

# Joint Operating Procedures for First Nations Consultation on Energy Resource Activities

October 31, 2018

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## Agreement

Under the *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities (Procedures)*, the Aboriginal Consultation Office (ACO) and the Alberta Energy Regulator (AER) agree to the following:

- 1) The ministerial order issued on October 31, 2014 (*Energy 105/2014* and *Environment and Sustainable Resource Development 53/2014*) and the *Procedures* apply only to applications made to the AER under the specified enactments, as defined by the *Responsible Energy Development Act* (i.e., *Public Lands Act*, *Mines and Minerals Act* (Part 8), *Water Act*, and the *Environmental Protection and Enhancement Act*), in respect of energy resource activities.
- 2) The *Procedures* sets out the procedures to administer and coordinate the operations of the ACO and the AER on matters relating to First Nations consultation, in accordance with the directions provided to the AER in the ministerial order.
- 3) In addition to following the defined procedures, ACO and AER staff are encouraged to informally engage one another, as needed, to coordinate the processing of individual files or applications.
- 4) The *Procedures* operates as a standing request from the AER to the ACO for advice on whether Alberta has found consultation adequate, adequate pending outcome of the AER's process, or not required, and on whether actions may be required to address potential adverse impacts on existing Treaty rights and traditional uses, under section 7 of the ministerial order, for all decisions made by the AER under the specified enactments.
- 5) The *Procedures* will be revised or updated as needed with the involvement of both the ACO and the AER.

<original signed by>

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Lisa Tchir  
Assistant Deputy Minister  
Department of Indigenous Relations  
Government of Alberta

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31/10/2018

Date

<original signed by>

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Mark Taylor  
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Operations Division  
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31/10/2018

Date

## Revision History

Version date	Description
December 10, 2014	Release of the <i>Joint Operating Procedures</i>
June 10, 2015	Section 2.3 and 4 amended to reflect updated AER application requirement
October 31, 2018	Review and complete revision of the <i>Joint Operating Procedures</i> . <ul style="list-style-type: none"><li>• No changes to the substantive aspects of the process, but significant changes to the format and wording of the document to<ul style="list-style-type: none"><li>- make it more “user-friendly” for staff, and</li><li>- ensure staff have clear guidance on roles and responsibilities, the internal procedures, and the expectations for information sharing between the ACO and the AER.</li></ul></li><li>• Changed process 2 to optional for certain <i>Public Lands Act (PLA)</i> applications. Proponents are no longer required to have ACO adequacy decision prior to submitting these applications to the AER. Proponent can now choose whether or not to follow process 2 or process 3 when submitting their <i>PLA</i> application to the AER.</li></ul>

## Definitions of Key Terms

The following terms are defined for the purposes of the *Joint Operating Procedures*.

Term	Definition
ACO hearing report	A written report from the ACO that may contain advice to the AER on any potential adverse impacts on Treaty rights and traditional uses that were raised during an AER hearing and that had not been previously addressed by the consultation process or the ACO report. The ACO hearing report may be submitted during an AER hearing and is permitted by section 49(2) of the <i>Responsible Energy Development Act</i> .
ACO report	A written report from the ACO to the proponent, First Nations, and the AER that contains the ACO's finding on consultation adequacy and that may also contain advice to the AER on any potential adverse impacts on Treaty rights and traditional uses identified during consultation.
consultation	As defined in <i>The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013</i> , a process intended to understand and consider the potential adverse impacts of anticipated Crown decisions on First Nations' Treaty rights and traditional uses, with a view to substantially addressing them.
delegated consultation	Those procedural aspects of consultation (as defined above) that the Crown delegates to and are carried out by the proponent.
First Nation	Ordinarily, First Nation "bands" as defined by the <i>Indian Act</i> (Canada). Also includes any organization that the ACO has an established practice of consulting under <i>The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013</i> .
FNC	Stands for "file number for consultation," the tracking number the ACO assigns to regulatory applications being reviewed for consultation.
FNC application supplement	A form that the proponent of an energy application is required to submit to the AER. The form includes information about the potential adverse impacts of the proposed energy resource activity on existing rights of aboriginal peoples as recognized and affirmed under Part II of the <i>Constitution Act, 1982</i> and on traditional uses as identified in <i>The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013</i> .
traditional uses	As identified in <i>The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013</i> , the customs or practices that First Nations may engage in on the land that are not existing section 35 Treaty rights but are nonetheless important to First Nations. These may include burial grounds, gathering sites, and historical or ceremonial locations and do not refer to a proprietary interest in the land.
Treaty rights	As identified in <i>The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013</i> , rights that are protected by section 35 of the <i>Constitution Act, 1982</i> . Alberta recognizes that impacting Treaty rights to hunt, fish, and trap for food may trigger a duty to consult. These rights may be practiced on unoccupied Crown lands and other lands to which First Nations members have a right of access for such purposes.



## 1 Background

The *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities (JOP)* sets out the procedures to administer and coordinate the operations of the Aboriginal Consultation Office (ACO) and Alberta Energy Regulator (AER) on matters relating to the *Ministerial Order (Energy 105/2014 and ESRD 53/2014)*. The ministerial order provides direction to the AER to ensure that the AER considers and makes decisions in respect of energy applications in a manner that is consistent with the work of the Government of Alberta

- a) in meeting its consultation obligations associated with the existing rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*; and
- b) in undertaking its consultation obligations pursuant to *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013* and associated *Guidelines*.

The *JOP* works in conjunction with

- the ministerial order on aboriginal consultation direction (*Ministerial Order Energy 105/2014* and *ESRD 53/2014* issued on October 31, 2014, and any amendments),
- *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013* (consultation policy),
- *The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management* (consultation guidelines), and
- any other relevant Alberta aboriginal consultation policy, guideline, or procedure.

## 2 Roles and Responsibilities

The Government of Alberta (GoA), under the consultation policy, created the ACO, which reports to the minister of Indigenous Relations. The ACO was established to manage all aspects of aboriginal consultation, including working with the AER.

The AER has jurisdiction under the *Responsible Energy Development Act (REDA)* for the entire life cycle of upstream energy resource development in the province, including upstream oil, natural gas, oil sands, and coal activities. The AER combines regulatory functions of its predecessor, the Energy Resources Conservation Board (ERCB), with those regulatory functions previously undertaken by Alberta Environment and Parks (AEP) under the specified enactments (*Public Lands Act, Mines and Minerals Act (Part 8), Water Act*, and the *Environmental Protection and Enhancement Act [EPEA]*) in respect of energy resource activities. Section 21 of *REDA* precludes the AER from determining the adequacy of consultation.

The ACO has the responsibility to

- determine if consultation is required,
- manage the consultation process,
- assess the adequacy of consultation undertaken, and
- provide advice to the AER on whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses.

The AER has a responsibility to consider and accommodate (avoid, minimize, or mitigate) the impacts of energy applications on the constitutionally recognized rights of aboriginal peoples.

The ACO is a decision-maker that has concurrent authority, with the AER, over certain aspects of energy resource development. The ACO’s authority is in relation to the Crown’s constitutional duty to consult, and therefore different considerations may arise for the ACO. The ACO’s process is a part of, but not a substitute for, the AER discharging its statutory functions and responsibilities.

The general roles of the AER and ACO are outlined in table 1.

**Table 1. ACO and AER roles**

ACO	AER
Requires consultation with a First Nation (the collective) at a particular level in accordance with applicable policies and guidelines, usually considering the category of project and its location relative to the geographic area where the ACO ordinarily consults that First Nation.	Receives and responds to statements of concern in accordance with applicable legislation.
<p>Responds to the AER’s request for advice prior to the AER making a decision in respect of an energy application for which First Nations consultation is required.</p> <p>Assesses the adequacy of Crown consultation in respect of energy applications.</p> <p>Provides advice to the AER respecting whether Alberta has found consultation to have been adequate, adequate pending the outcome of the AER’s process, or not required.</p> <p>Provides advice to the AER on whether actions may be required to address potential adverse impacts on existing rights (such as Treaty rights) of aboriginal peoples as recognized and affirmed under Part II of the <i>Constitution Act, 1982</i>, or traditional uses as defined in the Consultation Policy.</p>	<p>Considers and decides energy applications and other related matters under applicable legislation.</p> <p>Considers potential adverse impacts of energy applications on existing rights (such as Treaty rights) of aboriginal peoples as recognized and affirmed under Part II of the <i>Constitution Act, 1982</i>, within its statutory authority under <i>REDA</i>.</p> <p>Monitors and enforces compliance with applicable legislation in respect of energy resource activities.</p>

### **3 Communication**

Communication between the AER and the ACO should be timely, efficient, and effective. AER and ACO staff are encouraged to communicate directly with their counterparts in order to ask questions and seek clarity on matters regarding an energy application.

### **4 Procedures**

The following sections provide clarification on the ACO report, the file number for consultation (FNC) application supplement, and the interactions between AER and ACO throughout key points in the AER regulatory process (public notice of application period, statement of concern process, FNC application supplement, and hearings).

#### **4.1 ACO Report**

The ACO report informs the AER of the consultation adequacy decision and of whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses. When such advice is offered, the ACO report will summarize the concerns that were raised during consultation that are relevant to the advice being offered. The ACO report will also be provided to the proponent and First Nation and will be filed on the AER's public record of its proceeding.

Once the ACO report is received, the AER is to consider the effectiveness of the proposed actions. The AER will also have regard to whether a proposed commitment or action is outside the AER's jurisdiction or would impact other aspects of the application. The AER will not make a decision on an application until the ACO report is received unless the activity or application does not require consultation (please refer to section 5.1).

#### **4.2 FNC Application Supplement**

The FNC application supplement is a document that forms part of any application submitted to the AER under the specified enactments, except applications for those activities listed in appendix C of the consultation guidelines. The FNC application supplement serves the following purposes:

- It enables the proponent to confirm that the information and location stated in the application to the AER are the same as what was the subject of First Nation consultation.
- It fulfils the direction under the ministerial order that the AER shall require the proponent to provide the AER with information about any potential adverse impacts of the proposed energy resource activity on the existing rights or traditional uses of aboriginal peoples.

- It summarizes the actions taken or proposed by the proponent to address those potential adverse impacts.

The FNC application supplement and instructions are available on the AER website.

### 4.3 AER Public Notice of Application Period and Delegated Consultation

In cases where First Nation consultation has been occurring for an extended period before the submission of an AER application (e.g., large, complex projects), there is a need for the consultation and regulatory processes to be coordinated in advance of making a regulatory decision.

Coordination between the ACO and AER will begin during a proponent's consultation planning stage with the ACO. The ACO is to provide information about consultation requirements, and the AER is to provide information about its public notice of application (PNoA) period, including the length of the public comment period that applies. It is during the PNoA period that a concerned party may file a statement of concern (SOC).

#### 4.3.1 Statements of Concern

The AER will provide the ACO with a copy of any SOCs, including any attachments, received from a First Nation or other aboriginal group, as well as the proponent's responses. The AER will also forward to the ACO a copy of any SOCs received from individuals who may be representing a First Nation or other aboriginal group.

*Mines and Minerals Act* (Part 8) applications are exempt from the PNoA period and SOC processes.

### 4.4 AER Hearings

The AER may schedule a hearing before the ACO report is complete. When considering the scheduled timing for a hearing, the AER may contact the ACO for an update on the status of the delegated consultation process.

If the AER holds a hearing on an application, the ACO may observe the hearing and may provide an ACO hearing report or advise the AER panel that it does not intend to provide a hearing report. If the hearing is partly or entirely a written hearing, the ACO may review the relevant written documents and may provide an ACO hearing report. The ACO hearing report is a written statement from the Crown permitted by section 49(2) of *REDA*.

The hearing report will contain the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses. The normal time to prepare the report is 20 GoA business days; however, timing may vary depending on the amount of new evidence at the hearing, the complexity of the project, consultation, and the potential adverse impacts.

The ACO will advise the AER in writing of the timing of the ACO hearing report. It is important that the ACO has sufficient time to review the hearing record.

Once the AER receives the ACO hearing report, the AER will consider any advice offered with regard to mitigating potential impacts to Treaty rights and traditional uses. The AER will not make a decision on an application until the ACO hearing report is received or the ACO advises that it is not providing an ACO hearing report.

#### 4.4.1 Joint Review Panel Proceedings

A Joint Review Panel (JRP) may be established by way of agreement between the AER and a minister of the Government of Canada, or one of its departments or agencies, for projects that require provincial approval and a federal impact assessment.

When the ACO will provide a consultation adequacy assessment to the AER in relation to a JRP proceeding is determined by what functions the JRP will fulfil with regard to decision making under the specified enactments.

- To the extent the JRP is making the AER's decisions under the specified enactments: ACO-AER process 4 of the JOP applies.
- To the extent the JRP is either only making a recommendation or the AER is subsequently making a decision under the specified enactments: ACO-AER process will be determined on a case by case basis.

#### 4.5 Regulatory Appeals, Reconsiderations, and Appeals to the Court of Appeal

The AER will notify the ACO if a First Nation or other aboriginal group is requesting a regulatory appeal, reconsideration, or permission to appeal to the Court of Appeal.

#### 4.6 AER Alternative Dispute Resolution

The AER will notify the ACO if a First Nation or other aboriginal group is to participate in alternative dispute resolution (ADR) facilitated by the AER. ADR offers concerned parties options for managing disputes. ADR attempts to ensure a common understanding of the facts and involves examining different options with the goal of establishing a mutually agreed upon solution.

The AER has no jurisdiction regarding the adequacy of Crown consultation associated with the rights (such as Treaty rights) of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act, 1982*. Disputes regarding adequacy of consultation are out of scope in AER-facilitated ADR. The ACO will not participate in an ADR process.

## 5 Joint Operating Procedures

The following section provides an overview of the procedures for activities not requiring consultation, activities already deemed adequate, activities requiring renewal or amendment, and activities requiring consultation.

### 5.1 Activities Not Requiring Consultation

An activity or application does not require consultation if

- the activity or application is identified in appendix C of the consultation guidelines or
- the ACO determines during a pre-consultation assessment that consultation is not required.

The AER will accept applications for activities identified in appendix C of the consultation guidelines without any further information about consultation.

If the ACO determines no consultation is required, the AER will require the proponent to provide the FNC application supplement and the pre-consultation assessment from the ACO.

### 5.2 Activities Already Deemed Adequate

This heading pertains to an ACO-issued FNC for an activity or application that has been previously submitted to the AER and the AER did one of the following:

- required an amendment application or
- refused or rejected the application and directed the proponent back to the ACO.

If the ACO's pre-consultation assessment indicates that the consultation is already deemed adequate, then the AER will require the proponent to attach that pre-consultation adequacy assessment and the original adequacy assessment decision to the FNC application supplement submitted with the AER application.

### 5.3 Activities Requiring Renewals and Amendments

If a proponent seeks to renew or amend a decision issued by the AER under the specified enactments, the renewal or amendment application may trigger the duty to consult. The AER will require the proponent to apply to the ACO for a pre-consultation assessment, unless the activity or application is listed under appendix C of the consultation guidelines. If consultation is required, follow the applicable process outlined in this document.

## 5.4 Activities Requiring Consultation

The processes (table 2) are triggered by the type of consultation required by the ACO (i.e., no consultation, streamlined, standard, or extensive) and the stage of consultation at the time of application submission to the AER (i.e., no consultation required, completed, and concurrent consultation). The AER does not categorize its applications based on the level of consultation or the associated process.

For *Public Lands Act* applications, the stage of consultation required for an AER application is dependent on the disposition type and the purpose or activity being applied for as outlined in the *Public Lands Administration Regulation*, Table A2 (*PLAR* Table A2). This table can be accessed on the AEP website. In order for an AER application to be accepted, the FNC application supplement provided must indicate that consultation has reached a specific stage within the consultation process. Where *PLAR* Table A2 allows for a concurrent process, the proponent may proceed by that process, or alternatively, may choose to submit their application once consultation has been completed.

**Table 2. Processes overview**

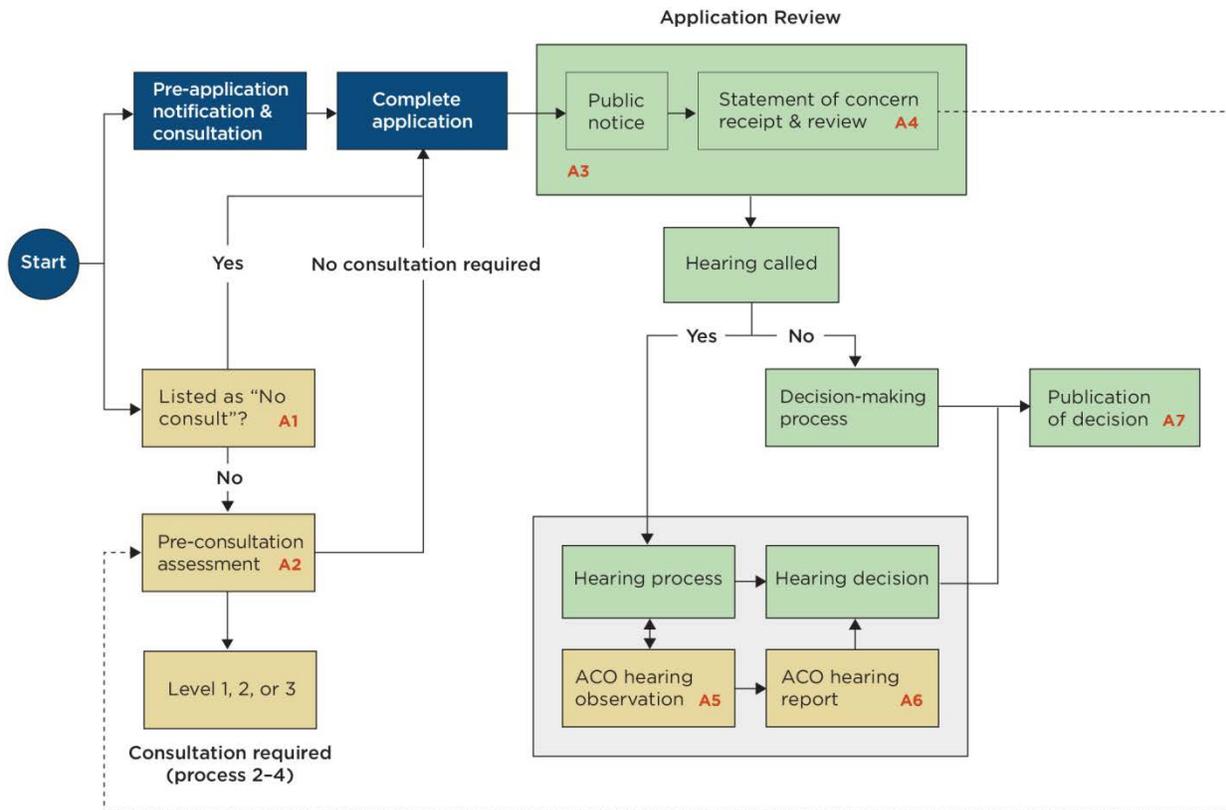
Process no.	AER application	
	Stage of consultation	ACO consultation requirements
Process 1	No consultation required	None
Process 2	Completed <sup>1</sup>	Streamlined or standard (level 1 or 2)
Process 3	Concurrent <sup>2</sup>	Streamlined or standard (level 1 or 2)
Process 4	Concurrent	Extensive (level 3)

<sup>1</sup> ACO decision has been issued indicating that the consultation is either adequate or adequate pending the outcome of the AER's process.

<sup>2</sup> ACO consultation and AER application review occur simultaneously.

### 5.4.1 Process 1 (No Consultation Required)

Applies to applications for energy resource activities where consultation is not required by Alberta (figure 1, table 3). For these applications, the AER will confirm either that the activity or application is identified in appendix C of the consultation guidelines or that the application is accompanied by the FNC application supplement and the ACO’s pre-consultation assessment indicating that no consultation is required.



- Legend**
- ACO
  - AER
  - Proponent

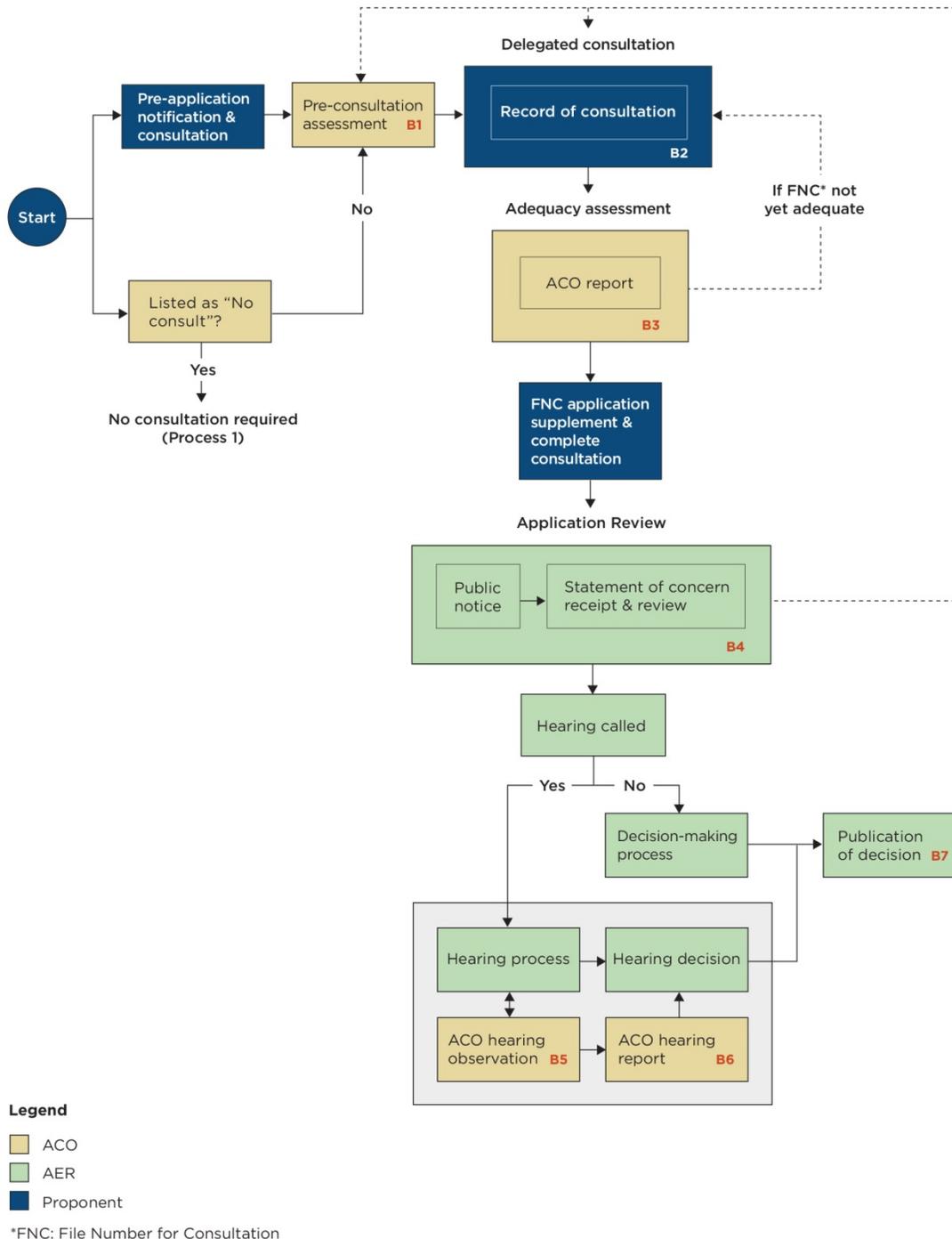
**Figure 1. Illustration of process 1 (no consultation required)**

**Table 3. Process steps and description for process 1 (no consultation required)**

Step	Description
<b>A1</b>	<p><b>No consultation required</b></p> <ul style="list-style-type: none"> <li>• The proponent checks appendix C of the consultation guidelines to determine if consultation is not required by Alberta (i.e., the activity is listed in the appendix).               <ul style="list-style-type: none"> <li>- If the activity or application is listed, the proponent may proceed to apply to the AER. There is no additional AER application without any further information about consultation.</li> <li>- If the activity or application is not listed, the proponent proceeds to step A2.</li> </ul> </li> </ul>
<b>A2</b>	<p><b>Pre-consultation assessment</b></p> <ul style="list-style-type: none"> <li>• The proponent applies to the ACO requesting a pre-consultation assessment.</li> <li>• The ACO conducts the assessment to determine if aboriginal consultation is required.</li> <li>• If the assessment indicates that no consultation is required, the proponent may apply to the AER, attaching the pre-consultation assessment and the FNC application supplement to the AER application.</li> <li>• If the assessment indicates level 1, 2, or 3 consultation is required, the proponent proceeds with the required consultation and the applicable process.</li> </ul>
<b>A3</b>	<p><b>Complete application</b></p> <ul style="list-style-type: none"> <li>• The AER confirms that the activity or application is identified in appendix C of the consultation guidelines or that the application is accompanied by the FNC application supplement and an ACO pre-consultation assessment indicating that no consultation is required.               <ul style="list-style-type: none"> <li>- Applications that do not meet either of these requirements should not be accepted by the AER, and the AER will direct the proponent to the ACO.</li> </ul> </li> <li>• Once the AER has confirmed that no consultation is required, the application proceeds to review and decision making.</li> </ul>
<b>A4</b>	<p><b>Statement of Concern</b></p> <ul style="list-style-type: none"> <li>• The AER addresses any SOC that it receives through its established processes.</li> <li>• The AER provides any SOC received from First Nations or other aboriginal groups and proponent responses to the ACO.</li> <li>• The ACO will review the SOC for               <ul style="list-style-type: none"> <li>- new information that may warrant a review of the pre-consultation assessment and</li> <li>- information about potential adverse impacts on Treaty rights and traditional uses.</li> </ul> </li> </ul>
<b>A5</b>	<p><b>ACO hearing observation</b></p> <ul style="list-style-type: none"> <li>• The AER must advise the ACO whether it intends to hold a hearing.</li> <li>• If a hearing is held, the AER must also advise the ACO if First Nations or other aboriginal groups have or have not been given participation rights in the hearing.</li> <li>• The ACO may elect to observe or monitor the hearing and may provide an ACO hearing report.</li> <li>• The ACO has discretion to participate beyond observing or monitoring the hearing.</li> </ul>
<b>A6</b>	<p><b>ACO hearing report</b></p> <ul style="list-style-type: none"> <li>• The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report.</li> <li>• The ACO provides the hearing panel and the parties with the ACO hearing report before or at the close of the evidentiary portion of the hearing and before the final submissions of the parties.</li> </ul>
<b>A7</b>	<p><b>Publication of Decision</b></p> <ul style="list-style-type: none"> <li>• When the AER makes a decision in regards to an application with First Nation participation, the AER must immediately provide the ACO with a copy of its decision, and any related reasons, in respect of the decision, at the same time it provides the notice of the same to the proponent and participants.               <ul style="list-style-type: none"> <li>- If the application does not go to hearing then the AER will provide the ACO with a copy of the notice of decision.</li> <li>- If the application goes to hearing then AER will provide the ACO with a copy of the hearing decision report.</li> </ul> </li> </ul>

### 5.4.2 Process 2 (Consultation Completed)

Applies to energy resource activities where consultation is completed (figure 2, table 4) by the time of application submission to the AER. For such applications made under the specified enactments, the ACO may require streamlined (level 1) or standard (level 2) consultation.



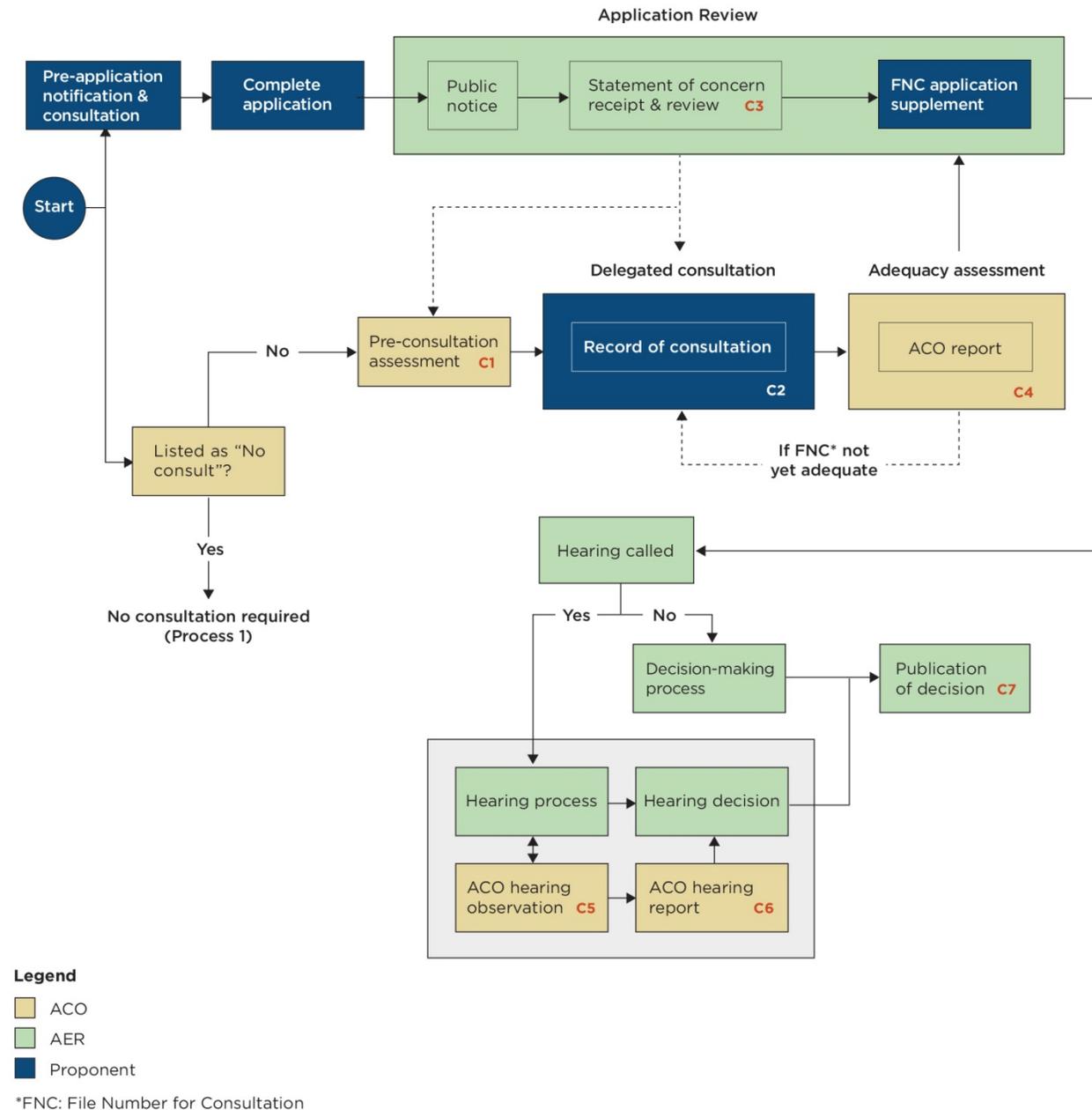
**Figure 2. Illustration of process 2 (consultation completed)**

**Table 4. Process steps and description for process 2 (consultation completed)**

Step	Description
<b>B1</b>	<p><b>Pre-consultation assessment</b></p> <ul style="list-style-type: none"> <li>• The proponent applies to the ACO requesting a pre-consultation assessment.</li> <li>• The proponent proceeds to step B2 if the assessment indicates that streamlined consultation (level 1) or standard consultation (level 2) is required. If extensive consultation (level 3) is required, refer to process 4.</li> </ul>
<b>B2</b>	<p><b>Consultation with First Nations</b></p> <ul style="list-style-type: none"> <li>• The proponent provides project information to First Nations and consults on potential adverse impacts on Treaty rights and traditional uses.</li> </ul>
<b>B3</b>	<p><b>ACO report</b></p> <ul style="list-style-type: none"> <li>• The ACO reviews information gathered during the delegated consultation to assess the adequacy of the consultation undertaken. <ul style="list-style-type: none"> <li>- In cases where proponent consultation is not adequate, the ACO may require further consultation.</li> </ul> </li> <li>• The ACO completes the adequacy assessment and generates the ACO report.</li> <li>• The ACO report is sent to the First Nations, the proponent, and the AER, providing the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses identified during First Nations consultation.</li> <li>• Once the ACO has determined consultation adequacy and has generated an ACO report, the proponent may submit its application to the AER. This is the key difference in process 2 from processes 3 and 4: the ACO report is completed BEFORE the proponent applies to the AER.</li> </ul>
<b>B4</b>	<p><b>Statement of Concern</b></p> <ul style="list-style-type: none"> <li>• The AER addresses any SOC that it receives through its established processes.</li> <li>• The AER provides any SOC received from First Nations or other aboriginal groups and proponent responses to the ACO.</li> <li>• The ACO will review the SOC for <ul style="list-style-type: none"> <li>- new information that may warrant a review of the pre-consultation assessment and</li> <li>- information about potential adverse impacts on Treaty rights and traditional uses.</li> </ul> </li> </ul>
<b>B5</b>	<p><b>ACO hearing observation</b></p> <ul style="list-style-type: none"> <li>• The AER must advise the ACO whether it intends to hold a hearing.</li> <li>• If a hearing is held, the AER must also advise the ACO if First Nations or other aboriginal groups have or have not been given participation rights in the hearing.</li> <li>• The ACO may elect to observe or monitor the hearing and may provide a hearing report.</li> <li>• The ACO has discretion to participate beyond observing or monitoring the hearing.</li> </ul>
<b>B6</b>	<p><b>ACO hearing report</b></p> <ul style="list-style-type: none"> <li>• The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report.</li> <li>• The ACO provides the hearing panel and the parties with the ACO hearing report before or at the close of the evidentiary portion of the hearing and before the final submissions of the parties.</li> </ul>
<b>B7</b>	<p><b>Publication of Decision</b></p> <ul style="list-style-type: none"> <li>• When the AER makes a decision in regards to application with First Nation participation, the AER must immediately provide the ACO with a copy of its decision and any related reasons in respect of the decision at the same time it provides the notice of the same to the proponent and participants. <ul style="list-style-type: none"> <li>- If the application does not go to hearing then the AER will provide the ACO with a copy of the notice of decision.</li> <li>- If the application goes to hearing then AER will provide the ACO with a copy of the hearing decision report.</li> </ul> </li> </ul>

### 5.4.3 Process 3 (Concurrent Consultation)

Applies to energy resource activities where concurrent consultation (i.e., consultation occurring while the AER reviews the application) is acceptable (figure 3, table 5). In those matters, the AER will accept and begin a technical review of applications made under the specified enactments while consultation with the ACO is ongoing.



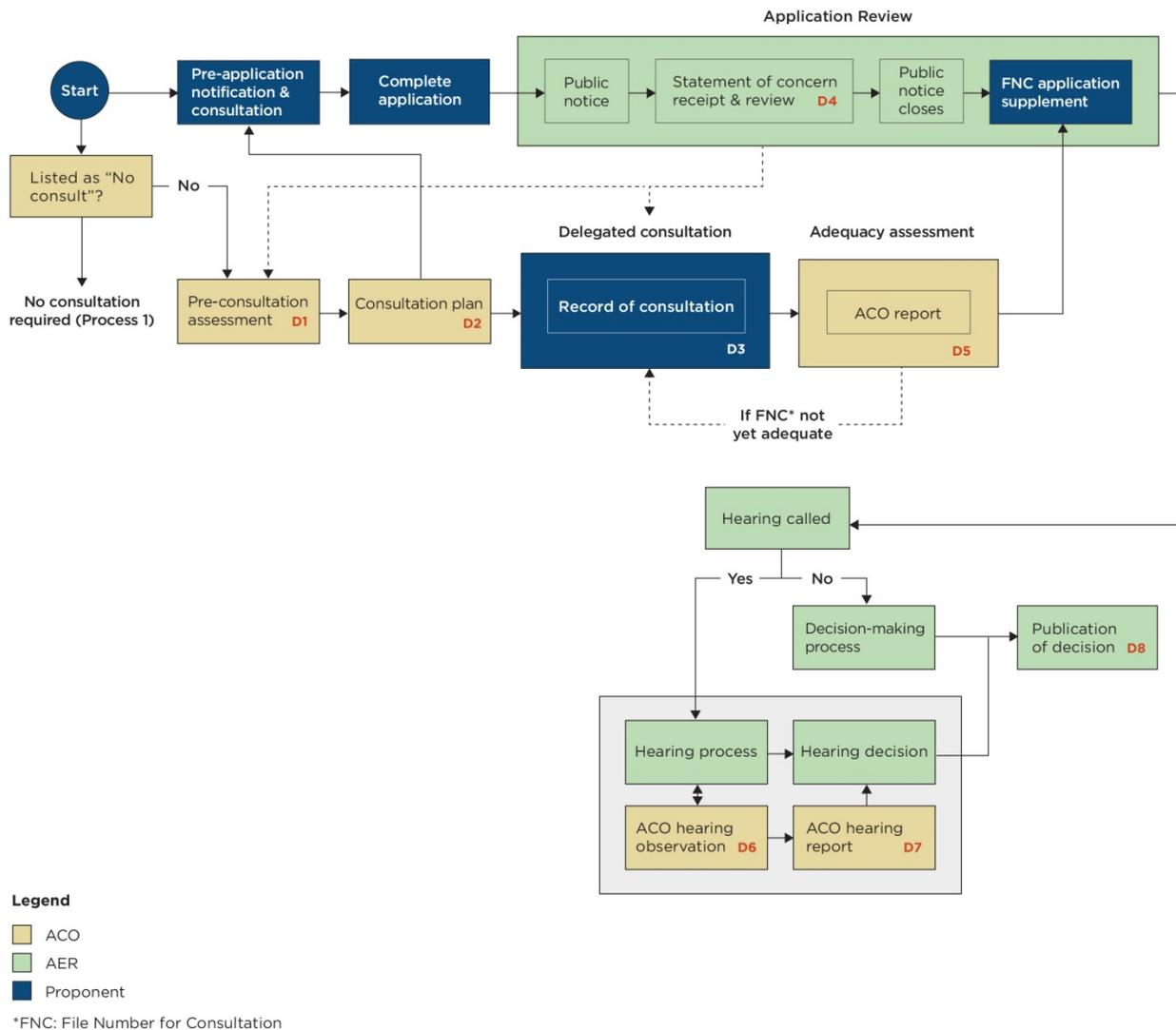
**Figure 3. Illustration of process 3 (concurrent consultation)**

**Table 5. Process steps and descriptions for process 3 (concurrent consultation)**

Step	Description
<b>C1</b>	<p><b>Pre-consultation assessment</b></p> <ul style="list-style-type: none"> <li>• The proponent applies to the ACO requesting a pre-consultation assessment.</li> <li>• The proponent proceeds to step C2 if the assessment indicates that streamlined consultation (level 1) or standard consultation (level 2) is required. If extensive consultation (level 3) is required, refer to process 4.</li> </ul>
<b>C2</b>	<p><b>Consultation with First Nations</b></p> <ul style="list-style-type: none"> <li>• The proponent provides project information to First Nations and consults on potential adverse impacts on Treaty rights and traditional uses.</li> <li>• Proponents may file their application with the AER so that the application review process can begin.</li> </ul>
<b>C3</b>	<p><b>Statement of concern</b></p> <ul style="list-style-type: none"> <li>• The AER addresses any SOC that it receives through its established processes.</li> <li>• The AER provides any SOC received from First Nations or other aboriginal groups and proponent responses to the ACO.</li> <li>• The ACO will review the SOC for               <ul style="list-style-type: none"> <li>- new information that may warrant a review of the pre-consultation assessment and</li> <li>- information about potential adverse impacts on Treaty rights and traditional uses.</li> </ul> </li> </ul>
<b>C4</b>	<p><b>ACO report</b></p> <ul style="list-style-type: none"> <li>• The ACO reviews information gathered during the delegated consultation to assess the adequacy of the consultation undertaken.               <ul style="list-style-type: none"> <li>- In cases where proponent consultation is not adequate, the ACO may require further consultation.</li> </ul> </li> <li>• The ACO completes the adequacy assessment and generates the ACO report</li> <li>• The ACO report is sent to First Nations, the proponent, and the AER, providing the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses identified during First Nations consultation.</li> </ul>
<b>C5</b>	<p><b>ACO hearing observation</b></p> <ul style="list-style-type: none"> <li>• The AER must advise the ACO whether it intends to hold a hearing.</li> <li>• If a hearing is held, the AER must also advise the ACO if First Nations or other aboriginal groups have or have not been given participation rights in the hearing.</li> <li>• The ACO may elect to observe or monitor the hearing and may provide a hearing report.</li> <li>• The ACO has discretion to participate beyond observing or monitoring the hearing.</li> </ul>
<b>C6</b>	<p><b>ACO hearing report</b></p> <ul style="list-style-type: none"> <li>• The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report.</li> <li>• The ACO provides the hearing panel and the parties with the ACO hearing report before or at the close of the evidentiary portion of the hearing and before the final submissions of the parties.</li> </ul>
<b>C8</b>	<p><b>Publication of Decision</b></p> <ul style="list-style-type: none"> <li>• When the AER makes a decision in regards to an application with First Nations participation, the AER must immediately provide the ACO with a copy of its decision and any related reasons in respect of the decision at the same time it provides the notice of the same to the proponent and participants.               <ul style="list-style-type: none"> <li>- If the application does not go to hearing then the AER will provide the ACO with a copy of the notice of decision.</li> <li>- If the application goes to hearing then AER will provide the ACO with a copy of the hearing decision report.</li> </ul> </li> </ul>

#### 5.4.4 Process 4 (Extensive Consultation Required)

Applies to applications for energy resource activities where extensive consultation is required by Alberta (figure 4, table 6). Certain applications made under the specified enactments may require the coordination of the consultation and regulatory processes between the ACO and AER which begins at the consultation planning phase. This coordination will continue to occur throughout the project regulatory process until a regulatory decision is made.



**Figure 4. Illustration of process 4 (extensive consultation required)**

**Table 6. Process steps and description for process 4 (extensive consultation required)**

Step	Description
<b>D1</b>	<p><b>Pre-consultation assessment</b></p> <ul style="list-style-type: none"> <li>• The proponent applies to the ACO requesting a pre-consultation assessment.</li> <li>• The proponent proceeds to step D2 if the assessment indicates that extensive consultation (level 3) is required.</li> </ul>
<b>D2</b>	<p><b>Consultation plan</b></p> <ul style="list-style-type: none"> <li>• The proponent prepares and submits a consultation plan to the ACO for review and approval.</li> <li>• The ACO will provide the proponent information about consultation requirements, and the AER will provide the proponent information about the AER's PNoA period.</li> </ul>
<b>D3</b>	<p><b>Consultation with First Nations</b></p> <ul style="list-style-type: none"> <li>• The proponent provides project information to First Nations and consults on potential adverse impacts on Treaty rights and traditional uses,</li> <li>• Proponents may file their application with the AER so that the application review process can begin.</li> </ul>
<b>D4</b>	<p><b>Statement of concern</b></p> <ul style="list-style-type: none"> <li>• The AER reviews any SOC that it receives through its established processes.</li> <li>• The AER provides any SOC received from First Nations or other aboriginal groups and proponent responses to the ACO.</li> <li>• The ACO will review the SOC for <ul style="list-style-type: none"> <li>- new information that may warrant a review of the pre-consultation assessment and</li> <li>- information about potential adverse impacts on Treaty rights and traditional uses.</li> </ul> </li> </ul>
<b>D5</b>	<p><b>ACO report</b></p> <ul style="list-style-type: none"> <li>• The ACO reviews information gathered during the delegated consultation to assess the adequacy of the consultation undertaken. <ul style="list-style-type: none"> <li>- In cases where proponent consultation is not adequate, the ACO may require further consultation.</li> </ul> </li> <li>• The ACO completes the adequacy assessment and generates the ACO report</li> <li>• The ACO report is sent to First Nations, the proponent, and the AER, providing the ACO's finding on consultation adequacy and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses identified during First Nations consultation.</li> </ul>
<b>D6</b>	<p><b>ACO hearing observation</b></p> <ul style="list-style-type: none"> <li>• The AER must advise the ACO whether it intends to hold a hearing.</li> <li>• If a hearing is held, the AER must also advise the ACO if First Nations or other aboriginal groups have or have not been given participation rights in the hearing.</li> <li>• The ACO may elect to observe or monitor the hearing and may provide a hearing report.</li> <li>• The ACO has discretion to participate beyond observing or monitoring the hearing.</li> </ul>
<b>D7</b>	<p><b>ACO hearing report</b></p> <ul style="list-style-type: none"> <li>• The ACO considers all relevant evidence submitted during the hearing before preparing a hearing report.</li> <li>• The ACO provides the hearing panel and the parties with the ACO hearing report before or at the close of the evidentiary portion of the hearing and before the final submissions of the parties.</li> </ul>
<b>D8</b>	<p><b>Publication of Decision</b></p> <ul style="list-style-type: none"> <li>• When the AER makes a decision in regards to an application with First Nations participation, the AER must immediately provide the ACO with a copy of its decision and any related reasons in respect of the decision at the same time it provides the notice of the same to the proponent and participants. <ul style="list-style-type: none"> <li>- If the application does not go to hearing then the AER will provide the ACO with a copy of the notice of decision.</li> <li>- If the application goes to hearing then AER will provide the ACO with a copy of the hearing decision report.</li> </ul> </li> </ul>