

- a. The Guidelines listed in this document are the minimum requirements for consultation and accommodation and are the expectations of Aamjiwnaang with respect to consultation and accommodation.
- b. Aamjiwnaang has inherent treaty rights and aboriginal rights as well as a traditional territory and must be consulted with on any project that will or might have an impact on these rights.
- c. All parties must recognize that the duty to consult and accommodate with Aamjiwnaang rests with the Crown (Federal and Provincial Governments) and that all authority for decision-making and approvals will remain on a government-to-government basis.
- d. All proponents must commit to satisfying all environmental regulations and to seek best practice solutions and to use best available technology as regards any environmental concerns on any project within Aamjiwnaang's traditional territory. Aamjiwnaang must be made aware of any real or potential risks to health and safety, and every measure should be provided to avoid impacting the health of the Aamjiwnaang people.
- e. Proponents, the Crown, and the First Nation will approach meetings in good faith, with respect, and with a desire to be flexible and seek a fair agreement for all parties.
- f. Proponents, in their desire to complete projects in a reasonable time frame, should seek to satisfy all relevant federal and provincial guidelines and legislation for the project.
- g. Consultations and negotiations should be held with full disclosure that includes, but should not be limited to, detailed project reports, details about regulations and fees that relate to the property or development in question, and any information given also to the Crown to satisfy regulatory measures.
- h. All consultation and negotiation should be free of all coercion (including financial and time constraints), and should begin as soon as possible to ensure First Nations are included before irreversible decisions are made.
- i. That all parties recognize that consultation is an on-going process that spans the life of a project through construction, operation, and decommissioning. Therefore, any agreements resulting from this process should allow for the possibility of renegotiation if the circumstances surrounding the agreement change.
- j. Decisions should be made by consensus wherever possible. There must be a willingness to provide accommodation for the reasonable concerns of Aamjiwnaang before the project proceeds.

- k. Nothing in this document shall offer any justification for taking away or superseding treaty and/or aboriginal rights within the meaning of Section 25 and 35 of the Constitution Act, 1982 or the duty to consult and accommodate.
- l. Nothing in this document shall be considered an endorsement by Aamjiwnaang of any current legislation, regulations, policies, procedures, or practices of the Crown or proponents in Aamjiwnaang's traditional territory where Aamjiwnaang has no meaningful role in their development or administration, or do not reflect the reconciliation of the relationship between the Crown and Aamjiwnaang.
- m. Nothing in this protocol implies consent or approval of any past, existing, new, or ongoing activities within Aamjiwnaang's traditional territory.

### 3. Definitions:

**Aamjiwnaang First Nation:** Means the aboriginal people within the meaning of section 35 of the Constitution Act, 1982, which is a First Nation, and a Band pursuant to the Indian Act. The First Nation is formerly known as the Chippewas of Sarnia. The First Nation's reserve is located near Sarnia, Ontario and is un-ceded land.

**Aamjiwnaang Rights (Aboriginal Rights):** Aamjiwnaang members have Aboriginal rights within the meaning of Section 25 and 35 of the Constitution Act, 1982 which are collective and not individual. The rights belong to the community and arise from presence, occupation and practice on the land prior to European contact. These rights continue to exist unless modified or extinguished by treaty.

**Aamjiwnaang Title (Aboriginal Title):** is a common law property interest in land. Aboriginal title arises from occupation of Canada by Aboriginal peoples prior to the *Royal Proclamation of 1763*. Aboriginal title is a collective right to land held by all members of an Aboriginal nation.

**Accommodation:** An amicable agreement achieved by consultation between two or more parties to deal with concerns and to avoid irreparable harm or to minimize the effects of infringement by seeking compromise in an attempt to harmonize any conflicting interests.

**Activity:** Any legislation, regulation, policy, procedure, plan, tenure, grant, license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, or other activity, which may have an impact on Aamjiwnaang's Aboriginal Title or other Aboriginal Rights.

**Consultation:** A deliberation, in good faith, on a matter involving two or more parties having concern for the consideration of a First Nation's wishes in planning and acting; with a mutual goal of arriving at an agreeable decision prior to any undertaking by any party.

**Crown:** Her Majesty in right of Canada and Her Majesty in right of Ontario and their respective governments and agencies.

**Information:** Refers to materials that can be disclosed in accordance with applicable law

**Impact:** Any adverse effect that any activity may cause to the Environment within Aamjiwnaang's traditional territory or the health of Aamjiwnaang or any of its members or any Aamjiwnaang right.

**Proponent:** A person, including corporations, which may include the Crown, who proposes a project to be implemented that may affect Aamjiwnaang interests.

**Reserve:** Refers to the un-ceded land near Sarnia, ON that was set aside under Treaty 27 ½ and 29 for the Sarnia band, now known as Aamjiwnaang First Nation and formerly known as the Chippewas of Sarnia.

**Traditional Territory:** The Traditional Territory of Aamjiwnaang is not confined to its reserve boundaries, but rather to the area of past occupation and land use. For this purposes of this consultation protocol, the Traditional territory of the Aamjiwnaang First Nation stretches along the shores of Lake Huron, north to Goderich, east to Stratford and south to Point Pelee.

#### 4. Consultation principles

The Crown must initiate consultation at the earliest stage in the decision-making process before decisions are made that infringe on Aamjiwnaang title or rights, and without Aamjiwnaang first having to raise questions about the proposed activity. Consultation must occur at all stages of any proposed activity that potentially impact on asserted or recognized rights of Aamjiwnaang, including legal or policy changes, strategic planning, scientific or technical decision making, operational decisions, environmental assessments, impact assessments, approvals which may lead to a permit, license, lease, or change in land status, and any amendment to any such decisions.

The consultation process, while involving non-crown proponents, shall have an ongoing government-to-government relationship based on the recognition and affirmation of the aboriginal and treaty rights and aboriginal title of the people of Aamjiwnaang. The concerns, interests, and ideas of Aamjiwnaang must be integrated into the decisions or developments that impact their territory, rights, or title.

Consultation with Aamjiwnaang must be separate and distinct from consultation with other interest groups.

The Crown or its designate shall provide all necessary financial or other resources required by Aamjiwnaang in order to effectively participate in all aspects of the consultation.

All discussions must be undertaken in good faith, and all alternative options must be available, including a “no-activity” option if the impacts of the decision or development are expected to cause undue infringement on Aamjiwnaang’s rights, title, or people.

Aamjiwnaang must be prioritized in any strategic level decisions, before operational decisions are undertaken. Resources and time must be provided to Aamjiwnaang in order to conduct the necessary studies or reviews to better understand the potential impacts or infringements that may occur as the result of an activity.

## **5. Anticipated Outcomes:**

It is the desired hope that all consultations will result in fair and mutually beneficial meetings that are conducted in good faith, without prejudice, and designed to incorporate Aamjiwnaang into the decision making process. It is further expected that the Crown and Proponents must accommodate and/or mitigate any activity that may infringe on Aamjiwnaang’s Aboriginal title, rights, or interests.

Common types of Accommodation include, but are not limited to:

- Modification of the project, including scope, scale, or technology changes
- Employment
- Joint Ventures
- Co-management of resources
- Joint land use planning
- Training
- Limiting resource extraction and harvesting
- Conservation measures
- Hunting access
- Environmental protections and ongoing monitoring
- Alternate land arrangements
- Relocation
- Alternative food source compensation
- Equity in companies
- Preferential contracts for services
- Community-use buildings
- Financial compensation
- Compensatory damages for past infringements or impacts

- Other arrangements

## **6. Responsibilities of Each Party**

### **6.1 Crown**

The Crown is responsible to:

- Respect and uphold the treaty and aboriginal rights enshrined in the Constitution Act, 1982 related to First Nations.
- Consult with and seek accommodate for Aamjiwnaang whenever there is an activity that may or will impact the treaty and aboriginal rights of the community.
- Work with Aamjiwnaang on a government-to-government basis.
- Uphold the honour of the Crown.
- Consider and give reasonable consideration to Aamjiwnaang rights and interests.

### **6.2 Proponent(s)**

The Proponent is responsible to:

- Recognize that Aamjiwnaang is a level of government that seeks to uphold the treaty and aboriginal rights held by Aamjiwnaang community members.
- Ensure that good faith consultation and flexibility guide relations with the Aamjiwnaang community with an aim to seeking mutually beneficial solutions.
- Recognize that an activity cannot be permitted within Aamjiwnaang's traditional territory without consultation and accommodation with Aamjiwnaang.
- Recognize that the duty to consult rests with the crown and that any decision or agreement reached must ultimately be made on a government to government basis.
- Provide contact persons and all information in a timely manner to ensure that good communication is the cornerstone of effective and transparent consultation.
- Provide adequate details and information about the project and any associated timelines or project schedules.

### **6.3 Aamjiwnaang**

Aamjiwnaang is responsible to:

- Provide information to Proponents and the Crown when asked related to the Aboriginal Rights and Treaty Rights asserted on or near the activity under discussion.
- Provide contact person(s) for whom inquiries could be made regarding the status and execution of the consultation process of Aamjiwnaang.
- Represent the views of community members at all times.

- Make a reasonable effort to provide Aamjiwnaang members with adequate notice of all major projects and time allowances for comments.
- Monitor compliance by all parties of the consultation and accommodation process.
- Operate in good faith and with a desire to seek mutually beneficial outcomes wherever possible.
- Provide information and guidance in order to ensure that activities are undertaken with consideration of the land-use principles and potential impact on sites of cultural, spiritual, or heritage interest.

## **7. Funding and Capacity to meet Consultation Needs:**

The Crown is responsible for providing funding and capacity to enable First Nations and Proponents to hold meaningful discussions about activities and for both parties to understand the issues at stake. This funding is critical for the consultation process in order to proceed without delays.

Proponents must recognize that the Aamjiwnaang First Nation often does not have the internal capacity or resources necessary to meet all consultation goals without outside funding. Proponents must recognize that Aamjiwnaang does not receive adequate resources to undertake all consultation requests received. Proponents may be asked to provide capacity for various portions of the consultation process.

Consultation needs are often extensive, including:

- Hiring Aamjiwnaang members to review and meet with proponents.
- Hiring outside experts or staff to provide critical analysis.
- Completion of third-party reviews of Environmental Assessment documents or Legal agreements.
- Travel, accommodation, and other honoraria.
- Administrative costs.
- Other costs.

The necessity of consultation and accommodation and the lack of capacity of Aamjiwnaang requires proponents to meet many of the capacity and consultation costs associated with the process to ensure the meeting of deadlines and deliverables in a timely manner. Costs may also rise or decrease depending on the size, scope, and community involvement necessary to hold adequate and good faith consultations. Proposed budgets will be developed and shared with the proponent throughout the process.

## 8. General Consultation and Accommodation Steps

The following outlines the general process of consulting and accommodating Aamjiwnaang.

**1. Initial Contact:** Notice of a proposed project or decision is made to Aamjiwnaang. Any notice must be submitted to the Chief, the Council, and the Health and Environment Committee. Proponents must submit adequate information and details about the proposed activity including:

1. The appropriate contact person and his or her contact information
2. Reference maps of the proposed project site or area
3. Information about the activity and potential impacts in plain language format, including potential impact on resources and land
4. Information on the anticipated economic impact on Aamjiwnaang and on surrounding communities
5. The timeframe or activity schedule with critical dates identified
6. Information about the potential impacts on treaty or aboriginal rights

**2. Information Sharing:** Following an internal review, a response will be sent to the proponent, indicating the next steps and the appropriate contact person at Aamjiwnaang. This will likely take one of three forms:

1. More information is required from the proponent or the Crown to adequately assess the proposal
2. At this time Aamjiwnaang is not interested in entering into a full consultation process, however the proponent should continue to inform Aamjiwnaang throughout the process, especially if there are any changes in scope or expected impact.
3. Aamjiwnaang is considering entering into a full consultation process and requires more information and capacity.

**3. Pre-Consultation:** If the response is to consider entering a full consultation process, the Proponent will be asked to provide more information and attend meetings. Details of the process, budget, and information required will be discussed. This stage in the process will lead to one of three responses

1. More information is required from the proponent or the Crown to determine whether there are potential or real impacts on constitutional rights or title issues.
2. At this time Aamjiwnaang is not interested in entering into a full consultation process, however the proponent should continue to