

# Chapter 6.3

## Completing Application Information Details: First Nations

### First Nations

#### 6.3

As an agent of the Crown, the Regulator fulfils any provincial obligation to consult with First Nations on any potential impacts to their rights recognized and affirmed by Section 35(1) of the Constitution Act, 1982.

Submission of an application for an oil and gas or associated activity may require additional application requirements in regards to First Nations and is based on the planned activity and location of activity. The First Nations tab requires application information details.

This section includes an overview of First Nations consultation, guidance regarding First Nations consultation, details related to First Nations consultation requirements and detailed instructions for completing the data fields within the First Nations consultation tab.

In addition to the requirements listed in this section, Regulator staff may request additional information where necessary to facilitate review of the application.

### 6.3.1 Consultation Procedures and Timelines

#### Administration Boundaries

Administrative boundaries established through consultation agreements guide where consultation for each First Nations community takes place. Where there is no agreement in place, applicants should refer to the [Consultative Areas](#)

[Database](#). Depending on the community to be engaged, the consultation process, and the application, requirements may be different.

## Notice Only Communities

There are four Aboriginal communities the Regulator provides information about oil and gas activities through an Aboriginal Community Notice:

- Kelly Lake Cree Nation (KLCN).
- Kelly Lake First Nation (KLFN).
- Kelly Lake Metis Settlement Society (KLMSS).
- Acho Dene Koe (Fort Liard First Nation) (FLFN).

The Application Management System identifies communities to be consulted based on spatial data uploaded. No additional information or attachments are required.

## Treaty 8 First Nations

Consultation process agreements are established between the Regulator and some Treaty 8 First Nations. Where agreements are in place with a Treaty 8 First Nations community, the consultation process is guided by the agreement. The Application Management System spatial data identifies Treaty 8 First Nations to be consulted.

Where agreements with Treaty 8 communities are not in place, the consultation process is guided by the Interim Consultation Procedure (ICP) with Treaty 8 First Nations. All existing agreements with First Nations and the ICP are found on the [First Nations](#) page of the Regulator's website.

## Please Note:

Effective immediately, applicants are required to submit the BRFN Implementation Agreement Form (Form) with all new or amendment applications that fall within BRFN's territory. The Form should be completed after pre-engagement and uploaded as an "Attachment for Treaty 8 Nations" within the Blueberry River First Nations section under the First Nations tab.

The Form is also required for applications currently in review unless it meets the following criteria:

- The application has already been referred by the BCER to BRFN (applications referred prior to July 2021, will require the form).
- The application is located entirely within an existing site and no new cut is required.
- The application is for an amendment to an existing permit and does not include any new development.

For these applications, the form can be uploaded as an "other" under the Attachments tab within the AMS application. An email should be sent to [Rebecca.Bromba@bc-er.ca](mailto:Rebecca.Bromba@bc-er.ca) advising the form has been uploaded. See Information Update, [IU 2023-12](#) for more information and guidance regarding this consultative process.

## Non-Treaty 8 Nations

For non-Treaty 8 First Nations, the Regulator follows internal procedures based on [provincial guidelines](#) and recent court decisions regarding consultation procedures. Where applications require consultation with non-Treaty 8 communities, spatial data identifies non-Treaty 8 nations to be consulted.

## Consultation Agreements

The Regulator works closely with First Nations to establish negotiated Agreements and Memoranda of Understanding as living documents, recognizing that both documents are the foundations for long, collaborative working relationships. The established formal consultation processes provide for First Nations' participation in the consultation process and ensures applications are dealt with as effectively and efficiently as possible.

An application, amendment or a revision to an oil and gas activity which may have a potential adverse impact to the Nation's Section 35(1) rights is classified in accordance with the applicable consultation process agreement.

Applicants must determine the classification according to the consultation process agreement and refer to the [First Nations section](#) of the Regulator website for the appropriate agreement.

## Timelines

General consultation timelines are provided in consultation process agreements and indicate the amount of time a First Nations community is given to review and respond.

Best practice dictates that applicants engage with First Nations early and often and to refer to the consultation process agreements as a guide to the consultation procedures and timelines.

Where concerns are identified by the First Nation, there may be additional time required to complete the consultation process. The Regulator will discuss those concerns and potential solutions with the First Nation. In some cases, this may include facilitating meetings between the First Nation and applicant to discuss concerns and proposed accommodation measures.

## Additional Reference Documents for First Nation Consultation

Additional reference documents regarding the First Nation consultation process and the applicant's role are available on the Regulator's [website](#). Applicants may also refer to the Ministry of Aboriginal Relations and Reconciliation's [Building Relationships with First Nations: Respecting Rights and Doing Good Business](#), and the Environmental Assessment Office's [Proponents Guide to First Nation Consultation in the Environmental Assessment Process](#).

The Regulator may make available additional information to First Nations to assist with the engagement process and to assist First Nations with decisions.

## 6.3.2 Pre-Engagement with First Nations

To support reconciliation and ensure the meaningful participation of Indigenous people in processes affecting them, the BCER requires proponents to engage affected First Nations prior to application submission (pre-engagement) when planning energy resource activities on private or non-private land.

The objective of pre-engagement is for proponents and First Nations to proactively share information, identify potential impacts to Aboriginal and Treaty Rights, and discuss measures to avoid/mitigate those potential impacts when planning oil and gas activities.

The [Guidance for Pre-Engaging with Indigenous Nations](#) document provides information to support industry's pre-engagement with the First Nations as part of application and development planning process. The Regulator has a sample [Engagement Log](#) and a sample [Pre-Engagement Record](#) spreadsheet available on the website for use by industry, although if alternative formats capturing similar information area already in use, these can be used as well. These records should be included for each application submitted to the Regulator, and can be uploaded as an attachment in the applicable First Nations consultation section under the First Nations tab in AMS.

These records will be considered in the application review and decision making process, but they do not replace the First Nations consultations carried out by the Regulator as described above.