

Alberta Culture and Community Spirit Procedures for Reporting Proponent-led Consultation

Introduction

In May 2005 the *Government of Alberta's First Nations Consultation Policy on Land Management and Resources Development* (the Policy) was released. Since that time, Alberta has released Consultation Guidelines (the Guidelines) that outline the steps for implementing the Policy¹. Within the Policy and Guidelines, Alberta has recognized a duty to consult with First Nations where land management and resource development have the potential to adversely impact First Nations Rights and Traditional Uses² of Crown land.

Alberta Culture and Community Spirit (ACCS) is responsible for regulatory and land management activities through the activities of the Historic Resources Management Branch. As such, ACCS has developed Ministry-specific Consultation Guidelines for the purposes of implementing the Policy. The reporting procedures outlined in this document are designed to guide efforts to document consultation requirements made by ACCS regarding historic resources, as mandated by the *Historical Resources Act*.

An important element of both the Policy and the Guidelines is that, while Alberta retains the duty to consult in fulfilling its legislated mandates, procedural aspects of the consultation process can and will be delegated to project proponents. It is Alberta's intent that this delegated consultation will be conducted within existing regulatory frameworks and timelines.

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

The following Reporting Procedures have been developed to be consistent with the Policy and Guidelines. The intent of these procedures is to provide a framework for reporting the results of consultative efforts made under ACCS Consultation Guidelines that reflect the following principles: consultation that is meaningful, conducted in the spirit of collaboration, timely, and gives consideration to concerns raised.

It is acknowledged, however, that despite the best of intentions, not all consultation will achieve an ideal result in terms of process or outcome. These procedures provide

¹ The Consultation Policy and the Guidelines are available at <http://www.international.gov.ab.ca/571.cfm>

² *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.

direction for reporting this type of result. In all cases, however, documentation of efforts to consult must be maintained. Much of this documentation will be required for reporting but files kept by proponents in relation to their efforts to consult may be important if disagreement results.

In addition, these procedures recognize the sensitivity of the information shared by First Nations through the consultation process. They accommodate concerns for the confidentiality of that information by ensuring that reports prepared pursuant to a requirement to consult issued by ACCS are independent from any other reports that may be required by ACCS and that they are securely archived. This report independence represents a significant departure from the text presented in Part II of the September 2006 Guidelines. The security of reports prepared under these procedures is further reinforced by provisions of the Freedom of Information and Protection of Privacy Act (Division 2, subsection 28) wherein ACCS can refuse to disclose information that may result in damage to or interference with the conservation of any historic resource, which includes many traditional use locations and areas³. It is ACCS's intent to maintain the confidentiality of consultation reports and the information they contain.

GENERAL REPORTING REQUIREMENTS AND FORMAT

General Reporting Requirements

The requirement to prepare and submit a consultation report to ACCS under the Guidelines can be triggered in two ways. During existing development review processes, ACCS may become aware that a project has the potential to impact a resource or traditional use locality of significance to a First Nation. Prior to issuance of clearance to proceed under the provisions of the *Historical Resources Act*, the ACCS statutory decision maker will issue a letter to the project proponent, indicating that consultation will be required (Schedule A). This requirement letter will identify which First Nation(s) to consult and the appropriate individual(s) with whom to initiate contact. This requirement letter is an official notification of the delegated responsibility to complete the procedural aspects of consultation and will require submission of a report detailing the nature and results of consultation activities. This report must be separate from any other reports that may be required by ACCS.

During the course of completing requirements for other types of historic resource studies the proponent or their agents may encounter a resource or location that reflects First Nations traditional use of an area and is likely to fall under the provisions of the *Historical Resources Act*. If such a resource occurs within or adjacent to a proposed development zone and could be impacted by development activities, the proponent is required to report this occurrence and the likelihood of impact in a report that is separate from other reports necessary to meet the requirements of the *Historical Resources Act*.

³ See the list of traditional resources that may be considered historic resources under the definitions provided in the *Alberta Historical Resources Act* in Part II of the *Government of Alberta's First Nations Consultation Guidelines on Land Management and Resources Development*.

In this latter case, because no notification of delegated responsibility to consult preceded these discoveries, the proponent is not obligated to consult First Nations to determine the significance of the identified resource(s) or any First Nations concerns for the resource(s) associated with their project. However, proponents may see an advantage to undertaking and reporting upon consultation with respect to these resources to foreshorten the review and decision making process, as once reported, a requirement to consult on impacts to these resources may be issued. Should proponents wish to undertake and report on this work, ACCS consultation staff can be contacted to assist in identifying which First Nations may have an interest and who to contact to initiate consultation.

Reporting Format

Reporting of consultation activities and any information derived from the consultation process will be undertaken in two forms, printed text and digital copies. ACCS intends to make every effort to maintain the confidentiality of information shared by First Nations pursuant to requirements to consult, or when information on historic resources reflecting traditional use are encountered during other studies required under the *Historical Resources Act*. For these reasons proponents are encouraged to maintain security and control the distribution of any information needed to prepare reports for ACCS review.

If more than one First Nation has been consulted, individual reports outlining the process conducted with each and the results achieved would be prepared.

ACCS will require that reports comply with several conventions:

- Printed reports should be prepared using standard, up-to-date word processing programs and should employ a font style and size that is easily readable (i.e. Times Roman or Arial 12 pt Font). Text should be written in plain language that avoids jargon and can be understood by a wide audience. All reports must be final reports; drafts or interim reports will not be reviewed. If acronyms are necessary a separate page should be included defining each acronym used. A glossary of terms should be included.
- All printed and digital report copies must contain a title page that identifies the official name of the project (as appears on approval applications), the project proponent and the First Nation consulted. A report author, either an individual or a company, must be identified. Although not necessarily on the title page, all reports must identify any contact agent, including name, position, company, full mailing address, telephone number, fax number and email address. In addition, if consultation has been conducted as a result of an ACCS requirement, reference to the ACCS file number cited in the requirement letter must be included in as introductory information. If consultation has been conducted in conjunction with archaeological studies, reference to the applicable Archaeological Research Permit number must be included in the report.
- Larger reports, dealing with multiple resources or several information sources, should have a table of contents as an organizing tool for the information included.
- All figures, charts and tables must be clearly labeled, legible and relevant to the issue at hand.

- All reports must follow standard academic conventions for citation of written or oral sources of information.
- Two copies of printed reports will be submitted to ACCS, one of which ACCS will submit to the First Nation consulted. In addition ACCS will require submission of a digital copy of the report on a disc and in a format that complies with requirements outlined in Survey Note 2006-1⁴. All reports (printed and digital) will be submitted to:

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Permits and Records Coordinator,
Historic Resources Management Branch,
Alberta Culture and Community Spirit,
Old St Stephens College,
8820 - 112th Street,
Edmonton, AB Canada T6G 2P8
Tel 780-431-2331 Fax 780-427-3956,
Email martina.purdon@gov.ab.ca
- Submissions must be forwarded by mail, courier, or otherwise to ensure they are received in a complete, intact and readable form. Unreadable faxed or emailed submissions cannot be reviewed and will not be processed.

REPORT CONTENT

ACCS will review reports submitted to determine the adequacy of the consultation procedures employed and the results achieved before making a decision whether a project can be provided *Historical Resources Act* clearance. Reports should provide sufficient information to allow ACCS to clearly understand the process and agree that consultation measures have been adequate, concerns raised have been considered and reasonable efforts have been made to avoid or mitigate potential impacts to historic resources of value for their cultural/traditional use interest.

The following information categories are based on criteria that ACCS may consider in conducting a review of the adequacy of proponent-led consultation. They represent an ideal that may not be achieved in all cases but consultation activities should be directed toward completing and reporting upon these procedural stages whenever possible.

1. Project Notification

ACCS's review of a proposed development may result in an order delegating a responsibility to consult First Nations to the project proponent. This order would be copied to the First Nation(s) determined to have interest, and represents an initial notification that consultation has been triggered. The proponent will then be required to contact the specified First Nation(s) to provide detailed notification relating to the nature of the proposed development and its potential impacts.

⁴<http://culture.alberta.ca/heritage/resourcemanagement/archaeologyhistory/researchpermitmanagementsystem/>

Both initial notification and subsequent consultation should take place sufficiently in advance of the proposed development activity to ensure that the potentially affected First Nation(s) has adequate time to assess any concerns its members may have, and subsequently to convey these concerns to the proponent and discuss any potential mitigative strategies. Time in advance of development also needs to be allocated to preparation of a report for ACCS review and for that review to take place. ACCS's review will assess the timeliness of the project notification to First Nations as an element of consultation adequacy, and reports will need to provide information verifying this. It cannot be overstated that adequate lead time is one of the most important elements of success in the consultation and review process. Failure to allocate sufficient time is likely to be the most common reason for delay of project approvals.

Project information should use plain language to describe the scope and location of the project and should clearly identify long and short term adverse impacts. Copies of the written project description information provided directly to First Nations will be a required element of the body of a consultation report. If information relating to the impacts of a proposed project was transmitted verbally in meetings, the nature of this information should be summarized in the main text of the consultation report. It is recommended that project information be provided to the First Nation(s) in person rather than delivered. If material has been transmitted by courier or registered mail, record of this transmission should be kept but need not be included in the consultation report.

ACCS reviewers will require illustrations that clearly identify the location of any activity that may impact the historic resources identified in the requirement letter as the trigger for consultation. Furthermore, because Historical Resource Act clearance will be provided for specific development footprints, plans of survey for developments must be included in consultation reports. If a plan of survey is not available, a land ownership plan indicating the exact location of the development will usually suffice. MSL (Mineral Surface Lease), LOC (License of Occupation) and PLA (Pipeline Agreement) numbers, if available, must be included in project information included in required consultation reports.

2. Project Specific Engagement

Engagement with First Nations is the principal means by which requirements for proponent-led consultation can be met. It is critical that all efforts to engage with appropriate First Nations be documented and that this information be included in a final consultation report. Following the general principles outlined in the Guidelines, it is expected that the spirit of collaboration would characterize these interactions.

The ACCS letter requiring consultation will identify the First Nation(s) to be consulted and the relevant contact person with that First Nation. Initial engagement during the proponent-led consultation process is expected to be with that person. The individuals specified in these letters or in conversations with ACCS aboriginal consultation staff are those that have been authorized by those First Nations as the appropriate first contact. ACCS adequacy review will consider it mandatory that efforts to contact that individual be made and documented.

The specified contact person may subsequently direct a proponent to consult other members of the First Nation who may be better suited to address specific concerns associated with the proposed project. Alternatively, they may suggest a process that might involve meetings with several individuals or a group. Other processes may be suggested, and proponents are encouraged to comply with these suggested processes if relevant and reasonable.

Proponents are encouraged to follow cultural protocols relevant to the community consulted and which show respect for First Nations and their traditions. The individual contacts identified in the ACCS requirement letter can provide advice in this regard.

It cannot be overstated that all efforts to consult whether successful or not be documented, and the date on which these efforts were made identified. This information can be conveyed in tabular, textual or other suitable format. ACCS's review of any report submitted in response to a consultation order will consider the issue of **who was consulted** and **when the consultation took place** as important elements of adequacy review.

3. Project Specific Concerns

The object of consultation is to share information to reach an assessment of the potential impacts a project may have on First Nations Rights and Traditional Uses. Once an understanding of the effects of a project have been communicated and understood by First Nations members it is important that they be afforded opportunities to raise concerns in relation to these impacts. Documentation of **what concerns were raised** during the consultation process will form an important element of ACCS's adequacy review.

For ACCS review purposes, only issues relating to potential impacts to traditional use locations of an historic resources nature, or other historic resources of central significance to First Nations, as defined in the Guidelines, will be of direct relevance to the adequacy of the required consultation process. Although many other concerns may be raised during consultation, the report submitted to ACCS need only detail those involving these resources.

The consultation report submitted to ACCS must discuss how consultation was triggered (e.g., ACCS requirement with file number, chance encounter of resource/self directed consultation). If consultation is being conducted because the lands in question are on the *Listing of Historic Resources*, all reports must explain the relationship between the development activity and the traditional cultural resource on the Listing. This relationship must be illustrated on an accompanying map, which includes the Alberta Township Grid minimally to the section level, and should be shared with First Nations members during consultation as a focus of discussion surrounding concerns.

The resources on the Listing are those that have been shared with ACCS by First Nations and for which known concerns exist in those communities. It will be a minimal requirement of the report to provide evidence that the relationship between the resource

on the Listing and the proposed development has been explained clearly, and that concerns raised by First Nations have been documented and included in the report. ACCS may consult the community during the adequacy review process to verify that potential impacts were clearly understood and that the concerns identified in the report reflect accurately First Nations' views.

Any other historic resources concerns in relation to their proposed development that may be relayed to a proponent during the consultation process should also be documented and included in the report, if the community is prepared to share the information and concerns with ACCS. Concerns relating to socio-economic issues that emerge in the consultation process need not be included in the report submitted to ACCS and will not be considered in the adequacy review.

4. Response to Concerns

The concerns identified by First Nations during consultation may form the basis for procedures designed to avoid or mitigate the potential impacts of the development on First Nations rights or traditional uses, as expressed in the historic resources that may be affected. First Nations may have made specific recommendations during the consultation process, which the proponent is obligated to consider and report. However, the proponent is not obligated to comply with all recommendations made.

In the report prepared for ACCS review the proponent must indicate **how the concerns expressed by First Nations will be managed** if the development were to receive clearance to proceed under the *Historical Resources Act*.

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

If no concerns were identified in the consultation process, no mitigation would be required. All that would be necessary in the report would be statements to this effect. Again, ACCS may verify this type of assertion through consultation with the First Nation(s). Where mitigation of impacts may be required, ACCS adequacy review of the information provided in the report will focus on whether reasonable efforts were made to avoid or mitigate First Nations concerns.

5. Outstanding Project Specific Issues

Considering the results of the consultation process, the proponent may request conditional clearance to proceed with their development. This may be based on a commitment to complete mitigation measures proposed in the final report, or on other issues that may relate to the future effects of a staged development on historic resources

of concern to First Nation(s). In these or similar instances it will be necessary to make clear statements in the report submitted to ACCS relating to any outstanding historic resources issues that relate to the development and to propose measures to ensure that these issues are resolved.

ACCS adequacy review will consider the long term implications of the project on the historic resources in questions, and the adequacy review will consider the effectiveness of measures proposed to offset these effects.

6. Traditional Use Data Appendix

Whether the project has been triggered by a known concern on the Listing or by a chance encounter of an historic resource of traditional use character, information may be obtained that has a bearing on the existing traditional use database maintained by ACCS. This information may be useful for assessing impacts of the development at hand or future developments that may be proposed in the area. ACCS is interested in maintaining accurate and up-to-date databases.

Traditional use site information is recorded using the Traditional Use Site Data Inventory Form⁵, which includes relevant locational, descriptive and evaluative information and can be submitted electronically to ACCS. When consultation has been required under terms of a requirement letter, a field inspection of the resource may be needed to assess the effects of a proposed development. In this case the proponent would be required to provide updated information on the status of the resource in question as part of the process. This information update will be required in the form of an electronic submission of the above form and in hard copy as an appendix to the consultation report.

Similarly, when traditional use locations of an historic resources nature are encountered by chance during the course of other heritage investigations, it is expected that a partially completed Inventory Form will be included with the separate report discussing these findings. Electronic submission of this form will also be required. The entries relating to information that can only be provided by First Nations members need not be filled in unless a proponent elects to undertake consultation in this regard. In the former situation, ACCS will assume the responsibility of undertaking consultation with the community involved and would complete inventory information, if the community wishes to share that information. Inclusion of any site recorded by chance in the Listing would only occur if the community consulted evaluates it as being of significance to that community and agrees with its inclusion in the Listing.

Irrespective of its origin, ACCS would treat any submission of traditional use information with confidence and would maintain the security of that information.

⁵The TUS Data Inventory form is available at <http://culture.alberta.ca/heritage/resourcemanagement/aboriginalconsultation/default.aspx>

7. Project Clearance

When the ACCS statutory decision maker has ordered proponent-led consultation in relation to a proposed development, and that proponent has submitted a report, ACCS will conduct an adequacy review before making a decision in relation to *Historical Resources Act (HRA)* clearance for the development to proceed. If it is determined that consultation has been adequate and potential adverse impacts have been addressed satisfactorily, ACCS will communicate this finding to the proponent and will provide official notification of *HRA* clearance. Notification of this decision will also be provided to the First Nation(s) consulted.

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

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

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

Questions about application of these procedures can be directed to:

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