PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

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[Submitted Electronically]

Crown-Indigenous Relations and Northern Affairs Canada
Consultation and Accommodation Unit
219 Laurier Avenue West, 7th floor
Mail stop: 25E-8
Ottawa, Ontario K1A 0H4

RE: PDAC's Response to the Federal Consultation and Accommodation Guidelines Renewal

On behalf of the Prospectors & Developers Association of Canada (PDAC) and our more than 8,200 individual and corporate members, we welcome the opportunity to provide comment on the renewal of federal consultation and accommodation guidelines.

This renewal is an opportunity to clarify government, proponent, and Indigenous community roles and expectations when the Duty to Consult is triggered, and to have a material impact on improving project development timelines in Canada. The proposed policy statements must therefore be written to ensure clarity, predictability, and proportionality while advancing Indigenous rights and maintaining efficient approvals for economic development activities. The following recommendations will ensure the policy statements reflect these objectives.

Statements 1 and 4: UNDA and FPIC

Clarity on the role and influence of the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) in federal consultations and accommodations, and the related definition of Free, Prior, and Informed Consent (FPIC), is of the utmost importance. As it stands, courts across Canada have been inconsistent in the application of UNDRIP in cases relating to the implementation of the Duty to Consult, giving rise to a litigious and volatile landscape.

The federal government must remain steadfast and vocal in reiterating initial interpretations. Per comments made by the active Justice Minister of the time, David Lametti, "free, prior and informed consent does not constitute veto power over the government's decision-making process" and Bill C-15 "[would] not change Canada's existing duty to consult with Indigenous peoples or the other consultation and participation requirements under other legislation". Proactive guidance in these instances by the federal government can ensure that interpretations of the Act at the federal and sub-sovereign level align with its originally stated intentions, and that the Act remains consistent and equitable across Canadian jurisdictions.

This guidance must further clarify that, while silence may not equal consent, silence following reasonable efforts to engage cannot hinder project approvals. Furthermore, "considerations for when consent is not provided" must clearly state that final decisions lie with the Crown, and that those decisions are made with due consideration of all environmental, social, and economic impacts of a proposed development.

Statement 1: Assessment of Duties

Defining who is consulted, when and how that consultation takes place, and the scale and implementation of accommodation measures in the Guidelines, should align with *Haida Nation v. British Columbia (2004)*. Guidelines should outline a tangible, predictable, risk-based threshold matrix that assesses the scale and probability of potential impacts on established Aboriginal or Treaty rights. The factors considered in this assessment should be transparent and measurable, with decisions adequately explained to all involved parties, to ensure scope of consultation and community of interest designations are evidence-based and made uniformly across departments, projects, and jurisdictions.

Federal departments must coordinate with their provincial counterparts to ensure consistent determinations of impacted Indigenous communities or groups and scope of consultation. Aligning consultation lists and providing rationale for these determinations to proponents and communities will allow for earlier engagement and equitable agreements, where outcomes can be predicted in the first stages of project development, further aligning with Statement 2's objectives of early and ongoing partnerships supported by mutual understanding.

Statement 3: Public Interest

Statement 3 proposes to change "*Consultation and accommodation will be carried out in a manner that seeks to balance Aboriginal interest with other societal interests, relationships and positive outcomes for all partners*" to "*a consultation and accommodation process is to be carried out in a manner that seeks to balance the interests of Indigenous communities as a special kind of public interest*".

Government must clearly define what is meant by "a special kind of public interest" in a way that retains the ability for Crown decisions to favour Canada's broader economic, defense, and climate change objectives, including to "transform our nation's economy and help us build a more resilient, sovereign Canada" (Minister LeBlanc, 2025).

Statements 4, 6, and 8: Involved Parties and Delegation

Proposed Statements 4 and 6 replace "The Government of Canada" with "Everyone involved in consultation and accommodation processes". The statement creates uncertainty as to who is considered "everyone involved", whether that is intended to encompass all federal departments, or to extend to provincial and territorial bodies, or even project proponents. The term "Government of Canada" should be reinstated in the text or alternate phrasing must be more clearly defined in a manner that respects provincial jurisdiction and the sensitivity of relationships between proponents and Indigenous communities.

Proponents are significant supporters of Indigenous participation in the mineral sector, with more than 500 active cooperation or relationship agreements currently in place. In 2024, according to the ESTMA database, more than CAD$600 million in payments were made by proponents to Indigenous governments in Canada. While proponents often take an active role in supporting the capacity and participation of Indigenous Peoples in the mineral sector, and procedural aspects of consultation are frequently delegated to proponents, the legal obligation to fulfil the Duty to Consult must remain with the Crown.

In developing new Guidelines, particularly "Who's responsible for accommodation measures" and the reference to the "role of proponent and IBA/MBA", consider the complex and confidential nature of such agreements, and that many other forms of cooperation and accommodation between the parties may exist in addition to or instead of IBAs. Impact Benefit Agreements (IBAs) and other cooperation agreements between proponents and Indigenous communities arise from a desire for mutual benefit, clearly outlined cooperation mechanisms, and mitigation of risk; these shared interests create a negotiating environment conducive to compromise and creative thinking. Government pressure or involvement in completing such negotiations, or the requirement to disclose the otherwise confidential and highly sensitive terms of these agreements, risk undermining the conditions that create productive negotiating environments, potentially reducing the willingness of parties to reach mutual understanding.

Conclusion

PDAC believes that clear, predictable, and proportionate federal consultation and accommodation guidelines will strengthen Indigenous-Crown-proponent partnerships, reduce litigation, and unlock the full potential of Canada's mineral exploration sector. We urge CIRNAC to incorporate these recommendations into the renewed Policy Statements and Guidelines and welcome the opportunity to participate in further stages of their development and implementation.

PDAC thanks you for your consideration of this matter. Please contact Jeff Killeen (PDAC Policy & Programs Director) at jkilleen@pdac.ca should you wish to discuss our comments further.

Kind regards,

Jeff Killeen
Director, Policy and Programs