

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



Revised March 27, 2019

Temagami First Nation (TFN) and TemeAugama Anishnabai (TAA)

TABLE TO CONTENTS

1	TFN AND TAA RIGHTS.....	3
2	PURPOSE.....	3
3	PRINCIPLES	4
4	CONSULTATION PROCEDURE.....	4
	Step 1: Notice.....	4
	Step 2: Screening	5
	Step 3: Consultation at Exploration Stage	6
	Step 4: Consultation - Advanced Exploration and Mine Development.....	6
	Step 5: Implementation and Monitoring.....	7
5	CONSULTATION MATRIX.....	8
6	RESOLUTION OF DISPUTES.....	8
	APPENDIX A: TRADITIONAL TERRITORY OF TFN AND TAA (N'DAKI MENAN)	9
	APPENDIX B: CONTACTS FOR NOTICES	10
	APPENDIX C: TFN/TAA CONSULTATION PROCESS	11

1 TFN/TAA RIGHTS

- 1 The 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 to ensure 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 TFN/TAA.
- 3 The Supreme Court of Canada recognised that n'Daki Menan was and is the traditional territory of 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 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 mining 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 mining 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 and 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 Aboriginal 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 concerning mining activities.
- 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 depicted in Appendix C and described below.

The consultation requirements in this Protocol are not exhaustive and TFN/TAA Chiefs and Councils reserve the right to amend this Protocol.

STEP 1: NOTICE

- 1 The Proponent must submit to TFN/TAA, electronically by e-mail and fax to the contact people in Appendix B:
 - a) Notice of Intent to submit an exploration plan or application for exploration permit at least thirty (30) days prior to submission of an exploration plan under section 5 or application for an exploration permit under section 12 of O. Reg 308/12 under the *Mining Act*

Temagami First Nation (TFN) and TemeAugama Anishnabai (TAA)

- b) Notice of Intent to commence or recommence any proposed advanced exploration or mining activity at the earliest practicable date prior to filing a certified closure plan or certified amendment to a closure plan under sections 140, 141 or 143 of the *Mining Act*
 - c) Notice of Intent to conduct any work that requires any permit applications to Ontario or Canada
 - d) Notice of any proposed or actual sale, assignment or transfer of claims or property.
- 2 The Notice must provide all or any of the following information:
- a) intent to submit an Exploration Plan, Exploration Permit or Closure Plan to the Director of Exploration (MENDM) or intent to submit applications for other regulatory permits or approvals
 - b) draft Exploration Plan, Exploration Permit, Closure Plan or other regulatory permit or approval applications, and any withdrawal or adjustment to same
 - c) description of the proposed exploration or mining activity
 - d) description of the approvals process, timeline and deadlines
 - e) contact information for the designated representative of the Crown or Proponent
 - f) reference maps of the proposed exploration or mining activity site or area
 - g) hard copies and electronic copies of reports, studies, and maps that are available
 - h) any other information that may help to assess the impacts of the proposed exploration or mining 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 AT EXPLORATION STAGE

- 1 If the response following the screening is to enter into a consultation process, the Proponent may be asked to sign agreements relating to early and/or advanced exploration (“Exploration Agreements”).
- 2 The Exploration Agreements will identify the consultation process and address accommodation requirements that include, but are 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 or advanced exploration project
 - d) Provision of financial benefits to TFN/TAA, which may include shares, lump sum payments, social benefits, or an assignment fee during advanced exploration
 - e) Assurance that successors and assigns are bound by the negotiated obligations
 - f) Modifications to the exploration project to address any adverse impact to TFN/TAA’s Aboriginal or Treaty rights, which may include monetary compensation
 - g) Funds to cover TFN/TAA’s consultation costs or to enable TFN/TAA to develop capacity to benefit from the exploration activity
 - h) Funds to cover TFN/TAA’s ability to monitor the proposed work.
- 3 The Exploration Company will share its feasibility and assay reports with TFN/TAA on a confidential basis. The results of the exploration stage analysis will determine whether to progress to the next step.

STEP 4: CONSULTATION AT ADVANCED EXPLORATION STAGE AND MINE DEVELOPMENT

- 1 During advanced exploration, TFN/TAA and the Proponent will focus consultations on providing the capacity for TFN/TAA to review environmental assessments and other permit studies to assess potential impacts, develop mitigation plans and measures, and monitor exploration, mining, closure and post closure activities.
- 2 At the advanced exploration stage, the Proponent will be asked to enter into an Advanced Exploration Agreement (AEA) or other type of Agreement that is appropriate to provide benefits to TFN/TAA and also to accommodate potential impacts.
- 3 Once it is determined that a mine is feasible, the Proponent will 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.

Temagami First Nation (TFN) and TemeAugama Anishnabai (TAA)

- 4 The Proponent may be asked to enter into negotiations that may include, but not be limited to the following:
 - a) Mine 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 and closure plan 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 Proponent
- 5 Throughout the Agreement negotiations process, the 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 5: 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 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 Proponent will develop a monitoring program, which includes TFN/TAA members to actively monitor the impacts from the project on the environment for the life of the mine, during closure and post-closure.
- 4 TFN/TAA together with the Proponent will review any Exploration Agreements at regular intervals to determine whether amendments are required to any Exploration Agreements between the parties in order to better protect TFN/TAA Aboriginal and Treaty rights.

5 CONSULTATION MATRIX

- 1 The consultation process will vary in length and intensity depending on the level of impact of the mining activity on TFN/TAA Aboriginal and Treaty rights.
- 2 Steps 1 and 2 can be viewed as light consultation, steps 1, 2 and 3 as moderate consultation and steps 1 to 5 as intensive consultation.
- 3 The Consultation Matrix below provides a guide about the level of consultation to be expected:

	<i>Level of Impact on Aboriginal and Treaty Right</i>			
	Low	→		High
Type of Mining Activity	No Demonstrated Impact	Low Impact	Moderate Impact	Intensive Impact
Advanced Exploration and Mining Development (drilling, stripping, pitting, mine construction, operation, rehabilitation and closure)	<i>Not applicable</i>	<i>Steps 1 to 5</i>	<i>Steps 1 to 5</i>	<i>Steps 1 to 5</i>
Exploration Activity (drilling, stripping overburden, pitting, trenching bedrock, rehabilitation)	<i>Steps 1 and 2</i>	<i>Steps 1, 2, and 3</i>	<i>Steps 1, 2, 3 and 5</i>	<i>Steps 1, 2, 3 and 5</i>
Early Exploration Activity (prospecting, staking, geophysical surveys, line cutting, rehabilitation)	<i>Steps 1 and 2</i>	<i>Steps 1 and 2</i>	<i>Steps 1, 2 and 3</i>	<i>Not applicable</i>
	Low	→		High
	<i>Level of Consultation Required</i>			

6 RESOLUTION OF DISPUTES

- 1 If disputes occur during the early exploration stage over an exploration plan or permit, the Dispute Resolution Process under s. 21 of O. Reg. 308/12, *Mining Act*, will be used.

**APPENDIX B
Contacts for Notices**

Please send Notices required by this Protocol by email.

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Bear Island
Lake Temagami, ON P0H 1C0

Attention: Robin Koistinen, Lands and Resource Director

Tel: 705-237-8943 ext 204

Fax: 705-237-8959

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Attention: Dan Mongrain, Resource Development Advisor

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APPENDIX C TFN/TAA Consultation Process

