Note

This guide is intended to provide practical advice in support of engagement by industry with Aboriginal Peoples in New Brunswick as part of the Government of New Brunswick's engagement, consultation and accommodation process. Specific advice and guidance on various provincial government decisions rest with the government department and/or agency responsible for the permitting and/or regulatory approvals as well as with the Department of Aboriginal Affairs.

This document does not contain and is not intended to provide legal advice.

Contact information

Department of Aboriginal Affairs

P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: 506-462-5177
Fax: 506-444-5142
Email: abaffsec@gnb.ca

Website: http://www.gnb.ca/aboriginal

Cover Artwork by and © Timothy Hogan

Interim Proponent Guide

Published by:

Department of Aboriginal Affairs
Government of New Brunswick
P.O. Box 6000
Fredericton, New Brunswick
E3B 5H1
Canada

Printed in New Brunswick

ISBN 978-1-4605-2365-0 (PDF: English)
ISBN 978-1-4605-2364-3 (PDF: française)

12367
Table of Contents

Definitions ................................................................. 1

1.0 Introduction .......................................................... 3

2.0 Background .......................................................... 4
  2.1 Treaty Rights in New Brunswick .................................... 4
  2.2 Aboriginal Rights in New Brunswick ................................. 4
  2.3 Government’s Duty to Consult and Accommodate ..................... 4
  2.4 Regulatory Processes for Proposed Projects ......................... 4

3.0 Roles and Responsibilities ............................................. 5
  3.1 Introduction ........................................................ 5
  3.2 General Aspects of the Consultation and Accommodation Process ........................................ 5
  3.3 The Phases of Engagement and Consultation ............................ 7
  3.4 Proponent Record Keeping ........................................ 10

4.0 Proponent and Aboriginal Peoples Agreements .......................... 12

Appendix A: Map of Aboriginal Communities in New Brunswick ................. 13
Appendix B: Aboriginal Communities in New Brunswick Pronunciation Guide .................... 14
Appendix C: Contact Information for Aboriginal Communities and Consultation Representatives .......... 15
Appendix D: Templates
  Engagement and Communication Log ...................................... 17
  Interests and Concerns Tracking Log ....................................... 17
Appendix E: Additional Resources .......................................... 18
Definitions

Aboriginal Nation (or First Nation) – Aboriginal Nation(s) is a term used to describe Aboriginal Peoples in Canada who are not Métis or Inuit, and came into common usage in the 1970’s to replace the word “Indian(s).” Despite its widespread use, there is no legal definition for this term in Canada. Among its uses, the term “Aboriginal Nations or peoples” refers to the Indian peoples in Canada, both Status and Non-Status. Some Indian peoples have also adopted the term “First Nation” to replace the word “band” in the name of their community.

Aboriginal Peoples - a collective term used in the Constitution Act, 1982 and includes First Nations, Inuit and Métis Peoples. Aboriginal Peoples can be used interchangeably with First Nations Peoples, First Nations or Indigenous Peoples.

Aboriginal rights – Rights recognized and affirmed under section 35 of the Constitution Act, 1982; this includes established and asserted rights that are practices, traditions and customs integral to the distinctive culture of the Aboriginal group claiming the right based on practices that existed prior to contact with Europeans. Generally, these rights are fact- and site-specific. Examples include fishing, hunting, gathering, and ceremonial practices. Aboriginal title is a specific Aboriginal right that is a unique interest in land that encompasses the right to exclusive use and occupancy of land for a variety of purposes.

Accommodation – Accommodation means avoiding, minimizing, offsetting and/or compensating for adverse impacts to Aboriginal and Treaty rights. It often includes project mitigation measures to avoid or reduce adverse impacts. In some cases, reasonable accommodation may include the Crown’s rejection of a proposed project.

Band – A group of Aboriginal people as defined under the Indian Act and for whose common use and benefit lands have been set aside or moneys held on their behalf by the Government of Canada. The term “First Nation” is often used interchangeably with the term “Band.”

Band Council (Chief and Council) – The governing or administrative body of a band, elected according to procedures established by the Indian Act or the First Nations Election Act. The members are responsible for administering provisions under the Indian Act and carrying out the regular business of the band government.

Crown – The federal and/or provincial government.

Crown land – Lands under the administration and control of the federal or provincial government, including submerged land.

Duty to Consult – Term used when referring to the constitutional obligation of governments to ensure that Aboriginal people are adequately consulted about matters that may impact their Aboriginal and Treaty rights before the Crown makes a decision or takes an action that may adversely impact those rights. Depending on the facts, the Crown may also have a constitutional obligation to develop accommodation to address the adverse impacts of the proposed decision or action on Aboriginal and Treaty rights.

Engagement and consultation – Engagement and consultation refer to the meaningful dialogue and interaction between the Crown, its delegates and Aboriginal Peoples that facilitates the fulfillment of the Duty to Consult. It is an interactive and creative process of engaging in communications and relationship building with the goal being an understanding of respective needs, and working towards solutions based on those needs.

First Nation (or Aboriginal Nation) – First Nation(s) is a term used to describe Aboriginal Peoples in Canada who are not Métis or Inuit, and came into common usage in the 1970s to replace the word “Indian(s).” Despite its widespread use, there is no legal definition for this term in Canada. Among its uses, the term “First Nations peoples” refers to the Indian peoples in Canada, both Status and Non-Status. Some Indian peoples have also adopted the term “First Nation” to replace the word “band” in the name of their community.

Proponent – A corporation, individual, organization or government agency proposing a project that requires permits, authorities, authorizations or approvals from the provincial government.

Traditional lands – Lands used and occupied by Aboriginal Peoples before European contact; also referred to as ancestral lands or traditional territory.

Treaty rights – The specific rights of the Aboriginal peoples embodied in the treaties they entered into with the Crown. In New Brunswick, Aboriginal Peoples have Treaty rights as described in the Peace and Friendship Treaties and as defined and clarified by the courts.
1.0 Introduction

The Government of New Brunswick is dedicated to building long-term relationships with Aboriginal Peoples and promoting greater opportunity for participation in economic development.

The provincial government is equally committed to meeting its legal obligation to consult actively and accommodate, where appropriate, Aboriginal Peoples. Although Proponents do not have an independent Duty to Consult, they play an important role in the provincial consultation process with Aboriginal Peoples.

Proponents are often in the best position to explain their proposals and address any Aboriginal concerns and interests. Early and meaningful engagement provides the opportunity for developing plans that avoid or minimize impacts to Aboriginal and Treaty rights and are responsive to the broader interests and values of Aboriginal Peoples. For these reasons, the Crown may delegate certain procedural aspects of consultation to the Proponent.

Proponents play a critical role in providing meaningful accommodation and gaining Aboriginal support for their proposed projects. Building Aboriginal support is desirable in that it builds strong relationships with Aboriginal Peoples, simplifies and often speeds up the regulatory review process, assists the government in fulfilling its Duty to Consult required before approving the project and reduces uncertainty arising from potential legal challenges to approvals.

This guide is intended to provide practical assistance to Proponents who are considering activities that may have an adverse impact on the Aboriginal and Treaty rights of Aboriginal Peoples in New Brunswick. Appropriate and meaningful engagement with Aboriginal Peoples promotes collaboration, builds long-term relationships, and supports economic opportunities.

Specifically, this guide:

- differentiates the roles of Proponents and the government in engagement and consultation activities;
- provides general advice for determining which Aboriginal Peoples to engage, when to engage and how to prepare;
- clarifies what information is relevant to inform and support the government’s Duty to Consult and accommodate;
- provides guidance on how to document relevant engagement efforts; and
- clarifies how the government will use relevant information provided to inform and support its Duty to Consult and accommodate.
2.0 Background

2.1 Treaty Rights in New Brunswick

In the Maritime provinces, a series of historic treaties referred to as Peace and Friendship Treaties were signed by the British government and the Mi’gmaq (Micmac), Wolastoqey (Maliseet) and Peskotomuhkati (Passamaquoddy) peoples between 1725 and 1779. Thus, Treaty rights are held by Aboriginal Peoples in accordance with the Peace and Friendship Treaties.

For historical information about the Peace and Friendship Treaties:

- Crown-Indigenous Relations and Northern Affairs Canada
- Historic Treaties and Treaty First Nations in Canada Infographic

2.2 Aboriginal Rights in New Brunswick

Aboriginal rights derive from the long-standing use and occupancy of Canada by Aboriginal Peoples prior to European contact, as well as the associated customs, practices and traditions that make Aboriginal societies distinct. These rights are held collectively by Aboriginal Peoples.

2.3 Government’s Duty to Consult and Accommodate

The provincial government has a constitutional Duty to Consult and where required, accommodate Aboriginal Peoples, whenever a decision or activity could adversely impact Aboriginal or Treaty rights. The obligation to consult gives a right to process, not to a particular outcome. This duty, which emanates from Canadian common law, remains an evolving area of law.

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

Securing Aboriginal support or consent may have the following benefits for Proponents:

- builds strong relationships with Aboriginal Peoples;
- simplifies and often speeds up the regulatory review process; and
- creates certainty that projects will proceed and that they will not face legal challenges from Aboriginal Peoples.

The Government of New Brunswick Duty to Consult Policy contains information on the Duty to Consult (see Appendix E). Proponents are also encouraged to review this policy and to contact the Department of Aboriginal Affairs for additional information on the Duty to Consult, and engagement and consultation expectations.

2.4 Regulatory Processes for Proposed Projects

Proposed projects that require regulatory approval(s), permits, and/or licences to proceed may attract the Duty to Consult. Information about various permits, approvals and licences may be found by contacting the appropriate government departments.

Many project proposals will be required to undergo an Environmental Impact Assessment (EIA), managed by the Department of Environment and Local Government. Additional information about the EIA process can be found on the Department of Environment and Local Government’s website, along with specific information for Proponents in A Guide to Environmental Impact Assessment in New Brunswick (see Appendix E).
3.0 Roles and Responsibilities

3.1 Introduction

The following provides a brief description of the roles and responsibilities of the parties in the consultation and accommodation process.

**Government of New Brunswick** – The provincial government is responsible for the overall consultation process and must ensure that consultation and accommodation are appropriate for the circumstances prior to determining whether a project can proceed. The government is responsible for overseeing and ensuring the adequacy of the Proponent’s engagement efforts as well as assessing any proposed mitigation strategies and accommodation measures developed in response to concerns raised by Aboriginal Peoples.

**Aboriginal Peoples** – There is a reciprocal responsibility on Aboriginal Peoples to participate in the consultation process in good faith, to make known their concerns about their Aboriginal and Treaty rights and to respond to the provincial government’s effort to consult.

**Proponents** – Proponents do not have a Duty to Consult but do play a valuable role in the consultation process by engaging Aboriginal Peoples in the development of any project or proposal. The government may also delegate procedural aspects of the consultation process to Proponents, including the collection and sharing of information. This means Proponents may also be directly engaged with Aboriginal Peoples in collecting information from them about their Aboriginal rights and their community interests and aspirations, as well as sharing information about the nature and scope of the proposed project, in order to enable Aboriginal Peoples to assess the potential adverse impacts on their Aboriginal rights. Proponents are required to document their engagement activities; share their consultation record with the provincial government; and advise the government of any issues that arise. Where accommodation is warranted, the Proponent will often be well positioned to provide some, and in certain cases all, of that accommodation.

### Best Practices for Proponent Engagement with Aboriginal Peoples

- Learn about the community and the Aboriginal culture
- Mutual respect
- Early engagement
- Be open and transparent
- Listen with an open mind
- Adapt where possible to avoid impacts to Aboriginal rights

3.2 General Aspects of the Consultation and Accommodation Process

Before determining the procedural aspects of the consultation process that may be delegated to a Proponent, the government will review materials provided by the Proponent and may discuss project details with the Proponent regarding:

- the nature, size and scope of the proposed activity;
- the nature of Aboriginal and Treaty rights potentially impacted;
- the capacity of the Proponent to undertake engagement activities;
• the capacity of the Proponent to provide information relating to the details or context of the proposed activity;
• the ability of the Proponent to incorporate appropriate avoidance or mitigation measures into the project design and/or implementation;
• any protocols or agreements with the First Nation(s); and
• the willingness of Aboriginal Peoples to engage with the Proponent.

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

• providing information about the proposed project to Aboriginal Peoples early in the planning process;
• potentially providing capacity funding to the Aboriginal Peoples to allow them to participate meaningfully in consultation;
• obtaining from and discussing with Aboriginal Peoples information about specific Aboriginal or Treaty rights and other concerns that may be impacted;
• considering modifications to plans to avoid or mitigate impacts to Aboriginal or Treaty rights;
• determining possible accommodation that the Proponent could provide to address the project’s potential adverse effects on Aboriginal rights; and
• documenting engagement, specific Aboriginal or Treaty rights that may be impacted, or other concerns, and any modifications to address concerns and providing this record to the government.

Proponents should seek to engage with Aboriginal Peoples regarding the following, and other topics, as appropriate:

• potential impacts to Aboriginal interests such as activities related to the practice of Aboriginal and Treaty rights, archeological sites and economic development opportunities;
• the type of information required to understand and assess those potential impacts;
• methods of gathering information (e.g., discussions with the Chief and Council, involvement of First Nations technical staff regarding opportunities for Aboriginal Peoples participation in regulatory processes, including traditional use or other studies where appropriate, community meetings, etc.); and
• project adjustments, strategies, or mitigations to avoid or accommodate for adverse impacts to Aboriginal or Treaty rights.

Procedural delegation does not include authority to make decisions regarding the consultation and accommodation, including:

• which Aboriginal Peoples to consult with;
• whether any action may result in adverse impacts to Aboriginal or Treaty rights;
• the consultation required with respect to the seriousness of adverse impacts to Aboriginal rights; and
• the adequacy of consultation or, where appropriate, accommodation.
3.3 The Phases of Engagement and Consultation

The following phases of engagement and consultation are provided as a general guide, and Proponents should work with the provincial government through these phases.

<table>
<thead>
<tr>
<th>Preparation Phase – Pre-application (Early Engagement)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provincial Government</strong></td>
</tr>
<tr>
<td>At the request of the Proponent, the Department of Aboriginal Affairs and other provincial departments will seek to:</td>
</tr>
<tr>
<td>• Provide available information about Aboriginal Peoples to Proponents, including any relevant protocols and agreements.</td>
</tr>
<tr>
<td>• Provide information that may help the Proponent focus their engagement efforts based on an initial scan of Aboriginal and Treaty rights in and around the proposed project area.</td>
</tr>
<tr>
<td>• Advise Proponents that the scope of consultation may change as further information is received about the location, scope and other aspects of the project and about potential impacts on Aboriginal and Treaty rights.</td>
</tr>
<tr>
<td>• Will rely, in part, on the scientific and technological acumen of Proponents with respect to discussing project proposals with Aboriginal Peoples.</td>
</tr>
<tr>
<td>• May advise Proponents to consider undertaking with Aboriginal Peoples, a traditional land use, indigenous knowledge, or other such study, particularly, for projects that are:</td>
</tr>
<tr>
<td>• Of a larger scope and located on Crown lands;</td>
</tr>
<tr>
<td>• Situated close to Aboriginal Peoples land;</td>
</tr>
<tr>
<td>• Located in areas of known high archaeological significance; or,</td>
</tr>
<tr>
<td>• Situated in areas that have particular cultural significance for the Aboriginal Peoples of New Brunswick.</td>
</tr>
<tr>
<td><strong>Proponent Best Practices</strong></td>
</tr>
<tr>
<td>Before submitting applications for authorizations, the Proponent should:</td>
</tr>
<tr>
<td>• Contact the Department of Aboriginal Affairs and the provincial departments responsible for project authorizations to discuss the potentially impacted First Nations.</td>
</tr>
<tr>
<td>• Inquire whether the government has agreements with Aboriginal Peoples as to consultation protocols, etc.</td>
</tr>
<tr>
<td>• Obtain information about the First Nation(s) in the proposed project area, including information regarding culture, history, economy and political/governance structures.</td>
</tr>
<tr>
<td>• Engage with Aboriginal Peoples early in the planning stage of a project or initiative to build relationships and for information sharing purposes.</td>
</tr>
<tr>
<td>• Be flexible about how to engage, and offer to meet with Chiefs and Councils or their designated representatives, or organizations, and their communities.</td>
</tr>
<tr>
<td>• Learn about the communities’ Aboriginal and Treaty rights and their community aspirations.</td>
</tr>
<tr>
<td>• Where a First Nation establishes a reasonable need for consultation capacity funding, provide appropriate funding.</td>
</tr>
<tr>
<td>• Share as much information as possible with Aboriginal Peoples about the nature of the project to enable them to assess its potential impacts on their Aboriginal and Treaty rights. If requested, share GIS information regarding project location, as well as baseline studies prepared in support of the project (subject to working out any reasonably required confidentiality commitments to protect the Proponent’s sensitive information).</td>
</tr>
<tr>
<td>• Where the project could have adverse impacts on Aboriginal or Treaty rights, engage with the purpose of learning whether it may be possible to gain Aboriginal support for the project.</td>
</tr>
<tr>
<td>• Look for opportunities to include Aboriginal Peoples in developing any studies required to inform the project, such as archeological studies and environmental studies, as their participation in this work will help build good working relationships and trust in the information supporting the project application.</td>
</tr>
<tr>
<td>• Prior to submitting applications for permits and approvals, Proponents may be advised to consider undertaking a traditional land use, indigenous knowledge, or other such study with Aboriginal Peoples, particularly for projects that are:</td>
</tr>
<tr>
<td>• Of a larger scope and located on Crown lands;</td>
</tr>
<tr>
<td>• Situated close to Aboriginal Peoples land;</td>
</tr>
<tr>
<td>• Located in areas of known high archaeological significance; or,</td>
</tr>
<tr>
<td>• Situated in areas that have particular cultural significance for the Aboriginal Peoples of New Brunswick.</td>
</tr>
<tr>
<td>• To ensure transparency, communicate to Aboriginal Peoples that the information gathered during early engagement may form a component of the project proposal submitted to the government.</td>
</tr>
</tbody>
</table>
### Preparation Phase – Once an Application is Submitted

<table>
<thead>
<tr>
<th>Provincial Government</th>
<th>Proponent Best Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provincial government activities:</strong></td>
<td><strong>Proponent activities:</strong></td>
</tr>
<tr>
<td>• Review the application to consider the potential adverse impacts on Aboriginal and Treaty rights and conduct an early (initial) assessment;</td>
<td>• Advise the responsible provincial department and the Department of Aboriginal Affairs of plans to engage the relevant Aboriginal groups.</td>
</tr>
<tr>
<td>• Advise Aboriginal Peoples whether or not the Crown considers there is a Duty to Consult, and the initial scope of consultation (this may be revised as consultation proceeds);</td>
<td>• Inform and involve Aboriginal Peoples in the planning phase of the proposed project. For specific requirements relevant to the EIA process, see <a href="#">Guide to Environmental Impact Assessment in New Brunswick</a> (Appendix E).</td>
</tr>
<tr>
<td>• Review any agreements with Aboriginal Peoples that relate to the consultation process.</td>
<td>• Be responsive to relevant Aboriginal information requests.</td>
</tr>
<tr>
<td>• Decide whether the Proponent is to be involved in procedural aspects of consultation and inform Proponent and Aboriginal Peoples of the procedural aspects delegated to the Proponent.</td>
<td>• If concerns and interests remain unresolved and there is a mutual willingness to keep talking, continue engagement with Aboriginal Peoples.</td>
</tr>
<tr>
<td>• Provide the Proponent with:</td>
<td>• Keep Aboriginal Peoples advised of project milestones.</td>
</tr>
<tr>
<td>• Any further assistance needed to identify which Aboriginal Peoples to engage, along with appropriate contact information;</td>
<td>• Develop and maintain a record of engagement efforts.</td>
</tr>
<tr>
<td>• Any information that may help the Proponent in focusing its engagement efforts, which may include:</td>
<td></td>
</tr>
<tr>
<td>• Non-confidential, available information about Aboriginal and Treaty rights;</td>
<td></td>
</tr>
<tr>
<td>• Information about those Aboriginal and Treaty rights that may be impacted by the proposed activity and possible avoidance or mitigation measures; and/or</td>
<td></td>
</tr>
<tr>
<td>• Information about how Proponents should document their engagement activities and outcomes, including any measures taken to accommodate adverse impacts to Aboriginal or Treaty rights.</td>
<td></td>
</tr>
</tbody>
</table>
### Consultation and Accommodation Phase

<table>
<thead>
<tr>
<th><strong>Provincial Government</strong></th>
<th><strong>Proponent Best Practices</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provincial government activities:</strong></td>
<td><strong>Proponent activities:</strong></td>
</tr>
<tr>
<td>• Engage Aboriginal Peoples in an appropriate consultation process.</td>
<td>• Consider entering into a participation/capacity agreement with the relevant Aboriginal Peoples.</td>
</tr>
<tr>
<td>• Maintain a record of Crown engagement/consultation activities;</td>
<td>• Provide capacity funding to support Aboriginal engagement where possible and where reasonably required.</td>
</tr>
<tr>
<td>• Offer opportunities for the Proponent to participate in the Crown’s consultation activities, if appropriate.</td>
<td>• Provide Aboriginal Peoples with comprehensive information as to the potential impact of the project on lands and resources.</td>
</tr>
<tr>
<td>• Consider information provided by the Aboriginal Peoples as to the project impacts and their Aboriginal and Treaty rights.</td>
<td>• Respond to Aboriginal requests for technical information on potential project impacts.</td>
</tr>
<tr>
<td>• Consider information provided by the Proponent based on its engagement with First Nations.</td>
<td>• Make reasonable efforts to build Aboriginal support for the project.</td>
</tr>
<tr>
<td>• Assess whether the consultation is sufficient based on the project’s potential adverse impacts to Aboriginal and Treaty rights.</td>
<td>• Continue to maintain a comprehensive record of Aboriginal engagement including information shared and collected, and share this record with Aboriginal Peoples.</td>
</tr>
<tr>
<td>• Ensure adequate and meaningful consultation occurs and assess whether consultation met the Crown’s requirements and obligations.</td>
<td>• Consider entering into an impact and benefit or other agreements with the relevant Aboriginal groups.</td>
</tr>
<tr>
<td>• Assess whether proposed accommodation is adequate in the circumstances through measures such as:</td>
<td>• Assess options to avoid, minimize or mitigate impacts to Aboriginal and Treaty rights, based on the information about how the Aboriginal Peoples are using lands and resources potentially impacted (i.e., within or downstream of the project area) for the practice of Aboriginal and Treaty rights.</td>
</tr>
<tr>
<td>• Avoiding the impact to the identified Aboriginal and Treaty rights;</td>
<td>• Propose any adjustments to the project that are intended to avoid, minimize, or mitigate adverse impacts identified by the Aboriginal Peoples on their ability to practise Treaty rights.</td>
</tr>
<tr>
<td>• Modifying the proposal to mitigate potential impacts to Aboriginal and Treaty rights (e.g., altering the footprint or location of the proposed activity);</td>
<td>• Consider appropriate accommodation that might offset or compensate for potential adverse impacts to Aboriginal or Treaty rights that cannot be fully avoided or mitigated.</td>
</tr>
<tr>
<td>• Changing the timing of proposed activities;</td>
<td>• Continue to document all communications with the Aboriginal Peoples regarding the project adjustments and any other accommodation measures, and the response to the proposed measures.</td>
</tr>
<tr>
<td>• Determining requirements for impact or environmental monitoring; and</td>
<td>• Provide the consultation record to the government and to Aboriginal Peoples.</td>
</tr>
<tr>
<td>• Undertaking other mitigation strategies.</td>
<td></td>
</tr>
<tr>
<td>• Consider avoidance and mitigation measures undertaken by the Proponent when assessing whether Aboriginal and Treaty rights have been adequately accommodated.</td>
<td></td>
</tr>
<tr>
<td>• Consider the adequacy of accommodation that would offset or compensate for potential adverse impacts that cannot be fully avoided or mitigated; and</td>
<td></td>
</tr>
<tr>
<td>• Share proposed accommodation measures with Aboriginal Peoples and seek their agreement on the sufficiency of the accommodation.</td>
<td></td>
</tr>
<tr>
<td>• The government will encourage the Proponent to propose accommodation measures particularly once there is a thorough understanding of the nature of potential impacts on Aboriginal and Treaty rights.</td>
<td></td>
</tr>
</tbody>
</table>
### Decision and Follow-up Phase

<table>
<thead>
<tr>
<th>Provisonal Government</th>
<th>Proponent Best Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial government activities:</td>
<td>Proponent activities:</td>
</tr>
<tr>
<td>• Through the decision-maker in the appropriate department(s), make a decision(s), which may include terms and conditions related to accommodation.</td>
<td>• Ensure that all terms and conditions of government authorizations that relate to accommodation measures are implemented.</td>
</tr>
<tr>
<td>• Communicate the decision and accommodation measures to the Proponent and Aboriginal Peoples.</td>
<td>• Ensure all provisions of any agreements with Aboriginal Peoples are implemented.</td>
</tr>
<tr>
<td>• Ensure implementation of all accommodation measures by the responsible parties, including the Proponent and the government.</td>
<td></td>
</tr>
<tr>
<td>• Where accommodations are to be implemented after a decision has been made, follow up with Proponents to ensure that any accommodation-related conditions of authorizations are fulfilled.</td>
<td></td>
</tr>
</tbody>
</table>

### 3.4 Proponent Record Keeping

Proponents are responsible for maintaining a record of all engagement and consultation activities. This record includes an engagement summary and a detailed Communications log (both described below) and must be shared with government and with the relevant Aboriginal Peoples, as required. For specific requirements relevant to EIAs, see [Guide to Environmental Impact Assessment in New Brunswick](#) (Appendix E).

#### Engagement Summary

A separate engagement summary for each group of Aboriginal Peoples must be provided where engagement is undertaken. This summary should include:

- the potential adverse impacts to Aboriginal or Treaty rights that have been identified through the engagement process (e.g. impacts to the ability to hunt, fish or gather or carry out other rights-based activities);
- any actions that have been integrated into the proposal/project to avoid, minimize or mitigate potential impacts that have been identified by Aboriginal Peoples during engagement; and
- any additional outstanding issues that cannot be addressed by avoidance or mitigation, along with rationale for why these issues cannot be addressed.

#### Detailed Communications & Issues Tracking Logs

For each group of Aboriginal Peoples or First Nation community, Proponents should document all engagement activities. A sample template for a communications log and issues tracking log can be found in Appendix D. Detailed information should include, but is not limited to:

- community contact(s)/liaison(s);
- dates and types of engagement activities, including all meetings, telephone conversations, emails, letters, etc.; and
- all attempts to engage, whether successful or not.

Engagement summaries and communications and issues tracking logs should be included in a project proposal or as an appendix or addendum to an EIA registration document. These should also be shared with Aboriginal Peoples.

The provincial government may request additional supporting materials, such as:
• record of written correspondence to support communication logs;
• meeting agendas, participant lists, presentation materials and meeting notes;
• any additional studies conducted, reports or other information provided by or to Aboriginal Peoples; and
• any other relevant information used to inform Aboriginal Peoples.

Proponents should maintain a permanent record of all engagement and supporting materials for future reference and to provide to the government if necessary.

The government may require occasional updates from the Proponent regarding the status of engagement activities with Aboriginal Peoples. The government will review the Proponent’s engagement record and verify any outcomes with the Aboriginal Peoples. The government will also share the Crown’s consultation record with Aboriginal Peoples.
4.0 Proponent and Aboriginal Peoples
Agreements

Some Proponents have advanced their projects by entering into agreements and arrangements with Aboriginal Peoples. Each business will need to consider whether it is in its interest to develop such agreements. Government may advise Proponents to consider such agreements.

There are two broad categories of agreements:

1. Agreements that address matters within the consultation process and facilitate productive dialogue between the parties. These agreements can provide capacity or participation funding to attend meetings, review technical information and hold community sessions. Agreements may also fund and otherwise enable studies to assess the potential impact of a project on Aboriginal or Treaty rights, traditional use studies, mitigation and monitoring programs, or studies that provide Aboriginal Peoples and Proponents with information as to how they could participate in projects such as employment surveys, economic development studies, etc.

2. Proponents and Aboriginal Peoples may enter into benefit-sharing agreements that resolve matters related to a project. These agreements may provide accommodation measures and address the impacts of a project on Aboriginal or Treaty rights. Agreements may also provide benefits to Aboriginal Peoples such as partnership arrangements, revenue-sharing, contracting and employment opportunities, community infrastructure enhancement or equity sharing and may include alternative dispute resolution processes. Some industry associations will be able to provide their members with examples of impact and benefit agreements. Natural Resources Canada is another source of information on impact and benefit agreements.

Natural Resources Canada (Mining/Minerals Publications):

The provincial government recognizes that such arrangements make good business sense and can contribute to enhancing and building partnerships. Where arrangements or agreements have been developed between Proponents and Aboriginal Peoples, the government, to the extent that their terms are known and relate to accommodation, may be able to take such agreements into account.

For agreements to succeed over the long term, they need to meet the mutual interests of Aboriginal Peoples and Proponents. All parties will need to commit to implementing the terms of the agreements. Developing an implementation plan as part of such agreements will facilitate communications and help meet the parties' expectations and obligations.
Appendix A: Map of Aboriginal Communities in New Brunswick
### Appendix B: Aboriginal Communities in New Brunswick Pronunciation Guide

<table>
<thead>
<tr>
<th>ABORIGINAL COMMUNITIES IN NEW BRUNSWICK PRONUNCIATION GUIDE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td><strong>Mi’kmaq Nation communities</strong></td>
</tr>
<tr>
<td>Eel River Bar</td>
</tr>
<tr>
<td>Pabineau</td>
</tr>
<tr>
<td>Burnt Church</td>
</tr>
<tr>
<td>Red Bank</td>
</tr>
<tr>
<td>Eel Ground</td>
</tr>
<tr>
<td>Indian Island</td>
</tr>
<tr>
<td>Elsipogtog</td>
</tr>
<tr>
<td>Buctouche</td>
</tr>
<tr>
<td>Fort Folly</td>
</tr>
<tr>
<td>(Source: Assembly of First Nations Chiefs in New Brunswick)</td>
</tr>
<tr>
<td><strong>Wolastoqey (Maliseet) Nation communities</strong></td>
</tr>
<tr>
<td>Oromocto</td>
</tr>
<tr>
<td>Saint Mary’s</td>
</tr>
<tr>
<td>Kingsclear</td>
</tr>
<tr>
<td>Woodstock</td>
</tr>
<tr>
<td>Tobique</td>
</tr>
<tr>
<td>Madawaska</td>
</tr>
<tr>
<td>(Source: Imelda Perley)</td>
</tr>
<tr>
<td><strong>Peskotomuhkati (Passamaquoddy) Nation community</strong></td>
</tr>
<tr>
<td>Skutik</td>
</tr>
<tr>
<td>(Source: Assembly of First Nations Chiefs in New Brunswick)</td>
</tr>
</tbody>
</table>
Appendix C: Contact Information for Aboriginal Communities and Consultation Representatives

Contact information: Mi’gmaq Communities

Chief and Council, Tjipõgtõtjg (Buctouche First Nation)
9 Reserve Rd.
Buctouche, NB E4S 4G2
Telephone: 506-743-2520
Fax: 506-743-8995

Chief and Council, Natoaganeg (Eel Ground First Nation)
47 Church Rd.
Eel Ground, NB E1V 4E6
Telephone: 506-627-4600
Fax: 506-627-4602

Chief and Council, Ugpi’ganjig (Eel River Bar First Nation)
11 Main St., Unit 201
Eel River Bar, NB E8C 1 A1
Telephone: 506-684-6277
Fax: 506-684-6282

Chief and Council, Elsipogtog (Big Cove First Nation)
RR 1, 373 Big Cove Rd.
Elsipogtog, NB E4W 2S3
Telephone: 506-523-8200
Fax: 506-523-8230

Chief and Council, Oinpegitjoig (Pabineau First Nation)
1290 Pabineau Falls Rd.
Pabineau First Nation, NB E2A 7M3
Telephone: 506-548-9211
Fax: 506-548-5348

Chief and Council, Esgenoôpetitj (Burnt Church First Nation)
620 Bayview Dr.
Burnt Church, NB E9G 2A8
Telephone: 506-776-1200
Fax: 506-776-1243

Chief and Council, Amlamgog (Fort Folly First Nation)
38 Bernard Trail
PO Box 1007
Dorchester, NB E4K 3V5
Telephone: 506-379-3400
Fax: 506-379-3408

Chief and Council, L’nui Menikuk (Indian Island First Nation)
61 Island Dr.
Indian Island, NB E4W 1S9
Telephone: 506-523-4875
Fax: 506-523-8110

Chief and Council, Metepenagiag (Red Bank First Nation)
PO Box 293
Metepenagiag Mi’gmaq Nation, NB E9E 2P2
Telephone: 506-836-6111
Fax: 506-836-7593

Contact information: Mi’gmaq representative organization (other than Elsipogtog)

Mi’gmawe’l Tplu’taqunn Incorporated (MTI)
40 Micmac Road
Eel Ground, NB E2V 4B1
Telephone: 506-627-4604
Fax: 506-627-4605

Contact information: Elsipogtog representative organization

Kopit Lodge
33 Riverside Drive
Elsipogtog, NB E4W 2Y6
Telephone: 506-338-0125
Contact information: Wolastoqey Communities

Chief and Council, Pilick (Kingsclear First Nation)
77 French Village Rd.
Kingsclear First Nation, NB E3E 1K3
Telephone: 506-363-3028
Fax: 506-363-4324

Chief and Council, Kapskuksisok (Madawaska Maliseet First Nation)
1771 Principale Street
Madawaska First Nation, NB E7C 1W9
Telephone: 506-739-9765
Fax: 506-735-0024

Chief and Council, Welamakotuk (Oromocto First Nation)
P.O. Box 417
Oromocto, NB E2V 2J2
Telephone: 506-357-2083
Fax: 506-357-2628

Chief and Council, Sitansisk (Saint Mary’s First Nation)
150 Cliffe St.
Fredericton, NB E3A 0A1
Telephone: 506-458-9511
Fax: 506-462-9491

Chief and Council, Neqotkuk (Tobique First Nation)
13094 Rte 105
Tobique, NB E7H 3Y4
Telephone: 506-273-5400
Fax: 506-273-5650

Chief and Council, Wolastokuk (Woodstock First Nation)
3 Wulastook Ct.
Woodstock First Nation, NB E7M 4K6
Telephone: 506-328-3303
Fax: 506-328-2420

Contact information: Wolastoqey Nation in New Brunswick (representative organization)

Consultation Director, Kchikhusis Commercial Centre
150 Cliffe St., Box 14
Fredericton, NB E3A 0A1
Telephone: 506-459-6341
Fax: 506-459-0974

Contact information: Peskotomuhkati Nation at Skutik

Chief and Council, Peskotomuhkati Nation at Skutik
27 King Street,
St Stephen, NB E3L 2C1
Telephone: 506-466-2216
Fax: 506-466-2217

Treaty Negotiations Director
Treaty Negotiations Office
27 King Street,
St Stephen, NB E3L 2C1
Telephone: 506-466-2216
Fax: 506-466-2217
Appendix D: Templates
Engagement and Communication Log
Interests and Concerns Tracking Log
Appendix E: Additional Resources

New Brunswick Duty to Consult Policy
http://www2.gnb.ca/content/dam/gnb/Departments/aas-saa/pdf/en/DutytoConsultPolicy.pdf

Environmental Impact Assessment Regulation (including Schedule A)

Department of Environment and Local Government - Environmental Impact Assessment in New Brunswick
http://www2.gnb.ca/content/gnb/en/departments/elg/environment/content/environmental_impactassessment.html

A Guide to Environmental Impact Assessment in New Brunswick:

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) - Indigenous peoples and communities
https://www.rcaanc-crnac.gc.ca/eng/110010013785/1529102490303

First Nation Profiles

Crown-Indigenous Relations and Northern Affairs Canada