

## TRIGGERS AND GUIDELINES TO CONSULTATION WITH FIRST NATIONS

June 12, 2006

### Triggers:

New or amending legislation that may result in changing the way a right is exercised; such as restricting access to certain lands, animals, plants or resources; requiring licenses; imposing testing or requiring reporting.

Policy change that may result in changing the way a right is exercised; such as providing for a reduction in the sustainability of a resource, an increase or decrease of access to a resource or the depletion of a resource.

Permitting activity on Crown land that may change the way a right is exercised, such as a pipeline or transmission line that may change wildlife movement patterns.

Permitting an activity on Crown land that may disturb culturally significant plants or herbs or that may disturb a significant cultural site.

Leasing of tracts of Crown land that are greater than 100 hectares.

Permitting an activity on Crown land that takes place within 1 kilometres of Reserve or mapped culturally significant site or potential title area.

Alienation of Crown land that is greater than 100 hectares.

**Low impact** means may have the potential to cause a slight inconvenience in the way or where a right is exercised.

**Medium impact** means that it is likely that the exercise of a right may be affected with respect to location and availability of the resource but such impact will not eliminate the exercise of the right or the resource.

**High impact** means that it clear that the exercise of the right will be impacted to the extent that the exercise of the right must take place somewhere else or that the resource is severely depleted in all locations. Activity on land that is subject to what would likely be a successful **title** claim would also be considered high impact. Land likely to be the object of a successful title claim is land very close to existing or former reserves and culturally significant sites where artefacts are located/found or where communities existed.

## **Actions**

Staff person responsible for Project to assess, at the earliest possible time, whether the project may result in a possible impact with any asserted or proven Aboriginal or Treaty rights. Asserted and proven treaty rights in New Brunswick include; hunting, fishing and gathering of traditional plants and herbs. Aboriginal Title, while asserted over all of New Brunswick, has not been established. A staff member from Policy and Planning is available to assist in the Assessment. A written record of the assessment should be kept in the project file.

**Assessments** require that the following matters be considered:

### **Activity:**

Does the activity inherently result in the disruption of wildlife and fauna patterns, access to land, depletion of a resource.

### **Mapping:**

Is the proposed activity taking place in close proximity to Reserves, former reserves or culturally significant areas.

### **Facts:**

Do we possess any information that would indicate that the activity or the location of the activity will be viewed as impacting aboriginal or treaty rights.

After consideration of the above, the Assessment must make a **Recommendation** on whether consultation is needed.

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If the assessment by the responsible staff person determined that there is a likelihood of an impact on or an infringement on an aboriginal or treaty right, the responsible staff person will contact the Policy and Planning Branch to create a **Consultation Plan**. In the creation of a consultation plan the following factors will be considered:

- 1) If Province wide in scope, all 15 First Nations will be consulted.
- 2) If immediately adjacent to a Reserve, the specific Community residing on the Reserve in question will be consulted.
- 3) Any Community within 50 kilometres of site of activity/project will be consulted.

- 4) Proponent of activity/project will be asked to carry out as much of consultation as is deemed appropriate after discussion with responsible staff person and proponent. If EIA is triggered, it is suggested that the terms of the EIA, include consultation with First Nation Communities to determine if there are impacts on or infringements of aboriginal or treaty rights.
- 5) If impact is deemed low, a letter notifying the First Nation Community of the proposed activity will be sent from Policy and Planning Branch. The project should be described in general terms and a request for comments or concerns should be included
- 6) If impact is deemed to be moderate or medium, the consultation will be led by a Policy and Planning Branch member in conjunction with the responsible staff person. Detailed information on the proposed project is to be sent to the First Nation Communities being consulted and an offer to make a presentation on the project is made. This may be part of the EIA process. The offer to present or the presentation is followed up with requests for specific concerns to be identified. If or as concerns are brought forward, decisions must be made on the validity of the concerns. If valid, any accommodations or mitigation steps that might be offered will be made jointly by the Policy and Planning member, the proponent, the responsible staff person and representatives from Justice and the Aboriginal Affairs Secretariat.
- 7) If the impact is deemed to be high the consultation will be led by a Policy and Planning Branch member in conjunction with the responsible staff person. Detailed information on the proposed project is to be sent to the First Nation Communities being consulted and an offer to make a presentation on the project is made. This may be part of the EIA process. The offer to present or the presentation is followed up by an offer of a meeting with the Chief and Band Council to discuss the activity/project. Discussions on the project should look to acknowledge the impacts or infringements and generate ideas around accommodations and/or mitigation. Decisions on any accommodations or mitigation steps that might be offered will be made jointly by the Policy and Planning member, the proponent, the responsible staff person and representatives from Justice and the Aboriginal Affairs Secretariat.
- 8) At any stage of any consultation, if valid impacts or infringements are identified, the focus of the consultation should shift to the accommodation or mitigation of the impact or infringement identified.