

**SCHEDULE "C"**

# **Draft Aboriginal Consultation Guide**

for preparing a  
Renewable Energy Approval (REA)  
Application

Ministry of the Environment  
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## Foreword

This Renewable Energy Approval (REA) Aboriginal Consultation Guide provides direction for applicants, and contains an overview of the REA process for Aboriginal consultation pursuant to Ontario Regulation 359/09 (O. Reg. 359/09). The guide supports the Crown's commitment to discharge its duty to consult. It describes the obligations of the Crown, applicants and Aboriginal communities. It also offers considerations in conducting consultation activities to help applicants carry out more effective consultations.

Aboriginal consultation is mandatory for applicants of projects requiring a REA, other than class 2 wind facilities. For the purposes of this guide Aboriginal communities are members of First Nation and Métis communities. This guide is intended to stress the importance of applicants engaging Aboriginal communities about proposed renewable energy projects in ways that will be meaningful and in ways that facilitate effective and timely information exchange.

This guide is designed to complement the Ministry of Environment's REA regulation and technical guidance as well as the Ministry of Natural Resource's Approvals and Permitting Requirements Document for approval of renewable energy projects. If applicants are uncertain of the provincial requirements for developing a renewable energy project in Ontario, they are asked to please contact the Renewable Energy Facilitation Office of the Ministry of Energy (REFO).

The REA Aboriginal Consultation Guide supports the development of a complete REA submission under provincial regulations. Applicants are encouraged to contact the federal government to find out more about any potential federal requirements (e.g. *Canadian Environmental Assessment Act*, *Fisheries Act*) that may apply to their project.

Please note that this guide does not apply to persons engaging in waterpower projects. Waterpower projects are regulated by separate processes, permits or approvals under a number of different statutes such as the *Environmental Assessment Act*, the *Ontario Water Resources Act*, and the *Lakes and Rivers Improvement Act*.

### Disclaimer

While this technical guide is written to provide detailed information on the application requirements it should not be construed as legal advice. All requirements relating to REA applications and renewable energy projects are contained in Part V.0.1 of the *Environmental Protection Act* and O. Reg. 359/09 which can be found at Ontario's e-laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) and searching for "359/09".

# 1. Introduction

## 1.1 REA Pre-Submission Requirements

In order to proceed with a renewable energy project applicants are required to obtain a Renewable Energy Approval (REA) under the *Environmental Protection Act*, in accordance with Ontario Regulation 359/09 (O. Reg. 359/09). A renewable energy project includes all of the activities related to the construction, installation, use, operation, changing or retiring of a renewable energy generation facility.

O. Reg. 359/09 outlines the REA application requirements which include a variety of reports and technical studies as well as consultation requirements that are dependent on the type and class of renewable energy facility. Aboriginal consultation is one pre-submission activity.

The REA application process is applicant-driven and it is up to the applicant to plan and coordinate pre-submission activities such as studies and consultation.

O. Reg. 359/09 and the Ministry of the Environment's Technical Guidance for Renewable Energy Approvals, located on the Ministry of the Environment's website, can provide applicants with more information on the necessary technical studies and reports, as well as additional public/municipal consultation activities and approvals that may be required for the proposed renewable energy project.

### **Additional Provincial Permits and Approvals**

While the REA is an approval that consolidates a number of permits previously issued for such facilities, there may be additional processes separate from the REA process that could apply depending on the unique features of the proposed project. For example, if a proposed REA facility is located on land controlled by the Ministry of Natural Resources or the Ministry of Infrastructure permissions from these ministries to use the land are required. These processes may include additional Aboriginal notification or consultations that are not replaced by REA consultation requirements. If a proposed facility is on land managed by the Ministry of Natural Resources or Ministry of Infrastructure, applicants are encouraged to contact the respective ministries to find out more information on these requirements before beginning the REA process.

Applicants should discuss the project as a whole including all related approvals and permits with the Aboriginal community.

## 1.2 Duty to Consult & the REA Process

The Supreme Court of Canada has determined that the constitutional protection accorded Aboriginal rights and treaty rights under section 35 of the *Constitution Act, 1982* requires the Crown to consult with First Nation and Métis communities when it has knowledge of an existing or asserted Aboriginal or treaty right, and contemplates conduct that may adversely affect the right in question.

The duty to consult generally has both information and response components. The nature of the consultation required will vary with the strength of the assertion or the nature of the existing right, and the potential impacts on Aboriginal or treaty rights. This legal duty to consult rests with the Crown, and the Crown is ultimately responsible for ensuring that the duty has been met. However, through the REA process the Crown has delegated procedural aspects of consultation to applicants.

Through the REA regulation and this guide, the Ministry of Environment has built flexible processes to capture the different degrees of consultation that may be required for a renewable energy project depending on the existing or asserted Aboriginal or treaty rights in question and the severity of any potential impacts on the exercise of those rights. Throughout this guide, where reference is made to Aboriginal or treaty rights, this is intended to include both, existing or asserted rights.

The REA regulatory requirements are anticipated to be appropriate for the majority of REA projects; however the Ministry retains the discretion to require or undertake additional consultation steps or processes where required to satisfy the duty to consult. These circumstances will be identified by the Ministry of the Environment and may require one or more of the additional consultation requirements outlined in Section 3 of this guide.

## 1.3 Objectives of Aboriginal Consultation

The objectives of consultation include:

- Providing information to the Aboriginal community on the proposed project;
- Obtaining information on potentially affected rights;
- Listening to any concerns raised by the Aboriginal community; and
- Considering adverse impacts and determining how to address these concerns, including attempting to avoid, minimize and/or mitigate adverse impacts on Aboriginal or treaty rights.

The REA regulation establishes a process to formally integrate the views of Aboriginal communities into the applicant's planning and decision making for renewable energy projects in Ontario.

In addition, consultation can lead to community support for the proposed project, access to a growing Aboriginal labour force, partnerships on current and future projects and a productive ongoing relationship with local communities.

## 1.4 General Roles in Consultation

In order to integrate a variety of views into the applicant's planning and decision making process for renewable energy projects, applicants, the Ministry of the Environment on behalf of the Crown and Aboriginal communities all have a role to play to ensure that concerns are identified and potential adverse impacts or potential negative environmental effects are avoided, minimized or mitigated where possible. All parties must act in good faith in order to engage in meaningful consultation.

### Role of the Applicant

The applicant is required to complete the following in relation to the consultation of Aboriginal communities about projects requiring a REA:

- Seek the Ministry of Environment's direction on which communities to consult;
- Provide a draft Project Description Report that is sufficiently detailed for the ministry to develop the REA Aboriginal consultation list;
- Notify and share information with communities about the project to assist them in identifying any potential adverse impacts on Aboriginal or treaty rights as well as potential negative environmental impacts;
- Consult directly with Aboriginal communities to identify how potential adverse impacts on rights could be avoided, minimized and/or mitigated;
- Document and report back on consultation efforts in the manner required under the REA regulation and this guide so that the Crown can assess their adequacy; and
- If identified as a project that requires additional consultation by the Ministry of the Environment, prepare an Aboriginal Consultation Plan and progress updates (see Section 3 of this guide) or as directed by the Ministry.

Due to the volume of consultation requests received and the possible limits on their human and financial resources, some Aboriginal communities find it challenging to participate in consultation. Some communities may request additional resources or other financial assistance to facilitate their involvement in the consultation process. Applicants will generally be expected to cover the reasonable costs associated with those aspects of the consultation process that have been delegated to it through the REA regulation and processes outlined in this guide. Where additional costs are anticipated or requested, applicants may wish to contact MOE for further direction.

Aboriginal applicants are also required to meet the Aboriginal consultation requirements outlined in O. Reg. 359/09 and this guide.



## **Role of the Ministry of the Environment**

While the REA process delegates certain procedural aspects of the Crown's duty to consult with Aboriginal communities to applicants, the ministry remains responsible for ensuring that the Crown's duty to consult is met, and maintains an oversight function of an applicant's consultation activities. The ministry will undertake the following:

- Identify for the applicant the Aboriginal communities to be consulted;
- Provide direction on the extent of consultation that will be required;
- Provide an opportunity for direct communication between Aboriginal communities and the ministry;
- Provide direction on any requirements for additional consultation such as an Aboriginal consultation plan/progress update(s);
- Where appropriate, provide direction to the applicant and monitoring to help facilitate consultation; and
- Upon submission of a REA application, assess the adequacy of consultation to determine whether the consultation has been sufficient for an approval to be granted.

## **Role of the Aboriginal Communities**

The role of the Aboriginal communities in consultation is to:

- Participate in the process so that any necessary consultation can proceed in a reasonable timeframe; and
- Articulate the nature and basis for any concerns, including the nature of any potential adverse impact on rights, and possible options to avoid, minimize or mitigate those impacts.

# **2. Aboriginal Consultation Requirements under the REA Regulation**

## **2.1 Regulatory Requirements for Aboriginal Consultation**

The Ministry of the Environment is responsible for administering and enforcing the REA regulation (O. Reg. 359/09). As part of the decision making process, the Ministry must



ensure that the Crown's duty to consult, together with any statutory consultation obligations, have been met.

The Ministry expects applicants to incorporate, appropriate 'Considerations in Conducting Consultation Activities,' outlined in Section 5 of this guide, into the consultation process or activities required under the REA regulation.

## 2.2 Obtain an Aboriginal Consultation List from the Ministry of the Environment (s. 14)

Upon receipt of a draft copy of the Project Description Report and the request for an Aboriginal consultation list, the Ministry's REA Director, on behalf of the Crown, will review the nature and location of the proposal, and provide a list of Aboriginal communities that applicants are required to consult as part of the REA process.

The Aboriginal consultation list will include Aboriginal communities that:

- (1) Have constitutionally protected Aboriginal rights, either established or asserted, which may be adversely impacted by the proposed project; or
- (2) May have an interest in any negative environmental effects of the proposed project.

Aboriginal and treaty rights are collective and applicants must consult with communities. Community contact information will be provided to applicants by the Ministry.

The Aboriginal consultation list will identify separately Aboriginal communities with potentially affected Aboriginal or treaty rights as well as those communities that may be interested in the potential negative environmental effects of the projects. The REA regulatory requirements apply to communities identified on both a rights and interests basis.

A reassessment of the Aboriginal consultation list may be necessary when new information becomes available such as greater clarity on the scope of the project and potential impacts or new assertions have been made known to the Crown.

Applicants should provide sufficient detail in the draft Project Description Report to enable the ministry to create an Aboriginal consultation list. For more information on how to prepare a Project Description Report, please refer to the Ministry of the Environment's Technical Guidance for Preparing a Renewable Energy Approval Application.

### **Applicant's Aboriginal Consultation Process under O. Reg. 359/09**

1. Prepare draft Project Description Report (PDR)
2. Obtain Aboriginal Consultation list
3. Provide Notices
4. Distribute draft PDR to communities
5. Hold 1<sup>st</sup> public meeting
6. Integrate comments
7. Circulate report summaries
8. Discuss and work with communities; integrate comments
9. Provide draft project documents to communities
10. Discuss and work with communities; integrate comments
11. Hold final public meeting
12. Integrate comments
13. Prepare REA application
14. Submit REA application and inform communities

## 2.3 Ministry of the Environment Makes Initial Contact with Aboriginal Communities

After the Aboriginal consultation list has been prepared and sent to applicants, the Ministry's REA Director will notify each Aboriginal community on the list. The purpose of this notification is to inform the community that an applicant will be approaching them to discuss a proposed project, and to establish a direct line of communication between the community and the Ministry.

This notification will be accompanied by information about the REA process to help prepare the community to engage in discussions with the applicant.

## 2.4 Provide Notices to Aboriginal Communities (s.15(6))

Applicants are required to deliver a Notice of Proposal to Engage in the Project and Notice(s) of the Public Meetings (if applicable) to every Aboriginal community on the Aboriginal consultation list.

Before providing notice to any Aboriginal communities that are not on the list provided by the Director an applicant should contact the Ministry.

Along with the notices delivered to the Aboriginal communities, applicants should provide, where information is available, the following:

- A description of the nature and scope of the project;
- The potential negative effects of the project on the environment, including their geographic scope. This can include, but is not limited to, effects on ecologically sensitive areas, water bodies, wetlands, forests or habitat of species at risk and habitat corridors;
- A description of other provincial or federal approvals that may be required for the project to proceed;
- Whether the project is on privately owned or Crown controlled land;
- A timeframe in which they intend to submit a completed REA application;
- An indication of the applicant's availability to discuss the process and provide further information about the project;
- The applicant's contact information; and
- Any additional information that might be helpful to the community.

### **Farm-based, Bio-energy Facilities**

Public meetings and associated notices are not required for:

- Class 1 or 2 anaerobic digestion facilities;
- Class 1 (if located on a farm) or 2 thermal treatment facilities.

NOTE: a notice to engage in a project is still required.

Applicants are also required to publish the notices in any local Aboriginal newspapers or any newspapers published by each Aboriginal community on the Aboriginal consultation

list, if it is reasonable to do so. The notices must be delivered and published at least 30 days before the first public meeting is held.

It is recommended that applicants follow up with Aboriginal communities to confirm receipt of the Notice of Proposal to Engage in the Project and Notice(s) of the Public Meetings.

## **2.5 Distribute Draft Project Description Report and Hold First Public Meeting (s. 16(2))**

The consultation process under the REA regulation requires an applicant to hold at least two public meetings (except for farm-based bio-energy and Class 2 wind facilities). These meetings are general public meetings not Aboriginal specific; however individuals from listed Aboriginal communities may attend.

At least 30 days prior to the first public meeting applicants are required to give a copy of the draft Project Description Report to the Aboriginal communities that received notice of the meeting and make copies of the draft Project Description Report available in the community, if the community agrees.

Applicants are encouraged to update the Project Description Report that was used to request the REA Aboriginal consultation list before distributing it to listed communities.

## **2.6 Circulate Summaries to Aboriginal Communities and Request Comments (s. 17(1))**

Before the final public meeting, applicants are required to seek input from Aboriginal communities on draft versions of all materials required for the REA application and before such materials are made available to the public. They are also required to provide to each Aboriginal community on the Aboriginal consultation list:

- An updated draft Project Description Report;
- Any information the applicant may have on any potential adverse impacts the project may have on Aboriginal or treaty rights;
- A summary of each document required as part of the REA application;
- A request asking the Aboriginal community to provide in writing:
  - Any information available to them that should be considered when preparing the project documentation;
  - Any information the community may have about any potential adverse impacts on their Aboriginal or treaty rights; and
  - Any suggested measures for avoiding, minimizing or mitigating potential adverse impacts.

Applicants must incorporate the comments and feedback received from Aboriginal communities into the draft materials that are made available to the public prior to the final public meeting.

Applicants of farm-based, bio-energy projects that are not required to hold public meetings are required to undertake the steps noted above at least 30 days prior to submitting an REA application to the Director.

## 2.7 Provide Draft Project Documents to Aboriginal Communities and Hold the Final Public Meeting (s.16(5))

At least 60 days before the final public meeting applicants are required to:

- Make available paper copies of all the draft documents that are to form part of the application in any Aboriginal community on the Aboriginal consultation list, if the community agrees; and
- Distribute these documents to each Aboriginal community that was provided the project notice.

The timelines noted above represent the minimum regulatory requirements. Applicants are encouraged to consider the Aboriginal community's capacity in order to allow sufficient time for Aboriginal communities to comment.

The draft documents will reflect the technical studies and information about how the project has changed based on consultations to date, but remain flexible enough in order to incorporate any further changes that result from the final public meeting or subsequent Aboriginal consultations.

### **Farm-based, bio-energy facilities**

Applicants of farm-based, bio-energy projects are required to provide documents to Aboriginal communities at least 30 days prior to submitting an REA application to the Director.

## 2.8 Communicating with Aboriginal Communities (s. 17.4(2))

Applicants are required to communicate with Aboriginal communities about their interests in the potential negative environmental impacts of the proposed project and if indicated, the potential adverse impacts to Aboriginal or treaty rights as well as any measures for avoiding, minimizing or mitigating adverse impacts.

Aboriginal consultation is most effective when approached as an opportunity to build a trusting and respectful relationship in order to create a basis to discuss and potentially enhance the project. Applicants should be responsive to the concerns raised by Aboriginal communities, though particular attention must be given to any comments related to potential adverse impacts on Aboriginal and treaty rights.



Aboriginal communities identified by the Ministry of the Environment as being interested in the potential negative environmental effects of the project may assert an adverse impact on an Aboriginal or treaty right. If an applicant becomes aware of a rights assertion of this nature by a community they should contact the Ministry of the Environment. Applicants should continue communicating with such a community and document this in the Aboriginal consultation section of the Consultation Report.

## 2.9 Working with Communities to Address Their Concerns

Applicants are encouraged to work cooperatively with Aboriginal communities to propose measures that address concerns raised, whether those concerns relate to the potential adverse impact on Aboriginal or treaty rights or potential negative environmental effects of the project. Applicants are also expected to inform the community about how their concerns were considered and whether the proposal was altered in response.

In an attempt to avoid, minimize or mitigate any potential adverse impacts on Aboriginal or treaty rights, applicants and Aboriginal communities are encouraged to be creative and flexible. There are a number of ways this can be accomplished, including, but not limited to:

- Modify facility design to reduce or prevent potential adverse impacts on the exercise of a right (e.g. changing location of access roads and/or infrastructure or modify construction timelines to accommodate community activities such as hunting season);
- Conduct further studies with respect to the activities that the community has identified as being adversely impacted;
- Commit to establishing ongoing monitoring of environmental effects, perhaps through a community liaison committee; or
- Develop a contingency plan that is to be implemented should the potential adverse impacts be greater than expected.

In some cases, the Aboriginal community and the applicant's discussions may lead to partnerships or economic opportunities (e.g. employment opportunities, direct awards for contract services, etc.). These arrangements are not legally required, however such arrangements may be a mutually beneficial way of reflecting the relationship developed through the consultation process, serve to move the applicant's overall business interests forward and result in a beneficial long term relationship with the Aboriginal community. It is important to understand that applicants must continue to meet the REA regulatory requirements.

Circumstances may arise where Aboriginal communities and applicants do not agree on how to avoid, minimize or mitigate a potential impact on a community's Aboriginal or treaty rights. In such cases, either party can contact the REA Director to express their concerns.

## 3. Additional Requirements

### 3.1 Additional Requirements That May Be Required

The REA Director may decide that Aboriginal consultation, beyond the REA regulatory requirements, is required in order for the Crown to discharge its duty to consult.

Subsection 17(4) of the REA regulation allows the Ministry of Environment's REA Director to require an applicant to conduct further consultation, including consultation with Aboriginal communities beyond the requirements set out in the REA regulation. Subsection 47.4(2) of the *Environmental Protection Act* also gives the Director the discretion to require an applicant to submit plans, specifications and information or to conduct tests or experiments relating to the proposed renewable energy project. In addition, the Director may determine that it is appropriate for the Crown to assume responsibility for consultation activities being carried out by the applicant or increase the Ministry's direct interaction with the Aboriginal communities.

Applicants will be informed if there will be additional consultation requirements in respect of the proposed project when the REA Director provides the Aboriginal consultation list. In addition, during the consultation process, information could come to light that suggests additional Aboriginal consultation is required. Although the REA Director may not have identified this at the outset, it may lead to the REA Director requesting an applicant to take one or more of the steps such as those discussed below.

These additional consultation requirements can include:

- Working with the ministry to develop an Aboriginal consultation plan;
- Providing consultation progress updates to the Ministry; and/or
- Following the direction provided by the Ministry after its review of:
  - A consultation progress update; or
  - Information received directly from an Aboriginal community.

The REA Director is most likely to require these additional steps for projects that have the potential to have a significant adverse impact on the exercise of an Aboriginal or treaty right and are proposed to be located where rights are known to be exercised by Aboriginal communities. Examples may include, but are not limited to:

- Large scale wind facilities that are expected to have significant environmental impacts, and are proposed to be located on Crown land where one or more Aboriginal communities are known to exercise treaty rights to hunt;
- Anaerobic digestion or thermal treatment facilities that proposed to discharge effluent into a water body in a way that may adversely impact an Aboriginal or treaty right to fish.

## 3.2 Developing an Aboriginal Consultation Plan

An Aboriginal consultation plan should set out the steps an applicant intends to take in respect of the consultation activities for their proposed project.

Consultation plans can help structure timelines and organize information. They can also structure how information provided by communities on rights, interests and impacts are received, and how comments received from Aboriginal communities were considered and incorporated, where appropriate. The Ministry of Environment will review a draft of the plan in order to provide appropriate direction.

**Consultation Plans  
can help all  
applicants**

Applicants not required by the ministry to complete a consultation plan may consider doing so as a good business practice.

For each community identified on the Aboriginal consultation list as requiring a consultation plan, the plan should include a consideration of:

- How the applicant proposes to provide information to the Aboriginal community about the proposed project. This can include a description of the steps and specific activities planned such as notifications, information sharing opportunities, public forums, individual meetings with the community and a timeline or schedule of the proposed consultation activities;
- How the applicant proposes to obtain information on potentially impacted rights; this can include a description of activities planned such as holding follow-up discussions with the Aboriginal community, providing documents to the community on what was heard or seeking further information or clarification on concerns;
- How and when an applicant intends to report back to the Ministry and when in the consultation process the applicant may anticipate needing further Crown direction. This can include a description of any planned progress update(s) to the Ministry which include how comments received from the Aboriginal community were considered and incorporated into the project to date;
- Who within the Aboriginal community the applicant is consulting and their contact information;
- What the applicant anticipates as potentially impacting an Aboriginal or treaty right; and
- A summary of consultation activities already carried out to date, if any.

The Ministry of the Environment recommends that Aboriginal consultation, as well as Aboriginal consultation plans provide for individual meetings with First Nations and Métis communities to discuss each community's specific issues related to the project.

Plans should be flexible and allow for changes in both process and timelines to reflect new information.



### 3.3 Crown Input on the Aboriginal Consultation Plan

Once an applicant believes their Aboriginal consultation plan is sufficient they are expected to contact the Ministry of the Environment so that the Ministry can review and provide input on the proposed plan. The Ministry may seek input from other government Ministries in developing recommendations regarding changes that will ensure the applicant completes all the requirements of consultation.

It is also possible that the plan will need to be modified as the project proceeds, to reflect changes in circumstance or new information.

### 3.4 Aboriginal Consultation Progress Update(s)

The applicant may be required to provide one or more progress update(s) to the Ministry of the Environment. Progress update(s) are expected to occur at the milestones identified in the consultation plan or otherwise specified by the REA Director.

The Director may also request one or more progress updates, even if an Aboriginal consultation plan is not required.

Progress updates should include the type of information that is required in the Consultation Report as outlined in Section 4.1 of this guide, including:

- A summary of communications with Aboriginal communities;
- Any information provided by an Aboriginal community in response to the request for information to be considered in the project documentation;
- Any information provided by the community about adverse impacts on Aboriginal or treaty rights and measures for mitigating adverse impacts; and
- Indication of how the applicant considered adverse impacts and how these concerns may be addressed, including any attempts to mitigate adverse impacts on Aboriginal or treaty rights.

The ministry will review the update(s) and may:

- Request a meeting to discuss consultation activities to date;
- Require or engage in further Aboriginal consultation activities as described above; and/or
- Request changes to the consultation plan.

## 4. Preparing and Submitting a REA Application

### 4.1 Preparing the Consultation Report (s.13, Item 2 of Table 1)

A REA application requires a Consultation Report to meet the complete submission requirements and will be considered by the REA Director when determining whether a project should be approved.

The purpose of the Consultation Report is to:

- 1) Document consultation activities in order for the Ministry of the Environment to determine if an application is complete and meets the consultation requirements outlined in the REA regulation and this guide; and
- 2) Provide a record of comments and information received through consultation activities and document how these comments were considered, including whether the project was modified as a result of the comments heard.

The section of the Consultation Report, dealing with Aboriginal consultation, is required to outline the following information:

- Evidence that the information required to be distributed to communities was distributed according to the REA regulation;
- Any information provided by an Aboriginal community in response to the request for information to be considered in the project documentation;
- Any information the community provided on potential adverse impacts on Aboriginal treaty rights and measures for avoiding, minimizing or mitigating potential adverse impacts to those rights;
- Whether and how;
  - Comments made by the Aboriginal communities were considered;
  - The proposed project and REA reports were altered to reflect comments from Aboriginal communities and comments received at the final public meeting.
- The rationale behind any proposed mitigation option to address potential impacts on Aboriginal or treaty rights or potential environmental effects;
- The degree to which Aboriginal communities were involved in developing any mitigation options; and
- The rationale why any community proposal for mitigation was or was not accepted by the applicant.

The Consultation Report should include both a written summary of consultations and appended documentation such as copies of notices, written comments received and any

other communications. When including reference documents as attachments or appendices, please ensure that they are clearly labelled and referenced.

Aboriginal consultation activities should be documented in a clearly identified section of the Consultation Report.

Applicants may want to consider creating different chapters for each community on the Aboriginal consultation list or using charts to summarize the information required above.

## **4.2 Submitting an Application to the Ministry of the Environment**

Upon receipt of an application, the Ministry of the Environment will screen the application to make sure it meets complete submission requirements for the REA, and if complete will accept it for a technical review. If the REA application is not deemed complete, it will be returned to the applicant indicating the regulatory requirements that were not met in the application.

## **4.3 Notice of Environmental Registry Posting Provided to Aboriginal Communities**

As part of the Ministry of Environment's public consultation requirements under the *Environmental Bill of Rights*, 1993, the Ministry will post a proposal notice on the Environmental Registry when a REA application has been accepted for technical review.

Once the proposal is posted on the Environmental Registry an applicant is required to publish a notice in a local newspaper notifying members of the public the REA application has been accepted for a technical review as well as making final copies of the REA application materials, including the Consultation Report, available on its website if the applicant has a website. This provides the public, including Aboriginal communities, with an opportunity to review the REA application and submit comments to the Ministry on the proposed REA project.

The Ministry of the Environment will also send a letter to each Aboriginal community on the Aboriginal consultation list, informing them that the mandatory requirements set out in the REA regulation have been completed and requesting that they advise the Ministry of any outstanding concerns they have with the project before the Ministry's REA Director makes a decision on the application.

Depending on the nature of the project, the Ministry may confirm the status and outcome of consultation activities with the Aboriginal communities on the Aboriginal consultation list before a decision is made on the REA application.

## 4.4 Ministry of the Environment Makes a Decision

After a technical review of an application, the Ministry's REA Director may, if in his or her opinion, it is in the public interest to do so, issue or refuse to issue a REA.

When assessing the adequacy of Aboriginal consultation the REA Director may ask the following questions:

- Has the mandatory consultation taken place, including the requirements outlined in Section 2 of the guide?
- Are consultation activities clearly outlined in the Aboriginal consultation section of the Consultation Report?
- Was the applicant responsive to the comments received from the Aboriginal communities?
- Did the applicant inform the community about how their concerns were considered?
- Does the community have any outstanding concerns?
- Did the applicant take any measures to mitigate any potential negative environmental effects of the project as well as any potential adverse impacts on the exercise of Aboriginal or treaty rights in question?
- Has the applicant followed the Aboriginal consultation plan and provided a consultation progress update, where required?

If the REA Director is of the view that consultation or proposed mitigation measures are not sufficient, further consultation will be required.

Once a decision is made in respect of an application, applicants will be notified and a decision notice for the REA will be placed on the Environmental Registry, initiating a 15 day appeal period. The REA Director will also provide all consulted Aboriginal communities with a letter informing them of the decision notice on the Environmental Registry.

## 4.5 Implementation

If a REA is granted, it may be issued with terms and conditions that must be complied with. These conditions could include requirements that are designed to mitigate impacts on the rights or interests of Aboriginal communities or negative environmental effects.

The terms and conditions could also include a requirement that an applicant establish an appropriate vehicle to continue consultation throughout the lifecycle of the project.

Applicants are encouraged to discuss potential options that should be considered regarding if and how the community would like to be kept informed of the project during construction, operation and decommissioning.

## **5. Considerations in Conducting Consultation Activities**

### **5.1 Building a Relationship Takes Time**

Applicants should build in time in the consultation process to recognize that Aboriginal governments may wish to consult with different groups within their own communities and may, for example, look to Elders, Chief and Council, or individual community members to provide guidance on environmental issues and concerns.

Leaving ample time for research and consultation activities will help to provide the communities adequate time to consider and identify any concerns that they may have with the project. Leaving appropriate time for consultation will also support the process by allowing all parties sufficient time to develop solutions or any mitigation measures to address the concerns raised by Aboriginal communities.

Applicants should recognize that the relationship will evolve and change over time and may want to consider establishing long-term vision and strategic guidance early in the planning process.

Interaction through information sessions, written correspondence, and/or meetings with Aboriginal communities will set the stage for developing relationships that may extend through the life of the project.

### **5.2 Understand the Community**

Ontario's First Nations and Métis communities are diverse in terms of cultural and linguistic heritage. There are three primary First Nations cultural groups in Ontario: the Cree, Ojibway and Iroquois.

Understanding the history and complexity of the First Nation or Métis community and the uniqueness of each individual community is important in developing a respectful and productive relationship. Learning more about the communities on the Aboriginal consultation list, including their cultural and world views, events that are taking place (such as elections or community hunts) as well as their particular concerns can help applicants relate to the community better.

Understand the community's culture and socio-economic aspects.

The more applicants are prepared the easier it will be to scope consultation requirements and understand any concerns a community may have with the proposed project, allowing for more informed project decisions early in the development process.



In addition to cultural considerations, learning about the community's past or present experiences with other renewable energy or natural resource developments may give insight into some of the potential concerns the community may have, allowing for a stronger relationship with the community.

## 5.3 Establish Respectful and Collaborative Consultation Processes

It is imperative to provide potentially affected communities with the information needed to encourage open, meaningful dialogue that addresses their interests and concerns.

When discussing consultation activities it is expected that applicants will encourage community involvement by being open minded and flexible, as well as respecting the community's capacity and needs.

Some communities may have developed tools, such as consultation protocols, policies or processes that provide guidance on how they would prefer to structure conversations.

These have been created by the Aboriginal community to meet their specific needs and represent community interests, not necessarily the requirements specified in the REA regulation. Proponents may wish to review these protocols and consider whether any aspects of them are consistent with the REA consultation process outlined in the REA regulation and this guide.

As part of the consultation process applicants may want to:

- Co-ordinate consultation requirements for other approvals that may be required in respect of the project;
- Discuss with a community whether they wish to host a project meeting; and
- Provide additional relevant project documentation when requested by the community.

## 5.4 Consider the Community's Interests

Aboriginal communities can have a range of interests and views to offer, as well as vast knowledge and experience that can add value to a project. Aboriginal communities have long had a historical connection with the land and may also be able to contribute to the studies required under the REA regulation. Applicants conducting community visits should be flexible, responsive, sensitive, and prepared.

When conducting consultations it is important to note that it is a two-way process – applicants will be educating the community on the project, and the community will be educating applicants on their interests, concerns or rights. Through this process the Ministry of the Environment anticipates that applicants will be willing to listen to and address concerns and proposals presented by Aboriginal communities, and that all participants can come to mutually beneficial solutions.

While the applicant is responsible for ensuring the community has a solid understanding of the nature of the impacts of the project in order to meaningfully engage in the consultation process, they may also want to consider the community's other interests in the project. For example, a community may want to be involved in any studies undertaken, partner on the project, or ensure that the project provides jobs for the community. Considering all the possibilities can help prepare for discussions with communities on these topics. Gaining insight into how the community may be approaching the project can help to solidify relations with the community and facilitate the consultation process.

Aboriginal communities that are required to be consulted may not consider the proposed project or associated consultation process a priority. Being sensitive to the community's larger issues can help demonstrate good faith and build stronger relationships.

## 5.5 Talk to the Right People

The Director will identify and provide contact information for those Aboriginal communities that should be contacted.

Before distributing notices, applicants may wish to inquire of communities whether they have any other individuals who should receive notices and REA reports/summaries (such as consultation coordinators) in addition to the contact provided by the Ministry. Following up with Aboriginal communities via phone to confirm receipt of this notification is also recommended.

## 5.6 Use Appropriate Communication Techniques and Tools

When providing project notification and discussing the project with communities, applicants are encouraged to use appropriate communication techniques and tools.

Some members of Aboriginal communities may not speak English or French as their first language. When providing project notification, sharing project reports, and discussing the project, applicants are encouraged to take language preferences into account by ensuring materials are translated and/or providing translation services when appropriate.

In addition to using Aboriginal-run newspapers, consider other forms of communication including community radio, websites and other communication tools when distributing notice about the project, consultation meetings, and REA reports. Since a number of communities have radio stations, it is recommended that applicants contact the community to find out if and where these may exist.

The location of the proposed project will also affect how applicants communicate with a community. When consulting with northern or remote communities, it is important to take into consideration the timing of and time required to attend project information meetings.



It is highly recommended that applicants follow up after providing the required written notices and reports with phone calls and face-to-face meetings. Follow-up phone calls and meetings may help ensure progress with consultations. As most communities will be looking to see that applicants are interested in developing a relationship, personal meetings will help to build the relationship and demonstrate good faith.

## 5.7 Consider Capacity

A community may not have the resources to effectively participate in the consultation process without some support. A community may request support to make materials accessible which may include requests for third party or expert review, translation or consulting services. They may also request financial support for their participation in the consultation process. Applicants should consider reasonable requests and may seek the input of the Crown on such requests.

## 5.8 Recording and Using Aboriginal Information

Applicants should thoroughly document the engagement process. Clear and concise documented records have proven valuable to avoid misunderstandings, and to provide a means to structure progress on agreed-to plans. An important aspect of the REA submission will be documenting consultations. Before implementing any recording methods (video, audio, or notes), it is recommended that applicants discuss with communities the various options, ensuring sensitivity to their needs and wishes and ensuring communities are comfortable with the decision.

Many Aboriginal communities pass knowledge down through generations orally, and this knowledge may be considered sacred. It is highly recommended that applicants discuss and respect the communities' wishes regarding what information can be shared and how it can be used for the project.

### *Freedom of Information and Protection of Privacy Act (FIPPA)*

Applicants should also note that a complete REA application and any accompanying materials will be submitted to the ministry. This documentation is subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA) and it may be accessible to the public by request.

As some Aboriginal communities may consider the information that they share with applicants as confidential, applicants are strongly encouraged to discuss any concerns with Aboriginal communities early and ensure that the information provided to the Ministry of the Environment respects the community's wishes for confidentiality while providing enough detail for the ministry to evaluate consultation activities.

# APPENDIX A

## REA Aboriginal Consultation Requirements

### Summary of Renewable Energy Approval Aboriginal Consultation Requirements

			REA Required	Project Notice	Meeting Notice(s)	Provide report summaries & request comments	Public Meetings	Draft Project Documents	Aboriginal Consultation Section in the Consultation Report*
Solar	Class 1	≤12kW							
	Class 2	Roof/wall mounted >12kW							
	Class 3	Ground mounted >12kW	X	X	X	X	X	X	X
Wind	Class 1	≤3kW							
	Class 2	3-50kW	X	X					
	Class 3	≥50kW sound power level >102 dBA	X	X	X	X	X	X	X
	Class 4	≥50kW sound power level ≤102 dBA	X	X	X	X	X	X	X
	Class 5	Off-shore wind facility	X	X	X	X	X	X	X
Anaerobic Digestion		Nutrient Management Act approved on-farm Anaerobic Digesters							
	Class 1	Farm-based Anaerobic Digesters using farm material and/or agricultural waste or biomass grown for electricity generation	X	X		X		X	X
	Class 2	Farm-based Anaerobic Digesters using biomass that includes waste that is not of a farm origin (e.g. source separated organics "green-bin")	X	X		X		X	X
	Class 3	Non-farm Anaerobic Digesters <500kW using biomass, farm material and/or source separated organics ("source separated organics")	X	X	X	X	X	X	X
Biogas		Landfill gas or gas from anaerobic digestion is used to generate electricity	X	X	X	X	X	X	X
Biofuel		Liquid fuel made solely from biomass (e.g. ethanol, methanol and biodiesel) is used to generate electricity	X	X	X	X	X	X	X
Thermal Treatment	Class 1	Wood waste only, on a farm	X	X		X		X	X
	Class 1	Wood waste only, non-farm	X	X	X	X	X	X	X
	Class 2	Not only wood waste, on a farm	X	X		X		X	X
	Class 3	Not only wood waste, non-farm	X	X	X	X	X	X	X

## APPENDIX B

There are a variety of resources available to help applicants with Aboriginal consultations. Applicants may want to consider talking with other renewable energy applicants regarding their experiences or hire an Aboriginal affairs consultant to help with the process. By reviewing some of the materials below, applicants may be able to gain a greater understanding and sensitivity to the issues they may face through the consultation process.

### Government Resources

Ontario Ministry of Aboriginal Affairs, <http://www.aboriginalaffairs.gov.on.ca/>

The website contains useful information where applicants can find out more about demographics and current land claims, including a map of the area in question.

Ontario Ministry of Aboriginal Affairs,

<http://www.aboriginalaffairs.gov.on.ca/english/policy/DraftConsultJune2006.pdf>  
Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights.

Ontario Ministry of Energy, Renewable Energy Facilitation Office (REFO)

[http://www.mei.gov.on.ca/en/energy/renewable/index.php?page=refo\\_office](http://www.mei.gov.on.ca/en/energy/renewable/index.php?page=refo_office)  
REFO is Ontario's one-window to find out more about the requirements for renewable energy projects. They can be contacted at [REFO@ontario.ca](mailto:REFO@ontario.ca) or via phone at 1-877-440-7336 or within the GTA at (416) 212-6582.

Ontario Ministry of the Environment,

[http://www.ene.gov.on.ca/environment/en/subject/renewable\\_energy/STDPROD\\_085137.html](http://www.ene.gov.on.ca/environment/en/subject/renewable_energy/STDPROD_085137.html)

The website contains technical guidance and forms for completing a renewable energy approval application as well as general information about current REA application received by the Ministry.

Ontario Ministry of Natural Resources,

<http://www.mnr.gov.on.ca/en/Business/Renewable/index.html>  
[http://www.mnr.gov.on.ca/en/Business/Renewable/2ColumnSubPage/STEL02\\_167266.html](http://www.mnr.gov.on.ca/en/Business/Renewable/2ColumnSubPage/STEL02_167266.html)  
[http://www.mnr.gov.on.ca/en/Business/Renewable/2ColumnSubPage/STEL02\\_167546.html](http://www.mnr.gov.on.ca/en/Business/Renewable/2ColumnSubPage/STEL02_167546.html)

These websites contains a vast amount of information and technical guides on renewable energy, including permitting and approvals, site release process, conducting bird and bat studies and a renewable energy atlas and maps. Contact information for field offices is also available.

Ontario Ministry of Tourism and Culture,

[http://www.mtc.gov.on.ca/en/heritage/renewable\\_energy.shtml](http://www.mtc.gov.on.ca/en/heritage/renewable_energy.shtml)

The website contains information about how to conduct an archaeological and heritage assessment for renewable energy projects.

Ontario Power Authority, <http://fit.powerauthority.on.ca/>

The OPA manages the Feed-In Tariff Program which includes an Aboriginal price adder. The OPA website also provides information on the Aboriginal Energy Partnership Program which supports First Nation and Métis participation in renewable energy projects.

Ontario Financing Authority, <http://www.ofina.on.ca/algp/>

The Aboriginal Loan Guarantee Program supports Aboriginal participation in renewable energy projects.

Indian and Northern Affairs Canada,

<http://www.ainc-inac.gc.ca/index-eng.asp>

<http://www.Aboriginalcanada.gc.ca/acp/site.nsf/en/index.html>

The website contains a range of useful information and resources related to national aboriginal organization, claims and treaties, environment and natural resources sector as well as regional based information.

Natural Resources Canada, [http://geonames.nrcan.gc.ca/search/search\\_e.php](http://geonames.nrcan.gc.ca/search/search_e.php)

The Canadian Geographic Names database allows for searches base on geographical areas that can identify local environmental features and reserves.

Statistics Canada, <http://www.statcan.ca/Daily/English/981214/d981214.htm#ART1>

The website provides information on Canada's Aboriginal Languages.

## **Internet & Other Information for Aboriginal Consultation**

[http://www.cofi.org/library\\_and\\_resources/publications/pdf/FirstNationConsultationPaper.pdf](http://www.cofi.org/library_and_resources/publications/pdf/FirstNationConsultationPaper.pdf) First Nation Consultation and Accommodation: A Business Perspective, Submission to the New Relationship Management Committee.

Assembly of First Nations, <http://collections.ic.gc.ca/afn/E2.htm>

[http://www.afn.ca/Fact%20sheets/top\\_10\\_misconceptions\\_about\\_abor.htm](http://www.afn.ca/Fact%20sheets/top_10_misconceptions_about_abor.htm)

AFN has produced educational material that can help provide applicants with a great appreciation of First Nations history and culture. Two documents applicants may want to review include: Top 10 Misconceptions About Aboriginal People and Tradition and Education: Towards a Vision of our Future.

Chiefs of Ontario (COO), <http://www.chiefs-of-ontario.org/>

COO is a First Nation political organization composed of the Grand Chiefs of the four political territorial organizations (PTO) and a representative of the independent First Nations. The website provides contact information for Ontario's First Nations and PTOs. The Chief's of Ontario (and Environmental Assessment Technical Working Group) has also developed the First Nations Environmental Assessment Toolkit.

Métis Nation of Ontario, <http://www.metisnation.org/>

The MNO is a political organization that promotes the common cultural, social, political and economic well-being of Métis who live within Ontario. The website provides information on governing structures, community councils and culture.

Métis National Council, <http://www.metisnation.ca/>

Is a Canada-wide organization that provides information on specific aspects of Métis Nation governance.

Notzke, Claudia (1994) *Aboriginal Peoples and Natural Resources in Canada* is a book that can help applicant understand more native perspectives on natural resource management, including approaches to water, fisheries, forests, wildlife and land.

Rogers, Edward and Smith Donald (1994). *Aboriginal Ontario: Historical Perspectives on the First Nations* is a set of 17 essays on the history of Ontario's native people, providing a view into their varied and complex history.

Walter and Duncan Gordon Foundation,

[http://www.ibacommunitytoolkit.ca/links\\_resources.html](http://www.ibacommunitytoolkit.ca/links_resources.html)

The Foundation has published the IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements (2010), which provides general information on the negotiation of impact and benefit agreements.