



TEMAGAMI FIRST NATION

BEAR ISLAND,
LAKE TEMAGAMI, ONTARIO

<contact information removed>

Within the Terms of Reference, it is unclear as to how the review panel plans to consult Temagami First Nation, and how the Review Panel plans to consider the values and priorities of Temagami First Nation. Where the terms of reference lack detail, we view this as an opportunity for each individual first Nation to input their own consultation procedures and policies on sharing information about values and priorities.

Consultation Procedures:

Temagami First Nation's detailed consultation procedure has four required steps – notice, screening, consultation, and implementation and monitoring. These steps are outlined in detail below, and the full document will be attached by email.

Step 1: Notice

The Proponent must submit to TFN/TAA, electronically by e-mail to the contact people in Appendix B:

- Notice of Intent to submit a plan or application at least thirty (30) days prior to submission of a plan,
- Notice of Intent to conduct any work that requires any permit applications to Ontario or Canada,

The Notice must provide all or any of the following information:

- intent to submit applications for other regulatory permits or approvals and any withdrawal or adjustment to same
- description of the proposed activity
- description of the approvals process, timeline and deadlines
- contact information for the designated representative of the Crown or Proponent
- reference maps of the proposed activity site or area
- hard copies and electronic copies of reports, studies, and maps that are available
- any other information that may help to assess the impacts of the proposed activity on the environment of n'Daki Menan or Aboriginal and Treaty rights.

TFN/TAA may prioritize those proposals that may cause immediate adverse impacts.

Step 2: Screening

TFN /TAA will respond to the Crown and Proponent in one of three ways:

- request for more information from the Crown and/or Proponent to adequately assess the proposal and/or ask the Proponent to attend a meeting with TFN/TAA Chiefs and Councils, or designate
- provide comments to the Crown and/or Proponent about the proposed activity and ask the Crown and/or Proponent to follow-up as the work proceeds
- inform the Crown and/or Proponent that TFN/TAA expects to engage in a consultation process and ask the Proponent to attend a meeting with the Chiefs and Councils or designate.

Step 3: Consultation

If the response following the screening is to enter into a consultation process, the Proponent may be asked to sign a Memorandum of Understanding

The MOU will identify the consultation process and address accommodation requirements that includes, but is not limited to, the following:

- Work plan, timeframe, and budget to undertake consultations and review the proposal, including expert legal, technical, or other advice
- Request to undertake studies, or to expand on existing studies
- TFN/TAA training, employment, and business opportunities with the early project
- Assurance that successors and assigns are bound by the negotiated obligations
- Modifications to the project to address any adverse impact to TFN/TAA's Aboriginal or Treaty rights, which may include monetary compensation
- Funds to cover TFN/TAA's consultation costs or to enable TFN/TAA to develop capacity to benefit from the activity
- Funds to cover TFN/TAA's costs to monitor the proposed work.

TFN/TAA and the Crown and Proponent will focus consultations on getting TFN/TAA ready to benefit from the activity, to review environmental assessments and other permit studies to assess potential impacts, develop mitigation plans and measures.

The Crown and the Proponent may be asked to enter into Impact Benefit Agreement (IBA) or other type of Agreement that is appropriate to provide benefits to TFN/TAA and also to accommodate potential impacts.

The Proponent may be asked to enter into negotiations that may include, but not be limited to the following:

- Project modifications to minimize potential environmental impacts
- Measures to avoid or protect burial, heritage, sacred, and ceremonial sites
- Monetary compensation to TFN/TAA for the impacts on Aboriginal and Treaty rights

- Economic opportunities to the TFN/TAA, such as commercial enterprises, partnerships, or joint ventures
- Education and training opportunities/programs, such as internships, apprenticeships, scholarships, and on-site training
- Revenue/profit sharing arrangements
- Environmental permit review and monitoring program with TFN/TAA members conducting the monitoring
- Assurance that successors and assigns are bound by the negotiated obligations
- Provision funds to fully cover TFN/TAA's costs to consult with the Crown and Proponent
- Throughout the Agreement negotiations process, the Crown and Proponent and TFN/TAA will both directly communicate to community members about the Agreement and project, and TFN/TAA will determine the appropriate Agreement ratification process.

Step 4: Implementation and Monitoring

The success of consultation, mitigation, and accommodation measures will be assessed through implementation, monitoring and follow-up.

TFN/TAA together with the Crown and Proponent will develop and continually update an implementation plan and time-line that will ensure that the terms negotiated are fulfilled.

TFN/TAA together with the Crown and Proponent will develop a monitoring program, which includes TFN/TAA members to actively monitor the impacts from the project on the environment.

TFN/TAA together with the Crown and Proponent will review any agreements or MOUs at regular intervals to determine whether amendments are required to any agreements or MOUs between the parties in order to better protect TFN/TAA Aboriginal and Treaty rights.

Exchange of Information:

Temagami First Nation would also like to address the potential exchange of information and data. The terms of reference refer briefly to the submission of information in confidence, and Temagami First Nation would like to specify that the principles of OCAP (Ownership, Control, Access, and Possession) are key components of our Conditions of Use and Release Agreement. The Conditions of Use and Release document specifies that information collected, or studies carried out, by Temagami First Nation will always remain the intellectual property of Temagami First Nation.

**TEMAGAMI FIRST NATION (TFN)/
TEME AUGAMA ANISHNABAI (TAA)
DRAFT CONSULTATION PROTOCOL
FOR ACTIVITIES
IN N'DAKI MENAN**

TABLE OF CONTENTS

1	TFN/TAA RIGHTS	3
2	PURPOSE	3
3	PRINCIPLES	4
4	CONSULTATION PROCEDURE	4
	Step 1: Notice.....	4
	Step 2: Screening	5
	Step 3: Consultation.....	5
	Step 3: Consultation Matrix	7
	Step 4: Implementation and Monitoring	7
6	RESOLUTION OF DISPUTES.....	7
	APPENDIX A: TRADITIONAL TERRITORY OF TFN/TAA (N'DAKI MENAN).....	8
	APPENDIX B: CONTACTS	9

1 TFN/TAA RIGHTS

- 1 TFN/TAA have a sacred and inalienable relationship with n'Daki Menan. TFN/TAA have a shared interest to protect the integrity of n'Daki Menan and ensuring sustainable development within n'Daki Menan. Appendix A is a map of n'Daki Menan.
- 2 N'Daki Menan ("Our Land") is the traditional lands and waterways occupied and used for thousands of years, and currently used by the Temagami First Nation/Teme-Augama Anishnabai ("TFN/TAA").
- 3 The Supreme Court of Canada recognized that n'Daki Menan was and is the traditional territory of TFN/TAA, and that the Crown has failed to comply with its fiduciary obligations to TFN/TAA (*Ontario v. Bear Island Foundation* [1991] 2 SCR 570. TFN/TAA has a strong case of inherent Aboriginal title and rights over n'Daki Menan, of which the Crown has knowledge. These matters currently are the subject of negotiations between the Crown and TFN/TAA.
- 4 In an Indenture of Accord dated September 7, 1978 the surrounding First Nations recognized n'Daki Menan to be the ancestral lands of the TAA.
- 5 The *United Nations Declaration on the Rights of Indigenous Peoples* provides that indigenous peoples have the right to own, use, develop and control lands that they possess by reason of traditional ownership, or other traditional occupation or use, and the right to maintain and strengthen their distinctive spiritual relationship with, and to uphold their responsibilities to future generations in regard to, these lands (Articles 25 and 26).
- 6 TFN/TAA have constitutionally protected Aboriginal and Treaty rights and the Crown and any third party (Proponent) must engage TFN/TAA when proposing any activity on n'Daki Menan to determine any adverse impact upon any of TFN/TAA's Aboriginal or Treaty rights, and to accommodate those rights through mutually acceptable negotiations.

2 PURPOSE

- 1 Whereas activities of third parties and conduct by the Crown within n'Daki Menan have caused, and continue to cause adverse impact on the TFN/TAA rights, and trigger a duty to consult and accommodate for the impacts.
- 2 Therefore TFN/TAA developed this Consultation Protocol ("Protocol") to set out TFN/TAA's expectations for consultation and accommodation regarding proposed activities within n'Daki Menan.

3 PRINCIPLES

- 1 Consultations must be undertaken in good faith in order to be meaningful and enhance relations. This includes commencing the consultation process at the earliest stages of decision-making, entering the process with the willingness to change the project as a result of consultations.
- 2 The Crown and Proponent will make available financial assistance to the TFN/TAA to participate meaningfully in the consultation process.
- 3 Consultations must be transparent and flexible. This includes implementing workable timelines, consistent communications, and identifying solutions.
- 4 Nothing in this Protocol nor the implementation of this Protocol shall be interpreted so as to abrogate or derogate from TFN/TAA Aboriginal and Treaty rights, regardless of whether such rights are established or defined at the time of execution or implementation of this Protocol. Nothing in this Protocol shall constitute TFN/TAA's endorsement of legislation that they had no meaningful role in creating or administering or that does not reflect an honourable reconciliation of pre-existing TFN/TAA jurisdiction with the Crown's asserted jurisdiction. This Protocol is without prejudice to TFN/TAA Title and Rights and to any future settlement of the land question that reconciles pre-existing TFN/TAA sovereignty with the asserted sovereignty of the Crown.
- 5 Consultations will consider and respect the natural and ecological integrity of n'Daki Menan. This includes incorporating traditional ecological knowledge, and environmentally sustainable practices and principles in decision-making processes.
- 6 Activities within n'Daki Menan must benefit TFN/TAA and its citizens, through employment, growth of TFN/TAA businesses, and sharing in the revenue from resource extraction.

4 CONSULTATION PROCEDURE

The TFN/TAA consultation requirements are described below.

STEP 1: NOTICE

- 1 The Proponent must submit to TFN/TAA, electronically by e-mail to the contact people in Appendix B:
 - a) Notice of Intent to submit a plan or application at least thirty (30) days prior to submission of a plan,
 - b) Notice of Intent to conduct any work that requires any permit applications to Ontario or Canada,

- 2 The Notice must provide all or any of the following information:
 - a) intent to submit applications for other regulatory permits or approvals and any withdrawal or adjustment to same
 - b) description of the proposed activity
 - c) description of the approvals process, timeline and deadlines
 - d) contact information for the designated representative of the Crown or Proponent
 - e) reference maps of the proposed activity site or area
 - f) hard copies and electronic copies of reports, studies, and maps that are available
 - g) any other information that may help to assess the impacts of the proposed activity on the environment of n'Daki Menan or Aboriginal and Treaty rights.
- 3 TFN/TAA may prioritize those proposals that may cause immediate adverse impacts.

STEP 2: SCREENING

- 1 TFN /TAA will respond to the Crown and Proponent in one of three ways:
 - a) request for more information from the Crown and/or Proponent to adequately assess the proposal and/or ask the Proponent to attend a meeting with TFN/TAA Chiefs and Councils, or designate
 - b) provide comments to the Crown and/or Proponent about the proposed activity and ask the Crown and/or Proponent to follow-up as the work proceeds
 - c) inform the Crown and/or Proponent that TFN/TAA expects to engage in a consultation process and ask the Proponent to attend a meeting with the Chiefs and Councils or designate.

STEP 3: CONSULTATION

- 1 If the response following the screening is to enter into a consultation process, the Proponent may be asked to sign a Memorandum of Understanding
- 2 The MOU will identify the consultation process and address accommodation requirements that includes, but is not limited to, the following:
 - a) Work plan, timeframe and budget to undertake consultations and review the proposal, including expert legal, technical, or other advice
 - b) Request to undertake studies, or to expand on existing studies
 - c) TFN/TAA training, employment, and business opportunities with the early project
 - d) Assurance that successors and assigns are bound by the negotiated obligations
 - e) Modifications to the project to address any adverse impact to TFN/TAA's Aboriginal or Treaty rights, which may include monetary compensation

- f) Funds to cover TFN/TAA's consultation costs or to enable TFN/TAA to develop capacity to benefit from the activity
 - g) Funds to cover TFN/TAA's costs to monitor the proposed work.
- 3 TFN/TAA and the Crown and Proponent will focus consultations on getting TFN/TAA ready to benefit from the activity, to review environmental assessments and other permit studies to assess potential impacts, develop mitigation plans and measures.
- 4 The Crown and the Proponent may be asked to enter into Impact Benefit Agreement (IBA) or other type of Agreement that is appropriate to provide benefits to TFN/TAA and also to accommodate potential impacts.
- 5 The Proponent may be asked to enter into negotiations that may include, but not be limited to the following:
- a) Project modifications to minimize potential environmental impacts
 - b) Measures to avoid or protect burial, heritage, sacred, and ceremonial sites
 - c) Monetary compensation to TFN/TAA for the impacts on Aboriginal and Treaty rights
 - d) Economic opportunities to the TFN/TAA, such as commercial enterprises, partnerships, or joint ventures
 - e) Education and training opportunities/programs, such as internships, apprenticeships, scholarships, and on-site training
 - f) Revenue/profit sharing arrangements
 - g) Environmental permit review and monitoring program with TFN/TAA members conducting the monitoring
 - h) Assurance that successors and assigns are bound by the negotiated obligations
 - i) Provision funds to fully cover TFN/TAA's costs to consult with the Crown and Proponent
- 6 Throughout the Agreement negotiations process, the Crown and Proponent and TFN/TAA will both directly communicate to community members about the Agreement and project, and TFN/TAA will determine the appropriate Agreement ratification process.

Consultation Matrix

Level of Impact on Aboriginal and Treaty Right			
Low		→	High
No Demonstrated Impact	Low Impact	Moderate Impact	Intensive Impact
Not applicable	Steps 1 to 4	Steps 1 to 4	Steps 1 to 4
Low		→	High
Level of Consultation Required			

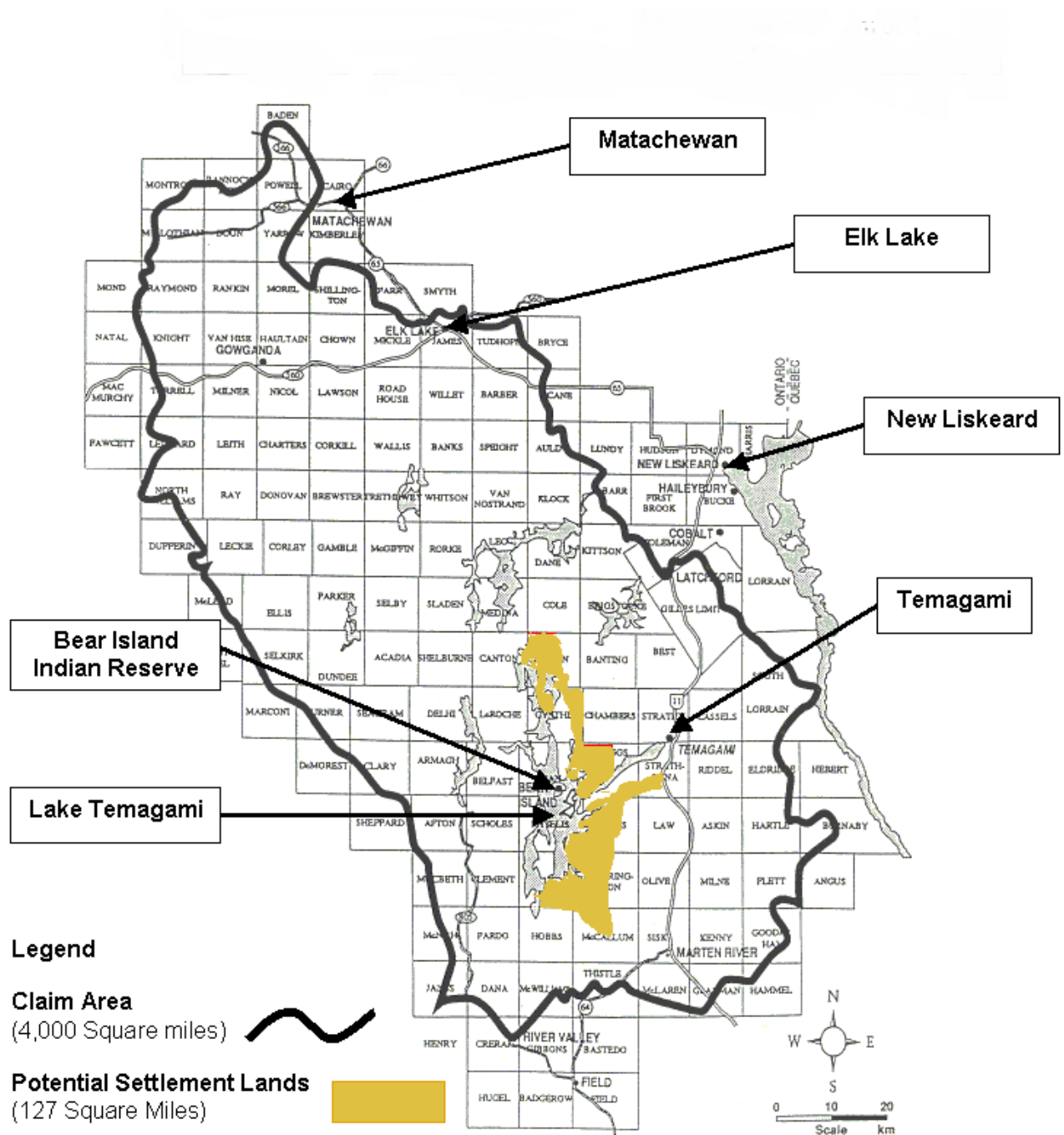
STEP 4: IMPLEMENTATION AND MONITORING

- 1 The success of consultation, mitigation, and accommodation measures will be assessed through implementation, monitoring and follow-up.
- 2 TFN/TAA together with the Crown and Proponent will develop and continually update an implementation plan and time-line that will ensure that the terms negotiated are fulfilled.
- 3 TFN/TAA together with the Crown and Proponent will develop a monitoring program, which includes TFN/TAA members to actively monitor the impacts from the project on the environment.
- 4 TFN/TAA together with the Crown and Proponent will review any agreements or MOUs at regular intervals to determine whether amendments are required to any agreements or MOUs between the parties in order to better protect TFN/TAA Aboriginal and Treaty rights.

5 RESOLUTION OF DISPUTES

- 1 TFN/TAA and the Proponent may also have recourse to dispute resolution processes in any Agreement they have signed.

APPENDIX A Traditional Territory Of TFN/TAA (n'Daki Menan)



APPENDIX B:
TFN/TAA Consultation Process

Contacts: Please send Notices required by this Protocol by email.

Attention: Robin Koistinen, Lands and Resource Manager
<contact information removed>

Attention: Doug McKenzie, Resource Development Advisor
<contact information removed>

Mailing Address:
Temagami First Nation
Bear Island
Lake Temagami, ON <contact information removed>