



BRITISH COLUMBIA ENERGY REGULATOR

Guidance for Pre-engaging with Indigenous Nations

VERSION 1.0: March 2023

About the Regulator

The BC Energy Regulator (Regulator) is the single-window regulatory agency with responsibilities for regulating oil and gas activities in British Columbia, including exploration, development, pipeline transportation and reclamation.



The Regulator's core roles include reviewing and assessing applications for industry activity, consulting with First Nations, ensuring industry complies with provincial legislation and cooperating with partner agencies. The public interest is protected by ensuring public safety, protecting the environment, conserving petroleum resources and ensuring equitable participation in production.

Vision, Mission and Values

Vision

A resilient energy future where B.C.'s energy resource activities are safe, environmentally leading and socially responsible.

Mission

We regulate the life cycle of energy resource activities in B.C., from site planning to restoration, ensuring activities are undertaken in a manner that:



Protects public safety and the environment



Supports reconciliation with Indigenous peoples and the transition to low-carbon energy



Conserves energy resources



Fosters a sound economy and social well-being



Values

Respect is our commitment to listen, accept and value diverse perspectives.

Integrity is our commitment to the principles of fairness, trust and accountability.

Transparency is our commitment to be open and provide clear information on decisions, operations and actions.

Innovation is our commitment to learn, adapt, act and grow.

Responsiveness is our commitment to listening and timely and meaningful action.

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Preface

Proponents of oil and gas activities play a vital role in successful engagement with Indigenous Nations. The BC Energy Regulator (the “Regulator”) requires proponents to meet with and engage in dialogue with affected Indigenous Nations when planning oil and gas activities. This is part of the Regulator’s work with Indigenous Nations to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) within Regulator processes.

About This Guideline

The Guidance for Pre-engaging with Indigenous Nations (the “guidance”) is intended to provide a basic reference document for applicants engaging with Indigenous Nations to avoid and/or mitigate potential impacts to Indigenous Interests¹ prior to submitting applications to the Regulator for adjudication.

This guideline provides general information on pre-engagement with Indigenous Nations. However, applicants should consider the diversity of Indigenous peoples in British Columbia, particularly their distinct cultures, customs, practices, rights, traditions, institutions, governance structures, relationships to territories and knowledge systems. **Applicants are strongly encouraged to discuss the specific needs and preferences for pre-engagement with each affected Indigenous Nation.**

¹ The term “Indigenous Interests” refers to claimed or proven Aboriginal rights (including title) and Treaty Rights recognized and affirmed by section 35 of the Constitution Act, 1982.

Document Revisions

The Regulator is committed to the continuous improvement of its documentation. Revisions to the documentation are highlighted in this section and are posted to the [Energy Professionals](#) section of the BCER's website.

Version Number	Posted Date	Effective Date	Chapter Section	Summary of Revision(s)
1.0	March 6, 2023	March 6, 2023	Various	<p>This is a new document, users are encouraged to review in full.</p> <p>For more information, please refer to Technical Update TU2023-02 Updates to Application Manual to Support Consultation with First Nations on the BCER website.</p>

1. What is Pre-engagement?

Pre-engagement is a process of information sharing and dialogue between applicants and Indigenous Nations during the planning of oil and gas activities. The objective of pre-engagement is for applicants and Indigenous Nations to share information, identify potential impacts to Indigenous Interests, and develop measures to avoid and/or mitigate potential impacts, well in advance of submitting applications to the Regulator.

1.1. Why Pre-engage?

The Regulator, Indigenous Nations, and applicants recognize that consultation with Indigenous Nations is more effective when potential impacts to Indigenous Interests are addressed during the planning phase of development, prior to the submission of permit applications. Pre-engagement provides an opportunity to build positive relationships, proactively address issues, and increase operational certainty.

1.2. When to Pre-engage

Pre-engagement is most effective when initiated early during project planning, well ahead of application submission, when proponents and the Indigenous Nations have the greatest flexibility to avoid and/or mitigate potential impacts, both in terms of time available and in terms of being able to make adjustments to the planned development.

2. Determining the Scope of Pre-engagement

The Regulator encourages proponents to pre-engage potentially affected Indigenous Nations in a manner commensurate with the scope and scale of the proposed activities and work with the Indigenous Nations accordingly to develop measures to protect Indigenous Interests.

For large scale or high impact oil and gas activities, proponents and Indigenous Nations may seek to develop strategic landscape level plans to guide broader and longer term project and program development to avoid or minimize impacts to Indigenous Interests at the initial planning stage.

3. Responsibilities

3.1. Industrial Proponents

- Share information about proposed projects and/or programs with potentially affected Indigenous Nations and solicit feedback.
- Review any information provided by Indigenous Nations and seek to collaboratively develop measures to avoid, mitigate, or monitor potential adverse impacts to Indigenous Interests.
- Document pre-engagement efforts and submit records to the Regulator for review and consideration during consultation and permit adjudication.
- Ensure that any confidential or sensitive information that may be shared by Indigenous Nations is respected and protected accordingly.

3.2. Indigenous Nations

- Review project and/or program information submitted by proponents for potential impacts to Indigenous Interests as capacity allows.
- Engage with proponents to assess potential impacts and discuss options to avoid/mitigate potential impacts as capacity allows.
- Review regulatory applications referred by the Regulator against any proposed avoidance/mitigation measures made with proponents to confirm accuracy.

3.3. BC Energy Regulator

- Provide advice or information during pre-engagement (if requested by Indigenous Nation(s) and/or Proponent(s)).
- Review pre-engagement records and any agreed-upon accommodations made between proponents and Indigenous Nations to inform the consultation and permit adjudication processes.

4. Identifying Indigenous Nations

Applicants and permit holders can use the Province's [First Nation Consultation Areas Public Map](#) to identify the Indigenous Nations within the area queried. Permit holders can also contact the Regulator directly for any required contact information.

5. Information Requirements

Sharing detailed and accurate information with Indigenous Nations is essential for effective pre- engagement. When initiating pre-engagement, applicants are encouraged to provide an information package that can be shared with the Indigenous Nation. This information is preferably shared in a printable format (e.g., PDF), including maps at a scale which can be printed by a consumer printer. **Please note that each Nation may have unique information preferences, so it is important to ask about information requirements early in the discussions.**

For example, a pre-engagement information package should at minimum include:

- applicant contact name, phone number, and email address;
- a project description;
- project locations description and area covered;
- reasoning for site locations and design;
- GIS compatible spatial data, (i.e., shapefiles, KMZ files, or other comparable GIS data format files);
- accurate map(s) at a scale sufficient to indicate the location and details of the proposed project;
- a summary of how the project fits into the larger context of current and future activities in the area;
- length of time and sequencing of proposed construction activities;
- any planned or ongoing restoration activities that are being planned in the area;
- a summary of relevant supporting documentation (e.g., environmental assessments);
- an impact assessment of potential adverse project impacts at scale relevant to the interests of the Indigenous Nation(s).
- description of any expected long-term or short-term offsite impacts, including noise, light, changes in area traffic volumes, etc.; and,
- description of all permits and authorizations that are needed to carry out the project, including water withdrawals and waste discharge permits.

The impact assessment shared with Indigenous Nations should describe in plain language the:

- permanence of impact on the land and resources;
- anticipated impacts on the land and resources, including water and air quality, fish and wildlife and their habitat;
- potential for interfering with a known sensitive area or place of special cultural or ecological value;
- potential for interfering with Indigenous People's uses of the land or natural environment, including any hazards which may pose threats to Indigenous access to and use of lands;
- degree to which the Indigenous Nation(s) will continue to have the ability to use the affected land or resources in their preferred manner; and
- extent of existing development in the area.

6. Pre-engagement and Consultation

The Regulator, as an agent of the Crown, has a duty to consult and where required, accommodate affected Indigenous Nations whenever a decision or activity may impact their Indigenous Interests. This duty stems from Canadian common law as expressed in court decisions.

While the duty to consult and accommodate, when triggered, rests with the Regulator, proponents can assist the Regulator in meeting this obligation by considering ways to address concerns by avoiding or mitigating impacts to Indigenous Interests. Although, pre-engagement does not replace the duty to consult, it is beneficial if applications submitted to the Regulator for adjudication clearly reflect pre-engagement discussions and relevant commitments made between Indigenous Nations and a proponent to accommodate Indigenous Interests.

Below are some example measures which the Regulator may consider in its assessment of whether there has been adequate accommodation in circumstances where activities may pose adverse impacts to Indigenous Interests:

- Avoiding adverse impact(s) to an identified Indigenous Nation's interest.
- Modifying the proposal to mitigate potential impacts to an Indigenous Nation's interests (e.g., altering the footprint or location of the proposed activity).
- Changing the timing of proposed activities.
- Committing to requirements for impact or environmental monitoring.
- Other mitigation strategies.

7. Pre-engagement Records

Records of pre-engagement are best tracked in a [Pre-engagement Record](#) for each Indigenous Nation and submitted as supporting information with an application(s). Pre-engagement records should provide a detailed description of the process used to pre-engage, any objections or concerns raised from Indigenous Nations and the outcomes of pre-engagement. This includes but is not limited to:

- A summary of all engagement activities, including all attempts to engage, with Indigenous Nations affected by the project.
- Detailed records of pre-engagement for each Indigenous Nation engaged, outlining any objections or concerns raised during engagement, and how or if the application addresses them.
- A clear summary of how input from the Indigenous Communities was incorporated in the final proposed development application.

Regulator review staff will use any pre-engagement records to facilitate consultation discussions with the Indigenous Nations about a given application.