



# **Indigenous Engagement Guidebook**

**September 2020**

This document is one of five chapters in the Association for Mineral Exploration (AME) British Columbia's Indigenous Engagement Guidebook. This guidebook intends to provide mineral explorers and developers working in BC with the context and understanding to effectively create open and strong relationships that can lead to successful delivery of exploration and resource development projects.

The guidebook can be found on the AME website at <https://amebc.ca/resources/tools/>

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## Chapter 1: Indigenous Engagement Guidebook Introduction

At the Association for Mineral Exploration (AME), we believe successful projects and partnerships provide mutual benefit and support efforts towards reconciliation.

This series of information and tools intends to provide mineral explorers and developers working in British Columbia (BC) with the context and understanding to effectively create open and strong relationships that can lead to successful delivery of exploration and resource development projects. While some requirements are spelled out clearly in regulations and law, others are found more broadly in Canadian case law, local expectations and best practices. Mineral explorers and developers may also look to guidance and calls to action in [Canada's Truth and Reconciliation Commission report](#) as well as the principles within the [United Nations Declaration for Rights for Indigenous Peoples](#). In addition, the Canadian government has created "[10 Principles: Respecting the Government of Canada's Relationship With Indigenous Peoples](#)".

These tools have been developed with a range of mineral explorers and developers in mind, but also recognizes other key readers may include the regulators, investors and Indigenous communities with whom mineral explorers and developers engage and work. Furthermore, Indigenous peoples and companies are increasingly active in the exploration and mining sector; these tools are meant to be helpful for all readers who are participating or interested in mineral exploration and development in BC.

Early engagement with Indigenous peoples is a key component of a successful approach to mineral exploration and resource development. Proper, early and meaningful engagement should lead to

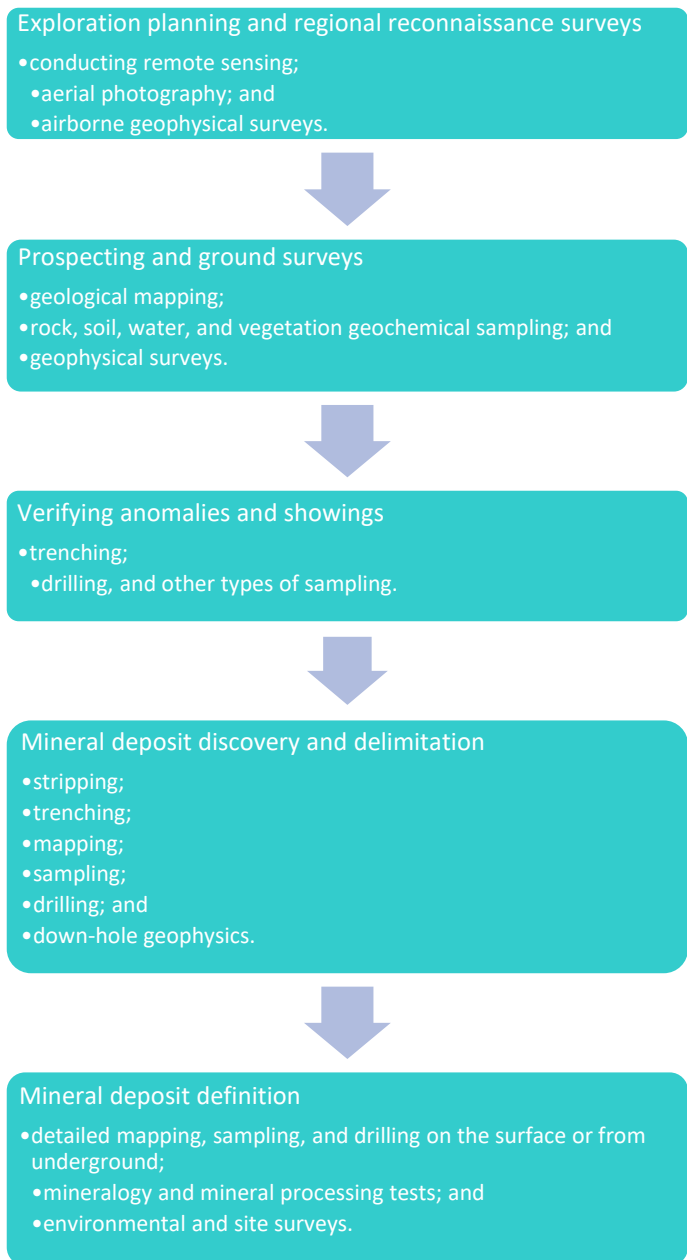
respectful relationships, strong projects and mutual benefits for Indigenous peoples, industry and society as a whole. The Provincial and/or Federal government is legally obligated to consult and, where appropriate, accommodate Indigenous peoples on land and resource decisions that could impact Indigenous rights and interests.

Mineral explorers and developers have an important role to play in projects successfully moving forward. Explorers are often the first to connect with communities and are well suited to share up-to-date information regarding their project. Mineral explorers and developers can also create direct opportunities for Indigenous input, improved understanding of mineral exploration, shared decision-making, relationship building and economic participation. Indigenous leaders and community members have knowledge they may choose to share that could assist or otherwise improve the exploration and development activities. Mineral explorers, developers and Indigenous peoples can work together for mutual benefit through early engagement, as evident in the many good projects in British Columbia.

### What is Mineral Exploration?

Mineral exploration is the search for materials in the earth's crust that appear in high enough concentrations and amounts to be extracted and processed for profit. It is the first step in the mining lifecycle and includes a wide range of techniques and activities and may take several years to confirm a resource. The supply of minerals is critical to support the needs of our modern society and furthers our ability to grow the "green" economy.

During the mineral exploration stage, large areas of land are often evaluated by airborne or ground-based surveys, such as those conducted by the [BC Geological Survey](#) or [Geoscience BC](#). These surveys provide important geological and geoscientific information about the occurrence and potential of mineral and coal resources. This information encourages investment in mineral and coal exploration by helping prospectors and companies target promising areas.



Mineral exploration covers a wide range of objectives and activities (as shown in the box on the previous page) that begin with the selection of a target area. The type of work carried out depends on the minerals being sought and how much information is already known about a deposit and area geology. Pursuing promising clues that may lead to a mineral discovery often requires substantial investment and years of work and only a small number of these clues lead to discovery. It is not until drilling and rock excavation have more clearly defined the extent of a deposit and cost studies have concluded that profitable extraction is possible while taking into consideration environmental and social conditions.

As described by the federal department of [Natural Resources Canada \(NRCan\)](#) on their website, mineral exploration may involve a variety of different activities as summarized in the flow chart. Generally, exploration can be divided into two stages: initial exploration and advanced exploration.

More advanced exploration activities include:

- Project engineering, done by conducting pilot tests of processing methods, engineering design and planning, and risk analysis;
- Project economics, accomplished through financial studies (pre-feasibility studies) that include mine capital and operating cost estimations; and
- Feasibility studies and production decisions, accomplished through an exhaustive due diligence.

It should be noted that it is the duty of every mineral explorer and developer, whether an individual or company, to comply with all Federal and Provincial laws and regulations, specifically, applicable sections of the [Mines Act](#), and parts of the [Health, Safety and Reclamation Code in BC](#).

This information in this Guidebook does not replace laws or regulations, nor does it substitute for the advice of professionals in the field, including legal counsel and Indigenous governments. Should anything contained in this information or the tools appear to be in variance with the *Mines Act* and Code, current case law, or other relevant legislation or regulations, the provisions of the *Mines Act* and Code, current case law, or other relevant legislation or regulations will prevail.

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## Chapter 2: Regulation of Mineral Exploration Activities in BC

There are a multitude of Provincial and Federal laws and regulations that can apply to the mineral exploration and mining processes in British Columbia, although federal jurisdiction is less likely to apply to smaller exploration projects. This chapter outlines the key regulatory requirements for mineral exploration in BC, and some important non-legally binding documents that will influence engagement by explorers in BC.

This chapter contains a summary based on the latest information as of July 2020. For the most up to date information about the regulatory regime for mineral exploration visit the BC [Ministry of Energy, Mines and Petroleum Resources website](#)(MEMPR).

### 2.1 Ministries Responsible for Permitting

The provincial government of BC has primary jurisdiction over the regulation of mineral exploration and mining through the [Mineral Tenure Act \(MTA\)](#), the [Coal Act](#) and the [Mines Act](#). Several ministries within the provincial government may also have jurisdiction related to a project, depending on the location and nature of exploration activities. As described in the BC [Proponent Guide to Coordinated Authorizations for Major Mine Projects \(2013\)](#):

- No permit is required for prospecting using hand tools.
- A free miner certificate under the MTA enables a person or company to be eligible for a mineral title on an area.
- Title under the MTA or the *Coal Act* provides rights to minerals or coal.
- A mineral exploration permit under the *Mines Act* is required for exploration activities involving mechanical disturbance (application is a "Notice of Work").
- An effluent discharge permit under the *Environmental Management Act* may be required during advanced exploration activities.
- *Heritage Conservation Act* requirements need to be met before site disturbance.

- A free use permit under the *Forest Act* may be required to cut timber.
- Depending on the scope of the work and activities, other permits may be required such as a *Land Act* Permit or a permit under the *Water Sustainability Act*.

Chapter 5 of this guidebook expands on the regulations that may be applicable to mineral exploration activities.

The name of the ministry responsible for administering the MTA and *Mines Act* has changed over time and may change again. As of July 2020, it is MEMPR that is responsible for approving and regulating mineral exploration and development 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).

## 2.2 Claims, Permitting and Engagement

A **mineral claim** may be registered for **mineral title** in areas approved by the BC government. Parks or other protected areas, reserve land, heritage conservancies and certain other land classifications are closed to mineral claim registration. Based on best practices, AME suggests that explorers in BC view this mineral title acquisition stage as the right time to **initiate engagement** with affected Indigenous communities. Chapters 3 and 4 of this guidebook outline how to identify communities, prepare an engagement plan, and initiate engagement activities, prior to setting boots on the ground or obtaining permits.

The acquisition of a mineral title is separate from the right to carry out exploration, development or mining. The MTA provides the holder of a valid **Free Miner Certificate** with the exclusive right to explore that area for minerals, and authorization for any form of disturbance is typically via the *Mines Act*. The MTA also provides the legal and policy framework for the administration of mineral resources, including the acquisition of mineral titles through an on-line system known as Mineral Titles Online (MTO). Coal and placer rights are separate and distinct from mineral rights and are administered under specific tenure systems.

The *Mines Act* regulates the exploration, development, and production of minerals. The Act 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. Trenching, drilling, camp construction and site reclamation are examples of mechanized activities. A permit is not required for prospecting or non-mechanized activities including mapping; collecting water, rock, soil, till, and stream sediment samples; biogeochemistry sampling; and using helicopters and other modes of transportation.

## 2.3 Notice of Work

A **permit** is obtained by submitting a [Notice of Work \(NoW\) application](#) via FrontCounterBC, an online application system. It is best practice to include a **record of engagement activities** to date when submitting permit applications, therefore we encourage engagement with local communities at the earliest stages.

The online application system offers the options to apply for a one-year or a multi-year area-based (MYAB) permit, which authorizes exploration activities for up to five years within an approved area. A detailed plan for first year activities must be included in the application.

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 number of referrals (a letter from the provincial government to notify the community of the permit application) sent to potentially affected Indigenous communities, easing the burden on the communities' staff that review these documents. Some Indigenous communities do not have the capacity to respond to referrals and engagement efforts and Chapter 3 examines the causes and options to help with capacity building.

Some Indigenous communities may perceive the MYAB permit to be too flexible such that the communities are unsure about which activities will take place from year to year and the sum of those effects. This uncertainty may require exploration companies take extra care to build a strong relationship and foundation of trust and develop clear communication channels to successfully pursue and implement a MYAB in BC.

### *Notice of Work (NoW) Consultation and Engagement*

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 government's legal **duty to consult** is currently triggered upon submission of the NoW application.

The government undertakes its duty to consult Indigenous communities through its referral process before NoW permit activities can take place. During this process, information submitted by the explorer in their NoW application is distributed to identified Indigenous communities and government ministries for consultation and input. Consultation activities, including the procedural elements of consultation undertaken by the explorer, and the outcomes are considered by MEMPR when deciding whether to issue a NoW permit, and with what conditions.

## 2.4 UN Declaration on the Rights of Indigenous Peoples

The United Nations (UN) General Assembly adopted the [UN Declaration on the Rights of Indigenous Peoples](#) (UN Declaration or UNDRIP) in 2007. The UN Declaration emphasizes the Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous needs and aspirations.

Over 140 countries have signed the UN Declaration, including Canada who adopted it as the framework for reconciliation with Indigenous peoples in May 2016. In late 2019, BC became the first Canadian province to implement the UN Declaration through the [BC Declaration on the Rights of Indigenous Peoples Act](#).

Exploration companies and their employees should be familiar with both the UN and BC Declarations: Explorers in BC play an important role in physically implementing these Declarations "on the ground".

Numerous UNDRIP Articles provide principles and guidance relevant to development such as mineral exploration. Some selected articles are summarized below. Mineral explorers can read the [UN Declaration online](#). The following Articles within the UN Declaration are particularly applicable to exploration:

- Article 8 states that Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture and goes on to say that States (countries) must provide mechanisms for prevention of, and redress for example from any action which has the aim or effect of dispossessing them of their lands, territories or resources.
- Article 10 says that Indigenous peoples should not be forcibly removed from their land or territories.
- Article 19 says that “States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

**Free, Prior and Informed Consent (FPIC)** is one of the principles in UNDRIP that has gained attention in Canada. UNDRIP is an aspirational document and 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, where necessary, infringements on asserted or proven Indigenous rights and title or treaty rights.

Mineral explorers can anticipate that the UNDRIP principles will likely play a greater role in Canadian policy and regulation going forward. Where possible, mineral explorers are encouraged to gain the support of Indigenous groups through meaningful engagement and the avoidance, mitigation or accommodation of concerns and interests, ideally with the ultimate outcome being activities and projects that result in mutual benefits.



# The Exploration Process and When to Engage

## STAKING

Once you obtain a **Free Miner Certificate**, Mineral and Placer Tenures can be staked online at **Mineral Titles Online**. The *Mineral Tenure Act* explains all government legislation and laws related to staking a mineral claim in BC.

Understanding the social and environmental context is key to planning. Early engagement with Indigenous communities will aid in the understanding of goals and expectations from both parties. All types of exploration will warrant different levels of engagement and/or consultation with Indigenous people.

### Non-mechanized activity

Non-mechanized, early stage prospecting, soil sampling and airborne geophysical surveys do not require an exploration permit (**Notice of Work, or NoW**) however it is important to initiate a conversation with Indigenous people at this point.

### Mechanized activity

Line cutting, camp building, road construction, diamond drilling and all other mechanized activity that causes ground disturbance will require a **NoW**. Ensure you are clear and concise when discussing the type and amount of disturbance with Indigenous communities, including a well-defined year one plan.

## NoW APPLICATION

NoW is completed online at **Front Counter BC** through the Ministry of Energy, Mines and Petroleum Resources (MEMPR). Other Regional offices will also be associated with the NoW Process, including the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD).

### Description of Work

- Access roads, trails, heli-pads
- Camps, staging areas
- Cut lines
- Exploration surface drilling
- Mechanical trenching, test pits
- Settling ponds
- Bulk sample
- Underground exploration
- Water supply
- Complete reclamation plan for all activities

### Other Information

- Mineral tenure location
- Vegetation, access, physiography
- Emergency Response Plan
- Caribou Management Plan
- Cultural Heritage Chance Find Procedure
- Archaeological Studies
- Record of Indigenous engagement
- Equipment
- Timber Cutting

## NoW APPROVED

## EXPLORATION

If your NoW Application is approved, exploration work can begin. Conduct exploration activities in accordance with the *Mines Act, Health, Safety and Reclamation Code for Mines in British Columbia*, and *Riparian Management Plan*. Meet the requirements in the NoW including:

### Reclamation Bond

A Reclamation Bond may be required. Search for the 'Reclamation Bond Calculator' on the BC Government website.

### Additional Permits

- Free Use Permit
- Occupant License to Cut
- Water Use Permit
- Road Use Permits

### Annual Reporting

Each year, an Annual Summary of Exploration Activities (ASEA) must be submitted to MEMPR, along with a Multi Year Area Based (MYAB) MYAB summary, if a multi-year NoW permit was issued.

Ongoing engagement with affected communities and reclamation of disturbed lands

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## Chapter 3: Relationship Building

Relationship building is a dynamic process. It does not happen in a vacuum and many factors external to mineral exploration play a role. In BC, these include questions about land rights and access, UNDRIP principles, and how individuals and companies can contribute to reconciliation in Canada.

Within this changing landscape, the foundation of a successful exploration program will be the relationships between mineral explorers and Indigenous leadership and community members built on trust, transparency, and flexibility. Strong relationships will endure, grow, and contribute to both meaningful reconciliation and the project's viability and certainty. An awareness of the social and cultural factors that may influence these relationships is key.

### 3.1 Cultural Awareness

When embarking on a new relationship, it is important to be prepared to consider other perspectives and as much context and background information as is available to you. This will help develop healthy relationships built on respect and avoid misunderstandings.

Where possible, AME recommends that mineral explorers who are planning to engage directly with Indigenous groups take, at a minimum, basic cultural awareness training prior to embarking on relationship building and engagement. Private companies provide this training in BC and other parts of Canada. Mineral explorers may also ask Indigenous communities if they offer their own local cultural training programs.

As with any new relationship in an unfamiliar culture, a good approach is to be respectful, open, and humble. Seek to learn from individuals with local knowledge, but bear in mind that some information held by community members may require community protocols be followed to access it, and that some information may be protected by legislation, or considered confidential.

### *Relationships built on shared values*

Engagement must start with looking deeper. Ask yourself, how can I better understand your culture and how your community functions? How does this effect our ability to communicate and connect? Although there are no simple answers, one effective approach is to think more deeply about the shared values and the different backgrounds and realities the people in your project's area of influence are facing.

Building a relationship with an Indigenous community may mean moving out of your comfort zone. Explorers should be prepared to move beyond discussing the project and its opportunities with the political or economic development groups within a community: think about building relationships and common understanding with other community members, too. This could include making meaningful connections throughout the community, including with Elders, youth, and Indigenous business owners. Chapter 5 of this guidebook - Engagement in Practice – has practical ideas for building relationships.

## **3.2 Concepts of Land Stewardship**

There are differences in the ways that Indigenous people and non-Indigenous people view the world. These views are often referred to as Indigenous or Traditional Knowledge (TK) and Western science. Many non-Indigenous Canadians with European heritage are taught Western science at school and may be unfamiliar with TK.

Although we should recognize the diversity within and between Indigenous groups and people from European and other non-Indigenous cultures, there are fundamental differences that are important to keep in mind when working with Indigenous peoples.

For instance, in the Western world view people take for granted land ownership and individual rights over a piece of planet Earth, but land or property ownership is not a globally accepted concept. In most Indigenous world views, land is held collectively, and the people steward the land for the benefit of all, including future generations.

Western science tends to examine the world as isolated categories and components, whereas Indigenous peoples often see and experience these components as borderless and fundamentally interconnected. This can make it difficult for those with a Western world view to fully understand potential impacts to Indigenous rights. This is in part because Western scientific categories often prevent the meaningful, holistic understanding of impacts on traditional land and Indigenous culture.

## **3.3 Exploration and Reconciliation**

The outcomes of Canada's Truth and Reconciliation Commission (TRC) in June 2015 brought discussion about reconciliation between Indigenous Peoples and non-Indigenous Canadians into mainstream Canadian discourse. The TRC focused on the historical legacy of colonization of Indigenous peoples in Canada and included a calls-to-action for all Canadians to pursue reconciliation.

Mutually respectful relationships form the foundation of reconciliation. In the context of consultation and engagement, 'meaningful' means respectful, honest and clear communications, showing that your intentions are genuine, and working to identify and mitigate concerns to the best of your ability. Within these relationships, the rights and values of each party are respected, and you find the path forward by working together through meaningful communication and connection.

As described by Isadore Day in the *Canadian Mining Journal* in 2016, “the ‘Reconciliation Lens’ can be a way for industry to create stronger relations, avoid conflicts, build strong business partnerships and help achieve collective prosperity with First Nations”.

Each relationship is unique and what worked well for a project in another jurisdiction may not work as well on another project.

AME recommends that mineral explorers familiarize themselves with the TRC and how individuals and companies can contribute to reconciliation. Practical guidance, toolkits and resources can be found on the [Reconciliation Canada website](#). Specifically, [Call to Action 92](#) is directed towards business and industry and calls on the corporate sector to adopt UNDRIP as a reconciliation framework and perform actions that lead to reconciliation.

### 3.4 Building Lasting Relationships

The role of mineral explorers in reconciliation may include learning about history, improving cultural awareness, hearing Indigenous peoples’ stories and concerns, and ensuring that engagement efforts made by mineral exploration companies are early and meaningful.

Opportunities for reconciliation and relationship building can be both planned (e.g. specific training) and less formal. These less formal opportunities for connection can build trust if approached with a genuine interest in strengthening connections. Ideas and examples of relationship building activities and efforts include:

- Participation by exploration teams in events, if invited by the community.
- Inviting community leadership or members to visit active exploration sites.
- Inviting community leadership or members to visit company offices.
- Finding opportunities to support businesses outside of the direct exploration work (e.g., inviting a local artist to create gifts for company clients, ensuring all food for meetings comes from local caterers, etc.).
- Identifying meaningful sponsorship opportunities in the community.
- Looking for meaningful community investment opportunities to support community initiatives and needs.
- Participating in job fairs or other community events where industry is invited to participate.

All relationship building actions should be ethical, thoughtfully considered, and align with local cultural expectations.

### 3.5 Community Capacity

Mineral exploration brings potential opportunities to communities, but project assessments and permit applications also create extra work for Indigenous groups. The community and/or leadership will need to, for example, take time to review the exploration project and proposed work, meet with the mineral explorer or group, and hold leadership or community meetings to discuss the proposed work. There are expenses associated with these tasks. Often, Indigenous communities do not have the tax base, revenues, or people to allocate to these tasks.

When it comes to responding to engagement efforts by mineral explorers, each Indigenous community has different abilities, competencies and resources. Their capacity to engage depends on individual capabilities, leadership knowledge and availability, community experience and interest, available resources, and other factors. Other natural resource projects beyond exploration and development may be occurring simultaneously in the territory which will put added demands on the individual or department responsible.

At the mineral exploration stage, two aspects of community capacity may impact engagement efforts:

1. **Human capacity:** Is someone available to manage and review your files?
2. **Technical capacity:** Does the person assigned to your file have the knowledge and experience to understand and comment meaningfully on your project plans?

Indigenous communities may ask mineral explorers to support and fund studies, reviews, referrals or regulatory processes, particularly if the community has previous experience with projects with larger budgets. Mineral explorers should be transparent about the scope of the exploration work and the scale of any potential impacts: explain that the project is at an early stage and funds for community capacity may be limited until the project advances further. However, mineral explorers should be prepared to support the community to have sufficient capacity to review the project in a meaningful way from the outset. This could include sharing the costs of a consultant or hosting community members in the field to see the impact of mineral exploration activities.

Chapter 4 examines when capacity funding may be requested, and when and how to create formal agreements regarding capacity funding.

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## Chapter 4: Preparing for Effective Engagement

To engage with someone is to establish a meaningful contact or connection. Mineral explorers should aim to create meaningful connections with Indigenous peoples who may have rights or interests associated with the area within which mineral exploration activities. This includes early stage field work such as rock and soil sampling.

Early engagement, prior to setting boots on the ground or submitting a NoW, should build relationships to ease information exchange and to create opportunities to identify mutual benefits for those involved.

This chapter provides practical advice on how to create an effective plan for engagement with Indigenous peoples (an 'engagement plan') appropriate to the stages and scope of exploration work.

In this chapter, we examine:

- The various elements of successful engagement (Section 4.1 and subsections)
- How to prepare exploration and local staff for engagement (Section 4.2)
- Various mutual benefits and arrangements available (Section 4.3 and subsections).

In tandem with this chapter, we have developed an [Early Engagement Planning Tool](https://amebc.ca/tools/early-engagement-planning-tool/) that will step you through the engagement planning process. It is available on the AME website at <https://amebc.ca/tools/early-engagement-planning-tool/>.

### 4.1 Elements of Successful Engagement

There is no single formula for building successful relationships nor for carrying out engagement and consultation with Indigenous peoples. Every engagement plan is unique, based on the history and preferences of the community and the needs of the exploration program. Understanding the communities, making an engagement plan and determining what actions are appropriate and effective will depend on the exploration activities proposed and the potential impacts they may have on the land and traditional

activities, the history and capacity of the people and communities involved, and the Indigenous rights and interests asserted by the Indigenous communities.

Explorers should not be discouraged by the apparent complexity of this process. Engagement can be straightforward when approached with openness and honesty. The process starts with sharing information and listening to and respecting concerns raised. Together, explorers and communities can look 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 to create mutual benefits.

At AME, we suggest that the following actions be part of every engagement process:

- **Engage early:** Engagement should start before the exploration program begins and continue throughout the program.
- **Understand intercultural differences:** The world view of Indigenous peoples and their experience in society may be different than that of the explorer. Have an open mind and listen without judgement to the concerns and issues raised.
- **Focus on building lasting relationships:** A lasting relationship will require trust built in part on sincerity and honesty. Be open and transparent about your plans and be willing to adapt them to address concerns and issues.
- **Contribute to reconciliation:** Understanding the perspective of the community and contributing to goals as determined by the community may advance reconciliation.
- **Treat the relationship as a priority:** Positive relationships with Indigenous communities are an asset and a plan to respectfully transition the relationship should be in place if tenure is sold.
- **Plan for ongoing communication and relationship building:** If the project advances to the mining stage, engagement will carry on.
- **Create an engagement plan:** Read this chapter and use our online tool at <https://amebc.ca/tools/early-engagement-planning-tool/>.
- **Listen, understand and address:** Invest the time to understand Indigenous community issues and concerns and make best efforts to resolve.
- **Create mutual benefit from the project:** Seek support for the project and establish formal agreements, where practical.

Successful engagement also requires being informed and up to date on engagement-related topics, such as best practices, case law related to consultation, and local Indigenous community activities and timing. Explorers can stay current on engagement matters by monitoring blogs and websites of prominent provincial Indigenous leaders (e.g. the [Working Effectively with Indigenous Peoples blog](#)) and subscribing to legal newsletters specializing in interpreting the latest court cases (e.g. [First Peoples Law](#) or [Mondaq](#)). Explorers can also watch local Indigenous community websites and call the community office for updates before attending a community meeting.

### 4.1.1 Early Engagement

Explorers frequently plan the exploration activity, apply for licences, and then inform or engage with the potentially affected communities. This approach can be problematic. The best advice is to start early by informing and engaging the local community. Failure to inform early can cause a mineral explorer to run afoul of, and present a project at odds with, the broader interests and values of the community. Instead,

consider approaching the community to discuss options for engagement and sharing information as one of the first actions in exploration planning.

### 4.1.2 Creating an Engagement Plan

[Engagement planning](#) is a critical step in relationship building. Before starting any exploration activity, explorers should prepare an engagement plan or strategy to guide their engagement activities. Ideally, an engagement plan would be dynamic, developed with input from the Indigenous communities.

The plan should include consideration of the unique local history and culture, a description of potential engagement approaches, a method for keeping detailed records, and be designed to ensure enough time and flexibility to adapt to local and project realities. The plan should be reviewed and updated from time to time as the exploration process advances. The explorer may wish to share the plan with potentially affected communities to get their input and to identify community protocols.

The content of an engagement plan is developed through research and contact with affected Indigenous communities. It involves:

- Identifying potentially affected or interested Indigenous communit(ies).
- Summarizing available community information and understanding potential Indigenous rights, interests, and concerns.
- Determining the expected depth or level of engagement each Indigenous community may desire.
- Outlining an engagement plan that includes tools/tasks for engagement and relationship building.
- Creating a project information sheet to share.
- Creating a record or form for documenting engagement and outcomes.
- Establishing communication and reporting protocols.

### 4.4.3 Identifying Potentially Affected Indigenous Groups

One of the earliest steps when creating an engagement plan is to identify potentially affected Indigenous communities.

There are two primary ways for explorers to find out which Indigenous communities may have rights and interests in a project area:

1. When acquiring new mineral title, mineral explorers will receive information from the Mineral Title Office (MTO) on the Indigenous communities whose traditional territory overlaps with the newly acquired mineral title.
2. If purchasing or optioning existing mineral title, you may not receive information from MTO and should inquire with the company selling or optioning the mineral title.

Explorers can visit the [Consultative Areas Database](#) (CAD) maintained by the BC government, the [First Nations in BC Knowledge Network](#), and the Government of Canada's [First Nation Profiles Interactive Map](#).

Prior to initiating contact with the Indigenous communities identified through MTO, CAD, or the First Nation Profiles Interactive Map, AME recommends that mineral explorers contact the MEMPR and or the Ministry



of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) offices to ask for advice about which Indigenous communities to engage with.

This government information is a starting point to identify Indigenous communities with interests in the area. It may also be useful to contact other mineral explorers in the area or different industry sources, such as forestry or oil and gas companies who may be operating in the area. Explorers can contact AME to inquire if the Association is aware of other explorers with experience in an area.

When identifying potentially interested or affected Indigenous communities, there is a potential that the scope of your engagement will be too narrow or too wide, and this can increase risks or escalate costs. Too wide, and you may spread your resources and attention too wide and lose focus on the Indigenous groups most proximate and affected. Too narrow, and you risk leaving behind an Indigenous group that has legitimate claims and concerns related to the exploration activities or the potential of a future mine.

At the exploration stage, it is considered best practice to ensure all Indigenous communities whose traditional territories overlap with your project area have an equal opportunity to understand the content and scope of your proposed project activities. Though you might be able to catch up on the engagement with the Indigenous group later, there is the possibility that the relationship with that group will be more difficult and, possibly, they will present concerns not considered during engagement with other groups. In general, explorers should notify any Indigenous groups identified using traditional territory maps as a guide and assume that Indigenous communities will wish to be engaged if the exploration area overlaps their territory.

Some Indigenous communities have protocols in place with neighbouring groups to manage shared territory. If a protocol is indicated, confirm with the adjacent Indigenous communities that it is recognized by all affected groups. Boundary disputes are sensitive and complex and explorers have no place in resolving them. It remains best practice to continue engaging with and treating all identified Indigenous communities equally, particularly at the early stage.

Indigenous groups may also prioritise and access different areas of their traditional territory at different seasons of the year to harvest or protect populations of game, fish and other resources, or for other cultural connections to the land.

#### **4.1.4 Culture and Communication**

Successful engagement respects cultural differences and follows communication protocols. As in many other parts of Canada, Indigenous communities within BC are geographically, historically, culturally, and linguistically diverse. Given this diversity, developing and implementing an engagement plan will require flexibility.

Many Indigenous communities will expect explorers to meet directly with their elected Chief and Council. Other communities suggest explorers work with staff members such as referral managers or land managers. Some Indigenous communities publish their referral processes and contacts on their website.

It is important to clarify with community decision makers who is expected to attend meetings, such as hereditary Chiefs, keyoh heads (extended family group territory representatives), family representatives

and/or clan representatives. One of the best ways for a mineral explorer to ensure it is meeting with the correct individual(s) is to call the band office and ask, or ask Chief and Council.

You may also wish to clarify other communication protocols at or before your first meeting, including discerning roles, responsibilities, and procedures. To avoid conflict, communication protocols should be raised and clarified (ideally in writing) during initial meetings. If you are receiving contradictory advice from band staff and Chief or Council, defer communication to Chief and Council as they are responsible for community governance. Ensure that any miscommunications driving the conflict are addressed. Document all communications.

Although not exhaustive, the following list includes some tips for understanding intercultural differences and communication:

- Find a cultural guide in the community and seek their advice about how the community prefers to be engaged.
- Thank the Indigenous community hosts for the invitation into their territory.
- Understand that Indigenous cultures have oral rather than written traditions and that verbal agreements can be as binding as a written agreement. A good practice is to record verbal agreements in writing to avoid misunderstandings in the future.
- Understand that English is not the only language in many Indigenous communities and that the traditional language may still be spoken, particularly by Elders.
  - While Indigenous leaders and community members are fluent in English, there may be a preference for speaking the traditional language. Inquire whether translation services would be appropriate and valuable when organizing a meeting, and if they are available in the community.
  - If a translator is needed, it is advisable to meet with them 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. Explorers 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. Check for seasonal subsistence activities that may affect availability for meetings, even at the leadership level.
- Be prepared for everyone in the room to take turns speaking in a meeting in a round table format: a talking stick - a ceremonial stick that can be passed from person to person to indicate who should be speaking - may be used.
- Be prepared to listen to a story in response to a direct question. Indigenous people often prefer not to give direct advice. The story may hold the answers but will 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, reach a decision by consensus. Approach issues from the perspective of developing a mutually agreeable result.

### 4.1.5 Understanding Specific Communities

Time spent on engagement with Indigenous communities will vary throughout the mineral exploration stages. Overall, more time spent in a community, building solid relationships and understanding who is influential and supportive, leads to better results in the engagement process.

Before visiting a community, explorers should develop a general understanding of the specific communities and their interests, if possible. Some of this information can be found on community websites and through provincial and federal government sources (e.g. Statistics Canada's [Aboriginal Peoples: Fact Sheet for British Columbia](#)) or by asking questions of your primary community contacts (leadership or lands managers).

Seeking answers to these questions will help inform your engagement efforts:

- What human and physical geographic information is available? For example, traditional territory maps, demographics of the community population (example, number of Elders and youth), community history, community education levels and skills.
- What is the leadership structure of the community? Is there a hereditary governance structure or an elected band council? If elected, what is the election period and timing? Is a system of land governance in place that includes family groups or houses or clans?
- Are there modern or historic treaties in place? Has the Indigenous group started or settled any court cases?
- What are the traditional activities of the community and what is the timing for key activities?
- Does the community have experience with mineral exploration or mining in their territory? How has that experience been? Do they have any benefit agreements in place with other industry proponents or government?
- Does the community have a referrals process for permits and other regulatory requests?
- How would the community prefer to be engaged on the project? For example, through meetings, an information portal, email, or other?
- What kind of information does the community and or leadership like to receive? Does the community prefer all the details, or high-level summaries, or other?
- Does the community have a land management protocol or stewardship document?
- What are the goals and aspirations of the community? What are their businesses and business development interests?

### 4.1.6 Goals for Early Meetings

Explorers should clarify communication protocols through early communication or at the first in-person meeting, including discerning roles, responsibilities and procedures. If the band staff, Chief, or Council give contradictory advice, defer to the agreed-upon communication protocol and Chief and Council.

Be prepared for your initial meeting to be an introductory meeting and do not expect any decisions to be made by the Indigenous community during this meeting. Aim to position your project as proposed work and demonstrate your willingness to engage in conversations and adjust your plans, where feasible and practical. Try to avoid setting firm timelines in early meetings as this can create trust issues. Understand and plan for communities to have varying levels of experience and understanding of mineral exploration.

Requests for funding or other assistance are common in early meetings or prior to a first meeting. Mineral explorers should be prepared to respond to these requests. Consider:

- Setting a budget for requests for financial support.
- Canvassing other exploration companies in the area about their experience and costs.
- Putting funding agreements in writing, including the purpose of the funding and any expectations or, as your relationship builds, timelines regarding the use of those funds.

#### 4.1.7 Estimating Engagement Level

Rather than simply focusing on information sharing, which has generally been the practice in the past, AME recommends being open to collaboration and joint decision-making processes that allow community input and reach for free, prior and informed consent, or consensus. This openness and deeper engagement can contribute to building strong relationships and trust and enables communities to participate in a more meaningful way.

Some elements that demonstrate the depth of engagement include:

- The depth and detail of information shared
- The degree of shared decision-making and collaboration
- The level of effort made to mitigate or otherwise accommodate concerns and interests
- The level of effort to gain formal consent in the form of a binding agreement

#### 4.1.8 Engagement Tools and Techniques

Common formats for engagement with Indigenous groups in BC include:

- Meeting with leadership (Chief and Council)
- Meeting with community staff such as a referrals officer, lands department, title and rights manager, or land manager
- Meeting with smaller family groups
- One-on-one meetings with other agencies in the community (e.g. economic development, employment)
- Hosting community meetings to explain the project
- Arranging site visits for Chief and Council or community staff members, such as land managers
- Open houses to reach a broader community audience
- Participation in annual community gatherings and events
- Drop-ins or open houses scheduled, advertised and held at the community administration office
- Drop-ins or open houses scheduled in coffee shops or other venues, if no administration office. Seek community guidance on appropriate venues in smaller communities.

Table 1 summarizes the engagement activities explorers may want to consider depending on the types and complexity of the activities they are conducting.

**Table 1: Engagement according to exploration related activity**

<b><i>Phase and activity</i></b>	<b><i>Potential impacts</i></b>	<b><i>Regulations</i></b>	<b><i>Possible engagement</i></b>	<b><i>Considerations</i></b>
<p><u>Claim Staking</u></p> <p>e.g. acquiring mineral claims on MTO website.</p>	<p>No physical works. Potential impact on underlying Indigenous title or rights.</p>	<p>Free Miner Certificate (FMC)</p>	<p>Notice of staking and introduction meeting or conversation especially if there are immediate plans to prospect on the property.</p>	<p>Learn appropriate contact people within the Indigenous community to create the foundation of the relationship and begin engagement planning.</p>
<p><u>Non-mechanized activities</u></p> <p>e.g. prospecting, geological mapping, soil, silt and some rock sampling, water sampling, biology surveys, airborne geophysics, small camp construction.</p>	<p>Minimal or no land disturbance.</p> <p>Possible wildlife disturbance (human presence, or from airborne surveys). Possible culture disturbance.</p>	<p>NoW is not required</p>	<p>Introduction and early engagement is important at this stage.</p> <p>Concerns about access, hunting or fishing activities and locations of known archeological sites can be addressed.</p>	<p>Provide a letter describing the scope of activities and offer to meet with local Indigenous communities to discuss any concerns they may have with the non-mechanized exploration activities and the means to reduce potential impacts.</p>
<p><u>Mechanized activities</u></p> <p>e.g. 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, underground exploration.</p>	<p>Yes, variable depending on level of activity.</p>	<p>NoW is required, can be up to five years (MYAB).</p>	<p>Ongoing engagement prior to submittal of permit application can address some of the concerns and aid the government referral process.</p>	<p>Potential impacts vary significantly. Exploration stage agreements can be beneficial to both parties.</p>

### 4.1.9 Information Sharing

In addition to considering how the engagement will take place and the engagement objectives, it is crucial to consider what information will be presented to communities and what information will be requested of communities. Mineral explorers should take the approach of information sharing being a two-way exchange. This needs to be kept throughout the life of the exploration or mining activity.

Mineral explorers should be prepared to answer questions including those about the behaviour of past mineral explorers in the territory. Expect to cover the following subjects:

- Exploration stages, mining life cycle and current project status
- Regulatory process and status of project
- Potential impacts of the proposed/current exploration program
- Mitigation and minimizing impacts
- Employment and training opportunities
- Contract opportunities (clearing, helicopters, camp support, catering, equipment operators, fuel suppliers, etc.).

Information should be provided in an understandable format, recognizing that Indigenous community representatives may not be geologists and may not have previous experience with mineral exploration.

## 4.2 Preparing Exploration Staff for Engagement

Engagement happens with every interaction. Explorers should ensure that every member of the exploration team, including consultants and contractors, is briefed on engagement practices and expectations. Some basic preparation activities include:

- Cultural awareness orientation to understand cultural differences and obligations.
- Training in communication and collaboration skills.
- Encouraging respect for communities, lands and resources.
- Building awareness of any engagement plan and activities to date.
- Briefings on culture, economies and governance.
- Creating opportunities to enhance Indigenous engagement, employment and education and environmental protection.

Starting an engagement program on the “wrong foot” can require considerable effort to re-establish a positive relationship with the Indigenous community. There are some potential pitfalls, as discussed in 4.1 above, that may be met while implementing an engagement program or creating opportunities through local hiring and procurement.

When preparing exploration staff from outside of the community for engagement, it might be useful to prepare information about the community and a list of potential questions the community members might ask and appropriate responses.

On the other hand, explorers should be prepared to help ease local hires into camp life. Camp life is a unique experience and it may take time for local people not experienced with exploration to settle in. The hours are long and local hires may miss their normal support networks, family and friends. In this case, consider providing intercultural training within the camp, outline harassment policies and reporting mechanisms, and team with mentors or representatives from the same community together.

## **4.3 Mutual Benefits and Arrangements**

Understanding community interests, values and expectations is foundational to understanding the community's motivations and assists in developing mitigation strategies for potential impacts, building future relations, and avoiding misunderstandings.

Many Indigenous groups in BC are concerned about the loss of resources through forestry, fishing, mining, oil & gas development, hydro power generation, and other resource activities within their territories, while their communities and families receive little to no benefit. They share a near-universal Indigenous philosophy that resources are borrowed from future generations and decisions made today should consider the effect on the people who will live seven generations from now. This long-term view of decision-making may mean that Indigenous communities are not solely focused on the near-term exploration activity, but on the longer-term effects of a potential project. It is important for explorers to understand these existing concerns about resources and the short- and long-term interests of the Indigenous community in order to find common ground and a path forward.

Communities may have interests in creating mutual benefit that are broader than just exploration activities and permits. These interests may be raised during engagement.

### **4.3.1 Traditional Use and Traditional Knowledge**

Depending on the nature of the exploration work, an Indigenous community may want to conduct a study to determine the extent of current and past land use in the area. These studies, variously called Traditional Land Use Studies, Traditional Use Studies, Traditional Knowledge and Use Studies, or Current Land Use Studies, can be expensive and time-consuming. Traditional Land Use Studies are more commonly conducted as part of more advanced stages of mine project development, but the study may be the only way for a community to determine with confidence how an area is being used. Many families keep their cultural activities and practices private within small family groups and do not widely share information within the community, thus the need for a study conducted by the community itself to understand the potential impacts of an exploration project.

### **4.3.2 Capacity Building and Funding**

To understand the concerns and interests of Indigenous groups, and to enable participation in various engagement activities, explorers may need to consider different forms of payment for Indigenous groups' studies.

Capacity comes in various forms – financial, human resources, technical knowledge, training and ability. Explorers can expect to encounter issues of capacity that will influence the community’s ability to participate and respond. Some Indigenous communities may have strong technical knowledge, ability, and staff numbers to respond to mineral exploration applications. Other communities may have a difficult time responding to applications in the time required by the proponent or may have to hire consultants. Early engagement may enable all sides to understand the workload and clarify the timing for review.

As discussed earlier in section 4.3.2, it is common for communities to request capacity funding to support engagement. Some communities are well-funded and have long-term experience with exploration and engagement related matters. For other communities, the experience might be entirely new. Capacity funding is often used by communities to hire technical support, arrange for transportation, train new staff, or anything else to support responding to mineral exploration.

Community capacity may be limited if the leadership have many and varied roles. This can lead to confusion between projects, missed meetings or other activities that may slow reviews or extend timelines. This needs to be considered when seeking to engage and explorers should look for ways to facilitate the process including assisting with the cost of engagement, as appropriate.

Capacity requests in communities can also come in the form of employment and training. It is common for exploration companies to want to find ways to include community members in exploration related work with a view to tangibly incorporate local knowledge and skills. For communities to take advantage of these opportunities, they may ask for training as environmental/wildlife monitors, drill helpers, field technicians, etc. as part of the project.

Capacity funding payments should not be arbitrary, but rather linked to the costs associated with the Indigenous community participating in the engagement process. Essentially, any capacity funding should be commensurate with the level of the proposed exploration activity.

### **4.3.3 Fees as a Percentage of Exploration Budget**

While not widespread in mineral exploration companies, some Indigenous communities request a payment of a fixed percentage of the total exploration program budget. The community may see this as a way of estimating the potential cost to the community (for material review, participation, etc.). With overlapping asserted territory by multiple Indigenous groups, each of the First Nations (and in some cases each House of a First Nation) may request payments.

In these instances, explorers would be best to respond to such requests with a forthright approach and a commitment to understand the needs and concerns of the community and share the company’s approach to capacity funding and creating mutual benefit. Recognize that the request for a general fee or fund is not required of the mineral explorer; the response and the manner in which the mineral explorer provides other positive alternatives will be important to building a positive future relationship.



#### 4.4.4 Training and Education

Training and education are essential steps towards effectively creating mutually beneficial joint ventures and employment opportunities for Indigenous peoples. Training for certain field roles can be provided by the exploration company, while other roles will require longer, more formal education and training.

Training programs are available both privately and through the BC Government who also offers programs under Aboriginal Small Business Resources and Industry Training Authority (ITA). Commonly, nearby regional colleges in smaller communities have programs that can assist with training initiatives. Explorers should consult with the Indigenous communities to gather information on the available workforce and employment opportunities.

#### 4.4.5 Joint Ventures

Joint ventures offer partnership opportunities between Indigenous communities and mineral explorers or contractors. Joint ventures can present an opportunity to build a relationship and give back to the Indigenous community while also offering training and employment for Indigenous people.

Collaboration, economic development, and a trained local workforce can provide cost-effective longevity to a mineral exploration project and benefits to the region. Drill contractors, camp suppliers, heavy equipment contractors, clearing contractors and suppliers of fuel or other consumables are all examples of some viable partners in joint ventures or locally sourced Indigenous businesses.

#### 4.4.6 Service Agreements

A subset of agreements with communities, either within a larger agreement or stand alone, may provide specific services. The scope, duration and cost of the services would be outlined in the agreement, as they would for any contract. Such service agreements may include work related to:

- Line cutting and brushing.
- Tree clearing.
- Excavation.
- Drilling.
- Road construction.
- Environmental monitoring.
- Archeological monitoring.
- Food services.
- Security services.
- Camp provision.

#### 4.4.7 Working with Economic Development Corporations

Economic Development Corporations (also known as “Ec Dev Corps” or “EDC’s”) are corporations formed under the laws of governmental regulation to manage the economic arm of an Indigenous

community. They are becoming more commonly used in Canada and are increasingly influential in the overall Canadian corporate environment.

The main benefits for an Indigenous community to form an EDC generally include:

- Reduce financial risk to the Indigenous Nation and its members.
- Effectively compartmentalize businesses and allocate resources.
- Separate business from politics.
- Allow outside expertise/advisors when circumstance warrant.
- Maximize tax benefit to Indigenous groups.

EDC's allow for the formation of wholly (or partially) owned Limited Partnerships ("LP's") or Limited Liability Partnerships which are, in turn, owned by the "parent company", namely the EDC as a holding company. The ability to put all business activity under "one roof" also allows for cost savings on administrative and other costs, talent attraction, capacity building and, ultimately, Nation building. EDC's allow Indigenous groups to enter the corporate world in a legally and financially sound manner while maximizing the constitutionally existing rights and assets held by each Indigenous community and individual.

Each EDC may also have outside partners owning a portion of an EDC controlled LP in order to allow for specialization in services, capacity building and ensuring necessary resources are in place to serve potential customers. It is especially important to enquire about these joint ventures to understand the services a Nation's EDC can offer, e.g. engineering, drilling, camp services, road maintenance, air transportation. LP's/JV's all currently exist with many Indigenous EDC's.

If an explorer is pursuing a formal agreement with the community, mineral explorers should make inquiries of the existence of a community's EDC and what services they offer. Services that will normally be contracted by an exploration companies' operation could be awarded directly to a Nation's EDC, under certain circumstances, which is a mutual benefit for the exploration company needing the work and the Nation achieving economic benefits from such work. For mining projects going into the development and construction phase, these benefits can be of significant value and contribute to the economic independence of an Indigenous community in significant and meaningful ways. The key is to ask early, start early, plan early and execute on time.

#### **4.4.8 Transparency and Anti-Corruption Considerations**

Both explorers and Indigenous 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 most cases, providing capacity funding or negotiating agreements with Indigenous communities will not offend the principles underlying transparency and anti-corruption rules. However, the following principles may help both explorers and Indigenous communities navigate these issues:

- It is generally better to have open and transparent communications among explorers, government and Indigenous communities (such as between the leadership of Indigenous 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).

Mineral explorers, like other extractive sector companies, will likely need to report to the government any payments, including taxes and other payment types, on a project-by-project basis as required under the Canadian *Extractive Sector Transparency Measures Act* (ESTMA).

ESTMA came into force on June 1, 2015, introducing new reporting and transparency obligations for the Canadian extractive sector in order to contribute to global efforts against corruption in the sector. These reporting and transparency requirements apply to Indigenous governments as well as any other government in Canada.

Explorers should be aware of their reporting and transparency requirements under ESTMA. By way of illustration, the provision of capacity funding to assist an Indigenous 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 Indigenous community will generally not be appropriate,

#### 4.4.9 Confidentiality

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 the government. Though the details of some negotiations are conducted confidentially, 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 Indigenous 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 Indigenous community should also be avoided.

Confidentiality requests from Indigenous groups may also arise related to request for access payments. This request is challenging on several fronts. Direct payments are not a legal requirement in most locations e.g., they may be required where claims are settled. For explorers, it is critical to maintain transparency for legal, tax and shareholder purposes; unaccounted dollars give the impression of bribery and detract from the principle of freedom in decision-making.

#### **4.4.10 Share Relevant Information Respectfully**

Where doing so would not violate confidentiality obligations, explorers should consider speaking with others who are engaged with Indigenous communities in the vicinity of mineral exploration activities to share information on successful approaches for effectively engaging Indigenous communities, developing positive relations and securing agreements.

It is in the best interests of all parties engaged in the exploration industry - both Indigenous and non-Indigenous - to move toward a transparent practice of sharing information with others and seeking to act in a consistent way that fosters the development of best practices and industry standards.

This document is one of five chapters in the Association for Mineral Exploration (AME) British Columbia's Indigenous Engagement Guidebook. This guidebook intends to provide mineral explorers and developers working in BC with the context and understanding to effectively create open and strong relationships that can lead to successful delivery of exploration and resource development projects.

The guidebook can be found on the AME website at <https://amebc.ca/resources/tools/>

Chapter 1: Indigenous Engagement Guidebook Introduction

Chapter 2: Regulation of Mineral Exploration Activities in BC

Chapter 3: Relationship Building

Chapter 4: Preparing for Effective Engagement

Chapter 5: Legislation and Regulation – YOU ARE HERE!

## Chapter 5: Legislation and Regulation

Mining-related activities are governed by provincial and federal laws and regulations. The laws and regulations applying to mineral exploration are listed in alphabetical order below. Any decision made by the Crown under these laws and regulations has the potential to trigger the duty to consult to determine the potential to impact Indigenous rights or Indigenous land title. In most cases, an application for a permit or other regulatory decision will be referred to the potentially affected Indigenous group.

Provincial regulations are listed first and are most likely to apply to mineral exploration activities. Federal regulations are listed second.

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## 5.1 Province of BC (Provincial) Legislation and Regulation

### 5.1.1 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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_04015_01)

### 5.1.2 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 Protection Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_01009\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_01009_01)

### 5.1.3 Environment and Land Use Act (1996)

The *Environment and Land Use Act* (ELUA) is a broad piece of legislation that 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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96117_01)

### 5.1.4 Environmental Management Act (2004)

The *Environmental Management Act* (EMA) along with the *Waste Management Act* to provide innovative tools for environmental protection. ***Part 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*

[https://www.bclaws.ca/civix/document/id/complete/statreg/03053\\_05#part5Fish%20Protection%20Act%20\(1997\)](https://www.bclaws.ca/civix/document/id/complete/statreg/03053_05#part5Fish%20Protection%20Act%20(1997))

### 5.1.5 Riparian Areas Protection Act (1997)

The *Riparian Areas Protection Act* and the *Riparian Areas Regulation* provides legislative authority for water managers to consider impacts on riparian areas 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.*** Assessment reports are required before any development proposals related wholly or partially to riparian assessments areas.

For full details please go to: *Riparian Areas Protection Act*

[http://www.bclaws.ca/civix/document/id/complete/statreg/00\\_97021\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/00_97021_01)

### 5.1.6 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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96157_00)

### 5.1.7 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](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)

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/health-and-safety/code-review/health\\_safety\\_and\\_reclamation\\_code\\_2017\\_rev.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/health-and-safety/code-review/health_safety_and_reclamation_code_2017_rev.pdf)



### 5.1.8 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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96187_01)

### 5.1.9 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 cross-referenced in the MTA under section 19, Right of Entry on Private Land and Compensation. This may impact mineral exploration activities.***

For full details please go to: *Land Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96245\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96245_01)

### 5.1.10 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). 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: *Mineral Tenure Act*

[https://www.bclaws.ca/civix/document/id/complete/statreg/00\\_96292\\_01](https://www.bclaws.ca/civix/document/id/complete/statreg/00_96292_01)

### 5.1.11 Mines Act (1996)

The *Mines Act* and Code regulate the exploration, development and production of minerals. 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: *Mines Act*

[http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96293\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96293_01)

Health, Safety and Reclamation Code (HSRC)

[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/health-and-safety/code-review/health\\_safety\\_and\\_reclamation\\_code\\_2017\\_rev.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/health-and-safety/code-review/health_safety_and_reclamation_code_2017_rev.pdf)

### 5.1.12 Water Protection Act (1996)

The *Water Protection Act* protects BC's water by defining BC's ownership of surface and groundwater, clearly defining limits for bulk water removal, and prohibiting the large-scale diversion of water between major provincial watersheds and/or to locations outside of the province. Exploration activities that involve water management require the preparation of 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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96484_01)

### 5.1.13 Water Sustainability Act (2014)

The *Water Sustainability Act* replaced the *Water Act* (1996) in an effort to modernize the provincial water law. This Act provides for management of activities utilizing water, and plays a key role in the sustainability of BC's water. This Act requires authorization for use of groundwater for anything other than domestic use. ***There are provisions in the Act that speak directly to mineral exploration and mining.***

For Full details please go to: *Water Sustainability Act*

<http://www.bclaws.ca/civix/document/id/lc/statreg/14015>

### 5.1.14 Water Users' Communities Act (1996)

This Act governs groups of six or more water licensees who join together to construct and maintain a water diversion and storage or delivery system.

For full details please go to: *Water Users' Communities Act*

[http://www.bclaws.ca/civix/document/id/complete/statreg/96483\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96483_01)

### 5.1.15 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\\_96488\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96488_01)

### 5.1.16 Environmental Assessment Act (2002)

The *Environmental Assessment Act* (EAA) provides an environmental assessment process and states that a person cannot undertake or carry out 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: *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](http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20e%20--/environmental%20assessment%20act%20sbc%202002%20c.%2043/00_02043_01.xml)

## 5.2 Canadian (Federal) Legislation and Regulation

### 5.2.1 Canadian Environmental Assessment Act (2012)

The *Canadian Environmental Assessment Act* (2012) focuses on the environmental assessment of 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 typically trigger the legislation. Note: This legislation is currently being up-dated.***

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>

### 5.2.2 Canadian Environmental Protection Act (1999)

The *Canadian Environmental Protection Act* (CEPA) seeks to prevent and manage 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/eng/acts/c-15.31/>

### 5.2.3 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>

### 5.2.4 Indian Act (1985)

The *Indian Act* defines who is an “Indian” in Canadian law (current to 2017) 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 “Crown-Indigenous Relations and Northern Affairs Canada”. ***The Indian Act may have application to mineral exploration if an opportunity is near or on a reserve.***

For full details please go to: *Indian Act*

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

### 5.2.5 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>

### 5.2.6 Navigation Protection Act (1985)

The *Navigation Protection Act* (NPA) regulates works that has the potential to affect navigation and is therefore subject to federal approval. ***Mineral exploration generally does not include activities that affect navigation.***

For full details please go to: *Navigation Protection Act*

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

### 5.2.7 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.asp?lang=En&n=24F7211B-1>

BC Conservation Data Centre

<https://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/conservation-data-centre>