

The Government of Alberta's First Nations Consultation Guidelines on Land Management and Resource Development

Preamble

On May 16, 2005 Alberta adopted the *Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* (Policy). To facilitate the Policy's commitment to create Consultation Guidelines (Guidelines), the Framework for Consultation Guidelines (Framework) was released on May 19, 2006 with the purpose of establishing the principles with which Guidelines are required to be consistent. Within the Policy, Alberta recognizes it has a duty to consult with First Nations where land management and resource development have the potential to adversely impact First Nations *Rights and Traditional Uses*¹ of Crown lands.

Through a desire to implement a practical and efficient consultation process, Alberta has developed Guidelines intended to provide procedures to carry out the duty to consult. The Guidelines are in place to provide direction to all parties involved in consultation and are consistent with both the Policy and the Framework. Alberta views the process of developing Consultation Guidelines as ongoing and intends to use an Annual Quality Assurance Assessment to monitor the Guidelines and make adjustments as necessary.

The Guidelines include the following sections:

- Part I: The Consultation Process
- Part II: Alberta Community Development
- Part III: Alberta Energy
- Part IV: Alberta Environment
- Part V: Alberta Sustainable Resource Development
- Appendices:
 - A. First Nations Consultation Policy
 - B. Framework on Consultation Guidelines

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

Part I: The Consultation Process

A. Duty to Consult

Alberta appreciates that Guidelines require greater detail and a clear definition of the government role within the process. While project proponents are required to conduct procedural aspects of project-specific consultation in some cases, Alberta acknowledges it has a duty to consult with First Nations where legislation, regulations or other actions have the potential to adversely impact treaty rights. In recognition of this role, Alberta may:

- Undertake consultation with First Nations in relation to 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;
- Manage and determine the adequacy of consultation activities;
- Report back to First Nations and industry regarding decisions; and
- Consider any other issue or take any other action Alberta deems necessary.

In addition to the above, Alberta will monitor the implementation of the Guidelines. On an annual basis, Alberta will assess the effectiveness of the Guidelines and determine whether changes are required. This approach to Guidelines implementation will help to achieve an effective and efficient process that strives to address concerns from all parties. Alberta encourages the development of best practices throughout the process and will continue to rely on input from First Nations and industry to inform implementation and assessment of the Policy and Guidelines. The province is also committed to a review of the Policy four years after implementation.

B. Procedural Delegation of Consultation

While Alberta has a duty to consult and is accountable for consultations undertaken with First Nations where legislation, regulations or other actions have the potential to adversely impact treaty rights some aspects of consultation will be delegated to project proponents. This delegation will be carried out in the manner described in these Guidelines. It is Alberta's intention that those aspects of consultation delegated to proponents will be conducted within the existing regulatory framework and timelines.

The fundamental aspects of assessment and notification, consultation procedures, and review and decision making are defined in these Guidelines.

1. Assessment and Notification

When determining whether to delegate the responsibility to complete project specific consultation Alberta will take into account the following:

- Specific traditional use information 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 relevant information that comes to Alberta's attention.

In those instances where proponent-led consultation is required, the Crown may assist by:

- Advising whether notification will be required and with which First Nations;
- Providing First Nations contact information for consultation purposes;
- Providing government contact information for further information and support;
- Providing guidance and advice to assist in planning the consultation that will be required;
- Establishing timeframes within which consultation should occur in relation to the magnitude and duration of the proposed project;
- Assessing and approving the adequacy of proposed strategies that may be used to avoid or mitigate potential adverse impacts on First Nations *Rights and Traditional Uses*; and
- Any other steps or measures Alberta deems necessary.

2. Consultation Procedures

As stated in the Policy, Alberta will not require project proponents to consult in relation to every proposed resource development activity. However, in some cases

Alberta will require project proponents to conduct procedural aspects of project-specific consultation. In these instances, the following key elements should be used by project proponents as a basis for consultation:

- Notification to band council or a designate of potentially adversely impacted First Nations;
- Provision of plain language information describing the scope and location of the project, and clearly identifying potential short and long term adverse impacts;
- Meetings to discuss ideas, comments and concerns of the potentially adversely impacted First Nations;
- Strategies to avoid or mitigate potential adverse impacts on First Nations *Rights and Traditional Uses*;
- Where agreement has not been reached with respect to avoidance or mitigation of potentially adverse impacts, written reasons be provided to the Crown; and
- Prior to a decision on an application, the project proponent will provide consultation information to the Crown, with copies provided to First Nations.

C. Adequacy Review

One of the primary concerns of all parties is the determination of adequate consultation. Although project proponents will be required to conduct procedural aspects of project-specific consultation, Alberta retains the accountability for ensuring consultation has been adequate. Therefore, Alberta will perform an assessment of proponent-led consultation activities. Within the Policy, Alberta expects consultation to occur before decisions are made and retains responsibility of determining whether proponent-led consultation is adequate in the circumstances.

As part of the review and approval process, Alberta will review the consultation information submitted by project proponents for adequacy and completeness. Alberta may verify information with First Nations and seek advice from internal government personnel during the review process. Where applications are considered to be incomplete or inadequate after evaluation by Alberta, proponents may be required to consult further with First Nations.

Alberta may use the following criteria in its assessment of the adequacy of proponent-led consultation with First Nations:

- Consultation was conducted in a meaningful way that supports the spirit of collaboration;
- Information was provided in a timely manner;
- Reasonable efforts were made to avoid or mitigate First Nations concerns;
- Actions of First Nations including the nature and degree of participation in the process;

- Potential adverse impacts were specifically identified and understood;
- Scope of the impact was effectively communicated; and
- Any other criteria that Alberta deems necessary.

D. Decision Making

Based on the consultation information provided, Alberta will make an informed decision relative to the potential adverse impacts of the project on First Nations *Rights and Traditional Uses*. Written notification of this decision will be conveyed in a timely manner to both the project proponent and the First Nations.

E. Department Specific Approaches

Each ministry within the government of Alberta administers legislative and regulatory processes unique to its business functions. To promote an effective and efficient consultation process related to resource development, each of the ministries has conducted a review of its internal processes to assess where to best incorporate First Nations consultation. The result has been the development of Guidelines for each department with the intention of ensuring compatibility with various resource sectors. While departmental requirements may be diverse, they are consistent with the Policy and compatible with each other.

Part II:

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

September 1, 2006

Guideline Development Process

Alberta Community Development (ACD) is responsible for regulatory and land management activities under the *Historical Resources Act*, the *Provincial Parks Act*, the *Wilmore Wilderness Park Act*, the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, and the *Black Creek Heritage Rangeland Trails Act*.

ACD Guidelines were developed using feedback gained through both a cross-ministry Guideline Integration Group and an ACD Internal Process Committee. The Guideline Integration Group was established by the Aboriginal Consultation Coordinating Group (ACCG) to integrate individual department guidelines. Comprised of members from Parks and Protected Areas, the Royal Tyrrell Museum of Palaeontology, and the Heritage Resource Management Branch, the ACD Internal Process Committee focused on existing regulatory processes and how First Nation Consultation could be effectively integrated into these. Discussion topics included: Statutory Decisions, Forestry, Crown Mineral Sales, Conventional Oil & Gas, Environmental Impact Assessments, Ammonite Shell, Aggregates, Geophysical, Power, Recreational and Transportation Projects as well as Traditional Use Study data management, roles and responsibilities and records management.

With other ministries, ACD has engaged both Industry stakeholders and First Nations in discussions related to the development of its Guidelines. These discussions have taken place with the Treaty 8 Joint Technical Team on Consultation, the Athabasca Tribal Council Protocol Working Group, the Treaty 6 Confederacy, the Treaty 7 Management Corp., and the Industry Guidelines Advisory Group.

Objectives

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

1. Improve First Nations awareness of ACD legislation, regulatory processes, and services; and to learn more about heritage issues of concern to First Nations;
2. Address more effectively the concerns of First Nations about adverse impacts on First Nations' Rights and Traditional Uses¹ in relation to ACD mandates;
3. Provide appropriate and effective methods for project-specific consultation with respect to historical resources issues;
4. Assist in the protection of traditional use locations and other historical resources of significance to First Nations within existing regulatory processes;

¹*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.

5. Increase certainty for industry and define their role in the consultation process regarding historical resources; and,
6. Guide ACD's decision-making processes regarding consultation, resource development and land management practices.

Mandate with Respect to Consultation

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

Historical Resources Act

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

Provincial Parks Act, Wilmore Wilderness Park Act, the Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act, and the Black Creek Heritage Rangeland Trails Act

- Legislative, regulatory and policy changes;
- Establishment of new Provincial Parks or Protected Areas;
- Re-designation of a Provincial Park or Protected Area;
- Development or revision of Park Management Plans;
- Issuance of research or collection permits within Provincial Parks or Protected Areas; and
- Development and operation of facilities within Provincial Parks or Protected Areas.

Consultation will be required when such decisions are made regarding provincial Crown land, and when such decisions may potentially adversely impact First Nations *Rights and Traditional Uses*.

Traditional Uses may refer to uses of the land such as hunting, fishing and trapping areas but also burial practises conducted in specific areas, and historic or ceremonial locations that reflect on-going or former traditional use.

ACD Consultation Strategies

ACD accepts responsibility for consultation with respect to regulatory matters concerning heritage in Alberta. Our ministry recognizes that varying consultative strategies will be needed to accommodate different types and sectors of development. In certain situations, ACD will play the lead role in consultation. In other circumstances, ACD will delegate responsibility for leading the consultation to Project Proponents. ACD Consultation Strategies will address both Crown Consultation Activities and Project-Specific Consultation.

Crown Consultation Activities

Strategy 1

ACD 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.

Information sessions can be arranged through the contacts listed at the end of ACD's Guideline section.

Strategy 2

ACD wishes to learn more about heritage issues of concern to First Nations. ACD 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.

First Nations wishing to explore Heritage Management Plans should get in touch with the contacts listed at the end of ACD's Guideline section.

Strategy 3

The *Historical Resources Act* empowers the Minister of Community Development to designate any historical resource as a Provincial Historic Resource, if its preservation is in the public interest. Designation recognizes the significance of an historical resource and provides it with the highest level of protection available under the *Historical Resources Act*. Historical 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 historical, cultural, natural, scientific or aesthetic interest.

ACD 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. 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 *Historical Resources Act*.

Strategy 4

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

Currently ACD works with the *Blackfoot Confederacy Landscape Heritage Advisory Committee* and the *Treaty 6 Elders Committee* on broad issues that may affect a number of First Nations within a given region. ACD is receptive to further proposals for working relationships of this broad nature, through the contacts listed at the end of ACD's Guideline section.

Strategy 5

ACD will consult potentially adversely impacted 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.

Public consultation processes for changes in legislation, regulation or policy will incorporate First Nations input.

Strategy 6

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

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. In these meetings and correspondence, First Nations representatives will be made aware of timelines and opportunities for further comment. ACD 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).

Strategy 7

When traditional use data is available and a concern is identified, ACD 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. In these meetings and correspondence, First Nations representatives will be made aware of timelines and opportunities for further comment. ACD 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).

Strategy 8

When traditional use data is available and a concern is identified, ACD will consult with potentially adversely impacted First Nations when re-designating a protected area 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. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. ACD 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).

Strategy 9

When traditional use data is available and a concern is identified, ACD will consult with potentially adversely impacted First Nations regarding research or collection activities 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) regarding the permits. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. ACD 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).

Strategy 10

ACD will also adhere to its own and other ministries' consultation guidelines for department-led development projects, such as the construction of Parks infrastructure or historic sites and cultural facilities. When traditional use data is available and a concern is identified, ACD will consult with potentially adversely impacted First Nations when historical 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.

If a pre-development assessment or a Historical Resources Impact Assessment indicates that consultation is required, ACD will provide written notification regarding the redevelopment or construction of park or historic sites and cultural facilities as well as meet with authorized representatives of the First Nation(s) regarding the project. In these meetings and correspondence, First Nation representatives will be made aware of the timelines and opportunities for further comment. ACD 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).

Consultation and Historical Resources

ACD is responsible for the preservation and promotion of historic resources in Alberta. Historic resources are defined under the *Historical Resources Act* 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 historical resources fall into one of three categories: historic buildings and other structures, archaeological sites and palaeontological sites. Traditionally, the Heritage Resource Management Branch has protected and managed these types of historical resources through the review of proposed developments and land disturbance activities. Where conflicts with historical resources are likely, ACD may inform developers that an Historical Resources Impact Assessment is required. Highly significant historical resources are further protected through the Provincial Designation Program, which restricts developments that are likely to be detrimental to the resource.

Historical resources are susceptible to the effects of time and, especially, to damage caused by the activities of modern society. In recognizing their nonrenewable nature, Section 37 of the *Historical Resources Act* provides the framework for Historical Resources Impact Assessments (HRIAs) and mitigative studies. When, in the opinion of the Minister of ACD, an activity will or will likely result in the alteration, damage or destruction of an historic resource, the person or company undertaking the activity can be required to:

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

Existing Historical Resource Regulatory Process

Currently, ACD uses referral mechanisms or “triggers”, principally the *Listing of Significant Historical Sites and Areas* and/or the Land Status Automated System (LSAS) notations (see the next section), to identify circumstances where historical resource impact assessment activities may be required. Where that need is determined to exist by professional staff members, the provisions of the *Historical Resources Act* are communicated to proponents through a “Section 37 Requirements” letter from the Assistant Deputy Minister, Cultural Facilities and Historical Resources Division (CFHRD). The Assistant Deputy Minister has the delegated authority of the Minister of Community Development to order HRIAs and related activities. This Section 37 letter stipulates what impact assessment measures must be undertaken by the developer.

The developer then secures the services of a historical resources professional to conduct an HRIA. The HRIA involves record searches and field activity. The HRIA report is

submitted to the Heritage Resource Management Branch, where it undergoes review. Recommended correspondence is then provided to the Assistant Deputy Minister, CFHRD. If all concerns have been met, Assistant Deputy Minister correspondence will be issued in the form of a *Historical Resources Act* 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 historical resources mitigation activities (such as the archaeological or palaeontological excavation of a site, or historical and architectural evaluation of a building).

Once a mitigation report has been received and reviewed, the Assistant Deputy Minister, CFHRD, will provide further correspondence on the disposition of the historical resources site or sites in question, with respect to the development. In rare instances, involving sites that warrant designation as Provincial Historical 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 ACD for heritage resource management purposes. In the past six years the *Listing* has evolved to describe approximately 31,000 sections of land or portions thereof (just under 6% of the land mass of Alberta) that possess known historical resources or have high potential for the presence of historical resources. The current edition of the *Listing* assigns land a Historical Resource Value (HRV) from 1 to 5, which informs users the level of historical resource sensitivity and of any *Historical Resources Act* requirements.

Currently the *Listing* is used:

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

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

ACD uses the *Listing* 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 *Historical Resources Act*.

New Consultation Guideline Provisions Regarding Historical Resources

To ensure that its consultation obligations are met, ACD will be active in two areas:

- Historical resource management activities with respect to sites that may be of central significance to First Nations; and,
- Historical resource management activities with respect to significant traditional use locations.

The following principles and procedures will be employed by Alberta Community Development in fulfilling the Crown duty for consultation through administration of its legislated responsibilities with respect to historical resources. These align with general Alberta Government-wide procedures outlined in the main portion of this document.

1. Assessment and Notification

Sites of Central Significance to First Nations

In certain cases, historical 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. These sites will generally be known to the First Nation through oral tradition, ceremonial practices, or other cultural activities. They are not susceptible to a simple definition, but would include major archaeological sites, landscape features or historical structures with an important connection to First Nations oral tradition and history. Certain examples of entries on the list of examples of traditional use sites given below (marked by asterisks) meet these criteria, although these examples are by no means exhaustive.

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 historical resources of central significance are potentially adversely impacted by resource development or decisions regarding that development made by ACD. Written notification of such requirements will be transmitted to both the project proponent and the potentially impacted First Nation(s).

Consultation and Traditional Use

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

ACD will work with Alberta Sustainable Resource Development (SRD) to share the responsibility of negotiating access to and managing Traditional Use Data. ACD considers certain types traditional use sites as historical resources under the *Historical Resources Act*.

Such sites would 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.

Given the mandate and expertise of the Ministry, traditional use sites of a subsistence nature (e.g. hunting, trapping, fishing areas) will not be considered historical resources by ACD.

Consultation with First Nations will be required when traditional use sites of an historical resources nature are potentially adversely impacted by resource development and/or decisions regarding that development made by ACD. Written notification of such requirements will be transmitted to both the project proponent and the potentially impacted First Nation(s).

With SRD, ACD co-chairs the cross-ministry TUS Data Management Subcommittee of the Aboriginal Consultation Coordinating Group. The TUS Data Management Subcommittee will be 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 ACD by First Nations through Data Sharing Agreements or other means will be placed as entries on the *Listing* and appear in internal inventories of historical resources. ACD will use TUS sites on the *Listing* as a trigger mechanism for proponent-required consultation with First Nations.

Traditional use information shared with ACD by First Nations will also be used inform ACD's broader decision-making and planning processes. Further details on the role of traditional use sites in the *Listing* are to be found in Appendix A.

Project-Specific Consultation

Strategy 11

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

In the great majority of cases, Historical Resources Impact Assessment and mitigation activities will be 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, ACD usually engages with proponents when their development is "triggered" through a potential land use conflict involving consultative or protective notations registered with Alberta's Land Status Automated System, or an entry on the *Listing of Significant Historical Sites and Areas*.

Alberta Community Development's Consultation Guidelines are therefore *not* intended to provide generalized notification, consultation procedures, and reporting concerning the development, but rather consultation concerning specific heritage or cultural matters arising from the Historical Resources Impact Assessment and mitigation needs occasioned by the project.

Assessment of 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 ACD has other knowledge of potential traditional use concerns located within lands affected by a proposed development;
3. When a known historical 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

Under Section 37 of the *Historical Resources Act*, the Assistant Deputy Minister, CFHRD has the delegated authority of the Minister of Community Development to order that impact assessments be conducted and be reported upon so that protective measures can be undertaken for historical resources.

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

Locations of known traditional use sites provided to ACD by First Nations through Data Sharing Agreements will be placed as entries on the *Listing*. If the proposed development targets an area described in the *Listing* or LSAS reveals a reservation notation placed by ACD, a referral must be sent to ACD for review. At this time ACD Aboriginal Consultation staff will evaluate the development plan and accompanying information to determine if consultation is required.

Should a proposed development have the potential for adverse impacts on a known historical resources site of central significance to a First Nation, or, a significant traditional use location, Aboriginal Consultation staff will recommend that consultation occur. **If the Assistant Deputy Minister, Cultural Facilities and Historical Resources Division, agrees with this recommendation, 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).**

Alberta Community Development reserves the right to require consultation should it learn of pertinent new information at any time during the regulatory process.

2. Consultation Procedures

When consultation is required, ACD will provide the proponent with the name(s) of and contact information for the potentially adversely impacted First Nation(s), as well as details of what to include in an information package, the preferred means of contacting the community and requirements for the Consultation Report. It is then the responsibility of the Project Proponent, their agent or historical resources consultant to contact the appropriate First Nation(s) and meet with them to discuss their concerns and options for avoidance or mitigation.

When ACD 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 Historical Resources Impact Assessment, 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 will allow for field identification of known sites, identification of new sites, and evaluation of potential adverse impacts and associated mitigative recommendations.

A Consultation Officer from ACD will be available to assist the developer or agent, the developer or agent's historical resources consultant, and representatives of the First Nations community during the conduct of the Historical Resources Impact Assessment.

3. Adequacy Review

In accordance with general consultation procedures to be undertaken by the Government of Alberta, as outlined in the preamble to this document, ACD will review the results and determine the adequacy of proponent-led consultation, when a requirement has been issued under the provisions of the *Historical Resources Act*. This review will be based on documentation provided by the proponent and ACD's understanding of the issues involved. Documentation regarding consultation activities will be required for this review, and may include the following:

- Which First Nations were engaged regarding the proposed project;
- How potentially adversely impacted First Nations were contacted, or detailed reporting of attempts to contact potentially adversely impacted First Nations;
- A description of the project information that was provided to First Nations;
- Concerns related to potential historical resource impacts by the proposed project relayed during consultation;
- How First Nations concerns were addressed and what, if any, concerns remain outstanding relative to impacts on historical resources and the proposed project;
- Information regarding traditional use sites that might potentially be adversely impacted by the proposed project (TUS sites forms), if desired by the First Nation(s).

Results of proponent-led consultation should be reported in a section of the Historical Resources Impact Assessment or mitigation report devoted to consultation requirements and results. This section of the report will be reviewed by ACD to ensure issues regarding historical resource-related impacts on First Nations' *Rights and Traditional Uses* have been adequately addressed. ACD Aboriginal Consultation staff will be available to facilitate communication between First Nations and Industry to resolve issues related to these impacts as necessary.

4. Communicating Statutory Decisions Surrounding Historical Resource Management

Based on a recommendation from Aboriginal Consultation staff members on the adequacy of consultation, as well as other historical resources regulatory recommendations, the statutory decision maker for ACD, the Assistant Deputy Minister of the CFHRD will then determine if a Historical Resources Act Clearance letter will be issued or if further measures will be required.

The Assistant Deputy Minister, will be aware of consultation provisions and results in the HRIA report in making a decision concerning the development proposal. Correspondence from the Assistant Deputy Minister to the proponent conveying that decision will assess the adequacy of consultation, and will be copied to the First Nation(s). Questions concerning the Assistant Deputy Minister's decisions surrounding consultation requirements and subsequent actions may be referred to the Assistant

Deputy Minister, Cultural Facilities and Historical Resources Division, or to the Deputy Minister, Alberta Community Development.

Managing Adverse Impacts During Historical Resources Consultation

Proponents should already be familiar with the range of mitigative strategies ACD may employ with highly significant historical resource sites. Avoidance of such sites is clearly the preferred strategy and developers must remain aware that no impacts whatsoever may be allowed at many of these locations. Because significant historical resources sites with aboriginal affiliations are likely to be linked to First Nations oral traditions, the proponent may be required to provide any relevant oral tradition information First Nations are willing to share to enhance significance evaluations and resulting HRIA and mitigation reports.

With respect to other historical resources sites where consultation concerns may exist, and with respect to significant TUS locations, experience has shown that avoidance is feasible for many land use conflicts, in many classes of development. Avoidance will be ACD's preferred mitigative strategy, whenever it can be suitably applied. This may require direct proponent or historical resources consultant work with First Nation representatives in realigning a development footprint.

Where avoidance is not feasible, mitigation may occur through the recording of pertinent information. For significant archaeological sites, scientific excavations are typically required. For historic structures, architectural and historical evaluations are typically required. Such requirements will continue, as appropriate to the circumstances. For significant traditional use locations, ACD will require that unavoidable impacts to a site be offset by recovering traditional knowledge concerning use of the site. Where unavoidable impacts are to occur in these situations, ACD may require the proponent to make detailed photographic recording of the sites, to record and transcribe traditional users' knowledge concerning the location, and similar measures.

The more ACD knows about such locations, the more effective mitigative strategies can be. **ACD nevertheless respects and accepts that certain forms of cultural knowledge about TUS locations may not be suitable for sharing.** Any information a First Nation is comfortable sharing for mitigative purposes will appear in Historical Resources Impact Assessment and mitigation reports, copies of which the proponent will provide to the First Nation.

Strategy 12 Issuance of Historical Resources Impact Assessment/Mitigation Permits

Historical Resources Impact Assessments are conducted to determine if a project will result in significant impacts to known historical resources, or investigate locations thought to have high potential to yield significant historical resources. Generally speaking, impact assessment procedures involve minimal field activities that have little or no effect on historical resources, but that are required for the discovery of historical resources. In certain instances, however, impact assessment or mitigation measures could have adverse impacts on historical resources of high cultural significance to First Nations. Examples of such circumstances might include archaeological investigations at

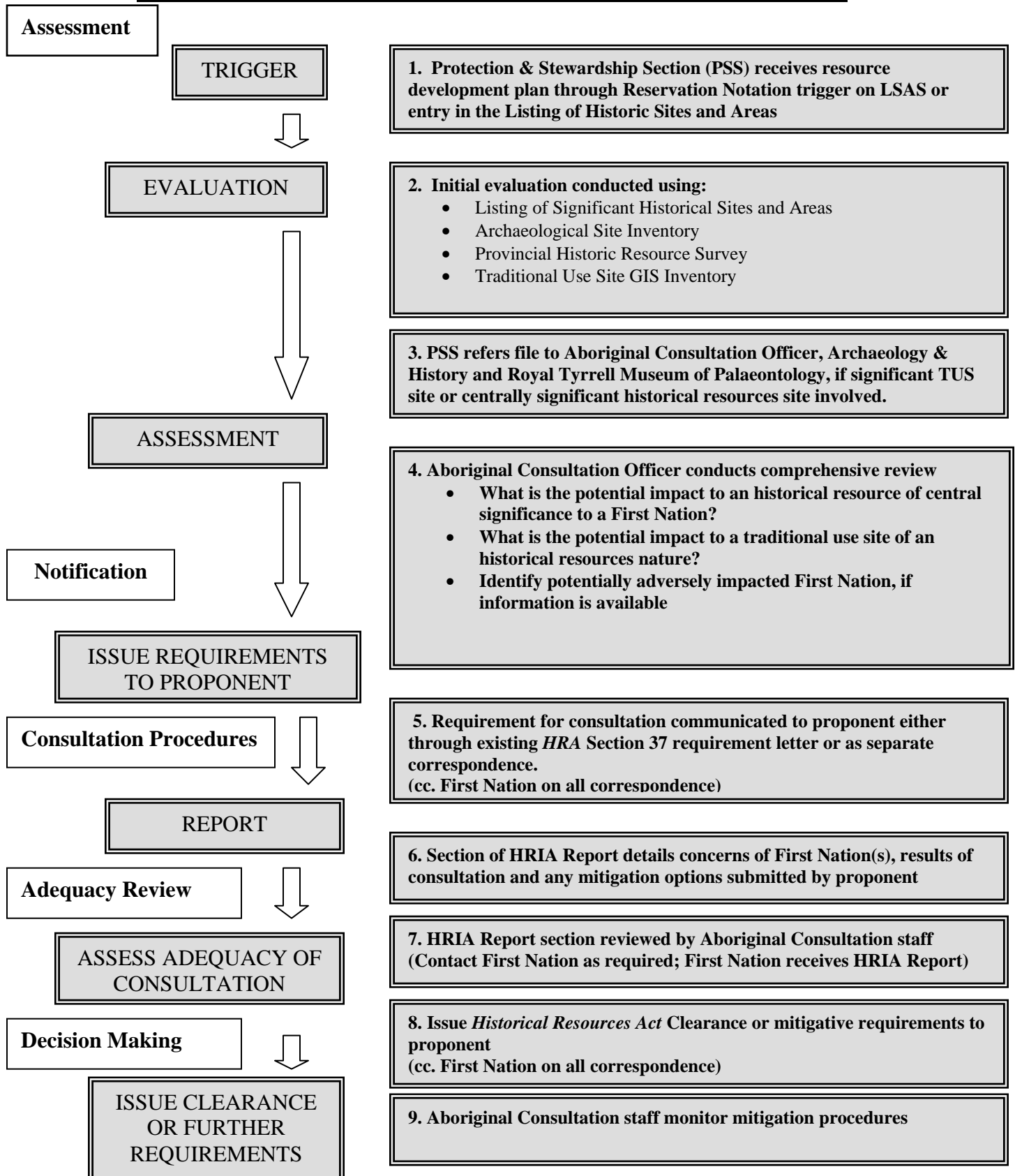
a Medicine Wheel, a quarry source for pipestone, or a traditional use location of great significance, such as a Sundance location.

Where the Historical Resources Impact Assessment or mitigation activities may themselves have an adverse impact on such sites, ACD is committed to consultation with potentially adversely impacted First Nations prior to approving an archaeological permit. ACD will contact potentially adversely impacted First Nations directly by telephone and correspondence. Permit applicants, under the guidance of the Archaeology & History Section, Heritage Resource Management Branch, will be instructed to consult with potentially adversely impacted First Nations, and address First Nation concerns about the intended project in their permit application. **ACD intends to avoid invasive investigation of such locations under all but the most unusual circumstances, where the Historical Resources Impact Assessment or mitigation activities will significantly enhance understanding of the site in question for *all* parties, and assist in developing sound management strategies.**

Resulting reports will need to show how First Nation concerns were addressed; a copy of the permit report must be provided to potentially adversely impacted First Nations.

Questions concerning consultation requirements and issuing archaeological permits can be directed to the Manager, Archaeology & History Section (Provincial Archaeologist), Heritage Resource Management Branch (who has the delegated authority of the Minister of Community Development to issue archaeological permits), or the Director, Heritage Resource Management Branch.

Internal Processes for Proponent-Led First Nation Consultation



Sector-Specific Consultation and Regulatory Processes

ACD will attempt to integrate First Nations consultation into existing regulatory processes and maintain current timelines. Due to the sector-specific nature of ACD regulation, sector processes are addressed separately and illustrated in the attached process schematics.

1. Ammonite Shell (Appendix B)

ACD will play a significant role in First Nations consultation with respect to ammonite shell development projects. ACD will determine how consultation should occur and will guide this consultation to identify the significance of ammonite, any known sites that may be present sites and details regarding the aboriginal right to harvest ammonite shell. Known historic 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. An ACD Information Letter will also be drafted and attached to approved Ammonite Shell Agreements. This letter will provide information regarding possible HRIA and ACD-led consultation initiatives. At the exemption stage the Aboriginal Liaison or Consultation Officer will review the proposed project and conduct consultation as necessary. Once adequate consultation has occurred *HRA* Exemption may be granted.

2. Conventional Oil & Gas Including Area Operating Agreements (Appendix C)

The *Listing* is the trigger for ACD involvement in regulating conventional oil & gas activities, which includes wellsites, pipelines and associated access roads. The Environmental Field Report (EFR) required by Sustainable Resource Development (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 Consultation/Liaison staff to determine if the project may adversely impact First Nations' *Rights and Traditional Uses*. ACD encourages Project Proponents to check the *Listing* during the planning stage for large scale drilling programs; it is easier for all parties involved to conduct consultation on an entire program rather than on an individual disposition basis. Once a referral is received the consultation process will occur as detailed in the previous section.

3. Forestry Development (Appendix D)

Heritage Resource Management for the Forest industry is a relatively new initiative and a formal program has not yet been developed. Due to this ACD will establish a forestry focus group in order to learn about existing relationships, use of traditional use data, data sharing and consultation procedures as well as to gain industry insight into how consultation could fit into the heritage resource management process. Opportunities for incorporating consultation may include three-way Data Sharing Agreements, minimum ACD consultation requirements and including traditional use study data into historic resource predictive models.

4. Environmental Impact Assessments (Appendix E)

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 historical resources. Requirements by ACD will be outlined in the project terms of reference and may include the following:

- a) Document any participation by local Aboriginal peoples in the field program conducted;
- b) Identify sites of traditional use that may be considered historical 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 Aboriginal peoples with respect to Project impacts on historical resources;
- e) Identify mitigation strategies proposed to address these concerns.

Project Proponents will submit the required information to ACD as part of the HRIA Report. The Consultation/Liaison staff will review the report and request supplemental information as needed. ACD will then issue *HRA* Clearance or mitigation procedures to the Project Proponent. Potentially adversely impacted First Nation(s) will be provided copies of any historical resources clearance letters issued for EIA reviewed projects.

5. Crown Mineral Sales

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

6. Aggregates, Geophysical, Power, Recreational and Transportation Projects

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.

Implementation and Communication

ACD Consultation Guidelines will be effective September 1, 2006, and will be circulated as part of the Government of Alberta's consultation initiative led by the Aboriginal Consultation Coordination Group (ACCG). The Policy, Consultation Guidelines, requirements, reporting Guidelines and related forms will be made available on the Heritage Resource Management and Parks and Protected Areas sections of the ACD website:

<http://www.cd.gov.ab.ca/preserving/heritage/index.asp>

<http://www.cd.gov.ab.ca/preserving/parks/index.asp>

The *Listing* is available at

http://www.cd.gov.ab.ca/preserving/heritage/pands/significant_sites/Applications/Listing/listing.asp

Contacts for ACD Consultation are as follows:

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Acting Assistant Deputy Minister
Cultural Facilities and Historical Resources Division
(780) 431-2309 Fax: (780) 427-5598

Review of the Guidelines

From September 1, 2006 to April 2007, ACD staff will work with First Nations and Industry to successfully implement these Guidelines, develop best practices and establish effective relationships. After this time the Guidelines will be revised as necessary.

Appendix A:

Traditional Use Sites and the Listing of Significant Historical Sites and Areas

Through the provisions of the *Historical Resources Act*, a key mandate of the Heritage Resource Management Branch of Alberta Community Development (ACD) is to preserve and protect historical resources as defined under the Act during the industrial development process. As part of this mandate, it is ACD's responsibility to protect sites of importance to First Nations. The main tool used by the Heritage Resource Management Branch to protect heritage sites is the *Listing of Significant Historical Sites and Areas* (the *Listing*).

Through the *Listing*, the Heritage Resource Management Branch makes developers aware of sensitive locations on the landscape prior to land surface impacts. Where there is a potential conflict between a development and a significant historical site or area, ACD may require a Historical Resources Impact Assessment (HRIA) for the development that includes recommendations for how to avoid or mitigate negative impacts. For Crown and Special Areas lands, the *Listing* must be reviewed prior to land surface impacts that involve Sustainable Resource Development's (SRD's) Environmental Field Report Process (EFR). Alberta Energy and Utilities Board (AEUB) Directive 56 for freehold land also requires that an energy industry developer check the *Listing* to determine if the development will potentially impact a significant historical resource. If the development affects listed lands, the developer is required to indicate if *Historical Resources Act* clearance has been provided by ACD. The AEUB will not provide its approval for the project without *Historical Resources Act* clearance, unless there are exceptional circumstances for which a detailed explanation has been provided.

The types of development for which the *Listing* must be reviewed prior to government approval of land surface impacts involving Sustainable Resource Development's (SRD's) Environmental Field Report Process (EFR) are listed in the following table:

<ul style="list-style-type: none"> • Battery Site • Compressor Site • Heater Site • Plant Site • Satellite Site • Separator Site • Sump • Wellsite (industrial) • Access Roads • Flowline • Gas Co-op Pipeline • Pipeline 	<ul style="list-style-type: none"> • Water Injection Line • Buried/Communications/Fiber-optics Cable • Power Line • Railway Spur Line • Vegetation Control-actual ROW clearing with a new power line • Campsite-long-term industrial and commercial • Compressor Site-i/c caretaker residence 	<ul style="list-style-type: none"> • Landfarm Site • Landfill Site-after soil testing • Log Storage Site • Mill Site • Pipe Storage Site • Plant Site-i/c caretaker residence • Power Substation Site • Rig Storage Site • Service Station Site • Tank Storage Site • Tower/Repeater Site
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Note: Only pipeline installation leases (**PILs**) located outside existing, proposed or approved pipeline right of way lands, require an EFR.

ACD will also use traditional use site location information in evaluating other classes of development, including those of the forest industry.

The *Historical Resources Act* provides protection for sites of cultural and heritage significance. Many kinds of traditional use sites fit this description. ACD will extend its regulatory provisions to traditional use sites including, but not limited to, examples such as:

<ul style="list-style-type: none"> • Historic cabins (unoccupied) • Areas associated with creation stories, ancient myths, and oral traditions. • Ribstones or other sculpted objects on the landscape • Ceremonial/spiritual plant gathering sites (e.g. sweetgrass) • Ochre or other mineral pigment gathering sites 	<ul style="list-style-type: none"> • Trails • Offering areas • Ancient habitation areas • Sundance grounds • Fasting sites • Sweat lodge sites • Culturally modified trees • Fish weirs (rock, potentially wooden) 	<ul style="list-style-type: none"> • Battlegrounds • Shrines • Rock art • Dance sites • Medicine wheels • Burial sites (gravesites) • Vision quest sites • Pipe stone gathering sites • Iniskim (ammonite) gathering sites
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A significant traditional use location provided by a First Nation community to ACD will be entered in both the Public and the Restricted versions of the *Listing*. The Public version provides general information on the location; it does not indicate which First Nation is associated with the site, and indicates only that the location has cultural significance. The Restricted version provides a little more detail on the site location. The following are examples of how sites would be listed in each version.

Public:

Mer	Rge	Twp	Sec	LSD(s)	HRV	Category
X	XX	XX	XX	1-16	4	c

Restricted:

Site	Mer	Rge	Twp	Sec	LSD(s)	HRV	Category
Ceremonial/Cultural Site	X	XX	XX	XX	LSD #	4	c

The Public version is available online in Geographic Information System (GIS), Portable Document File (PDF) and Excel Table formats. The Restricted version is only available to ACD-approved historical resources professionals conducting Historical Resource Impact Assessments (HRIA) within Alberta. ACD is prepared to share portions of the Restricted version of the Listing with First Nations having a direct interest in traditional use or historical resource sites relevant to their community. The Historical Resources Value (HRV) column in both the public and restricted version provides the level of

sensitivity for the lands listed. Most traditional use sites will be listed with an HRV of 4 which means the site(s) is a "Previously recorded historical resource that requires avoidance and/or the conduct of additional historical resource studies." In the Category column the "c" represents "...cultural resources (such as cultural facilities or specific types of historic sites)."

Most traditional use sites provided to the Historical Resources Management Branch would be listed with a HRV of 4, but highly significant traditional use sites could receive HRVs of 1 (a provincially designated historical resource) or 3 (a site that has the potential to be provincially designated). Traditional use sites shared with ACD would be afforded a category "c" designation. ACD will also work directly with Sustainable Resource Development to request that significant traditional use locations on the *Listing* receive notations in the Government of Alberta's Land Status Automated System (LSAS), as appropriate.

Currently, 11 First Nation communities have shared some traditional use site location data with ACD or SRD. Where a development takes place at or near a traditional use site location on the *Listing*, ACD will require that the Historical Resource Impact Assessment activities take this into account through consultation, and that the impact assessment report makes appropriate recommendations to avoid or mitigate potential impacts. A Consultation Officer from ACD will work directly with the developer or agent, the developer or agent's historical resources consultant, and representatives of the First Nations community during the conduct of the historical resources impact assessment. ACD will not issue permits for historical resource impact assessments at significant traditional use locations without first discussing this with the First Nation. When a potential land use conflict arises with a proposed development and a site that has been placed on the *Listing* by a First Nation, it is important to stress that ACD will contact the First Nation to inform them of potential adverse impacts that the proposed development may have on traditional use sites and to seek suitable outcomes to the impact assessment process. *Historical Resources Act* clearance for the development to proceed is not granted by ACD until the historical resources impact assessment and mitigation needs have been met. All other development approval processes in Alberta can be bound by the *Historical Resources Act*.

Traditional use information that has been provided to the Heritage Resource Management Branch (beyond the locational data noted in the examples above), for use in connection with ACD's regulatory role, can and will be retained in confidence under various provisions of the *Freedom of Information and Protection of Privacy Act of Alberta*. If a First Nation would like a CD-ROM copy of the *Listing of Significant Historical Sites and Areas*, please use the contacts provided below. If you would like a digital copy of the *Listing of Significant Historical Sites and Areas*, it can be downloaded in PDF, Excel and Arc GIS shape file formats from our website at:

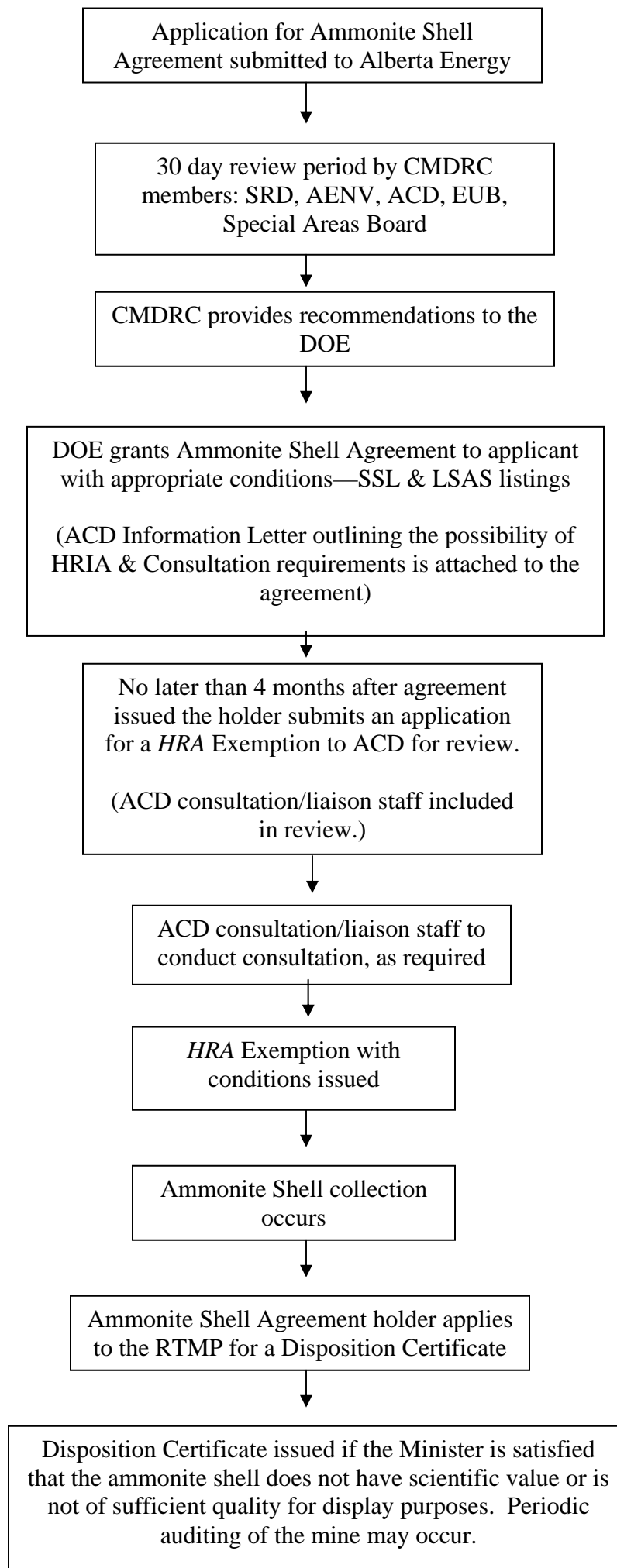
http://www.cd.gov.ab.ca/preserving/heritage/pands/significant_sites/Applications/Listing/listing.asp

First Nations can access the public version of the *Listing* in Geographic Information System format through the Alberta Energy's Community Link mapping website. To explore use of the *Listing*, to express concerns regarding cultural resources on the landscape, or to arrange an introductory session on Alberta Community Development's regulatory role, please use these contacts:

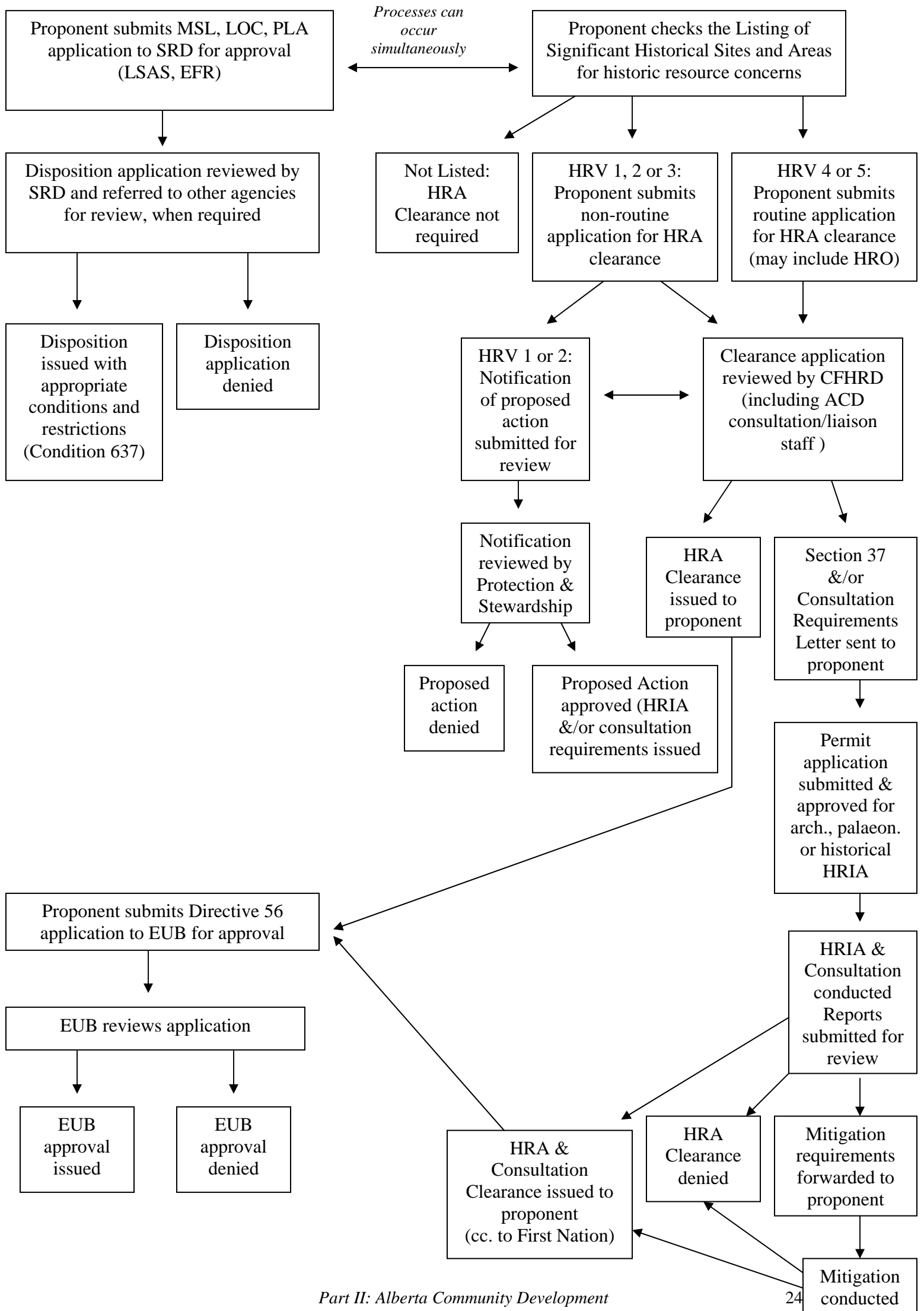
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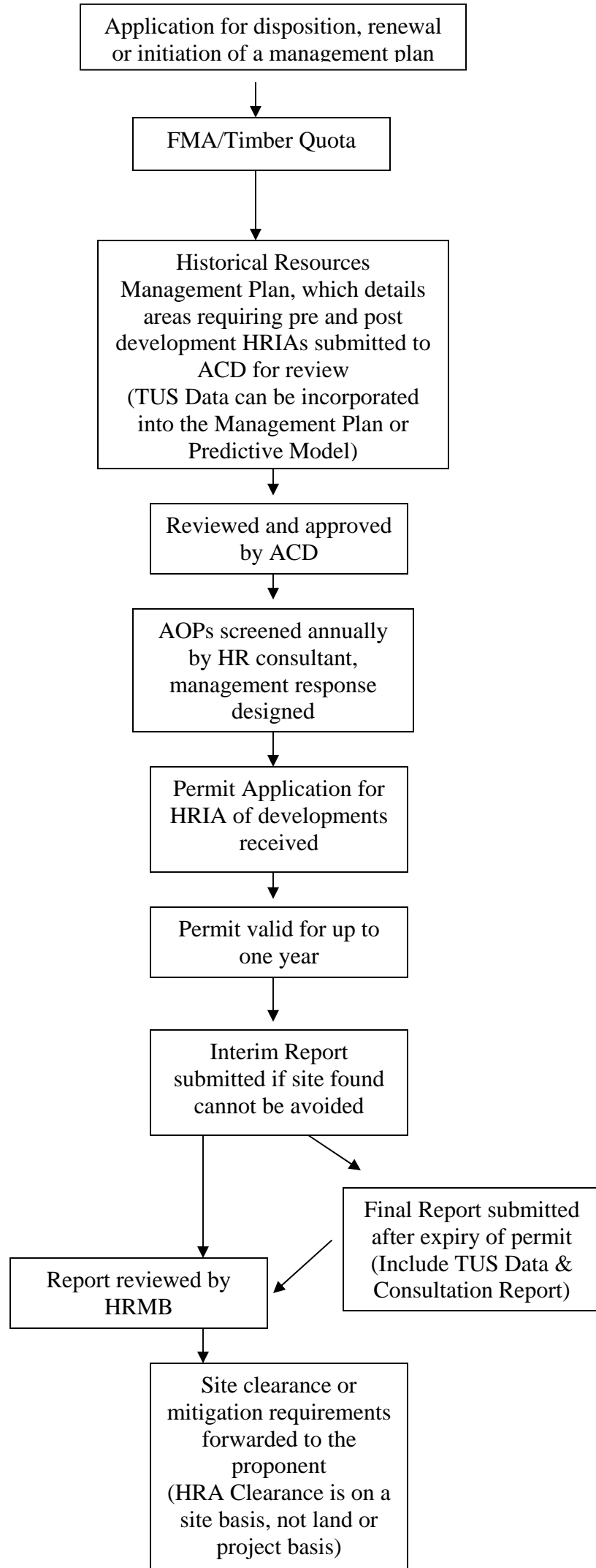
Appendix B:
Ammonite Shell Application Approval Process & Historical Resources Concerns



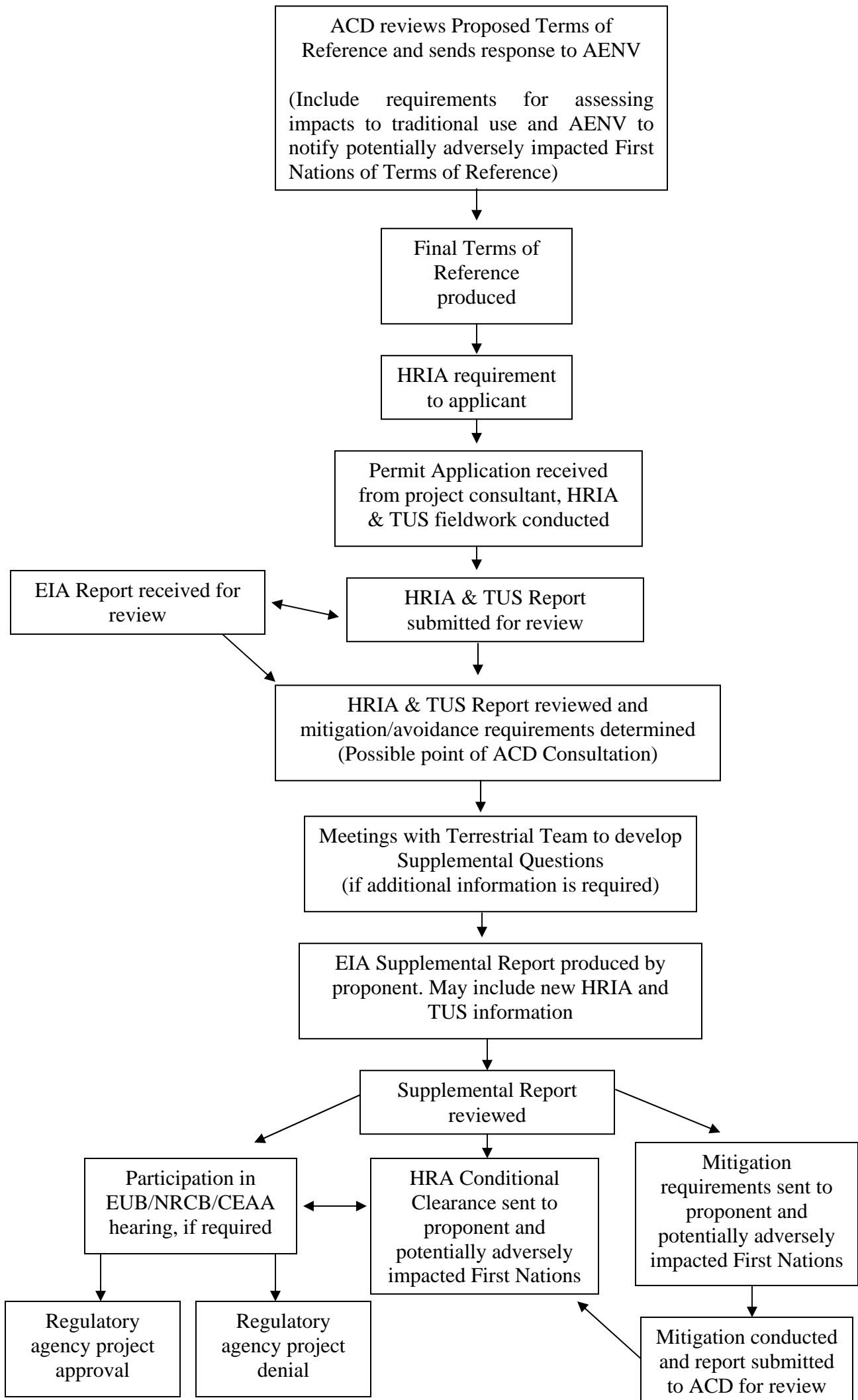
Appendix C:
Conventional Oil & Gas Historical Resource Act Clearance Process, Including Consultation



Appendix D:
Forestry Development Approval Process & Historical Resource Concerns



Appendix E:
Environmental Assessment Process & Historical Resources Concerns



Part III:

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

September 1, 2006

The Department of Energy's First Nations Consultation Guidelines

Preamble

The Government of Alberta recognizes First Nations rights respecting public lands as provided for in the treaties and the *Natural Resources Transfer Agreement*, including the rights to hunt, fish, and trap for food. The province also recognizes the interests of First Nations regarding traditional uses of public lands such as for burial grounds, gathering sites, and historic or ceremonial locations.

In September 2000, Alberta released *Strengthening Relationships: the Government of Alberta's Aboriginal Policy Framework (APF)*. Within the APF, Alberta committed to consult with Aboriginal people about proposed development activities that may infringe their existing treaty or other constitutional rights.

Alberta's *First Nations Consultation Policy on Land Management and Resource Development* (Consultation Policy), approved in May 2005, establishes principles for meaningful consultation, defines Alberta's role in the consultation process, and sets out Alberta's expectations of industry and First Nations. The Consultation Policy provides for the development of consultation guidelines to address questions about how consultation should occur in relation to specific activities such as resource extraction and the management of forests, fish and wildlife. The guidelines are to be consistent with and provide for implementation of the Consultation Policy.

The Framework for Consultation Guidelines was released in May 2006, to support implementation of the guidelines and ensure they are effective, efficient and consistent across departments. This document also identifies a long-term vision for how the Consultation Policy will be implemented and evaluated.

Government of Alberta Policy Statement on First Nations Consultation

Alberta will consult with First Nations where development of natural resources on provincial Crown land may infringe First Nations "*Rights and Traditional Uses*"¹. These *Rights and Traditional Uses* are defined in Alberta's *First Nations Consultation Policy on Land Management and Resource Development*.

¹ 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.

Department of Energy's Responsibilities

Alberta Energy (the Department) manages the disposition of provincially owned mineral resources² 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 also works to increase Albertans' awareness of energy and mineral development and related policies, and their significance to the province's economy, as well as ensuring Albertans have a choice of reliable and competitively priced energy.

Department of Energy's Role in First Nations Consultation

It is essential that Crown consultation with First Nations occurs early. Through relationship-building activities, support of the traditional use study program, as well as integrated land management planning, the Department will work to ensure that potential adverse impacts on First Nations *Rights and Traditional Uses* are identified and then avoided or mitigated.

Although the leasing of Crown mineral rights does not, in and of itself, adversely impact First Nations *Rights and Traditional Uses*, the Department recognizes that potential surface activities associated with the exploration and development of mineral resources might adversely impact these rights or traditional uses.

Therefore, the Department will provide information to both industry and First Nations in preparation for discussions that may ensue regarding surface activities, which are regulated by other branches of government.

The goals of the Department of Energy'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 Alberta's energy and mineral resources; and
- Fulfill the Department's role in meeting Alberta's duty to consult with First Nations.

The Department's guidelines outline an approach for addressing both the Consultation Policy and departmental goals. They identify internal practices of the Department; general consultation activities in which the Department will engage with First Nations;

² Mineral resources include minerals such as petroleum, natural gas, oil sands, coal, limestone, salt, gold, silver, iron, nickel, lead and diamonds.

specific consultation activities the Department will undertake regarding a particular initiative; and, direction given to industry on meeting consultation requirements.

Department of Energy's Consultation Guidelines

A. Internal Practice

This section outlines activities within the Department that serve 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

- The Department's Aboriginal Relations Business Unit (EAR) will act as the Department's primary contact with First Nations; Aboriginal issues will be directed to EAR, which will provide support to other business units in addressing Aboriginal issues potentially affecting the Department's business.
- EAR will liaise with contact persons identified by each business unit to provide support and advice on proposed initiatives that may require consultation.
- EAR will host information/knowledge of business sessions to describe the role of EAR, and to provide cultural and business information relevant to department staff.
- EAR will host discussion forums targeted at those business units, such as Oil Sands Development, Tenure, Resource Land Access, whose activities may be relevant to First Nations issues.
- EAR will review other business units' annual business plans to identify strategies and initiatives that may require consultation with First Nations.

B. General Consultation

This section outlines consultation activities that are focused on building a more effective working relationship between the Government of Alberta and First Nations. Consultation is not based on a specific development proposal, but on 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 2: Develop First Nations' understanding and increase knowledge of Government processes

- The Department of Energy, in coordination with other provincial government departments with resource management responsibilities, such as Community Development and Sustainable Resource Development, will participate in information sharing sessions with all First Nations communities. The goals of such sessions will be to increase First Nations' understanding of Alberta's resource development and land management responsibilities and its various regulatory processes.

The Department will share 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;
- Current and anticipated resource development in the vicinity of First Nations; and,
- Areas in the vicinity of First Nations where mineral leasing has not yet occurred.

The Department will participate in additional sessions at the request of specific First Nations and with other government departments. EAR will seek feedback from First Nations on concerns with regard to resource development activities, providing support to Department business units and where applicable, other government departments, on strategies to avoid or mitigate any adverse impact on First Nations *Rights and Traditional Uses*.

- The Department will provide access to basic information on mineral resource activity in Alberta through the development of an interactive website called the "Aboriginal Community Link".
 - The site will be available for the exclusive use of Aboriginal communities, with each community assigned an individual account and password.
 - EAR staff will provide training to communities to use the website, as well as ongoing telephone assistance.

Information on the Aboriginal Community Link will include mineral ownership, existing Mineral Access Restrictions, as well as active mineral agreements and lands posted for public offering. Information from other Alberta government departments may also be made available on this system.

This information will assist communities to identify areas of potential mineral resource development, and to assess if a specific location is of critical concern to the First Nation due to a traditional use site. Coupled with traditional use data, this information provides a method to initiate discussion between the Department and First Nations on site-specific concerns, and possible measures to avoid or mitigate adverse impacts.

Guideline 3: Support traditional use studies

- The Department will participate on the cross-ministry traditional use studies (TUS) committee and will provide advice and support to First Nations undertaking traditional use studies.

Participation will include:

- Developing criteria, with deliverables, for accessing provincial funding to conduct a traditional use study.
 - Reviewing traditional use proposals and providing advice and feedback to First Nations to assist them in finalizing a proposal.
 - Offering technical advice and support to First Nations in developing GIS capabilities.
 - Negotiating and implementing Data Sharing Agreements with First Nations.
- The Department will use available traditional use data to increase awareness of traditional uses of Crown land and avoid or mitigate impacts from resource development.
 - Where appropriate, and subject to an agreement to share data, site-specific traditional use information such as cabins and gravesites, will be entered in the surface portion of the Land Status Automated System³ as Protective Notations. This data may also be attached as addenda to the public offering of Crown mineral rights and may result in Mineral Access Restrictions on mineral agreements.

Guideline 4: Support industry

- The Department will provide information to industry clients on potential access restrictions that proponents may encounter due to significant First Nations traditional uses on Crown land.
 - Significant traditional use sites identified on the Land Status Automated System as Mineral Access Restrictions will give industry an opportunity to pre-plan their consultation with First Nations.
- EAR will act 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.

³ 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.

- The Department will issue an Information Letter outlining the application of the Consultation Policy to surface activities that companies may undertake as a result of acquiring Crown mineral rights.
- The Department will include a general statement in the mineral sales notice to identify the application of the Consultation Policy to surface activities and providing an EAR contact for further information.

Guideline 5: First Nations participation in resource planning

- In collaboration with other government departments, EAR will participate in the development and implementation of regional forums for discussion of resource development issues between industry and First Nations.
- The Department will work with First Nations and other government departments to define how First Nations will participate in land use planning initiatives and decision-making processes.
- The Department will make use of TUS data in its resource development planning and decision-making.

Guideline 6: First Nation treaty land entitlement settlements

- The Department will work with Canada, Alberta Aboriginal Affairs and Northern Development and First Nations to identify suitable lands to support treaty land entitlement settlements.
- The Department will reserve specified undisposed Crown mineral rights from further disposition until a treaty land entitlement 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, the Alberta Government, upon approval of the Alberta Cabinet and Lieutenant Governor, will transfer Crown mineral rights to Canada through Order in Council to be set aside as reserve lands for First Nations.

C. Department Led Consultation

In most cases, project proponents will be required to conduct procedural aspects of project-specific consultation, with Alberta responsible for determining whether consultation has been adequate in these circumstances.

However, Alberta will consult directly with First Nations where major Department policies or new initiatives are proposed, and where Alberta's assessment of the initiative indicates the province should engage in consultation with First Nations.

This section outlines consultation activities that are specific to instances where the Department leads, or participates with other government departments in direct consultation with First Nations.

Guideline 7: Assess the need for consultation

- The test to determine whether First Nations consultation is required is if the initiative has the potential to adversely impact First Nations *Rights and Traditional Uses*. To determine whether a Department policy or new initiative has this potential, the Department will consider the following:
 - Anticipation of a general public consultation process
 - Magnitude and duration of the initiative - could the initiative result in significantly increased or altered activity by resource developers
 - Lands are of significant interest to First Nations; specific TUS sites
- EAR, in coordination with other departments, will identify First Nations whose *Rights and Traditional Uses* may be adversely impacted; EAR will review any available traditional use data and incorporate this information.

Guideline 8: Consult

- Where an initiative has the potential to adversely impact First Nations *Rights and Traditional Uses*, the Department will, in co-ordination with other appropriate departments, consult with affected First Nations.
- EAR will work with the business unit leading the initiative, and facilitate discussions between the Department and First Nation to develop an effective consultation plan. Consultation will consider a First Nation's interest in being actively engaged in the initiative review as well as the level of potential impact on *Rights and Traditional Uses*. A consultation plan may include:
 - Meetings to provide information on the initiative; consider First Nation concerns and methods to mitigate adverse impacts
 - First Nation active involvement through participation on Advisory Committees or working groups that guide the initiative and make recommendations to Government

- Keeping First Nations apprised of progress throughout the stages of the initiative and seeking input and feedback on draft proposals.

Guideline 9: Report decision

- The Department will document all discussions with First Nations and record all decisions in this regard; report back to the First Nations on how their concerns were considered in the decision.

D. Industry Led Project Consultation

Based on the understanding that the leasing of Crown mineral rights does not, in and of itself, adversely impact First Nations *Rights and Traditional Uses*, Alberta will not consult with First Nations prior to the disposition of Crown mineral rights, and First Nations consultation will not be a condition of acquiring or renewing mineral agreements.

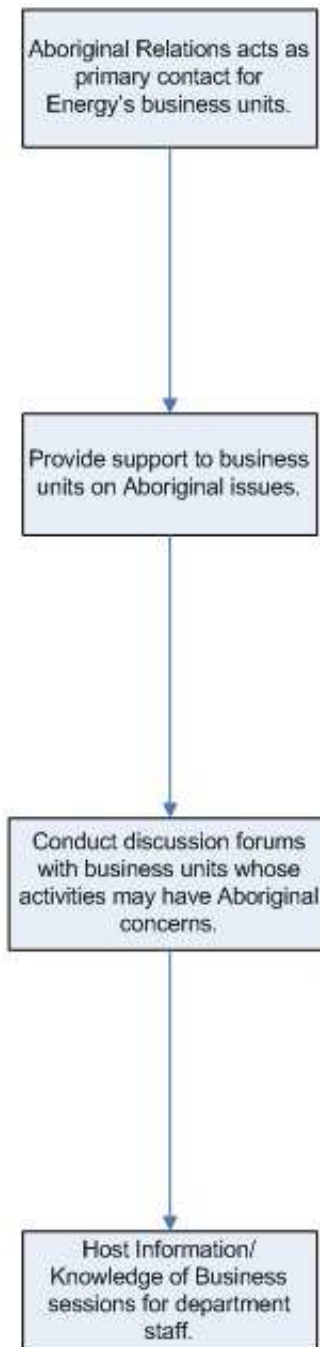
It is critical that consultation be effective and efficient. Mineral dispositions do not grant the right of access to the land. Many primary term petroleum and natural gas agreements expire without the necessary surface dispositions being issued or any exploration or development activity occurring. As well, in situations where development does occur, often only small portions of the total leased area are directly affected by surface activity. As such, First Nations and industry efforts to consult prior to the acquisition of mineral agreements would not be efficient or effective for either party given the unknown nature, extent and timing of any resulting activity. Consultation activities will be directed toward resource development where surface activity is being actively planned and adverse impacts might occur.

In this regard, the Department will not normally take a direct role in project specific consultation, but will advise potential mineral lessees that, should any surface activities be proposed, the Consultation Policy and Guidelines will apply (see Guideline 4).

The Department will also encourage 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. EAR staff will continue to act as the Department contact on the Consultation Policy and the Department's guidelines.

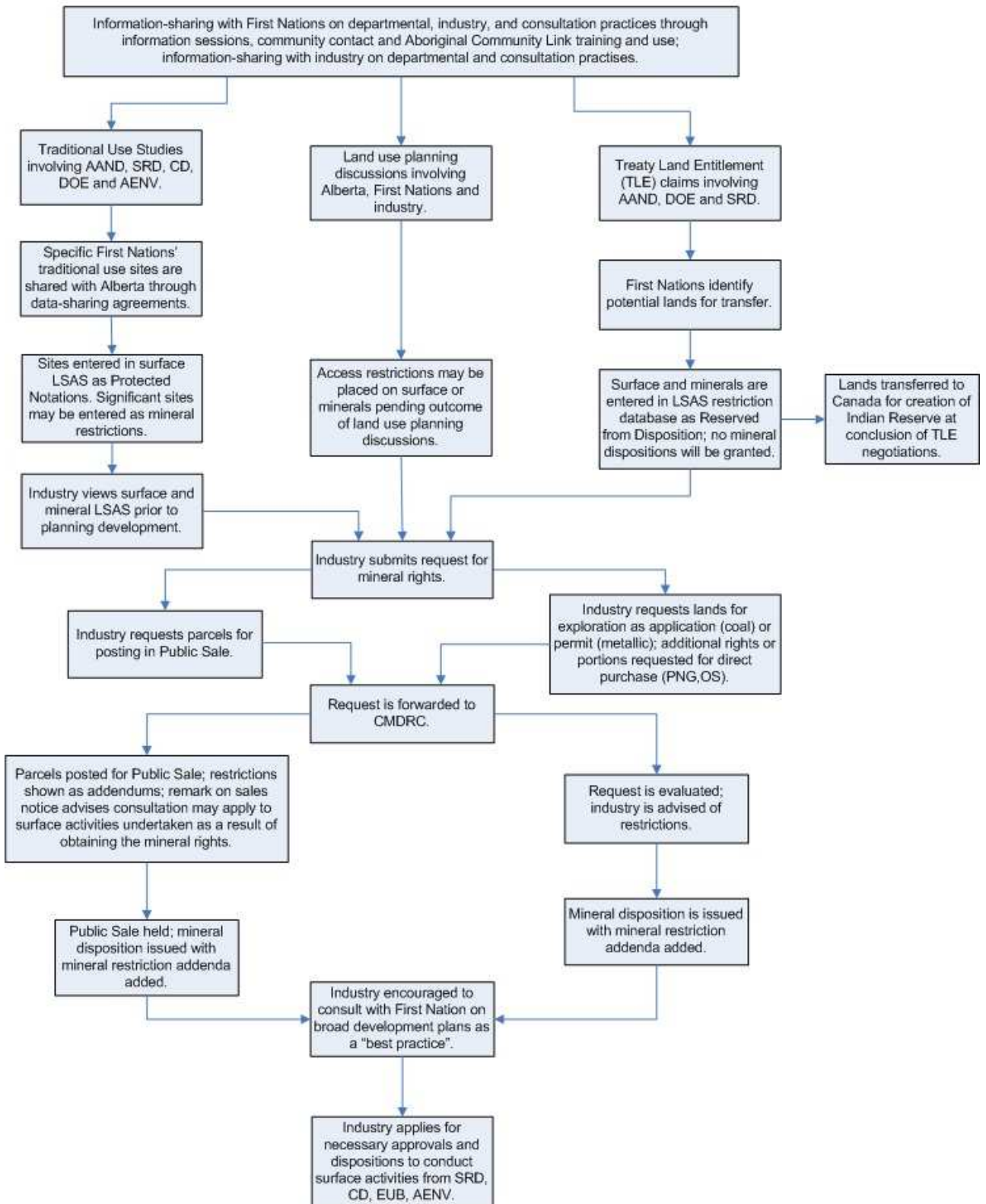
Department of Energy's Roles in First Nations Consultation

A: Internal Practice



Department of Energy's Roles in First Nations Consultation

B: General Consultation



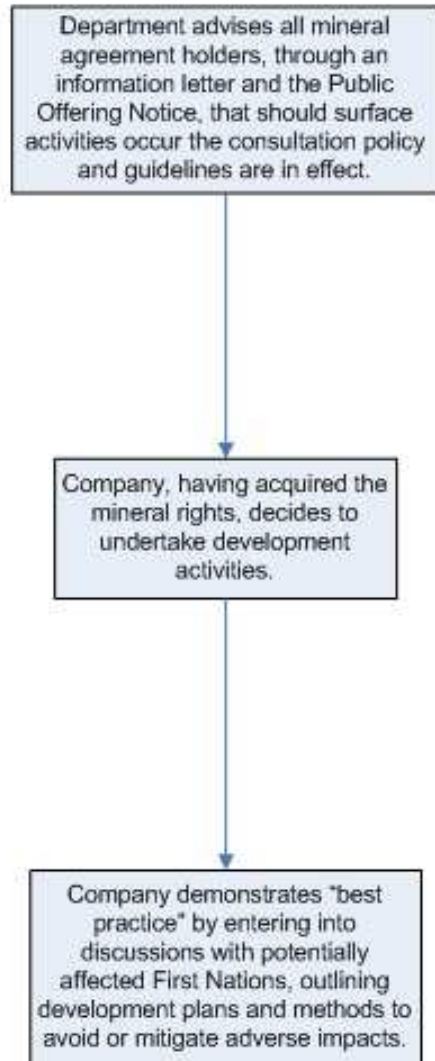
Department of Energy's Roles in First Nations Consultation

C: Department Led Consultation



Department of Energy's Roles in First Nations Consultation

D: Industry Led Project Consultation



Part IV:

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

September 1, 2006

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 Aboriginal Affairs and Northern Development website at www.aand.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.

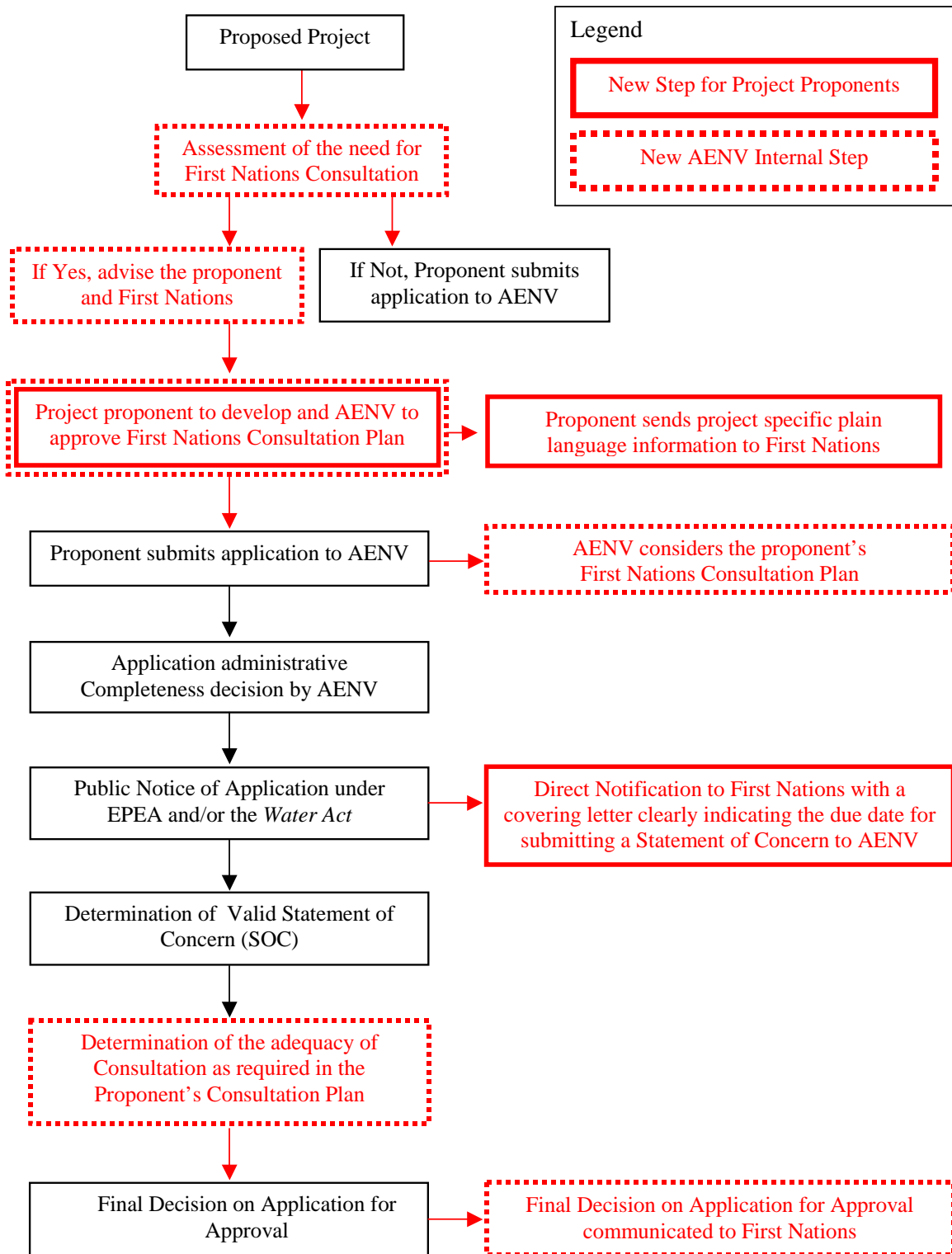
c) Notice of Final Terms of Reference

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.

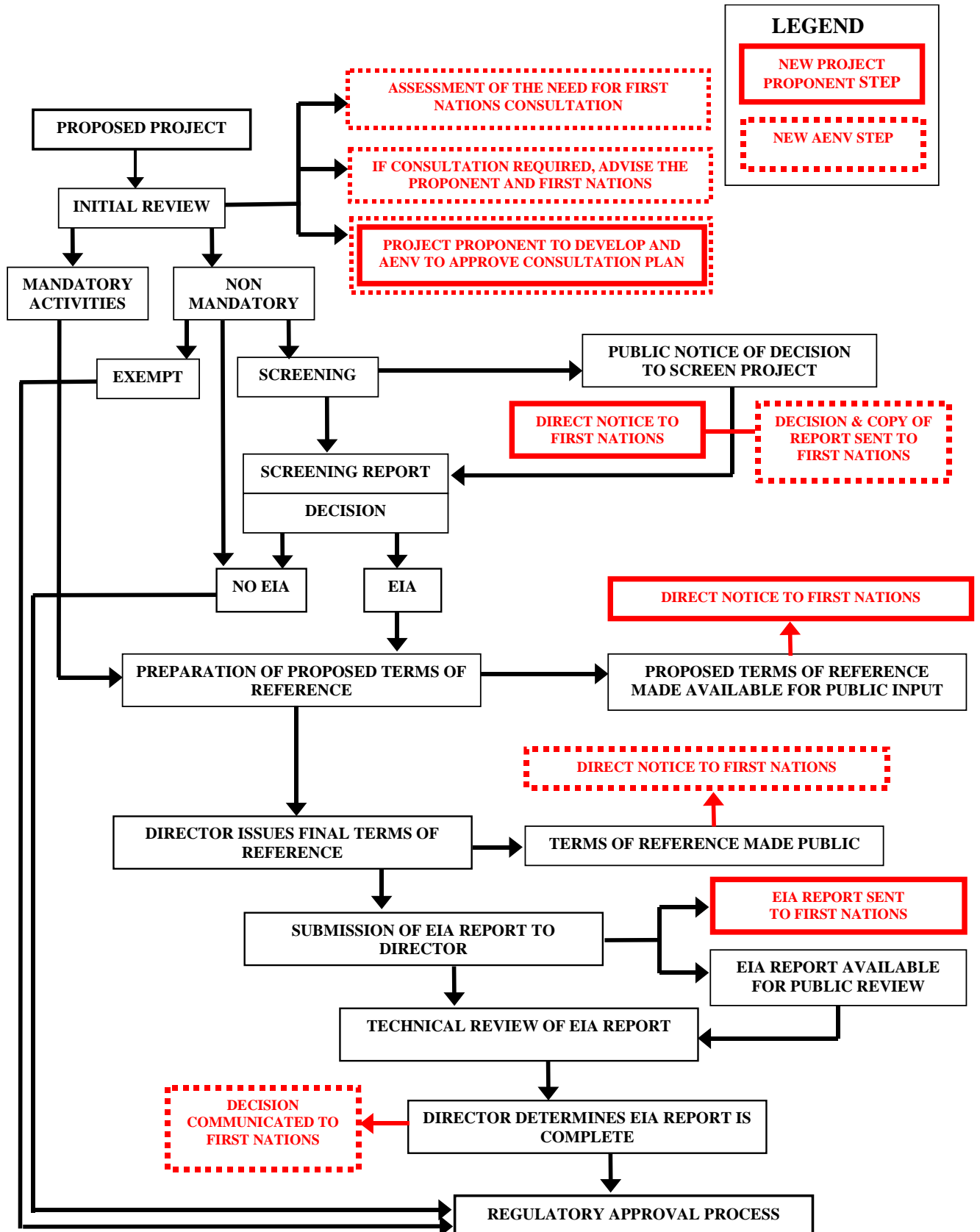
d) EIA Report Completeness Decision

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 V:

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

September 1, 2006

Introduction

Alberta Sustainable Resource Development (SRD) is responsible for managing Alberta's public lands, forests, and fish and wildlife resources. SRD recognizes that it has a duty to consult with First Nations where its management of these resources has the potential to adversely impact First Nations *Rights and Traditional Uses* of Crown lands.

SRD will be solely responsible for undertaking consultation regarding legislation, regulations, policies or planning initiatives that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Crown lands.

Where SRD is considering an application of a project proponent to undertake an activity, some procedural aspects of consultation will be delegated to the project proponent. This delegation will be carried out in the manner described in the following guidelines. SRD will retain the responsibility for determining the adequacy of project-specific consultation.

These guidelines are in place for the 2006 – 2007 season and may be revised if necessary. In addition, an Annual Quality Assurance Assessment will be undertaken to monitor the effectiveness of the guidelines and to make adjustments as necessary. Alberta has also committed to a review of the entire First Nations Consultation Policy on Land Management and Resource Development four years after implementation.

Forest Management First Nations Consultation Guidelines 2006-2007

SRD recognizes that it has a duty to consult with First Nations regarding forest management activities that have the potential to adversely impact First Nations *Rights and Traditional Uses* of Crown lands.

In Crown managed Forest Management Units, the following guidelines for consulting with First Nations will be implemented:

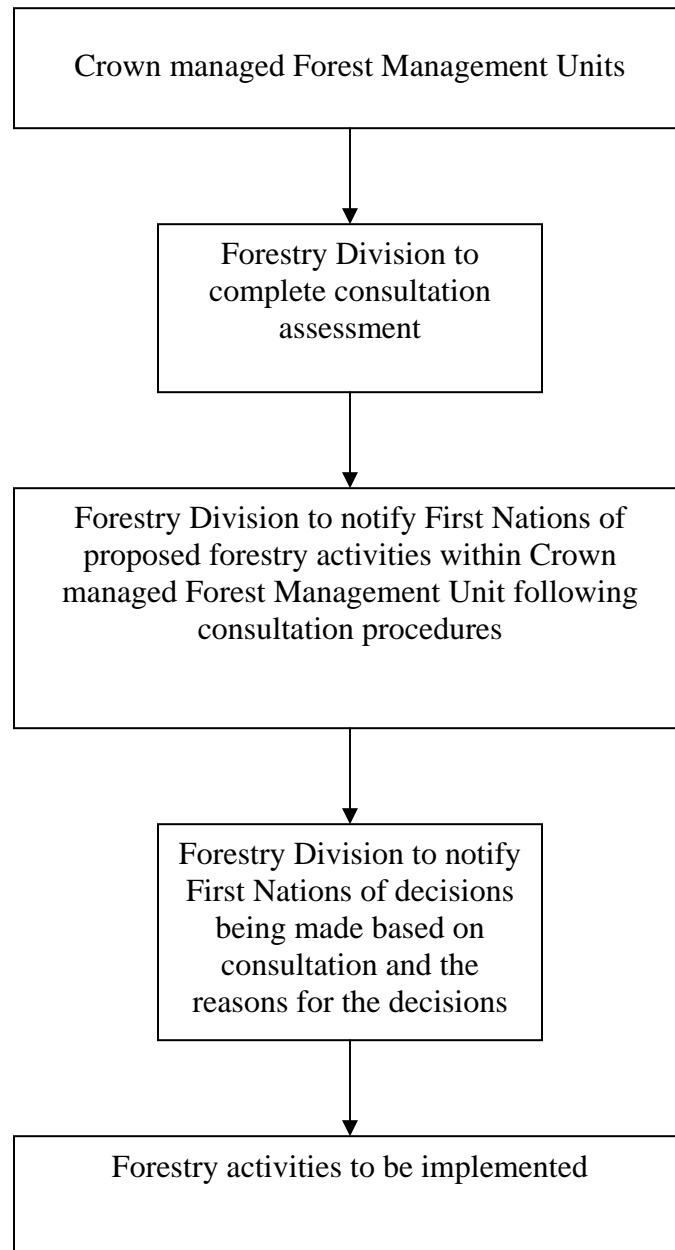
1. Assessment – The First Nations that are to be contacted will be determined based on the following criteria:
 - Specific traditional use sites shared by First Nations;
 - Lands selected as part of Treaty Land Entitlement negotiations;
 - Information shared at regional consultation tables;
 - Information acquired through direct interaction with First Nations; and
 - Any other information that comes to Alberta's attention.

2. Notification – Forest Management Branch will:
 - 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 – Forest Management Branch will:
 - Notify First Nations at the outset of the forest management planning process.
 - Notify First Nations before decisions are made;
 - Provide plain language information describing the forest management planning process, and clearly identify potential short and long term adverse impacts;
 - Initiate meetings to discuss the forest management planning process and to review ideas, comments and concerns of the potentially adversely impacted First Nations;
 - Plan to avoid, mitigate or accommodate 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 potential adverse impacts; and

- Notify the First Nations of decisions being made based on consultation and the reasons for the decisions.
4. All forms of consultation and communication shall be documented.

SRD - Forest Management Consultation Process



Forest Protection First Nations Consultation Guidelines 2006/2007

SRD recognizes that it has a duty to consult with First Nations when its forest fire management activities have the potential to adversely impact First Nations *Rights and Traditional Uses* of Crown lands.

When initiating the planning process for Wildfire Management – Fire Smart or prescribed fire projects, the following guidelines for First Nations consultation will be implemented:

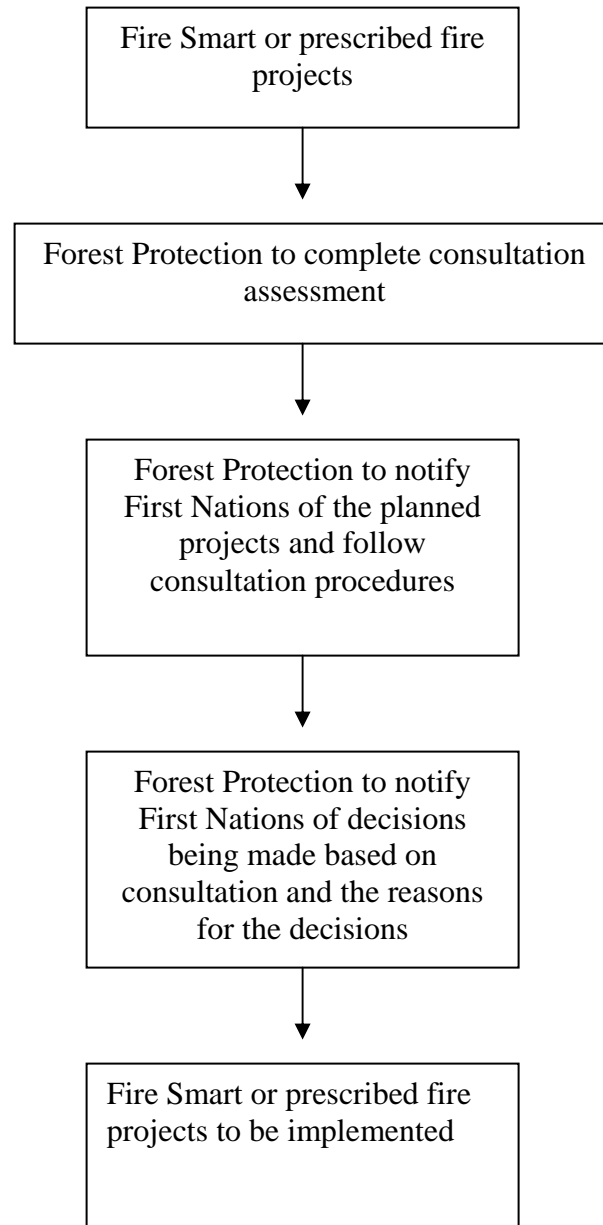
1. Assessment – The First Nations that are to be contacted will be determined based on the following criteria:
 - Specific traditional use sites shared by First Nations;
 - Lands selected as part of Treaty Land Entitlement negotiations;
 - Magnitude and duration of the proposed project;
 - Information 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 – Forest Protection will:
 - 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 in relation to the magnitude and duration of the proposed project; 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 – Forest Protection will:
 - Notify the First Nations before decisions are made;
 - Provide plain language information describing the scope and location of the project, and clearly identify potential short and long term adverse impacts;
 - Initiate meetings to discuss the forest protection planning process and to review ideas, comments and concerns of the potentially adversely impacted First Nations;
 - Develop strategies to avoid, mitigate or accommodate 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 potential adverse impacts; and

- Notify the First Nations of decisions being made based on consultation and the reasons for the decisions.
4. All forms of consultation and communication shall be documented.

SRD Forest Protection Consultation Process



Land Management First Nations Consultation Guidelines 2006-2007

SRD recognizes that it has a duty 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 Crown lands.

The scope of consultation activities and the level of First Nations involvement (Treaty level organization, Regional Tribal Council, and 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*.

Consultation with First Nations will be determined based on the following criteria:

1. Assessment –

- 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, Lands Division will:

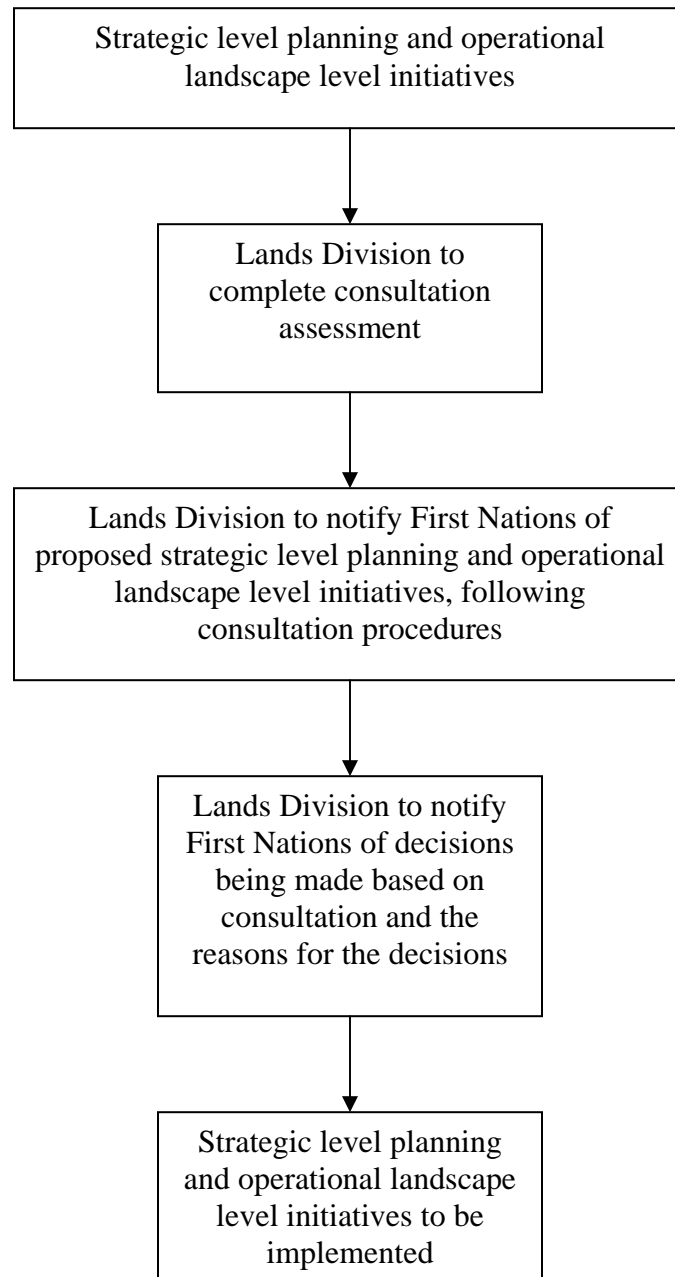
- For provincial-scale initiatives, contact Treaty level organizations first for advice on how they want to be consulted, other parties to include, and how information should be provided;
- For operational landscape level initiatives, the appropriate Regional Tribal Council and/or First Nations will 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 should occur;
- Outline general strategies that may be used to avoid, mitigate or accommodate potential impacts on First Nations *Rights and Traditional Uses*.

3. Procedures – The consultation process will include the following key elements:

- 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 clearly 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;
 - 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 being made based on consultation.
4. All forms of consultation and communication shall be documented.

SRD - Land Management Consultation Process



Conventional Oil and Gas First Nations Consultation Guidelines 2006-2007

SRD recognizes that it has a duty 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.

The method for those consultation responsibilities delegated by Sustainable Resource Development (SRD) to project proponents on conventional oil and gas development for the 2006 – 2007 season will be for the proponent to 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 2006-2007 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 in the 2006-2007 season. Alberta recognizes proponents may have already conducted consultations with First Nations regarding the proponents program for the 2006-2007 season. Proponents are asked to review their consultation activities to identify if further consultation may be required. Beginning September 1, 2006 SRD staff will canvass companies using AOAs to determine what consultation activities are in progress or planned in relation to AOAs. Where companies are not preparing an AOA they should discuss their program plan for this season with their regular SRD staff contacts.

Area Operating Agreements

An AOA includes and outlines a company's plans for development and operations in a particular operating area for the coming season. One of its purposes is to facilitate company planning and to identify plans for the season. 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

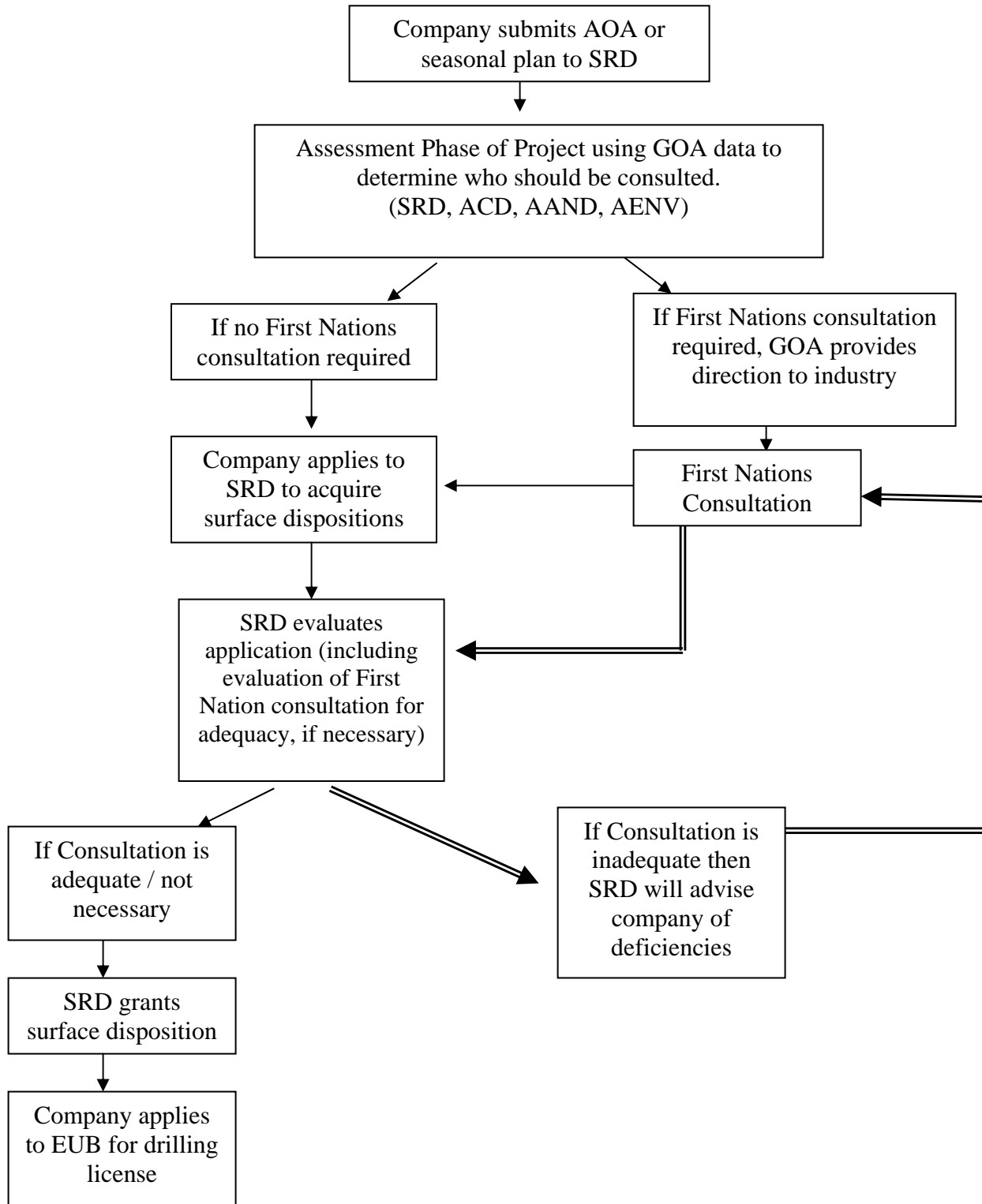
- developed by the proponent during the preparation of the AOA with assistance from Alberta, as set out in Part I of the Guidelines.
2. Consistent with Part I of the Guidelines, SRD or Alberta staff will review the program contemplated in the AOA and will: (a) assess the duty to consult; and (b) identify 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.
 6. Matters requiring further consultation may require meetings among the proponents, First Nations, and Alberta for resolution.

Other

1. For resource development not included in an AOA, Alberta's Consultation Policy and the Framework for 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 scheduled to be executed in the 2006-2007 season. Consistent with Part I of the Guidelines, Alberta will provide assistance based on such a consultation plan.

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



Fish and Wildlife First Nations Consultation Guidelines 2006/2007

SRD recognizes that it has a duty to consult with First Nations regarding fish and wildlife management changes that have the potential to adversely impact First Nations *Rights and Traditional Uses* of 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.

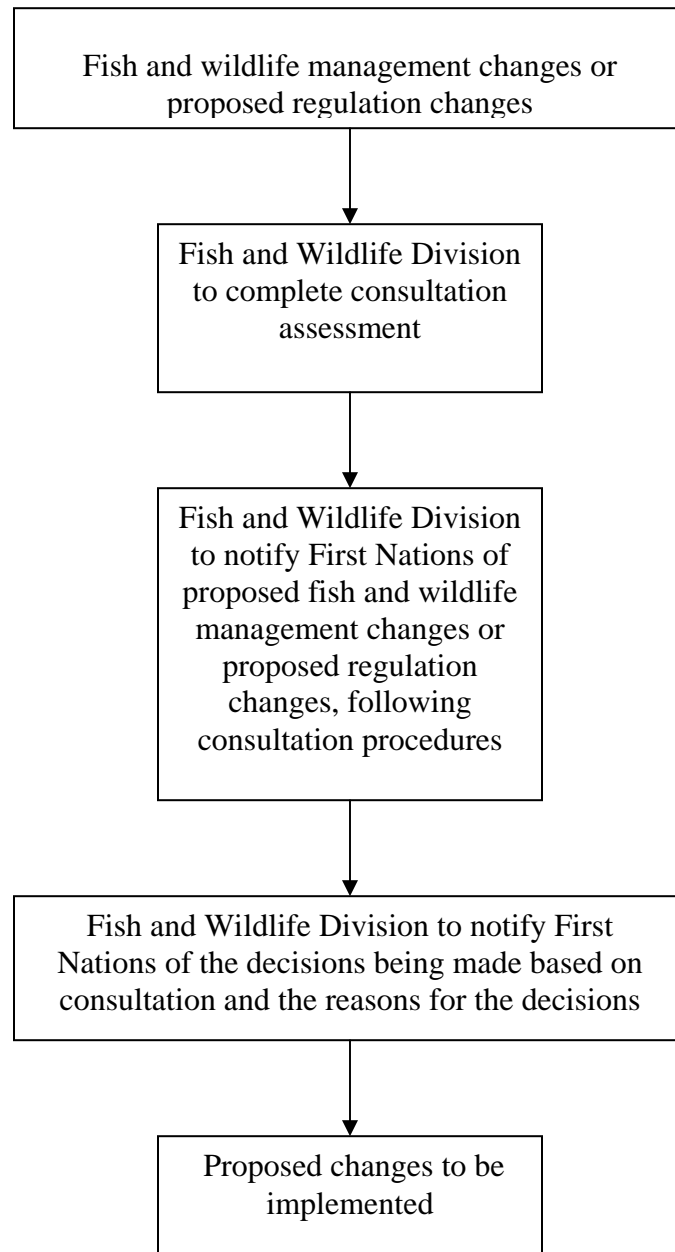
Fish and Wildlife Division will consult on all proposed regulation changes that have the potential to adversely impact First Nations *Rights and Traditional Uses*.

Consultation with First Nations will be determined based on the following criteria:

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*;
 - 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 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 – The consultation process will include the following key elements:
 - Notification to Treaty level organizations/Regional Tribal Councils/First Nations before decisions are made;
 - Provision of plain language information describing the proposed regulation changes, and conservation reasons for proposing the changes;
 - Meetings to discuss ideas, comments and concerns;
 - Reasonable time will be provided for parties involved to review, consider and respond;
 - Strategies to avoid, mitigate or accommodate the potential adverse impacts on First Nations *Rights and Traditional Uses*;

- Where avoidance is not possible, consultation will be conducted with the goal of mitigating such adverse impacts; and
 - Notify the First Nations of the decisions being made based on the consultations.
4. Fish and Wildlife Division will maintain a record of consultation activities.
 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



Forest Industry First Nations Consultation Guidelines 2006/2007

SRD recognizes that it has a duty 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 Crown lands. When a timber harvesting authorization is submitted, the following procedural aspects of consultation will be delegated to the project proponents.

The Forest Industry is required to initiate meetings with First Nations to review planned forest operations.

For this season, items to be reviewed include, but are not limited to:

- Detailed Forest Management Plan (DFMP)
 - General Development Plans (GDP)
1. Assessment – 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;
 - 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 – SRD will:
 - Advise forest industry which First Nations need to be consulted;
 - Provide First Nations contact information for consultation purposes;
 - Provide government contact information for further information and support.

SRD will assist the Forest Industry in developing:

- A general outline of the consultation that will be required;
 - Timeframes within which consultation should occur;
 - General strategies that may be used to avoid or mitigate potential adverse impacts on First Nations *Rights and Traditional Uses*.
3. Procedures - First Nations and industry have indicated that the following key elements be used by project proponents as a basis for consultation:

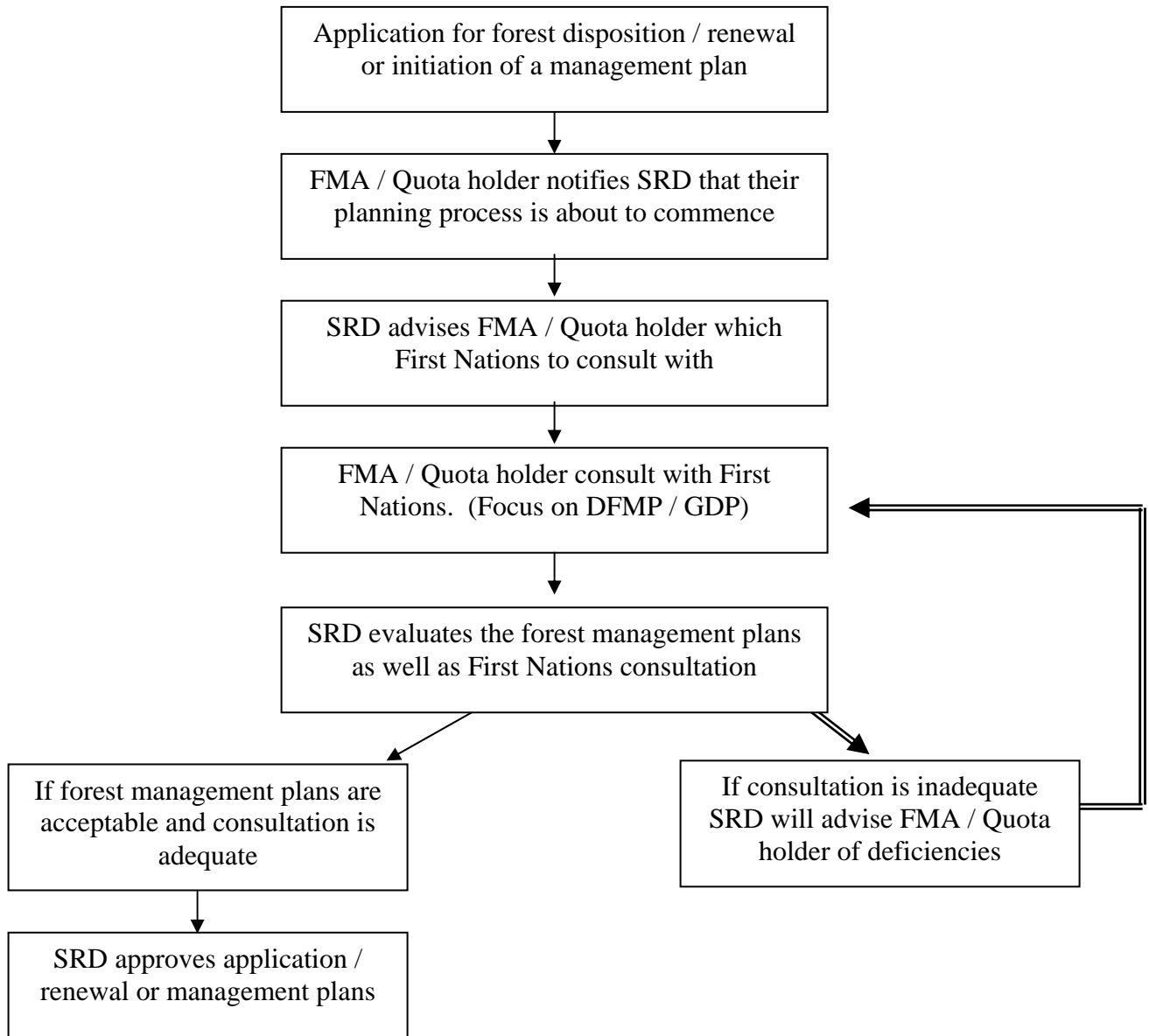
- Notify First Nations at the outset of the forest management planning process;
- Notify First Nations before decisions are made;
- Provide plain language information describing the scope and location of the project;
- Proponents will initiate meetings with the First Nations to listen to and gain their input on the potential short and long term adverse impacts of their proposed plans. 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;
- Notify SRD of steps taken for avoidance or mitigation of potential adverse impacts on First Nations *Rights and Traditional Uses*; and
- The project proponent will provide consultation information to SRD and to First Nations.

4. All forms of consultation and communication shall be documented.

Forest Management Agreements

When SRD is considering issuing or renewing a Forest Management Agreement (FMA), the First Nation consultation process will be undertaken jointly by SRD and the FMA holder. SRD will be primarily responsible for the assessment and notification phases of consultation. The FMA holder will be delegated the procedural aspects of consultation as outlined in Part 1 of the Consultation Guidelines.

SRD - Forest Industry Consultation Process



Part VI:

APPENDICES

- A. The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development
- B. Framework on Consultation Guideline