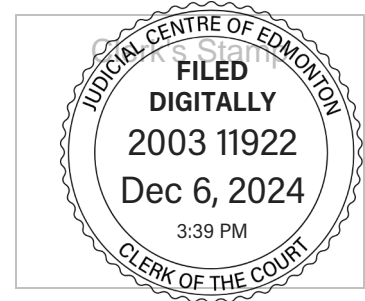


**Form 10**  
[Rule 3.25]

COURT FILE NUMBER      2003 11922  
COURT                      Court of King's Bench of Alberta  
JUDICIAL CENTRE        Edmonton



PLAINTIFFS                Mikisew Cree First Nation and Athabasca Chipewyan  
First Nation  
DEFENDANT                ~~Her Majesty the Queen~~ **His Majesty the King** in right of  
Alberta as Represented by the Minister of Indigenous  
Relations  
DOCUMENT                **AMENDED STATEMENT OF CLAIM**

AMENDED *E. Wheaton*  
on Dec 6, 2024  
by order dated Nov 29, 2024

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT                **JFK LAW CORPORATION LLP**  
Barristers & Solicitors  
~~340-1122 Mainland Street~~  
~~Vancouver BC V6B 5L1~~  
**260-200 Granville Street**  
**Vancouver, BC V6C 1S4**

Tel: 604-687-0549  
Fax: 604-687-2696

Robert Janes, Q~~Q~~**K**C  
Mae Price  
**Kaelan Unrau**  
~~Naomi Moses~~

Tel: 604-687-0549  
Fax: 604-687-2696  
[rjanes@jfkaw.ca](mailto:rjanes@jfkaw.ca); [mprice@jfkaw.ca](mailto:mprice@jfkaw.ca);  
[kunrau@jfkaw.ca](mailto:kunrau@jfkaw.ca); [nmoses@jfkaw.ca](mailto:nmoses@jfkaw.ca)

**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

**Overview**

1. The plaintiffs, Mikisew Cree First Nation and Athabasca Chipewyan First Nation (collectively, “the Nations”), are two First Nations who have lived in the Athabasca region for thousands of years and who possess rights under Treaty 8. Their way of life was historically nomadic, and they have developed complex cultures centered around land-based practices, including hunting, trapping, fishing, and gathering. Their traditional lands overlap with the heart of Alberta’s oil sands.
2. The Crown entered into Treaty 8 to open up the west and northwest to settlement and development, while securing friendly and peaceful relations with the Indigenous peoples of the region. The treaty ensured that the Indigenous inhabitants would consent to coexistence and the sharing of land and resources, while guaranteeing them a constitutionally protected right to continue their way of life into the future. Treaty 8 did not give Alberta or Canada the right to unilaterally develop the First Nations’ homelands without consultation. Instead, it promised a process of consultation on a good faith basis as Canada and later Alberta moved forward with development.
3. For more than a hundred years, this promise was largely neglected as Alberta developed the Athabasca region and, in more recent decades, the oil sands region – one of the largest industrial undertakings in Canada. It was only with the Supreme Court of Canada’s recognition that the duty to consult applies to Treaty rights as much as it does to Aboriginal rights that Alberta began to engage with the First Nations’ concerns.

4. Alberta has elected to create a ~~comprehensive consultation~~ framework that governs consultation with Indigenous communities for all oil sands related development, as part of its framework for consulting on land and natural resource management decisions (the “Consultation Regime”). The Consultation Regime is made up of Alberta’s policies, guidelines, and practices on consultation with Indigenous communities regarding land and natural resource management. However, the Consultation Regime is a fundamentally flawed process that does not meet the standards imposed by the Constitution, and this court should make declarations to that effect.
5. The Consultation Regime fails to uphold the Crown’s constitutionally required duty to consult in a number of ways:
  - a. It systematically excludes consideration of the full range of effects associated with projects by artificially focusing on project-specific effects.
  - b. It excludes the consideration of contextual factors relevant to consultation, especially the impacts of cumulative effects on Treaty rights.
  - c. It undermines consultation by separating the consideration of adverse impacts of proposed development on Treaty rights from the regulatory and Crown decision-making processes relating to such development.
  - d. It unreasonably limits accommodation.
  - e. It has created a process that has been effectively immunized from judicial review for constitutional compliance.

6. As a result, the Consultation Regime fails to uphold the Crown's duty to consult as required by section 35 of the *Constitution Act*, 1982, and is inconsistent with the entitlement of all Canadians under section 96 of the *Constitution Act*, 1867 to effective judicial supervision of the constitutionality of laws and the Crown's conduct. Declaratory relief should issue to compel Alberta to bring its regime for developing the First Nations' homelands into constitutional compliance.

### **The Parties**

7. The plaintiffs are two First Nations whose traditional territories lie primarily in northeastern Alberta. Each of the Nations is a band within the meaning of section 2 of the *Indian Act*, RSC 1985, c I-15, and an Aboriginal people within the meaning of section 35 of the *Constitution Act*, 1982. The reserves and traditional territories of the Nations lie within the tract of land subject to Treaty 8.
8. The Nations have used and continue to try to use their traditional territories and other Treaty 8 lands and waters, and the resources found within those lands and waters, for a variety of traditional purposes, including hunting, fishing, trapping, gathering, cultural activities and transportation. The ability to use their traditional lands for a range of practices and have access to traditional resources is extremely important to the Nations, as the lands and resources underpin their culture, traditions, identity, well-being, spirituality, and rights. Healthy and sustained lands and waters, including the Athabasca River, are critical for ensuring their ability to pass on their culture to future generations and meaningfully exercise their Treaty rights. The traditional practices

conducted on the land and waters are integral to the Nations' physical and cultural survival.

9. Large portions of the Nations' traditional territories are situated in the oil sands region, which is an area of significant past, present, and anticipated resource development. The Nations have consistently asserted their rights to use their traditional territories and to be consulted regarding development that may adversely impact their traditional territories and rights, both on and off reserve.

### **The Making of Treaty 8**

10. After Canada acquired a large tract of land in the northwest in 1870, the Indigenous inhabitants of the area now covered by Treaty 8 put pressure on Canada to negotiate a treaty with them. The Indigenous inhabitants were concerned that Canada had assumed control of these lands but had not taken steps to obtain their consent or protect them from disruptive impacts to their culture and way of life.
11. As a result of this pressure, along with increased settlement that was leading to conflict between Indigenous and non-Indigenous people in the region, Canada began the treaty negotiations that ultimately led to Treaty 8.
12. Throughout the negotiation of Treaty 8, the Indigenous negotiators made it clear that they wanted to continue to practice their culture and to hunt and fish as before. While they were open to a treaty that would allow for the arrival of settlers, they expected that the Crown would protect their people and their way of life.

13. A key component relied on by the First Nations in the Treaty 8 negotiations were the assurances by Canada of continuity of traditional patterns of economic activity and land use. The treaty commissioners recognized that the guarantee that hunting, fishing, and trapping rights would continue was the essential element that led to the Indigenous negotiators signing the treaties.
14. The treaty that the Crown prepared and the signatories signed in 1899 was a formal document designed to memorialize the oral terms of Treaty 8. The treaty guaranteed the Indigenous signatories the continued meaningful ability to carry out their traditional activities in perpetuity in ways that support their traditional patterns, cultures, and overall well-being.
15. The Indigenous signatories to Treaty 8 understood that they were entering into a relationship with the senior government in Canada representing the Crown: the federal government of Canada. They understood that the federal government would protect their interests, manage the settlement of their lands, hear their complaints, and address their concerns.
16. This formalized relationship between the Indigenous signatories and the Crown created a duty on the part of the Crown to engage in ongoing consultation with them about the management of the lands covered by Treaty 8. The Indigenous signatories understood that Canada had the right to take up parts of their territories, but that this right had to be exercised in keeping with the honour of the Crown. In this way, one effect of Treaty 8 was to confirm the Crown's duty to consult and accommodate the

Indigenous signatories before interfering with or taking up the territories on which they exercised their Treaty rights.

### **Establishment of Alberta and the Natural Resources Transfer Agreement**

17. In the period following the making of Treaty 8, Canada consistently failed to fulfill the commitments it had made to protect the Nations' way of life. Instead, Canada largely disregarded their concerns about ongoing interference with their way of life and at times directly interfered with their way of life through land-use policies and regulations.
18. In 1905, Canada created the province of Alberta, which included a large part of the Nations' traditional territories. From 1905 until 1930, Canada continued to administer the public lands in Alberta, with little regard for the protection of the Nations' ability to exercise their Treaty rights. For instance, Canada's creation of Wood Buffalo National Park in 1922 established unnatural boundaries and restricted the ability of the Nations to exercise their Treaty rights and maintain their way of life.
19. Canada was under pressure to transfer public lands to the province, and in 1930, without the consent of the signatories of Treaty 8 and without consulting them, transferred administration and control of Alberta's public lands to the provincial government through the Natural Resources Transfer Agreement.

### **Alberta's Failure to Acknowledge the Duty to Consult**

20. After the transfer of public lands to the province, Alberta took the position that it had no duty to consult with First Nations with respect to decisions that adversely affected their Treaty rights, including when it took up lands covered by Treaty 8.

21. The province refused to acknowledge any duty to consult with the Treaty 8 nations until the Supreme Court of Canada's 2005 decision in *Mikisew Cree First Nation v Canada*, 2005 SCC 69, which confirmed that the Crown's obligation to consult with First Nations extends to treaty lands. The Court in *Mikisew* emphasized that the honour of the Crown infuses the performance of every treaty obligation, and that Treaty 8 creates both procedural consultation rights and substantive rights to hunt, fish, and trap on treaty territories.

### **Oil Sands Development on Treaty 8 Lands**

22. Commencing in the 1970s, and continuing to today, the Alberta government has undertaken a policy of aggressive resource development in Treaty 8 territories, primarily consisting of forestry and oil sands activities. The scale of this development was not contemplated by the signatories of Treaty 8 when it was signed in 1899.

23. While the cumulative impacts of all industrial disturbance have drastically changed the lands and resources upon which the Nations depend for the practice of their Treaty rights and culture, oil sands development has been particularly devastating.



24. Oil sands development in the Athabasca region has consisted of a range of activities, including exploratory drilling, creation of cutlines, open pit mining, in situ production, and the development of extensive ancillary infrastructure.
25. The scale of oil sands development has profoundly impacted the Nations' traditional territories. Their lands are now covered by oil sands mines, cutlines, tailings ponds, processing facilities, steam assisted gravitational drainage facilities, seismic testing sites, water intakes, mining camps, waste storage facilities, diverted creeks and rivers, and other oil sands developments.

### **Range of Impacts from Industrial Projects and Development**

#### *Impacts to Lands and Resources that Support Rights and Culture*

26. The Nations' lands and resources, and their ability to use them, have been negatively affected by the individual and cumulative impacts of development, including but not limited to oil sands development. This has in turn impacted the Nations' ability to exercise their rights and culture.
27. The Nations have repeatedly expressed concerns that the development of their traditional lands and waters has already put their culture, physical health, and way of life at risk, and that current levels of development are already jeopardizing the survival of their rights, culture, and people.

28. Among other impacts to their ability to exercise their Treaty rights, the Nations have experienced the following:

- a. low water levels resulting in difficult and unsafe navigation of waterways that are central to their ability to access their reserves and traditional territories, harvest resources, and maintain their culture;
- b. fear of contamination of traditional resources due to the presence of deformed wildlife, unsuitable water, industrial runoff, air pollution, and odours from oil sands operations;
- c. documented contamination of traditional resources;
- d. declines in the abundance and diversity of traditional resources, for instance the steep reduction in the muskrat population;
- e. landscape fragmentation and degradation, causing the loss of ecosystems that previously supported wildlife and vegetation;
- f. reduction in territory available for traditional uses such as hunting due to the footprints of oil sands projects and supporting infrastructure;
- g. loss of wetlands and muskeg, which act as natural filters and keep waterways free of contaminants;
- h. industrial noise and light that interfere with hunting and the sense of solitude and connection to the lands and waters; and
- i. increased harvesting pressures due to the increase of non-Indigenous harvesters in the area.

*Project-Specific Effects*

29. In addition to the systemic effects of widespread industrial development in the lower Athabasca region's ecosystems, these projects have also had project-specific effects. The construction, operation, closure, and post-closure stages of each project destroy and/or disturb environmental features in and around the project area, including past and current habitat areas necessary to support harvestable resources. Each additional project diminishes the utility and health of the lands and waters that support the resources upon which the Nations rely. The Nations have expressed their concerns with habitat destruction and fragmentation caused by individual projects to Alberta and Canada in many different forums. These effects are felt not only on the footprint of the particular projects under consideration but also on the lands, waters, habitats, and wildlife populations in the larger region around each project.

*Loss of Heritage, Identity, and Traditional Knowledge*

30. The loss of resources and the degradation of the environment caused by oil sands developments have also negatively impacted the Nations' ability to maintain their culture and pass it down to future generations. Pollution, loss of confidence in resources, loss of access to important parts of their territories, and increased non-Indigenous harvesting pressure have meant that the Nations' members spend less time on the land, and less time teaching future generations how to exercise their Treaty rights and maintain their traditional practices.

31. Moreover, the Nations' connection to the land is holistic and is an integral part of their culture and identity. The loss of animals, plants, and ecosystems has threatened the

integral connections between the natural world and the Indigenous people who live in relationship with it. This has a profoundly negative impact on cultural survival. The degradation and diminishment of the Nations' lands and resources has threatened their ability to survive as distinct people with a way of life that includes medicinal, spiritual, and cultural practices.

#### *Cumulative Effects of Development*

32. The Nations are concerned that the massive and accelerating development in their traditional territories has driven their lands to a state of crisis. Due to industrial development, much of their traditional land base no longer supports the exercise of their rights. Oil sands development in particular presents a threat to the Nations' ability to maintain the exercise of their rights.

#### **Alberta's Land Use Planning in the Lower Athabasca Region**

33. Development of the Alberta oil sands proceeded rapidly and in the absence of a comprehensive land management plan. This situation was of profound concern to the Nations, who experienced the systematic degradation of their territories without a sense of how development would be managed or controlled to protect their Treaty rights.

34. In the fall of 2012, the Alberta government approved the Lower Athabasca Regional Plan (“LARP”), pursuant to the *Alberta Land Stewardship Act*, SA 2009, c A-26.8.

LARP is the regional land use plan for the oil sands region.

35. However, LARP contains a number of deficiencies with respect to addressing impacts to Treaty rights, including the following:

- a. LARP was developed without meaningful consultation with First Nations;
- b. LARP contains no express protections for Treaty rights, Indigenous navigation, fish and fish habitat, and species at risk, such as wood bison and caribou.
- c. Alberta finalized LARP without working with Indigenous nations to develop a knowledge base of what resources and conditions are needed for them to sustain their livelihood and protect their rights and culture.
- d. LARP fails to recognize that the existing levels of development in some areas in the region are already adversely affecting the Nations’ Treaty rights.
- e. LARP does not provide any guidance to decision makers to avoid further adversely affecting the Nations’ Treaty rights.
- f. LARP prioritizes a range of land uses over the practice of Treaty rights for the majority of lands within the Lower Athabasca Region, and it appears to categorize Treaty rights as recreational activities.

*Review Panel Report on LARP*

36. In light of these deficiencies, in 2013, Mikisew Cree First Nation and other First Nations filed requests for a review of LARP pursuant to section 19.2 of the *Alberta Land Stewardship Act*. The resulting Review Panel Report concluded that LARP was adversely affecting Indigenous interests.

37. The Review Panel Report also described other deficiencies with LARP, such as its inequitable approach to cumulative effects management, flawed environmental monitoring program, and lack of measures to protect Treaty rights in the Lower Athabasca region.

38. Alberta has not implemented the recommendations made in the Review Panel Report or otherwise addressed its findings. Representatives of Alberta Environment and Parks have expressed skepticism towards the findings of the Review Panel and have been reluctant to implement the recommendations.

**Alberta's Development of the Consultation Regime**

*2008 – 2013: Energy Resources Conservation Board*

39. Prior to and throughout the expansion of oil sands development in the Athabasca Region, the Nations have repeatedly emphasized Alberta's duty to consult with them with respect to these operations.

40. Following the Supreme Court's decision in *Mikisew*, the Alberta government established the Energy Resources Conservation Board (the "ERCB") in 2008. The ERCB was a regulator that issued approvals for energy projects in the province.

Despite First Nations repeatedly raising consultation issues at the ERCB, and despite the ERCB having jurisdiction to consider these issues, the ERCB frequently declined to consider the adequacy of Crown consultation and constitutional questions involving First Nations.

*2013 to present: Alberta Energy Regulator and Aboriginal Consultation Office*

41. In 2013, the ERCB was abolished and replaced with the Alberta Energy Regulator (“AER”). Around the same time, Alberta established the Aboriginal Consultation Office (“ACO”).

42. The *Responsible Energy Development Act*, SA 2012, c R-17.3 established the AER and defined its mandate and authority with respect to energy resource activities. The AER has jurisdiction under several enactments, including the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, to assess the effects and benefits of proposed oil sands projects and issue project approvals. In many cases, the AER acts as a final decision maker with respect to projects and applications; however, in certain cases, AER decisions require the consent of the Lieutenant Governor in Council.

43. In both cases, it is the AER, not the ACO, that is responsible for developing and issuing conditions that attach to the relevant project permits or approvals (“Project Conditions”).

44. Despite having primary responsibility for regulating oil sands development, the AER is restricted from managing consultation with Indigenous peoples potentially affected by proposed projects or assessing the adequacy of that consultation. Instead, the

Government of Alberta attempts to manage consultation and assess the adequacy of consultation through the ACO.

45. The ACO was established in 2013 under the Government of Alberta's Policy on Consultation with First Nations on Land and Resource Management, 2013. It is responsible for managing the Consultation Regime, including:

- a. determining if consultation is required;
- b. overseeing proponent consultation;
- c. assessing the adequacy of consultation activities by proponents in relation to Alberta's written policies and guidelines relating to consultation; and
- d. providing advice to the AER on whether actions may be required to address potential adverse impacts on Aboriginal and Treaty rights and traditional uses.

46. The ACO manages the Consultation Regime by way of a number of written policies and guidelines, including the following:

- a. Government of Alberta's Policy on Consultation with First Nations on Land and Resource Management, 2013; (updated April 2020) attached as Schedule "A":
- b. Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management, 2014;



- c. Government of Alberta's Proponent Guide to First Nations and Metis Settlements Consultation Procedures, 2019;
- d. Joint Operating Procedures for First Nations Consultation on Energy Resource Activities, October 31, 2018; and
- e. Energy Ministerial Order 105/2014 and Environment and Sustainable Resource Development Ministerial Order 53/2014.

47. The policies and guidelines that make up the Consultation Regime are summarized in the Government of Alberta's Consultation Guide for First Nations, Metis Settlements and Credibly Asserted Metis Communities, June 2022 (the "Consultation Guide"), attached as Schedule "B". The ACO also has a number of unwritten practices that govern the Consultation Regime-, many of which have been summarized in the Consultation Guide.

48. The ACO reports to the Minister of Indigenous Relations. It has no statutory authority with respect to consultation or accommodation.

49. The project approval process (managed by the AER) and the Consultation Regime (managed by the ACO) operate separately, except as set out in the Joint Operating Procedures and Ministerial Order. This often requires the Nations to engage in a consultation process on the potential adverse effects of a proposed project that ends before the hearing and evaluation process carried out by the AER.

## **Deficiencies with Alberta's Consultation Regime**

50. The Consultation Regime created by Alberta is inadequate to discharge the Crown's duty to consult for a number of reasons, as detailed below.

### *Consultation Regime Limits Consultation to Site-Specific Impacts*

51. In policy and/or practice, Alberta limits consultation with First Nations to effects that the ACO characterizes as "site-specific" – that is, adverse effects to physical cultural heritage, traditional resources or treaty practices that are confined within the footprint of a particular activity (such as a core hole from exploratory drilling) and cannot be found outside of a project footprint.

52. The ACO maintains that issues identified by First Nations that are not site-specific fall outside of the scope of the ACO's consultation policy. The result is that the ACO does not consult with the Nations about non-site-specific issues relating to a proposed decision, and it has not developed any mechanism or system for considering, addressing, or accommodating those issues prior to providing advice to the AER or prior to an AER decision. In practice this results in most of the Nations' concerns being considered out of scope.

### *Consultation Regime does not Consider or Address Cumulative Effects*

53. Alberta does not consider information about existing levels of adverse cumulative effects of development on Treaty rights and culture to be relevant or within the scope of the Consultation Regime. The ACO applies the Consultation Regime in a way that

only considers new incremental effects (to the extent any are site-specific) without considering how those effects interact with existing effects.

54. Further, the ACO takes the position that cumulative effects issues have already been addressed under LARP, despite the fact that LARP does not expressly consider impacts to Treaty rights. The result is that the Consultation Regime prevents Alberta from considering information and issues that the ACO determines are related to the cumulative effects of proposed decisions.

*Consultation Regime Precludes Effective Accommodation*

55. Alberta's exclusive reliance on the ACO to mitigate or accommodate potential adverse effects of project applications on the Treaty rights of the Nations is fundamentally flawed for reasons including the following:

- a. Despite being the sole entity responsible for consultation on project applications under the Consultation Regime, the ACO has no authority to make commitments relating to accommodation measures on behalf of the Government of Alberta or to require proponents to make project changes or commitments.
- b. Alberta has limited the possible outcomes of consultation under the Consultation Regime to Project Conditions developed and imposed by the AER. However, the AER is precluded from requiring the Government of Alberta to issue mitigation or accommodation measures of any kind.

- c. The Consultation Regime ends prior to the Nations or the ACO knowing what Project Conditions the AER will attach to the approval, and whether and how those Project Conditions will address First Nations' concerns. There are no opportunities in the Consultation Regime to remedy any shortcomings.

56. In these ways, the Consultation Regime prevents a range of potential accommodation outcomes from being discussed with the Nations prior to decision-making on project applications and precludes Alberta from making accommodation commitments, where required.

*The ACO/AER Relationship Undermines Consultation*

57. The coordination of the ACO/AER processes undermines effective consultation, including for the following reasons:

- a. The fact that consultation is conducted largely separately from the AER's decision-making process means that the ACO undertakes consultation without access to the more specialized tools and mechanisms available to the AER for assessing and understanding project impacts.
- b. To the extent that the AER considers findings and recommendations from the ACO derived through the Consultation Regime, the AER is statutorily prevented from allowing the Nations to inquire about or test those recommendations prior to the AER making its decisions.

- c. Where the AER's authority is conditional on a decision by the Lieutenant Governor in Council, the Consultation Regime excludes consultation on the Lieutenant Governor in Council's decision.

### *Ineffective Judicial Supervision*

58. The only means of supervising the duty to consult in Alberta is by way of a challenge to an ACO decision in Alberta Queen's Bench. However, the Alberta Queen's Bench has no jurisdiction to give relief against the AER or any permit that may be issued by the AER, as the legislation prohibits this through a privative clause. Any challenge to an AER decision must be pursued by way of appeal to the Alberta Court of Appeal (with permission), but because the AER is specifically prohibited from considering the adequacy of Crown consultation, this is likely not a matter that can be considered by the Court of Appeal. As a result, First Nations who seek to challenge the adequacy of consultation that takes place before an authorization is issued have no judicial route to pursue this issue.

### **Nations have Raised Concerns with Consultation Regime**

59. The Nations have consistently raised concerns about the failure of this process to address the adverse effects of industrial projects on their Treaty rights, and have tried to work with the Alberta government to revise the regime so that it adequately discharges the Crown's duty to consult.

60. For instance, in late 2017, the Nations began working with Alberta Indigenous Relations on potential revisions to Alberta's consultation policy. At the same time, the

Nations began working with Alberta Environment and Parks on potential revisions to the LARP.

61. In 2019, Alberta Indigenous Relations advised that it would not be completing the renewal of the consultation policy. Alberta Environment and Parks have not made any revisions to LARP.

### **Legal Basis for Claim**

62. The Consultation Regime is inconsistent with section 35 of the *Constitution Act*, 1982, which recognizes and affirms the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada.

63. Treaty 8 engages the honour of the Crown and gives rise to a duty to consult with First Nations on actions that may potentially impact their Treaty rights.

64. The Crown's ongoing development of the Athabasca region, including the oil sands, gives rise to a duty to consult. This duty can be discharged on a project-by-project basis, or by creating a process. The Consultation Regime established by the Crown to meet its duty to consult must be reasonable and adequate to discharge the duty.

65. Alberta's Consultation Regime is both unreasonable and fundamentally inadequate to discharge the Crown's duty. It breaches the duty to consult and fails to uphold the honour of the Crown in the following ways:

- a. It excludes the consideration of the full range of effects on Treaty rights by focusing exclusively on the project-specific effects of each project, to the exclusion of other relevant effects.

- b. It excludes the consideration of relevant contextual factors, including the cumulative effects of development projects on Treaty rights.
- c. It unreasonably limits accommodation.
- d. It manages the ACO/AER processes in a way that undermines consultation.

66. Alberta's consultation regime is also contrary to section 96 of the *Constitution Act*, 1867, which provides the courts with inherent jurisdiction to hear matters involving the constitutionality of the laws of Canada.

67. The honour of the Crown and the duty to consult are constitutional limits on the Crown's power, and First Nations are entitled to effective judicial supervision of these limits under section 96.

68. Alberta has improperly created a process that is effectively immunized from judicial review for constitutional compliance. This process operates as follows:

- a. Consultation with First Nations is statutorily removed from the AER's jurisdiction, despite the fact that it is the regulatory body with the sole authority to approve projects;
- b. Consultation occurs through the ACO, a body that does not have the authority to approve projects;
- c. First Nations cannot challenge the AER's decision to approve a project without adequate consultation, as the legislation prohibits this through a privative clause;

- d. The AER's decision to approve a project can only be appealed to the Court of Appeal on a question of law or jurisdiction; and
- e. An appeal of the ACO's decision that consultation was adequate can be made to the Court of Queen's Bench, but this court does not have the jurisdiction to overturn the AER's approval of the project. First Nations are therefore left without a remedy that protects their Treaty rights.

### **Remedies Sought**

69. The Nations seek the following declarations:

- a. an order that Alberta's Consultation Regime is inconsistent with section 35 of the *Constitution Act*, 1982 and section 96 of the *Constitution Act*, 1867;
- b. an order that Alberta's Consultation Regime is inadequate to discharge its duty to consult with First Nations;
- c. an order that Alberta is required to consult with First Nations in a manner that provides for proper judicial supervision of the duty to consult;
- d. an order for costs of and incidental to this action; and
- e. such further and other relief as this Court may deem appropriate and just.



### **NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your Statement of Defence or a Demand for Notice on the plaintiff's(s') address for service.

### **WARNING**

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

# **The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013**

## **Introduction**

The Government of Alberta ("Alberta") is committed to strengthening relationships with First Nations through the continued recognition of the Treaty relationship between First Nations and the Crown. Alberta's legal duty to consult and accommodate is grounded in the honour of the Crown. Under this Policy, Alberta will seek to reconcile First Nations' constitutionally protected rights with other societal interests with a view to substantially address adverse impacts on Treaty rights and traditional uses through a meaningful consultation process. Additionally, the provincial government strives to ensure First Nations have the chance to benefit from economic development opportunities and to enjoy Alberta's prosperity.

Alberta's management and development of provincial Crown lands and natural resources is subject to its legal and constitutional duty to consult First Nations and, where appropriate, accommodate their interests when Crown decisions may adversely impact their continued exercise of constitutionally protected Treaty rights. In this document, "decisions relating to land and natural resource management" refers to provincial Crown decisions that directly involve the management of land, water, air, forestry, or fish and wildlife.

## ***Treaty Rights Context***

Alberta respects that First Nations' Treaty rights are protected by section 35 of the *Constitution Act, 1982*, and understands the important role these rights have in maintaining First Nations' cultures and traditions. Alberta recognizes that impacting Treaty rights to hunt, fish, and trap for food may trigger a duty to consult. These rights may be practised on unoccupied Crown lands and other lands to which First Nations members have a right of access for such purposes.

## ***Traditional Uses***

Alberta recognizes that First Nations may engage in customs or practices on the land that are not existing section 35 Treaty rights but are nonetheless important to First Nations ("traditional uses"). Traditional uses of land include burial grounds, gathering sites, and historical or ceremonial locations and do not refer to proprietary interests in the land. First Nations' traditional use information can help greater inform Crown consultation and serve to avoid or mitigate adverse impacts. Alberta will consult with First Nations when traditional uses have the potential to be adversely impacted by land and natural resource management decisions.

## ***Duty to Consult***

Consultation is a process intended to understand and consider the potential adverse impacts of anticipated Crown decisions on First Nations' Treaty rights, with a view to substantially address them. Alberta recognizes that a duty to consult exists when the following three factors are all present:

1. Alberta has real or constructive knowledge of a right;
2. Alberta's decision relating to land and natural resource management is contemplated; and
3. Alberta's decision has the potential to adversely impact the continued exercise of a Treaty right.

### ***Accommodation***

Consultation may reveal a Crown duty to accommodate First Nations. The primary goal of accommodation will be to avoid, minimize, or mitigate adverse impacts of a Crown decision on Treaty rights or traditional uses.

Accommodation, where appropriate, will be reflected in the Crown's decision.

### **Policy Response**

Through *The Government of Alberta's First Nations Consultation Policy on Land and Natural Resource Management, 2013* ("Policy"), Alberta will seek to reconcile First Nations' Treaty rights and First Nations' traditional uses with Alberta's mandate to manage provincial Crown lands and resources.

Alberta will consult with First Nations when Crown land and natural resource management decisions may adversely impact Treaty rights protected under the *Constitution Act, 1982*, as well as traditional uses.

In conjunction with the changes to the regulatory regime represented by the Integrated Resource Management System and Regulatory Enhancement Project, Alberta intends to increase its emphasis on strategic consultation. Strategic consultation will be defined in the operational guidelines.

### **Policy Application**

#### ***Provincial Crown Lands***

This *Policy* applies to strategic and project-specific Crown decisions that may adversely impact the continued exercise of Treaty rights and traditional uses. Specifically, the *Policy* applies to Crown decisions in relation to land and natural resource management with the potential to adversely impact

- Treaty rights on provincial Crown lands, as described above; or
- Traditional uses on provincial Crown lands, as described above.

Alberta may enter into specific consultation process agreements with individual First Nations to further clarify the consultation process. A formal process to outline the creation of consultation process agreements will be developed after the implementation of this *Policy*. Consultation process agreements will be consistent with this *Policy*.

### ***Matters Subject to this Policy***

Crown decisions that Alberta will assess for potential consultation will include:

- Provincial regulations, policies, and plans that may adversely impact First Nations Treaty rights and traditional uses; and
- Decisions on projects relating to oil and gas, forestry, and other forms of natural resource development that may adversely impact First Nations Treaty rights and traditional uses.

### ***Matters Not Subject to this Policy***

Crown decisions that Alberta will *not* assess for potential consultation will include those relating to:

- Leasing and licensing of rights to Crown minerals;
- Accessing private lands to which First Nations do not have a right of access for exercising their Treaty rights and traditional uses;
- Crown decisions on policy matters that are unrelated to land and natural resource management; and
- Emergency situations that may impact public safety and security.

The *Policy* does not preclude other Crown processes that may engage First Nations and lead to government-to-government agreements or resolutions. That engagement may occur between First Nations and Crown officials and elected leadership.

### ***Federal Crown Lands***

In some cases, the *Policy* may also apply to provincial Crown decisions relating to or impacting lands other than provincial Crown lands. Alberta recognizes that First Nations members may also be exercising Treaty rights and traditional uses on federal Crown lands (including Indian reserves). Therefore, consultation with First Nations may be required for provincial Crown decisions with the potential to adversely impact the exercise of Treaty rights and traditional uses on federal Crown lands.

### ***Guiding Principles***

In November 2005, the Supreme Court of Canada released its decision in *Mikisew Cree First Nation v. Canada*, addressing the Crown's duty to consult First Nations in Treaty areas. From this decision and others, a number of principles have been derived to help guide consultations in a respectful and meaningful manner. Alberta believes that the following principles will result in meaningful consultation.

- Alberta will consult with honour, respect, and good faith, with a view to reconciling First Nations' Treaty rights and traditional uses within its mandate to manage provincial Crown lands and resources for the benefit of all Albertans.
- Consultation requires all parties to demonstrate good faith, reasonableness, openness, and responsiveness.

## Schedule "A"

- Consultation should be carried out before Crown decisions on land and natural resource management are made. Where appropriate, consultation will be done in stages.
- Alberta and project proponents will disclose clear and relevant information regarding the proposed development, decision, or project to First Nations and allow reasonable time for review.
- The level of consultation depends on the nature, scope, magnitude, and duration of the potential adverse impacts on the Treaty rights and traditional uses of the affected First Nation.
- Alberta will inform First Nations and project proponents of known potential adverse impacts and the degree of consultation to be undertaken.
- Alberta will solicit, listen carefully to, and seriously consider First Nations' concerns with a view to substantially address potential adverse impacts on Treaty rights and traditional uses.
- Proponents must act within applicable statutory and regulatory timelines and in accordance with *The Government of Alberta's Corporate Guidelines for First Nations Consultation Activities*.
- First Nations have a reciprocal onus to respond with any concerns specific to the anticipated Crown decision in a timely and reasonable manner and to work with Alberta and project proponents on resolving issues as they arise during consultation.
- The Crown's duty to consult does not give First Nations or project proponents a veto over Crown decisions, nor is the consent of First Nations or project proponents required as part of Alberta's consultation process.
- Accommodation will be assessed on a case-by-case basis and applied when appropriate. The Crown is ultimately responsible for accommodation, but project proponents may have a role in accommodating First Nations.

## Elements of Consultation

### *Content of the Duty*

The content of the duty to consult and the appropriate level of consultation to be conducted are based on specific factors. Because the degree of consultation required varies with specific circumstances, Alberta's approach to meeting the duty to consult requires flexibility and responsiveness.

Alberta has developed draft *Government of Alberta's Corporate Guidelines for First Nations Consultation Activities* ("Corporate Guidelines"), which include a draft consultation matrix that classifies activities according to their relative potential impact on Treaty rights and traditional uses. Operational matrices will be created to identify when (i.e., in what cases) and how much (i.e., the degree of) consultation is required. The matrices will also identify timelines within the consultation process.

### ***Scope of Consultation***

The scope of consultation will be defined by the project or initiative being proposed and its potential adverse impacts on the continued exercise of Treaty rights and traditional uses. For projects or initiatives to which the operational matrices would apply, Alberta will use the operational matrices to make its initial determination of the scope of consultation.

### ***Depth of Consultation***

Alberta recognizes that more consultation may be required where the potential adverse impact on Treaty rights and traditional uses is greater. Factors that could influence the depth of consultation include:

- The geographic extent of the anticipated Crown decision's impact on the land or resources; and
- The degree to which First Nations have used the affected lands and resources for the exercise of Treaty rights and traditional uses and continue to do so today.

### ***Consultation Office***

Alberta will also establish a consultation office that reports to the Minister of Aboriginal Relations. In satisfying Alberta's duty to consult, this office will manage all aspects of consultation, including:

- Policy development and implementation;
- Pre-consultation assessment;
- Management and execution of the consultation process;
- Assessment of consultation adequacy;
- Consultation capacity-building initiatives with First Nations; and
- Measures to protect the transparency and integrity of the consultation process.

The consultation office will carry out these activities in a manner described in this *Policy* and the draft *Corporate Guidelines*.

### ***Direct Consultation by the Crown***

Alberta will consult directly in the following situations:

- When Alberta undertakes strategic initiatives with the potential to adversely impact Treaty rights and traditional uses;
- When Alberta acts as a project proponent; and
- When a project requires Level 3 consultation as set out in the draft *Corporate Guidelines*.

Direct Crown consultation will ordinarily be carried out by the consultation office with support from appropriate provincial departments. Consultation for certain strategic initiatives may be led by provincial departments with support from the consultation office. For Level 3 consultation, proponents may be required to participate in and lead various aspects of direct consultation.

### Delegation

Within this *Policy*, a proponent is defined as “an entity or person who is either applying for or seeking a Crown decision related to land and natural resource management.” Alberta recognizes that the legal duty to consult rests with the Crown. However, when consultation relates to specific projects, the law allows the Crown to delegate procedural aspects of consultation to project proponents.

Generally, the consultation office will delegate procedural aspects of consultation for projects where the preliminary assessment indicates that the scope of consultation is limited (refer to the operational matrices within the draft *Corporate Guidelines*). When delegating aspects of consultation, the consultation office will assess consultation adequacy. The level of consultation that the consultation office requires of proponents depends on the extent of the potential adverse impacts on the Treaty rights and traditional uses and the scope and depth of the proponents’ anticipated activities.

When it delegates procedural aspects of consultation, the consultation office will remain engaged in the consultation process. In general, procedures that may be delegated to project proponents include:

- Providing First Nations with plain language information on project scope and location;
- Identifying potential short- and long-term adverse project impacts;
- Meeting with First Nations to discuss their concerns;
- Developing potential mitigation strategies to minimize or avoid adverse impacts;
- Implementing mitigation measures, as directed; and
- Summarizing, for both Alberta and First Nations, consultation efforts including an explanation, when required, of how specific First Nations’ concerns regarding adverse impacts have been addressed.

Despite the above, the consultation office will direct and manage all aspects of consultation for those projects requiring Level 3 consultation with First Nations as set out in the draft *Corporate Guidelines*. In cases involving proponents, the consultation office will guide the proponents in how to support the consultation.

Proponents will summarize, for both Alberta and the appropriate First Nations, their consultation efforts in a way that clearly demonstrates how mitigation strategies will address impacts to the Treaty rights and traditional uses. Using this information, the consultation office will assess the adequacy of consultation and provide direction to proponents regarding mitigation.

Alberta acknowledges that some First Nations have developed their own consultation protocols. Alberta encourages proponents to be aware of these protocols, but does not require proponents to comply with them while consulting with First Nations. In cases of conflict between a First Nation's consultation protocol and this *Policy* or the *Corporate Guidelines*, the *Policy* and *Corporate Guidelines* will prevail.

As stated above, the consultation office will manage delegated aspects of consultation. Forthcoming operational guidelines will set out minimum standards for delegated consultation activities, specific timelines, and a range of Crown-management activities. This clarification of the Crown's role will help ensure delegated consultation activities are meaningful and consistent with the *Policy*.

## **Roles and Responsibilities in Delegated Consultation**

### ***Government of Alberta***

#### **Conducting a Pre-Consultation Assessment**

Pre-consultation assessments will guide the consultation office in determining if consultation is needed in the circumstances and, if so, the scope and extent of the consultation required. The consultation office will complete this initial assessment as early as possible in the planning phase of an anticipated Crown decision.

#### **Determining Notification Requirements**

The consultation office is responsible for determining which projects require consultation and which First Nations need to be notified and for directing proponents to provide reasonable time for First Nations to respond with their specific concerns about the potential adverse impacts.

#### **Considering the Response and Determining Adequacy**

The consultation office will determine whether delegated activities were performed adequately by considering what efforts were made to mitigate or substantially address potential adverse impacts on Treaty rights and traditional uses. This assessment of adequacy will be made after consultation is completed and before the Crown decision is made. If the consultation office finds performance to be inadequate, the consultation office may direct the proponent to take further steps to achieve adequacy.

#### **Accommodating First Nations**

While accommodation is the responsibility of the Crown, proponents will have a role in identifying and implementing potential mitigation measures, where appropriate.

#### **Reporting the Decision and Following Up**

In a manner consistent with the draft *Corporate Guidelines*, Alberta may report its decision in writing to the affected First Nations. When procedural aspects of consultation are delegated, it



is expected that proponents will identify adverse impacts on Treaty rights and traditional uses to Alberta, and how they plan to mitigate those impacts.

## ***First Nations***

### **Timely Information Sharing and Communication**

First Nations have a reciprocal obligation to be timely in responding to the Crown's efforts to consult and in providing Alberta or proponents with specific information on how the project or initiative may adversely impact the exercise of their Treaty rights and traditional uses. The obligation also requires First Nations to report consultation concerns to Alberta as soon as possible. First Nations are invited to work with Alberta to identify the geographic areas on which they have historically exercised their Treaty rights and traditional uses and continue to do so.

### **Providing a Single Point of Contact**

Consultation will occur on a government-to-government basis. Alberta recognizes that consultation will require the participation of different levels of officials, employees, or agents of Alberta and First Nations, depending on the nature of the anticipated Crown decision and the organizational structure of the particular government. For clarity and efficiency, Alberta requires First Nations to identify a single point of contact to serve as the First Nation's authorized consultation representative that Alberta or the proponent should contact. A First Nation's Chief and Council, ordinarily recognized by Canada, may serve as this representative.

## ***Project Proponents***

### **Carrying Out Delegated Activities**

Project proponents that have procedural aspects delegated to them by Alberta's consultation office may include industry, municipal governments, or any other organization requiring Crown approval of a project. The consultation office will assess the adequacy of the consultation. As directed by Alberta, proponents will notify potentially affected First Nations early in project planning to allow reasonable time for First Nations' concerns to be considered. Proponents will discuss project-specific issues that arise with First Nations as well as strategies to address those concerns.

## **Consultation Timelines**

The assessment of consultation adequacy will generally occur within applicable statutory and regulatory timelines and in accordance with the *Corporate Guidelines*.

## **Coordinating Consultation**

Consultation may involve coordination across jurisdictions, departments, agencies, and processes. Alberta will continue to work on enhancing cross-government working relationships, in order to

strengthen this coordination. Alberta will also develop coordination processes with other provincial and territorial governments, Canada, or agencies of government, with a view to increasing information-sharing and cross-jurisdictional collaboration.

### ***Alberta Energy Regulator***

Alberta has established the Alberta Energy Regulator ("the Regulator"). This Regulator has no jurisdiction with respect to assessing the adequacy of Crown consultation-associated First Nations' Treaty rights as recognized and affirmed under Part II of the *Constitution Act, 1982*. The consultation office will work closely with the Regulator to ensure that any needed consultation occurs for decisions on energy project applications within the Regulator's mandate.

### **Consultation Capacity**

Alberta will develop a program to increase capacity funding to First Nations and to fund that program through a levy on industry. The consultation office will be responsible for managing and distributing this funding to First Nations. Alberta will solely fund government-led consultation for Crown projects.

### **Transparency of Process**

The integrity of the consultation process depends on all parties knowing clearly at each step of a consultation what the costs of that consultation will be.

The levy and its resulting funding contribute to this transparency by increasing consultation capacity of First Nations. Alberta supports general community economic development initiatives which proceed outside this *Policy*, including current discussions with First Nations on an Economic Opportunities Initiative. The option of entering into agreements about project impact benefit agreements is open for exploration between First Nations and proponents.

Measures to maintain integrity of the consultation process will be contained in guidelines developed to support this *Policy*.

### **Corporate and Operational Guidelines**

To provide all parties to the consultation process with increased clarity and direction, and to ensure that consultation is meaningful, Alberta will adopt *Corporate Guidelines* and operational guidelines that will:

- Develop a range of Crown-monitoring activities for delegated consultation;
- Clarify specific information required from First Nations on projects and initiatives;
- Coordinate consultation by working with Canada and provincial governments;
- Reflect the needs of proponents and First Nations as well as specific ministry mandates and regulatory processes; and

- Guide the development of consultation matrices to identify triggers, project scope, and depth of consultation, and address the range of projects and initiatives and their potential to impact Treaty rights and traditional uses.

## Review

It is important for all parties to continue to identify, discuss, and resolve issues related to First Nations consultation. Alberta will review this *Policy*, and all associated documentation, in separate engagement forums with First Nations, industry, and other stakeholders annually as mutually decided upon by the affected parties. The purpose of these forums will be to assess the performance, standards, and best practices of the consultation process. This will ensure that the *Policy* reflects developments in First Nations consultations and responds to the future needs of First Nations, industry and other stakeholders. Alberta reserves the right to amend this *Policy* as appropriate.

## Conclusion

This *Policy* replaces *The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* (adopted May 16, 2005) and comes into force upon a date to be specified.

Alberta's previous *First Nations Consultation Guidelines on Land Management and Resource Development* (updated November 14, 2007) outlined procedures to help the Crown implement its duty to consult. The *Policy* and *Corporate Guidelines* support these existing guidelines, which will remain in effect, with necessary changes, until forthcoming operational guidelines under the *Policy* come into effect. Many of the matters outlined in the *Policy*, including the consultation office, operational matrices, the consultation levy and consultation process agreements, will require further engagement and discussion with First Nations, industry, and other stakeholders.

In the event of a discrepancy between the *Policy* and the existing guidelines, the *Policy* will prevail. Where consultation on a project or initiative has commenced prior to this *Policy* coming into effect, consultation will be completed under the previous policy and guidelines.

# The Government of Alberta's Consultation Guide

For First Nations, Metis Settlements and  
Credibly Asserted Métis Communities



## Schedule "B"

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Indigenous Relations, Government of Alberta

The Government of Alberta's Consultation Guide for First Nations, Metis Settlements and Credibly Asserted Métis Communities

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## About this document

*The Government of Alberta's Consultation Guide for First Nations, Metis Settlements and Credibly Asserted Métis Communities* (Guide) provides information on Alberta's consultation and regulatory processes for land and natural resource management decisions relating to Indigenous communities. The Guide clarifies roles and responsibilities, improves transparency and enhances capacity for participation in Alberta's consultation process. The Aboriginal Consultation Office (ACO) provides current and relevant information to all parties involved in the consultation process. The Guide supplements Alberta's consultation policies, guidelines and proponent guide. The Guide is an evolving document and if there is any inconsistency or conflict between it and the consultation policies, guidelines or proponent guide, the latter shall prevail. The information in the Guide is based on consideration of the feedback from Indigenous communities and others regarding Alberta's consultation process.

The Guide provides an easily accessible summary of the consultation-related information contained in:

- [\*The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013.\*](#)

- [\*The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management, July 28, 2014.\*](#)
- [\*The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015.\*](#)
- [\*The Government of Alberta's Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management, 2016.\*](#)
- [\*The Government of Alberta's Proponent Guide to First Nations and Metis Settlements Consultation Procedures, 2019.\*](#)

### Glossary of Terms

For easy reference, definitions for words that might be unfamiliar are located at the end of this document.

Note: First Nations, Metis Settlements and Credibly Asserted Métis Communities (CAMCs) hereafter collectively referred to as Indigenous communities and singularly referred to as Indigenous community for the purpose of the Guide.

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## Acronyms

ACO	Aboriginal Consultation Office	GoA	Government of Alberta
ACO DS	Aboriginal Consultation Office Digital Service	HRA	Historical Resources Act
AER	Alberta Energy Regulator	HRV	Historical Resource Value
AEP	Alberta Environment and Parks	IR	Indigenous Relations
ATS	Alberta Township Survey	LNO	Letter of non-objection
CA	Consultation Advisor	MMA	Mines and Minerals Act
CAMC	Credibly Asserted Métis Communities	PLA	Public Lands Act
EIA	Environmental Impact Assessment	PLAR	Public Lands Administration Regulation
EPEA	Environmental Protection and Enhancement Act	REDA	Responsible Energy Development Act
FA	Forests Act	ROC	Record of Consultation
FNC	File Number for Consultation	WA	Water Act

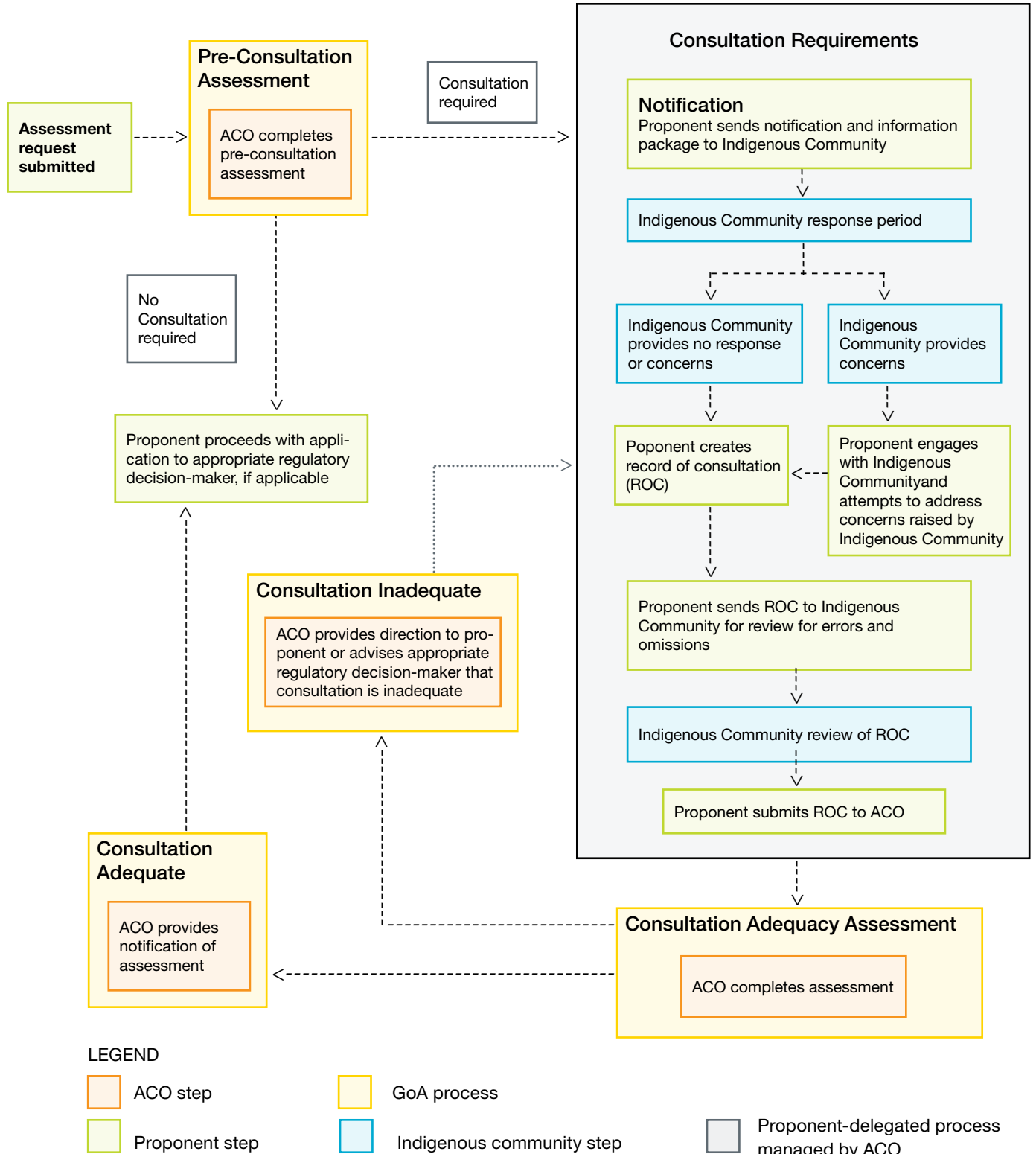
## Introduction

Alberta's management and development of provincial Crown lands and natural resources is subject to the Crown's duty to consult First Nations and its consultation obligations with Metis Settlements and CAMCs. When Crown decisions may adversely impact First Nations Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both, Alberta will consult and, where appropriate, accommodate the First Nations, Metis Settlements and CAMCs. Accommodation, where appropriate, will be reflected in the Crown's decision.

Consultation is a process intended to help parties understand and consider the potential adverse impacts of a proposed project or activity on First Nations Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both with a view to substantially address them.



## A brief overview of the consultation process



## Alberta's Consultation Policies: An Overview



According to the Government of Alberta's consultation policies,<sup>1</sup> Alberta will consult with a First Nation, Metis Settlement and CAMC when the following three factors are all present:

1. The GoA has real or constructive knowledge of a First Nation Treaty right or traditional use, a Metis Settlement/CAMC members' harvesting or traditional use activities or both;
2. The GoA is contemplating a decision relating to land and natural resource management; and,
3. The GoA's decision has the potential to adversely impact the continued exercise of a First Nation Treaty right or traditional use, a Metis Settlement/CAMC members' harvesting or traditional use activities, or both.

### Consultation with First Nations

Alberta respects that First Nations' Treaty rights are protected by section 35 of the *Constitution Act, 1982* and understands the importance of these rights in maintaining First Nations' cultures and traditions. Through *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, Alberta seeks to reconcile First Nations' Treaty rights and traditional uses with Alberta's mandate to manage provincial Crown lands and natural resources for the benefit of all Albertans.

<sup>1</sup> *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013 and The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*

### Consultation with Metis Settlements

Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the "existing aboriginal and treaty rights of the aboriginal peoples of Canada." Section 35(2) defines the "aboriginal peoples of Canada" as including "the Indian, Inuit and Métis peoples of Canada." Métis communities in this province do not hold Treaty rights, but may hold Aboriginal rights.

Alberta acknowledges that some Metis Settlement members may be members of a Métis community holding Aboriginal rights, and that such rights may trigger the Crown's duty to consult about potential adverse impacts. Through *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*, Alberta seeks to reconcile Metis Settlement members' harvesting and traditional use activities with Alberta's mandate to manage provincial Crown lands and natural resources for the benefit of all Albertans. In relation to the management and development of provincial Crown lands and natural resources, Alberta's policy is to consult and, where appropriate, accommodate Metis Settlements when Crown decisions may adversely impact Metis Settlement members' harvesting and traditional use activities.

### Consultation with Credibly Asserted Métis Communities (CAMCs)

Alberta will consult and, where appropriate, accommodate CAMCs on the management and development of provincial Crown lands and natural resources when Crown decisions may adversely impact their members' harvesting and traditional use activities.

Regarding consultation with CAMCs, Alberta uses the definition of "harvesting" and "traditional use activities" found in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*. Consultation with CAMCs also occurs operationally under that policy and *The Government of Alberta's Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management, 2016*.

The GoA takes a case-by-case approach when considering consultation with Métis organizations (other than the Métis Settlements) that represent Métis community members. To be considered for consultation, a Métis organization must first successfully demonstrate a credible assertion of Métis Aboriginal rights through Alberta's Métis Credible Assertion Process. If a credible assertion is established through this process, Alberta will consult the Métis organization when Crown land management and resource development decisions may have the potential to adversely impact credibly asserted Métis Aboriginal rights.

For more information, see [Alberta's Métis Credible Assertion Process and Criteria](https://open.alberta.ca/publications/metis-credible-assertion-process-and-criteria), 2020 at [open.alberta.ca/publications/metis-credible-assertion-process-and-criteria](https://open.alberta.ca/publications/metis-credible-assertion-process-and-criteria)

If there is any inconsistency or conflict between this Guide and Alberta's Métis Credible Assertion Process and Criteria, 2020, the latter shall prevail.



### **Alberta Indigenous Relations, Aboriginal Consultation Office (ACO) responsibilities**

Tasked with upholding the honour of the Crown, the ACO ensures that Indigenous communities have the opportunity to be meaningfully consulted and have their input considered on proposed land management and natural resource development activities that may adversely impact First Nation Treaty rights and traditional uses, Métis Settlement/CAMC members' harvesting and traditional use activities, or both on Alberta Crown lands. The ACO is responsible for the operational delivery of the GoA's policies and guidelines on consultation with Indigenous communities regarding land and natural resource management.

The ACO works to increase awareness and understanding of First Nation Treaty rights and traditional uses, Métis Settlement/CAMC members' harvesting and traditional use activities or both. In addition, the ACO ensures that project proponents act in good faith when the Crown delegates procedural aspects of consultation to them.

The ACO's management of all aspects of consultation includes evaluating consultation records and providing:

- Pre-consultation assessment advice or direction;
- Advice or direction during the consultation process;
- Advice or direction to Indigenous communities and project proponents if disputes arise during the consultation process;
- Staff to participate in consultation meetings with project proponents, Indigenous communities, as required; and,
- Consultation adequacy assessment advice or direction.



## Proponent delegated consultation

Alberta may delegate the procedural aspects of consultation to project proponents when consultation relates to specific projects. These procedural aspects may include notifying and engaging with Indigenous communities to discuss project-specific issues and possible mitigation. Fulfillment of these delegated procedural aspects should comply with Government of Alberta's consultation policies and guidelines.

In general, procedures potentially delegated to project proponents include:

- Meeting with Indigenous communities to discuss their concerns;
- Developing potential mitigation strategies to minimize or avoid adverse impacts;
- Implementing mitigation measures, as directed; and,
- Summarizing consultation efforts for both Government of Alberta and Indigenous communities. These efforts include an explanation, when required, of how specific Indigenous communities' concerns regarding adverse impacts have been addressed.

Proponents are required to summarize their consultation efforts in a way that clearly demonstrates how mitigation strategies will address impacts to First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. The ACO uses this summarized information to assess the adequacy of consultation and if proposed mitigation measures are reasonably responsive to the Indigenous communities' concerns.

## Recommendations and decision making

### Recommendations

Crown decision-makers include:

- Environment and Parks;
- Energy;
- Agriculture, Forestry and Rural Economic Development;
- Transportation;
- Infrastructure;
- Municipal Affairs;
- Culture and Status of Women.

The ACO's adequacy recommendation to Crown decision-makers is only a recommendation regarding the consultation (see Table 1), and not a decision on consultation adequacy. The decision on consultation adequacy is made by the Crown decision-maker to either approve or not approve the application, based on information at the time the decision is made. The ACO's recommendations to these Crown decision-makers includes completing pre-consultation and adequacy assessments as well as providing advice, as requested, during consultation.



### Decision-making

For energy applications requiring Alberta Energy Regulator (AER) approval, the ACO will decide whether consultation was adequate and provide that decision to the AER. Section 21 of the *Responsible Energy Development Act* (REDA) precludes the AER from determining the adequacy of consultation. The ACO manages the consultation process and determines the adequacy of consultation regarding AER-regulated projects. The ACO will send an ACO report to the First Nations, Metis Settlements and CAMCs involved in the consultation, the AER, and the project proponent. The ACO report informs the AER of the consultation adequacy decision and of any actions that may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both, identified during consultation. When such advice is offered, the ACO report will summarize the concerns that were raised during consultation that are relevant to the advice being offered.

The AER will not make a decision on an application until the ACO report is received unless the activity or application does not require consultation.

The AER has a responsibility to consider potential adverse impacts of energy applications on all persons who may be directly and adversely affected, including Indigenous communities.

The ACO's process is a part of, but not a substitute for, the AER discharging its statutory functions and responsibilities. For more information, see the [Joint Operating Procedures \(JOPs\)](#):

- *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities*, October 31, 2018 at <https://open.alberta.ca/publications/joint-operating-procedures-for-first-nations-consultation-on-energy-resource-activities>.
- *Joint Operating Procedures for Metis Settlement Consultation on Energy Resource*, October 31, 2018 at <https://open.alberta.ca/publications/joint-operating-procedures-for-metis-settlement-consultation-on-energy-resource-activities>.

If there is any inconsistency or conflict between this Guide and the JOPs, the latter shall prevail.

**Table 1. An example of ACO's role in relation to AER and Crown decision-makers.**

Authority	Examples of applicable legislation	Examples of projects that may require consultation	ACO's role in consultation adequacy
Alberta Energy Regulator	<i>Responsible Energy Development Act, Mines and Mineral Act (Part 8), Water Act, Environmental Protection and Enhancement Act, Public Lands Act</i>	Energy resource activities (upstream oil and gas, coal, pipelines).	Decision
Environment and Parks	<i>Water Act, Environmental Protection and Enhancement Act, Public Lands Act</i>	Dams, mineral exploration, sand and gravel.	Recommendation
Agriculture, Forestry and Rural Economic Development	<i>Forests Act, Public Lands Act</i>	Forest Management Agreements, Forest Management Plans, General Development Plans.	Recommendation

## Consultation overview

### Consultation triggers

Consultation with Indigenous communities is triggered when the GoA is contemplating a decision and has knowledge of the potential for that decision to have an adverse impact on the exercise of First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. While this list is not exhaustive, the following types of decisions may produce such triggers:

- Regulation, policy, and strategic initiatives or changes to public access;
- Fish and wildlife management – A decision that may limit or alter the quality and quantity of fish and wildlife;
- Natural resource development – A decision about surface land activity related to petroleum, forestry, mines and minerals, and other forms of natural resource development; and,
- Land use planning that provides a long-term framework for Crown decisions.

Examples of the types of activities that may require decisions include forest management agreements/plans, general development plans, power lines, seismic, coal exploration, pipeline projects and associated facilities, well sites, in-situ projects, oil sands mines and associated facilities.





## Consultation levels

The scope of consultation is related to:

1. The nature of the project; and,
2. Its potential impacts on First Nation Treaty rights, and traditional uses and/or Metis Settlement/CAMC members' harvesting and traditional use activities or both, at that location.

Consultation levels include:

**Level 1 Streamlined Consultation** – Notification with opportunity for Indigenous communities to respond.

**Level 2 Standard Consultation** – Notification with opportunity for Indigenous communities to respond and required follow-up by proponent.

**Level 3 Extensive Consultation** – Preparation and approval of an information package, notification with opportunity for Indigenous communities to respond, and required follow-up by proponent.

**No Consultation Required** – See [Appendix C](#) for details.

The Sector-Specific Consultation Matrices (Matrices) within the appendices of the Government of Alberta's consultation guidelines describe typical project activities, provide an initial assessment of the potential impacts and identify the depth of consultation required.

Factors that may determine the sensitivity of a location include historical use and level of contemporary use, the presence of ceremonial sites, or other values to indicate the importance of the site for First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities or both.



There may be modifications to the level of consultation required, based on characteristics of the project, including location, scale, duration and intensity. The ACO may use information from previous consultation and other information about Indigenous communities to assess the depth of consultation required. The level of the consultation required and associated timelines may be revised during the consultation process. These revisions can take place if information from First Nations, Metis Settlements and CAMCs, proponents, or the Crown demonstrate that potential adverse impacts require either more or less discussion.

## Pre-consultation assessments

The pre-consultation assessment is intended to assess whether consultation is required and at what level.

The ACO bases its pre-consultation assessment recommendation or direction on the available information, including all information submitted by a proponent in the

assessment request. Once the assessment request has been reviewed and assessed regarding the proponent's project application, as per the Government of Alberta's consultation guideline, the pre-consultation assessment includes one of the following results:

Pre-Consultation Assessment	Definition	Justification
No Consultation Required	There is no consultation required for the proposed project and the proponent may proceed with the next steps in the regulatory process.	Government of Alberta's consultation guidelines
Already Deemed Adequate	Previous consultation has already occurred for the proposed project and a decision of adequacy was rendered.	Consultation was deemed adequate within the past two years and there have been no adjustments to the scope or footprint of the project.
Consultation Required	Consultation is required for the proposed project.	The scope of consultation is related to: the nature of the project and its potential impacts to First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both at that location. The pre-consultation assessment identifies three potential levels of consultation, which correspond with the scope of the potential adverse impacts.

## Information sharing and exploring concerns

Each level of consultation has specific requirements and timelines (see Overview of Consultation Process Chart on page 17). Information regarding the consultation process, in terms of information sharing and exploring concerns, is outlined in this section.

### Information sharing

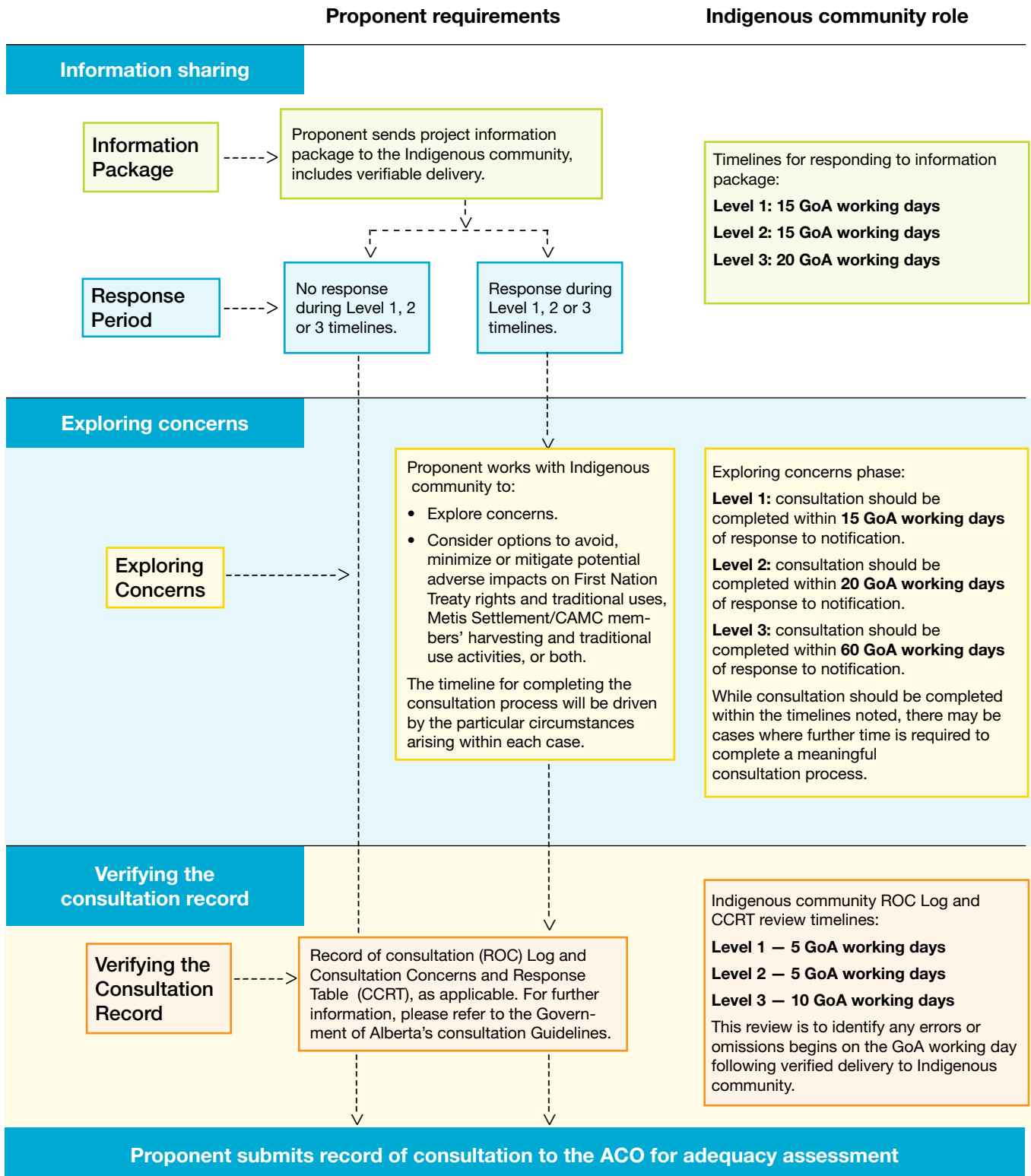
The proponent will share a plain language information package with Indigenous communities. It will include details about the proposed project. This information package will be sent to the Indigenous community's consultation contacts identified on Alberta's Indigenous consultation contacts web page. An information package uses clear language and terminology for the potentially impacted Indigenous communities to have a clear understanding of the proposed project and its potential impacts (see [Appendix D](#)).

The verified delivery of the information package by Indigenous communities initiates the notification period and consultation timelines begin to apply (see next page). While proponents can begin consultation on a proposed project once they have received their pre-consultation assessment and have all information required as part of the information package, some proponents may choose to start engaging with Indigenous communities early to build relationships before officially initiating consultation.



## Consultation process timelines

### Overview of the Consultation Process (Level 1, 2 and 3)



### Responses

Following the receipt of the information package, the Indigenous community has a defined time to review the information and provide a response to the proponent. Responses to the information package should include a written submission:

- Indicate the specific project name and any applicable GoA FNC;
- Describe specific First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both that may be impacted by the project at that location; and,
- Identify if and why the impacts described may require a deeper level of consultation.

The exploring of concerns phase begins when there is a response from an Indigenous community. Proponents are required to provide reasonable time for responses.

The ACO recommends that if more time is required, the Indigenous community communicate in writing to the proponent, including how much more time is needed.

### Non-objection letters

The ACO recognizes that in some cases, Indigenous communities may provide a letter to the proponent indicating that they have no objection with the project moving forward in the regulatory process. When the ACO is in receipt of a valid Letter of Non-Objection, consultation can be considered concluded; and, Indigenous community review of the ROC Log for errors and omissions is not required.

The ACO uses specific criteria for validating a Letter of Non-Objection to ensure there is no miscommunication/misinterpretation regarding the intent of the letter (see [Appendix H](#)). A valid Letter of Non-objection must include:

- GoA's File Number for Consultation (FNC).
- Company or proponent name.
- Project name and/or legal land location.
- Confirmation that there are no objections with the project proceeding forward in the regulatory process.

The ACO will accept the following formats:

- Letter: use Indigenous community's official letterhead and signed by community's consultation contacts (see Alberta's Indigenous contacts web page).
- Email: sent by the Indigenous community's consultation contact (see Alberta's Indigenous contacts web page).
- Electronic submission (i.e. Community Knowledge Keeper/ Traditional Land Use Portal): summarize or provided via an electronic submission (see Alberta's Indigenous consultation contacts web page).

### Consultation monitoring

The ACO monitors proponent activity on consultation files and has staff available to participate in consultation meetings with proponents and Indigenous communities upon request. The objective is to help all parties proceed effectively with the consultation process with the intent to address concerns regarding First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities or both.

At any time during the consultation process, the ACO may redirect proponents to repeat steps that have not been completed adequately. When carrying out the delegated aspects of consultation, proponents must act in good faith during all aspects of the consultation process.

### Capacity funding

The Indigenous Consultation Capacity Program is intended to contribute to base funding to assist Indigenous communities with expenses (e.g., setting up an office, administration costs, salary contributions, etc.). The goal is to support Indigenous participation in consultation activities related to resource development and land management activities. The funding is not intended to cover the costs of proponent-specific consultations, such as map reviews or completion of site visits, although an Indigenous community may choose to allocate funding to cover such costs.

Each Indigenous community that directly participates in Alberta's consultation process is offered an equal allocation. First Nations and Metis Relations (FNMR) within Indigenous Relations is responsible for managing this program.



### Site visits

Site visits are not a requirement of consultation and are a business agreement between a proponent and Indigenous community. The ACO does not provide advice or guidance regarding the use of capacity funding or to facilitate agreement on a site visit.

If the proponent agrees to conduct a site visit with an Indigenous community, Alberta suggests that all parties agree to the timeline and reporting results before the site visit.

### Consultation contacts

Alberta requires each Indigenous community to identify a single point of contact to serve as the community's authorized consultation representative for communication with the GoA or the proponent. Indigenous communities provide the GoA with their designated consultation contacts and their preferred methods of communication. GoA staff and proponents refer to this information when confirming who should be contacted for proposed projects.

For Alberta Indigenous consultation contacts, visit [alberta.ca/indigenous-consultation-contacts.aspx](https://alberta.ca/indigenous-consultation-contacts.aspx)

### Exploring concerns

During the consultation process, an Indigenous community has the opportunity to identify concerns and state whether their exercise of First Nation Treaty rights and traditional uses or Metis Settlement/CAMC members' harvesting and traditional use activities may be adversely impacted.

When exploring concerns, the following questions should be considered:

- What specifically is the concern?
- Where specifically is the concern located in relation to the proposed project footprint?
- How are the First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both, impacted by the proposed project?
- What is the significance of the concern?
- What (if any) are the Indigenous community's proposal(s) to address the concern?

Concerns raised during consultation are considered as either site-specific or broad concerns.



### Site-specific concerns

A site-specific concern is:

- directly related to a First Nation Treaty rights and traditional use activities, Metis Settlement/CAMC members' harvesting and traditional use activities, or both (as defined in the applicable consultation policies);
- can be spatially defined (it pertains to a defined location within the specified project area);
- is identified as adversely impacted by the proposed project; and,
- may be avoided or mitigated by the proponent.

### Broad concerns

Broad concerns are generalized non-site-specific concerns about the continued exercise of First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both, or substantive environmental concerns extending beyond the project.

As such, they are either better addressed outside of the project-specific consultation or outside the scope of Government of Alberta's consultation policies and guidelines.

### Accommodation

Consultation may reveal a Crown duty to accommodate Indigenous communities. The primary goal of accommodation will be to avoid, minimize or mitigate adverse impacts of a Crown decision on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. Accommodation, where appropriate, will be reflected in the Crown's decision.

Proponents and Indigenous communities are encouraged to consider options to avoid, minimize or mitigate adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. When proposing measures to address each site-specific concern, the consultation parties should consider its location, nature and significance.

Efforts to accommodate may include, but are not limited to:

- Modifying project design;
- Modifying project location or footprint;
- Modifying project timing;
- Seeking opportunities to mitigate adverse impacts to traditional uses/harvesting and traditional use activities; and,
- Exploring options to address concerns regarding access.

The ACO reviews the project-specific concerns raised by Indigenous communities and may seek further clarification from the proponent or Indigenous community. The ACO's review will ensure any mitigation or avoidance measures suggested or agreed to are reasonably responsive to the site-specific concerns expressed.

### Working with the AER

The AER has a responsibility to consider potential adverse impacts of energy applications on all persons who may be directly and adversely affected including Indigenous communities, within its statutory authority under *REDA*. With section 21 of *REDA* precluding the AER from determining the adequacy of consultation, the ACO manages the consultation process, determines the adequacy of consultation and provides that decision to the AER.

### The ACO Report

The AER will not make a decision on an application until the ACO report is received unless the activity or application does not require consultation. The ACO report is sent to Indigenous communities, the proponent, and the AER, providing the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both identified during consultation.

The ACO report will summarize the concerns that were raised during consultation that are relevant to the advice being offered to the AER. Once the ACO report is received, the AER is to consider the effectiveness of the proposed actions. The AER will consider whether a proposed commitment or action is outside the AER's jurisdiction or would impact other aspects of the application.

The ACO strives to advise the appropriate Crown decision-maker on concerns that are not project-specific and are not location-specific (i.e., broad concerns) and are presented in the consultation record. That Crown decision-maker may follow up with Indigenous communities as appropriate to clarify what process may be followed and to discuss those broad concerns.

### AER Hearings

For an Indigenous community to be a participant in an AER hearing for a project application, they must submit a request to participate by the deadline in the AER's notice of hearing; the hearing commissioners decide who participates and how. If the AER holds a hearing on an application, the ACO may observe the hearing and may provide an ACO hearing report to the AER. The hearing report will contain the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report.

Once the AER receives the ACO hearing report, the AER will consider any advice offered with regard to mitigating potential impacts to First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. The AER will not make a decision on an application until the ACO hearing report is received or the ACO advises that it is not providing an ACO hearing report. The ACO hearing report concludes the ACO's involvement with the proposed project application.

### Statement of Concern (SOC)

With respect to an application to the AER for a proposed project, an Indigenous community can submit a [Statement of Concern \(SOC\)](#) to the AER. The AER will provide the ACO with a copy of any SOC including any attachments received from an Indigenous community, as well as the proponent's responses. The ACO reviews the SOC for new information that may warrant a review of the pre-consultation assessment and information about potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both. This informs the record of consultation for the ACO.

Indigenous communities can file similar Statements of Concern with Crown decision-makers that have regulatory authority under their specified enactments (e.g. *Environmental Protection and Enhancement Act*) as applicable.



### Level 3 - Extensive consultation

Level 3 Extensive consultation files requires additional consultation documentation and monitoring than found in Level 1 Streamlined consultation and Level 2 Standard consultation. Level 3 Extensive consultation typically include activities that are long in duration, large in size and scale or complexity, have extensive environmental impacts, and include approvals from multiple regulatory authorities. For each Level 3 proposed project, the ACO will:

- Monitor the consultation activities;
- Address any emerging issues; and,
- Provide ongoing support to all parties during the consultation process.

The information package provides additional details on bimonthly reviews of cumulative ROC Logs, Consultation Concern and Response Tables (CCRT), supporting documentation, and other matters specific to Level 3 Extensive consultation. During Level 3 Extensive consultation, proponents are required to submit the ROC Log, and CCRT, every two months to the ACO and Indigenous communities.

### Projects requiring Environmental Impact Assessments (EIAs)

EIAs are a component of the regulatory process that may inform consultation. The ACO provides EIA-specific direction to project proponents by way of the Information Package Approval Letter, which is copied to the Crown decision-maker or AER for awareness of the ACO-required Indigenous communities for consultation.

An EIA may not be required for a Level 3 Extensive Consultation Project because this is determined by AER or Crown decision-maker. Some projects that do not trigger an EIA still meet the criteria for requiring Level 3 Extensive consultation according to the Government of Alberta's consultation guidelines.

ACO involvement in the EIA process includes consideration of Indigenous communities' participation in the EIA process when finding consultation adequate regarding the subsequent regulatory decision(s). Specifically, the ACO considers whether the consulted Indigenous communities were aware of, and had an opportunity to provide input into the EIA process as applicable.



### Verifying the consultation record

The proponent sends the final Record of Consultation Log (ROC Log) to the Indigenous communities. By doing so, the proponent is requesting review of the ROC Log for errors and omissions before requesting a consultation adequacy assessment from the ACO. If the proponent's consultation record appears inaccurate to the Indigenous communities and/or the ACO, the ACO will work with the proponent and provide direction to address gaps. If components of consultation remain outstanding, the ACO will consider whether it is appropriate to continue having the proponent work with the Indigenous communities to complete the consultation record.

Timelines for the Indigenous community to review the record of consultation are:

- **Level 1 Streamlined Consultation** – 5 GoA working days
- **Level 2 Standard Consultation** – 5 GoA working days
- **Level 3 Extensive Consultation** – 10 GoA working days

The time provided for verifying the consultation record is for review and assessment of accuracy. It is not intended to be an extension of consultation timelines.

#### ROC or ROC Log? What is the difference?

The Record of Consultation (ROC) includes all consultation records. This consists of the Record of Consultation Log (ROC Log), supporting documentation and any other relevant information that should be considered for the consultation adequacy assessment.

### Consultation adequacy

#### ROC Log

In situations where an Indigenous community does not respond during the exploring concerns phase of consultation, the phase is concluded and proponents can submit the ROC Log to the Indigenous community for review to identify errors and omissions. If a ROC Log review is required, an Indigenous community has a defined time to review the ROC Log for any errors and omissions.

In cases where ROC Log deficiencies are identified, either by the ACO and/or Indigenous community, the ACO will direct proponents to address the deficiencies and send them to the Indigenous community for review of errors and omissions, or just for their records.



### Consultation Concern and Response Table (CCRT)

The CCRT is a tool designed to capture each concern that an Indigenous community may raise in the course of consultation, and to ensure each concern is addressed appropriately. In the course of consultation on projects, where a single concern is raised, then the ROC Log can be used to capture what the concern is and how it is addressed. During Level 1 and Level 2 consultations, the ACO may require proponents to use the CCRT, in addition to the ROC Log. During Level 3 consultation, the proponent must use the CCRT as a supplementary document to the ROC Log to ensure that every concern raised is clearly captured and addressed appropriately.

Every two months, the proponent will send the CCRT to the Indigenous community, along with the ROC Log filled out with all information available to date. The Indigenous community will review both the ROC Log and the CCRT for errors and omissions.

The time period provided for the verification of the record of consultation is for review and assessment of accuracy; it is not intended to be an extension of the consultation timelines. Upon completion of the consultation process, the proponent sends both the final version of the ROC Log and CCRT to the Indigenous community for their review for errors and omissions.

### Determining consultation adequacy

The ACO is responsible for deciding the adequacy of consultation for activities requiring AER approvals. In other cases, the ACO shall provide a recommendation to a Crown decision-maker as to whether consultation is adequate. Although the optimal outcome of consultation is that all consulting parties reconcile interests, agreement of all parties is not required for consultation to be adequate.

In assessing adequacy, the ACO will review information gathered during the pre-consultation assessment information review, the proponent's consultation record and any information provided by the Indigenous community. The ACO will consider at a minimum:

- Were all identified Indigenous communities provided project information and given an opportunity to participate in the consultation process?
- Did the proponent provide project-specific information within a reasonable time before approvals were required or before the project was scheduled to start?
- If the Indigenous community provided site-specific concerns about how the proposed project may adversely impact their First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both, did the proponent make reasonable attempts to avoid and/or mitigate those potential impacts?
- Did the proponent indicate how they intend to avoid and/or mitigate any potential adverse impacts to the exercise of the First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.
- Were general concerns expressed by Indigenous communities responded to or addressed?

## Communication tools and updates

### Contacting the ACO

Each Indigenous community has an assigned Consultation Advisor who will answer questions, provide information and guidance with respect to Alberta's consultation process. Consultation Advisors work to foster relationships with consultation contacts at individual First Nations, Metis Settlements, and CAMCs.

To access ACO contact information regarding a specific file, please visit ACO contacts by region at [alberta.ca/indigenous-consultations-in-alberta.aspx](https://alberta.ca/indigenous-consultations-in-alberta.aspx). ACO administrative regions can be found at [alberta.ca/assets/documents/ir-aco-regions-and-sub-regions-map.pdf](https://alberta.ca/assets/documents/ir-aco-regions-and-sub-regions-map.pdf).

### Updates and information

The following communication tools are available for updates and information from the ACO:

#### Mailing list

To sign-up for news updates from the ACO, visit [alberta.ca/aboriginal-consultation-office-mailing-list-subscription.aspx](https://alberta.ca/aboriginal-consultation-office-mailing-list-subscription.aspx).

Updates will be sent to the email address that is provided when there are changes to the department's work such as:

- consultation timeline pauses or extensions due to statutory holidays, natural disasters or community health issues.
- revised proponent guides and documents.
- revisions to geographical consultation areas.
- information not sent in a regular newsletter.

### ACO Bulletin

The ACO Bulletin is published four times per year to share up-to-date information with Indigenous communities, industry groups and the public about the GoA's consultation role and operating processes.

#### Website

The ACO has a website for communication of consultation-related information. Updates include links to information and available tools, active consultation pauses or extensions, as well as notices and resources for consultation.

### Landscape Analysis Indigenous Relation Tool (LAIRT)

LAIRT provides information that indicates which Indigenous communities the GoA ordinarily considers requiring consultation under the GoA's First Nations and Metis Settlements consultation policies. The tool produces a Landscape Analysis Tool (LAT) report for all Alberta public land disposition applications. Users have the ability to determine the sensitivities and conditions associated with a project location, activity or both. Please note that that LAT report cannot be these things:

- a pre-consultation assessment;
- an official list of Indigenous communities to consult; and,
- a way to delegate procedural aspects of consultation to the report's recipient.

The LAT can be accessed at <https://maps.alberta.ca/LAT>.



### Consultation summary checklist

The Consultation Summary Checklist is a tool to help proponents better understand the adequacy assessment submission requirements, submit more complete and accurate applications, reduce delays, and improve processing times. This tool can also show that proponents have sent all required information and met submission standards (see [Appendix B](#)).

**The ACO Digital Service (DS)** is the ACO's new online system, which allows users to more easily manage their regulatory consultation file information. Through the ACO DS, First Nations and Metis Settlements/CAMCs consultation staff can easily and quickly access consultation file information to check statuses, look up contacts, and find out about consultation process requirements, so users can:

- View all of their current and active consultations in one place.
- Search by proponent name, project name, and other information.
- Provide feedback to help improve the ACO DS.

Please contact the ACO DS team at [ACODigitalService@gov.ab.ca](mailto:ACODigitalService@gov.ab.ca) to get an account.

## Appendices and glossary

### Appendix A: General roles of ACO and AER

OVERVIEW OF ACO/AER JOINT OPERATING PROCEDURES (JOPs)	
ACO	AER
Responds to the AER's request for advice prior to the AER making a decision in respect of an energy application for which Indigenous community consultation is required.	Considers and decides energy applications and other related matters under applicable legislation.
Assesses the adequacy of Crown consultation in respect of energy applications.	Considers potential adverse impacts of energy applications on all persons who may be directly and adversely affected including Indigenous communities, within its statutory authority under <i>REDA</i> .
Provides advice to the AER: <ul style="list-style-type: none"> <li>Respecting whether Alberta has found consultation to have been adequate, adequate pending the outcome of the AER's process, or not required.</li> <li>On whether actions may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.</li> </ul>	Monitors and enforces compliance with applicable legislation in respect of energy resource activities.
ACO REPORT	
Informs the AER of the consultation adequacy decision and whether actions may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.	
ACO	AER
When such advice is offered to the AER, the ACO report will summarize the concerns that were raised during consultation that are relevant to the advice being offered.	The AER will also have regard to whether a proposed commitment or action is outside the AER's jurisdiction or would impact other aspects of the application.
The ACO report will also be provided to the proponent and Indigenous community and will be filed on the AER's public record of its proceeding.	The AER will not make a decision on an application until the ACO report is received unless the activity or application does not require consultation.
OVERVIEW OF ACO/AER PROCEDURES	
Statement of Concern (SOC)	
A SOC is a written submission that outlines specific concerns about an AER application. Anyone who is concerned about a particular application and who believes they may be directly and adversely affected by an application may submit a SOC. An Indigenous community can submit to the AER a SOC on the AER applications for the project	
ACO	AER
The ACO will review the SOC for information about potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.	The AER addresses any SOC that it receives through its established processes.



## Schedule "B"

<b>Hearings</b>	
An AER hearing is a formal court-like process that the AER uses to gather information before making a decision on some energy project applications.	
<b>ACO</b>	<b>AER</b>
The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report. The ACO may provide an ACO hearing report or advise the AER panel that it does not intend to provide a hearing report.	Once the AER receives the ACO hearing report, the AER will consider any advice offered with regard to mitigating potential impacts to First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.
The ACO will advise the AER in writing of the timing of the ACO hearing report. The ACO hearing report will contain the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.	The AER will not make a decision on an application until the ACO hearing report is received or the ACO advises that it is not providing a hearing report.
<b>Joint Review Panel (JRP)</b>	
May be established by way of agreement between the AER and a minister of the Government of Canada, or one of its departments or agencies, for projects that require provincial approval and a federal impact assessment.	
When the ACO will provide a consultation adequacy assessment to the AER in relation to a JRP proceeding is determined by what functions the JRP will fulfill with regard to decision making under the specified enactments.	To the extent the JRP is making the AER's decisions under the specified enactments: ACO-AER process 4 of the JOPs applies. Either only making a recommendation or the AER is subsequently making a decision under the specified enactments: ACO-AER process will be determined on a case-by-case basis.

## Appendix B: Consultation summary checklist

This tool is meant to help proponents better understand the adequacy assessment submission requirements, submit more complete and accurate applications, reduce delays, and improve processing times. It is an optional tool and there is no requirement to upload the checklist as part of the adequacy assessment submission.

Proponent(s) should have the information below. Each section represents a separate file for uploading **(1 per First Nation/Metis Settlement/CAMC):**

### Notification package (required)

- Notification letter.
- Map, sketch and/or survey plan.
- Any other information provided to the First Nation/Metis Settlement/CAMC in the information package.
- Information package uploaded is identical to the one supplied to the First Nation/Metis Settlement/CAMC.

### Notification verification (required)

- Proof (e.g., delivery receipt) the information package was sent to the correct contact using an approved contact method.
- If sent by email, include the original email.

### Consultation supporting doc (if applicable)

- All written communications (e.g., emails, printouts from community consultation portals retrieved after the ROC Log was sent, meeting notes, etc.) are uploaded.
- Communications are chronological with no repeated documents.

### Letter of non-objection (if applicable)

- The letter meets the criteria described in Appendix C of the proponent guide.
- If not, the ROC Log was sent for five GoA business days review.

### Record of Consultation (required)

- All communications with the First Nation/Metis Settlement/CAMC regarding consultation have been entered.
- All concerns, including statements of initial concerns and those from letters of non-objection.
- The date the ROC Log was sent to the First Nation/Metis Settlement/CAMC is entered.
- The copy of the ROC Log provided to the ACO is identical to the one supplied to the First Nation/Metis Settlement/CAMC.

### Record of Consultation Verification (required - if sent)

- Five GoA business days have concluded since the ROC Log was delivered (if applicable).
- If sent by email, include the original email.
- Include Record of Consultation Log Review Letter, if applicable.
- Proof (e.g., delivery receipt) the ROC Log was sent to the correct contact using an approved contact method (**official consultation contact listing**).



## Appendix C: Non-Sector specific activities that do not require consultation\*

Activity or application
The activity is regulated by a code of practice under the <i>Water Act</i> and <i>Environmental Protection and Enhancement Act</i> .
The activity requires a short-term diversion and use of water authorized by a temporary diversion license under the <i>Water Act</i> .
The activity requires temporary, short-term access to public land and is identified as "not requiring consultation" in the Temporary Field Authorizations Guidelines (see tables C and D).
<p>The activity consists of:</p> <ul style="list-style-type: none"> <li>• adjustments, repairs, replacements, or maintenance made in the normal course of operations.</li> <li>• short-term testing or temporary modifications to machinery, equipment, or processes that do not result in a new surface disturbance beyond the normal course of operations.</li> </ul>
<p>The application is for renewals and amendments to existing authorizations, including:</p> <ul style="list-style-type: none"> <li>• correcting clerical errors;</li> <li>• changing monitoring, reporting, or inspection requirements;</li> <li>• effecting a change in ownership;</li> <li>• addressing matters related to temporary discontinuance of an activity;</li> <li>• a single short-term extension (up to 1 year) of the expiry date for an authorization or a term or condition of the authorization;</li> <li>• amend a term condition if there is no new surface disturbance beyond the normal course of operations;</li> <li>• amalgamate authorizations;</li> <li>• filing as-built (final survey submissions) if the lands applied for have not changed from the original application; and,</li> <li>• amendment for the purpose of deleting lands from an application (deletion of lands).</li> </ul>

\*Source: Government of Alberta's consultation guidelines at <https://www.alberta.ca/indigenous-consultations-in-alberta.aspx>

## Appendix D: Information package – proponent requirements

Proponents need to include these details in their Information Package:

### Notification letter

- File Number for Consultation (FNC).
- Notice that the proponent has been directed to consult with the First Nation/Metis Settlement/CAMC on the proposed project.
- Level of consultation.
- List of each activity type, applicable act and regulatory body.
- Any associated activities (*Public Lands Act*, *Water Act* and/or *Environmental Protection and Enhancement Act* application numbers).
- Project details:
  - purpose of the proposed project.
  - relationship of project to existing and future projects.
  - location of the proposed project.
  - project schedule for construction, operation and anticipated life of the project.
- Any known potential short- and long-term adverse impacts to the First Nation's Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.
- Description and intent of the consultation buffer, where applicable.

- Note the proximity to any HRV 4c sites, where applicable.
- A request that the First Nation/Metis Settlement/CAMC respond within the prescribed period with spatially located concerns and an explanation of how the proposed project may adversely affect the First Nation's Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.
- A link or reference to Alberta's Indigenous consultation contacts Alberta webpage, which lists a description of the consultation process and associated timelines.
- The proponent's contact information.

### Mapping

- Map, survey plan or sketch as per submission requirements.  
(Refer to Section 1.1 - Table 1 in the Proponent Guide)
- When a buffer is included, clearly illustrate it on all maps, sketches or survey plans.  
(Refer to Appendix B in the Proponent Guide)

## Appendix E: Glossary

**Aboriginal Consultation Office (ACO)** – Ensures for the operational delivery of the GoA's policies and guidelines on consultation with Indigenous communities on land and natural resource management. ACO manages the consultation activities of government ministries, as well as industry proponents and Indigenous communities.

**ACO Digital Service (DS)** – A new online system for users to more easily manage their regulatory consultation file information.

**ACO Hearing Report** – A written report from the ACO that may contain advice to the AER on any potential adverse impacts on First Nation Treaty rights and traditional uses and/or Metis Settlement/CAMC members' harvesting and traditional use activities that were raised during an AER hearing and that had not been previously addressed by the consultation process or the ACO report. The ACO hearing report may be submitted during an AER hearing and is permitted by section 49(2) of the *Responsible Energy Development Act*.

**ACO Report** – A written report from the ACO to the proponent, First Nations/Metis Settlements/CAMCs, and the AER that contains the ACO's finding on consultation adequacy and that may also contain advice to the AER on any potential adverse impacts on First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both during consultation.

**Alberta Energy Regulator (AER)** – Ensures the safe, efficient, orderly, and environmentally responsible development of oil, oil sands, natural gas, and coal resources over their entire life cycle. This includes allocating and conserving water resources, managing public lands, and protecting the environment while providing economic benefits for all Albertans.

**Alberta Environment and Parks (AEP)** – A Government of Alberta ministry that supports environmental conservation and protection, sustainable economic prosperity, quality of life and outdoor recreation opportunities.

**Alberta Agriculture, Forestry and Rural Economic Development (AAFRED)** – A Government of Alberta ministry that supports the growth, diversification and sustainability of Alberta's agriculture and forest industries and rural communities.

**Alberta Township Survey (ATS)** – Any parcel of land in Alberta can be located by its legal land description. Legal land descriptions are based on the Alberta Township Survey (ATS) system. The ATS is a grid network dividing the province into equal-sized parcels of land.

**Approval** – Authorizations or dispositions or licences or registrations or permits as defined under the appropriate statutes or regulations.

**Broad Concerns** – Broad concerns are not site-specific concerns relating to the proposed project that is subject to consultation. They are either (a) generalized non-site-specific concerns about the continued exercise of First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both; or (b) substantive environmental concerns extending beyond the project. As such, they are either (a) better addressed outside of the 'Government of Alberta's project-specific consultation; or (b) outside the scope of the consultation policies and guidelines.

**Consultation** – As defined in *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, a process intended to understand and consider the potential adverse impacts of anticipated Crown decisions on First Nations' Treaty rights and traditional uses, with a view to substantially addressing them.

As defined in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*, a process intended to understand and consider the potential adverse impacts of anticipated Crown decisions on Metis Settlement members' harvesting and traditional use activities, with a view to substantially addressing them. The process also applies with respect to Credibly Asserted Métis Community (CAMC) members' harvesting and traditional use activities.

**Consultation Concern and Response Table (CCRT)** – is a tool designed to capture each concern that an Indigenous community may raise in the course of consultation and to ensure that each concern is addressed appropriately.

**Consultation Trigger** – When the Government of Alberta is contemplating a decision and has knowledge of the potential for that decision to have an adverse impact on the exercise of First Nation Treaty rights and traditional uses, Metis Settlement/CAMC members' harvesting and traditional use activities, or both.

**Credible Asserted Métis Community (CAMC)** – The Government of Alberta addresses consultation with Métis organizations (other than the Metis Settlements) on a case-by-case basis. To be considered for consultation, a Métis organization must first successfully demonstrate a credible assertion of Métis Aboriginal rights through the Alberta government's Métis Credible Assertion Process. If a credible assertion is established through this process, Alberta will consult the Métis organization when Crown land management and resource development decisions may have the potential to adversely impact credibly asserted Métis Aboriginal rights (see Métis Credible Assertion Process and Criteria, 2020)

**Crown** – In Canada, the Crown may refer to the federal government and each of the provincial governments. Within this document, the Crown refers to the Government of Alberta (GoA or Alberta).

**Decision** – Any administrative, legislative, statutory, regulatory, policy, and operational decision of the GoA.

**Delegated Consultation** – The procedural aspects of consultation (as defined above) that the Crown delegates to and are carried out by the proponent.

**Environmental Impact Assessment (EIA)** – The complexity and scale of a proposed project, technology, resource allocation, or siting considerations create uncertainty about the exact nature of environmental effects, or result in a potential for significant adverse environmental effects.

**Environmental Protection and Enhancement Act (EPEA)** – Is the primary Act in Alberta through which regulatory requirements for air, water, land, and biodiversity are managed. The Act supports and promotes the protection, enhancement and wise use of the environment by designating proposed activities for which an approval or registration is required.

**File Number for Consultation (FNC)** – The tracking number the ACO assigns to regulatory applications being reviewed for consultation.

**FNC Application Supplement** – A form that the proponent of an energy application is required to submit to the AER. The form includes information about the potential adverse impacts of the proposed energy resource activity on existing rights of Aboriginal Peoples as recognized and affirmed under Part II of the *Constitution Act, 1982* and on traditional uses as identified in *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*; and/or on harvesting and traditional use activities of Metis Settlement members as identified in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*.

**First Nation** – Ordinarily, First Nation "bands" as defined by the Indian Act (Canada). Also includes any organization that the ACO has an established practice of consulting under *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*.

**Forests Act (FA)** – The Act that defines the powers of the Lieutenant Governor and Minister with respect to establishing regulations related to forestry in Alberta. The Act provides for the establishment of forest management units as a mechanism for allocation and disposal of timber, and specifies the method of disposal of Crown timber through forest management agreements, quota certificates, and timber permits. In addition, the Act and its regulations outline timber damage assessment requirements for industrial disturbances. Offences related to, and penalties for, contravention of the Act are described.

**Government of Alberta (GoA)** – The British monarch is the official head of state with the Crown represented by the Alberta Lieutenant-Governor who is appointed by the federal government. Based on provincial population statistics, Alberta is divided into 87 regions, which are known as constituencies. During a provincial election (held by law every four years), the candidate in each constituency who wins the highest number of votes becomes the constituency representative as a Member of the Legislative Assembly (MLA). The leader of the political party with the most winning candidates becomes the Premier of Alberta. The Premier, as head of the elected government, governs the province on a daily basis in the monarch's name.

**Harvesting** – As identified in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*, Alberta recognizes that some Metis Settlement members use the land for harvesting (fishing, hunting, and trapping for food). These activities are practiced on unoccupied Crown lands or other lands to which Metis Settlement members have access for such purpose in accordance with applicable federal and provincial legislation and in accordance with any applicable existing Aboriginal rights within the meaning of section 35 of the *Constitution Act, 1982*. Although Credibly Asserted Métis Community (CAMC) members are not referred to in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*, the remainder of this Harvesting definition applies with respect to CAMC members.

**Historical Resources Act (HRA)** – The Act provides for the use, designation and protection of moveable and immoveable historic resources; establishes the Historic Resources Fund and The Alberta Historical Resources Foundation.

**Listing of Historic Resources** – Identifies lands in Alberta that contain or have a high potential to contain historic resources. The Listing does not include all lands that may contain historic resources. When previously unknown historic resources are discovered or high potential areas are identified, their locations are added to the Listing. The Listing is a tool that land owners, developers, industry representatives, and regulators may use to help determine if a proposed development might affect historic resources.

**Indigenous Communities/Community** – For the purpose of this Guide, First Nations, Metis Settlements and Credibly Asserted Métis Communities are collectively referred to as Indigenous communities and singularly referred to as the Indigenous community.

**Indigenous Relations (IR)** – A GoA ministry that works with Indigenous communities, the federal government, industry and other stakeholders to support strong, vibrant Indigenous communities and people who fully participate in a prosperous, competitive and diverse Alberta.

**Joint Operating Procedures (JOPs)** – The JOP sets out the procedures to administer and coordinate the operations of the Aboriginal Consultation Office (ACO) and Alberta Energy Regulator (AER) on matters relating to First Nations and Metis Settlements consultation on energy resource activities, pursuant to the Ministerial Order issued October 31, 2014 (Energy 105/2014 and Environment and Sustainable Resource Development 53/2014) and the Ministerial Order issued March 30, 2016 (Energy 39/2016 and Environment and Parks 16/2016). The Ministerial Order provides direction to the AER to ensure that the AER considers and makes decisions in respect of energy applications in a manner that is consistent with the work of the GoA.

**Joint Review Panel (JRP)** – A Joint Review Panel may be established by way of agreement between the AER and a minister of the Government of Canada, or one of its departments or agencies, for projects that require provincial approval and a federal impact assessment. When the ACO will provide a consultation adequacy assessment to the AER in relation to a JRP proceeding is determined by what functions the JRP will fulfill with regard to decision making under the specified enactments.

**Land and Natural Resource Management** – As defined in the Government of Alberta's consultation policies and guidelines, land and natural resource management include activities (on or off Crown land) potentially affecting the use of provincial Crown land where such activities arise from decisions involving land, water, air, forestry, or fish and wildlife.

**Landscape Analysis Indigenous Relations Tool (LAIRT)** – A tool that provides information that indicates which First Nations and Metis Settlements the Government of Alberta ordinarily considers requiring consultation, under the Government of Alberta's First Nations and Metis Settlements consultation policies, somewhere (but not necessarily everywhere) within the geographic parameters (location or area) indicated by the recipient when making the request.

**Landscape Analysis Tool (LAT)** – A web-enabled geo-spatial mapping tool that identifies base and sensitive landscape features and how they interact with a proposed land location and activity being considered on Alberta Government Public Land.

**Metis Settlements** – Metis Settlements as established under the *Metis Settlements Act*.

**Mines and Minerals Act (MMA)** – This Act governs the management and disposition of rights for Crown-owned mines and minerals. The Act is jointly administered by Alberta Energy, Alberta Environment and Parks, and the AER.

**Proponent** – An entity or person who is either applying for or seeking a Crown decision related to land and natural resource management or seeking approval from the AER under the specified enactments. It may include industry, municipal governments, or any other organization or individual requiring Crown approval of a project.

**Proponent Delegated Consultation** – Alberta may delegate procedural aspects of consultation to project proponents. Direction on delegation of procedural aspects of consultation are provided in the consultation guidelines. When Alberta delegates procedural aspects of consultation, the ACO will manage the consultation process.

**Public Lands Act (PLA)** – The Act that establishes the role of the Alberta government in managing public land. It sets out mechanisms by which rights in public land may be transferred by lease or sale. It provides for and defines the powers of the Minister and the Lieutenant Governor in Council with respect to establishing regulations to govern use and allocation of public land. The Act and its regulations also control public land use through the establishment of public land use zones, recreation areas and trails. The Act provides for appropriate use and management of public land and for the classification of the public land base in Alberta.

**Record of Consultation (ROC)** – A complete record of consultation efforts between the Proponent and the impacted First Nations and/or Metis Settlement. It contains all communications with the First Nation/Metis Settlement regarding consultation have been entered as well as all concerns, including statements of initial concerns and those from letters of non-objection.

**Record of Consultation Log (ROC Log)** – A template form that the proponent must prepare and maintain for each First Nation/Metis Settlement/CAMCs consulted. It contains a complete, detailed, accurate and chronological account of all consultation activities including details for both successful and unsuccessful communications.

**Responsible Energy Development Act (REDA)** – The Act that defines AER's governance. It was proclaimed in part on June 17, 2013. Further parts of REDA were proclaimed on November 6, 2013 and March 29, 2014. After REDA was proclaimed, the AER became the single regulator for upstream oil, gas, oil sands and coal projects in Alberta. The AER is responsible for regulating energy resource developments under the specified enactments (*Public Lands Act, Environmental Protection and Enhancement Act, Water Act and Part 8 of the Mines and Minerals Act*) from initial application to reclamation. REDA also creates a registry for landowners to register private surface agreements and ensure companies comply with commitments set out in the agreements. REDA defines the AER's governance structure which separates corporate, operational, and governance responsibilities from adjudicative functions (i.e., hearings on energy applications). With respect to Crown consultation with Aboriginal Peoples, section 21 of REDA precludes the AER from assessing the adequacy of Crown consultation associated with the existing rights of aboriginal peoples as recognized and affirmed under Part II of the Constitution Act, 1982.

### **A Site-Specific Concern is:**

- directly related to a First Nation Treaty rights and traditional use activities, Metis Settlement/CAMC members' harvesting and traditional use activities, or both (as defined in the applicable consultation policies);
- can be spatially defined (it pertains to a defined location within the specified project area);
- is identified as adversely impacted by the proposed project; and
- may be avoided or mitigated by the proponent

**Statement of Concern (SOC)** – A written submission that outlines specific concerns about an AER application. Anyone who is concerned about a particular application and who believes they may be directly and adversely affected by an application may submit a Statement of Concern. An Indigenous community can submit to the AER a SOC on the AER applications for the project.

**Strategic Initiatives** – An embracing or overarching policy addressing an objective of the GoA that may set a context in which project-specific consultation can occur.

**Surface Disturbance** – Any disruption of an area that disturbs the Earth's surface or waters during activity or after an activity has ceased.

**Traditional Uses** - As identified in *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, the customs or practices that First Nations may engage in on the land that are not existing section 35 Treaty rights but are nonetheless important to First Nations. These may include burial grounds, gathering sites, and historical or ceremonial locations and do not refer to a proprietary interest in the land.

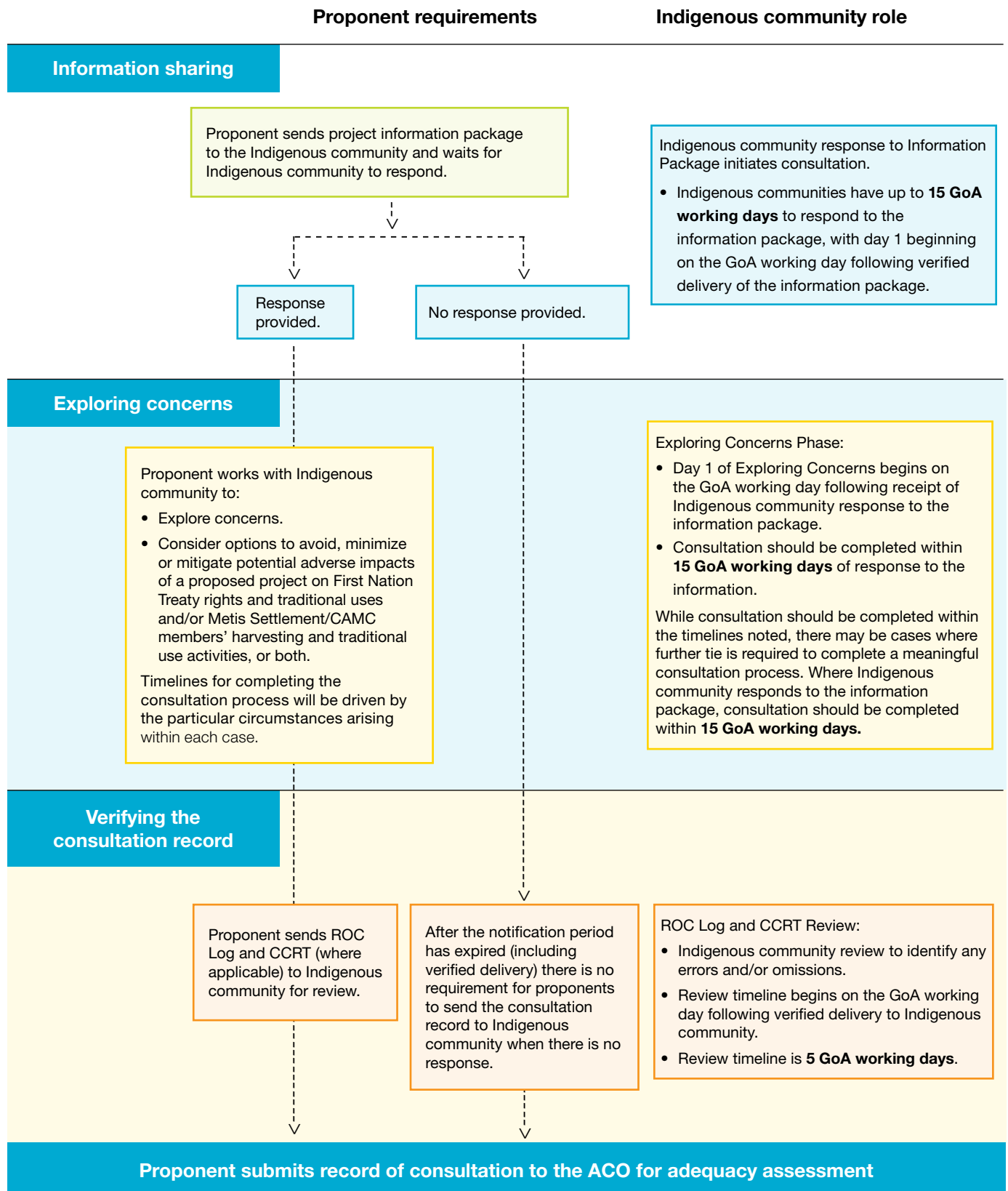
**Traditional Use Activities** – As identified in *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015*, the customs or practices that Metis Settlement members may engage in on the land that are not existing section 35 rights but are nonetheless important to Metis Settlements. These may include burial grounds, gathering sites, and historical or ceremonial locations and do not refer to a proprietary interest in the land. Although Credibly Asserted Métis Community (CAMC) members are not referred to in *The Government of Alberta's Policy on Consultation with Métis Settlements on Land and Natural Resource Management, 2015*, the remainder of this part of the Traditional Uses and Activities definition applies with respect to CAMC members.

**Treaty Rights** – As identified in *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, rights that are protected by section 35 of the *Constitution Act, 1982*. Alberta recognizes that impacting Treaty rights to hunt, fish, and trap for food may trigger a duty to consult. These rights may be practiced on unoccupied Crown lands and other lands to which First Nations members have a right of access for such purposes.

**Water Act (WA)** – The Act that supports and promotes the conservation and management of water, through the use and allocation of water in Alberta. It requires the establishment of a water management framework and sets out requirements for the preparation of water management plans. The Act addresses: Albertans' rights to divert water and describes the priority of water rights among users; the types of instruments available for diversion and use of water and the associated processes for decision-making; and the range of enforcement measures available to ensure the goals of the Act are met.

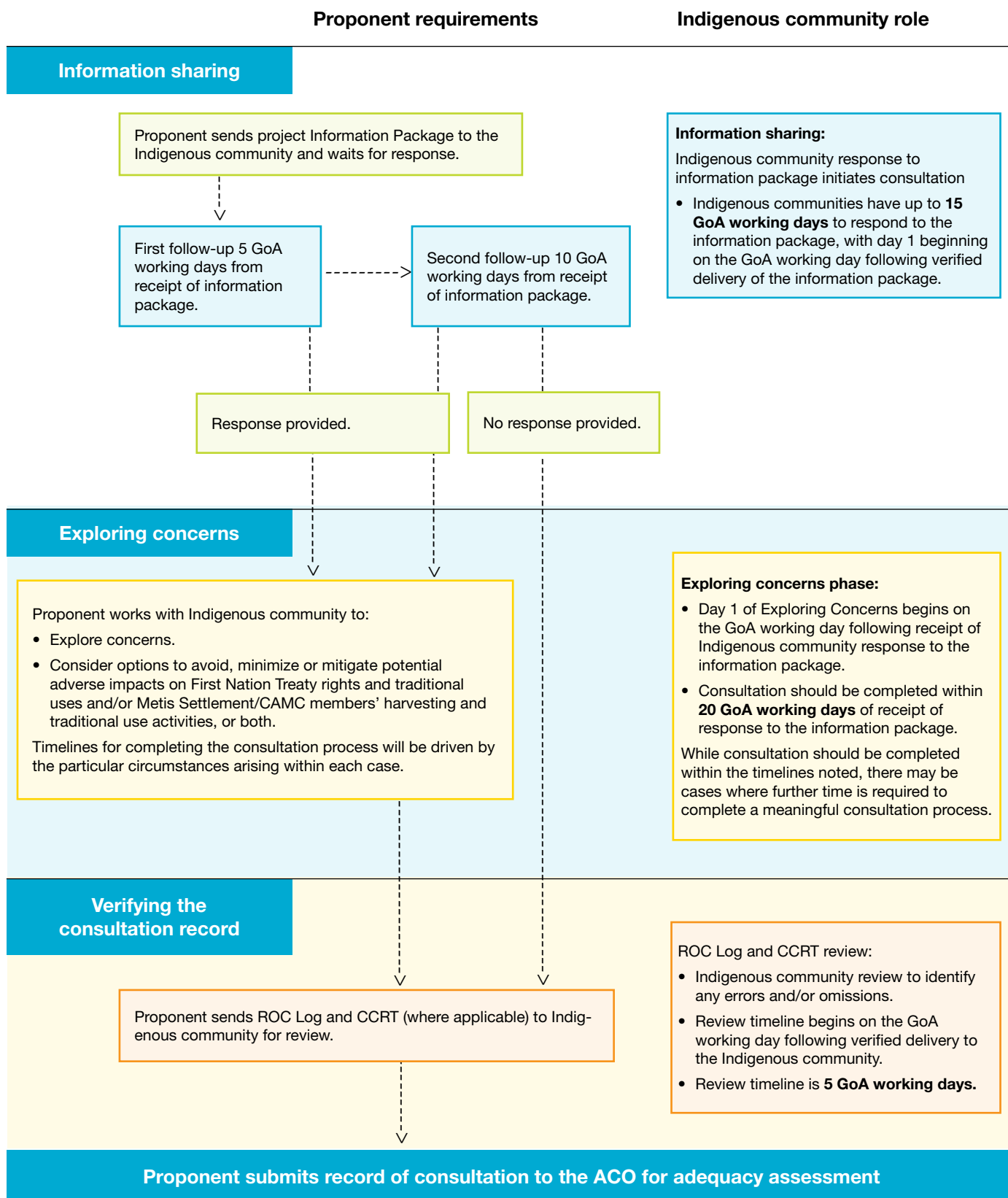
## Appendix F: Proponent and Indigenous community roles and responsibilities

## Level 1 Streamlined Consultation - Overview

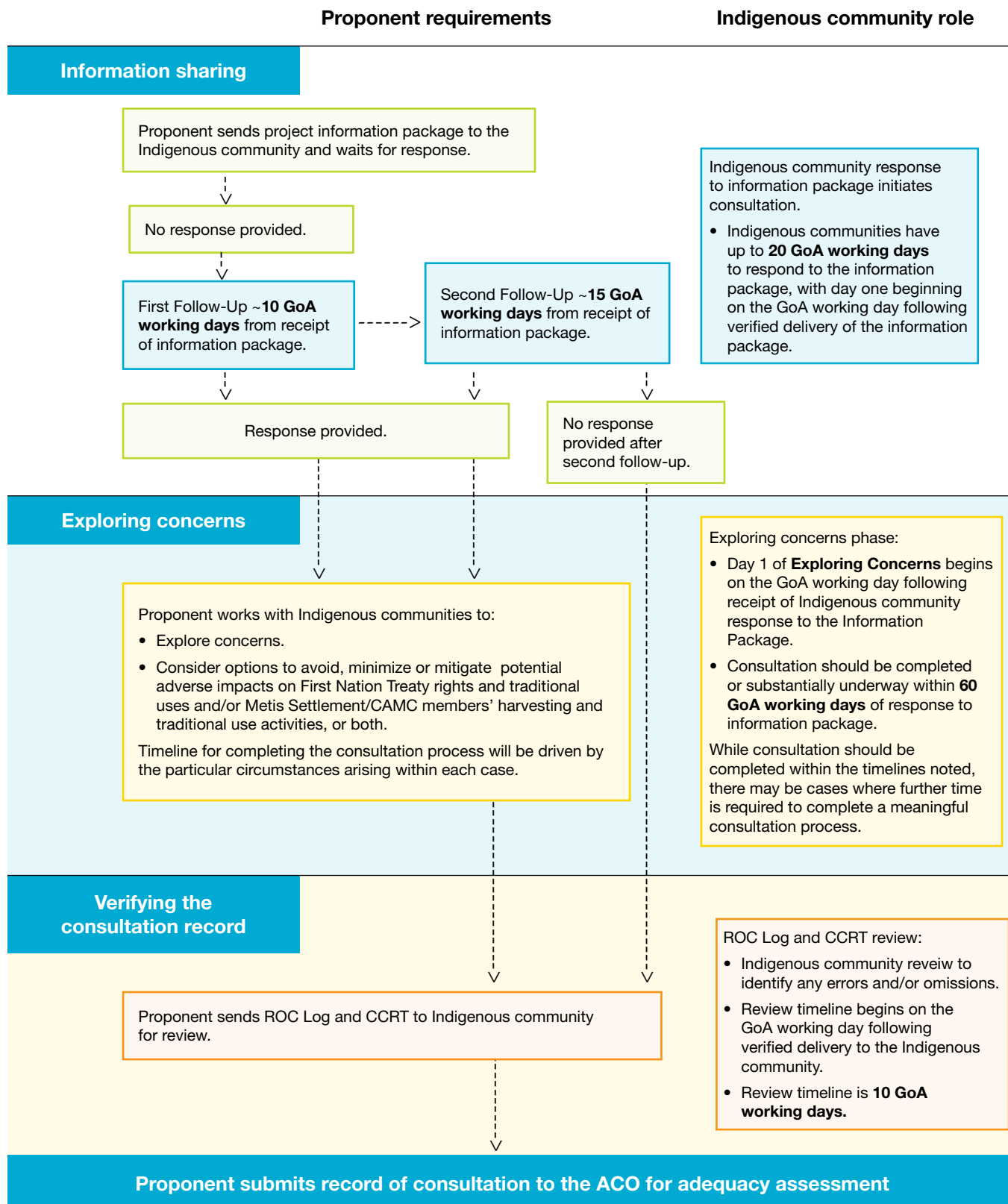




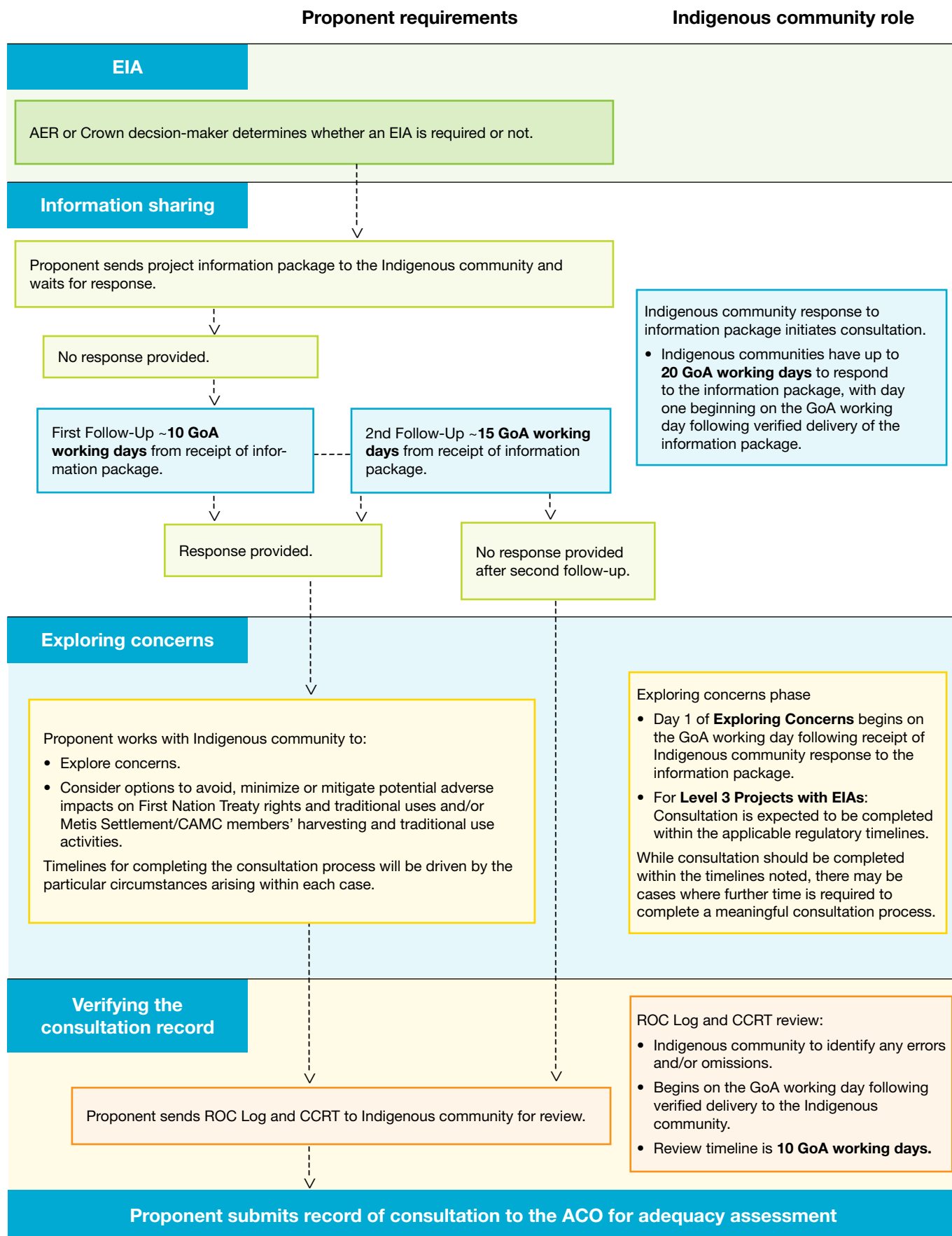
## Level 2 Standard Consultation - Overview



## Level 3 Extensive Consultation (No EIA required) - Overview



## Level 3 Extensive Consultation (with EIA required) - Overview



## Appendix G: Guiding principles

The following appendix is based on:

- *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013;*
- *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015.*

Both are available at <https://www.alberta.ca/indigenous-consultations-in-alberta.aspx>

### Guiding principles for First Nations

In November 2005, the Supreme Court of Canada released its decision in *Mikisew Cree First Nation v. Canada*, addressing the Crown's duty to consult First Nations in Treaty areas. From this decision and others, a number of principles were derived to help guide consultations in a respectful and meaningful manner. Alberta believes that the following principles will result in meaningful consultation.

- Alberta will consult with honour, respect, and good faith, with a view to reconciling First Nations' Treaty rights and traditional uses within its mandate to manage provincial Crown lands and resources for the benefit of all Albertans.
- Consultation requires all parties to demonstrate good faith, reasonableness, openness, and responsiveness.
- Consultation should be carried out before Crown decisions on land and natural resource management are made. Where appropriate, consultation will be done in stages.
- Alberta and project proponents will disclose clear and relevant information regarding the proposed development, decision, or project to First Nations and allow reasonable time for review.
- The level of consultation depends on the nature, scope, magnitude, and duration of the potential adverse impacts on the Treaty rights and traditional uses of the affected First Nation.
- Alberta will inform First Nations and project proponents of known potential adverse impacts and the degree of consultation to be undertaken.
- Alberta will solicit, listen carefully to, and seriously consider First Nations' concerns with a view to substantially address potential adverse impacts on Treaty rights and traditional uses.
- Proponents must act within applicable statutory and regulatory timelines and in accordance with *The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management, 2014*.
- First Nations have a reciprocal onus to respond with any concerns specific to the anticipated Crown decision in a timely and reasonable manner and to work with Alberta and project proponents on resolving issues as they arise during consultation.
- The Crown's duty to consult does not give First Nations or project proponents a veto over Crown decisions, nor is the consent of First Nations or project proponents required as part of Alberta's consultation process.
- Accommodation will be assessed on a case-by-case basis and applied when appropriate. The Crown is ultimately responsible for accommodation, but project proponents may have a role in accommodating First Nations.

### Guiding principles for Metis Settlements

Alberta believes that the following principles will result in meaningful consultation:

- Consultation will take place with the Metis Settlements, not their individual members.
- Alberta will consult with honour, respect, and good faith, with a view to reconcile Metis Settlement members' harvesting or traditional use activities with Alberta's mandate to manage provincial Crown lands and resources for the benefit of all Albertans.
- Consultation requires all parties to demonstrate good faith, reasonableness, openness, and responsiveness.
- Consultation should be carried out before Crown decisions on land and natural resource management are made. Where appropriate, consultation will be undertaken in stages.
- Alberta and project proponents will disclose clear and relevant information regarding the proposed development, decision, or project to Metis Settlements and allow reasonable time for review and response.
- The level of consultation depends on the nature, scope, magnitude, and duration of the potential adverse impacts on the harvesting or traditional use activities of the affected Metis Settlement's members.
- Alberta will inform Metis Settlements and project proponents of known potential adverse impacts and the degree of consultation to be undertaken.
- Alberta will solicit, listen carefully to, and seriously consider Metis Settlements' concerns with a view to substantially address potential adverse impacts on Metis Settlement members' harvesting or traditional use activities.
- Proponents must act within applicable statutory and regulatory timelines.
- Metis Settlements have a reciprocal onus to respond with any concerns specific to the anticipated Crown decision in a timely and reasonable manner, and work with Alberta and project proponents to resolve issues as they arise during consultation.
- Consultation does not give Metis Settlements or project proponents a veto over Crown decisions, nor is the consent of Metis Settlements or project proponents required as part of Alberta's consultation process.
- Accommodation will be assessed on a case-by-case basis and applied when appropriate. The Crown is ultimately responsible for accommodation, but project proponents may have a role in accommodating Metis Settlements.

The above guiding principles with respect to Metis Settlements also apply to Credibly Asserted Métis Communities.

## Appendix H: Letters of Non-Objection - LNO Sample Letter Template

The ACO recognizes that, in some cases, a First Nation or Metis Settlement/CAMC may provide a letter to the proponent indicating that they have no objection with the project proceeding forward in the regulatory process.

The Letter of Non-Objection must contain the following information:

- FNC;
- Company or proponent name;
- Project name and/or legal land location; and,

- Confirmation there are no objections with the project proceeding forward in the regulatory process.

\*Please note the following is sample letter template. Indigenous communities are free to use any letter format that reflects their unique needs/circumstances, as along as it meets the requirements stated above.

When an Indigenous community provides a valid Letter of Non-Objection, consultation can be considered concluded. No review of the ROC Log for errors and omissions is required.

*FN/MS/CAMC Letter Head*

*Insert date*

*FNC#*

*Proponent name  
Address*

Dear *proponent name*:

Re: *Proponent name, project name, FNC#*

Our *FN/MS/CAMC* has reviewed your information on your proposed project/activity at the following locations:

Activity #	Activity Type	Project/Activity Name	ATS Legals	Area/Distance
<i>FNC# - 001</i>	<i>Access road (LOC)</i>	<i>Atlas Project</i>	<i>NW to SW 4-44-4-W4M</i>	<i>200m</i>

We do not have any objection to this project/activity proceeding in the regulatory process for the following reasons:

*Reasons a, b, and c*

This letter is for your records only.

Sincerely,

*Signed by FN/MS/CAMC consultation contact name listed on Alberta's Indigenous consultation contacts webpage*

