

# Sagkeeng Anicinabe

## Consultation and Accommodation Protocol

*Made pursuant to the O'na-katch-to'o-na-wa Onakonigawin (Conservation Law)*

### 1. PREAMBLE AND PURPOSE

Sagkeeng Anicinabe has used, occupied, and governed in lands surrounding the Winnipeg River (its Traditional Territory) since time immemorial. Its rights to use the lands, waters and resources, and its corresponding responsibility to protect them for future generations, are inherent and sacred, coming from the Creator. It decides how to exercise such rights and responsibilities through self-determination. Sagkeeng has been self-determining through application of its own Anicinabe laws since it has been here, notwithstanding the Crown's interference. Among those laws is the *O'na-katch-to'o-na-wa Onakonigawin*, which in the Anicinabe language refers to the 'Conservation Law' of Sagkeeng.

Sagkeeng's rights and responsibilities are: those confirmed by the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP); and Aboriginal and Treaty rights protected by Canada's *Constitution Act, 1982* ("Sagkeeng Rights").

In order to care for its Traditional Territory, protect Sagkeeng Rights, and implement the *O'na-katch-to'o-na-wa Onakonigawin*, Sagkeeng has developed this Consultation and Accommodation Protocol, which shall serve to direct all consultations between the Crown and proponents, and Sagkeeng. This Protocol provides certainty to all parties, by ensuring that the requirements of Canadian, International, and Sagkeeng Indigenous law are met.

Sagkeeng's Indigenous laws have had jurisdiction throughout its Traditional Territory since time immemorial. Sagkeeng laws are customary in nature, and largely unwritten, although some are compiled as written laws for the purposes of dealing with modern situations as they arise and so that outsiders can know the laws, as in this case. Sagkeeng laws require that lands and resources be protected for future generations. This Protocol supplements and implements the *O'na-katch-to'o-na-wa Onakonigawin*, by setting out the circumstances under which the Crown and proponents may be authorized to carry out activities in Sagkeeng Traditional Territory.<sup>1</sup>

As with all laws, Sagkeeng's laws have evolved and changed over time. The version of the *O'na-katch-to'o-na-wa Onakonigawin* included with this Protocol is the most recent iteration of Sagkeeng's Anicinabe law. This Protocol is made pursuant to that Law.

This Protocol sets out the terms on which Sagkeeng's consent to activities/projects in Sagkeeng Traditional Territory or that affect Sagkeeng Rights or Sagkeeng Values may be obtained.

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<sup>1</sup> This Protocol is a Regulation to the *O'na-katch-to'o-na-wa Onakonigawin* pursuant to section 11 of that Law.

International law, including UNDRIP, requires that any project, development, action or activity affecting the lands, territories, or resources of Indigenous peoples, such as Sagkeeng, receive their Free, Prior and Informed Consent (“FPIC”) before it is approved. The Government of Canada adopted UNDRIP in May of 2016. Canadian law, properly interpreted and applied, in accordance with UNDRIP and the nation-to-nation Treaty relationship, means that: consultation should lead to accommodation, and affected Indigenous peoples should determine the sufficiency of the accommodation – by consenting or withholding consent to the decision or action.

In order to acquire Sagkeeng’s consent, a process of consultation and accommodation must occur. Canadian law requires consultation and accommodation before any decision or action is undertaken which might have an adverse impact on known or asserted Aboriginal or Treaty rights. This duty lies with the Crown, but is often delegated to proponents. The consultation which takes place must have as its intent to substantially address the concerns of the affected Indigenous party, about that decision or action, through accommodation. No such decision or action may be carried out before consultation and accommodation is completed.

There are four types of accommodation measures: those that prevent impacts; those that mitigate or minimize impacts that cannot be fully prevented; those that compensate for remaining impacts; and those that provide positive benefit sharing for projects that yield revenues, reflecting the treaty relationship of mutual sharing.

If accommodation measures are sufficient to substantially address Sagkeeng’s concerns, Sagkeeng will be able to provide its free, prior and informed consent about the decision or action. If accommodation measures are not sufficient, Sagkeeng may not be able to consent to the decision or action.

This Protocol sets out the terms for such consultation and accommodation. It ensures that consultation and accommodation apply to and are triggered by every action or decision by the Crown and any proponent that might affect Sagkeeng Rights; the land, resources, and environment of Sagkeeng Traditional Territory; and/or Sagkeeng’s current cultural connections to, heritage values in, and spiritual uses of the Traditional Territory (“Sagkeeng Values”). It ensures that Sagkeeng’s consent to any action or decision is ultimately required.

Any consultation which takes place according to this Protocol must at all times strive to give meaning to the stated Purposes of the *O’na-katch-to’o-na-wa Onakonigawin*, by “(a) honouring the Creator through the conservation and protection of the natural environment; (b) honouring our ancestors by protecting and enhancing the exercise of our inherent Aboriginal and Treaty rights and (c) honouring future generations by fostering economic development and opportunities within and around the Territory.”<sup>2</sup>

The implementation of this Protocol has been delegated to Sagkeeng’s Consultation and Accommodation Protocol Team (“CAP Team”), whose contact information is set out at the end of this Protocol. Proponents and Crown representatives should contact a CAP Team member (or, if not appointed or not available, another member of the Sagkeeng Executive Council) with any questions regarding the Protocol.

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<sup>2</sup> *O’na-katch-to’o-na-wa Onakonigawin* 2018, s. 4

In most cases, this Protocol will lead to an accommodation agreement establishing Sagkeeng's consent to the action or decision in question, on specified terms. A large-scale, long-term project such as hydro development, mining or forestry will usually take the form of an Impact Benefit Agreement and/or ownership agreement, while a small-scale, short-term project such as exploration will usually take the form of a smaller scale or interim agreement, such as an Exploration Agreement.

Sagkeeng supports responsible development that provides sustainable benefits to its people and that is conducted in a manner that respects its environmental, economic, social, cultural, and spiritual rights and interests, including Sagkeeng Rights and Values. This Protocol will serve as a basis for the Crown and proponents to engage with Sagkeeng in a respectful, productive, and non-adversarial manner. Respectfully conducted processes have been proven to result in mutually beneficial relationships between Indigenous and non-Indigenous parties.

## **2. APPLICATION**

2.1 This Protocol applies whenever:

- (a) the Crown and/or a proponent is/are contemplating any action or decision that has the potential to affect Sagkeeng Rights, Sagkeeng Values, or Sagkeeng Traditional Territory; or
- (b) the Crown is aware of any contemplated action or decision that has the potential to affect Sagkeeng Rights, Sagkeeng Values, or Sagkeeng Traditional Territory.

2.2 Pursuant to section 2.1, Sagkeeng requires the Crown and any proponents to adhere to this Protocol.

2.3 Notwithstanding section 2.2, if Sagkeeng has entered into any written agreement with the Crown or a proponent (such as an Impact-Benefit Agreement or Exploration Agreement) that sets out a consultation process and/or accommodation and/or Sagkeeng consent for a particular action or decision, that agreement will take priority over this Protocol.

2.4 During any consultation between Sagkeeng and the Crown or a proponent, the Rights and Values of Sagkeeng that may be considered include, but are not limited to:

- (a) The right to use, benefit from and manage the land and resources in the Traditional Territory, with higher intensity or use and benefit within the unextinguished title claim area (Sagkeeng O-tah-she-kay-win).
- (b) The right to hunt, fish, trap and gather, as sustenance and as a living, including the right to conduct activities reasonably incidental to the activities of hunting, fishing, trapping and gathering such as the building and use of cabins, campsites, and landing sites;

- (c) The right to exercise practices and customs that are integral to the distinctive culture of Sagkeeng, including the conduct of political, social (including recreational), ceremonial, cultural, spiritual and economic ways of life;
  - (d) The right to the use and preservation of sacred, cultural, burial and spiritual sites;
  - (e) The right to the preservation of wildlife, water fowl, fish and their respective habitats, including their respective nesting, spawning and calving areas and their migration routes, in order to protect the right to hunt, fish, trap and gather;
  - (f) The right to make use of and manage the waterways and bodies of water;
  - (g) The right pursuant to section 13 of the *Crown Natural Resources Transfer Act*, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which Sagkeeng may have a right of access;
- 2.5 In considering the impacts of a decision or action, Sagkeeng, the Crown and the proponent may consider impacts including, but not limited to;
- (a) Impacts on the Rights and Values set out at section 2.4 of this Protocol, or any other right or interest of Sagkeeng;
  - (b) Impacts of the proposed decision or action on the environment, including but not limited to ecosystem health, wildlife, erosion, and pollution
  - (c) The impact of the decision or action on the climate and the extent to which it may worsen or abate the effects of climate change;
  - (d) The aesthetic impacts of the decision or action on the Sagkeeng Traditional Territory;
  - (e) Psycho-social impacts of the proposed decision or action.

### 3. **GUIDING PRINCIPLES**

- 3.1 Sagkeeng receives a large number of development notifications and requests for consultation. Sagkeeng considers every action or decision that may affect Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory to be worthy of attention. However Sagkeeng does not have unlimited capacity to respond or engage as it might wish, in every case. This Protocol and the process it sets out must be read and understood in that context.
- 3.2 The Crown must, in every case, immediately notify and engage in the Protocol process when it contemplates any action or decision that may affect Sagkeeng

Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory, and/or when it becomes aware of any contemplated action or decision by a proponent that may affect Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory, including selling, leasing, renting, transferring, disposing of or issuing any property interest (including any mining claims or rights) in any Crown land within Sagkeeng Traditional Territory.

- 3.3 A proponent must, in every case, immediately notify and engage in the Protocol process when it contemplates any action or decision that may affect Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory, regardless of whether the Crown has advised the proponent of the need to notify and engage in consultation with Sagkeeng, including buying, leasing, renting, transferring, disposing or acquiring in any way of any interest in any Crown land within Sagkeeng Traditional Territory.
- 3.4 **Bare notification of an action or decision pursuant to sections 3.2 or 3.3 will not satisfy the duty to consult and accommodate Sagkeeng regarding that action or decision**, as mere notification does nothing to hear, understand, and address, through accommodation measures, Sagkeeng's concerns. The Crown and/or proponent is/are required to follow the Protocol process unless Sagkeeng explicitly sets out in writing that further consultation, accommodation, and consent are not required.
- 3.5 The process set out in this Protocol shall be conducted according to the principles of the Honour of the Crown, the nation-to-nation Treaty relationship, section 35 of the *Constitution Act, 1982*, and UNDRIP.
- 3.6 The process set out in this Protocol must be carried out with full respect for Sagkeeng's historic, cultural, and spiritual ties to the land, as well as the present-day uses of the land by Sagkeeng members.
- 3.7 The focus of the process set out in this Protocol must be on actual engagement for the purpose of arriving at fair and sufficient accommodation. The focus must not be on the appearance of the process for the purpose of building "a record of consultation."
- 3.8 Consultation must have, as its ultimate goal, the accommodation of all of Sagkeeng's concerns. Such concerns are those that pertain to Sagkeeng's ability to self-determine, to maintain a sustainable exercise of Sagkeeng Rights and Sagkeeng Values, and to protect Sagkeeng Traditional Territory sufficiently to support these purposes now and seven generations into the future. To that end, no Consultation will be complete unless and until the parties discuss and Sagkeeng is consulted about the type and scope of accommodation required, and Sagkeeng acting reasonably determines the sufficiency of accommodation.
- 3.9 Accommodation could include any or all of, but is not limited to, the following:

- (a) amendments to the contemplated action or decision – its design, timing, scope, location, etc.;
- (b) cancellation/abandonment of the action or decision;
- (c) environmental/cultural protection measures and ongoing monitoring of impacts from the action or decision;
- (d) revenue sharing associated with the action or decision;
- (e) royalty/lease/rental or other analogous payments to Sagkeeng associated with the action or decision;
- (f) priority economic development opportunities (such as business contracting) associated with the action or decision;
- (g) priority opportunities for training, employment, and capacity building associated with the action or decision; and
- (h) joint ventures and/or partnerships associated with the action or decision.

3.10 The Crown and/or proponent, as applicable, shall fund the process set out in this Protocol at a level sufficient to ensure Sagkeeng’s full and effective participation, including Sagkeeng’s understanding of the action or decision and its potential effects on Sagkeeng. This includes providing funding for any experts, consultants, and legal counsel that Sagkeeng reasonably requires for informed participation in the Protocol process.<sup>3</sup>

- (a) Pursuant to section 15 of the *O’na-katch-to’o-na-wa Onakonigawin*, the provision of reasonable funding by the Crown and/or proponent for the consultation process is a condition precedent of Sagkeeng’s consent being given for any action or decision.

3.11

3.12 Sagkeeng reserves the right to withhold consent to any action or decision if Sagkeeng’s concerns are not sufficiently accommodated.

#### 4. **NON-DEROGATION**

4.1 Nothing in this Protocol is to be interpreted as derogating from, abrogating from, or amending any Sagkeeng Rights.

4.2 Nothing in this Protocol is to be interpreted to limit any consultation or accommodation obligations owed to Sagkeeng by the Crown and/or any proponent.

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<sup>3</sup> As required by section 14 of the *O’na-katch-to’o-na-wa Onakonigawin*.

- 4.3 Notwithstanding anything in this Protocol, Sagkeeng retains the right to challenge, by way of judicial review or any other legal or other process, any action or decision.

## 5. CONSULTATION AND NEGOTIATION OF ACCOMMODATION PROCESS

- 5.1 Sagkeeng reserves the right to deal with individual projects outside of this Protocol process as it determines to be necessary or reasonable, and in every case where it intends to do so, Sagkeeng will notify the Crown and proponent in writing of its intention.
- 5.2 At any point during the consultation, the CAP Team may designate one or more of its members as the designated contact person for the Crown and proponent.
- 5.3 Immediately upon the application of this Protocol being triggered pursuant to section 2.1, the Crown and/or proponent, as applicable, must contact Sagkeeng by sending a letter of notification (“Notification Letter”) by mail and fax to the Band Office, and copying the Notification Letter by e-mail to the offices of the CAP Team (the contact information for which is provided at section 10). The Notification Letter must set out the following information:
- (a) the nature, scope, and timing of the proposed action or decision;
  - (b) how and the extent to which, to the best of the Crown’s and/or proponent’s knowledge, the proposed action or decision may affect Sagkeeng Rights, Sagkeeng Values, and Sagkeeng Traditional Territory;
  - (c) the name of the person or body that will be undertaking the action or decision, including contact information;
  - (d) a list of documents pertaining to the proposed action or decision that are available for Sagkeeng to review, including those that would only become available pursuant to a signed confidentiality agreement; and
  - (e) any deadlines or filing dates pertaining to the action or decision.
- 5.4 Within seven (7) days of sending the Notification Letter, the Crown and/or proponent, as applicable, must confirm with the CAP Team (the contact information for which is provided at section 10) that the Notification Letter was received. If the CAP Team does not provide a response to the confirmation request, the Crown and/or proponent shall not assume that Sagkeeng has received the Notification Letter and/or that it has no concerns with the action or decision, but shall continue efforts to contact the CAP Team until a member of the CAP Team has confirmed receipt of the Notification Letter.
- 5.5 Within three (3) weeks of confirming receipt of the Notification Letter, Sagkeeng will reply to the Crown and/or proponent, as applicable, and indicate whether Sagkeeng requires consultation and accommodation or whether none is required.

If Sagkeeng does not reply within this three (3) week period, the Crown and/or proponent shall not assume that Sagkeeng has no concerns with the action or decision, but shall contact a member of the CAP Team to be advised of the status of the Notification Letter and the time period still required for reply.

- 5.6 If Sagkeeng indicates that no further consultation or accommodation is required, it will advise of this in writing. Such notification will constitute Sagkeeng's consent, or its determination that the duty to consult and accommodate does not apply to Sagkeeng in respect of this action or decision (ie that Sagkeeng has no jurisdiction to consent or withhold consent). Unless Sagkeeng provides such notice in writing, the Crown and/or proponent shall assume that further consultation and accommodation is required, and continue carrying out the Protocol process.
- 5.7 If Sagkeeng indicates that further consultation and accommodation is required with respect to the action or decision, the Crown and/or proponent, as applicable, will, in conjunction with Sagkeeng, establish a convenient time and place to meet with the CAP Team, either in person or by telephone, to discuss a further exchange of information and to develop a workplan and budget for continuing the Protocol process.
- 5.8 The workplan will generally include agreement upon the following steps as part of carrying out the Sagkeeng Protocol:
  - (a) provision of all relevant information by the Crown and/or proponent, as applicable, to the CAP Team, including a description of that information and a timeline for its delivery;
  - (b) an agreement regarding the information to be shared that must be kept confidential;
  - (c) the collection of required non-confidential information from Sagkeeng, such as information about the nature and extent of the exercise of Sagkeeng Rights and/or Sagkeeng Values, and how Sagkeeng Rights and/or Sagkeeng Values and/or Sagkeeng Traditional Territory may be affected by the proposed action or decision, including a description of the information and a timeline for its delivery;
  - (d) if reasonably required, the retention of experts/consultants (for example, environmental experts, archaeologists, historians, industry consultants, financial advisers, etc) to provide Sagkeeng with an outline of the work they will complete (for example, a field study, a review of the proposal, the preparation of a report, etc), and a timeline regarding when each step of that work will be completed;
  - (e) if reasonably required, the retention of legal counsel to provide Sagkeeng with legal analysis as well as an outline of legal work to be provided (for



example, assisting Sagkeeng in the Protocol process, evaluating information provided by the Crown and/or proponent and/or experts, the preparation of legal advice and memoranda regarding potential impacts on Sagkeeng Rights, drafting/rewriting any agreements to be entered into, etc), and a timeline regarding when each step of that work will be completed;

- (f) the establishment of an outline of consultation and negotiation meetings, including locations, participants, purposes, goals, and times;
- (g) an outline of the steps to be accomplished between each consultation and negotiation meeting (for example, the collection and provision of information, the work of experts or legal counsel, etc);
- (h) an outline of the internal community consultation to be carried out by or in collaboration with Sagkeeng (for example, community meetings, dissemination of materials to community members, the work of staff in developing such materials and administering consultation processes, etc), and a timeline regarding when each step of that work will be completed;
- (i) if appropriate, the date by which an accommodation agreement between Sagkeeng and the Crown/proponent is intended to be reached; and
- (j) if appropriate, the date and process by which ratification of any accommodation agreement that is reached is intended to be carried out.

5.9 The budget will generally include:

- (a) expenses to collect, copy, and disseminate information;
- (b) expert/consultant fees and expenses (if reasonably required);
- (c) fees/honoraria for Sagkeeng land users and elders to participate in the process by providing information on effects on Sagkeeng Rights, Sagkeeng Values, and Sagkeeng Traditional Territory;
- (d) legal fees and expenses (if reasonably required);
- (e) fees or honoraria and expenses for CAP to carry out work for and during consultation and negotiation meetings (if applicable);
- (f) costs of room-booking, refreshments, and related expenses for meetings (if applicable); and
- (g) disbursements for internal community consultation processes (for example, booking meeting rooms, refreshments for meetings, creating and copying and disseminating written information packages, the related costs of staff and administrative labour, etc).

- 5.10 Sagkeeng and the Crown and/or proponent may, through agreement, amend the workplan and budget from time to time.
- 5.11 Sagkeeng and the Crown and/or proponent, as applicable, shall fund the workplan and budget through a capacity funding agreement.
- 5.12 Sagkeeng and the Crown and/or proponent, as applicable, shall meet and/or correspond as necessary and as set out in the workplan to exchange information and to negotiate accommodation measures for Sagkeeng.
- 5.13 If and when appropriate accommodations have been determined and agreed upon, Sagkeeng and the Crown and/or proponent will enter into an agreement setting out the agreed-upon accommodation measures, the steps that the Crown and/or proponent will take to implement the accommodation measures, and Sagkeeng's consent.
- 5.14 If Sagkeeng determines, at its sole discretion, that an accommodation agreement is not necessary, it may instead issue a Certificate of Completion, to be executed jointly by a quorum of the Executive Council and a quorum of the Delegates Council. The Certificate of Completion shall be provided to the Crown and proponent, and may be used by them to demonstrate Sagkeeng's consent to the action or decision.
- 5.15 Following the conclusion of the Consultation, whether by an accommodation agreement, a Certificate of Completion or a refusal to consent, the Crown and/or proponent will afterwards continue to update Sagkeeng on the status of the action or decision and will immediately notify Sagkeeng of any future change to the nature or scope of the action or decision, and engage in a new consultation and accommodation process.

## **6. RESPONSIBILITIES OF SAGKEENG**

- 6.1 Sagkeeng recognizes that successful consultation and negotiation of accommodation requires a commitment from Sagkeeng, the Crown, and/or the proponent, as applicable, to cooperate in the process to pursue a fair and just outcome. The CAP Team, supported by Sagkeeng leadership, is expected to uphold the integrity of this Protocol and is therefore required to:
  - (a) act with honour, integrity, and good faith;
  - (b) be accountable to the Executive Council and Delegates' Council of Sagkeeng;
  - (c) provide relevant non-confidential information in as timely a manner as possible to the Crown and/or proponent, as applicable;

- (d) negotiate a confidentiality agreement with the Crown and/or proponent, if necessary, to provide and/or receive confidential information in as timely a manner as possible;
- (e) actively participate in the process in as timely a manner as possible;
- (f) negotiate with the Crown and/or proponent, as applicable, to ensure that Sagkeeng is provided with adequate financial and other resources to fully engage in the process in an effective and informed way;
- (g) act in the long-term interests of Sagkeeng and ensure that Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory are respected;
- (h) provide opportunity for Sagkeeng members to voice concerns and interests, and ensure that Sagkeeng members understand the proposed decision or action, and the chosen accommodation measures; and
- (i) where appropriate, negotiate accommodation agreements in the best interests of Sagkeeng, and ensure that such agreements are implemented, or recommend that a Certificate of Completion be issued.

## 7. **RESPONSIBILITIES OF THE PROPONENT**

7.1 Sagkeeng requires proponents to do the following when it is engaged by the Protocol:

- (a) actively participate in and abide by the process set out in this Protocol;
- (b) act in good faith;
- (c) consult with the intention of fairly and justly addressing all of Sagkeeng's concerns through accommodation measures;
- (d) ensure transparency during the consultation and negotiation process;
- (e) provide Sagkeeng with adequate financial support and time to ensure that Sagkeeng has the capacity to fully engage in the process in an effective and informed manner;
- (f) provide any agreed-upon financial support, including funding for experts/consultants, in a timely manner;
- (g) provide all relevant and necessary information regarding its action or decision to Sagkeeng as soon as such information is available, including any such information that can only be provided under a confidentiality agreement with Sagkeeng;

- (h) respect Sagkeeng Rights and Sagkeeng Values;
- (i) substantially accommodate Sagkeeng's concerns;
- (j) not proceed with any action or make any decision potentially affecting Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory until an accommodation agreement has been entered into with Sagkeeng providing Sagkeeng's consent, or until Sagkeeng has provided written notification it does not require consultation and accommodation; and
- (k) honour any agreements reached with Sagkeeng.

## 8. **RESPONSIBILITIES OF THE CROWN**

8.1 Sagkeeng requires the Crown to do the following whenever the Protocol is engaged:

- (a) act in good faith;
- (b) uphold the Honour of the Crown;
- (c) when involved in the process, consult with the intention of fairly and justly addressing Sagkeeng's concerns;
- (d) fully inform itself of the potential impacts of any action or decision on Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory;
- (e) ensure that consultation and accommodation is meaningful and sufficient;
- (f) ensure that Sagkeeng receives sufficient financial support and time so that it has the capacity to fully engage in the process in an informed manner;
- (g) provide Sagkeeng with all relevant and necessary information and ensure that any proponent does the same;
- (h) respect Sagkeeng Rights and Sagkeeng Values;
- (i) ensure that Sagkeeng's concerns are fairly and justly accommodated; and
- (j) not proceed with or authorize any action or make any decision potentially affecting Sagkeeng Rights, Sagkeeng Values, and/or Sagkeeng Traditional Territory until Sagkeeng has consented or has provided written notification that it does not require consultation and accommodation.

## 9. **REVIEW AND AMENDMENT**

9.1 The map of Traditional Territory attached as Appendix A is based on Sagkeeng's understanding of the land as of the date that this Protocol was authorized. It is

subject to change as Sagkeeng acquires additional information about its territory and history. At all times, the final authority on the extent of Sagkeeng's Traditional Territory is the Elders' Council.

- 9.2 Sagkeeng reserves the right to review and amend this Protocol as necessary or desirable.
- 9.3 Any consultations that have begun prior to such amendments shall not be affected by the amendments to this Protocol unless agreed upon by all parties.

## 10. CONSULTATION AND ACCOMMODATION TEAM

10.1 The Consultation and Accommodation Team is made up of:

- (a) The Chief of Sagkeeng – chief@sagkeeng.ca;
- (b) One other member of the Executive Council – c/o ceo@sagkeeng.ca
- (c) The Elders' Council Delegate
- (d) The Coordinator of the Lawmakers Assembly – sagkeenglawmakers@gmail.com
- (e) Sagkeeng Legal Counsel – cshefman@oktlaw.com

10.2 Notification pursuant to section 5.3 of this Protocol must be sent to the members of the CAP Team by faxing one copy to the Sagkeeng Band Office (204-367-4315) and by emailing those CAP Team members for whom email addresses have been provided at section 10.1.

10.3 Any member of the Sagkeeng Executive Council may participate in the consultation process in addition to the CAP Team.

10.4 The CAP Team may designate one or more of its members as the primary contact persons for any given consultation and the proponent and the Crown may correspond directly with those persons and the representations of those persons may be taken by the proponent and the Crown as being made on behalf of Sagkeeng.

10.5 Notwithstanding that the CAP Team may have designated a primary contact person, an Accommodation Agreement or a Certificate of Completion shall only be executed as set out herein, by a quorum of both the Executive Council and the Delegates Council, or if the Delegates Council is not able to achieve quorum, by just the Executive Council.

## 11. COMMUNITY CONSULTATION

- 11.1 To the extent reasonable in the circumstances, the CAP Team shall ensure that members of Sagkeeng are informed of the progress of any consultation processes and of any accommodations and consents provided as a result of this Protocol.
- 11.2 To the extent reasonable in the circumstances, the CAP Team shall seek input from members of Sagkeeng on potential impacts of actions or decisions and potential accommodations for those impacts.
- (a) This obligation may be discharged by consulting with particular groups of members, for example, resource users in a particular area which may be impacted by a decision or action. Not every member need be consulted on every decision or action, but the greatest amount of consultation which is reasonable in the circumstances should be undertaken.

## 12. **DECLARATION OF EXTRAORDINARY IMPACT POTENTIAL**

- 12.1 Either the Executive Council or the Delegates Council may declare a particular decision or action to have “Extraordinary Impact Potential” if the decision or action would;
- (a) Cause irreparable impact on Sagkeeng Rights or Values, or impact which would last longer than two generations (50 years) from the date the decision takes effect or action commences;
- (b) Prevent, or impair to a significant degree Sagkeeng members from exercising particular Rights;
- (c) For other reasons, at the discretion of the Executive Council or Delegates Council acting reasonably, potentially have extraordinary impact on Sagkeeng Rights or Values.
- 12.2 A Declaration of Extraordinary Impact Potential may only be made on the recommendation of the CAP Team.
- 12.3 A decision or action which has been declared to have Extraordinary Impact Potential shall be subject to more extensive consultation and accommodation requirements, including but not limited to;
- (a) More frequent and comprehensive consultation by Sagkeeng leadership with the members of Sagkeeng will be required, and the CAP Team will be required to seek regular input from Sagkeeng members;
- (b) A ratification vote of all Sagkeeng Electors may be required prior to the execution of any Accommodation Agreement or Certificate of Completion;

- (c) Further information sharing or gathering obligations may be required of the Crown or proponent, and of Sagkeeng (through further expert assistance funded by the Crown or proponent).
- 12.4 When a Council makes a declaration of Extraordinary Impact Potential, the Council making the declaration shall, in the resolution in which the declaration is made, set out what additional steps must be taken as part of the consultation process. That Council may vary the additional steps required at any time by further resolution.
- 12.5 The Crown or a proponent may ask for an Extraordinary Impact Potential designation to be overturned, by sending a letter to both the Executive Council and Delegates Council setting out their objections and reasons, and including all relevant scientific and other evidence to support that position.
- (a) The Executive Council and Delegates Council shall convene a joint meeting within 14 business days of receiving a letter pursuant to section 12.5 to consider its contents.
  - (b) Quorum for a joint meeting shall be at least 3 representatives of the Executive Council and 3 from the Delegates Council, with the Executive Council Representative on the Delegates Council only counting as a member of one of the Executive Council for the purpose of this meeting.
  - (c) In order to overturn a designation of Extraordinary Impact Potential, at least 66% of Council members present at a joint meeting must vote in favour of doing so.

Proclaimed and in force as of this \_\_\_\_\_ day of May, 2018, by the signatures of a quorum of each of the Executive Council and Delegates' Council of Sagkeeng Anicinabe.

<b>Chief Derrick Henderson</b>	<b>Elders' Council Delegate</b>
<b>Councillor John Courchene</b>	<b>Youth Council Delegate</b>

<b>Councillor Marilyn Courchene</b>	<b>Men's Council Delegate</b>
<b>Councillor Mark Courchene</b>	<b>Women's Council Delegate</b>
<b>Councillor Linda Dorie</b>	<b>Executive Council Delegate</b>