



2016 ABORIGINAL ENGAGEMENT HANDBOOK

A Handbook for Proponents of Mineral Exploration and Mining in Manitoba

Version 1

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GREETINGS FROM THE MINING ASSOCIATION OF MANITOBA

“Engaging with the Aboriginal peoples of Manitoba is essential for the advancement of the mining industry in our province and it contributes positively to mutual understanding and respect. The Mining Association of Manitoba continues to actively seek opportunities to listen and to learn, so that all Manitobans can benefit from mining exploration and development. This ongoing commitment to being more inclusive, diverse and representative as an industry has included the development of an Aboriginal Relations Committee, involvement in the Mining Association of Canada’s Towards Sustainable Mining Program, and participation on the Minister’s Mining Advisory Council, wherein Aboriginal communities, government, and the mining industry are working together to make Manitoba a top jurisdiction for mining and mineral exploration investment and a leader in sustainable mining practices. This handbook represents another good step towards further improving relations between the mining industry and Aboriginal communities.”

*Lovro Paulic, Chair
Mining Association of Manitoba*

DISCLAIMER

The Mining Association of Manitoba Inc. (MAMI) makes no representations or warranties, implied or otherwise, that the content contained in this handbook is free from errors or omissions.

The information in this Handbook is for general guidance and educational purposes only. It does not constitute legal or other professional advice and should not be relied upon as a statement of the law or advice about a particular project or concerns. Neither is it an exhaustive treatment of the subject or subjects. Because it is only intended as a general guide, it contains generalizations that may not apply to a particular project.

Users are encouraged to consult professional consultants and lawyers who are experts in environmental assessment and public consultation for professional advice that applies to the specifics of their particular project and before taking any course of action related to information, ideas or opinions expressed in this Handbook.

ACKNOWLEDGEMENTS

MAMI wishes to acknowledge the contributions of Gail Matchullis, who incorporated research developed as part of her Master’s level studies at the University of Manitoba’s Natural Resource Institute, into the initial drafting of this document.

MAMI appreciates the information and advice it has received from sources made available by:

- ▶ Aboriginal Relations Committee of MAMI
- ▶ Minister’s Mining Advisory Council (MMAC)
- ▶ Manitoba Prospectors and Developers Association (MPDA)
- ▶ Prospectors & Developers Association of Canada (PDAC); and
- ▶ The Working Group of MMAC
- ▶ Association for Mineral Exploration BC (AMEBC)
- ▶ Yukon Chamber of Mines

PREAMBLE

This Aboriginal Engagement Handbook is intended to set out a practical approach to support proponents of mineral exploration and mine development in engaging with Aboriginal communities in Manitoba.

It is important to emphasize that the principal goal of engagement is always for proponents to learn what needs to be considered in their project plan while showing respect for a community's Aboriginal and treaty rights.

We recognize that proponent engagement with Aboriginal communities potentially affected by exploration and mining activity can result in the development of information that is valuable to the Crown in carrying out its statutory and Constitutional duties of consultation.

We recognize that engagement can lead to relationships with communities that both contribute to economic development in communities and improve the economic outlook of mineral companies through the establishment of local business connections and the development of locally based workforces.

We recognize that Aboriginal and treaty rights have been the subject of numerous legal actions in recent years, often in relation to mineral resource activities. Many of these actions have resulted in new legal precedents that have helped clarify the practical implications of these rights as they apply to mineral resource projects and we expect further actions will continue to provide additional clarity over time. The intent of this document is to find a platform upon which mineral resource projects can move forward for mutual benefit in a manner consistent with the principles arising out of the case law.

Such engagement processes between proponents and First Nations, however, do not displace or substitute for the Crown's constitutional obligations in relation to the proposed actions or decisions which have the potential to impact Aboriginal or treaty rights.

We hope that the information included in this Handbook will assist proponents in pursuing these goals, developing relationships, building trust and communicating effectively at all stages of exploration and mine development.

1 INTRODUCTION

1.1 CREATION OF THE MINISTER'S MINING ADVISORY COUNCIL

Industry and Aboriginal interests intersect in a variety of ways throughout the various stages of mineral exploration, mine development and eventual closure. The creation of the Minister's Mining Advisory Council reflects the recognition by First Nations, government and industry of the value and importance of Aboriginal inclusion in the mining industry through all of these stages.

Increased competition in the global mining sector and the decline in the availability of capital, coupled with uncertainties around the processes for granting of land tenure and mineral rights, have contributed to a significant decline in investment in exploration in Manitoba since 2010.

The Minister's Mining Advisory Council (MMAC), created in 2013, has brought together Aboriginal, Manitoba government and mining industry representatives to improve avenues of communication and address some of the uncertainties in our industry. In the MMAC, some representatives of government, Aboriginal peoples and industry have come together to address the potential for mineral resource exploration and development in Manitoba while recognizing and affirming their respect for the Treaties and for the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. MMAC's aim is to promote collaborative and proactive communication that effectively supports the development of capacity in both industry and the Aboriginal community to engage in effective participation in the exploration and mining sector.

1.2 DEVELOPMENT OF THIS HANDBOOK

With over 38,500 lakes and 383,000 km² of forest, Manitoba is a province comprised of landscapes rich in natural resources, including many regions identified as holding significant geological potential. Over the past hundred years, more than 2,600 sites have been subject to varying forms of mineral exploration. These mineral

exploration efforts have led to the development of 67 mines in Manitoba, six of which are still in operation. Natural Resources Canada has reported a total of 220 operating mines in Canada.

Manitoba currently has three operating mining companies and 63 First Nation communities with reserve lands and some with treaty land entitlement or Northern Flood Agreement entitlement. Approximately one quarter of Manitoba provincial land base is already subject to restrictions on mining activity. In order for development efforts to be successful going forward, decisions related to the development of mineral resources and the protection of the remaining land base must be handled in a way that provides for active, respectful communication among industry, communities, government, and other interested parties.

MMAC discussed various ways to improve proponent and community engagement and determined that the creation of a handbook focused on proponent engagement would be beneficial for proponents, Aboriginal community partners and the Crown. Effective and successful engagement requires the active and informed participation of both industry and Aboriginal communities.

The members of the Mining Association of Manitoba Inc. (MAMI) are proud of the recent advances that have been made in incorporating environmentally sustainable approaches into both Manitoba's regulatory regime and our industry's standard of practice. MAMI members wish to play an equally constructive role in Manitoba's process of reconciling its relationship with Aboriginal peoples. MAMI therefore agreed to accept MMAC's mandate to produce a handbook that would support proponents' role in developing positive, meaningful and mutually beneficial relationships among Aboriginal peoples, proponents and the Crown. This Handbook is offered in fulfillment of that mandate with the expectation that MAMI will periodically revise it and advance the information it contains as ongoing feedback is received and as circumstances change.

1.3 MAMI INTERVIEWS ON COMMUNITY EXPECTATIONS FOR ENGAGEMENT

MAMI's researcher was able to have discussions about engagement with some members of Aboriginal communities, in which community members expressed their expectations for engagement with the mining industry. The following are some of the ideas concerning community expectations gained from this interview process but they are not necessarily representative of the views of all Aboriginal peoples in Manitoba:

- ▶ A proponent should come into the community first to inform members of its desire to explore the area;
- ▶ A proponent should commit to hiring and involving members of the community from the beginning stages of exploration and into mine development;
- ▶ A proponent should hold engagement meetings conducted with honesty and respect that include and interest community members;
- ▶ A proponent should work hand in hand with Aboriginal community counterparts, ensuring that they have the tools necessary for engagement, from the outset of a project;
- ▶ A proponent should be honest about the potential effects that a project might have on a community;
- ▶ A proponent should demonstrate some effort towards developing an agreement with the community;
- ▶ A proponent should be willing to visit the community and hold in-person meetings;
- ▶ A proponent should support the government's process of conducting traditional land use studies and be respectful of culturally sensitive areas; and
- ▶ A proponent should assist the Crown in consulting with Aboriginal peoples by providing information and participating in consideration of methods of addressing concerns raised by Aboriginal peoples.

2 DEVELOPING ENVIRONMENTALLY SUSTAINABLE AND RESPECTFUL PRACTICES

MAMI acknowledges that the development of respectful relationships with Aboriginal peoples in Manitoba must include a commitment to applying the principles of environmental and economic sustainability, as follows:

- ▶ Sustainable mining includes both the opportunity for Aboriginal communities to participate in the business and employment benefits flowing from mineral exploration and extraction activities and the application of environmental protection practices that respect and preserve the environmental integrity of Aboriginal traditional territory and the region as a whole;
- ▶ One goal of sustainable mining practice is that the benefits of business opportunities such as joint ventures and employment “outlive” the projected life of a specific mining project;
- ▶ Exploration and mining practice should include engagement that is guided by a clear understanding of the location of traditional territories, the nature of Aboriginal rights and interests in the area and the location of culturally important sites; and
- ▶ Increasing the scope and vitality of our mineral exploration and mining industry will enhance the overall economic health of the Province of Manitoba.

3 PROPONENTS' RATIONALE FOR EARLY, EFFECTIVE AND CONTINUING ENGAGEMENT

Areas with mineral potential may also be areas in which Aboriginal peoples exercise Aboriginal and treaty rights or carry out traditional activities. Potentially competing interests in resource extraction and traditional land use can be sources of tension between Aboriginal communities, government and the mining industry in Manitoba. MAMI recognizes the importance to our industry of government, exploration and mining companies, and Aboriginal communities working together to develop strong relationships, establish opportunities for communication and transparency and carry out truly effective, proponent engagement and Crown consultation processes.

Early, effective and continuing proponent engagement with Aboriginal communities has been identified as a key component of efforts to create a successful mining industry and stimulate the productive involvement of Aboriginal communities in our industry. Early engagement allows proponents to begin a dialogue with communities that may potentially be impacted by a project and to set a positive foundation for a continuing relationship in case the proponent's activity continues beyond early exploration. Effective engagement creates the type of communication that yields truly useful information and outcomes for both the miner and the community. Continuing engagement is needed to support regulatory approval processes and promote business efficacy when project activity carries on past early exploration.

The advantages to industry of early, effective and, when applicable, continuing engagement include:

Opportunity to establish a clear understanding of roles, expectations and responsibilities

The proponent should begin the process by identifying potentially affected communities, commencing respectful communication with their leadership and asking for the community's effective participation in the proponent's planning process.

Development of connections and relationships that will help the proponent gather essential information

The proponent can provide useful information about what it proposes to do and where and when it proposes to do it. In turn, the proponent will have the opportunity

to seek advice from traditional knowledge holders who can provide the information the proponent needs to plan its project in a way that avoids adverse impacts on traditional activities.

Reduction of project costs, risks and delays

Early and effective engagement will help the proponent provide the information that the Crown needs to inform aspects of consultation, carry out timely review of applications and include effective terms and conditions in regulatory approvals. The proponent also can make connections with local businesses and potential employees needed to support project development.

Enhanced value of a project

A positive relationship with Aboriginal communities supports development and financing of projects and increases their intrinsic value by creating a useful foundation for timely regulatory approvals and for effective business and employment relationships in the region.

Enhancement of the proponent's understanding of culturally sensitive areas

Effective project planning and the development of sound business relationships require understanding and respect for the culture and traditions of local communities including, if the information is made available, the First Nation's laws and protocols.

Establishment of trust

Establishment of trust requires sustained effort over time. As trust is developed, exploration and mining companies will be able to engage more and more effectively with the Aboriginal communities of Manitoba.

This Handbook is intended to provide a practical outline for proponents to carry out early, effective and when it is appropriate, continuing engagement with Aboriginal communities.

4 BACKGROUND ENGAGEMENT

Manitoba is home to many Aboriginal groups, including communities comprised of members of the Ojibway, Cree, Oji-Cree, Dakota and Dene Nations, the Métis and Inuit peoples, and other communities comprised of non-status Aboriginal people. Section 35 of the Constitution Act, 1982 recognizes and affirms the existing “Aboriginal and treaty rights of the Aboriginal Peoples of Canada”, including “Indian, Inuit and Métis peoples.”

Manitoba First Nations are signatories to seven treaties entered into between 1871 and 1921 by the Crown and First Nations who now have reserve land in what became Manitoba (Treaties 1, 2, 3, 4, 5, 6, and 10).

The right of First Nations to continue to hunt, fish and trap for food within their traditional territory was affirmed in the Natural Resources Transfer Agreement, which, in 1930, transferred ownership of Manitoba’s mineral and other natural resources from Canada to Manitoba.

The government of Manitoba also recognizes Métis rights to harvest natural resources for food and domestic use in Manitoba. Métis people have Aboriginal harvesting rights in certain regions of Manitoba as identified in Manitoba Conservation and Water Stewardship’s map titled “Recognized Areas for Metis Natural Resource Harvesting.”

“Treaty rights” are the rights set out in the Treaties and affirmed in the Constitution Act, 1982 and the Natural Resources Transfer Agreement. “Aboriginal rights” may be understood as including all traditional resource harvesting and spiritual, ceremonial and cultural practices that connect a community to the land and waters, including hunting and fishing for food and harvesting plants for traditional medicines. These rights are collective; that is, they are held by the Nation or rights-bearing community as a whole.

The Courts have explained that, before making decisions that may adversely affect the exercise of Aboriginal and treaty rights, the Crown must carry out meaningful consultation with rights bearing communities and, where appropriate “accommodate” the exercise of these rights. Both Canada and Manitoba can make decisions affecting resources that are subject to traditional use and both are bound by this obligation. More information on the background for engagement can be obtained through the Treaty Relations Commission of Manitoba (www.trcm.ca).

5 UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly on September 13, 2007. UNDRIP is a non-legally binding document that describes both individual and collective rights of Indigenous peoples around the world. It addresses issues such as culture, identity, language, health and education, and provides guidance to the signatories of UNDRIP, the United Nations, and other international organizations on harmonious, cooperative relationships with Indigenous peoples.

Free, Prior and Informed Consent (FPIC) is an aspirational principle contained within UNDRIP that would require states to obtain the consent of Indigenous peoples before making decisions that impact them within their traditional territories. FPIC does not supersede Canadian law with respect to the Crown's responsibility to function as the decision maker in regulating industries or the Crown's duty to consult and accommodate infringements on asserted or proven Aboriginal rights and title or treaty rights.

On November 12, 2010, Canada issued an endorsement of support for UNDRIP as an "aspirational" set of principles that does not supersede the domestic laws of the country. Canada supports the principles set out in UNDRIP (namely, equality, partnership, good faith and mutual respect) and takes the position that these principles are consistent with its established approach to working with Aboriginal peoples.

UNDRIP does not supersede Canadian law with respect to the Crown's responsibility to function as the decision maker in regulating industries or the Crown's duty to consult and accommodate infringements on asserted or proven Aboriginal rights and title or treaty rights. Neither does it create a veto right on the part of Aboriginal peoples or impose a legal obligation on the part of either the government or explorers to obtain the consent of an Aboriginal community for activities undertaken on Crown lands. Nonetheless, Aboriginal communities may have a different perspective on UNDRIP and FPIC and explorers should be aware of their significance.

This section reprinted with permission from AME BC, Aboriginal Engagement Guidebook, January 2014.

6 CONSULTATION BY THE CROWN

It is important to understand that consultation and engagement are not the same. Consultation refers specifically to activities undertaken by the Crown in relation to its Duty to Consult, an obligation created by section 35 of the Constitution Act 1982. Engagement is a series of desirable and recommended activities that companies may undertake in support of the Crown's Duty to Consult. In short, governments consult and companies engage.

6.1 CONSULTATION BY THE CROWN

Both the Crown in right of Manitoba and Crown in right of Canada have duties to consult with rights-bearing communities before making decisions that could adversely affect the exercise of Aboriginal and treaty rights. While the federal government makes decisions in relation to protection of fisheries, navigation, migratory birds and the use of Indian Reserve land, Manitoba makes decisions regarding the use of all renewable and non-renewable resources on Crown land in the Province. The use of Crown land, the granting of rights to mineral resources on Crown land and environmental regulation of the mineral industry, whether on private or Crown land, are all under provincial jurisdiction.

The Manitoba government acknowledges its responsibility to consult in a meaningful way with Aboriginal peoples before making a decision that might adversely affect the exercise of treaty or Aboriginal rights and, where appropriate, to develop meaningful ways to accommodate the concerns of Aboriginal

communities about any potential adverse impacts on the exercise of their rights. Manitoba Mineral Resources has developed draft procedures related to consultation efforts for both mineral exploration and mine development. A link to these procedures is provided in the Additional Resources section at the end of this Handbook.

The Crown also may expect a proponent to support its consultation efforts by participating in community meetings, providing information (such as is described below) and responding to the community's questions. An invitation from the Crown to the proponent to participate in Crown consultation should be accepted and regarded as an opportunity to explain their project in an accurate, timely and useful manner and to help the Crown design, in a useful and constructive manner, any "accommodation" measures which may be required (for example, respecting the seasonal fluctuations in the activities of game in the region).

6.2 ENGAGEMENT BY THE PROJECT PROPONENT

Proponent engagement is encouraged before applications are made that may trigger the Crown duty to consult. Proponents are encouraged to initiate engagement prior to undertaking any exploration or mining activities which have the potential to affect the exercise of Aboriginal and treaty rights. The information obtained through engagement helps the proponent plan its proposed project in a way which avoids adverse effects

on Aboriginal rights and interests and, if it is well documented, can be included in applications for permits and approvals and used by the Crown to inform its consultation process.

Manitoba regulatory authorities appreciate receiving well-documented engagement records. Early engagement by the proponent helps facilitate a more efficient and timely Crown consultation process by identifying and addressing community concerns before regulatory applications are made. Avoidance and mitigation measures developed by the proponent can be incorporated into permits and approvals and may be used by the Crown to fulfil some aspects of its duty to accommodate First Nations whose Aboriginal and treaty rights may be affected by the proposed activity.

Engagement may have three very different but complementary goals:

- ▶ Achieving understandings with an Aboriginal community about proposed exploration or mining activities through a respectful process of engagement consistent, wherever possible, with the community's traditional laws, protocols and stewardship responsibilities;
- ▶ Sharing and obtaining the information needed to plan the proposed project in a way which respects Aboriginal interests and thus also producing a record relevant to Crown consultation; and

- ▶ Involving the Aboriginal community in business and employment opportunities that may flow from the project.

Many Aboriginal communities in Manitoba have expressed interest in building lasting relationships with the mining industry. Early engagement can help establish working relationships that can last through the mining life cycle, from early exploration to mine closure.

Project planning should include providing for sufficient funding and time in the schedule for meaningful engagement to occur. Funding for exploration should include the costs of supporting engagement, including expenses related to producing material to display the proposed project and potentially also expenses related to compensating elders, resource users and traditional knowledge holders for sharing their knowledge and expertise as appropriate.

Early engagement helps proponents establish reasonable and realizable expectations for Aboriginal participation in their projects. Over time, proponents can also build a reputation for sharing useful information, showing respect for traditional knowledge and avoiding adverse impact on Aboriginal use of resources.

The following sections outline a practical approach for deciding what type of engagement and how much engagement is appropriate for the stages of early exploration, longer-term or more intensive exploration, and mining and closure.

7 ENGAGEMENT PROCESS

7.1 PLANNING THE ENGAGEMENT PROCESS

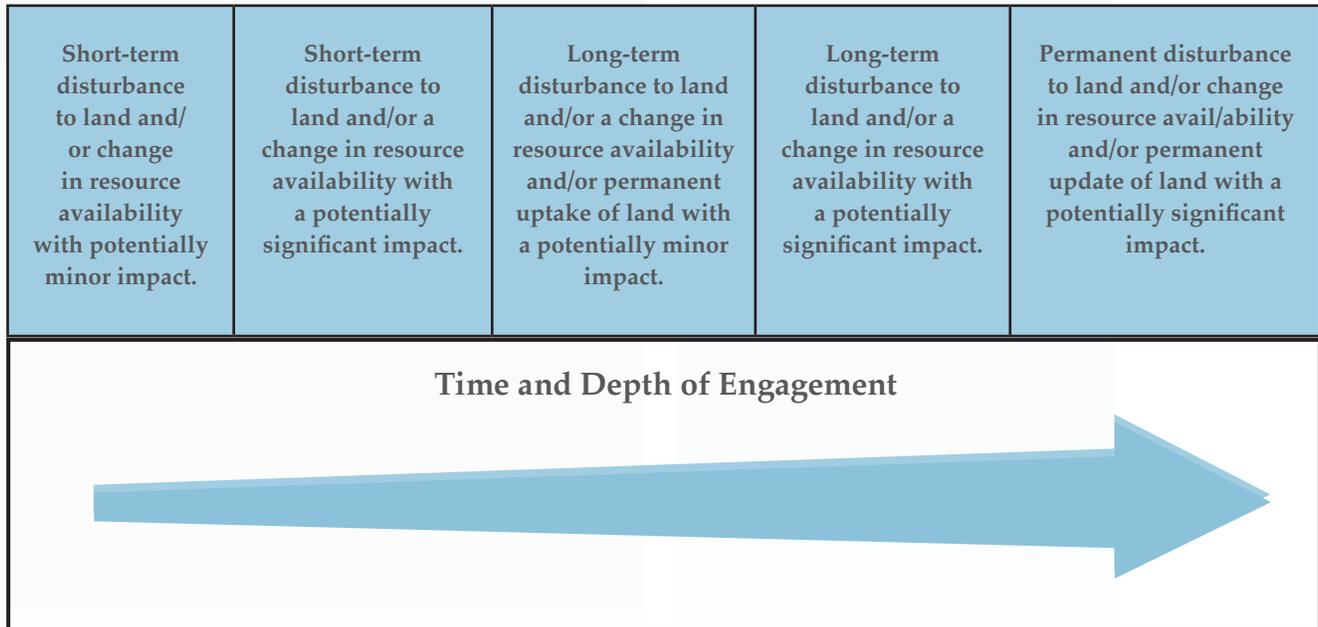
The intensity of engagement efforts should be commensurate with the project’s potential to adversely impact a community’s ability to hunt, fish or trap for food or carry out traditional activities. Proponents should consider how intense or widespread the impact will be and how long it will last. If an application to a regulatory authority will trigger Crown consultation, engagement efforts should precede the application.

One factor to consider is whether the area to be explored is relatively pristine or if it is in an area that already has been subject to exploration, mining or other relatively intensive development or human occupation. It is useful to understand in a general way what experiences the community may have had with the Crown and with

other developers and whether they have experienced environmental impacts of historical mining or other types of resource development. Proponents should be prepared to intensify the engagement effort if the community provides information indicating that the area of impact contains a resource that is rare or of particular value.

Many communities have expressed a strong connection with their traditional territories and have requested that they be engaged when there is any consideration of mineral exploration activity within these regions. This includes prospecting activities that do not have any obvious potential for environmental impact. It may be important for proponents to be sensitive to this point of view.

The following chart summarizes the potential nature of impacts and the time and depth of the anticipated engagement.



Source: Saskatchewan’s Proponent Handbook for Voluntary Engagement. Voluntary Engagement with First Nations and Métis Communities to Inform Government’s Duty to Consult Process

7.2 SETTING REASONABLE EXPECTATIONS

Most people who are not engaged in the mineral industry have little or no understanding of how the industry works or knowledge of the technical terms used by geologists and mining engineers. That might seem like an obvious fact but it takes effort and sometimes skill in communication to translate technical material into material that explains a project clearly, accurately and completely in plain language that is understandable to people who have never been directly involved in the mining industry. Many communities do indeed have members who have worked in the industry or have relevant education or technical expertise but the proponent should not assume that such will be the case. It is the proponent's responsibility to prepare useful material and be prepared to explain its project in a way that makes sense to people who are not miners.

One of the facts that most people do not know is that very few early exploration efforts last for longer than a single season or lead even to more intensive exploration, much less construction of a mine or mineral production. Another is that financing for early exploration is generally constrained to very specific types of expenses. Proponents should be prepared to clearly describe background information about the mining industry that lets non-miners develop reasonable expectations commensurate with the stage of an exploration project. Descriptive photographs and graphic illustrations are always useful in such communication.

The information conveyed during engagement should help establish and clarify reasonable expectations for the engagement effort and the engagement effort should be commensurate with the level of potential impact on the exercise of Aboriginal or treaty rights, on the one hand, and the practical ability of the exploration company to offer business opportunities or employment, on the other.

7.3 EXPLORATION ACTIVITIES WITH LITTLE OR NO POTENTIAL FOR ADVERSE IMPACT

It is advisable to identify First Nations or Aboriginal communities who use the land in an area to be explored even before undertaking early exploration activities

which do not entail potential adverse impacts on the environment or on the exercise of Aboriginal and treaty rights. Proponents should provide community leaders with notice of one's intentions, along with a brief description of what is proposed, when the proponent proposes to be there and generally where the proponent is proposing to operate. Giving notice in this way will show respect for Aboriginal rights and interests, help answer questions and allay concerns that might otherwise arise prior to commencing exploration activities. It will also lay the groundwork for developing a relationship based on reasonable expectations if the proponent's early exploration efforts result in an intention to return for more activity.

7.4 LONGER TERM OR MORE INTENSE EXPLORATION

Early exploration may involve activities that affect the land, even in a minor or temporary way, or the results of early exploration may provide indications of geological potential that justify longer term or more intensive efforts. The proponent may wish to secure permits needed to carry out diamond drilling, the development of small open pits or trenching. It may wish to establish a camp to support these efforts. At each of these stages of exploration, engagement should include, in some measure, the following steps.

- ▶ Identifying potentially affected Aboriginal communities and/or those in proximity to the project and contacting the leadership of those communities to ask for an opportunity to share information with them and request information in return.
- ▶ Expressing a genuine interest in the well-being of those communities and listening to the goals of community members.
- ▶ Building strong personal relationships with community members.
- ▶ Creating material that clearly describes your project (what, when, where and how) and its effects in a way which can be understood by non-miners.

- ▶ Identifying the potential impacts of your proposed project on the environment generally and, in particular, identifying the specific resources you expect to impact (eg., removal of a stand of trees).
- ▶ Seeking information from the community about potential impacts on the exercise of Aboriginal and treaty rights and traditional lands and resources.
- ▶ Responding to any issues and concerns raised during engagement, including by incorporating any new information into the proposed project plan.
- ▶ Identifying opportunities for First Nations to benefit from the development of local resources.
- ▶ Maintaining supporting documentation, which can include identifying all important communications with community members, developing notes of meetings and maintaining records of any changes in the proponent's proposed plans intended to avoid or mitigate adverse impacts on the community's traditional activities.

7.4.1 CREATING PROJECT DESCRIPTIONS AND DESCRIPTIONS OF POTENTIAL IMPACTS

The Exploration and Mining Guide prepared by the Manitoba Mineral Resources Policy and Business Development (www.manitoba.ca/iem/busdev/exp-guide) contains detailed information about the applications that must be filed under The Mines and Minerals Act and The Crown Lands Act to obtain the permits required to support exploration. Generally, the project description and other information needed to complete those applications is the type of information that should be shared with potentially affected communities, on their traditional territories, but the information noted on those forms will be in technical language intended to be read by experts in mineral exploration and development, not by people without experience in the mining industry.

Time and funding to support the engagement effort should include the resources needed to develop effective tools for communicating with people who are not miners and whose first language may be different from the proponent's.

7.4.2 IDENTIFYING POTENTIALLY AFFECTED COMMUNITIES ON THEIR TRADITIONAL TERRITORIES

Proponents will be able to identify the communities who are in close geographic proximity to the project but it can be difficult to identify with assurance all communities that may be impacted. All communities who historically have exercised Aboriginal or treaty rights or undertaken traditional uses in the area and who continue to do so today should be included in engagement efforts. This may mean that more than one community will need to be engaged. Proponents also should take into account that offsite impacts identified at any stage of exploration or development should prompt consideration of whether more distant communities should be brought into the engagement process.

Once the area of operation and of potential environmental impact has been identified, the Manitoba Mines Branch can provide guidance on which First Nations or other communities may be using the resources in those areas. The Branch has access to information about various types of historic uses and current interests in land that can be used to identify the communities to include in engagement efforts. The Branch is also responsible for providing the proponent with contact information for each of the selected communities. Primary contacts at the Branch for this information are the Director of Mines (204-945-6505) and the Aboriginal Consultation Coordinator (204-945-6563). More contact details are available at the end of this document.

The federal government also maintains a web-based system that might be helpful, called the Aboriginal and Treaty Rights Information System (ATRIS), which is "intended to provide up-to-date, site-specific information on the potential or established Aboriginal and treaty rights of Aboriginal peoples across Canada and contact information for communities and leadership of Aboriginal groups in a proposed project area." (Canada: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - 2011)

7.4.3 COMMENCING RESPECTFUL COMMUNICATION

Proponents should be prepared to pay the costs associated with reasonable engagement efforts, including expenses related to producing material to display the proposed project and expenses related to compensating elders, resource users and traditional knowledge holders for sharing their knowledge and expertise concerning resources in the proposed project area and advice on avoidance of impact. Companies should also make an effort to show that they want to listen and understand the information provided by the community and, where appropriate, make adjustments in the project plan to avoid, minimize or mitigate potential adverse impacts on a community's Aboriginal and treaty rights.

Proponents should commence the process by contacting the leadership of each community to seek their advice and direction on engagement activities and whom to contact for further efforts (for example, a community contact/liaison, such as a First Nation Land Manager, Band Administrator or Consultation Coordinator). Proponents should also check with Manitoba Mines Branch about funding which, depending on the stage of engagement and/or consultation, might be available to the community to help support its participation in the information-sharing process, for example by hiring a member to coordinate the engagement and Crown consultation process.

The community leadership may ask that proponents meet with the community as a whole and/or separately with various community groups, such as elders, youth, Chief and Council, fishers and trappers. Proponents should be aware of any community protocol that might apply to such meetings, such as providing honoraria for the participation of elders or other knowledge holders and paying for a meal or refreshments to be served at meetings. Proponents should obtain advice, in advance if possible, about methods by which visitors can show their respect, such as by ordering catering from a community provider, accommodating the opening and closing of meetings with prayer, and whether it is appropriate to pass ceremonial amounts of tobacco to the Chief and/or a designated individual. As a matter of respect, it may be

advisable to ask the community's leadership what name they use for their community and how they pronounce it, and what terminology they prefer concerning their identity, such as "First Nation" rather than "Band", "Indigenous" rather than "Aboriginal," or the Cree/Ojibway/Dene names for their community rather than band name recorded under the Indian Act.

If language presents a barrier to sharing and receiving the desired information, arrangements may need to be made for translation of materials. Community leadership can help identify a local interpreter the proponent can retain to help at meetings. If translation of materials is required, it also may be helpful in developing a relationship to enlist a community member to complete the translation.

Proponents should clearly communicate that information gathered during community engagement will be included in applications for permits submitted to regulatory authorities for government approvals; i.e., it should be made clear that the engagement is not 'off the record' or 'without prejudice.' However, proponents can offer to respect the confidentiality of any specific information received about traditional uses and resources because such information can be shared with regulators on a strictly confidential basis, i.e., in a way that protects it from being shared with other potential users. In communicating with regulators, though, proponents should be very careful to identify such information as confidential.

7.4.4 INITIAL CONTACT

Initial community contact may be face to face or by way of email and/or a mailed letter followed soon after by a telephone or face to face contact (or vice versa). It is recommended that the introductory letter include the following information:

- ▶ The proponent's name and contact information.
- ▶ A brief overview of the intended project (i.e. purpose, general location, nature of the activity, the mineral being explored, and the duration of the intended project).

- ▶ Any maps necessary to outline the planned activity and/or camp in relation to where the community is located.
- ▶ The steps the proponent intends to take to follow up on the initial contact (eg., the company will call the community within a week of the mailing of this letter);
- ▶ The next steps for arranging a phone call or in person meeting (eg., asking permission to visit the community/community leaders).
- ▶ A description of any permit that the proponent will be seeking.
- ▶ Notice that the information shared in this process will be provided to regulatory officials and notice that the community should be expecting a contact from the Crown to initiate formal consultation, if required.

7.4.5 CONTENT OF THE INFORMATION SHARING

In considering applications for permits and approvals, decision makers will be looking for specific information in regards to your engagement process. In short, you will need to describe what you did to learn about the community, what the concerns of community members are regarding your project, and how you have answered those concerns or avoided or mitigated potential adverse effects in your operating plans.

Depending on the stage of the project, the budget and abilities of the proponent, and the needs and desires of the community's leadership, the process of engagement can include a range of activities including exchange of written information, meetings and site visit(s). In addition to leadership, engagement activities may include separate meetings with elders, resource users, traditional knowledge holders or land keepers, women and youth, who each can offer different perspectives, information and advice, and meetings with all community members who are interested in attending and hearing about the proponent's business and its project.

The type of forum will also depend on the objectives for the information sharing. The proponent may have two different but complementary goals for the engagement process.

One objective certainly will be to explain the project plan and, in return, receive information from elders, resource users and/or other traditional knowledge holders that identifies resources that are important to the community and its traditional activities. To achieve this objective, the proponent needs access to community leadership but also to traditional knowledge holders who can teach the proponent about culturally sensitive areas or traditional harvesting grounds that should be protected.

The proponent will share details of the project plan, such as the following items:

- ▶ Timeline and location of the project, including maps.
- ▶ Description of the type of work to be carried out.
- ▶ Description of the stage of the proponent's plans in the area.
- ▶ Any further steps the proponent intends to make.
- ▶ Expected adverse impacts on land, fish or wildlife resources in the area (such as disturbance to mammals or the removal of trees or undergrowth).
- ▶ Methods that the proponent plans to use to avoid, minimize or mitigate potential adverse impacts on the environment or on the community's ability to carry out traditional harvesting or other activities.
- ▶ Expectations for receiving the permits and approvals needed to support the work.

The proponent should also consider providing some background information on itself, such as materials from its financial statements or investor presentations, to help the community understand who they are working with, what constraints the company is facing and how this project fits into the proponent's larger strategic plan.

A successful engagement process builds capacity in both the community and the proponent. Taking the time to share information with all those who are interested and to understand the community's interests and identify the locations of sensitive areas will help demonstrate to the community that the proponent is committed to respectful relationships and sustainable mining practices. For example, seeking out Elders and/or the Elders Council to ask for teachings about the land shows respect for and a willingness to learn about the community's traditional values and beliefs.

Quite apart from the specific objectives for the particular project, spending time in the community to understand the people and exchange information, teachings, and stories can help establish the basis for a respectful relationship. Proponents may want to ask community leadership to help them arrange a tour of the community and a walk of the land with Elders, land managers or other individuals who can bring traditional perspectives to project planning and can inform the proponent of key issues and cultural practices.

Before describing its particular project, the proponent may want to participate in a community meeting aimed at explaining to non-miners what mineral exploration involves. One very useful method is to include a presentation about the steps in exploration and mining which is displayed entirely in language understandable to non-miners, uses descriptive photos and includes information about how young people can become involved in the mining industry in Manitoba.

Creating economic ties by working with businesses in the region and developing a local workforce may be a separate but complementary goal for proponents in community engagement. To accomplish this second goal, the proponent likely will need access to broader

representation in the community, including, for example, economic development officers, youth and educational leaders.

Proponents can incorporate into business plans a commitment to patronize community services as much as possible, such as catering, accommodation, restaurants and gas bars.

The proponent will want to share information about its business plans and any opportunities for community members or businesses to be involved in employment or business opportunities. Building capacity in the community may involve helping individuals, community businesses or organizations qualify for bidders' lists within companies or employment and training initiatives offered either by the proponent or by another organization in Manitoba.

7.4.6 DOCUMENTING ENGAGEMENT

Documentation of the engagement process can take many forms and include many different types of information. In general, regulatory bodies look favourably on more detailed reports but each company needs to decide for itself what level of detail is appropriate.

For each community that is engaged, the proponent should consider maintaining a detailed, up-to-date log of all engagement activities:

- ▶ Important community contact information.
- ▶ Date and type of important engagement activities, including site visits, meetings with leaders, elders, traditional resource users, traditional knowledge holders and other community members.

- ▶ Records of important telephone conversations (who was involved, information discussed, actions items and results).
- ▶ Information conveyed by the community about their traditional activities, rights and related interests, other than information that has been identified by the First Nation as sensitive or confidential. Confidential information should be treated separately as described in section 7.4.3.
- ▶ The nature of any concerns expressed and the way in which the proponent responded to each concern.

If aspirations or concerns have been expressed that cannot or should not be addressed by the proponent, these also should be described.

Most steps in the approval process will require the proponent to submit a summary of its engagement work with each community to date. These summaries should include the following items:

- ▶ Names of the main community contact(s).
- ▶ A summary of the proponent's conclusions concerning potential adverse impacts to the community's ability to hunt, fish and trap or carry out other traditional activities in the project area.
- ▶ A summary of any avoidance, mitigation and, if appropriate compensation measures that the proponent intends to take to address these impacts.
- ▶ A list of all failed attempts to engage, including dates and times and efforts made to overcome this challenge.

The proponent should also consider providing an outline of any unresolved issues or gaps in information and an explanation of why the gap could not be closed.

Where possible, the proponent should retain originals or copies of important documents:

- ▶ Written correspondence (e-mails, letters, handwritten notes).
- ▶ Copies of meeting agendas, participant lists, meeting notes and presentations.
- ▶ Studies conducted, reports or other information provided to the community.
- ▶ Presentations and other materials used to provide information to the community engagement.
- ▶ Summaries of any information provided by the community and the proponent's response to it.

Sample templates for both the summary and the log can be found at the end of this document.

Even if exploration work ends, a permanent record of all engagement efforts and all supporting materials should be kept by proponents for future reference and to provide to the Crown if needed in the future when and if activity resumes.

8 ADVANCED EXPLORATION AND MINE DEVELOPMENT

The main components of the engagement process, described in the previous section, do not change significantly as projects proceed toward advanced exploration and mining phases. The discussion, however, will now grow to include more consideration of the potential for environmental and economic impacts resulting from the project.

At this stage, proponents generally have retained consultants to help collect the baseline environmental information that will be needed to help plan an advanced exploration project and/or prepare the environmental impact assessment report needed for environmental regulatory review processes. The proponent should now consider more intensive engagement activities commensurate with these advanced stages of development such as taking a more proactive role in gathering traditional knowledge that may help inform the pending environmental studies. Proponents should also consider reviewing the results of its environmental work with potentially affected communities. In some cases it may also be advisable for proponents to provide funding to communities to retain a qualified consultant to help the community understand environmental or other studies prepared by the proponent, and to comment on them.

Proponents should communicate with government officials and community leaders to determine as early as possible what their expectations will be related to community engagement, application of Aboriginal

and treaty rights and traditional activities and the incorporation of traditional knowledge into any future environmental impact assessment. This assessment will be important for determining which of their staff or available consultants will be most appropriate for conducting the required environmental and other related work.

At this stage, if not before, it is good business to try to involve communities in employment and business opportunities related to the project. Holding meetings to discuss these opportunities demonstrates the proponent's commitment to working with the community on a long-term basis to find mutually beneficial arrangements for economic cooperation. It is very important to manage a community's expectations by taking the time to explain the many risks that characterize mine development, the fluctuations in the commodity market which can interrupt mine operations with periods of inactivity, and the limits to a miner's ability to contribute to economic benefits in the community with limited financial resources.

Early and effective engagement should help build the basis for a sound, respectful, and mutually beneficial continuing relationship throughout the life cycle of the mine, including closure and rehabilitation.

9 ADDITIONAL SOURCES OF INFORMATION

Included in the Appendix are links to other resources that will help proponents develop engagement processes. These include guides for proponents prepared by the governments of Saskatchewan and Canada, both of which contain clear, brief and helpful descriptions of engagement processes that proponents can follow, as well as longer guides that explain in detail how and why the Crown engages in consultation and accommodation and how it uses information on engagement provided by a proponent. All of this information is generally descriptive of processes that are or may usefully be applied in Manitoba, as well as in these other jurisdictions.

Proponents might also consider the e3 Plus Community Engagement Guide developed by the Prospectors and Developers Association of Canada (PDAC), which contains useful tips for understanding more about engagement, and the Mining Association of Canada's (MAC) Towards Sustainable Mining (TSM). The TSM Assessment Protocol is highly valued by the mining industry inside and outside Manitoba. Senior mining companies in Manitoba have increasingly incorporated outreach and accountability into

their operations. TSM focuses on sustainable development that involves a socio-environmental component. The key to TSM is maintaining accountability measures with its members. Members of MAC must strive to apply the principles set out in the TSM platform. The TSM principles of accountability, transparency and credibility also are useful concepts to consider in planning engagement processes with Aboriginal communities throughout the exploration and mining life cycle. Links to these resources also are contained in the Appendix.

Geologists and mining engineers and other people who are experts in their technical fields may benefit greatly from workshops that help them gain cultural awareness and develop the oral and written communication skills that are useful in explaining the technical issues that they understand so well to people not directly involved in their industry. We encourage proponents to contact the Treaty Relations Commission of Manitoba (www.trcm.ca) for assistance in identifying relevant workshop opportunities.

10 APPENDIX

10.1 GLOSSARY OF TERMS

Aboriginal group	A community of people that holds or may hold Aboriginal and treaty rights under section 35 of the Constitution Act 1982.
Aboriginal peoples	As provided for in section 35 of the Constitution Act 1982, the Aboriginal Peoples of Canada include the “Indian, Inuit and Métis peoples of Canada.”
Aboriginal rights	“Aboriginal rights” are collective, Constitutionally protected rights which flow from Aboriginal peoples’ continued use and occupation of certain lands prior and subsequent to European contact, which may include rights to land, resource use, self government and other cultural and traditional activities.
Community of Interest	An Aboriginal community in proximity to the project or who engages in rights-bearing activities in the area that will be impacted by the proponent’s mining activity.
Duty of Consultation	The Crown’s Constitutional duty to consult in a meaningful way with Aboriginal peoples before making decisions that might adversely affect the exercise of Aboriginal or treaty rights and, where appropriate, to develop meaningful ways to accommodate the concerns of Aboriginal communities about any potential adverse impacts on the exercise of their rights.
Engagement	Communication between a project proponent and a community to share information relevant to the project planning and/or planning for the community to share in business and employment opportunities generated by the project.
First Nation	A term that has come into common usage to replace “Indian” in some circumstances, either because “Indian” is felt by some to be offensive or by preference; sometimes adopted into the name of a Treaty community in replacement of the word “band.”
Indigenous	Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.
Inuit	An Aboriginal people in Northern Canada, who live primarily in Nunavut, Northwest Territories, Northern Quebec and Northern Labrador. Some Inuit people live in Manitoba. The word means “people” in the Inuit language — Inuktitut. The singular of Inuit is Inuk.
Métis	People of mixed First Nation and European ancestry who identify themselves as Métis, as distinct from First Nations people, Inuit or non-Aboriginal people. The Métis have a unique culture that draws on their diverse ancestral origins, such as Scottish, French, Ojibway and Cree.
Proponent	The person or company carrying out or seeking approval for any form of exploration or mining-related activity.
Traditional Ecological Knowledge (TEK)	Knowledge related to land and culture that has been passed down from generation to generation
Traditional Territory	Land defined as being traditionally used or occupied by Aboriginal peoples.
Treaty rights	Rights of an Aboriginal People arising out of a treaty, whether the treaty is an historic treaty or modern treaty.

10.2 MANITOBA MINERAL RESOURCES CONTACTS

MANITOBA MINERAL RESOURCES

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MANITOBA CONSERVATION AND WATER STEWARDSHIP

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Winnipeg, MB R3J 3W3

PARKS AND NATURAL AREAS BRANCH PUBLIC INFORMATION & INQUIRIES

Phone: (204) 945-6784
Toll Free: 1-800-214-6497

FORESTRY BRANCH

(204) 945-7989
forestinfo@gov.mb.ca
Wildlife Branch
Phone: (204) 945-7775

ENVIRONMENTAL APPROVALS - ENVIRONMENTAL ASSESSMENT AND LICENSING BRANCH

123 Main St Suite 160
Winnipeg, MB R3C 1A5
Phone: (204) 945-7071

MANITOBA LABOUR AND IMMIGRATION

200-401 York Avenue
Winnipeg, MB R3C 0P8

MINES INSPECTOR, MINES INSPECTIONS BRANCH

Phone: (204) 945-8083
Fax: 204-948-2209

COMPANIES OFFICE - BUSINESS AND CORPORATE INQUIRIES AND FEEDBACK

1010-405 Broadway
Winnipeg, MB R3C 3L6
(204) 945-2500
Toll-free: 1-888-246-8353 (in Manitoba)
companies@gov.mb.ca

10.3 ADDITIONAL RESOURCES

MAMI also wishes to acknowledge the following publicly available resources and recommends proponents review them as appropriate to provide additional perspectives and insights on the issues raised in this document:

MINING ASSOCIATION RESOURCES

The Mining Association of Manitoba Inc.

www.mines.ca

Mining Association of Canada- Towards Sustainable Mining Principles

www.mining.ca/towards-sustainable-mining

e3 Plus Community Engagement Guide

www.pdac.ca/programs/e3-plus/community-engagement-guide

First Engagement: A Field Guide for Explorers [PDAC] (2014)

www.pdac.ca/docs/default-source/e3-plus---common/pdac-first-engagement-guide---final-draft-nov2014.pdf?sforsn=2

PDAC: Extractive Sector Transparency Measures Act Brief

www.pdac.ca/policy/transparency

AME BC Aboriginal Engagement Guidebook

www.amebc.ca/docs/default-source/publications/aboriginal_engagement_guidebook.pdf

Yukon Chamber of Mines: Engaging with Yukon First Nations and Communities

www.trondek.ca/downloads/QRG.pdf

MANITOBA GOVERNMENT RESOURCES

Manitoba Mineral Resources: Building Relationships and Creating Opportunities

www.manitoba.ca/iem/busdev/guideline/pdfs/mmg.pdf

Manitoba Mines Branch

www.manitoba.ca/iem

Guidelines for Best Practices in Mineral Exploration in Manitoba (2015)

Land Access for Mineral Exploration and Mine Development (2014) Map

www.manitoba.ca/iem/mines/sustain/access.html

Procedures for Crown Consultation with Aboriginal Communities on Mine Development Projects- Mineral Resources Division, Manitoba Science, Technology, Energy and Mines

www.manitoba.ca/iem/mines/procedures/pdfs/procedures_minedevelopment.pdf

Procedures or Crown Consultation with Aboriginal Communities on Mineral Exploration- Mineral Resources Division, Manitoba Science, Technology, Energy and Mines

www.manitoba.ca/iem/mines/procedures/pdfs/procedures_mineralexploration.pdf

Interim Provincial Policy for Crown Consultations with First Nations, Métis Communities and Other Aboriginal Communities

www.manitoba.ca/ana/pdf/pubs/interim_aboriginal_consultation_policy_and_guidelines.pdf

CANADIAN GOVERNMENT RESOURCES

Natural Resources Canada: Good Practices in Community Engagement and Readiness
https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www/pdf/publications/emmc/Good_practice_Compendium_e.pdf

Updated Guidelines for Federal Officials to Fulfill the Duty to Consult
www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_eng.pdf

BRITISH COLUMBIA GOVERNMENT RESOURCES

Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process
www.eao.gov.bc.ca/pdf/EAO_Proponent_Guide_Dec2013.pdf

SASKATCHEWAN GOVERNMENT RESOURCES

Proponent Handbook: Voluntary Engagement with First Nations and Métis Communities to Inform Government's Duty to Consult Process
<https://www.saskatchewan.ca/~media/files/government%20relations/first%20nations/201410proponent%20handbook%20voluntary%20engagement.pdf>

Saskatchewan: Proponent Consultation Guidelines
www.environment.gov.sk.ca/EAProponentConsultationGuidelines

ASSEMBLY OF FIRST NATIONS RESOURCES

First Nations and Natural Resource Development: Advancing Positive, Impactful Change (2015)
www.afn.ca/uploads/files/Working-Group-on-Natural-Resource-Development-Report.pdf

10.4 SAMPLE ENGAGEMENT SUMMARY²

Engagement Summary	
Date:	Project Contact:
Project Name:	Organization
Aboriginal community:	
Aboriginal community contact:	
Describe how the project will adversely impact the Aboriginal community's ability to hunt, fish and trap for food, and to carry out traditional uses.	Describe actions to avoid, minimize or mitigate specific adverse impacts to the Aboriginal community's ability to hunt, fish and trap for food and to carry out traditional uses.
<i>e.g. Traditional plants are gathered on SE 1/4 where access road is proposed.</i>	<i>e.g. Access road route changed to avoid SE 1/4 and SW 1/4.</i>
Description of Outstanding issues	Comments / Proposed Actions
Information Gaps identified by the community	Comments / Proposed Actions

10.5 SAMPLE ENGAGEMENT LOG³

Date	Activity (Letter, E-mail, Phone Call, Meeting)	Proponent contact	First Nation or Métis community contact	Purpose	Notes
01/01/2015	Letter	John Smith, Operations Manager	Chief A.L Taylor	Introduction	Chief Taylor provided outline of the proposed project and invitation to meet and discuss further.
10/10/2015	Meeting	John Smith, Operations Manager	Chief A.L Taylor Councilor - G.S Raymond	Follow up to January 15th letter on project overview	Discussion on proposed project and cursory overview of potential impacts, specifically concerns related to the local fishery

^{2/3} This section reprinted with permission from Saskatchewan's Proponent Handbook for Voluntary Engagement. Voluntary Engagement with First Nations and Métis Communities to Inform Government's Duty to Consult Process



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