



Duty to Consult Policy

Issue Date: April 7, 2011

Revised Dates: June 9, 2015

Authority

The CIC Crown Corporations Act, 1993

CIC Board Minute #133/2006

CIC Board Minute #060/2010, May 13, 2010

CIC Board Minute #64/2011, April 7, 2011

CIC Board Minute #083/2015, June 9, 2015

Applicability

This policy is applicable to CIC and all CIC subsidiary Crown corporations.

CIC Duty to Consult Policy

CIC and its subsidiary Crown corporations will:

1. Assess and fulfill their duty to consult responsibilities in compliance with the ***Government of Saskatchewan's First Nation and Métis Consultation Policy Framework (CPF)*** that is consistent with the process set out in the *Duty to Consult Process Guide for Saskatchewan Government Officials* - follow the link to <http://www.saskatchewan.ca/residents/first-nations-citizens/duty-to-consult-first-nations-and-metis-communities#duty-to-consult>
2. When acting as a project proponent, follow the guidance in the ***Proponent Handbook: Voluntary Engagement with First Nation and Métis Communities to Inform Government's Duty to Consult Process*** - follow the link to <http://www.saskatchewan.ca/residents/first-nations-citizens/duty-to-consult-first-nations-and-metis-communities#proponents-and-the-duty-to-consult>

Guiding Principles

CIC and its subsidiary Crown corporations:

- Understand and respect the Treaty and Aboriginal rights of First Nation & Métis communities.
- Are committed to promoting positive and transparent relationships with First Nation and Métis communities based on open communication, trust, respect, common interests and shared values.
- Are responsible to consult with those First Nations and Métis communities whose Treaty and Aboriginal rights and/or traditional uses of land and resources have the potential to be adversely impacted by a Crown corporation decision or action.
- Are responsible to engage with First Nation and Métis communities to inform government's duty to consult process when they are acting as a proponent and seeking authorization from a government ministry or agency.
- Are responsible to evaluate if strategic, higher level decisions, such as new/amended legislation, regulations, policies, and strategic plans that will guide future decisions trigger the duty to consult.

Background

Legal Foundation for the Duty to Consult

In 2004, the Supreme Court of Canada released two decisions concerning the duty to consult and accommodate Aboriginal peoples. Both cases arose out of circumstances in British Columbia where the issue of Aboriginal title has not been dealt with by way of Treaty as it has in Saskatchewan. In the Haida Nation and Taku River decisions, the Supreme Court ruled that if the government's actions could adversely affect asserted claims of Aboriginal title or rights, consultation would still be required even though the claim had not yet been proven.

In 2005, the Supreme Court of Canada handed down its decision in the case of Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage). In the decision, the Supreme Court confirmed that, while governments have the power under Treaties to take up land, they have a duty to consult when the taking up of land may adversely affect Treaty rights.

The CPF

Approved by Cabinet in June 2010, the CPF describes Government's roles and responsibilities in the duty to consult process, outlines criteria for determining when the duty to consult is triggered and describes different consultation levels based on the anticipated level of adverse impact of the proposed development on Treaty and Aboriginal rights and traditional uses.

The CPF is available at <https://www.saskatchewan.ca/live/first-nations-citizens/lands-and-consultation/consultations>.

Operational Implementation Procedures

The CPF noted that each ministry, Crown corporation and agency would develop "operational implementation procedures" in alignment with the CPF's guidelines.

In 2011 CIC developed Duty to Consult Guiding Procedures and indicated the following:
"CIC subsidiary Crown corporations may develop more detailed implementation procedures to suit individual business needs. Where customized detailed procedures are prepared by a Crown corporation, it is important that such procedures be aligned with these Guiding Procedures and the CPF. First Nation and Métis consultation is an evolving matter. The Guiding Procedures are therefore subject to modification should new information become available, or Government policies and processes be created or modified that would impact the Policy."

In April 2015, the Government of Saskatchewan developed the *Duty to Consult Process Guide for Saskatchewan Government Officials* (Guide) to replace the need for ministry, CIC subsidiary Crown corporations and agency-specific operational procedures.

The Guide sets out a single consistent process to help officials understand their duty to consult responsibilities when determining and fulfilling government's legal obligation.

The Guide is housed on a Duty to Consult SharePoint site and linked to a full suite of tools to assist officials with implementation. CIC or a subsidiary Crown corporation official can arrange for access by contacting Aboriginal.Consultation@gov.sk.ca or call toll free: 1-877-879-7099.

The Proponent Handbook

The *Proponent Handbook: Voluntary Engagement with First Nation and Métis Communities to Inform Government's Duty to Consult Process* was developed to clarify the roles and responsibilities of proponents, highlight the opportunity for engagement, and address the duplication of engagement and consultation efforts on projects that have the potential to trigger the duty to consult when authorization is sought.

The Handbook encourages the opportunity for early, effective and timely information exchange between proponents and First Nations and Métis communities and provides practical advice on how to gather and document information relevant to informing government's duty to consult.

When CIC or a subsidiary Crown corporation seeks authorization from another government ministry or agency related to land and/or resource development, they are viewed as a project proponent.

The Proponent Handbook is available at: <http://www.saskatchewan.ca/live/first-nations-citizens/lands-and-consultation/consultations>.

Advice and Support

Questions on the CPF, the Guide, the tools, the SharePoint site or the Proponent Handbook should be directed to the Ministry of Government Relations' Aboriginal Consultation Branch at Aboriginal.consultations@gov.sk.ca or by phoning toll-free 1-877-879-7099.

As outlined in Section 4 of the Guide, the following consultation tools are available on the Duty to Consult SharePoint site:

- Important Terms
- Consultation Record
- Project Cover Sheet
- Notification and Consultation Log
- Community Consultation Summary
- Consultation Assessment
- Pre-Consultation Assessment Template (Proposed Project)
- Pre-Consultation Assessment Template (Legislation, Regulation, Policy, Strategic Plans)
- Interest-Based Engagement
- Consultation Matrix
- Notification Letter Outline
- Sample Notification Letter
- Fast Track Grants Fact Sheet
- Assigning Procedural Aspects of Consultation
- Sample Letter of Assignment
- Consultation Meetings
- Open House Consultations
- Participant Attendance Sheet
- Managing Community Responses
- Decision Letter Outline
- Sample Decision Letter
- Community Contact Lists



Administrative Information:

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