

# Alberta's First Nations Consultation Guidelines on Land Management and Resource Development

(Updated November 14, 2007)

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## **Part I: Alberta's Guidelines**

**\*\*\*Please note\*\*\***

*First Nations, project proponents, and government representatives engaging in First Nations consultation should consider Part 1 as both a starting point and a foundation for project-specific consultations. Part 1 outlines the generic components of all consultation. The Department-specific Guidelines in subsequent Parts supplement this generic outline with explicit directions for consultation within the regulatory authority of each Department. In the event of an inconsistency between Part 1 and the Department-specific Guidelines, the guidance in Part 1 should ordinarily prevail.*

### **A. Background**

On May 16, 2005, the Government of Alberta (Alberta) adopted the *Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* (Policy). In the Policy, Alberta makes the commitment to consult with First Nations where land management and resource development have the potential to adversely impact First Nations rights and traditional uses<sup>1</sup> of Crown lands (Rights and Traditional Uses).

In the Policy, Alberta committed to creating consultation guidelines (Guidelines) to fulfill its duty to consult, to offer procedures for consultation, and to ensure a practical and efficient consultation process. To ensure consistency across the Guidelines, a framework (Framework) was released on May 19, 2006.

The Guidelines, now outlined within this document, are intended to guide all parties involved in consultation, as they are consistent with the current state of the law on consultation.

### **B. Next Steps**

Alberta views the process of developing Guidelines as ongoing. At the end of the 2006-07 operating season, Alberta conducted its first quality-assurance assessment to revise and adjust the Guidelines as necessary. Alberta will do similar assessments annually.

Alberta is recommending a trilateral process (involving representatives from industry, First Nations and government) to discuss the issues of timelines, notification and the capacity of all parties to implement First Nations consultation in the province. A bilateral process (involving individual First Nations and Alberta) will also be initiated, with the intent of clarifying areas of critical interest for First Nations and to bring consistency to

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<sup>1</sup> Rights and traditional uses includes uses of public lands such as burial grounds, gathering sites, and historic or ceremonial locations, and existing constitutionally protected rights to hunt, trap and fish and does not refer to proprietary interests in the land.

the determination of “who to consult” regarding land management and resource development proposals.

Internal and external sessions are being planned to enhance the knowledge of all parties regarding the 2007-08 Guidelines as well as to discuss implementation issues, in an effort to increase communication and monitor the application of consultation more closely. Ministers participating in the Consultation Initiative have also committed to meet with First Nations chiefs on a semi-annual basis, to begin to structure a political process in recognition of the government-to-government nature of Alberta's relationship with First Nations.

### **C. The Role of the Crown**

The duty to consult rests with the Crown (Alberta). While the key goal in all circumstances is to avoid or mitigate potential adverse impacts and to come to an agreeable solution, the agreement of all parties is not a requisite component of adequate consultation.

In some cases, consultation may reveal a duty to accommodate for the Crown to meet in making its decision. Accommodation can mean efforts to reconcile, adjust, or adapt. In that regard, it will be reflected in the regulatory approval process, which will take into account the efforts of project proponents to address First Nation concerns by making changes to plans and adjusting and adapting projects to minimize impacts.

Alberta acknowledges a duty to consult with First Nations where Alberta's actions have the potential to adversely impact treaty rights. In recognition of its role, Alberta may:

- Undertake consultation with First Nations on a range of provincial planning initiatives (e.g., *Water for Life: Alberta's Strategy for Sustainability*, integrated land management plans);
- Provide direction and support to proposed regional consultation tables;
- Work with First Nations to ensure traditional use study information is used to support consultation where such information is available;
- Provide information to First Nations and industry to assist in consultation activities;
- Where disputes arise, provide direction at the request of either party;
- Determine the adequacy of consultation activities with the intent of avoiding adverse impacts to First Nations Rights and Traditional Uses and making efforts to substantially address the concerns of First Nations;
- Report back to First Nations and industry regarding decisions; and
- Consider other issues or take other actions as Alberta deems necessary.

When considering approval of resource development projects, Alberta may delegate procedural aspects of its duty to project proponents (Proponents). This process is described in “The Role of Proponents,” below. Such consultation activities are expected to comply with the Policy and Guidelines. To help ensure their adequate consultation and

compliance with the Policy and Guidelines, Alberta will review Proponents' consultation activities.

Alberta is also responsible for documenting the overall consultation process, including details about its:

- Decision on whether the duty to consult is engaged and, if so, whom to consult;
- Delegation of specific consultation activities to Proponents;
- Decision on the adequacy of the Proponents' performance of delegated activities; and
- Notification to First Nations and Proponents about its decisions.

Alberta remains fully engaged in the substantive aspects of consultation, even when some aspects are delegated. Specifically, Alberta will:

- Provide advice and make information available to Proponents, as able, regarding potential adverse impacts to Rights and Traditional Uses;
- Support Proponents by providing consistent advice on who to consult on a proposed project;
- Ensure Proponents provide First Nations with early and adequate notifications on proposed projects;
- Review and approve consultation plans;
- Oversee the consultation process by evaluating reports submitted by Proponents; and
- Make final decisions about project approvals once Alberta determines that consultation has been adequate.

Alberta will also monitor implementation of the Guidelines. Every year, Alberta will assess effectiveness of the Guidelines and determine whether changes are required. This monitoring will help to achieve an effective and efficient process and address concerns from all parties. Alberta encourages the development and discovery of best practices for consultation. Alberta will continue to rely on feedback from First Nations and industry to inform implementation and assessment of the Guidelines.

Finally, Alberta is committed to reviewing the Policy in May 2009—four years after it was initially approved. In the year leading up to that date, Alberta will seek feedback from First Nations and industry to inform this review.

#### **D. The Role of Proponents**

As manager of the consultation process, Alberta will delegate some project-specific activities to Proponents. This delegation may apply on projects that began before release of the Guidelines in September 2006 but require further regulatory approval. All consultation required by Alberta will be carried out in the manner described in these Guidelines. If a project approval process straddles the issuance of a revised version of these Guidelines, then affected Proponents should seek direction from the appropriate

Alberta staff, who will strive to manage the transition in accordance with the legitimate expectations of the parties involved.

It is Alberta's intention that the activities delegated to Proponents will be conducted within the existing regulatory framework and timelines. To help maintain those timelines, Alberta strongly encourages Proponents to begin notifying First Nations early on when planning their projects and, where possible, consulting with First Nations before applying for government approvals. Likewise, where appropriate, Alberta may encourage Proponents to initiate discussions with First Nations at the program level so that a broader, more integrated understanding of area development can be shared.

The minimal requirements for assessment and notification, consultation procedures, and review and decision-making are defined as follows:

***1. Assessment and Notification***

Alberta will determine which projects require consultation and inform Proponents about which First Nations they should consult with on those projects. Consultation on certain approval processes for certain projects may apply both on private lands and Crown lands within Alberta. Consultation may be required for projects on private lands if Alberta believes the project may adversely impact Rights and Traditional Uses (for example, by affecting animal populations on nearby lands on which a First Nation exercises a treaty right to hunt those animals for food). In such cases, Proponents will be advised that consultation is required.

When determining whether to delegate project-specific consultation, Alberta will consider the following:

- Specific traditional use information shared by First Nations;
- Lands selected as part of treaty land entitlement (TLE) negotiations;
- The magnitude and duration of the proposed project;
- Information shared at regional consultation tables;
- Information acquired through direct interaction with First Nations; and
- Other relevant information that comes to Alberta's attention.

Consultation will not be required where there is no potential for adverse impacts on Rights and Traditional Uses. In particular, consultation may not be required if:

- The First Nation has informed Alberta that they do not exercise Rights and Traditional Uses in the area; or
- The proposed activity was the subject of previous consultation and has had either minor or no subsequent changes and therefore is not subject to further potentially adverse impacts on Rights and Traditional Uses.

In those instances where consultation activities are delegated to a Proponent, the Crown may assist by:

- Advising whether notification will be required and with which First Nations;
- Providing First Nations contact information;
- Providing government contact information;
- Providing guidance and advice about the required consultation;
- Establishing timeframes within which consultation should occur relative to the magnitude and duration of the proposed project;
- Assessing and approving proposed strategies to avoid or mitigate potential adverse impacts on Rights and Traditional Uses; and
- Other steps or measures Alberta deems necessary.

## **2. Consultation Procedures**

As stated in the Policy, Alberta's duty to consult will not be engaged on every proposed resource development activity. However, when it is, Alberta will require Proponents to follow specific consultation procedures for specific projects. In these instances, Proponents should do *at least* the following activities:

- Notify either the band council or a designate of potentially adversely impacted First Nations (a list of consultation contacts endorsed by each First Nation is available and regularly updated on the IIAR website at <http://www.international.gov.ab.ca>);
- Provide plain language information describing the scope and location of the project, and clearly identifying those potential adverse impacts which the Proponent anticipates in the short and long term;
- If required, meet to discuss comments and concerns of the potentially adversely impacted First Nations;
- Strategize to avoid or mitigate potential adverse impacts on Rights and Traditional Uses;
- Where agreement has not been reached about how to avoid or mitigate potentially adverse impacts, provide written reasons to Alberta; and
- In any case, before government approvals, provide to Alberta a summary of the efforts to share information relating to the project, with the same summary copied to the First Nation(s) to which it pertains.
- To ensure efficient processing of applications, it is advisable to complete consultation procedures prior to applying for approvals.

Alberta may verify that the First Nation(s) received the summary of consultation activities.

Alberta acknowledges that some First Nations have developed their own consultation protocols. Alberta encourages, but does not require, Proponents to be aware of those protocols when consulting with First Nations. Where appropriate, Alberta will continue to work with First Nations to incorporate aspects of these protocols into the Guidelines.

## **E. Response of First Nations**

Alberta will require Proponents to provide written notification to First Nations where there are potential adverse impacts to Rights and Traditional Uses stemming from land management and resource development activities. Where notification is provided, First Nations must indicate in writing to the Proponent within a reasonable timeline if there are concerns with the proposed project. Where no response is received from a First Nation within 21 calendar days, it will be determined that they have no concerns with the project and the project approvals process will proceed without any further notice to the First Nation.

In responding to written notification within 21 days, a First Nation shall identify the name of the project that is being responded to and clearly identify the potential adverse impacts on Rights and Traditional Uses that call for further consultation. Further consultation will be conducted in accordance with the "Consultation Procedures" section.

#### **F. "Adequate Consultation"**

A primary concern of all parties is determining when consultation is "adequate." Although Proponents will be required to follow specific consultation procedures, Alberta remains responsible for ensuring that performance of delegated consultation activities has been adequate. Alberta will ensure a consistent and coordinated approach across departments to determine the adequacy of consultation whenever consultation is required. Alberta will also assess Proponent-led consultation activities.

As stated in the Policy, Alberta expects consultation to occur *before* decisions are made. Therefore, Alberta strongly encourages Proponents to begin notification activities early on when planning their projects and, where possible, consult with First Nations before applying to government departments for approval.

Alberta will review the consultation information submitted by Proponents for adequacy and completeness. Alberta may verify information with First Nations and seek advice from internal government personnel during its review. Where applications are considered incomplete or inadequate, Proponents may be required to consult further with First Nations.

Alberta may consider the following questions when assessing the adequacy of Proponent-led consultation with First Nations:

- Did the Proponent and the First Nation consult in a meaningful way that supports the spirit of collaboration?
- Did the Proponent and the First Nation exchange information in a reasonable amount of time before the project was to begin?
- Did the Proponent make reasonable efforts to avoid and mitigate First Nations concerns?
- How did First Nations participate in the process?
- How much did First Nations participate in the process?
- Were potential adverse impacts specifically identified?

- Was the scope of the potential impacts communicated effectively?

When consultation has occurred, Alberta will use the information provided to consider the potential adverse impacts of the project on Rights and Traditional Uses and send written notification of its decision in a timely manner to both the Proponent and the First Nation.

All regulatory decisions related to consultation will be made by Alberta, or its boards, to satisfy its duty to consult. An example is the Alberta Energy and Utilities Board (EUB). The EUB's Directive 056 (Energy Development Applications and Schedules) requires applicants to adhere to these Guidelines as well.<sup>2</sup>

Alberta remains fully engaged in the substantive aspects of consultation, and may take a role in the procedural aspects of project-specific consultation, when appropriate. For example, where disputes arise, Alberta encourages either party to seek direction from the appropriate government staff. While agreement is desirable, Alberta does not require consent by either First Nations or Proponents. Alberta has the final decision-making authority in assessing the adequacy of consultation. Where approval is given to move forward with a proposed project, Alberta has deemed consultation to have been adequate.

### **Department-Specific Guidelines**

Each Alberta Ministry (Department) administers legislative and regulatory processes unique to its business functions. To promote an effective and efficient consultation process related to resource development, each Department has reviewed its internal processes to assess where to best incorporate First Nations consultation. The result has been development of Department-Specific Guidelines to ensure compatibility with various resource sectors. While each Department's requirements may vary, each Department intends its Guidelines to be both consistent with the current state of the law on consultation and compatible with the other Department-Specific Guidelines.

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<sup>2</sup> EUB Directive 56, Section 2.1 (page 5)  
<http://www.eub.ca/docs/applications/submissions/1457147/10-004-2005-09-12-Directive056.pdf>

## **Part II:**

# **Alberta Energy Consultation Guidelines for First Nations Consultation on Resource Development and Land Management**

## 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 resources<sup>3</sup> 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*)<sup>4</sup>. 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 Traditional Uses*. The Department provides information to both industry and First Nations so they can

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<sup>3</sup> Mineral resources include minerals such as petroleum, natural gas, oil sands, coal, limestone, salt, gold, silver, iron, nickel, lead, and diamonds.

<sup>4</sup> *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.

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 System<sup>5</sup> (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.

On its website ([www.energy.gov.ab.ca](http://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 provide 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.

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<sup>5</sup> The LSAS is the Government of Alberta's database which maintains information about provincial Crown lands and mineral resources.

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 new 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 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.

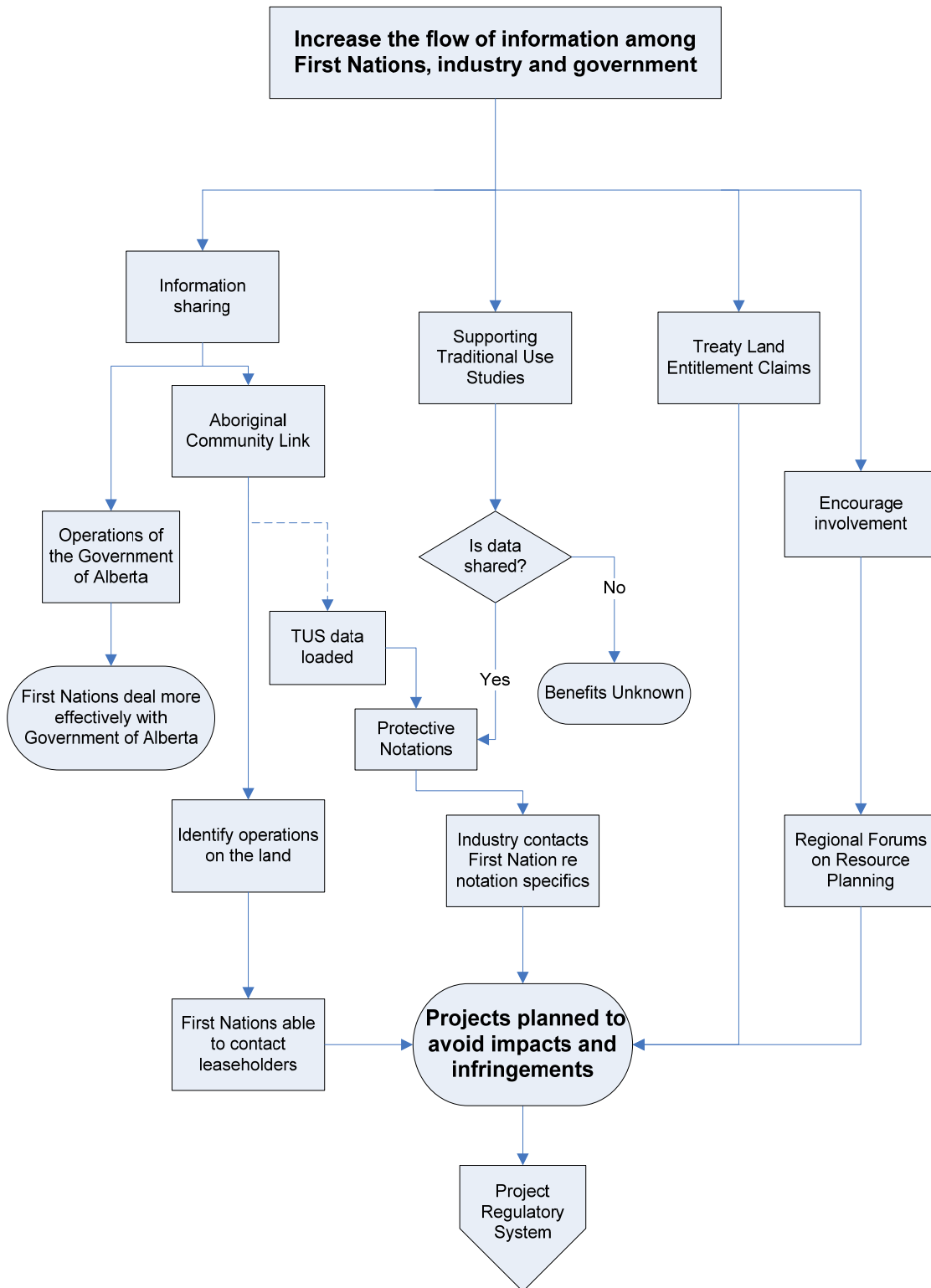
***Guideline 1: Develop departmental understanding and increase knowledge of First Nations issues.***

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.

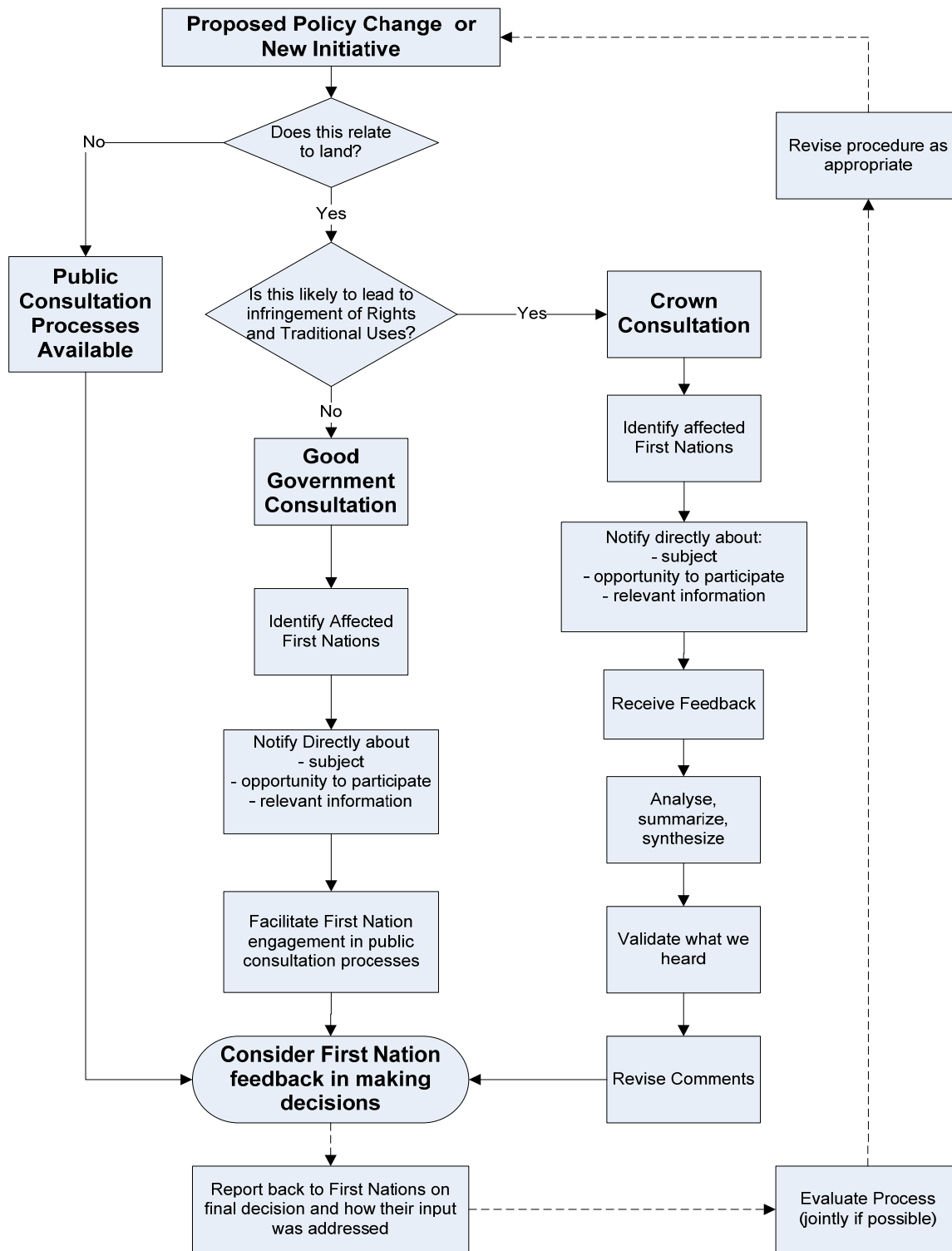
To further support this relationship, Aboriginal Relations hosts information sessions to describe its role and provide cultural and business information relevant to Department staff. It also hosts targeted discussion forums for business units whose activities may be relevant to First Nations issues.

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



## **Part III:**

### **Alberta Environment First Nations Consultation Guidelines (Regulatory Authorizations and Environmental Impact Assessments)**

## **1. Introduction**

Alberta Environment's *First Nations Consultation Guidelines* (the Guidelines) outline the Ministry's required consultation with First Nations for activities regulated under the *Environmental Protection and Enhancement Act* (EPEA), the *Water Act* and those subject to *Environmental Impact Assessments* (EIA's).

At the discretion of the Director, these Guidelines will apply to the following types of projects:

- Large-scale industrial projects (i.e. new projects and major expansions);
- Large-scale water diversion or wastewater projects;
- Projects requiring an EIA; and
- Projects off Indian Reserves that may have a potential to adversely impact First Nation Rights and Traditional Uses on Indian Reserves.

Alberta Environment (AENV) expects that the concerns raised by First Nations throughout the process of consultation will be discussed and considered fairly and reasonably. When it is determined that a proposed project requires consultation, AENV will advise First Nations and require the project proponent to identify and commit to implement strategies for avoidance or mitigation based on the magnitude and duration of the proposed project.

## **2. Incorporating First Nations Consultation within AENV Regulatory Processes**

These Guidelines are intended to facilitate specific involvement of First Nations in AENV regulatory processes through opportunities that currently exist through public notices under EPEA and/or the *Water Act* and provide additional requirements to ensure adequate First Nations consultation.

Implementation of these Guidelines will require additional up front lead-time for AENV to determine any required First Nations consultation for the proposed project. For any required consultation, additional time will be required for the proponent to submit project-specific information to potentially adversely impacted First Nations prior to AENV accepting their application as complete. This does not limit the ability of the project proponent to consult more broadly.

At the discretion of the Director, AENV may require the project proponent to undertake consultation based on the receipt of new or additional information at any time during the regulatory approval process.

### **3. Assessment and Advise ment of the Need for First Nation Consultation**

On eligible projects, AENV will assess project specific information provided by the project proponent to determine if a proposed project requires First Nations consultation. In making that determination, the Director, at his or her discretion, may consider the following:

- i. The magnitude and duration of the proposed project;
- ii. Any potential adverse impacts on First Nations' *Rights and Traditional Uses* on:
  - Indian Reserves;
  - Lands selected as part of Treaty Land Entitlement negotiations;
  - Any Sites or areas within the proposed project area or affected by the proposed project as being important to the exercise of First Nation Rights or Traditional Uses; and
- iii. Any other available information.

When AENV determines that a proposed project requires consultation, and the project proponent is ready for public disclosure, Alberta Environment will advise potentially adversely impacted First Nations of the proposed project and upcoming regulatory milestones.

### **4. First Nations Consultation Plan**

When AENV determines that a proposed project requires First Nations consultation, Alberta Environment will require the proponent to develop, to the satisfaction of the Director, a First Nations Consultation Plan.

The First Nations Consultation Plan shall include, at a minimum, the following information:

- i. Project proponent contact information;
- ii. A list of specific First Nations to be consulted;
- iii. Plain language project specific information;
- iv. Delivery methods for providing plain language project specific information and direct notices to First Nations;
- v. Any available information regarding potential adverse impacts to First Nations *Rights and Traditional Uses*;
- vi. Timelines and schedules for consultation activities including any significant milestones; and
- vii. Procedures for reporting to AENV on the progress and results of consultation.

At the discretion of the Director, AENV may require the project proponent to include any other information in a First Nations Consultation Plan that is deemed necessary in order to ensure the adequacy of consultation.

Contact information for First Nations is listed in the document entitled [\*Profiles: First Nations and Metis Settlements\*](#) (February 2006) which can be found on the Alberta International, Intergovernmental and Aboriginal Relations website at [www.international.gov.ab.ca](http://www.international.gov.ab.ca). In determining which First Nations to include, the approach taken by project proponents should be one of inclusion rather than exclusion.

**a) Plain Language Project Specific Information**

Prior to public Notice of Application, AENV requires the project proponent to contact potentially adversely impacted First Nations and provide them with plain language project specific information as outlined in the Consultation Plan.

Plain language, project specific information shall, at a minimum, include the following:

- i. The project proponent's contact information for a First Nation to provide initial feedback and/or request further information about the proposed project;
- ii. A non-technical, plain language description of the proposed project including the magnitude and duration of the proposed project;
- iii. A map (or maps) of sufficient scale to clearly illustrate the location of the proposed project in relation easily identified and/or commonly known landmarks (water bodies, roads, etc.);
- iv. Clear identification of potential short and long term potential adverse impacts of the project; and
- v. The proposed consultation schedule.

**b) Informing First Nations about Consultation Activities and Meetings**

The First Nations Consultation Plan shall identify how the project proponent will provide information about planned consultation activities and meetings to First Nations involved in consultation. The project proponent is encouraged to provide First Nations information about proposed consultation activities using a combination of the following:

- i. Advertisements in First Nations newspapers;
- ii. Community postings;
- iii. Face-to-face meetings with, or presentations to elected leaders or their delegated representatives; and/or
- iv. Any other means that sufficiently informs members of the First Nation about the proposed project and their involvement in the consultation process.

## **5. Documenting and Reporting First Nation Consultation**

As required by the Director and in accordance with the First Nations Consultation Plan, the project proponent shall document and report to AENV the progress and outcomes of their consultation with First Nations. Documentation shall include, at a minimum, the following information:

- i. A list of First Nations who were provided with project specific information;
- ii. Copies of the plain language, project specific information provided to First Nations contacted;
- iii. How and when information was provided to First Nations involved in the consultation process;
- iv. All dates and locations of activities and/or meetings undertaken throughout the consultation process;
- v. Names of individuals and/or groups contacted within the First Nation and lists of attendees at all meetings;
- vi. All documented records-of-decision, or minutes compiled throughout the consultation process by either the project proponent or the First Nation;
- vii. A summary of consultation efforts and outcomes including any information regarding potential adverse impacts to First Nations Traditional Rights and Uses;
- viii. Proposals for addressing the interests and/or concerns of First Nations involved in the consultation process (i.e. avoidance or mitigation);
- ix. Where agreement has not been reached with respect to avoidance or mitigation of potentially adverse impacts, written reasons be provided to the Crown;
- x. Any proposed follow-up with First Nations (if applicable); and
- xi. At the discretion of the Director, any other information that may be deemed necessary to determine the adequacy of consultation.

## **6. Determining the Adequacy of Consultation**

Under these Guidelines, AENV will retain and exercise its responsibility to make a final determination as to whether or not consultation activities undertaken by the project proponent were adequate.

Failure to complete an approved First Nations Consultation Plan will be taken into consideration by AENV when deciding to approve a proposed project. At the discretion of the Director, any inadequacies with regard to First Nation consultation could result in a delay of the regulatory approval process.

In making a final determination regarding the adequacy of consultation, the Director will consider, at a minimum, all of the following:

- i. Consultation was conducted in a meaningful way that supports the spirit of collaboration;
- ii. The information provided to First Nations was project specific, provided in a timely manner and presented in a plain language form;
- iii. The nature and scope of the potential adverse impacts of the proposed project were effectively communicated and understood by all parties;
- iv. Rights and activities that could be potentially adversely impacted were specifically identified and understood;
- v. Reasonable efforts were made on the part of the project proponent to avoid or mitigate First Nation concerns;
- vi. The extent of involvement by First Nations, including the nature and degree of their participation in the process; and
- vii. At the discretion of the Director, any other matters deemed necessary in order to ensure that the Crown's duty to consult has been fulfilled.

## **7. Milestones Specific to Regulatory Authorizations (EPEA and/or Water Act Applications)**

A process flowchart outlining the new steps within Alberta Environment's Regulatory Approval Process for EPEA and Water Act Authorization Applications that facilitate First Nation involvement is attached. Details regarding these new steps are outlined below.

### **a) Determination of Administrative Completeness of Applications**

In addition to the standard considerations that apply to AENV in determining administrative completeness and accepting applications for regulatory approval under EPEA and/or the *Water Act*, AENV will consider the project proponent's First Nations Consultation Plan as discussed in Section 4 of these guidelines.

### **b) Public Notice of Application**

When the project proponent files a public Notice of Application, they shall also provide direct notification to potentially adversely impacted First Nations identified in the First Nations Consultation Plan by sending a copy of the Notice of Application with a covering letter that clearly indicates the due date for the submission of a Statement of Concern (SOC) to AENV.

The information shall be sent to First Nation's Chief and Council or any individual or group designated by the Chief and Council with the specific authority to represent the

First Nation in these matters. The project proponent is encouraged to supplement direct notification to First Nations using the methods outlined in Section 4 b) of these Guidelines.

**c) Determination of a Valid Statement of Concern**

For the purposes of the appeal process under the Environmental Appeals Board or the Natural Resources Conservation Board, the criteria for accepting a Statement of Concern (SOC) under EPEA and/or the *Water Act* will not change. The criteria include all of the following:

- The SOC was received within the legislated period provided for its submission;
- All concerns relate to issues within the authority of the Director;
- All concerns relate directly to the proposed project; and
- The filer of the SOC is a party directly affected by the activity or proposed project.

First Nations will continue to be responsible for demonstrating how a proposed project may directly affect them. Any written concerns submitted to AENV by First Nations prior to the legislated submission date may be considered by the Director in determining a valid Statement of Concern.

As per the existing process, First Nations will be informed of any AENV determination regarding accepting or not accepting their Statement of Concern under EPEA and/or the *Water Act*.

**d) Final Decision on Application for Approval**

In the final determination on the application for regulatory approval, the Director will consider the adequacy of the project proponent's First Nations consultation efforts as outlined in Section 6 of these Guidelines. The Director's decision regarding the approval of the application will be communicated by AENV to those First Nations identified in the First Nations Consultation Plan.

## **8. Specific Milestones Related to Environmental Assessment**

A process flowchart outlining the new steps within Alberta's Environmental Assessment Process under EPEA that facilitate First Nation involvement is attached. Details regarding these new steps are outlined below.

### **a) Notice of Decision to Screen**

Project proponents shall directly notify potentially adversely impacted First Nations identified in the First Nations Consultation Plan of Alberta Environment's decision to prepare a Screening Report. This notification shall be made by sending a copy of the Notice of Decision to Screen to the First Nation's Chief and Council or any individual or group designated by the Chief and Council with the specific authority to represent the First Nation in these matters. The project proponent is encouraged to supplement direct notification to First Nations using the methods outlined in Section 4 b) of these Guidelines.

AENV will directly provide the First Nations identified in the First Nations Consultation Plan, with a copy of the screening report including the decision as to whether or not an EIA is required.

### **b) Notice of Proposed Terms of Reference**

The Project proponent shall directly notify First Nations identified in the First Nations Consultation Plan by sending copies of the Notice and the Proposed Terms of Reference with a covering letter clearly indicating the due date for submitting comments to AENV.

The information shall be sent to First Nation's Chief and Council or any individual or group designated by the Chief and Council with the specific authority to represent the First Nation in these matters. The project proponent is encouraged to supplement direct notification to First Nations using the methods outlined in Section 4 b) of these Guidelines.

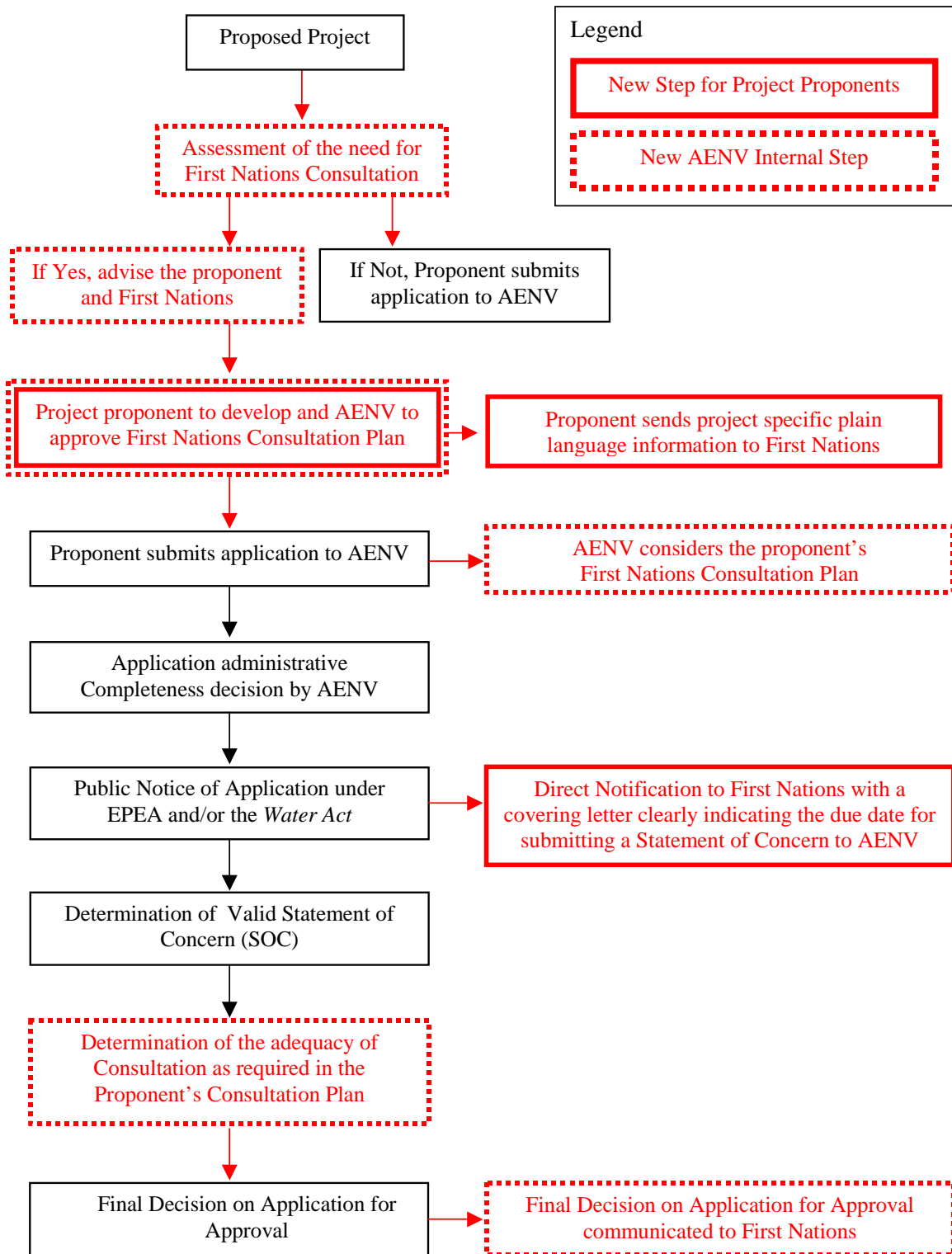
### **c) Notice of Final Terms of Reference**

AENV will provide a copy of both the Notice and the Final Terms of Reference directly to First Nations identified in the First Nations Consultation Plan.

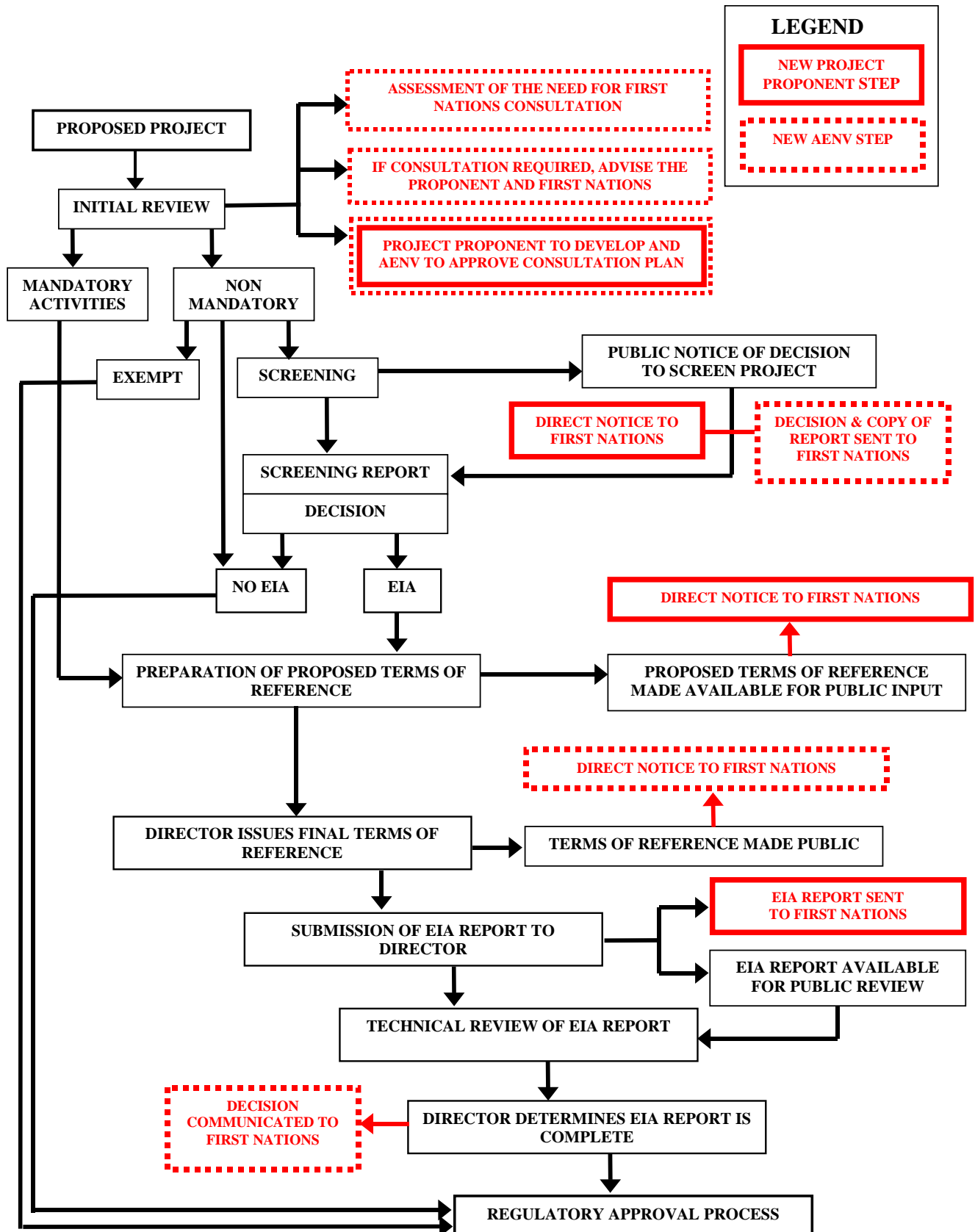
### **d) EIA Report Completeness Decision**

AENV will inform First Nations identified in the First Nations Consultation Plan that the EIA has been deemed complete.

**Alberta Environment's Regulatory Approval Process for *Environmental Protection and Enhancement Act (EPEA)* and *Water Act* Authorization Applications**



Alberta's Environmental Assessment Process



**Part IV:**

**Alberta Sustainable Resource Development Guidelines for  
First Nations Consultation on Resource Development  
and Land Management**

## Fish and Wildlife First Nations Consultation Guidelines 2007/2008

SRD-Fish and Wildlife Division is committed to consult with First Nations regarding fish and wildlife management activities and proposed policy, legislative or regulatory changes that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Alberta Crown lands.

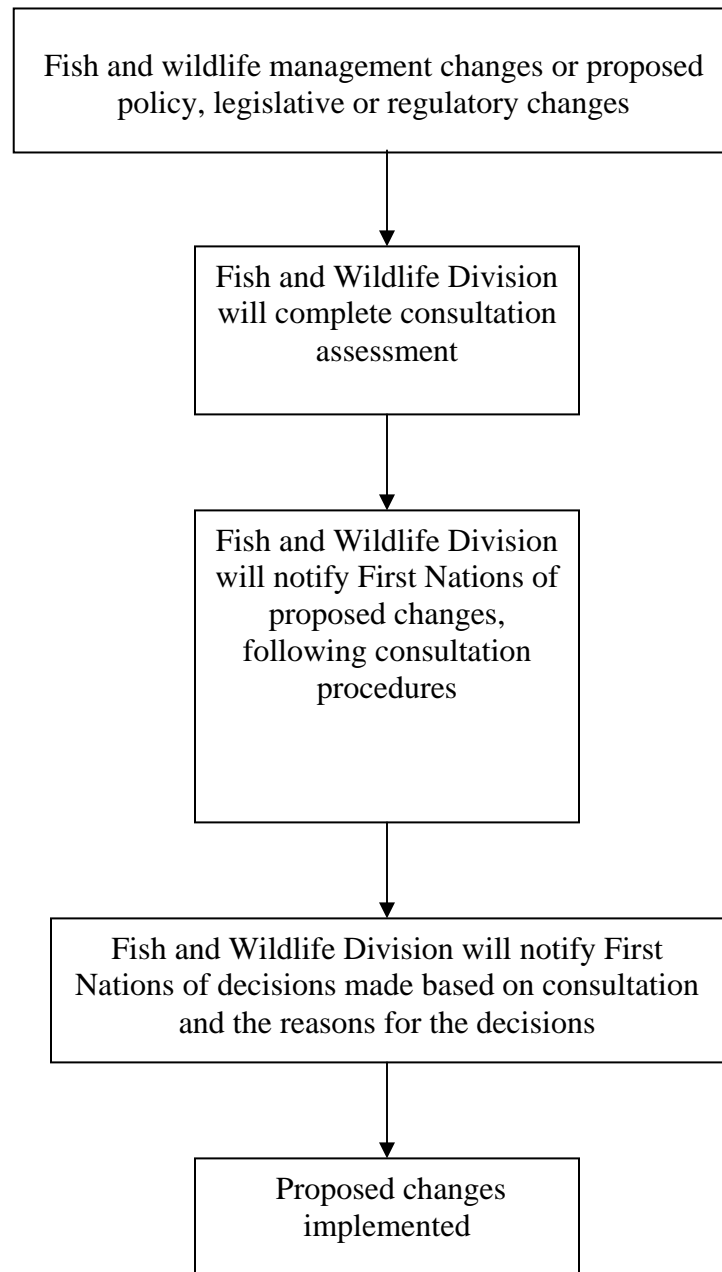
Fish and Wildlife Division wants to ensure that both parties receive timely and relevant information in order to keep each other informed and foster positive relationships. This will allow for meaningful participation in the consultation process.

Consultation with First Nations will use the following process:

1. Assessment – The scope of consultation activities and the level of First Nation involvement (Treaty level organizations/ Regional Tribal Councils/First Nations) will be determined by the potential adverse impact the proposed changes (provincial, regional or local) may have on First Nations *Rights and Traditional Uses*. The First Nations or organizations that are to be contacted will be determined based on the following criteria:
  - Specific traditional use sites shared by First Nations;
  - Lands selected as part of Treaty Land Entitlement negotiations;
  - Magnitude and duration of the proposed project;
  - Information shared at regional consultation tables;
  - Information acquired through direct interaction with First Nations; and
  - Any other information that comes to Alberta's attention.
2. Notification – As part of the notification process, Fish and Wildlife Division will:
  - Provide a general outline of the consultation that will be undertaken;
  - Provide government contact information for consultation information and support;
  - Establish timeframes within which consultation should occur; and
  - Outline general strategies that may be used to avoid, mitigate or accommodate potential adverse impacts on First Nations *Rights and Traditional Uses*.
3. Procedures –
  - Notify First Nations at the outset of the proposed changes;
  - Provide plain language information describing the proposed changes, and the conservation reasons for proposing the changes;
  - Initiate meetings to discuss ideas, comments and concerns of the potential adverse impact to First Nations;

- Reasonable time will be provided for parties involved to review, consider and respond;
  - Develop strategies to avoid, mitigate or accommodate the potential adverse impacts on First Nations *Rights and Traditional Uses*; and
  - Notify the First Nations of the decisions made based on the consultations and the reasons for the decisions.
4. Fish and Wildlife Division will maintain a record of consultation activities and ensure fairness of process.
  5. Fish and Wildlife Division will continue to strive to respond to issues of interest that arise throughout the year.

## SRD - Fish and Wildlife Consultation Process



## Land Management First Nations Consultation Guidelines 2007/2008

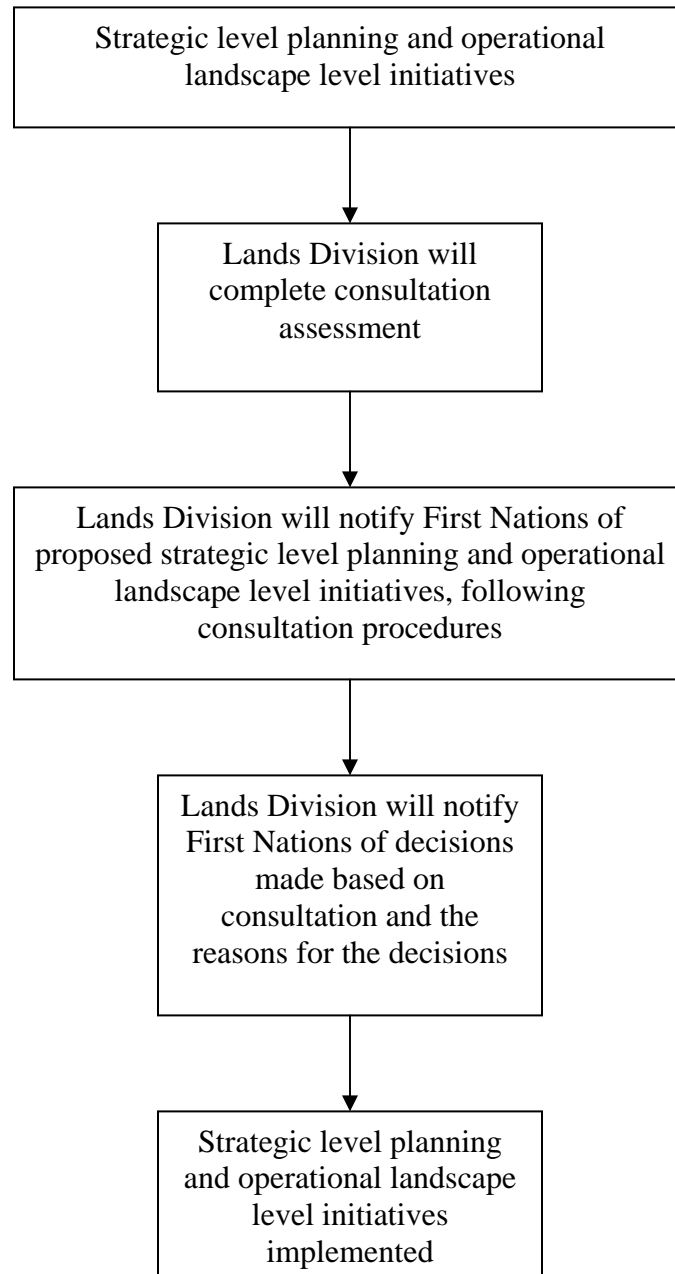
SRD is committed to consult with First Nations regarding strategic level planning and operational landscape level initiatives that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Alberta Crown lands.

Consultation with First Nations will use the following process:

1. Assessment – The scope of consultation activities and the level of First Nations involvement (Treaty level organization/Regional Tribal Council/First Nations) will be determined by the potential adverse impact the proposed initiatives (provincial, regional or local) will have on First Nations *Rights and Traditional Uses*. The First Nations or organizations that are to be contacted will be determined based on the following criteria:
  - Specific traditional use sites shared by First Nations;
  - Lands selected as part of Treaty Land Entitlement negotiations;
  - Magnitude and duration of the proposed project;
  - Information shared at regional consultation tables;
  - Information acquired through direct interaction with First Nations; and
  - Any other information that comes to Alberta's attention.
2. Notification –
  - For provincial-scale initiatives, contact Treaty level organizations first for advice on how they want to be consulted, other parties to include, and how information should be provided;
  - For operational landscape level initiatives, the appropriate Regional Tribal Council and/or First Nations will be approached first for advice on how they want to be consulted;
  - Provide government contact information for further information and support;
  - Establish timeframes within which consultation will occur; and
  - Outline general strategies that may be used to avoid, mitigate or accommodate potential impacts on First Nations *Rights and Traditional Uses*.
3. Procedures –
  - Involvement of Treaty level organizations/Regional Tribal Councils/First Nations at the early stages of the planning process;
  - Provision of plain language information describing the proposed plan, and identifying potential short and long term adverse impacts;

- Initiate meetings to provide information to First Nations about integrated land management planning activities thereby inviting First Nations to provide direct input and participate in the planning process;
  - Reasonable time will be provided for parties involved to review, consider and respond;
  - Develop strategies to avoid, mitigate or accommodate the potential adverse impacts on First Nations *Rights and Traditional Uses* whenever possible; and
  - Inform the Treaty level organizations/Regional Tribal Councils/First Nations of the decisions made based on the consultations and the reasons for the decisions.
4. All forms of consultation and communication shall be documented.

## SRD - Land Management Consultation Process



## Conventional Oil and Gas First Nations Consultation Guidelines 2007/2008

SRD is committed to consult with First Nations when it issues authorizations for conventional oil and gas activities that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Crown lands. When applications for conventional oil and gas activities are submitted, some procedural aspects of consultation will be delegated to the project proponent.

Where SRD delegates the responsibility for consultation, the project proponent will consult with potentially affected First Nations on that proponent's planned development program for the season. Alberta recognizes development plans change as the season progresses and, as such, consultations will be undertaken with this in mind. The *Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* and Part I of the Consultation Guidelines apply to these consultations and prevail where there are any inconsistencies.

For the purposes of First Nation consultations, a proponent's seasonal development program may take the form of an Area Operating Agreement ("AOA") or some other package of proposed projects or activities scheduled to be executed within that season.

### **Area Operating Agreements**

An AOA does not convey statutory approval for a company to proceed with its plans, but only what the company intends to follow when requesting individual site approval.

1. Where possible, consultation should occur during preparation of the operational planning (Part C) of the AOA. If this is not possible, the proponent will be required to have completed consultations prior to the issuance of approvals contemplated by the AOA. If desired, a First Nations Consultation Plan can be developed by the proponent during the preparation of the AOA with assistance from Alberta, as set out in Part I of the Guidelines.
2. Consistent with Part I of the Guidelines, SRD or Alberta staff will review the program contemplated in the AOA and will: (a) assess the duty to consult; and (b) identify which First Nations are to be consulted.
3. Proponents will provide First Nations with relevant information about their project including, but not limited to:
  - A proposed program plan including maps and proponent contact information; and
  - A proposed program schedule.

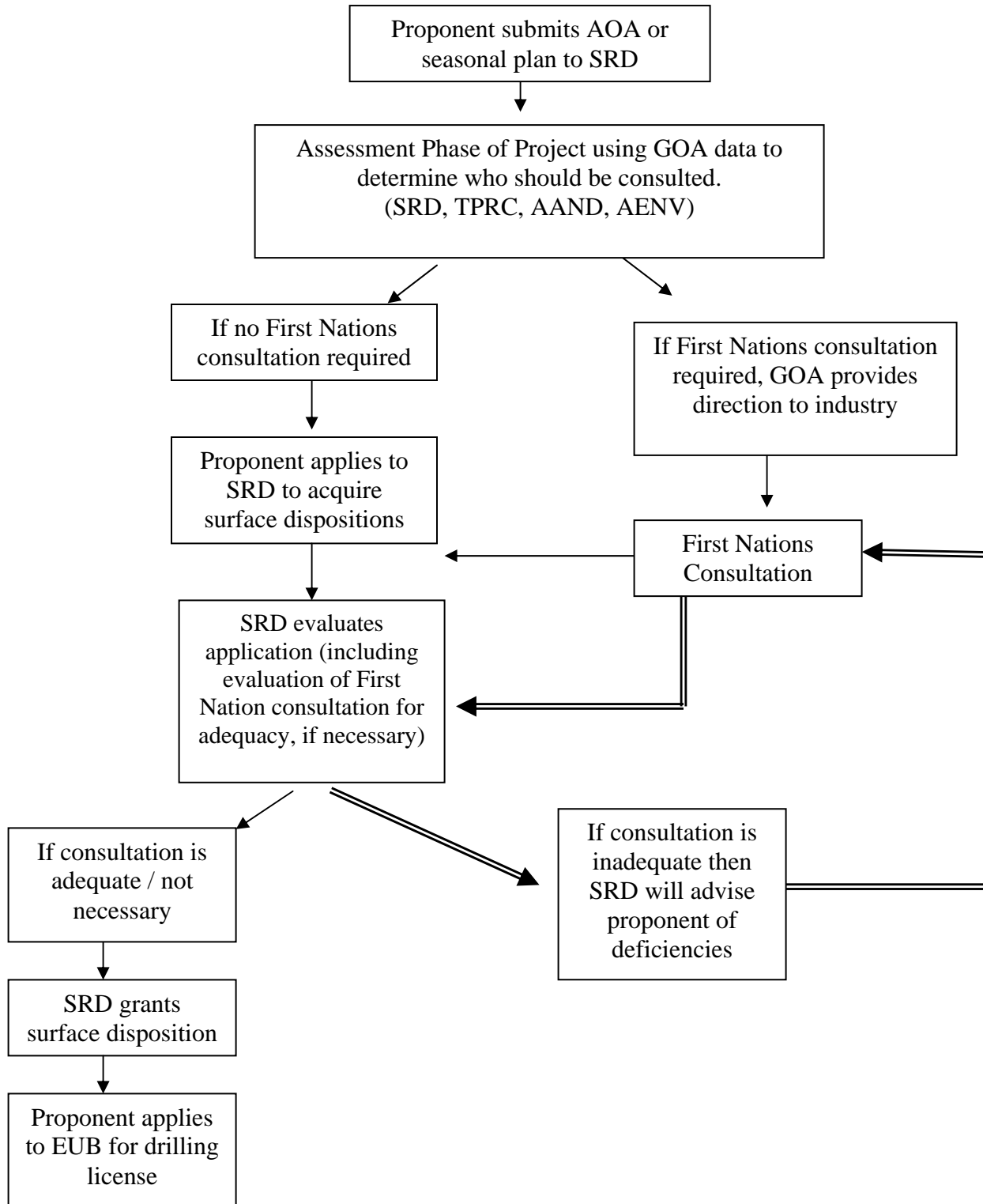
4. Proponents will initiate meetings with the First Nations to listen to and gain their input on the potential adverse impacts of the proposed program. First Nations responses and concerns are to be discussed and considered in the consultation process to identify possible methods to avoid or mitigate potential adverse impacts.
5. All forms of consultation and communication shall be documented. A summary of the consultations will be provided to Sustainable Resource Development and to the First Nations.
6. Matters requiring further consultation may require meetings among the proponents, First Nations, and Alberta for discussion.

#### **Other**

1. For activities not included in an AOA, Alberta's Consultation Policy and the Guidelines will continue to apply. Industry proponents will review consultation requirements with their regular staff contacts within SRD.
2. The provisions of Part I of the Guidelines apply to these consultations. Project proponents may develop and execute consultation plans which include a package of proposed projects, or activities planned for the season.

SRD reserves the right to require consultation based on receipt of new information at any time during the approval process.

## SRD - Conventional Oil & Gas Consultation Process



## Forest Industry First Nations Consultation Guidelines 2007-2008

SRD is committed to consult with First Nations before it issues authorizations for timber harvesting that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Alberta Crown lands. The following procedural aspects of consultation will be delegated to project proponents:

The Forest Industry is required to initiate meetings with First Nations to review planned forest operations. Plans to be reviewed include, but are not limited to:

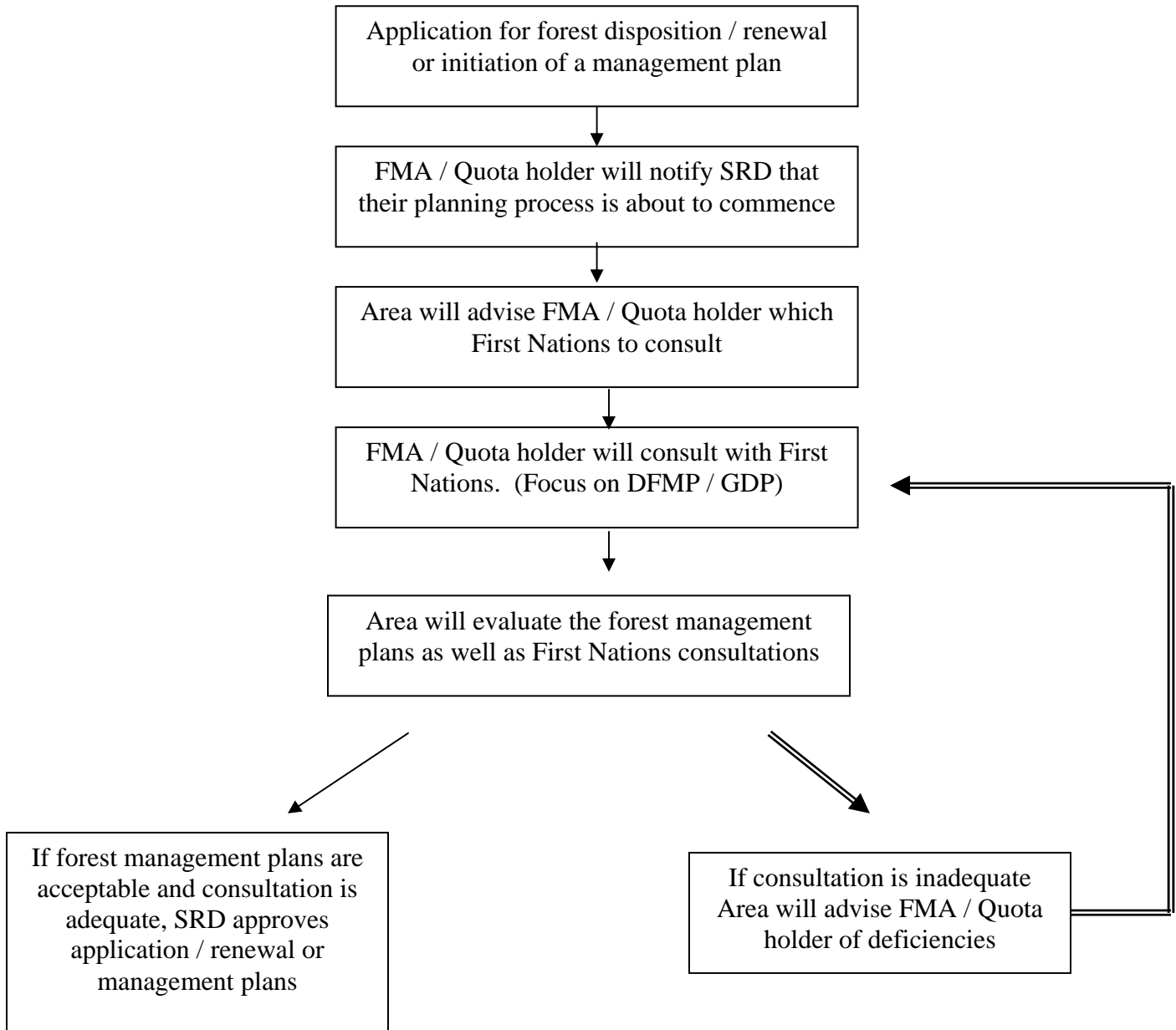
- Detailed Forest Management Plans (DFMPs)
  - General Development Plans (GDPs)
1. Assessment – The scope of consultation activities and the level of First Nations' involvement will be determined by the potential adverse impact the proposed project may have on First Nations *Rights and Traditional Uses*. To provide advice on which First Nations are to be consulted, the Area will complete an assessment based on the following criteria:
    - Specific traditional use sites shared by First Nations;
    - Lands selected as part of Treaty Land Entitlement negotiations;
    - Magnitude and duration of the proposed forest operations;
    - Information shared at regional consultation tables;
    - Information acquired through direct interaction with First Nations; and
    - Any other information that comes to Alberta's attention.
  2. Notification – The Area will assist Forest Industry by:
    - Advising Forest Industry which First Nations need to be consulted;
    - Providing First Nations contact information for consultation purposes;
    - Providing government contact information for further information and support; and
    - Establishing timeframes within which consultation should occur in relation to the magnitude and duration of the forest operations; and
    - Providing a general outline of the consultation that will be undertaken.
  3. Procedures – The Forest Industry will:
    - Notify First Nations at the outset of the forest management planning process;

- Provide plain language information describing the forest management process, the scope and location of upcoming forest operations (including maps and schedules);-
  - Initiate meetings to discuss the forest management planning process and to review ideas, comments and concerns of the potential short and long term adverse impacts to First Nations *Rights and Traditional Uses* as brought forward by First Nations;
  - Provide reasonable time for First Nations to review, consider and respond;
  - Develop strategies to avoid or mitigate the potential adverse impacts on First Nations *Rights and Traditional Uses* whenever possible;
  - Where avoidance is not possible, consultation will be conducted with the goal of mitigating such adverse impacts; and
  - Notify SRD of steps taken for avoidance and mitigation of potential adverse impacts on First Nations *Rights and Traditional Uses*;
5. All forms of consultation and communications shall be documented. A summary of the consultations will be provided to the Area and to the First Nations prior to approval.
  6. Matters requiring further consultation may require meetings among the Forest Industry, First Nations, and Alberta for discussion. Where a First Nation and/or the Forest Industry advise that there are irreconcilable issues, the Area will take the lead role in bringing about a resolution.
  7. The Area will notify the First Nations of the decisions based on consultations and the reasons for the decisions.

#### Forest Management Agreements

Forestry Division will notify potentially affected First Nations of the government's intent to renew Forest Management Agreements (FMAs). Forestry Division will offer to meet to explain the forest management business model, including the tenure system and the planning process. The meeting will also be used to describe where opportunities for further consultation will occur. If necessary, the FMA holder will then undertake consultation with the potentially affected First Nations to listen and respond to concerns that such First Nations may have with the renewal of an FMA. The FMA holder is expected to document these discussions. Should a First Nations concern not be adequately addressed, it is expected that the Forestry Division will be appraised and will determine what, if any, further steps are required. The Crown remains ultimately responsible for consulting First Nations.

### SRD - Forest Industry Consultation Process



## Forest Management First Nations Consultation Guidelines 2007-2008

SRD is committed to consult with First Nations regarding forest management activities that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Alberta Crown lands.

In Crown managed Forest Management Units, the Area will consult with First Nations to review planned forest operations. Plans to be reviewed include, but are not limited to:

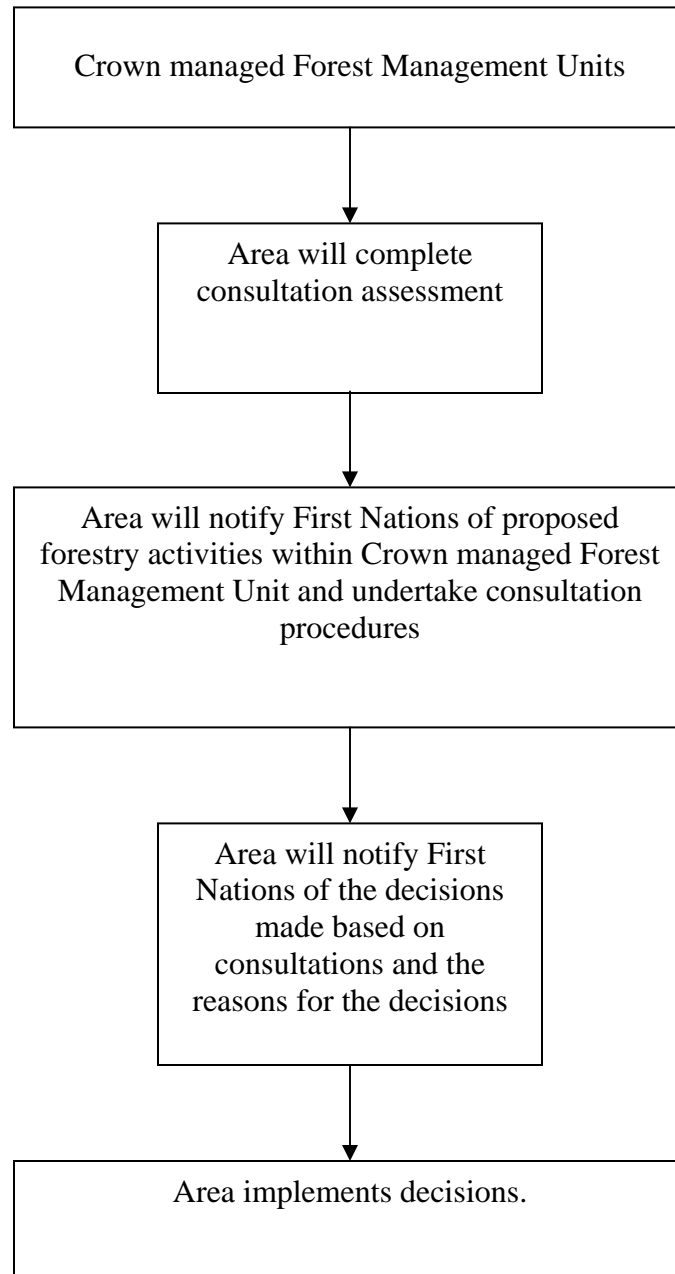
- Forest Management Plans (FMPs)
- General Development Plans (GDPs)

The following process for consulting with First Nations will be implemented:

1. Assessment – The scope of consultation activities and the level of First Nations' involvement will be determined by the potential adverse impact the proposed project may have on First Nations *Rights and Traditional Uses*. The First Nations that are to be contacted will be determined based on the following criteria:
  - Specific traditional use sites shared by First Nations;
  - Lands selected as part of Treaty Land Entitlement negotiations;
  - Magnitude and duration of the proposed forest operations;
  - Information shared at regional consultation tables;
  - Information acquired through direct interaction with First Nations; and
  - Any other information that comes to Alberta's attention.
2. Notification –
  - Provide a general outline of the consultation that will be undertaken;
  - Provide government contact information for further information and support;
  - Establish timeframes within which consultation should occur; and
  - Outline general strategies that may be used to avoid, mitigate or accommodate potential adverse impacts on First Nations *Rights and Traditional Uses*.
3. Procedures –
  - Notify First Nations at the outset of the forest management planning process;
  - Provide plain language information describing the forest management process, the scope and location of the proposed project (including maps and schedules), and identify potential short and long term adverse impacts;
  - Initiate meetings to discuss the forest management planning process and to review ideas, comments and concerns about the potential adverse impacts to First Nations *Rights and Traditional Uses*;

- Provide reasonable time for First Nations to review, consider and respond;
  - Develop strategies to avoid, mitigate or accommodate the potential adverse impacts on First Nations *Rights and Traditional Uses* whenever possible; and
  - Notify the First Nations of the decisions made based on consultations and the reasons for the decisions.
4. All forms of consultation and communications shall be documented. A summary of the consultation shall be provided with the plan.

## SRD - Forest Management Consultation Process



## Forest Protection First Nations Consultation Guidelines 2007-2008

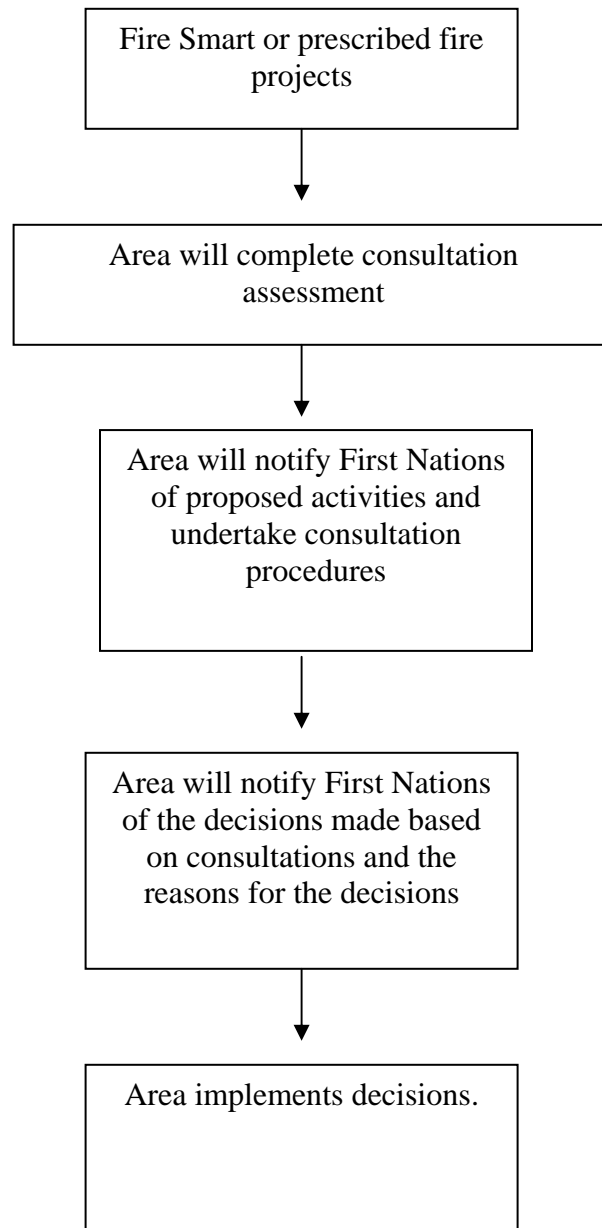
SRD is committed to consult with First Nations regarding wildfire management activities that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Alberta Crown lands.

When initiating the planning process for Wildfire Management, such as FireSmart or prescribed fire projects, the Area will use the following process for consulting with First Nations:

1. Assessment – The scope of consultation activities and the level of First Nations' involvement will be determined by the potential adverse impact the proposed project may have on First Nations *Rights and Traditional Uses*. The First Nations that are to be contacted will be determined based on the following criteria:
  - Specific traditional use sites shared by First Nations;
  - Lands selected as part of Treaty Land Entitlement negotiations;
  - Magnitude and duration of the proposed project;
  - Information shared at regional consultation tables;
  - Information acquired through direct interaction with First Nations; and
  - Any other information that comes to Alberta's attention.
2. Notification –
  - Provide a general outline of the consultation that will be undertaken;
  - Provide government contact information for further information and support;
  - Establish timeframes within which consultation will occur; and
  - Outline general strategies that may be used to avoid, mitigate or accommodate potential adverse impacts on First Nations *Rights and Traditional Uses*.
3. Procedures –
  - Notify First Nations at the outset of the planning process;
  - Provide plain language information describing the planning process, the scope and location of the project (including maps and schedules), and identify potential short and long term adverse impacts;
  - Initiate a meeting to discuss the forest protection planning process and to review ideas, comments and concerns of the potential adverse impacts to First Nations;
  - Provide reasonable time for First Nations to review, consider and respond;
  - Develop strategies to avoid, mitigate or accommodate the potential adverse impacts on First Nations *Rights and Traditional Uses* whenever possible; and

- Notify the First Nations of the decisions made based on consultations and the reasons for the decisions.
4. All forms of consultation and communications shall be documented. A summary of the consultations shall be provided with the Plan.

## SRD Forest Protection Consultation Process



## **Part V:**

### **Tourism, Parks, Recreation and Culture Guidelines for First Nations Consultation on Resource Development and Land Management**

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## **Mandate**

On May 16, 2005 Alberta's *First Nations Consultation Policy on Land Management and Resource Development* was released. The Policy states that Alberta will consult with First Nations where land management and resource development on provincial Crown land may infringe First Nations Rights and Traditional Uses. Tourism, Parks, Recreation and Culture (TPRC) is responsible for regulatory and land management activities through the activities of the Historic Resources Management Branch, and of Alberta's Parks and Protected Areas Program. As such, TPRC has developed Consultation Guidelines for the purposes of implementing the Policy.

### ***Historic Resources Management Branch***

Taking its mandate from the *Historical Resources Act (HRA)*, the Historic Resources Management Branch (HRMB) guides the preservation of Alberta's in-situ cultural heritage, which includes historic buildings, archaeological sites and Aboriginal traditional use sites. It does this by working with industry and other government departments to account for threatened heritage locations in industrial development plans; owners of current and potential Provincial Historic Resources in planning for site protection and conservation; municipal governments in devising local heritage management plans; and, First Nations and other Aboriginal groups on preserving their heritage sites.

In response to the commitment made in the Policy and current case law, consultation will be required when TPRC makes decisions that have the potential to adversely impact First Nations Rights and Traditional Uses<sup>1</sup>. In specific circumstances the following statutory decisions made by TPRC under the *HRA* have the potential to adversely impact Rights and Traditional Uses:

- Legislative, regulatory and policy changes;
- Issuance of *HRA* Clearance;
- Issuance of a Section 37 Requirement Letter;
- Provincial Historic Resource designation;
- Issuance of permits to conduct Historic Resources Impact Assessments and mitigation for archaeological resources recognized as having significance to First Nations; and
- Development and operation of facilities dedicated to public interpretation of historic resources.

### ***Provincial Parks and Protected Areas***

The Government of Alberta's Parks and Protected Areas program protects aspects of Alberta's biological and geological history and examples of its historic and cultural heritage for future generations. This responsibility relates to the establishment and

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<sup>1</sup> *Rights and Traditional Uses* includes uses of public lands such as burial grounds, gathering sites, and historic or ceremonial locations, and existing constitutionally protected rights to hunt, trap and fish and does not refer to proprietary interests in the land.

management of parks and protected areas to ensure protection in perpetuity, of representative natural landscapes and specific, unique, rare, or distinctive natural features, vegetation, wildlife, and wildlife habitat. Alberta's Parks and Protected Areas program is currently managed under three separate pieces of legislation:

- *Provincial Parks Act*
- *Wilderness Areas, Ecological Areas, Natural Areas and Heritage Rangelands Act*
- *Willmore Wilderness Park Act*

Together, these three Acts define the purpose of the different classes of parks and protected areas and provide for the establishment, management, protection and administration of provincial parks and protected areas. The eight classes that are currently part of the classification framework include Wilderness Areas, Ecological Reserves, Natural Areas, Heritage Rangelands, Wildland Provincial Parks, Provincial Parks, and Provincial Recreation Areas. Willmore Wilderness Park is established and managed under its own Act.

In response to the commitment made in the Policy and current case law, consultation will be required when TPRC makes decisions that have the potential to adversely impact First Nations Rights and Traditional Uses. In specific circumstances the following statutory decisions made by TPRC under Parks-related legislation have the potential to adversely impact Rights and Traditional Uses:

- Legislative, regulatory and policy changes related to resource protection, resource management, land use or activities in provincial parks and protected areas;
- Establishment of new Provincial Parks or Protected Areas or expansion of existing areas;
- Re-designation of a Provincial Park or Protected Area to a different classification;
- Development or revision of Park Management Plans;
- Issuance of research or collection permits within Provincial Parks or Protected Areas; and
- Development of facilities within Provincial Parks or Protected Areas.

## **Objectives**

The principal objectives of TPRC's consultation activities with First Nations regarding resource development and land management activities are to:

1. Improve First Nations awareness of TPRC legislation, regulatory processes, and services; and to learn more about issues of concern to First Nations related to TPRC mandates;
2. Address more effectively the concerns of First Nations about adverse impacts on First Nations Rights and Traditional Uses relative to TPRC mandates;
3. Provide appropriate and effective methods for project-specific consultation with respect to historic resources issues;

4. Assist in the protection of traditional use locations and other historic resources of significance to First Nations within existing regulatory processes;
5. Increase certainty for industry and define their role in the consultation process regarding historic resources; and,
6. Guide TPRC's decision-making processes regarding consultation, resource development and land management practices.

## **Consultation and the Historical Resources Act**

TPRC is responsible for the preservation and promotion of historic resources in Alberta. Historic resources are defined under the *HRA* as

*any work of nature or of humans that is primarily of value for its palaeontological, archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest including, but not limited to, a palaeontological, archaeological, prehistoric, historic or natural site, structure or object.*

Most of Alberta's known historic resources fall into one of three categories: historic buildings and other structures, archaeological sites and palaeontological sites. Traditionally, the Historic Resources Management Branch has protected and managed these types of historic resources through the review of proposed developments and land disturbance activities. Where conflicts with historic resources are likely, TPRC may inform proponents that a Historic Resources Impact Assessment (HRIA) is required. Highly significant historic resources are further protected through the Provincial Designation Program, which restricts developments that are likely to be detrimental to the resource.

Historic resources are susceptible to the effects of time and, especially, to damage caused by the activities of modern society. In recognition of their nonrenewable nature, Section 37 of the *HRA* provides the framework for impact assessment and mitigation. When an activity will or will likely result in the alteration, damage or destruction of an historic resource, the proponent of the activity can be required to:

- Conduct an HRIA on lands that may be affected by the activity;
- Submit to TPRC a report discussing the results of the HRIA;
- Avoid any historic resources endangered by activity; or,
- Mitigate potential adverse impacts by undertaking comprehensive studies.

### ***Historic Resource Regulatory Process***

TPRC uses referral mechanisms or “triggers”, principally the *Listing of Significant Historical Sites and Areas* and/or Land Status Automated System (LSAS) notations<sup>2</sup>, to identify circumstances where HRIA activities may be required. When HRMB staff determines such action is necessary, the provisions of the *HRA* are communicated to proponents through a Section 37 Requirement Letter. This correspondence stipulates what impact assessment measures must be undertaken by the proponent.

The proponent then secures the services of a historic resources professional to conduct an HRIA. The HRIA involves record searches and field activity. The HRIA report is submitted to the HRMB for review. If all concerns have been met, correspondence will be issued in the form of a *HRA* Clearance letter, advising that the development may proceed (sometimes with certain conditions). If the HRIA recommends that further studies are needed, the letter may require historic resources mitigation activities (such as the archaeological or palaeontological excavation of a site, or historic and architectural evaluation of a building).

Once a mitigation report has been received, reviewed and approved, correspondence regarding *HRA* clearance will be issued. In rare instances, involving sites that warrant designation as Provincial Historic Resources, development clearance may be withheld.

### ***Listing of Significant Historical Sites and Areas***

The *Listing of Significant Historical Sites and Areas* (the *Listing*) is one of the key tools used by TPRC for heritage resource management purposes<sup>3</sup>. In the past seven years the *Listing* has evolved to describe approximately 22,000 sections of land or portions thereof (just under 5% of the land mass of Alberta) that possess known historic resources or have high potential for the presence of historic resources. The current edition of the *Listing* assigns land a Historic Resource Value (HRV) from 1 to 5, which informs users the level of historic resource sensitivity and of any *HRA* requirements.

Currently the *Listing* is used to:

- regulate small scale oil and gas developments including wellsites, access roads, tie-in pipelines and geophysical programs;
- inform the Environmental Field Report (EFR) required by Sustainable Resource Development (SRD) for the issuance of surface dispositions;
- review Oil Sands Exploration (OSE) and Coal Exploration Program (CEP) disposition applications sent by SRD to the HRMB for review;
- inform the Crown Mineral Disposition Review Committee (CMRDC); and
- inform historic resources management programs for forestry operations.

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<sup>2</sup> Land Status Automated System, or LSAS, refers to the Government of Alberta's database which maintains information with respect to provincial Crown lands and mineral resources.

<sup>3</sup> The Listing is available at <http://www.tprc.alberta.ca/heritage/resourcemanagement/archaeologyhistory/inventoryprograms/listingsignificantsites.aspx>

The *Listing* is updated twice annually to ensure that potential adverse impacts to historic resources are effectively avoided or mitigated.

The *Listing* is used in conjunction with notations in the Government of Alberta's Land Status Automated System (LSAS), and land title caveats created through the designation provisions of the *HRA*.

### ***Consultation Guidelines Regarding Historic Resources***

TPRC will address consultation issues through administration of the HRMB's legislated responsibilities with respect to two types of historic resources:

#### **Sites of Central Significance to First Nations**

In certain cases, historic resources may be of central significance to First Nations, and may have the potential to be directly connected with the practice of a First Nations Right or Traditional Use. These sites will generally be known to the First Nation through oral tradition, ceremonial practices, or other cultural activities. These types of sites could be characterized as representing the defining and central attributes of the First Nation's culture. They are not easily defined, but would include major archaeological sites, landscape features or historic structures with a significant connection to First Nations oral tradition and history.

Sites with this potential already exist on the *Listing* (although proportionally few *Listing* entries relate to sites of central significance to First Nations). Sites with potential to be of central significance to a First Nation may also be added to the *Listing* through time.

Consultation with First Nations will be required when historic resources of central significance are potentially adversely impacted by resource development or decisions made by TPRC regarding that development.

#### **Traditional Use Sites as Historic Resources**

Because Treaty Rights may be practised through traditional use activities, the identification of traditional use sites is an essential component of TPRC's consultation strategy. The results of traditional use studies can inform TPRC and industry of First Nations use of the land, and known traditional use site locations will provide a basis for assessing the need for project-specific consultation.

TPRC considers certain types of traditional use sites as historic resources under the *HRA*. Such sites may include but may not be limited to the following:

- Cabins (unoccupied);
- Trails;
- Battlegrounds;
- Areas associated with creation stories, ancient myths, and oral traditions;
- Offering areas;
- Shrines;
- Ancient habitation areas;

- Rock art;
- Ribstones or other sculpted objects on the landscape;
- Sundance grounds;
- Dance sites;
- Fasting sites;
- Medicine wheels;
- Sweat lodge sites;
- Burial sites (gravesites);
- Ceremonial/spiritual plant gathering sites (e.g. sweetgrass);
- Culturally modified trees;
- Vision quest sites;
- Fish weirs (rock, potentially wooden);
- Pipe stone gathering sites;
- Ochre or other mineral pigment gathering sites;
- Iniskim (ammonite) gathering sites.

Traditional use sites of a subsistence nature (e.g. gathering, hunting, fishing areas) generally will not be considered historic resources by TPRC. Therefore, activities regulated under the *HRA* will not require First Nations consultation regarding traditional use sites of a subsistence nature. Consultation with First Nations will be required when traditional use sites of an historic resources nature are potentially adversely impacted by resource development and/or decisions made by TPRC regarding that development.

TPRC works with Alberta Sustainable Resource Development (SRD) to share the responsibility of negotiating access to and managing Traditional Use Data. With SRD, TPRC co-chairs the cross-ministry Traditional Use Data Management Subcommittee of the Aboriginal Consultation Coordinating Group. The Data Management Subcommittee is active in acquiring traditional use data through negotiation and execution of Data Sharing Agreements with First Nations. Locations of known traditional use sites provided to TPRC by First Nations through Data Sharing Agreements or other means will be placed as entries on the *Listing*, and will appear in internal inventories of historic resources. TPRC will use traditional use sites on the *Listing* as a trigger mechanism for proponent-required consultation with First Nations.

## **Consultation and Alberta's Parks and Protected Areas Program**

Due to the land management role of Alberta Parks, decisions made under Parks-related legislation have the potential to impact First Nations Rights and Traditional Uses related to both historic resources and subsistence activities such as gathering, hunting and fishing. Consultation will be required when statutory decisions made by TPRC under the *Provincial Parks Act* and associated legislation have the potential to impact: sites of central significance to First Nations; traditional use sites that may be considered historic resources under the *HRA*; or First Nations Rights and Traditional Uses. As part of the newly created Division of Parks, Conservation, Recreation and Sport, HRMB and Alberta Parks staff are currently developing procedures and processes to address these consultation requirements in further detail.

## **TPRC Consultation Guidelines**

In some cases, TPRC will play the lead role in consultation. In other circumstances, TPRC will delegate procedural aspects of consultation to project proponents. TPRC Consultation Guidelines address both Crown-led and proponent-led consultation.

### ***Crown-Led Consultation***

#### **Guideline 1**

TPRC will continue to participate with other ministries and at the request of First Nations in information sessions designed to communicate useful information about ministry legislation, regulatory processes, and programs.

#### **Guideline 2**

TPRC wishes to learn more about heritage issues of concern to First Nations. TPRC will work directly with mutually interested First Nations, on a pilot basis, to develop Heritage Management Plans for regions, specific sites or locations, or certain development sectors where a First Nation's interest in heritage management is recognized.

#### **Guideline 3**

The *HRA* empowers the Minister of TPRC to designate any historic resource as a Provincial Historic Resource, if its preservation is in the public interest. Designation recognizes the significance of an historic resource and provides it with the highest level of protection available under the *HRA*. Historic resources eligible for consideration for designation include built structures, archaeological sites, palaeontological resources and other works of humans or nature that are of value for their historic, cultural, natural, scientific or aesthetic interest.

TPRC will consult potentially adversely impacted First Nations on applications for Provincial Historic Resource designation of sites in which First Nations may have an interest. Such consultation will involve written notification of an interest in a designation as well as meetings with authorized representatives of the First Nation regarding the designation, when appropriate. In these meetings and correspondence, First Nation representatives will be made aware of the designation timelines, provision of notification for designation in the *Alberta Gazette*, and opportunities for further comment connected with the designation process mandated by the *HRA*.

#### **Guideline 4**

Where appropriate, TPRC will establish forum-style consultation opportunities of a broad nature. Broad consultation strategies will allow First Nations representatives with appropriate cultural knowledge to advise TPRC on heritage resource management procedures, specific classes of development project impacts, and sites or locations of high cultural significance to a community.

### **Guideline 5**

TPRC will consult First Nations when developing or amending legislation, regulation or policy that has potential to have an adverse impact on First Nations Rights or Traditional Uses.

### **Guideline 6**

Where Historic Resources Impact Assessment or mitigation activities may themselves have an adverse impact on historic resources of central significance to First Nations, TPRC will consult with potentially adversely impacted First Nations prior to approving an archaeological permit.

### **Guideline 7**

When traditional use data is available, and/or a concern for potential adverse impacts on First Nation Rights or Traditional Uses is identified, TPRC will consult with potentially adversely impacted First Nations when new parks or protected areas are established or existing areas are expanded or boundaries area altered.

Consultation will involve written notification regarding the designation of new parks or protected areas as well as meetings with authorized representatives of the First Nation(s) regarding the designation, when appropriate. In these meetings and correspondence, First Nations representatives will be made aware of timelines and opportunities for further comment. TPRC will consider the results of the consultation and make an informed decision with respect to potential adverse impacts and communicate that decision to the First Nation(s).

### **Guideline 8**

When traditional use data is available and/or a concern is identified, TPRC will consult with potentially adversely impacted First Nations when developing or revising Park Management Plans, where land management decisions may adversely impact First Nations Rights or Traditional Uses.

Consultation will involve written notification regarding the development or revision of Park Management Plans as well as meetings with authorized representatives of the First Nation(s) regarding the plan, when appropriate. In these meetings and correspondence, First Nations representatives will be made aware of timelines and opportunities for further comment. TPRC will consider the results of the consultation and make an informed decision with respect to potential adverse impacts and communicate that decision to the First Nation(s).

### **Guideline 9**

When traditional use data is available and/or a concern is identified, TPRC will consult with potentially adversely impacted First Nations when re-designating a park or protected area to a different classification which results in changes to permitted activities that may adversely impact First Nations Rights or Traditional Uses.

Consultation will involve written notification when re-designating a protected area as well as meetings with authorized representatives of the First Nation(s) regarding the re-designation, when appropriate. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. TPRC will consider the results of the consultation and make an informed decision with respect to potential adverse impacts and communicate that decision to the First Nation(s).

**Guideline 10**

When traditional use data is available and/or a concern is identified, TPRC will consult with potentially adversely impacted First Nations regarding research or collection activities within Alberta Parks and Protected Areas that may adversely impact First Nations Rights or Traditional Uses.

Consultation will involve written notification when approving permits for research or collection activities as well as meetings with authorized representatives of the First Nation(s), when appropriate. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. TPRC will consider the results of the consultation and make an informed decision with respect to potential adverse impacts and communicate that decision to the First Nation(s).

**Guideline 11**

TPRC will adhere to its own and other ministries' consultation guidelines for department-led development projects, such as the construction of new park infrastructure or historic sites and cultural facilities. When traditional use data is available and/or a concern is identified, TPRC will consult with potentially adversely impacted First Nations when historic resources of central significance or a significant traditional use location may be adversely impacted by the redevelopment or construction of park or historic sites and cultural facilities.

When it is determined that consultation is required, TPRC will provide written notification regarding the redevelopment or construction of park or historic sites and cultural facilities, and will meet with authorized representatives of the First Nation(s) regarding the project when appropriate. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. TPRC will consider the results of the consultation and make an informed decision with respect to potential adverse impacts and communicate that decision to the First Nation(s).

## ***Proponent-Led Consultation***

### **Guideline 12**

To ensure that effective and efficient regulatory processes are maintained, TPRC will require proponent-led consultation when proposed resource development may adversely impact known traditional use sites or other historic resources of significance to First Nations. Such project-specific consultation will require that a proponent engage with First Nations to determine potential adverse impacts and practical avoidance or mitigation strategies.

In the great majority of cases, HRIA and mitigation activities are the result of a resource development project undertaken by a public or private sector proponent. Outside of major projects in the Environmental Impact Assessment process and provisions for the forest industry, TPRC usually engages with proponents when their development is “triggered” through a potential land use conflict involving consultative or protective notations registered with LSAS, or an entry in the *Listing* (see Appendix B). The following outline the steps for proponent-led consultation:

### ***Assessing the Need for Project-Specific Consultation***

Project specific consultation review may take place in the following instances:

1. When a project referral is triggered by traditional use data in the *Listing*;
2. When TPRC has other knowledge of potential traditional use concerns located within lands affected by a proposed development;
3. When a known historic resource with recognized significance to First Nations may be adversely impacted;
4. When an HRIA is required as part of an Environmental Impact Assessment.

### ***Issuing Requirements for Project-Specific Consultation***

The Director of the HRMB has the delegated authority of the Minister to order that impact assessments be conducted and be reported upon so that protective measures can be undertaken for historic resources.

Project proponents are required to check the *Listing* and LSAS to determine if TPRC is to be contacted for First Nation consultation purposes.

If the proposed development targets an area described in the *Listing* or LSAS reveals a reservation notation placed by TPRC, a referral must be sent to TPRC for review. At this time TPRC Aboriginal Consultation staff will evaluate the development plan, accompanying information, and internal inventories to determine if consultation is required.

Should a proposed development have the potential for adverse impacts on a known historic resource of central significance to a First Nation, or a traditional use location of an historic resources nature, a requirement for consultation will be communicated to the

Project proponent within a Section 37 Requirement Letter. The Section 37 letter will be copied to the relevant First Nation(s).

Section 31 of the HRA requires the reporting of any historic resources encountered during the course of development activities. Requirements for consultation may be re-evaluated should such a report be made to the HRMB. TPRC reserves the right to require consultation should it learn of pertinent new information at any time during the regulatory process.

### ***Consultation Procedures***

When consultation is required, TPRC will provide the proponent with the name(s) of and contact information for the potentially adversely impacted First Nation(s). The project proponent, or their agent or historic resources consultant is responsible for contacting the appropriate First Nation(s) and meeting with them to discuss their concerns and options for avoidance or mitigation.

When TPRC determines that the potential adverse impacts of a project will require proponent-led consultation, the procedures to be applied will be the same as those discussed in Part 1 of this Government of Alberta Guidelines document. Should a requirement for consultation accompany the requirement for a HRIA, the proponent is encouraged to engage potentially adversely impacted First Nations during the planning and conduct of the survey portion of the impact assessment. This may allow for field identification of known sites, identification of new sites, and evaluation of potential adverse impacts and associated mitigative recommendations.

### ***Reporting and Adequacy Review***

Comprehensive reporting of delegated consultation activities and their results is a critical component of Alberta's management of Crown land under the First Nations Consultation Policy and Guidelines. Consultation reports provided by proponents will inform decisions about the adequacy of required consultation and whether developments can be approved, given the impacts identified and mitigative strategies adopted. Consultation reports may form part of legal proceedings if action takes place over the decisions made.

TPRC Reporting Guidelines provide a framework for reporting the results of consultative efforts. These Reporting Guidelines are available on the TPRC website.<sup>4</sup> When the TPRC statutory decision maker has ordered proponent-led consultation in relation to a proposed development, and that proponent has submitted a report, TPRC will conduct an adequacy review before making a decision in relation to *HRA* clearance for the development to proceed. Adequacy will be evaluated based on the requirements outlined in the Reporting Guidelines.

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<sup>4</sup>Reporting Guidelines are available at [http://www.tprc.alberta.ca/heritage/resourcemanagement/archaeologyhistory/aboriginalconsultation/TPRC\\_Consultation\\_report\\_guidelines.pdf](http://www.tprc.alberta.ca/heritage/resourcemanagement/archaeologyhistory/aboriginalconsultation/TPRC_Consultation_report_guidelines.pdf)

### ***Communicating Statutory Decisions Surrounding Historic Resource Management***

If consultation is determined to have been adequate and potential adverse impacts have been addressed satisfactorily, TPRC will communicate this finding to the proponent and will provide official notification of HRA clearance. Notification of this decision will also be provided to the First Nation(s) consulted.

If consultation is determined to have been adequate, but mitigation of proposed impacts is required before development can proceed, TPRC will issue a second requirement letter (Schedule B) that would outline the nature of necessary mitigation measures. In this case, additional consultation may or may not be required, but demonstration of completion of any mitigation ordered would be essential before the development would be given clearance. Any decision with respect to clearance of a proposed development would be communicated in writing to the First Nation(s) involved.

In some cases where mitigation measures would occur in the future, in conjunction with planned stages of the development, conditional HRA clearance may be provided. A Schedule B requirement letter would communicate the nature of these requirements. TPRC retains the power to issue stop work orders if non-compliance with mitigation measures ordered under the provisions of the HRA becomes evident.

If TPRC determines that consultation has not been adequate, additional consultation requirements may be issued, with a copy to the First Nation(s) involved. In this case it is likely that development clearance will be withheld until this additional consultation has been completed and determined adequate. It is in proponents' interests to ensure that Guideline measures of adequacy have been achieved prior to submission of a consultation report in response to an official requirement.

### ***Managing Adverse Impacts During Historic Resources Consultation***

The concerns identified by First Nations during consultation may form the basis for procedures designed to avoid or mitigate the potential impacts of the development on First Nations Rights or Traditional Uses. First Nations may make specific recommendations during the consultation process, which the proponent is obligated to consider and report. The consultation report must indicate how the concerns expressed by First Nations will be managed if the development were to receive clearance to proceed under the *HRA*.

TPRC management philosophy with respect to historic resources is that avoidance of impacts is almost always the preferred option. Other forms of mitigation exist, however, and may be recommended by the proponent. These might entail collection and preservation of detailed information related to the site, such as recording oral history, detailed as-found recording, sample recovery through scientific excavation procedures, or a combination of these techniques. Other forms of impact mitigation that have been considered acceptable in specific situations include public interpretation of the resource or educational programming.

If no concerns were identified in the consultation process, no mitigation would be required. All that would be necessary in the report would be statements to this effect.

Again, TPRC may verify this type of assertion through consultation with the First Nation(s). Where mitigation of impacts may be required, TPRC adequacy review of the information provided in the report will focus on whether reasonable efforts were made to avoid or mitigate First Nations concerns.

## Implementation and Communication

TPRC Consultation Guidelines came into effect on September 1, 2006. This revised version was released November 1, 2007. The Policy, Consultation Guidelines, the *Listing*, Reporting Guidelines and related forms will be made available on the TPRC website:

<http://www.tprc.alberta.ca/heritage/resourcemanagement/archaeologyhistory/aboriginalconsultation/default.aspx>

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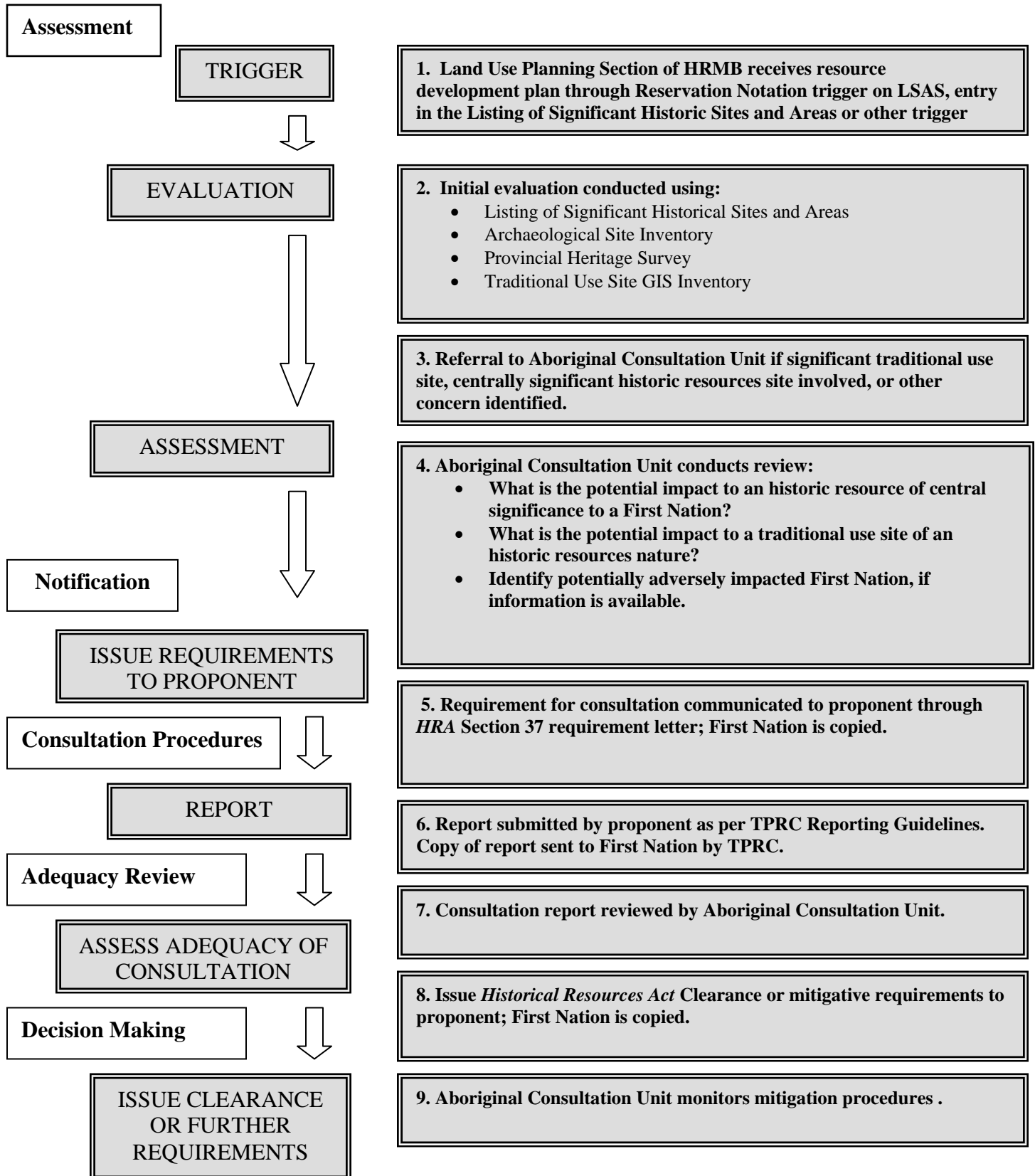
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## Appendix A. Internal TPRC Processes for Proponent-Led First Nation Consultation



## **Appendix B. Sector-Specific Consultation and Regulatory Processes**

TPRC will attempt to integrate First Nations consultation into existing regulatory processes and maintain current timelines.

### ***Ammonite Shell***

TPRC is currently engaging in work to identify the significance of ammonite, known harvesting sites, and the impact of ammonite mining on First Nations Rights and Traditional Uses. It is anticipated that known harvesting locations will be protected through the *Listing* and as Reservation Notations on LSAS, in turn ensuring consultative addenda are placed on the sale notice. A TPRC Information Letter will be attached to approved Ammonite Shell Agreements, and will provide information regarding possible HRIA and TPRC-led consultation initiatives. At the exemption stage the Aboriginal Consultation Unit will review the proposed project and conduct consultation as necessary.

### ***Conventional Oil & Gas***

The *Listing* is the trigger for TPRC involvement in regulating conventional oil & gas activities, which includes wellsites, pipelines and associated access roads. The Environmental Field Report (EFR) required by SRD for surface dispositions also requires a review of the *Listing* for application purposes. The *Listing* will be used as a trigger for a referral to Aboriginal Consultation Unit staff to determine if the project may adversely impact First Nations Rights and Traditional Uses under TPRC's mandate. TPRC encourages project proponents to check the *Listing* during the planning stage for large scale drilling programs to facilitate efficient consultation efforts. Once a referral is received the consultation process will occur as detailed in the previous section.

### ***Forestry Development***

The current Historic Resource Management strategy for the Forestry sector is largely a self-managed program. A Historic Resources Management Plan, which details areas requiring pre and post development HRIAs is submitted to TPRC for review, and site clearance or mitigation requirements forwarded to the proponent. When available, TUS data can be incorporated into such a management plan. If the *Listing* indicates the presence of a traditional use site in a proposed development area, consultation should proceed as directed in the Guidelines.

### ***Environmental Impact Assessments***

As part of the Environmental Impact Assessment (EIA), project proponents may be required to consider the development's impact on First Nations' Rights and Traditional Uses relative to historic resources. Requirements by TPRC will be outlined in the project terms of reference and may include the following:

- a) Document any participation by local First Nations in the field program conducted;

- b) Identify sites of traditional use that may be considered historic resources, including cabin sites, spiritual and sacred sites, trails and graves;
- c) Determine the Project and cumulative impact of development on these uses;
- d) Document any concerns of First Nations with respect to Project impacts on historic resources;
- e) Identify mitigation strategies proposed to address these concerns.

Project proponents will submit the required information to TPRC as per the Reporting Guidelines. The Aboriginal Consultation Unit will review the report and request supplemental information as needed. TPRC will then issue *HRA* Clearance or mitigation procedures to the proponent. Potentially adversely impacted First Nation(s) will be provided copies of any historic resources clearance letters issued for EIA reviewed projects.

### ***Crown Mineral Sales***

Traditional use study data of an historic resource nature may be placed as Restrictions on subsurface LSAS and uploaded as addenda to sale by the Department of Energy (DOE). TPRC will work with the DOE toward ensuring that the *Listing*, including traditional use sites, is uploaded for all types of mineral sales. Including historic resources information as addenda to sale could provide early notice to prospective proponents of the potential need to consult with First Nations regarding the *HRA*. In the interim, CMDRC referrals will be reviewed consistently by TPRC to determine if there are potential adverse impacts to known traditional use sites.

### ***Aggregates, Geophysical, Power, Recreational and Transportation***

These development sectors do not have a formalized heritage resource management program. As sector-specific programs are developed, Aboriginal issues, First Nations consultation and the use of traditional use data will be incorporated where possible. In lieu of a formalized regulatory process, known traditional use sites or areas may be protected through an entry on the *Listing* and as Reservation Notations on LSAS.