

The Department of Energy First Nations Consultation Guidelines

The Department's Mandate Respecting First Nations Consultation

The Alberta Department of Energy (the Department) manages the disposition of rights to provincially owned mineral resources¹ for development by industry, and the assessment and collection of resource revenues in the form of royalties, fees, rentals, and mineral tax and bonus payments.

The Department secures the Crown's share of resource revenues for the benefit of all Albertans. Its legislation and policies support the government's policy of sustainable resource and environmental management, while ensuring Alberta's resources remain competitive and attractive to investment over the long term.

The Department is committed to consult with First Nations where the development of mineral resources on provincial Crown land has the potential to adversely impact First Nations rights and traditional uses (*Rights and Traditional Uses*)². To coordinate its consultation activities, the Department has established a consultation team within its Aboriginal Relations Business Unit.

The Department's Role in First Nations Consultation

The leasing of Crown mineral rights does not, in and of itself, adversely impact First Nations *Rights and Traditional Uses*. Reasons for this include:

- Mineral dispositions do not grant the right of access to the land. Mineral leaseholders must obtain further approvals for surface activities such as seismic exploration, drilling, and pipeline or road construction.
- Many primary-term mineral agreements expire without any surface dispositions being issued or any exploration or development activity occurring.
- In situations where development does occur, often only small portions of the total leased area are directly affected by surface activity.

Given this, the Government of Alberta does not consult with First Nations prior to the disposition of Crown mineral rights, and First Nations consultation is not a condition of acquiring or renewing mineral agreements.

The Department recognizes that surface activities associated with the exploration and development of mineral resources have the potential to adversely impact *Rights and*

¹ Mineral resources include minerals such as petroleum, natural gas, oil sands, coal, limestone, salt, gold, silver, iron, nickel, lead, and diamonds.

² *Rights and Traditional Uses* includes uses of public lands for purposes such as burial grounds, gathering sites, and historic or ceremonial locations, and existing constitutionally protected rights to hunt, trap, and fish; it does not refer to proprietary interests in the land.

Traditional Uses. The Department provides information to both industry and First Nations so they can prepare for discussions about surface activities that are regulated by other branches of government.

The Department encourages companies to develop best practices in relation to First Nation consultation, and to share relevant information on projects with First Nations early in the planning process. Aboriginal Relations staff will continue to act as the Department contact for First Nations and industry on the consultation policy and the Department's guidelines.

The goals of the Department's consultation guidelines are to:

- More effectively address the concerns of First Nations in relation to mineral resource development;
- Provide reasonable certainty for industry seeking access to the province's energy and mineral resources;
- Ensure consultation activities about resource development are directed to situations where surface activity is being actively planned and these activities have the potential to adversely impact *Rights and Traditional Uses*; and
- Fulfill the Department's role in meeting Alberta's duty to consult with First Nations.

It is essential that Crown consultation with First Nations occurs early. Through relationship-building activities, support of the traditional use study (TUS) program, and integrated land management planning, the Department will work to ensure that potential adverse impacts on First Nations *Rights and Traditional Uses* are identified and considered in making decisions.

The Department's guidelines outline an approach for addressing both the consultation policy and departmental goals. They identify:

- General consultation activities in which the Department will engage with First Nations;
- Specific consultation activities the Department will undertake regarding a particular initiative; and
- Internal practices of the Department.

The Department's Consultation Guidelines

A. General Consultation

General consultation forms the basis of the Department's consultation and focuses on building an effective working relationship between the Government of Alberta and First Nations. General consultation is independent of any specific development proposal. It uses a range of activities to increase the flow of information between First Nations, industry and government, and to avoid or mitigate impacts on First Nations *Rights and Traditional Uses*.

Guideline 1: Offer First Nations information and explanation of government processes.

The Department and other relevant provincial government departments participate in information sharing sessions with First Nations communities. The goals of such sessions are to increase First Nations' understanding of Alberta's resource development and land management responsibilities and its various regulatory processes. The Department will participate in additional sessions at the request of specific First Nations. Through these information sessions, the Department seeks feedback from First Nations on concerns about resource development activities, in order to provide support to the Department's business units and other government departments on strategies to avoid or mitigate any adverse impact on First Nations *Rights and Traditional Uses*. These activities are described below and illustrated in *Figure A*.

In these sessions the Department shares information about:

- Energy and mineral resource development in general;
- The roles and responsibilities of the Department;
- Regulatory processes involved in leasing mineral rights and the management of mineral agreements; and
- Current and anticipated resource development in the vicinity of First Nations.

Guideline 2: Provide First Nations with access to relevant information on mineral resource development activity.

The Department provides access to basic information on mineral resource activity in the province through the development of an interactive website called the Aboriginal Community Link. The site is available on request for the exclusive use of Aboriginal communities, with each community assigned an individual account and password. Aboriginal Relations staff provides communities with both training to use the website and ongoing telephone assistance.

The Aboriginal Community Link includes information on mineral ownership and existing mineral access restrictions, and shows active mineral agreements and lands posted for public offering. This gives participating First Nations the earliest possible access to information on land postings that may be of interest to them. Other Alberta departments may also place information on this system.

This information can assist First Nations to identify areas of potential mineral resource development and to assess whether a specific location is of critical concern to the community because of a traditional use site. Coupled with traditional use data, this information offers a way to initiate discussions between the Department and First Nations on site-specific concerns and possible measures to avoid or mitigate adverse impacts. The Department and other affected departments (Sustainable Resource Development; Tourism, Parks, Recreation and Culture) are also willing to place protective notations on sites under traditional use when a First Nation has shared TUS data for that purpose.

Guideline 3: Support TUS programs.

The Department participates on the cross-ministry TUS Data Management Committee (the Committee), which addresses issues related to the use and management of traditional use data in support of First Nations consultation on resource development and land management.

The Committee's objectives include:

- Negotiating and implementing data-sharing agreements with First Nations;
- Identifying a process for the use of TUS data in Alberta's regulatory and consultative roles;
- Protecting sites from the impacts of resource development and using TUS data to support land use planning; and
- Developing recommendations for data management and maintenance using existing regulatory processes and systems.

The Department also provides limited funding to assist communities in using Global Positioning System (GPS) technology to verify the locations of traditional use sites that have been identified through a community mapping initiative or traditional use study.

Where a First Nation makes TUS data available through a data-sharing agreement, the Department will use it to increase awareness of traditional uses of Crown land. Where appropriate, and subject to the agreement, site-specific TUS information such as cabins and gravesites will be entered in the surface portion of the Land Status Automated System³ (LSAS) as "Protective Notations". This data may also be attached as addenda to the public offering of Crown mineral rights and may result in access restrictions being included as a notice to lessee on mineral agreements.

Guideline 4: Inform industry of the consultation guidelines and process.

The Department provides information to industry clients on potential access restrictions they may encounter due to significant First Nations traditional uses on Crown land. Significant traditional use sites identified on the LSAS as access restrictions will give industry an opportunity to pre-plan their consultation with First Nations.

Aboriginal Relations acts as the Department contact with the energy and mineral development industry on the consultation policy and government's expectations of industry clients in meeting consultation requirements. Aboriginal Relations staff are available to address these issues as requested.

The Department issued an information letter (IL# 2006-29) in September 2006 outlining the application of the consultation policy to surface activities that companies may undertake after acquiring Crown mineral rights.

³ The LSAS is the Government of Alberta's database which maintains information about provincial Crown lands and mineral resources.

On its website (www.energy.gov.ab.ca), the Department includes a general statement in the Public Offering Notice for mineral sales to identify how the consultation policy applies to surface activities and provides an Aboriginal Relations contact for further information.

Guideline 5: Encourage First Nations participation in resource planning.

In collaboration with other government departments, Aboriginal Relations will participate in developing and implementing regional forums for discussing resource development issues between industry and First Nations.

The Department will work with First Nations and other government departments to define how First Nations will participate in land use planning initiatives.

The Department will use TUS data in its resource development planning and decision-making whenever such data is made available under a data-sharing agreement.

Guideline 6: Facilitate settlement of First Nations treaty land entitlement claims.

Once a treaty land entitlement (TLE) claim has been accepted by the Government of Canada (Canada), the Department will work with Canada, Alberta International, Intergovernmental and Aboriginal Relations (IIAR), and First Nations to identify suitable lands to support TLE settlements.

The Department will reserve specified undisposed Crown mineral rights from further disposition until a TLE settlement is reached, and will keep Crown mineral agreement-holders who will be affected by the transfer of mineral rights from the province to Canada apprised of the process.

When a land claim settlement is reached, Alberta, upon approval of Cabinet and the Lieutenant Governor, will transfer Crown mineral rights to Canada through Order in Council, to be set aside as reserve lands for First Nations.

B. Department-Led Consultation

The Department leads or participates with other government departments in direct consultation with First Nations where major government policies or new initiatives have the potential to adversely impact First Nations *Rights and Traditional Uses*.

The Department will fulfill this commitment through the development and implementation of a consultation plan that follows the steps outlined below and illustrated in *Figure B*:

Guideline 1: Assess the need for and type of consultation required.

In assessing whether First Nations consultation is required for a new policy or new initiative, and if so what type of consultation is required, the Department will assess the proposed change against the following criteria:

- Does the proposed change relate to land or the use of land?
- If so, does the impact on land have the potential to adversely affect First Nations *Rights and Traditional Uses*?

Where initiatives do not potentially impact First Nations *Rights and Traditional Uses*, the Department will encourage First Nations to engage in the public consultation process instead.

Guideline 2: Determine which First Nations are affected.

The Department will identify First Nations whose *Rights and Traditional Uses* may be adversely impacted based on the location of Indian reserves, and known traditional use sites and areas in relation to the proposed policy or initiative.

Guideline 3: Notify affected First Nations.

The Department will contact affected First Nations directly in order to:

- Inform them of the proposed policy or initiative;
- Provide any information that is relevant to their participation; and
- Disclose any relevant deadlines that First Nations must meet.

Guideline 4: Receive and analyze First Nations' feedback.

The Department will conduct consultation activities in order to receive input from affected First Nations on the proposed policy or initiative. Depending on the level of consultation, this may involve one or more of the following activities:

- Public forums, open houses, or information sessions;
- Participation on multi-stakeholder or advisory committees that guide the initiative and make recommendations to Alberta;
- Regional or community-specific First Nation consultation sessions involving Chief and Council, technical staff, elders, or community members; and
- Opportunities to provide written feedback.

Based on the type of consultation undertaken, the Department will work with First Nations to ensure appropriate capacity is in place to assist them in the consultation process. The Department will summarize and analyze the feedback from First Nations to identify what we heard.

Guideline 5: Validate our understanding of the feedback received.

Where a separate consultation process is undertaken with First Nations, the Department will validate input from affected First Nations to ensure that the Department's reporting

of key issues, themes, or recommendations brought forward by First Nations is accurate. The validation process may take the form of a validation meeting or an opportunity to provide written comments.

Guideline 6: Consider feedback and report decisions to First Nations.

The Department will document all feedback from First Nations and report back to First Nations on how their concerns were considered in the final decision. At this time, there may also be an opportunity to work with First Nations to determine their role in implementing the new policy or initiative.

Guideline 7: Evaluate the consultation process.

Where both agree that it is appropriate, the Department and the affected First Nations will jointly evaluate the effectiveness of the consultation process in order to adjust it for future policies or initiatives.

C. Internal Practices

To support general or department-led consultation, Aboriginal Relations also works within the Department to increase staff awareness of First Nations issues and to ensure the Department's business considers impacts on First Nation *Rights and Traditional Uses*.

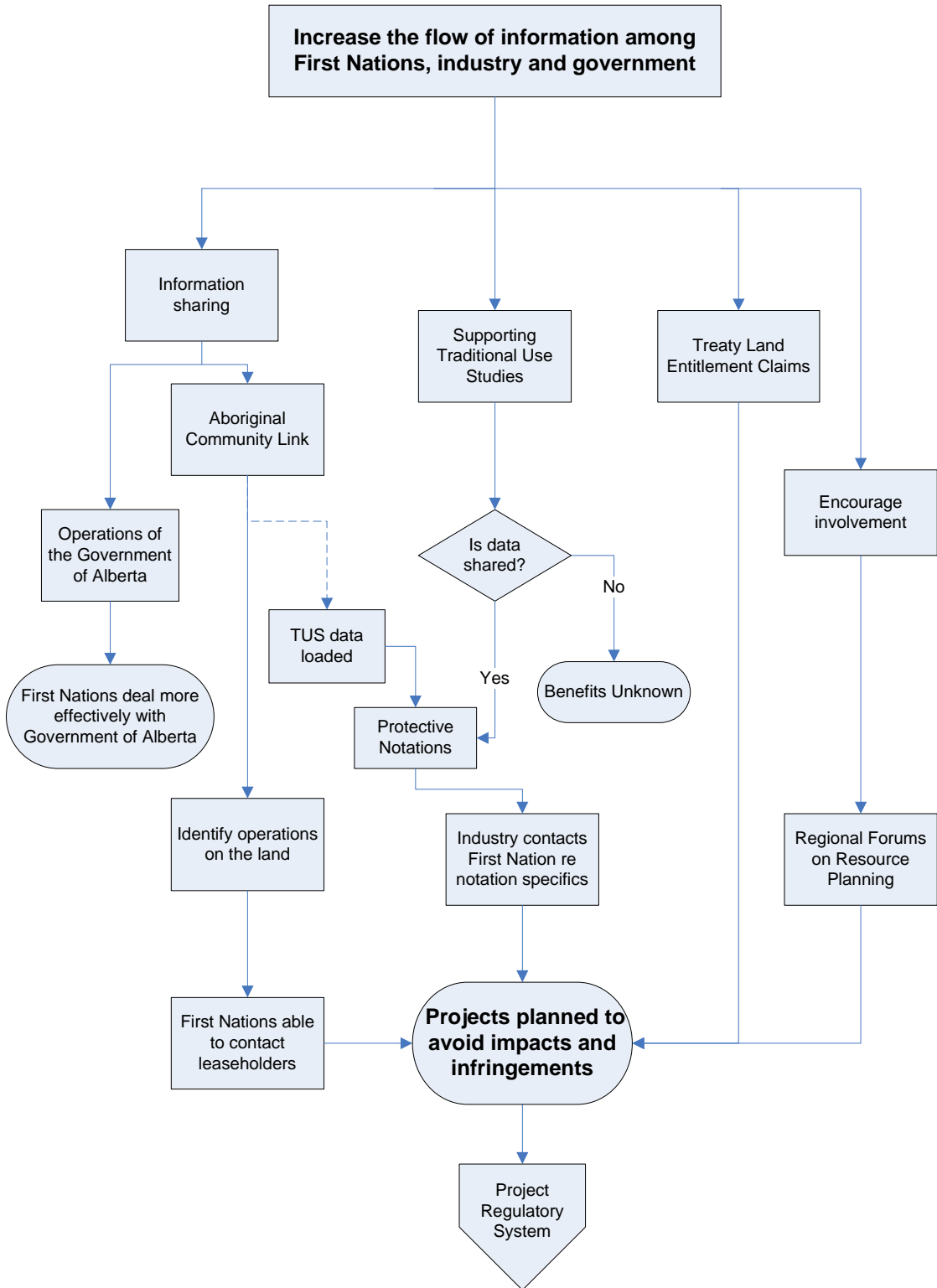
Guideline 1: Develop departmental understanding and increase knowledge of First Nations issues.

Aboriginal Relations acts as the Department's primary contact with First Nations. The unit also provides support to other business units in addressing Aboriginal issues with the potential to affect the Department's business. Each business unit has a contact person through whom Aboriginal Relations staff can provide support and advice on any proposed initiatives that may require consultation.

To further support this relationship, Aboriginal Relations hosts information sessions to describe its role and provide cultural and business information relevant to Department staff. It also hosts targeted discussion forums for business units whose activities may be relevant to First Nations issues.

Finally, Aboriginal Relations reviews other business units' annual business plans to identify strategies and initiatives that may require consultation with First Nations.

A: General Consultation



B. Department-Led Consultation

