

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.1	Air Quality Monitoring and Reporting in the Wood Buffalo Region
<b>Sponsor(s):</b>	<i>Wood Buffalo Environmental Association (WBEA) - 27 member organizations including 5 First Nations, Athabasca Tribal Council and Métis Local #122 (Fort McKay)</i>	

## Objective

To monitor and provide accurate, transparent and understandable information regarding environmental air quality in the Wood Buffalo region of Alberta.

## Description

WBEA is an independent, community-based, not-for-profit society that collects air quality data continuously in the Wood Buffalo region (an area of 68,454 km<sup>2</sup>) and reports this information to Alberta Environment, local industry and the community. It endeavours to ensure that what is reported and how it is reported is scientifically-based, credible, and easy to understand. It actively facilitates dialogue among members and others so that they can be responsive to the environment in their planning, decision-making and operation.

WBEA is a multiple-stakeholder agency with representation from First Nations and Métis communities, the public, non-governmental organizations, provincial and local governments, and the oil sands industry. While industry partners fund most of WBEA's operations, each WBEA member has an equal voice. Each member has a chance to be heard and understood, as well as the opportunity to influence decisions that, once made, are supported by all members.

WBEA operates on the basis of being an open, transparent organization. All information that is available to WBEA members is also accessible to community members. Raw data that WBEA collects is continuously transmitted to its website ([www.wbea.org](http://www.wbea.org)) and Alberta Environment. Alberta Environment then uses these data to calculate an air quality index (AQI), which is an easily-understood measure of outdoor air quality. The final resting place for all air monitoring data is the Clean Air Strategic Alliance ([www.casadata.org](http://www.casadata.org)). This is a database for all of Alberta's air monitoring programs.

The processes and equipment used by the WBEA are subject to quality control, as well as government and independent audits to ensure the credibility of the WBEA's data collection and reporting.

## Implementation

Some of the key elements for implementation and management of this program are:

- WBEA consists of a governing board of directors (composed of the entire membership) that meets quarterly and has a number of committees. These include a governing committee, a funding committee and committees that reflect the four components of WBEA's monitoring activities within the Regional Municipality of Wood Buffalo. The four components are:
  - **Ambient Air Monitoring Program.** This program is the cornerstone of WBEA. It ensures that accurate and timely air monitoring data is available. WBEA operates the most extensive ambient air monitoring system in Alberta. Data are collected at 14 air monitoring stations (each built at a cost of \$250,000) located between Fort Chipewyan and Fort McMurray, with most of them concentrated at or near the oil sands plants. There are an additional 14 passive monitoring sites in more remote locations. Equipment is subject to rigorous quality control and assurance programs to ensure the highest quality data is collected. These include daily calibration and monitoring of instrument performance with multi-point calibrations and regular government audits. Data is reviewed for long-term systematic errors and all raw and quality controlled data is archived for future reference. Concentrations of several potentially harmful airborne elements and compounds are measured, including sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), total hydrocarbons, total reduced sulphur compounds (TRS), carbon monoxide (CO) and ambient air particulate matter. Readings are compared to standards established by Alberta Environment for safe exposure levels for varying time periods - one hour, 24 hours or yearly. If air quality guidelines are exceeded, WBEA's network records this and issues a ground level concentration (GLC) exceedance notification to Alberta Environment and industry, including various WBEA members. Industry members review the GLCs to determine if plant operations or events may have contributed to the exceedance.
  - **Terrestrial Environmental Effects Monitoring Program.** This program collects and reports data on the effects of air emissions on plants and soil. Two field projects have been undertaken: a Jack Pine Acidification Program (which was initiated in 1996 and undertakes intense field sampling every six years) and a Lichen Monitoring Program (which was piloted in 2002/2003 and utilizes 44 sites located throughout a 45,000 km<sup>2</sup> area surrounding existing oil sand developments).
  - **Human Exposure Monitoring Program.** This program monitors, records and examines selected air contaminants that residents are exposed to daily - in their homes, at work, and outdoors. This is the first long-term human exposure monitoring program conducted at the community level anywhere in the world. The program's six-year plan (which began in 2005) involves recruiting volunteers in Fort McMurray and Fort Chipewyan (other communities will be added to the project in the future). As part of their daily routine for a week, volunteers wear monitoring devices to collect data for this study. The study will determine whether or not there are any trends in air contaminant levels to which people in the Wood Buffalo region are exposed in their everyday environment. If trends do exist, they could be used to assist in establishing

links between air quality and potential health-related effects. These data are analyzed by Alberta Health and Wellness.

- o **Reporting to the community.** WBEA recognizes its responsibility to be transparent and accountable to the residents of the Wood Buffalo region. Care is taken to ensure that messages related to air quality are not lost in scientific jargon. WBEA's goal is to explain what it does and the information it collects in a way that is meaningful to members of the public.

Community education and awareness are the primary focus of WBEA's communication activities. WBEA communicates to the public in several ways. Radio and newspaper advertising (Air Facts) offers straightforward information on regional air quality and the work of the WBEA. The WBEA message is taken to the public through quarterly newsletters, presentations to school classes, tours of air monitoring stations, and participation in Fort McMurray trade shows, the Wood Buffalo Science Fair, and open houses held in conjunction with the Regional Aquatics Monitoring Program (RAMP) and the Cumulative Environmental Management Association (CEMA).

### **Timeframe for Results**

WBEA had its beginnings in 1985 when the Fort McKay First Nation expressed concern about air quality. In response, government and industry formed an Air Quality Task Force. The task force described issues, established priorities and recommended on-going dialogue and a consensus-based approach to air quality concerns. Later, the task force became the Regional Air Quality Coordinating Committee (RAQCC). This group prioritized regional air quality concerns and coordinated a program to manage air quality in the Wood Buffalo region. In 1997, the Government of Alberta developed a regional approach to air quality monitoring under the umbrella of the Clean Air Strategic Alliance (CASA). RAQCC joined CASA as the Wood Buffalo Environmental Association. WBEA assumed responsibility for ownership and operation of a regional consolidated air quality monitoring network in the region that included ecological and health effects monitoring.

WBEA now has a continuing mandate to monitor air quality in the Wood Buffalo Region. Raw data from the 13 ambient air quality monitoring stations is reported continuously on the WBEA website. Information from the Terrestrial Environmental Effects Monitoring and Human Exposure Monitoring Program programs is posted on the website as it becomes available. Data is tabulated annually and included in a yearly report that is available in both print and on the website. Information from the annual report is summarized in a community report that is delivered to each home and business in the region.

## Measurable Criteria

- Data collected through the Ambient Air Monitoring Program is compared to that collected in previous years and to standards established by Alberta Environment for safe exposure levels for varying time periods: one hour, 24 hours or yearly.
- Data collected in 1998 during the first set of intensive field tests for the Jack Pine Acidification Program serves as a benchmark for subsequent field sampling conducted every six years.
- Data collected during the 2002/2003 pilot of the Lichen Monitoring Program is used as a benchmark for subsequent findings from this study.
- Data from the Human Exposure Monitoring Program is released publicly and posted on the website as it becomes available.
- Feedback collected from residents of the region - through surveys, questionnaires and focus groups - is used to measure the effectiveness of the WBEA's communications strategies.

## Budget

Funding for the WBEA's annual budget of \$3.5 million comes from industry. Company contributions are determined using a formula based on each company's atmospheric emissions. The budget figure does not fully reflect the operating and capital costs as many organizations make substantial in-kind contributions.

## Partners and Sponsors

Alberta Environment	Imperial Exxon-Mobil Oil
Alberta Sustainable Resource Development	Mikisew Cree First Nation
Alberta Energy and Utilities Board	Northern Lights Health Region
Albian Sands Energy Inc.	Nunee Board of Health
Athabasca Chipewyan First Nation	OPTI/Nexen Inc.
Athabasca Tribal Council	Pembina Institute for Appropriate Development
Canadian Natural Resources Limited	Petro-Canada
Chipewyan Prairie First Nation	Regional Municipality of Wood Buffalo
Deer Creek Energy Ltd.	Saskatchewan Environment
Fort McKay First Nation	Suncor Energy Inc.
Fort McKay Métis Local #122	Synenco Energy
Fort McMurray Environmental Association	Syncrude Canada Ltd.
Fort McMurray First Nation	Toxics Watch Society of Alberta
Husky Energy	UTS Energy Corporation
	Williams Energy (Canada) Ltd.

## **Experience with the Program**

WBEA is an effective vehicle for data collection and monitoring as well as for communication and information-sharing among various stakeholders in the oil sands region. All WBEA members recognize the need to ensure that the quality of “the air we share” remains high. WBEA strives to be transparent in its operation - sharing information with the public, government, and industry that is scientifically-based, credible, easy to understand, and timely.

Others see WBEA as a reliable source for environmental information. Air monitoring data collected by WEBA is regularly used by Environment Canada and independent researchers.

## **General Applicability**

WBEA demonstrates the value of a multi-stakeholder agency that includes broad representation from First Nations communities, the public, non-governmental organizations, provincial and local governments, and the oil sands industry. The consensus-focused decision-making model practised by WBEA ensures that every member organization is able to share its environmental concerns and has an equal voice in developing and implementing the WBEA’s plans. This model could be successfully adopted for any organization in which participants are united by common interests and concerns for environmental issues and protection.

## **Additional Information or Support**

Executive Director, Wood Buffalo Environmental Association, 905 - 9915 Franklin Avenue, Fort McMurray, AB T9H 2K4

Telephone: (780) 799 - 4420

Website: [www.wbea.org](http://www.wbea.org)

Date Entered or Updated:            January 6, 2006

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.2	Best Practices Handbook for Traditional Use Studies
<b>Sponsor(s):</b>	<i>Alberta Aboriginal Affairs and Northern Development, Alberta Energy, Western Economic Diversification Canada</i>	

## 1. Objective

To provide a best practices handbook that can guide companies and other parties interested in undertaking traditional use studies in Alberta.

## 2. Description

The rapid expansion of resource development activities across Alberta and the associated land disturbance creates potential conflicts with traditional use by Aboriginal communities. This led to the development of a best practices handbook that is intended to provide useful information to anyone who wants to learn about conducting traditional use studies. The best practices identified in this handbook are based on interviews with people, communities and organizations in Alberta that have been involved in traditional use studies.

The handbook uses the term “traditional use study” to mean a project that is designed to capture and record patterns of traditional use by Aboriginal communities. Three main types of data collection characterize a traditional use study:

- Interviews and discussions with elders and custodians of knowledge
- Historical and other types of research
- Mapping and recording of traditional uses, including sites and activities

Although traditional use studies are community-specific, they share some similar components. The type of traditional use study described in this handbook typically has three phases. Each phase has several steps or activities - from the start-up stage, where the need for a study is identified, through to completing the study. The phases are:

### Phase 1 - Plan the traditional use study

- Identify the need for a traditional use study
- Determine who will be responsible for the study
- Inform the community and develop community support for the study
- Decide how the traditional use study will be managed
- Develop a budget, identify project supporters and obtain funding

### Phase 2 - Conduct the traditional use study

- Select and train interviewers, researchers and mapping technicians
- Inform elders and custodians of knowledge about the study
- Conduct the interviews and undertake research
- Map the information obtained through the interviews
- Utilize databases

### Phase 3 - Use the traditional use study

- Establish the value of the study
- Share information with appropriate stakeholders
- Apply results to activities of interest to the community
- Create a living document that can be frequently updated

Traditional use studies have evolved to reflect community control of the study and have emphasized training Aboriginal people to undertake all aspects of the study. Additionally, some communities are undertaking a series of smaller individual studies conducted over a longer period of time. In this way, a community can do a phased traditional use study and focus on areas of immediate interest.

## 3. Implementation

Some of the key elements for implementation and management of this program are:

- Once the need for a traditional use study has been determined, the Aboriginal community should decide who will have overall responsibility for the project. The support and guidance of community leadership is key for access to elders and custodians of knowledge and will help to maintain momentum over the extended time period typical of a traditional use study.
- A trend with recent studies is the intent to use the results of the study to create sustainable long-term benefits. For example: initiating a plan for using the information to ensure balanced and sustainable economic development; using the data as part of an industry referral process; and monitoring change and measuring the capacity of the land to sustain traditional use.
- Traditional use study information can be put into a geographic information system (GIS) program, in layers, to be easily accessed and used in the resource development and referrals process.
- Aboriginal communities are often reluctant to share traditional use information within the community and with external groups. As a result, it is important that information-sharing be guided by an agreed-upon protocol that is explicit about intellectual property, ownership and control.
- Aboriginal communities often identify a difference between information that can be made publicly available and other information that needs to be kept confidential because it is protected by elders and custodians of knowledge. This could include medicinal plant

sites, and productive berry and hunting areas. Confidentiality can be managed by strategies such as using buffer zones around sensitive sites, having protocols on information-sharing, using access control procedures, and mapping landscape capacity or habitats rather than specific activities or sites.

- The traditional use study should be fully funded to meet expectations. In most cases, partnerships have been developed to help with the costs. If the community leads the study, funding a portion of the project can help attract other funding sources and demonstrate the community's commitment to the project. Where studies are industry-initiated, communities often feel they should not be expected to contribute money as the knowledge they have is a valuable asset and should be considered a valuable contribution.

#### **4. Timeframe for Results**

The handbook presents what have been found to be the best practices at this time (2003). The process for doing a traditional use study continues to evolve as knowledge and experience are gained.

#### **5. Measurable Criteria**

Resource developers in Alberta may voluntarily undertake, or be required to undertake, traditional use studies in connection with projects and activities on Crown land. Such studies can provide a useful planning tool for industry in avoiding or mitigating impacts on traditional use sites and activities, and helping build positive relationships with Aboriginal communities.

For Aboriginal communities, traditional use studies provide a mechanism for providing input into managing natural resources, educating industry about Aboriginal dependence on the land and resources, and serving as a community development tool by giving the community an understanding of its unique history.

#### **6. Budget**

Costs of a traditional use study are dependent on the area of land, the number of people and communities involved, and the amount of time and effort required to collect the data. The costs for studies conducted in Alberta have generally ranged from \$100,000 to \$160,000.

#### **7. Partners and Sponsors**

The handbook was developed through a project sponsored and funded by Alberta Aboriginal Affairs and Northern Development, Alberta Energy and Western Economic Diversification Canada under the Western Economic Partnership Agreement. Aboriginal communities in Alberta with experience in traditional use studies were invited to participate in developing this handbook.

#### **8. Experience with the Program**

The handbook was published in 2003. It appears that the first traditional use study undertaken in Alberta was completed in 1982, with several more studies initiated in the early 1990s. To date, approximately 39 Aboriginal communities in Alberta have undertaken some type of traditional use study.



## **9. General Applicability**

This handbook is applicable to all industries active on Crown or reserve lands in Alberta where the need for a traditional use study has been determined.

## **10. Additional Information or Support**

This publication is available at no charge from:

Alberta Aboriginal Affairs and Northern Development, 19th Floor, Commerce Place, 10155 - 102nd Street NW, Edmonton, Alberta T5J 4G8

An electronic version is available at [www.aand.gov.ab.ca](http://www.aand.gov.ab.ca)

Date Entered or Updated:           September 15, 2005

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.3	Prince Albert Model Forest Integrated Resource Management Model
<b>Sponsor(s):</b>	<i>Prince Albert Model Forest</i>	

## 1. Objective

To establish a partnership of First Nations, industry, governments and public stakeholders for planning and sustainable management of the forest ecosystem and land base through research, education and integrated use of all forest resources.

## 2. Description

The Prince Albert Model Forest (PAMF) is a not-for-profit partnership association of First Nations, industry, local communities, and federal and provincial resource management agencies. These parties share a commitment to the sustainability of Saskatchewan's forests through research, education and integrated use of all forest resources. There are 12 partners involved in PAMF including four First Nations and Aboriginal organizations. PAMF is supported by direct funding from the Canadian Forest Service and by partner contributions.

PAMF covers 367,034 hectares in central Saskatchewan within the mixed wood section of the southern boreal forest. A significant part of PAMF is an active part of Weyerhaeuser's forest management agreement. Protected areas include Prince Albert National Park and Candle Lake Provincial Park. PAMF also encompasses part of the traditional lands of the Montreal Lake and Lac La Ronge bands.

The purpose of PAMF is to work together to implement integrated programs in land-use planning and First Nations business opportunities, while maintaining a sustainable and healthy forest ecosystem. The partners have formed working groups that carry out a wide range of activities related to:

- Ecosystem health and local level indicators of sustainable forest management suited to local socio-economic, cultural and environmental conditions
- Communications and knowledge exchange
- Integrated resource management

## 3. Implementation

The model forest program offers opportunities for Aboriginal communities to participate in sustainable forest management decision-making. These opportunities are provided through three main mechanisms:

- **The model forest partnership.** Direct participation by Aboriginal partners provides unique knowledge of the forest ecosystem and allows both traditional and contemporary experiences to shape management practices. The PAMF board of directors has 12 members including four Aboriginal representatives. The board sets direction, establishes priorities, approves the annual workplan and assesses results.
- **Enhanced Aboriginal involvement strategic initiative.** This was introduced in 1997 as part of Canada's model forest program. It was designed to enhance the participation of First Nation, non-status Indian and Métis communities in the development and accumulation of knowledge and tools associated with sustainable management of forest resources. Projects that specifically address the needs of Aboriginal communities include documenting traditional ecological knowledge, launching non-timber forest product ventures and developing Aboriginal forest management plans.

As an example, PAMF partners have collaborated on the Wapus Lake elk re-establishment project to bring back this species whose population was severely affected by an epidemic in the 1940s and an increase in timber harvesting in the mid-1960s which created greater access for predators. The project draws on traditional knowledge of the Montreal Lake Cree elders as well as modern science. In 1999, 276 elk were released into the Wapus Lake area and a total of 600 to 1,200 animals are expected to be relocated throughout the five-year program.

- **Prince Albert Model Forest ecosystem-based integrated resource management plan.** PAMF has developed an integrated land use plan that was adopted in 2000 by all levels of Aboriginal and non-Aboriginal government - a first in Canada. It was developed with input from all resource users including the public, Aboriginal people and local residents and is being used by the Saskatchewan government as the framework for future forest management planning. The plan provides PAMF partners with direction on how to manage all uses and resources of the PAMF area. It was designed to be an adaptive document, to allow for change so that the plan could continually guide management decisions in the best possible direction. The plan is also reviewed and monitored, including annual assessments with continued public input and comprehensive evaluation every five years.

The planning area accommodates a wide variety of resource and land-based uses such as forestry, mining, ecotourism and tourism, traditional use, trapping, roads, trails, power lines, railroads and recreation sites. The plan is based on the principles of integrated and ecosystem-based management, which ensure that planning decisions consider the health of the whole ecosystem including soil, water, plants and animals, to meet a wide variety of objectives. Integrated resource management allows for a broad range of resource uses and gives all affected parties the opportunity to be informed and involved in management planning. The plan is supported by ecological, social and economic information so that decisions are based on consideration of all uses and benefits over the whole area.

Each of PAMF partners expects that the technical knowledge and experience gained in working cooperatively on the model forest will provide the foundation for long-term relationships on much larger forest lands in Saskatchewan. The transfer of technology from the model forest to

other forest managers as well as the transfer of technology from other areas to the model forest are major priorities of PAMF.

#### **4. Timeframe for Results**

PAMP was established in 1992 by the Government of Canada as one in a network of 11 model forests across Canada. The program was renewed in 1997 and again in 2002 for another five-year term.

#### **5. Measurable Criteria**

- The number of participants and the ability to build an effective partnership
- Direct partner contributions in addition to federal government funding; success as a large-scale working model of sustainable forest management
- Development of new knowledge and technologies
- Promotion of education and public awareness of sustainability issues
- Technology transfer

#### **6. Budget**

The budget is set at \$750,000 a year for five years. This includes \$500,000 annually from the Canadian Forest Service and \$250,000 a year (cash or in-kind) from the other PAMF partners. Depending on the project, there may also be additional contributions from PAMF partners as well as external sources.

#### **7. Partners and Sponsors**

Canadian Forest Service, Weyerhaeuser, Montreal Lake Cree Nation, Lac La Ronge Indian Band, Federation of Saskatchewan Indian Nations, Prince Albert Grand Council, Parks Canada, Canadian Institute of Forestry, Resort Village of Candle Lake, Saskatchewan Environment, Saskatchewan Forest Centre, Saskatchewan Research Council

#### **8. Experience with the Program**

PAMF is seen by all partners as a highly successful effort in long-term relationship building. In particular, the development and implementation of PAMF's ecosystem-based integrated resource management plan is a major accomplishment. The partners saw the need to replace the previous system of independent, single-purpose objective setting among agencies and groups with integrated resource management planning. It was recognized that such planning must be supported by adequate ecological, social and economic information on which to base decisions. It was also recognized that the process must include a wide range of participants and that the interests and unique contribution of Aboriginal communities must be integrated into planning and decision-making for PAMF.

Other successes of the PAMF program include the development of local level indicators of sustainability; innovative land tenure models; best management practices in sustainability codes of conduct for woodlot managers and contractors; leading-edge wildlife research; public education and participation; and the development and application of geographical information systems technologies for forest management and resources scenario planning.

## **9. General Applicability**

PAMF provides a working example of how industry, Aboriginal communities and governments can cooperate in developing and implementing an integrated resource management plan, and jointly undertake research activities and apply practical knowledge in support of sustainable forest resource management.

## **10. Additional Information or Support**

Gene Kimbley, General Manager, Prince Albert Model Forest, P.O. Box 2406, Prince Albert, SK S6V 7G3

Telephone: (306) 922-1944

Email: [PAMF@PAmodeforest.sk.ca](mailto:PAMF@PAmodeforest.sk.ca)

Website: [www.pamodeforest.sk.ca](http://www.pamodeforest.sk.ca)

Date Entered or Updated: August 15, 2005

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.4	Assessment of Health of Rivers and Lakes in the Oil Sands Region
<b>Sponsor(s):</b>	<i>Regional Aquatic Monitoring Program (RAMP) - 31 member organizations including 5 First Nations, Athabasca Tribal Council, and Métis Locals #122 (Fort McKay) and #124 (Fort Chipewyan)</i>	

## 1. Objective

To integrate aquatic monitoring activities so that long-term trends, regional issues and potential cumulative effects related to oil sands development can be identified and addressed.

## 2. Description

The objectives of RAMP are to:

- Monitor aquatic environments in the oil sands region to detect and assess cumulative effects and regional trends
- Collect baseline data to characterize variability in the oil sands area
- Collect and compare data against which predictions contained in environmental impact assessments (EIAs) can be assessed
- Collect data that satisfies the monitoring required by regulatory approvals of oil sands developments
- Collect data that satisfies the monitoring requirements of company-specific community agreements with associated funding
- Recognize and incorporate traditional knowledge into monitoring and assessment activities
- Communicate monitoring and assessment activities, results and recommendations to communities in the Regional Municipality of Wood Buffalo, regulatory agencies and other interested parties
- Continually review and modify the program to incorporate monitoring results, technological advances, community concerns, and new or changed approval conditions
- Conduct a periodic peer review of the program's objectives against its results, and make recommendations for adjustments necessary for the program's success

Coordination of monitoring efforts results in the development of a more comprehensive and cost-

effective regional database that may be used by oil sands operators for their environmental management programs, compliance with environmental requirements in regulatory approvals, and assessments of proposed oil sands developments. It also helps other stakeholders interested in the health of aquatic environments in the Athabasca oil sands region.

### 3. Implementation

Some of the key elements for implementation and management of this program are:

- The RAMP regional study area (RSA) is defined by the boundaries of the Regional Municipality of Wood Buffalo, an area of 68,454 km<sup>2</sup> with a population of approximately 60,000. Within the RSA, a focus study area (FSA) is defined by the watersheds in which oil sands development is occurring or is planned. Much of the intensive monitoring activity is conducted within the RAMP FSA. The RAMP FSA is comprised of two major areas: one upstream (south) and the other downstream (north) of Fort McMurray.
- Sampling conducted by RAMP is focused on lakes and rivers in areas where oil sands development is occurring or is planned as well as downstream of any development. During 2004, RAMP monitoring focused on the following aquatic systems:
  - Athabasca River and the Athabasca River delta
  - Major tributaries of the Athabasca River, including the Clearwater, Christina, Hangingstone, Steepbank, Muskeg, MacKay, Eils, Tar, Calumet and Firebag rivers
  - Select minor tributaries of the Athabasca River such as MacLean Creek, Beaver Creek and Poplar Creek
  - Specific shallow lakes in the vicinity of current or planned oil sands development
  - A set of regional lakes important either from a fisheries perspective or known to be sensitive to acidifying emissions
- RAMP focuses on five key components of the aquatic ecosystem:
  - **Climate and hydrology.** This involves monitoring climatic variables (precipitation, air temperature, wind, etc.) and the volume of water flowing through selected rivers and creeks. The information is used to increase knowledge of how regional water bodies react to rain and snow, flooding, drought, and other irregular events.
  - **Benthic invertebrate communities.** These consist of aquatic organisms such as insects, snails, clams and worms that spend at least part of their lives in or on the bottom of rivers, lakes or wetlands. These organisms are an important food source for fish and thus are an important indicator of fish habitat quality. Generally, benthic communities in unpolluted waters consist of a large number of animals (high abundance) and a wide range of species (richness). Monitoring benthic communities provides a measure of the health of a lake or river.
  - **Water and sediment quality.** This component reflects habitat quality and potential exposure of fish and invertebrates to organic and inorganic chemicals.

Monitoring the physical and chemical characteristics of water and sediment (which includes mud, soil, sand and other materials that make up the bottoms of lakes and rivers) provides insights into how natural and human activities affect the health of aquatic ecosystems. Water quality measurements provide a snapshot of current conditions. Sediment quality measurements show how chemicals accumulate over time.

- **Fish populations.** These serve as an important monitoring tool because they are good ecological indicators and a valued resource. RAMP monitors fish populations in the Athabasca River as well as smaller rivers and streams flowing into the Athabasca to determine whether or not the fish are safe to eat or are being affected by oil sands development. The RAMP fish program monitors: the presence and abundance of fish species; fish habitat; fish health; and fish tissue chemistry.
- **Acid-sensitive lakes.** These water bodies are considered vulnerable to increasing acidity. Acid-forming compounds (such as oxides of sulphur and nitrogen released by industry) can cause lakes and streams to become more acidic, which can harm the health of resident fish, insects and plants. The goal of this monitoring activity is to identify early signs of acidification before the lakes and organisms have been harmed.

#### **4. Timeframe for Results**

RAMP was established in 1997 and has a continuing mandate to monitor aquatic ecosystems in the Wood Buffalo region. Data are collected and analyzed on an ongoing and scheduled basis. A technical report is prepared annually and posted on the RAMP website ([www.ramp-alberta.org](http://www.ramp-alberta.org)). Measurement endpoints or limits used in the analysis of current data will provide a basis for the analysis of future data collected.

#### **5. Measurable Criteria**

- Analysis for each RAMP component uses a set of specific measurement endpoints to evaluate aquatic ecosystem health and integrity. Endpoints may be compared against government guidelines for aquatic health, and/or subjected to statistical analyses for the purpose of determining whether or not significant changes have occurred over time or relative to undisturbed areas.
- RAMP recognizes its responsibility to create community awareness and encourage involvement of members of the public. Several initiatives are in place to meet this goal. In conjunction with the Wood Buffalo Environmental Association (WBEA) and the Cumulative Environmental Management Association (CEMA), RAMP holds open houses in smaller communities within the Regional Municipality of Wood Buffalo. Posters and information sheets have been developed and distributed to explain what RAMP does. An annual community report summarizing RAMP's work over the previous year is delivered to each home and business in the Region.

Three initiatives are in place that invite residents to participate in RAMP:

- **Fish abnormalities program.** Residents who catch an abnormal fish are asked to retain



the specimen and contact RAMP.

- **Fish tagging program.** Members of the public are invited to record and report information about any tagged fish that they catch.
- **River response network.** Residents are invited to report any non-spill related events and occurrences of foam, scum, turbidity or other events which may or may not be of natural origin.

## **6. Budget**

Since 2003, RAMP has operated with an annual budget of \$1.8 million which is funded by companies active in oil sands development. These companies include: Syncrude Canada Ltd., Suncor Energy Inc., Albion Sands Energy Inc., Shell Canada Limited, Canadian Natural Resources Limited, Imperial Oil Resources, Petro-Canada, Opti Canada Inc./Nexen Inc., Husky Energy, Synenco Energy Inc., Deer Creek Energy Ltd., and Devon Canada Corporation.

## **7. Partners and Sponsors**

Alberta Energy and Utilities Board, Alberta Environment, Alberta Pacific Forest Industries Inc., Alberta Sustainable Resource Development, Albion Sands Energy Inc., Athabasca Chipewyan First Nation, Athabasca Tribal Council, Canadian Natural Resources Limited, Chipewyan Prairie First Nation, Deer Creek Energy Ltd., Devon Canada Corporation, Husky Energy, Imperial Oil Resources, Environment Canada, Fisheries and Oceans Canada, Fort Chipewyan Métis Local #124, Fort McKay First Nation, Fort McKay Métis Local #122, Fort McMurray First Nation, Imperial Oil Resources, Mikisew Cree First Nation, Nexen Inc., Oil Sands Environmental Coalition, OPTI Canada Inc., Petro-Canada, Pembina Institute, Regional Municipality of Wood Buffalo, Shell Canada, Suncor Energy Inc., Syncrude Canada Ltd., Synenco Energy Inc

## **8. Experience with the Program**

The governance structure and processes utilized by RAMP have contributed to its acceptance and successes. The steering committee, which sets goals and provides overall direction to the program, is made up of representatives from a wide range of stakeholder groups, including regulators, community groups, and industry funding partners. Each member brings different expertise, knowledge and perspective to the table. Collectively, the steering committee is committed to ensuring that recognized professionals, with significant expertise and experience in aquatic resources monitoring, facilitate the program.

## **9. General Applicability**

While RAMP was designed to assess the impact of a specific industry on a unique watershed, the processes it uses and its multi-stakeholder approach to governance may be applicable to other watersheds that may be influenced by other types of industrial activity.

## **10. Additional Information or Support**

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T9H2J4

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Date Entered or Updated: January 6, 2006

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.5	Traditional Cultural Study and Industry Referral Program
<b>Sponsor(s):</b>	<i>West Fraser Mills Ltd., Foothills Model Forest</i>	

## 1. Objective

To work with multiple Aboriginal communities within the Foothills Model Forest to collect traditional cultural knowledge and to design and implement a joint industry/Aboriginal referral process.

## 2. Description

The Foothills Model Forest (FMF) area is home to 13 Aboriginal communities in Alberta and four Aboriginal communities in British Columbia who have a vested interest in having an informed relationship with all stakeholders in the FMF area.

The focus and specific purpose of a traditional culture study (TCS), in the context of the Foothills Model Forest, is to research the merits of applying traditional knowledge to the management practices of a sustainable forest. As well, participating Aboriginal communities will have a permanent record, in the form of a GIS database, of their traditional use of the land. The study includes status, non-status and Métis people - anyone with a traditional Aboriginal heritage.

The FMF's traditional culture study is guided by two documents: "A Guide to Conducting a Traditional Knowledge and Land Use Study", published by Natural Resources Canada, Canadian Forest Service, and "Best Practices Handbook for Traditional Use Studies", published by Alberta Aboriginal Affairs and Northern Development.

The industry referral process is intended to facilitate communication between Aboriginal communities and industry to prevent disturbance of Aboriginal cultural, historical or spiritual sites. It is based on the repository of cultural data that will be created by the traditional culture study. This repository will provide the means to refer prospective surface land users to the Aboriginal community of interest for consultation and direction concerning community-based data.

A steering committee is the guiding force for the TCS study. The committee is made up of representatives from five participating communities, the forest industry, the oil and gas industry, Parks Canada, the Province of Alberta, and the FMF. This committee meets five times per year to give direction to the process and to assume responsibility for the production of extraordinary guidelines and research projects.

### **3. Implementation**

The program is implemented through the direction of the FMF's board of directors. A multiple-partner steering committee oversees program planning and strategy. The program lead works with the communities and ad-hoc committees in acquiring the TCS data and developing the referral process.

### **4. Timeframe for Results**

Preparation has taken two years. The first community started their research in year 2005. The five initial Aboriginal communities are scheduled to have their traditional knowledge data in the repository by the summer of 2007. The referral process is also expected to be working by the summer of 2007. Thereafter, the duration of research for all seventeen communities will be determined by available resources, both money and people.

### **5. Measurable Criteria**

- For each community, the history of elders will be recorded orally and written.
- A repository of cultural data will be maintained on the FMF GIS at a coarse level of resolution and denoted by the community of interest. This repository will provide the means to refer prospective surface land users to the Aboriginal community of interest for consultation and direction concerning community-based data.
- An information protocol will be developed to facilitate copyright and intellectual property practices.
- The traditional knowledge of the elders and other persons with traditional cultural data will be recorded and placed in an electronic data system. All traditional land use sites, such as burial sites, sacred sites, home sites and animal habitat, will be mapped and the information protected in a GIS data base.
- If the community studies are successfully completed, the Foothills Model Forest area will have a thorough description of Aboriginal use of this land. The Foothills Model Forest will have facilitated the production of a data base for the benefit of the seventeen communities in the area. By extension, traditional knowledge will be applied to land use practices.
- Two community TCS projects are underway with three more communities to be underway by June 2007.
- Referral process will be in place June 2007.

### **6. Budget**

The required funds are different for each community. The estimate to complete the first five communities is \$543,000. To date, \$246,000 has been committed to cover three communities.

The Alberta government, West Fraser Mills Ltd. and the Foothills Model Forest are supporting the project. For the first two years, funds were used to network with the communities, do initial training, provide for coordination of the steering committee and develop strategies and plans.

## **7. Partners and Sponsors**

West Fraser Mills Ltd., Alberta Sustainable Resource Development, Alberta Aboriginal and Northern Affairs, Petro-Canada Ltd., Talisman Energy, Jasper National Park, Foothills Ojibway Society, Aseniwuche Winewak, Nakcowinewak, Alexis Nakota Sioux First Nation, Sunchild First Nation, Canadian Forest Service

## **8. Experience with the Program**

Building trust, reaching understanding and gaining acceptance of the programs was a difficult and lengthy process. It was time well spent in that it helped all partners to understand each other and develop a strong working relationship. A "Guiding Principles Agreement" came out of the development process. Today, communities are working together to help each other understand the process, do the studies and develop a referral process.

## **9. General Applicability**

Once completed, we will have multiple Aboriginal input on their TCS, uniform data input for all communities involved, a process that allows the effective use of time and resources of both the communities and industry. Once established and validated, this process can serve as a model for other jurisdictions. Advantages include multiple communities utilizing the same format, common data input, and sharing of resources which allows communities to utilize state-of-the-art systems that they may not have been able to afford on their own.

## **10. Additional Information or Support**

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Don Polubny, General Manager, Foothills Model Forest, PO Box 6330, Hinton AB, T7V 1X6

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Date Entered or Updated: June 30, 2005

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.1	Strengthening the Knowledge Base
<b>Template:</b>	5.1.6 Traditional Land Use Geographical Information System	
<b>Sponsor(s):</b>	<i>Alberta-Pacific Forest Industries Inc.</i>	

## 1. Objective

To facilitate resource access, planning and management decisions by assisting the efforts of Aboriginal communities to collect and record traditional land use information.

## 2. Description

In most areas of Alberta, traditional land use information is sporadic and incomplete. This complicates access and planning decisions by resource companies. As part of the consultation process around developing woodlands operating plans, Alberta-Pacific Forest Industries Inc. (Al-Pac) has maintained a geographical information system (GIS) that incorporates traditional land use information where possible. The company operates in a license area that includes the traditional lands of the Bigstone Cree Nation.

In an effort to enhance availability and application of traditional use knowledge, Al-Pac and Bigstone have jointly initiated a program called the Kituskeenow Traditional Land Use GIS on a portion of the land base. This program is intended to enable Bigstone to collect, store, manage, expand and analyze culturally significant traditional land use data. The database will be proprietary to the Bigstone Cree Nation. After the data are collected and stored, Bigstone will be better able to plan activities on their traditional lands.

The program involves recruiting an experienced GIS analyst, establishing a map department in the Bigstone consultation office, purchasing the necessary software and computer equipment, and providing the training required to ensure the GIS can be operated and understood locally.

The benefits resulting from this program are: allows Bigstone to record traditional land use information for their future use; provides a common data set for all industries that deal with Bigstone to plan activities; offers a potential education tool for Bigstone youth and other band members; and provides a tool to help Bigstone in their land use planning.

## 3. Implementation

Some of the key elements for implementation and management of this program are:

- The Bigstone Cree will have the capacity and means to record and update the

traditional land use information that applies to their traditional lands. This information belongs to the First Nation and can be used internally or shared with others using these lands.

- For companies operating on traditional lands, the ability to access a GIS database of traditional land use information will assist planning, reduce delays and possible conflicts, and reduce costs. There may be potential for Bigstone to charge for this information and recover some part of the cost for maintaining the database.
- The traditional knowledge compiled and recorded has the potential for use in Aboriginal schools to maintain culture through teaching and identification of "areas of significance".

#### **4. Timeframe for Results**

The program was initiated in 2002 and the GIS analyst commenced work in January 2003. By 2005, the system should be fully operational as a repository of traditional land use information.

#### **5. Measurable Criteria**

- Successful transfer of the traditional land use GIS such that it can be operated and understood locally
- Success in building the program into a more comprehensive traditional land use database
- Interest by companies operating on these traditional lands to access and utilize the database
- Ability to utilize the database in Aboriginal schools as an education tool to maintain culture

#### **6. Budget**

The set-up cost of the program was approximately \$100,000 shared by Bigstone, Indian & Northern Affairs Canada (INAC) and Alberta-Pacific Forest Industries Inc.

#### **7. Partners and Sponsors**

Bigstone Cree Nation, Alberta-Pacific Forest Industries Inc., Indian & Northern Affairs Canada

#### **8. Experience with the Program**

The Bigstone TLU GIS program is on-going. The Bigstone Consultation Office continues to collect data within its traditional land use area, and is developing methods to utilize the information.

The Bigstone Consultation Office has signed data sharing agreements with AI-Pac, Weyerhaeuser and the Government of Alberta, which allow for the transfer of Bigstone's traditional land use data to these organizations for planning purposes.

GIS training also continues, and the Bigstone consultation office now employs its own GIS technician.

## **9. General Applicability**

Bigstone has utilized the traditional land use (TLU) GIS program to engage other resource development companies operating within its traditional land use area by producing maps that identify potential areas of concern. Through its resource partnership project, Bigstone will work with industry to determine additional ways in which its traditional land use database may be used to facilitate consultation.

Furthermore, the growth of the TLU GIS program has allowed Bigstone to enter into a memorandum of understanding with AI-Pac and Ducks Unlimited Canada, which provides further support to gather traditional land use data.

Finally, other Bigstone organizations have begun to use traditional land use data for their own programs. The Bigstone Education Commission, for example, is developing a program whereby traditional land use information is infused into the elementary school curriculum. AI-Pac has provided support to this initiative, and will continue to be involved as the project develops.

## **10. Additional Information or Support**

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**Date Entered or Updated: September 9, 2005**



## ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.1	Aboriginal Engagement Process and the Oil Sands Markets Study
<b>Sponsor(s)</b>	<i>Enbridge Inc.</i>	

### Objective

To build relationships between the Oil Sands Markets Study aboriginal relations team and key communities between Fort McMurray, Alberta, and the north-central west coast of British Columbia.

### Description

In early 2002, Enbridge Inc. began a comprehensive study to fully explore the market, transportation and stakeholder issues and challenges underpinning the success of producing and moving oil sand products to market. This initiative, known as the Oil Sands Markets Study (OSMS), was designed to answer some key questions regarding future oil sands production and markets, as well as the pipeline infrastructure required to move the oil to new or existing markets.

The Aboriginal Engagement Process was structured as the relationship-building component of the OSMS - designed to introduce Enbridge to communities which likely would not have knowledge of Enbridge. This process allowed Enbridge to establish relationships and gain an understanding of desired community and consultation protocols well in advance of a decision to actually proceed to a regulatory application stage.

The Aboriginal Engagement Process included:

- Use the framework of the Enbridge Indigenous Peoples Policy (see addendum) to structure the overall engagement strategy and plan
- Identify all affected Aboriginal stakeholders
- Open, establish and maintain lines of communications between the OSMS project team and Aboriginal communities
- Provide an overview and educational component of study parameters - what the study is and what it is not
- Issue identification and potential mitigation strategies
- Identify local protocols to facilitate field studies

- Develop a plan of full engagement to facilitate any move from the study phase to the project application stage

### Principles of Aboriginal engagement

In accordance with Enbridge's Indigenous Peoples Policy, the OSMS project team committed to working with Aboriginal communities to develop mutually beneficial relationships and opportunities that address both Enbridge's business interests and the interests of Aboriginal stakeholder communities.

The principles of engagement include:

- Developing a program that fully supports and is aligned with Enbridge's overall business objectives
- Promoting an environment of respect, openness and honesty with its Aboriginal community stakeholders
- Providing accurate and timely information on OSMS activities to Aboriginal community stakeholders
- Creating an environment where Aboriginal community stakeholders are given the opportunity to provide input in a meaningful way
- Remaining flexible to meet the distinct needs of its Aboriginal community stakeholders
- Meeting or exceeding regulatory, agency and community consultation expectations through interactive communications that are transparent, sincere, proactive, responsive, flexible, reasonable, and respectful
- Seeking community input with respect to the proposed route and eliciting comments regarding the project scope as a whole
- Maintaining a positive profile of the study team with key decision-makers and affected stakeholders
- Honouring community elders, leaders and communities by following traditional protocols when working with and within the Aboriginal communities
- Documenting communication with the communities and organizations, and input all information into an issues tracking database in a timely manner
- Building on existing resources (economic, human resource, education, and social programs) within communities, making it cost-effective for communities to adopt new initiatives from the project
- Developing community profiles to better understand Aboriginal stakeholders and communities
- Developing and maintaining a database of new and existing Aboriginal companies and proprietors that may assist with project in providing economic, training and capacity building opportunities
- Fostering respect and trust regarding Enbridge's approach

## Aboriginal Engagement Process

The Enbridge OSMS aboriginal relations team was mandated to establish and maintain mutually beneficial relationships with Aboriginal stakeholder communities. The team recommended a phased approach that would lead to a future formal consultation program with Aboriginal stakeholders when a decision is made to proceed to a regulatory application. It was envisioned that future formal consultation would be structured around two main principles:

1. While the nature and scope of consultation may vary depending on specific circumstances, the fundamental principles of consultation are the same for both Aboriginal rights and Aboriginal title.
2. Consultation efforts must be made in good faith with the intention of substantially addressing a community's concern(s) relating to infringement. In practical terms, this means the quality of consultation is of primary importance.

Key to building goodwill and trust with the various communities during the engagement process was the positioning of the OSMS simply as being a feasibility study that is only in the preliminary stages. Defining the process as a study allowed Enbridge to demonstrate a genuine commitment and goodwill when engaging communities. It also demonstrates that Enbridge was seeking their views and identifying concerns prior to any decisions being made. In short, it demonstrated that Enbridge was not participating in "token consultation".

### Short-term engagement initiatives (during feasibility):

- Build solid mutually beneficial relationships between Enbridge and Aboriginal communities now to enhance any future consultation with Aboriginal communities
- Working under the guidance and review of Enbridge public and government affairs, generate policy recommendations for the OSMS, regarding economic opportunities, participation, training, training, social investment and the incorporation of traditional knowledge
- Commence the OSMS from a traditional perspective to establish a "foot print" for Enbridge, and be the first in the industry to use such an approach in working with Aboriginal communities

## Implementation

Some key elements for implementation and management of this program were:

- Establishing a credible external Aboriginal relations team - with demonstrable negotiation skills and knowledge of the local communities
- Building an Aboriginal engagement strategy within an overall communications/consultation strategy for feasibility study
- Providing Aboriginal sensitivity training to all members of the feasibility project team
- Allowing adequate time to engagement a large and diverse group of communities - most of which had never been exposed to Enbridge in the past
- Provide adequate funding to support to the community engagement program

## **Timeframe for Results**

The study commenced in the spring of 2002 and proceeded until late 2004 - at which time a decision was made with respect to the feasibility of the project.

## **Measurable Criteria**

In 2002, Enbridge engaged more than 120 Aboriginal communities during the OSMS process. Detailed records of these meetings were compiled. Without exception, the communities expressed support for the Enbridge approach to relationship building. In essence, trust had been established which in turn provided Enbridge with valuable assessment of community needs and expectations.

## **Budget**

The OSMS Aboriginal Engagement process for 2002 cost approximately \$400,000 and included two Alberta coordinators and two British Columbia coordinators - as well as support for various field and community activities.

## **Partners and Sponsors**

Enbridge was the sole sponsor.

## **Experience with the Program**

In early 2005, Enbridge announced that the proposed transportation project, Gateway Pipeline LP, would commence activities to determine detailed routing and environmental baselines in advance of regulatory application filings. The success of the Aboriginal Engagement Program enabled Enbridge to quantify community expectations and capacities. By producing a good foundation to build productive relationships, Enbridge was also able to begin to identify community protocols which have also helped to facilitate engineering and environmental field studies.

## **General Applicability**

The Enbridge Aboriginal Engagement approach is relatively unique in terms of project development. Typically, most companies will only begin external consultation programs after determining the business and engineering viability of a proposal. The OSMS approach has demonstrated the value of early engagement as well facilitating the building of productive and trusting relationships in advance of any definitive project. There may be a general applicability to this program - for those companies willing to engage communities outside of the conventional project cycles.

## **Additional Information or Support**

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Date Entered or Updated: June 23, 2005

## Addendum

### Enbridge's Indigenous Peoples Policy

Enbridge recognizes the history, uniqueness and diversity of indigenous peoples, and they are often key stakeholders in Enbridge's activities. Positive relations with indigenous peoples based on mutual respect and trust will help Enbridge to reach its strategic business objectives and indigenous peoples to realize their aspirations.

Enbridge's commitment is to forge mutually beneficial relations with indigenous peoples in proximity to its operations. To achieve this Enbridge will:

- ensure forthright and sincere consultation with indigenous peoples about Enbridge's projects that affect them, to facilitate a shared understanding of interests and appropriate courses of action;
- respect indigenous peoples' traditional ways, the land, heritage sites, and the environment;
- commit to the fair and equal access of indigenous peoples to opportunities in education, training, employment and business development that result from Enbridge's operations, and foster their greater participation in those opportunities;
- build understanding, sensitivity and respect for local indigenous peoples among Enbridge's employees and contractors; and
- promote participation by indigenous communities in Enbridge's community investment funding programs.

This commitment is a shared responsibility involving Enbridge and its subsidiaries, employees and contractors:

- Enbridge and its employees will conduct business in a manner that recognizes and respects indigenous peoples.
- Senior management of Enbridge will provide ongoing leadership and resources to ensure the effective implementation of this policy.
- Relevant business units or subsidiaries will be responsible for developing specific action plans, in conjunction with indigenous communities, to implement this policy.
- Contractors and suppliers will be expected to comply with this policy and its provisions as set out in Enbridge agreements and contracts.

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.2	Aboriginal Engagement Process on Linear Projects
<b>Sponsor(s):</b>	<i>Kinder Morgan Canada Inc.</i>	

## 1. Objective

To create economic opportunities for affected Aboriginal communities while respecting Aboriginal rights.

## 2. Description

The Aboriginal Engagement Process is a component of Kinder Morgan Canada's Aboriginal relations strategy. (Kinder Morgan Canada was formerly known as Terasen Pipelines and prior to that as TransMountain Pipelines.) The purpose of the strategy is to provide a framework by which corporate decisions affecting Aboriginal communities and organizations are made in a consistent manner and create mutually beneficial opportunities for the company and Aboriginal stakeholders.

### Consultation principles

- Be open, flexible, respectful, consistent and realistic
- Make sure both parties embrace the principle of mutual responsibility
- Start early and remain flexible
- Ask communities how they want to proceed with process

### Short-term engagement initiatives (during feasibility)

- Identify individual who will be the primary company representative
- Schedule meetings with community representatives as early as possible to introduce players
- Make sure company's proposed plans are consistent with the long-term operational vision of the company
- Realistic depiction of potential benefits associated with the company activities is crucial
- Focus on economic (employment/business) opportunities
- Make sure the environmental assessment includes Aboriginal concerns regarding traditional activities and impact on environment

## 3. Implementation

Some of the key elements for implementation and management of this program are:

- The implementation strategy must take into account the long-term resource capacity of the company, particularly if the strategy becomes part of a long-term protocol agreement.
- The implementation strategy should focus as much as possible on the business relationship. (This is an area that companies can deliver on as opposed to human resource development.)
- Depending on contractual arrangements, work with major contractors to identify potential fits with Aboriginal groups.
- Encourage joint venturing if the Aboriginal group does not have the current capacity to undertake work.
- In some cases, work with federal and/or provincial manpower training agencies and training institutions to build Aboriginal capacity for project. (This can only be done effectively if consultation starts early.)

#### **4. Timeframe for Results**

Depends on project's schedule.

#### **5. Measurable Criteria**

- Dollar value of contract
- Number of jobs
- Support of project during regulatory process

#### **6. Budget**

If the project requires a new relationship-building process, make sure there is an adequate budget to cover regular, on-the-ground community visits.

#### **7. Partners and Sponsors**

Kinder Morgan Canada is the sole sponsor.

#### **8. Experience with the Program**

Kinder Morgan Canada personnel have experience in the Aboriginal Engagement Process through building the Corridor Pipeline System in north-eastern Alberta.

#### **9. General Applicability**

Aboriginal engagement can be applied to all resource sectors.

#### **10. Additional Information or Support**

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Date Entered or Updated:           October 15, 2005

# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.3	Consultation/Emergency Response Planning (ERP) for Aboriginal Residents
<b>Sponsor(s):</b>	<i>Gecko Management Consultants (Emergency Response Planning Specialists)</i>	

## 1. Objective

To provide emergency response planning, including consultation, to companies operating in close proximity to Aboriginal residents and communities.

## 2. Description

Emergency response planning is an opportunity, and often a regulatory responsibility, for a resource company to build relationships with an Aboriginal community while obtaining input into emergency response planning and operations.

When Aboriginal residences or communities are close to or within the defined emergency planning zone (EPZ), consultation and emergency response planning requires unique strategic planning and implementation. A resource company may utilize the services of consultants with this specialized expertise, such as GECKO Management Consultants.

The development of a new emergency response plan (ERP) for wells or production facilities, or revisions to an existing ERP, provides an opportunity to:

- Open the lines of communications with the Aboriginal communities, emergency services and other operators in the area
- Arrange for a meeting with the chief and council members to discuss the project and the company's existing and proposed operations
- Clarify and discuss the nature and scope of the proposed project
- Communicate the potential public safety risks of the project, perceived risks, and how the company will address them
- Identify, clarify and work to address any concerns - building trust
- Identify and support the maintenance of reliable emergency response resources in the area with other resource company operators and the Aboriginal community
- Meet one-on-one with individual Aboriginal residents, explaining the project, the safety precautions and emergency procedures. This is also a time where confidential resident, information would be gathered for the ERP as wells as geographic, logistical and other



relevant information for the emergency response plan.

### 3. Implementation

Some of the key elements for implementation and management of this program are:

#### **Make initial contacts with Aboriginal community and the consultation process**

Contact with the Aboriginal residences and community leaders should take place at the initial stages of planning as well as throughout the development and testing of emergency response plans.

Prepare an information package for each residence that:

- Describes the operation and its risk (including characteristics and details on hydrogen sulphide (H<sub>2</sub>S) and sulphur dioxide (SO<sub>2</sub>) hazards)
- Outlines detailed procedures the company will use to ensure safety during operations
- Explains how residents' safety will be protected (evacuated or sheltered) during an incident
- Provides a map showing the evacuation centre
- Offers key resource company contacts for additional information as well as the resource company (and/or mutual aid group's) main emergency number(s)

On reserves and on Crown land where Aboriginal rights and treaty rights are asserted or exist (including those lands often referred to as "traditional lands") and where Aboriginal residents are within the EPZ, an emergency planning/risk communication specialist makes the initial contact with the band office to determine protocol and receive the band's recommendation or agreement for selection for hire of the Aboriginal liaison(s). The function of the Aboriginal liaison is twofold:

1. Primarily the Aboriginal liaisons are hired to work closely with the consultation specialist in conducting the one-on-one visitations with Aboriginal residents within the EPZ. With training, the liaisons can effectively explain the project, the safety precautions and the procedures in the event of an emergency. It is not expected that the Aboriginal liaison would undertake this alone, but would travel with and be supported by the consultation specialist.
2. Secondly, the Aboriginal liaison fills a vital role in public safety as defined with the ERP during specific operations such as sour drilling and completions. The Aboriginal liaisons must be trained, competent and available to notify and support evacuation of the public if an emergency situation with potential to impact the public were to take place.

In planning (within the ERP) and in the selection of the Aboriginal liaisons for a particular operation, some key considerations include:

- The consultation specialist who is training and working closely with the Aboriginal liaisons requires a high level of cultural awareness, sensitivity and risk communication skills.
- The company and contracted consultation specialist need to work with the chief and council to obtain band administration advice and recommendations regarding who should could fill Aboriginal liaison functions.

- When hiring the Aboriginal liaison, preference should be given to those who have a proven competence, previous experience and those with specialized training in safety (e.g. H<sub>2</sub>S Alive certification) or risk communications.
- Ensure that there are adequate numbers of Aboriginal liaison personnel and back-ups. It is recommended that if two liaisons are required then have three in place.
- The consultation specialist must carry out initial and on-going training to ensure the Aboriginal liaisons understand the importance of the role to their own community's safety.
- Liaisons must fluently speak the language of the relevant Aboriginal community(s).
- The consultation specialists should encourage a strong link between the Aboriginal liaisons and elders in the community to provide encouragement and mentoring. The elders provide a spiritual element to the mentorship and are often role models for no-substance abuse, thus resulting in a higher level of dependability and competence in the designated Aboriginal liaisons.
- The consultation specialist must continually strive to build and strengthen positive working relationships with the Aboriginal liaisons, and encourage them in developing competence and confidence in their role as Aboriginal liaisons.
- The consultation specialist meets one-on-one with Aboriginal residents, always accompanied by a chief-and-council-approved Aboriginal liaison, to explain the project.
- Clarify any safety concerns, the involvement of workforce (e.g. lease construction), and confirm any agreements that may have been made with the resource company landmen. Workforce commitments may include discussions with the economic development officer.
- Complete area surveillance for a general idea of the residents with the EPZ and the geographical area, homes, roads and trails.
- The Aboriginal liaison (traveling with the consultation specialist) makes contact with residents of each home in the emergency planning zone, gathering confidential resident information such as occupant names and telephone numbers (if available), exact residence locations, special issues that must be addressed within the ERP (e.g. special medical conditions and/or limited mobility); alternative contacts; place of employment, schools attended and other relevant public-safety information. During this information exchange process (e.g. sharing project and public safety data and gathering confidential resident information), the Aboriginal liaison supports the consultation specialist by identifying where residences/residents are located. The consultation specialist will have to schedule resident visits around the Aboriginal liaison's availability.
- Distribute the information package to each residence. As literacy can be an issue, the information package may be interpreted by the Aboriginal liaison.

### **Involving other resource companies**

Many resource companies are developing mutual aid agreements in areas in proximity to Aboriginal communities and reserves. This mutual aid agreement outlines how companies will support one another in responding to incidents. It defines each participant's responsibilities for providing aid and support during an incident. It is vital that once developed, the mutual aid arrangement and process for notification and mobilization be communicated to the First Nation

administration and to the Aboriginal community.

### **Developing the emergency response plan**

Base area maps and confirmation of maps to current resident data are prepared and verified. ERPs must be flexible and innovative. Residents may not always be living at the same home and some residents cannot be reached by phone. Transportation by bus in case of evacuation is often required due to lack of personal transportation. For certain operations (e.g. sour drilling & completions), the plan may need to specify that busses be accessible on a 24-hour basis, with the drivers on-call, for the specified period of time

### **Communicating and testing the plan**

For certain higher risk operations (e.g. sour drilling and completions) where there are more than approximately 25 residences within an EPZ, resource companies should consider utilizing a dedicated local public safety coordinator. The coordinator stays in the area to manage the community relations during drilling, testing and completions, trains and supervises the Aboriginal liaisons and bus drivers, and is prepared to coordinate all public-safety measures as outlined in the ERP in the event of an emergency. The public safety coordinator depends upon local Aboriginal liaisons and the specified bus drivers to conduct the notification and evacuation of potentially affected residents and transients within the EPZ.

Communication of an ERP that includes Aboriginal residents should include the following steps:

- Review plan outline with Aboriginal authorities, including chief and council, and liaisons
- Conduct regular visits with Aboriginal authorities and liaisons to discuss emergency response plan and any other issues or concerns
- Document and follow up on all issues and concerns raised about the plan and communicate any resulting changes
- Be prepared - have radio systems and pagers in place to contact the Aboriginal liaisons and check-in regularly to confirm their engagement
- Include residents and designated Aboriginal leadership in emergency exercises and review of your emergency response plan to ensure their needs are addressed, they understand your commitment and approach to emergency response, and the plans are appropriate to the site and the community.
- Evaluate all real and simulated implementations of the plan to determine the effectiveness of communication with all stakeholders, correct deficiencies and communicate resulting changes.

### **Notification and communication during an emergency**

The resource company (public safety coordinator) will ensure all residents and affected publics are contacted and kept informed with up-to-date information in the event of an incident. Have a plan in place for the Aboriginal liaisons to keep in direct contact with the public safety coordinator and residents in the EPZ. Telephones may quite likely be an unreliable method to contact residences, so generally a well-prepared ERP will be designed to mobilize the designated Aboriginal liaison to make personal contact with each of the residents.

For drilling or completion operations, the on-site supervisor (e.g. drilling foreman) will activate

the ERP as required and as outlined in the plan. Upon activation of the company's ERP, notification and communications will be made with the First Nation administration, the required emergency services and government agencies, and the media (if required). The company must be prepared to provide information directly to the residents and Aboriginal authorities. In a real emergency, company personnel should stick to the facts and provide the Aboriginal community with the information, such as:

- Nature and current status of the incident
- Incident location and proximity to people in the vicinity
- Potential for the incident to escalate in severity and the potential impact to the people in the area
- Description of the emissions or releases involved, and their short- and long-term effects
- Status and identification of any affected public evacuation or other emergency processes and procedures
- Time period anticipated to correct the situation
- Procedures to prevent future occurrences and sources for additional information
- Open invitation and a compassionate attitude to listen to, clarify and address concerns

#### **Community relations following an emergency event**

When the emergency has been downgraded and terminated, the public safety coordinator (and/or consultation specialist), with support from the Aboriginal liaisons, should personally notify the First Nations administration, businesses, residents, employees, media, and other interested affected parties, as required. Post-incident contact and direct communication and explanation of the incident, the response actions and current status build and maintain trust with stakeholders. This direct one-on-one communication helps to identify information needs, issues or outstanding concerns (e.g. compensation) requiring attention by the resource company.

A review of the actual response actions compared to the pre-defined response actions in the ERP should be conducted. Lessons learned and areas for improvement should be documented and action items assigned and completed. Results of the response and action plans to improve preparedness should be shared with the First Nations administration and possibly with the community as a whole.

#### **4. Timeframe for Results**

Depends on the number of residents in the emergency response plan and the particular aspects of the site-specific operation.

#### **5. Measurable Criteria**

- No delay in consultation process or regulatory application approval
- Good reputation which may allow for less time intensive planning and consultation phase for subsequent applications in the same community
- Effective response efforts during a real emergency event

## **6. Budget**

Depends on the nature of the project, the concerns of the area residents and administration, the size of the EPZ and the number of residents.

## **7. Partners and Sponsors**

Resource company, emergency response planning company (GECKO Management Consultants), the Aboriginal community

## **8. Experience with the Program**

GECKO Management Consultants have been providing the consultation and emergency response planning service to numerous oil and gas companies since 1997. They deliver effective communication, which has gained the confidence of Aboriginal communities living within the planning zones. Success is attributed to the utilization of local Aboriginal liaisons, skilled consultation and emergency planning specialists, and highly trained competent public safety coordinators.

## **9. General Applicability**

This program can be used by companies to raise the understanding of the sensitivities and unique challenges and opportunities of emergency response planning near Aboriginal communities on Crown lands.

## **10. Additional Information or Support**

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Date Entered or Updated: August 22, 2005

## ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.4	Doing Better Business - Effective Consultation and Disclosure
<b>Sponsor(s):</b>	<i>World Bank International Finance Corporation (IFC)</i>	

### Objective

To provide guidance on the principles and process to be followed in public consultation and disclosure with the aim of building not only financially successful projects, but environmentally and socially responsible ones as well.

### Description

In today's world where growing public awareness of environmental and social issues is driving changes in consumer behaviour, investment, and regulation, the International Finance Corporation (IFC) of the World Bank Group is a leader. Its environmental and social requirements have become the global benchmark. IFC's reputation and international standing as a member of the World Bank Group allows it to bring communities, governments and non-governmental organizations together with the private sector to develop innovative approaches to complex issues, including consultation.

IFC recognizes and endorses the fundamental importance of accountability and transparency in the development process. Experience has demonstrated that consultation and sharing of information with local communities affected by IFC-financed projects, as well as with co-financers, partners, and groups and individuals with specialized knowledge of private sector development issues, helps to enhance the quality of IFC-financed operations.

The IFC has prepared policies and guidelines, including a Good Practice Manual. This manual is specifically tailored to help companies working in developing and emerging economies meet challenges of effective public consultation and information disclosure due to duration of projects, distance covered by the project, and the biophysical and cultural diversity of the project area. The manual describes how to identify project-affected people and carry out meaningful culturally appropriate consultation.

The Good Practice Manual addresses the challenges of the private sector which has specific characteristics and operates under certain constraints. This at times makes public consultation and disclosure particularly sensitive and complex. The many political and commercial factors should not be considered insurmountable obstacles. However, they should not be seen as excuses for failing to consult with locally affected people.

The manual discusses the risks of failing to consult adequately including delays, weakened negotiating positions and damaged public images.

The guidance notes of the manual explain how to carry out good public consultation and disclosure during each stage of planning and implementing a major private-sector project. The stages include:

- Conceptual design
- Stakeholder identification
- Planning for public consultation and disclosure
- Scoping the environmental assessment (EA)
- Preparing the draft EA report and environmental action plan (EAP)
- Consultation and disclosure on the draft EA report
- Construction and operations
- Community development
- Approaching IFC after EA completion

The IFC has embarked on an integrated comprehensive review of its Disclosure of Information policy, safeguard policies, and Environmental, Health & Safety (EHS) guidelines.

- Safeguard policies are the basis for IFC's leadership on social and environmental sustainability to manage the social and environmental risk of private sector operations it finances in emerging markets. IFC has developed safeguard policies for environmental and social issues that project sponsors should review before conducting their assessments. IFC's policies and guidelines give project sponsors a powerful tool for identifying risks, reducing development costs, and improving project sustainability by benefiting affected communities and preserving the environment.

Safeguard policies include policies and programs regarding:

- Environmental assessment
- Natural habitats
- Pest management
- Forestry
- Safety of dams
- International waterways
- Indigenous Peoples - OD 4.20 September 1991 Safeguard Policy Operational Directive OD 4.20 Indigenous Peoples provides guidance with
  1. Definitions of terms
  2. Objective and policy
  3. Indigenous peoples development plan

4. Project processing and documentation
  - Involuntary resettlement
  - Cultural property
  - Child and forced labour policy statement
- Environmental Health and Safety guidelines. To ensure the sustainability of investment activities, IFC has developed a comprehensive social and environmental risk management framework.
- Extractive industries review (EIR). This was launched by the World Bank Group to discuss its future role in the extractive industries with concerned stakeholders. The aim of this independent review was to produce a set of recommendations that will guide involvement of the World Bank Group in the oil/gas and mining sectors. The discussion was within the context of the World Bank Group's overall mission of poverty reduction and the promotion of sustainable development. This global review was initiated in July 2001 and completed in December 2003 with the EIR recommendations published in the final report entitled "Striking a Better Balance". Following a period of public comments, management of the World Bank responded in September 2004 with the "Final World Bank Group EIR Management Response". See website: <http://www.eireview.org/>
- Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, including Article 6 on consultation. See website: <http://www.unhchr.ch/html/menu3/b/62.htm>

## Implementation

Eleven actions for managing public consultation:

1. Plan ahead - effective public consultation requires advanced planning that includes research to identify: any risks to the project arising from the local environmental and social context; the key parties who may be affected by or able to influence the project's outcome; and local regulatory requirements calling for public involvement.
2. Test the program
  - Identify relevant stakeholders
  - Inform
  - Provide opportunities and time
  - Respond
  - Communicate responses back to individuals and organizations consulted, and to the wider public
3. Invest time and money
4. Involve operations managers directly. The support and active participation of the project sponsor's top management and a commitment to incorporating stakeholder concerns is required. This participation must begin very early in the



process, so that the entire company understands the importance of integrating stakeholder concerns into project design and key schedules.

5. Hire and train the right personnel for public consultation. Identify the management structure with responsibility for public consultation. A reporting structure should be developed so the community liaison office has board-level reporting authority and some rank in terms of being able to negotiate, not just listen, on behalf of the company. They should have responsibilities that include hearing and considering local concerns and suggestions.
6. Maintain overall responsibility for the outcomes. The company should maintain overall responsibility for the outcomes of all public consultation performed by external consultants or sub-contractors, through the use of explicit terms of reference and contractual arrangements.
7. Coordinate all consultation. Coordination will provide consistency in the information conveyed, increase efficiency, decrease confusion, and reduce the likelihood that the project may make conflicting commitments.
8. Build dialogue and trust with two-way communication. Develop two-way channels of communication, preferably in the local language, with project-affected groups and other relevant stakeholders. Special consideration should be given to the culture, language, land use, and territorial rights of affected Aboriginal peoples, if present in the project area. Continuity and familiarity build trust and understanding.
9. Manage expectations. In order to avoid unrealistic demands and expectations from local communities and other interested parties, the project sponsor needs to be clear and firm from the beginning in describing what the project can deliver. Try not to overstate the benefits.
10. Work with governments. Inform and consult with relevant government departments.
11. Work with NGOs and community-based organizations. Carry out initial research regarding the local power dynamics and existence of special interest groups to ensure that any intermediary organization are true representative of and accountable to the community interest they claim to support and represent.

### **Timeframe for Results**

The scheduling of project activities should allow sufficient time for consultation and for addressing unanticipated issues. Extensive consultation is required during all phases of projects. If not implemented properly, there will be immediate and long-term consequences.

The duration of consultation programs in developing countries is difficult to predict. Generally speaking, as projects become larger and more complex, the time to complete the program will likely increase. Another important factor that can affect the timeframe for implementing a consultation program is the capacity of the local stakeholders to understand what is being presented to them, so that they can participate and make decisions as informed stakeholders.

## Measurable Criteria

Generate positive financial and commercial benefits for a resource company including:

- Reduced financial risk
- Reduced direct costs
- Increased market share
- Enhanced social and business benefits for local communities; increased efficiency and avoidance of future costs due to the integration of local knowledge to a project's design, construction, and operation
- Identification and resolution of problems and conflicts in an atmosphere of trust

The environment and social development department of IFC is tasked with evaluating, appraising and monitoring the environmental and social impacts of proposed and existing IFC projects. While compliance with IFC's guidelines and safeguard policies is a requirement for project sponsors, adhering to them will lead to better business performance and more sustainable outcomes for any company.

## Budget

The project budget should allow for expenditures such as hiring consultants to perform all the necessary steps: employing permanent staff with the appropriate qualifications; organizing public meeting; printing and distributing written material; including material translated into local languages; and working with the media.

The budget may depend on a range of factors including scope and complexity of the issue, willingness and capacity of the community to engage, time required to do effective consultation, and whether there is an existing relationship. Consideration may need to be given to funding the capacity development of local stakeholders so that they are able to effectively participate in the consultation program.

## Partners and Sponsors

The International Finance Corporation, the private sector development arm of the World Bank Group, is committed to financing environmentally and socially sound projects in its member countries.

## Experience with the Program

The "Doing Better Business Through Effective Public Consultation and Disclosure Good Practice Manual" was published in 1998, but the World Bank and similar organizations have been advocating these business practices for many years.

IFC has embarked on an integrated review of its safeguard policies, policy on Disclosure of Information, and Environmental, Health & Safety guidelines. The review involves a comprehensive update of policies and guidelines, subsequent to stakeholder consultation and expert guidance. The revised policies were presented to IFC's management and board for approval in late 2005.

## **General Applicability**

This program is a model that can be used by companies undertaking consultation and working in culturally diverse communities.

## **Additional Information or Support**

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World Bank IFC Resource Guide: <http://www.ifc.org/enviro/Publications/Practice/practice.htm>  
<http://www.ifc.org/ifcext/policyreview.nsf/Content/DisclosurePolicyReview>

Date Entered or Updated: September 1, 2005

## ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.5	Legal Principles Surrounding Consultation
<b>Sponsor(s)</b>	<i>Fraser Milner Casgrain LLP</i>	

### Objective

To provide an overview of legal principles relating to Aboriginal consultation on Crown land in Alberta for resource developers.

### Description

Consultation is the process by which Aboriginal peoples are consulted regarding land use decisions that affect the exercise of Aboriginal or treaty rights or the enjoyment of Aboriginal title. Consultation is relevant for the resource developer as a failure to consult with Aboriginal peoples by the Crown may in certain circumstances impact upon licenses, leases or permits that are issued to resource developers under Crown authority. In other instances, a failure to consult with Aboriginal peoples can result in delays to project development.

There have been significant and ongoing developments in the law surrounding the duty to consult with Aboriginal peoples. It must be kept in mind that this remains an unsettled area of law, although the Supreme Court of Canada in judgments rendered in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550 and *Mikisew Cree First Nation v. Canada*, [2005] S.C.J. No. 71 have provided further guidance and clarification of the legal principles associated with the duty to consult. These decisions specifically provided the Supreme Court of Canada with an opportunity to address the duty to consult with, and where appropriate, accommodate Aboriginal peoples. Given the importance of these decisions, they will be addressed in greater detail below.

Much of the recent law surrounding the duty to consult has arisen in British Columbia where, with the exception of the north-eastern part of the province, there are no treaties. Alberta, however, is covered by three treaties, numbered 6, 7 and 8. Treaties 6, 7 and 8 contain clauses extinguishing Aboriginal rights and title in exchange for treaty rights. Therefore, of particular relevance to Alberta is the application of the duty to consult as it relates to treaty rights. Treaty rights contained within Treaties 6, 7 and 8, include, for example, the right to reserve lands, and specific rights to hunt, fish and trap. The Supreme Court of Canada has also determined (*R. v. Badger* [1996] 1 S.C.R. 771) that the *Natural Resources Transfer Agreements* (appended to the *Constitution Act, 1930*) modified the Treaty 8 right to hunt in Alberta such that the treaty right

to hunt is for food only and not for commercial purposes but that the right extends to all “unoccupied Crown lands or lands to which the Indians may have a right of access”. As the wording in Treaties 6 and 7 is similar to that contained in Treaty 8, it is presumed that this modification of the treaty right is also applicable to Treaties 6 and 7.

Therefore, it is important to recognize that the duty to consult in Alberta will primarily relate to treaty rights which may be exercised on reserve lands and “unoccupied Crown lands or lands to which the Indians may have a right of access”. A recent important development relating to the duty to consult in respect to historical treaty rights arose in *Mikisew Cree First Nation v. Canada*, [2005] S.C.J. No. 71. The Supreme Court of Canada provided specific guidance as it relates to consultation pertaining to treaty rights in Alberta. Given the importance of this decision, it will be discussed in greater detail below.

Despite the relevance of treaty rights, this is not to suggest that Aboriginal rights will not also be claimed or found to exist (see for instance *Ahyasou v. Lund*, [1998] A.J. No. 1157 (Alta. Q.B.) where the Athabasca Tribal Council claim that exploration activity infringes both Aboriginal and treaty rights; and the decision of *R. v. Breaker*, [2000] A.J. No. 1317, where Judge Cioni of the Alberta Provincial Court found that a member of the Siksika First Nation (a signatory under Treaty 7) was exercising both Aboriginal and treaty rights in hunting for food and that his right to do so extended to unoccupied Crown lands.

Furthermore, although treaties 6, 7 and 8 contain clauses extinguishing Aboriginal rights and title in exchange for treaty rights, it should be noted that all Aboriginal peoples do not accept that these rights were extinguished. Therefore, claims for Aboriginal title may be asserted by those Aboriginal peoples who do not accept that their rights were extinguished by the treaties.

## Sources of Consultation

It is important to understand that consultation obligations can arise from different sources, including those imposed by regulators. The primary sources are:

- Section 35, Constitution Act, 1982
- Statutory obligations
- Administrative law requirements

### Section 35, *Constitution Act*, 1982

The starting point for the duty to consult stems from the recognition and affirmation of the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada in the *Constitution Act, 1982* (the “*Constitution Act*”). Section 35 of the *Constitution Act* protects those Aboriginal and treaty rights of the Aboriginal peoples existing as of April 17, 1982 when the *Constitution Act* came into force.

The Supreme Court of Canada has spoken of the duty of consultation as a function of the Crown’s role in justifying the infringement of an Aboriginal or treaty right. Despite the inclusion of Aboriginal and treaty rights in the *Constitution Act*, 1982, these rights are not absolute. Treaty and Aboriginal rights can be either extinguished or infringed provided that certain tests are met.

Infringement, as opposed to extinguishment, occurs where a government, either federal or provincial, acts in a way that is inconsistent with the exercise of the Aboriginal interest.

Aboriginal and treaty rights may be lawfully infringed by the Crown so long as the infringing act meets the Court's test of justification. The test for demonstrating justification of the infringement of an Aboriginal or treaty rights is a two-part test: first, the court must consider whether there has been a *prima facie* infringement of an Aboriginal or treaty right; and second, the court must consider whether any infringement is justified in the circumstances.

A body of law has developed at the Supreme Court of Canada level that provides that the Crown has a fiduciary obligation to consult with Aboriginal peoples as part of the justification process once an Aboriginal or treaty right has been established (See *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at 1119; and *Delgamuukw v. The Queen*, [1997] 3 S.C.R. 1010).

In the decision of *Haida Nation v. British Columbia (Minister of Forests)*, the Supreme Court addressed the issues of (1) whether the Crown has a duty to consult with and accommodate Aboriginal peoples prior to making decisions that might adversely affect their unproven Aboriginal rights and title claims; and (2) whether a company may owe an independent duty to consult with and accommodate a First Nation. The *Taku River v. British Columbia* decision also addressed the issue of consultation and particularly, the issue of the limits of the Crown's duty to consult. The following conclusions can be drawn from these decisions:

- The obligation to consult arises when the Crown has knowledge of the potential existence of the Aboriginal right or title and is contemplating action that may adversely affect those interests.
- The scope of the duty will be proportionate to (1) a preliminary assessment of the strength of the case supporting the asserted Aboriginal right or title and (2) the seriousness of the potentially adverse effect upon the right or title claimed.
- Even where "deep consultation" is required, where dealing with asserted but unproven rights, the Aboriginal groups do not have a veto over the uses of Crown land.
- The consultation process may indicate a need for accommodation, which requires that Aboriginal concerns be balanced reasonably with the potential impact of the particular decision on those concerns, and with competing societal concerns.
- Good faith in the consultation process is required on the part of both the Crown and the Aboriginal groups, who must not frustrate the Crown's reasonable good faith efforts to consult.
- The obligation to consult with and, where indicated, to accommodate Aboriginal concerns lies with the Crown alone. There is no independent legal obligation on third parties such as project proponents.
- Environmental assessment and regulatory processes that provide a meaningful opportunity to address the interests and concerns of Aboriginal people during project development can discharge the duty of the Crown to consult with, and where appropriate, accommodate the interests of Aboriginal people, even in those areas of Canada that are not subject to historical treaties or modern land claim agreements.

While the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River v. British Columbia* addressed the duty of consultation in the context of unproven aboriginal rights and title claims, the Supreme Court had the opportunity to examine

consultation and accommodation duties in the context of historical treaty rights in the decision of *Mikisew Cree First Nation v. Canada*. The Supreme Court continued to apply the principles that it had set forth in the *Haida* and *Taku River* decisions, but in the context of historical treaty rights in Alberta. The specific question in this case was whether or not the Crown had sufficiently consulted with the Mikisew Cree First Nation (a signatory to Treaty 8) before approving the construction of a winter road through Wood Buffalo National Park which, if implemented, would traverse the trap lines of 14 Mikisew families. In a unanimous decision written by Binnie J., the Supreme Court held that the Crown's consultation efforts in the particular instance were not sufficient and, more importantly, not honourable. The Supreme Court rejected an argument by the Crown that in approving the construction of the road, the Crown was simply exercising its treaty right to "take up" surrendered lands under the terms of the treaty and that, therefore, consultation with potentially-impacted First Nations was not required. The relevant portion of Treaty 8 reads as follows:

And Her Majesty the Queen hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes. [emphasis added]

The Supreme Court specifically concluded as follows as it pertains to the Crown's duty to consult, and where appropriate, accommodate Aboriginal peoples:

- The Crown has a treaty right (which exists in some form in all of the numbered treaties) to "take up" surrendered lands for a variety of purposes with the effect that certain treaty First Nations will be precluded from exercising their rights to hunt, trap, or fish on those lands. However, the exercise of this treaty right by the Crown must be honourable and must involve a process of consultation with any Aboriginal group whose rights may be impacted.
- The Supreme Court confirmed that First Nations will not hold a veto power over a proposed project despite having a treaty right to be honourably consulted.
- When a project contemplates any potential impact on the treaty rights of a First Nation, the Crown is not automatically obligated to consult with every First Nation that happens to be a signatory to that particular treaty. The impact on potential treaty rights is to be ascertained "in relation to the territories over which a First Nation traditionally hunted, fished and trapped, and continues to do so today."
- The duty to consult will always have both "informational and response components." Merely providing a standard package of information about a project (in the same form as that distributed to other interested stakeholders) or holding public open houses does not constitute sufficient consultation in the Aboriginal context.
- The Crown's duty of consultation in *any* instance must be undertaken "in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue" and the Crown must always ensure that the interests of aboriginal peoples "are seriously considered and, wherever possible, demonstrably

integrated into the proposed plan of action."

Thus, the Supreme Court of Canada has provided guidance and clarification, in its first significant pronouncements on the nature and context of the Crown's duty to consult with, and where appropriate, accommodate Aboriginal peoples prior to making decisions that might adversely impact Aboriginal or treaty rights.

### **Statutory obligations**

The obligation to consult may also arise directly from legislation. For example, the *Indian Oil and Gas Act*, R.S.C. 1985, c.I-7, as amended, (which relates to Reserve Lands in Alberta) stipulates in section 6 as follows:

6(1) Minister to Consult - The Minister, in administering this Act, shall consult on a continuing basis, persons representative of the Indian bands mostly directly affected thereby.

Consultation obligations may also arise through administrative direction. Of particular relevance to the resource sector are directives issued by the National Energy Board (the "NEB"). While the NEB had issued a Memorandum of Guidance dated March 4, 2002 addressing consultation with Aboriginal peoples, this was withdrawn by letter dated August 3, 2005 as a result of the Supreme Court of Canada decisions in *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia*. The Memorandum of Guidance dated March 4, 2002, had required applicants to identify Aboriginal peoples that had an interest in the area and to also provide evidence that there had been adequate Crown consultation. However, in the letter dated August 3, 2005, the NEB indicated the following:

The Board is committed to ensuring that appropriate consultation is carried out in respect of projects where there is a potential impact on the rights or interests of Aboriginal peoples. Where there is a potential for infringement of Aboriginal rights or interests in the area of the proposed project, applicants will be expected to meet the information requirements set out in the generic information request on consultation dated 3 April 2002 (copy attached) and the Filing Manual, which is available on the Board's Web site ([neb-one.gc.ca](http://neb-one.gc.ca)). The Board will continue to require applicants to file information to identify any Aboriginal groups that may be affected by a proposed project, details of meetings with those individuals or groups, details of concerns expressed and the degree to which those concerns have been or will be addressed by the proponent. The Board may also require additional information in any process where there is a possibility of infringement of Aboriginal rights or interests.

As set forth in the August 3, 2005 letter, where there is potential for infringement of Aboriginal rights or interests, applicants will be expected to provide the information set out in the list dated April 3, 2002. This includes, *inter alia*, information by the company as to which Aboriginal groups have been contacted, the nature of any concerns raised by the group and whether the company is aware of any Crown consultation.

In addition the National Energy Board's Filing Manual released on April 29, 2004, provides guidance on the design and implementation of public consultation programs, and includes specific advice regarding consultation with Aboriginal communities.

The Alberta Energy and Utilities Board has also issued a guide (Guide 56) that requires that



consultation of affected parties be met when making applications. This guide essentially requires consultation with all "...parties whose rights may be directly and adversely affected by the nature and extent of the proposed application; and includes First Nations and Métis."

#### **Administrative law requirements**

As an interested and affected stakeholder, Aboriginal peoples may have a right to procedural fairness (including a right to be heard and consulted) as part of an administrative hearing where their interests are being considered. This would be the same right to procedural fairness or the right to be heard that any citizen is entitled to before an administrative tribunal whose rights are being affected.

#### **Other developments**

The Alberta government has also made it clear that there may be further developments to consultation requirements with Aboriginal groups. For instance, the Alberta government released an Aboriginal Policy Framework (the "APF"), dated September, 2000, entitled "Strengthening Relationships". The APF states that the government will:

Where appropriate, consult affected Aboriginal people about proposed regulatory and development activities that may infringe existing treaty, NRTA or other constitutional rights.

Work with affected Aboriginal Communities and industry to use existing mechanisms and, where necessary, develop new ones for appropriate consultation on resource development and land-use decisions and to identify opportunities to participate in the associated benefits.

Further, the Ministry of Aboriginal Affairs and Northern Development ("AAND") in its business plan referenced as 2003-06, at page 54, has stated that one of its strategic priorities is to improve consultation with Aboriginal groups in Alberta:

Improved consultation policies, strategies and practices are desirable in the resource sector. Traditional use studies contribute to enhanced consultation regarding land use. AAND will advise, facilitate, and coordinate work with other Ministries to effectively manage this significant challenge on behalf of the Government of Alberta.

Finally, on May 16, 2005, the Alberta government released a consultation policy entitled "The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development". The purpose of the policy is to address the manner in which Alberta will consult with First Nations and to define the roles and responsibilities of all parties. The policy indicates that Alberta will consult with First Nations where land management and resource development on Provincial Crown land may infringe First Nations rights and traditional uses. The Alberta government has set forth the guiding principles in its policy:

- Consultation must be conducted in good faith.
- Alberta is responsible for managing the consultation process.
- Consultation will occur before decisions are made, where *land management and resource development* may infringe First Nations *rights and traditional uses*.
- While each has very different roles, the consultation process requires the participation of

First Nations, the *project proponent* and Alberta.

- Alberta's consultation practices will be coordinated across departments.
- Parties are expected to provide relevant information, allowing adequate time for the other parties to review it.
- The nature of the consultation will depend on such factors and the extent of potential infringement, the communities affected, and the nature of the activities involved.
- Consultation should be conducted with the objective of avoiding infringement of First Nations *rights and traditional uses*. Where avoidance is not possible, consultation will be conducted with the goal of mitigating such infringement.
- Consultation will occur within applicable legislative and regulatory timelines.

The Alberta government also expects industry to engage in consultation based on respect, open communication and cooperation. Specifically, the following expectations of the project proponent are identified by the Alberta government:

- Provide early notification to Alberta and to First Nations before development is authorized to proceed, to ensure they are reasonably informed about the *project proponent's* proposed activities. Information should include short-term and long-range plans in the area.
- Discuss with First Nations when their proposed activities may infringe First Nations *rights and traditional uses*.
- Record and address issues or concerns identified by the First Nations and identify how infringements were avoided or mitigated.
- Upon request, make available to Alberta its documentation and other information related to consultation.
- Consider the circumstances of the project and avoid infringement of First Nations *rights and traditional uses*. Where avoidance is not possible, the *project proponent* is expected to make reasonable efforts to mitigate the infringement.
- Enter into dialogue with the First Nations regarding opportunities specific to an individual project toward achievement of a positive, sustainable outcome.

The Alberta government has also outlined at page 6 of its policy, the expectations of First Nations, which are not set forth herein.

#### 1. Nature and scope of consultation

The nature and scope of the duty will vary with the circumstances. In the *Delgamuukw* decision, the Supreme Court of Canada set forth a spectrum analysis of consultation, with the degree of consultation required being a function of the nature of the right held and the extent and seriousness of the interference with that right. For instance, where the breach of the right is less serious or relatively minor, it will be no more than a duty to give notice, disclose information and discuss important decisions. In other cases, where there is a more significant breach of a right, deep consultation may be required aimed at finding a satisfactory solution. In certain circumstances, the consent of the First Nation may be required. In *Mikisew Cree First Nation v.*

*Canada*, the Supreme Court confirmed that the scope of consultation lies within a spectrum. It stated that every case must be approached individually. Each case must also be approached flexibly, since the level of consultation required may change as the process goes on and new information comes to light. The duty to consult will always have both informational and response components.

## 2. Practical implications

Despite the fact that private parties do not have a legal duty to consult (as set forth in *Haida Nation v. British Columbia*), it is private companies that may bear the burden of the Crown's failure to consult or, where indicated, accommodate First Nations. In two recently decided cases *Blaney et al v. British Columbia (The Minister of Agriculture, Food and Fisheries, et al)*, 2005 BCSC 283 and *Betsiamites First Nation et al v. Kruger Inc. et al*, Superior Court of Quebec 500-17-022878-048, Canadian courts have applied the principles expressed by the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests)* to enjoin private parties from conducting resource-based activities in areas subject to asserted but unproven Aboriginal rights and title. Despite the fact that the private parties' activities were authorized by their respective provincial governments, they were ordered not to act on those authorizations. These cases demonstrate that private parties must ensure that government adequately fulfills its duty to consult with, and where appropriate, accommodate Aboriginal groups who assert rights and title in areas of resource development. In addition, it is important for companies operating on Crown lands where Aboriginal and treaty rights are asserted or exist (including those lands often referred to as "traditional lands") to participate in a consultation process. A consultation process will identify the various stakeholders in the area and their specific concerns so that steps can be taken to address issues raised. **Consultation is a sound practice from a risk management perspective.** In addition, it can assist in identifying issues so that the company can ensure that the government is addressing issues and consulting adequately with Aboriginal groups.

## 3. Who should be consulted

It is not always clear as to who should be consulted as there may be overlapping claims to an area. The most prudent course is to engage in a consultation process with any First Nation, members of a First Nation or tribal council (speaking on behalf of members) who are claiming rights to the area.

## 4. Specific steps for project proponent to take

The Crown will be required to inform the First Nation of its plans in the area affected and provide a reasonable opportunity for input into those plans. In order to minimize risks and delays associated with the project, resource companies/project proponents should consider undertaking the following steps:

### Understand Aboriginal interests

- Identify the various Aboriginal communities that exercise rights on or claim interests in the lands in question.
- Determine whether treaties or comprehensive land claim agreements have been concluded or land claims are being advanced in relation to the land, either through litigation or through the treaty negotiation process.

- Identify any agreement or memoranda of understanding between government and First Nations that apply to the proposed project area.

#### **Know your obligations**

- Review all provincial and federal statutes and regulations that are applicable to the lands and that contain consultation requirements.
- Be aware of when consultation is required by the regulators, with whom, and what specific information must be provided as part of the consultation requirements.
- Be aware of relevant provincial and federal policies that may impact decision-making processes regarding your project.
- Stay informed regarding evolving judicial consideration of consultation and compensation requirements to determine if the courts have imposed new requirements or provided greater direction regarding the fulfilment of existing requirements.

#### **Develop productive relationships**

- Invite each potentially affected Aboriginal community to meet as early in the project planning phase as is feasible.
- Discuss with these communities how they would like to be consulted regarding the project and what their information needs are.
- Consult with the appropriate representatives of the Aboriginal community. The appropriate representatives may be more difficult to identify when dealing with a Métis or non-status Aboriginal community as in some cases these communities may not have a recognized government structure, or an accepted elected or recognized hereditary leader.
- Understand and respect community protocols.
- Provide the Aboriginal communities with sufficient information that they will understand the nature of the project and its potential impact.
- Be respectful of Aboriginal communities' views.

#### **If possible, negotiate an MOU**

- Identify the company's objectives, both short-term and long-term.
- Identify possible opportunities for Aboriginal communities to be involved in the project. These may include involvement in the environmental or archaeological assessments and traditional land use studies, employment, business, or economic development opportunities.
- Understand any issues that the company is unable to address effectively, and make those limitations clear in discussion with the communities (e.g., the project proponent may have no ability to assist an Aboriginal community in addressing issues related to treaty negotiations).
- Attempt to make negotiation interest-based, rather than positional.

### **Protect project proponent's right.**

- Document consultation efforts.
- Attempt to accommodate Aboriginal concerns and minimize impacts of the project on their rights.
- Ensure that the company carries through with its commitments to Aboriginal communities and to government decision-makers.
- Communicate effectively with government decision-makers about the company's consultation plans and processes.

### **General Applicability**

This template was developed by Fraser Milner Casgrain LLP as an overview for resource companies on legal issues relating to Aboriginal consultation in Alberta.

### **Additional Information or Support**

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# ACR Aboriginal Programs Project Program Template

<b>Program Area:</b>	5.0	Resource Stewardship
<b>Sub Program:</b>	5.2	Implementing Consultation Processes for Resource Access and Management
<b>Template:</b>	5.2.6	Standards of Consultation
<b>Sponsor(s):</b>	<i>Athabasca Tribal Council (ATC)/All Parties</i>	

## 1. Objective

To define expectations for Standards of Consultation that will be utilized by the First Nations and industry parties who are the signatories to the ATC/All Parties Core Agreement.

## 2. Description

The Athabasca Tribal Council (ATC)/All Parties Core Agreement Standards of Consultation schedule includes:

### Principles of Consultation

Consultation will reflect the culture of the communities and will be based upon: on-going, timely and long-term consultation; a consultation process designed to establish an understanding of on-going issues and resolution of these issues; proactive identification of opportunities to work together and to establish and maintain relationships; and working relationships at senior, managerial, technical and administrative levels.

### Mandate

A mandate will be negotiated between the parties to arrive at common understanding of the overarching purpose of the relationship and of the consultation process. The mandate will ensure:

- Due diligence is carried out by the First Nation in reviewing and examining applications, environmental impact assessment, conservation and reclamation plans, and environmental licenses and approvals.
- Consultation with the First Nation community about industrial development includes building awareness between the parties and a process to seek input, advice and feedback. "Community" is defined as individuals, formal leaders, elders, informal leaders, community groups and service providers.
- The facilitation of relationships with industrial developers as desired by the parties.
- Enhancement of the industry relations capacity within the community. This may be formal (education, on-the-job development) or informal (on-going information sharing,

meetings, etc).

- Identification and understanding of the key concern areas (KCAs) that will be under discussion and negotiation. KCAs may include, but are not limited to:
  - Business development
  - Culture retention
  - Training and education
  - Environmental affairs
  - Career development
  - Infrastructure
  - Trappers compensation

### Consultation process

In support of the principles and mandate of the Standards of Consultation, the consultation process must be meaningful and effective for both the First Nation and the corporation. The consultation process must take into account how each party consults, time lines required for consultation, and stages in the decision-making processes for the First Nation and the corporation.

## 3. Implementation

Some of the key elements for implementation and management of this program are:

- **The IRC agreement.** Each First Nation community in the ATC Agreement will establish an industry relations corporation (IRC). The Core Agreement provides a base capacity for each community to deal with industry and the impact of industrial development.
- **Negotiated environmental and socio-economic agreements.** The consultation process must include the development of environmental and socio-economic agreements that deal specifically with the KCAs described in the IRC agreement. These agreements can take the form of action plans that describe the activity, mutual responsibilities, obligations and time lines.
- **Relationship-building initiatives.** Relationships are the key element of the consultation process. Working relationships must be proactively established and maintained at all levels e.g. chief to executive, staff to staff, and party to First Nation. In order to build these necessary relationships, trust must be established. For the purposes of these standards, the requirements for trust include individual representatives who demonstrate ethical behaviour and follow through on commitments.
- **Monitoring and evaluating.** Relationships break down because neither party's needs are met. To ensure that the consultation process is working for both parties, and to identify issues before they become problems, monitoring and evaluation criteria must be established and used on a regular basis, especially for relationships that have had problems or relationships that are just being formed. The criteria should include what is to be evaluated, by whom, when and how. The evaluation must be two-way and be

approached frankly and openly with diplomacy.

#### **4. Timeframe for Results**

It may require 20 years for the process to work on its own.

#### **5. Measurable Criteria**

Generate positive financial and commercial benefits for the parties including:

- Reduced financial risk
- Increased market share
- Enhanced social and business benefits for local communities
- Increased efficiency and avoidance of future costs due to the integration of local knowledge to a project's design, construction and operation
- Identification and resolution of problems and conflicts in an atmosphere of trust

#### **6. Budget**

Adequate resources and proper management of resources are critical in negotiating resources. Agreement on the following will be established: required human resources; behaviours needed of those taking part in the consultation process; appropriate capital and operating investment.

#### **7. Partners and Sponsors**

Parties - the individual signatories to the Core Agreement.

Sectors - a group of parties who are accountable to specific constituents. The formal sectors of the Core Agreement are First Nations, industry (resource developers) and governments (federal, provincial, municipal).

#### **8. Experience with the Program**

The agreement was signed in January 2003. The program is successful for two reasons: new companies have a model to work with and can see the results; and the model can be modified to suit other regions and their needs.

#### **9. General Applicability**

This program is a model which can be used by companies from diverse resource sectors.

#### **10. Additional Information or Support**

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