

INTERIM GUIDANCE

Aboriginal Use of Ontario's Provincial Parks

May 1, 2013

Introduction

The guidance in “Interim Guidance Aboriginal Use of Ontario's Provincial Parks” seeks to:

- assist Ontario Parks staff to contribute to the broader MNR implementation of “Strategic Directions for MNR Aboriginal Relations” [<LINK>](#), and
- to be responsive in an appropriate, consistent and respectful manner to Aboriginal people accessing the provincial park system for the exercise of rights and for other purposes.

Ontario respects the protection provided for existing Aboriginal and treaty rights, as recognized and affirmed by Section 35 of the Constitution Act, 1982 and is committed to meeting the Province's constitutional and other obligations in respect of Aboriginal Peoples.

While this guidance addresses much more than the exercise of rights, a key component of this guidance is the recognition that Aboriginal and treaty rights may generally be exercised on Crown land including provincial parks. Rights based activities may be subject to limitations where there are concerns related to public safety and/or resource conservation.

The use of the term “local” as a descriptor for an Aboriginal community in this document refers to a community whose traditional area encompasses all or a portion of a particular park recognizing that traditional territories of two or more communities may overlap.

Many of Ontario Parks staff at the Main Office, Zone and Park level have direct experience in developing and maintaining relationships with Aboriginal communities. Those staff can provide valuable insight in regards to the implementation of this Interim Guidance document. The District Resource Liaison Officer or RLO (sometimes known as Resource Liaison Specialist or by other titles) is also a key individual who may be able to assist Park staff by providing advice as well as the names of appropriate Aboriginal community contacts. The District RLO may also be able to provide support by participating in meetings and

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discussions with community representatives. Section 8 provides a list of others who may be able to assist in specific circumstances.

This Interim Guidance is intended for use by senior staff at the Zone and park level (e.g. Zone Manager, Superintendent, Assistant Superintendent and those whose duties include that of Park Duty Officer). Algonquin Provincial Park has a unique organizational structure within Ontario Parks and staff who would be expected to use this Interim Guidance would include the Manager of Operations and other management staff as determined by the Manager of Operations. Where necessary, Ontario Parks staff will consult with other MNR staff who have the appropriate expertise.

This Interim Guidance will be revised from time to time to reflect direction resulting from clarification of, or new interpretation of, the *Constitution Act*, 1982 (often based on decisions of the Court) as well direction established by applicable legislation, regulation and policy.

NOTE: "Aboriginal people" is a term defined in the *Constitution Act* of 1982 that refers to all indigenous people in Canada, including Indians (status and non-status), Métis, and Inuit people. More recently, "First Nation" is a term that has been adopted to replace "Band" in the name of a community.

1. Development of Relationships

a) General:

One of the principles in "Strategic Directions for MNR Aboriginal Relations" is "Focusing on Strengths – MNR will focus on its strength of building relationships at the community and regional levels." At the zone and park level, Ontario Parks staff can contribute to building those relationships primarily at the community level.

Where a good relationship with a local Aboriginal community has already been established at the park level, the use of ideas contained within this guidance should focus on maintaining, and where appropriate, improving that relationship.

Where involvement of a local Aboriginal community has yet to be established, the use of ideas contained within this guidance should focus on the establishment of a good relationship when opportunities arise either through the efforts of staff to engage the local community or as a result of the community approaching Ontario Parks at the zone or park level.

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If not already known, staff at each park should determine the Aboriginal communities whose traditional territories encompass all or part of the park. The local District RLO can advise on that effort and will also be able to advise, and perhaps facilitate, the best approach to maintaining or establishing good relationships. In addition, District staff can provide advice on the identification of Aboriginal communities and organizations that have territories and rights and/or interest in the particular geography, particularly in the context of the “duty to consult”.

A local Aboriginal community may show little interest in developing a relationship with Ontario Parks in regard to a particular park at a particular point in time. If this is the case, Ontario Parks staff should seek future opportunities to engage that Aboriginal community on a periodic basis. In addition, an open invitation to the community to become engaged at the park should they become interested in the future should be made. Park staff should recognize that the development and maintenance of a relationship with a local Aboriginal community will likely take significant effort and time

Staff should expect varying degrees of success with respect to efforts to develop relationships. Success is dependent on the individual park, the proximity of the local Aboriginal community, the Aboriginal use of the park area (i.e., current, past or intended future use), interest of that community in the park geography and other factors. However, if an Aboriginal community chooses to become involved, the ideas in this Interim Guidance may serve as a basis for the development of a long term positive relationship.

b) Ideas to Foster or Maintain a Good Relationship

Ontario Parks staff have had good success in developing relationships with local Aboriginal communities. The list of ideas/topics for discussion, found below, may be useful as a means to establish or maintain a relationship. Generally, they are ordered in a manner that reflects a more mature relationship as one progresses down the list. They are not intended to be limiting in any way.

List of Ideas\Discussion Topics to Consider

1. park management planning (including amendments to management direction)
2. project evaluation (Class Environmental Assessment)
3. park operations (e.g. including contracting of services)
4. opportunities for full time and seasonal employment
5. youth employment such as the Aboriginal Youth Work Exchange Program (AYWEP) and regular youth employment opportunities
6. regular seasonal and full time employment opportunities
7. facilitation of ceremonies or other events for community membership

8. facilitation of ceremonies or events that would be open to all park visitors to assist with the understanding of Aboriginal cultural and practices
9. participation in regular Natural Heritage Education programs
10. participating in, or leading, the development and/or delivery of Natural Heritage Education programs for other park visitors including both self-directed NHE materials and active delivered programs
11. interest in exercising Aboriginal or treaty rights on park lands
12. resource management activities including harvest (subject to safety and resource conservation principles)

At meetings or during discussions with individuals, Aboriginal communities and representatives may raise certain topics which are beyond the mandate of the MNR to address. Where this occurs, Ontario Parks staff should record the topic and the comments made and seek advice from appropriate MNR staff. In some cases, staff may be able to obtain a suitable response and in other cases, information on an appropriate contact who can address the topic may be provided to the Aboriginal community.

2. Exercise of Aboriginal and/or Treaty Rights

a. General

Access fees in operating parks do not apply for individuals and/or groups of Aboriginal people exercising existing Aboriginal or treaty rights in a provincial park within their community's traditional territory.

Ontario Parks staff will accommodate and facilitate the exercise of Aboriginal and treaty rights in provincial parks within the traditional territory of those who hold those rights. This may include hunting, fishing, trapping, gathering, spiritual ceremonies and/or other activities that can be directly associated with Aboriginal and/or treaty rights subject to public safety and resource conservation. Generally, the exercise of rights does not include commercial harvest; however, there are exceptions related to trapping and commercial fishing.

While those intending to exercise Aboriginal or treaty rights in a provincial park are not required to provide advance notice, Ontario Parks encourages those individuals or groups to contact the Superintendent (or in Algonquin, the Manager of Operations) a reasonable period in advance, particularly where there may be public safety and/or resource conservation concerns or where there will be large group activities occurring. This will allow time to confirm eligibility to exercise rights and to discuss how Ontario Parks may best accommodate and facilitate the activities in a manner which will address the protection of park values and minimize impacts on other park users. Efforts to develop good relationships with communities prior to the exercise of Aboriginal or treaty rights will help to ensure that park values and other visitors to the park are appropriately considered.

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The determination of what activities are rights and where they may be exercised and by whom (e.g. traditional areas versus inter treaty harvesting, status Indian vs non status Indian, AANDC recognized community versus a self-declared community, Métis status and eligibility to exercise rights) is often complex. Ontario Parks staff are encouraged to seek assistance from the local District RLO particularly where the individual(s) or community is not already known to Park staff or where it is uncertain that the intended activities are associated with Aboriginal or treaty rights.

The exercise of Aboriginal and/or treaty rights may require the use of some park infrastructure (e.g., roads, parking area) and may, in some cases, involve overnight stays. Providing access to park facilities and services (e.g., privies, comfort stations and water) may be necessary to accommodate the exercise of rights. Special events permits are not required for spiritual or other ceremonies or activities where there will be a group of participants. Refer to Section 6 for guidance on when fees would apply.

Ontario Parks staff should seek assistance from the local District RLO (or appropriate Ontario Parks\MNR staff) if an Aboriginal individual(s), a FN community or a Métis Council that is not already known to hold rights indicates an intent to exercise asserted rights within a provincial park. This will ensure that only those who hold Aboriginal and/or treaty rights are considered in this context.

A Certificate of Indian Status (or Status Card) is an acceptable form of identification for First Nation community members. The Status Card includes a specific number code that identifies the card holders membership in a specific First Nation.

NOTE: A Certificate of Indian Status, more commonly known as a Status Card, is an identity document issued by Aboriginal Affairs and Northern Development Canada (AANDC) to confirm that an individual is registered as a Status Indian under the *Indian Act*. More information on Status Cards can be found at the following link:

<http://www.aadnc-aandc.gc.ca/eng/1100100032405/1100100032419>

The local District RLO may also be able to assist in determining other acceptable forms of identification of membership in a local Aboriginal community or an Aboriginal organization. Circumstances where this may be necessary include eligible Aboriginal communities whose members are not (or are not all) Status Indians (e.g., Algonquins of Ontario). Please refer to “Exercise of Aboriginal Rights by Métis” for guidance with respect to the identification of Métis.

b. Exercise of Aboriginal Rights by Métis

The *Constitution Act*, 1982 Section 35 (2) states: "In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada." There are several sources of information to guide the MNR staff response to those who self-identify as Métis who wish to exercise Aboriginal rights:

- Aboriginal Policy Branch Bulletin # 6 – Métis Consultation
- Aboriginal Policy Branch Bulletin # 7 – Métis Harvesting

Aboriginal Policy Branch Policies and Guidelines (incl. Bulletins): [<LINK>](#).

The MAA Toolkit: Interim Advice for Consultation with Métis may also provide guidance for staff on this topic.

While Ontario recognizes that Métis people may have Aboriginal rights, MNR is not in a position to recognize any membership cards or certificates from MNO, or other Métis organizations, as a substitute for proof that that the individual presenting the card may exercise Sec. 35 Aboriginal rights including subsistence harvesting rights. The recommended approach that ministry staff should follow is provided in the Bulletin # 7 including the Appendix 1 - Métis Harvesting Letter.

In all cases where there is an indication that a self-identified Métis wishes to exercise Aboriginal rights in a provincial park, the local District Resource Liaison should be contacted. The District Resource Liaison can provide advice and guidance to park staff on how to respond.

c) Hunting – Rural and Urban Parks Throughout Ontario

Where Ontario Parks staff in rural or urban provincial parks are approached by community leaders or community representatives in regard to a planned hunt for subsistence and/or ceremonial purposes where firearms are to be used, Ontario Parks staff will seek the assistance of the local District RLO. The District RLO can provide valuable advice in regard to the community and eligibility to exercise rights while facilitating discussions with community leaders or representatives about resource conservation and public safety to determine, by consensus, if planning for the hunt should proceed.

If a decision is made that a hunt related to the exercise of rights is to proceed, Ontario Parks, with the assistance of the District RLO, will work with the Aboriginal community leadership to develop a Memorandum of Understanding (including a Safety Protocol) in regard to the planned hunt. In addition, Ontario Parks will make the appropriate contacts in the District, Enforcement Branch, Communications Services Branch and external parties (e.g. Ontario Provincial Police, municipal contacts including municipal police, and emergency medical services) as appropriate during the development of the following products:

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- Issues management plan (CSB lead)
- Communications Bulletin (if required by IMP - CSB lead)
- Media Questions and Answers (CSB lead)
- General Notice (if required by IMP - CSB lead)
- Stakeholder Notice (if required by IMP - CSB lead)
- Contingency Plan (Ontario Parks Lead)

d) Hunting – Remote or Semi Remote Northern and Central Ontario Parks

In the many northern Ontario parks and those parks that are remote in nature (e.g., may be little or no road access) hunting and traditional use regularly occurs. Traditional summer family use areas often mimic trap lines and an assortment of seasonal camps and trap cabins exist. Hunting, fishing and gathering takes place 365 days of the year and little to no communication takes place with MNR staff. Only in a few remote Northern Ontario operating Parks (e.g., Woodland Caribou, Wabikimi, and Quetico) is there active correspondence with MNR staff regarding traditional use. For those parks that are remote and non operational (Wilderness, waterway and natural environment in some cases) traditional gathering takes place within park boundaries which define administrative areas that are part of the broader Crown land area. Ontario Parks should be careful to carry a consistent message but respect that aboriginal communities often have a unique relationship with all or portions of northern parks. Park Superintendents responsible for those operating remote parks that charge fees must interpret this policy and make sound decisions based on this Interim Guidance.

NOTE: Where a Métis Council or self identified Métis individual indicates intent to exercise hunting or other asserted rights in a provincial park, Please refer to the section "Exercise of Aboriginal Rights by Métis".

e) Structures Incidental to the Exercise of Aboriginal or Treaty Rights

In some cases, structures may be necessary or desired to facilitate the exercise of an Aboriginal or treaty rights. These could include structures which will remain for a longer term such as incidental cabins (including trap cabins). In other cases, they may be temporary structures which are built prior to the specific use and removed at the end of that use (e.g., traditional hunt camps). Park staff should seek advice from the local District RLO if there is any uncertainty with respect to built or proposed structures that would be incidental to the exercise of Aboriginal and/or treaty rights.

f) Aboriginal Domestic Use of Forest Resources in Provincial Parks

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In December 2006, the Supreme Court of Canada handed down a decision in the Gray and Sappier (G&S) case based in New Brunswick recognizing an Aboriginal communal right to harvest trees from Crown land for domestic use such as shelter, transportation, tools and fuel. The decision confirmed that trees harvested for domestic purposes based on this right cannot be traded, bartered or sold. The right to harvest is limited to those lands that were traditionally harvested by an individual community and thus there are limits on the area where the right may be exercised. Further, the court emphasized that exercising of the right to harvest must be tied to the purpose of ensuring the continued existence of the Aboriginal community and therefore is not to be exercised by any member of an Aboriginal community independent of that purpose.

Discussions of park use with an interested Aboriginal community may include arrangements for the future or continued use of forest resources such as fuelwood, and/or building products. If MOUs or similar agreements are made Park staff may want to consider elements such as location of harvesting, amounts harvested, timing, and possible renewal of the resource. Public safety, resource conservation, park values and other park users will be considered during these discussions and/or in any MOU that is developed.

NOTE: Treaties with First Nations can address activities differently and not all treaties address the same topics. In addition the interpretation of treaties can evolve over time (e.g. Treaty # 20 and the Williams Treaty First Nations right to hunt). The local District RLO can provide advice in this regard.

3. Education (Aboriginal School or Youth Groups) - Operating Parks

Aboriginal people used the land within their traditional territory for educational purposes as part of their cultural activities. The facilitation of related activities through the use of courtesy passes is encouraged where an organized school or youth group from an Aboriginal community desires access to a park for the purpose of group educational activities relating cultural practices associated with the Aboriginal community.

Park staff should consider the following when approached by Aboriginal community, school or youth group leaders or representatives in regard to educational activities for topics such as (but not limited to) the natural world, community culture and community history:

- i) How much advance notice was provided?
 - Depending on the circumstances (e.g. number of youth, desire for parks staff to participate), more, or less, notice is appropriate.
- ii) Is there documented support of community leadership?

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- An email from a Council representative or the community office would be good documentation to receive and keep on file.
- iii) Does the park have the capacity to host the group (i.e. # of youth, vehicles) considering planned activities?
 - Facility capacity and other park users should be considered
 - Wherever possible, park staff should be available to assist in leading and/or participating in activities when requested by the activity leaders
- iv) Is there opportunity for NHE participation in the activities?
 - Provision of self directed NHE materials or park staff led NHE activities should both be considered
- v) Are there potential implications for other park users and are there measures which could be implemented to minimize any potential user conflict?
 - Communication of planned activities to other park users
 - Determining the appropriate time and location of activities
 - Planning should consider the # of participants and the specifics of the planned activities.

Any vehicle(s) associated with the school or youth group that requires access to the park should be appropriately identified (e.g. school or group name and community affiliation visible in the front vehicle window. Gate house and other appropriate staff should be notified in advance if at all possible.

4. Participation in Natural Heritage Education Programs

Many Aboriginal community members have extensive knowledge about the natural and cultural heritage within their traditional territory. In order to strengthen relationships with local Aboriginal communities and provide enhanced educational opportunities for park visitors, Park staff may consider some of the following when developing annual NHE schedules:

- Invite/facilitate community member participation in events lead by park staff
- Invite/facilitate community members to develop and deliver events with park staff participation and/or coordination
- Invite/accommodate special events organized by the community and hosted by the park

5. Economic\Employment Opportunities

Park operations provide economic and/or employment opportunities for Aboriginal community members. Ontario Parks staff will provide related information to local First Nation communities as the opportunity arises or upon

request. Presentations\exchange of information\career day activities may be included. Information and activities may include:

- Park organization (e.g., organization chart showing full time, seasonal and summer positions)
- Park operation (e.g., annual cycle including operating dates, visitation, park maintenance activities, financial picture, etc.)
- Career day event (off season) for community members including youth which may include:
 - o A tour of the park,
 - o A description\presentation\tour which addresses park operations,
 - o Opportunities for full time, seasonal, student and Aboriginal Youth Work Exchange (AYWEP) employment, and
 - o Information on where to find out about employment opportunities (and when) and how to apply.
- Contracting opportunities related to park operations, services, procurement (including opportunities to facilitate capacity building).

Ontario Park staff will ensure that the elements of the Ontario Government Aboriginal Procurement Pilot that apply to their specific areas of business will be appropriately applied within the park system. For more information on this Pilot, contact the Ontario Parks Business Manager.

6. Application of Fees

A jurisdictional scan of other Canadian jurisdictions has found a variety of approaches.

Parks Canada generally provides free access for Aboriginal people for any purpose; however, fees do apply for the use of developed campsites. Agreements between Parks Canada and specific First Nations are in place for specific parks (e.g. Pukaskwa National Park) which modify the approach to the application of fees.

The provincial level parks organizations contacted all provide free access for the exercise of Aboriginal or treaty rights; however, fees apply for day use and camping for recreational purposes.

NOTE: With the exception of local initiatives approved by the Director, Ontario Parks, fees for recreational day use and camping in Ontario's provincial parks will apply as described below.

a) Recreational Day Use

The recreational day use of parks and their facilities, services and programs involve the use of infrastructure and services. This use results in a direct cost to Ontario Parks in providing those services and for the maintenance of infrastructure. Therefore, access fees will apply for day use by Aboriginal individuals and families.

b) Recreational Camping on Developed Campsites

Developed campsites include those campsites in organized campgrounds, back country campsite and group campsites. Fees are set for car camping, roofed structures (e.g. yurts), interior camping and extra vehicle parking to cover the use of infrastructure and services (e.g. roads, campsites, comfort stations, trails, beaches, natural heritage programs, washrooms and potable water) in those operating parks which provide for camping. With a few exceptions, the fees collected do not cover the total cost of operating the park. Therefore, access fees for camping will apply to Aboriginal individuals and families in an organized campground, back country campsite or a group campground. Normal rules for sites available for reservation or for sites available on a first come first served basis will apply.

NOTE: HST will be charged on entry fees for camping since the "service" (i.e. providing camp sites and associated facilities) is rendered off of the reserve. For further information contact the Revenue Administrator, Ontario Parks.

NOTE: There are no fees for access to non-operating parks with limited or no facilities\infrastructure.

NOTE: Fees will not apply for camping; associated with the exercise of Aboriginal and/or treaty rights; outside of organized campgrounds, backcountry campsites, and group campsites where park services and infrastructure are not used.

7. Training Opportunities for Ontario Parks Staff and Target Audiences

Training needs related to Aboriginal awareness varies with the position held and the potential for interaction with Aboriginal community representatives or individuals. Generally, the training needs are greater for more senior park level

and zone positions and as the potential for interaction increases. The following provides a guide to an approach for zone and park staff training related Aboriginal awareness:

- Zone staff and senior park staff
 - o Aboriginal Relations (Module 1) preferably as a face to face delivery or alternatively as an eLearning module
- Superintendents\Assistant Superintendents and Park Wardens (Zone Meeting\Park Warden training)
 - o Interim Guidance - Aboriginal Use of Ontario's Provincial Parks
 - o Interim Enforcement Protocol
- Gate staff (where determined necessary by Park Management staff)
 - o Simplified OP approach\some level of Aboriginal awareness
 - o Expectation of Aboriginal interaction for coming year for the specific park
- All Park Staff at Park Orientation Meetings (where determined necessary by Park Management Staff)
 - o Some level of Aboriginal awareness
 - o Expectation of Aboriginal interaction for coming year for the specific park

8. Sources of Advice\Guidance and Information

It is important for Park staff to be aware that there are many sources of advice and guidance. As previously noted, experienced Ontario Parks staff and the District RLO are key individuals who can provide support. In addition, individuals in the following positions, Sections or Branches may also be able to assist in specific circumstances:

- Experienced Ontario Parks staff (are only a phone call or email away)
- Parks and Protected Areas Policy Section
- Aboriginal Policy Branch
- Enforcement Branch
- Legal Services Branch

Appendix 1 provides a list of online government (Canada and Ontario) and Aboriginal organization information sources and a general description of content for each.

Appendix 1 – List of Information Sources

Website Links with Aboriginal Related Guidance and Information For Protected Area Managers

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1. OMNR - Aboriginal Policy Branch – Intranet

<http://intra.net.gov.on.ca/mnrabp/>

Includes:

- Strategic Directions for MNR Aboriginal Relations
 - o Staff Backgrounder and Q's and A's
- Consultation and Accommodation Handbook – A Practitioners Handbook
- Supporting Policy Bulletins #1 through #8
- Aboriginal Community Identification Template for MNR Project Approvals and Planning Activities
- Aboriginal Traditional Knowledge : A Framework for MNR Staff
 - o Toolkit and Strategic Context
- Algonquin Land Claim Updates
- Aboriginal Relations Knowledge (knowledge retention website)
- E-Learning and Face to Face Training
 - o Module 1 – Aboriginal Relations: An Introduction to First Nations and Métis People of Ontario
 - o Module 2 - Aboriginal Relations: Consultation and Accommodation

2. Ontario Ministry of Aboriginal Affairs – Intranet

<http://intra.net.gov.on.ca/aboriginalaffairs/>

Includes:

- Aboriginal Information System Resource Centre (includes a geo viewer)
- Aboriginal Community profiles and Data Sheets
- Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights
- Guidelines and Protocols for Planning and Conducting Aboriginal Site Visits
- First Nation Political Structure
- Métis 101 – the Métis Nation of Ontario

3. Canada – Aboriginal Affairs and Northern Development Canada – Internet

<http://www.aadnc-aandc.gc.ca/eng/1100100010002>

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5. Chiefs of Ontario - Internet

<http://www.chiefs-of-ontario.org/>

6. Political Territorial Organizations (PTOs) - Internet

a) Association of Iroquois and Allied Indians

<http://www.aiai.on.ca/>

b) Nishnawbe-Aski Nation

<http://www.nan.on.ca/>

c) Grand Council Treat #3

<http://www.gct3.net/>

d) Union of Ontario Indians (Anishinabek Nation)

<http://www.anishinabek.ca/index.asp>

7. Métis Organizations in Ontario - Internet

a) Métis Nation of Ontario

<http://www.metisnation.org/>

Note: While the MNO is the most organized and well known Métis organization in Ontario, it does not represent all Métis in the province.

b) Ontario Métis Aboriginal Organization

<http://www.oma.org/home.html>

c) Ontario Coalition of Aboriginal People

<http://www2.o-cap.ca/>

d) Red Sky Métis Independent Nation

<http://rsmin.ca/>