

Anishinaabe Agowidiwinan Treaty No. 2 Territory

Consultation, Accommodation and Consent Law

PREAMBLE

WHEREAS:

- A. Anishinaabe Agowidiwinan wish to enact a law based on Inherent and Treaty Rights, Title and Interests that will guide the conduct of Crown-First Nation consultation and accommodation;
- B. Anishinaabe Agowidiwinan Nations are the direct descendants, heirs, and successors of the Nations which entered into Treaty No. 2 in 1871 with the Imperial Crown, and as a result their inherent rights and Treaty-confirmed - Title and Interests regarding lands, waters, and resources are recognized and affirmed pursuant to section 35 of the *Constitution Act*, 1982;
- C. Anishinaabe Agowidiwinan asserts and maintains the protection, promotion and enforcement of its inherent *Rights*, Title and Interests before Treaty, at Treaty, and over the years after Treaty continuously to the present day;
- D. Pursuant to Supreme Court of Canada decisions in the *Haida*, *Taku River* and *Mikisew* cases, the Crown has a legal duty to consult and accommodate First Nations whenever it is contemplating or making any decisions or conducting an activity that may infringe on those inherent rights and Interests of First Nations people;
- E. Anishinaabe Agowidiwinan upholds and is guided by the *UN Declaration on the Rights of Indigenous Peoples* and the doctrine of *Free, Prior and Informed Consent in the determination of their rights*.
- F. Anishinaabe Agowidiwinan are mandated in the coordination of the Crown-First Nation consultation with respect to their collective rights and to assist in the consultation process, which is both a procedural and substantive right, and the subsequent negotiation of accommodation measures regarding the adverse effects of projects;
- G. Any proponent, including Municipalities and Crown corporations-are encouraged to engage Anishinaabe Agowidiwinan when they have actual or perceived

knowledge of any proposed activity that potentially infringes upon the exercise of Inherent and Treaty Rights, Title and Interests of the Anishinaabe in Treaty No.2 Territory.

THEREFORE BE IT RESOLVED, the Council of Chiefs of Treaty 2 Territory on the ____ day of _____, 2018 hereby enact the following *Consultation, Accommodation and Consent Law*.

Name of this Law

1. This law shall be known as the *Consultation, Accommodation and Consent Law*.
2. Short title: "*Consultation Law*".

Interpretation and Application

3. For the purposes of this law, the term "*inherent rights*" is used in a legal context and generically regarding the rights we had prior to entering Treaty and which were confirmed in Treaty. "*Aboriginal and Treaty Rights*" is a term used in s. 35 of the *Constitution Act, 1982*, and is included here because it is frequently used by settler governments.
4. The *Consultation Law* shall apply as a legal instrument and as an expression of the collective interests of Anishinaabe Agowidiwinan.
5. The *Consultation Law* shall apply and is triggered when a proposed or actual action, activities or decision has a potential to adversely affect the exercise of the inherent rights of the People of Anishinaabe Agowidiwinan, as well as to the term used by settler governments *and Treaty Rights*.

Inherent Rights

6. The inherent rights are those rights which the Anishinaabek of Anishinaabe Agowidiwinan exercised prior to entering into Treaty, did not surrender in the making of Treaty, and therefore continue to exist after the making of Treaty to the present. The conditions of consultation and accommodation also apply to "*Aboriginal and Treaty Rights*" recognized and affirmed pursuant to section 35 of the *Constitution Act, 1982* of Canada and to which this law also applies.
7. The land and resource entitlement interests under the provisions and promises to Anishinaabe Agowidiwinan include a) the payment of compensation for lands taken up for immigration and settlement, b) the free and unrestricted use of all lands within the territory which were not taken up for immigration and settlement,

and c) those lands reserved for our exclusive use and benefit pursuant to Treaty. those landing rights to reserve lands under the per capita provisions, and all resources within the Territory, they not having been the subject of Treaty.

8. Nothing in the Anishinaabe Agowidiwinan *Consultation Law* is intended to diminish, derogate or abrogate from rights held collectively by the Treaty No. 2 Anishinaabe or the rights held collectively by any individual First Nation to its reserved lands.
9. Nothing in this law shall be interpreted to mitigate or absolve the Crown in Right of Canada or the Crown in Right of Manitoba or Crown in Right of Saskatchewan from their respective duties and obligations to respect the rights of the Anishinaabe to their lands and resources and to obtain our consent to affect any proposed actions or decisions which might affect the rights and interests of Anishinaabe Agowidiwinan.

Purpose

10. The purpose of this law is: to ensure the rights and interests of Anishinaabe Agowidiwinan collective are respected and to set out the consequences of not respecting those rights and interests.

Principles

11. The Anishinaabek of Anishinaabe Agowidiwinan expect, pursuant to the Treaty and the *Royal Proclamation of 1763* and the *Declaration of the Rights of Indigenous Peoples*, that the Crown shall ensure that its Governments of Canada Saskatchewan and Manitoba shall respect the following principles and shall ensure that their citizens and other persons and corporate bodies and entities within the jurisdiction of Canada and/or Manitoba and Saskatchewan also shall respect the following principles.
 - a. *Reconciliation* – Anishinaabe Agowidiwinan involves the reconciliation of the respective sovereignties of the Crown with the sovereignty of the Anishinaabek of Anishinaabe Agowidiwinan.
 - b. *Duty to Consult, Accommodate and Obtain Consent* – that if the Crown proposes that any situation or proposal for action, activity or decision should arise which might affect the rights or interests Anishinaabe Agowidiwinan, that the Crown will engage with the Anishinaabe collectively or with an individual Anishinaabe Nation (as might be appropriate) in good faith discussions to determine if and how the matter might be accommodated, and

where required, the free, prior and informed Consent of Anishinaabe Agowidiwinan might be obtained. .

- c. *Honour* – The Honour of the Crown is at stake through all its dealings with the Anishinaabe Agowidiwinan, as is the Honour of Anishinaabe Agowidiwinan in its dealings with the Crown.
 - d. *Indigenous Knowledge and Science* – In the discussions, consultations and negotiations with the Crown, each Party is entitled to apply its respective knowledge and science with the expectation that the Parties will make best efforts to reconcile their points of view.
12. Crown-First Nation consultation, also known historically as the “polishing of the Covenant Chain of Friendship”, is an ongoing process.

Consultation Triggers

13. The requirement of consultation by the Crown with Anishinaabe Agowidiwinan is triggered when there is actual or perceived knowledge of a project activity that has a potential to infringe in the exercise of *Aboriginal and Treaty Rights* and when the Crown is in receipt of an application relating to the following, but not limited to:
- a A permit related to the staking of a mineral or mining claim;
 - b a mineral exploration license, mineral exploration work permit, mining license or any other resource extraction permit or license;
 - c a commercial or sporting fishing or hunting license to be utilized on Treaty No.2 Territory;
 - d a license or permit to engage in forestry practices or the use of forestry resources,
 - e licenses and permits in the energy sector (with the exception of the use of wind or solar energy on lands taken up for immigration and settlement);
 - f any study which requires entry on lands which have not been taken up for immigration and settlement and for which compensation has been paid.
 - g any proposed alteration of waterways for agriculture purposes;
 - h remedial measures and measures intended to prevent or mitigate natural disasters on lands not taken up for immigration and settlement and for which compensation has been paid;
 - i any commercial activity on lands not taken up for immigration and settlement and for which compensation has not been paid;
 - j the construction of roads, bridges or any infrastructure project that has the potential to negatively impact on the environment relating to water, land and wildlife and the collective rights of Anishinaabe Agowidiwinan for which consent has not been provided and for which compensation has not been paid.

- k any undertaking that disturbs archeological sites and other historical and sites of spiritual and cultural significance anywhere within Treaty No.2 Territory, including areas taken up for immigration and settlement and for which compensation has been paid.

Notice Provision

- 14. The Crown shall give adequate notice to Anishinaabe Agowidiwinan Protection and Implementation Office when it has actual or perceived knowledge of a permit or application made or to be made which has a potential to infringe on the rights or interests of Anishinaabe Agowidiwinan.

Failure to Provide Notice

- 15. When Anishinaabe Agowidiwinan Protection and Implementation Office becomes aware that a project or activity is being considered or conducted without proper notice having been given and consent having been provided, Anishinaabe Agowidiwinan shall immediately issue a *Stop Work Order* until such time the issue has been resolved.

Consultation Procedure

- 16. The following consultation procedures shall be followed:
 - a) **Initial Step 1:** the Crown to provide a notice of any pending permit, decision or activity and a copy of the application for the permit or license, if any, to Anishinaabe Agowidiwinan Protection and Implementation Office for initial acknowledgement, comment and recommendation on the procedural requirements on consultation;
 - b) **Alternative Step 1:** if Anishinaabe Nations within Anishinaabe Agowidiwinan receive information or otherwise believe that a permit, decision or activity may be pending and for which they believe they should be or have been provided the above-mentioned notice, Anishinaabe Nations will provide formal notice to the Crown of its belief and ask that the Crown either comply with the Initial Step 1 or to state that it has no knowledge of the matter.
 - c) following either the Initial or requested notice of the Crown, Anishinaabe Agowidiwinan shall promptly make a determination and provide notice to the Crown regarding the level of consultation that it considers to be proportionate to the potential level of infringement on the rights and interests of Anishinaabe Agowidiwinan,
 - d) following which the Crown shall provide in a letter to Anishinaabe Agowidiwinan Protection and Implementation Office on the following:
 - i the nature and scope of the project;
 - ii duration of the project;

- iii location of the proposed project along with maps and Global Positioning System (GPS) coordinates of all major activity;
 - iv description of the potential impacts on the rights and interests of the Anishinaabe Nations and/or upon the environment;
 - v a statement as to the Crown's evaluation as to whether the project will contribute to the augmentation of cumulative rights to the point at which the accumulation may impact on the rights and interests of the Anishinaabe Nations;
 - vi whether the Crown believes it has the right to engage in the matter without any further involvement of Anishinaabe Nations, or whether it will proceed to participate in the process set out by Anishinaabe Nations, or to provide other information as may thought to be useful or which is requested by Anishinaabe Nations to assess and monitor the project.
- e) A *Crown-First Nation Consultation Agreement* shall be negotiated by the Parties outlining the consultation process, protocols and resourcing consistent to this law;
- f) Prior to a decision on a permit or license application or on any disposition relating to water or land, the Crown and a proponent shall first obtain *free, prior and informed consent* from Anishinaabe Agowidiwinan and Anishinaabe First Nations on any proposed activity in the Territory if that consent is required.
- g) As part of the *Crown-First Nation Consultation Agreement* the Crown shall provide sufficient funding to Anishinaabe Agowidiwinanto cover its costs expended for its participation in the process.
- h) As part of the *Crown-First Nation Consultation Agreement* a Anishinaabe Agowidiwinan Monitoring Committee shall be established and shall have access to the project site and conduct occasional site visits;
- i) The *cumulative effects* of project development in Anishinaabe Agowidiwinan territory shall be a subject of consultation and accommodation prior to granting of a permit or license;
- j) The Crown may involve, as may be appropriate, government, municipalities, corporation's individuals, organizations proponents in the fulfilment of its responsibilities in these matters, providing that it should always be clear that the consultation taking place is between the Crown and Anishinaabe Agowidiwinan, who in turn are represented in these matters by its Protection and Implementation Office.

Treaty No. 2 Officials Appointments

17. Anishinaabe Agowidiwinan Council of Chiefs shall appoint a Senior Official to oversee the above detailed matters and processes and to represent the Council of Chiefs in the consultation and accommodation and negotiations processes, and to make recommendations for the consideration of the Council of Chiefs.

- a) The Senior Official shall be available to assist Anishinaabe Agowidiwinan in its involvement in the matters covered by this law.
- b) The Senior Official shall provide regular reports to the Anishinaabe Agowidiwinan Council of Chiefs regarding, *inter alia*, the following,
 - the progress on each set of consultations, actual or pending, and the negotiation on the
 - recommendations to the Council of Chiefs as instructions the Senior Official would find beneficial to the representation of the Council of Chiefs;
 - research, reports and assessments pertaining to projects and activities or generally that might be of special interest to Anishinaabe Agowidiwinan;
 - any other information the Senior Official deems should be provided or which has been requested by the Council of Chiefs.

Confidentiality

18. Council of Chiefs, the senior official, and staff shall respect the privacy and confidentiality of information received from other parties as well as from the Council of Chiefs collectively or from any individual Anishinaabe Nations.
19. A Non-Disclosure Agreement may be required by resolution of the Council of Chiefs as a condition of involvement relating to Anishinaabe Agowidiwinan in any matter which is the subject of this law.

Amendments

20. Anishinaabe Agowidiwinan may make further amendments to the Consultation Law or create other laws to carry out and give effect to the provisions of this law.