

The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015

Introduction

The Government of Alberta ("Alberta") is committed to strengthening relationships with the Metis Settlements through the recognition that Metis Settlement members use the land for harvesting and traditional use activities. Additionally, the provincial government strives to ensure Metis Settlements have the chance to benefit from economic development opportunities and to enjoy Alberta's prosperity.

This Policy aims to substantially address potential adverse impacts to Metis Settlement members' harvesting and traditional use activities due to Crown decisions relating to land and natural resource management through a meaningful consultation process.

Metis Settlement Context

Metis communities emerged as distinct peoples during the 18th and 19th centuries and trace their lineage to both European and First Nation ancestors. Historically, the Metis played a crucial role in the development and success of the fur trade in parts of the Canadian West. Metis families and communities were located in parts of the Canadian Plains prior to Confederation, including parts of the province of Alberta. Some of these families and communities have contributed to the political, economic, and social development of Alberta for over 150 years.

In 1938, twelve Metis Settlements were formed through the *Metis Population Betterment Act*. Four of these Settlements were later dissolved in the 1950s and 1960s. The eight remaining Metis Settlements are unique, vibrant, Alberta communities. Following the Grant MacEwan Commission in 1984 calling for changes to the provincial Metis Settlement relationship, Alberta and Metis Settlements signed a historic Accord in 1989. The Accord sought to secure a Metis land base, gain local autonomy, and achieve economic self-sufficiency. The *Constitution of Alberta Amendment Act* of 1990 also committed Alberta to the preservation and enhancement of Metis culture and identity by protecting the Metis land base. This is the only recognized Metis land base in Canada protected by legislation.

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) of the *Act* defines "the aboriginal peoples of Canada" as including "the Indian, Inuit and Metis peoples of Canada." Metis communities in this province do not hold treaty rights, but some may hold Aboriginal rights.

Alberta acknowledges that some Metis Settlement members may be members of a Metis community holding Aboriginal rights. To the extent that such rights may trigger the Crown's duty to consult about potential adverse impacts, Alberta intends this Policy to:

- Acknowledge that the Metis Settlements are a proper party to be consulted; and

- Establish a process aimed to meet the duty.

Nothing in this Policy is to be construed so as to abrogate or derogate from any Aboriginal rights referred to in section 35 of the *Constitution Act, 1982*.

Harvesting

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 purposes 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*.

Traditional Uses

Alberta recognizes that Metis Settlement members engage in customs or practices on the land that are not existing section 35 rights but are nonetheless important to Metis Settlements (“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. Metis Settlements’ traditional use information can better help to inform Crown consultation and support a process of exploring opportunities to avoid or mitigate potential adverse impacts.

Management of Provincial Crown Lands and Natural Resources

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 Settlement members’ harvesting and traditional land use activities.

In this Policy, “decisions relating to land and natural resource management” refer to provincial Crown decisions about:

- Strategic, long-term management of land, water, air, forestry, or fish and wildlife; and
- Individual decisions about specific developments, dispositions, or actions to manage land, water, air, forestry, or fish and wildlife.

Consultation

Consultation is 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 address them.

Alberta will consult with Metis Settlements when the following three factors are all present:

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

Accommodation

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

Policy Application

This Policy applies to strategic and project-specific Crown decisions that may adversely impact the continued exercise of Metis Settlement members' harvesting or traditional use activities.

Through this Policy, Alberta will seek to reconcile management and development of provincial Crown land and resources with Metis Settlements' harvesting and traditional use activities.

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 Metis Settlement members' harvesting or traditional use activities; and
- Decisions about specific developments, dispositions, or actions to manage land, water, air, forestry, or fish and wildlife that may adversely impact Metis Settlement members' harvesting or traditional use activities.

Matters Not Subject to this Policy

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

- Crown decisions about natural resource development dispositions on Settlement lands that are already subject to a statutory regime and agreement (*Metis Settlements Act* and *Co-Management Agreement*);
- Leasing and licensing of rights to Crown minerals;
- Accessing private lands to which Metis Settlement members do not have a right of access for exercising harvesting or traditional use activities;
- Crown decisions on policy matters that are unrelated to land and natural resource management; and
- Emergency situations that may impact public safety and security.

This Policy does not preclude other Crown processes that may engage Metis Settlements and lead to government-to-government agreements or resolutions. These engagements may occur between Metis Settlements and Crown officials and elected leadership.

Federal Crown Lands

In some cases, this Policy may also apply to provincial Crown decisions relating to or impacting lands other than provincial Crown lands. Alberta is aware that Metis Settlement members may also be exercising harvesting or traditional use activities on federal Crown lands. Therefore, consultation with Metis Settlements may be required when provincial Crown decisions have the potential to adversely impact the exercise of Metis Settlement members' harvesting or traditional use activities on federal Crown lands.

Guiding Principles

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.

Elements of Consultation

Content of the duty to consult

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 a duty to consult requires flexibility and responsiveness.

Scope of Consultation

The scope of consultation will be defined by the project or initiative being proposed and its potential adverse impact on the continued exercise of Metis Settlement members' harvesting or traditional use activities.

Depth of Consultation

Alberta recognizes that more consultation may be required where the potential adverse impact on Metis Settlement members' harvesting or traditional use activities 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 Metis Settlement members have used the affected lands and resources for the exercise of Metis Settlement members' harvesting or traditional use activities and continue to do so today.

Roles and Responsibilities

Aboriginal Consultation Office (ACO)

Alberta has established an Aboriginal Consultation Office (ACO) that reports to the Minister of Aboriginal Relations. This Office manages all aspects of consultation, including:

- Policy development and implementation;
- Pre-consultation assessment;
- Management and execution of the consultation process;
- Advice or direction to Metis Settlements, government ministries, and project proponents during the consultation process;
- Assessment of consultation adequacy;
- Consultation capacity-building initiatives with Metis Settlements; and
- Measures to protect the transparency and integrity of the consultation process.

Government of Alberta Departments

Departments with statutory and regulatory responsibilities related to Crown land and natural resource management in Alberta are responsible for ensuring that Metis Settlements are consulted if there is potential for adverse impacts on harvesting or traditional use activities. Departments work with the ACO to ensure that consultation is completed.

Metis Settlements

Timely Information Sharing and Communication

Metis Settlements 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 Metis Settlement members' harvesting or traditional use activities. The obligation also requires Metis Settlements to report consultation concerns to Alberta as soon as possible. Metis Settlements are invited to work with Alberta to identify the geographic areas on which their members exercise harvesting or traditional use activities.

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 Metis Settlements, depending on the nature of the anticipated Crown decision and the organizational structure of the particular government. For clarity and efficiency, Alberta requires Metis Settlements to identify a single point of contact to serve as the Settlement's authorized consultation representative for communication with Alberta or the proponent.

Project Proponents

Carrying Out Delegated Activities

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

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 with the rights of Aboriginal peoples as recognized and affirmed under section 35 of the *Constitution Act, 1982*. The ACO will work closely with the Regulator to ensure that any needed consultation occurs for decisions on energy project applications within the Regulator's mandate.

Direct Consultation by the Crown

Alberta will consult directly in the following situations:

- When Alberta undertakes strategic initiatives with the potential to adversely impact Metis Settlement members' harvesting or traditional use activities;
- When Alberta acts as a project proponent; and
- When a project requires extensive consultation.

Direct Crown consultation will ordinarily be carried out by the appropriate provincial department with support from the ACO and/or project proponents. Consultation for certain strategic initiatives may be led by provincial departments with support from the ACO.

Delegation of Procedural Aspects of Consultation

In 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 may delegate procedural aspects of consultation to project proponents. Direction on delegation of procedural aspects of consultation will be provided in the Consultation Guidelines.

Generally, the ACO will delegate procedural aspects of consultation for projects where the preliminary assessment indicates that the scope of consultation is limited. When delegating aspects of consultation, the ACO will assess consultation adequacy. The level of consultation that the ACO requires from proponents depends on the extent of the potential adverse impacts on the Metis Settlement members’ harvesting or traditional use activities and the scope and depth of the proponents’ anticipated activities.

When Alberta delegates procedural aspects of consultation, the ACO will manage the consultation process.

In general, procedures that may be delegated to project proponents include:

- Providing Metis Settlements with plain language information on project scope and location;
- Identifying potential short and long-term adverse project impacts;
- Meeting with Metis Settlements to discuss their concerns;
- Developing potential mitigation strategies to minimize or avoid adverse impacts;
- Implementing mitigation measures, as directed; and
- Creating a consultation record for both Alberta and Metis Settlements, including information on how specific concerns regarding adverse impacts have been addressed.

For projects that require extensive consultation with Metis Settlements (as set out in the Consultation Guidelines), the ACO will direct and manage all aspects of consultation. In cases involving proponents, the ACO will guide the proponents on how to support the consultation.

Proponents will summarize, for both Alberta and the appropriate Metis Settlements, their consultation efforts in a way that clearly demonstrates how mitigation strategies will address impacts to the Metis Settlement members’ harvesting or traditional use activities. Using this information, the consultation office will assess the adequacy of consultation and provide direction to proponents regarding mitigation.

Alberta acknowledges that some Metis Settlements may have developed their own consultation protocols. While it is encouraged that proponents be aware of these protocols, Alberta does not require proponents to comply with them while consulting with Metis Settlements. In cases of conflict between a Metis Settlements’ consultation protocol and this Policy or the Consultation Guidelines, the Policy and Guidelines will prevail.

As stated above, the ACO will manage delegated aspects of consultation. The Consultation 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 to ensure delegated consultation activities are meaningful and consistent with the Policy.

Consultation Process

Steps in the consultation process will be set out in the Consultation Guidelines.

Consultation Timelines

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

Consultation Capacity

Alberta will develop a program and provide funding to increase the consultation capacity of Metis Settlements. Alberta Aboriginal Relations will be responsible for managing and distributing this funding to Metis Settlements. 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.

Alberta supports general community economic development initiatives that proceed outside this Policy, including current discussions with Metis Settlements on economic opportunities. The option of entering into agreements about project impact benefit agreements is open for exploration between Metis Settlements and proponents.

Consultation Guidelines

Measures to maintain consistency, integrity and transparency of the consultation process will be contained in the Consultation Guidelines.

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

- Develop a range of Crown-monitoring activities for delegated consultation;
- Clarify specific information required from Metis Settlements on projects and initiatives;
- Coordinate consultation by working with Canada and provincial governments;
- Reflect the needs of proponents and Metis Settlements 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 Metis Settlement members' harvesting or traditional use activities.

Review

It is important for all parties to continue to identify, discuss, and resolve issues related to Metis Settlements' consultation. Alberta will review this Policy and all associated documentation with Metis Settlements, as well as industry and other stakeholders when appropriate. 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 Metis Settlements' consultations and responds to the future needs of Metis Settlements, as well as industry and other stakeholders. Alberta reserves the right to amend this Policy as appropriate but will engage with Metis Settlements prior to doing so.