

IMPLEMENTATION OF THE METIS SETTLEMENTS CONSULTATION POLICY

BACKGROUND

The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015 (Policy) was approved by Cabinet in October, 2015. With the full support of the Metis Settlements General Council (MSGC), both the Metis Settlements Consultation Policy and its accompanying Guidelines were modeled closely after the current First Nations Consultation Policy and Guidelines. Full implementation of the new Metis Settlements Policy began on April 4, 2016 following release of the *Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management (Guidelines)*.

FREQUENTLY ASKED QUESTIONS

1. What is consultation? What is accommodation?

Consultation on potential adverse impacts of Crown decisions on Metis Settlements members' harvesting and traditional use activities will take place basis according to the Policy and Guidelines.

Under the Metis Settlements Consultation Policy, Alberta will consult with Metis Settlements when the following three factors are all present:

1. Alberta has real or constructive knowledge of Metis Settlement members' harvesting or traditional use activities;
2. Alberta is contemplating a decision relating to land and natural resource management; and
3. Alberta's decision has the potential to adversely impact the continued exercise of Metis Settlement members' harvesting or traditional use activities.

Consultation may reveal the need to accommodate a Metis Settlement when an adverse impact to harvesting or traditional use activities is identified. The primary goal of accommodation will be to avoid, minimize or mitigate adverse impacts of a Crown decision on Metis Settlement members' harvesting or traditional use activities. Accommodation, where appropriate, will be reflected in the Crown's decision.

2. What are the Metis Settlements?

In 1938, Alberta passed the *Metis Population Betterment Act*, which provided for the establishment of Metis Settlements throughout central and northern Alberta. There are currently eight Metis Settlements in Alberta. In 1989, Alberta and the Alberta Federation of Metis Settlement Associations signed the historic Alberta-Metis Settlements Accord with the goals of securing a Metis land base, enabling local autonomy and achieving economic self-sufficiency. In 1990, the Alberta

Federation of Metis Settlements Association officially became the MSGC and Alberta passed four laws to give effect to the Accord by providing a governance framework for the eight Metis Settlements, protecting Metis Settlement lands under Alberta's provincial constitution, and providing for co-management of sub-surface resources on Settlement lands. 1.25 million acres of land was also transferred to the MSGC through letters patent. This is the only recognized land base in Canada protected by legislation.

3. How will this impact both industry and Metis Settlements when projects are being considered? What does this mean for the Metis Settlements?

A formal consultation process is necessary to build effective consultative relationships between Alberta, industry proponents and Metis Settlements.

This Policy aims to substantially address potential adverse impacts to Metis Settlement members' harvesting or traditional use activities due to Crown decisions relating to land and natural resource management through a meaningful consultation process. It is a process for the Metis Settlements to provide meaningful input on land and natural resource management decisions that affect lands the Settlement members use for hunting, fishing, trapping, and other cultural purposes.

The Policy provides greater certainty for project proponents by giving clear and consistent direction on consultation with Metis Settlements. Through consultation, the Government of Alberta seeks to reconcile Metis Settlement members' harvesting and traditional use activities with the interests of all Albertans.

4. How was the Policy developed? When was it approved?

The Metis Settlements Consultation Policy was developed in consultation with MSGC and a working group of Settlement leaders to ensure their interests and issues were well understood. As a result of this collaborative process, the final Policy has the full support of the MSGC. External stakeholders, including municipalities and industry, were also invited to participate in engagement sessions and they provided written input on the Policy.

The Policy and associated Cabinet Report were submitted for Cabinet consideration in October 2015. Both documents were reviewed by the Social Policy Committee before it was submitted to Cabinet for approval. On December 2, 2015, the former Minister of Indigenous Relations, Kathleen Ganley, informed the Metis Settlements General Council that the Metis Settlements Consultation Policy was approved by Cabinet. The Guidelines were subsequently approved by Indigenous Relations in March, 2016.

5. How is the Government of Alberta supporting implementation of and compliance with the Policy?

In order to implement, and support compliance with, the Policy, Alberta has undertaken a number of supporting measures, along with training for and on the awareness of the Policy.

Guidelines:

The Guidelines clarify the roles and responsibilities of all parties involved in the Metis Settlements consultation process, and were modeled after the First Nations Consultation Guidelines, as agreed to with the Metis Settlements General Council (MSGC).

AER-ACO Relationship:

To implement the Policy, IR's Aboriginal Consultation Office (ACO) is working closely with the Alberta Energy Regulator (AER). Provisions have been put in place to ensure the ACO is contacted for advice by the AER regarding the ACO's assessment of the adequacy of consultation with Metis Settlements before the AER makes any resource development decisions that could adversely impact Settlement members' harvesting and traditional use activities. IR continues to work closely with the AER to finalize procedures to guide day-to-day interactions between the ACO and AER on matters related to Metis Settlements consultation.

Proponent Guide:

The Proponent Guide provides detail and clarity on the steps involving proponent consultation of Metis Settlements. The revised Proponent Guide will be completed in the coming months, at which point it will be publicly posted on the IR website.

Training:

Monthly consultation capacity building sessions for the Metis Settlements have been occurring since January 2015 and will continue throughout the Policy implementation. Information sessions have also been held for Government of Alberta staff as well as representatives from the Alberta Energy Regulator and industry.

6. How will the Policy affect First Nations? How is the Metis Settlements consultation process different from the First Nations consultation process?

The Policy does not and will not reduce or lessen Alberta's duty to consult with First Nations, nor will it adversely impact any First Nation's ability to continue exercising their Treaty rights.

As the Metis Settlements Consultation Policy and Guidelines are modeled closely after the current First Nations Consultation Policy and Guidelines, there will be no

notable procedural differences between the Metis Settlements and First Nations consultation processes.

7. When will there be a consultation policy for non-settlement Metis?

In October 2015, Indigenous Relations received Cabinet approval to engage in discussions with the Metis Nation of Alberta Association (MNAA) and Metis communities across the province to discuss a framework for developing a non-Settlement Metis Consultation Policy. Alberta is currently engaged in a collaborative discussion with the MNAA regarding the development of a non-Settlement Metis Consultation Policy.

8. How does the Policy relate to the Government of Alberta's implementation of the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*?

The Government of Alberta is currently building meaningful relationships with Indigenous Peoples in Alberta through the implementation of the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, consistent with the Canadian Constitution and Alberta law.

Development and implementation of the Metis Settlements Consultation Policy are in line with the principles and objectives of the UN Declaration as it creates a formal process for the Metis Settlements to express their concerns and issues related to the impacts of land and natural resource management decisions on their members' harvesting or traditional use activities.

9. How will the Policy be communicated to the Metis Settlements, industry and other Albertans?

In addition to information sessions provided to industry and ongoing training for the Settlements, Indigenous Relations has sent letters to major industry associations and the MSGC to inform them of the approval and implementation of the Policy and Guidelines. IR also held a full day working session with the Metis Settlements Coordinators to review the Guidelines.

Initial web page updates on the implementation date have been posted; Indigenous Relations will continue to update the web page as necessary.

Should Albertans require further information on the Policy, including clarification of roles, responsibilities and processes, they should contact Cory Enns, Director of Policy and Capacity, Stewardship and Policy Integration at: 780-644-1055.

10. How will the renewal of the First Nations Consultation Policy inform future revisions to the Metis Settlements Consultation Policy?

The Metis Settlements Consultation Policy will not immediately be affected by the upcoming renewal of the First Nations Consultation Policy and Guidelines. However, changes resulting from the renewal process will be fully analyzed in the context of future revisions to the Metis Settlements Consultation Policy. Alberta will engage with the Metis Settlements prior to revising any aspect of the Metis Settlements Consultation Policy, according to the review process set out in the Guidelines.

11. The Policy refers to both “traditional uses” and “traditional use activities” as well as “harvesting” and “harvesting activities” – is there a difference between these terms?

For the purposes of this Policy, the terms “traditional uses” and “traditional use activities” have the same meaning (see explanation of “traditional uses” on page 2 of the Policy) and are used interchangeably. Similarly, for the purposes of this Policy, the terms “harvesting” and “harvesting activities” have the same meaning (see explanation of “harvesting” on page 2 of the Policy) and are used interchangeably.

12. How will the policy implementation date affect projects that are already underway?

Where an application for a project or initiative was submitted prior to the effective date, consultation for that project, activity or development should ordinarily be completed as previously intended.

13. How are non-IR Ministries expected to work with ACO under this Policy?

Ministries with statutory and regulatory responsibilities related to Crown land and natural resource management in Alberta are each responsible for ensuring that Metis Settlements are consulted if there is potential for adverse impacts on Metis Settlement members’ harvesting or traditional use activities. Depending on the case, ministries may work with the ACO to ensure that consultation objectives are met in a manner that is consistent with the standards and requirements in the Policy and Guidelines. Ministries may also carry out the procedural and/or substantive aspects of consultation activity, including pre-consultation and adequacy assessments.

14. What consultation capacity support is being provided to the Metis Settlements?

Funding to support Metis Settlements’ consultation capacity is identified in the Long Term Agreement (LTA) with the MSGC and has been approved by Cabinet

and Treasury Board. The LTA contemplates capacity funding to Metis Settlements over the 10 year term of the Agreement (until March 31, 2023). This funding is administered by the Ministry of Indigenous Relations.

15. If a proponent has recently received a pre-consultation assessment and has not begun consultation with the identified First Nation, will the proponent need to re-submit the proposed project for another pre-consultation assessment?

As of April 4, 2016, all pre-consultation assessments will look at whether a proposed project may have the potential to adversely impact First Nations Treaty rights and traditional uses, and Metis Settlements harvesting and traditional use activities. Where consultation on a project or initiative has commenced prior to April 4, 2016, consultation should be completed as previously directed. For project-specific issues arising from the transition (For example: Level 3 extensive consultation has been triggered but consultation hasn't begun), the ACO may, on a case by case basis, need to have further discussions with the project proponent regarding who should be consulted.

16. Now that the Government of Alberta is requiring consultation with Metis Settlements, will this mean that proponents will need to take additional steps when submitting their proposed project to the ACO for a pre-consultation assessment?

No, the procedures for submitting a proposed project to the ACO for a pre-consultation assessment remain the same.

17. On projects where an adequacy decision has been received from the ACO and consultation has been deemed complete, do proponents need to further consult if they change the Purpose Code? If further consultation is required, would they consult with the First Nations previously triggered or would the proponent also need to consultation with Metis Settlements?

A change to a Purpose Code may in some cases require further consultation, especially if the new Purpose Code changes the scope of the activity and if the change was not consulted on prior to the issuance of adequacy. In such a situation, the proponent may be asked to go back and carry out further consultation with the same communities the proponent was instructed to consult with on the original purpose code. Additionally, now that the Metis Settlement consultation policy is in effect, the proponent may also be directed to consult with Metis Settlements as well.

In a case where the change in Purpose Code was consulted on prior to the issuance of adequacy and it is clearly demonstrated in the consultation record, the proponent may not be required to carry out further consultation. Where the

ACO has determined that the consultation on the change in Purpose Code was sufficient, the proponent would not be asked to carry out consultation with Metis Settlements.

18. What role does the Alberta Energy Regulator (AER) have in the First Nations and Metis Settlements consultation process?

The Government of Alberta relies in part on the AER's regulatory process to assist it in fulfilling its consultation commitments. The AER will request advice from ACO regarding mitigating impacts and decide on reasonable mitigation measures for a proposed project that may affect First Nations Treaty rights and traditional uses or Metis Settlements' members harvesting and traditional use activities.

19. When does the AER interact with the ACO?

When project-specific First Nations or Metis Settlements consultation is triggered by some of the decisions made under the specified enactments (*Public Lands Act*, *Mines and Minerals Act* [Part 8], *Water Act*, and *Environmental Protection and Enhancement Act*), the AER will request advice from ACO on decisions where the ACO has determined First Nations or Metis Settlements consultation is required.

20. Is it anticipated that the Alberta Utilities Commission (AUC) has a role in First Nation and Metis Settlements consultation going forward?

It is not currently anticipated that the AUC will have a further role in First Nation and Metis Settlements consultation at this time.

21. Will there also be Joint Operating Procedures (JOPs) between the ACO and the AER for Metis Settlement consultation?

A new Ministerial Order (MO) for Metis Settlement Consultation Direction was signed on March 30, 2016. The MO requires that the ACO is contacted for advice by the AER regarding the ACO's assessment of the adequacy of consultation with Metis Settlements before the AER makes any resource development decisions that could adversely impact Settlement members' harvesting and traditional use activities.

The ACO will work closely with the AER in the coming months to develop Metis Settlement consultation JOPs, which will detail the approaches and processes required to continue to operationalize the MO, and guide day-to-day interactions between the ACO and AER on matters related to Metis Settlements consultation.

22. Can Metis Settlements use the Metis Settlement Appeals Tribunal to voice their concerns/issues with consultation?

No. The Metis Settlement Appeals Tribunal deals with land and membership disputes among Metis Settlements and Settlement members. However, the Tribunal is not mandated to hear concerns/issues or resolve disputes over the content and application of the Metis Settlements Consultation Policy.

With regard to advancing concerns about Crown consultation procedures, the Guidelines set out a collaborative process for periodically reviewing the Policy and Guidelines to ensure that they reflect developments in Metis Settlements consultations, and respond to the future needs of Metis Settlements as well as industry and other stakeholders. The purpose of the review will be to assess the performance, standards and best practices of the consultation process. Reviews will take place from time to time as agreed to between Alberta and Metis Settlements.

23. The Metis Settlements Guidelines. Is it possible to be a bit clearer about what we mean by “community emergency?”

The Guidelines state that factors that may extend consultation timelines include circumstances that make a timely response to a project notification difficult for a Metis Settlement, such as an emergency situation in the community. This wording mirrors the wording in the First Nation Consultation Guidelines, which also allow for the possibility that an emergency situation in the community, or other relevant factors, may make a timely response difficult for a First Nation community.

The intent of these sections in both sets of Guidelines is to demonstrate the Crown’s awareness and understanding that certain circumstances may arise that may require an extension of consultation timelines so as to accommodate the urgent needs of the indigenous community in question.

ACO will assess such circumstances on a case-by-case basis, whether these circumstances qualify as an “emergency situation” for the purposes of extending timelines. For instance, ACO extended the consultation process timelines for consultation activities involving the Athabasca Chipewyan, Fort McMurray, Fort McKay, Chipewyan Prairie and Mikisew Cree First Nations due to the effects of the May 2016 wildfires in and around these communities.

24. Does the Policy require consultation on Settlement lands?

Alberta’s Metis Settlements Consultation Policy states ‘Crown decisions about natural resource development dispositions on Settlement lands that are already subject to a statutory regime and agreement (Metis Settlements Act and Co-Management Agreement)’ will not be assessed for potential consultation under this Policy. However in certain instances, other Crown decisions for projects on

Settlement lands may require consultation, depending on the type of activity that is being applied for and their potential downstream impacts on the exercise of First Nations' Treaty rights/traditional uses (or Metis Settlement members' harvesting/traditional use activities) in surrounding areas. The ACO will assess such situations on a case-by-case basis.

25. Does the Policy require consultation on other types of private lands?

Alberta may require proponents to consult Metis Settlements on resource activities occurring on private lands if their members have a right to access those lands to exercise their harvesting or traditional use activities (or in the case of First Nations, their Treaty rights and traditional uses). In general, private landowners can keep out or let in trespassers at their discretion and therefore any form of notice from the landowner is sufficient to take away a right of access. Consultation may be required if a resource activity taking place on private land has the potential to adversely impact the exercise of Treaty rights and traditional uses by First Nations (or harvesting or traditional uses activities by Metis Settlements) in surrounding areas. For instance, in situations where a private landowner on private land applies for a *Water Act* water diversion to take water out of a river with potential downstream impacts, consultation may be required.

In considering whether consultation is required, a number of factors will be relevant:

- What is the type and size of project?
- Does the project have the potential to impact lands in the area surrounding the project lands? If so, how far will those effects likely flow?
- What type of land is in the vicinity of the project lands? Is it unoccupied Crown land? Is it private land not put to a visible and incompatible use (i.e., the “visible incompatible use” test)?

26. Is the 160 km radius harvesting area used under the Harvesting Policy also used for determining the consultation areas of Metis Settlements?

The 160 km radius harvesting area is only relevant to Metis harvesting activities dealt with under the Government of Alberta's Harvesting Policy. They are not relevant for the purposes of consultation under the Metis Settlements Consultation Policy. For the purposes of guiding Crown consultation activities, interim consultation area maps have been developed. These maps are distinct from the harvesting areas set out in the Harvesting policy. The maps have been developed using internal Government of Alberta data and will be refined by the Geodata mapping committee and the Metis Settlements throughout 2016.