

Taykwa Tagamou Nation Consultation and Accommodation Protocol

1.0 Purpose and Application

This Protocol outlines how meaningful consultation on development projects and decisions can take place between Taykwa Tagamou Nation (TTN), the Crown, and project proponents. It is supported by TTN's understanding of the respectful application of Canadian law, and the principles of good governance. A meaningful consultation and accommodation process provides TTN with clarity and certainty about how Aboriginal and Treaty rights will be respected and, if necessary, accommodated in all stages of development projects and decisions. In turn, governments and project proponents following this Protocol in good faith stand to gain support, consistency, and certainty from TTN with respect to development projects and decisions. The consultation and accommodation process set out in this Protocol is intended to achieve TTN consent for the development project or decision, and to be a basis for negotiating compensation or accommodation for the impacts on TTN's Aboriginal and Treaty rights as a way to reconciliation.

TTN requests that the Crown and project proponents respect this Protocol in their dealings with TTN about such projects and decisions.

2.0 Non-Derogation

Nothing in this Protocol nor the process or documents derived from it shall be construed so as to abrogate or derogate from TTN rights, regardless of whether such rights are recognised, established or defined after this Protocol comes into effect.

Nothing in this Protocol shall be construed so as to limit any consultation or accommodation obligations owed to TTN by the Crown or any proponent.

Notwithstanding anything in this Protocol, TTN retains the right in relation to any development project or decision, to decide whether it supports a project and to: comment to regulators, participate in regulatory processes and hearings, seek intervenor funding, or challenge and seek remedies through court proceedings.

This Agreement is without prejudice to the rights of TTN to enter into negotiations with the federal or Ontario provincial governments or their branches, departments or agencies which may deal with matters not triggering this Protocol, such as, but not limited to:

- a) co-management, co-jurisdiction and co-existence arrangements on TTN Traditional Territory,
- b) the nature and extent of TTN Rights including the right to hunt, fish and trap for food, social, ceremonial and commercial purposes, and
- c) self government arrangements.

3.0 Definitions

Crown means either or both of the governments of Canada and Ontario and its component parts and agents, as well as its designates.

Moose River Basin Environmental Custodial Body means the advisory body composed of elders from TTN, and Moose Cree First Nation.

Decision means a decision, permit, approval, policy, plan, or procedure being considered by the Crown which will directly affect the authorization or regulation of a project.

Development means the use, taking, or removal of land, energy (wind, water, hydrocarbon or other forms), water, mineral, forest, fisheries, wildlife, or other resources, and the associated infrastructure to support such activity (such as roads, transmission lines, etc.).

Impact means any adverse change or effect that any aspect of a development project or decision may have on TTN's rights, the cultural and spiritual value of the land, the health of its members, communities, or the biophysical environment in TTN's traditional territory.

Project means any activity pursuant or incidental to anything authorized or ordered by the Crown, or that the Crown is considering authorizing or ordering which may have an impact on TTN, and does not include any activity of TTN or a member of TTN or a business in which TTN have majority control or a majority financial interest which activity TTN has authorized.

Proponent means the party that proposes to undertake or is undertaking a development project or decision. In some cases, such as public policy changes, land and resource management planning processes, or when the Crown proposes a project, the Crown may be the proponent under this Protocol. This definition also includes Aboriginal proponents, including members of TTN.

Protocol means the Taykwa Tagamou Nation Consultation and Accommodation Protocol

Taykwa Tagamou Nation (TTN) 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*.

TTN Representative means the person(s) appointed and mandated by Chief and Council of the TTN to participate in the consultation and accommodation process described in or related to this Protocol, about a particular project or decision, and such person(s) may have the authority to act on behalf of TTN in regard to same.

TTN Rights means any of TTN's or its members' Aboriginal or Treaty rights or the ability to exercise such rights, or asserted Aboriginal or Treaty rights protected under section 35 the *Canadian Constitution, 1982*.

TTN Reserve means the reserve of TTN/New Post 69 A/B.

TTN Traditional Territory means the territory as described in the map provided in Schedule B of the Protocol.

4.0 Reaffirmation

Whereas the Mushkegowuk of TTN have lived in their Traditional Territory since time immemorial, practicing their ways and living according to their laws and culture as a self-defined people;

Whereas, in addition to Aboriginal title, TTN's rights in its Reserve and Traditional Territory include the rights to hunt, fish and trap, to harvest plants for food and medicines and to pursue a variety of traditional livelihoods, to protect and honour burial sites and other sacred and culturally important sites, to sustain and strengthen its spiritual and cultural connection to the land, to protect the

biophysical environment that supports its survival, to govern itself, and to participate in all governance and operational decisions about how the land and resources will be managed, used, and protected;

Whereas TTN's laws require TTN to preserve and even enhance a mutually respectful relationship with the biophysical environment, to co-exist with Mother Earth and protect this relationship. TTN under its laws has the responsibility to care for its Traditional Territory for future generations, to preserve and protect wildlife, lands, waters, air, and resources. TTN relies on the health of the biophysical environment in its Traditional Territory for its survival. The health of the lands and waters is essential to the continued existence of TTN as a people and its' members' health, its culture, laws, livelihood, and economy.

Be it therefore resolved that TTN reaffirms its land and resource rights and responsibilities belonging to its people, and that the establishment of this Protocol is an expression thereof.

5.0 General Principles of Meaningful Consultation

- a. All development projects or decisions with a potential impact on TTN must be made carefully and in the best interests of TTN's long-term well-being. TTN has suffered adverse effects in the past from development, use, and pollution of its Traditional Territory.
- b. TTN expects to play a meaningful role in any Environmental Assessment (EA) or regulatory approval processes. This will include, if requested by TTN, a role in establishing the scope and terms of reference for such EAs, participating in conducting EAs, and to appoint a member(s) to any committees/bodies established for the purposes of consultation or coordination. TTN also expects to be able to review and comment on environmental impact statements, screenings, studies, or like reports. Note that EAs and any role that TTN might take in regard to these do not, on their own, satisfy the Crown's Duty to Consult.
- c. It takes time to make good decisions that consider all relevant matters, and it takes time to build and maintain good relations, and sufficient time must be provided for consultation, and if applicable, accommodation of TTN by the Crown and proponents.
- d. All parties to the consultation and accommodation process are expected to treat each other with respect and act in good faith, in an honest, transparent, and open manner.
- e. The Crown and if applicable, proponents, must always consult with TTN with the intent to accommodate, by taking all feasible steps, TTN's legitimate concerns about the impact of the development project or decision.
- f. TTN must be consulted by the Crown and if applicable, proponents, from the earliest stages of any proposed development project or decision which may have an impact on TTN. In this way, strategic and long-term planning is facilitated and TTN's input can be taken into account in the consideration of relevant alternatives to the project or decision, its design, and assessment of its environmental and socioeconomic effects. This should be a demonstrable benefit to the planning exercise, and greatly reduce the potential for conflict at later stages.
- g. While the Crown may delegate procedural aspects of the consultation and accommodation process to the proponent, it is expected, at a minimum, to remain engaged and to maintain an oversight role over the entire process, and will continue to fulfill its responsibilities to TTN as described in section 6.1 of the Protocol.
- h. By virtue of the Treaty (Treaty No. 9), and the Constitutional protection of its Aboriginal and Treaty rights, TTN is not a third-party stakeholder as compared with those who do not have Aboriginal and Treaty rights and a special relationship with the Crown.

- i. The Crown and proponent are expected to fund, and/or ensure funding is provided, for all reasonable costs of TTN to participate in a meaningful and informed way in the consultation and accommodation process, for any development project or decision which may have an impact on TTN.
- j. The Crown must not dispose of, or grant to any party any interest in land which would have an impact on TTN (either in its Traditional Territory, or which would impact its Treaty rights) without the prior and informed consent of TTN.
- k. TTN is a respected and principled steward of the biophysical environment. TTN's input and perspective in any consultation and accommodation process will likely include the use of traditional ecological and cultural knowledge, alongside knowledge from Western scientific and technical sources.
- l. TTN recognizes the need to identify and develop new and appropriate ways through which aboriginal and non-aboriginal parties may create sustainable development opportunities from the resources that exist within TTN's Traditional Territory.

6.0 Responsibilities

6.1 Responsibilities of the Crown

Fundamentally, it is the responsibility of the Crown to operate in good faith and uphold the Honour of the Crown, and fulfill its duties towards TTN with respect to Treaty and Aboriginal rights. In practice, in the context of all development projects and decisions which may impact TTN, this entails:

- Actively participating in, and abiding by the terms of, the consultation and accommodation process set out in the Protocol.
- Acting with honour, integrity, fairness, and in good faith, when dealing with TTN.
- Providing full and ongoing disclosure of information with respect to the project or decision of interest.
- Consulting with an intention to accommodate TTN's concerns, when possible at an early stage in the planning, by attempting to mitigate impacts or infringements on TTN's rights, and limit damage done to the biophysical environment in TTN's Traditional Territory.
- Undertaking and disclosing to TTN an assessment of the extent of its Duty to Consult.
- Taking a leadership and oversight role in the consultation and accommodation process, consistent with the role and duty of the Crown.
- Providing early and ongoing opportunities for TTN to voice its concerns, comment on key outputs of any decision-making and planning process, and have a meaningful and influential role in the decision-making and planning process.
- Adjusting timelines of development projects or decisions, without causing undue hardship to the Crown or any proponent, until such time as TTN has fully participated in, considered and identified its concerns, and had these concerns accommodated with respect to such projects or decisions by either the Crown or the proponent, as applicable.
- Ensuring the consultation and accommodation process is adequately and securely funded, and providing funding to TTN for this purpose where applicable.

- Ensuring the consultation and accommodation process is coordinated amongst all levels of government.

6.2 Responsibilities of Proponents

Proponents may have been delegated procedural aspects of consultation by the Crown, and have a moral imperative and business interest in engaging TTN in meaningful consultation about any development project or decision they are pursuing which may have an impact on TTN's rights or Traditional Territory. TTN's consent for such projects, if provided, is an important component of project feasibility and sends an important message to investors and/or stakeholders. Proponents are therefore urged to abide by the following in going forward with a meaningful consultation and accommodation process with TTN:

- Actively participating in, and abiding by the terms of, the consultation and accommodation process set out in the Protocol.
- Acting in good faith when dealing with TTN
- Providing full and ongoing disclosure of information with respect to the project or decision of interest, and potential impacts.
- Consulting with an intention to accommodate TTN's concerns, by attempting to mitigate or compensate for impacts or infringements on TTN's rights, and limit damage done to the biophysical environment in TTN's Traditional Territory.
- Adjusting timelines of the development project or decision to allow TTN adequate time to fully participate in, consider and identify its concerns, and respond to the consultation and accommodation process.
- Seeking out opportunities to increase TTN's comfort with or trust in the project, through means such as community environmental monitoring, community liaison or oversight committees or staff, a role in the proponent's project planning and decision-making, etc.
- Seeking out opportunities to increase TTN's capacity and benefits arising from the project such as economic and human development opportunities, support for community strategic or economic development planning or community-based land-use planning, etc.
- Entering into and actively participating in dispute resolution processes, if necessary, to reach a mutually acceptable agreement to accommodate TTN's concerns.

6.3 Responsibilities of TTN

TTN will fulfill the following responsibilities in upholding the integrity of the Protocol, as an expression of its ultimate responsibility to protect its rights and Traditional Territory and further the sustainability of its people:

- Actively participating in, and abiding by the terms of, the consultation and accommodation process set out in the Protocol, including those terms agreed to in project-specific consultation workplans.
- Acting with honour, integrity, and good faith when dealing with the Crown and proponents.
- Sharing information provided by the Crown and proponents about the project or decision of interest with its members, as applicable.

- Where applicable, assistance and/or advice in gathering the views and perspectives of its members on the development project or decision of interest.
- Entry and active participation in dispute resolution processes, if necessary, to reach a mutually acceptable agreement to accommodate TTN's concerns.
- Suggesting ways that the Crown or proponent could adjust timelines to allow TTN adequate time to fully participate in, consider and identify its concerns, and respond to the consultation and accommodation process.
- Suggesting opportunities to increase TTN's comfort with or trust in the project.
- Suggesting opportunities to increase TTN's capacity and benefits arising from the project.

7.0 Trigger for Consultation

The consultation and accommodation process set out in the Protocol is triggered when the Crown is contemplating any development project or decision, or is aware of any proposed development project by proponents that may have an impact on TTN.

Unless TTN otherwise decides, if any development project or decision is underway before consultation with TTN is completed and such consultation would have been triggered, the Crown and where applicable the proponent, must undertake consultation and if applicable, accommodation of TTN. TTN expects the Crown to suspend such projects or decisions where to do so would not cause undue hardship to the Crown or any relevant proponent, until consultations are complete.

7.1 Content of Notice about Project or Decision

A proponent or the Crown must give notice early in the project's planning cycle, as soon as a proponent is considering developing a project in, or that could affect TTN Traditional Territory.

The notice should be a letter that includes:

- Key proponent/Crown contact names and roles, in order of seniority
- a statement of the nature of the decision or project being considered
- a brief synopsis of the details of the matter to be decided or project proposed, including a map
- a summary of readily identifiable potential impacts of the decision or project
- a description of any process, activities, timeline or limitations associated with the decision or the project
- contact information for the designated representative of the Crown and Proponent
- an indication of when and how TTN will receive a comprehensive information package about the decision or project being considered
- a list of reports and studies that the proponent will prepare in support of the project
- a request for a formal meeting regarding the proponent's plans and interests in the proposed project.

8.0 The Consultation and Accommodation Process

The consultation and accommodation process is described in detail below. A consultation and accommodation process flow chart is shown in Figure 1 which summarizes the process.

8.1 Step One- Initial Contact and Notification

8.1.1 Initial Contact and Engagement (Proponent)

Early in any project planning cycle and as soon as a proponent is considering a project, a proponent must contact and notify TTN by letter containing the information set out above.

TTN will generally respond within 5-10 business days to the request for a meeting, and will arrange for the meeting at a location agreeable to both parties. If such response does not occur within the aforementioned time period, the proponent cannot assume that the TTN has no concerns with the Project and will need to contact TTN's Band Administrator to determine if the notification was received.

TTN will inform the proponent ahead of time if it is their expectation that the proponent will cover all of TTN's expenses for this meeting.

Prior to the meeting, the proponent will be requested to forward a workplan of their proposed project as well as any publically known/available history of activities for the project site.

More than one meeting may be required for meaningful engagement to occur between TTN and the proponent, in particular to understand the scope and implications of the proposed project.

8.1.2 Notification (the Crown)

Before any development project or decision is commenced or approved, and early in any consideration or planning cycle, the responsible agency of the Crown must notify and inform TTN of the proposed project or decision by way of letter containing the information set out above

Letters of notification must be sent to the TTN Representatives identified in Schedule 2 of the Protocol. In most cases, TTN will confirm their notification of such letters within 5-10 business days. If such confirmation does not occur within the aforementioned time period, Crown representatives need to contact TTN's Band Administrator to determine if the notification was received.

Note that, in this figure, TTN may also include the Moose River Basin Environmental Custodial Body

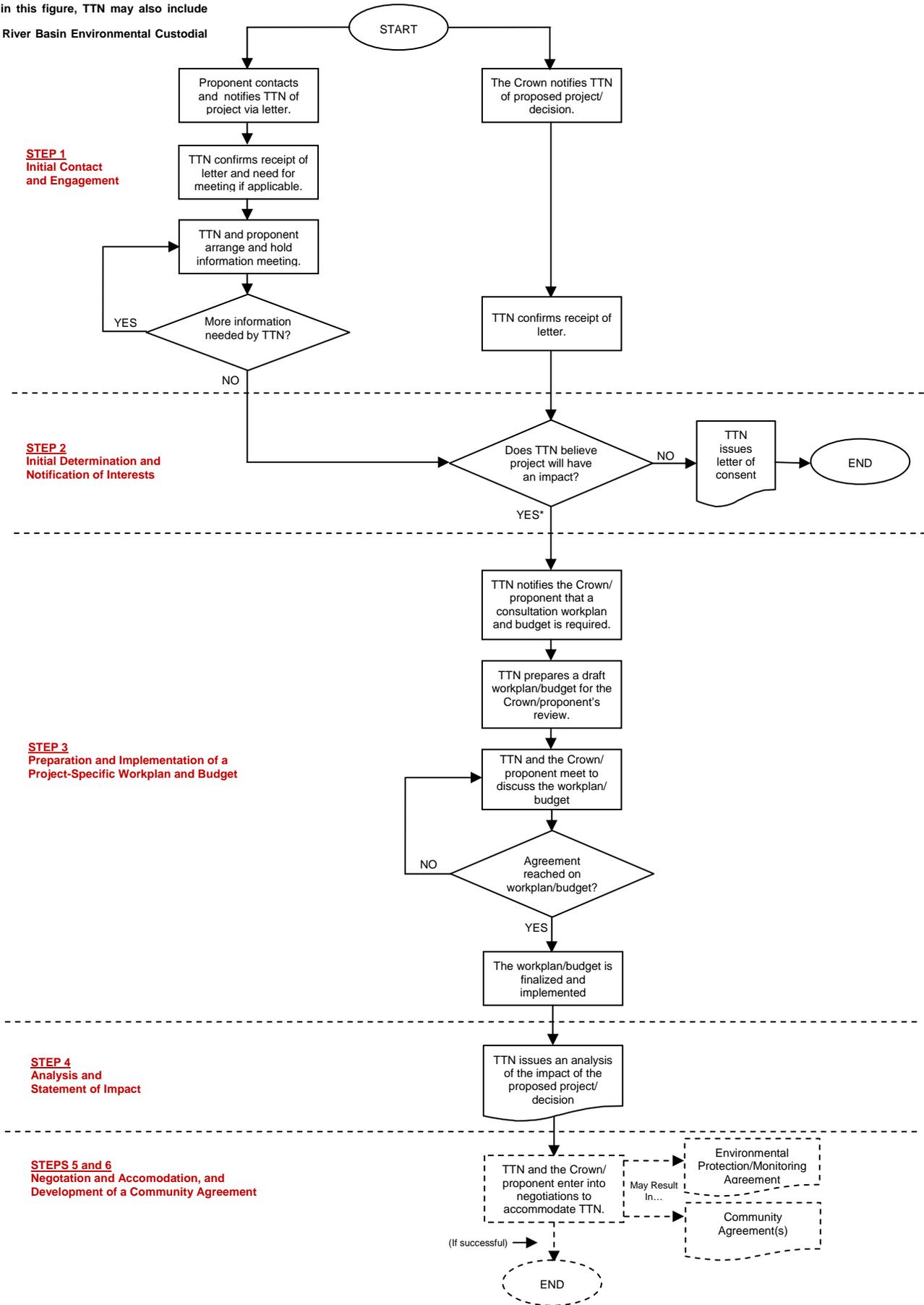


Figure 1: Consultation and Accommodation Process Flow Chart

*Also applies if TTN is uncertain about whether an impact will arise.

8.2 Step Two- Initial Determination and Notification of Interests (TTN)

TTN shall respond to the Crown's letter of notification, indicating whether the proposed development project or decision has a potential impact on TTN.

If TTN believes that the project or decision will not impact its rights or Traditional Territory, TTN will notify the Crown and proponent by letter of its consent, and any associated conditions. The kind of activity that would receive consent without additional consultation and accommodation would include: routine road maintenance, small road side pits, microfit roof mounted solar projects. This letter will generally be issued within 30 days from receipt of the Crown's notification letter if this is the case, at which point the consultation and accommodation process would then be considered completed.

If TTN feels that the proposed development project or decision has the potential to impact on TTN, then additional steps in the consultation and accommodation process need to be completed, as outlined below.

8.3 Step Three- Preparation and Implementation of a Project-specific Consultation Workplan and Budget (if required)

In the event that TTN identifies potential impact(s) on its rights or Traditional Territory, then it may require further information, expertise, and time to analyze the information prior to providing their response. TTN may also require additional resources of either the Crown or the proponent to conduct its review and analysis of the proposed development project or decision. It is at this point that TTN may seek to establish a mutually agreeable project-specific consultation workplan and budget with the Crown and/or proponent. The process for this will be as follows:

1. TTN will notify the Crown and proponent that a project-specific consultation workplan and budget is required, and will describe its initial needs for further information, expertise, time, and financial resources to participate meaningfully in the consultation process.
2. TTN will prepare a draft project-specific workplan and budget for supporting TTN's meaningful participation in the consultation process, and provide it to the proponent for review.
3. TTN will arrange a meeting at a mutually agreeable time and location with the Crown and/or proponent to discuss and agree upon the terms of the consultation workplan and budget. Further meetings may be required if no agreement can be reached at this point, and whose cost will be added to the consultation budget.
4. Upon reaching agreement on the terms of a project-specific consultation workplan and budget, the Crown and/or proponent will prepare and send a final version to all parties to the agreement, including TTN.
5. The final consultation workplan and budget are implemented, and amended periodically as required.

The workplan may consist of any of the following elements, as applicable:

- A list of contact persons for all parties to ensure proper and effective communication
- Information requirements of TTN, their formats, content, and timing
- Information required from TTN, how it should be collected and provided
- Requirements of TTN for expertise, or legal advice or input, when it is required and for how long

- Consultation and negotiation meetings, their locations, formats, participants, goals, and timing
- Internal community consultation requirements, their locations, formats, goals, participants, and timing
- TTN's requirements for commenting on and participating in EA and/or other regulatory processes related to the development project or decision.
- Mechanisms for implementation, monitoring and follow-up during the life of project development

The budget may consist of any of the following elements, as applicable:

- Expenses to collect, copy, and disseminate information
- Expert fees and expenses
- Legal fees and expenses
- Fees or honoraria and expenses for TTN Representatives (including youth and elder participants or observers) and the Moose River Basin Environmental Custodial Body elders for their work in the consultations and negotiations
- Meeting costs
- Internal community consultation costs
- Costs for the Chief and Council to attend any meeting that is specific to the project, which can include travel, honoraria or fees depending on the intensity of their involvement

TTN expects the Crown and proponent, if applicable, to abide by the terms of the final consultation workplan and budget, and for the Crown to cover the budgeted costs or to ensure that the proponent covers such costs. TTN will in turn abide by said terms.

8.4 Step Four- Analysis and Statement of Impact (if required)

Once information about the project is fully disclosed and, if applicable, the consultation workplan has been implemented to TTN's satisfaction, TTN will carry out an analysis and issue a statement of the impact of the proposed development project or decision on its Aboriginal and Treaty rights.

8.5 Step Five- Negotiation and Accommodation (if required)

Once an impact is identified, the Crown and/or the proponent shall enter into discussions with TTN to determine how to reduce the impacts to satisfy TTN's concerns. At this stage it may be necessary as a procedural matter, to invite the proponent to participate if they have not already participated up to this point.

This step in the process includes the negotiation of any type of environmental protection/monitoring agreement. The environmental and rights issues must be dealt with separate from, and before economic benefits are negotiated.

Other community agreements with TTN may be co-management, impact benefits (IBA), revenue sharing, compensation, or other appropriate means to address TTN's concerns and to ensure the Crown has dealt honourably with TTN, and the proponent has not been a party to an infringement of TTN's rights.

If the analysis results in finding that the proposed project or decision is determined to affect any identified sensitive sites, areas of traditional activities, or of environmental concern, TTN has the option to consent to the project or decision as it pertains to that area. Such consent will be subject to the conditions to be negotiated. TTN also has the option to request that the proposed project or decision does not take place.

8.6 Step Six- Negotiation of a Community Agreement (if required)

If the concerns of TTN can be met to its satisfaction, then the proponent and TTN may enter into negotiations to determine suitable economic development opportunities for TTN.

8.7 Step Seven – Implementation, Monitoring and Follow-up

The success of consultation and, where appropriate, accommodation measures will be realized in the implementation, monitoring and follow up phase. The Proponent or Crown will discuss with TTN an implementation plan, including monitoring the project to ensure that commitments are fulfilled and ongoing follow up.

The Proponent or Crown will maintain continued contact with the TTN throughout the life of the project to ensure that any new developments or impacts on TTN Rights are dealt with promptly.

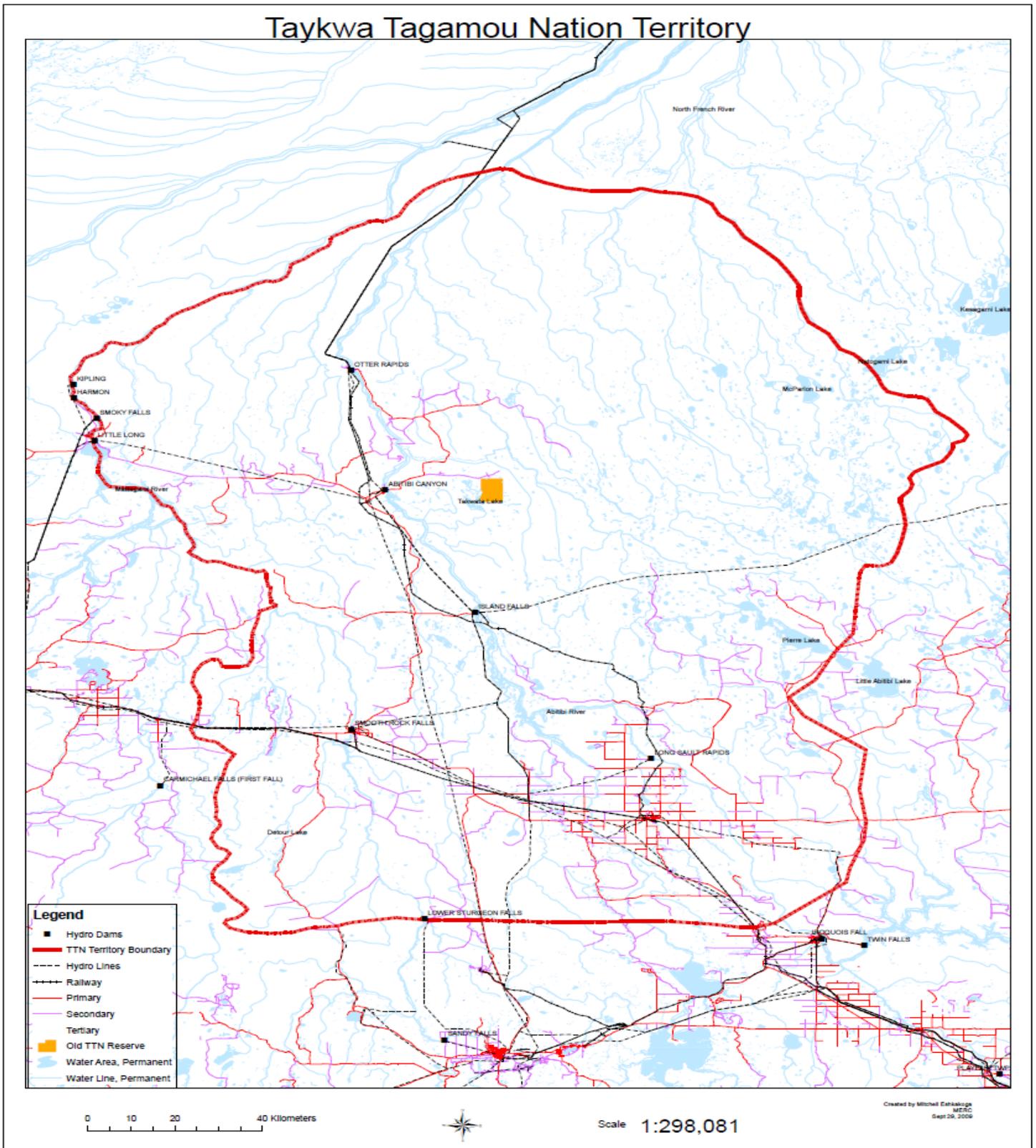
9.0 General

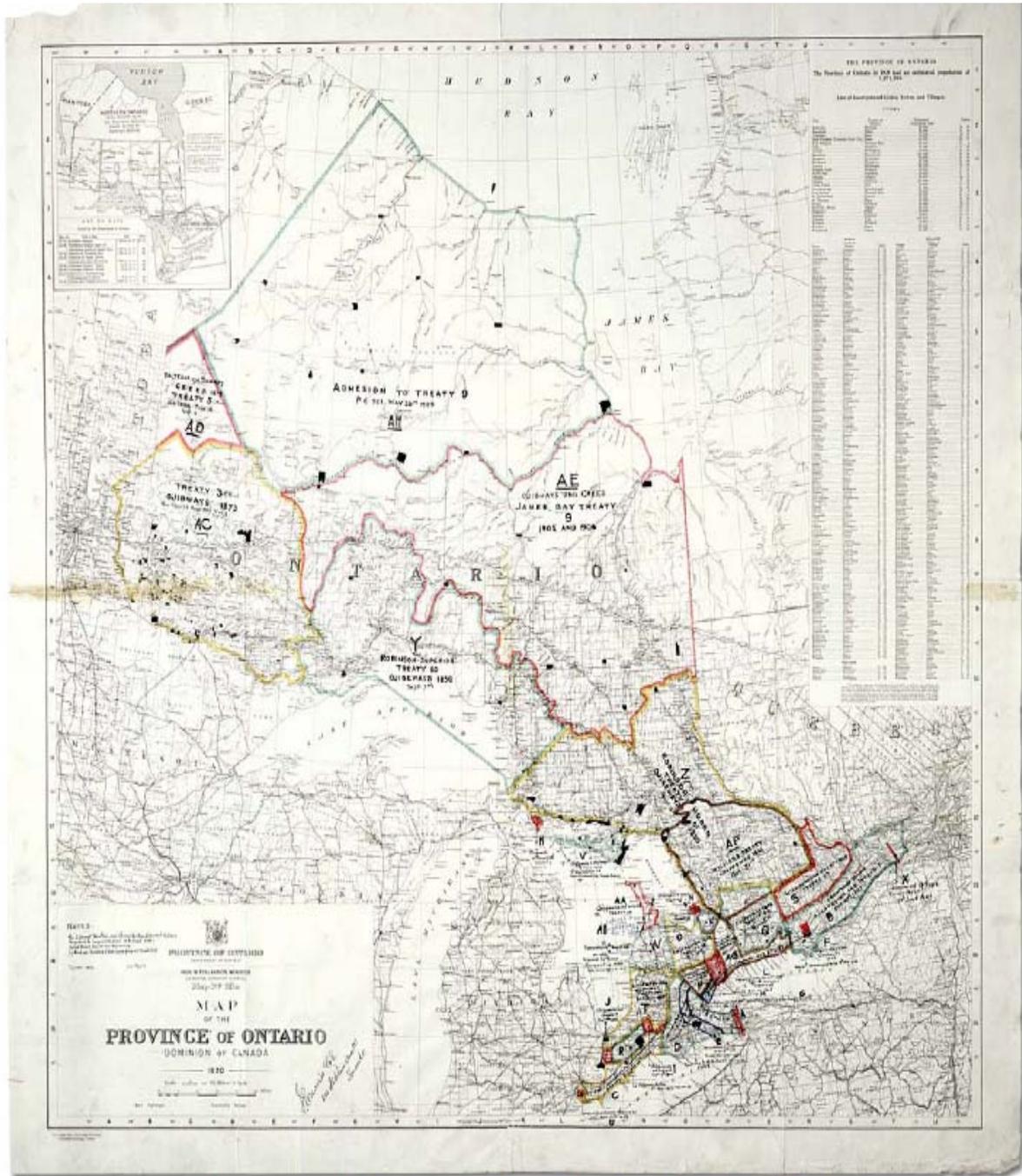
- a. TTN may determine whether it wishes to hold any aspect of the consultation and accommodation process with the Crown, the proponent, or both, and expects the parties to respect such decisions if they are reasonable.
- b. Any party to the consultation and accommodation process set out in the Protocol may involve such experts, lawyers, or support persons as are reasonably required.
- c. Parties to the consultation and accommodation process may enter into confidentiality agreements and may agree that all relevant and related discussions and correspondence are confidential to the extent allowed by law.
- d. This Protocol will be periodically reviewed and amended to improve its clarity or application. Any ongoing consultations shall not be affected by changes to the Protocol, unless agreed to by all parties.

Appendices/Schedules to be Added

- A. Treaty and traditional territory and hunting and harvesting maps
- B. Key TTN contacts

APPENDIX A
Treaty and Traditional Territory, Hunting and Harvesting Maps





[Map showing Indian treaties in Ontario] James L. Morris, [base] Map of the province of Ontario: Dominion of Canada. Map No. 20a. Ontario: Department of Surveys, 1931
 J. L. Morris fonds
 Reference Code: F 1060-1-0-51, Folder 1, map 14, 13356 (63/5)
 Archives of Ontario, 10022329

APPENDIX B

Key TTN Contacts:

Chief Linda Job	1-705-465-2923
Councillor Roger Archibald	1-705-272-1933
Councillor Bruce Archibald	1-705-465-6315
Councillor Tina Archibald	1-705-272-1800
Councillor Peter Archibald	1-705-365-6549

Address:

Taykwa Tagamou Nation
RR# 2 box 3310
Cochrane, ON
POL 1C0

Ph.# 1 705 272 5766
Fax# 1 705 272 5685

Lands and Resources Portfolio
RR# 2 box 3340
Cochrane, ON
POL 1C0

Attention: Peter Archibald

Phone: 1-705-272 6896
Cell: 1-705-465 6549
Cell: 1-705 365-1871
E-mail: Peter_archibald@hotmail.com

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