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# Indigenous Consultation in Alberta

Canadian Institute Forestry – Rocky Mountain Section Spring Technical Session, April 2022

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# Agenda



Background



Role of Agriculture, Forestry and Rural Economic Development & the Aboriginal Consultation Office (ACO)



Alberta's Indigenous Consultation Process



Best Practices & ACO Initiatives

# Background



# Strengthening Relationships

- Alberta is committed to strengthening relationships with First Nations through continued recognition of the Treaty relationship between First Nations and the Crown
  - Alberta's legal duty to consult and accommodate is grounded in the honour of the Crown
  - Alberta will seek to reconcile First Nations' constitutionally protected rights with other societal interests with a view to substantially address adverse impacts on Treaty rights and traditional uses through a meaningful consultation process
- Alberta is also committed to strengthening relationships with the Metis Settlements through the recognition that Metis Settlement members use the land for harvesting and traditional use activities
- Additionally, the provincial government strives to ensure First Nations and Metis Settlements have the chance to benefit from economic development opportunities and to enjoy Alberta's prosperity



# What is Consultation?

**Consultation** is a process intended to understand and consider the potential adverse impacts of an anticipated Crown decision on a First Nations Treaty rights and traditional uses or Metis Settlement/Métis Credibly Asserted Community members' harvesting and traditional use activities with a view to substantially address them



# Why Does Alberta Consult with Indigenous Communities

- Legal and constitutional duty to consult with First Nations
- Policy decision to consult with MS/CAMC in the Metis policy
- Where Crown decisions may adversely impact continued exercise of constitutionally protected Treaty rights/harvesting and traditional use activities



# When Does Alberta Consult with Indigenous Communities?

- 1) Alberta has a real or constructive knowledge of a right
- 2) Alberta is contemplating a decision relating to land and natural resource management
- 3) The decision has the potential to adversely impact the continued exercise of a Treaty right and/or Metis Settlement members' harvesting or traditional use activities

# Where is Alberta's Consultation Process Captured?



**The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013**

The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management

July 28, 2014

The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015

The Government of Alberta's Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management 2016

The Government of Alberta's  
Proponent Guide to First Nations  
and Metis Settlements  
Consultation Procedures



Alberta



# Role of Agriculture, Forestry and Rural Economic Development & the Aboriginal Consultation Office

# Decision vs Recommendation



**Alberta Energy Regulator (AER)** - The ACO makes decisions on consultation related to upstream Oil and Gas and Coal

**Government of Alberta (GoA) Ministries** - ACO makes recommendations on consultation for (Environment and Parks, Transportation, Municipal Affairs and **Agriculture, Forestry, and Rural Economic Development**)

# Procedural Aspects of Consultation



The Duty to Consult rests with the Crown, however, case law allows the Crown to delegate procedural aspects of consultation to proponents:

- Plain-language project information package
- Identifying potential project impacts
- Meeting with FN/MS/CAMC to discuss concerns
- Developing potential mitigation strategies
- Implementing mitigation measures
- Summarizing consultation efforts

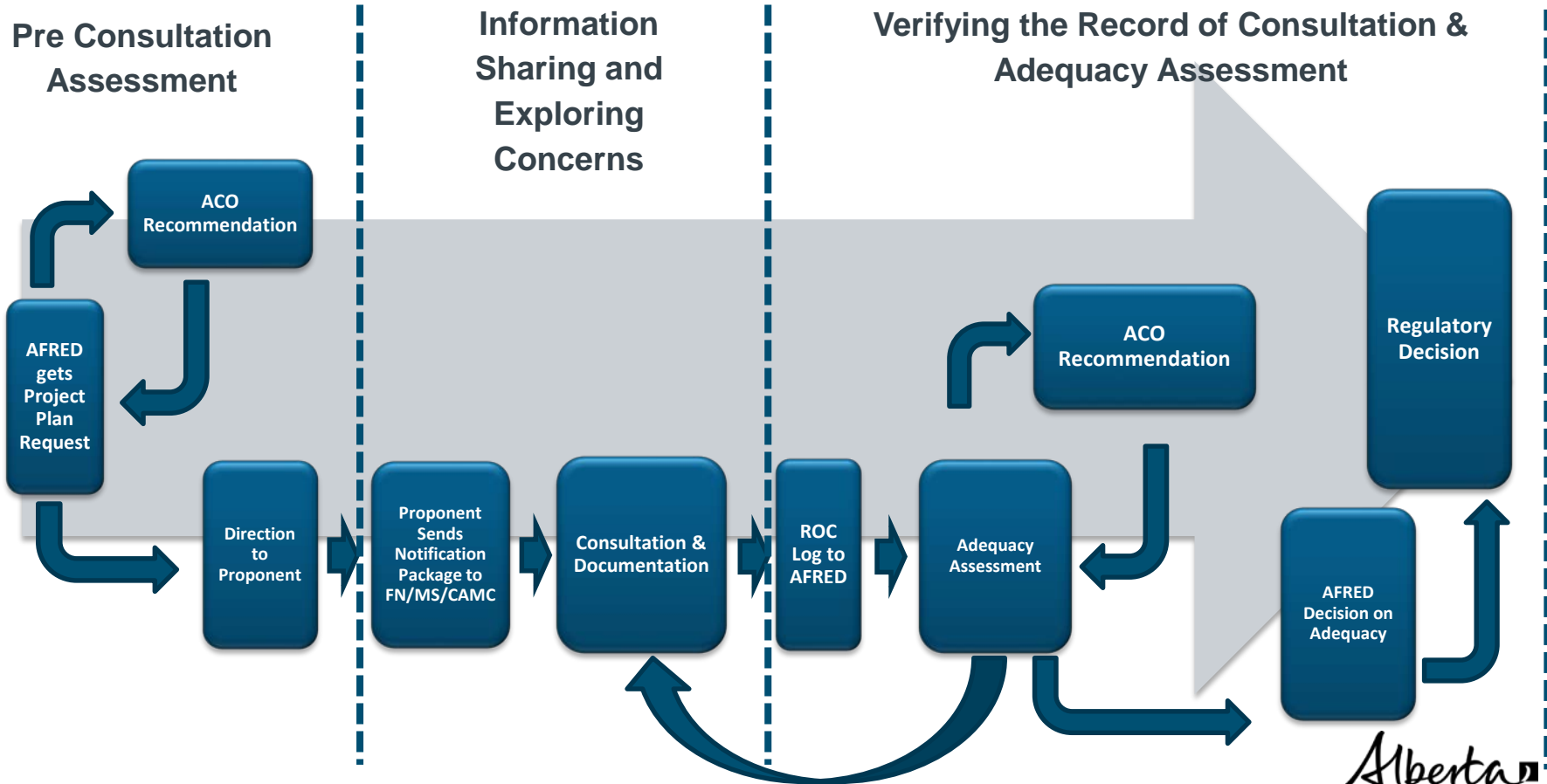
# Agriculture, Forestry and Rural Economic Development (AFRED)

AFRED is the regulator

- Therefore, AFRED is the consultation adequacy decision maker and make the final decision on the duty to consult and consultation adequacy
- Because the ACO is the consultation subject matter expert, AFRED refers Forestry plans (e.g. FMA, FMP, GDP) to the ACO and receives support and advice from the ACO
- AFRED then uses the adequacy decision to inform the plan approval decision

# Alberta's Indigenous Consultation Process

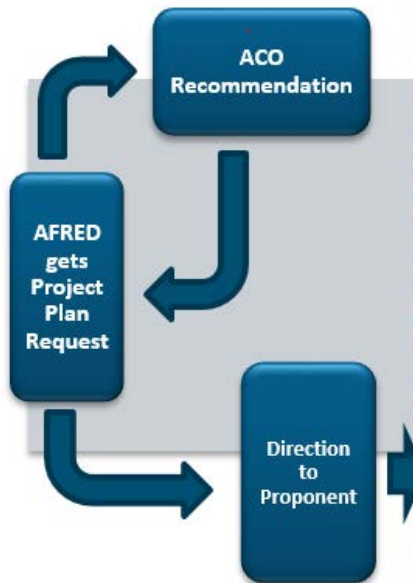
# Consultation Process - Forestry



# Pre-Consultation Assessment



## Pre Consultation Assessment





# Pre-Consultation Assessment Decision

The Pre-consultation Assessment will indicate one of the following:

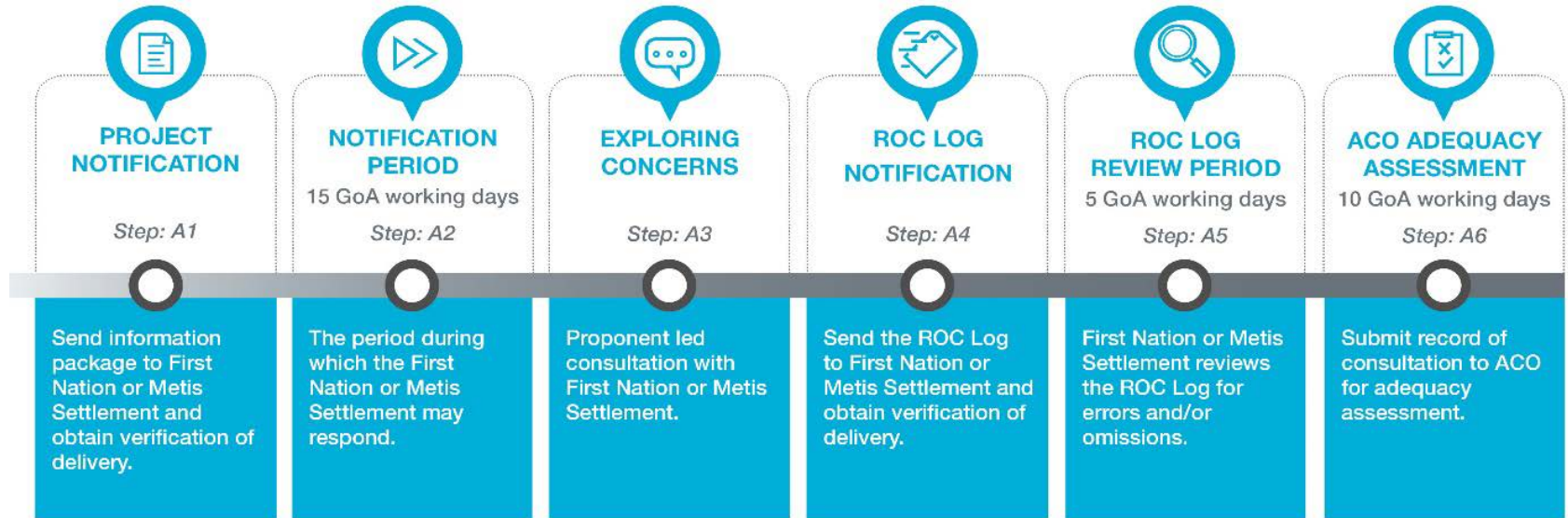
- Consultation Required
  - Level 1 – Streamline
  - Level 2 – Standard
  - Level 3 – Extensive
- Already Deemed Adequate
- No Consultation Required

The Pre-consultation Assessment is valid for 6 months from the date of issue, due to potential changes in consultation areas



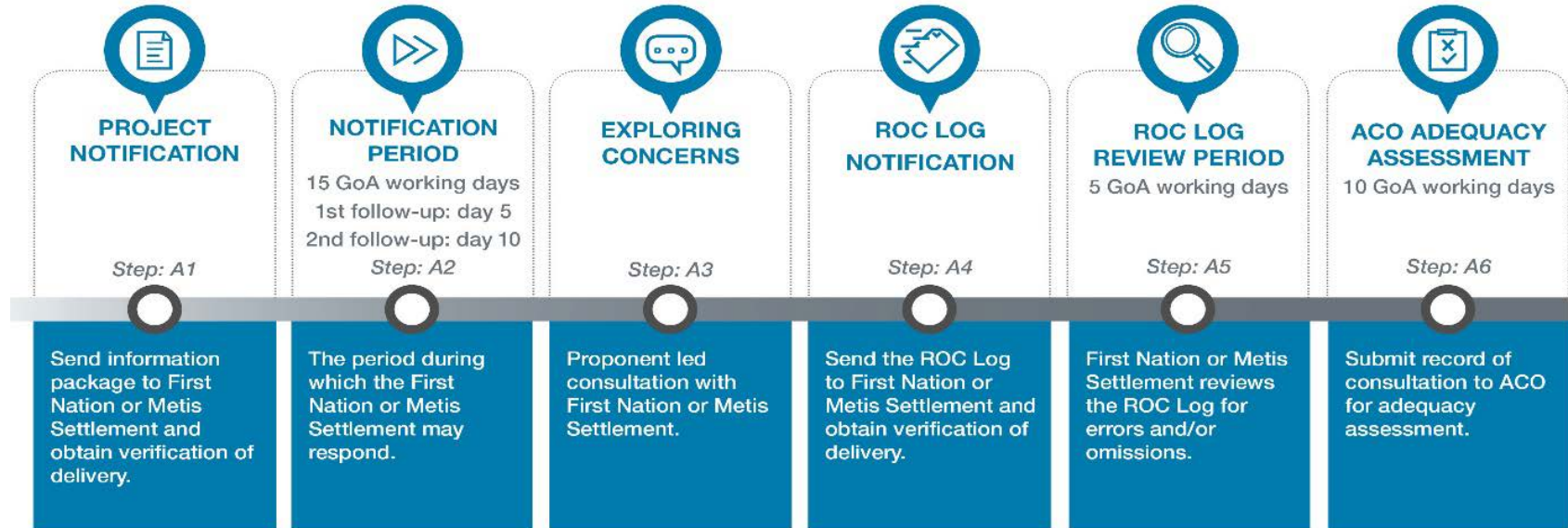


# Consultation Timelines – Level 1 Streamlined



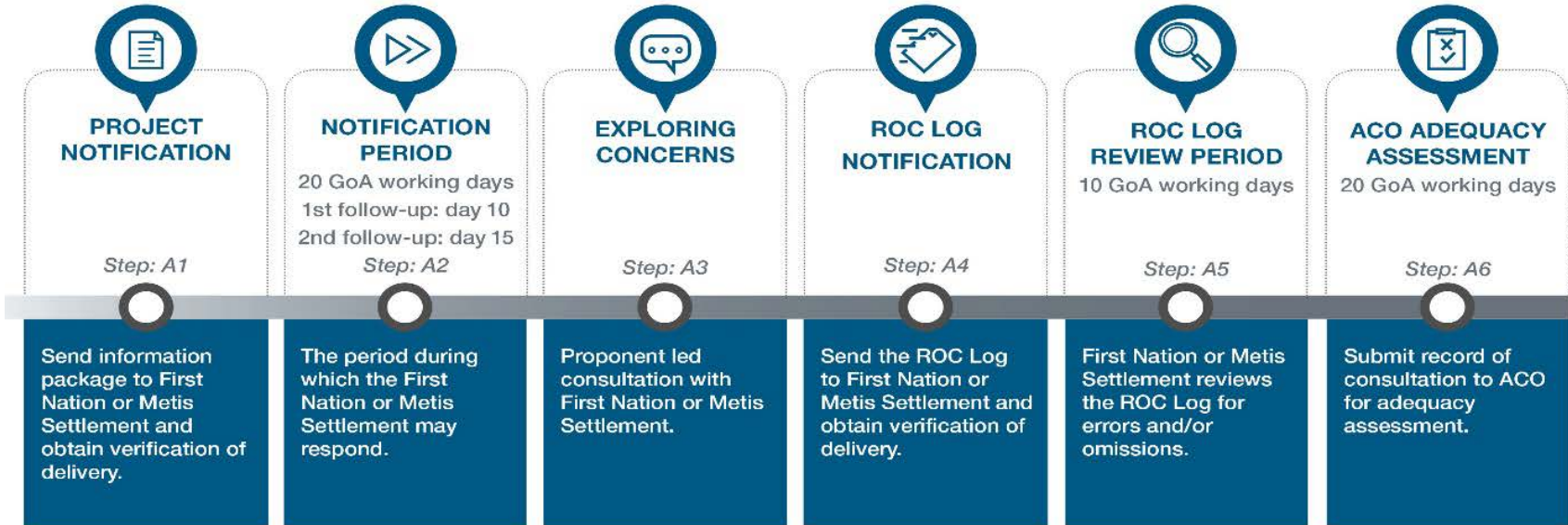


# Consultation Timelines – Level 2 Standard

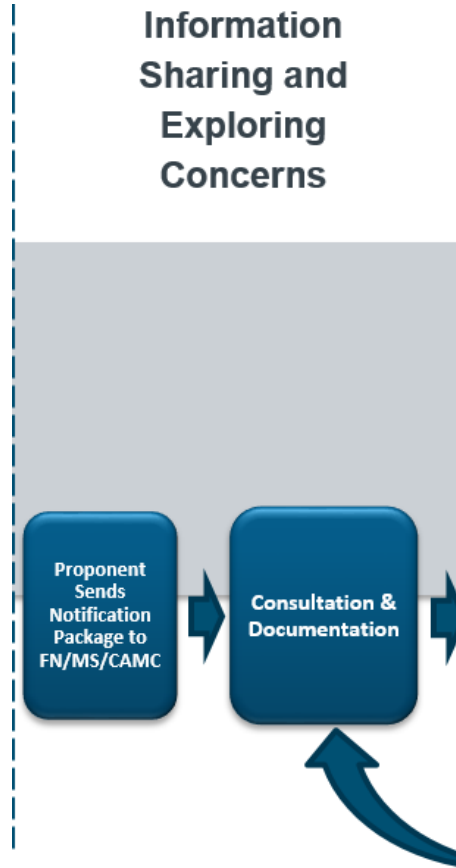




# Consultation Timelines – Level 3 Extensive



# Information Sharing and Exploring Concerns



# Site Specific Concerns

A site-specific concern(s):

- Directly related to a Treaty right, harvesting, or traditional use (as defined in the applicable consultation Policy)
- Can be spatially defined (it pertains to a defined location within the specified project area)
- Is identified as adversely impacted by the proposed project
- May be avoided or mitigated by the proponent

# Broad Concerns

Broad concern(s) are:

- Not site-specific concerns relating to the proposed project that is subject to consultation
- Wildlife populations
- Water quality
- Cumulative effects



# Exploring Concerns

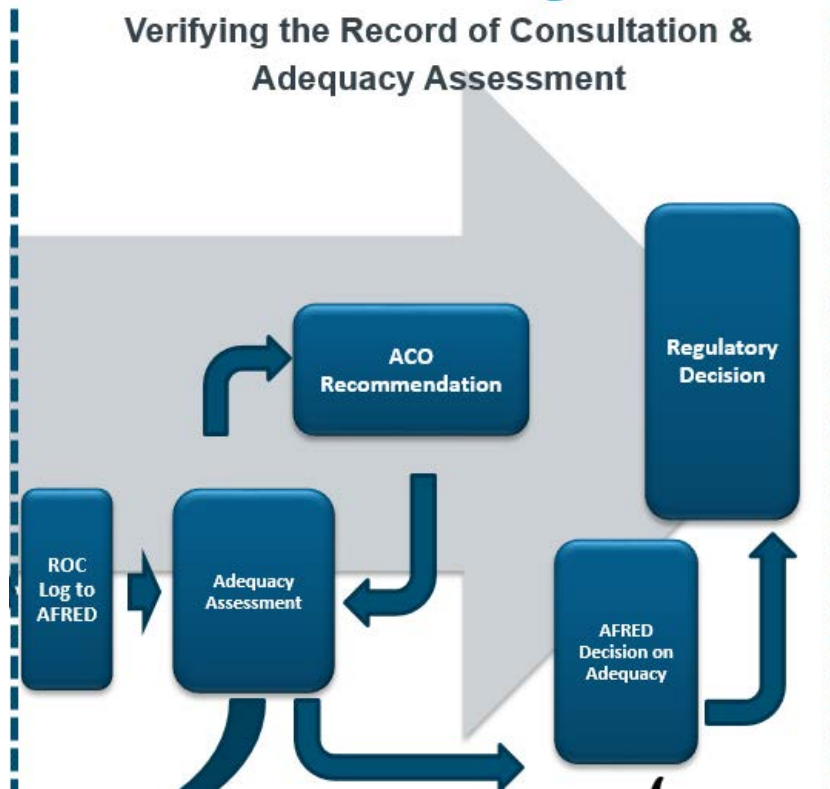
- The proponent must capture all concerns expressed in a Record of Consultation (ROC) and/or Consultation Concern & Response Table (CCRT)
- The proponent must address all concerns raised in a reasonably responsive manner
- Consider accommodation options to avoid, minimize, or mitigate any project specific concerns
- Proponents should give Indigenous communities the opportunity to comment on proposed accommodations measures prior to submitting for Adequacy Decision



# Exploring Concerns – Letters of Non-Objection

- A FN/MS/CAMC may provide a letter to the proponent indicating that they have no objection with the project proceeding forward in the regulatory process
- Consultation is considered concluded when there is a valid Letter of Non-Objection; no review of the ROC Log for errors/omissions is required

# Verifying the Record of Consultation & Adequacy Assessment





## Adequacy Decision - Yes

Yes

- Consultation is procedurally complete and/or substantively adequate
- Project can move on to the regulatory decision stage

## Adequacy Decision - No



No

- Procedurally incomplete, or concerns not addressed adequately
- ROC Log and/or CCRT does not adequately document consultation
- Proponent will ensure that concerns are addressed & ROC Log resubmitted

# Best Practices & ACO Initiatives

# Best Practices

- Start early to provide extra time to complete consultation
- With concerns that are not specific, ask for clarity, seeking to learn whether the concern is site specific or not
- Give the benefit of the doubt to the community
- If in doubt, don't hesitate to contact the ACO

# ACO Initiatives

- ACO Bulletin
- ACO Digital Service
- Indigenous Communities Consultation Guide
- Training and Outreach Opportunities

# References

*The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management* 2014 <https://open.alberta.ca/publications/3775118-2014>

*The Government of Alberta's Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management* 2016 <https://open.alberta.ca/publications/guidelines-on-consultation-with-metis-settlements-2016>

*The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management* 2013 <https://open.alberta.ca/publications/6713979>

*The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management* 2015 <https://open.alberta.ca/publications/policy-on-consultation-with-metis-settlements-2015>

*The Government of Alberta's Proponent Guide to First Nations and Métis Settlements consultation procedures* [2019] <https://open.alberta.ca/publications/goa-proponent-guide-to-first-nations-and-metis-settlements-consultation-procedures-2019>

*ACO Bulletin* <https://open.alberta.ca/publications/aco-bulletin>

# Questions?

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