

Manitoba – First Nations Mineral Development Protocol

**Co-Chairs' Report:
Findings and Recommendations**

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Manitoba – First Nations Mineral Development Protocol

Message from the Co-Chairs

Tansi, Bozhoo, Masi-Cho;

As the co-chairs of the provincial mineral development protocol, it is our pleasure to submit to you our findings and recommendations from our engagement process with First Nations leadership, industry representatives and other stakeholders on the development of a new provincial mineral development protocol.

Our mandate as co-chairs has been to lead an engagement process with First Nations that have immediate or potential mineral development opportunities within their traditional territories, and to determine what key components should be included in a protocol that guides the Crown-Aboriginal consultation process for mineral development in Manitoba.

We are optimistic that the findings and recommendations set out in this report will assist in establishing a clear pathway forward that will see government, First Nations and industry move forward collaboratively and proactively to advance mineral development opportunities in Manitoba.

It has been a privilege to have met with many First Nations who have immediate or potential mineral development interests in their traditional territories and to seek their insight into this process. We have also met with industry representatives and other stakeholders who are directly involved in mineral development, as well as with those who have an interest in sustainable resource development.

We are extremely pleased with the positive interest that this initiative has generated, and for the meaningful, insightful and constructive input we have received. All of the input received was taken into account in developing our recommendations. Together, it forms the proposed framework for a mineral development protocol and our recommended next steps.

We would also like to acknowledge and recognize the positive work undertaken by communities who have already developed a protocol with Manitoba. The protocol guides how the Crown-Aboriginal consultation process for mineral development is to be undertaken with the respective communities, as well as those First Nations and exploration companies that have worked collaboratively to develop benefit agreements. These communities provided feedback about which components of their existing protocols have worked well, and which components could be improved or added. This strengthens their ability to participate in Crown-Aboriginal consultation processes regarding mineral development projects, as well as strengthening their working relationship with government.

We would like to extend our sincerest appreciation to all First Nations, industry representatives and other stakeholders who participated and contributed their knowledge and experience and to the Manitoba government for their support throughout this process.



Former Chief Ron Evans (from left), Growth Enterprise and Trade Minister Blaine Pedersen and former Tory MLA Jim Downey

Sincerely,

Co-Chair
Ron Evans

Co-Chair
Jim Downey

What We Heard

Summary of findings from the engagement process to develop a Manitoba – First Nations mineral development protocol

In July 2017, the premier announced the development of a provincial mineral development protocol with First Nations communities. He appointed us as co-chairs, to lead an engagement process with First Nations leadership, industry representatives and stakeholders, to develop a mineral development protocol.



The objective of the development of a province-wide protocol is to establish a clear pathway forward on mineral development by establishing a respectful and productive protocol for Crown – Aboriginal consultations for this sector. This will improve certainty for all parties and better prepare First Nation communities to understand and be actively involved in all phases of, and ultimately benefit from, mineral development.

This process has provided the opportunity to work collaboratively with First Nations and to advance areas of mutual interest, including social and economic development opportunities, and to advance reconciliation by fostering

mutually respectful relationships between the Crown and Indigenous peoples. This work is fundamental to both Manitoba's Path to Reconciliation Act and Canada's Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.

THE PROCESS

While our primary focus was to identify key elements to establish a mineral development protocol, we remained open to receiving feedback on all aspects that might strengthen and enhance mineral development in Manitoba. In receiving this information, we have committed to including all feedback and a 'what we heard' summary of our findings.

An engagement process with First Nations communities with immediate or potential mineral development opportunities was undertaken. A number of one-on-one meetings were held with individual First Nations, industry representatives and other stakeholders, leading up to and during the Manitoba Mines and Minerals Convention held in Winnipeg November 15 and 16, 2017.

We also met with a number of industry representatives and stakeholders, including the Manitoba-Saskatchewan Prospectors and Developers Association, the Manitoba Prospectors and Developers Association, The Mining Association of Manitoba's Aboriginal Relations Committee and Board of Directors, and the Manitoba Bar Association's Environment, Energy and Resource Law Section. In addition, a number of junior and large mining companies and other stakeholders reached out to us to discuss challenges and opportunities in the minerals industry and to provide input into development of the protocol.

An engagement session was held with First Nations leadership and representatives on January 16, 2018 in Winnipeg, to discuss and build on the emerging themes and feedback received through individual meetings with First Nations. Approximately 17 First Nations participated in the engagement session and approximately 24 First Nations have participated to date in the overall process.

WHAT WE HEARD

As a result of our discussions to date, it has been clearly articulated that it is important to have a mutually agreed, stable and predictable Crown-Aboriginal consultation process. It was also determined that it is imperative that government and industry better understand what resources, supports and the tools are required to prepare First Nations to be actively involved in all phases of mineral development.

From our discussions with First Nations, industry representatives and other stakeholders to date, we have identified seven priority areas that make up the key components of the proposed mineral development protocol.

These seven priority areas include:

1. Improved communication, information sharing, and government relations
2. Recognition that clear and predictable permitting and licencing processes are necessary for mineral development investment and that consultation is a critical step in those processes
3. Recognition of historical mineral development projects
4. Resource revenue sharing
5. Enhanced community participation (including capacity development, training and employment opportunities)
6. Enhanced economic partnerships and benefits
7. Enhanced proponent engagement and relationships

In addition to the seven priority areas, First Nations and industry representatives strongly articulated the need for government to address other related issues, and to develop processes that will complement and support the implementation of a mineral development protocol.

These other related issues include:

1. Developing a Shared Management Model for Mineral Development
2. Enhanced Community Capacity Development
3. Creating Certainty of Land Tenure
4. Establishing a fair and equitable Government Resource Revenue Sharing Model
5. Modernization of the Mines and Minerals Act and Related Regulations

Participants agreed that establishing processes to address these other related issues will strongly support the implementation of a mineral development protocol and significantly improve and support the Crown-Aboriginal Consultation process at all stages of mineral development.

SUMMARY OF PRIORITY AREAS AND RECOMMENDATIONS

This summary aims to provide an overview of the input received for each of the seven priority areas and recommended action items identified during the engagement process. This summary will focus on the key components that make up the proposed framework for the mineral development protocol.



Priority Area #1

Improved Communication, Information Sharing, and Government Relations

A recurring theme identified throughout the engagement process was the need for government to improve the way in which it communicates and shares information with First Nations about the government's notification efforts and Crown-Aboriginal consultation processes. This includes to whom the information is communicated with and the form in which it is communicated.

Concerns were also raised with respect to:

- the way in which (the method and form of) notification currently takes place
- the time provided to review the notifications once they are actually received by the community
- the turnaround time of response
- lack of clarity as to timeframes for decision making for mineral dispositions, work permits and the renewal of work permits.

It was clearly articulated that a mutually agreed to process be developed so that the Crown-Aboriginal consultation process for all phases of mineral development is clear, predictable and provides certainty for all parties involved, including First Nations, government and industry. It was recommended that each First Nation identify a representative as a point of contact and liaison for the community. Government will communicate directly with this individual on all notifications, consultations and ongoing communications and include this person as part of the mineral development protocol.

Priority Area # 2

Clear and Predictable Permitting and Licensing Processes

The objective of this process was to establish a mutually agreed to Crown-Aboriginal consultation process for all phases of mineral development. It includes clear and predictable permitting and licensing processes for projects, recognizing that Crown-Aboriginal consultation is a critical step in these processes within Indigenous traditional territories that are necessary for mineral development.

As stated under Theme #1, First Nations strongly articulated the need to be better informed of potential projects at all stages and early on, and that a mutually agreed to process needs to be developed with respect to notification for entry onto traditional Indigenous territories, mineral dispositions and work permits, with timeframes for each phase.

It was also suggested that consideration be given to identifying important milestones and timelines. It was felt that is important to establish a mutual understanding of when key events will occur. First Nations indicated a desire to review the protocol at regular, pre-determined points to ensure that it continues to meet the intended needs.

Priority Area # 3

Recognition of Impacts of Historical Mining Projects

Many of the First Nation representatives who participated in this process are from communities who have been impacted by historical mineral development projects and other resource development projects, such as hydro development.

It is these historical impacts that have caused mistrust between First Nations and governments, as decisions on projects were made by government without the involvement of or consultation with First Nations, and without agreements that directly benefited First Nations (employment opportunities, partnerships and resource revenue sharing). Furthermore, it is believed that many of the historical projects did not include the necessary sustainable development, remediation and ongoing monitoring plans and have caused significant environmental damages to lands and resources. Therefore, the impacts are seen to outweigh the benefits of these projects.

It was strongly expressed that government and First Nations must continue to work together to resolve outstanding grievances and impacts from historical mineral development and other resource development projects within Indigenous traditional territories.

It was recognized that the Manitoba government has worked diligently over the last two years to expedite the Treaty Land Entitlement (TLE) process and has approved, through Order-in-Council, a significant number of parcels (acres) of both Crown and acquired land, transferring the land to Canada for reserve creation. It was further recognized that the government understands the importance of TLE as a mechanism to provide significant economic and employment opportunities for Entitlement First Nations, including the development of economic development zones. However, some Entitlement First Nations who participated in this engagement process, expressed their frustration that their TLE selections have not been advanced due to the fact that there are third party interests associated with some of the outstanding parcels of land, including mineral claims and dispositions, and therefore, remain unresolved.

There is a desire from First Nations to support mineral development opportunities in their traditional territories, so that First Nations can benefit from the social and economic opportunities and revenues that accrue from projects. However, First Nations have articulated that development needs to be done in a sustainable way that ensures there is a balance in protecting the land, resources and the exercise of Aboriginal and treaty rights for the benefit of future generations.

Priority Area # 4

Resource Revenue Sharing

Throughout the engagement process, First Nations expressed the importance of sharing in the benefits that accrue from mineral development projects, above and beyond training and employment opportunities and that, projects for consideration within Indigenous traditional territories must bring significant benefit (relative and proportional to the project) to the communities that the project will impact.

Government resource revenue was also raised and discussed throughout the process. It was acknowledged that resource revenue sharing models have been negotiated and implemented in other jurisdictions. It was recommended that a resource revenue sharing model be explored and developed for Manitoba, working collaboratively with government, First Nations and industry representatives, so that any future mine development and the revenues that accrue from them will benefit First Nations and all Manitobans.

Priority Area # 5

Enhance Community Participation (including capacity development, training and employment opportunities)

The need for increased capacity development, including education and awareness about the mineral development cycle, capacity for ongoing consultation coordination and economic development, and training and employment opportunities for each project stage, was identified as one of the most important and key factors that will enable First Nations to participate meaningfully in mineral development projects. In order to support these efforts, it is recommended that the provincial and federal governments work collaboratively to support full time consultation coordinators for individual First Nations or by Tribal Council or treaty organization.

One of the greatest barriers identified is the level of understanding of the mining cycle within communities. As there are several stages or phases of mineral development within the cycle, it was recommended that an education and awareness program be developed collaboratively with government, First Nations and industry, to deliver to communities. As each stage or phase of the cycle involves different levels of activity and impacts, each level will require different levels of consultation and permits or licences. Furthermore, each level of activity or project will have different employment and financial benefits associated with it that are proportional to the activity. This information needs to be better understood by communities as it corresponds to the level of consultation required for each stage of development.

Capacity development efforts include ensuring that First Nations have the resources to:

- establish ongoing consultation coordination, creating expertise in the community to review and provide advice on mineral dispositions, applications, consultation processes and project information for mineral development projects throughout all phases
- coordinate efforts with industry and government to understand and share information with communities, coordinate community consultation meetings and inform community decision-making processes.

First Nation leadership and decision makers also require the capacity to develop and negotiate memorandums of understanding and benefit agreements with industry, which detail arrangements and any benefits for projects.

Resources and programs are required to assist communities in developing training programs to support training and employment opportunities to establish the necessary work force to participate in jobs associated with mineral development projects. Enhanced community capacity development, training and employment opportunities will ensure that First Nations have the tools and resources to support and be directly involved in all aspects of mineral development projects.

First Nations articulated the importance of having the federal government and Industry involved in establishing the required capacity, and that federal programming and funding is required to support capacity development efforts as it relates to advancing economic development opportunities for First Nation communities.

As part of our recommendations, we call for the immediate establishment of a federal government led capacity building program to support mineral development activities that will support the implementation of the protocol.

Priority Area # 6

Increasing Economic Partnership and Benefits

First Nations expressed the importance of becoming active partners in all stages of mineral development. There is a strong desire from First Nations to develop partnerships with industry that go beyond training and employment agreements and include partnerships in all the spin off benefits of development and business development opportunities in the areas of supply and services, transportation, construction, etc. Depending on the location of a new project, services can also include camp services and catering, logistics, winter road services, helicopter and fixed wing aircraft services, drilling and environmental services. First Nations also identified a desire to examine the potential for partnerships that may include ownership or an equity stake in development.

First Nations strongly desire a share in the financial benefits that accrue from projects. Benefit agreements would vary and are dependent on the nature and scope of the project or activity (proportionality) and potential revenues that will accrue.

While economic partnership and benefits between First Nations and industry is outside of government purview, government encourages First Nations and industry to work collaboratively.

Priority Area # 7

Enhancing Proponent Engagement and Relationships

Throughout the engagement process, First Nations expressed the importance of early engagement and relationship building with industry, independent of government's Crown-Aboriginal consultation process. In many cases, exploration and mining companies are unfamiliar with the communities and the traditional territories they may find themselves working in. Therefore, it is critical that industry take the necessary steps to learn about the communities, develop relationships, build trust and develop transparent communication processes with leadership, resource users and the community members.

First Nations have articulated the need for government to encourage industry to work with communities and the desire of communities to negotiate agreements so that revenues accrued through projects will be re-invested in communities to support infrastructure and social and economic development opportunities, which in turn will benefit Manitoba's economy. Industry should be encouraged to make best efforts to negotiate agreements with interested communities as projects reach more advanced stages of exploration and development.

First Nations have pointed to the fact that the earlier industry develops a relationship with communities to share information about the proposed project, the more effectively the community will respond and work with industry. It is critical that Industry works closely with communities to understand and to determine the importance and significance of the lands and resources to the community and the potential impacts of the project on Aboriginal and treaty rights. This will assist in determining early on what mitigation efforts can be made to lessen the impacts on Aboriginal and treaty rights and the opportunity to make adjustments to project plans, as well as determine what accommodations the community feels are appropriate.

It is important that industry fully understands and takes into account the community's traditional knowledge, with respect to the use of the land and the resources. This includes the location of sacred and historical sites and the required protections, and also where resource use activities such as hunting, trapping, fishing and medicinal harvesting occur, as well as any other expertise the community can contribute. Sacred and historic sites are of particular importance to many First Nations and areas where it is important for governments and industry to be mindful and respectful of local protocols and cultural practices.

The more that industry understands the relationship that the community has with the land and the resources where projects are being proposed, and works with the community to understand the potential impacts of the proposed project on the exercise of Aboriginal and Treaty rights, the greater the possibility of determining potential solutions and mechanisms to lessen the impacts. In turn, this may create greater certainty that the Crown-Aboriginal consultation process will move forward in a timely and efficient way, as communities will be fully engaged and involved in reviewing the project plans and ensuring their concerns and issues are addressed, and if possible, mitigated.

Successful early engagement between industry and First Nations will ensure that First Nations fully understand the proposed project and will inform industry of potential impacts, potential mitigation and accommodation measures and that this information will then form the basis of the Crown-Aboriginal consultation process required for the level of activity proposed by the project. Successful early engagement will contribute positively to establishing efficiencies in the Crown-Aboriginal consultation process.

Although proponent engagement will occur independently of government, both First Nations and Industry agree that government has a role to play in assisting industry in making the necessary connections and in informing industry of how to engage respectfully with First Nations. This may include providing background information about the communities, their traditional territories and communication protocols.

Other Related Issues

The primary focus of the engagement process was to identify the key elements that should be included in a mineral development protocol for consultation. However, we were open to receiving feedback and consideration to other issues raised that may support the implementation of a mineral development protocol and enhance the mineral development opportunities in Manitoba.

First Nations and industry strongly articulated the need for Manitoba to address other related issues and to develop processes that will complement and support the implementation of a mineral development protocol. We feel that it is important that government address the following issues to better position the mineral development protocol for success.

Developing a Collaborative Management Model for Mineral Development

Establishing a collaborative management model with First Nations will enable a more inclusive and effective way to manage the lands and the resources, address and mitigate adverse effects to the exercise of Aboriginal and treaty rights, and proactively develop a relationship based on trust and mutual respect that will advance reconciliation.

Enhanced Community Capacity Development

Enhancing community capacity was identified as one of the priority areas that needs to be addressed to support First Nations meaningful participation in the mineral development sector. First Nations articulated the importance of having the federal government involved and that a collaborative approach is required to ensure that First Nations have the necessary resources to support long-term consultation coordination and expertise to advance social and economic development opportunities.

Creating Certainty of Land Tenure

In addition to advancing outstanding TLE selections and resolving third party interests on TLE selections, First Nations and industry identified the development of land-use and management plans as an important mechanism and tool for communities to develop lands and resources, both on reserve and within their traditional land use areas.

Establishing a Fair and Equitable Government Resource Revenue Sharing Model

First Nations have clearly articulated that the establishment of a government resource revenue sharing model, which will see First Nations share in the revenues resulting from new mineral development projects within their traditional territories, be considered by government. It is recommended that government consider establishing a table that includes government, First Nations and industry representatives, so that a fair and equitable model is established.

Modernizing the Mines and Minerals Act and Related Regulations

First Nations and industry pointed to the fact that the current Mines and Minerals Act is outdated and that the current regulatory and policy framework does not adequately support the mineral development industry. As such, First Nations and industry strongly urge government to undertake a full review of the Mines and Minerals Act to determine the key policy and regulatory amendments that will enhance and modernize the act to reflect section 35 of the Constitution Act, 1982 and other policy initiatives that will support proponent engagement and Aboriginal procurement.

Industry Feedback

As stated throughout this report, this process generated a lot of interest from industry representatives and other stakeholders. We met with and received feedback and input from industry representatives that directly relate to the Crown-Aboriginal consultation process, as well as other issues and challenges that currently impact mineral development and feedback, and opportunities that could strengthen processes and advance mineral development in Manitoba. We felt it was important to include this information as part of our report.

In order to implement a mutually agreed to process for Crown-Aboriginal consultation, First Nations and Industry representatives strongly recommended that government undertake a full review of the Mines and Minerals Act and related regulations to determine key policy and regulatory amendments that will enhance and modernize the act to reflect:

- changes to support a collaborative and mutually agreed to approach that reflects section 35 of the Constitution Act, 1982
- policy initiatives that support both proponent engagement and Aboriginal procurement

Industry stakeholders pointed to a need for enhanced information sharing between government departments and their First Nations clients, to support local capacity for decision-making. The Manitoba Geological Survey was provided as an example where high value information is being produced that would increase First Nations awareness of the resource potential within their traditional areas, but where no resources are allocated to information sharing. A review of the service delivery model should be considered and a clear mandate for enhanced information sharing with First Nations be instituted.

Extended consultations can complicate the requirements and conditions associated with mineral claims, exploration licenses and work permits. It has been recommended that consideration be given to the terms and timeframes associated with work permits in the context of the Crown-Aboriginal consultation process and requirements that coincide with the application of work permits. It was further recommended that consideration be given to allow for enhanced work plan development for each stage of exploration that would set out the proposed work for each stage of exploration instead of each activity (for example, summer vs. winter work) and include extended timeframes for the work to be undertaken as part of the work permit. Enhanced work plan development and extended time frames as part of the work permit, would better align the Crown-Aboriginal consultation process with the proposed work and the necessary planning, and would better allow Industry to work proactively with the respective First Nation to establish training, employment and other economic development opportunities associated with the longer term work plan. This would also allow the opportunity for exploration companies to secure the necessary financial investments required to undertake the proposed work over a longer period of time. Enhanced work plans and extended work permits would require statutory changes.

It is also suggested that consideration be given to establishing an enhanced independent accountability mechanism to address potential disputes. It was felt that is important to ensure mechanisms are in place for independent review of issues and complaints, which should include fact-finding and developing recommendations for dispute resolution and remediation.

While there are many factors that impact exploration and Manitoba's competitiveness, cost continues to be a primary driver. It is important that government continue to support exploration in Manitoba's remote northern region. However, there may also be opportunities to enhance existing incentive programs, such as a mineral exploration investment fund or tax incentive program to facilitate industry engagement with First Nations at the early stages of exploration and to support industry to help improve local capacity within First Nations.

Co-Chair Recommendations

As a result of our engagement efforts with First Nations, industry representatives and other stakeholders, we recommend that government:

1. Support the proposed framework for the mineral development protocol that builds on the seven priority areas and key components.
2. Support implementation of a protocol with First Nations that includes milestones and reasonable timelines.
3. Collaborate with the federal government to immediately establish community capacity development initiatives that will support the implementation of the protocol.
4. Develop a shared management and decision-making model to enhance participation in mineral development.
5. Work collaboratively to resolve outstanding third party Interests related to TLE selections as well as outstanding land transfers.
6. Clarify, consult on and implement a land use planning process for Crown lands in traditional land use areas.
7. Support an exploratory process towards establishing a fair and equitable resource revenue sharing model with First Nations and Industry representatives.
8. Review and modernize the Mines and Minerals Act, related regulations and other legislation to streamline the permitting process, and key policy and regulatory amendments, to reflect section 35 of the Constitution Act, 1982 and other policy initiatives that will support proponent engagement and Aboriginal procurements.
9. Work with and encourage the minerals sector and all resource sectors to adopt and implement the Truth and Reconciliation Commission (TRC) of Canada's Call to Action #92, that *calls upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources*, in becoming TRC compliant (see Appendix E for the TRC's Call to Action #92).
10. Provide the capacity and resources to implement these recommendations.

We look forward to receiving Manitoba's response to this report and to the important work ahead of us. Our hope is that this proposed mineral development protocol framework will be accepted by government and adopted by First Nations, and that it will be implemented to guide collaborative efforts with industry and advance mineral development in Manitoba. We hope that this important work will result in a renewed enthusiasm for both First Nations and industry, for the benefit of all Manitobans.

APPENDIX A

Framework for Provincial Mineral Development Protocol

First Nations who wish to adopt the mineral development protocol are encouraged to work with the Resource Development Division of the department of Growth, Enterprise and Trade. The protocol is intended to act as a mechanism to facilitate a mutually agreed to Crown-Aboriginal Consultation process, as well as provide access to initiatives that will enhance capacity development and economic development opportunities related to mineral development.

While the framework for the protocol will be consistent for First Nations who wish to sign on, it can include customized aspects to reflect the governance, administrative and communication protocols of each community.

The framework for the protocol includes:

1. improved communication, information sharing and government relations
2. recognition that clear and predictable permitting and licencing processes are necessary for mineral development investment and that consultation is a critical step in those processes
3. recognition of historical mineral development projects
4. resource revenue sharing
5. enhanced community participation (including capacity development, training and employment opportunities)
6. enhanced economic partnerships and benefits
7. enhanced proponent engagement and relationships

Community capacity development initiatives include:

- a) immediate community capacity development and support for consultation coordination
- b) long-term community capacity development initiatives for all stages of development

APPENDIX B

Crown-Aboriginal Consultation Process for Mineral Development

The Manitoba government has a legal duty to consult in a meaningful way with Indigenous communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of an Aboriginal or treaty right of that Indigenous community. This duty arises out of the recognition and affirmation of Aboriginal and treaty rights under section 35 of the Constitution Act, 1982.

The key objectives of the Provincial Policy for Consultation and Accommodation with Indigenous Communities include:

- Advance the process of reconciliation between the Crown and Indigenous communities.
- Respect and protect Aboriginal and treaty rights by ensuring that potential adverse effects on such rights, resulting from Crown decisions or actions, are avoided, minimized or mitigated and that Indigenous concerns are accommodated, as appropriate.
- Ensure that the government informs itself and gains a proper understanding of Indigenous communities' perspectives with respect to a proposed government decision or action.
- Provide for a consultation process of a nature in scope that is proportionate to the potential level of effect on the exercise of Aboriginal and treaty rights.
- Establish a clear, predictable and timely process for communication, information sharing and meaningful consultation with respect to mineral development.

It is recommended that objectives of the Crown-Aboriginal consultation process for the Mineral Development Protocol follow these key objectives:

Phases of Consultation:

Crown decisions and activities that may require consultation vary, as does the level or scope of consultation. All consultation processes will have the following four phases:

Phase 1: Initial Assessment to determine Level of Impact and Level of Consultation Required

Phase 2: Community Consultation Process

Phase 3: Analysis and Decision upon completion of Crown-Aboriginal Consultation Process

Phase 4: Final Reporting, Implementation and Monitoring

The following proposed guide outlines the levels of consultation, the proposed appropriate timeframes and the specified consultation activity and Crown-decision making timeframes relative to the level of consultation. This guide serves to propose reasonable timeframes for each level of consultation and activity required, and can be adjusted, as necessary, on a case-by-case basis.

Informational Notification

General Process for Notification: A letter is sent to the chief and council and/or an authorized consultation coordinator with relevant information, proposed activity and notification of claim.

Potential impact/disturbance: NONE

Proposed Timeframe for Community Response: This is concurrent with the registration of claim.

Crown Decision Timeframe: The Crown must wait 30 days from staking, before the claim can be issued. Notification of issuance of the claim is sent to First Nations in the Community Interest Zone.

Level 1 Consultation

General Process for Level 1 Consultation: Consultation will be conducted by letter, which provides necessary information about the proposed decision and/or activity, and requests communities to provide concerns, if any, in writing. The proponent is to advise and engage the community on proposed project plans.

Follow up is required.

Proposed Timeframe for Community Response: A response is requested within 30 calendar days.

Potential impact/disturbance: There is a short-term disturbance to resource use and availability, with potential minimal adverse effect.

Crown Decision Timeframe: A decision is anticipated within 45 calendar days.

A letter is sent to the community reporting the Crown's decision.

Level 2 Consultation

General Process for Level 2 Consultation: An initial consultation letter is sent to the community, which provides necessary information with an offer for one to two consultation meetings to be held to discuss the proposed activity and to inform the decision on the application for the disposition. This requires a formal response from the community, and application for the disposition could include possible special conditions imposed on the disposition, based on the information provided through the consultation process.

Follow up is required.

Potential Impact/disturbance: There is a short-term disturbance to resource use and availability, with a potentially moderate to significant adverse effect, or a long-term disturbance to resource use and availability, with a potentially minimal adverse effect.

Proposed Timeframe for Community Response: A response is requested within 60 calendar days.

Crown Decision Timeframe: Decision timelines are determined on a case-by-case basis (dependent on the disposition required).

A letter is sent to the community reporting the Crown decision.

Level 3 Consultation

General Process for Consultation: The process is department facilitated between the First Nation and the company.

Follow up is required.

Potential Impact: There is a long-term or permanent disturbance to resource use and availability, with a potentially adverse effect.

(The presence, duration, size and intensity of exploration activities, near or at climax, may require continuous presence on the land.)

Proposed Timeframe for Community Response: A response is required within 120 calendar days.

Reasonable timeframes need to be established for decisions. Mine production involves multiple levels of approval and the involvement of multiple departments and provincial and federal Environmental Act processes and licences.

Under the Mines and Minerals Act, all proposed mine developments require mine closure and rehabilitation plans, which are included in the consultation process for mine development and required approvals.

Crown Decision Timeframe: Decision timelines are determined on a case-by-case basis (dependent on disposition required).

A letter is sent to the community reporting the Crown decision.

***Timeframes, as outlined above for community response as part of the Crown-Aboriginal Consultation process, are recommended as reasonable timeframes to be established. It is recognized that there may be exceptional circumstances that may require extending the timeframes, and these circumstances will be considered on a case-by-case basis.

APPENDIX C

Phases of Mineral Development Cycle



Source: SlideShare.net, Food Security and mineral resources conservation
 Dr. Tanuja Nautiyal, Assistant Professor (Chemistry)

This table of activities provides examples of the types of activities to be expected in all phases of the mining cycle and includes on-the-ground activities that require a claim or disposition (licence or permit).

Staking	Stages of Exploration	Stages of Development
Staking and issuance of a claim	Grassroots exploration (airborne satellite surveys, geological and geophysical prospecting, surveying, non-mechanized sampling)	Mine complex development and mine production Deposit appraisal, permitting and development (environmental baseline studies, detailed site surveys, major earth moving and construction) Expansion toward permanent work site, mining activities.
	Early exploration Airborne geophysical surveys, line cutting, geological mapping, outcrop stripping or mechanized trenching, low-density drilling. (Periodic overflights, short-term/seasonal ground-based activities).	Mine closure and rehabilitation Removal of infrastructure, re-contouring of waste rock, revegetation, water management
	Advanced exploration High-density drilling, bulk sampling.	

APPENDIX D

Consultation Matrix and Process Guide

The following matrix serves as a proposed consultation guide to address the level of consultation according to the level of potential impact and disturbance (sensitivity), and the type of proposed activity of mineral development, as set out in the initial assessment process. It is acknowledged that proposed activities that trigger Crown-Aboriginal consultation may initially be scoped at a lower level of consultation and that initial discussions between the proponent and communities, or between government and communities, may determine that the potential impacts are higher than initially anticipated, and may require more consultation than specified in this table. This will be determined on a case-by-case basis.

Level of Consultation/Level of potential impact/disturbance <i>(Low, Moderate, High)</i>	Category of Activity	Mineral Claim/Disposition/Outcome
Informational notification <u>No impact or disturbance</u>	Staking and issuance of a claim	Mining claim recorded
Level 1 <u>No to low impact or disturbance</u>	Grassroots exploration Issuance of a Mineral Exploration Licence (no impact) grassroots exploration	Mineral exploration licence (MEL)
Level 2 <u>Low to moderate Impact or disturbance</u>	Early exploration Advanced exploration	Work permit
Level 3 <u>Moderate to high impact or disturbance</u>	Advanced exploration Mine complex development and mine production Mine closure and rehabilitation	Work permit Environment Act Approvals (Licences) (Project could require a federal and/or provincial environmental approval-harmonization of federal and provincial EA approval processes is highly recommended)

APPENDIX E

Truth and Reconciliation Commission of Canada: Calls to Action

Business and Reconciliation

92. We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include the following:

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
- ii. Ensure that Aboriginal peoples have equitable access to jobs, training and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
- iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations*

Declaration on the Rights of Indigenous Peoples, treaties and Aboriginal rights, Indigenous law and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism.

Please see the following hyperlink to view the full report:

[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls to Action_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)