

NOFNEC 2014

Early Engagement and Consultation
Arrangements Workshop

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WELCOME

Presenters

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Earlier Engagement

- Opportunity to prepare for MOU development and community readiness.
- 2012 - Changes to "*Mining Act*"
 - Notification of intent for plan or permit;
 - Early exploration level activities;
 - SOACS/TEK and identification of culturally significant sites;
 - Developing social licence.

Engagement Best Practices

- Engagement/Consultation should begin as early as reasonably possible;
 - When there is enough information on the proposed activity, to allow an Aboriginal community a reasonable opportunity to identify any concerns about possible impacts to its Aboriginal or treaty rights; and.
 - So that any concerns from the Aboriginal community can still be considered and addressed, if necessary.
- Consultation must be undertaken with good faith and integrity.
- Consultation processes should reflect reasonable and genuine efforts by all parties.

Duty to Consult

- The objective of the law of Aboriginal and treaty rights (ie. those rights identified in section 35 of the *Constitution Act, 1982*) is the *reconciliation* of Aboriginal and non-Aboriginal peoples and their respective claims, interests and ambitions.
- *Consultation* with Aboriginal peoples about potential adverse impacts of government action on their asserted or established rights has been identified by the courts as a significant tool for achieving the objective of reconciliation. It is a legal duty of the Crown, recognized in several Supreme Court of Canada decisions, and is grounded in the honour of the Crown.

Consultation

- Consultation is often misinterpreted at early stages of mineral/resource development.
- Consultation – (*def. to consult with, to seek information or advice from, or to take into consideration)

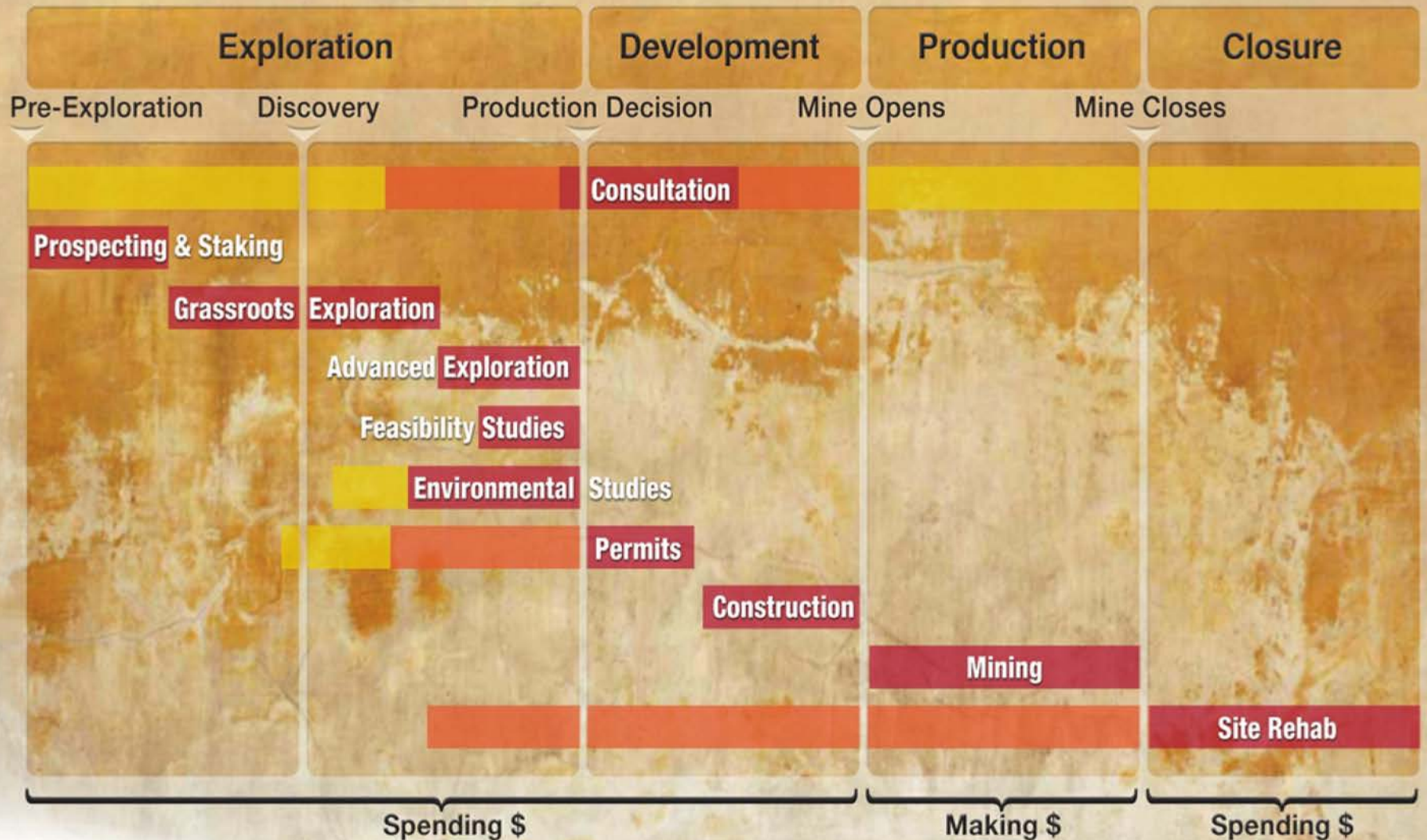
"A progression of events (process) in which two parties meaningfully engage and communicate with each other in regard to matters which require significant consideration."

MNDM - Consultation Protocol

- For the purpose of Mineral Exploration: "Consultation shall be considered meaningful when, fundamental information is delivered to the First Nation community as a whole, and their input has been solicited by the parties for the purpose of having key decisions made."
- The method of delivery of consultation may also be further defined by leadership as applicable to their community.

**Although the duty to consult legally rests with the Crown, this duty can and has been delegated (transferred) to be implemented and financially supported by the project proponent.

The Exploration & Development Sequence



Discussion

Types of Arrangements:

- Letter of Intent (LOI)
- Memorandum of Understanding (MOU)
- Exploration Agreement
- Participation Agreements
- Impact and Benefit Agreements (IBA)/Accommodation Agreement
- ❖ Mutual Cooperation (Shared Areas) Agreement

How Should a Community Prepare?

- Has your community developed:
 - An Engagement protocol?
 - A Consultation Protocol?
 - A Communications protocol?
 - A Resource Management Protocol?
 - Any Land Management Tools. (i.e., LUP, TEK studies, values mapping);
 - A Local Procurement Policy (Hiring, Services Provision).

Note: your community may not need to have all of the above in place as different communities have different priorities and visions for their communities and these documents reflect the individual needs of First Nation communities.

How Should a Community Prepare?

Cont'd

- Does your community have a process for keeping and filing engagement/consultation records?

- Does your community have any committees for consultation established? Such as;
 - consultation committee,
 - environmental committee,
 - land use planning committee
 - economic development committee,
 - youth committee, and/or
 - health and social issues committee.

Discussion

Note the previous slides contain considerations and suggestions to be used as a tool to assist in getting communities started.

Additional Considerations: Benefits of Preplanning

- Does the community have any templates for arrangements developed?
- The Aboriginal community should think about developing an arrangement templates rather than negotiating them on an ad hoc, "as and when needed" basis.
- Helpful to have a confidential template of minimum required terms and conditions ready to present to industry proponents.

Additional Considerations: Benefits of Preplanning - cont'd

Does the Aboriginal community have:

- An inventory of community members' skills that may be applicable to employment on potential project(s)?

- An inventory of the services available in the community, for example:
 - Catering,
 - Housekeeping,
 - Staging and delivery,
 - Site security/monitoring,
 - Admin/bookkeeping,
 - Other?

Additional Considerations: Benefits of Preplanning - cont'd

Does the Aboriginal community have:

- An inventory of businesses available in the community, for example;
 - Drilling companies,
 - Line cutting and other early exploration activities,
 - Heavy equipment contracting,
 - Warehouse space,
 - Accommodations,
 - Goods and materials supplies to project.

- An economic development plan that outlines the goals and priorities of the community?

Discussion

Note the previous slides contain considerations and suggestions to be used as a tool to assist in getting communities started.

Arrangements are:

- A form of formalized business agreements between two or more parties, in this case, Aboriginal community(s) and proponent.
- The Ontario Government does not view the signing of an agreement between the industry proponent and Aboriginal community(s) as the fulfillment of the duty to consult.
- The duty to consult refers to;
 - The discussion of the potential impacts a project may have on Aboriginal and/or treaty rights,
 - Versus, environmental impacts regulated by the Crown.
- Whereas an agreement may address, and mitigate or accommodate these impacts.

Benefits of Early Exploration Arrangements:

- Builds an ongoing, trusting, relationship with an industry proponent that can extend over the life of a project;
- Ensures local community benefits from the project;
- Enhances the Aboriginal community's understanding of the proposed project;
- Develops overall community support for the project;
- Begin addressing socio-economic, environmental and other potential impacts generated by a project.

When Entering Into Discussions....

- Proponents and Aboriginal communities should keep in mind the scale, scope and schedule of the proposed project;
- Take into account the differences between;
 - Early, low-impact exploration activity;
 - Moderate impact, early exploration activity;
 - Higher impact, advanced exploration activity;
 - and mine development.

Note: *A graduated approach to the development of any signed arrangements, reflective of the scope and impact of the proposed activity, makes good business sense for all parties involved.

**What goes into an
arrangement?**

Content of Arrangements

- Define the, project team, scope and schedule;
- Identify the FN position and status on;
 - Land use, management and planning,
 - Environmental Expectations,
 - Business Opportunities,
 - Financial Provisions, and the
 - Negotiation of Further Agreements.

What are some of the details communities have added to customize their arrangement?

BREAKOUT

Workbook discussions in small groups

Final product will be
shared – post conference.