

The Government of Alberta's Corporate Guidelines for First Nations Consultation Activities, 2013

Introduction

The draft *Government of Alberta's Corporate Guidelines for First Nations Consultation Activities* ("draft *Corporate Guidelines*") have been developed to provide consulting parties with clear direction on and standards for consultation activities. Transparency, adequacy, and accountability of these activities are key outcomes of the draft *Corporate Guidelines*.

Purpose

The Government of Alberta's duty to consult is a legal obligation founded in the honour of the Crown. These draft *Corporate Guidelines* establish standards for consultation activities to assist the Government of Alberta ("Alberta") in meeting its obligations in a manner consistent with the honour of the Crown. Clearly outlining Alberta's consultation processes and standards will increase the transparency of Alberta's consultation initiative overall. Increased transparency leads to accountability for all parties and provides better assurances of consultation adequacy.

When the consultation office delegates procedural aspects of consultation to proponents, it expects the activities undertaken on its behalf to meet the standards established here.

Corporate Guidelines Application

The draft *Corporate Guidelines* document applies to all strategic and project-specific Crown decisions that may adversely impact the continued exercise of Treaty rights and traditional uses. The draft *Corporate Guidelines* will apply to Alberta's consultations with all First Nations; however, Alberta is prepared to enter into specific consultation process agreements with First Nations. These agreements will further clarify the consultation process.

Consultation Assessment

When a project or initiative involving land management and resource development is proposed, Alberta's consultation office will conduct a preliminary assessment to determine

- Whether the project requires consultation;
- Which First Nations to notify;
- What level of consultation is necessary in the circumstances; and
- Whether or not to delegate procedural aspects of consultation to project proponents.

The consultation office's initial assessment may be done on a case-by-case, project, or class basis.

To support this assessment, Alberta has developed a draft Consultation Process Matrix and appended it to these draft *Corporate Guidelines*. The draft matrix establishes three potential assessment levels for consultation. When the preliminary assessment identifies the scope of consultation as Level 2, the consultation office will normally delegate procedural aspects of consultation to the proponent. The consultation office will ordinarily consult directly on projects requiring Level 3 consultation.

Specific operational matrices will be developed to replace the draft Consultation Process Matrix. These operational matrices will serve as tools for the consultation office in conducting its preliminary consultation assessment.

In its initial assessment, the consultation office will consider factors including

- The magnitude, scope, timing, location, and duration of the proposed project;
- The status of the project site relative to lands selected as part of Treaty Land Entitlement negotiations;
- The general availability of Crown land in the area for exercising Treaty rights or practising traditional uses;
- The specific information shared by First Nations about exercising their Treaty rights or practising traditional uses;
- Information acquired through direct interactions with First Nations; and
- Other relevant information that is available to Alberta.

If consultation is required, the consultation office will communicate that requirement to the proponent and communicate what it expects of the proponent.

Delegation

When procedural aspects of consultation are delegated, the proponent is expected to proceed according to the following. In direct consultation, the consultation office will do the same.

Notification

Once a consultation trigger has been identified and the scope of consultation determined, the next step is to notify the appropriate First Nation(s). For Level 2, the consultation office will direct proponents to create and send to First Nations a notification package containing, at minimum, a plain language description of the project magnitude, scope, timing, location, duration, possible impacts (as understood by Alberta), and visual aids such as maps or diagrams, where possible.

For Level 3, the consultation office will create the notification package. They will then forward the notification package to each affected First Nation's authorized consultation representative and confirm that it was received by the authorized representative. Evidence of receipt may include a courier receipt, an email or letter acknowledging receipt, a follow-up telephone call confirming receipt, or other documentation with similar details.

If it believes a proposed project may adversely impact its exercise of Treaty rights and traditional uses, the notified First Nation is expected to respond to the consultation office or proponent within the timelines identified in the draft Consultation Process Matrix. The nature of this response is outlined in the matrix. The timelines and responses will be clarified in operational matrices.

All notification activities and responses to notification packages must be thoroughly documented by the consultation office in Level 3 consultation or by their delegated proponent in Level 2 consultation.

First Nations Response

When responding to written notification within the timelines identified in the draft Consultation Process Matrix, the First Nation is expected to name the specific project and clearly identify the potential adverse impacts on Treaty rights and traditional uses.

Initial Engagement

Upon receipt of a response to notification, the consultation office or proponent will engage in a dialogue with the First Nation to determine the details of the potential impacts and whether or not the impacts can be mitigated. These discussions may be done over the telephone, by email, or in person. If a First Nation requests a face-to-face meeting to discuss the project, the consulting party is strongly encouraged to do so in the spirit of meaningful dialogue and positive relationship-building.

The consulting party must thoroughly document all initial engagement activities. First Nations are also encouraged to document these activities for their own records.

Exploring Mitigation

Once the proponent understands the nature of the First Nation's concerns, both parties are expected to work together to discuss potential strategies to avoid or minimize the impacts to Treaty rights and traditional uses. Mitigation strategies could include amending project plans to accommodate site-specific concerns and to reduce or change the potential impact on areas used for exercising Treaty rights and traditional uses.

The proponent must thoroughly document any mitigation strategies explored or agreed upon by the parties. First Nations are also encouraged to document these activities for their own records.

Proposing Solutions

If the parties agree to a mitigation strategy, the proponent will need to confer with the consultation office, which will then work with the regulatory authority to determine whether the proposed strategy could result in unintended regulatory complications (e.g., environmental or site-specific sensitivities).

If the parties do not agree on a mitigation strategy, the nature of the disagreement and all attempts to resolve it must be documented by both parties to be considered by the consultation office.

Reporting and Completing the Consultation

The proponent is required to compile their consultation record as directed by the consultation office, detailing the activities that occurred as a part of the consultation, and provide it to the consultation office and the First Nation. The consultation office will use this record to assess the adequacy of consultation. The consultation office may also ask the First Nation to provide their consultation records. If the consultation is considered inadequate, the proponent will be given further direction on what is required. The consultation office will manage the consultation process and conduct the final assessment of adequacy.

Once the consultation is considered adequate, the consultation office will inform First Nations, project proponents, the appropriate regulatory bodies, and (if different from the project proponent) the consulting party of the result of its assessment.

Consultation Timelines

Crown decisions will generally occur within applicable statutory and regulatory timelines and in accordance with the draft *Corporate Guidelines*. Depending on the impact to the First Nation's Treaty rights and traditional uses, the consultation issues raised, and the specifics of the proposed project or initiative, consultation may take days or months. For this reason, proponents are encouraged to contact the consultation office in the early stages of their project or initiative.

The draft Consultation Process Matrix establishes timelines associated with levels and phases of consultation. It also establishes conditions that may extend deadlines, such as project modification and additional information that may modify the level of consultation required. The timelines could also be affected by

- First Nations holiday office closures (which vary from First Nation to First Nation);
- Ceremonial days or events such as Treaty Days, National Aboriginal Day, and community dances/feasts (generally one or two days); and
- Emergency situations such as wildfires and floods (timelines vary to extent of the emergency).

Other circumstances may also warrant modifying the timelines. In all cases, the consultation office will have the authority to do so.

Transparency of Process

Alberta is committed to achieving a consultation process which maintains integrity of that process.

One tool to maintain the integrity of the process is negotiation of a consultation process agreement between Alberta and a First Nation.

Where a cooperative arrangement protecting the integrity of the consultation process cannot be developed, Alberta will rely on the compulsory disclosure process enabled by the *Aboriginal Consultation Levy Act*. Under that process, industry proponents will provide to the consultation office all

consultation-related agreements signed with First Nations as an outcome of consultation processes along with their consultation logs. Alberta will publish aggregated information regularly.

The parties acknowledge that disclosure of these agreements can significantly harm relations between the parties. As a result, the agreements will be kept confidential, and will not be made public or shared with any person or organization outside of Alberta staff except as required by law. Sanctions will be developed for proponents who fail to comply.

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