

Minerals North 2008
Working Together for a Better Future:
A workshop for First Nations, the Mineral Exploration Industry and Provincial Government:

SUMMARY REPORT

Wednesday April 16th, 8:30am – 4:30pm.
DZE L K'ANT Friendship Centre
Smithers, B.C.

Summary report prepared by the *Minerals North 2008 workshop organizing committee:*

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Panel moderators: David Belford and Steve Jennings

Facilitator: Rachel Speiran

Introduction

A total of 86 people representing First Nations, the Provincial Government and the Mineral Exploration Industry registered and participated in this one day workshop. Workshop participants were assigned seating in order to have equally diverse representation from each group at each table in the breakout discussion groups and large group dialogue sessions. Approximately 10 additional participants joined the workshop as observers. Key points and recommendations raised from the day's discussion are documented and summarized in the following report.

Minerals North '08 Workshop Organizing Committee Recommendations

1. First Nations, Industry and Government should collaborate on providing more venues for education, exchange of knowledge and discussion of culturally appropriate, relevant and effective approaches to consultation and accommodation of interests.
2. First Nation title and right to benefit from the land and resources on their territories must be recognised, respected and accommodated by government, and mining sector proponents.
3. The *Notice of Work* (NOW) should be redesigned with input from First Nations so that it is more accessible and provides meaningful and understandable information for First Nations
4. Common standards for consultation policies and guidelines should be developed that also leave room for adopting culturally relevant approaches and processes.
5. Mineral Titles Online should investigate the possibility of sending an automated e-mail notice to the local First Nations group when claims are acquired in their Traditional Territory.
6. Provincial government should contact each First Nation and request to be supplied with contact information and make this information available to industry on the MEMPR *MapPlace* website.
7. Exploration companies should be advised and encouraged to communicate directly with First Nations.

8. First Nations, Industry and Government should continue to explore joint solutions that encourage responsible companies to invest in BC in a way that brings benefits to all people.
9. Government and First Nations to consider potential revenue sharing possibilities related to mineral tenure acquisition and maintenance.

Workshop objectives

The overall intent of the workshop was to provide an opportunity for dialogue and to explore the various issues and interests associated with mineral exploration in northwest B.C. from three perspectives: First Nations, provincial government and the mineral exploration industry. Specifically, the objectives were to:

- Develop greater understanding of First Nation requirements
- Develop greater understanding of the Mineral Exploration industry requirements
- Develop greater understanding of Provincial Government requirements
- Develop effective approaches to communications and relationship building between First Nations, Provincial Government, and Mineral Exploration Companies
- Seek joint solutions to enable mineral exploration that bring benefits to all people

Overview

The workshop opened with a welcome and opening prayer from a Wet'suwet'en elder. A **panel session** ensued with presentations by David deWit, Loren Kelly and Dan Jepsen, representing First Nations, provincial government and mineral exploration industry perspectives, respectively.

After a refreshment break, the participants were asked to **examine and discuss scenarios** based on the current government referral process representing typical aspects and varying levels of complexity in the exploration stage of mining.

Each group was given the following **materials** as background information to 'explore' each scenario and to inform their discussions:

1. Exploration scenario descriptions
2. Scenario maps
3. Exploration permitting information
4. Notice of Work (NOW) sample

After reviewing these materials, the groups were asked to respond to the following:

1. List the First Nation requirements/interests that need to be addressed during consultation/accommodation negotiations.
2. List the Mineral Exploration industry requirements/interests to be addressed during consultation/accommodation negotiations.
3. List the Provincial Government requirements/interests to be addressed during consultation/accommodation negotiations.
4. What form should the consultation/negotiations negotiations take (which parties, preferred method of communication, etc)?
5. What can the three interested parties do collectively to ensure that mineral exploration brings benefit to all people?

Each group then presented the results of their discussions by reporting back to the large group. The following is a list of the comments, issues and ideas that each group raised:

Summary of outcomes of scenario assessment and discussion

The following presents a summary of the key themes that arose from the morning's group activity and discussions. [*Please refer to [Appendix A](#) for a detailed list of the outcomes from the Scenario 1 assessment and group discussion*].

A. Summary of the First Nation requirements/interests that need to be addressed during consultation/accommodation negotiations.

1. Consultation and communication: early, often, appropriate format; appropriate protocol and process
2. Information sharing and notification: keep everyone informed and information transparent
3. Importance of trust and relationship building
4. Need for partnership model and approach
5. Cultural awareness, understanding and sensitivity: knowledge of the First Nation's governance structure, culture, traditions and associated values, importance of protecting archaeological sites
6. First Nations require funding support and other resource capacity to meaningfully be involved in the process
7. Importance of written agreements: demonstration of commitment from both parties
8. Education needed to define and clarify consultation triggers and requirements

B. Summary of the Mineral Exploration industry requirements/interests to be addressed during consultation/accommodation negotiations.

1. Confidentiality: required because exploration is a highly competitive industry
2. Reasonable certainty that successful exploration can lead to successful development
3. List of local resources and contacts: required to hire locally
4. Understanding of First Nations governance, policies, and land use plan (this includes culturally sensitive areas)
5. Knowledge of First Nations consultation authorities, policies, and process
6. Projects need to be undertaken and completed in a timely manner
7. Personal and funding capacity need to be provided to ensure meaningful First Nation involvement in the process.

C. Summary of the Provincial Government requirements/interests to be addressed during consultation/accommodation negotiations.

1. Compliance with Provincial government Acts, laws, policies and regulations
2. Inclusion of First Nations, communities and interests
3. Reasonable certainty that successful exploration can lead to successful development
4. Investment: desire to create a positive investment climate to attract capital

D. Summary of suggested forms of consultation/negotiations:

1. Face to face and community level meetings in the traditional territories
2. Improved systems and methods of referrals, notification and access to information
3. Working together in collaboration and partnership
4. Written agreements
5. Meaningful information sharing
6. Digital map and GIS information

D. Summary of suggested collective actions to take to ensure that mineral exploration brings benefits to all people:

1. Increased amount and quality of communication
2. Increased access to information

3. Identification of appropriate First Nation specific consultation protocol
4. Increased participation
5. Benefit sharing, joint ventures and creation of partnerships
6. Local employment and contracting
7. Earlier notification of work and intention

After each group reported back to the main group on their discussions and suggestions, participants were invited to share questions and comments:

During this large group discussion, a participant raised questions and concerns regarding the underlying intention of the workshop and interactive activity. Specifically, **the workshop organizers were questioned as to whether the objectives of the workshop truly supported First Nations interests, needs and values.**

Moreover, questions were raised concerning how information generated from discussions was going to be used? What implications did this have – would it affect policy development?

Participants further stated that the objectives of the workshop rested on an underlying assumption that First Nations would want mineral exploration to occur on their territories (regardless of project-specific impacts). And yet, the process of scenario analysis and answering questions did not permit other, more pressing questions and issues to be raised by First Nations.

Three other delegates echoed what was being said and voiced concern over the overarching BC environmental assessment and consultation process as it related to First Nations rights, title and interests. The relevancy of continuing with the path outlined in the workshop agenda was further questioned.

As a result of these discussions and points raised with various First Nation, provincial government and mineral exploration industry representatives during the lunch break, the workshop organizing committee collectively decided to change course and adapt the agenda to reflect the voiced needs of the participants.

The afternoon group activity and discussion was therefore dedicated to examining an issue that appeared either directly or indirectly/ explicitly or implicitly throughout all discussions: **consultation**. Each group was then asked to reflect on and discuss the following:

1. **What is consultation?**
2. **Why consult?**
3. **Who to consult?**
4. **When do you consult?**
5. **How do you consult?**

Groups also had the option to focus their discussion on a collectively agreed upon topic that would be of value and interest to them.

<p style="text-align: center;">Summary of group discussion outcomes concerning the what, why, who, when and how of consultation</p>
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The following presents a **summary of the key themes** that arose from the afternoon group activity and discussions on consultation. [*Please refer to [Appendix B](#) for a detailed list of discussion outcomes*].

A. Summary of themes in response to: ‘What is consultation’?

1. A means of creating a trusting, respectful and meaningful relationship
2. Communication and dialogue on an on-going basis
3. Timely and appropriate information sharing
4. A means to identify First Nation interests and concerns, and resolve issues
5. A legal responsibility of the Crown bearing legal implications for First Nations rights and title.

6. Education
7. A means to create mutual understanding and develop relations
8. Culturally specific, relevant and appropriate
9. Perceived and interpreted differently by different parties

B. Summary of themes in response to: ‘Why consult’?

1. To build and establish positive relationships
2. To exchange knowledge and information between all parties
3. To meet legal obligations
4. To operate in a morally and socially responsible way
5. To create success
6. To produce outcomes and results
7. To collaborate and share benefits
8. To educate; learn and teach
9. To identify, understand, and address each parties’ interests and rights
10. To resolve issues and foster common understanding

C. Summary of themes in response to: ‘Who to consult’?

1. Industry leaders and government must contact First Nation organizations to identify the appropriate First Nations leaders with whom to consult
2. Community members should then be consulted

D. Summary of themes in response to “When to consult”?

1. Early: at earliest phase of exploration possible (immediately after staking?)
2. At each phase of project: before, during and after each phase
3. On a continuous basis

E. Summary of themes in response to: ‘How to consult’?

1. Build relationship and partnership
2. Provide capacity funding and other resources to enable meaningful First Nations participation
3. Have project site visits and face-to-face local community meetings
4. Government and industry to provide regular tenure notices and updates to First Nations
5. Identify and understand First Nations governance and protocol
6. Get legal information and advice
7. Define consultation and its terms of reference on a case by case basis
8. Initiate early, on a continuous basis, in a meaningful way
9. Develop and commit to written agreements and partnerships
10. First Nations set the consultation standards
11. Without judgement, assumptions or preconceptions
12. With honest and open dialogue
13. Use accessible, non-technical, laypersons terms
14. Have patience and time
15. Ensure that government fulfills their duty to consult

Additional consultation considerations

- Consultation will quickly identify immediate concerns and support for exploration
- Consultation will determine how, where and when mineral exploration proponent will be able to access land base
- Consultation will identify support for exploration in an area
- Consultation first step to managing risk by being open and having an open relationship
- Consultation can overcome a lot of perceived risk

- Consultation triggers multiple information sharing processes

Interests, challenges and barriers to First Nations

- First Nations are interested avoiding/mitigating environmental impacts, protecting cultural heritage values, and benefiting from the exploration and development of mineral resources on their territories
- When could there be local employment opportunities?
- First Nations want to know about projects early, want to be consulted on environmental impacts, and learn how their interests, concerns and issues will be accommodated.
- First Nations want to work with, and for mineral exploration and mining companies.
- First Nations don't have access to sufficient knowledge about which mineral exploration companies are operating where.
- First Nations are working hard to train people so that they are employable in the sector.
- First Nations need to work together to define the consultation process.
- It is difficult for First Nations individuals to find financial support to start a small business

<h3>Final panel and closing remarks</h3>

After each group shared the above discussion points with the rest of the group, a second panel session was convened.

Loren Kelly (MEMPR); John Risdale (Office of the Wet'suwet'en); Hans Smit (Consulting Geologist and exploration company principal); and Dan Jepsen (Association of Mining Exploration of BC) provided reflections and messages on the day's discussions vis-à-vis mining, diverse interests and needs within the northwest BC context.

Synopsis of the reflections and key messages put forth by the panellists:

Loren Kelly: Acknowledged the complex issues and interests that had been tabled during the day's discussions. Processes and procedures need to be re-examined and modified to better support the realities and practicalities of First Nations and industry needs and interests. Consultation processes, along with agreements between government and First Nations government as well as between industry and first nations should be collaboratively discussed and moved forward into actions. Ultimately, change and progress in the mining sector will be contingent on the development of shared decision making processes.

David deWit: Outlined the Wet'suwet'en perspective on title to territories never ceded, surrendered, or extinguished, and the right to benefit from the development of surface and sub-surface resources. Consultation and accommodation guidelines for mineral exploration and mine development proponents on Wet'suwet'en territories will be available in May. He emphasized that both government and the mining sector will be expected to provide financial support for meaningful consultation, and accommodate the concerns and interests of Wet'suwet'en.

John Risdale: Spoke of the huge number of land and resource referrals received by First Nations from government, and the extremely limited capacity, both financial and in human resources to adequately address each proposed resource development activity. He outlined the Wet'suwet'en guidelines for meaningful consultation, and expected accommodation of rights and title interests.

Hans Smit: Noted that from his experience, consultation with First Nations was not necessarily onerous and could be productive for both parties, and improve projects, when people worked collaboratively. He agreed there is a need for increased dialogue and consideration for other interests in British Columbia. First Nations, government and industry must work together to ensure development occurs in a responsible and respectful manner. However, if people want mineral exploration and the economic input it brings in BC, they must also work together to create a clear, straightforward and timely regulatory and consultation regime to guide development so that BC is seen as an attractive place to invest.

Dan Jepsen: Spoke of the importance for opportunities such as this dialogue session to communicate. Looking at what 'certainty' means to each of us is critical in this process as we continue to learn and grow towards better understanding. This includes cultural awareness and examining the impact of our assumptions, judgment and perceptions. The question of 'what consultation is', should be whatever the local community wants. Through trust, respect and relationships, a common ground can be found.

The workshop came to a close with a collective agreement that each party involved had specific needs, interests and challenges to address. This day provided a means to come together and openly communicate these diverse needs and interests. Large issues could not be solved in one day and yet it was acknowledged that positive change was a process, and during this day- as a local First Nations Chief observed – ***'a seed was planted'***.

Appendix A: Detailed list of outcomes from scenario assessment and group discussion

Question 1: List the First Nation requirements/interests that need to be addressed during consultation/accommodation negotiations.

- Proponent needs to have upfront and early communication with their proposed exploration. Approval needs to be sought from the First Nation.
- Potential opportunities should be discussed
Information sharing is key
- A consultation protocol should be negotiated between the Proponent and the First Nation
- Identify First Nation contacts: express interest in the area
- Notify and communicate intentions
- Record communications
- Establish relationship
- Notification to local band
- In order to identify the site, go through the workplan; visit the site; option to employ band members
- Understand traditional and current land use
- Impacts, mitigation and reclamation: all require input
- First Nations require information
- Consult immediately
- Where is the work being done, and how big is it (the project)
- Identify cultural sites to company
- Archaeological resources to be protected
- Need to know industry partners
- Data-gathering – referral process
- Pre-exploration: cultural assessment and information gathering
- How to define the complexity of information needed to protect archaeological sites
- Consultation, accommodation and compensation defined
- Face to face and early consultation (vs. after the fact / word of mouth)
- Letters and referrals
- Community meetings
- The Provincial government consultation process does not work
- Need to address challenges: reserves and communities are wide spread; proponents are not local, BC or Canadian
- Cultural sensitivity and awareness
- Basic education of Proponents
- Financing of consultation
- Need to communicate
- Integrity
- Must have project draft agreement (e.g. IBA – Impact and Benefit Agreement)
- Approach in a partnership way
- Need to discuss interests of each party (First Nations, government and Industry)
- “Permit” impacts traditional responsibilities to the land
- Would having a NOW for all activities (not just those that involve ground disturbance) compel better exchange and information?
- What are the variety of tools that could be used to compel/invite people to improve their exchange of ideas; knowledge and information?
- What are the activities that require some kind of alert or exchange?
- Notification should happen on all activities: airborne, land base – make a phone call
- If you’re not talking early, then you are going to run the risk later (the ‘half empty’ reason to talk...)
- Use some kind of expression of interest: It would be better to receive more notification rather than less for the foreseeable future

- Consult First Nations at a government level – let them know who you are and what your plans are: meet face to face
- Contact local community to find out appropriate First Nation community

Question 2: List the Mineral Exploration industry requirements/interests to be addressed during consultation/accommodation negotiations.

- Confidentiality
- Certainty with the community and the ability to work on the land
- Government to perform their consultation duties in a timely manner
- Ensure that other necessary permits are obtained
- List of local contacts and resources
- Understanding of First Nations land use and culturally sensitive areas
- Confidentiality agreement
- Knowledge of current land use planning
- Identification of no-go areas and sites
- Identify potential employees and suppliers
- Determine the consultation process
- Access
- Water or fisheries issues
- Timeframe and capacity issues (of all parties)
- Awareness about culturally sensitive areas
- Knowledge about capacity and resources in the area
- Timeline and certainty around 'blessing' of the project
- List of first nations groups to consult in the area and near the claim
- Contact information with tenure
- Knowing who to talk to: land owners and First Nations
- Knowing what is off limits (no-go zones such as archaeological and environmentally sensitive sites)
- Better public access to government and First Nations information
- Information sharing
- First Nations archaeology of the area
- Cultural impacts to the site area
- Establish communications
- First Nations representative on site
- Trail marking [line access can disturb traditional identification markings]
- First Nation information contained at difference contact sources: House chiefs, house family,
- It is governments responsibility to consult and accommodate; not company (but some do)
- Hire locals: through community engagement, learn traditional knowledge and implement values
- Understand cultural differences – different nations/houses/clans and families; understand potentially different values
- Company needs to know if First Nations representatives are comfortable with program

Question 3: List the Provincial Government requirements/interests to be addressed during consultation/accommodation negotiations.

- Ensure that proponent is meeting regulatory requirements
- Be informed by the Proponent
- Out of the loop (at this stage)
- Notices of work encouraged but not required
- Ministry of Forest – permit to cut trees needed
- Mineral disturbance
- Following regulations; codes and guidelines for water, wildlife, land and air
- If company provides a Notice of Work, then government will consult
- Health and safety requirements

- Environmental requirements
- Certainty
- Investment
- Inclusion of First Nations and community
- Government needs to respect local interests

Question 4: What form should the consultation/negotiations negotiations take (which parties, preferred method of communication, etc)?

- Proponent and First Nations should be engaging at the community level
- Government needs to be informed
- Face to face
- Emphasis on relationship building
- There is a cost for First Nation consultation
- Immediate leaders of the First Nations and the (mineral exploration company) should consult
- Have either a meet and greet or a more formal meeting, depending on scope of project
- Government / Ministry of Environment would like to be aware of work
- Letter with details (introduction and intent)
- Face to face (need to document)
- Meet on traditional territory

Question 5: What can the three interested parties do collectively to ensure that mineral exploration brings benefit to all people?

- Communicate
- Participate
- Benefit sharing
- Work together
- Form partnerships
- Form joint ventures
- Develop working agreements
- Communicate
- Acquire equipment and workers locally
- Communicate and cooperate
- Speak directly with First Nations at the Notice of Work stage
- Notice of Work should be required even if exploration activities do not involve ground disturbance during exploration
- Communicate open and honestly
- Ensure all parties have adequate information and resources
- Collective efforts
- Communication
- Frequency and ease of access
- Maximize communication with technology
- Establish and maintain First Nation communication
- Find out if a First Nation protocol (guideline) exists and follow it

Appendix B: Detailed list of outcomes from group discussion concerning the what, why, who, when and how of consultation

1. What is consultation?

- A relationship
- Information distribution and exchange
- Dialogue (no outcome; as outcome = accommodation)
- Identification of key issues
- Respect
- Site visits
- Opportunities
- Community meetings and project updates
- Two-way street
- On-going
- Sharing
- Meaningful, on a case by case basis vs. simply a legal requirement
- Face to face dialogue (phone, email and faxes to be used for logistical reasons only)
- Initiation of early contact
- Signed MOU (Memorandum of Understanding) between hereditary land owner and proponents
- Equal involvement
- Legal definition (scaled)
- First Nation entitlement to opportunities to participate fully in and at all stages and levels
- Government to government (not industry)
- Meaningful
- Letter of intent
- Relationship and trust building
- Education and capacity building
- Understanding (Mining 101 and First Nations 101)
- Process to follow
- Identifying interests, values and concerns
- Communication
- Face-to-face meeting on traditional territory
- Reaching common understanding
- Education
- Documentation
- Continuity of participants
- Relationship building
- Culturally relevant
- Disclosure and permission
- Action word – meaning communication and relationship building
- Direct, clear understanding
- Different everywhere
- Relationship building
- Trust
- Communication
- Get to know each other
- A more detailed definition of 'consultation' is needed
- Standards should be set by First Nations

2. Why consult?

- Establish relationship building
- Identify and understand environmental impacts

- Sharing of information
- Legal obligations
- Best practices modelling (e.g. use local resources; generate jobs and business opportunities)
- Sharing of benefits
- Foundation for success (avoid and mitigate infringement)
- Respect for cultures and resources
- Collaboration – include revenue sharing/some equity
- Communication – talk and listen
- The “C” word is loaded; legally defined through the Supreme Court; good faith and meaningful; involves different levels (general and detailed)
- Negative to First Nation; not genuine
- Sharing of ideas
- Negotiation (?) – “get what you want” (?); a tool (to expedite?)
- Outcome based
- Learn – recognize differences and similarities
- Land: talk with the heart and not the head
- Our information vs. theirs
- Our interests and rights vs. theirs
- Information sharing – elders’ knowledge
- Common agreement
- Get to “yes”....is it OK to say “no”?!
- Government must consult based due to the constitution and case law
- Companies must consult to gain business certainty and practice social responsibility
- First Nations must represent people; protect the land – it is a two way street, and requires capacity
- Avoid legal issues and challenges
- Avoid road blocks
- Build positive relationships
- It’s the only option
- Incorporate traditional and local knowledge
- Dispute resolution about land
- Moral obligation (social licence)
- Certainty
- Mutual respect
- Information sharing

3. When do you consult?

- As soon as possible
- Ideally: Prior to staking (need to address confidentiality and timing issues)
- Realistically: Right after staking
- Part of pre-operational planning
- Part of permitting
- On-going
- As soon as tenure is granted
- Prior to ‘walk about’: let local First Nations know
- Once work starts (staking)
- Before, during and after (project development)
- It’s a continuous process

4. How do you consult?

- Address financial challenges to First Nations participation
- Tenure: notice to First Nations from Government and proponent (daily – monthly updates)
- Acquire legal opinion

- First Nation define what it (consultation) is and terms of reference
- Ensure consultation guidelines are communicated
- Website – funding for improved communication with First Nation
- Greater support for communication strategy (i.e. to address limited First Nation capacity)
- Meetings in communities
- Protocol: leader to leader
- Explore (employment) opportunities
- Know who to consult with
- Need to identify the type of company (i.e. small/junior – large/major?)
- In person; phone calls; paper
- Initial mini-agreements (between government, First Nations and industry)
- Early access
- Discussions of projects and its status
- Listening and learning with respect
- Understanding
- Letting people know: communication
- Protocol process
- Head of company calls the Chief
- What does NOT work: Consultation “after-the-fact”; using a consultation template; having preconceived ideas
- Need for open, honest dialogue with the right people at the right time
- Avoid technical and legal terms
- Explain information clearly / in laypersons terms
- Sometimes internal communication in First Nations is difficult – hard to reach everyone: be patient!
- Duty to consult (legal and technical) is the duty of the Crown – companies cannot fulfill the government’s role
- Every situation is unique
- Broad brush ‘one size fits all’ approach does not work
- The entire permitting and EA process needs to change – because this affects when, how and why consultation is done (e.g. roads are being built without following regulations)
- Things are currently being done really backwards
- Time limits imposed often are not reasonable
- Notice of Work (NOW) form needs to be revised
- This notification of work should be done from the ‘get go’
- First Nations need to be brought into the process and consulted from the beginning
- Changes to this form and process should be done with input from First Nations
- No one size fits all
- Understand and identify First Nations government and talk to First Nations government
- Face to face meetings at proposed development site
- Communication
- Capacity building
- Common language – share information
- Develop framework for all parties concerned to move forward
- Define timelines
- Develop partnerships and formal agreements (MOUs etc.)
- Be honest and blunt – no hidden agendas
- Capacity: without capacity on all sides, it won’t work
- Keep it Simple (KIS)
- Ongoing -scale; can’t isolate
- Relationship building
- Don’t mix it (consultation) up with accommodation