

# Requirements for Engagement and Completing Application Information Details

## 6. Requirements for Engagement/Completing Application Information Details

Application information, including engagement activities, supports the activity application and is required for all energy resource and associated activity applications. This chapter provides detailed instructions of the Regulator's requirements for completing both the engagement requirements and the application information details in the Application Management System.

Consultation and engagement with land owners, rights holders and First Nations are application information tabs, like the previous chapter, but due to the specifics and importance of the pre-planning requirements for these three areas, they are detailed in this Chapter.

Each section of this chapter provides an overview of application information section, definitions and requirements to support the activity listed below. Application information detail requirements (and corresponding section number) in this chapter includes:

- 6.1 Consultation and notification
- 6.2 Rights holder engagement
- 6.3 First Nations

# Chapter 6.1

## Completing Application Information Details: Consultation & Notification

### 6.1 Requirements for Consultation and Notification Regulation

Consultation and Notification (C&N) is required as part of the application process and is intended to promote communication and collaborative engagement between proponents, land owners and rights holders prior to application submission. Applicants are encouraged to adopt industry's best practices and assist in the avoidance or mitigation of any potentially adverse impacts.

Submission of an application for an energy resource or associated activity must include additional application deliverables specific to consultation and notification. The required consultation and notification vary based on the planned activity and location of activity.

The consultation and notification tab in AMS requires specific application information details. This section includes an overview of consultation and notification, guidance regarding consultation and notification, details related to consultation and notification requirements and detailed instructions for completing the data fields within the consultation and notification tab.

Details of applicant's responsibilities to comply with ERAA and all regulations, including the Requirements for Consultation and Notification Regulation (RCNR), are discussed in Chapter 1 of this manual. In addition to the requirements listed in this section, Regulator staff may request additional information where necessary to facilitate review of the application.

**Please Note:**

This manual is written as a whole and provided to industry in sections to allow permit holders to access activity chapters. It is prudent of the permit holder to review the manual in its entirety and be aware of the content in other sections of the manual.

**Regulatory Requirements**

The [Energy Resource Activities Act](#) (ERAA) and the [Requirements for Consultation and Notification Regulation](#) (RCNR) require energy resource applicants to conduct formal consultation and/or notification with recipients prior to submitting an application for an activity. Refer to the definition of an “applicant” in Part 1 and persons prescribed in Part 2, Division 1 and 2 of the RCNR to determine whether consultation and notification is required as part of the application.

**Additional Guidance**

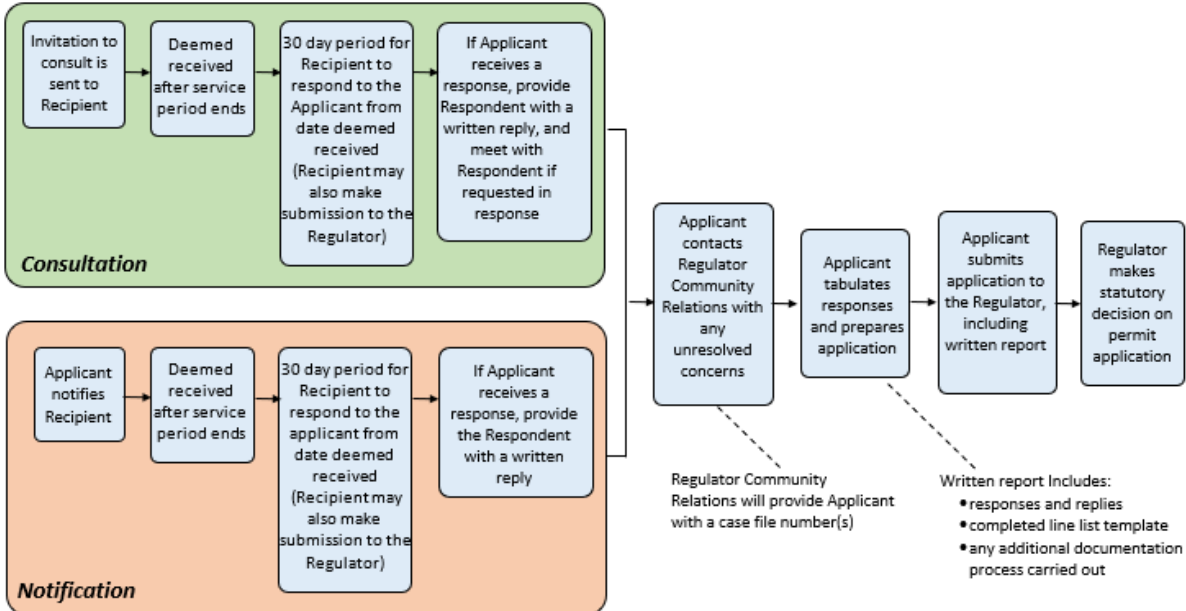
The [Land Owner Information Guide](#) for Oil and Gas Activities in British Columbia describes petroleum, natural gas, and geothermal exploration, development, and production with respect to rights and interests surrounding proposed and permitted energy resource activities on or near private or Crown land. The guide explains the life cycle of energy resource activities, from what to expect during pre-activity application requirements such as the consultation and notification process, through the construction of access roads, well sites, facilities and pipelines, to final site restoration.

The [BC Registered Trapper and Petroleum Industry Agreement on Notification and Compensation](#) is a useful tool for industry and trappers and sets out guidelines for reasonable compensation for both parties.

**6.1.1 Consultation and Notification Overview**

The consultation and notification processes are similar since both provide a formalized engagement; however, the difference in obligation between the two generally arises from proximity to proposed energy resource activities. Consultation recipients are typically closer and as such, the consultation process provides the opportunity for discussion between the applicant and the recipient. The steps in the consultation and notification process are outlined in Figure 6-A below.

Figure 6-A Consultation and Notification Process Steps



## Consultation

Consultation is the exchange of information regarding proposed energy resource activities between applicants and recipients within the consultation distance. It begins when an Invitation to Consult is sent from an applicant.

## Notification

Notification provides written information regarding proposed energy resource activities to recipients within the identified notification distance. Where consultation is conducted with recipients, notification is not required.

**Please Note:**

Notification requirements specific to fixing the site of a pipeline are indicated in Section 23 (3) of ERAA and Section 23 of the Requirements for Consultation and Notification Regulation (RCNR) and detailed in Section 4.2 of the pipeline section of this manual.

**Who Must Provide Consultation or Notification?**

Any person or company intending to submit an application to the Regulator that meets the definition of an applicant in the Requirements for Consultation and Notification Regulation (RCNR), including those prescribed in Section 3(1) of the RCNR, must carry out the prescribed consultation or provide the prescribed notices, according to the RCNR prior to submission of the application.

The RCNR does not apply to stand-alone related activities as defined under ERAA. Specific information regarding rights holder engagement for related activities on Crown land (associated activities and/or CER activities) is reflected in Section 6.2 of this manual.

Where an application includes a primary activity and a related authorization, consultation and notification must be done for the entire development, not just the primary activity. The material provided in the invitation to consult and/or notice documents must include all proposed activities, not just the primary activity.

The applicant must provide notification to the land owner on whose land the activity is proposed under Section 22 (2) of ERAA (for initial applications) or Section 31 (1) of ERAA (for amendment applications), or as otherwise noted in specific circumstances, outlined in Section 31 (1.1) of ERAA.

Some exemptions from land owner notification can be granted. Refer to Section 6.1.12 of this manual for information regarding exemptions from consultation and notification requirements.

**Please Note:**

If an applicant offers C&N, by choice or inadvertently, the prescribed process must be followed.

## 6.1.2 Land Owners and Rights Holders

### Land Owners

A land owner is:

- a person registered in the land title office as the owner of the land surface or as its purchaser under an agreement for sale; or
- a person to whom a disposition of exclusive use (lease, rental of property, or outright sale) of Crown land has been issued under the Land Act.

A land owner is not the Government, or a person who holds a Licence of Occupation for non-intensive occupation and use of Crown land.

### Rights Holder

A rights holder is a person granted non-intensive occupation, use of or other rights over Crown land by permit, licence, or approval. Further information specific to rights holders is detailed in Section 6.2 of this manual.

If any level of government holds a tenure such that it would qualify as a rights holder, the respective agency would be consulted, not as government, but as a rights holder. Tenures that qualify entities as rights holders include:

- Licence under Section 39 of the Land Act.
- A community forest agreement, first nations woodlot license, forest licence, timber license, timber sale licence, tree farm licence, or woodlot licence under the Forest Act.
- A forestry licence to cut under the Forest Act, if the licence is a major licence.
- A permit for geothermal exploration, a lease or a well authorization under the Geothermal Resources Act.
- A grazing permit or grazing licence under the Range Act.

- A guide outfitter's licence for Crown land, guiding territory certificate for Crown land or a registered trapline under the Wildlife Act.
- A claim under the Mineral Tenure Act.
- A conditional or final water licence under the Water Sustainability Act.

### Please Note:

Provincial and Federal government agencies are not considered rights holders under ERAA. Applicants are not obligated to engage agencies in advance of an application to the Regulator; however, applicants are encouraged to advise the Regulator of any Land Act Map Reserves or Resource Features (as defined in the EPMP) as early as possible, even prior to submitting an application to the Regulator, to allow the Regulator to consider and facilitate any required engagement with other government agencies and avoid delays in application processing. It should be noted that any proposed activities on federal Crown land will require consultation with the relevant Federal government department/agency as per Section 6 or 8(b) of the Requirements for Consultation and Notification.

## Representation Agreements

In some cases, recipients may designate an individual or agency to communicate on their behalf in the consultation and notification process. The Regulator needs to be satisfied that the legal recipient of consultation / notification, as documented in Divisions 2 and 3 of the RCNR, has designated someone else to communicate on their behalf in the process. Letters designating representation need to be addressed to the Regulator, signed by the official recipient, name the designate, and may also give direction on the parameters of the representation (e.g. only for this application, only for this time period, for all matters related to ERAA).

Letters must be provided for each application – the Regulator will not keep a record of representation for use on different files.

For Power of Attorney the Regulator requires a copy of the legal document as there are specific parameters on documents, such as restrictions and timelines.

## 6.1.3 Determining Obligations to Consult or Notify

Obligations to carry out consultation or notification are prescribed in the RCNR, and are based on proximity to the proposed activities and other factors, such as

presence on an area subject to the right of a rights holder, or the presence of a residence or structure within the consultation or notification zone.

The table and diagrams on the following pages outline a series of tests to determine a potential applicant's obligations to notify or consult. Table 6-A is intended to highlight the different factors which create obligations to notify or consult among the various persons and entities identified in the Requirements for Consultation and Notification Regulation. Figures 6-B through 6-E illustrates examples of the application of the consultation and notification tests.

**Table 6-A: Notification or Consultation**

Person / Entity	Test for Obligation to Provide Notification	Test for Obligation to Provide an Invitation to Consult	Exclusions
Land owner 6	Land owner of land on which activities are planned.	Land owner of land on which activities are planned.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.
Local Authority 8(1)(a), 11(1)(a)	All or part of a structure owned by the local authority is within an applicable notification distance  Consultation can be provided instead.	All or part of a structure owned by the local authority is within an applicable consultation distance.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.
Government of Canada 8(1)(b), 11(1)(b)	All or part of a structure owned by the government of Canada is within an applicable notification distance.  Consultation can be provided instead.	All or part of a structure owned by the government of Canada is within an applicable consultation distance.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.
First Nations 8(1)(c), 11(1)(c)	All or part of the First Nation's reserve is located	All or part of the First Nation's Indian reserve is located within the	Consultation is not applicable to geophysical activities, as there is no



**Table 6-A: Notification or Consultation**

<b>Person / Entity</b>	<b>Test for Obligation to Provide Notification</b>	<b>Test for Obligation to Provide an Invitation to Consult</b>	<b>Exclusions</b>
	within the applicable notification distance.  Consultation can be provided instead.	applicable consultation distance.	prescribed consultation distance for geophysical activities.
Person / Registered land owner 8(2)(a-c), 11(1)(d)	All or part of the land is located within an applicable notification distance.  Consultation can be provided instead.	All or part of: a residence the person occupies, a structure the person uses for livestock, or a school or related structure owned by the person is located within the applicable consultation distance.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.
Person who has entered into agreement with land owner to lease or rent a residence or a structure used for livestock on the land 8(1)(d)		All or part of a residence or structure is within the applicable consultation distance.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.

**Table 6-A: Notification or Consultation**

<b>Person / Entity</b>	<b>Test for Obligation to Provide Notification</b>	<b>Test for Obligation to Provide an Invitation to Consult</b>	<b>Exclusions</b>
Rights Holders 7(a),(b); 10(a),(b)	The proposed activities are to be carried out on an area subject to a right of the rights holder, and the	The proposed activities are to be carried out on an area subject to a right of the rights holder, and it is known to the applicant the ability of the rights	Consultation is not applicable to geophysical activities, as there is no prescribed consultation

Table 6-A: Notification or Consultation

Person / Entity	Test for Obligation to Provide Notification	Test for Obligation to Provide an Invitation to Consult	Exclusions
	applicant has not provided an invitation to consult  Consultation can be provided instead.	holder to exercise their right will be directly and adversely affected by the proposed activities.	distance for geophysical activities.
Ministry of Transportation and Infrastructure 9(a-b)		A <b>pipeline</b> proposed within the municipality and within the right-of-way of an arterial or municipal highway, and is to be used for transporting petroleum, natural gas or both, or water associated with activities performed in relation to petroleum, natural gas, or both.	Only applicable to pipelines.
Municipal Council 9(a-b)		A <b>pipeline</b> proposed within the municipality and within the right-of-way of an arterial or municipal highway, and is to be used for transporting petroleum, natural gas or both, or water associated with activities performed in relation to petroleum, natural gas or both.	Only applicable to pipelines.
Person who holds a conditional or final licence under the Water Sustainability Act with respect to the	All or part of a known community watershed is established or continued under the Act and is located within an applicable notification distance  Consultation can be provided instead.	The proposed activities are to be carried out on an area subject to a right of the rights holder, and it is known to the applicant the ability of the rights holder to exercise their right will be directly and adversely affected by the proposed activities.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.

**Table 6-A: Notification or Consultation**

Person / Entity	Test for Obligation to Provide Notification	Test for Obligation to Provide an Invitation to Consult	Exclusions
community watershed 11(2)(a)			
Person who holds a construction permit or operating permit under the Drinking Water Protection Act with respect to the community watershed 11(2)(b)	All or part of a known community watershed is established or continued under the Act and is located within an applicable notification distance.  Consultation can be provided instead.	The proposed activities are to be carried out on an area subject to a right of the rights holder, and it is known to the applicant the ability of the rights holder to exercise their right will be directly and adversely affected by the proposed activities.	Consultation is not applicable to geophysical activities, as there is no prescribed consultation distance for geophysical activities.

Notification is not required to be sent to a landowner to whom was given notice under Section 22(2) or 31(1) of the Act with respect to the same application, or to a person who was provided with an invitation to consult.

## Please Note:

Tree Farm Licence and Forest Licence holders require an Invitation to Consult if the proposed activities are to be carried out on an area subject to a right of one of these licence holders. Thus, the Invitation to Consult is only required if the proposed activity intersects an area where the licence holder holds a cutting permit and the cutting permit area has not been harvested.

**Figure 6-B: Consultation and Notification Test**

**Linear Proposals 1 – Pipelines, energy resource roads and geophysical exploration in relation to private land parcels with RCNR references.**

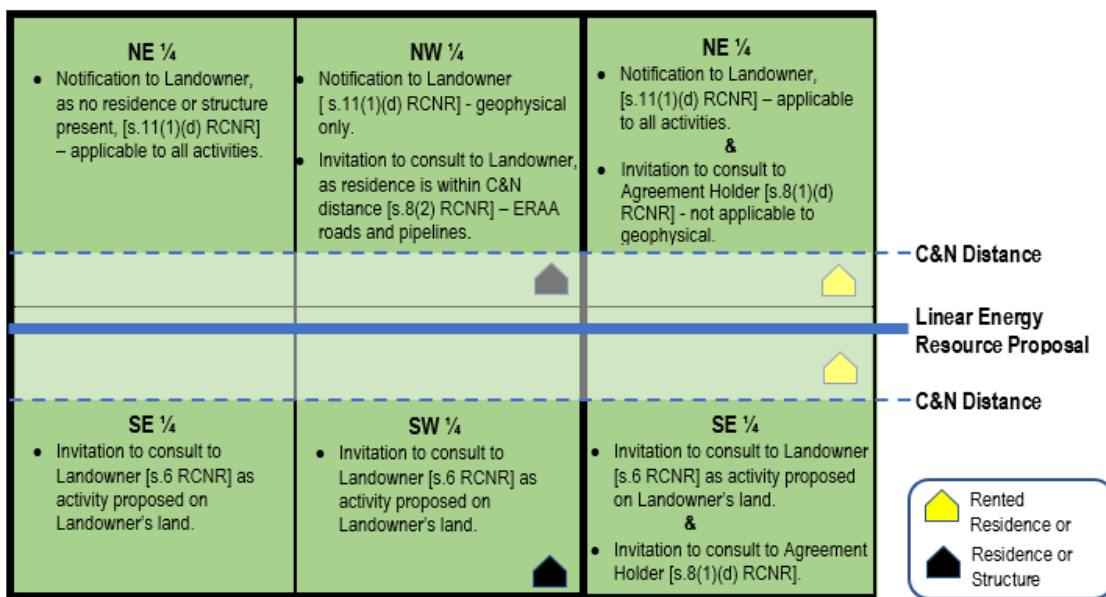


Figure 6-C: Consultation and Notification Test

**Linear Proposals 2 – Pipelines, energy resource roads and geophysical exploration with RCNR references.**

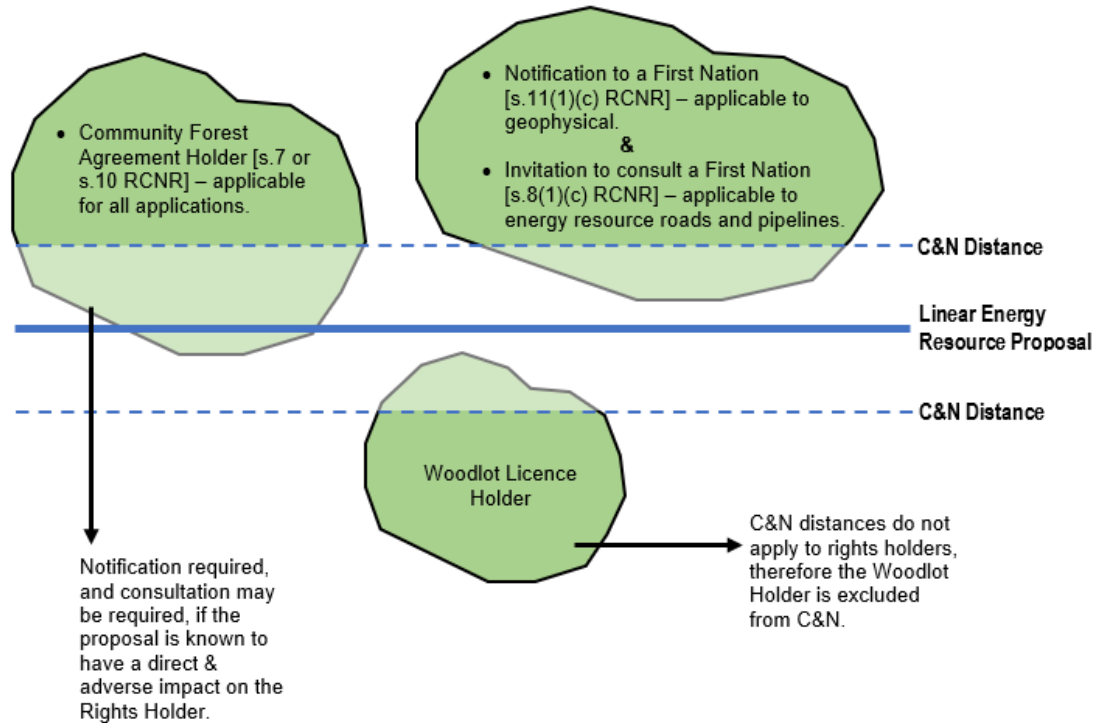


Figure 6-D: Consultation and Notification Test

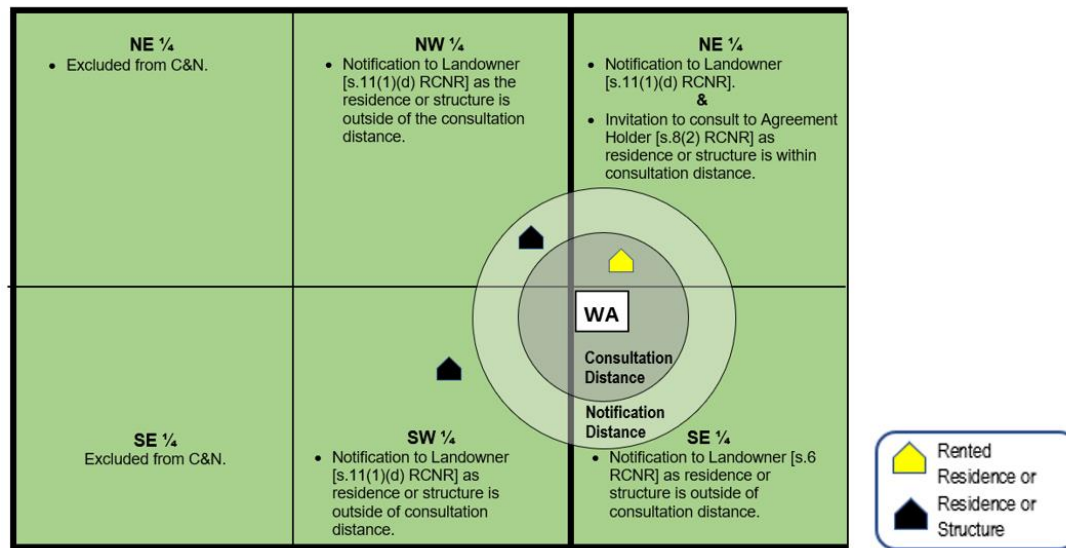
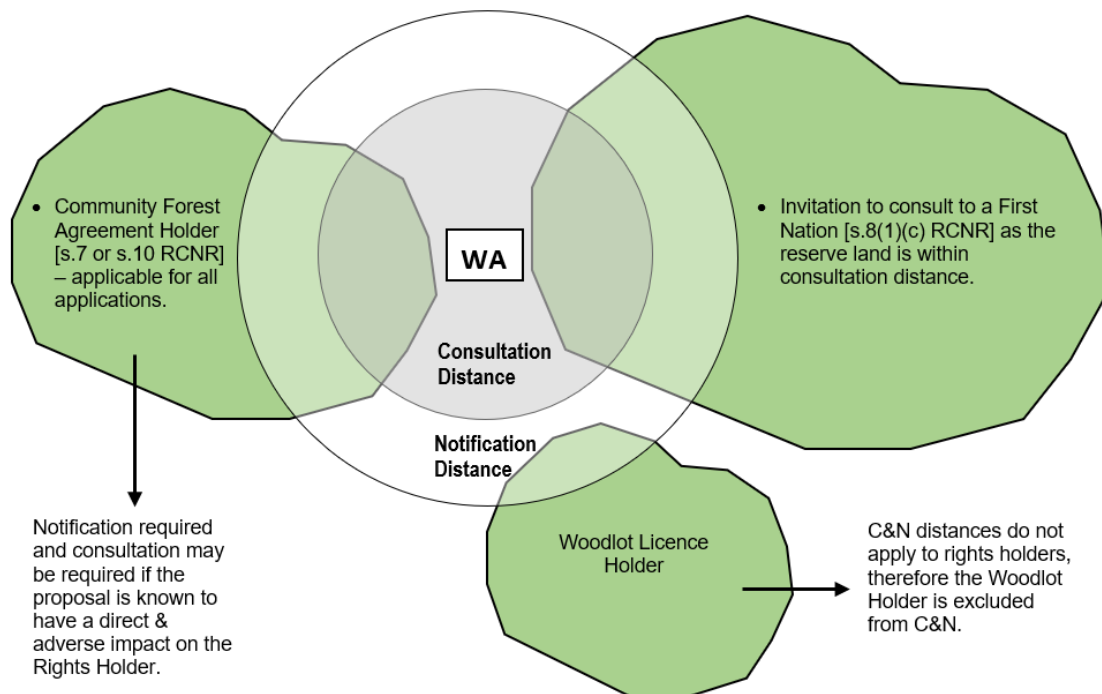


Figure 6-E Consultation and Notification Test



## 6.1.4 Calculating Consultation and Notification Distances

Minimum distances have been set for consultation and notification associated with specific activities in the RCNR, Section 17. Distances are measured horizontally from:

- Centre point of a facility area or wellsite
- Centre line of the right-of-way of a pipeline, energy resource road right of way, or seismic line.

For each category of activity, there is a minimum distance where notification or consultation is required, as outlined in Table 6-B and illustrated in Figures 6-G and 6-H.

Where an application includes a construction corridor and the applicant wants the flexibility to move the activity footprint anywhere within the corridor, consultation and notification distances must be measured from the outer edge of the corridor.

Where an application includes both a primary activity and a related authorization, consultation and notification must be done for the entire development, not just the primary activity. The content and material provided in the invitation to consult and/or notice documents must include reference to all activities, not just the primary activity.

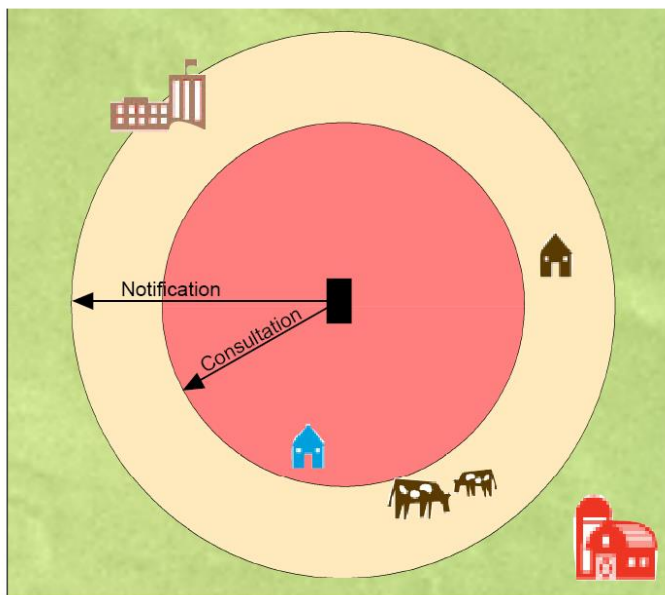
Table 6-B below makes reference to distances in the Consultation and Notification Regulation.

**Table 6-B: Consultation and Notification Distances for Energy Resource Activity as per s.17 of the RCNR**

Energy Resource Activity	Consultation Distance	Notification Distance
LNG facility, petroleum refinery, manufacturing plant, gas processing plant that is a Class C natural gas facilities and not subject to an environmental certificate	3,300 metres	3,300 metres

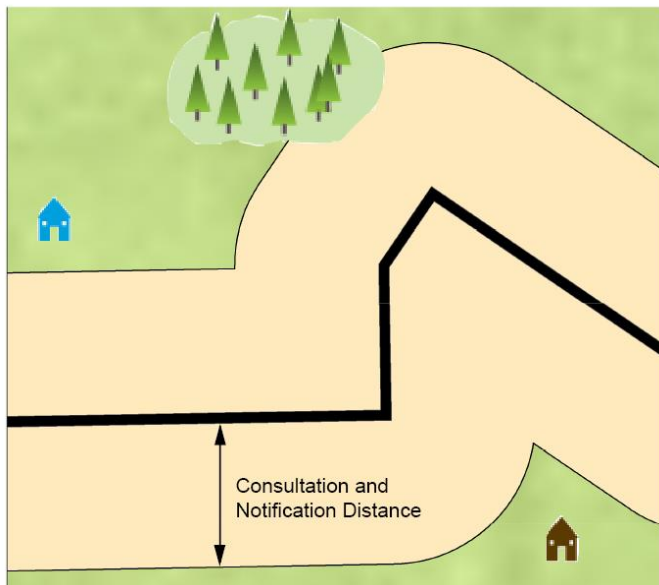
Energy Resource Activity	Consultation Distance	Notification Distance
Facilities not listed above and have a facility area or wellsite measuring less than 5 hectares.	1,000 metres	1,500 metres
Facilities not listed above and have a facility area or wellsite measuring equal to or more than 5 hectares.	1,300 metres	1,800 metres
Wellsite measuring less than 5 hectares	1,000 metres	1,500 metres
Wellsite measuring greater than or equal to 5 hectares.	1,300 metres	1,800 metres
Pipeline	200 metres	200 metres
Energy Resource Road	200 metres.	200 metres.
Geophysical	Not applicable	400 metres.

**Figure 6-G: Illustration of Consultation and Notification Distances Surrounding a Well or Facility.**





**Figure 6-H: Illustration of Consultation and Notification Distances Along a Pipeline**



## 6.1.5 Information For the Recipient

### Documentation Requirements

#### Notification

Notification packages to recipient(s) must include the information listed in Section 19 of the RCNR.

The prescribed descriptions in Section 19(3) (a) to (e) ) must also include:

- All legal locations potentially impacted by the contemplated activities must be noted, including cases where a project may be carried out on an area covering more than one legal location, but owned by the same land owner.
- For multi-activity permits, including multi-well pads, describe the entire anticipated schedule of activities over various years, where applicable.

Consultation and notification template examples are provided as guidance regarding the required content of notices and invitations to consult under the Requirements for Consultation and Notification Regulation (RCNR). Refer to Examples #1 through #4, which can be found [here](#).

Example #1: RCNR Section 19 and Section 20: consultation for a wellsite, road and borrow pit.

Example #2: RCNR Section 19 and Section 20: consultation for a pipeline, road and temporary workspace.

Example #3: RCNR Section 19: notification for a wellsite, road and borrow pit.

Example #4: RCNR Section 19: notification for a pipeline, road and temporary workspace.

The following points should be considered when drafting a notification or consultation letter.

RCNR:

- The definition of “Proposed Activities” refers to ERAA activities.
- Anticipated vehicle traffic on energy resource roads means traffic on energy resource roads (ERAA roads) within the consultation distance that are not the proposed road (if any).
- “Ancillary activities” refers to activities, the carrying out of which are required for the purpose of carrying out energy resource activities. Ancillary activities may also be “related activities” as defined in ERAA and referenced in Section 19(3)(c) of the RCNR.
- Section 20(2) of the RCNR requires information for each phase. The 2 phases indicated in the consultation letters are suggested based on common practice. This applies to consultation letters only.
- Section 20(2)(b)(i) of the RCNR requires a description of reasonably foreseeable noise, dust, light and odours. In cases where any of these would not be expected, it is suggested to include that information for each phase. This applies to consultation letters only.
- Section 20(2)(b)(ii) of the RCNR requires a description of traffic on energy resource roads within the consultation distance. It is suggested to also include traffic associated with the activities that is outside of these parameters, such as a preferred traffic route if applicable. This applies to consultation letters only.
- Include the Regulator’s mailing address and/or email address (BC Energy Regulator Bag 2 Fort St. John, BC V1J 2B0 ([WrittenSubmissions@bc-er.ca](mailto:WrittenSubmissions@bc-er.ca))) for the recipient to make a written submission to the Regulator.

**Please Note:**

Consultation and Notification maps must be at an appropriate scale to show clearly the activities in relation to dwellings, facilities and nearby urban centers.

**Consultation**

In addition to the information required to be included in a notification package, an invitation to consult must also include the content outlined in Section 20 of the RCNR.

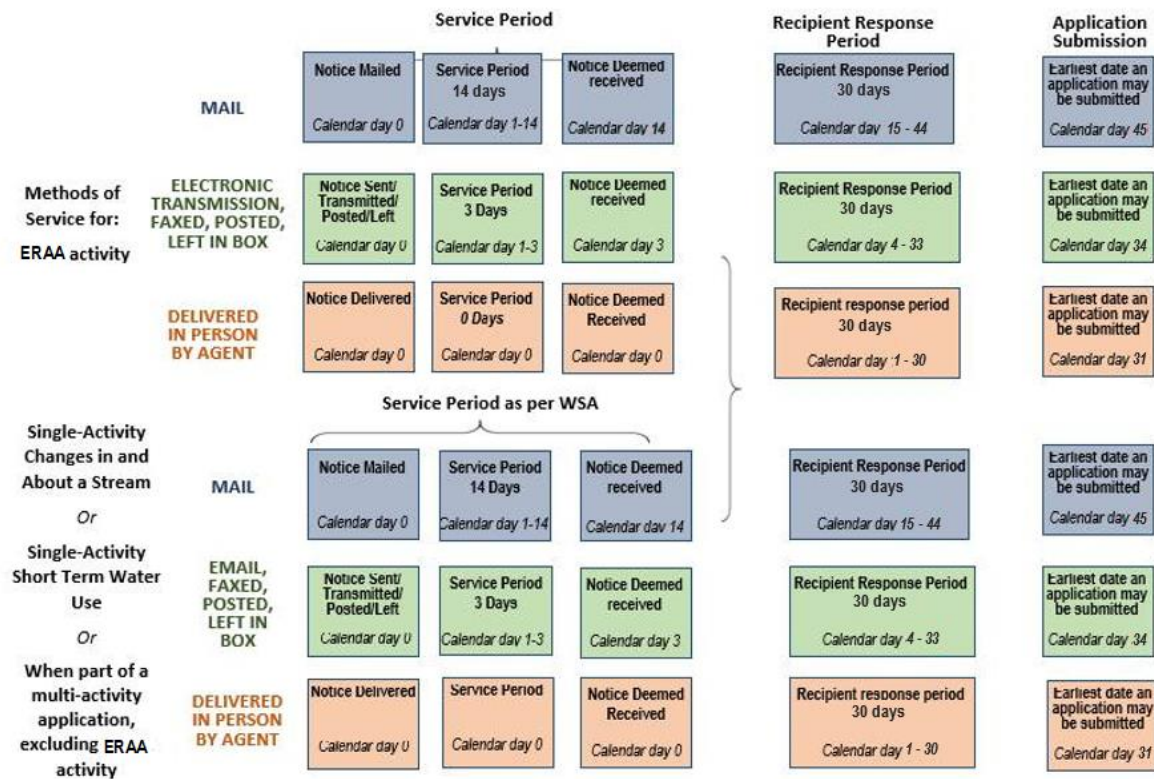
## 6.1.6 Consultation and Notification Timelines

Applicants must carry out the prescribed consultations and notification while budgeting for appropriate timelines and taking into consideration delivery methods. Applicants must provide recipients a 30-day review and response period. All documentation must follow the methods of service set out in the [Service Regulation](#) or Section 79(1) of ERAA.

Figure 6-I shows graphically the timeline for service period and response period to determine consultation and notification timelines.

**Figure 6-I : Using Service Period and Response Period to determine consultation and notification timelines for new applications.**

Where the last day of the recipient response period falls on a statutory holiday, the response period will be extended to the next day that is not a statutory holiday.



## Consultation and Notification Activity Complete

The obligation to notify or consult is fulfilled as prescribed in Section 19 and 20 of RCNR, respectively. An application can be submitted:

- The day after the thirty day response period, after the last required notification or consultation was deemed received, or
- Prior to 30 days if:
  - All respondents indicate they have no concerns or (if applicable) are not requesting a meeting. Letters of non-objection from all respondents confirming this need to be provided in the application.

- All respondents withdraw all concerns or (if applicable) a request for a meeting. Letters of non-objection from all respondents confirming this need to be provided in the application.
- An exemption from C&N timelines is granted by the Regulator.

There are no further obligations for C&N if no written responses are received.

If a written response is received following the prescribed response period, the applicant has no obligation under the RCNR to provide a written reply or schedule a meeting. However, the Regulator recommends that applicants make best efforts to address and resolve concerns with affected land owners and rights holders. The Regulator will consider any written submission made respecting an application.

## Letters of Non-objection

A letter that signifies there are no concerns with a proposed project is referred to as a letter of non-objection. RCNR section 22(3)(a) enables the proponent to apply to the Regulator earlier than 30 days if they have received this from all parties who have been provided consultation or notification. Letters of non-objection do not require a reply.

It is not a “non-objection” if there are additional comments that note concerns or things the recipient would like the applicant to do; those are considered written responses and, if such correspondence is received by the applicant within the 30 day engagement window, a written reply is required.

## Please Note:

If a respondent withdraws all concerns or (if applicable) a request for a meeting, this is not the same thing as a waiver allowing construction to commence prior to the 15 day waiting period outlined in ERAA Section 25(6).

## Major Changes

If there is a major schedule change for energy resource activities, or the permit holder decides not to carry forward a planned energy resource activity, all recipients should be notified of the change.

## 6.1.7 Replying to Respondents

Recipients of consultation or notification with interests in or concerns about a proposed energy resource activity may provide a written response to the applicant or the applicant's designated contact. If a written response is provided within the 30 day response period, the recipient is then referred to as a respondent.

Respondents may detail concerns and any proposed recommendations for mitigation. If the response is received before or within the 30 day consultation and notification response period the applicant must reply, in writing, as soon as practicable. The obligation to notify or consult, and thus the ability for the applicant to submit the application, is not met until the last written reply has been sent.

The applicant's written reply must contain all of the relevant provisions outlined in Section 21 of the RCNR, as applicable.

Where a written response to an invitation to consultation includes a request for a meeting, the applicant must make reasonable efforts to meet with the respondent in a timely manner and provide a summary of the meeting in the written reply which will be uploaded to the Regulator with the application. If reasonable efforts have been made to schedule the meeting and the 30 day response period has elapsed without the meeting being scheduled, the application may be submitted along with a detailed explanation of the efforts made to schedule a meeting. The written reply must also include:

- A description of any revisions, if any, based on the concerns
- A statement that the written response and written reply will be included in the application to the Regulator
- If the application is for a new (ERAA section 24) application, a statement that the respondent may make a submission to the Regulator

Recipient concerns, proposed recommendations for mitigation and meeting requests are tracked. Applicants should consult the RCNR to ensure all prescribed statements are correct and included.

The Regulator provides the required RCNR Line List template for applicants to use for all correspondence records. The completed RCNR Line List along with recipient written responses and replies must be included in the application

submission as part of the written report (detailed in Section 6.1.10 of this manual).

## 6.1.8 Written Submissions to Regulator

In addition to the consultation and notification processes, Section 22 (5) of ERAA conveys the right for anyone with an interest or concern about a proposed activity and/or its proposed location to make a written submission. While not required, a Written Submission Form is recommended and available on the Regulator's website or directly from the Regulator.

Written submissions are made directly to the Regulator, can happen at any time in the application process, and may be made by any person. This differs from recipient requirements and written responses which are specific to consultation and notification and have clear guidelines and timelines. The Regulator forwards written submissions to applicants, along with a Case File Number. Where received prior to application submission, the Case File Number must only be referenced on the Line List when concerns remain unresolved at the time of application submission. The applicant is not required to reply, however may be encouraged to respond in order to assist in resolution of issues. Completed Written Submission Forms are sent by email to: [WrittenSubmissions@bc-er.ca](mailto:WrittenSubmissions@bc-er.ca), or submitted directly to the Regulator's Fort St. John or Dawson Creek offices.

### Unresolved Concerns

To ensure decisions are made with full knowledge it is important that any concerns that remain unresolved at the time of application submission, including those outside the Regulator's regulatory jurisdiction (e.g. access and compensation), are noted as unresolved concerns in the RCNR Line list. It is also important to note if concerns were raised and responded to verbally; these should also be included in the RCNR Line list for the application.

### Case File Numbers

Case file numbers must be referenced on the RCNR Line List in applications when Written Submissions have been received and the concerns with respect to the proposed activities remain unresolved.

If a written submission is received by the Regulator, the applicant will be provided with the assigned case file number. If the application has been submitted the case file

number can be used for reference but will need to be used in an updated line list should there be a revision.

If there are outstanding concerns, applicants should contact the Community Relations department well in advance of submitting an application to obtain case file numbers, when required. Case file numbers will be provided to the applicant upon receipt of the following information:

- a copy of the notification and the map sent to the recipient;
- the written responses and replies exchanged during the consultation and notification timeline; and
- the name, contact information, and recipient type for those with unresolved concerns.

If there is no documentation identifying unresolved concerns and mitigating actions, a brief summary noting verbal exchanges is required.

One case file number will be assigned per land owner or rights holder, per application. It is important to note that case file numbers are not interchangeable or reusable. If a case file number has been provided to the applicant and is not used (e.g. if issues are resolved prior to submitting the application), please advise Community Relations and the case file number will be cancelled.

Case file numbers should not be referenced on the RCNR Line List when concerns regarding the proposed activities have been resolved. If the concerns have been resolved, applicants should indicate “no” on the RCNR Line List and contact the Community Relations Department to cancel the case file number.

## 6.1.9 Dispute Facilitation & Conflict Resolution

Conflicts not resolved before submitting an application affect the Regulator’s review process and may determine whether an application is approved with changes, without changes or refused.

The applicant and recipient(s) may require facilitation services within the Regulator if, after all reasonable efforts are made, issues remain unresolved. This non-mandatory process exists to aid communication and resolve interest-based differences between applicants and consultation and notification recipients.



This facilitation ranges from prompting the exchange of additional information to providing neutral mediation between parties. An assessment of the processes and activities completed and the specific circumstances will determine the type of facilitation service most effective. Landowner Liaisons within the Regulator's Community Relations Department are available to assist with dispute facilitation. It is recommended that applicants provide full documentation regarding their efforts to resolve concerns to the Community Relations Department prior to submitting an application. This will assist in a more efficient application review and decision process.

## 6.1.10 C&N Application Requirements

### Written Report

ERAA requires that each permit application subject to consultation and notification requirements include a written report, summarizing the results of consultation and notification activities. Note: the written report has been incorporated under the Consultation & tab within AMS.

The Regulator requires the applicant to upload components of the written report into AMS during the application process. Specific files, relevant to the written report, to be uploaded include:

- Completed consultation and notification line list. The line list is a summary record of the consultation and notification activities performed with each recipient. The [RCNR Line list template](#) is found on the Regulator website and includes an example for guidance. The AMS will not accept line list templates that are altered or missing required information.

To assist applicants with aligning the differences between the previous line list and the current RCNR Line List, the following tables have been prepared:

- [RCNR Feature Type Concordance](#)
- [RCNR Recipient Type Concordance](#)
- Engagement supporting documentation, which includes:
  1. All notification/consultation information, if applicable;
  2. Details of any known concerns and mitigating actions taken by the applicant;

3. Responses received from respondents and replies made by the applicant. The package of responses/replies must also include attempts made by the applicants to contact the respondent. The applicant should make an effort to follow up with the recipient if mail is returned, sent to wrong address and/or to ensure package was attempted to be delivered; and
  4. Summaries of meetings that provide information about issues, actions and outcomes.
- Consultation and notification map showing the proposed activities in relation to dwellings, facilities and nearby urban centers. The map must cross reference consultation and notification recipients from the Line List.
  - For activities located on private land, with the exception of geophysical applications, an ownership map must be uploaded with the application. An Individual Ownership Plan (IOP map) must be at an appropriate scale that allows directly impacted land owner(s) to easily identify their land and the impact of permitted energy resource activities on that land

### Please Note:

PID numbers must be included in the line list under the “Recipient Legal Land / Parcel description of Rights Holder Tenure Identifier” tab.

## 6.1.11 Revisions and Amendments

### Revisions

A project can either be revised prior to application submission, or after application submission but before a decision. Applications may be revised as a result of the consultation and notification process and associated engagements with recipients or not, and in some circumstances, additional consultations or notifications may be required.

In accordance with Section 13 of the RCNR, the obligation to notify or consult is triggered for a revision to the project or revision to the application in one or more of the following ways:

- g) a change to the area on which the applicant intends to carry out the proposed activities by increasing that area by one hectare or more, or shifting that area by 100 metres or more,
- h) by adding to the proposed activities the drilling of a new well;

- i) by adding to the proposed activities any of the following:
  - i. the construction of a new pipeline
  - ii. the construction of a new facility
  - iii. the installation of new storage tanks, compressors, dehydrators, flare stacks, generators or stabilizers;
  - iv. the installation of new gas processing equipment for fractionation, liquefaction or extraction of hydrocarbons or other substances
  - v. without limiting subparagraph (i), (ii), (iii) or (iv), the installation of any new major equipment that may significantly increase the amount or duration of the noise, dust, light and odours, or anticipated vehicle traffic on energy resource roads within the consultation distance, if applicable, that will be caused by the proposed activities
- j) by increasing the capacity of a proposed facility for petroleum, natural gas or water so as to change the class of the facility.

Section 14 of the RCNR outlines requirements for consultation and notification for revisions.

Revisions that result in new recipients falling within the prescribed consultation or notification distances require consultation or notification. The service period timeline and the consultation and notification response period timeline of 30 days will apply in resubmitting a revised application to the Regulator.

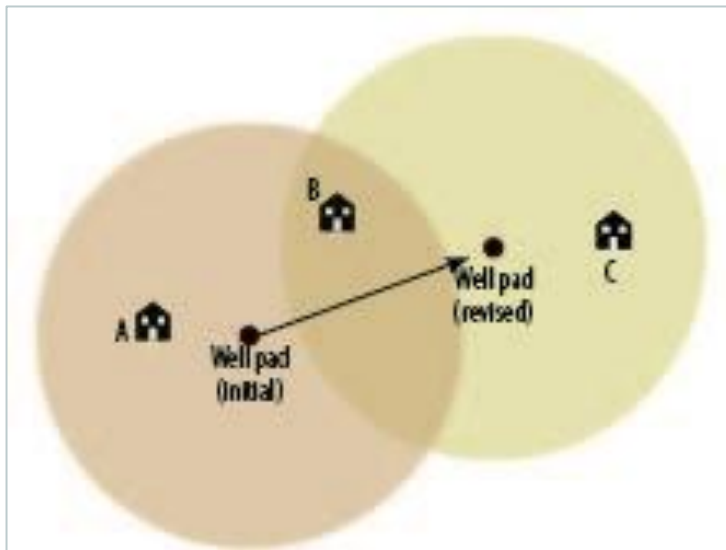
Those, who were previously consulted or notified, but are affected by a revision and still remain in the revised C&N radius require revised consultation or notification explaining the revised program.

If the revision is to add a new pipeline that is not sour, an invitation to consult is required to be provided only to land owners on whose land the new pipeline would be constructed

It is not required that those who were previously consulted or notified and who are no longer in the C&N radius be further engaged; however it is a best practice to notify them explaining that they are no longer potentially affected.

A revision as shown in Figure 6-F, may result in a different applicable consultation distance than the initial proposal. For example:

- Incorporating a facility onto a wellsite.

**Figure 6-F Significant Revision in Consultation Distance**

### Amendments Applications

The applicant must provide notification to the land owner on whose land the activity is proposed under Section 31(1) of ERAA, except where exempted from doing so under Section 31(1.1). The notice must provide a description of the proposed amendment. The notice must also advise the recipient that they may send a Written Submission (within 15 days of receiving the notice) to the Regulator regarding the amendment. The applicant does not need to wait 15 days after the notice is deemed received before submitting the amendment application.

As per Section 31(5) of ERAA after an amendment application has been submitted, the Regulator may require, an applicant to complete all or a portion of the prescribed requirements outlined in the RCNR. If the Regulator compels the applicant to provide additional consultation/notification, applicable reviews will continue during the prescribed service and response periods; however, a decision will not be made until obligations have been met and it is confirmed that no objections/outstanding concerns have been raised by the affected parties.

Specific requirements for additional C&N on amendment applications are determined on an application-by-application basis by the decision maker. Typically, the decision maker's consideration of additional C&N under Section 31(5), will apply where there is the potential for adverse impact to the rights of the rights holder or adjacent land owner. This consideration is primarily centred around quiet enjoyment of the land and will usually focus on amendments that

involve changes in activity levels that may increase air (primarily dust), noise or light emissions. Additional considerations that may require consultation or notification for an amendment include:

- New rights holders or landowners of the land on which an operating area is located.
- Previous unresolved concerns.
- An increase in area or shift in location.
- An increase in class of facility.

**Please Note:**

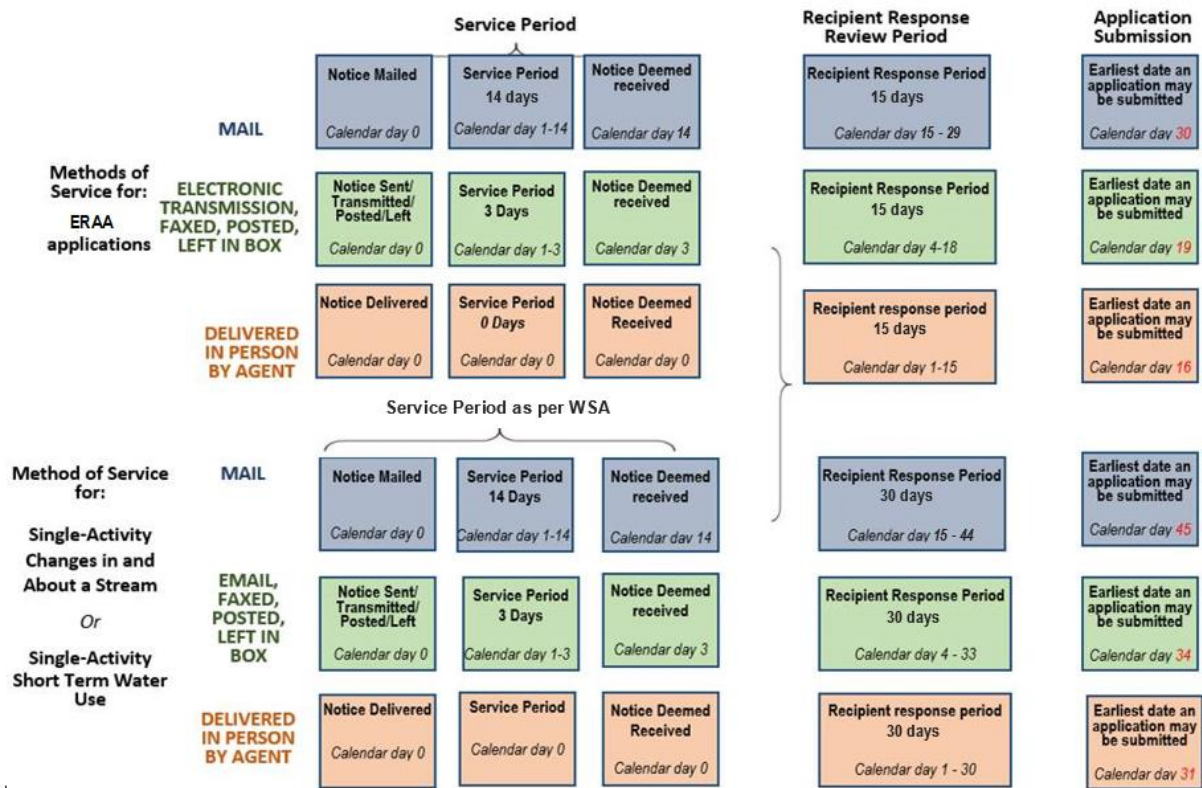
Not all C&N requirements associated with ERAA amendments are mandatory, Applicants are encouraged to contact an Authorizations Director prior to submission of an amendment application if they have any questions about additional consultation or notification

**Please Note:**

Including the prescribed content of notice requirements constitutes offering C&N. If a permit holder does offer C&N by choice or inadvertently, the prescribed process must be followed

**Figure 6-G Amendment application submission timelines for Service Period and Response Period for C&N**

Where the last day of the recipient **response** period falls on a statutory holiday, the **response** period will be extended to the next day that is not a statutory holiday. Timelines with respect to the amendment application submissions in AMS are managed internally.



## 6.1.12 Exemptions from C&N Obligations

Upon written request from the applicant, the Regulator may exempt an application from consultation and notification requirements specified in Section 22(3) of ERAA. In doing so, the Regulator may also substitute other consultation and notification requirements. It is important to note that the Regulator cannot exempt applicants from providing notification to landowners of proposed energy resource activities, per Section 22(2) of ERAA.

Requests for exemptions must include:

- a description of the proposed activity;
- a precise explanation of which prescribed requirements the applicant is requesting exemption from;
- the rationale behind the request including and explanation of why it is unreasonable or unachievable to fulfill the prescribed requirements; and
- an explanation of what the applicant proposes to do in lieu of the prescribed requirements, if applicable.

Exemption requests must be submitted to the Regulator by e-mail, and can be directed, as appropriate, to the Executive Director, Permit Adjudication; or the Vice President, Applications.

If an exemption is granted, the proponent must include the written exemption letter from the Regulator with the application.

### Exemptions Regarding Amendments

Under Section 31(1.1) of ERAA, the Regulator may exempt a person or class of persons from the requirement to provide notice under Section 31(1).

The Regulator may also exempt an applicant from providing notice to directly impacted land owners, provided certain criteria are met, as per Section 31(1.1).

The Regulator issued a class of persons exemption under Section 31(1) in March 2016. Further information about this exemption can be found in Exemption 2016-02 [here](#). When submitting an application to which this exemption applies, AMS will prompt applicants to respond to specific questions pertaining to class of exemptions.

## 6.1.13 Permit Extensions

### Requirements for a Permit Extension

Upon receipt of a permit extension request per ERAA 32 (2), a Regulator's decision maker may require that C&N be carried out prior to making a decision on the application per Section 32(3). If required, the applicant must carry out C&N and provide the information outlined in Sections 19 and 20 of the RCNR.

For further clarification, it is recommended that a proponent contact an Authorizations Director prior to submitting an extension request to determine if C&N will be required.

### Please Note:

Including the prescribed content of notice requirements constitutes offering C&N. If a permit holder does offer C&N by choice or inadvertently, the prescribed process must be followed.



# Chapter 6.2

## Completing Application Information Details: Rights Holder Engagement

### 6.2 Rights Holder Engagement

Rights holder engagement is required as part of the application process for CER related approvals, single activity Associated Activities (ACT) on Crown land, and single activity authorizations permitted under the Water Sustainability Act or multi-activity applications that include both AACT and water use activities. Submission of an application for any of the above applications must include additional application deliverables specific to rights holder engagement.

The rights holder engagement tab requires specific application information details. This section includes an overview of rights holder engagement, guidance regarding rights holder engagement, details related to rights holder engagement requirements and detailed instructions for completing the data fields within the rights holder engagement tab.

#### 6.2.1 Rights Holder Engagement Process Overview

The province coordinates resource management related to energy resource activities and is mindful of reducing adverse effects on long-term rights holders' interests. The methods used to engage rights holders may vary depending on the nature and scope of the proposed related activity. Rights holder engagement is a process to ensure appropriate engagement with rights holders in cases where the consultation and notification process does not apply.

## Rights Holder Defined

A rights holder is a person granted non-intensive occupation or use of Crown land by permit, licence or approval. Rights holder is defined under the RCNR and are indicated as follows:

<b>Legislation</b>	<b>Permission</b>
Land Act	Licence under Section 39
Forest Act	Forest licence Forestry licence to cut (major) Community forest agreement First Nations woodland licence Timber sale licence Timber licence Tree farm licence Woodlot licence
Range Act	Grazing permit Grazing licence
Wildlife Act	Guide outfitters licence for Crown land Guiding territory certificate for Crown land Registered trapline
Mineral Tenure Act	Mineral claim
Geothermal Resources Act	Geothermal exploration permit, lease or well authorization
Water Sustainability Act	Water licence (conditional or final)

The Regulator requires applicants to engage with rights holders prior to submitting an application. The applicant is expected to notify a rights holder if the proposed activity is within an area subject to the right of a rights holder (e.g., the proposed activity falls within a guide outfitter's tenure) or if the proposed activity is deemed to have the potential to adversely affect existing rights (e.g. if the proposed activity could result in impacts to downstream water rights holders).

If proposed activity is within an area subject to the right of a rights holder or as detailed in engagement requirements for Water Sustainability Act applications below, and it is known to the applicant that the ability of the rights holder to

exercise their rights are likely to be directly and adversely affected, the Regulator expects the applicant to engage the rights holder in consultation.

### Please Note:

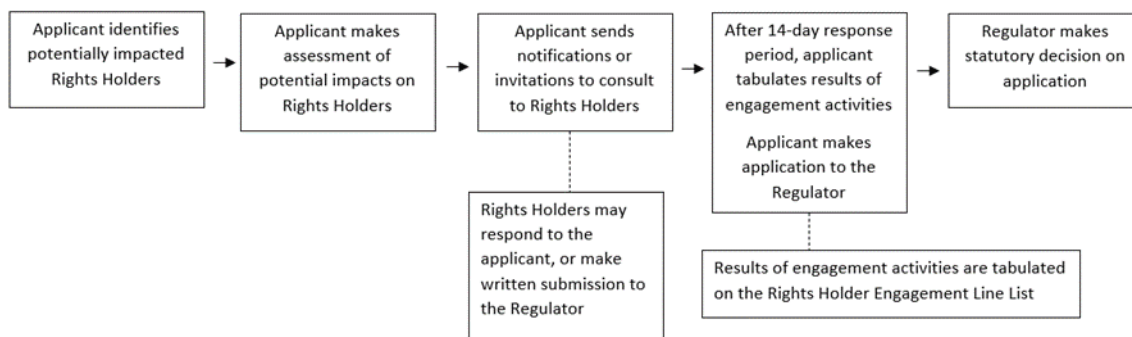
If a legal recipient chooses to designate someone to communicate on their behalf, a letter designating the representation must be sent to the Regulator. The letter must be addressed to the Regulator, state the name of the designate, outline the parameters of the representation, and be signed by the official recipient.

Letters must be provided for each application, as the Regulator will not keep a record of representation for use on other applications.

### Please Note:

For Power of Attorney, a copy of the legal document must be sent to the Regulator.

**Figure 6-K: Rights Holder Engagement Process**



### Who must carry out Rights Holder Engagement?

The rights holder engagement process must be carried out by applicants preparing applications for the following activities:

- Associated activities when submitted as a single-activity application (i.e., not included in consultation and notification processes carried out on an ERAA activity).
- CER pipeline right-of-way applications.
- CER road right-of-way applications
- CER ancillary applications.
- Short-term water use authorizations when submitted as a single-activity application (i.e., not included in consultation and notification processes carried out on an ERAA activity).

- Changes in and about a stream authorizations when submitted as a single-activity application (i.e.. not included in consultation and notification processes carried out on an ERAA activity).
- Water Licence applications.

In addition, the rights holder engagement process must be carried out in preparing revision or amendment applications if the revision or amendment will change the location of the activity or if the applicant expects the changes may lead to additional adverse impacts on rights holders.

Provincial and federal government agencies are not considered rights holders. Applicants are not obligated to engage agencies prior to submitting an application to the Regulator, however, applicants are encouraged to advise the Regulator of any provincial or federal interests, such as Land Act Map Reserves or Resource Features (as defined in the EPMR), as early as possible. The Regulator will facilitate any required engagement during the application review.

### **Please Note:**

If an Associated Activity was included in the Consultation and Notification process carried out under an ERAA application but is being applied for separately from that ERAA application, further rights holder engagement is not required prior to application for the associated activity. However, the engagement information must be completed and uploaded into AMS on the applicable RHE Line List with the application.

### **Please Note:**

Prior to the submission of an application for a camp, applicants are required to notify the Peace River Regional District (PRRD) and the Northern Rockies Regional Municipality (NRRM) as a rights holder.

## **Rights Holder Engagement Requirements for CER Related Approvals and Associated Activity (AACT) Authorizations**

The province makes every effort to ensure that resource management is coordinated and that the related energy resource activities will not adversely affect long-term rights holders' interests. The methods used to engage rights holders may vary depending on the nature and scope of the proposed related activity.

Engagement materials provided to the rights holder must provide sufficient information to enable an understanding of the proposed activity and its relationship to the rights holder's legally granted interests. Generally, relevant information includes:

- Applicant name and contact information.
- Description of the location of proposed activity, and associated activities.
- Activity specifics including any significant structures and equipment to be added.
- Any roads that will be used to carry out the proposed activities.
- Approximate timing schedule of project where applicable.
- Map that shows the proposed activities in relation to rights holder's area of interest.
- Statement advising the rights holder may make a Written Submission to the Regulator and at any time prior to the application decision.
- Recipient response options. Clearly state options for recipients to respond including:
  - Responding directly to applicant.
  - Providing a Written Submission to the Regulator.

The Regulator requires the applicant to document their completed rights holder engagement process and include it with the application submission. Applications can be submitted to the Regulator once the rights holder engagement service period and response period timelines have passed.

## Methods of Service

Acceptable methods of service for the distribution of rights holder engagement materials are identified in the Service Regulation.

## Determining RHE Timelines – Service Period and Response Period for New Applications and Amendments

Prior to submitting an application, applicants must ensure service period and response period obligations have been met. The applicable response period begins once the service period obligations have ended and notice is deemed received. However, applicants may apply earlier if a letter of non-objection is received from impacted rights holders is received or by requesting a variance from engagement from the Regulator. If a written response is received within the prescribed engagement period, the applicant is required to submit the response including the applicant's written reply with the application.

Applications that include both related associated activities and water use activity will default to the latest application submission timeline; unless obligations have been met or a variance from the timeline is granted.

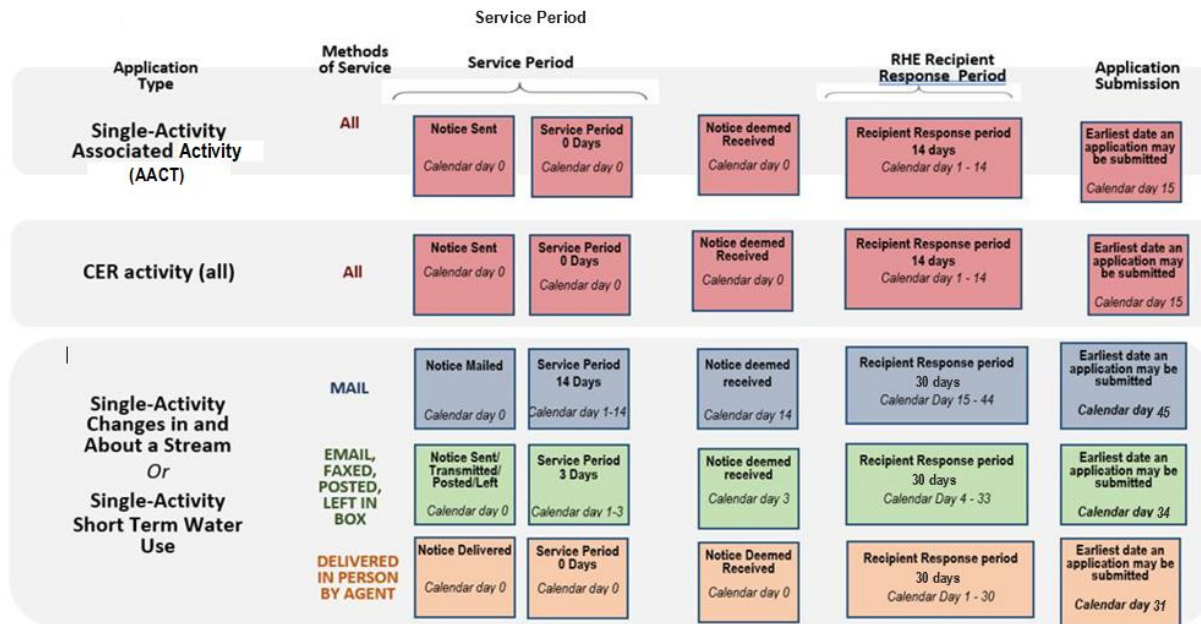
For specific application timeline examples, refer to Figure 6-L below.

## Best Practices

If there is a major schedule change for an activity, or if the permit holder decides not to carry forward with the planned activity, all recipients should be notified of the change.

**Figure 6-L: Application submission timelines using the Service Period and Response Period for Rights Holder Engagement (for both new applications and amendment applications)**

Timelines with respect to the amendment application submissions are managed internally.



## Rights Holder Engagement Requirements for Water Sustainability Act Authorizations

Approvals granted under the Water Sustainability Act (WSA) are defined in the WSA as rights holders whose water rights may be detrimentally affected by the issuance of the authorization under consideration. These include applications for (Short-Term Water Use (use approval), Changes in and about a stream (change approval) and Water Licences).

Water rights holders include:

- Water licensees.
- Applicants for water licences.
- Use approval holders.
- Use approval applicants.

The Water Sustainability Act also specifies that riparian owners and those land owners whose property may be physically affected by the issuance of the licence or authorization under consideration must also be notified. If access across private property is required the applicant must have land owner consent. On Crown land currently under treaty, riparian owners are generally expected to include those First Nations in whose traditional territory the proposed water withdrawals are to occur.

First Nations deemed as riparian owners will be engaged as per the Regulator's First Nations consultation process and therefore do not require notification during rights holder engagement.

A search of the [Water Licenses Web Query](#), along with the [North East Water Tool \(NEWT\)](#), the [Omineca Water Tool \(OWT\)](#), or the [North West Water Tool \(NWWT\)](#) should be completed before submitting a Short-Term Water Use Application, to assist with determining water rights holders on the same water source.

Applications for water diversion and use in the Blueberry River, Upper Beatton River, and Lower Sikanni Chief River Watersheds shall refer to the New Environmental Flow Needs Framework for Water Management interim [guidance documentation and tool](#). For more information refer to [IU 2023-05](#) Implementing the Northeast British Columbia Treaty Agreements: New Framework for Water Management.

Applicants must notify and engage with rights holders, riparian owners and land owners as defined in the Water Sustainability Act, and provide a summary of that engagement with their application. For change approval applications, verification of the landowners consent is required and must be included with the application.

Rights holders, riparian owners and land owners must be notified according to the requirements outlined in Section 117 of the Water Sustainability Act (WSA) which specifies the ways in which a notice may be given or delivered. Section 117 also specifies when a notice may be deemed received depending on which delivery method has been utilized.

Section 13(1) of the WSA requires the decision maker to direct applicants to give notice; therefore, it is recommended that applicants contact the Regulator prior to providing notification.



Notification materials provided to rights holders, riparian owners and land owners must include:

- The name of the decision maker (BC Energy Regulator).
- The applicant name and contact information.
- A map indicating the POD location/s and/or the proposed works in relation to the rights holders, riparian owners or land owner's area of interest.
- A description of the proposed timing and extent of works.
- A statement advising the rights holder, riparian owner or land owner that they may object to the proposed water withdrawals via Written Submission to the Regulator within 30 days of receiving the notice.
- The BC Energy Regulator's Fort St. John mailing address to which objections can be sent.

Notification material must include sufficient information to enable an understanding of the proposed water withdrawals to be made and their relationship to the rights holders, riparian owners, or land owner's legally granted interests.

Notification template examples are provided as guidance regarding the required content of notices under the Water Sustainability Act. Refer to Example #5, which can be found [here](#).

## **Methods of Service**

Acceptable methods of service for the distribution of rights holder engagement materials and for standards used in determining when a document is to be deemed received, specific to water use activities, is outlined in Section 117 of the Water Sustainability Act.

## Service Period and Response Period timelines for New Applications and Amendment Applications Specific to Water Use Activities

Prior to submitting an application, applicants must ensure service period and response period obligations have been met. The applicable response period begins once the service period obligations have ended and notice is deemed received. However, applicants may apply earlier if a letter of non-objection is received from impacted rights holders is received or by requesting a variance from engagement from the Regulator. If a written response is received within the prescribed engagement period, the applicant is required to submit the response including the applicant's written reply with the application.

Applications that include both water use activity and related associated activities will default to the latest application submission timeline; unless obligations have been met or a variance from the timeline is granted.

For specific application timeline examples, refer to Figure 6-L.

The Water Sustainability Act gives the decision maker discretion to determine if further Rights Holder Engagement is required as well as if a decision can be rendered before the 30 day response period has expired. The Regulator encourages companies and the affected rights holder(s) to try to resolve concerns before contacting the Regulator

## Rights Holder Engagement Requirements for Water Use and Related Associated Activity Applications

The Regulator requires that the applicant document their completed rights holder engagement process and include with the application:

- The Rights Holder Engagement Line List.
- A description of all mutually acceptable agreements made including copies of all Letters of Non-Objection received. Letters of Non-Objection must be signed by the rights holder, riparian owner or land owner.
- Details of any known rights holder, riparian owner or land owner concerns and a description of any actions taken or measures applied by the applicant in response to these concerns.

Once the application is received the decision maker will determine if he or she is satisfied with the Rights Holder Engagement undertaken by the proponent.

## Best Practices

If there is a major schedule change for an activity, or if the permit holder decides not to carry forward with the planned activity, all recipients should be notified of the change.

## Case File Numbers

Case file numbers must be provided in applications when Written Submissions have been received and the concerns with respect to the proposed activities remain unresolved. The Regulator's Community Relations department is able to provide case file numbers upon receipt of information including the following:

- Copy of notification and map sent to recipient.
- Written responses and replies exchanged during the engagement timeline.
- Name, contact information and recipient type for those with unresolved concerns.
- If no documentation identifying unresolved concerns and mitigative actions, a brief summary noting verbal exchanges.

## Please Note:

Case file numbers are assigned for the designated person/activity are not interchangeable or reusable. If a case file number has been provided to you and you no longer require it (e.g. if issues are resolved prior to application) please advise the Community Relations department so the Regulator can cancel the case file number.

## 6.2.2 Written Submissions to Regulator

In order for the Regulator to make informed decisions it is necessary to understand interests or concerns of those who may be directly impacted by a proposed activity. The Regulator has adopted by policy the opportunity to make a

Written Submission for those wishing to convey interests/concerns. The [Written Submission Form](#) available on the Regulator's website.

Written submissions are made directly to the Regulator and can happen at any time in the application process and may be made by any person.

The Regulator forwards written submissions to applicants. The applicant is not required to reply, however may be encouraged to respond in order to assist in resolution of issues. Completed [Written Submission Forms](#) are sent by email to [WrittenSubmissions@bc-er.ca](mailto:WrittenSubmissions@bc-er.ca), or submitted directly to the Regulator's Fort St. John or Dawson Creek offices. Written submissions are reviewed by the Regulator's statutory decision maker prior to making a statutory decision on the associated permit application.

### 6.2.3 Replying to Respondents

Rights holders with interests in or concerns about a company's proposed energy resource activity may submit a written response to the applicant or the applicant's designated contact.

Respondents may detail concerns and any proposed recommendations for mitigation. If the response is received within the applicable response period, the applicant is strongly encouraged to reply, in writing, as soon as possible. When part of the rights holder engagement process, this response is not mandatory but is a valuable opportunity to provide information to the rights holder and demonstrates a desire to address concerns.

Respondent concerns, proposed recommendations for mitigation and meeting requests must be tracked by the applicant. The Regulator provides the required [Rights Holder Engagement Line List Template](#) for applicants to use to track all correspondence records. The completed RHE Line List along with respondent written responses and replies must be included in the application submission.

## 6.2.4 Unresolved Concerns

Conflicts not resolved before submitting an application affect the Regulator's review process and may determine whether an application is approved with changes, without changes or refused.

If there are unresolved concerns, the applicant is required to include details of the concerns and the proposed mitigation actions with the application submission. The Regulator uses the rights holder engagement documentation for evaluation and may:

- Make a decision on the application, based on the engagement documentation.
- Recommend the applicant continue consultation.
- Recommend the use of dispute resolution.

### Please Note:

To ensure decisions are made with full knowledge, it is important that all concerns that are unresolved at the time of application, including those outside of the Regulator's regulatory jurisdiction, are noted as unresolved concerns. It is also important to note if there are any concerns that were raised and responded to verbally.

## 6.2.5 Dispute Facilitation & Conflict Resolution

The applicant and recipient(s) after all reasonable efforts are made, may require facilitation services within the Regulator if issues remain unresolved. This non-mandatory process exists to aid communication and resolve interest-based differences between applicants and consultation and notification recipients.

This facilitation may be as simple as prompting the exchange of additional information to providing neutral mediation between parties. An assessment of the processes and activities completed and the specific circumstances will determine the type of facilitation service most effective. Landowner Liaisons within the Regulator's Community Relations Department are available to assist with dispute facilitation.

## 6.2.6 Variance Requests

Where the rights holder engagement process described in this manual is not practicable for a specific application, applicants may request permission to use alternate engagement practices or strategies. Variance requests must be made to the appropriate Authorizations Director prior to application. Written approval of alternate engagement practices or strategies must be included with the application.

## 6.2.7 Completing the Rights Holder Engagement Tab

Applicants should follow the instructions, answer questions and enter data in the Application Management System. Applicants are required to upload the following items onto the rights holder engagement tab:

- Rights Holder Engagement Line List. The line list is a summary record of the engagement activities performed with each recipient. The line list template is found on the Regulator website and includes an example for guidance.
- Engagement map showing the proposed activities in relation to rights holders' areas of interest. The map must cross reference rights holder engagement recipients from the Line List.
- All written responses from respondents and replies from the applicant. It is recommended that the package of responses and replies include a sample copy of the Notification and/or Invitation to Consult letters sent to recipients.
- Letters of non-objection (if applicable).

# Chapter 6.3

## Completing Application Information Details: First Nations

### 6.3 First Nations

As an agent of the Crown, the Regulator fulfils any provincial obligation to consult with First Nations on any potential impacts to their rights recognized and affirmed by Section 35(1) of the Constitution Act, 1982.

Submission of an application for an energy resource or associated activity may require additional application requirements in regard to First Nations and is based on the planned activity and location of activity. The First Nations tab requires application information details.

This section includes an overview of First Nations consultation, guidance regarding First Nations consultation, details related to First Nations consultation requirements and detailed instructions for completing the data fields within the First Nations consultation tab.

In addition to the requirements listed in this section, Regulator staff may request additional information where necessary to facilitate review of the application.

#### 6.3.1 Consultation Procedures and Timelines

##### Administration Boundaries

Administrative boundaries established through consultation agreements guide where consultation for each First Nations community takes place. Where there is no agreement in place, applicants should refer to the [Consultative Areas Database](#). Depending on the community to be engaged, the consultation process, and the application, requirements may be different.

## Treaty 8 First Nations

Consultation process agreements are established between the Regulator and some Treaty 8 First Nations. Where agreements are in place with a Treaty 8 First Nations community, the consultation process is guided by the agreement. The Application Management System identifies Treaty 8 First Nations to be consulted based on the spatial data.

All existing agreements with First Nations are found on the [First Nations](#) page of the Regulator's website.

## Treaty 8 Planning and Mitigation Measures

As of April 15, 2024 the planning and mitigation measures outlined within the [Treaty 8 Planning and Mitigation Measures](#) are now required within Treaty 8 territory in Northeast British Columbia. Organized by activity type (e.g., seismic, roads, aggregate and borrow pits, pipelines, facilities, and water) the measures provide baseline measures for environmental values, restoration, and additional project planning considerations. Please review these planning and mitigation measures carefully as they must be addressed in application materials submitted to the BCER, including, but not limited to:

- New requirements for construction plans including known wildlife trails.
- Wetland hydrological integrity plans signed by a qualified professional.
- Restoration Plans signed by a qualified professional.
- Mitigation Plans for mineral licks and wallows signed by a qualified professional.
- If a proposed borrow pit is expected to hold water, a plan, written and signed by a qualified professional, indicating whether the pit may be hydrologically connected via surface and/or groundwater flow.
- For water withdrawals, documentation, confirmed by a qualified professional, must indicate whether the water withdrawal location is hydrologically connected to surface water.
- Wildlife trails crossed by pipelines require a mitigation plan signed by a professional.

It is recognized that the mitigation measures may not be practical or applicable in every circumstance. If an applicant considers certain measure(s) to be infeasible, they



are expected to discuss these issues with the affected Treaty 8 Nations during pre-engagement, propose alternatives and try to come to a collaborative solution.

As part of the application, applicants must describe how they have considered the measures in the planning stages, provide a rationale for why these measures were not applied, and provide reasonable alternatives to mitigate effects, as appropriate.

For more information on the Treaty 8 Planning and Mitigation Measures please see the accompanying [Frequently Asked Questions](#).

## BRFN Implementation Agreement

Effective immediately, applicants are required to submit the [BRFN Implementation Agreement Form](#) (Form) with all new or amendment applications that fall within BRFN's territory. The Form should be completed after pre-engagement and uploaded as an "Attachment for Treaty 8 Nations" within the Blueberry River First Nations section under the First Nations tab. A guide to submitting applications consistent with the Implementation Agreement can be found [here](#). Please pay particular attention to page four which outlines the additional application requirements that require reviews by a qualified professional.

Please see [IU 2023-12](#) for more information and guidance regarding this consultative process.

## Non-Treaty 8 Nations

For non-Treaty 8 First Nations, the Regulator follows internal procedures based on [provincial guidelines](#) and recent court decisions regarding consultation procedures. Where applications require consultation with non-Treaty 8 communities, spatial data identifies non-Treaty 8 nations to be consulted.

## Consultation Agreements

The Regulator works closely with First Nations to establish negotiated Agreements and Memoranda of Understanding as living documents, recognizing that both documents are the foundations for long, collaborative working relationships. The established formal consultation processes provide for First Nations' participation in the consultation process and ensures applications are dealt with as effectively and efficiently as possible.

An application, amendment or a revision to an energy resource activity which may have a potential adverse impact to the Nation's Section 35(1) rights is classified in accordance with the applicable consultation process agreement.

## Timelines

General consultation timelines are provided in consultation process agreements and indicate the amount of time a First Nations community is given to review and respond.

Best practice dictates that applicants engage with First Nations early and often and to refer to the consultation process agreements as a guide to the consultation procedures and timelines.

Where concerns are identified by the First Nation, there may be additional time required to complete the consultation process. The Regulator will discuss those concerns and potential solutions with the First Nation. In some cases, this may include facilitating meetings between the First Nation and applicant to discuss concerns and proposed accommodation measures.

## Additional Reference Documents for First Nation Consultation

Additional reference documents regarding the First Nation consultation process and the applicant's role are available on the Regulator's [website](#). Applicants may also refer to the Ministry of Aboriginal Relations and Reconciliation's [Building Relationships with First Nations: Respecting Rights and Doing Good Business](#),

and the Environmental Assessment Office's [Proponents Guide to First Nation Consultation in the Environmental Assessment Process](#).

The Regulator may make available additional information to First Nations to assist with the engagement process and to assist First Nations with decisions.

## 6.3.2 Pre-Engagement with First Nations

To support reconciliation and ensure the meaningful participation of Indigenous people in processes affecting them, the BCER requires proponents to engage affected First Nations prior to application submission (pre-engagement) when planning energy resource activities on private or non-private land.

The objective of pre-engagement is for proponents and First Nations to proactively share information, identify potential impacts to Aboriginal and Treaty Rights, and discuss measures to avoid/mitigate those potential impacts when planning energy resource activities.

The [Guidance for Pre-Engaging with Indigenous Nations](#) document provides information to support industry's pre-engagement with the First Nations as part of application and development planning process. The Regulator has a sample [Engagement Log](#) and a sample [Pre-Engagement Record](#) spreadsheet available on the website for use by industry, although if alternative formats capturing similar information area already in use, these can be used as well. These records should be included for each application submitted to the Regulator and can be uploaded as an attachment in the applicable First Nations consultation section under the First Nations tab in AMS.

These records will be considered in the application review and decision-making process, but they do not replace the First Nations consultations carried out by the Regulator as described above.