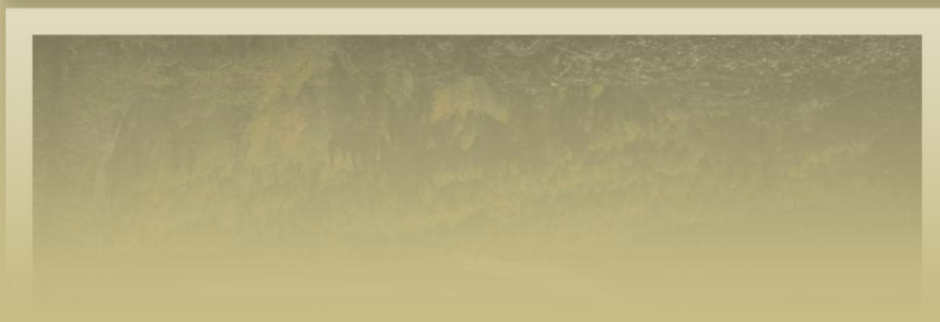


# Fort Nelson First Nation

## Consultation Protocol and Guidelines

April 1, 2011

Addendum: Consultation on Water Permits and Licenses in FNFN Territory



## Table of Contents

<b>Introduction.....</b>	<b>3</b>
<b>A Duty to Consult and Accommodate .....</b>	<b>3</b>
Consultation and the Crown.....	3
Consultation and Industry .....	4
Accommodation and Mitigation .....	6
<b>FNFN Consultation Principles .....</b>	<b>7</b>
<b>FNFN Consultation Process &amp; Guidelines .....</b>	<b>8</b>
Stage 1: Notification and Information Sharing.....	8
Stage 2: Review of FNFN Rights & Interests.....	10
Stage 3: Assurance of Time and Resources .....	10
Stage 4: Analysis of Impacts to FNFN Rights & Interests .....	11
Stage 5: Accommodation of FNFN Rights & Interests.....	11
Stage 6: Monitoring of Impacts to FNFN Rights & Interests .....	13
<b>FNFN Consultation Guidelines .....</b>	<b>14</b>
<b>FNFN Community Engagement Guidelines .....</b>	<b>15</b>
<b>FNFN Field Participation Guidelines.....</b>	<b>16</b>
Participation Request.....	16
Data Collection.....	17
Data Analysis/Information Sharing .....	18
Rate Schedule .....	18
Safety Protocol.....	18
<b>FNFN Research Protocol &amp; Guidelines.....</b>	<b>20</b>
FNFN Research Protocol .....	20
Research Participation Request .....	21
Data Collection.....	22
Traditional Use Research Process.....	22
Request for TEK/TLU Information.....	23
Rate Schedule .....	23
Study Schedule .....	23
<b>Addendum: Consultation on Water Permits and Licenses in FNFN Territory.....</b>	<b>24</b>

## Introduction

Fort Nelson First Nation (FNFN) is committed to engaging in good faith with those who wish to access our ancestral lands for the purposes of resource extraction and development. We have rights to our land and a responsibility to our future generations to ensure that our land will continue to sustain us long after the resource industries have gone.

In the meantime, FNFN aims to re-establish ourselves as a people—strong, healthy, proud and self-reliant—connected to our lands and our culture. To that end, FNFN wishes to ensure that industrial development in our territory occurs in a coordinated and responsible manner that balances the benefits of development with the adverse impacts to our land and our community.

For many generations, we have upheld our rights and responsibilities to our lands and to our people. FNFN confirmed these rights and responsibilities when we signed Treaty 8 with the Crown in 1910. Since then Aboriginal and Treaty rights have become legal rights pursuant to Section 35(1) of the *Constitution Act, 1982*. Aboriginal and Treaty rights include the constitutionally protected priority use rights to resources (e.g. fish, wildlife, trees, and other land-based medicines and foods). Section 35(1) further demands that the protection of these rights is a paramount objective.

A treaty is a solemn agreement between the Crown and Indigenous peoples. The Supreme Court of Canada has outlined the nature of Treaty rights, developed a number of principles regarding their interpretation, and states that treaties must be interpreted in a manner that maintains the honour of the Crown, which is always at stake in dealings with First Nations.

The honour of the Crown requires it to conduct such negotiations in good faith and with a willingness to accommodate Aboriginal interests where necessary. ...If the Crown does not make reasonable concessions, it is open to the court to conclude that the Crown is not negotiating in good faith with a willingness to accommodate Aboriginal interests. (*Gwassiam v. B.C.* (2004), 38 B.C.L.R. (4th) 57)

## A Duty to Consult and Accommodate

### Consultation and the Crown

In recent years, Canadian law has evolved to recognize First Nations' rights and responsibilities and has declared that the Crown not only has a duty to consult First Nations regarding activities in our territories, but also a duty to accommodate our rights and interests in our lands. Any potential infringement of our rights raises obligations on the part of the Crown to consult with the FNFN and to find means to accommodate proposed infringements. If proposed

infringements cannot be justified, then the Crown is obligated not to proceed with approval of the activity.

FNFN expects both the Federal and the Provincial Crown to undertake consultation whenever it is proposed that land management and/or resource development activity be undertaken with the potential to impact the exercise of our Aboriginal and Treaty rights, directly, indirectly, or cumulatively, within our territory. Specifically, FNFN expects the Crown to undertake consultation prior to the following activities:

- Assessments and approvals which may lead to resource exploitation or extraction activities, including but not limited to, conventional and non-conventional oil and gas exploration and related development activity, mining, forestry, fishing, guide-outfitting, hydro-electric and alternative energy development, etc.;
- Legal and policy changes;
- Government planning processes, including but not limited to, strategic land management and water use planning;
- Approvals which may lead to the issuances of a license, permit, lease or change in land status, tenure dispositions, transfers and replacements;
- Approvals which may lead to the construction, expansion, amendment or decommissioning of facilities and associated infrastructure (including seismic programs, camps, borrow pits, drilling and disposal wells, processing plants, pipelines, water loading stations, roads, dams, bridges, etc.);
- Approvals which may lead to the issuances of a license, permit, lease, or change in tenure or status for the collection, diversion or withdrawal of fresh surface water, and;
- Amendments to decisions.

FNFN views meaningful consultation to consist of information-sharing, review, assessment, and reasonable accommodation. Information-sharing, review and assessment determine the extent, scope, and magnitude of the potential direct, indirect, and cumulative impacts on our ecological, cultural, social and economic systems from the proposed activity. Accommodation discussions determine appropriate mitigation steps to offset adverse impacts to our land and our ability to exercise our treaty rights in our territory.

“If we don’t look after the land, we don’t have a life, so take care of it. We would not be here without it.” – FNFN Elder

### Consultation and Industry

While resource extraction companies do not have a legal duty to consult with First Nations, any certificates, permits, licenses or other Crown decisions issued or made in breach of the

Crown's legal duty to consult with and accommodate FNFN may be challenged in court and may be set aside as invalid. Otherwise, such approvals may be subject to legal action for compensation for infringement of our Aboriginal and Treaty rights.

Ultimately, proponents cannot assume that the Crown has discharged its duty to consult with FNFN. To offset the risk of having approvals set aside or other unnecessary delays, it is in the best interest of proponents to engage with FNFN to demonstrate a commitment to relationship-building, open communication and good business practice.

Specifically, FNFN requests that the proponent engage with FNFN prior to submitting applications or requests to the Crown for the following activities:

- Resource exploitation or extraction activities, including but not limited to, conventional and non-conventional oil and gas exploration and related development activity, mining, forestry, fishing, guide-outfitting, hydro-electric and alternative energy development, etc.;
- Policy and/or legislative changes;
- Implementation of industry planning processes, including but not limited to, Area Operating Protocols, land management regimes, water use planning, and infrastructure development;
- Changes in land status, tenure dispositions, transfers and replacements;
- Construction, expansion, amendment or decommissioning of facilities and associated infrastructure (including seismic programs, camps, borrow pits, drilling and disposal wells, processing plants, pipelines, water loading stations, roads, dams, bridges, etc);
- License, permit, lease, or change in tenure or status for the collection, diversion or withdrawal of fresh surface water, and;
- Amendments to Crown decisions.

In the interest of solid relationship-building and minimizing unnecessary delays in project development, proponents should not rely on government consultation policy and procedures alone to guide engagement with FNFN. Rather, FNFN requests that proponents also adopt the FNFN Consultation Protocol and Guidelines. Adherence to the FNFN Consultation Protocol and Guidelines will facilitate consultation between FNFN and government agencies and can avoid delays and uncertainty resulting from instances of inadequate Crown consultation.

Meaningful engagement is realized when FNFN has adequate knowledge and resources to participate fully in consultation processes. In some cases, FNFN may undertake environmental, socio-economic and cumulative impact assessments to determine potential impacts to our Aboriginal and Treaty rights. This may require a Traditional Use study (TUS), and/or evaluations of existing oral histories, land management plans, current industrial and traditional land use and occupation maps, archaeological and bio-physical studies. FNFN will pursue funding from the Crown and proponent to conduct and respond to studies. In the absence of a formal capacity agreement with FNFN, the FNFN Consultation and Participation Fee Schedule will apply.

### Accommodation and Mitigation

As FNFN and the Crown and/or proponent work through the FNFN Consultation Process, FNFN may identify concerns related to the infringement of our Aboriginal and Treaty rights by proposed activities or decisions. FNFN is committed to working with the Crown and the proponent to minimize these impacts and reconcile competing interests on the land.

The Crown has a duty to reasonably accommodate FNFN in the attempt to reconcile industrial development with FNFN rights and interests. In return, FNFN is committed to working toward reasonable, appropriate, and workable accommodation of our rights and interests and mitigation of the ill effects of development on our land and our ability to exercise our treaty rights in our territory. Accommodation and mitigation discussions will help determine the appropriate measures to offset these impacts.

Through meaningful dialogue with both the Crown and the proponent, FNFN is committed to negotiating, in a timely manner, a reasonable approach to development that builds capacity in our community, is sustainable for our local and traditional economies, minimizes adverse impacts to our land, air and water, and ensures our ability to practice our Aboriginal and treaty rights and interests in our territory for generations to come.

Accommodation and mitigation measures may include, but are not limited to:

- Modifying or cancelling a proposed activity or decision to avoid or minimize impacts or infringements of FNFN Treaty and Aboriginal rights and interests;
- Undertaking conservation measures and restoration and reclamation activities;
- Limiting the level and pace of resource harvesting and extraction activities;
- Engaging in a detailed assessment of the potential impacts and infringements of the proposed activity or decision;
- Conducting joint land-use planning or reconciliation of Crown, Industry and FNFN land-use plans;
- Implementing management processes involving shared decision-making authority;
- Participation in future joint decision-making;
- Revenue-sharing;
- Resource re-allocation;
- Compensation for past, present and future infringement and negative impacts;
- Provision of business development opportunities, including employment and contracting agreements for FNFN members and businesses;
- Provision of training, education and scholarships to FNFN members;
- Community economic agreements, partnerships and/or joint ventures.

FNFN encourages relationship-building and social license initiatives occurring in our territory. When such initiatives occur in the absence of FNFN involvement, they cannot substitute for meaningful consultation or accommodation, however, such economic development initiatives

will be taken into account by FNFN when considering the adequacy of consultation and accommodation once assessment is complete and impacts are determined.

Before a project or a development is approved, the Crown and the proponent should discuss with FNFN the economic development issues associated with the project and work to ensure our long term participation throughout the lifecycle of industrial development, including planning and assessment, project construction, operation and maintenance, and the final deactivation and reclamation phases.

In keeping with the Crown's duty to consult, third-party interests must not be granted and significant developments within FNFN territory must not proceed without adequate consultation with FNFN and reasonable accommodation of our rights and interests. The proponent can assist the Crown and facilitate consultation through early and meaningful engagement with FNFN along with sincere attempts to mitigate the adverse impacts of proposed developments on the rights, land and culture of the Fort Nelson First Nation.

“When all the oil and gas is gone, we're going to have to go back in the bush and live the Indian way.” –FNFN Elder

## **FNFN Consultation Principles**

For countless generations, our land has sustained us. It is part of who we are, how we think and where we are from. Our culture, history, and identity as families and as a community are tied to the land, the waters and the animals. Forever we have lived in this land, we have died in this land, and we have learned from this land that balance in all things is necessary.

While FNFN views all industrial activities occurring in our traditional territory as an infringement of our rights to access our land and to practice our traditional ways, we believe that industrial development can occur in a manner that balances the interests of economic development with our need to maintain the health of our land and our culture. This is the perspective from which we approach meaningful consultation and reasonable accommodation.

From this perspective flow the following principles of consultation:

1. Activities or decisions that may affect FNFN rights and interests must not proceed without full and meaningful consultation with the FNFN;
2. FNFN must be engaged at the earliest possible stages of project planning and/or decision-making, allowing adequate time for FNFN to fully and meaningfully participate in consultation and engagement processes;
3. FNFN must be involved in scoping, prioritizing and determining the level of engagement, consultation and accommodation required for each project and/or decision that may affect our rights and interests;

4. FNFN has a strong connection to the lakes, rivers and streams within our territory. FNFN must be consulted prior to any activity, including water withdrawal, that may potentially impact wetlands, rivers, muskeg, lakes, streams, creeks and springs;
5. Cultural, ceremonial and heritage impacts on FNFN can only be determined by FNFN;
6. Processes should reflect the notion of free, prior and informed consent recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to which Canada is a signatory;
7. FNFN must have the capacity to consult. FNFN expects that the Crown and/or proponent will help fund our participation in consultation and engagement processes;
8. Consultation agreements, participation agreements, resource sharing agreements, and other interim measures by themselves do not discharge the Crown from its duty to consult and accommodate FNFN's rights and interests;
9. Engagement in a consultation process does not indicate that FNFN agrees to or supports a proposed activity or decision, and;
10. Consultations must be conducted with FNFN elected Council, or such representatives as they may appoint. While all FNFN members are to be informed of impacts to their rights, consultation cannot be conducted through individual FNFN members.

These principles represent the basis of meaningful consultation with the FNFN. FNFN may adapt or change resulting consultation policy and procedures in line with these principles to meet our specific needs in any given case.

“The land is a part of me and my family and I don't want it destroyed.  
The animals need it to live and we need the animal to live.” –FNFN Elder

## **FNFN Consultation Process & Guidelines**

The following six-stage process has been developed to implement the FNFN consultation principles in a manner that is appropriate to FNFN. The FNFN Consultation Process answers the question, “How does FNFN wish to be consulted?”

The FNFN Consultation Guidelines are intended to guide FNFN staff, Crown agents, and proponents through FNFN's six stages of meaningful consultation.

### Stage 1: Notification and Information Sharing

Meaningful consultation begins before any activity or decision is commenced or approved. Initially, the Crown and/or proponent will notify FNFN of intentions and provide us with detailed information regarding the proposed activity or decision. FNFN requests that the Crown and/or proponents provide us with two copies, one electronic version and one hard copy, of the following information:

1. The nature and scope of the proposed activity;
2. The nature and scope of all related activities, such as applications for related infrastructure, water use, future growth phases related to a proposed project, etc;
3. The rationale for or purpose of the proposed activities;
4. The exact location of the proposed activities, including all relevant Shape files;
5. Identification of all existing industrial development within 10km of the proposed activities;
6. The timing of the proposed activities, including all applicable regulatory timelines;
7. The duration and anticipated life-cycle of the proposed activities;
8. Identification of possible alternatives to the proposed activities;
9. The names and full contact information for any Crown decision-makers related to the proposed activities, and;
10. The names and full contact information for the proponent.

Information provided should be accurate in presenting the size, scope, and magnitude of the activity or decision and indicate reasonable alternatives to the proposed activities. The Crown and the proponent should also indicate if the proposed activities are subject to review by the BC *Environmental Assessment Act*, the Canadian *Environmental Assessment Act*, the National Energy Board, and/or any other regulatory agency.

FNFN may request that the Crown and/or proponent provide additional information to FNFN staff or advisors to allow FNFN to understand the process and the substance of the proposed activity or decision. Additional information may include:

- A summary of known traditional use information and traditional ecological knowledge relevant to the proposed project area;
- A preliminary environmental risk assessment of the proposed activities;
- Relevant ethnographic, archaeological, hydrological, ecological and bio-physical reports, studies and assessments available to be reviewed in relation to the proposed project;
- Relevant land and resource management plans, legislation, policy, guidelines and regulations available to be reviewed in relation to the proposed project;
- Resource conservation (including merchantable timber and fresh surface water), remediation, and reclamation plans;
- Identification of who will be involved in carrying out the proposed activities, including agents and contractors working for the Crown and the proponent;

We ask that information is provided in a form that is understandable to FNFN and not excessively technical. At this point, FNFN does not have the capacity to analyze biological, hydrological, geological and other technical documents. The Crown and/or the proponent

should be prepared to assist FNFN in understanding technical documents, either through capacity sharing or providing capacity funding to allow us to hire technical expertise.

### Stage 2: Review of FNFN Rights & Interests

Once information-sharing has begun, FNFN will assess proposed activities and/or decisions for potential to infringe upon our Aboriginal and Treaty rights and interests. Using our own culturally-based criteria, FNFN will determine whether activities have the potential to impact our rights and interests, as well as the significance of the potential to impact our rights and interests, particularly in relation to our cultural, historical and treaty connections to our land.

Regardless of size, scale or magnitude of proposed activities, meaningful consultation cannot occur if the Crown and/or the proponent unilaterally exclude, deny, or minimize the potential for a proposed activity or decision to impact FNFN rights and interests in our territory. In addition to the need for a historically grounded and culturally based review of proposed activities, FNFN is concerned that the cumulative impacts of industrial development will render our treaty rights meaningless as access to our land and the health of our land is diminished bit by bit through progressive industrial development. Meaningful consultation requires that FNFN is provided an opportunity to determine the potential of all industrial activity within our territory to impact our rights and interests.

Similarly, the FNFN is deeply concerned about the impacts of non-conventional oil and gas extraction, including hydraulic fracturing processes, to the quality and quantity of fresh water sources in our territory. Without fresh, clean water for people, animals and fish to drink, we will be unable to practice our treaty rights in our territory. We also have a cultural connection to the water bodies in our territory that may not be fully understood by the Crown and/or proponent. Meaningful consultation requires that FNFN is provided an opportunity to consider the potential impact of all applications for licenses and permits to collect, divert and/or withdraw water from fresh water sources within FNFN territory prior to approval.

Upon review of each proposed activity and/or decision in our territory, FNFN will determine the level of engagement and consultation we require to fully understand the potential impacts of a proposed activity or decision on our Aboriginal and Treaty rights and our ability to exercise them in our territory.

### Stage 3: Assurance of Time and Resources

If there is a significant potential for infringement, FNFN needs sufficient time to consider the information and sufficient human and financial resources to assess and respond to the information in an informed and timely manner.

FNFN will work with the Crown and/or proponent to reconcile FNFN capacity with proponents' desire for timely approvals. To that end, FNFN is committed to reaching an agreement with the Crown and/or the proponent regarding a mutually acceptable consultation plan, including timelines, engagement protocols and capacity funding.

If a proposed activity is subject to review by the *BC Environmental Assessment Act*, the *Canadian Environmental Assessment Act*, the National Energy Board, and/or any other regulatory agency,

FNFN may request a meeting with the relevant Crown agencies to discuss the regulatory process, available resources, and the expectations and opportunities for FNFN participation in the review process.

FNFN may pursue a separate and distinct consultation process from existing public and stakeholders review processes, as is our entitlement as Aboriginal and Treaty rights holders. However, the FNFN may agree to consult solely within public review processes and will attempt to meet reasonable regulatory timelines within these processes. In order to conduct meaningful consultation with our members within regulatory timeframes, FNFN will pursue agreements with the Crown and/or proponent to secure sufficient capacity funding.

Consultation plans, engagement protocols and capacity agreements are necessary to allow for meaningful consultation and analysis of potential impacts to FNFN Aboriginal and Treaty rights and interests. In the absence of a formal capacity agreement with FNFN, the FNFN Consultation and Participation Fee Schedule will apply.

### Stage 4: Analysis of Impacts to FNFN Rights & Interests

Meaningful consultation exists when FNFN and the Crown jointly determine the extent and nature of potential impacts and infringements upon FNFN Aboriginal and Treaty rights and interests.

To this end, FNFN is committed to full and meaningful participation in environmental, socio-economic and cumulative impact assessments activities conducted in our territory that will help determine potential impacts not only upon our Aboriginal and Treaty rights, but also upon our land and culture. This may include terrestrial, aquatic or forestry ecosystem assessment as well as environmental assessment processes and related studies conducted by or on behalf of the Crown and/or proponent.

FNFN may also conduct our own environmental and Traditional Use study (TUS), and/or evaluations of existing oral histories, land management plans, current industrial and traditional land use and occupation, archaeological and bio-physical studies. FNFN will pursue adequate funding from the Crown and/or proponents to conduct and to assess these studies.

FNFN will document all non-confidential information collected about traditional and current use of the impacted area and cultural and environmental aspects that exist in the general area. FNFN will then consider the information in the context of the proposed activity or decision and how it may affect historic, current and future use of the project area. All relevant concerns will be identified, including recommendations for resolution and/or mitigation.

### Stage 5: Accommodation of FNFN Rights & Interests

Where the impact on FNFN rights and interests is determined to be significant, FNFN will pursue fair and reasonable accommodation and mitigation measures.

FNFN will share our non-confidential findings with the Crown and/or proponent, outlining the potential impacts and/or infringements of the proposed activity or decision by providing a

summary of concerns and all relevant non-confidential information to the Crown and/or proponent for review and subsequent dialogue via mitigation and accommodation discussions.

Upon completion of mitigation discussions with the proponent, FNFN will provide the proponent with an Engagement Summary outlining our engagement activities, FNFN concerns, agreed upon mitigation commitments, and any recommendations for further accommodation.

FNFN requests that the proponent submit the FNFN Engagement Summary to the Crown for all applications leading to:

- Resource exploitation or extraction activities, including but not limited to, conventional and non-conventional oil and gas exploration and related development activity, mining, forestry, fishing, guide-outfitting, hydro-electric and alternative energy development, etc.;
- Changes in land status, tenure dispositions, transfers and replacements;
- Construction, expansion, amendment or decommissioning of facilities and associated infrastructure (including seismic programs, camps, borrow pits, drilling and disposal wells, processing plants, pipelines, water loading stations, roads, dams, bridges, etc);
- License, permit, lease, or change in tenure or status for the collection, diversion or withdrawal of fresh surface water.

Applications for these activities will be referred to the FNFN through the Crown and should have the FNFN Engagement Summary attached. Applications submitted without the FNFN Engagement Summary will be considered incomplete by the FNFN and a request for further engagement with FNFN will be issued through the Crown. FNFN will respond to these referrals within 30 calendar days and will pursue a capacity agreement with the Crown to allow us to process referrals and engage in accommodation discussions in a timely manner.

FNFN requests that the FNFN Engagement Summary is reviewed by the Crown in preparation for accommodation discussions with FNFN prior to issuing approvals. In addition to proponents' mitigation commitments, reasonable accommodation measures at this stage could include:

- Modifying or cancelling a proposed activity or decision to avoid or minimize impacts or infringements of FNFN Treaty and Aboriginal rights and interests;
- Undertaking conservation measures and restoration and reclamation activities;
- Limiting the level and pace of resource harvesting and extraction activities;
- Engaging in further assessment of the potential impacts of the proposed activity or decision;
- Conducting joint land-use planning or other reconciliation of Crown, Industry and FNFN land-use plans;
- Implementing management processes involving shared decision-making authority;
- Participation in future joint decision-making;
- Revenue-sharing;

- Resource re-allocation;
- Compensation for past, present and future infringement and negative impacts.

In keeping with the Crown's legal duty to consult, third-party interests cannot be granted and industrial development within FNFN territory cannot proceed without adequate consultation with FNFN and reasonable accommodation of our Aboriginal and Treaty rights and interests.

#### Stage 6: Monitoring of Impacts to FNFN Rights & Interests

Meaningful consultation and reasonable accommodation as it relates to FNFN's Aboriginal and Treaty rights and interests require that FNFN and the Crown and/or proponent monitor long-term impacts of activities on the land and our rights. This includes ongoing assessment of the cumulative impacts of industrial development on the land and FNFN rights and interests.

During accommodation and mitigation discussions, FNFN will pursue monitoring protocols and capacity agreements to follow up on accommodation and mitigation commitments to ensure that they are being followed and are effective. Agreed upon accommodation and mitigation measures will guide monitoring objectives, tasks and duties. As development progresses, FNFN, the Crown and/or the proponent may decide that mitigations as proposed are not effective and agree to revisit the commitments through on-going participation, assessment and dialogue.

The ultimate goal of the FNFN Consultation Process is to reconcile the rights and interests of FNFN, the Crown and proponents in our territory. It is hoped that the FNFN Consultation Process will facilitate cooperation and respect among parties and allow FNFN to exercise our rights and responsibilities to our land and our future generations, while minimizing FNFN objections to unmitigated resource extraction in our territory.

“The land is our way of survival. Without the trees, animals or water we have nothing. So the land means everything to me.” – FNFN Elder

## FNFN Consultation Guidelines



## FNFN Community Engagement Guidelines

FNFN Chief and Council welcome proponents and the Crown to engage with FNFN to discuss land use and development plans at the earliest possible stages of planning.

Meaningful consultation requires that consultation is conducted with the duly elected FNFN Chief and Council, or such representatives as they may appoint. Consultation cannot be conducted through individual FNFN members; rather, the FNFN Lands Department is the first point of contact to begin consultation with FNFN. All consultation requests can be directed to FNFN Lands and Resources Community Liaisons: [Cynthia.burke@fnnation.ca](mailto:Cynthia.burke@fnnation.ca) and [Janelle.badine@fnnation.ca](mailto:Janelle.badine@fnnation.ca) cc: [Madeline.burke@fnnation.ca](mailto:Madeline.burke@fnnation.ca), or call 250-774-6313.

FNFN staff will follow the FNFN consultation principles, protocol and guidelines when engaging with the Crown and proponents.

In addition to formal consultation with FNFN Chief and Council and Lands staff, FNFN welcomes community engagement through information-sharing sessions such as open-houses, community meetings, trade shows and other public sessions intended to inform FNFN members of project plans, processes and opportunities. All public sessions held by the Crown and/or proponents in the FNFN community must be approved by FNFN Chief and Council. Requests for approval can be directed to FNFN Clerk to Council: [sandy.mclean@fnnation.ca](mailto:sandy.mclean@fnnation.ca)

Once approved, FNFN can arrange a venue, refreshments and advertising in the community for each event. Please contact the FNFN Communications and Events Coordinator to make arrangements: [Moira.biddlecombe@fnnation.ca](mailto:Moira.biddlecombe@fnnation.ca). Unless other agreements have been made through FNFN Chief and Council, the venue, refreshments and advertising will be subject to a flat fee as set out in the FNFN Consultation and Participation Fee Schedule.

Proponents are encouraged to engage individuals registered to traplines within FNFN territory directly to discuss their interests. A list of registered trapline holders in northeast British Columbia can be found through the BC Ministry of Environment, Fish and Wildlife Section, Fort St. John: [Nick.baccante@gov.bc.ca](mailto:Nick.baccante@gov.bc.ca), or call: 250-787-3289. All enquiries regarding the BC Trapline Registry and Registered Traplines in FNFN territory should be directed to the BC Ministry of Environment.

## **FNFN Field Participation Guidelines**

The ultimate goal of the FNFN Consultation Protocol and Guidelines is to reconcile the rights and interests of FNFN, the Crown and proponents in our territory. Fort Nelson First Nation wishes to ensure that industrial development in our territory occurs in a coordinated and responsible manner that balances economic development with social and cultural development, while minimizing negative impacts to the land, air and water.

The FNFN field program has been established to help implement meaningful consultation by gathering cultural and environmental information to assist in environmental impact, archaeology, and cumulative effects assessments, traditional land use studies and other baseline research, and to ensure cultural and environmental stewardship within FNFN traditional territory. Our aim is to assist industry and government in understanding and monitoring the effects over time of land use and industrial development in FNFN territory in the context of environmental health and FNFN treaty rights and interests.

The following is intended as a guide to help proponents, contractors and Lands staff implement the FNFN field program. These guidelines offer clearly identified roles, responsibilities and procedures for requesting FNFN field participation, collecting data in FNFN territory, sharing field data and information, and finally upholding our responsibility to ensure safety on the land.

### Participation Request

FNFN welcomes the opportunity to participate in all environmental and archaeological field work within FNFN territory. Requests for FNFN Field Participation should be directed to the FNFN Lands Department and will require the following:

- 1) Requests for Participation can be emailed in pdf format to:  
[fieldcoordinator@fnnation.ca](mailto:fieldcoordinator@fnnation.ca) c.c.: [Madeline.burke@fnnation.ca](mailto:Madeline.burke@fnnation.ca) . Faxed requests are no longer accepted;
- 2) FNFN Field Participation is to be conducted by FNFN Field Assistants or other representatives as selected by the FNFN Lands Department. Participation with individual FNFN members who are not authorized representatives for field participation by the FNFN Lands Department will not be viewed as FNFN participants;
- 3) FNFN requires at least five (5) working days' notice to process Requests for Participation;
- 4) Requests for Participation are to include the following information:
  - (a) Project description (Type of program; anticipated start and end dates);
  - (b) Location of known archaeological sites, nesting sites or other sensitive areas;
  - (c) Orthographic and/or air photos and map sheets (1:250,000) of the program area;

- (d) Location access (main roads, helicopter, boat, all-terrain vehicles);
  - (e) Safety equipment and training requirements;
  - (f) Crew leader name and contact information;
  - (g) Client name and contact information
- 5) FNFN requires at least 24 hours' notice of job cancellation or standby. If adequate notice is not provided, a daily standby rate plus administration fee will apply;
  - 6) FNFN requires 24 hours' notification of all job extensions with the all necessary project information (see Bullet 5 above);
  - 7) FNFN participation and standby are compensated for according to the FNFN Consultation and Participation Fee Schedule;
  - 8) FNFN requires that FNFN Field Assistants sign a time sheet before leaving the job. We cannot accept time sheets that FNFN Field Assistants have not signed.

### Data Collection

FNFN Field Assistants are trained to gather information by using traditional knowledge coupled with western scientific data collection methods. FNFN Field Assistants collect information using site cards, digital photographs, GPS tracks and waypoints, and field notes. Information is returned to the FNFN GIS Technician and the Research team for processing in the FNFN Community Information System (CIS). Lands staff use this information to assess the potential impacts of industrial activity to FNFN treaty rights and interests and is passed on to Chief and Council for use in land use decision-making. Information may also be shared with industry and government.

When working in FNFN territory alongside FNFN Field Assistants, the following should be understood:

1. FNFN requires that FNFN Field Assistants conduct traditional use site assessments at every opportunity while on the land. We request that your company allow FNFN Field Assistants time to do so while working with your crew;
2. Photographs of FNFN Field Assistants are not to be used by the proponent or contractor for any purpose without prior authorization from the FNFN Lands Department;
3. Land use information shared by FNFN Field Assistants should be considered confidential, and not property of the consultant, company or proponent, or in any way used to fulfill consultation and engagement requirements;
4. FNFN Field Assistants are not necessarily holders of traditional knowledge and field participation alone is not an adequate method for sharing, collecting or integrating TEK into scientific studies and/or environmental assessments. FNFN conducts our own Traditional Use studies, which is the only appropriate method for sharing, collecting, and integrating TEK and TLU information into such studies;

5. FNFN Field Assistants are not obligated to provide proponents or contractors with reports, documents, GPS data, or photographs collected on the job. A formal request for such information can be submitted to the FNFN Lands Department;
6. FNFN encourages companies to inform all field work with existing traditional land use information; if you choose to access this information, you will be expected to enter into an Information-Sharing Agreement with FNFN;
7. FNFN Field Assistants may identify significant sites while in the field. If this occurs, the Field Assistant will notify the FNFN Lands Department immediately. A stop-work order may be requested by the Lands staff;
8. FNFN requests that the FNFN Lands Department is consulted prior to any field work being conducted in the vicinity of culturally significant or sacred sites.

#### Data Analysis/Information Sharing

Upon completion of data collection, FNFN Field Assistants return all data to the FNFN Lands Department. Information is logged into the CIS database within 14 days of collection. If a company requires information gathered by FNFN Field Assistants, an Information-Sharing agreement may be required.

To access information, submit a Request for Information to the FNFN Lands Department. Requests for information should include the following:

1. Name and contact information for the proponent and/or contractor requesting the information;
2. The specific Information required;
3. The form the requested information is to be delivered in;
4. The intended of use of the requested information;
5. Plans for gathering, use, storage and distribution of the requested information.

#### Rate Schedule

The FNFN Lands Department will invoice for staff time and equipment in accordance with the FNFN Consultation and Participation Rate Schedule. All invoices are subject to a 15% administration fee. Payment received later than 30 days of date on the invoice is subject to a 6% mark up fee.

#### Safety Protocol

The FNFN Lands Department is committed to maintaining a high standard of safety. The FNFN Field Coordinator is also the FNFN Lands Department Safety Officer and is responsible for ensuring compliance with the FNFN Health and Safety Program. All FNFN Field Assistants are trained to industry standards and are expected to comply with the FNFN Health and Safety program. The FNFN Health and Safety manual and staff safety tickets are available from the FNFN Field Coordinator upon request.

When working with FNFN Field participants, FNFN requests the following from proponents and contractors:

1. Inform the FNFN Field Coordinator of any and all safety and training requirements, including drug and alcohol testing, required for FNFN Field Assistants to participate;
2. FNFN maintains a zero tolerance policy on drug and alcohol use on the job. FNFN Field Assistants will comply with drug and alcohol testing at the request of the proponent and/or contractor. Costs to be borne by the proponent and/or contractor;
3. All on-the-job safety training required of FNFN Field Assistants is done in accordance with the FNFN Lands Department Health and Safety manual;
4. Proponents and/or contractors provide the FNFN Field Coordinator with an Emergency Response Plan (ERP) for each project at least 24 hours before heading out on the land. The ERP should outline emergency personnel and phone numbers and barriers to first aid;
5. Proponents and/or contractors identify known hazards prior to FNFN Field Assistants entering a work site;
6. Copies of pre-work meetings, safety meetings and/or tailgate meetings outlining known hazards and safety measures are forwarded to the FNFN Field Coordinator daily;
7. Proponents and/or contractors notify FNFN Lands Department within 24 hours of all incidents, accidents or other health and safety issues involving FNFN Field Assistants.

The FNFN Lands Department is proud to offer a strong field program to assist industry and government in the collection and sharing of information in FNFN territory while promoting safety in the field. For more information about the FNFN Field Participation Guidelines, please contact the FNFN Field Coordinator: 250-774-6313 cell: 250-500-1087 or: [fieldcoordinator@fnnation.ca](mailto:fieldcoordinator@fnnation.ca).

## **FNFN Research Protocol & Guidelines**

The ultimate goal of the FNFN Consultation Protocol and Guidelines is to reconcile the rights and interests of FNFN, the Crown and proponents in our territory. Fort Nelson First Nation wishes to ensure that industrial development in our territory occurs in a coordinated and responsible manner that balances economic development with social and cultural development, while minimizing negative impacts to the land, air and water. To that end, FNFN welcomes the opportunity to lead and/or participate in land-based research studies within FNFN territory, whether they are required for regulatory and planning processes or academic pursuits.

The FNFN lands research program has been established to help implement meaningful consultation by conducting traditional land use studies and other baseline research to assist in environmental impact, socio-economic, and cumulative effects assessments, and to ensure cultural and environmental stewardship within FNFN traditional territory. Our aim is to assist industry and government in land use planning and assessing the potential effects over time of land use and industrial development in FNFN territory in the context of environmental health and FNFN treaty rights and interests.

In order to ensure positive working relationships within our territory, FNFN has developed this research protocol, process and guidelines to ensure mutually beneficial participation, consistency in FNFN traditional land use (TLU) and traditional ecological knowledge (TEK) research methods, and protection of FNFN intellectual property rights.

### FNFN Research Protocol

This research protocol has been developed to help ensure that, in all land-based research conducted in FNFN territory or involving FNFN traditional ecological knowledge, appropriate respect is given to the culture, languages, knowledge and values of FNFN members, and to the standards used by FNFN to legitimate and document traditional ecological knowledge in our territory.

When considering land-based research in FNFN territory, the following should be understood:

1. FNFN conducts our own Traditional Use Studies, which is the only appropriate method for sharing, collecting, and integrating our TEK and TLU information in such studies, whether they are required for regulatory processes or academic requirements.
2. All Traditional land use and traditional ecological knowledge studies required for regulatory and/or consultation processes will be conducted by the FNFN Lands Department.
3. TUS/TEK studies conducted for the purposes of regulatory and/or consultation processes by contractors not hired by FNFN for the purposes of the study will be considered illegitimate by the FNFN.

4. TEK and TLU information gathered as an addendum to archaeological, environmental or bio-physical studies cannot be considered as meeting TEK/TLU requirements for consultation and/or regulatory processes.
5. FNNF field participants are not necessarily holders of traditional knowledge and field participation alone is not an adequate method for sharing, collecting or integrating TEK/TLU into scientific studies and/or environmental assessments. Researchers are encouraged to contact the FNNF Lands Department to discuss how TEK/TLU information can be integrated into research projects.
6. FNNF retains all rights to ownership, protection and custody of our traditional knowledge.
7. All TEK/TLU information collected by FNNF will be handled in strict confidentiality and will remain the property of the FNNF. Access to this information will be governed by an information-sharing and/or confidentiality agreement to be signed prior to project start.
8. All field research conducted with FNNF participation must be conducted in accordance with FNNF Community Engagement Protocol and FNNF Field Participation Guidelines, including the FNNF Health and Safety Program. Researchers who violate the FNNF safety program risk losing FNNF participation.

#### Research Participation Request

FNNF welcomes the opportunity to participate in research within FNNF territory. Requests for FNNF participation in land-based research should be directed to the FNNF Lands Department and will require the following:

- 1) Requests for Participation can be emailed in pdf format to: [jennifer.coupe@fnnation.ca](mailto:jennifer.coupe@fnnation.ca) c.c.: [Madeline.burke@fnnation.ca](mailto:Madeline.burke@fnnation.ca);
- 2) FNNF Research Participation is to be conducted by FNNF Researchers or other representatives as selected by FNNF;
- 3) Requests for Participation are to include the following information:
  - (a) Project description (Type of project; project design, anticipated start and end dates, funding agencies; affiliated institutions);
  - (b) Project rationale, purpose and anticipated outcomes;
  - (c) Maps or description of study area;
  - (d) FNNF's proposed role in the research project;
  - (e) Potential for FNNF capacity-building within the project;
  - (f) Principle Researcher name and contact information;
  - (g) Client name and contact information, if applicable;
- 4) FNNF participation is compensated for according to the FNNF Consultation and Participation Fee Schedule;

### Data Collection

FNFN Researchers are trained to gather traditional knowledge using methods tailored to the needs of the FNFN. FNFN Researchers collect information using community interviews, field verifications, and archival research. Information is returned to the FNFN GIS Technician and the research management team for processing in the FNFN Community Information System (CIS). Lands staff may use this information to assess the potential impacts of industrial activity to FNFN treaty rights and interests and may be passed on to Chief and Council for use in land use decision-making. Information may also be shared with industry and government.

Academic and government researchers may request FNFN expertise and participation in data collection and are encouraged to include FNFN in the design stage of research projects to ensure our full and meaningful participation in land-based research in FNFN territory.

Research projects requiring FNFN traditional ecological knowledge must include FNFN participation in the research design stage as FNFN will be taking the lead role in the collection of such information. Researchers wishing to access TEK information will be required to enter into an information-sharing and/or confidentiality agreement and will have to negotiate participation in community interviews and field verification. Researchers may also require FNFN Council approval to access some archival documents.

### Traditional Use Research Process

Traditional Use Studies (TUS) allow FNFN to gather land use information in our territory relevant to proposed development areas. This information allows FNFN to carry out our Consultation Protocol and make informed decisions and contributions in the planning and assessment of proposed industrial development in our territory. The FNFN TUS process is key to understanding the potential impacts and infringements upon FNFN rights and interests of proposed activities and decisions.

A proper TUS is a baseline study that documents and analyzes information about land use, traditional knowledge, and history of FNFN within a given area. The study draws on information from five sources:

1. The oral histories of FNFN Elders and active land-users with known knowledge and interest in the study area;
2. Existing traditional use and other studies that contain information relevant to the study area;
3. Industrial and provincial land use mapping;
4. Field studies of traditional use, vegetation, fisheries, and wildlife etc.
5. GIS Mapping of FNFN use of the territory

Each of the five components forms a separate but integrated component of a baseline study.

### Request for TEK/TLU Information

Upon completion of data collection, the FNFN TUS team returns all data to the FNFN Lands Department for processing. If a proponent or researcher requires information gathered by the FNFN TUS team, an information-sharing and/or confidentiality agreement will be required.

To access information, submit a Request for Information to the FNFN Lands Department. Requests for information should include the following:

1. Name and contact information for the proponent and/or contractor requesting the information;
2. The specific Information required;
3. The form the requested information is to be delivered in;
4. The intended of use of the requested information;
5. Plans for gathering, use, storage and distribution of the requested information.

All TEK/TLU information collected by FNFN will be handled in strict confidentiality and will remain the property of the FNFN.

### Rate Schedule

A TUS project budget will be negotiated prior to project start. Upon agreeance, the FNFN Lands Department will invoice the Crown and/or proponent for staff time and equipment in accordance with the FNFN Consultation and Participation Rate Schedule. All invoices are subject to a 15% administration fee. Payment received later than 30 days of date on the invoice is subject to a 6% mark up fee.

### Study Schedule

A timeline and work plan for the completion of a TUS will be negotiated prior to project start. The study will begin as soon as capacity funds are delivered to FNFN and appropriate human resources (i.e. consultants and research teams) are in place.

The FNFN Lands Department is proud to offer a strong research program to assist academics, industry and government in the collection and sharing of information in FNFN territory while promoting meaningful engagement and consultation to ensure the protection of FNFN Aboriginal and Treaty rights and interests. For more information about the FNFN TUS Research Program, please contact Jennifer Coupé, FNFN Research Coordinator: 250-774-6313 or: [jennifer.coupe@fnnation.ca](mailto:jennifer.coupe@fnnation.ca).

## **Addendum: Consultation on Water Permits and Licenses in FNFN Territory**

Fort Nelson First Nation (FNFN) must be fully consulted prior to any activity, including water withdrawal that may potentially impact wetlands, rivers, muskeg, lakes, streams, creeks and springs within FNFN territory.

FNFN is particularly concerned about the impacts of non-conventional oil and gas extraction, including hydraulic fracturing processes, may have on the quality and quantity of fresh water sources in our territory. Without fresh, clean water for people, plants, animals and fish, we are unable to practice our treaty rights in our territory. FNFN also has a strong cultural connection to the lakes, rivers and streams within our territory that may not be fully understood by the Crown and/or proponents.

This addendum provides the Crown and proponents a basis for consultation and engagement for water use by industries operating within FNFN territory.

To fully understand how industrial operations may affect our land and water resources, FNFN needs to know how many water approvals can reasonably be expected to be issued in the months and years ahead in geographically defined areas of our land, most notably within the boundaries of watersheds or catchment areas. Therefore, to begin meaningful consultation on water, it is imperative that FNFN receive immediate notification of all industry water applications and proposed water withdrawal points. This includes all surface water sources such as streams, rivers and lakes as well as muskeg and groundwater sources (fresh or saline water) and all engineered sites such as borrow pits.

Meaningful consultation further requires that:

1. FNFN is provided an opportunity to consider the potential adverse impacts and the cumulative effects of all applications for licenses and permits to collect, divert, and/or withdraw water from fresh water sources, including groundwater and muskeg, within FNFN territory *prior to approval*.
2. Engagement with FNFN begins prior to the submission of individual water applications;
3. Baseline information is provided to FNFN in a reasonably timely manner in a form that is not excessively technical;
4. FNFN is provided adequate time and resources to assess the potential adverse and cumulative impacts that proposed water withdrawals may have on our lands, rights and resources;
5. The Crown coordinates the assessment of Oil and Gas Commission (OGC) water permit applications and Water Stewardship Branch water license applications and such coordinated assessment is reflected in each application referred to FNFN;

The OGC has recently issued a directive requiring all proponents holding Section 8 water use permits to submit monthly water withdrawal data on a quarterly basis. We believe that this data

is essential for the Crown to effectively engage in meaningful consultation with FNFN. We are pleased to see that such reporting will be required by withdrawal location, and we look forward to regular reporting of all water withdrawn from lakes, rivers, streams, borrow pits or dugouts.

In order for us to have confidence in the data reported, we would like to see the OGC post such information electronically, in a format that allows us to identify the following:

1. Water withdrawals by permit number
2. Water withdrawals by permit holder
3. Water withdrawals by water source
4. Volume of water withdrawals by source and by day
5. Water withdrawals by watershed

Ultimately, we believe that meaningful consultation involves FNFN, the Crown and proponents jointly reviewing proposed water withdrawals on a watershed-by-watershed basis well in advance of individual approvals being issued. In order for that to happen, we believe individual companies must be required at a minimum to submit five-year development plans. Such plans should outline the following:

1. The approximate location of proposed well pads; associated years of development; the number of wells per pad; associated water usage and the most likely water sources;
2. The location of all related well pad infrastructure including but not limited to roads, pipelines, water storage tanks, wastewater storage pits, injection wells, groundwater wells and borrow pits;
3. All proposed water sources with projected water withdrawal rates (by daily maximum and yearly total);
4. All existing or anticipated water tenures associated with individual well pads (including temporary "Section 8" water permits and longer-term water licenses;

In order for reviews of five-year development plans to be complete and therefore meaningful and effective, submission of such plans must be coordinated to ensure that in watersheds or catchment areas where more than one proponent operates, all plans pertaining to the watershed are available for review at the same time. This will require coordination both by the proponents and the Crown alike.

Such coordination is required in order for FNFN and the Crown to have a complete picture of industry intentions in defined catchment areas and therefore be able to project, with some certainty, what the potential cumulative impacts on our lands might be. At the time that five-year development plans are filed, companies should provide sufficient hydrological data to assist the Crown and FNFN in assessing potential cumulative impacts.

Lastly, given indications by individual oil and gas companies about the large number of gas wells that they intend to drill in FNFN territory over the next 25 years, we request that the Crown provide reasonable projections regarding, 1) what industry's total combined water demand may be in the years ahead 2) from which watersheds water withdrawals can be expected, and 3)

what constitutes a reasonable rate of water withdrawal based upon existing and projected precipitation and recharge data.

As we work towards implementing meaningful consultation on water allocations in FNFN territory, FNFN requests that all industrial water use applications, all supporting documents, and all related correspondence between proponents and the Oil and Gas Commission (OGC) and the BC Water Stewardship Branch are referred to the FNFN Lands Department and that no approvals be issued until meaningful consultation has occurred and our concerns have been addressed.

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

– *United Nations Declaration on the Rights of Indigenous Peoples*

June 21, 2011

**For more information about the Fort Nelson First Nation  
Consultation Protocol and Guidelines please contact:**

**Lana Lowe  
Lands Director  
Fort Nelson First Nation**

**Tel: 250-774-6313**

**Fax: 250-774-6317**

**[lane.lowe@fnnation.ca](mailto:lane.lowe@fnnation.ca)**

