PROPONENT CONSULTATION GUIDANCE

For Executive Committee Screenings

Version History

Version #2.0 Date [2026-03-03]
*This guidance, dated 2026-03-03 replaces the previous bulletin published by YESAB on this topic. The previous iteration was initially published in 2017, and was subject to one editorial change in May 2025.

For More Information
Contact YESAB

Telephone: 867-668-6420
Toll Free: 1-866-322-4040
Email: yesab@yesab.ca
www.yesab.ca

Disclaimer: This document is not intended to provide legal advice or direction. It is for information purposes only and should not be used as a substitute for the Act or its associated regulations and rules. In the event of a discrepancy, the Act, regulations, and rules prevail. YESAB retains the discretion to deviate from the procedures described in this guidance where appropriate.

Yukon Environmental and Socio-economic Assessment Act* and the *Umbrella Final Agreement

This policy guidance includes references to the *Yukon Environmental and Socio-economic Assessment Act* ("YESAA"). Where applicable, the corresponding provisions of the *Umbrella Final Agreement* are also identified.

YESAA was enacted to meet a commitment in the Umbrella Final Agreement between the Government of Canada, the Council of Yukon First Nations and the Government of Yukon

The *Umbrella Final Agreement* ("UFA"), and Chapter 12 in particular, sets out an over-arching framework for a development assessment process in Yukon. The agreement required and contemplated that elements of this process would be further developed through legislation enacted by Canada or Yukon.

In 2003, ten years after the UFA was signed, YESAA was given Royal Assent. YESAA specifies that in the event of an inconsistency or conflict between a final agreement and YESAA, the agreement prevails to the extent of the inconsistency or conflict YESAB has a special relationship with the UFA and the unique environmental and socio-economic assessment legislation that it created. We recognize that we are one of many organizations with a role to play in meeting its spirit, intent and purpose.

We further acknowledge that the *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP*)* is also relevant to the interpretation and implementation of our mandate. As the Government of Canada works towards the implementation of the *United Nations Declaration of the Rights of Indigenous Peoples Act*, YESAB will continue to incorporate many of the principles underlying UNDRIP and the Truth and Reconciliation Commission's calls to action via YESAB rules and organizational initiatives. We will also consider UNDRIP, where applicable, when interpreting our statutory framework.

TABLE OF CONTENTS

PREFACE 5

MANNER OF CONSULTATION 5

PRE-SUBMISSION ENGAGEMENT 6

REFERRED PROJECTS 6

OBLIGATIONS 6

THE CONSULTATION RECORD 7

WHEN AN APPLICABLE FIRST NATION OR COMMUNITY DOES NOT PROVIDE VIEWS OR INFORMATION 10

EXECUTIVE COMMITTEE DETERMINATION 10

PREFACE

This guide provides directions to proponents undergoing screening by the Executive Committee (EC) on how to meet the consultation requirement in section 50(3) of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA or the Act). For more information regarding the Executive Committee screening process please visit www.yesab.ca.

Pre-submission Engagement (PSE) is mandatory for all projects requiring the Executive Committee screening. PSE allows participants opportunities to provide their views and information to the EC. These views and information, ultimately, inform the requirements with respect to project proposals submitted to the EC. For clarity, PSE does not replace or fulfill the proponents' consultation requirements. More information on PSE is available on page 6 of this guide.

This guide does not apply to projects subject to a Designated Office evaluation or a Panel Review.

Yukon assessment framework

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

YESAA establishes a single assessment process for projects in Yukon. Under YESAA, the Designated Office, EC 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. Decision Bodies issue the rationale for their decision(s) in the Decision Document.

Regulators may only issue permits or authorizations once YESAB provides a recommendation and a Decision Document is issued. For more information on YESAB, please visit www.yesab.ca.

PURPOSE OF CONSULTATION

YESAA directs proponents to consult with the First Nations and residents of the communities coming within the scope of 50(3). Specifically, "*proponents are required to consult any first nation in whose territory, or the residents of any community in which, the project will be located or might have significant environmental or socio-economic effects"*. This enables the proponent to consider their interests and concerns during project development prior to assessment.

For the purposes of this guidance, these individuals and governments are collectively referred to as "Applicable First Nations and Communities". In this guide the terms Community and Communities can be understood to mean the residents of communities.

The EC will examine a proponent's consultation efforts against the requirements set out in YESAA.

The requirement for proponents to consult under YESAA is different from the requirement for the Crown's constitutional duty to consult. The proponents' consultation duties arise solely under statute and are evaluated based on the standard set out in s.3 of the Act. In contrast, the Crown's constitutional duty to consult potentially affected First Nations, and accommodate is grounded in the honour of the Crown and is enshrined in s.35 of the *Constitution Act*. The fulfillment of the Crown's constitutional duty to consult is evaluated on a different basis than the standard set out in s.3 of YESAA. For information on Crown's consultation, contact Major Projects Yukon and the Northern Projects Management Office of the Canadian Northern Economic Development Agency.

MANNER OF CONSULTATION

The proponents' consultation efforts will be assessed, by the EC, to determine if the proponent has met their obligation to consult, under YESAA. The starting point in this analysis is s.3 of the Act, which states:

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.

The proponent must meet each criterion set out in section 3 for each Applicable First Nation and Community coming within the scope of section 50(3). If any one of the criteria in section 3 are not met, the proponent's consultation requirement has not been fulfilled.

The EC strongly encourages the proponent to engage with the Applicable First Nations, in particular, with respect to how they wish to be consulted. The EC will not require the conclusion of a consultation plan agreement as a component or element of the proponent's 50(3) duties. In practice, however, co-development and agreement on a consultation plan can help ensure that the ensuing consultation activities occur in a productive and meaningful manner.

PRE-SUBMISSION ENGAGEMENT

Pre-submission engagement (PSE) is mandatory for all projects requiring screening by the Executive Committee

The purpose of PSE is to identify gaps and issues of concern, define values and baseline information requirements, and lay the groundwork for an efficient and effective screening process. A proponent's participation in the PSE process is not a suitable replacement for direct consultation with First Nations and communities.

To know more about the PSE process, read PSE User Guide.

REFERRED PROJECTS

For the purposes of this guide, a referred project is a project that a Designated Office (DO) elevates to the EC for screening at the end of the DO assessment under section 56(1)(d) of the Act.

When a DO refers a project to the EC, the proponent of the referred project is required to submit a revised proposal to the EC. Proponents submit the revised proposal in Phase 6 of the PSE process. Revised proposals do not go through Phases 1–5 of the PSE process. Proponents of referred projects should refer to the guidance in this document, as they must also demonstrate to the satisfaction of the EC that they have satisfied their consultation obligations, under 50(3), before moving into the screening phase.

OBLIGATIONS

Proponent obligations

Before submitting a proposal to the EC, the proponent must consult with certain first nations and communities. Specifically, the proponent must consult with residents of communities and first nations in whose territory the project will be located or might have significant environmental or socio-economic effects.

Executive Committee Obligation

Once the proponent submits a proposal to the EC and prior to starting a screening, the EC first determines if the proponent has met their consultation duties as set out in 50(3).[1]

EXECUTIVE COMMITTEE EXAMINATION

A proponent can use various techniques and methods to fulfill their consultation obligations. The EC does not prescribe the method or technique; however, the proponent must demonstrate in their consultation record how each of the elements set out in section 3 of YESAA have been met.

Relevance of UNDRIP

The United Nations Declaration of the Rights of Indigenous Persons ("UNDRIP") is a universal human rights instrument, with application in Canadian law. While UNDRIP contains a number of articles relevant to consultation (e.g. articles 18, 26 and 32), neither UNDRIP nor the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* extend the EC's legal powers or obligations, under YESAA. UNDRIP is, however, relevant to the EC's interpretation and

[1] Section 57(2) of YESAA: the EC can only commence a screening after the EC has issued notifications including a notification to the proponent that they have consulted first nations and residents of communities in accordance with section 50(3).

application of the requirements of s.50(3) and s.3 of YESAA, as these relate to proponents' statutory obligations to consult with applicable First Nations.

YESAB understands UNDRIP to support a robust interpretation of consultation activities required under 50(3) in relation to First Nations coming within the scope of this section. In practice, this is most likely to be relevant to the interpretation of:

- "sufficient" in s.3(a)(i) (i.e. "sufficient form and detail");
- "reasonable" in s.3(a)(ii) (i.e. "reasonable period to prepare views"); and
- "fully and fairly" in s.3(b) (i.e. the requirement to fully and fairly consider any views presented).

A broad interpretation of the above aligns with the requirement for meaningful dialogue. The consideration of UNDRIP does not, however, extend so far as to require or enable the EC to determine that a proponent can only meet their 50(3) duty if the applicable First Nation(s) consent to the project.

THE CONSULTATION RECORD

The proponent must submit a detailed record of their consultation with Applicable First Nations and Communities as part of their project proposal. The EC will examine this record, together with other information including the remainder of the proposal, when determining if the proponent has met their duty to consult under section 50(3). In the materials submitted to the EC, proponents:

- Must demonstrate that they have taken into account any effects of accidents and malfunctions when identifying which Applicable First Nations and Communities come within the scope of their duty to consult, under section 50(3).
- Must clearly identify and provide a rationale for the identified Applicable First Nations and Communities that have been engaged for the project.
- Should provide an audience-appropriate level of detail in project information for each Applicable First Nation and Community. In practice, a greater level of detail will often be required and appropriate for Applicable First Nations, as compared to communities.

In addition, proponents are encouraged to demonstrate the efforts to develop appropriate consultation methods and techniques with each of the Applicable First Nations and Communities, recognizing community and nation-specific requirements.

The proponent must submit a detailed record of their consultation with Applicable First Nations and Communities as part of or in conjunction with the project proposal.

It should clearly demonstrate how the proponent meets the four criteria in section 3 of YESAA for each Applicable First Nation and Community.

The consultation record must address each Applicable First Nation and Community in separate sections. The EC requires evidence that shows the proponent has met each criterion in section 3 for each Applicable First Nation and Community.

The following sections provide guidance for proponents pertaining to the content and presentation within their consultation record. However, the EC may specify additional, project-specific requirements relevant to 50(3) through PSE, and in particular through the requirements expressed in a Project Proposal Report.

Correct identification of Applicable First Nations and Communities

The EC will determine if the proponent correctly identifies each of the Applicable First Nations and Communities coming within the scope of section 50(3).

To support that determination, the consultation record must include an identification of the significant project effects that might occur, the location of these effects, and the community or First Nation(s) in whose territory these effects may be expressed. The definition of "territory" in this context is established in s.2 of the Act as:

> **(a)** in relation to the first nation for which a final agreement is in effect that first nation's traditional territory and any of its settlement

lands within Yukon that are not part of that traditional territory;

(b) in relation to the first nation known as the Tetlit Gwich'in, the areas described in Annex A of Appendix C to the Gwich'in Agreement; and

(c) in relation to any other first nation, the geographic area within Yukon identified on the map provided by that first nation under the Umbrella Final Agreement for the purpose of delineating the first nation's traditional territory.

While EC does a preliminary identification of Applicable First Nations and Communities during PSE, this is not a final determination. Rather, the EC determines this once the proponent has submitted the proposal, together with the consultation record.

Key information and justification

The consultation record must include a list of key documents or information provided to each First Nation and Community the proponent has engaged with. Proponents are strongly encouraged to confirm and seek direction from Applicable First Nations as to the level of detail and information they would like to receive as part of the proponent's consultation with them.

In addition to these documents, the proponent must include a narrative outlining how the information presented in the consultation record demonstrates that the proponent has met each of the elements of consultation, as defined in section 3 of YESAA, for each of the Applicable First Nations and Communities.

Consultation requirements

The EC will review the consultation record (including key documents and narrative) for each Applicable First Nation and Community to determine if the criteria in section 3 of YESAA have been met. The proponent must demonstrate that the following requirements have been met:

1. Providing notice of the matter in sufficient form and detail

Notice can be provided in various formats. Demonstrate the notice's form and detail sufficiency to the EC in the following ways:

- Meetings: Provide copies of the actual materials presented at meetings. Templates of presentations, or presentations that were not delivered, will not suffice.
- Correspondence: provide copies of emails and letters, including attachments, which the proponent relies on to demonstrate that notice in sufficient form and detail has been provided.
- If you relied on methods other than meetings or correspondence, provide evidence and details that demonstrate the substance of the notice provided.

Proponents should also indicate if they were advised by an Applicable First Nation or Community that the information provided by them did not contain sufficient detail for them to provide views. If the proponent was so advised, the consultation record should also include and explain the proponent's response. Specifically, the proponent should identify the additional information provided in response to the request from the Applicable First Nation or Community. If no additional information was provided, explain why not.

2. A reasonable period for each Applicable First Nation and Community to prepare their views

The proponent may demonstrate this element of consultation by providing to the EC:

Copies of notices or other documents which include the following information, for each applicable notice:

- the date the notice was sent;
- the name and title of the individual the notice was sent to;

In addition, proponents should identify if an Applicable First Nation or Community requested additional time to prepare their views, and the proponents' response to any such request. If the additional requested time to prepare views was not provided, describe why not.

3. An opportunity to present views

Demonstrate that Applicable First Nations and Communities were given opportunities to provide their views. This can be done by:

- Providing dates, times, and locations where Applicable First Nations or Communities presented their views and information to the proponent in response to a notice. Include positions and roles of individuals in attendance at meetings or events (i.e. the opportunities) where the proponent received views and information.
- Provide the records of meetings (either minutes, notes or summaries) with Applicable First Nations and Communities. These notes should detail and set out the views expressed at these meetings. The notes should also identify which notice the views have been provided in response to.
- Copies of correspondence, mailouts or other publications that contain the views or information provided by Applicable First Nations and Communities in response to the notice provided by the proponent.

Proponents must ensure that the details of the opportunities provided to present views are clear and are relevant to the notice of matters provided in previous consultation steps.

4. Full and fair consideration of any views presented

The Proponent must demonstrate how they fully considered any views and information submitted in their project proposal. The consultation record must detail this robust consideration by:

- Identifying and describing what activities in the proposal might have been altered or modified by views or information received, and in what way.
- Listing mitigation measures that the project will implement in response to views and information received and describe how these measures might address these views.
- Detail the project changes, alternatives or modifications raised by views and information that were not made and describe why not.

The EC examines the proponent's consultation record for a demonstration of how the proponent meaningfully considered the information and views obtained during their consultation process. More specifically, how this informed the project development. The proponent is required to demonstrate and provide a rationale for how they fully and fairly considered the views provided by Applicable First Nations and Communities.

Consultation record presentation

The format and presentation of the consultation record may vary depending on the proponent, their project, the depth of consultation, and the Applicable First Nation or Community with whom consultation is being undertaken. Regardless, the presentation of the consultation record will contain the same basic elements.

The consultation record must contain the information and data about the proponent's consultation done for each Applicable First Nation and Community, as well as an analysis of this information and data of how it meets the requirements set out section 3 of the Act. This includes a rationale and analysis as to how the instances contained in the consultation record satisfy each of the elements of the proponents' duty to consult under section 3 and section 50(3) of the Act.

To assist the EC's review of the consultation record and in making their determination on whether the proponent has fulfilled their obligations, the proponent is required to present their engagement record that:

- Is in a searchable format for all documents and appendices with a linked table of contents.
- Uses clear and unique identification of each supporting document used to substantiate the consultation record.
- Uses hyperlinks to the supporting documents, when referenced in either the record or narrative analysis to assist navigability.
- Contains clear and specific references to other sections of the consultation record or project proposal including enough detail to navigate, for instance by providing section numbers, page numbers, or hyperlinks.

WHEN AN APPLICABLE FIRST NATION OR COMMUNITY DOES NOT PROVIDE VIEWS OR INFORMATION

In some cases, an Applicable First Nation or Community may choose not to participate or respond to notices or opportunities to present views to a proponent. For these situations, the EC will be looking for details about a proponent's efforts to meet or engage with the First Nation or Community to fulfill elements of consultation under section 3 of the Act. These efforts must be substantiated by the consultation record. A proponent can demonstrate this to the EC by:

- Providing evidence that notice was provided in sufficient form and detail to allow the Applicable First Nations and Communities to prepare views and provide information.
- Detailing the reasonable period of time that was given to the Applicable First Nations and Communities to prepare their views.
- Providing the evidence that the Applicable First Nations and Communities were given opportunities to present their views; and
- Although the above notice and opportunities were provided, no views or information were provided by the First Nation or community, as the case may be.

While the EC interprets the duties under s.50(3) to require robust and meaningful dialogue, this does not mean that EC will determine that proponents' consultation duties are not met if an Applicable First Nation or Community chooses not to consult with the proponent.

EXECUTIVE COMMITTEE DETERMINATION

In all cases, to determine whether a proponent has met the criteria set out in sections 3 and 50(3), the EC will:

- Focus on consultation activities and efforts that have or should have occurred before the proposal submission to meet the requirement for consultation under section 50(3).
- Recognize that certain projects may impact the Applicable First Nations and Communities differently and that a proponent's consultation efforts/ records must reflect these differences. The EC recognizes that reasonable time to prepare views, consultation efforts and record will not necessarily be consistent from First Nation to First Nation, or among communities.
- Contact First Nations to seek their input on the proponent's consultation record.

The proponent's consultation with Applicable First Nations and Communities during the assessment process, after the proposal is submitted, may be relevant to the assessment outcome, but this consultation is not relevant to the EC's determination as to whether the proponent has met their s. 50(3) duty to consult.

If the EC determines that the proponent has not met the consultation obligation, the project will not proceed to screening. The EC can allow the proponent to submit a revised proposal in those circumstances, which may be informed by further consultation activities under Rule 32(3) of the EC Screening Rules.

If you have any questions, please contact YESAB by phone at 867-668-6420, email at yesab@yesab.ca

CONSULTATION RECORD *Use one table per Applicable First Nation or Community* *Examples provided in red*	*Applicable First Nation or Community Name Here*

PART 1: NARRATIVE

Use this area to provide a detailed narrative of how the proponent understands they have addressed the 4 criteria for consultation in accordance with section 3 of YESAA. Support your narrative with a rationale that relies on the evidence provided in the consultation data table in Part 2 of the record. The narrative must describe how the consultation record meets the four criteria for consultation in section 3. The narrative must address each element:
(1) The sufficient form and detail of notices provided, and the reasons for why the notice is of a sufficient form and detail for the intended audience.
(2) The reasonableness of the period of time provided for the preparation of views and information in response to the notice.
(3) A description of the opportunities provided to present views in response to the notice.
(4) How the views provided were fully and fairly considered, including the relevant components of the project proposal relating to those views. Identify where and how the project was changed or modified in response to views and information provided during consultation.

PART 2: CONSULTATION DATA TABLE – NOTICE AND TIME TO PREPARE VIEWS

RECORD NUMBER	DATE	RECIPIENT	NOTICE	PERIOD OF TIME TO PREPARE VIEWS (IF APPLICABLE)	LINK TO CONSULTATION DOCUMENTS (IF APPLICABLE)	ASSOCIATED RECORD IN PART 2 AND/OR IN PART 3		
Identification number for consultation event	*The date of the consultation action*	*Tell us who, within an Applicable First Nation or Community, the proponent consulted with*	*Identify the subject matter of consultation, actions taken, and the means of how consultation was undertaken (meeting, email, etc.)*	*How many days was the Applicable First Nation or Community given to review the documents and/or information provided?*	*Documents that were a part of consultation can be included as an appendix. In this column provide a link or reference to included documents within the appendix. NB: where the same*	*If consultation consists of multiple events, for example a meeting invitation and the meeting itself provide the corresponding record numbers.*		

					document was shared with multiple parties or multiple times, one copy of the document should be included in the Appendix and referenced accordingly			
1	Jan-04	Municipal Council	Provided an introductory email and established a mechanism for consultation with the Municipality. Requested meeting for January 20.	16 days	n/a	Pt. 3 #1		
2	Feb-01	Community members	We distributed fliers inviting community residents to attend a meeting (Feb 15) to discuss wildlife.	14 days	Appendix 2-15	Pt. 3 #2, 3		
3	Apr-03	Municipal Council	Provided, via email, a draft Project Proposal for review. Suggested April 23rd meeting to review. The Municipal Council suggested April 27th as an alternative	24 days	Appendix 2-25	Pt. 3 #4		

			meeting date.					
PART 3: CONSULTATION DATA TABLE – OPPORTUNITIES, VIEWS PROVIDED AND CONSIDERATION								
Record Number	**Date**	**Recipient**	**Opportunity**	**Views and Information from Applicable First Nation and Communities (if applicable)**	**Link to consultation documents (if applicable)**	**Outcome of consultation**	**Project proposal reference(s) or change(s) (if applicable)**	**Associated record in Part 2 and/or in Part 3**
Identification number for consultation event	*The date of the consultation action*	*Tell us who, within an Applicable First Nation or Community, the proponent consulted with*	*Identify the means of how consultation was undertaken (meeting, email, etc.)*	*What did the proponent hear from the Applicable First Nations and Communities during consultation? If applicable provide the format by which views were shared (e.g., email, document review, meeting, public meeting, etc.).*	*Documents that were a part of consultation can be included as an appendix. In this column provide a link or reference to included documents within the appendix. NB: where the same document was shared with multiple parties or multiple times, one copy of the document should be included in the Appendix and referenced accordingly*	*Describe how matters raised during consultation were considered (e.g., changes to project design, mitigations, etc.) with rationale.*	*Reference the applicable section of the project proposal were concerns are addressed, or where changes were made.*	*If consultation consists of multiple events, for example a meeting invitation and the meeting itself provide the corresponding record numbers.*
1	Jan-20	Municipal Council	Virtual Meeting discussing mechanisms for consultation	The council raised interest in ensuring documentation is	Appendix 2-7, 2-8	Matters raised were agreed upon by proponent and municipality;	n/a	Pt. 2 #1

				in writing, and meeting minutes can be shared on Proponent's website for municipal citizens to access.		meeting minutes on website.		
2	Feb-15	Community members	Community meeting about wildlife; emphasis on large game.	Community members were concerned about wildlife becoming trapped in open pits.	Appendix 2-23	Fencing for open pits was added to project design to mitigate entrapment.	Section 3.4.56.789, pp. 765.	Pt. 2 #2 and Pt. 3 #3
3	Feb-15	Community members	Community meeting about wildlife; emphasis on large game.	Community members were concerned about increased hunting pressures	Appendix 2-24	Wildlife management plans were discussed, including additional matters related to traffic management.	Section 4.9.6, Section 5.6.7 pp.67 Management Plans	Pt. 2 #2 and Pt. 3 #2
4	Apr-27	Municipal Council	Meeting to discuss project proposal.	Concerns about traffic and noise were raised during the meetings	Appendix 2-26	Noise mitigations in the project proposal are sufficient to address community council concerns. Project traffic will be diverted around the community core.	Section 4.6.7 Noise, section 5.6.7 pp. 25 Management Plans	Pt. 2 #3