

# Proposed Indigenous Engagement Framework For Railway Line Construction

## 1.0 Introduction

The Canadian Transportation Agency (Agency) is an independent, quasi-judicial tribunal and regulator that makes determinations on a wide range of economic matters involving federally-regulated modes of transportation.

**Comment [P[1]:** Consider removing economic or adding "and regulatory or environmental" given they consider impacts on Indigenous communities.

The Agency's authority includes approving the construction of federally-regulated railway lines, pursuant to section 98 of the *Canada Transportation Act*. The Agency may approve an application to construct a railway line if it considers that the location of the railway line is reasonable taking into consideration the:

1. requirements for railway operations and services; and
2. interests of the localities, including those of Indigenous communities, who will be affected by the railway line.

**Comment [P[2]:** Interest but not impacts on potential or established aboriginal and treaty rights?

**Comment [JT3]:** Perhaps we can use "interests" in this document, but maybe expand scope to include asserted or established Aboriginal rights, including title and treaty rights. NRCan and NEB used "Aboriginal Interests" on Trans Mountain as a collective term this way.

The Agency recognizes the importance of considering the impact its determinations may have on Indigenous communities.

This framework sets out how applicants/proponents should engage Indigenous communities who may be affected by the location of the railway line. While the framework is primarily directed at applicants, it also provides useful information for Indigenous communities and other interested persons.

**Comment [P[4]:** Consider using proponents or applicants seeking approval to construct a railway line.

The Agency invites Indigenous communities to [contact its staff](#) if they have any questions about the application process. The Agency is committed to hearing from Indigenous communities in a way that respects their values and traditions.

**Comment [P[5]:** About the proponents' application process? Sounds as if Indigenous groups can apply for something?

**Comment [P[6]:** Orally? Aboriginal Traditional Knowledge?

## 2.0 Indigenous Engagement

The Agency expects that applicants will undertake the following activities before submitting an application requesting approval to construct a railway line.

## 2.1 Identify Indigenous communities

Applicants can use the Government of Canada's [Aboriginal and Treaty Rights Information System](#), a web-based interactive map, to help identify Indigenous communities' that may be impacted by -its proposed railway line.

## 2.2 Timing of engagement

The Agency expects applicants to engage Indigenous communities early in the planning phase of its project with the goal of identifying and addressing any concerns related to the location of the railway line. Developing a respectful working relationship, along with early and ongoing meaningful engagement will help Indigenous communities understand the project and its possible impacts on their [rights and](#) interests.

Applicants should plan the timing of their engagement activities by taking into account Indigenous communities' seasonal, cultural, hunting, fishing and gathering activities that may impact their availability. Applicants must provide Indigenous communities with enough time to consider the information taking into account the complexity of the information that is to be shared. Applicants must also be ready to answer questions and to meet with Indigenous communities.

**Comment [P[7]:** Provide opportunities for Indigenous participation through the conduct of traditional knowledge studies.

## 2.3 Engagement activities and project information

The Agency expects applicants to share relevant information, to listen to and document concerns that are raised and to consider [how to address the concerns](#). Engagement with Indigenous communities could be achieved in various ways, including through meetings, open houses, community discussion tables and providing Indigenous communities the opportunity to [participate in aboriginal traditional knowledge studies/activities or](#) view project information online. Everyone in the communities that will be impacted by the project should have the right and the opportunity to review the project information and to participate in the engagement process.

**Comment [P[8]:** See above

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Applicants are expected to provide Indigenous communities with sufficient detail on the nature of the project, its routing, how it will be constructed, environmental and socio-

economic impacts and any measures to minimize adverse impacts. Applicants should be prepared to tailor the information to each community's requirements, and where appropriate, translate it into the language of that community.

Applicants are expected to have a working knowledge and be respectful of Indigenous cultural and political protocols [e.g., Consultation Protocols](#).

### 3.0 Documenting Engagement Activities and Information to Include in an Application

The Agency expects applicants to include the following information on their engagement activities with Indigenous communities:

- A list of Indigenous communities that may be affected by the project and how they were identified;
- A description of when and how Indigenous communities were contacted and who the contact person was in each community;
- A copy of all information provided to the Indigenous communities, how and when they were made available and the amount of time they were provided to consider the information;
- A summary of Indigenous engagement activities including meeting dates, attendees, topics discussed, concerns raised, plans for addressing concerns, and any outstanding concerns;
- An analysis of the potential impacts of the project on any traditional practices, such as hunting, fishing, trapping, and gathering and on any other Indigenous rights and interests;
- Any mitigation measures proposed by either Indigenous communities or the applicant to address potential adverse impacts on Indigenous rights and interests; and,
- Any other information the applicant believes would be relevant to the Agency's consideration of its Indigenous engagement activities.

**Comment [JT9]:** Similar to my comment on page above, could use Indigenous "interests" as a collective term comprising asserted or established Aboriginal rights, including title and treaty rights. Note that when referring to rights, it needs to be Aboriginal as per S 35.

**Comment [P10]:** Consider using "potential or established aboriginal and treaty rights or interests."

Applicants must provide this information in sufficient detail and with enough supporting evidence to permit the Agency to assess the application.

### 4.0 Agency Review of Application

Upon receiving an application, the Agency will review it for completeness, including assessing whether the applicant conducted the appropriate Indigenous engagement

activities. If the Agency is not satisfied that the applicant sufficiently engaged the affected Indigenous communities, it will deem the application incomplete.

Once the application is considered complete, the Agency will post the application on its website. The Agency will provide a minimum of 30 business days during which persons, including Indigenous communities, can provide comments, identify their interests and express concerns they may have about the proposed location of the railway line. At least 7 days in advance of the application being posted to the Agency's website, the applicant will be expected to publish a notice in a local newspaper in both official languages and, where appropriate, in the language of that community, informing the public of the upcoming comment period and indicating where the public can view the application.

During the comment period, the applicant must have a copy of its application available for viewing in a public forum such as Band Council or Settlement office, city hall or a library. The applicant is also expected to send a copy of the notice directly to the identified Indigenous communities to inform them of the upcoming comment period. All of the comments and responses from the notice will be posted on the Agency's website.

The Agency will take into account all comments from Indigenous communities and [demonstrate how feedback from Indigenous communities was considered in the Agency's approvals. The Agency will also consider the comments and concerns of other localities](#), to determine whether or not to approve the construction of the railway line.

The Agency's approval may be subject to conditions [including but not limited to, mitigation, accomodation measures, follow-up and montitoring](#).

**Comment [P[11]:** Consider going beyond take into account.

**Comment [JT12]:** Can we illustrate how to go beyond "take into account"?

**Comment [P[13]:** Indigenous communities have potential or established aboriginal and treaty rights. Consider revising so that they are not referred to in the same way as other localities.

## 5.0 Involvement of Indigenous Communities

The Agency encourages Indigenous communities to participate in the engagement process as early as possible after being approached by the applicant. As the Agency can only consider information that has been placed on its public record, it is important that Indigenous communities participate and provide their comments so that they may be taken into account by the Agency in arriving at its determination.

The Agency also encourages Indigenous communities who want to know more about a proposed project to contact the applicant for additional information and to request that the applicant talk with their community about its project.

**Comment [P[14]:** Indigenous communities are encouraged to participate, the onus is placed on the communities to contact the applicant.

