

Chapter 6.3

Completing Application Information Details: First Nations

6.3 First Nations

As an agent of the Crown, the Commission fulfils any provincial obligation to consult with First Nations on any potential impacts to their rights recognized and affirmed by Section 35(1) of the Constitution Act, 1982.

Submission of an application for an oil and gas or associated activity may require additional application requirements in regards to First Nations and is based on the planned activity and location of activity. The First Nations tab requires application information details.

This section includes an overview of First Nations consultation, guidance regarding First Nations consultation, details related to First Nations consultation requirements and detailed instructions for completing the data fields within the First Nations consultation tab.

In addition to the requirements listed in this section, Commission staff may request additional information where necessary to facilitate review of the application.

6.3.1 Consultation Procedures and Timelines

Administration Boundaries

Administrative boundaries established through consultation agreements guide where consultation for each First Nations community takes place. Where there is no agreement in place, applicants should refer to the [Consultative Areas Database](#). Depending on the community to be engaged, the consultation process, and the application, requirements may be different.

Notice Only Communities

There are four Aboriginal communities the Commission provides information about oil and gas activities through an Aboriginal Community Notice:

- Kelly Lake Cree Nation (KLCN).
- Kelly Lake First Nation (KLFN).
- Kelly Lake Metis Settlement Society (KLMSS).
- Acho Dene Koe (Fort Liard First Nation) (FLFN).

The Application Management System identifies communities to be consulted based on spatial data uploaded. No additional information or attachments are required.

Treaty 8 First Nations

Consultation process agreements are established between the Commission and some Treaty 8 First Nations. Where agreements are in place with a Treaty 8 First Nations community, the consultation process is guided by the agreement. The Application Management System spatial data identifies Treaty 8 First Nations to be consulted.

Where agreements with Treaty 8 communities are not in place, the consultation process is guided by the Interim Consultation Procedure (ICP) with Treaty 8 First Nations. All existing agreements with First Nations and the ICP are found on the [First Nations](#) page of the Commission's website.

Please Note:

Effective immediately, INDB 2018-15 New Measures Applied to Oil and Gas Applications is no longer in effect and has been replaced by [INDB 2019-13](#). Operators should now use the [Blueberry River First Nations Application Assessment Form](#) on the Commission's website, instead of the Regional Strategic Environmental Assessment (RSEA) Interim Measures Form which is no longer an application requirement.

Non-Treaty 8 Nations

For non-Treaty 8 First Nations, the Commission follows internal procedures based on [provincial guidelines](#) and recent court decisions regarding consultation procedures. Where applications require consultation with non-Treaty 8 communities, spatial data identifies non-Treaty 8 nations to be consulted.

Consultation Agreements

The Commission works closely with First Nations to establish negotiated Agreements and Memoranda of Understanding as living documents, recognizing that both documents are the foundations for long, collaborative working relationships. The established formal consultation processes provide for First Nations' participation in the consultation process and ensures applications are dealt with as effectively and efficiently as possible.

An application, amendment or a revision to an oil and gas activity which may have a potential adverse impact to the Nation's Section 35(1) rights is classified in accordance with the applicable consultation process agreement.

Applicants must determine the classification according to the consultation process agreement and refer to the [First Nations section](#) of the Commission website for the appropriate agreement.

Timelines

General consultation timelines are provided in consultation process agreements and indicate the amount of time a First Nations community is given to review and respond.

Best practice dictates that applicants engage with First Nations early and often and to refer to the consultation process agreements as a guide to the consultation procedures and timelines.

Where concerns are identified by the First Nation, there may be additional time required to complete the consultation process. The Commission will discuss

those concerns and potential solutions with the First Nation. In some cases, this may include facilitating meetings between the First Nation and applicant to discuss concerns and proposed accommodation measures.

Additional Reference Documents for First Nation Consultation

Additional reference documents regarding the First Nation consultation process and the applicant's role are available on the Commission's [website](#). Applicants may also refer to the Ministry of Aboriginal Relations and Reconciliation's [Building Relationships with First Nations: Respecting Rights and Doing Good Business](#), and the Environmental Assessment Office's [Proponents Guide to First Nation Consultation in the Environmental Assessment Process](#).

The Commission may make available additional information to First Nations to assist with the engagement process and to assist First Nations with decisions.

6.3.2 Engaging First Nations Prior to Application

In order to facilitate the efficiency of consultation, applicants are encouraged to initiate and build relationships with First Nations communities by discussing proposed activities with the communities during the project planning phase.

Applicants may contact the Commission's First Nations Liaison Officers (FNLOs) to access First Nations area maps and for advice about engaging First Nations.

Where pre-engagement occurs, an [Engagement Log](#) should be used to record all engagements and related details including concerns expressed by a First Nation and mitigation proposed or implemented by the applicant. If required, an engagement log can be uploaded within the First Nations tab. Engagement logs may be considered in the decision making process, however the engagements do not replace the First Nations consultations carried out by the Commission as described above.

6.3.3 First Nations: Data Field Completion

Table 6-E below provides detailed instructions for each of the data fields requiring input (not auto populated) within the Application Management System.

Table 6-E: Application Instruction Table for the First Nations Tab

Label	Instructions
First Nations Details	
Has an Authorizations Manager Deemed Consultation Required	This question will be asked of the applicant when the application is on private land outside of Treaty 8 areas. If answered 'no,' the applicant will be required to upload a confirmation from an Authorizations Manager (e.g. an email), indicating First Nations consultation is not required for the application.
Treaty 8 First Nations	
Consultation Category	Select the consultation category (classification) based on the pertinent consultation agreement or process.
Criteria Reference	Select the classification criteria from the appropriate consultation agreement or process used to determine the consultation category indicated.
Description	Provide a rationale indicating why the indicated criteria and category is appropriate. Include any pertinent supporting information.
File XREF Number	Enter any other Commission file numbers or the Crown land tenure number to which the proposed activity is related.
Upload Attachment	Attachments may include First Nations engagement log and cover letter, where required.
Non Treaty 8 First Nations	
Consultation Category	Indicate the consultation category (classification) based on the pertinent consultation agreement or process.

Label	Instructions
Criteria Reference	Select the classification criteria from the appropriate consultation agreement or process used to determine the consultation category indicated.
Description	Provide a rationale indicating why the indicated criteria and category is appropriate. Include any pertinent supporting information.
File XREF Number	Enter any other Commission file numbers or the Crown land tenure number to which the proposed activity is related.
Attachments	Attachments may include First Nations Engagement Log and cover letter where required.