



## **Six Nations of the Grand River Consultation & Accommodation Policy**

**A Policy to obtain free, prior and informed consent of the peoples of  
the Six Nations of the Grand River**

Category: Public

Approved By: SNEC

Effective Date: September 24, 2013

Date for Review: Annually

Previous Versions: Six Nations

### **1. Preamble**

Six Nations of the Grand River (SNGR) is the largest First Nation by population in Canada. The current territory spans 46,500 acres which represents only 4.8% of the 950,000 acres of the Haldimand Tract lands that were granted to Six Nations by the Haldimand Proclamation in 1784.

As the official governing body of the territory, Six Nations Elected Council (SNEC) on behalf of the peoples of SNGR has interests in and a duty to protect land, air, water and our Aboriginal economic base within the Haldimand Tract and the wider area specified by the 1701 Fort Albany/Nanfan Treaty. The Crown has failed in their fiduciary duty to SNGR which has resulted in land disputes that harms business, resources and hinders economic opportunities. This has caused frustration for developers, municipalities, communities, as well as the peoples of SNGR. SNGR is not to be considered as just a part of a larger Ontario community who might be consulted as a stakeholder only.

### **2. Policy Statement**

- 2.1 SNEC, in accordance with Canadian and International laws, requires that The Crown, Proponents and municipalities consult in good faith with SNEC, acting in a fiduciary capacity on behalf of SNGR, in order to obtain the free, prior and informed consent of SNGR prior to commencing any project that may potentially affect SNGR's rights or interests.
- 2.2 SNEC supports development that provides ongoing accommodation and benefits to the peoples of SNGR and is conducted in a manner that is cognisant and respectful of the environmental, economic, social, cultural, and spiritual rights and interests of the peoples of SNGR.
- 2.3 SNEC fully expects all Proponents, municipalities and The Crown to respect the terms of this policy.

### **3. Guiding Principles**

The following principles shall guide all consultation and accommodation endeavours.

- 3.1 The process of consultation and accommodation must be guided by the principles established by the United Nations Declaration on the Rights of Indigenous Peoples. At a minimum this must include:
  - (i) a lack of any and all coercion including, but not limited to, financial and time constraints;
  - (ii) commencing consultation at the onset of a project, prior to decisions being made; and
  - (iii) provide full disclosure including, but not limited to, detailed reports on the project and the property.
- 3.2 The process shall be based on the recognition of SNGR's inherent rights, treaty rights, and title. SNEC must have a formal role in all decisions influencing and impacting the territory at all levels reasonably necessary to protect the rights and interests of SNGR.
- 3.3 The process shall be carried out with respect for the sacred bonds between SNGR and the land, through long term agreements that provide measures to protect the land and resources that SNGR relies on to sustain its culture, community, and economy.
- 3.4 Adequate financial resources shall be made available to SNEC for its full and effective participation in all aspects of the Consultation and Accommodation Process.
- 3.5 There must be an accommodation agreement reached with SNEC, on behalf of SNGR, prior to the commencement of the project. The accommodation agreement shall be based on the principles of perpetual care and maintenance.
- 3.6 The parties must be willing to engage in a jointly accepted dispute resolution process in the event an agreement cannot be reached.
- 3.7 SNEC is committed to deal with each development on an individual and flexible basis.

### **4. Application**

- 4.1 This policy and related procedures apply to existing and new federal, provincial and municipal land use proposals, policies or regulations and all private or public land use development projects within the Haldimand Tract and the Fort Albany/Nanfan treaty lands that affect Six Nations' Interests and Aboriginal and treaty rights.
- 4.2 This policy does not apply to private land use projects proposed by Members of Six Nations within the SNGR Territory.

### **5. Definitions**

- 5.1 Accommodation – an amicable agreement, achieved by consultation, negotiated between two or more parties to address Third Party use of SNGR treaty and traditional lands. Mitigation is not considered accommodation. Accommodation may include, but is not limited to:
  - (i) Partnerships;
  - (ii) joint ventures;
  - (iii) revenue sharing;
  - (iv) employment and educational opportunities; and
  - (v) other arrangements that benefit SNGR.

- 5.2 Consultation – an engagement process involving two or more parties to exchange information in order to reach an accommodation agreement for the use of SNGR treaty and traditional lands. This process is carried out in a deliberate and good faith manner, to reach a mutually acceptable agreement(s) prior to any proposed undertaking by either party. Notification is not considered consultation.
- 5.3 Consultation and Accommodation Process (CAP) Team – A team authorized by SNEC to carry out the process of consultation and accommodation on behalf of SNGR in accordance with the Consultation and Accommodation Process Team – Terms of Reference.
- 5.4 Council – means the Six Nations Elected Chief and Council acting as a whole through Six Nations Council Resolutions.
- 5.5 Fort Albany/Nanfan Treaty - Nanfan Treaty of 1701 is the treaty lands within Southwestern Ontario and the United States that was the trade and economic base of Six Nations as well as our shared traditional hunting, gathering and fishing territories.
- 5.6 Haldimand Tract – the land six miles on either side of the Grand River from its source to Lake Erie granted to Six Nations by the Haldimand Proclamation of October 25, 1784.
- 5.7 Major projects – Projects that are on lands to which SNGR has a strong *prima facie* case for title; or are deemed by SNEC to have a reasonable potential to cause environmental damage, result in non-compensable damage, or affect SNGR’s economic interests. These projects may include, but are not limited to:
- (i) estate residential depending on location;
  - (ii) large residential developments;
  - (iii) commercial and industrial developments;
  - (iv) changes to policies or plans;
  - (v) major transportation projects;
  - (vi) projects that cross the Grand River;
  - (vii) energy projects; and
  - (viii) Special Projects.
- 5.8 Minor projects – Projects deemed, by SNEC, to present very little potential for negative effects on the environment, cultural damage, or infringement on Six Nations’ Interests, or Aboriginal and treaty rights. These projects may include, but are not limited to:
- (i) severances;
  - (ii) variances;
  - (iii) lot line adjustments;
  - (iv) garden suites;
  - (v) the majority of notices outside of the Haldimand Tract that are not deemed Special Projects by SNEC.
- 5.9 Proponent – A person(s), organization(s), corporation(s) and any other business entities, which may include The Crown, who puts forward a proposal to be implemented that may affect Six Nations’ rights and interests.
- 5.10 Six Nations’ Interests – SNEC asserts their interest to include the following lands:
- (i) All lands within the Haldimand Tract;
  - (ii) The Grand River including the river bed;
  - (iii) The 1701 Fort Albany/Nanfan Treaty territory; and
  - (iv) Other treaties as deemed significant by SNEC.
- 5.11 SNEC – Six Nations Elected Council.

5.12 SNGR – Six Nations of the Grand River.

5.13 Special Projects – Projects of a significant size or importance that, in the opinion of SNEC, has a reasonable potential to affect Six Nations’ Interests or infringe on SNGR’s rights. The Crown – Her Majesty in right of Canada and Her Majesty in right of Ontario and their respective governments and agencies.

5.14 Third Parties – A person; other than The Crown, SNEC, or the Proponent; who is either directly or indirectly affected by a project.

## **6. Enforcement**

6.1 If a Proponent or The Crown fails to abide by this policy SNEC may take one or more of the following actions:

- (i) dispute resolution;
- (ii) legal action; and
- (iii) any other action deemed reasonable.

## **7. Non-Derogation**

7.1 Nothing in this policy, pursuant to section 25 of the Charter of Rights and Freedoms, shall be construed so as to abrogate or derogate from the protection provided for Six Nations’ existing Aboriginal or treaty rights as recognized by section 35 of the *Constitution Act* 1982, the Royal Proclamation of October 7, 1763, and any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

7.2 Nothing in this policy shall be construed as to affect the Aboriginal or treaty rights, as recognized by section 35 of the *Constitution Act*, 1982, of any other First Nation.

## **8. Responsibilities of The Crown**

8.1 The Crown, in obtaining free, prior and informed consent is required to :

- (i) operate in good faith;
- (ii) uphold the honour of The Crown;
- (iii) notify and consult on all policy and process changes;
- (iv) keep abreast of the status of the consultation process throughout;
- (v) contribute in a meaningful way when necessary;
- (vi) participate in consensus decision making;
- (vii) give reasonable consideration to Six Nations’ rights and interests;
- (viii) conduct consultation in the most expeditious manner possible consistent with SNEC policies and processes;
- (ix) ensure the consultation process is adequately and securely funded;
- (x) accommodate Six Nations rights and interests that have been asserted; and
- (xi) monitor compliance of the accommodation agreement(s);

## **9. Responsibilities of SNEC**

9.1 SNEC will:

- (i) operate in good faith;

- (ii) ensure transparency and accountability in the CAP;
- (iii) respect the concerns, values, and opinions of all Six Nations Members;
- (iv) provide all Six Nations Members with reasonable opportunity to comment on projects during community engagement;
- (v) promote and encourage the use of the CAP;
- (vi) negotiate with Proponents for adequate resourcing required to ensure due diligence is completed;
- (vii) monitor compliance of the CAP; and
- (viii) negotiate accommodation agreements and ensure that they are complied with.

## **10. Responsibilities of Proponents**

10.1 Proponents are expected to be responsible to:

- (i) operate in good faith;
- (ii) ensure transparency in the CAP;
- (iii) notify SNEC of any proposed projects as early as possible;
- (iv) follow the consultation and accommodation process;
- (v) provide all project information and capacity funding required for due diligence; and
- (vi) comply with all negotiated accommodation agreements;

## **11. Overview of the Consultation and Accommodation Process**

11.1 SNEC asserts that notification of a project does not constitute consultation.

11.2 Contact between SNEC and a Proponent may be initiated through informal meetings and/or other forms of communication. This may be interpreted as a sign of good faith and honourable intention, however; this initial communication shall not be considered to fulfill the duty to consult.

11.3 Proponents must consult with SNEC prior to the onset of the proposed project.

11.4 Proponents must provide SNEC with detailed descriptions of the proposed project and any other related documentation requested by SNEC.

## **12. Minor Projects**

12.1 If a Proponent is proposing a minor project, the proponent shall submit to SNEC all relevant documentation on the land being used and the project itself

12.2 SNEC reserves the right to make the final determination on all projects submitted as Minor Projects. If a Proponent submits a project as a Minor Project that in the opinion of SNEC is a Major Project, including a Special Project, SNEC shall return all documentation and fees received to the Proponent with directions to pursue consultation as a Major Project.

12.3 SNEC will review the documentation provided, and if necessary, request any additional documentation.

12.4 SNEC reserves the right to request regular updates on specific aspects of minor projects.

### **13. Major Projects**

- 13.1 SNEC recognizes that not all major projects present equal levels of risk to Six Nations' Interests or inherent Aboriginal and Treaty Rights. The following represents an overview of how SNEC is prepared to be consulted on major projects. SNEC reserves the right to deal with each project on an individual basis within this framework.
- 13.2 The Proponent shall provide SNEC with all related documentation relevant to the project.
- 13.3 The Proponent and the CAP team will negotiate a capacity funding agreement (CFA). The purpose of the CFA is to enable SNEC to be adequately financed throughout the consultation process and to reach an accommodation agreement.
- 13.4 When a draft CFA has been negotiated the CAP Team will present the CFA to Council for approval and signature.
- 13.5 The CAP team will do the due diligence required for the project.
- 13.6 The CAP team will negotiate a term sheet of the potential community benefit.
- 13.7 The CAP team will take the term sheet to council for approval to take to the community.
- 13.8 The CAP Team will engage with the community for consideration of the project and the term sheet. The CAP Team shall allow a reasonable amount of time for all Six Nations Members to submit comments on the project. The CAP Team shall give all reasonable submissions consideration.
- 13.9 The CAP team makes a recommendation to council on the community engagement.
- 13.10 If the community supports the project, the CAP team and the proponent will negotiate a final definitive agreement; if no support, then the CAP team and the proponent go back to negotiate a new term sheet.
- 13.11 The CAP team will present the community's support for the project and the definitive agreement to Council for final approval.
- 13.12 If at any point during this process prior to the definitive agreement, Council decides to cease consultation, or opposes the project, a Letter of Objection shall be furnished to The Crown and to the Proponent.
- 13.13 The CAP team would further engage the community to inform them of the option selected for the community benefit.

### **14. Dispute Resolution**

- 14.1 If at any point throughout the CAP the parties feel that an agreement cannot be reached they may opt to pursue a dispute resolution process which may include arbitration.
- 14.2 Any dispute resolution process must be:
  - (i) conducted in a manner where Six Nations has equal decision making power;
  - (ii) conducted in an impartial and mutually acceptable manner; and
  - (iii) conducted in a timely manner.
- 14.3 The process of consultation shall cease for the duration of a dispute resolution process.

### **15. Responsibility**

- 15.1 The SAO is the Procedural Authority and is authorized to approve any procedures, guidelines, applications, and forms that are required for the implementation of this policy.

- 15.2 The CAP Team is the Position Responsible and is accountable for ensuring: the ongoing accuracy of the policy; that any procedures, guidelines, and forms are developed and approved by the Procedural Authority; that the policy is reviewed when scheduled; and that the distribution requirements are met.
- 15.3 The Director of Lands and Resources is the Implementation Body/Position and is responsible for ensuring that the policy is enforced and implemented in a timely manner.
- 15.4 The Consultation Point person shall be contacted for all Consultation & Accommodation matters.

## **16. Review and Amendment**

- 16.1 SNEC shall review this policy on at least an annual basis.
- 16.2 Any ongoing consultations shall not be affected by changes to the policy, unless agreed to by all parties.
- 16.3 SNEC reserves the right to amend or clarify the policy as it considers necessary to reflect its intended application.

## **17. Related Documents**

- 17.1 Global Solutions Booklet
- 17.2 Six Miles Deep Booklet

## **18. Key Stakeholders**

- 18.1 Six Nations of the Grand River Community
- 18.2 CAP Team

## **19. Authorization**

- 19.1 This policy was approved by Six Nations Elected Council on September 24, 2013 by SNCR No. ICGC#498/09/24/2013 to be effective on that date. This policy shall repeal and replace previous policies on consultation and accommodation relating to development of Six Nations lands.