

Halfway River First Nation Information Guidance and Categorization Worksheet

INFORMATION GUIDANCE

In 1982, existing aboriginal and treaty rights were recognized and affirmed in Section 35(1) of the Constitution Act, 1982 (“Section 35 rights”). The courts continue to clarify the nature of existing aboriginal and treaty rights and, as a consequence, define the legal relationship between the Province and First Nations. The Province has a legal obligation to consult and, as appropriate, accommodate First Nations’ Section 35 rights which may be adversely impacted by its actions or decisions. No infringements to First Nations’ Section 35 rights can be justified without consultation occurring. In short, government is legally required to consult with First Nations and seek to address their concerns before impacting their Section 35 rights.

The Oil and Gas Commission (Commission), as an agent of the Crown, is legally required to consider First Nation’s rights and title prior to resource development. The Commission takes this legal responsibility very seriously and is the leading edge in its rigorous consultation approach on oil and gas activities with First Nations throughout BC. Guidance is provided through the Provincial mandate (New Relationship), Provincial Consultation standards, and further defined by community specific agreements.

Present Agreements with First Nations that guide the referral process on oil and gas consultation, are more robust than previous versions. Among other things, these agreements may reference the adoption of industry’s best practices, submission of pre-engagement records, enhanced application packages, and publicly available First Nations consultative area maps to assist in project and program planning.

You are encouraged to download a copy of the respective agreement and become familiar with the content.

OIL AND GAS PROPONENTS PLAY A VITAL ROLE IN THE SUCCESSFUL ENGAGEMENT WITH FIRST NATION COMMUNITIES

Pre-Development Engagement

In order to encourage the participation of First Nations in processes affecting them, the Commission encourages proponents that may be contemplating oil and gas activities to meet with and engage in dialogue with the First Nation(s) when planning oil and gas activities.

Pre-engagement with First Nations provides opportunities to address potential issues, increase operational certainty, and avoid potential consultation delays. 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 potential impacts when planning oil and gas activities.

Pre-engagement with Halfway River First Nation

The Commission encourages proponents to pre-engage Halfway River First Nation (HRFN), share information relating to proposed activities directly with HRFN at a level of detail commensurate with the scale and scope of the activities proposed (OGCA s. 5.3) and work with HRFN to develop avoidance/mitigation measures. In certain instances, such as large scale or high impact oil and gas activities, HRFN and proponents may seek to develop landscape level management plans to inform early project and program development and avoid or minimize impacts at the initial planning stage.

Pre-engagement is not a requirement; however, it is strongly encouraged, and the Commission and HRFN recognize that consultation with HRFN may have expedited timelines when Treaty-related issues have been resolved prior to the submission of permit applications.

HRFN has a history of developing successful relationships with certain proponents that prioritize early engagement which have led to mutually acceptable outcomes. HRFN wishes to replicate these successful relationships with other proponents by transparently communicating their preferred pre-planning and engagement process in order to provide opportunities for HRFN to have meaningful input into oil and gas activities and ensure that their Treaty Rights are protected.

HRFN's expectation is that proponents will work with them early in project and program development to establish a relationship, identify core HRFN values and set out agreed upon avoidance/mitigation measures. HRFN expects to review potential projects and programs at the planning stage in order to work with the proponent to minimize and/or avoid impacts to HRFN values including: spiritual places, habitation and camping sites, cultural trails and trail corridors, traditional food and culturally significant plants, as well as important fish and wildlife habitat. HRFN has provided a sample list of some key values and sample mitigation measures important to them, which they hope to discuss with proponents during pre-engagement in Appendix A.

Roles in Pre-engagement

Below is an overview of suggested best practices for effective pre-engagement with HRFN.

Industrial Proponents:

- Share information about proposed projects and programs, early in development, with HRFN and solicit feedback. Spatial data for an entire projects and programs is preferred.
- Review HRFN's feedback and collaboratively develop measures to avoid/mitigate potential impacts to Treaty Rights such as surface disturbances including, where appropriate, management plans.
- Document pre-engagement efforts and submit to Commission for review and consideration during consultation.

HRFN:

- Review project and program information submitted by proponents for potential impacts to values important to HRFN (see Appendix A).
- Engage with proponents to assess potential impacts and discuss options to avoid/mitigate potential impacts.

- Review regulatory applications referred by the Commission against any agreed-upon avoidance / mitigation measures and management plans made between proponents and HRFN to confirm accuracy.

Commission:

- May provide advice during pre-engagement (if requested by HRFN and/or Proponent(s))
- Consider pre-engagement when completing the Initial Impact Assessment of applications to set the level of consultation with HRFN (OGCA s 5.6, 5.8). Applications for projects and programs supported by pre-engagement may require a lower level of consultation and take less time to adjudicate if potential adverse impacts to Treaty Rights were addressed upfront.
- Review pre-engagement logs and any agreed-upon avoidance / mitigation measures made between proponents and HRFN to inform the consultation process (OGCA 5.24).

Pre-engagement and Consultation:

Pre-engagement is most effective when initiated early during initial planning and project and program development, prior to application submission, when proponents may have greater flexibility to avoid/mitigate impacts. HRFN's expectation is that applications submitted to the Commission for adjudication should reflect initial planning and pre-engagement discussions and relevant commitments made between HRFN and a proponent (see pre-engagement records below).

Proponents may submit an application(s) to the Commission at anytime and continue discussions with HRFN. After an application(s) is submitted, the Halfway River First Nation Oil and Gas Consultation Agreement (OGCA) process will guide consultation between HRFN and the Commission. If HRFN identifies potential impacts to Treaty Rights during consultation, the Commission and HRFN will develop a plan of action to attempt to resolve any outstanding HRFN concerns and complete consultation (OGCA s.22).

Pre-engagement Records:

Proponents are encouraged to document pre-engagement and submit this information to the Commission to inform consultation on applications and support timely decision making.

Efforts to accommodate potential adverse impacts to Treaty Rights through avoidance, mitigation, or other means, are best tracked in a [Pre-engagement Record](#). Pre-engagement meetings and conversations with First Nations are best recorded in an [Engagement Log](#). These documents can be found on the Commission's website under the First Nations tab.

Cover Letter

The Oil and Gas Consultation Agreement (OGCA) Cover Letter: (Cover Letter) can be found on the Commission's website under the First Nations tab.

Please be sure to complete the entire checklist, and verify that all required information is included with your submission. Submitting an incomplete referral package will cause unnecessary delays for the submitting proponent—it is best that all information be double-checked for accuracy and completeness.

The Cover Letter is submitted with your original referral package, once received by the Commission, the package is separated from the main application and forwarded onto the respective First Nations Liaison Officer (FNLO).

If the referral package is determined to be complete, the FNLO will forward it onto the respective First Nation(s).

If the referral package is incomplete, the FNLO will contact the submitting proponent for any necessary change(s), and the package will be declined. An email will be sent to the submitting proponent and the FNLO will advise either that a new First Nation's "package is required", or that "no package is required".

Once the corrected referral package is received by the Commission, it will undergo a thorough screening (where the First Nation's packages stay with the application package until it has been deemed correct and the application accepted), and then, if accepted, will be forwarded to the FNLO for circulation to the respective First Nation(s).

If you have a question regarding the Cover Letter, contact the FNLO who works with the respective First Nation you are submitting the Cover Letter for.

CATEGORIZATION WORKSHEET

The Categorization Worksheet illustrates the categories that a referral package can be streamed into. It will be used to provide a consistent and transparent approach to classifying referral packages. It draws directly from the categorization criteria listed in the respective First Nation Agreement. Please be sure to refer to the Categorization Worksheet of the First Nation you are submitting a referral package for as there are differences amongst the agreements.

Attachments

APPENDIX A – Halfway River First Nation Values and Mitigation Measures

APPENDIX B – Halfway River First Nation Categorization Worksheet

APPENDIX A

HALFWAY RIVER FIRST NATION VALUES AND MITIGATION MEASURES

The table below is a non-exclusive list of HRFN values and sample mitigation measures provided by HRFN.

VALUES AND MITIGATION MEASURES
VALUE: SPIRITUAL PLACES
Mitigation Examples:
<ul style="list-style-type: none"> • appropriate set backs • measures to ensure access to important sites for HRFN members
VALUE: HABITATION AND CAMPING SITES
Mitigation Examples:
<ul style="list-style-type: none"> • appropriate set backs • measures to ensure access to important sites for HRFN members
VALUE: TRAILS AND TRAIL CORRIDORS
Mitigation Examples:
<ul style="list-style-type: none"> • measures to reduce industrial disturbance and maintain trail continuity and connectivity
VALUE: TRADITIONAL FOOD
2.4 Mitigation Examples:
<ul style="list-style-type: none"> • measures to support sustainable population of moose, elk and berry producing plants in traditional, current and future critical hunting areas
VALUE: CULTURALLY SIGNIFICANT PLANTS
Mitigation Examples:
<ul style="list-style-type: none"> • measures to preserve of medicinal plants in traditional, current and future critical gathering zones
VALUE 6: FISH AND WILDLIFE
Mitigation Examples:
<ul style="list-style-type: none"> • measures to maintain critical wildlife corridors
VALUE 7: RESILIENT ECO SYSTEMS

Mitigation Examples:
<ul style="list-style-type: none"> • measures to maintain structural, compositional and functional ecosystems
VALUE 9: WATER QUALITY / QUANTITY
Mitigation Examples
<ul style="list-style-type: none"> • measures to ensure acceptable water quality, including prevention of contamination from industrial discharges • measures to maintain adequate aquifer water reserves
VALUE 10: AIR QUALITY
Mitigation Examples:
<ul style="list-style-type: none"> • measures to ensure acceptable air quality
VALUE 11: VISUAL QUALITY
Mitigation Examples:
<ul style="list-style-type: none"> • measures to maintain acceptable visual quality at key view points.
VALUE 12: NOISE QUALITY
Mitigation Examples:
<ul style="list-style-type: none"> • measures to maintain acceptable noise quality

APPENDIX B

CATEGORIZATION WORKSHEET

HALFWAY RIVER FIRST NATION OIL AND GAS CONSULTATION AGREEMENT

Please do not submit this worksheet. Cut and Paste appropriate portions into the rationale portion of the First Nation Cover Letter

Purpose

The worksheet is a tool to implement the categorization criteria from the Halfway River First Nation Oil and Gas Consultation Agreement (“OGCA”) in a consistent and transparent way by:

- Providing a consistent approach for the Commission, industry, and First Nation’s staff to categorize application, amendment, and revision submissions; and
- Documenting the rationale for the appropriate categorization.

General Information

- Pre-engagement and engagement records which track information exchange and commitments between HRFN and industry are encouraged;
- Pre-engagement will be evaluated based on the substance of the engagement.
- Minor amendments and some new applications with a low risk of potential adverse impacts to Section 35 rights are streamed as Notification; and
- Major amendments and new applications are streamed as standard or complex.

General Guidance

Section 5.6

Following review of an Application received by OGC from the Applicant, OGC will make an initial impact assessment of any potential adverse impacts on the exercise of HRFN Section 35(1) Rights relating to the Application pursuant to Section 5.7 and will confirm the level of consultation for the Application as Notification, Standard or Complex.

In addition to an Initial Impact Assessment (“IIA”) prepared by the Commission, the OGCA sets out some criteria by which Applications may be classified as Notification (s. 5.10), Standard (s. 5.11), or Complex (s. 5.12 and 5.13) (the “Classification Criteria”). The particular circumstances of the submission will determine which streaming Classification Criteria applies. As per Section 5.6 and 5.8 of the OGCA, the Commission will confirm the level of consultation for the application. Based on the IIA, the Commission may determine that an application will be streamed at a different classification than the Classification Criteria guidelines indicate.

The actual Notification, Complex, and Standard criteria from the agreement are in *italics* below. The below non-italic text is for guidance only. Use the tic boxes below to identify the applicable criteria and to indicate attachments.

Notification Classification Criteria

- N1. *An application, an amendment to an approved Oil and Gas Activity, or a revision to an application, that is for improved health or safety or provides an overall benefit to the environment, including site restoration and remediation activities on the site of an authorized Oil and Gas Activity and which has minimal potential to impact adversely any HRFN Section 35(1) Rights.*

Provide rationale of the revision, or amendment for improved safety or overall environmental benefit at the site:

- N2. *An application, an amendment to an approved Oil and Gas Activity or a revision to an application which will implement an accommodation measure identified through consultation with HRFN and which HRFN has agreed satisfactorily addresses any adverse impacts on HRFN Section 35(1) Rights.*

Describe the impact and how the concern was mitigated [make reference and attach relevant written correspondence demonstrating HRFN’s agreement with the measure(s)]:

rationale prepared by _____ agency or company _____

- N3. *An application, amendment to an approved Oil and Gas Activity or a revision to an application where the activity is to be carried out within a construction corridor, as defined in the applicable application manual published by OGC, on which HRFN was previously consulted with no outstanding concerns.*

- N4. *An application, an amendment to an approved Oil and Gas Activity or a revision to an application which:*

- *is immediately off an established access route;*
- *requires less than 500 metres of new road;*
- *requires less than or equal to 1 ha. of clearing;*
- *will not impact archaeological resources; and*
- *is located in or adjacent to a related project or program in relation to which OGC completed consultation with HRFN within the 2 year period prior to the referral of current application or amendment and which concluded with no outstanding site specific concerns;*

Please Note: N4 applies only if all the N4 sub- criteria are true.

- The AAIF is attached. There are no impacts to archaeological resources.

Provide a complete rationale and include all file #(s) of related projects and programs:

N5. *Is an application, an amendment to an approved Oil and Gas Activity or a revision to an application, for:*

- *a subsequent well on an existing pad for which no new land is required; or*
- *an additional pipeline within an existing right of way for which no new land is required.*

N6. *An application, an amendment to an approved Oil and Gas Activity or a revision to an application for water use, if:*

- *the point of diversion is not within an area established through an order under Section 34 or 35 of the Environmental Protection and Management Regulation, B.C. Reg. 200/210;*
- *the total withdrawal per point of diversion identified in the application, or amendment, is less than or equal to 10,000 m³;*
- *the point of diversion is not located within, as agreed to by OGC and mapped in OGC's data base, either a sensitive waterbody, or an area of known cultural significance to HRFN; and*
- *the use is not primarily intended for hydraulic fracturing.*

Provide a complete rationale:

Please Note: N6 applies only if all the N6 sub- criteria are true.

Standard Classification Criteria

Applications for new Oil and Gas Activities, or revisions, or amendments to an approved Oil and Gas Activities not meeting the criteria set out in either the Notification or Complex classifications will be streamed as Standard.

S1. *Does not meet the Notification Classification Criteria; and*

S2. *Does not meet the Complex Classification Criteria.*

Complex Classification Criteria

Applications for Oil and Gas Activities will be streamed as Complex if the application does not meet the criteria set out in the Notification Classification under Section 5.10 of the OGCA and meets one or more of the criteria set out in Section 5.13 of the OGCA. *The criteria for the Complex Classification are:*

- C1. *An application for a new activity proposed to be located in an area known to OGC to be of cultural significance to HRFN, including those areas identified in Appendix D;*
- C2. *An application for a new activity in an area identified in an approved Provincial Land and Resource Management Plan as a Special Management Zone designated for wildlife or environmental objectives, a Major River Corridor or a Protected Area identified in an approved Provincial Land and Resource Management Plan;*
- C3. *An application for a new activity which includes a permanent water crossing of an S1 or S2 stream as classified under the Environmental Protection and Management Regulation, BC Reg. 200/2010;*
- C4. *An application for a new 3D geophysical activity;*
- C5. *An application for a new pipeline that has an overall length greater than 15 km or has a segment longer than 10 km;*
- C6. *An application for construction of a new road longer than 5 km or of new road segments, which segments taken together total more than 5km;*
- C7. *An application for a new gas processing plant¹ larger than 2 ha;*
- C8. *An application for a new well site pad for multiple wells;*
- C9. *An application for a new development project or program; or*
- C10. *An application which requires an environmental assessment under provincial or federal legislation.*

¹ See interpretation of a “gas processing plant” in the [Drilling and Production Regulation](#) for a definition of plant site.