

# MÉTIS NATION BRITISH COLUMBIA



**MÉTIS NATION**  
BRITISH COLUMBIA

## CONSULTATION GUIDELINES

ADOPTED JUNE 2020

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## Letter from President:

Welcome to the BC Métis Nation governed by Métis Nation British Columbia (MNBC).

The duty to consult and, where appropriate, accommodate is part of a process of fair dealing and reconciliation.<sup>1</sup> Consultation should be conducted with the objective of avoiding infringement of Métis rights and traditional land-use. Where avoidance is not possible, consultation must be conducted with the goal of mitigating such infringement.

These MNBC Consultation Guidelines address questions about how consultation for land management and resource development should occur in relation to activities such as exploration, resource extraction, and management of forests, fish, and wildlife.

The guidebook provides an effective procedure for minimizing impacts on Métis rights and traditional land-use. The objective is to produce better communication, stronger relationships, and a Métis-specific approach for engagement with the Crown and industry.

We look forward to working with proponents during this important moment of Métis reconciliation with both the federal and provincial governments, as well as industry. These guidelines reflect a commitment on the part of MNBC, as well as project proponents, to land and resource stewardship in British Columbia.

Natural resources are vitally important to Métis culture in BC. As Thomas Isaac wrote in his 2016 Report, “reconciliation is more than platitudes and recognition. Reconciliation flows from the constitutionally protected rights of Métis protected by Section 35 and is inextricably tied to the honour of the Crown and must be grounded in practical actions.” MNBC will work diligently and in good faith to protect the resources that Métis people in BC rely on as a way of life and cultural connection. MNBC’s vision is to build a proud, self-governing, sustainable nation in recognition of inherent rights for our Métis Citizens.

With your continued support, and by working together, we can reach our highest potential for the stewardship of BC’s natural resources.



Clara Morin-Dal Col,

President, Métis Nation British Columbia

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<sup>1</sup> Aboriginal Affairs and Northern Development Canada, *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (Guide) Catalogue No. R3-111/2012E-PDF (Ottawa: Aboriginal Affairs and Northern Development Canada, March 2011) at 6. (*Federal Guidelines*)

## **MNBC Consultation Guidelines**

We are pleased to provide these consultation guidelines to governments, businesses, project proponents, and individuals, including MNBC Citizens, that may have interests within the BC Métis Nation. The MNBC Consultation Guidelines are based on our asserted Aboriginal rights, title, and interests within British Columbia and our relationship with the land. Our Elders have taught us that we have a responsibility to steward and share the land. We have been marginalized over the past 150 years, and it is our intention to reverse that pattern and once again fulfill our obligation to take care of the land and share its resources.

These guidelines acknowledge the obligation of governments to consult with and accommodate Métis interests within the BC Métis Nation and provide a collaborative and non-adversarial means for fulfilling that obligation.

These guidelines do not constitute a blanket approval for land, water, and resource decisions that have been made in the past in which MNBC did not participate. Those decisions, and the interests that have been created from them, need to be dealt with through individual processes involving MNBC, the responsible governments, and the various stakeholders in our community.

These guidelines are to be used as a mechanism to further the growth of the relationships that we have built and to provide a certainty of purpose and intent that will invite and enable new partnerships and relationships. It is an invitation to work together with the full, up front, and transparent knowledge of our needs and expectations.

### **Why Are These Guidelines Important?**

A uniform approach to engaging in consultation serves several purposes. Project proponents must satisfy the requirements of a regulatory process, including engaging potentially affected communities in consultation; however, there is no legal obligation to negotiate benefits for the Métis.

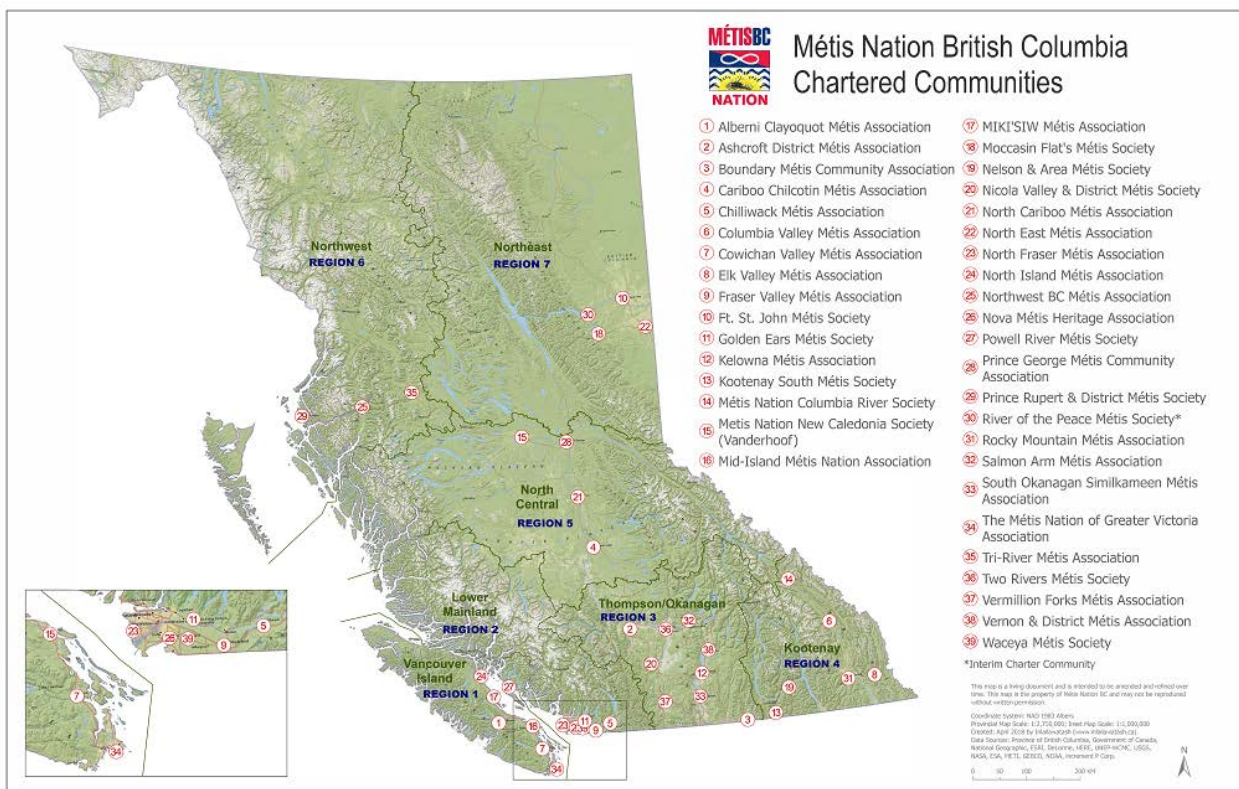
Proponents may try to satisfy their consultation obligations by consulting with individual Métis Citizens, without consulting the Métis Nation directly. To maximize benefits for the Métis, it is important to work strategically within regulatory processes and to speak with “one voice” for the BC Métis Nation. Engagement with the project proponent and regulators should be conducted through the Nation’s legal counsel. As the government of the Métis in British Columbia, it is important to follow these steps to ensure accountability and transparency in the consultation process for MNBC Citizens. Citizens expect a consistent approach to engaging in consultation initiatives. These guidelines will create that approach for the Métis government.

By following these guidelines, the Métis can ensure their rights are protected, and they realize as many benefits as possible from proposed projects including financial payments, employment and training, and economic development for Métis owned businesses.

## Background:

More than a decade ago, the British Columbia Métis Assembly of Natural Resources (BCMANR) and the MNBC Board approved the Métis Nation British Columbia Consultation Guidebook, which included Consultation Guidelines and a Métis Traditional Knowledge Policy. The legal landscape has significantly changed since the original guidelines were drafted, and new guidelines are now required to reflect these changes. During the 2017 Métis Nation Governing Assembly (MNGA), BCMANR made a commitment to return to the next MNGA with recommendations, and, at the 2018 MNGA, a further commitment was made to have a consultation table at our 40 Métis Rights and Reconciliation Community Engagement (MRRCE) sessions in order to solicit feedback from our community leaders and Citizens. Draft versions of the updated Consultation Guidelines were distributed for community feedback in two comment periods in 2019.

BCMANR presents the following updated Consultation Guidelines as a result of the above feedback coupled with following best practices in place from other Section 35 Rights Holders.



## Legal Background

The Duty to Consult and, where appropriate, accommodate, emerges from the recognition and affirmation of Aboriginal and treaty rights in Section 35(1) of the *Constitution Act, 1982*. These rights are coupled with the Supreme Court of Canada's recognition of the obligation to protect the honour of the Crown. As Chief Justice Beverley McLachlin explained in the 2004 *Haida* decision, "[i]t is a corollary of Section 35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests. This, in turn, implies a duty to consult and, if appropriate, accommodate."<sup>2</sup> Because this obligation applies only to those rights affirmed and recognized in Section 35 of the *Constitution Act, 1982*, the duty to consult in Canada is associated with rectifying the imbalance of power that historically has existed in the country between the government and Aboriginal peoples.

Thomas Isaac wrote in his 2016 report, *A Matter of National and Constitutional Import: A Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Decision*, that "there is no doubt, at law, the Crown's duty to consult Aboriginal peoples applies to Métis".<sup>3</sup> The Métis in British Columbia are Section 35 rights holders. These collective rights are represented by the Métis in British Columbia's governing body, Métis Nation British Columbia (MNBC).

Also in 2016, Bryn Gray submitted his report entitled "*Building Relationships and Advancing Reconciliation through Meaningful Consultation*" to the Minister of Aboriginal and Northern Affairs, assessing Canada's current approach to consultation and accommodation with Aboriginal groups. Some key highlights from the report include:

### 1. Promoting early engagement

Early engagement is a key ingredient of meaningful consultation, as engagement is frequently needed before the duty to consult is formally triggered.

### 2. Ensuring meaningful consultation

Canadian courts have repeatedly underscored the need for consultation to be meaningful. As stated in a recent decision of the BC Court of Appeal:

*There must be more than an available process; the process must be meaningful. In this regard, I agree with the views of Neilson J. in Wii'litswx # 1 at para. 178: 'The Crown's obligation to reasonably consult is not fulfilled simply by providing a process within which to exchange and discuss information'. That obligation was described by Finch J. A. (as he then was) in Halfway River at para. 160 as 'a positive obligation to reasonably ensure*

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<sup>2</sup> *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73

<sup>3</sup> Thomas Isaac, *A Matter of National and Constitutional Import: A Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Decision* (June 2016), online: Indigenous and Northern Affairs Canada at 16 < [https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/report\\_reconciliation\\_1471371154433\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/report_reconciliation_1471371154433_eng.pdf)>.

that aboriginal peoples are provided with *all necessary information in a timely way so that they have an opportunity to express their interests and concerns and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action*'.<sup>4</sup>

In 2007, the United Nations passed the *United Nations Declaration on the Rights of Indigenous Peoples*, which states in Articles 3 and 4:

**Article 3:** Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.

**Article 4:** Indigenous peoples, in exercising their right of self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

### 3. Cultural awareness of Métis

As a Nation, we are deeply concerned with the lack of cultural awareness demonstrated by both federal and provincial officials, as well as industry proponents. In his report, Thomas Isaac addressed the need to educate federal government officials on Métis history, culture, traditions, and rights. He specifically recommended that “Canada immediately establish a program(s) to educate federal employees involved with Aboriginal-related matters about the history of Métis, Métis contributions to Canada, existing federal initiatives relating to Métis, Métis culture and traditions and Canadian law relating to Métis and their Section 35 rights”.<sup>5</sup> In addition, greater guidance is needed on consultation with the Métis. The Government of Canada’s 2011 Guidelines, codified in the document *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, and the Draft Proponent Guidance do not contain any Métis specific guidance and there is significantly less awareness within the federal government on Métis issues in comparison to First Nations.

The Government of British Columbia, in the 2018 *Draft Principles That Guide the Province of British Columbia's Relationship with Indigenous Peoples*, states in Principle 10, “The Province of British Columbia recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of Indigenous peoples in BC are acknowledged, affirmed, and implemented”. Further in this section, the Province recognizes “the Métis Nation” as one of the Indigenous peoples of Canada.

Canada's reliance on existing regulatory and environmental review processes to fulfill the duty to consult is consistent with the jurisprudence in principle; and the courts have held that Métis have an obligation to use these processes to address their concerns as long as they are adequate, accessible, and provide an opportunity to meaningfully participate. In August 2015, the Federal Court of Appeal held that there were “strong practical reasons” to rely on regulatory processes to fulfill the duty to consult, but, in all cases the Crown must ‘assess whether

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<sup>4</sup> *Chartrand v. British Columbia*, [2015] BCCA 345 (CA) at para. 77, in Bryn Gray, “Building Relationships and Advancing Reconciliation through Meaningful Consultation”.

<sup>5</sup> Isaac, at 12.

additional consultation activities or accommodation is required in order to satisfy the Honour of the Crown.<sup>66</sup>

The Citizens of MNBC have an important role to play in this process. There are two sides to every relationship and reconciliation is not a one-way street. Success will require compromise and give-and-take on all sides and an understanding of each other's perspectives, interests, and respective challenges.

The federal guidelines on Aboriginal Consultation and Accommodation<sup>7</sup> state that when developing and implementing processes for consultation and accommodation, the Crown will be guided by a series of principles that have emerged both from the case law and consultation practice by government over the years.

The following legal principles apply in all contexts in which consultation obligations may arise, and outline the basis for this obligation and the objectives that the Court has sought to promote through this common law duty:<sup>8</sup>

***Honour of the Crown*** – The honour of the Crown is at stake in all dealings between the Crown and Aboriginal peoples. The duty to consult and accommodate, where appropriate, stems from the Crown's unique relationship with Aboriginal peoples and must be discharged in a manner that promotes reconciliation of Aboriginal and non-Aboriginal rights and interests.

***Reconciliation*** – The duty to consult, and where appropriate, accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty by the Crown, and continues beyond formal claims resolution through to the application and implementation of treaties. Crown efforts to consult with, and accommodate the interests of, Aboriginal groups whose rights may be adversely affected, should be consistent with the overarching objective of reconciliation with Aboriginal groups.

***Reasonableness*** – Crown efforts to reconcile and balance other societal interests and established or potential Aboriginal and treaty rights must be reasonable. Consultation processes need to reflect reasonable and genuine efforts by all parties.

***Meaningful Consultation*** – The duty to consult requires a genuine effort to address legitimate concerns and interests that relate to the impacts of contemplated Crown conduct on Section 35 rights. To be meaningful, there must be a genuine willingness and ability to adjust the contemplated conduct, if such is appropriate.

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<sup>66</sup> *Hamlet of Clyde River v. TGS-NOPEC Geophysical Co. ASA (TGS)*, [2015] F. C. J. No. 991 (FCA) at para. 65, in *ibid*.

<sup>7</sup> Government of Canada, "Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Legal Duty to Consult".

<sup>8</sup> Government of Canada, "Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Legal Duty to Consult".



**Good Faith** – Consultation must be guided by genuine efforts. Such efforts require the disclosure of relevant factors and information, no predetermined outcome, no oblique motive, and the absence of any appearance of any sharp dealing.

**Responsiveness** – Consultation is intended to respond to Aboriginal rights and interests, to minimize the potential adverse effects of a given activity, and to substantively address the concerns raised. To do so, it is necessary that the Crown be prepared to respond, have some degree of flexibility in relation to the planning and implementation of the proposed activity, and consider potential accommodation measures that may be appropriate in a given context.

## **Scope of Guidelines**

These guidelines apply where actions and activities have the potential to infringe on Métis rights and land-uses. The following goals also apply to all proposed projects that have the potential to infringe on Métis rights and land-uses:

- Assurance that the proposed policy, plan, development, or land and resource use will not pose a threat of irreparable environmental, cultural, or resource damage;
- Assurance that all such policies and projects contain an element that can contribute to the restoration of the natural and/or cultural health of the land;
- Assurance that any proposed policy or project will provide more positive than negative social impacts for the BC Métis Nation;
- Assurance that these policies and projects will not jeopardize, prejudice, or otherwise compromise Métis Nation rights, title, and interests within BC;
- Assurance that all such policies and procedures adhere to and are guided by Métis Traditional Knowledge, as defined through the Métis Traditional Knowledge Policy of MNBC;
- Provision for the widest possible opportunity for education and direct employment-related training for Métis people within BC in connection with any agreed upon project;
- Provision for economic participation by the BC Métis Nation where possible, in commercial and industrial development projects within BC;
- Assurance that any development within BC will maximize and promote the development of new Métis business opportunities and the utilization of existing Métis businesses which may be associated with that development; and
- Provision for the proponent and the regulators to assist MNBC on to accomplish the objectives stated above by providing financial assistance where necessary to mobilize the MNBC communities' capacity to engage.

## Consultation Guidelines

### 1. Introduction

Consultation with the BC Métis community and the accommodation of Métis interests is the main theme of these guidelines. MNBC<sup>9</sup> desires a practical consultation process that avoids or minimizes impacts on Métis rights and land-use and creates opportunities for Métis Citizens. MNBC's objective is to build a Métis-specific approach that seeks to improve working relationships throughout the province. MNBC's consultation process is intended to produce better communication, stronger relationships, and easier resolution of issues between government, industry, and MNBC. These guidelines will provide an effective procedure for minimizing impacts on Métis rights and land-use and assist the economic prosperity of Métis Citizens and communities.

#### 1.1 Principles for Consultation

The principles below will result in meaningful consultation by bringing the appropriate parties together in a timely and meaningful process in which Métis Citizens, industry and government listen openly to each other before resource development and land management decisions are made.

- 1.1.1 In all cases, consultation with MNBC should seek to achieve our informed consent.
- 1.1.2 Governments have the legal obligation to consult with MNBC and accommodate where there is potential for adverse impact or infringement. MNBC will cooperate with proponents and others whom government has enlisted to engage with Métis, however, MNBC is clear that governments cannot "contract out" of their legal responsibility for consultation and accommodation.
- 1.1.3 Consultation must be conducted in good faith.
- 1.1.4 Management of the consultation process is the responsibility of MNBC and BCMANR. These organizations will ensure co-operation with the Métis Chartered Communities as part of the consultation process.

#### 1.2 Markers of Meaningful Consultation

- 1.2.1 The consultation process will focus on identifying means for involving MNBC as early in the planning process and decision-making process as possible.
- 1.2.2 Consultation with the Métis Nation means:
  - a. provision of notice by the responsible agency to MNBC of the matter to be decided;
  - b. provision by the responsible agency and/or proponent of the resourcing required for MNBC to participate effectively in the consultation;

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<sup>9</sup> MNBC is defined as the Métis Nation British Columbia and all of its ministries, including the British Columbia Métis Assembly of Natural Resources.

- c. provision of information about the matter to be decided in sufficient form and detail to enable MNBC to understand the nature of the matter to be decided and its potential impact on Métis interests, and to prepare and present their views on the matter;
- d. provision of a reasonable period of time in which MNBC may prepare and present their views of the possible impact of the matter to be decided on their values, asserted Aboriginal rights, title, and interests;
- e. provision for the responsible agency and the proponent to respond to the issues raised by MNBC; identifying those areas where the responsible agency agrees to incorporate MNBC views and identifying those areas of disagreement;
- f. establishment of an issue resolution process to deal with any disagreements arising from MNBC views and the response of the agency and proponent;
- g. provision for full and fair consideration by the responsible agency and the proponent of the information provided by MNBC including a specific response to any outstanding issues not resolved through the issue resolution process referred to above;
- h. responsible agencies must notify MNBC in writing of the proposed decision by the statutory decision maker identifying how Métis interests were considered and addressed; and
- i. MNBC must be provided with an opportunity to address any outstanding issues prior to a final decision by the statutory decision maker.

### 1.3 Markers of Meaningful Accommodation

- 1.3.1 The consultation procedures outlined in this section will include an accommodation process to address Métis interests arising from potential adverse impacts or infringements. Accommodation arrangements may include, but are not limited to:
  - a) economic accommodations;
  - b) cultural accommodations;
  - c) social accommodations;
  - d) stewardship accommodations; and,
  - e) Métis health and wellbeing accommodations.
- 1.3.2 MNBC will take a flexible approach to structuring accommodation provisions. Depending on the nature of the proposed policy or project, MNBC may agree to offsetting stewardship initiatives, such as habitat restoration, enhancement, or other such projects, that contribute to the long-term health of the land.

## 2. Principles for Assessing Proposed Developments

### 2.1 Introduction

MNBC uses two “lenses” to analyze land use decisions, proposed projects, and new or amended government policy that may impact our rights and our use areas. Is the proposal a good land use decision? Does it represent the best use of lands and resources for the present and for the future? What impact does it have on the natural and cultural resource base within which it is proposed? What does it contribute to the cumulative effect of past land use decisions? What implications does it have for future development to which it may be linked or that it may enable?

The second “lens” looks at impacts and benefits. Will the proposed decision, project or policy have the ability to provide benefits to the BC Métis Nation that are commensurate with the impacts that it will have? In this context, MNBC takes a holistic view of the project, decision, or policy in context with the alienation of resources, lands, and economic opportunities that have occurred throughout the province since pre-effective control and the assertion of sovereignty by settler governments.

**MNBC will not endorse, approve or otherwise remove their objection to proposed decisions, projects or policies until MNBC has conducted a diligent assessment of the project through these two “lenses”.**

### 2.2 Principles for Assessing Project Development

- 2.2.1 Sustainable development is a key to supporting the social and economic objectives of MNBC.
- 2.2.2 Ensure that each project contributes in some way to the restoration, protection, conservation, and/or preservation of the natural health of the land and wildlife species that could be impacted by natural resource development projects. This could include: the development of mitigation and offsetting measures, contributions to a type of “Nature legacy fund”, and/or supporting environmental research initiatives. As lands are developed, it is crucial to take an active role in the conservation and protection of wildlife, land, and waters that are of significance to Métis. The goal is to ensure that BC’s natural heritage is preserved so that future generations can enjoy the land, wildlife, and natural resources.
- 2.2.3 Development assessment processes need also to reflect the government-to-government, nation-to-nation relationship between MNBC and the project review and approval processes. Key elements of that relationship are:
  - a) Early MNBC involvement in the development of the scope of assessment documents;

- b) MNBC involvement that is voluntary and without prejudice in “round table” processes with stakeholders; and
- c) An “end of process” decision forum between MNBC and government decision makers to ensure that adequate consideration has been accorded MNBC suggestions and concerns.

2.2.4 The Consultation Guidelines require that projects provide commensurate benefits to the community in consideration of the potential foreseen impacts. Accommodation and impact and benefit arrangements can take many forms, and MNBC will take a flexible and creative approach to discussions related to accommodation, impacts, and benefits.

## **Specific Steps for Successful Project Assessment**

### **STEP ONE: Pre-Consultation Notice**

In order to begin the process of consultation with the BC Métis Nation, the Crown and/or project proponents should give notice to MNBC Head Office, directed to the Ministry of Natural Resources.

Information contained in a notice of intent to engage in consultation must include the location of the proposed project or initiative, a description of the undertaking, and timelines associated with any decision-making or regulatory process.

If the Crown intends to rely on a regulatory process to fulfill its duty to consult, notice to that effect should be immediately given to MNBC and the Responsible Authority (“RA”) should be identified.

### **STEP TWO: Pre-Consultation Review by MNBC and Response**

MNBC will begin a process of assessing the information provided by the project proponent and/or the Crown.

MNBC may choose at this stage to seek clarification or further information before responding to the Crown or project proponent regarding the level of consultation required by the BC Métis Nation.

When MNBC is satisfied that enough information is available to make an informed decision, MNBC will respond, in writing, to the Crown and project proponent.

A response from MNBC will include identifying the potentially affected rights bearing Métis communities and the point of contact for MNBC. The response will also identify any known and potential impacts on Métis rights in British Columbia.

This response will propose next steps in order to begin a formal consultation process, including face-to-face meetings, and requests for capacity funding to be provided by the Crown and/or project proponent.

**Notice, review, and response by MNBC does not constitute consultation. These are preliminary steps designed to lay the foundation for a fair, objective and transparent consultation process with the potentially affected rights-bearing Métis communities.**

Information that may inform the extent of the consultation required by BC Métis Nation may include, but is not limited to:

- Existing information about Métis land use in the area in question;
- Proximity to a rights-bearing Métis community or lands of interest and significance (e.g., lands used for hunting, recognized historic sites);
- Proximity to non-Métis Aboriginal communities or lands of interest and significance;
- The size, nature, duration, and location of the proposed project, and level of disturbance activities proposed during all phases of the project including decommissioning and reclamation, if applicable;
- Potential environmental, social, and cultural impacts; and
- Potential impacts on asserted Métis rights.

### **STEP THREE: Funding and Capacity**

In order to facilitate a meaningful consultation process, the Crown and project proponents must be willing to provide funding for the full participation by the BC Métis Nation. MNBC will identify their requirements for funding from project proponents and/or the Crown in order to meaningfully participate in a consultation process.

Capacity funding may be used for additional studies, human resources related to a consultation process, legacy or trust funding, or for any activities that facilitate consultation with Citizens of the BC Métis Nation. Where consultation is project-specific, this work should be considered as part of the impact assessment of a project, the costs of which are generally borne entirely by a project proponent.

### **STEP FOUR: Exchange of Information and Dialogue**

To assist MNBC and BCMANR in making an informed determination regarding a proposed project, decision, activity, or initiative; MNBC, along with BCMANR, may request meetings and engagements with the Crown and/or project proponents. These meetings provide an opportunity to clarify information and raise additional questions.

Mutual exchange of information is required in the consultation process. Métis in BC expect the Crown and project proponents to be truthful and forthcoming with information related to potential actions or projects that may negatively impact Métis rights.

MNBC recognizes the reciprocal duty to engage in a process of consultation. MNBC and BCMANR will engage in good faith and share information related to traditional land use and potential impacts on Métis rights in order to ensure decisions are evidence-based and in the best interests of the Métis in BC.

## STEP FIVE: Additional Studies

After review of the information provided by the Crown and project proponents, MNBC and BCMANR may request additional studies to supplement gaps in the existing information, particularly about impacts on asserted rights.

Additional studies may include efforts to map Métis traditional land use in the area on question in order to facilitate a discussion with the Crown and/or project proponents, and to aid in the planning of future development which may affect the Métis in BC.

Studies will support the consultation process and may provide important information to MNBC, the Crown and project proponents to help determine potential impacts on asserted Métis rights. The Crown may request these studies be undertaken at the expense of a project proponent.

## STEP SIX: Accommodation

Consultation that excludes from the outset any form of accommodation is meaningless.<sup>10</sup> The process of consultation should include: an assessment of impact on exercise of Métis rights, both present and future; an assessment of impact of proposed projects, decisions, or activities on the cultural, economic and social well-being of the Métis; and the impact that proposed project will have on the environment, including potential future health effects on the Métis population of the region.

Where avoidance of infringement of Métis rights is not possible, the Crown must consider how to accommodate Métis concerns and rights with regard to a proposed project, decision, activity or initiative. The following chart provides for potential accommodation measures:

| AVOIDANCE   | RESPONSIBILITY                 |
|---|--------------------------------|
| Specific habitat protections for species of interest  | Crown and/or project proponent |
| Alter/change project location, route, etc.  | Crown and/or project proponent |
| Reduce project impact/footprint   | Crown and/or project proponent |
| Modify or abandon project components  | Crown and/or project proponent |
| Use of alternative techniques (e.g. change of technology, method, etc.)                               | Crown and/or project proponent |
| Adjust/change timing of work to avoid/lessen impacts on species of interest (e.g. fish, plants, etc.) | Crown and/or project proponent |

<sup>10</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 54. (*Mikisew Cree*)



| <b>MITIGATION</b>  | <b>RESPONSIBILITY</b>          |
|--|--------------------------------|
| Habitat restoration for species of interest                                | Crown and/or project proponent |
| Include Métis in environmental monitoring processes (e.g. contracts, etc.) | Project proponent              |
| Involve Métis in site maintenance and operations                           | Project proponent              |
| Involve Métis in site restoration/reclamation processes                    | Project proponent              |
| Use techniques to minimize disturbance to land and species of interest     | Project proponent              |
| Undertake additional studies not required by legislation or regulation     | Crown and/or project proponent |
| Create alternative areas for traditional use by the Métis                  | Crown                          |
| <b>COMPENSATION</b>  | <b>RESPONSIBILITY</b>          |
| Habitat restoration for species of interest                                | Crown and/or project proponent |
| Profit and/or resource sharing   | Proponent                      |
| Direct payment   | Crown and/or project proponent |
| Benefit agreement  | Project proponent              |
| Legacy or trust funds  | Crown and/or project proponent |
| Scholarships and/or skills development opportunities                       | Crown and/or project proponent |
| Employment contracts and/or tendering processes for Métis-owned businesses | Project proponent              |

Adapted from “*Government of Nova Scotia Policy and Guidelines for Consultation with the Mi’kmaq of Nova Scotia*” (2015).

### **STEP SEVEN: Reporting / Adequacy Review**

Where Métis are involved in a process of consultation and accommodation, the MNBC Ministry of Natural Resources will submit a final report and adequacy review which summarizes the consultation process and outcomes. The purpose of this reporting is to provide transparency regarding the consultation and accommodation process to Citizens of the Métis Nation.

The report will summarize discussion topics, information shared, accommodation of Métis concerns and will identify potential impacts to Métis rights and traditional land uses.

Copies of the report will be submitted to BCMANR, project proponents, the Crown, and may be submitted to Nation-Level representatives if appropriate.

MNBC may use the following criteria in its assessment of the adequacy of the consultation:

- Consultation was conducted in a meaningful way that supports the spirit of collaboration;
- Information was provided in a timely manner;
- Reasonable efforts were made to avoid or mitigate Métis concerns;
- Potential adverse impacts were specifically identified, understood and considered; and
- Any other criteria that MNBC deems necessary.

When the MNBC Ministry of Natural Resources (including BCMANR) participates in engagement and/or consultation, they will submit a final report that summarizes the potential impacts (if any) to Métis rights and land uses. The report will reflect the discussions, information shared, and accommodations to Métis concerns. Copies of the report will be submitted to the MNBC Board of Directors, with recommendations from BCMANR. These recommendations may include advised conditions that should be applied to the project, and overall approval or disapproval of the project.

### **STEP EIGHT: Approval Process**

Upon finalization of the consultation report and adequacy analysis, the MNBC Board of Directors will be provided with the information and technical resources required to facilitate any necessary decision making.

As codified in the MNBC *Natural Resource Act*, Article 7, the MNBC Board of Directors will be the final decision-making authority on behalf of the Métis Nation. This approval is in the form of an official MNBC Board motion that is recorded in the meeting minutes. This institution consists of a president, vice-president, seven regional directors, women's chair, and a youth chair.

The MNBC Board of Directors is required to submit a report to BCMANR once the final decision is made on a project. This report is to include an explanation why the recommendations in BCMANR's report were approved or rejected, and/or why the overall recommendation of BCMANR was rejected by the MNBC Board of Directors (if applicable).

Appendix A: Consultation Chart

| Proponent and/or Crown Action  | Steps to be taken by MNBC  |
|--|--|
| <b>PRE-CONSULTATION</b>  |  |
| <p>The Crown and/or project proponent contacts MNBC Head Office.</p>   | <ol style="list-style-type: none"> <li>1. Notify the MNBC Head Office of Proponent and/or Crown intent to engage in consultation.</li> <li>2. MNBC Head Office (Director of Natural Resources) will identify the likely level of impact of the project and base consultation accordingly.</li> <li>3. Identify the relevant regulatory process or decision-making process to determine all available options for Métis participation in Crown decision making.<br/><br/>This should be conducted in consultation with MNBC's legal counsel.</li> <li>4. MNBC will respond to Crown and/or project proponent with a response letter.</li> </ol> |
| <p>Crown and/or project proponent send detailed information related to the scope and potential impact of a project, decision, or initiative.</p> | <ol style="list-style-type: none"> <li>1. MNBC Director of Natural Resources will review the information.</li> <li>2. MNBC Director of Natural Resources will determine if additional information is required before consultation begins.</li> <li>3. MNBC will work with potentially affected Communities and/or regions to identify potential impacts on Métis rights.</li> <li>4. MNBC will respond to the project proponent and/or Crown.</li> </ol>   |
| <b>CONSULTATION PHASE</b>  |  |
| <p>Crown and/or project proponent begins process of consultation with the Métis.</p>   | <ol style="list-style-type: none"> <li>1. MNBC will identify what additional capacity is required to participate in consultation.</li> <li>2. Inform Crown and/or project proponents of the need to seek capacity funding to ensure full participation in consultation.</li> </ol>   |

|   |  |
|---|--|
| <p>Crown and/or project proponent begin process of scheduling information sessions or community meetings.</p> | <ol style="list-style-type: none"> <li>1. MNBC and BCMANR works with Crown and/or project proponent to schedule meetings with appropriate Métis communities.</li> <li>2. MNBC and BCMANR indicates to Crown and/or project proponents which communities require meetings based on response letter sent in the pre-consultation phase.</li> <li>3. MNBC reciprocates in exchange of information and provide Crown and/or project proponent with information relevant to project or decision in question.</li> </ol> |
| <p>Crown and/or project proponent indicate they are nearing the end of consultation process.</p>              | <ol style="list-style-type: none"> <li>1. MNBC and BCMANR will identify if sufficient information has been provided.</li> <li>2. MNBC may request additional studies to inform decision making if required.</li> <li>3. If Crown and/or project proponent do not engage in requests for additional studies, using capacity funding secured, MNBC may undertake their own studies related to the project or decision in question.</li> </ol>  |
| <p>Crown and/or project proponent identify impacts on Métis rights, way of life and economy.</p>              | <ol style="list-style-type: none"> <li>1. Engage Crown and/or project proponent in accommodation discussion to mitigate impacts on the Métis.</li> </ol>   |
| <p><b>REPORTING AND ADEQUACY REVIEW</b></p>   |  |
|   | <ol style="list-style-type: none"> <li>1. The Ministry of Natural Resources produces a report detailing the extent of the consultation and accommodation discussion process.</li> <li>2. The Ministry of Natural Resources may solicit feedback from the Crown and/or project proponent on the adequacy of consultation and accommodation discussions.</li> <li>3. Distribute report to BCMANR and Nation-Level representatives (if appropriate) for review and feedback.</li> </ol>                               |
| <p><b>DECISION MAKING</b></p>   |  |
|   | <ol style="list-style-type: none"> <li>1. MNBC and BCMANR should schedule meetings with the relevant Métis communities and leadership to discuss the information received by the Crown and/or project proponent.</li> <li>2. Discuss additional studies undertaken.</li> </ol>   |

|                 |  |
|-----------------|--|
|                 | <ol style="list-style-type: none"> <li>3. Discuss accommodation measures agreed to by the Crown and/or project proponent.</li> <li>4. Discuss adequacy report produced by the Consultation Lead.</li> <li>5. BCMANR reviews the report from the Ministry of Natural Resources, and makes decision whether to advise the MNBC Board of Directors to approve or reject the project, with suggested conditions of approval (if applicable).</li> <li>6. MNBC Board of Directors approves or rejects project.</li> </ol> |
| <b>RESPONSE</b> |  |
|                 | <ol style="list-style-type: none"> <li>1. MNBC will respond to the Crown and/or project proponent regarding a decision by MNBC on the project or proposal in question.</li> </ol> <p style="margin-left: 40px;">This response will also be sent to BCMANR.</p>   |

## Appendix B: Whose-Who in the Regulatory Process

### FEDERAL DEPARTMENTS, AGENCIES, AND REGULATORS

#### **Canadian Energy Regulator (“CER”)**

The Canadian Energy Regulator is an agency within the Department of Natural Resources of the Government of Canada. This agency is enabled by the Impact Assessment Act to oversee international and inter-provincial aspects of the oil, gas and electric utility sectors.

The CER primarily regulates the construction and operation of oil and natural gas pipelines within Canada, as well as jurisdiction over the construction and operation of international power lines.

The Canadian Energy Regulator reports to Parliament through the Minister of Natural Resources Canada.

#### **Canadian Nuclear Safety Commission (“CNSC”)**

The Canadian Nuclear Safety Commission is an independent regulatory agency of the Government of Canada enabled by the *Nuclear Safety Control Act* to regulate the use of nuclear energy and materials, and to implement Canada’s international commitments on the peaceful use of nuclear energy.

The Canadian Nuclear Safety Commission reports to Parliament through the Minister of Natural Resources Canada.

#### **Impact Assessment Agency (“IAA”)**

The Impact Assessment Agency of Canada (currently the Canadian Environmental Assessment Agency) leads all federal reviews of major projects, working with other regulatory bodies like the Canadian Energy Regulator, the Canadian Nuclear Safety Commission, and in cooperation with provinces and territories.

#### **Environment and Climate Change Canada (“ECCC”)**

Environment and Climate Change Canada is the department within the Government of Canada with responsibility for coordinating environmental policies and programs.

The powers and responsibilities of the Minister of the Environment include matters relating to the natural environment such as water, air, soil, flora and fauna; conserving renewable resources; and protecting water resources. The Department is also responsible for forecasting daily weather and providing meteorological information.

#### **Department of Fisheries and Oceans (“DFO”)**

Fisheries and Oceans Canada. (DFO) is the department within the government of Canada that is responsible for developing and implementing policies and programs in support of Canada's economic, ecological and scientific interests in oceans and inland waters.

The Department's mandate includes responsibility for the conservation and sustainable use of fishery resources.

**Natural Resources Canada (“NRCAN”)**

Natural Resources Canada is the department within the government of Canada responsible for natural resources, energy, minerals and metals, forests, earth sciences, mapping and remote sensing. The Department works to ensure the responsible development of Canada's natural resources, including energy, forests, minerals and metals. NRCAN also uses expertise in earth sciences to maintain an up-to-date knowledge base of our landmass and resources.

**Major Projects Management Office (“MPMO”)**

The Major Projects Management Office (MPMO) is a Government of Canada organization housed within Natural Resources Canada (NRCAN) whose role is to provide project management for major resource projects in the federal regulatory review process.

**Crown Indigenous Relations and Northern Affairs Canada (“CIRNA”)**

Crown-Indigenous Relations and Northern Affairs Canada is the department within the Government of Canada whose responsibility is to "renew the nation-to-nation, Inuit-Crown, government-to-government relationship between Canada and First Nations, Inuit and Métis.

The Department is also tasked with modernizing federal structures to enable Indigenous peoples to build capacity and support their vision of self-determination.