

2016



# WASAUKSING FIRST NATION EXTERNAL CONSULTATION AND ACCOMMODATION PROTOCOL

OUR COMMUNITY MOVING FORWARD



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# Wasauksing First Nation External Consultation and Accommodation Protocol



## 1.0 Preamble

**Whereas:** WASAUKSING FIRST NATION is a part of the Ojibway, Potawatomi and Odawa people who together comprise a historical affiliation known as the Three Fires Confederacy; and

**Whereas:** WASAUKSING FIRST NATION and our CITIZENS possess ABORIGINAL AND TREATY RIGHTS and interests over lands and RESOURCES within our WASAUKSING-ANISHINAABE TERRITORY as more particularly shown in Appendix "A" hereto; and

**Whereas:** Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing ABORIGINAL AND TREATY RIGHTS of the Aboriginal peoples of Canada; and

**Whereas:** the Supreme Court of Canada, in the *Haida, Taku River* and *Mikisew* cases, established that Aboriginal peoples asserting ABORIGINAL AND TREATY RIGHTS must be consulted and accommodated prior to the occurrence of any DECISIONS, conducts and/or ACTIVITIES which may have an IMPACT on those rights and interests of the Aboriginal peoples; and

**Whereas:** WASAUKSING FIRST NATION is ready, willing and able to engage in consultation(s), and where deemed appropriate by WASAUKSING FIRST NATION, to be ACCOMMODATED with respect to, any and all, DECISIONS, conducts and/or ACTIVITIES that may have the potential to IMPACT our collective ABORIGINAL AND TREATY RIGHTS and our lands and RESOURCES within our WASAUKSING-ANISHINAABE TERRITORY; and

**Whereas:** the CROWN and private industry sector PROPONENTS seeking to make DECISIONS and to carry out conducts and/or ACTIVITIES within the WASAUKSING-ANISHINAABE TERRITORY, should only do so in accordance with this PROTOCOL and with the *free, prior and informed consent* of WASAUKSING FIRST NATION; and

**Whereas:** WASAUKSING FIRST NATION has a profound relationship with the land that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator. It is within our Clan systems and our Seven Grandfather Teachings that we recognize and acknowledge our CITIZENS, including our Elders and our children, as knowledge-keepers whose voices warrant the same level of merit and respect as any other accredited sources of expertise.

## 2.0 Name and Adoption of this Protocol

- 2.1 This PROTOCOL shall be known as the *Wasauksing First Nation External Consultation and Accommodation Protocol*.
- 2.2 This PROTOCOL was adopted by the WASAUKSING FIRST NATION Council by way of WASAUKSING FIRST NATION Band Council Resolution # 2016-0078, dated November 10, 2016, and is in full force and in effect immediately.
- 2.3 This PROTOCOL applies to all lands and RESOURCES and all projects, DECISIONS or matters that may IMPACT the rights and/or interests of WASAUKSING FIRST NATION and/or our CITIZENS within our WASAUKSING-ANISHINAABE TERRITORY but does not limit or IMPACT the rights of WASAUKSING FIRST NATION in or to our RESERVE lands, or other lands held for the use and benefit of WASAUKSING FIRST NATION, including, but not limited to, those lands set out in Appendix “B” hereto.
- 2.4 Any reference to the rights and/or interests of WASAUKSING FIRST NATION herein shall be read and construed as meaning the “rights and/or interests of WASAUKSING FIRST NATION and/or our CITIZENS”.



Photo Credit: Jodi Baker

### 3.0 Aboriginal and Treaty Rights

- 3.1 For the purposes of the *Wasauksing First Nation External Consultation and Accommodation Protocol*, the term “ABORIGINAL AND TREATY RIGHTS” is used in a manner that is consistent with Section 35(1) of the *Constitution Act, 1982* which states:

*“The existing ABORIGINAL AND TREATY RIGHTS of the aboriginal peoples of Canada are hereby recognized and affirmed”.*

- 3.2 This *Wasauksing First Nation External Consultation and Accommodation Protocol*, and all actions, ACTIVITIES, DECISIONS or authorizations made pursuant hereto are and shall be interpreted as being without prejudice to any claims, specific claims and/or outstanding land claims asserted by WASAUKSING FIRST NATION with respect to our lands and RESOURCES within our WASAUKSING-ANISHINAABE TERRITORY, including WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS.
- 3.3 All consultations and ACCOMMODATIONS between WASAUKSING FIRST NATION and any municipality or private sector PROPONENT do not absolve the CROWN of its obligation and duty to consult with WASAUKSING FIRST NATION and/or ACCOMMODATE the rights and interests of WASAUKSING FIRST NATION in accordance with Section 35(1) of the *Constitution Act, 1982*.
- 3.4 Notwithstanding anything in this *Wasauksing First Nation External Consultation and Accommodation Protocol*, WASAUKSING FIRST NATION reserves the right to challenge by way of judicial review, application, action, or any other legal, administrative and/or other processes, any ACTIVITY which may potentially pose a threat to WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS.

### 4.0 Non-Derogation

- 4.1 Nothing in this *Wasauksing First Nation External Consultation and Accommodation Protocol* or any actions, ACTIVITIES, DECISIONS or authorizations shall be construed so as to abrogate and/or derogate from the ABORIGINAL AND TREATY RIGHTS of WASAUKSING FIRST NATION.



Photo Credit: Daniella Baker

## 5.0 Application

- 5.1 This *Wasauksing First Nation External Consultation and Accommodation Protocol* applies to the territory over which WASAUKSING FIRST NATION asserts our ABORIGINAL AND TREATY RIGHTS and interests, known as our WASAUKSING-ANISHINAABE TERRITORY, as more particularly defined in Appendix “A” hereto. WASAUKSING FIRST NATION reserves the right to define our WASAUKSING-ANISHINAABE TERRITORY from time to time based upon our traditional, spiritual, communal and historical uses of the land.
- 5.2 This *Wasauksing First Nation External Consultation and Accommodation Protocol* applies to:
- (i) Any consultations engaged between WASAUKSING FIRST NATION and the CROWN DESIGNATE, which includes: the CROWN in right of Canada, the CROWN in right of Ontario and all of their Ministries, cabinets, committees, CROWN corporations, local governments (municipalities and regional districts), agencies, employees, representatives and contracted agents;
  - (ii) Any and all consultations proposed and/or being undertaken with any municipalities and townships within our WASAUKSING-ANISHINAABE TERRITORY; and
  - (iii) All CROWN and private sector PROPONENTS proposing to undertake any ACTIVITIES and/or DECISIONS that may potentially alter and affect the lands, RESOURCES, air and watersheds or any use, benefit or association of WASAUKSING FIRST NATION or our CITIZENS of our WASAUKSING-ANISHINAABE TERRITORY.
- 5.3 **Impacts for Outside Projects** - WASAUKSING FIRST NATION relies on the health of the natural environment in our WASAUKSING-ANISHINAABE TERRITORY for our wellbeing and survival and are recognized stewards of the land and waters, including the upper waterways that may be outside of our WASAUKSING-ANISHINAABE TERRITORY. Therefore, to the extent that any proposed project(s) outside of our WASAUKSING-ANISHINAABE TERRITORY will IMPACT or may IMPACT any lands, rivers, waterways, flora or fauna within our WASAUKSING-ANISHINAABE TERRITORY, such projects will be subject to this PROTOCOL.

## 6.0 Triggers for the Duty to Consult

- 6.1 The duty to consult arises when: (a) the CROWN has KNOWLEDGE of any ACTIVITY, work, or undertaking or proposal for any ACTIVITY, work or undertaking within our WASAUKSING-ANISHINAABE TERRITORY or that may IMPACT our WASAUKSING-ANISHINAABE TERRITORY; (b) any DECISION, approval, permit or other governmental authorization or DECISION is requested with respect to any ACTIVITY, work or undertaking within our WASAUKSING-ANISHINAABE TERRITORY; or (c) any person, firm or corporation (the “PROPONENT”) engages in, plans to engage in or proposes to engage in an ACTIVITY, work or undertaking that may IMPACT WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS, regardless of CROWN KNOWLEDGE, real or CONSTRUCTIVE, of the existence of an ABORIGINAL OR TREATY

RIGHT. They include the undertaking of the following proposed ACTIVITIES, actions and/or DECISIONS, but are not limited to:

- (i) Disposing of any right, title or interest in and to CROWN lands, whether in whole or in part, including any issuances of letters patent, grants of fee simple, land use permits, leases, licences and easements;
- (ii) Disposing of or dealing with any ABORIGINAL AND TREATY RIGHTS to Treaty lands, including permits and public land stewardship securements for wildlife conservation purposes;
- (iii) All land use planning, official five (5) year planning reviews and proposed amendments and/or DECISIONS pertaining to public land use policies by any governmental authority;
- (iv) Any proposed expansions and/or adjustments to municipal/township boundaries or roadways including proposed public access restriction/closures to: a) accessible public roads; b) accessible public land areas; and c) accessible public watersheds and waterways;
- (v) Any recorded mining stake claims, including CROWN sponsored, authorized or approved mapping and exploration activities;
- (vi) All forestry management and logging activities, hydroelectricity, solar and wind development projects, mineral or aggregate operations, mineral exploration, extraction, mining, petroleum resource exploration extractions - oil and shale gas drilling, processing, transportation (transmission or pipeline corridors) or storage;
- (vii) All new construction/reconstruction of roads, dams, water diversions, bridges or any other such infrastructure that may have the potential to IMPACT the environment, forests, flora, lakes, watersheds, waterways, fish, wildlife and air quality;
- (viii) Any PROPONENT ACTIVITY that causes disruptive vibrations and harmful noise pollution to WASAUKSING FIRST NATION CITIZENS, our natural environment and/or our wildlife;
- (ix) Any proposed ACTIVITY that may disturb and/or damage culturally significant sites such as: sacred ceremonial sites, burial grounds, any identified areas of traditional medicines/plants and food harvesting sites, such as sweetgrass, hemlock, berries, hunting and fishing, etc.;
- (x) Any PROPONENT ACTIVITY that may potentially pose serious health risks, physical injury risks and/or result in death to any WASAUKSING FIRST NATION CITIZEN;
- (xi) Any PROPONENT ACTIVITY that may potentially pose structural risks to any CITIZEN household, community infrastructures and business buildings within WASAUKSING FIRST NATION; and
- (xii) Any and all nuclear power and nuclear fuel waste management, including nuclear fuel waste transportation projects.

- 6.2 Any potential risk of adverse IMPACTS to the environment and any other potential health, safety and life-threatening risks that are a consequence of projects and/or ACTIVITIES carried out by any governmental, municipality or private sector PROPONENT will trigger the duty to consult with WASAUKSING FIRST NATION. It is the responsibility of the CROWN, municipality and private sector PROPONENTS to notify WASAUKSING FIRST NATION when it is aware, or ought to be aware, of any such IMPACTS.



Photo Credit: Jennifer Predie

## 7.0 Guiding Principles for Meaningful Consultation

- 7.1 **Honour of the Crown** - The CROWN, in all its dealings with WASAUKSING FIRST NATION, must uphold the honour of the CROWN and undertake consultations in good faith. The Supreme Court of Canada, Council of the Haida Nation v. British Columbia in 2004 stated:

*“The Government’s duty to consult with Aboriginal Peoples and accommodate their interests is grounded in the honour of the CROWN”.*

- 7.2 **Meaningful Engagement** - Meaningful engagement means that WASAUKSING FIRST NATION is placed in a position to make informed DECISIONS and understands the effects/IMPACTS of proposed projects, actions, ACTIVITIES and/or proposed POLICY amendments/DECISIONS that may have IMPACTS to WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS and to ensure that those proposed projects, actions, ACTIVITIES and/or proposed POLICY amendments/DECISIONS addresses the needs, concerns and aspirations of WASAUKSING FIRST NATION. Any projects, ACTIVITIES, conduct or DECISIONS, existing or proposed, that have not been fully explained, reviewed and commented upon by WASAUKSING FIRST NATION and our CITIZENS prior to their commencement, shall be deemed to not have been the subject of “meaningful engagement” with WASAUKSING FIRST NATION.
- 7.3 **Reconciliation** - Without derogating from WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS when ACCOMMODATION is deemed impossible or inadequate, the principle of reconciliation, a reciprocal process between WASAUKSING FIRST NATION and the CROWN and/or a PROPONENT, which strives to reasonably balance both parties’ intents and interests, shall govern and guide, any and all consultation and ACCOMMODATION ACTIVITIES with WASAUKSING FIRST NATION.
- 7.4 **Environmental Protection and Sustainable Development** - WASAUKSING FIRST NATION and our CITIZENS rely upon, and shall continue to rely upon, the health of the natural environment for the wellbeing and survival of all. In fulfilling our environmental stewardship responsibilities, WASAUKSING FIRST NATION shall consider the sustainability of all projects, works, undertakings or developments and the sustainability of all NATURAL RESOURCES, lands, rivers, waterbeds, flora and fauna in light of any actual or proposed projects, works, undertakings or developments and shall require appropriate safeguards, MITIGATION or ACCOMMODATION to protect the future of our WASAUKSING-ANISHINAABE TERRITORY.
- 7.5 **Accommodation** - Fulfilling the CROWN’S duty to WASAUKSING FIRST NATION, the CROWN shall ensure that the necessary steps are taken to address and ACCOMMODATE, where required, WASAUKSING FIRST NATION’S interests, views and concerns with respect to proposed projects/ACTIVITIES and/or DECISIONS that may have potential IMPACTS within our WASAUKSING-ANISHINAABE TERRITORY. It is strongly emphasized that MITIGATION is not considered ACCOMMODATION.

- 7.6 **Sharing in Impact Benefits** - It is the overall presiding principle that WASAUKSING FIRST NATION is entitled to share in the economic wealth that may arise from proposed project developments, actions and/or ACTIVITIES by way of nation-to-nation negotiated IMPACT Benefit Agreements, Memorandums of Understanding and Resource Revenue Benefits Sharing Agreements with the CROWN and/or PROPONENT. WASAUKSING FIRST NATION is a recognized nation-to-nation government and has Aboriginal title through the signing of the *Robinson-Huron Treaty of 1850* and is further enshrined in Section 25 of the *Canadian Charter of Rights and Freedoms*.
- 7.7 **Capacity** - In all cases where the need for independent research and technical services are identified, WASAUKSING FIRST NATION will submit a request for capacity funding to the CROWN and/or PROPONENT in order to effectively participate in a meaningful consultative process. As soon as the duty to consult is triggered, it is the expectation of WASAUKSING FIRST NATION that funding for capacity must be readily available for independent research, technical services and professional advice. Meaningful consultation cannot occur without these resources being available when requested. Non-compliance will be deemed to be in direct violation of this PROTOCOL.



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## 8.0 Free, Prior and Informed Consent

- 8.1 All engagement/consultation matters and processes entered into with WASAUKSING FIRST NATION must adhere to the principle of **free, prior and informed consent** as recognized under the *United Nations Declaration on the Rights of Indigenous Peoples, March 2008*. Non-compliance to these principles will be deemed to be in direct violation of this PROTOCOL.
- 8.2 The principle of **free, prior and informed consent** is an ongoing consultative process throughout the life of any and all mutually-agreed upon development projects within our WASAUKSING-ANISHINAABE TERRITORY and applies to any and all contemplated POLICY amendments/DECISIONS. WASAUKSING FIRST NATION reserves the right to request regular updates on active projects taking place within our WASAUKSING-ANISHINAABE TERRITORY.
- 8.3 **Free** - All consultations are to be free from coercion, force, manipulation, intimidation and pressure by all levels of government and/or by all private sector PROPONENTS.
- 8.4 **Prior** - Before any work, action or DECISION is made that could affect WASAUKSING FIRST NATION'S ABORIGINAL AND TREATY RIGHTS, WASAUKSING FIRST NATION must be effectively engaged, consulted and ACCOMMODATED. Consideration must be given for respectful time requirements within our internal departmental and governmental processes. In instances where multiples of affected First Nation communities are involved, consideration of the time needed to consult with our sister First Nations within the region must be considered.
- 8.5 **Informed** - WASAUKSING FIRST NATION must be properly advised of all the relevant facts, information and risks from any and all projects, ACTIVITIES and/or DECISIONS that will affect and/or have enduring IMPACTS in or on our WASAUKSING-ANISHINAABE TERRITORY.

In addition, WASAUKSING FIRST NATION maintains the right to have:

- (i) Access to independent information and advice apart from the CROWN and/or private sector PROPONENTS; and
  - (ii) Access to experts, when required, for technical and legal advice.
- 8.6 **Consent** - WASAUKSING FIRST NATION maintains the collective right to say "Yes" or "No" to any proposed projects that may cause irreversible environmental damage within our WASAUKSING-ANISHINAABE TERRITORY or where ACCOMMODATION is insufficient to protect WASAUKSING FIRST NATION'S ABORIGINAL AND TREATY RIGHTS. WASAUKSING FIRST NATION also maintains the right to say "Yes" or "No" at each and every stage of project development that affects our lands and RESOURCES and/or is within our WASAUKSING-ANISHINAABE TERRITORY. If harmful and/or not beneficial to WASAUKSING FIRST NATION'S CITIZENS, or our rights and interests and/or to the environment, WASAUKSING FIRST NATION maintains the right to deny and/or reject a proposed project and/or proposed ACTIVITY. If it is proven to be of benefit to WASAUKSING FIRST NATION'S CITIZENS and/or to the

environment, the project and/or proposed ACTIVITY may be granted consent to move forward.

## 9.0 Notice of Consultation

- 9.1 The CROWN and/or PROPONENT shall submit a written Request for Consultation addressed to the Chief of WASAUKSING FIRST NATION at the preliminary stages of project planning or at least six (6) months prior to the undertaking of any ACTIVITIES that may affect WASAUKSING FIRST NATION'S ABORIGINAL AND TREATY RIGHTS and/or our interests.
- 9.2 WASAUKSING FIRST NATION asserts that a written Notice of Consultation does not constitute meaningful consultation with WASAUKSING FIRST NATION. In order for meaningful consultation to take place by the CROWN and/or PROPONENT, it must occur at the community level.
- 9.3 The Request for Consultation shall provide all relevant information pertaining to the proposed project, ACTIVITY, undertaking and/or contemplated DECISION written in a language and form that is comprehensible to WASAUKSING FIRST NATION. It shall include, but is not limited to:
- (i) The nature and scope of the project, geographical location in UTM, maps, etc.;
  - (ii) The duration and timelines of the proposed project and ACTIVITY;
  - (iii) All available resource materials - environmental assessments, permit applications, background papers for official plan reviews, proposed amended policies and any other relevant documents;
  - (iv) The distance to, location and name of nearest waterbodies;
  - (v) All potential environmental IMPACTS from the proposed project, ACTIVITY, undertaking or DECISION;
  - (vi) A list of any MITIGATION or compensation measures intended to minimize, eliminate or make up for potential environmental IMPACTS;
  - (vii) Contact information - names, addresses, phone numbers, email addresses and websites;
  - (viii) A commitment to continue to update and provide the foregoing information as and when available; and
  - (ix) An agreement to abide by this PROTOCOL.
- 9.4 In the event that a PROPONENT fails to provide a written Request for Consultation and WASAUKSING FIRST NATION becomes aware of a project, ACTIVITY, undertaking or proposed DECISION within our WASAUKSING-ANISHINAABE TERRITORY or that may affect our ABORIGINAL AND TREATY RIGHTS, WASAUKSING FIRST NATION will send the PROPONENT a written letter advising of their failure to do so and will set a reasonable timeframe for the PROPONENT to comply with Sections 9.0 - 9.3 of this PROTOCOL.

## 10.0 Time Constraints

- 10.1 There shall be no unreasonable time constraints imposed upon WASAUKSING FIRST NATION to fully respond to proposed moderate to extensive consultation projects, ACTIVITIES, undertakings or DECISIONS, as identified in the *Wasauksing First Nation Consultation Matrix*, attached as Appendix “C” hereto.
- 10.2 Time constraint demands of ninety (90) days or less are not considered an acceptable practice and will not be honoured by WASAUKSING FIRST NATION.

## 11.0 Responsibilities of Wasauksing First Nation

- 11.1 WASAUKSING FIRST NATION shall:
- (i) Provide a confirmation of receipt letter to the CROWN and/or PROPONENT indicating when the consultation request was received;
  - (ii) Assess the nature and complexity for each proposed project, ACTIVITY, undertaking and/or DECISION, and its potential effect on WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS, in a fair and consistent manner, as per the *Wasauksing First Nation Consultation Matrix*, and if unable to do so, shall request further information from the CROWN/PROONENT in order to perform such assessment; and
  - (iii) Operate and negotiate in good faith.



Photo Credit: Jennifer Predie

## 12.0 Consultation and Accommodation Process

- 12.1 All consultation processes shall require a Memorandum of Understanding (MOU) between WASAUKSING FIRST NATION and the PROPONENT, which details: (a) the PROPONENT'S acknowledgement and respect for WASAUKSING FIRST NATION'S ABORIGINAL AND TREATY RIGHTS; (b) a commitment to communicate and share information with WASAUKSING FIRST NATION; (c) when requested by WASAUKSING FIRST NATION, a commitment to meet with WASAUKSING FIRST NATION'S CITIZENS to explain the project, proposal or plan and hear and read any concerns exposed; (d) a commitment to negotiate proper ACCOMMODATION for WASAUKSING FIRST NATION and our CITIZENS where appropriate; (e) a commitment to abide by and follow the dispute resolution process as set out in Section 17.0 hereto; and (f) a commitment to report all archeological or historical discoveries immediately to WASAUKSING FIRST NATION and not undertake any further work within 500m of any such discovery without WASAUKSING FIRST NATION'S consent; and acknowledgement that all archeological items discovered shall be the property of WASAUKSING FIRST NATION and immediately delivered to WASAUKSING FIRST NATION.
- 12.2 The consultation and ACCOMMODATION process for proposed projects, ACTIVITIES and/or DECISIONS deemed to require moderate to extensive levels of consultation, as per the *Wasauksing First Nation Consultation Matrix*, will require:
- (i) The CROWN and/or PROPONENT to be open to making revisions to the original proposal, plan, ACTIVITY, undertaking and/or DECISION based on the concerns or views expressed during WASAUKSING FIRST NATION'S internal consultation process with our CITIZENS;
  - (ii) All parties to enter into a mutually agreed upon MOU, an IMPACT Benefit Agreement, a Mutual Benefits Agreement, a Resource Revenue Benefit Sharing Agreement and/or a co-management agreement if the proposed ACTIVITY and/or DECISION is collectively agreed to proceed by WASAUKSING FIRST NATION;
  - (iii) Any DECISION as to whether or not ACCOMMODATION is necessary shall be decided collaboratively by the PROPONENT and WASAUKSING FIRST NATION, in the spirit of reconciliation; and
  - (iv) PROPONENTS must comply with all negotiated ACCOMMODATION agreements with WASAUKSING FIRST NATION.
- 12.3 If at any point during the consultation process, WASAUKSING FIRST NATION decides to cease consultation or oppose a proposed project, ACTIVITY, undertaking and/or DECISION, a letter stating our objection and outlining our justification(s) will be forwarded to the CROWN and/or PROPONENT.

### 13.0 Application for Crown/Treaty Lands Disposition

13.1 Approval or consent for disposition of CROWN land and/or shoreline reserves shall not be provided where outstanding land claims for such lands or any immediately adjacent lands are in existence.

### 14.0 Consultation Status Readjustment

14.1 WASAUKSING FIRST NATION maintains the right at any time to readjust the consultation level for a proposed project, ACTIVITY, undertaking and/or DECISION from light consultation to moderate consultation or extensive consultation, or vice versa, and will notify the CROWN and/or PROPONENT through a written Notice of Consultation Status Change.

### 15.0 Consultation Cost

15.1 Depending on the nature of a proposed project, ACTIVITY, undertaking and/or DECISION and the level of consultation required, WASAUKSING FIRST NATION may require funding from the CROWN and/or PROPONENT for expenses and services related to:

- (i) Access to independent professional legal, technical and economic expertise;
- (ii) Research activities and project analysis;
- (iii) Information management and dissemination; and
- (iv) Costs associated with attending and hosting consultation meetings and community information and consultation sessions, such as: per diems, rental of meeting room, hotel accommodations, food and beverages, travel, overhead, etc.

### 16.0 Confidentiality

16.1 WASAUKSING FIRST NATION'S collected cultural and land-use data is the sole property of the First Nation and any information shared by WASAUKSING FIRST NATION shall not grant or convey any rights in or to such information to any person, firm or corporation.

16.2 PROPONENTS requiring review of WASAUKSING FIRST NATION'S cultural and land-use data will be required to enter into a confidentiality agreement prior to such review with WASAUKSING FIRST NATION.



Photo Credit: Jodi Baker

## 17.0 Dispute Resolution

17.1 The consultation process shall cease for the duration of a dispute resolution process.

17.2 In the event of a dispute held between the PROPONENT and WASAUKSING FIRST NATION, the following resolution steps shall be taken:

- (i) One party and/or both parties shall provide a written notice of the existence of a dispute, including a brief and concise explanation of the circumstance(s) and/or reason(s) leading up to the dispute and address it to the Community Consultation Coordinator, who will forward copies of the dispute notice to senior representatives of the PROPONENT, WASAUKSING FIRST NATION Council, and the CROWN;
- (ii) Both parties shall co-operate and negotiate in good faith to resolve the disputed matter to their mutual satisfaction;
- (iii) In such cases where a dispute cannot be resolved to both parties' mutual satisfaction, the appointment of a mediator or a facilitator shall be called upon prior to any litigation.
- (iv) If the mediation process fails or does not occur within ninety (90) days of the commencement of the dispute, either party may seek resolution through litigation.

17.3 The CROWN shall bear all the costs associated with the dispute resolution process.

17.4 Notwithstanding section 17.2, either party to the dispute may seek injunction relief in appropriate cases in the Ontario Superior Court of Justice or the Federal Court of Canada, as may be required.

## 18.0 Community Consultation Coordinator

18.1 The WASAUKSING FIRST NATION Community Consultation Coordinator shall be the point-of-contact person for all consultation and ACCOMMODATION matters.

## 19.0 Review and Amendment

19.1 WASAUKSING FIRST NATION'S Community Consultation Coordinator and our Lands and Resources Committee shall review this PROTOCOL on an annual basis, or as required. Any changes to the PROTOCOL will be recommended to Council for approval.

19.2 WASAUKSING FIRST NATION'S Community Consultation Coordinator and our Lands and Resources Committee may also create regulations regarding this PROTOCOL, which will be recommended to Council for approval.

## 20.0 Glossary

**"ABORIGINAL AND TREATY RIGHTS"** means practices, customs, and traditions that are integral to the distinctive culture of WASAUKSING FIRST NATION CITIZENS, as recognized and affirmed by Section 35(1) of the *Constitution Act, 1982*.

**"ACCOMMODATION"** means the process of adapting or adjusting to someone or something, a settlement or a compromise. The CROWN has an obligation to ACCOMMODATE, if required, the interests of those First Nation communities who may be potentially IMPACTED by a proposed DECISION and/or ACTIVITY.

**"ACTIVITY"** means any CROWN or PROPONENT action, including, but not limited to, any work, procedure, operation or other physical act, which may have an IMPACT on WASAUKSING FIRST NATION'S ABORIGINAL AND TREATY RIGHTS, our WASAUKSING-ANISHINAABE TERRITORY and/or our lands and RESOURCES.

**"CONSTRUCTIVE KNOWLEDGE"** means information that a person is assumed to have. For example, the CROWN is assumed to know all the Treaties it has entered into with First Nations and their contents.

**"CROWN DESIGNATE"** includes the CROWN in right of Canada or the CROWN in right of Ontario, their cabinets, committees, ministries, CROWN corporations, local governments (municipalities and regional districts), agencies, employees and contracted agents, representatives and delegates for the purpose of the duties of consultation and ACCOMMODATION.

**“DECISION”** means any CROWN DECISION or PROPONENT DECISION, including, but not limited to, any legislation, regulation, POLICY, procedure, plan, license, permit, amendment, approval, operation or other DECISION which may have an IMPACT on WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS, our WASAUKSING-ANISHINAABE TERRITORY and/or our lands and RESOURCES.

**“IMPACT”** or **“IMPACTS”** means any effect(s) that any ACTIVITY and/or DECISION may cause within our WASAUKSING-ANISHINAABE TERRITORY or to WASAUKSING FIRST NATION’S ABORIGINAL AND TREATY RIGHTS and our lands and RESOURCES.

**“MITIGATION”** means the act of lessening the IMPACTS of environmental and ecosystem damage due to a project, action and/or ACTIVITY.

**“NATURAL RESOURCES”** or **“RESOURCES”** means any materials found in nature, on or under the land, including wildlife, timber, fresh water, or a mineral deposit, that is necessary or useful to humans and therefore has economic value.

**“POLICY”** means strategy, plan, rule, guiding principle, course of action, guidelines and procedure.

**“PROPONENT”** includes, but is not limited to, any individual, researcher, company, corporation, firm, municipality, regional district, industry, society, non-governmental organization or CROWN DESIGNATE that is proposing to undertake or is undertaking an ACTIVITY or DECISION as defined above.

**“PROTOCOL”** means this *Wasauksing First Nation External Consultation and Accommodation Protocol*.

**“RESERVE”** means the RESERVE of WASAUKSING FIRST NATION, being Parry Island Indian RESERVE #16, which is a RESERVE established and subsisting under the Indian Act R.S.C. 1985 c. 1-5 (See Appendix B: Wasauksing First Nation Location Map).

**“RESIDUAL EFFECT”** means the IMPACTS to the environment, lands, and RESOURCES during or after the completion of a proposed project, ACTIVITY and/or DECISION.

**“WASAUKSING-ANISHINAABE TERRITORY”** means the traditional territory of our WASAUKSING FIRST NATION CITIZENS, as described in Appendix “A” hereto, known as the Robinson-Huron Treaty Area.

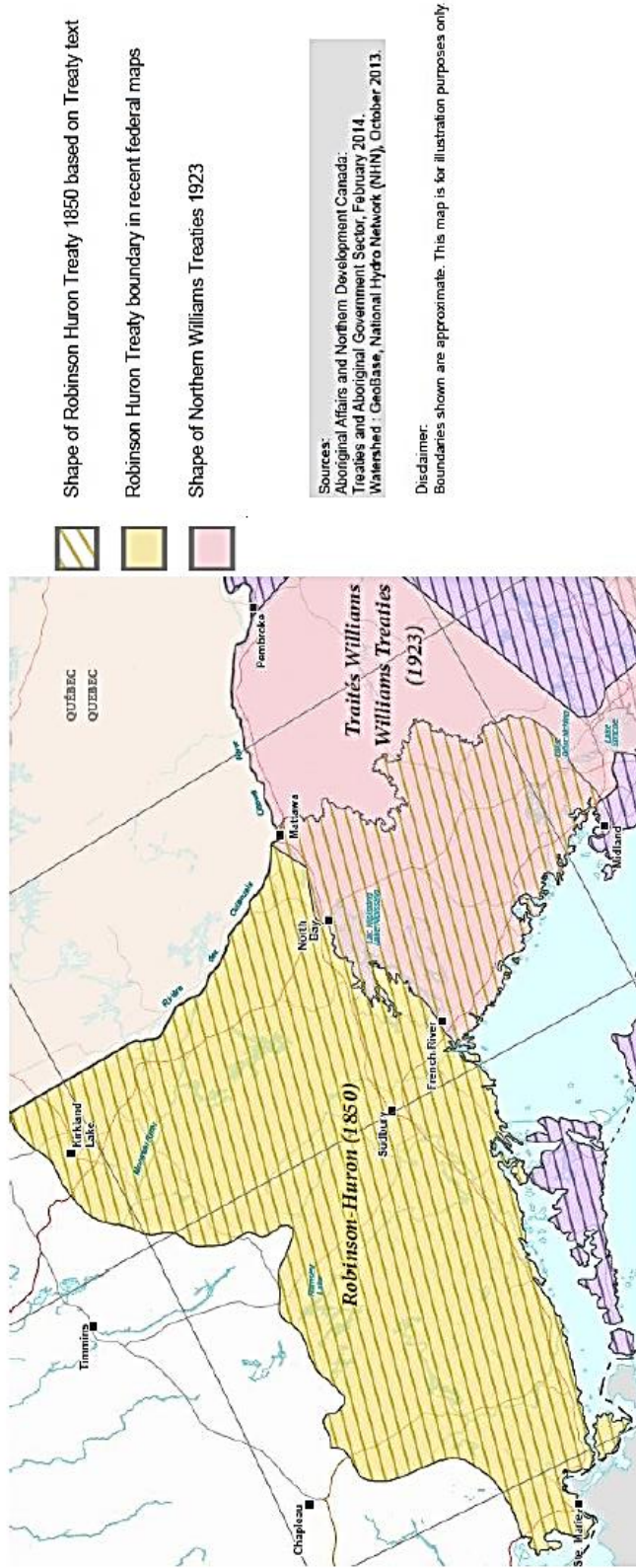
**“WASAUKSING FIRST NATION”** means WASAUKSING FIRST NATION and its CITIZENS.

**“WASAUKSING FIRST NATION CITIZEN”** means a person whose name appears on the WASAUKSING FIRST NATION Citizenship List, as managed by WASAUKSING FIRST NATION in accordance with Section 10 of the *Indian Act*.

21.0 Appendix A: Wasauksing-Anishinaabe Territory: The Robinson-Huron Treaty Area

**OVERLAP OF ROBINSON HURON TREATY AND WILLIAMS TREATIES**

Aboriginal Affairs and Northern Development Canada is currently reviewing the southern boundary of the Robinson Huron Treaty shape in an effort to upload it in the Aboriginal and Treaty Rights Information System (ATRIS).



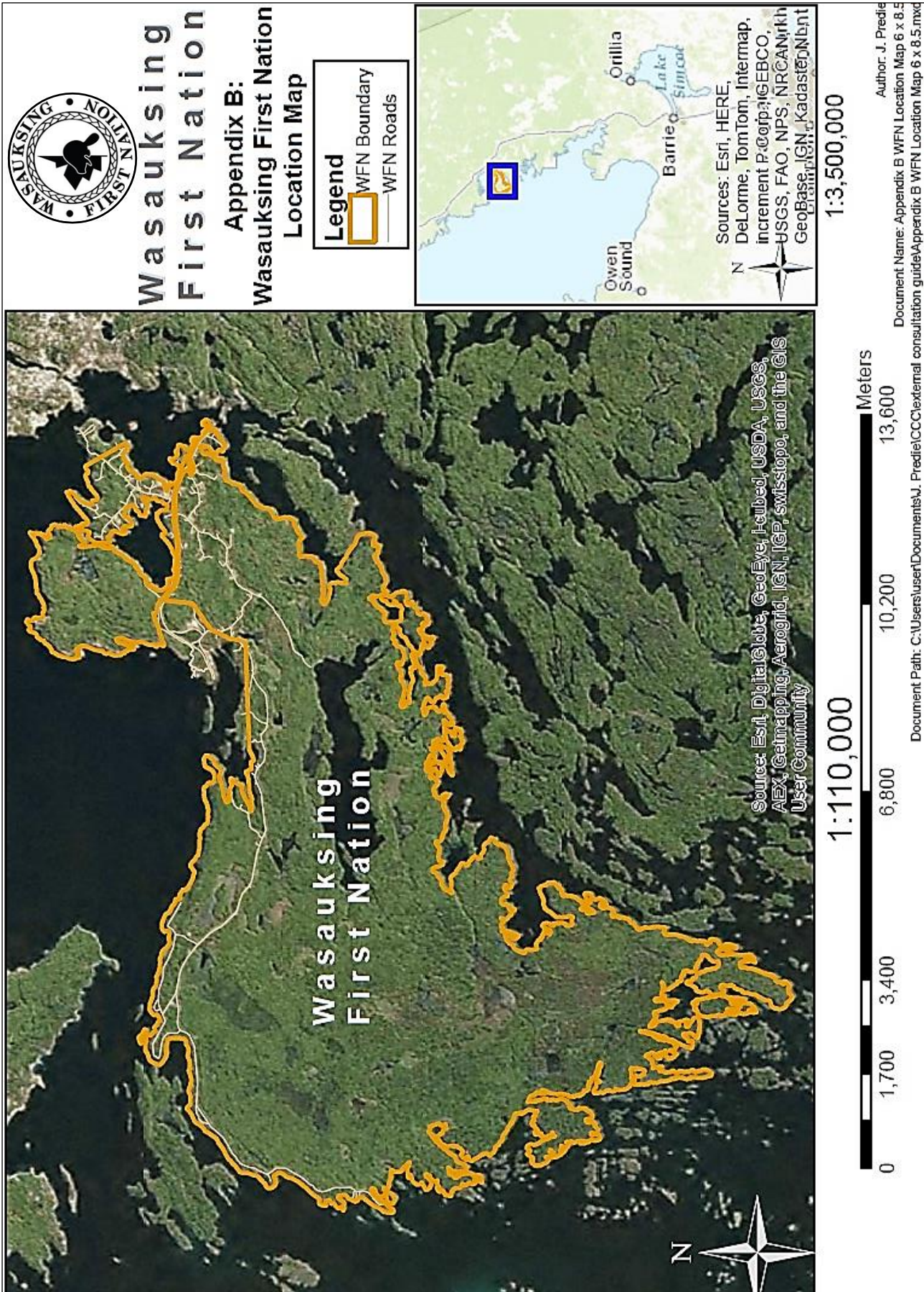
-  Shape of Robinson Huron Treaty 1850 based on Treaty text
-  Robinson Huron Treaty boundary in recent federal maps
-  Shape of Northern Williams Treaties 1923

Sources:  
Aboriginal Affairs and Northern Development Canada:  
Treaties and Aboriginal Government Sector, February 2014.  
Watershed : Geobase, National Hydro Network (NHN), October 2013.

Disclaimer:  
Boundaries shown are approximate. This map is for illustration purposes only.

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22.0 Appendix B: Wasauksing First Nation Location Map



Although Depot Harbour and the CN Railway locations have not been included within the WFN Boundary, these lands are managed by WASAUKSING FIRST NATION as if they are RESERVE Lands.

23.0 Appendix C: Wasauksing First Nation Consultation Matrix

**WFN Consultation Matrix**

Residual Effects of Proposed Project/Decision	<b>High</b>	Level 1: No Consultation	<i>Level 4: Extensive Consultation</i>	<i>Level 4: Extensive Consultation</i>	<i>Level 4: Extensive Consultation</i>
	<b>Moderate</b>	Level 1: No Consultation	<i>Level 3: Moderate Consultation</i>	<i>Level 3: Moderate Consultation</i>	<i>Level 4: Extensive Consultation</i>
	<b>Minor</b>	Level 1: No Consultation	<i>Level 2: Light Consultation</i>	<i>Level 3: Moderate Consultation</i>	<i>Level 4: Extensive Consultation</i>
	<b>None</b>	Level 1: No Consultation	Level 1: No Consultation	Level 1: No Consultation	Level 1: No Consultation
		<b>None</b>	<b>Minor</b>	<b>Moderate</b>	<b>High</b>

**Aboriginal and Treaty Rights in the Project/Decision Area**

**Level 1: No Consultation:**

- No RESIDUAL EFFECT of a proposed ACTIVITY/DECISION and/or no potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS will not require community consultation.
- Records of all such notices will be maintained by the CCC, and a summary can be provided to the community/CITIZEN upon request.

**Level 2: Light Consultation:**

- Minor RESIDUAL EFFECT(s) of a proposed ACTIVITY/DECISION and/or minor potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS will require a light community consultation.
- Consultation will consist of providing the community with a notice/update for the proposed ACTIVITY/DECISION via the Monthly Newsletter and WFN Website

**Level 3: Moderate Consultation:**

- Minor RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and moderate potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS;
- Moderate RESIDUAL EFFECT(s) of a proposed ACTIVITY/DECISION and/or moderate potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS; and
- Moderate RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and minor potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS.

Consultation will include: a notice/update to the community via Community Newsletter and a community information session/meeting to receive comments and/or concerns from CITIZENS.

**Level 4: Extensive Consultation:**

- Minor RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and high potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS;
- Moderate RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and high potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS;
- High RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and moderate potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS; and
- High RESIDUAL EFFECT(s) of a proposed ACTIVITY and/or DECISION and minor potential IMPACTS to our ABORIGINAL AND TREATY RIGHTS.

Consultation will include: a notice/update to the community via Community Newsletter and WFN Website, community information sessions to receive comments and/or concerns from CITIZENS, presentation(s) from CROWN DESIGNATE(S) and/or PROPONENT(S), including a community vote in the rare circumstances where a proposed project and/or DECISION may necessitate the need for a community vote, etc.



Photo Credit: Jennifer Predie



Photo Credit: Jennifer Predie



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