

Chapter 6.3

Completing Application Information Details: First Nations

6.3 First Nations

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 energy resource 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.

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.

All existing agreements with First Nations are found on the [First Nations](#) page of the Regulator's website.

Treaty 8 Planning and Mitigation Measures

As of April 15, 2024 the planning and mitigation measures outlined within the [Treaty 8 Planning and Mitigation Measures](#) are now required within Treaty 8 territory in Northeast British Columbia. Organized by activity type (e.g., seismic, roads, aggregate and borrow pits, pipelines, facilities, and water) the measures provide baseline measures for environmental values, restoration, and additional project planning considerations. Please review these planning and mitigation measures carefully as they must be addressed in application materials submitted to the BCER, including, but not limited to:

- New requirements for construction plans including known wildlife trails.
- Wetland hydrological integrity plans signed by a qualified professional.
- Restoration Plans signed by a qualified professional.
- Mitigation Plans for mineral licks and wallows signed by a qualified professional.
- If a proposed borrow pit is expected to hold water, a plan, written and signed by a qualified professional, indicating whether the pit may be hydrologically connected via surface and/or groundwater flow.
- For water withdrawals, documentation, confirmed by a qualified professional, must indicate whether the water withdrawal location is hydrologically connected to surface water.

- Wildlife trails crossed by pipelines require a mitigation plan signed by a professional.

It is recognized that the mitigation measures may not be practical or applicable in every circumstance. If an applicant considers certain measure(s) to be infeasible, they are expected to discuss these issues with the affected Treaty 8 Nations during pre-engagement, propose alternatives and try to come to a collaborative solution.

As part of the application, applicants must describe how they have considered the measures in the planning stages, provide a rationale for why these measures were not applied, and provide reasonable alternatives to mitigate effects, as appropriate.

For more information on the Treaty 8 Planning and Mitigation Measures please see the accompanying [Frequently Asked Questions](#).

BRFN Implementation Agreement

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. A guide to submitting applications consistent with the Implementation Agreement can be found [here](#). Please pay particular attention to page four which outlines the additional application requirements that require reviews by a qualified professional.

Please see [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 energy resource 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.

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 energy resource 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.