

CONSULTATION GUIDANCE FOR PROPONENTS

Executive Committee Screenings

May 29, 2024

Amendment Note: Appendix 1 – Item 3 header was incorrect and changed as noted (pg. 9)

This document is currently under review

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PREFACE

This Guide is intended to provide proponents of projects subject to a screening by the Executive Committee with guidance regarding consultation under sections 3 and 50(3) of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). For more information regarding the Executive Committee screening¹ process please visit www.yesab.ca.

This document should be used as a source of information to help guide a proponent's consultation efforts as it prepares to submit a project proposal to the Executive Committee of the Yukon Environmental and Socio-economic Assessment Board (YESAB).

This Guide does not apply to projects subject to a Designated Office evaluation or a Panel review.

Proponents are encouraged to contact YESAB regarding their consultation efforts prior to submitting their proposals.

Please contact YESAB by phone: 867-668-6420, email: yesab@yesab.ca or fax: 867-668-6425

Yukon Assessment Framework

YESAB is an independent arms-length body, responsible for the assessment responsibilities set out in the (YESAA) and its Regulations.

YESAA establishes a single assessment process for most projects in Yukon. Under YESAA, the Designated Office, the Executive Committee or a Panel of the Board conducts assessments of project proposals and makes recommendations to Decision Body(s). The federal, territorial and/or First Nation Governments, as Decision Bodies for projects, then decide whether to accept, reject or vary the recommendations. The rationale for their decision(s) is issued in a Decision Document. Regulators may only issue permits or authorizations once a recommendation has been received from YESAB and a Decision Document has been issued.

For more information on YESAB please visit www.yesab.ca.

Disclaimer

This Guide is not intended to provide legal advice or direction. The Guide provides information only, and should not be used as a substitute for YESAA or its associated Regulations and Rules. In the event of a discrepancy, YESAA, the Regulations, and the Rules prevail. Portions of YESAA have been paraphrased in the Guide, and should not be relied upon for legal purposes. The procedures described in this Guide may be deviated from, based on specific project circumstances. YESAB disclaims liability in respect of anything done in reliance, in whole or in part, on the contents of this Guide.

¹Schedule 3 to the *Assessable Activities Regulations* determines which projects are subject to a screening by the Executive Committee.

Purpose of Consultation

The purpose of proponent consultation with First Nations and “residents of any community” under YESAA is to identify values and interests, to discuss potential effects of a project, to consider views, and to take into account these views in the development of a project. The consultation process involves providing information to and meeting with potentially impacted First Nations and residents of communities, and listening, documenting, responding and following up on comments and concerns raised in relation to a proponent’s proposed project.

The requirement for proponents to consult under YESAA should not be confused with the requirement for the Crown to consult with First Nations. The two requirements are distinct from one another. The Crown has its own duty to consult with affected First Nations on projects. The Crown may, however, choose to rely on the assessment process under YESAA to help fulfill its requirement to consult with First Nations. For information on those processes contact Government of Yukon Development Assessment Branch and/or the Northern Projects Management Office of the Canadian Northern Economic Development Office.

What is important for proponents to understand is that their consultation efforts will be examined by the Executive Committee (EC) against the requirement set out in YESAA.

Proponent Obligation

YESAA requires a proponent to consult with First Nations and residents of communities before it submits a proposal to the EC. This obligation is captured in section 50(3) of YESAA:

s. 50(3) Before submitting a proposal to the executive committee, the proponent of a project shall consult any first nation in whose territory, or the residents of any community² in which, the project will be located or might have significant environmental or socio-economic effects.

²The reference to “residents of any community” can be found in s. 50(3) of YESAA. See footnote 2 for full text of s.50(3). There is no one definition for this category of individuals. The definition of this category of individuals will be project specific. Proponents are, therefore, advised to contact YESAB regarding their consultation efforts prior to submitting their proposals.

Manner of Consultation

The manner in which proponents must consult with First Nations and residents of communities is defined in section 3 of YESAA:

s. 3 Where, in relation to any matter, a reference is made in this Act to consultation, the duty to consult shall be exercised

- (a) *by providing, to the party to be consulted,*

 - (i) *notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,*
 - (ii) *a reasonable period for the party to prepare its views, and*
 - (iii) *an opportunity to present its views to the party having the duty to consult; and*

- (b) *by considering, fully and fairly, any views so presented.*

Each criterion set out in section 3 must be met in relation to each First Nation and/or residents of communities consulted. If any one of the criterion in section 3 is not met in relation to any one of the First Nations or residents of communities, the consultation requirement has not been fulfilled.

EC is willing to work with proponents as they formulate a consultation plan in relation to sections 3 and 50(3) for First Nations and residents of communities. Specifically, the EC may work with proponents to:

- Discuss the First Nations and communities that may be impacted by the proponent’s project.
- Discuss the obligations under sections 3 and 50(3) of YESAA.
- Discuss appropriate record keeping of consultation activities.

However, the EC cannot prescribe the manner of consultation that a proponent should follow. Ultimately, it is up to the proponent to decide on a consultation methodology that is consistent with sections 3 and 50(3) of YESAA³.

Executive Committee Obligation

The EC also has an obligation in relation to consultation; it is required to determine whether a proponent has consulted in accordance with section 50(3). The EC's obligation is contained in section 57(2) of YESAA. The EC makes this determination prior to beginning a screening.

Executive Committee Examination

EC will examine the proposal once submitted to determine where a project is located and where a project might have significant adverse effects, including the effects of accidents and malfunctions, in order to ensure that a proponent has consulted all of the First Nations and residents of communities required. The location of a project and where there may be any potential significant effects of the project are important considerations in relation to who must be consulted.

Proponents are strongly encouraged to:

- Take into account any effects of accidents and malfunctions when determining which First Nations and residents of which communities to consult.
- Provide detailed project information to First Nations and residents of communities to ensure that they are fully informed as to the nature of the proposed activities and are aware of any potential effects.

- Seek direction from First Nations and residents of communities for guidance on the appropriate means of consultation methodology recognizing community specific requirements including who has the authority to speak and meet on their behalf.

The EC recognizes that there is no single approach to fulfill the consultation obligation and that many different methods can achieve this goal. The EC will examine each consultation record on its merits. It will be looking for a clear, detailed account of the process and the outcome of consultation activities and efforts. See Appendix 1 and 2 Summary of Consultation Record - Sample Tables as examples of suitable approaches of keeping a detailed account of consultation activities with First Nations and residents of communities.

³ s. 57(2) The executive committee shall commence a screening of a project as soon as possible after it notifies the proponent affirmatively under subsection (1) and advises the proponent that, in its opinion, the proponent has in its proposal taken into consideration the matters referred to in paragraphs 42(1)(b), (c) and (e) to (h) and has consulted first nations and the residents of communities in accordance with subsection 50(3).

THE CONSULTATION RECORD

The Consultation Record should be a separate and distinct section within the larger project proposal and should clearly demonstrate the four criteria contained in section 3 for each individual First Nation and residents of each community. Proponents should be aware that it is not appropriate to simply reference sections within the larger proposal as a method to demonstrate consultation activities and outcomes. Preferably, each individual First Nation and residents of each community should be addressed in separate sections within the Consultation Record. The EC is looking for evidence to show that each criterion in section 3 has been met for each First Nation and residents of each community.

The EC will look to see if each First Nation and the residents of each community were given:

1. Notice in sufficient form and detail

This notice can be demonstrated to the EC in the following ways:

- Provide copies of the actual documentation, video or audio that was sent or presented at meetings. Templates of presentations, or presentations that were not delivered, will not suffice.
- Provide copies of emails and letters that demonstrate dates, times, and locations of events, meetings, and conversations by teleconferences or videoconference.
- Provide information on the methods by which you communicated your intention to consult about the project with First Nation and residents of communities.

The EC will also examine whether the information was provided in an understandable manner and whether a proponent ensured that knowledgeable personnel or experts were available to explain technical details and answer questions.

2. A reasonable period of time to prepare views

This period can be demonstrated to the EC in the following ways:

- Provide a timeline of events.
- Provide names of individuals who were invited to meetings, events, or who were asked to participate in conversations by teleconferences or videoconferences.
- Provide dates for when you invited First Nations or residents of communities to meetings, events, and telephone conversations.
- Provide notes taken or meeting summaries describing the information that you shared with First Nations or residents of communities.
- Provide copies of the actual notices and/or other documentation that were provided with the invitations or notifications and indicate to whom they were sent.

The EC will be looking for some indication as to how much time First Nations and/or residents of communities were given between being provided or presented with information and having to respond to that information with their views. For example, were First Nations and/or residents of communities asked to provide their views during the same meeting in which they were presented with information? Were First Nations and/or residents of communities given a specified amount of time to go away and reflect on the information that was presented and given a certain deadline by which to respond with their views? The EC recognizes that what constitutes a reasonable period of time is circumstance dependent.

3. An opportunity to present views

This opportunity can be demonstrated to the EC in the following ways:

- Provide names of individuals who attended, or who were parties to conversations, teleconferences or videoconference.
- Provide dates, times, locations of where First Nations and/or residents of communities presented their views to you.
- Provide notes taken or meeting summaries articulating the views of First Nations and/or residents of communities.
- Provide copies of any views shared with you via mail or letter.

4. Full and fair consideration of any views presented

This consideration can be demonstrated to the EC in the following ways:

- Provide details as to what activities were affected / altered / modified by views.
- Provide a list of mitigation measures you will implement or have committed to regarding First Nations' and/or residents of communities' views and the extent to which measures address the views.
- Provide details for what changes / alternatives / modifications were not made and why not.
- Provide descriptions of any outstanding issues and why they are outstanding.

The EC will be looking to see if a proponent has demonstrated how its project was affected by views, if at all. If a project was not affected, the EC will be looking for a detailed explanation as to why not.

PARTICIPATION OF FIRST NATION AND RESIDENTS OF COMMUNITIES

In some cases, a First Nation or residents of communities may be reluctant to participate in consultation. The EC will be looking for details regarding a proponent's attempts to meet with a First Nation or residents of communities and the responses that a proponent received in return. EC will also be looking for the information that accompanied the requests to participate in consultation activities. This detail can be demonstrated to the EC in the following ways:

- Provide the methods by which you communicated your intention to consult about the project with First Nations and/or residents of communities.
- Provide names of individuals who were invited to meetings, events, or who were asked to participate in conversations, teleconferences or videoconferences and the responses to the invitations.
- Provide dates for when you invited First Nations and/or residents of communities to meetings, events, and telephone conversations and whether or not they participated.
- Provide the information that was intended to be the basis of the consultation with the First Nations and/or residents of communities.

EXECUTIVE COMMITTEE DETERMINATION

In making its determination as to whether a proponent has consulted in accordance with sections 3 and 50(3), The EC will:

- Focus on consultation activities and efforts that have or should have occurred before the proposal was submitted. While engagement that occurs during the assessment process after the proposal is submitted may be relevant to the assessment outcome, this engagement is not relevant to the section 50(3) determination. Engagement that occurs subsequent to the submission of a proposal cannot be used to fulfill the pre-submission requirement for consultation under section 50(3).
- Recognize that certain projects may impact First Nations and residents of communities differently and that a proponent's consultation efforts/ records will reflect these differences. The EC recognizes that consultation efforts/records will not necessarily be consistent from First Nation to First Nation or from community to community.
- Take into account situations where First Nations and/or residents of communities are reluctant to participate in consultation with proponents.
- Contact First Nations and/or residents of communities to seek their input on the proponent's consultation record.

If the EC determines that the consultation obligation is not met, the proponent will be required to reconsider their proposal in relation to sections 3 and 50(3), which may include further consultation activities.

APPENDIX 1: Sample Table 1: Summary of Consultation Record for [First Nation/Residents of Community]

1. Provision of Notice in Sufficient Form and Detail

- Provide copies of the actual documentation, video or audio that was sent or presented at meetings. Templates of presentations will not suffice.
- Provide copies of emails and letters that demonstrate dates, times, and locations of events, meetings, and conversations by teleconferences or videoconference.
- Provide information on the methods by which you communicated your intention to consult about the project with First Nations and residents of communities.

ID	Date	Subject matter for consultation	Recipient	Description of information provided to recipient	Method of Notice	Documentation in CR*
A	1-Jan-01	Scope of Project	Chief and Council of X First Nation	Presentation regarding project outline	Via email	Section 1, pg. 2
B	1-Feb-01	Scope of Project	Residents of X community	Presentation on scope of project	Radio and newspaper ads/ posters	Section 1, pg. 3

2. A reasonable period of time to prepare views

- Provide a timeline of events.
- Provide names of individuals who were invited to meetings, events, or who were asked to participate in conversations, teleconferences or videoconferences.
- Provide dates for when you invited First Nations or residents of communities to meetings, events, and telephone conversations.
- Provide notes taken or meeting summaries describing the information that you shared with First Nation or residents of communities.
- Provide copies of the actual notices and/or other documentation that were provided with the invitations or notifications and indicate to whom they were sent.

ID	Date	Subject matter for consultation	Recipient	Period of time to prepare views	Documentation in CR
A	28-Dec-00	Scope of Project	Chief and Council of X First Nation	Invitation to meeting for presentation of project scope 4 days ahead of meeting	Section 2, pg. 3
B	15-Jan-01	Scope of Project	Residents of X community	Notification of public meeting to present project outline 2 weeks prior to the public meeting	Section 2, pg. 4

3. An Opportunity to Present Views (Note – title corrected May 29,2024)

- Provide names of individuals who attended meetings, events, or who were parties to conversations teleconferences or videoconferences.
- Provide dates, times, locations of where First Nations and/or residents of communities presented their views to you.
- Provide notes taken or meeting summaries articulating First Nations or residents of communities' views.
- Provide copies of any views shared with you via email or letter.

ID	Date	Subject	Recipient	Description	Method	Documentation in CR
A	1-Jan-01	Scope of Project	Chief and Council / Director of Lands X First Nation	Views on project outline from Director of Lands; Follow-up letter by Chief and Council	email	Section 3, pg. 5
B	1-Feb-01	Scope of Project	Residents of X community	Oral comments from public meeting; Written comments post meeting	notes taken at meeting / flyers	Section 3, pg. 5

4. Full and Fair Consideration of Views Presented

- Provide details as to what activities were affected/altered/modified by the views presented.
- Provide a list of mitigation measures you will implement or have committed to regarding the views of First Nations or residents of communities' and the extent to which the measures address those views.
- Provide details as to what changes/alternatives/modifications were not made and why.
- Provide any outstanding issues and why they are outstanding.
- Provide an explanation as to how the project was changed or modified, or not, based on the views of First Nations and/or residents of communities'.

Topic	Concern	Source(s)	Consideration	Documentation in CR
Water Quality	Acid rock drainage / metal leaching into river	X First Nation - Chief and Council	Provided details of mine waste management plan	Section 4, pg. 7
Wildlife - Moose	Access road cuts through moose calving area	Residents of X community	Re-routed access route to address concerns raised	Section 4, pg. 4

*ID = Identifier

*CR = Consultation Record

APPENDIX 2: Sample Table 2: Summary of Consultation Record for [First Nation/Residents of Community]

Section 3 Criteria							
1. Provision of Notice in Sufficient Form and Detail <ul style="list-style-type: none"> • Provide copies of the actual documentation, video or audio that was sent or presented at meetings. Templates of presentations will not suffice, or presentations that were not delivered. • Provide copies of emails and letters that demonstrate dates, times, and locations of events, meetings, and conversations by telephone conferences or videoconference. • Provide information on the methods by which you communicated your intention to consult about the project with First Nations and residents of communities. 	Date	1-Jan-01	1-Feb-01				
	Recipient	Chief and Council of X First Nation	Residents of X community				
	Subject matter for consultation	Scope of project	Scope of project				
	Method of notice	Via email	Radio and newspaper advertisement / posters				
	Documentation in CR	Section 1, pg. 1	Section 1, pg. 5				
2. A reasonable period of time to prepare views <ul style="list-style-type: none"> • Provide a timeline of events. • Provide names of individuals who were invited to meetings, events, or who were asked to participate in conversations, teleconferences or videoconferences. • Provide dates for when you invited First Nations or residents of communities to meetings, events, and telephone conversations. • Provide notes taken or meeting summaries describing the information that you shared with First Nations or residents of communities. • Provide copies of the actual notices and/or other documentation that were provided with the invitations or notifications and indicate to whom they were sent. 	Date	28-Dec-00	15-Jan-01				
	Recipient	Chief and Council of X First Nation	Residents of X community				
	Period of time to prepare views	Invitation to meeting for presentation of project scope 4 days ahead of meeting	Notification of public meeting to present project outline 2 weeks prior to the public meeting				
	Documentation in CR	Section 1, pg. 2	Section 2, pg. 6				

<p>3. Opportunity to Present Views</p> <ul style="list-style-type: none"> • Provide names of individuals who attended meetings, events, or who were parties to conversations, teleconferences or videoconferences. • Provide dates, times, locations of where First Nations and/or residents of communities presented their views to you. • Provide notes taken or meeting summaries articulating First Nation or residents of communities' views. • Provide copies of any views shared with you via email or letter. 	Date	1-Jan-01	1-Feb-01				
	Recipient	Chief and Council / Director of Lands X First Nation	Residents of X community				
	Description of recipients' response	Views on project given at meeting by Director of Lands	Oral comments from public meeting				
		Follow-up letter by Chief and Council	Written comments post meeting				
	Method	In person and by email	Notes taken at meeting /flyers				
	Documentation in CR	Section 1, pg. 3	Section 2, pg. 7				
<p>4. Full and Fair Consideration of Views Presented</p> <ul style="list-style-type: none"> • Provide details as to what activities were affected/altere d/ modified by views. • Provide a list of mitigation measures you will implement or have committed to regarding the views of First Nations or residents of communities and the extent to which the measures address the views. • Provide details for what changes/alternatives/ modifications were not made and why. • Provide any outstanding issues and why they are outstanding. • Provide an explanation as to how the project was changed or modified, or not, based on First Nation and/or residents of communities' views. 	Topic	Water quality	Wildlife - Moose				
	Concerns / Views	Acid rock drainage / metal leaching into river	Access road cuts through moose calving area				
	Source	Chief and Council of X First Nation	Residents of X community				
	Consideration by proponent	Provided details of mine waste management plan	Re-routed access route to address concerns raised				
	Documentation in CR	Section 1, pg. 4	Section 2, pg. 8				

*CR = Consultation Record