

First Nations and Metis Settlements Consultation Policies Renewal



Discussion Guide

Indigenous Relations, Government of Alberta
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First Nations and Metis Settlements Consultation Policies Renewal Discussion Guide
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Message From Minister Feehan

Thank you for participating in the renewal of the First Nations and Metis Settlement policies regarding consultation on land and natural resource management.

For the past two years, representatives from Indigenous Relations have worked with First Nations, Metis Settlements, industry stakeholders, municipalities and other government ministries and agencies to discuss and formulate options to enhance the consultation policies. Following these engagements, we are more convinced than ever that Alberta must make changes to its consultation policies in order to increase the meaningfulness, efficiency, and effectiveness of the consultation process.

Consultation provides an important opportunity for Indigenous people to have a voice in decisions that affect their lives. It is also important for resolving issues related to natural resource development and other land management activities. But more than this, consultation is an opportunity for relationship building that has the potential to benefit us all. Indeed, there are few among us who believe that a courtroom is the best place to grow partnerships to last many lifetimes.

Indigenous people's unique knowledge, culture and ingenuity contribute to our province in incredible and increasingly visible ways every day. By working together as government, industry, municipalities and Indigenous people, we have the best opportunity to build projects that are better for the environment and the future. Our government has a duty to consult with First Nations and Metis Settlements. When Indigenous communities feel that the consultation process is not working for them - or when they feel that the monetary, cultural and spiritual costs of a project are too high - we should listen.

During the engagements we heard many different views on how to promote and respect aboriginal and Treaty rights in Alberta through consultation. We heard about many companies finding appropriate ways to address concerns and deliver real benefits to communities – such as protecting a moose lick, adjusting a project footprint and engaging in business opportunities. We heard about the need for Alberta companies and municipalities to keep costs down as they try to remain attractive places to invest in our new economic reality. We also heard about the need for more clarity around the criteria used to make decisions on consultation adequacy.

While there is some widespread agreement on potential improvement to the consultation policy, there remains a wide divide on what can be done and what must be done. However, there is one issue where most agree – Indigenous communities require more capacity. We agree.

As a significant step towards ensuring that communities receive the capacity they need, effective immediately, the Government of Alberta is committing an additional \$20 million per year to its base consultation capacity funding to Indigenous communities that participate in Alberta's consultation process. This includes an additional \$6.7 million for the remainder of 2018 – 19. This funding should help communities meet immediate consultation needs. It should also allow some flexibility to evaluate what is working well and what is not. Additional details on how to access this increased funding will be provided as soon as they are available. This increase brings

Alberta's contribution to Indigenous consultation capacity funding to more than \$27 million per year, making the province a leader across Canada in funding base consultation capacity.

After careful consideration of the input received, we feel strongly that further discussion on most of the potential policy changes discussed to date is required before we can meet our goal of developing progressive and pragmatic improvements to the consultation policies in a collaborative way. We want to ensure we get it right.

Based on input received to date, this Discussion Guide outlines a set of 17 potential amendments to the current consultation policy and guidelines – four short-term and 13 longer-term.

The four short-term items represent changes we feel are both foundational in nature and could be implemented in 2019, following further brief engagement. A decision on the four short term items is expected to be made this fall. I believe these changes will serve as a starting point from which we can build further improvements.

The remaining 13 potential amendments require further collaborative engagement, some more than others, before they can be considered for implementation.

I invite you to review and provide detailed feedback on all of the 17 potential amendments in this Discussion Guide. Your input will help us understand both the benefits and challenges of implementing the potential amendments and further refine them prior to the development of draft renewed policies and guidelines.

Importantly, this Discussion Guide also invites you to provide feedback on how you would like to be engaged in the renewal process beyond fall 2018. For example, I have shared my view that tri-lateral discussion between government, proponents and Indigenous communities could be beneficial.

Thank you for your input and continued commitment toward the successful renewal of these policies. I am grateful to you as we continue this journey together.

Sincerely,

Richard Feehan
Minister of Indigenous Relations

Context

In 2016, Alberta Indigenous Relations embarked on a renewal process to update the Government of Alberta's *Policy on Consultation with First Nations on Land and Natural Resource Management (2013)* and associated Guidelines (2014). In 2017, Alberta Indigenous Relations initiated the renewal of the Government of Alberta's *Policy on Consultation with Metis Settlements on Land and Natural Resource Management (2015)* and associated Guidelines (2016). The last update on the policy renewal was provided in April 2018.

These policies and guidelines guide Alberta, project proponents, First Nations and Metis Settlements in the procedures required to complete adequate consultation related to land and natural resource development.

The term “consultation” in this Discussion Guide refers to the duty to consult First Nations and Metis Settlements on decisions relating to land and natural resource management that may have potential adverse impacts on First Nations' Treaty rights or traditional uses, and Metis Settlement members' harvesting or traditional use activities.

A more meaningful role for First Nations and Metis Settlements in the consultation process will lead to increased respect for Treaty rights, traditional uses and harvesting activities, and to a more sustainable natural resource sector overall. When communities have a greater voice in decisions that may affect their rights and activities, it leads to improved relationships and reduced conflicts over land uses, and enables all people in Alberta to benefit.

The potential changes in this Discussion Guide are intended to begin addressing the need for a more meaningful consultation process, while at the same time addressing consistent requests for enhanced clarity, certainty and capacity. The outcome of the policy renewal process aims to address concerns of First Nations, Metis Settlements and industry and municipal stakeholders, while continuing to support economic competitiveness and the ability to attract investment to Alberta. Through additional engagement, it may be possible to find solutions that balance the interests of all parties.

What you have told us through Policy Renewal engagements to date

Alberta Indigenous Relations has completed three phases of engagements with First Nations, industry and municipalities, and one phase of in-depth engagements with Metis Settlements, to identify and refine potential policy changes to enhance Alberta's Indigenous consultation processes.

Engagement sessions also took place with all of the above groups to discuss potential options to replace the repealed Bill 22 (i.e., The *Aboriginal Consultation Levy Act*). The purpose of these sessions was collaboratively to explore methods to enhance the consultation capacity of Indigenous communities that participate in Alberta's consultation processes.

The issues, concerns and recommendations identified during the engagement sessions shaped the development of the potential amendments described in this Discussion Guide.

Feedback generally fell under one or more of the following four themes:

1. Actively engage First Nations and Metis Settlements earlier and throughout the consultation process;
2. Broaden the list of activities requiring consultation;
3. Increase clarity and certainty for all parties; and
4. Enhance capacity for First Nations and Metis Settlements to participate more effectively in the consultation process.

In preparing and releasing this Discussion Guide, Alberta Indigenous Relations is acknowledging the need for further collaborative work to refine potential amendments. Further engagement with all parties will help to determine if and how potential policy concepts could be implemented in a way that meets the needs of First Nations, Metis Settlements and industry/municipal stakeholders. It also will achieve the intended outcome of greater certainty for all parties through a clearer, more effective, and efficient consultation process.

Potential Short-Term Amendments to Consultation Policies or Guidelines

The potential amendments numbered 1 through 4 in this document reflect process improvements that could be implemented in the short-term and generally can be understood as foundational changes to the way consultation occurs. When they were presented as policy ideas in spring 2018, many policy renewal participants generally supported these four proposals. Alberta is seeking to work with First Nations, Métis Settlements and proponents to determine how each of these changes could be implemented in a way that is effective and efficient for all.

The first stage of engagement will take place in November 2018. The focus will be on “Issues for Discussion” listed under the four short-term amendments. **Written feedback on the four short-term potential amendments is requested by November 23, 2018.**

No decision has yet been made on whether or not these changes will be implemented. This decision will be made following engagement and analysis of written feedback through to November 23, 2018. If a decision is made to implement any changes, the changes will come into effect in 2019.

#1: Require proponents to involve First Nations and Metis Settlements in the development of consultation plans for large, complex projects that require Level 3 consultation.

Current State:

Currently proponents are only required to work with Alberta on Level 3 consultation plans and not directly with First Nations and Metis Settlements.

Rationale:

Involving First Nations and Metis Settlements in the development of consultation plans ensures that the process is more likely to meet their needs and therefore lead to a more effective consultation process and improved working relationships among First Nation and Metis Settlement communities and proponents. All parties may benefit from gaining a clearer understanding of one another's respective needs and expectations.

Issues for Discussion:

- A targeted timeline of 60 days is proposed for proponents to engage with First Nations and Metis Settlements to develop Level 3 project consultation plans. Pre-consultation assessment would occur prior to initiation of the 60-day period to ensure that all potentially impacted First Nations and Metis Settlements are included.
- Should the 60-day consultation planning period occur before the formal notification period or during the notification period (i.e., when First Nations and Metis Settlements are reviewing project information packages from proponents)?
- If the proponent and First Nation/Metis Settlement are unable to align their perspectives on what should go into a consultation plan within the 60-day period, components of Alberta's Consultation Plan Template could be used for those areas where consensus was not reached.
 - An outline of a Consultation Plan Template, which identifies Alberta's required components for a consultation plan, is provided in Appendix 1 for further discussion. Based upon input received, this outline will be further developed into a complete Consultation Plan Template.
- In the development of consultation plans where more than one Indigenous group may be impacted, what would best meet the needs of First Nations, Metis Settlements and proponents?
 - Encourage proponents to develop a consultation plan for each individual First Nation or Metis Settlement with whom Alberta requires consultation; OR
 - Encourage proponents to develop a single consultation plan for all First Nations or Metis Settlements with whom Alberta requires consultation.
- What other ways could this amendment be implemented to best meet the needs of First Nations, Metis Settlements and proponents?
- Are there any other factors or implications that Alberta should consider with respect to implementing this proposed amendment?

#2: Develop and implement clear and reasonable criteria for adjusting consultation timelines to respond to specific community circumstances/situations.

Current State:

Although the Government of Alberta can and does exercise discretion to extend timelines, it is unclear in what circumstance those timelines may be extended.

Rationale:

The proposed change would enable consultation timelines to be adjusted to better meet the needs of First Nations and Metis Settlements when community circumstances or cultural events/ceremonies make it difficult to participate meaningfully in consultation processes. The predictability of the processes could be enhanced by clearly identifying and, in many cases, predicting circumstances in which consultation timelines may need to be extended.

Issues for Discussion:

Are the following timeline extensions appropriate for the identified situations?

- Extend timelines by a reasonable number of days in the case of death of a community member. A timeline extension of one to three days is proposed.
- Extend timelines by a reasonable number of days for ceremonies and cultural events (note: the specific dates of ceremonies and cultural events would need to be provided annually, at the beginning of each calendar year, by each First Nation/Metis Settlement who wishes to have consultation timelines adjusted). A timeline extension of one to five days is proposed.
- In the case of a local emergency (e.g., fire, flood), timelines will be paused. The timeline pause will depend on the scope, impact, magnitude, and efforts to respond to and address the emergency.
- Should there be an annual limit for the number of days a First Nation/Metis Settlement may extend consultation for deaths or cultural events?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- Are there any other factors or implications that Alberta should consider with respect to implementing this proposed amendment?

#3: Change Alberta’s definition of accommodation in the Consultation Policy to: “Avoid, minimize or mitigate adverse impacts of a Crown decision on First Nations’ Treaty rights or traditional uses, or Metis Settlement members’ harvesting or traditional use activities, through measures such as: adjust project; develop mitigating measures; change proposed activity; attach terms and conditions to authorization; reject project; or provide financial compensation.”

Current State:

Alberta’s current definition of accommodation in the Consultation Policy is to “avoid, minimize or mitigate adverse impacts of a Crown decision on First Nations’ Treaty rights or traditional uses, or Metis Settlement members’ harvesting or traditional use activities.” While the Consultation Policy does not contain any specific examples, the Aboriginal Consultation Office (ACO) guidelines for Alberta Energy Regulator (AER)-regulated projects provide the following examples of ways in which a proponent could mitigate potential adverse impacts:

- Modify project design;
- Modify project location or footprint;
- Modify project timing;
- Seek opportunities to mitigate impacts to First Nations’ Treaty rights and traditional uses or Metis Settlement members’ harvesting or traditional use activities; and/or
- Explore options to address concerns regarding access.

Rationale:

The proposed change has the potential to address the need expressed by all parties to reduce inconsistencies across jurisdictions in operational approaches to consultation by adopting a clear, flexible definition of accommodation within the Consultation Policy that includes specific examples of possible accommodation measures.

The new definition clarifies possible accommodation measures, but does not necessarily change the overall approach. Projects will still be considered on a case-by-case basis.

The specific examples of possible accommodation measures listed in the new definition are intended to be interpreted as options, not requirements.

Issues for Discussion:

- What is the best way of describing accommodation so that it does not limit the flexibility of the parties to develop appropriate accommodation measures for their unique consultation context, and yet still provides additional clarity?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- Are there any other factors or implications that Alberta should consider with respect to implementing this proposed amendment?

#4: Invite First Nations and Metis Settlements to provide a written submission prior to making a decision on adequacy. Only applies to Level 3 consultations. (Note: While the express invitation would only apply to Level 3 consultations, First Nations and Metis Settlements may still provide written submissions for other levels of consultation, if they wish.)

Current State:

While First Nations and Metis Settlements sometimes provided written submissions, the policy does not include an invitation to provide them.

Rationale:

Inviting First Nations and Metis Settlements to provide a final written submission regarding their views of the consultation process ensures that the ACO/government decision maker has an opportunity to understand the effectiveness of the consultation process from the perspectives of all parties. Written submissions could also enable the ACO/government decision maker to better understand how the consultation process is working overall, informing potential future improvements to the consultation process.

Proponents will be given an opportunity to respond to the First Nations'/Metis Settlements' submissions prior to determining adequacy. The authority to assess consultation adequacy will continue to rest with the Crown, and both First Nations'/Metis Settlements' and proponents' submissions will be made within defined timelines.

Issues for Discussion:

- Proposal: After receiving a copy of the final Record of Consultation from the proponent, First Nations and Metis Settlements will have a reasonable number of days to provide a final written submission.
- How much time do First Nations/Metis Settlements require to develop a final written submission on the adequacy of the consultation process?
- How much time do proponents require to review and, if desired, respond to the First Nations'/Metis Settlements' written submission before the consultation adequacy assessment is initiated?
- How can Alberta better incorporate First Nations' and Metis Settlements' feedback into the determination of consultation adequacy?
- What other ways could this proposed amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- Are there any other factors or implications that Alberta should consider with respect to implementing this proposed amendment?

Potential Longer-Term Amendments to Consultation Policies and Guidelines

These potential longer-term amendments reflect shifts to the current consultation policies or guidelines where support was varied among First Nations, Metis Settlements and stakeholders and where the complexities associated with implementation may be significant.

During potential future engagements, the focus will be on “Issues for Discussion” listed under the 13 longer-term amendments. Further engagement will allow more time to fully understand the potential implications of these concepts and to collaboratively develop potential amendments that balance the interests of all parties. **Written feedback on the longer-term proposed amendments will be accepted starting immediately.**

No decision will be made on whether or not any of these changes will be implemented until further engagement has been completed.

#5: Require proponents to bundle all applications for a project into one package as a means to limit project-splitting.

Current State:

Currently proponents are able to submit numerous applications associated with one project.

Issues for Discussion:

- Could incentives be created, in place of a requirement, for proponents to bundle applications?
- How can this proposal be approached to manage potential negative impacts to regulatory timelines where a lack of information or an incomplete application holds up initiation of the approval process for all other project applications?
- What is the best way to balance the proponents' need for flexibility with the need for First Nations, Metis Settlements and government to understand the potential adverse impacts of the entire proposed project?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- "Project-splitting" involves separating and submitting many applications associated with one project at different times.
- The Integrated Decision Approach (IDA) being implemented by Alberta Energy and the Alberta Energy Regulator could enable and create incentives for proponents to bundle more applications into one process.
 - The goal of the IDA is, instead of submitting several separate applications for each project activity, proponents will submit one integrated application that covers activities over the life of the project.
- Bundling would only apply to land and resource approvals issued by the Government of Alberta and the Alberta Energy Regulator.

#6: Require completion of formal Indigenous cultural training programs for Crown consultation staff and proponents involved in the consultation process.

Current State:

Cultural training is not required under the current policies.

Issues for Discussion:

- How can training programs be developed that build on current industry requirements (where those exist) and programs already offered by educational institutions to identify gaps and identify a curriculum that fills those gaps?
- How can cultural training be collaboratively developed with First Nations, Metis Settlements and proponents that meets the needs of all parties?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- Who is best suited to deliver these programs?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Requires extensive collaborative discussion to develop an effective framework for Indigenous cultural training programs.
- Some proponents and government officials are already provided with or required to complete cultural training.
- First Nations and Metis Settlements have expressed that consultation cannot be conducted in a meaningful way if consultation staff and proponents do not have an adequate understanding of Indigenous histories, cultures and traditional ways of life.

#7: Develop clear and reasonable pre-consultation assessment criteria for assessing: whether or not consultation is needed; whom should be consulted; potential adverse impacts of a proposed activity; and the scope of the duty to consult.

Current State:

Pre-consultation assessments are conducted by Alberta without input from First Nations and Metis Settlements.

Issues for Discussion:

- How can Alberta’s pre-consultation assessment criteria better reflect the perspectives of First Nation and Metis Settlements regarding analysis of potential adverse impacts?
- How does Alberta enable greater transparency for First Nations, Metis Settlements and proponents to better understand what criteria are applied in the pre-consultation assessment process?
- How can Alberta enable First Nations, Metis Settlements and proponents to have more input into the consultation process while still ensuring a timely, predictable process?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Factors currently considered during the pre-consultation assessment are:
 - Whether or not consultation is required;
 - If consultation is required, how First Nations/Metis Settlements are to be consulted;
 - The potential adverse impacts of a proposed decision or activity;
 - The scope of the consultation based on available information about the potential adverse impacts to Treaty rights, harvesting or traditional uses; and
 - Assign a level of consultation in order to provide direction or recommendations on the depth of the consultation.

#8: Enhance First Nations and Metis Settlement participation in forestry planning processes.

Current State:

- Consultation is currently occurring on Forest Management Plans (FMPs) and General Development Plans (GDPs).¹
- No consultation required specifically on Final Harvest Plans (FHPs) and Annual Operating Plans (AOPs), although some proponents undertake consultation as a best practice.²

Issues for Discussion:

- Are there potential improvements to be made to the current consultation process for Forest Management Plans (FMPs) and General Development Plans (GDPs)?
- How can the potential option to require consultation on FHPs and AOPs be approached in a way that balances the proponents' need for certainty in regulatory timelines with the request from First Nations and Metis Settlements to have an opportunity to review and comment on operational details of plans before submission to Alberta for approval?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- AOPs are developed after consultation on FMPs - forestry companies will develop AOPs in line with the accommodations determined during consultation on the FMPs.
- AOPs describe in detail the harvesting and road-building activities proposed for the current year.
- FHPs describe the finalized harvest and road layouts. The primary components of final harvest plans are a map and report that clearly show and document harvest area boundaries, roads and water crossings.

¹ FMPs summarize the current state of the forest, as well as the values, objectives, indicators and targets of sustainable forest management developed through consultation with the public, Indigenous communities and other stakeholders. The operational components of these plans are prepared for a 10-year term. GDPs project activities for five years. These documents include a forecast of the areas scheduled for harvest. They also provide details regarding road requirements and fish and wildlife issues within the planning area.

² FHPs describe the finalized harvest and road layouts. The primary components of final harvest plans are a map and report that clearly show and document harvest area boundaries, roads and water. AOPs describe in detail the harvesting and road building activities proposed for the current year.

#9: Require consultation for low impact seismic activities when the following two conditions are met:

- 1. within close proximity (e.g. 5-10 km radius) to a First Nation Reserve or a Metis Settlement; and**
- 2. there is potential for Treaty rights or traditional uses, or Metis Settlement members' harvesting or traditional use activities, to be adversely impacted.**

Current State:

- The following types of seismic activities could potentially trigger consultation if they have the potential to have an adverse impact First Nations' Treaty rights or traditional uses, or Metis Settlement members' harvesting or traditional use activities: intermediate intensive 3D seismic activities ($>$ (more than) 130 m, \leq (less than or equal to) 300 m source line spacing), intense 3D seismic activities (≤ 130 m source line spacing) and 4D seismic activities.
- The current Consultation Policies and Guidelines identify the following geophysical activities as potentially **not** requiring consultation: "Non-intensive 3D and 2D ($>$ 300 m source line spacing), activity is of a very low intensity (e.g. narrow meandering lines or utilizing existing lines); little or no disturbance to ground-level vegetation or soils; no mechanical ground access; short duration (usually a few weeks); drill holes are plugged/reclaimed within one season; negative impacts to the land are mitigated through approval conditions and exploration directives and directions within the *Policy and Procedures for Submitting the Geophysical Field Report.*"

Issues for Discussion:

- Is a five to 10 km radius an appropriate buffer zone around First Nation Reserve Lands or a Metis Settlement in which Level 1 consultation on low-impact seismic would be required?
- What criteria could be used to identify specific types of low impact seismic activities that require Level 1 consultation?
- What are the long term implications of implementing this change?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Notifying communities of nearby low-impact activities may help to ensure safety and allow potential conflict to be avoided.
- Using available data for kilometers of seismic lines mapped from 2011-2017, an annual average of 225 kms of seismic lines one metre or less in width occurred within the proposed 10 km radius. This represents 5-7% of all seismic lines in Alberta one metre or less in width over this time.
- "Low impact seismic activities" are identified in the current Consultation Policy Guidelines as potentially not requiring consultation, and include "Non-intensive 3D and 2D (greater than 300 m source line spacing), activity is of a very low intensity (e.g. narrow meandering lines or utilizing existing lines); little or no disturbance to ground-level vegetation or soils; no mechanical ground access; short duration (usually a few weeks); drill holes are plugged/reclaimed within one season; negative impacts to the land are mitigated through exploration directives and directions within the *Policy and Procedures for Submitting the Geophysical Field Report.*"

#10: Identify and implement reasonable increases to consultation timelines applicable to First Nations' and Metis Settlements' role in the consultation process.

Current State:

- Level 1 consultation: 15 working days to respond to project notification and five working days to review the consultation record.
- Level 2 consultation: 15 working days to respond to project notification and five working days to review the consultation record.
- Level 3 consultation: 20 working days to respond to project notification and five working days to review the consultation record.

Issues for Discussion:

- What are the long term impacts and benefits of expanding timelines as proposed below?
- How can this amendment be approached in a way that enhances the predictability of the consultation process?
- Would the following consultation timelines for activities regulated by the Alberta Energy Regulator allow for more effective participation and more certainty in the consultation process? Could these timelines be applied to other sectors?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Level 1 – Streamlined Consultation

- Response to Project Notification: Increase by five days for a new total of 20 days.
- Assess project impacts and complete consultation: Increase by five days for a new total of 20 days.
- Review Record of Consultation: Increase by five days for a new total of 10 days.

Level 2 – Standard Consultation

- Response to Project Notification: Increase by five days for a new total of 20 days.
- Assess project impacts and complete consultation: Increase by five days for a new total of 25 days.
- Review Record of Consultation: Increase by five days for a new total of 10 days.

Level 3 – Extensive Consultation with or without Environmental Impact Assessments (EIAs)

- Response to Project Notification: Increase by 10 days for a new total of 30 days.
- Assess project impacts and complete consultation: Should be substantially underway or completed within 70 days (increased by 10 days from 60 days, which is the status quo) (without EIAs) or completed within the applicable regulatory timelines (with EIAs).
- Review Record of Consultation (ROC): Increase by five days for a new total of 15 days.

Factors for consideration:

- Does the increase in capacity funding by \$20 million/year to a new total of over \$27 million/year now being provided by Alberta to First Nations and Metis Settlements potentially reduce the need for extending timelines?
- Additional work will need to be completed to determine if the proposed changes are also feasible for additional sectors.

#11: Add a statement that refers concerns that cannot be addressed through consultation to a Crown department or agent, or to a Crown-led land and natural resource management process.

Current State:

A process to respond to concerns raised during consultation that cannot be addressed through consultation is not present in the policy or guidelines.

Issues for Discussion:

- How does Alberta work collaboratively with First Nations, Metis Settlements and proponents to develop systems to track and use information obtained through consultation processes to assist in the assessment and management of broader environmental issues?
- What are the outputs that First Nations, Metis Settlements and proponent's would like to see from the potential development of a system to track and use this information?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- The ACO currently refers many of these issues to appropriate Crown departments for a response. However, there is no over-arching tracking or analysis system in place.
- Common themes of out of scope concerns that the ACO receives include references to issues beyond the project foot print such as:
 - Cumulative effects of decreasing wildlife habitat (moose and woodland caribou).
 - Plant populations (i.e., medical plants) decreasing across the region/province due to development.
 - Cumulative effects of resource development on water quality and quantity concerns across the region/province.

#12: Where First Nation and Metis Settlements identify that an individual project may affect their ability to practice Treaty rights, traditional uses and harvesting activities outside of the project footprint, consultation processes are to include efforts to mitigate these impacts.

Current State:

While not expressly stated in the existing policies or guidelines, Alberta generally requires proponents to consult on site-specific impacts that occur within a project footprint. Impacts occurring outside of a project footprint are sometimes considered out of scope and are sometimes not required to be addressed within the consultation process. There is limited guidance within the current policy and guidelines on how and when impacts occurring outside of a project footprint need to be addressed.

Issues for Discussion:

- Should we start by exploring a tangible example, such as finding ways of addressing access concerns to important sites beyond/outside of the project footprint raised by First Nations/Metis Settlements?
- What criteria could be used to identify when a non site-specific impact to a Treaty right, traditional use or harvesting activity needs to be mitigated or addressed within a project-specific consultation process?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Alberta is not seeking to require proponents to address pre-existing environmental impacts that occurred prior to a particular project application.
- Some proponents already engage in mitigation of these impacts as a best practice.

#13: Require consultation for scheme approvals associated with the *Environmental Protection and Enhancement Act* (EPEA) and *Water Act* applications.

Current State:

No consultation currently required on Oils Sands Scheme approvals.

Issues for Discussion:

- How can consultation on *Oil Sands Conservation Act* scheme approvals ensure a more effective and meaningful consultation process?
- Could incentives be created, in place of a requirement, for proponents to include scheme applications along with EPEA and *Water Act* applications and any other associated activities (*Public Lands Act* applications)?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- This proposed change would only refer to Oil Sands Scheme approvals under the *Oil Sands Conservation Act*.
- Having one consultation process that satisfies consultation requirements for multiple approvals (scheme approval, EPEA, *Water Act*) could lead to a more efficient and effective process.

#14: Require consultation on Temporary Field Authorizations (TFAs) that have a greater than minimal disturbance on the landscape.

Current State:

Very few TFAs are currently subject to consultation. Many TFAs have thresholds identified in the *Public Lands Administration Regulation Approvals and Authorization Administrative Procedures (2014)* that determine when consultation may be triggered. (For example, consultation may be triggered on a borrow pit TFA if the borrow pit activity is larger than 0.5 hectares).

Issues for Discussion:

- Which specific TFAs currently exempt from consultation are of greatest concern regarding the potential to adversely impact Treaty rights, traditional uses and harvesting activities?
- What are the long-term implications of requiring consultation on the TFAs are the greatest concern?
- For new projects, is there value in proponents including associated TFAs with their other project applications (e.g. *Environmental Protection and Enhancement Act (EPEA)*, *Water Act*, *Public Lands Act*) for consultation?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Examples of TFAs under consideration for inclusion in this policy would be large borrow pits and satellite log storage areas, as well as activities that require applications for permanent structures.
- There is a large spectrum of TFAs that are issued. Most of these are limited in scope, temporary and thus very low impact; these TFAs should continue to not trigger consultation.

#15: Require consultation for some types of temporary diversion and uses of water authorized by temporary diversion licenses (TDLs) under the *Water Act*.

Current State:

TDLs are exempt from consultation.

Issues for Discussion:

- Which specific TDLs are of greatest concern regarding the potential to adversely impact Treaty rights, traditional uses and harvesting activities (excluding those which are required to respond to emergency situations)?
- What thresholds could be introduced to ensure that consultation is triggered only on those TDLs that are of greatest concern?
- What are the long-term implications of requiring consultation on the TDLs are the greatest concern?
- For new projects, is there value in proponents including associated TDLs with their other project applications (e.g. EPEA, *Water Act*, *Public Lands Act*) for consultation?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and Proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Before diverting and using surface and groundwater in Alberta, a licence must be obtained under the province's *Water Act*. A temporary diversion licence (TDL) provides authority for this diversion, for a maximum of one year.
- The proposed change will not apply to the temporary diversion of water by farmers from dugouts or to emergency situations.
- There is a large spectrum of TDLs that are issued. Most of these are limited in scope, temporary and thus very low impact; these TDLs should continue to not trigger consultation.

#16: Include new grazing leases as potentially triggering consultation.

Current State:

Requirement to consult on new grazing leases is generally recognized for areas larger than five hectares, but is not clearly indicated in the policy or guidelines.

Issues for Discussion:

- What is an appropriate threshold for triggering consultation on new grazing leases?
- What are the long- term implications of reducing the threshold?
- What other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Factors for consideration:

- Renewals of existing grazing leases will not be assessed for potential consultation.
- New grazing leases are relatively rare (an average of two per year).
- New grazing leases that are under five ha in size are even more uncommon.

#17: Proponent contribution to consultation capacity.

Current State:

No guidance is provided to proponents regarding fees paid to First Nations/Metis Settlements for any level of consultation.

Issues for Discussion:

- Options could include one or more of the following approaches:
 - Require capacity agreements between proponents and First Nations/Metis Settlements for Level 3 consultations via either policy or legislation.
 - Establishment of flat fee rates for non-government proponents for Level 1 and Level 2 consultations via either policy or legislation.
 - Other potential proponent contribution approaches that may result from further engagement.
- In what other ways could this amendment be approached to best meet the needs of First Nations, Metis Settlements and proponents?
- What other factors need to be considered to implement this change?

Appendix 1: Proposed Consultation Plan Outline

Level 3 Consultation Plan Outline

Title Page

1. Name of Project
2. Submitted to
3. Submitted by
4. Submission Date

Introduction

1. Statement of Preparation
 - a. In accordance with requirement of *The Government of Alberta's Guidelines with First Nations Land and Natural Resource Management*
2. Project
 - a. Description
 - b. Location

First Nations & Metis Settlements Consultation

1. List of First Nations and Metis Settlements to be Consulted, and for Each One:
 - a. List of Consultations to Date
 - b. Description of Consultation Approach
 - c. Description of Notification to First Nations
 - d. Description of Initial Engagement
 - e. Description of Ongoing Engagement

Tracking & Reporting

1. Record of Consultation
2. Consultation Status Reports
3. First Nations and Metis Settlements Contact Information

Consultation Plan Appendices

Appendix A - Consultation Schedule

The proponent must include a proposed consultation schedule that outlines potential consultation activities to be carried out with each First Nation and/or Metis Settlement. The proponent must include details regarding potential timelines, contacts, methods of communication, consultation tracking and any other relevant information regarding the proposed consultation schedule.

Appendix B – Plain Language Information Package

Proponents must include the information package that they intend to send to the First Nation(s) and or Metis Settlement(s). (NOTE: content will be identical to information required at the notification stage within the current consultation process.) The package must include:

- Proposed development
- Project summary
- Project location
- Project facilities
- Environmental management
- Reclamation
- Further information
- Glossary

Method of Delivery of Information Package

The proponent must list the potential methods of delivery for providing each First Nation and/or Metis Settlement with an information package. The potential methods of delivery must be in compliance with the approved methods of delivery as set out in the Consultation Policy and Guidelines.

Appendix C – First Nation/Metis Settlement Contact Persons

The proponent must provide a list identifying the First Nation(s) and/or Metis Settlement(s) and the level of consultation as provided by the ACO in the Pre-consultation Assessment.

Appendix D – Method of Communicating Direct Notices to First Nations

The proponent must list the potential method(s) for communicating direct notices to First Nation(s) and/or Metis Settlements. Potential methods could include, but are not limited to: community postings; advertisements in local newspapers or First Nations' and/or Metis Settlements' newspapers; face-to-face meetings with, or presentations to, elected leaders or their delegated representatives.

Appendix E - Proponent Contact Information

The proponent must provide the company's name and general contact information (e.g., telephone, email, fax, and mailing address). Additionally, the proponent must identify the designated individual(s) who may be contacted for information regarding the proposed project and its associated consultation.

Appendix F – Project Location Maps

Appendix G – Project Schedule

Appendix H – Project Summary Table

Appendix I – Indigenous Community Consultation Concern & Response Table

Required for Each Indigenous Community:

This table is designed to capture all concerns brought forward by the First Nation and Metis Settlements during the consultation process, the proponent's plans to accommodate the concern(s) through avoidance, minimization or mitigation, any First Nation or Metis Settlement responses to the proponent's proposed accommodation measures, and the proponent's updated accommodation measures to reflect the First Nation or Metis Settlement's responses.

Document or meeting reference	Proponent's capture of the expressed concern	Proponent's measures to accommodate the concern through avoidance, minimization or mitigation, including any updates in consideration of any Indigenous Community response to the initial proposed measures.	Indigenous community response to the proponent's proposed measures to address the concern.
1.			
2.			
3.			
4.			

