



ABORIGINAL ENGAGEMENT GUIDEBOOK

A Practical and Principled Approach for Mineral Explorers

REVISED EDITION - MAY 2015

Includes guidance related to *Tsilhqot'in* and *Grassy Narrows*
Supreme Court of Canada decisions

**AME**BC
Association for Mineral Exploration British Columbia



Suite 800, 889 West Pender Street | Vancouver, BC V6C 3B2
T 604.689.5271 | F 604.681.2363
www.amebc.ca | info@amebc.ca

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p. 25; Scott Berdahl - p. 32; Brandon Woods - p. 40.

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FOREWORD

MESSAGE FROM THE CHAIR OF THE BOARD OF AME BC

It gives me great pleasure to release the second edition of the Association for Mineral Exploration British Columbia's (AME BC) Aboriginal Engagement Guidebook. The Guidebook was produced by AME BC, with input and help from a number of external experts and practitioners. The update to the first edition includes information on the *Tsilhqot'in Nation v. British Columbia* and the *Grassy Narrows First Nation v. Ontario (Natural Resources)* Supreme Court of Canada decisions.

The intent of the Guidebook is to provide broad based and pragmatic recommendations for working constructively with Aboriginal communities in an evolving area of law, public policy, governance and business practice. The Guidebook offers a realistic portrayal and understanding of how the interests of mineral explorers in British Columbia intersect with those of Aboriginal peoples, both in the field and during the regulatory process. The Guidebook is meant to be used as a practical tool for mineral explorers working in BC to provide guidance on how to create a pathway for the shared prosperity associated with mineral exploration and development.

AME BC recognizes that successful mineral exploration projects require more than favourable geology, technical expertise, and financial resources; projects also need individuals and companies with a clear commitment to socially and environmentally responsible resource development that includes building positive relationships with Aboriginal and non-Aboriginal communities. The aim of this Guidebook is to deliver practical advice and principled guidance on how to work effectively within the context of the differing viewpoints, expectations and concerns of Aboriginal communities, and how to meaningfully address them. It does not seek to provide specific answers to what can be complex issues. The Guidebook is written from the perspective of individuals and companies undertaking mineral exploration and development in BC, and we have seen with the first edition that this Guidebook addresses many of the challenges that are relevant to mineral explorers across Canada and elsewhere in the world.

A special word of thanks and acknowledgement to the many people who provided input into the development and review of the Guidebook, including past AME BC Chair Michael McPhie, under whose leadership the first edition was produced. In particular, I would like to also acknowledge Lana Eagle, Chair and the members of AME BC's Aboriginal Relations Committee, the ad hoc Guidebook Working Group, the Board of Directors, staff and the external reviewers of the Guidebook - all of whom played a critical role in what is presented here.

I hope this Guidebook is a useful and valued tool for you or your company that helps to facilitate the further discovery and development of the province's mineral resources to the benefit of all British Columbians.

Sincerely,



David McLelland
Chair, Board of Directors
AME BC | May 2015

ACKNOWLEDGEMENTS

AME BC would like to acknowledge the groups of contributors who have worked collaboratively to prepare this Guidebook:

- AME BC's ad hoc Guidebook Working Committee;
- AME BC's Board of Directors and Executive Committee;
- AME BC's Aboriginal Relations Committee; and
- Peer group reviewers.

As well, information and inspiration were drawn from the previous materials produced by AME BC that established AME BC as a leader in Aboriginal engagement, namely the following resources:

- Mineral Exploration, Mining and Aboriginal Community Engagement: A Guidebook, 2005; and
- AME BC Aboriginal Engagement Toolkit, 2009.



1.0 INTRODUCTION

Mineral exploration and development have occurred for thousands of years in what is now the Province of BC. Obsidian, chert and slate were some of the rocks and minerals gathered, used and traded by Aboriginal peoples before the Hudson's Bay Company first extracted coal in 1835. Following the initial discovery of gold in Trail in 1854, gold rushes began in the 1850s and drew thousands of people to the Fraser River, the Cariboo and other regions across BC. The Crown Colony of BC was born out of this activity in 1858. Early mining camps were soon established in the southeastern part of the emerging province at places like Rossland and Slocan. Though interests and activities of Aboriginal peoples and mineral explorers and developers have intersected for a long time, an important part of more recent history is an increased understanding of the value of building mutually beneficial relationships with Aboriginal communities.

There are compelling reasons for engaging early in the exploration phase, which leads to developing and maintaining strong relationships with Aboriginal communities. Reasons include:

- Engagement increases understanding about the nature, scope and duration of the exploration activities and helps to manage expectations in the short term, establishing a good basis for a longer term relationship;
- Engagement can decrease concerns and resistance by the local community and help facilitate timely, predictable and favourable permitting;
- Engagement can identify a source of employees and services that contributes economically to the local community and helps to advance projects;
- Engagement by the explorer respects the Crown's responsibility and the right of Aboriginal peoples to be consulted. Establishing a solid record of consultation can help the Crown meet its duty to consult and can help the explorer by ensuring more defensible permits, thus decreasing the likelihood of litigation;
- Engagement decreases the risk of opposition, assisting a project to proceed to the development stage in a more timely and cost effective manner and creating economic opportunity to the community as well as the explorer or developer; and
- Engagement can increase the value of an exploration project. Evidence of having established good relationships with Aboriginal peoples is increasingly being recognized as a significant asset by investors. Projects where goodwill has been established may increase in value. This higher value increases the potential of benefits to all parties.

This Guidebook addresses the following topics:

- A brief summary of Aboriginal history in BC and recent developments in government-Aboriginal relations.
- An overview of Aboriginal law in Canada, specifically in respect of the Crown's duty to consult.
- Mineral exploration regulatory requirements in BC, including applicable legislation and regulations.
- Guidance on Aboriginal engagement at different levels of exploration activity.
- Principled guidance and practical advice that may be applied at any stage of exploration.
- Guidance on exploration stage agreements.

Explorers are encouraged to engage with Aboriginal communities to build lasting and enduring relationships built on mutual understanding, trust and transparency commencing at the very early stage of the exploration process.

The Government has the legal duty to consult triggered by a government decision that might have an impact on Aboriginal rights and title. Explorers are encouraged to engage with Aboriginal communities to build lasting and enduring relationships built on mutual understanding, trust and transparency commencing at the very early stage of the exploration process. Aboriginal communities have an obligation to participate in meaningful dialogue and can contribute significant local knowledge. Engagement should be commensurate with the level of mineral exploration activity and should be viewed as a continuum rather than a solitary or completed task.

Explorers should not be discouraged by the apparent complexity of the process. Although it takes time, trusting relationships have been, and are being, successfully built between mineral explorers and developers and Aboriginal communities. Early and frequent communication, demonstrating responsiveness to concerns, hiring local people at the early stage of exploration and retaining them throughout the exploration process, providing early training opportunities, or entering into early contracts with Aboriginal-owned companies for the supply of services or goods for the exploration project are some of the means to build these relationships described in this Guidebook.

The information in this Guidebook is current as of January 2014. As the legal and regulatory environment in the subject area of consultation changes rapidly, explorers and developers are advised to check on the latest developments to the information contained in this Guidebook before relying on any specific statements of law or procedure.

2.0 AME BC'S GUIDING PRINCIPLES FOR SUSTAINABLE RELATIONSHIPS WITH ABORIGINAL PEOPLES

The Association for Mineral Exploration BC (AME BC) recognizes that building respectful and sustainable relationships with Aboriginal Peoples will assist its members in having access to land and resources, security of tenure, access to services and labour, and to operate according to standards of good corporate practice. In conducting their activities, AME BC members should strive to:

1. Work proactively with Aboriginal Peoples to build mutually beneficial relationships based on a shared understanding of our respective rights and interests.
2. Respect existing and asserted Aboriginal and treaty rights.
3. Respect Aboriginal communities' assertions regarding their traditional territories.
4. Respect the diversity of interests and cultures among Aboriginal Peoples and their respective relationships and views towards land and its resources.
5. Assist, to the extent reasonable, governments in carrying out their duty to consult and, where appropriate, accommodate Aboriginal Peoples regarding government decisions that may affect existing and asserted Aboriginal and treaty rights.
6. Ensure early and timely discussions with local Aboriginal communities regarding activities that may affect them.
7. Provide potentially affected communities with the information needed to encourage open, meaningful dialogue that addresses their interests and concerns.
8. Encourage the governments to carry out their duty to consult in a manner that reasonably balances existing and asserted Aboriginal and treaty rights with the interests of AME BC and its members.

Approved by the Board of Directors, Association for Mineral Exploration British Columbia, September 15, 2009:

*Robert Stevens, Chairman
Gavin C. Dirom, President & CEO*

AME BC recognizes that it is highly desirable for its members to build respectful and sustainable relationships with Aboriginal peoples.

AME BC's Guiding Principles for Sustainable Relationships with Aboriginal Peoples were approved by the Board of AME BC on September 15, 2009.

3.0 A BRIEF HISTORY OF ABORIGINAL PEOPLES IN BC

1700s

First recorded contact between Aboriginal peoples and Europeans.

1850s

Two historic treaties were signed in BC.

1876

Federal *Indian Act* established.

1899

The federal government negotiated Treaty 8.

1949

Provincial voting rights granted for Aboriginal peoples.

1960

Federal voting rights granted for Aboriginal peoples.

1982

Aboriginal and treaty rights became constitutionally entrenched under section 35(1) of the *Constitution Act*.

3.1 Early History of Aboriginal Peoples in BC

Before Europeans and other immigrants arrived in North America, Canada was home to Aboriginal peoples. Genetic and archaeological research point to a population migration from northeastern Asia approximately 10,000 years ago. Aboriginal peoples generally lived along the coasts and rivers, sustaining themselves through hunting, fishing and gathering food and medicines from the land. There is evidence of very early discovery and use of rocks and minerals by Aboriginal peoples in BC.

Starting in 1701, the British Crown entered into treaties in present-day Canada to encourage peaceful relations between Aboriginal and non-Aboriginal peoples. Over the next several centuries, treaties defined, among other things, the respective rights of Aboriginal peoples and the Crown to use lands that Aboriginal peoples had traditionally occupied.

The first recorded contact between Aboriginal peoples and Europeans along the West Coast occurred in the late 1700s, when ships arrived from Europe. Subsequently, explorers and fur traders arrived on the West Coast by travelling along rivers from the interior of the continent. These early relationships between Aboriginal peoples and Europeans were centred on trading.

Two historic treaties were signed in BC. James Douglas, first of the Hudson's Bay Company and later as the Governor of the Colony of Vancouver Island, made 14 purchases of First Nations' land on southern Vancouver Island between 1850 and 1854 at the request of the British Crown. These transactions became known as the Douglas Treaties. In 1899, the federal government negotiated Treaty 8 with eight First Nations in northeastern BC to resolve problems related to the Klondike Gold Rush. Treaty making in BC then stalled. Although it resumed in the early 1990s, treaty making in the Province has been a slow process, and even today only a few treaties are in place.

From 1857 onward, the non-Aboriginal population grew rapidly, leading to drastic impacts on the Aboriginal population. Epidemics of diseases with high mortality rates depopulated many villages. As settlers moved in, land became a key commodity. A new justice system was imposed, which was profoundly prejudicial to Aboriginal peoples.

Furthermore, through the *Pre-emption Act of 1861*, non-Aboriginal settlers could apply for land packages of 160 acres on Vancouver Island and 320 acres on the mainland. Aboriginal peoples, however, were restricted to reserve lands.

In 1867, the federation of Canada was formed and BC joined the federation in 1871. Over time as government structures became more formalized, earlier trade-based relationships were replaced by paternalistic legislation including the federal *Indian Act of 1876*, which effectively took control of Aboriginal peoples' lives. Aboriginal governance systems and spiritual ceremonies, including the potlatch were outlawed in 1880. Parenting, family life and education were severely impacted by the imposition of residential schools, which forcibly removed Aboriginal children from their parents and communities, with consequences being felt to this day through loss of cultural identity and traditional ways of life. This, in combination with inadequate health care, substandard housing and limited economic opportunities has resulted in high levels of poverty and social problems on many Indian reserves.

Aboriginal peoples were also challenged by other legal constructs. In 1927, the Parliament of Canada issued legislation making it illegal for lawyers to have contact with Aboriginal peoples regarding land claims. These laws were eventually repealed in 1951, along with the bans against the potlatch and other Aboriginal customs. Provincial voting rights for Aboriginal peoples were granted in 1949, and federal voting rights were granted in 1960.

3.2 Emergence of Legal and Constitutional Protections for Aboriginal Peoples

Legal and constitutional protections for Aboriginal peoples in Canada turned a corner in the 1970s. More progressive legislation and jurisprudence developed in Canada allowed Aboriginal peoples to begin to incrementally address historical grievances through the courts. In 1982, protections for Aboriginal and treaty rights became constitutionally entrenched under section 35(1) of the *Constitution Act, 1982*. The unique legal and constitutional status of Aboriginal peoples derives from their use and occupancy of the land from "*time immemorial*", long before Europeans and other immigrants from around the world arrived.

Canadian courts have found that the Crown must conduct itself with honour in its dealings with Aboriginal peoples; this principle is entrenched in section 35 of the *Constitution Act, 1982*. In keeping with the "*honour of the Crown*", when there is the potential for Crown conduct to adversely affect Aboriginal rights or interests, the Crown has a duty to consult and, where appropriate, accommodate Aboriginal peoples. Crown conduct does not just refer to activities undertaken by the Crown; it also refers to activities that the Crown allows to take place through its decision-making and regulatory processes.

In 1927, the Parliament of Canada issued legislation making it illegal for lawyers to have contact with Aboriginal peoples regarding land claims. These laws were eventually repealed in 1951, along with the bans against the potlatch and other Aboriginal customs.

In BC, the Ministry of Aboriginal Relations and Reconciliation (MARR) was formed with a mandate to lead reconciliation with Aboriginal peoples of the Province by working together to create a stable economic environment so that all British Columbians, including Aboriginal peoples, could pursue their goals.

The purpose of consultation is to achieve reconciliation between the pre-existence of Aboriginal peoples and the assertion of Crown sovereignty. These constitutional principles are elaborated in section 4 – Aboriginal Law in Canada.

3.3 Agreements and Treaty-Making Between the Crown and Aboriginal Peoples

During the 1990s and 2000s, the Crown recognized new ways of building relationships with Aboriginal peoples. In BC, the Ministry of Aboriginal Relations and Reconciliation (MARR) was formed with a mandate to lead reconciliation with Aboriginal peoples of the Province by working together to create a stable social and economic environment so that all British Columbians, including Aboriginal peoples, could pursue their goals. Three foundational documents provide a framework for MARR's work: the *New Relationship*, the *Transformative Change Accord*, and the *Métis Nation Relationship Accord*.

Many Aboriginal communities also entered into arrangements that enable more effective discussion with governments and advancement, in certain cases, of their own interests in self-government. In 2003, the First Nations Leadership Council (FNLC) was created by the political executives of the BC Assembly of First Nations (BCAFN), the First Nations Summit (FNS) and the Union of BC Indian Chiefs (UBCIC). Councils reporting to the FNLC include the First Nations Energy and Mining Council (FNEMC), the First Nations Forestry Council, the First Nations Fisheries Council, and the First Nations Economic Development Council.

The BC Treaty Commission negotiation process has been ongoing since 1992. Currently, 60 First Nations representing approximately two-thirds of all First Nations peoples in BC are involved in 49 voluntary treaty negotiations. The treaty negotiation process has six stages. In 2013, 33 First Nation groups (comprising 44 individual First Nations) were negotiating agreements-in-principle, which is the fourth stage of the process. Updated information regarding the BC treaty negotiation process is available online¹.

In recent years, the Province of BC has laid the foundation to share the wealth produced by mineral exploration and development with Aboriginal peoples outside of the treaty process, particularly in relation to new mines. Pre-treaty agreements, intended to be incremental agreements in the absence of a negotiated treaty, can help to build the mechanisms to support decision-making leading to treaty negotiations and for the post-treaty environment. These pre-treaty agreements have many forms and cover a wide array of areas including atmospheric, energy, forestry, mineral development and municipal issues. For example, a Strategic Engagement Agreement (SEA) is intended to develop a positive and respectful government-to-government relationship between the Province and an Aboriginal group by establishing procedures for consultation and accommodation with respect to land and resource decision-making.

¹ <http://www.treaties.gov.bc.ca/treaties.html> and <http://www.bctreaty.net>

An Economic and Community Development Agreement (ECDA) is an agreement between the Province of BC and an Aboriginal community for sharing the Province's revenues from mineral taxes levied on new mines and major mine expansions. Examples of these types of agreements between the government and Aboriginal peoples are set out in GUIDE 2.

3.4 Aboriginal Peoples and Mineral Exploration and Development in BC Today

According to recent census statistics, BC had a population of 232,290 Aboriginal peoples in 2011. This equates to approximately 5.4% of the population of BC, and approximately 16.6% of the total Aboriginal population in Canada. First Nations peoples in BC (excluding Métis and Inuit) reached just over 155,000, being 18.2% of First Nations peoples across Canada. Statistics Canada reports that there are over 69,000 Métis people living in BC². The populations of First Nations and Métis are relatively young, and are growing faster than the non-Aboriginal populations in BC and Canada.

Many Aboriginal communities are located near Canada's active mineral exploration and development projects and producing mines. The relative youth and growth of the Aboriginal population, and the proximity of many Aboriginal communities and their traditional territories to exploration and mining projects, provide both Aboriginal peoples and the mineral exploration and mining industry with opportunities. Though currently the largest private sector employer of Aboriginal peoples in Canada, the mining industry is facing a human resource crisis, and has the opportunity to further diversify and expand its current and future workforce. In addition to the prospect for employment close to home, Canada's mineral sector can provide Aboriginal communities with economic development and growth opportunities, and Aboriginal peoples can provide companies with important perspectives and knowledge about the land and its resources³.

Exploration and mining can create apprehension within Aboriginal and non-Aboriginal communities regarding perceived or real threats to land, water, wildlife or traditional ways of life. Other concerns that may be raised range from visual changes and increases in noise and vehicle traffic to the potential for significant social issues related to a sudden increase in disposable income within a community.

Though much work remains, mineral exploration and development create many opportunities, both for Aboriginal communities, and explorers and developers. If realized in appropriate ways, these opportunities can aid Aboriginal reconciliation, and contribute positively to the socioeconomic future of Aboriginal communities.



The populations of First Nations and Métis are relatively young, and are growing faster than the non-Aboriginal populations in BC and Canada.

² Aboriginal Peoples in Canada: First Nations People, Métis and Inuit, National Household Survey 2011.

³ Mining Industry Human Resources Guide for Aboriginal Communities, Mining Industry Human Resources Council (MiHR): <http://mihr.ca/en/resourcesGeneral/ResourceGuide.pdf>.



4.0 ABORIGINAL LAW IN CANADA

4.1 Constitutional Protection of Aboriginal and Treaty Rights

When Canada's *Constitution Act, 1982* was adopted, Aboriginal and treaty rights were officially entrenched in Canada's Constitution. Section 35(1) of the *Constitution Act, 1982* provides that "*The existing aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.*" Section 35 provides constitutional recognition of, and protection for, Aboriginal and treaty rights. Some terminology relevant to Aboriginal law is provided below.

Aboriginal peoples of Canada are defined broadly in section 35(2) of the *Constitution Act, 1982*, to include the Indian, Inuit and Métis peoples of Canada. The term "*First Nations*" is generally used to refer to "*Indian*" groups, rather than to Métis or Inuit. Métis peoples have their own unique culture, traditions and way of life in Canada. Their ancestors are a mix of Aboriginal and European peoples, but they are considered a distinct Aboriginal group, formally recognized in the Constitution. Their rights are afforded the same protections as those of First Nations and Inuit peoples.

Aboriginal rights are collective rights which derive from the continuous use and occupation of a certain area. In general, Aboriginal rights refer to the practices, traditions and customs that characterize each Aboriginal community. The rights of certain peoples to hunt, trap and fish on ancestral lands are examples of Aboriginal rights. Aboriginal rights can be infringed by the Crown under certain circumstances based on the consideration of balancing other societal interests and appropriate accommodation.

Aboriginal title refers to a collective right by an Aboriginal community to the exclusive use and occupation of land for a variety of purposes. Aboriginal title lands must not be used in a way that is irreconcilable with the nature of the community's attachment to the land. In order for the Crown to justify an infringement of Aboriginal title, it must demonstrate a compelling and substantial legislative objective, it must have consulted with the Aboriginal community prior to acting, and in some cases, it may be required to provide compensation.

Treaty rights refer to Aboriginal rights set out in a treaty; whether they are historic or modern treaties. Treaty rights are also protected by section 35 of the *Constitution Act*, which states that “*treaty rights*” include “*rights that now exist by way of land claims agreements or may be so acquired.*” While no two treaties are identical, examples of historic treaty rights include rights to reserve lands, farming equipment and animals, annual payments, ammunition, clothing, hunting and fishing within a traditional territory. Modern treaty rights are more comprehensive and generally include surface and subsurface rights within the treaty area and areas of legislative authority.

4.2 The Duty to Consult: Legal Principles

A modern body of case law has developed pursuant to section 35 of the *Constitution Act*, including the doctrine of the Crown’s duty to consult Aboriginal peoples. On November 18, 2004, the Supreme Court of Canada (SCC) released its decision in *Haida Nation v. BC and Weyerhaeuser (Haida)*.⁴ *Haida* is a landmark decision that sets out the framework of the Crown’s duty to consult and, where appropriate, accommodate Aboriginal peoples.

The Crown’s duty to consult Aboriginal peoples assists in protecting their constitutional rights and achieving the ultimate goal of reconciliation. In *Haida*, the SCC held that the Crown’s duty to consult will be triggered whenever the Crown (1) has knowledge - real or constructive, of the potential existence of an Aboriginal or treaty right or interest and (2) contemplates conduct that might adversely affect that potential Aboriginal or treaty right. The use of the words “*potential*” and “*might*” means that the bar to trigger the Crown’s duty to consult is very low.

The SCC noted that the Crown’s duty to consult and accommodate Aboriginal peoples is part of a “*process of fair dealing and reconciliation*” that starts with the assertion of Crown sovereignty and continues beyond formal claims resolution. The principle of the “*honour of the Crown*” requires that the Crown always act honourably when dealing with Aboriginal peoples, with the goal of reconciling the pre-existence of Aboriginal peoples with Crown sovereignty.

The Crown’s duty to consult is often triggered by the regulatory and permitting process for resource projects because the issuance of permits and approvals constitutes “*conduct*” by the Crown.

While the duty to consult is easily triggered, the level of consultation (and, in some cases, accommodation) required depends on the strength of the particular Aboriginal right or claim and the potential magnitude of the effect of the particular activity on the Aboriginal community. As a result, the scope of the duty to consult must be assessed on a case-by-case basis. A summary of the Crown’s duty to consult is set out in **GUIDE 3**.

Aboriginal rights are collective rights which derive from the continuous use and occupation of a certain area.

Aboriginal title refers to a collective right by an Aboriginal community to the exclusive use and occupation of land for a variety of purposes.

Treaty rights refer to Aboriginal rights set out in a treaty – whether they are historic or modern treaties.

⁴ 2004 SCC 73 (“Haida”).

The provincial and federal governments have a duty to consult, and where appropriate, accommodate Aboriginal peoples whenever they consider a decision or activity that could impact Aboriginal or treaty rights.

4.3 The Duty to Consult: Responsibilities of the Parties

The provincial and federal governments have a duty to consult, and where appropriate, accommodate Aboriginal peoples whenever they consider a decision or activity that could impact Aboriginal or treaty rights. While the Province of BC (or the federal government, as appropriate) is ultimately responsible for ensuring adequate and appropriate consultation and accommodation, the government may request that the explorer take on some of the procedural aspects of consultation.

Although the full scope of the Crown's ability to delegate procedural aspects of the duty to consult is not clear, the explorer may be requested to engage in discussions with potentially affected Aboriginal communities in the vicinity of their proposed activities, to keep records relating to their discussions, and to provide information about concerns raised by Aboriginal communities and how those concerns may have been addressed by the explorer.

Aboriginal peoples have reciprocal obligations to participate in the consultation process in good faith and not to attempt to thwart the Crown's good faith efforts to consult. This assumes, of course, that regulatory processes are reasonably accessible to Aboriginal peoples and that they have an opportunity to participate in a meaningful way.

The duty to consult does not impose a duty on any of the parties to agree, require an explorer to obtain the consent of an Aboriginal community, or provide for an Aboriginal veto over government decision-making. Rather, the duty requires a meaningful process of consultation carried out in good faith (e.g., a process that respects and attempts to be responsive to Aboriginal concerns).

4.4 The Duty to Consult: Accommodation

In addition to consultation, the Supreme Court of Canada held in *Haida* that good faith consultation may sometimes reveal a duty of the Crown to accommodate Aboriginal rights or treaty rights.

Accommodation can include avoiding, minimizing and mitigating adverse effects of actions or decisions on Aboriginal interests. While courts have not entirely ruled out the possibility of economic or financial accommodation in appropriate circumstances, it is not clear the extent to which there can be economic or financial component to accommodation. It is not unusual, however, to hear the term economic or financial accommodation used by governments and Aboriginal communities, in addition to other types of accommodation such as avoiding, minimizing or mitigating potential adverse impacts.

Where accommodation is required as a result of government decisions that may adversely affect unproven Aboriginal rights, the Crown must balance Aboriginal concerns with the potential impact of the decision on the asserted right with other societal interests.

UNDRIP is a non-legally binding document that describes both individual and collective rights of Indigenous peoples around the world.

4.5 The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly on September 13, 2007. UNDRIP is a non-legally binding document that describes both individual and collective rights of Indigenous peoples around the world. It addresses issues such as culture, identity, language, health and education, and provides guidance to the signatories of UNDRIP, the United Nations, and other international organizations on harmonious, cooperative relationships with Indigenous peoples.

Free, Prior and Informed Consent (FPIC) is an aspirational principle contained within UNDRIP that would require states to obtain the consent of Indigenous peoples before making decisions that impact them within their traditional territories. FPIC does not supersede Canadian law with respect to the Crown's responsibility to function as the decision maker in regulating industries or the Crown's duty to consult and accommodate infringements on asserted or proven Aboriginal rights and title or treaty rights.

On November 12, 2010, Canada issued an endorsement of support for UNDRIP as an "*aspirational*" set of principles that does not supersede the domestic laws of the country. Canada supports the principles set out in UNDRIP (namely, equality, partnership, good faith and mutual respect) and takes the position that these principles are consistent with its established approach to working with Aboriginal peoples.

UNDRIP does not supersede Canadian law with respect to the Crown's responsibility to function as the decision maker in regulating industries or the Crown's duty to consult and accommodate infringements on asserted or proven Aboriginal rights and title or treaty rights. Neither does it create a veto right on the part of Aboriginal peoples or impose a legal obligation on the part of either the government or explorers to obtain the consent of an Aboriginal community for activities undertaken on Crown lands. Nonetheless, Aboriginal communities may have a different perspective on UNDRIP and FPIC, and explorers should be aware of their significance.

4.6 Recent Significant Canadian Case Law

In the summer of 2014, the Supreme Court of Canada (SCC) issued two unanimous rulings that have implications for resource industries in Canada. The first was the decision in *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44 (also known as the William decision), and the second, not unrelated decision was *Grassy Narrows First Nation v. Ontario (Natural Resources)* 2014 SCC 48. The *Tsilhqot'in* decision in particular is significant as it is the first time a Canadian court has made a finding of Aboriginal title – in this case, for the Tsilhqot'in Nation on approximately 1,700 square kilometres of land in west-central British Columbia.

In the *Tsilhqot'in* decision, the SCC confirmed the three-part test to determine Aboriginal title, which considers an Aboriginal group's occupation of the land in question, the continuity of such occupation (when present occupation is relied on to prove occupation) and whether such occupation could be considered exclusive. However, the SCC declared that Aboriginal title is not absolute, meaning that project development can still proceed on land where Aboriginal title is established as long as one of two conditions is met. Project development can occur on Aboriginal title lands where the provincial government has obtained the consent of the Aboriginal group or, alternatively, government can infringe Aboriginal title for the purposes of project development where it can demonstrate that the infringement is justified. In order to justify an infringement of Aboriginal title, government must meet three requirements: that it has met the duty to consult and accommodate, that there is a substantial and compelling objective/public purpose for the infringement (mining is specifically cited by the SCC as one potential purpose) and that the infringement is consistent with government's fiduciary duty to Aboriginal groups.

In the *Grassy Narrows First Nation* decision, the SCC confirmed that the provinces can take up treaty lands (where treaties provide such rights) for provincially regulated purposes such as mining and forestry. The provinces do not require federal approval to do so. In order to take up treaty lands, the province must however consult Aboriginal groups about potential impacts to the exercise of treaty rights. The SCC also confirmed that provincial governments can infringe treaty rights where such infringements can be justified according to the same three-part justification analysis described above with respect to the *Tsilhqot'in* decision.

The *Tsilhqot'in* and *Grassy Narrows* decisions make clear that provincial law and the provincial government's ability to make new laws still apply to Aboriginal title or treaty lands, subject to constitutional limits.

In the summer of 2014, the Supreme Court of Canada issued two unanimous rulings that have implications for resource industries in Canada.



5.0 REGULATION OF MINERAL EXPLORATION ACTIVITIES IN BC

The Province of BC has jurisdiction over the regulation of the mineral exploration and mining industry. Exploration and mining activities in BC are regulated primarily by the *Mineral Tenure Act*⁵ (MTA), the *Coal Act*⁶ and the *Mines Act*⁷. There are also a number of important areas over which the federal government exercises its jurisdiction. In fact, there are a multitude of provincial and federal environmental laws and regulations that apply to the mineral exploration and mining processes in BC. Many of the most relevant laws and regulations are listed in **GUIDE 1**.

The MTA is the primary statute that authorizes the exploration for minerals and the registration of mineral titles in BC to those holding a valid Free Miner Certificate⁸. It also provides the legal and policy framework for the administration of Crown-owned mineral resources, including the acquisition of mineral titles through an on-line system known as Mineral Titles Online (MTO). Under the MTA, mineral claims provide the right to explore and develop subsurface mineral resources. Coal and placer rights are separate and distinct from mineral rights and are administered under specific tenure systems.

A mineral claim may be registered in areas of BC approved by the government. Parks or other protected areas, Indian Reserves, heritage conservancies and certain other land classifications are closed to mineral claim registration; these closed areas represent approximately 20% of the Province of BC. Once a mineral claim is registered, the holder is subject to a number of restrictions, including land use and wildlife planning requirements, land under cultivation, and other regional or more specific land use plans.

The acquisition of a mineral claim is separate from the right to carry out exploration development or mining work. The Ministry of Energy and Mines (MEM) is responsible for approving and regulating mineral exploration activities and mines in BC in accordance with the *Mines Act and accompanying Health, Safety and Reclamation Code for Mines in British Columbia* (the HSRC)⁹.

⁵ R.S.B.C., 1996 c. 292.

⁶ S.B.C., 2004 c. 15.

⁷ R.S.B.C., 1996 c. 293.

⁸ A person over the age of 18, corporation or partnership who is the holder of a valid free miner's certificate, can enter on all lands of the Crown, or other lands on which the right to so enter is reserved, and prospect for minerals, locate claims and mine.

⁹ www.empr.gov.bc.ca/Mining/HealthandSafety/Documents/HSRC2008.pdf

The *Mines Act* regulates the exploration, development and production of minerals and requires that a permit be obtained when the land is to be disturbed for exploration or mining by any mechanized means or through the use of explosives. A permit is not required for prospecting or non-mechanized activities. Where required, a permit is obtained by submitting a Notice of Work and Reclamation Program application (NoW application) to the Health Safety and Permitting Branch through FrontCounterBC's online e-application system¹⁰.

Government must consult Aboriginal communities before activities subject to a NoW permit can take place, which is managed through its "*referrals*" process. Under this process, the NoW application is referred to identified Aboriginal communities and applicable government ministries for consultation and input. This consultation and input is considered by MEM when deciding whether to issue a permit pursuant to a NoW application.

MEM offers the option to apply for a multi-year area-based (MYAB) permit, also filed through FrontCounterBC's online e-application system, which authorizes exploration activities for up to five years within the identified activity area(s) underlain by mineral title. The MYAB permit allows greater flexibility to execute exploration programs over an entire area and through the life cycle of an authorization, as field results and market conditions dictate. In addition, it reduces the significant number of referrals sent to potentially-affected Aboriginal communities, which eases the burden on Aboriginal communities' referral staff. It also provides Aboriginal communities with information on a proposed work program with a broader scope. It may enable a more meaningful discussion regarding possible impacts and, where necessary, development of more comprehensive mitigation measures or strategies over the term of the MYAB.

The HSRC describes the health and safety regulations for exploration and mining, including requirements for reclamation plans and security deposits to ensure reclamation costs are adequately funded by the explorer. The HSRC provides MEM with significant tools for enforcing the obligations of explorers in respect of exploration and mining activities.

The *Handbook for Mineral and Coal Exploration in British Columbia*¹¹ has been developed as a joint effort of MEM, the Ministry of Environment, AME BC and the Mining Association of British Columbia. Its purpose is to assist the BC mineral and coal exploration sectors to plan and implement their exploration activities with due regard for worker health and safety and environmental protection. Additional guidance can be found in *AME BC's Safety Guidelines for Mineral Exploration in Western Canada*, a comprehensive source for safety information for mineral exploration¹².

Further information on the regulatory regime for mineral exploration in BC can be acquired from the MEM website¹³.

Government must consult Aboriginal communities before activities subject to a NoW permit can take place, which is managed through its "*referrals*" process.

¹⁰ www.empr.gov.bc.ca/Mining/Permitting-Reclamation/Pages/NoticeofWorkApplications.aspx

¹¹ www.empr.gov.bc.ca/Mining/Exploration/Pages/Handbook.aspx

¹² www.amebc.ca/policy/health-safety

¹³ www.gov.bc.ca/ener



6.0 ABORIGINAL ENGAGEMENT DURING THE EXPLORATION PROCESS

Legal guidance on consultation, capacity of communities and explorers to engage, and the practices used are evolving. Furthermore, each community and exploration project is different. This section provides some guidance on when an explorer could initiate engagement related to the exploration process and current requirements for permitting.

There is no single formula for carrying out Aboriginal consultation and engagement. What is required will depend on the types of potential impacts that the exploration activities may have on the land or the carrying out of traditional activities as well as the types of Aboriginal rights and interests asserted by Aboriginal communities. Explorers should not be discouraged by the apparent complexity of this process. Consultation and engagement are about sharing information, listening to and respecting concerns raised, and looking for ways to address those concerns in a manner that is reasonable and commensurate with the nature, scope and duration of the exploration activities being carried out.

Aboriginal communities may expect engagement to occur earlier in the mineral exploration process, or at a more substantial level, than the government may consider necessary. It is often left to the explorer to try and navigate these varying expectations and to regularly seek clarification from the government.

Consultation and engagement does not necessarily mean reaching agreement. The specific goal of consultation and engagement is for the Crown to make informed decisions that balance Aboriginal rights and title with broader social interests. Consultation and engagement activities provide forums for discussion that can increase understanding and build working relationships to the mutual benefit of the community and the explorer.

The Province has published a *“Guide to Involving Proponents When Consulting First Nations”*, dated March 2011 which may be found on the BC government website¹⁴. Explorers should look for any updates to this or other provincial government consultation policies to ensure that they are using the most recent policy guidelines.

¹⁴ www.gov.bc.ca/arr/consultation/down/guide_to_involving_proponents_2011.pdf

6.1 The Appropriate Scope of Aboriginal Engagement

Best practices suggest that explorers should engage “*early and often*”, but what does this mean? Not all mineral exploration activities require, or even allow for, extensive early engagement; in reality, both explorers and Aboriginal communities have limited time and resources. Ultimately, what is reasonable in the circumstances will depend on a number of factors, including:

- the activities being proposed by the explorer and the location of those activities;
- the potential impact on any asserted rights;
- the permits or approvals for which the explorer must apply and the timing of those applications;
- the resources, financial or otherwise, Aboriginal communities and explorer have to dedicate to engagement; and
- the timing constraints, if any, that may limit, prevent or delay engagement between the explorer and Aboriginal communities prior to exploration activities being undertaken (for example, extra understanding and consideration may be needed to accommodate hunting, fishing or other activities which may delay the proposed engagement with an Aboriginal community).

These factors will be unique to each explorer, Aboriginal community and the particular activity. It is therefore important for explorers to develop their own roadmap for engaging with Aboriginal communities based on their particular set of circumstances. The first part of this section deals with the legal duty to consult and the balance of this section provides an overview of the potential opportunities and recommended practices for Aboriginal engagement depending on the nature, scope and duration of the exploration activities being carried out.

6.2 Aboriginal Engagement and the Legal Duty to Consult

The Crown’s duty to consult is triggered by government decisions that might have an impact on Aboriginal rights and title. As discussed in section 5, the approval of a work program proposed by an explorer in a NoW application is typically the first decision government will make with respect to an exploration project. As a result, the first point at which the legal duty to consult is currently triggered upon submission of the NoW application.

...engagement with Aboriginal communities is about sharing information, listening to and respecting concerns raised, and looking for ways to address those concerns in a manner that is reasonable and commensurate with the nature, scope and duration of the exploration activities being carried out.

A record of consultation should document all engagement, matters discussed, questions asked, answers provided, concerns raised and mitigation strategies agreed to or undertaken.

Generally, the government does not formally delegate procedural aspects of consultation to explorers; however, explorers may be encouraged by government to contribute to the consultation process by engaging with potentially affected Aboriginal communities and providing information about any engagement between the explorer and Aboriginal communities to government. Explorers' engagement efforts will assist government in satisfying its legal consultation obligations as part of the NoW process and therefore it is very important for explorers to plan for and create a comprehensive record of engagement to help government's decision-making process and to address issues should disputes arise in the future. A record of consultation should document all engagement, matters discussed, questions asked, answers provided, concerns raised and mitigation strategies agreed to or undertaken. This information may be used by government to assist it in determining what it is required to do prior to making a decision about whether to approve a NoW application. In cases where there has not been sufficient engagement with Aboriginal communities, government will need to carry out the engagement which may result in significant delay. In the case where Aboriginal communities do not respond to engagement attempted by the explorer, the explorer's best attempts to engage may be considered sufficient by government subject to government's own attempts at engagement and consultation.

Even though the explorer may not have been formally delegated an obligation to consult with Aboriginal communities, in practice explorers are strongly encouraged to engage with Aboriginal communities prior to and as part of submitting a NoW application or obtaining other permits for their mineral exploration activities.

Increasingly, explorers are encouraged by both government and Aboriginal communities to engage at an earlier stage and on an ongoing basis with the goal of identifying and addressing concerns and developing a respectful working relationship. Developing such a relationship with Aboriginal communities through early engagement can be very valuable, particularly if an explorer moves into more advanced exploration activities and, potentially, project development. As noted above, time delays during the permitting process may be reduced or avoided if the explorer has already worked with the relevant Aboriginal communities to build a productive relationship and to identify and address concerns wherever possible.

In some cases, Aboriginal communities may state that a meeting is not consultation. What this often means is that while the Aboriginal community is agreeing to engage with the explorer, the expectation (and in fact legal obligation) is for consultation with the Crown to still occur. It is generally recommended that explorers remain neutral, as it is primarily an issue between the government and the Aboriginal community. Explorers should make it clear that while the position of the Aboriginal community is respected, the explorer may be required to report on its engagement activities to the government. See **GUIDE 5** for more information about this and other common issues that arise during the consultation and engagement process.

6.3 Engagement at Different Levels of Exploration Activity

See GUIDE 5 for illustrative examples of some of the most common concerns related to mineral exploration activities expressed by Aboriginal communities, along with possible solutions to address those concerns.

6.3.1 Prospecting

Prospecting for mineral occurrences can be undertaken by a person on any land in BC that is open for mineral exploration. Prospecting activities may occur at any time, including both before and after acquiring mineral title. Prospecting includes looking for signs of mineralization and may involve any of the following activities: mapping; collecting water, rock, soil, till, and stream sediment samples; biogeochemistry sampling; and using helicopters along with other modes of transportation.

Prospecting activities are typically considered by the mineral exploration industry and regulators to be minimal impact and temporary. There are no government decisions or approvals required in order to carry out these low impact activities, and therefore, government does not generally carry out consultation with Aboriginal communities at this stage. Aboriginal communities do not always agree that consultation is unnecessary, and may voice concerns about perceived or real impacts on their rights and title as a result of prospecting activities. Early and on-going engagement and relationship building is important in order to identify and address such concerns in a reasonable manner.

Prospectors should be mindful of the potential for disturbing archaeological, ancestral or culturally significant sites, or interfering with traditional activities such as hunting, fishing, and gathering. Depending on the nature, scope and duration of the prospecting activities and the proximity to local communities, prospectors may wish to introduce themselves to local Aboriginal communities to let them know about the prospecting activities being undertaken in the area and to begin to develop a working relationship.

6.3.2 Mineral title acquisition

The acquisition of mineral title in BC occurs through Mineral Titles Online (MTO), an online registration system. The acquisition of mineral title itself does not result in any physical impacts to the land or any decision or approval from government; therefore, the government does not consult with regard to specific title acquisitions. Nevertheless, some explorers may view the acquisition of mineral title as an appropriate time to initiate engagement with Aboriginal communities by introducing themselves and beginning to develop a working relationship.

Mineral exploration activities can be broadly categorized based on how they are regulated in BC. The activities include:

- Prospecting
- Mineral title acquisition
- Non-mechanized exploration
- Mechanized exploration



As engagement can be a lengthy process, an explorer that has immediate plans after acquiring title to undertake non-mechanized exploration activities or to submit a NoW application should consider early engagement with Aboriginal communities. In addition, as the acquisition of mineral title may become known to the Aboriginal community (whether through a news release issued by the explorer or by the Aboriginal community accessing the MTO), in the interest of building understanding, an explorer may wish to introduce itself and its plans subject to legal disclosure constraints, to an Aboriginal community.

6.3.3 Non-mechanized exploration

Under the *Mines Act*, non-mechanized exploration activities do not require a NoW application or permit. Non-mechanized exploration activities may involve many of the same activities undertaken during prospecting, such as geological mapping, water, silt, soil and rock sampling, but may also include air and land geophysical surveys and construction of small camps. As with prospecting, these activities are typically considered by the regulators and the mineral exploration industry to create minimal and temporary impacts on the land, although Aboriginal communities do not always agree.

When out on the land, explorers should be mindful of the potential for disturbing archaeological, ancestral or culturally significant sites, or interfering with traditional activities such as hunting, fishing, and gathering. Depending on the scope and duration of the non-mechanized exploration activities and the proximity to local communities, explorers may wish to consider:

- providing a letter to local Aboriginal communities describing the scope of the non-mechanized exploration activities (and to introduce themselves if they have not done so previously); and
- offering to meet with local Aboriginal communities to discuss any concerns they may have with the non-mechanized exploration activities and the means to reduce any potential impacts on identified Aboriginal interests.

6.3.4 Mechanized exploration

Mechanized exploration activities require that explorers submit a NoW application in order to obtain a permit under the *Mines Act*. The potential scope of mechanized exploration is very broad; it covers both early and advanced stage exploration and includes line brushing and cutting, trail enhancement and construction, road construction, drilling, airstrip enhancement and construction, constructing camps for more than five persons, trenching, blasting, bulk sampling and underground exploration. Given the different scope and scale of these activities, the potential for impact on Aboriginal communities varies significantly.

6.4 Recommended Practices for Aboriginal Engagement on NoW Applications

The recommended practice for early and meaningful engagement on a NoW application begins with a letter from the explorer to the relevant Aboriginal communities notifying them of the NoW application and outlining the details of the proposed work program (for information on identifying the relevant groups, see section 7). The letter should be sent prior to the submission of the NoW application in order to provide an opportunity to identify and address any concerns of the Aboriginal community in advance of submission, although this may not be practical in all circumstances. The explorer should also consider including in the letter (to the extent not previously provided):

- an introduction to the explorer and the project, including the commodity for which exploration is being undertaken;
- if the explorer is a company, the name of the company's key contact(s) for the project;
- the proposed date and duration of work program;
- the general location of exploration area (including a map);
- the proposed mode of access to the exploration area; and
- the number of personnel involved in the work program.

The letter may close with a request to meet in person and an offer to review the NoW application, if appropriate, or to share information about the proposed program by other means.

All key engagement letters sent to an Aboriginal community, including copies to other Aboriginal communities (bands, tribal councils), should be retained and added to your consultation record and made available to the MEM and other relevant government offices as required.

Explorers may choose to specifically ask Aboriginal communities to identify the appropriate representatives with whom they should engage. Communities in closest proximity to an exploration work area may receive letters with an offer to meet, while more distant communities or groups may be encouraged to call the explorer if they wish to meet. There are various steps the explorer can take to narrow the bands/groups with whom it will engage. These approaches can be discussed with MEM and with the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) officials prior to sending letters.

If warranted by the proposed scope of the work program, explorers may offer to share information about the program with the Aboriginal community prior to submission of a NoW application to MEM. This approach would demonstrate the explorer's commitment to transparency and relationship building, and provide an opportunity for the Aboriginal community to identify any concerns, perceived or real impacts, or effects that they believe could occur as a result of the proposed exploration activities. Working collaboratively, the explorer and Aboriginal community may be able to identify measures to address the concerns raised, which could then be included in the NoW application, potentially expediting review and approval by MEM.

Aboriginal communities may respond to notification letters from explorers with a request to negotiate an exploration stage agreement or similar early stage agreement as part of an engagement process. While there is no legal obligation for explorers to enter into an agreement with Aboriginal communities, exploration stage agreements can be beneficial to both parties for a number of reasons, including the creation of communication and information-sharing protocols. Exploration stage agreements may also demonstrate the efforts the explorer has taken to engage an Aboriginal community and provide a framework for the parties to develop a mutually respectful working relationship. For more information and guidance on exploration stage agreements, please refer to section 8.



7.0 RECOMMENDED PRACTICES AND SUGGESTIONS FOR CARRYING OUT EFFECTIVE ABORIGINAL ENGAGEMENT

This section is intended to provide explorers with practical advice and principled guidance on how to conduct Aboriginal engagement at appropriate stages and scope of exploration work. It does not address consultation with stakeholders such as local non-Aboriginal communities, landowners, municipal governments, or other local interests.

It is advisable that explorers create an Aboriginal engagement plan or strategy to help guide their activities and this plan should be revisited and updated from time to time as the engagement process advances. For example, a plan for engaging with First Nations might include activities such as meetings with Chief and Council; meetings with communities; meetings with elders, elder committees or individuals; tours of the exploration site; community open houses; hiring of community liaison officers; and sharing information through a website or published information.

7.1 Building Positive and Effective Relationships

Relationships are built both inside and outside meetings. An explorer may be able to work with a community contact to understand the structure and protocols of the particular community with which it is engaging. An explorer should take the time in the early stages to get to know individuals from the Aboriginal community by sharing personal stories prior to discussing technical information about the exploration activities or program. Attendance at community events like hockey games, fundraisers, or public cultural gatherings show support and the willingness of the explorer to get to know the Aboriginal community and add to the building of relationships outside of formal meetings.



The principles and strategies in this section will help you to build your engagement plan. In addition to the guidance provided below, see GUIDE 5 for frequently asked questions and answers about the consultation and engagement process.

Positive, enduring relationships are built on mutual understanding, trust and respect. It is important that an explorer take the time to listen and to show respect. Meaningful dialogue builds trust, and trust is essential to a positive working relationship that will provide benefits throughout exploration and beyond.

7.2 Considering Engagement as a Continuous Process

Engagement throughout the exploration process is essential to building and maintaining trust, and growing successful relationships with Aboriginal communities. It is recommended that explorers continue to provide updates as exploration activities progress over time. In addition to geological findings, and to show how the explorer is living up to its commitments, updates can include reports on activities such as environmental performance, hiring and contracting.

7.3 Identifying Potentially Affected Aboriginal Communities

When acquiring new mineral title, explorers will receive information from MTO on the Aboriginal communities whose traditional territory overlaps with the newly acquired mineral title. If not acquiring new title from MTO, it is possible to identify the Aboriginal communities whose traditional territory overlaps with the mineral title through the Consultative Areas Database (CAD) maintained by the BC government on the GeoBC website¹⁵.

There is a risk that companies will either cast the net too narrow or too wide when identifying Aboriginal communities with which they should engage; each of these results has associated risks and costs. There are ways to help mitigate these risks. Prior to initiating contact with the Aboriginal communities identified through MTO or the CAD, it is highly recommended that the explorer contact the local MEM office and FLNRO to confirm the list of identified Aboriginal communities and to ask for advice regarding which Aboriginal communities should be engaged.

It is also useful for the explorer to contact other industry sources such as forestry companies who may be operating in the area to assist it in identifying the Aboriginal communities. Some companies may choose to undertake an independent strength of claim assessment, which is in part based on ethno-historical research. Although not a requirement and potentially more costly, a strength of claim assessment can create longer-term value if the property advances to later stages of development.

¹⁵ www.geobc.gov.bc.ca

7.4 Building Community and Area Profiles

It can be useful for an explorer to develop a preliminary community and area profile prior to initiating engagement. In doing so, explorers may undertake research on each Aboriginal community in question to better understand their land, business, cultural and political interests prior to initiating engagement. The depth of information collected and the scope of that information may vary according to the extent and scope of the proposed work in the NoW application, the local complexity, or if a large number of Aboriginal communities are impacted by the proposed work.

The basis for such profiles would likely include conducting a media scan, reading the Aboriginal communities' and government of BC websites, talking to local government representatives who may have on-the-ground experience, and talking with other exploration, mining or resource development companies that are active in the area. This will determine whether there are any past or current issues (legal, economic, environmental, socio-cultural, political, etc.) that may shed light on the Aboriginal communities' perspectives on resource developments, particularly mineral exploration and development, and reviewing past agreements and environmental assessment process documentation involving specific Aboriginal communities.

Some questions to consider as part of developing a preliminary community and area profile include:

- What is the Aboriginal community's experience with exploration and development?
- Are there other explorers conducting exploration in the area, and if so, do they have positive relationships with the local communities?
- What are the main concerns for the Aboriginal community?
- What has the Aboriginal community's prior experience of engagement with the mineral exploration industry been like?
- What kind of existing systems, protocols or capacity does the Aboriginal community have regarding engagement with explorers?
- What agreements or arrangements between government and the Aboriginal community exist that may be relevant to the area (e.g. ECDAs, SEAs)?
- What is the Aboriginal community's general relationship with government?



...explorers may undertake research on each Aboriginal community in question to better understand their land, business, cultural and political interests prior to initiating engagement.

Traditional and historical knowledge is handed down through the generations by elders and this is integral to the decision-making processes relating to resource management.

7.5 Recognizing the Importance of Elders and Youth in Aboriginal Communities

Among all Aboriginal communities, respect for elders, and their knowledge and legacy is paramount. Traditional and historical knowledge is handed down through the generations by elders and this is integral to the decision-making processes relating to resource management. Aboriginal leaders will often consult with the community's elders on matters affecting the people, lands and resources.

Youth are also important in Aboriginal communities. On average, one half of the Aboriginal population in Canada is under the age of 25, and many Aboriginal communities are investing heavily in their future generations. Many Aboriginal leaders will look to the potential for projects proposed by explorers to create opportunities for youth and will be concerned with ensuring developments are sustainable and provide benefits for future generations.

As a result, it is advisable to consider seeking forums, at appropriate stages and scope of work, to address elders and youth. These might include addressing established elders committees, undertaking one-on-one meetings, or staging open houses to which invitations are extended, specifically, to elders and youth.

7.6 Initiating Engagement

It is important to identify the appropriate contact for an Aboriginal community. For example, the majority of First Nations prefer that explorers conducting mineral exploration communicate first with Chief and Council (the elected leadership under section 74 of the *Indian Act*), others may have a traditional or hereditary system based on blood line. Métis groups will also have different leadership structures in place. Explorers can typically obtain appropriate contact information from the local MEM, and potentially the FLNRO, or by calling the Aboriginal community directly.

As mentioned in section 6.4, initial contact with Aboriginal communities should be in the form of a letter of introduction and should be followed up with a telephone call to confirm the letter was received. Once initial contact has been made with the leadership, a consultation officer or another delegate may be identified for ongoing contact and information exchange. It is advisable to get clarity about the areas of, and limits to, authority that the delegate possesses (for example, their ability to make decisions or recommendations and to whom they are reporting) and to confirm this information in writing. It is recommended that the communication protocols (roles, responsibilities and procedures) be re-affirmed at initial meetings.

7.7 Understanding Overlapping or Shared Traditional Territories

The existence of overlapping or shared traditional territories may require the explorer to engage with more than one Aboriginal community at the same time. Aboriginal communities who have recognized that they have historically shared traditional territories may have protocols in place that spell out an engagement or consultation process including the manner in which any benefits from resource development may be distributed.

Navigating overlapping claims to traditional territories where the Aboriginal communities are not in agreement about historical use can prove more challenging. The trigger for the Crown's duty to consult is low, and the Aboriginal communities do not need to have proven their rights, or the exclusivity of those rights, in order for consultation to be required. It is typically better to err on the side of being more inclusive and equitable in determining which Aboriginal communities to engage; explorers should converse with government prior to engaging with any groups that government had not identified for consultation. Explorers should also be aware that a group may need to be consulted even if it has not yet been identified by government.

In addition to consulting the CAD and obtaining advice from the government, an explorer should seek out the perspectives of the Aboriginal communities directly and at an early stage, as they may have relevant information about historic or developing claims to rights on their traditional territories. Explorers should be cautious of accepting one party's views or claims as absolute or exclusive, particularly if there is evidence that others should be considered. Explorers should also avoid making exclusive arrangements at any time in the engagement process, and in the case of multiple claimants, should approach the matter in a transparent and respectful manner with each Aboriginal community.

7.8 Documenting Engagement

Throughout the course of engagement with Aboriginal communities, the explorer should clearly document all engagement and attempts at engagement in an engagement log. Include voicemails, telephone conversations, text messages, incoming and outgoing emails, letters, and records of meetings. The log should also include matters discussed, questions asked, answers provided, concerns raised, any mitigation measures employed, commitments made, and/or any adjustments made to the program in the course of the engagement.

Aboriginal communities who have recognized that they have historically shared traditional territories may have protocols in place that spell out an engagement or consultation process including the manner in which any benefits from resource development may be distributed.

Comprehensive records of consultation or engagement may help the government meet its duty to consult and lead to more timely, defensible and favourable permit approvals. These records will also be helpful for the explorer in tracking and responding to concerns raised by Aboriginal communities.

As noted earlier, the explorer will be expected to provide MEM, and often FLNRO, with a record of this engagement as part of the NoW application. Other government decision-makers will likely request similar information in respect of applications for other permits and approvals. Stakeholder engagement tracking software is commercially available and can help explorers compile and organize the records from their engagement activities and produce reports for government. Comprehensive records of consultation or engagement may help the government meet its duty to consult and lead to more timely, defensible and favourable permit approvals. These records will also be helpful for the explorer in tracking and responding to concerns raised by Aboriginal communities.

7.9 Providing Information in Meaningful and Understandable Formats

Make sure that any information provided is in an understandable and manageable format. One-hundred-page geological reports may be useful for the regulatory process, but will likely not be well-received by an Aboriginal community. Explorers should be willing to offer project plans in an easily accessible format for community engagement. Avoid using jargon and include pictures of actual examples where possible. Patience is required; multiple visits, presentations and discussions will likely be necessary to describe exploration activities.

7.10 Respecting Existing Aboriginal and Treaty Rights

It is important to remember that the trigger for consultation is the potential to impact an asserted Aboriginal or treaty right, not just proven Aboriginal or treaty rights. It is also important to remember that there may be more than one Aboriginal community with asserted rights, and their interests may be overlapping. While explorers are not in a position to confirm or deny the existence of Aboriginal rights, explorers should at all times be respectful of the rights and interests asserted by Aboriginal communities.

Explorers should also be respectful of the assertion of potential impacts from their proposed activities - cultural, spiritual, and social impacts on the Aboriginal community are not always obvious to the explorer.

7.11 Understanding Intercultural Differences and Communication

Successful engagement should be culturally appropriate. Just like in many other parts of Canada and the world, keep in mind that Aboriginal communities within BC are geographically, historically, culturally and linguistically diverse. Nonetheless, it is possible to develop an understanding of the broad cultural differences between Aboriginal and non-Aboriginal communities, and incorporate that understanding into your approach and style. Although not exhaustive, the following list includes some tips for engagement:

- Thank the Aboriginal community hosts for the invitation into their traditional territory to conduct the meeting.
- Approach issues from the perspective of developing a mutually agreeable result.
- Be prepared for everyone in the room to take turns speaking in a “*roundtable*” format.
- Be prepared to be told a story in response to a direct question. Aboriginal peoples often prefer not to give direct advice or interfere with others unless the community is at risk. The story may contain the answers sought by the explorer, but will generally allow a listener to reach his/her own conclusions.
- Be prepared to take the time to arrive at a common understanding of the concerns and where possible a consensus based approach to decision-making.
- Understand that Aboriginal cultures have oral rather than written traditions and that verbal agreements are as binding as a written agreement. Nonetheless, a good practice is to record verbal agreements in writing to avoid different understandings in the future.
- Understand that English is not the only language in many Aboriginal communities and that the traditional language may still be spoken, particularly by elders. While Aboriginal leaders and community members are generally fluent in English, there may be a preference for speaking in the traditional language. Where practical, explorers should inquire whether translation services would be appropriate and valuable when organizing a meeting, and if they are available in the community. If so, it is advisable to meet with the translator in advance to review any presentation materials. This will allow the translator an opportunity to think about how best to translate the messages, meanings and technical information. An explorer may also work with a translator to develop cues to help guide the pace of presentations and answer questions raised.
- Be respectful of timing when planning a meeting. Aboriginal cultures may practice hunting, fishing and gathering. These seasonal cultural and subsistence activities may affect availability for meetings even at the leadership level.



...Aboriginal communities within BC are geographically, historically, culturally and linguistically diverse.

- Be aware of significant events that can affect the ability to hold a meeting, such as a death or a cultural event in the community.
- Be flexible. An explorer should confirm that a planned meeting is still on before finalizing travel arrangements or undertaking travel, as cultural activities or a significant community event or crisis may take precedence over a pre-planned meeting.
- Ask how best to format the meeting and avoid making assumptions as to style or structure. For example, some communities may want a meeting with Chief and Council, others may want an open-house style community meeting.
- Understand the difference between a Hereditary Chief and a Band Chief, and learn whether the Aboriginal community has one, the other or both. If both, the explorer should be prepared to meet with each Chief separately.
- Dress appropriately to reflect the fact that band offices tend to have more casual dress codes than those of many corporate offices.
- Be patient. A listener should wait until he or she is sure that the person speaking has finished completely before responding. While energetic debate is an appropriate meeting format in many corporate boardrooms, it is considered rude in many Aboriginal cultures.
- Be prepared to answer questions about the explorer's company and plans, and note that these questions may require more information than the explorer considers relevant. If this is the case, an explorer should look for opportunities to make modifications to its approach based on the concerns expressed by the Aboriginal community.
- Clearly communicate the explorer's company values and approaches regarding protecting the environment, community health and worker safety, and conducting operations in a manner that benefits local people and communities.
- Pay attention to body language and take cues from others attending the meeting. For example, prolonged direct eye contact is sometimes perceived as aggressive, and handshaking may be seen as a form of respect in some communities while not in others;
- Avoid pejorative terms such as "*Indians*" or "*Natives*". First Nations, Aboriginal communities or Aboriginal peoples are generally considered to be respectful terms. Similarly, an explorer should avoid use of potentially offensive colloquialisms, such as "*pow wow*" when used to refer to a meeting rather than a cultural gathering.
- Take meeting minutes. It is good practice to appoint someone to take minutes and to have the participants review and approve the minutes after the meeting so that all parties are aware of and agree to the official record of the meeting.
- Record all agreements, commitments made, and action items.
- Have a sense of humour. Teasing and humour is a form of welcoming and can be a signal of acceptance.

- Remember that community meetings are just that. Meetings are open to the entire community and whole families generally attend. An explorer should keep this in mind while organizing meetings, and consider hiring some of the older children in the community to set up a corner in the back of the room with activities for younger children (colouring books, crafts, games).
- Understand that elders may be asked to open and close meetings with a prayer in recognition of the spiritual importance of the topics being discussed. This prayer is usually given in the language of the community and can be lengthy. Be respectful.

7.12 Clarifying Expectations Regarding Engagement

Aboriginal communities often have different expectations and protocols for engaging and working with explorers. Some Aboriginal communities have developed their own consultation/engagement policies, bylaws, or templates based on internal consultation with their own membership that reflect their values and expectations. While this can be an excellent starting point for identifying and exploring expectations of both the community and the explorer, explorers should take care to understand any protocols or policies before agreeing to adopt them, particularly if they are not consistent with the legal obligations of consultation.

An explorer might consider negotiating an agreement or protocol with an Aboriginal community in order to establish mutual expectations and understandings about the engagement process. For more information on agreements with Aboriginal communities, see section 8.

7.13 Considering Capacity Funding

While not a legal requirement, Aboriginal communities and government often expect explorers to provide funding (often referred to as “*capacity funding*”) to Aboriginal communities to reasonably assist them with their costs. Capacity funding or provision of funds, for example to help Aboriginal representatives travel to and participate in meetings, should be defined and agreed upon in writing ahead of time. This can be done through a formal agreement or by company policy. Many prospectors and explorers cannot afford to offer capacity funding and should not generally be expected to pay for capacity building. However, if explorers offer to provide capacity funding to Aboriginal communities, such funding should generally be commensurate with the stage and level of activity of an exploration program and be clearly linked to developing capacity in the Aboriginal community. See further discussion of this issue in section 8.

Some Aboriginal communities have developed their own consultation/engagement policies, bylaws, or templates based on internal consultation with their own membership that reflect their values and expectations.



7.14 Avoiding or Mitigating Potential Impacts

While early stage exploration activities are often considered by the industry and regulators to have only minimal or temporary impacts, Aboriginal communities may consider any impacts from exploration activities to be significant. Concerns typically raised by Aboriginal communities include impacts on:

- the environment, including vegetation, soil, water, air, fish and wildlife;
- sites of cultural significance, including gathering places, burial, spiritual and archaeological sites;
- traditional, cultural and subsistence activities, such as hunting, fishing, gathering, and trapping; and
- trap lines, specific areas within the traditional territory where a particular family may have trapped for generations.

7.15 Recognizing and Respecting Culturally and Archaeologically Important Sites

There are safeguards in the *Heritage Conservation Act* with respect to culturally and archaeologically important sites and objects that may be impacted by mineral exploration activities. Explorers are also required to abide by chance find procedures in carrying out exploration activities to avoid or reduce the potential impacts on culturally and archaeologically important sites and objects. Explorers should be aware of and abide by these requirements.

In addition, it may be helpful to ask an Aboriginal community whether a Traditional Use or Traditional Knowledge study (TU/TK) has been produced previously or whether other traditional use or knowledge information exists. This information can help guide the parties in avoiding and reducing potential impacts from exploration activities on particular sites or activities undertaken by the Aboriginal community (see discussion of TU/TK and other studies in section 7.16).

7.16 Integrating Traditional Use/Traditional Knowledge and Other Studies

Some Aboriginal communities may ask for explorers to undertake TU/TK or other types of studies, such as archaeological studies, wildlife studies, or water quality studies. These are all tools that can help inform an Aboriginal community, the government and the explorer about traditional territory, practices and knowledge with a view to understanding the potential for project-related impacts on Aboriginal rights and title. However, these studies are not legal requirements or pre-conditions for obtaining an exploration permit, and are not typically associated with earlier stages of exploration. Explorers should carefully consider the scope, cost and need for any particular study requested by an Aboriginal community before agreeing to undertake it.

7.17 Encouraging Collaborative Approaches to Engagement

When engaging with more than one Aboriginal community on an exploration program, explorers are encouraged to consider whether collaborative approaches between the explorer and multiple Aboriginal communities may be appropriate and achievable for undertaking any studies, developing plans and addressing concerns. Working collaboratively, it may be possible to identify mitigation strategies that could be implemented by the explorer to address concerns raised by the Aboriginal communities. This approach may provide efficiencies for both the explorer and the Aboriginal communities by sharing resources and providing opportunities that may not exist through more traditional bilateral engagement activities. Such collaborative approaches may not always be possible.

7.18 Integrating Training, Employment and Business Development Opportunities

There are a number of programs throughout BC that provide support for training, employment and business opportunities in the mineral exploration and mining industry for Aboriginal peoples. Explorers should make themselves aware of these and other programs to prepare for meeting and discussing employment and business opportunities with Aboriginal communities. Explorers are also encouraged to hire from within the Aboriginal community, based on qualifications and merit, and to procure commercially competitive supplies and services from the Aboriginal community or Aboriginal-owned business (if available) whenever possible.

When engaging with more than one Aboriginal community on an exploration program, explorers are encouraged to consider whether collaborative approaches between the explorer and multiple Aboriginal communities may be appropriate and achievable for undertaking any studies, developing plans and addressing concerns.



A written agreement can be an important tool for developing a positive and effective relationship between an explorer and an Aboriginal community, provided the agreement is balanced and meets the needs of both parties.

8.0 EXPLORATION STAGE AGREEMENTS

8.1 Agreements Between Explorers and Aboriginal Communities

Agreements at the exploration stage are typically about relationship building and communication between an explorer and Aboriginal community. While there is no legal requirement to conclude an agreement in order for the duty to consult to be satisfied, in practice, explorers are increasingly entering into negotiations with Aboriginal communities as part of the exploration process. Explorers may enter into these negotiations for any number of reasons, including:

- **The expectations of Aboriginal communities** - Aboriginal communities will often request that an explorer enter into a written agreement in some form as part of the consultation and engagement process. Aboriginal communities may even have their own form of agreements that they will present to explorers;
- **The expectations of government** - Government decision-makers will often request information about the types of arrangements in place between an explorer and an Aboriginal community. Government may consider whether an agreement has been reached, or whether efforts have been made to reach an agreement, in making decisions on permits and approvals for exploration activities; and
- **Enhanced certainty for mineral exploration activities** - Reaching a formal agreement on a voluntary basis may enhance the acceptance of an individual or company and its exploration activities, and the ultimate stability and success of the project.

It is important to note that negotiating an agreement with an Aboriginal community is intended to enhance, not replace, the consultation and engagement activities carried out by an explorer during the exploration process. If an explorer is unable to reach an agreement with an Aboriginal community, the explorer is not prevented from proceeding with a particular exploration activity, provided the appropriate permits and approvals have been obtained; however, in this case an explorer should consider the effects that proceeding without an agreement could have on its long term relationship with the Aboriginal community. In other instances, it may be the Aboriginal community that does not want an agreement. Whether or not a formal agreement is in place, explorers should still endeavour to work cooperatively with an Aboriginal community in carrying out its exploration activities in accordance with the principles of meaningful engagement described in sections 6 and 7.

8.2 Exploration Stage Agreements

Exploration stage agreements are separate and distinct from later-stage “*project*” agreements, such as Impact Benefit Agreements (IBAs) that may be negotiated if an exploration project ultimately moves toward mine development. IBAs typically include much more significant obligations on the part of both parties than what would be appropriate at the exploration stage. For example, an IBA may contain an offer by the explorer to provide financial benefits to an Aboriginal community from the developed mine or contain promises by an Aboriginal community to support a mine.

Typically, neither explorers or Aboriginal communities are in a position during the exploration stage to make the types of commitments contained in an IBA, particularly early on in the exploration process. Hence, agreements at the exploration stage focus on establishing relationships and processes for an explorer and an Aboriginal community to engage during the exploration or permitting phases of projects.

Exploration stage agreements come in many forms and have many different names, such as protocol agreement, communication agreement, cooperation agreement, memorandum of understanding, exploration agreement and relationship agreement. Of course, the name given to an agreement is less important than the provisions it contains. While the provisions in exploration stage agreements will vary significantly based on the nature of the project and the specific circumstances and interests of the parties, most agreements will contain provisions related to:

- principles of engagement between the parties;
- sharing of information about the project, Aboriginal interests and potential impacts; and
- communication processes.

Exploration stage agreements may also include provisions related to:

- capacity funding to assist the Aboriginal community to participate in consultation and engagement as part of the permitting process and accounting and reporting requirements in relation to the use of that funding;
- employment, training and business opportunities associated with mineral exploration activities;
- specific measures to identify or address any concerns raised about the potential impact of exploration activities on asserted Aboriginal or treaty rights;
- commitments to negotiate later stage agreements such as an IBA if the project proceeds to the mine development stage; and
- public disclosure of the agreement.

Exploration stage agreements come in many forms, and have many different names, such as protocol agreement, communication agreement, cooperation agreement, memorandum of understanding, exploration agreement and relationship agreement.



While general examples and recommendations of what might be negotiated in an exploration stage agreement are provided in this Guidebook, each explorer should consider what is appropriate and achievable in the specific circumstances. Although each agreement may look different, there are a number of common principles shared by successful exploration stage agreements between explorers and Aboriginal communities. Successful agreements:

- reflect the existing relationship between the parties;
- are proportionate to the nature, scope and duration of the exploration activities and their potential impacts;
- respect the interests of both parties, even where there are differing perspectives;
- are practical and recognize the parties' existing capabilities, and do not place excessive obligations on either of the parties;
- do not undermine the feasibility of the exploration activities; and
- meet the needs of both parties.

8.3 Recommended Practices for Negotiating Agreements with Aboriginal Communities

The following recommended practices are provided in order to assist explorers that wish to attempt to negotiate a written agreement with an Aboriginal community. Although the successes and lessons learned from other explorers form a key component of these practices, each negotiation is circumstance and project-specific. As a result, this guidance is necessarily general in nature.

8.3.1 Setting the tone

- Scale the content of the agreement to be commensurate with the stage of the project. For example, an early stage exploration project will have less need than an advanced stage project for detailed information sharing processes and capacity funding.
- An early stage agreement can simply outline a manageable number of basic understandings that will assist the parties in developing a relationship. Some key items may include providing for communication between the parties or a commitment by the explorer to seek to provide employment and business opportunities for members and businesses in the Aboriginal community.
- Keep in mind that the benefits of a strong relationship and community buy-in at the earliest stages of exploration pay dividends at later stages, in particular as a project moves into mine development.
- It can be useful to develop a template agreement that can be presented to initiate discussions.

8.3.2 Actions speak louder than words

- Negotiations will often proceed more quickly where a relationship of trust has been established between the parties. In certain cases, a strong relationship may lead the parties to conclude a written agreement is not necessary to guide their engagement practices (although a good agreement can often be helpful in formalizing a relationship and managing expectations).
- The means for an explorer to help establish a relationship of trust with an Aboriginal community may include early and frequent communication, demonstrating responsiveness to the concerns of the Aboriginal community, hiring local Aboriginal people at an early stage, providing early training opportunities, or entering into early contracts with Aboriginal-owned companies for the supply of services or goods for the exploration project. All of these activities can be accomplished without entering into a written agreement with an Aboriginal community.

8.3.3 Strive for simplicity, rather than long complicated agreements

- The value of an agreement is in the successful implementation of the final product – not a protracted and expensive negotiation process. There is generally no need for long and complicated agreements, particularly at the early stages of exploration.
- If possible, it is generally preferable to negotiate the basic terms of the agreement directly between the explorer and the Aboriginal group rather than through third parties.
- Strive for a simple, relationship-building agreement. Avoid unnecessarily prescriptive commitments around uncertain future events; focus instead on engagement principles and processes that the parties can rely on to address issues as they arise. Simple agreements will be easier to draft, negotiate, understand and implement and will minimize the chance of protracted negotiations and expensive legal costs. It does not serve either party to include ambiguous or poorly drafted language ¹⁷.
- Be sure that both parties understand the intent and meaning of each clause. Test this understanding through the mutual discussion of various potential scenarios that could arise.



¹⁷ For example, wording for contacting services in a protocol agreement might be:

The Company and its contractors are committed to providing contracting opportunities to qualified local Aboriginal businesses on a competitive basis taking into consideration factors such as health, safety, environmental and technical capabilities, quality, price and scheduling requirements. Consistent with the Company's employment and contracting policies, the Company agrees to...[list several commitments that change according to project scope, Aboriginal capabilities, etc.].

8.3.4 Strive for fewer agreements rather than numerous agreements

- A simple, well drafted and flexible agreement can generally address all of the concerns of the parties at the exploration stage. There is generally no need for multiple agreements.
- Issues associated with mine development should be deferred to future agreements, particularly if negotiations are taking place during the early stages of exploration before a project has been well defined or its potential impacts evaluated. To address concerns about future mine development, consider including a commitment in the current agreement to enter into negotiations of an IBA or similar “*project*” agreement if the exploration project reaches the development stage.

8.3.5 Agreements are legally binding contracts

- Agreements are legally binding contracts and should be approached with the appropriate level of care and attention. Explorers should take care to ensure they understand the obligations to which they are agreeing and that these obligations are clear.
- Explorers should also consider that the agreements with Aboriginal communities may outlive their involvement with the project. An agreement will often be tied to a specific project and will be binding on the new purchaser of the project.
- If in doubt, explorers should seek legal advice early on in the process before an agreement has been significantly negotiated.

8.3.6 Payments to Aboriginal communities

- Early stage exploration agreements will often include commitments to provide capacity funding to assist an Aboriginal community in reviewing and understanding the project, providing information and engaging in the permitting process. Given that exploration activities are speculative and do not produce revenue, early stage exploration agreements typically do not include financial benefits (other than possible capacity funding).
- Capacity funding payments should not be arbitrary, but rather linked to the costs associated with the Aboriginal community participating in the engagement and consultation process. Essentially, any capacity funding should be commensurate with the level of the proposed exploration activity.
- Paying an access fee, application fee or similar fees in order to access Crown lands (even where subject to assertions of Aboriginal rights and title) is not recommended (this advice applies to prospectors and explorers undertaking non-mechanized work or mechanized work). It is not recommended to make payments linked to particular exploration activities (such as the number of holes drilled). Explorers should seek guidance from the government if in doubt about any payment being requested.

8.3.7 Be aware of transparency and anti-corruption rules

- Both explorers and Aboriginal communities should be aware of transparency and anti-corruption rules that could be relevant to engagements and negotiations, including public reporting requirements and provisions of the Canadian Criminal Code related to influence peddling and extortion.
- In the vast majority of cases, providing capacity funding or negotiating agreements with Aboriginal communities will not offend the principles underlying transparency and anti-corruption rules. However, the following principles may help both explorers and Aboriginal communities navigate these issues:
 - it is generally better to have open and transparent communications among explorers, government and Aboriginal communities (such as between the leadership of Aboriginal communities and community members);
 - if making any financial payments, consider the purpose and the beneficiaries of the payment and, if in doubt, seek appropriate advice and guidance (which may include seeking advice from Corporate Social Responsibility, legal or regulatory compliance people within an explorer's organization or retained consultant, or seeking advice from government);



By way of illustration, the provision of capacity funding to assist an Aboriginal community in offsetting the reasonable costs associated with engaging with the explorer or in a regulatory process will generally be appropriate. Conversely, providing personal financial or other benefits to a specific individual or group of individuals to the exclusion of other members of an Aboriginal community will generally not be appropriate; and

- financial payments or other benefits should never be extracted as a result of unreasonable threats or violence. Although exceptionally rare, threats to damage equipment, harm employees or unreasonably obstruct mineral exploration activities unless a payment is made are illegal.

8.3.8 Approach confidentiality obligations with care

- Unless there is an extremely compelling reason to do so, beware of agreeing to “*off the record*” or “*without prejudice*” discussions, or committing in any agreement not to share information with government. Although the details of some negotiations are conducted on a confidential basis, as discussed in section 5, explorers may be required to share the results of their engagement activities with the government as part of permitting processes for exploration activities.
- Explorers may need to share their agreements with Aboriginal communities for business reasons, including meeting securities law obligations or in the context of a project sale. Explorers must retain the flexibility to fulfill these obligations.
- Agreements that lead to a lack of transparency with the members of the Aboriginal community should also be avoided.

8.3.9 Consider sharing relevant information with other explorers, where doing so would not violate confidentiality obligations

- Explorers should speak with others who are engaged with Aboriginal communities in the vicinity of mineral exploration activities to share information on successful approaches for effectively engaging Aboriginal communities, developing positive relations and securing agreements, where not otherwise prevented by confidentiality obligations.
- Where appropriate, it is recommended that explorers share information generally with others, including specific agreements, subject to any applicable confidentiality obligations. It is in the best interests of all parties engaged in the exploration industry - both Aboriginal and non-Aboriginal, to move toward a transparent practice of sharing information with others, and seeking to act in a consistent way that fosters the developments of best practices and industry standards.

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GUIDE 1

LAWS AND REGULATIONS

Canadian (Federal) Legislation and Regulation:

Canadian Environmental Assessment Act (2012)

The *Canadian Environmental Assessment Act* (CEAA 2012) focuses on potential adverse environmental effects that are within federal jurisdiction. The Regulations for Designating Physical Activities outlines projects likely to require federal environmental assessment. Mineral exploration does not trigger CEAA 2012.

For full details please go to:

Canadian Environmental Assessment Act

<http://laws-lois.justice.gc.ca/eng/acts/C-15.21/index.html>

Regulations Designating Physical Activities

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-147/index.html>

Canadian Environmental Protection Act (1999)

The *Canadian Environmental Protection Act* (CEPA) is the primary element of the legislative framework for protecting the Canadian environment and human health. A key aspect of CEPA 1999 is the prevention and management of risks posed by toxic and other harmful substances. CEPA 1999 also manages environmental and human health impacts of products of biotechnology, marine pollution, and disposal at sea, vehicle, engine and equipment emissions, fuels, hazardous wastes, environmental emergencies and other sources of pollution. The only section of CEPA 1999 that applies to mineral exploration is section 122 (1) (k) Disposal at Sea for the processing of seabed mineral resources.

For full details please go to:

Canadian Environmental Protection Act

<http://laws-lois.justice.gc.ca/PDF/C-15.31.pdf>

Fisheries Act (1985)

The *Fisheries Act* is administered by the Department of Fisheries and Oceans. It is the key piece of regulation over fish and fish habitat in Canada. Mineral exploration is regulated under section 35 of the Act, which prohibits any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

For full details please go to:

Fisheries Act

<http://laws-lois.justice.gc.ca/PDF/F-14.pdf>

Indian Act (1985)

The *Indian Act* defines who is an “Indian” at law and contains certain legal rights and restrictions for registered or “status” Indians. It also addresses local government and the management of reserve land and communal monies. The *Indian Act* is overseen by the Department of Aboriginal Affairs and Northern Development.

For full details please go to:

Indian Act

<http://laws-lois.justice.gc.ca/eng/acts/I-5/page-1.html>

Migratory Birds Convention Act (1994)

The *Migratory Birds Convention Act* provides for the protection of migratory birds through the Migratory Birds Regulations and the Migratory Birds Sanctuary Regulations. Under subsection 5(9) of the Migratory Birds Sanctuary Regulations apply to mineral exploration, whereby no person shall disturb, destroy or take a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird except under authority of a permit.

For full details please go to:

Migratory Birds Convention Act

<http://laws-lois.justice.gc.ca/PDF/M-7.01.pdf>

Migratory Birds Regulations

http://laws-lois.justice.gc.ca/PDF/C.R.C.,_c._1035.pdf

Navigable Waters Protection Act (1985)

The *Navigable Waters Protection Act* (NWPA) regulates works that has the potential to affect navigation and is therefore subject to federal approval. Mineral exploration is not regulated under this piece of legislation.

For full details please go to:

Navigable Waters Protection Act

<http://laws-lois.justice.gc.ca/eng/acts/N-22/>

Species at Risk Act (2002)

The *Species at Risk Act* (SARA) aims to prevent wildlife species in Canada from disappearing, to provide for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened. SARA applies automatically only on federal lands. For species also protected under the *Migratory Birds Convention Act*, or aquatic species as defined in the Fisheries Act, SARA applies automatically on provincial and territorial lands and waters as well.

SARA may apply to mineral exploration activities on Crown land and operations may need to be modified to minimize disturbance to or contact with species at risk.

For full details please go to:

Species at Risk Act

<http://laws-lois.justice.gc.ca/PDF/S-15.3.pdf>

Species at Risk Registry

http://www.sararegistry.gc.ca/default_e.cfm

BC Conservation Data Centre

<http://www.env.gov.bc.ca/cdc/>

Province of British Columbia (Provincial) Legislation and Regulation:

British Columbia Environmental Assessment Act (2002)

The *British Columbia Environmental Assessment Act* (BCEAA) provides a streamlined environmental assessment process and states that a person cannot undertake or carry on any activity (e.g. construction, operations, etc.) on a reviewable project without first having an environmental assessment certificate. Environmental assessments are not required for mineral exploration activities.

For full details please go to:

British Columbia Environmental Assessment Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20e%20--/environmental%20assessment%20act%20sbc%202002%20c.%2043/00_02043_01.xml

Mine Project Thresholds

<http://www.empr.gov.bc.ca/Mining/Permitting-Reclamation/PermitApplicationRequirements/Pages/default.aspx#2.1>

Coal Act (2004)

The *Coal Act* authorizes the registration of coal titles with the Province and provides the policy framework for Mineral Titles administration.

For full details please go to:

Coal Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_04015_01

Drinking Water Protection Act (2001)

The *Drinking Water Protection Act* covers all water systems other than single-family dwellings (and systems excluded through the regulation). The Act sets out certain requirements for drinking water operators to ensure the provision of safe drinking water to their customers. Exploration activities shall not degrade water quality at a potable water supply intake so that it fails to meet the potable water requirements of the *Drinking Water Protection Act* and regulations. A Notice of Work permit must outline a program for the protection and reclamation of land, watercourses and groundwater in the context of the *Drinking Water Protection Act*, as well as other applicable legislation.

For full details please go to:

Drinking Water Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_01009_01

Environment and Land Use Act (1996)

The *Environment and Land Use Act* (ELUA) is a broad piece of legislation which empowers a Land Use Committee of Cabinet to ensure that all aspects of the preservation and maintenance of the natural environment are fully considered in the administration of land use and resource development. As per the MTA, mineral exploration is prohibited in areas (i.e. protected areas) designated under the ELUA.

For full details please go to:

Environment and Land Use Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96117_01

Environmental Management Act (2004)

The *Environmental Management Act* (EMA) combines the *Waste Management Act* and the *Environment Management Act* to provide innovative tools for environmental protection. Section 5 of the EMA speaks directly to the Remediation of Mineral Exploration Sites and Mines. The EMA applies to waste management requirements, including storage and water quality criteria.

For full details please go to:

Environmental Management Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20E%20--/Environmental%20Management%20Act%20SBC%202003%20c.%2053/00_Act/03053_05.xml#part5

Fish Protection Act (1997)

The *Fish Protection Act* provides legislative authority for water managers to consider impacts on fish and fish habitat before approving new licences, amendments to licences or issuing approvals for work in or near streams. Mineral exploration activities that are conducted near streams and which require a Notice of Work permit must outline a program for the protection and reclamation of land, watercourses and groundwater in the context of the *Fish Protection Act*, as well as other applicable legislation.

For full details please go to:

Fish Protection Act

http://www.env.gov.bc.ca/habitat/fish_protection_act/act/documents/act-theact.html

Forest Act (1996)

The *Forest Act* is one of two main pieces of legislation that govern logging on BC's publicly owned forest lands (see below for *Forest and Range Practices Act*). The *Forest Act* primarily addresses rights to log Crown timber, including determining the allowable annual cut, granting tenure rights to Crown (public) timber, and rules for the administration of tenures, and designating forest land for administrative purposes. As per the MTA, mineral exploration activities that require the cutting of timber may be subject to the terms and conditions set by the issuing authority under the *Forest Act*.

For full details please go to:

Forest Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96157_00

Forest Range and Practices Act (2002)

The *Forest and Range Practices Act* (FRPA) and its regulations govern the activities of forest and range licensees in B.C. The statute sets the requirements for planning, road building, logging, reforestation, and grazing. FRPA contains provisions on industrial use of a road for mineral exploration as granted under the MTA.

Community Watersheds are designated under The *Forest and Range Practices Act*. Under the Mineral Exploration (MX) Code, mineral exploration activities must be conducted so as to maintain natural drainage patterns and water quality in community watersheds. Water licence holders or water purveyors must be notified of activities. Contingency plans are also required in case any exploration activities adversely affect a community water supply.

For full details please go to:

Forest and Range Practices Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02069_01#section150

Mineral Exploration Code (section 9 of the *Health, Safety and Reclamation Code*)

<http://www.empr.gov.bc.ca/Mining/HealthandSafety/Documents/HSRC2008.pdf>

Heritage Conservation Act (1996)

The purpose of the *Heritage Conservation Act* is to encourage and facilitate the protection and conservation of heritage property in British Columbia. As per the MTA, no mineral exploration can occur in an area of land established as a Provincial heritage property under section 23 of the *Heritage Conservation Act* unless authorized by the Lieutenant Governor in Council on the recommendation of the person, corporation or government that is responsible for the park or the area of land.

For full details please go to:

Heritage Conservation Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96187_01

Land Act (1996)

The *Land Act* is the primary article of legislation that is used by the government to convey land to the public for community, industrial and business use. The Act allows the granting of land, and the issuance of Crown land tenure in the form of leases, licences, permits and rights-of-way. The *Land Act* is crossreferenced in the MTA under section 19, Right of Entry on Private Land and Compensation the Right of Entry on Private Land and Compensation. This may impact mineral exploration activities.

For full details please go to:

Land Act

http://www.for.gov.bc.ca/land_tenures/legislation_and_regulations/general_information.html

Mineral Tenure Act (1996)

The *Mineral Tenure Act* (MTA) is the statute that authorizes the registration of mineral titles in BC to those with a Free Miner Certificate. The MTA also provides the policy framework for the administration of Crown-owned mineral resources, including the acquisition of mineral titles through an online system known as Mineral Titles Online (MTO). Under the MTA mineral claims provide the right to explore and develop subsurface mineral resources. Note that coal and placer right are separate and distinct from mineral rights.

For full details please go to:

<http://www.empr.gov.bc.ca/Titles/MineralTitles/Pages/default.aspx>

Mines Act (1996)

The *Mines Act* and Code regulate the exploration, development and production of minerals and a permit under the *Mines Act* is required when the land is to be disturbed by any mechanized means or by explosives for exploration or mining. A permit is obtained by submitting a Notice of Work and Reclamation Program application to the Health Safety and Permitting Branch through FrontCounterBC's online e-application system.

For full details please go to:

http://www.bclaws.ca/Recon/document/ID/freeside/00_96293_01

Health, Safety and Reclamation Code (HSRC)

<http://www.empr.gov.bc.ca/Mining/HealthandSafety/Pages/HSRC.aspx>

Water Act (1996)

The *Water Act* is the principal law for managing the diversion and use of provincial water resources. Established in 1909, BC's *Water Act* is the primary piece of water management legislation and plays a key role in the sustainability of BC's water. There are provisions in the Act that speak directly to mineral exploration and mining.

For full details please go to:

Water Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96483_01

Mineral Exploration Handbook

<http://www.empr.gov.bc.ca/Mining/Exploration/Pages/Handbook.aspx>

Water Protection Act (1996)

The purpose of the *Water Protection Act* is to foster sustainable use of British Columbia's water resources in continuation of the objectives of conserving and protecting the environment. Exploration activities that involve water management and which require a Notice of Work permit must outline a program for the protection and reclamation of land, watercourses and groundwater in the context of the *Water Protection Act*, as well as other applicable legislation.

For full details please go to:

Water Protection Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96484_01

Mineral Exploration Handbook

<http://www.empr.gov.bc.ca/Mining/Exploration/Pages/Handbook.aspx>

Wildlife Act (1996)

The *Wildlife Act* is the main provincial law for protecting wildlife, endangered species and wildlife habitat. The Act has a number of provisions for protecting, managing, and purchasing habitat areas as well as protecting endangered and threatened species. Mineral exploration activities, such as drilling activities should avoid disturbing wildlife during crucial seasons in their life cycles, particularly nesting birds protected under the Wildlife Act (bald eagles, gyrfalcons, peregrine falcons, great blue herons).

For full details please go to:

Wildlife Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96484_01

GUIDE 2

GOVERNMENT POLICIES AND AGREEMENTS WITH ABORIGINAL COMMUNITIES

Aboriginal and Provincial Economic Agreements:

Land Use Plans

Traditionally, the provincial government conducted land use planning for the identification and protection of representative examples of flora and fauna across the province. These plans also include management strategies for areas outside of the protected areas. In the early 2000s, the provincial government initiated a process to gain Aboriginal communities' input on these strategic land use plans.

An example is the *Lillooet Land Use Plan* for which consultation is still underway:

<http://ilmbwww.gov.bc.ca/slrp/lrmp/kamloops/lillooet/index.html>

An example of a signed land use agreement is the *Dease-Liard Sustainable Resource Management Plan* (SRMP) between BC and the Kaska Dena to address the management of land and resources in the Dease and Liard River drainages in northern BC:

<http://ilmbwww.gov.bc.ca/slrp/lrmp/kamloops/lillooet/index.html>

More recently, government shifted its efforts towards coordinated Aboriginal communities' engagement which includes a land planning component. Land use plans and agreements are now expected to be one of the tools to support government-to-government negotiations with Aboriginal communities.

Exploration work must conform to all applicable requirements of the *Mineral Tenure Act* and *Mines Act*. The management objectives laid out under land use plans should guide how that work is done. For a complete list of land use plans in BC, consult the FLNRO website at:

<http://www.ilmb.gov.bc.ca/category/products-and-services/plans>

Strategic Engagement Agreements

Strategic Engagement Agreements (SEA) are intended to develop a positive and respectful government-to-government relationship between the Province of BC and Aboriginal communities by establishing mutually agreed upon procedures for consultation and accommodation for land and resource decision-making. This in turn will deliver more security of title, a process of dispute resolution and generally work towards strengthening BC's investment climate. A SEA typically will include a monetary component along with procedures for shared decision-making on land use issues. In some cases the SEA will result in significant prohibitions or severe restrictions on resource use while others deliver a streamlined permit review and decision process. It is important to remember that the Province of BC continues to hold final determination in the event of a disagreement over land use.

The following are examples of SEAs with First Nations. Note that each SEA is unique:

- *Tahltan Nation Shared Decision-Making Agreement* – signed March 14, 2013
- *Stó:lo First Nations Strategic Engagement Agreement Pilot* - signed June 12, 2012
- *Kaska Dena Council Strategic Engagement Agreement* - signed March 27, 2012
- *Whóoshtin yan too.aat/Land and Resource Management and Shared Decision Making Agreement* - signed July 19, 2011
- *Ktunaxa Strategic Engagement Agreement* - signed October 22, 2010
- *Tsilhqot'in Strategic Engagement Agreement* – amended August 2011
- *Nanwakolas Strategic Engagement Agreement* – renewed December 2012

Economic and Community Development Agreements

An Economic and Community Development Agreement (ECDA) is an agreement between the Province and an Aboriginal community for sharing the Province's revenues from mineral taxes levied on new mines and major mine expansions. The Province has committed to share a portion of the mineral tax revenue with directly affected Aboriginal peoples. Typically an ECDA will contain processes managing the Aboriginal community's use of the mineral tax revenue. This is a significant contribution to the economic development of Aboriginal peoples in BC and an incentive to Aboriginal communities to participate in mineral exploration and development.

Examples include:

- *Lower Similkameen Indian Band and the Upper Similkameen Indian Band Economic and Community Development Agreement* - signed on March 28, 2013. The revenue-sharing agreement enables the Upper Similkameen Indian Band and Lower Similkameen Indian Band to benefit from the Copper Mountain Mine, located southwest of Princeton.
- *Ktunaxa Nation Economic and Community Development Agreement* – signed on January 29, 2013. A revenue-sharing agreement between the Province and four Ktunaxa Nation communities ensure the communities benefit from resource development within their traditional territory.
- *Nak'azdli First Nation Economic and Community Development Agreement* – signed June 12, 2012. An agreement between the Province and Nak'azdli First Nation supports economic opportunity and provides greater certainty for the Mt Milligan Mine project over the life of its operation.
- *McLeod Lake Indian Band Economic and Community Development Agreement* – signed August 25, 2010. A revenue-sharing agreement between the Province and the McLeod Lake Indian Band to share mineral tax royalties from the Mt. Milligan Mine.
- *Stk'emlupsemc of the Secwepemc Nation Economic and Community Development Agreement* – signed August 24, 2010. A mining revenue-sharing agreement between the Province of British Columbia and the Stk'emlupsemc of the Secwepemc Nation to share mineral tax royalties from the New Afton Mine.

For a current list of key agreements between First Nations and the Province of BC, refer to the Ministry of Aboriginal Relations and Reconciliation website at <http://www.gov.bc.ca/arr/treaty/key/>.

GUIDE 3

CROWN'S DUTY TO CONSULT

The following is a brief summary of the Crown's duty to consult Aboriginal peoples:

- The Crown's duty to consult arises when the Crown:
 - has knowledge of the potential existence of Aboriginal or treaty rights; and
 - contemplates conduct that might adversely affect these rights.
- The Crown's duty to consult arises prior to proof of Aboriginal rights and title.
- The scope of the duty to consult is proportional to both the strength of the claimed right and the seriousness of the potential impact on that right.
- The Crown cannot delegate its duty to consult, but the Crown can, and does, delegate the procedural aspects of consultation to project explorers.
- The goals of consultation are to ensure the rights and interests of an Aboriginal community are properly considered and, where appropriate, accommodated by the Crown in making decisions that may adversely impact the rights and interests of the Aboriginal community.
- The Crown's duty to consult does not amount to a veto over resource development or create an obligation to obtain the consent of Aboriginal communities to activities undertaken on Crown lands.
- All parties must engage in the consultation process in good faith.

The leading case regarding the duty to consult is *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73. In *Haida*, the SCC confirmed the circumstances in which the Crown has a duty to consult with Aboriginal peoples, held that the duty is rooted in the "*honour of the Crown*", and that the duty is part of a process of reconciliation. The Court found that the transfer of a number of tree farm licences was invalid because the provincial Crown had failed to consult the Haida Nation with respect to its asserted, but as yet unproven, Aboriginal title claims to the land in question.

Following *Haida*, numerous courts across Canada have considered and elaborated on the duty to consult. Key cases from the SCC include:

- *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550
- *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388
- *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650
- *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103
- *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26

GUIDE 4

CONCERNS COMMONLY RAISED BY ABORIGINAL COMMUNITIES

GUIDE 4 is not intended to be prescriptive or set new standards, nor is it an exhaustive table of common concerns and suggested solutions. Explorers should ensure they are familiar with all regulatory requirements and policy documents such as the *HSRC* and the *Handbook for Mineral and Coal Exploration in British Columbia*. Additional resources are available, such as the *Yukon Chamber of Mines' Best Practices Guidelines*, to provide explorers with a more comprehensive understanding of the potential impacts and mitigation measures they should consider during the planning and execution of their exploration activities.

Activity	Concern	Suggested Solutions
Ground Access	New access routes may impact cultural/heritage sites or traditional activities.	<ul style="list-style-type: none">Utilize Chance Find Procedure.Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-route or reschedule to avoid conflict if possible.
	Increased access may lead to hunting and predation pressure on wildlife.	<ul style="list-style-type: none">Utilize existing access where ever possible.Where appropriate limit straight line access to minimize line of sight (predation).Close and reclaim new access trails as soon as feasible.Construct linear access opposed to looped access.Consider gating access if possible.
Air Access	Flight routes/timing may impact traditional activities.	<ul style="list-style-type: none">Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-route or reschedule to avoid conflict if possible.

Activity	Concern	Suggested Solutions
	Flight routes/timing may impact wildlife.	<ul style="list-style-type: none"> • Ensure pilots/crew are familiar with protocols for flying in sheep and caribou country (link to documents). • Avoid low passes, hovering over, or following wildlife. • Prohibit flights for viewing/photographing wildlife. • Do not approach nesting raptors. • Avoid mineral licks.
Airstrips & Staging Areas	New airstrips or staging areas may impact cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> • Utilize Chance Find Procedure. • Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-locate to avoid conflict if possible.
	Impacts to wildlife due to location.	<ul style="list-style-type: none"> • Avoid utilizing sensitive areas such as mineral licks, calving grounds, raptor nests, ground nests and migration routes.
Stream Sediment, Biogeochemistry, Geological Mapping & Soil & Rock Sampling	Impacts to cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> • Utilize Chance Find Procedure. • Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-route or reschedule to avoid conflict if possible.
	Visual concerns related to flagging/spray paint.	<ul style="list-style-type: none"> • Avoid excessive flagging. • Utilize biodegradable flagging. • Minimize use of spray paint, avoiding altogether if feasible.
	Impacts to environment from presence of people.	<ul style="list-style-type: none"> • Leave no trace. • Pack out all garbage. • Ensure human waste is properly buried.
Line Cutting & Ground Surveys	Line cutting or ground surveys may impact cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> • Utilize Chance Find Procedure. • Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-route or reschedule to avoid conflict if possible.

Activity	Concern	Suggested Solutions
	Impacts to the environment from line cutting.	<ul style="list-style-type: none"> • Minimize footprint by flagging in lines rather than cutting when possible. • Keep cut lines as narrow as possible. • Avoid line cutting where possible; use a GPS and limited amounts of flagging to set up grid. • Use biodegradable hip chain thread or if working in pairs, use nylon chain instead. • Consider using biodegradable flagging • Avoid cutting lines directly to a shore-line or public trail to reduce visibility of cut lines.
	Impacts to wildlife during geophysical surveys.	<ul style="list-style-type: none"> • Ensure wires are kept close to ground to avoid wildlife from becoming entangled. • Remove wires as soon as possible after survey complete.
Air Surveys	Flight routes/timing may impact traditional activities.	<ul style="list-style-type: none"> • Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-route or reschedule to avoid conflict if possible.
	Flight routes/timing may impact wildlife.	<ul style="list-style-type: none"> • Ensure timing of survey does not conflict with sensitive wildlife areas and events such as calving. • Ensure pilots/crew are familiar with protocols for flying in sheep and caribou country (link to documents). • Avoid hovering over or following wildlife. • Fly the maximum height possible.

Activity	Concern	Suggested Solutions
Trenching	Impacts to cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> Utilize Chance Find Procedure. Dialogue with Aboriginal communities regarding location/timing of traditional activities and reschedule to avoid conflict if possible. Consider employing an environmental monitor from within an Aboriginal community to assess trenching area prior to trenching; see also the regulatory requirement of 9.3.3 of the HSRC.
	Impacts to environment through soil erosion, exposed bedrock that has the potential to generate acid rock drainage.	<ul style="list-style-type: none"> Orient trenches to follow slope contour wherever possible to minimize soil erosion. Place a berm at the end of the lowest elevation point of the trench to prevent gullies forming from water erosion. Stockpile mineralized material separately from subsurface material and topsoil. Adhere to minimum regulatory setback distances from water bodies/courses. Reclaim trench as soon as mineral assessment is complete.
	Impacts to wildlife due to slumping or entrapment.	<ul style="list-style-type: none"> Slope sides of trench to a stable, safe angle to limit entrapment from slumping. Construct trenches with an angled end to allow an escape route for wildlife.
Blasting	Impacts to cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> Utilize Chance Find Procedure. Dialogue with Aboriginal communities regarding location/timing of traditional activities and reschedule to avoid conflict if possible. Consider employing an environmental monitor from within an Aboriginal community to assess blasting area prior to blast.
	Impacts to wildlife from noise, vibration and flying rock.	<ul style="list-style-type: none"> Avoid blasting during sensitive wildlife times, such as spring calving and nesting areas. Ensure that flyrock is mitigated through appropriate blasting methods, e.g. placing blasting mats on top of holes to reduce scattered debris.

Activity	Concern	Suggested Solutions
	Impacts to environment from explosives storage and use.	<ul style="list-style-type: none"> • Ensure strict adherence to all regulatory requirements regarding the transport, storage and use of explosives. • Do not use ammonium nitrate based explosives in or near water courses/bodies.
Drilling	Impacts to cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> • Utilize Chance Find Procedure. • Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-order drill plan or reschedule to avoid conflict if possible.
	Impacts to wildlife from tree cutting and brush clearing.	<ul style="list-style-type: none"> • Consider employing an environmental monitor from within an Aboriginal community to assess drill pad location and surrounding area prior to construction. • Ensure ground nesting birds not in vicinity of planned clearing location.
	Impacts to environment, including water bodies and fish habitat, from clearing, fuel, and waste products.	<ul style="list-style-type: none"> • Keep clearings for drill pads to a minimum. • Brush and felled trees should be bucked up; stockpile any topsoil and use during site reclamation. • Use non-toxic, biodegradable drill additives. • Ensure cuttings properly contained and reclaimed; ensure sumps properly located so drill water does not enter water courses/bodies directly. • Ensure proper fuel/waste management plan in place and that personnel are adequately trained. Know and apply the rules for safe storage of fuels and be sure to have emergency spill kits on hand.

Activity	Concern	Suggested Solutions
Bulk Sampling	Impacts to cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> Utilize Chance Find Procedure. Dialogue with Aboriginal communities regarding location/timing of traditional activities and re-schedule activities to avoid conflict if possible. Consider employing an environmental monitor from within an Aboriginal community to assess bulk sample location.
	Impacts to wildlife from tree cutting and brush clearing.	<ul style="list-style-type: none"> Consider employing an environmental monitor from within an Aboriginal community to assess bulk sample location and surrounding area prior to construction. Ensure ground nesting birds not in vicinity of planned clearing location.
Camps	New camps may impact cultural/heritage sites or traditional activities.	<ul style="list-style-type: none"> Utilize Chance Find Procedure during site selection process. Dialogue with Aboriginal communities regarding location of proposed camp and re-locate if possible to avoid conflict.
	Impacts to wildlife from poor site selection, handling of attractants/waste management and generally messy camp.	<ul style="list-style-type: none"> Choose camp location in an area that is not likely to be frequented by wildlife as evidenced by large and heavily used game trails, abundant natural food sources, scat etc. Ensure a proper attractant management plan is in place and followed. Ensure a proper waste management plan is in place and followed. Keep camp clean and tidy at all times. Consider a no hunting/fishing policy for employees and contractors.
	Impacts to environment, including water bodies and fish habitat, from poor site selection, handling of attractants/waste management and generally messy camp.	<ul style="list-style-type: none"> Adhere to minimum regulatory setback distances. Ensure a proper attractant management plan is in place and followed. Ensure a proper waste management plan is in place and followed. Keep camp clean and tidy at all times.

GUIDE 5

FREQUENTLY ASKED QUESTIONS

1. What is the difference between consultation and engagement?

Consultation is the word used to describe the legally-required process that occurs between the Crown and an Aboriginal community when the Crown is contemplating a decision or activity that may adversely impact an Aboriginal right or title. Consultation is the responsibility of the Crown. Aboriginal communities have a reciprocal obligation to participate in consultation with the Crown. In BC, this consultation process is often referred to as the “*referrals*” process.

Engagement is the process of meeting with Aboriginal communities and individuals over a period of time to share project information, understand and address local priorities, and build mutually beneficial relationships between the parties.

While consultation is the responsibility of the Crown, aspects of your engagement with Aboriginal communities will often form part of the consultation process. The Crown is likely to look to you to demonstrate the content and extent of your engagement with an Aboriginal community, and it may rely on this information as part of assessing whether it has met its duty to consult. The Crown may also specifically delegate certain aspects of the consultation process to you (although BC does not typically do so at the exploration stage).

2. How do I know if consultation has been delegated to me? How do I know if I have done enough?

The BC government does not typically delegate specific procedural aspects of consultation to explorers. In rare circumstances where delegation does occur, it is BC government policy to ensure this delegation is explicit to both the explorer and any involved Aboriginal community. Typically this will be via written correspondence outlining the Crown’s expectations regarding any consultation activities it expects the explorer to undertake. In the event you do receive consultation instructions from the BC government, or the instructions you receive are not clear, you should have a discussion with your regional mines office before commencing any consultation.

Whether or not aspects of consultation have been specifically delegated to you, you are likely to benefit from employing best practices and building relationships with Aboriginal communities. Moreover, government is likely to look to you to demonstrate the content and extent of your engagement with an Aboriginal community, and may rely on this information as part of assessing whether it has met its duty to consult. As a result, it is always advisable to keep a record of this engagement.

3. I received information from the MTO Consultation Areas Database that lists 15 First Nation organizations, including bands, tribal councils and treaty associations. Do I have to engage with all of them? If not, how do I know which organizations should be engaged?

You do not necessarily need to engage with all the groups listed. Typically, engagement will occur directly with individual bands; however, you may encounter a circumstance in which individual bands have directed government to consult with affiliated organizations, such as tribal councils. The best way to ensure you are engaging with the correct organization(s) is to contact the regional mines office to request that it review the list and confirm which organizations will be included in any Crown referral process.

4. My property overlaps with multiple traditional territories. Do I have to engage all of the Aboriginal communities associated with those territories?

Contact your local mines office to review the identified Aboriginal communities and confirm which groups would be included in any Crown referral process. You may find that some of the identified Aboriginal communities are not necessarily interested in your activities at the exploration stage, whereas others have a high level of interest. Generally speaking, at this stage it is considered a best practice to ensure all Aboriginal communities whose traditional territories overlap with your project area have an equal opportunity to understand the content and scope of your project activities. Some Aboriginal communities have protocols in place with neighbouring groups to manage shared territory areas. If this is indicated to you, confirm that the protocol is in fact in place and recognized by all affected groups.

Ensure all communications are properly documented, including those received from Aboriginal communities stating they do not wish to engage with you at this time.

5. I just met with an Aboriginal community that informed me my information identifying other Aboriginal communities as having traditional territories overlapping with my project area is incorrect, and that I do not have to meet with those groups. Is that accurate?

Assuming you have confirmed with the regional mines office which Aboriginal communities would be included in any Crown referral process, this information is not accurate. It is common for Aboriginal communities to disagree about traditional territory boundaries. This is an issue between the Aboriginal communities and the Crown to sort through. Industry has no place interfering in boundary disputes and should employ best practices by treating all identified Aboriginal communities equally.

6. Now that I know which Aboriginal communities to engage, with whom within that group should I meet? Do I talk to the Chief and Council, Hereditary Chief(s) or band staff?

Generally, Aboriginal communities will expect the key decision makers within your company to meet directly with their elected Chief and Council. Often, the Chief and Council will want to include Hereditary Chiefs, keyohs, and/or clan representatives in discussions. The best way to ensure you are meeting with the correct individual(s) is to call the band office and ask. You may also wish to clarify other communication protocols at this time or at your first meeting, including discerning roles, responsibilities, and procedures. In certain circumstances, the Chief and Council may instruct you to meet with band staff. Be prepared for your initial meeting to be an introductory meeting and do not expect any decisions to be made by the Aboriginal community during this meeting.

7. The Aboriginal community is not responding to my request to meet/my written correspondence. Now what?

It is important to understand that Aboriginal community leaders and administrators have limited resources and excessive demands on their time. Also keep in mind that cultural practices such as hunting, fishing, gathering and tracking have seasons that may impact the Aboriginal community's ability to respond in a timely manner.

In the event there is no response to your written correspondence, follow up via telephone call to ensure actual receipt of your correspondence.

Patience and persistence is often necessary to successfully arrange a meeting with an Aboriginal community. Use a combination of email and telephone calls, and ensure that accurate records are kept of all your attempts to connect with an Aboriginal community. Be prepared to submit your records to the Crown upon request.

8. What should I do when an Aboriginal community refuses to meet with me?

Aboriginal communities are not obligated to meet with industry. Where the Aboriginal community has refused to meet with you, ensure accurate records of all offers to meet are kept and be prepared to submit your records to the Crown upon request.

9. What is a SEA and why does it matter to me?

A SEA is a comprehensive agreement between the BC government and an Aboriginal community that discusses issues related to Crown land management and resources as they relate to the group's asserted Aboriginal rights and title. SEAs define consultation processes between the Crown and Aboriginal communities and include provisions for capacity funding to facilitate the Aboriginal community's participation in the established consultation processes.

As SEAs establish consultation processes, it is important to understand if your project falls in an area covered by a SEA, and if it does, how the established consultation processes affects your project. Review any SEAs that may be in place and follow up with the regional mines office to ensure your understanding of the SEA and consultation processes.

If the SEA indicates that Crown consultation will not occur at the current stage and scope of your proposed work program, it is considered a best practice to still engage the Aboriginal community by way of introductory letter.

10. During a Chief and Council meeting I was told that the meeting was not consultation. What does this mean?

The Aboriginal community is stating that while it may agree to engage with you, its expectation (and in fact the legal obligation of the Crown) is that consultation with the Crown must still occur. You, as a third party to the consultation process, should not take a position with respect to this question and leave it to the government to resolve.

You can confirm that you want to engage with the group directly as you feel you are in the best position to discuss your project plans and any associated concerns. While you may be required to report to government on your discussions, you do not object to the position of the Aboriginal community that your engagement is not consultation.

11. The Aboriginal community is requesting access to information that I, as a representative of a public company, cannot legally share. What do I do?

Take the time to explain to the Aboriginal community the constraints placed on public companies regarding disclosure and why the constraints exist. Ensure you share information as soon as you are legally able to and take the time to personally send information updates, such as news releases, to the Aboriginal community. Do not assume it is monitoring the news for your updates.

12. Do I need the consent of Aboriginal communities to access my mineral title and/or to run a work program?

Legally, you do not require the consent of Aboriginal communities to undertake work on Crown lands over which unproven rights are asserted, and those groups do not have veto powers in Canada. However, if an Aboriginal community has stated it does not want you working in their traditional territory, you should make best efforts to understand why and to seek common ground. You should discuss these issues with the relevant government decision-makers.

Ultimately it is a corporate decision whether to work in a traditional territory of an Aboriginal community that does not welcome you.

13. Is it reasonable for Chief and Council to request that I attend a community meeting?

Yes, it is reasonable for Chief and Council to want the broader community to meet you and hear firsthand about your activities within their traditional territory.

14. Is it reasonable for the Aboriginal community to request a site tour?

Yes, it is reasonable to undertake a site tour so the Aboriginal community can see your activities firsthand. Site tours provide a casual and informative opportunity for you to further your relationship with the Aboriginal community. Consider including elders and/or youth in your site tours.

15. I was asked to organize a site tour. Do I have to pay per diem, honoraria, and/or transport and accommodation costs for the attendees?

The provision of ad hoc funding is not recommended. AME BC encourages its members to confirm any funding provision in advance in writing, including the purpose of the funding and any expectations or timelines regarding its use.

Reimbursement requests for direct, out-of-pocket expenses associated with travelling to and from the site tour pick up location are considered reasonable. As always, the scope of the tour should be related to the stage of the project. However, all such payments (whether capacity funding or travel expenditures) should be documented in a formal agreement or company policy before proponents agree to pay.

16. The Aboriginal community has asked for helicopter time, should I provide this?

If the Aboriginal community wishes to have an aerial look at the proposed work site, consider incorporating this into a scheduled site tour. However, if the request is not directly related to your work program, then you may respectfully decline.

17. Whose advice do I take when the band staff contradicts the Chief or Council?

In the event of conflicting information, defer to the elected Chief and Council. Ensure any miscommunication that may be the driver of the conflict are clearly understood and addressed. Ensure adequate documentation of all communications.

To avoid such conflicts, communication protocols (roles, responsibilities and procedures) should be raised and clarified (ideally in writing) during initial meetings.

18. The Aboriginal community wants me to conduct archaeology studies on my exploration program. Do I have to do this?

Unless it is a condition of your permit, you do not have to do this. However, you must understand and comply with provincial legislation related to heritage sites and ensure you do not alter or destroy any heritage resources. Understand that undertaking comprehensive archaeology work is a requirement of any environmental assessment process. While you may not legally have to undertake any archaeology work at the exploration stage, you should take it into consideration. This may be an appropriate time to initiate archaeology work as important information gathered through this work will help to inform future work activities on your project.

19. The Aboriginal community wants me to undertake water quality sampling. Should I do this?

Consideration should be given to the stage and scope of your current work program along with the proximity of activities, such as drilling, to water bodies and sensitive habitat. In the earlier stages of exploration activities, it would be reasonable to consider collecting appropriately located water quality samples before and after drilling.

20. The Aboriginal community wants me to pay for a traditional use study on my grass roots exploration project. Should I do this?

It is not reasonable to undertake a comprehensive traditional use study at the exploration stage. However, it is reasonable to make a firm commitment to the Aboriginal community to undertake such a study as an integral component of environmental baseline work undertaken in preparation of a pre-feasibility report.

You should ensure the Aboriginal group has the capacity to review your permit application package so that it can identify any concerns with your proposed activities related to the community's asserted Aboriginal rights.

21. The Aboriginal community has requested that I hire an environmental/wildlife monitor. What does this involve and should I do so?

Aboriginal communities can have considerable concerns regarding potential impacts to wildlife and the environment. Having an environmental/wildlife monitor on-site may provide comfort to the Aboriginal community that you are indeed employing best practices in your approach to field activities. Examples of what this role may do include:

- maintaining a wildlife sighting log;
- reviewing proposed drill pad locations to ensure clearing the area will not impact things such as ground nests, raptor nests, berry picking, or heritage values;
- ensuring the proper storage, handling, and disposal of waste and contaminants;
- ensuring the proper storage, handling, and disposal of attractants; and
- ensuring the reclamation of drill sites, camp sites and other disturbance associated with exploration activities.

Ensure that duties and expectations for this role are clearly articulated and understood by field crew personnel, the Aboriginal community and the actual employee. Most Aboriginal communities have members who have received monitoring training; however, training support may be required in some instances. Any environmental/wildlife monitor should be appropriately qualified and should be primarily responsible to you as the project owner.

As many exploration projects do not have enough field activity to warrant a fulltime monitor position, consider grouping this role with another role that is required for the duration of the work program, such as a first aid attendant or field technician. As the scope of your exploration activities increase, it is reasonable to expect that the role of the monitor will also increase.

Joint reporting protocols (to the explorer and the Aboriginal community) can also be established. This requires careful planning and training to ensure that the scope and methodology of monitoring activities is appropriate. Explorers should carefully consider whether joint reporting protocols are appropriate and feasible in the circumstances.

22. The Aboriginal community has expressed concerns around companies just "*walking away*" from active exploration sites, leaving messes behind. How do I assure the group this will not happen?

Many Aboriginal communities have experienced historical activities within their traditional territories that were not subject to the same standards in place today. Have a reclamation plan in place no matter the size of the project. Take the time to explain the modern reclamation and bonding process in BC to the Aboriginal community, emphasizing that it is taken into consideration up-front, during the permit approval process.

23. The Aboriginal community has asked me to hire its joint venture partner. How do I respond? What should I do?

It is reasonable to work with Aboriginal communities to identify business opportunities for the supply of goods and services by Aboriginal-owned businesses or Aboriginal individuals in relation to exploration activities. Ask the Aboriginal community to provide a business directory of band-owned and operated services to be added to your tendering process. You may consider providing advance notice of contract opportunities for the supply of goods and services in relation to your exploration activities, which Aboriginal-owned businesses or individuals may be interested in pursuing.

It is reasonable to expect all Aboriginal owned businesses to meet environmental, health and safety, and performance standards, and to be commercially competitive (during the bid and work phases) in order to secure contract work from you. If you find a situation where the service is substandard or the Aboriginal business is unable to perform the task, you should be transparent with the Aboriginal community, explain the shortcomings, and look for collaborative solutions to the issues. This communication should be seen as positive business relationship building. Ultimately, the mutually agreeable contracts that you have signed with an Aboriginal community should govern the work, including remedies and consequences to issues that arise.

Preferential hiring for local people and local companies is encouraged, assuming that the hiring is based on qualifications and merit. Establishing company policy statements that outline these hiring principles can be helpful. Ultimately, it is your decision to make regarding who to employ or with whom to contract.

24. What should I do when an Aboriginal community will not meet with me, even though I know some of the group members want me to carry out my exploration work program so that they can be hired?

In the event you are unsuccessful in meeting with an Aboriginal community but still wish to offer local employment opportunities, ensure equal opportunity is provided to the community through advertising locally and undertaking a transparent interviewing process. Examples of locations where you can advertise your opportunities include the local health centre, post office, and grocery store. Ensure your advertisement is also sent to the band office (unless you have been directed by the Aboriginal community not to do so).

25. I received an invoice from an Aboriginal community related to a government referral for my *Mines Act* permit application. Do I have to pay this?

Legally, you do not need to pay this. Aboriginal communities have a reciprocal obligation to participate in consultation with the Crown and providing funding for this legal obligation is not a requirement of either industry or the Crown. Keep in mind that Aboriginal communities have limited resources and excessive demands for consultation that are not limited to the mineral exploration industry. It may therefore be appropriate for industry to consider providing reasonable capacity funding to Aboriginal communities so they can participate in the consultation process related to your project. AME BC does not recommend the provision of ad hoc funding. Rather, it encourages its members to confirm any funding provision in advance through written documents that clearly lay out the purpose of the funding, including any expectations or timelines for its use.

26. I want to hire locally. Do I have to hire individuals that the Aboriginal community chooses or can I hire whomever I want from the band? Can I set up an interview process?

It is recommended that you work with Aboriginal communities to identify any employment opportunities that may be sourced locally. It is important to ensure everyone within the community has equal opportunity for employment. Therefore, it is advisable to post job vacancies in band offices, community centers and/or health clinics. As part of your interview process, undertake reference checks, which may provide Aboriginal community leaders the opportunity for input into the hiring process.

Ensuring industry has a positive experience in hiring Aboriginal community members is important to many community leaders. As such, seeking input from these leaders during the hiring process is not unreasonable. Nonetheless, the decision of who to hire is ultimately yours.

27. I have my trained and experienced crew that consists of Aboriginal peoples from bands elsewhere in BC and Canada. The Aboriginal community in whose territory my claims are located has informed me that I cannot bring in my Aboriginal crew, but it does not seem to mind about the non-Aboriginal crew. What should I do?

It is recommended that you source local employment to the maximum extent possible and as stated above, to ensure everyone within the communication has equal opportunity for employment.

In the event you have attempted to source locally and cannot find qualified local personnel, discuss this with the local Chief and Council, assuring them that while future opportunities will be made available locally, in the interim you will be moving forward with your selected crew, which consists of non-local Aboriginal peoples.

28. I received an invoice from an Aboriginal community that I met with last week for costs related to the meeting. This wasn't previously discussed or agreed to; do I have to pay this?

As stated above, the provision of ad hoc funding is not recommended. AME BC encourages its members to confirm in advance any funding provision through written documents that clearly lay out the purpose of the funding, including any expectations or timelines for its use.

Companies may wish to establish a corporate policy that clearly articulates the parameters for the provision of funds.

29. The Aboriginal community has requested capacity funding. What does this mean and is this reasonable?

Aboriginal communities have limited resources and excessive demands for consultation that are not limited to the mineral exploration industry. It may therefore be appropriate for industry to consider providing reasonable capacity funding to the Aboriginal community so they can participate in the consultation process related to your project.

AME BC does not recommend the provision of ad hoc funding and instead encourages its members to confirm any funding provision in advance through written documents that clearly lay out the purpose of the funding, including any expectations and timelines for its use.

Funding provisions should be directly related to the current stage and scope of your work program and tied to key deliverables, such as review of permit application packages.

30. Should I negotiate an agreement with an Aboriginal community? What is reasonable to include in the agreement?

Upon request from the Aboriginal community, it is reasonable to negotiate an agreement. An agreement that is properly scoped to the stage of your exploration program can increase project certainty, particularly around timelines, while providing the Aboriginal community with comfort that they will receive information in a timely manner.

It is reasonable to include provisions for communication processes, commitments around sourcing employment and business services locally, as well as reasonable capacity funding tied to specific deliverables, such as review of permit application documents. It is also reasonable to include a commitment to try to negotiate future agreements, such as an IBA, if and when a decision is made to advance an exploration project through to mine development and operation.

Note that a company may also initiate discussions toward an agreement.

31. Why does an Aboriginal community want me to sign an agreement?

Most Aboriginal communities request an agreement so they can have increased certainty around communications and information sharing processes as well as ensuring that their members will have access to training, employment and business opportunities.

32. The Aboriginal community has requested a percentage of my exploration budget as a contingency. Should I pay?

The only direct funding to an Aboriginal community should be for capacity-funding as negotiated, and should be linked to specific deliverables and processes that involve the Aboriginal community's direct participation. Paying any contingency fee or a fee in order to access Crown land is not recommended.

33. The Aboriginal community has informed me that it expects a royalty from any helicopter landing or drilling within its territory. Is this legal and do I have to pay?

The only direct funding to an Aboriginal community should be for capacity-funding as negotiated, and should be linked to specific deliverables and processes that involve the Aboriginal community's direct participation. Paying any fee in order to access Crown land is not recommended.

34. I have received multiple requests for sponsorship and/or training funding support. How do I handle this? What is reasonable? Am I required to do this?

Consider developing a corporate policy and application process that clearly states what requests will be considered and the process for making such requests.

Contributing to local community events or initiatives should be viewed as a component of your relationship building efforts with the Aboriginal community. Sponsorship of activities that allow for your direct participation can provide excellent opportunities for you to interact with a broad spectrum of the community. Sponsorship may be provided to members of Aboriginal communities to attend educational conferences, such as short courses or skills training classes or programs.

GLOSSARY

AND DEFINITION OF ACRONYMS

Aboriginal community

A particular First Nation, Inuit or Métis community.

Aboriginal peoples

Aboriginal peoples is a broad term that includes three distinct groups, namely, First Nations, Inuit and Métis.

Aboriginal rights

Aboriginal rights are rights held by Aboriginal peoples to engage in certain activities which are an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal community claiming such rights.

Aboriginal title

Aboriginal title is a right in land which includes the right to use land for a variety of activities, not all of which need be aspects of practices, customs and traditions which are integral to the distinctive cultures of Aboriginal societies. However, uses of the land must not be irreconcilable with the nature of the attachment to the land which forms the basis of the particular group's Aboriginal title.

Accommodation

A remedy for possible infringement of Aboriginal rights or title, with an aim to avoid or minimize that infringement.

Band Chief

Band Chief is someone who is elected by band members to govern for a specified term, pursuant to the *Indian Act*.

Capacity funding

Funding provided to an Aboriginal community by an explorer to reasonably assist with the group's costs of engagement.

Chance find procedure

A chance find procedure is a project-specific procedure that outlines the actions to be taken if previously unknown cultural heritage is encountered.

Chief and Council

Pursuant to the Indian Act, bands are governed by one chief and an elected council. The number of counsellors on a council range from two to twelve, depending on the size of the band.

Consultation

The process by which an Aboriginal community is notified about contemplated Crown activities or decisions that could affect the group's interests and is given an opportunity to express its views or concerns on the subject, and which views and concerns the Crown is required to consider fully and fairly.

CAD

Consultative Areas Database.

Crown

Depending on the context, the federal or provincial government.

ECDA

Economic and Community Development Agreement.

Engagement

Engagement is the process of meeting with Aboriginal communities and individuals over a period of time to share project information, to understand and address local priorities and concerns toward the goal of building a mutually beneficial relationship.

First Nations

The term First Nations refers to the various and diverse Aboriginal peoples in Canada who are neither Inuit nor Métis. First Nations includes over 50 distinct linguistic and cultural groups reflected in 634 First Nation communities across Canada.

FLNRO

Ministry of Forests, Lands and Natural Resource Operations.

FPIC

Free, Prior and Informed Consent. A concept contained within UNDRIP.

HSRC

Health, Safety and Reclamation Code for Mines in British Columbia.

Hereditary Chief

Hereditary Chief is a leader, given the power to lead by custom.

IBA

Impact Benefit Agreement.

Indian Reserve

Indian Reserve means a tract of land that has been set apart by the Crown for the use and benefit of a band.

Keyoh

The term is a Dakelh (Carrier) word meaning “*territory*”. The traditional meaning is the area of which a certain group of people, basically an extended family group, have stewardship and ownership rights within a large Aboriginal community.

MEM

Ministry of Energy and Mines.

Métis peoples

A distinct and constitutionally recognized Aboriginal group whose ancestors are both Aboriginal and European.

MTA

Mineral Tenure Act.

MTO

Mineral Titles Online.

MYAB

Multi-year area-based permit.

NoW

Notice of Work.

SCC

Supreme Court of Canada.

SEA

Strategic Engagement Agreement.

Strength of claim assessment

A strength of claim assessment is an historical and anthropological assessment of the facts of a particular claim asserted by an Aboriginal community in the area of the proposed activity (Aboriginal Consultation and Accommodation, Government of Canada, 2011, p. 42: online at www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_eng.pdf).

Traditional knowledge

A cumulative body of knowledge, know-how, practices and representations maintained and developed by Aboriginal peoples.

Traditional territory

The geographic area identified by an Aboriginal group to be the area of land which they and/or their ancestors traditionally occupied or used.

Treaty rights

Treaty rights are those rights provided for by treaties and agreements between Aboriginal peoples and the Crown that are protected under section 35(1) of the Constitution Act, 1982

Tribal council

Tribal Councils are not defined under the *Indian Act*. Tribal Councils are mainly Aboriginal political organizations but some also administer community programs and services.

TU/TK study

A traditional use or knowledge study.

UNDRIP

United Nations Declaration on the Rights of Indigenous Peoples.

AME BC is the lead association for the mineral exploration and development industry based in British Columbia. Established in 1912, AME BC represents, advocates, protects and promotes the interests of thousands of members who are engaged in mineral exploration and development in B.C. and throughout the world. AME BC encourages a safe, economically strong and environmentally responsible industry by providing clear initiatives, policies, events and tools to support its membership.



