion group on “___.” The purpose of this gathering is to share ideas about the best way to communicate with each other when we begin discussing the “___” SRMP.
Read this report.	Could you review X,Y, Z, as they may relate to your community’s interests?
It is too soon in the process for First Nations involvement.	We’re developing an SRMP and we don’t really know what’s going to be in yet, but we want you to be involved.
Please call me as soon as you can.	When should I check back with you?
I need this information as soon as possible.	My report is due on Wednesday at 4 pm. Could you provide me with comments on Monday? Is it OK if I call you to follow up?

# Resource G: Establishing Personal Relationships

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Awareness of First Nations' cultural practices will assist meetings, workshops, telephone calls, written correspondence, and other contacts to proceed more smoothly and effectively. Genuine attempts by MSRM staff to respect First Nations culture and build relationships with communities will generally be appreciated. Aboriginal people will generally not expect government staff to know how to behave in all situations, and instead tend to respect staff who ask for advice or guidance on cultural matters. The following suggestions are intended to assist MSRM staff seeking to initiate a relationship, or improve a relationship, with a First Nation.

## The Importance of Introductions

If staff are unfamiliar with the First Nation they are seeking to begin consulting with, or have not had a successful consultation relationship with the First Nation in the past, the following may help to initiate or renew the relationship:

- Learn as much as possible about the First Nation before meeting its representatives face-to-face.
- Ask someone (e.g., from another agency, the municipality or regional district, another band, another regional office who deals with another part of the asserted traditional territory) with a good working relationship with the First Nation to make an introduction on your behalf (either via the telephone or at a meeting). Be creative here: use whomever is able to help bridge the gap.
- Make enquiries with agencies or other First Nation contacts to determine if the First Nation you are dealing with already has a set of formal consultation protocols.
- Invite the First Nation into the process – sometimes an invitation is more welcoming than requesting a presence at a meeting.

## Building Trust

A crucial element of successful relationships with First Nations is trust. But trust must be earned, and developed over time. The following can help to build trust with a First Nation:

- Help where you said you would help; do what you said you would do.
- Demonstrate an open attitude toward First Nations issues, values, and objectives.
- Acknowledge that traditional and ecological knowledge may be valuable in land use planning.
- Be open to blending different systems of knowledge (it may be counter-productive to go to a First Nation with a fixed research design and try to use traditional or local knowledge to confirm the results).
- Have adaptable expectations – the consultation process may not go as quickly or as smoothly as anticipated and the ability to adapt as the process continues is very important.
- Expect that, as in any community, individuals will differ in their opinions, capabilities, and interests. Do not assume that one person's suspicions of government or industry extends to the whole community.
- Expect that some people may favour economic development for their community while others may favour more traditional approaches to community development, and that the two approaches may not be exclusive.
- Be "yourself."

**It is important for sake of consistency to ensure that, where possible, the same MSRM staff are communicating with a First Nation. Frequent staffing changes tends to erode trust.**

Establishing a physical connection to a community can also help to build trust, and may be assisted by:

- visiting the band/tribal council office, when possible, so that individuals dealing with SRM planning issues on behalf of the First Nation become more comfortable with MSRM staff
- using local businesses such as the band store, gas station, and accommodations, where possible
- using band members where appropriate to assist the consultative process (e.g., working on project-specific jobs, handing out flyers, visiting homes to announce meetings, transporting people to meetings).

## Respectful Communication

The following may assist staff to develop respectful communication with First Nations:

- Agree to a set of operating principles for the consultation process.
- Be willing to meet to discuss contentious issues and offer the opportunity to explore options for addressing concerns.
- Ensure that all information provided to a First Nation is presented in a manageable and understandable format (i.e., use lay terms instead of technical terms and avoid acronyms).
- Allow the First Nation adequate time to review information, within the context of time limits imposed for the making of statutory decisions.
- Endeavour to end communication (e.g., correspondence, meetings, telephone calls) on a positive note.
- Use workshops/presentations to explain the referral process, the First Nation's potential involvement in the planning process and the anticipated on-the-ground effects of each component of the plan.
- Address decision making process issues (e.g., jointly establish a process), including timelines, for informing the First Nation when MSRM's decisions are expected and what decisions are made.
- Communicate MSRM's resource availability (e.g., staffing, any funding opportunities, partnership opportunities, equipment availability, employment opportunities).
- Attempt to educate other stakeholders about the First Nations community and their issues.

## Cross-cultural Training

Cross-cultural communication workshops can assist the parties to appreciate their cultural differences and develop respect for their counterparts.

Other measures that can assist the parties to learn more about each other include:

- field trips to contentious areas/sites of concern to allow First Nations the chance to comment on the location and its importance to the community. This may also help mitigate any misconceptions about an SRMP and allows local people to be the "experts."
- informal exchanges (e.g., in vehicles during travel/transportation to meetings). Informal contacts with community members allows them to see government staff in a non-business environment
- taking advantage of information gathered during oral interviews, documentary searches, traditional use/traditional ecological knowledge studies, and other sources to familiarize yourself with

the First Nations' culture. However, appreciate that the First Nation may seek guidelines regarding the use, ownership, and storage of traditional knowledge.

## **Building Relationships when an SRM Planning Process is Already Underway**

In the event that you are seeking to consult with a First Nation on a planning process that is already underway, ensure that you document why that First Nation was not contacted during the initial stages of the process, or document that they did not respond initially. In addition:

- provide the First Nation with clear and sufficient documentation of the process to date
- formally invite the First Nation to a meeting to discuss their involvement or, if possible, request that you make a presentation to the chief and council regarding the process
- if possible, rely on a MSRM staff member or other contact who is familiar with the First Nation to assist with introductions
- express the government's desire to obtain input from the First Nation and establish a working relationship with the First Nation before the process continues any further.

# Resource H:

## Types of Consultation Methods

The following table illustrates the range of methods that may be employed in consulting with First Nations, including methods appropriate for both informal information exchange and formal consultations. Some advantages and disadvantages of each method are noted.

Method	Benefits	Drawbacks
Formal Meetings/Presentations	<ul style="list-style-type: none"> <li>• Can speak directly to large groups</li> <li>• Can speak to decision makersAre often required in project terms of reference</li> </ul>	<ul style="list-style-type: none"> <li>• May not attract all of the people with whom you need to talk</li> <li>• Native groups are familiar with formal meetings, but may not prefer them</li> </ul>
Informal Meetings/Presentations	<ul style="list-style-type: none"> <li>• Smaller groups make for easier discussion</li> </ul>	<ul style="list-style-type: none"> <li>• May not attract all of the people with whom you need to talk</li> </ul>
Conference Calls	<ul style="list-style-type: none"> <li>• Saves on travel expenses</li> <li>• Can be easier for community members who might not work full time or live near the band office</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of face-to-face contact can cause misunderstandings</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Coffee/meal out of the community	<ul style="list-style-type: none"> <li>• Relaxed way to conduct business</li> <li>• Easy for businesses to pick up the bill</li> </ul>	<ul style="list-style-type: none"> <li>• May limit the number of participants</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Coffee/meal in the community	<ul style="list-style-type: none"> <li>• A format that many communities enjoy and appreciate</li> </ul>	<ul style="list-style-type: none"> <li>• Food must be prepared</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Correspondence	<ul style="list-style-type: none"> <li>• Saves on travel expenses</li> <li>• Provides First Nation with opportunity to officially advise government about their interests and concerns</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of face-to-face contact can cause misunderstandings</li> <li>• First Nations often feel overloaded by written referrals</li> </ul>
Email or Fax updates	<ul style="list-style-type: none"> <li>• Quick</li> <li>• Easy</li> </ul>	<ul style="list-style-type: none"> <li>• Not all communities and/or community members are using email or using it regularly</li> <li>• Never sure if the email or fax is read</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Housecalls/personal visits	<ul style="list-style-type: none"> <li>• Very personal approach</li> <li>• Gets message across directly</li> <li>• Uses/employs a community liaison</li> </ul>	<ul style="list-style-type: none"> <li>• Time consuming</li> <li>• Need a community liaison</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
TV/Ad Channel/Newsletters	<ul style="list-style-type: none"> <li>• Uses the local channels for getting information to community members</li> <li>• People will see these sources of information</li> </ul>	<ul style="list-style-type: none"> <li>• People may not respond to requests for information</li> <li>• Follow-up is required</li> <li>• Not appropriate for formal consultations by First Nation</li> </ul>



Method	Benefits	Drawbacks
Community Dinner	<ul style="list-style-type: none"> <li>• Communities are very familiar with this approach</li> <li>• Can use slides or other multimedia materials</li> </ul>	<ul style="list-style-type: none"> <li>• Time consuming and can be expensive</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Bringing people to you	<ul style="list-style-type: none"> <li>• Allows for a 'captive audience' at your sessions or meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Very expensive to fly people to meeting sites and to put them up in hotels</li> </ul>
Contact persons	<ul style="list-style-type: none"> <li>• Using one contact person gives specific responsibilities</li> <li>• You know who to work with and can develop a relationship with them</li> </ul>	<ul style="list-style-type: none"> <li>• Try to have an alternative contact person in case your primary person is away</li> </ul>
Drop-in Sessions (i.e., set up in one place for a few hours and wait for people to come to you)	<ul style="list-style-type: none"> <li>• Permits people to come and see your information or presentation at their convenience</li> <li>• Allows for direct one-on-one contact</li> </ul>	<ul style="list-style-type: none"> <li>• Can be time-consuming</li> <li>• It is possible no one will come</li> <li>• May not be considered appropriate for formal consultations by First Nation</li> </ul>
Interviews	<ul style="list-style-type: none"> <li>• Can use a community member to help you access people you want to speak with directly</li> </ul>	<ul style="list-style-type: none"> <li>• Potential interviewees might not want to talk to you</li> </ul>

# Resource I:

## Involving Industry in Consultations with First Nations

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Industry (e.g., forest licensees, mineral tenure holders, tourism operators) often have an interest in ensuring that consultation with First Nations has positive outcomes. While industry can assist MSRM staff with information exchange, communications and consultations, MSRM is ultimately responsible for ensuring that consultation obligations are fulfilled.

In circumstances where industry has agreed to assist with information exchange, MSRM staff must advise First Nations that information exchanged, and communication between, industry and a First Nation will be considered by MSRM, along with other relevant information, in the consultation process.

MSRM staff must consider the following when involving industry in the consultation process:

- When involving industry in information exchange/communication, MSRM staff should verify that the First Nation is satisfied with industry's role in the exchange.
- Where industry is involved in consultations with a First Nation, MSRM is still responsible for ensuring that consultation obligations are met.
- MSRM should provide the proponent with the necessary guidance.
- First Nations may forego industry's involvement in the information exchange/communication process and elect to deal directly with provincial representatives. In this situation, MSRM staff should deal directly with the First Nation.

The following may assist industry in its consultations with First Nations:

- Learn as much as possible about each First Nation within the operating area.
- Create improved lines of communication between itself, First Nations, and the province.
- Communicate resource availability openly:
  - staffing devoted to the particular issue
  - TUS/TEK funding
  - partnership opportunities
  - equipment loan/assistance
  - technology loan/assistance

- software loan/assistance
  - employment opportunities
  - job-shadowing opportunities
  - small business tenure opportunities
  - on-the-job training opportunities
  - capital cost assistance
  - joint venture opportunities.
- Demonstrate respect for the knowledge of all First Nations people, regardless of their level of formal education.
  - Provide compensation for First Nations' technical expertise, and traditional knowledge, for example.
  - Recognize professional accountability and liability.
  - Participate in cross-cultural awareness activities (partnerships between industry, First Nations, and government can struggle unless all parties share a commitment to developing effective communication strategies, understandings of cultural differences, and respect for their partners).
  - Share access to electronic data, where appropriate, including air photos, test/assessment results, topographic maps, logging maps, and hydrology maps.
  - Understand that information gathered during oral interviews, documentary searches, traditional use/traditional ecological knowledge studies is valuable and useful (there should be clear guidelines regarding the use, ownership, and storage of traditional knowledge).
  - Participate in local economic development committees which includes First Nations and local residents.
  - Respect the autonomy and diversity of each community.
  - Exercise flexibility when dealing with First Nations (e.g., allow the necessary time to build trust).
  - Foster long-term relationships with First Nations (e.g., use the same contact person/people whenever possible and give that person the necessary authority to deal with issues raised by First Nations).

# Resource J: Templates

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In maintaining a record of consultation efforts, keep in mind that the record will be used by regional directors or other decision makers in deciding whether to approve an SRMP, and that it could potentially be produced as evidence in court.

For due diligence purposes, it is essential that staff document all consultations or attempted consultations with First Nations. If in doubt about how much information to record, it is best to err on the side of too much information.

The following templates have been developed to assist staff to keep an accurate and complete record of all consultations or attempted consultations with First Nations:

- Template for record of consultation
- Template for record of decision maker's rationale
- Template for record of attempts to address and/or seek workable accommodations of aboriginal interests
- Template for consultation contacts.

It is recommended that each template be printed on brightly coloured paper that is easy to locate, and placed in an obvious location in the file folder or binder/stapled to the inside of a folder.

## Description of Record of Consultation

The record of consultation template is intended to assist staff to record all information that may be relevant to regional directors or other decision makers to make and justify their decisions.

Use a separate record of consultation form for each First Nation that is consulted with on each project.

In addition, use a separate record of consultation form for each project. In some cases, it may be useful to use a separate form for each value that a First Nation is consulted on during a project. If, for example, staff begin an SRMP by consulting on biodiversity and then visit the same First Nation six months later to consult on recreation and tourism values, two separate forms may be used to record the consultation efforts.

In each record of consultation, document the following information:

**First Nation:** for example, Canoe Creek or Cariboo Tribal Council (depending on which level at which you are consulting).

**Project:** for example, Horsefly SRMP, Recreation and Tourism

**Date:** Day, month, and year for each type of consultation. Even if two or more occur on the same day (e.g., letter sent out and checked the consultative boundary database), they need to be recorded as a separate consultation actions.

**Type of Consultation:** Consultation methods (e.g., telephone calls, meetings, site visits) may vary from situation to situation and First Nation to First Nation. Methods may also differ depending upon how staff have consulted with a particular First Nation in the past, the preferences of the First Nations (where reasonable), the type of information needed and other factors. Regardless of the method, all consultations or attempted consultations throughout the SRM planning process must be documented.

Use the following examples as a guide for filling in this particular field:

- letter
- telephone call
- reviewed TUS/traditional ecological knowledge study (TEK)
- reviewed consultative boundary database
- commissioned archaeological overview assessment (AOA)
- site visit (e.g., visited band office)
- informal meeting (e.g., coffee shop, restaurant)
- planned meeting
- workshop/presentation
- talked to staff from another provincial or federal agency or from own office (e.g., WLAP – record name and title of person)
- information exchange
- external evidence, based on reasonable enquiry (not obtained through consultation with First Nation).

**Person Contacted/Title:** (e.g., Jimmy Smith, Chief; Jane Smith, Band Manager)

**First Nation Response:** Record all (or none) of the responses received from the First Nation, for example:

- received response letter dated April 25, 2002 – in file
- no response
- was asked to leave meeting
- requested face-to-face meeting and set one up for October 8, 2002
- requested face-to-face meeting and was told: “This isn’t consultation and we want nothing to do with the government”

(for site visit) arrived at band office at 2:00 but doors were locked and no one was on site

- (for telephone call) left message for “ \_\_\_\_ ”; had not called back by “ \_\_\_\_ ”
- (for TUS/AOA) sites identified – notes in file
- (for meeting) meeting minutes in file
- (for informal coffee “meeting”) made notes on topics discussed after the meeting – notes in file
- (for workshop) copy of overheads in file, plus notes from roundtable
- (for chance encounter) gave “ \_\_\_\_ ” a ride into town and told him/her I was having trouble contacting “ \_\_\_\_ ” about the new SRMP. He/she said they would pass the message on.

**Comments:** This section is for extra notes or observations that apply to the consultation, or to the attempt at consultation. Personal observations and interpretations are not to be included here; keep strictly to the facts.

### Template for Record of Consultation

**First Nation:** \_\_\_\_\_ **Project:** \_\_\_\_\_

Date	Type of consultation	Person contacted/title	First Nation response	Comments

## Description of Record of Decision Maker's Rationale

The consultation process should inform decision makers of any possibility that decision(s) they make on proposed SRMPs may result in an infringement of aboriginal interests. Decision makers will also need to consider whether any attempts that were made to address and/or reach workable accommodations of aboriginal interests are adequate to justify any possible infringement.

Where consultation does not produce adequate information to enable an evaluation of the soundness of aboriginal interests, decision makers must rely on other sources of "reasonably available" information, such as archaeological studies, existing TUS/TEKs, local knowledge, archival resources, and legal advice to make an initial determination of whether aboriginal interests in the area give rise to the possibility that aboriginal rights and/or title may be proven.

Once the decision maker has considered the possible impacts of the SRMP on aboriginal interests, the decision maker must consider whether the circumstances surrounding any potential infringement of aboriginal rights and/or title as a result of the approval of the SRMP is compelling and substantial enough to justify the infringement. The MSRMP decision maker must seek legal advice prior to making these decisions. In all cases, the involvement of MAG will be coordinated by the manager, IAMC.

Senior decision makers should set up a process and timeline for their decision making and inform First Nations when a decision can be expected, and subsequently, what that decision is. The Record of regional director's rationale template will help decision makers ensure that this process is carried out adequately.

## Template for Record of Decision Maker’s Rationale

First Nation: \_\_\_\_\_ Project: \_\_\_\_\_

Stage	Question to be answered	Yes	No	Justification for proceeding to next step
Pre	<ul style="list-style-type: none"> <li>• Existing MSRM consultation protocol?</li> <li>• Asserted traditional territories id'd?</li> <li>• Existing treaties and/or treaty rights id'd?</li> <li>• SOIs id'd?</li> <li>• All FNs with potential interest in area id'd?</li> </ul>			Based on these answers: Is consultation required? (A "no" answer is unlikely) <hr/> <hr/> <hr/>
1a1b	<ul style="list-style-type: none"> <li>• TUS sites in area/close to area?</li> <li>• Archaeological sites in area/close to area?</li> <li>• Historical/ethnographic research reviewed?</li> <li>• Area subject to a specific claim?</li> </ul> <p><b>Indicators against FN interests:</b></p> <ul style="list-style-type: none"> <li>• Area alienated in fee simple?</li> <li>• Area alienated on a long-term lease?</li> <li>• Area too developed/alterd for FN to exercise aboriginal rights?</li> <li>• Area abandoned by FN prior to 1846?</li> <li>• Competing/conflicting title claims?</li> </ul> <p><b>Indicators for FN interests in SRMP:</b></p> <ul style="list-style-type: none"> <li>• IRs/settlements adjacent to/within SRMP?</li> <li>• Evidence of historical aboriginal presence?</li> <li>• Evidence of substantial FN connection to area?</li> <li>• FN indicated they have interests in area?</li> <li>• Aboriginal activities occurring in area?</li> <li>• Crown title held continuously in area?</li> <li>• Known fishing/hunting/trapping/gathering/cultural sites in area?</li> <li>• <b>Practical Planning Solutions</b> identified to attempt to address FN interests? If no, why not? If yes, provide details.</li> </ul>			"Yes" answers to more than one "indicators for interest" means FN interests must be considered, and that the SRMP may result in an infringement. Based on answers provided, is further consultation required? <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>



Stage	Question to be answered	Yes	No	Justification for proceeding to next step
2	<p><b>Consider the impact of SRMP on interests:</b></p> <ul style="list-style-type: none"> <li>• Will SRMP interfere with aboriginal activities?</li> <li>• Will SRMP provide for FN economic involvement if potential aboriginal title strong?</li> <li>• Will SRMP alter land/resources used by FN? Will SRMP result in land being sold?</li> <li>• Will SRMP result in long-term leases/tenures that could alter land/resources used by FN?</li> <li>• Would renewable leases/tenures alter land/resources used by FN?</li> <li>• Practical Planning Solutions identified to attempt to address FN interests?</li> <li>• If no, why not? If yes, provide details.</li> </ul>			<p>Consider first part of the Sparrow test if interest is an asserted aboriginal right. Based on answers provided, if unlikely that the SRMP will infringe on interests, is further consultation required?</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
3	<p><b>Consider if there are compelling and substantial reasons for potential infringement of aboriginal interests:</b></p> <ul style="list-style-type: none"> <li>• Compelling and substantial legislative objective as identified in Sparrow and Gladstone (for aboriginal rights) and Delgamuukw (for aboriginal title)?</li> <li>• Extent of infringement id'd?</li> <li>• Extent of significant accommodation id'd?</li> <li>• MSRM engaged in sufficient, diligent, and meaningful consultation?</li> <li>• Fiduciary obligations met?</li> <li>• Attempted to address interests and/or reach accommodation where sound case exists?</li> <li>• Consulted with the Manager, IAMC for anything other than potential minor infringement?</li> <li>• Infringement appear justifiable? (Consult with the Manager, IAMC, and MAG)</li> </ul>			<p>Describe types &amp; levels of possible infringement:</p> <hr/> <hr/> <hr/> <hr/> <p>Describe attempted/successful accommodation:</p> <hr/> <hr/> <hr/> <hr/> <p>Based on answers provided, potential infringement appears justifiable?</p> <hr/> <hr/> <hr/> <hr/>
4	<p><b>In consultation with the Manager, IAMC and MAG:</b></p> <ul style="list-style-type: none"> <li>• Will a planning solution suffice?; or</li> <li>• Is further accommodation required?</li> </ul> <p><b>If further accommodation is required:</b></p> <ul style="list-style-type: none"> <li>• Can a resolution be negotiated with the FN?</li> <li>• Have opportunities to address and/or accommodate interests through a formal agreement been offered?</li> <li>• If yes or no, describe in right column.</li> </ul>			<p>If yes to a resolution and/or formal agreement, describe:</p> <hr/> <hr/> <hr/> <hr/> <p>If no to a resolution and/or formal agreement, list reasons:</p> <hr/> <hr/> <hr/> <hr/>

## Description of Record of Attempts to Address and/or Seek Workable Accommodations of Aboriginal Interests

This template is to be used to record MSRM’s attempts to address and/or seek workable accommodation of aboriginal interests through practical planning solutions or formal accommodations at any stage of the SRMP process. Ideally, the template should provide the background for showing how information provided by a First Nation was considered in the decision making process and in planning. In order to achieve this objective, the following information must be recorded on the template:

- the First Nation being consulted with
- the name of the project
- the date changes were made
- a summary of the original plan
- a summary of the amended plan that accommodates interests
- how the First Nation was informed of the change (e.g., in a letter, fax, telephone call, at a meeting).

### Template for Record of Attempts to Address and/or Seek Workable Accommodations of Aboriginal Interests

First Nation: \_\_\_\_\_ Project: \_\_\_\_\_

Date	First Nations issue(s)	Original plan	Attempts to address and/or seek workable accommodations	Informing First Nations

## Description of Consultation Contacts

This template should be used to record each provincial, federal, municipal, regional, or other contact that MSRM staff have communicated with over the course of the consultation process because they either have some sort of relationship with, or information on, the First Nations being consulted with. The following information should be recorded for each contact:

- name
- title
- organization
- information/knowledge (e.g., advised to contact Jimmy Smith first; offered to introduce me to the Chief and Council; has consulted with First Nation in past and offered several useful tips).

### Template for Consultation Contacts

Name	Title	Organization	Information/Knowledge

# Resource K: Contacts

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MSRM staff requiring assistance with consultation issues, advice regarding MSRM's First Nations consultation guidelines for sustainable resource management planning, or the provincial policy for consultation with First Nations, or requests for legal advice, should contact the manager, IAMC for their region.

MSRM staff do not have the legal capacity to – and must not – make legal determinations of the soundness of aboriginal interests or existence of aboriginal rights and/or title.

In order to properly assess the possibility that a sound claim of aboriginal interests exists, MSRM staff may require legal and/or research advice from the Ministry of Attorney General.

## Other Useful Contacts

### Provincial Government

The following information is accurate as of March, 2003. If branch names or telephone numbers are incorrect, consult the BC Government Directory at <http://www.dir.gov.bc.ca> for up-to-date information.

Ministry of Agriculture Food and Fisheries  
Trade and Intergovernmental Relations Branch  
Branch Telephone: (250) 356-0247

Treaty Negotiation Office  
Director, Consultation  
TNO Reception: (250) 356-8281

Chief Negotiator, Consultation and Accommodation  
TNO Reception: (250) 356-8281

Ministry of Energy and Mines  
Aboriginal Affairs Branch  
Telephone: (250) 952-0502

Ministry of Forests  
Aboriginal Affairs Branch  
Telephone: (250) 356-6064

Environmental Assessment Office  
Telephone: (250) 387-5606

Land and Water B.C. Inc.  
Telephone: (250) 387-1736

Ministry of Transportation  
Properties and Business Management Branch  
Telephone: (250) 387-6931

Ministry of Water, Land and Air Protection  
Fish and Wildlife Recreation and Allocation Branch  
Telephone: (250) 387-9771

Parks and Protected Areas Branch  
Telephone: (250) 387-5002

Ministry of Community, Aboriginal and Women's Services  
Aboriginal Directorate  
Telephone: (250) 387-2199

BC Hydro  
Aboriginal Relations Branch  
Telephone: (877)-461-0161

Oil and Gas Commission  
Aboriginal Relations and Land Use Branch  
Telephone: (250) 261-5749

## **Federal Government**

The following information is accurate as of March, 2003. If branch names or telephone numbers are incorrect, consult the Federal Government Electronic Directory <http://direct.srv.gc.ca> for up-to-date information.

Canadian Environment Assessment Agency  
Negotiations  
Telephone: (604) 666-9344

Canadian Forest Services  
First Nations Forestry Program  
Telephone: (250) 363-6014

Canadian Heritage  
Aboriginal Issues  
Telephone: (604) 666-0176

Canadian Wildlife Service  
Aboriginal Program Advisor  
Telephone: (604) 940-4653 or (250) 833-9855  
  
Aboriginal Liaison – Species at Risk  
Telephone: (819) 994-1936

## CONTACTS

Environment Canada  
Aboriginal Affairs  
Telephone: (819) 994-3406

Federal Treaty Negotiations Office  
Vancouver Offices  
Telephone: (604) 775-7114

Indian and Northern Affairs  
Vancouver Office – General Inquiries  
Telephone: (604) 775-5100

Lands and Trust Services  
Telephone: (604) 666-5171

Industry Canada  
British Columbia/Yukon, Aboriginal Business Canada  
Telephone: (604) 666-5401

Natural Resources Canada (NRCAN)  
Metis and Non-status Indians  
Telephone: (613) 996-2007

Policy Planning on Aboriginal Issues  
Telephone: (613) 995-5115

Parks Canada  
Treaty Negotiations and First Nations Issues  
Telephone: (604) 666-6400

### **Local Government**

Union of BC Municipalities  
Aboriginal Affairs Office  
Telephone: (604) 270-8226

# **APPENDIX I:**

## **Legal Advice – Confidential**

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[The information contained in this section constitutes legal advice and is subject to solicitor/client privilege. It is not to be circulated outside of the provincial government. To ensure this, it is contained in a separate document.]

# **APPENDIX II:**

## **Provincial Policy for Consultation with First Nations**

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[October 2002]

Available on the Ministry of Sustainable Resource Management's web site  
at: <http://srmwww.gov.bc.ca/clrg/alrb/cabinet/ConsultationPolicyFN.pdf>