



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: SNGREC
Effective Date: March 25, 2024

Date for Review: Annually
Previous Versions: September 24, 2013

1. Preamble

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

As the official governing body of the territory, Six Nations of the Grand River Elected Council (SNGREC) 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 Treaty 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, as a sovereign nation, is not a municipality or merely an Ontario community or stakeholder.

2. Policy Statement

- 2.1 SNGREC, in accordance with Canadian and International laws, requires that The Crown, Proponents and municipalities consult in good faith with SNGREC, 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 SNGREC expects that effective mechanisms shall be provided by The Crown and/or Proponent for just and fair redress for any significant development activities; and all parties shall take appropriate measures to avoid and if not possible to mitigate adverse environmental, ecological, harvesting, economic, social, cultural or spiritual impacts.
- 2.3 SNGREC 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, ecological, harvesting, economic, social, cultural, and spiritual rights and interests of the peoples of SNGR.
- 2.4 SNGREC 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 (UNDRIP). 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 Article 25 of UNDRIP states: Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- 3.3 Article 26 of UNDRIP states:
 - (i) Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied, or otherwise used or acquired.
 - (ii) Indigenous Peoples have the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 - (iii) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned.
- 3.4 The process shall be based on the recognition of SNGR's inherent rights, treaty rights, and title. SNGREC 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.
- 3.5 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.
- 3.6 Adequate financial resources shall be made available to SNGREC for its full and effective participation in all aspects of the Consultation and Accommodation Process.
- 3.7 Where there is to be an accommodation agreement, it must be reached with SNGREC 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.
- 3.8 The parties must be willing to engage in a jointly accepted dispute resolution process in the event an agreement cannot be reached.
- 3.9 SNGREC 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 Treaty 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, having concern for and consideration of Six Nations of the Grand Rivers' wishes in planning and acting: with the potential 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 SNGREC 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 and Policy.
- 5.4 Due Diligence - A reasonable exercise of care that is taken by a business or person before entering into an agreement or contract with another party. It does include, but is not limited to:
- (i) The hiring of legal representation for legal analysis.
 - (ii) The hiring of financial accountants for financial analysis.
 - (iii) Community engagement of SNGR.
- 5.5 Council – Means the Six Nations of the Grand River Elected Chief and Council acting as a whole through SNGREC Resolutions.
- 5.6 Fort Albany/Nanfan Treaty 1701 - It is a treaty made between the Five Nations and the Governor of New York on behalf of Great Britain that places the Five Nations lands in Ontario and portions of the United States under the protection of Great Britain.
- 5.7 Haldimand Treaty – The land six miles on either side of the Grand River from its source (at Southgate Township) to its mouth (at Lake Erie) granted to Six Nations by the Haldimand Proclamation of October 25, 1784. Otherwise known as Haldimand Tract or Haldimand Proclamation.
- 5.8 Major projects – Projects that are on lands to which SNGR has a strong *prima facie* case for title; or are deemed by SNGREC 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 or laws;
 - (v) Major transportation projects;
 - (vi) Projects that border and/or cross the Grand River;
 - (vii) Aggregate resource projects;
 - (viii) Energy, electric and water projects;
 - (ix) Extractions; and
 - (x) Special projects.
- 5.9 Minor projects – Projects deemed, by SNGREC, to present very little potential for negative effects on the environment, cultural damage, or infringement on Six Nations' Interests, or Indigenous and treaty rights. These projects may include, but are not limited to:
- (i) Severances;
 - (ii) Variances;
 - (iii) Lot line adjustments;
 - (iv) Garden suites; and
 - (v) Some estate residential developments.
- 5.10 Norms – Any complementary norms or customary practices adopted by the CAP Team to manage the practical details of consultation operations or to guide their implementation of this Policy.
- 5.11 Proponent – A person(s), organization(s), corporation(s) and any other business entity, which may include The Crown, who puts forward a proposal to be implemented that may affect Six Nations' rights and interests.
- 5.12 Six Nations' Interests – SNGREC asserts their interest to include the following lands:
- (i) All lands within the Haldimand Tract; non surrendered lands and conditionally surrendered lands which are subject to unfulfilled condition(s);
 - (ii) The Grand River including the riverbed;
 - (iii) The 1701 Fort Albany/Nanfan Treaty territory; and
 - (iv) Other treaties as deemed significant by SNGREC.

- 5.13 SNGREC - Means Six Nations of the Grand River Elected Council. SNGREC includes the Elected Council Members and the Elected Chief.
- 5.14 SNGR - Means Six Nations of the Grand River. Six Nations of the Grand River is the legal name of the Elected Council and the organization as a whole.
- 5.15 Special Projects – Projects of a significant size or importance that, in the opinion of SNGREC, has a reasonable potential to affect Six Nations’ Interests or infringe on SNGR’s rights.
- 5.16 The Crown – His Majesty in right of Canada and His Majesty in right of Ontario and their respective governments and agencies.
- 5.17 Third Parties – A person; other than The Crown, SNGREC, or the Proponent; who is either directly or indirectly affected by a project.
- 5.18 Chief Executive Officer (CEO) - Is the CEO for SNGR.
- 5.19 Community Engagement – The process of seeking, receiving, following, and transmitting the sentiment, concerns, thoughts, and feedback of SNGR members, traditional and cultural leaders, and community groups.
- 5.20 Members – Anyone registered as a member of Six Nations of the Grand River and thus belonging to our Nation.
- 5.21 Traditional, cultural or community leaders – Any member validly recognized by SNGR as a
 - (i) Clan Mother;
 - (ii) Traditional Haudenosaunee Confederacy Chief;
 - (iii) Former Elected Chief;
 - (iv) Six Nations elder; or
 - (v) Community leader as otherwise defined by SNGR.
- 5.22 Community or leadership groups – Any groups or organizations formed of SNGR members or lawfully based on SNGR seeking to provide collective or institutional feedback, including:
 - (i) Six Nations Men’s Fire;
 - (ii) Mohawk Workers; or
 - (iii) Any other group as so recognized by SNGR.
- 5.23 Affiliated cultural leaders – Any non-member validly recognized by SNGR as a traditional Haudenosaunee Confederacy Chief, Iroquois Caucus participant Chief, or Elected Grand Chief of a separate Haudenosaunee or Iroquois First Nation or Tribe.
- 5.24 Policy - The SNGR Consultation and Accommodation Policy
- 5.25 Capacity Funding Agreement (CFA) - The CFA is to enable SNGREC to be adequately financed to do due diligence on the project and to reach an accommodation agreement.
- 5.26 Term Sheet - The legal agreement for the accommodation from the development/project that is subject to community engagement.
- 5.27 Accommodation Agreement - The legal contract that is entered into after supportive community engagement and SNGREC approval.
- 5.28 Community Engagement Process (CEP) - A guide on conducting community engagement in SNGR.
- 5.29 Environmental Levy Policy - A policy on SNGR’s environmental minimums and enhancements that was approved by SNGREC.

6. Enforcement

- 6.1 If a Proponent or The Crown fails to abide by this Policy, SNGREC 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 and timely way when necessary;
- (vi) Participate in consensus decision making;
- (vii) Uphold Six Nations' rights and interests;
- (viii) Conduct consultation in the most expeditious manner possible consistent with SNGREC 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 SNGREC

9.1 SNGREC 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 compliance with the same.

10. Responsibilities of Proponents

10.1 Proponents are expected to:

- (i) Operate in good faith;
- (ii) Ensure transparency to the CAP Team;
- (iii) Notify SNGREC of any proposed projects as early as possible;
- (iv) Follow the consultation and accommodation process;
- (v) Provide all project information in a timely manner 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 SNGREC asserts that notification of a project does not constitute consultation.
- 11.2 Contact between SNGREC 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 SNGREC prior to the onset of the proposed project.
- 11.4 Proponents must provide SNGREC with detailed descriptions of the proposed project and any other related documentation requested by SNGREC. This includes, but is not limited to:
 - i) Environmental Assessments or Environmental Impact Studies;
 - ii) Archaeology Reports;
 - iii) Developmental and Related fees;
 - iv) Building plans and Timelines; and
 - v) Other Studies and Documents.
- 11.5 Ensure compliance with the Environmental Levy Policy for every development/project.
- 11.6 Follow up meetings and site visits will occur as necessary.
- 11.7 Accommodation is a key part of every consultation.
- 11.8 Legal counsel will review any term sheets. The Proponent will pay the cost of the legal counsel.
- 11.9 Negotiations shall be carried out in a mutually agreeable, impartial manner. The structure, procedure, timing, location and parties shall be agreed to by all parties before the negotiation process commences.
- 11.10 In the event that a mutually acceptable agreement is no longer reasonably attainable, then SNGREC may start a dispute resolution process.
- 11.11 The CAP Team may supplement this Policy with its own complementary norms or customary practices to manage the practical details of any process or direction set out herein.

12. Minor Projects

- 12.1 If a Proponent is proposing a minor project, the Proponent shall submit to SNGREC all relevant documentation on the land being used and the project itself.
- 12.2 SNGREC will review the documentation provided and if necessary, request any additional documentation.
- 12.3 SNGREC reserves the right to request regular updates on specific aspects of Minor Projects.

13. Major Projects

- 13.1 SNGREC recognizes that not all Major Projects present equal levels of risk to Six Nations' Interests or inherent Aboriginal and Treaty Rights.
- 13.2 SNGREC reserves the right to deal with each project on an individual basis within this framework.
- 13.3 The Proponent shall provide SNGREC with all related documentation relevant to the project.
- 13.4 The Proponent and the CAP team will negotiate CFA.
- 13.5 When a draft CFA has been negotiated the CAP Team will present the CFA to Council/CEO for approval and signature.
- 13.6 The CAP team will exercise due diligence as required for the project.
- 13.7 The CAP team will negotiate a term sheet of the potential community benefit. Normally this will happen before the community engagement, but in some circumstances, it can occur after.
- 13.8 The CAP team will take the term sheet to Council for approval to take to the community.
- 13.9 The CAP team will engage with the community in accordance with the community engagement process as set out below.
- 13.10 The CAP team makes a recommendation to council on the community engagement.
- 13.11 The CAP team will present the community's support for the project and the accommodation 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.

14. Community Engagement Process

14.1 Community Engagement can include, but is not limited to:

- (i) Door to door engagement;
- (ii) Social media (Facebook, Instagram, Twitter, Tik Tok, etc.);
- (iii) Virtual meetings conducted on platforms such as Zoom, Microsoft Teams, or Webex;
- (iv) In person meetings/events;
- (v) Feedback/comments/questions through Email;
- (vi) Online survey and comments/questions/feedback on sixnations.ca;
- (vii) Feedback/comments/questions by telephone;
- (viii) Mail out feedback forms that are to be dropped off when completed;
- (ix) Radio and/or Newspaper advertisement; and
- (x) SNGR App.

14.2 The CAP Team will engage with the community for consideration of the project and the term sheet in accordance with our community engagement process as set out in this document and in any accompanying documentation as approved by Council, as well as with any complementary Norms. Engagement will normally occur after a term sheet is finalized but can occur before. 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.

14.3 If the community supports the project, the CAP Team and the proponent will negotiate a final accommodation agreement; if no support, then the CAP Team and the Proponent go back to negotiate a new term sheet.

14.4 The CAP Team will further engage the community to inform them of the option selected for the community benefit.

14.5 SNGR has established this process as the sole process that governments, proponents, and municipalities must comply with to fulfill their duty to consult.

14.6 After being notified of a project or proposal, the significance of which meets the size and circumstance thresholds for community engagement as set out in any relevant complementary norms, the CAP Team will begin their engagement with the community within a reasonable time in accordance with any Norms and the nature of the project in question.

14.7 The CAP Team will conduct this engagement with the community in such a way as to ensure that all interested members, including but not limited to traditional chiefs, clan mothers, cultural leaders, and community groups, are informed of the respective project or proposal and its impacts on any asserted or established rights.

14.8 The CAP Team will provide community members, chiefs, leaders, and groups with the opportunity to share their perspective on any project or proposal, or to seek any additional information or clarification from SNGR, or through SNGR from any proponent, government or municipality.

14.9 SNGR will share any formal feedback from traditional chiefs, cultural leaders, and community groups with the Crown, proponents or municipalities as appropriate and as requested by any such community leader or leadership group.

14.10 SNGR prohibits outside governments or proponents from interfering in our community engagement by conducting their own separate, parallel engagement internal to our community in a way that conflicts with our established procedures or undermines our community's interests, rights, or jurisdictional integrity.

14.11 SNGR also prohibits any payment intended to satisfy the interests or rights of the Six Nations community from being made to any individual or organization not expressly authorized by, and accountable to, SNGR.

- 14.12 SNGR may also consult other individuals or groups at its discretion, including affiliated cultural leaders, insofar as appropriate in the interests of the SNGR community.
- 14.13 Confidentiality of sensitive, personal, or proprietary information for all projects will be respected by the CAP Team and information shared will be determined on a case-by-case basis in accordance with any relevant complementary norms, confidentiality requirements, or privacy limitations.
- 14.14 Additional details and practical steps involved in community engagement may be found in the SNGR CEP Booklet and the SNGR CEP 10-Step Guide.

15. Approval

- 15.1 SNGREC has the final approval of all agreements/accommodations. The CAP Team will take all agreements/accommodations to SNGREC for their approval and signature as the final step.
- 15.2 If the accommodation/agreement is approved by SNGREC, the CAP Team will communicate the acceptance to the Proponent/The Crown/Third Party.
- 15.3 If the accommodation/agreement is not approved by SNGREC, the CAP Team will communicate this non acceptance to the Proponent/The Crown/Third Party
- 15.4 The CAP Team will also take Non-Disclosure Agreements (NDAs) and Capacity Funding Agreements (CFAs) to the SNGREC/CEO for their approval and signature so that the CAP Team can do due diligence and proceed onto the next steps.

16. Dispute Resolution

- 16.1 If at any point throughout the consultation and accommodation process the parties feel that an agreement cannot be reached, they may opt to pursue a dispute resolution process which may include arbitration.
- 16.2 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.
- 16.3 The process of consultation shall cease for the duration of a dispute resolution process.
- 16.4 A third party may receive standing in a dispute resolution.

17. Responsibility

- 17.1 The Chief Executive Officer (CEO) of SNGR is the Procedural Authority and is authorized to approve any procedures, guidelines, applications, and forms that are required for the implementation of this Policy.
- 17.2 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.
- 17.3 The Director of the Lands and Resources Department is the Implementation Body/Position and is responsible for ensuring that the policy is enforced and implemented in a timely manner.

18. Review and Amendment

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

19. Related Documents

- 19.1 Global Solutions Booklet.
- 19.2 Six Miles Deep Booklet.
- 19.3 Land Rights and Financial Justice Booklet.
- 19.4 Community Engagement Process Document.
- 19.5 Environmental Levy Policy.

20. Key Stakeholders

- 20.1 SNGR.
- 20.2 The CAP Team.

21. Authorization

- 21.1 This updated Policy was approved by Six Nations of the Grand River Elected Council on ICPL#7703/25/2024 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.