

Deshkan Ziibiing/Chippewas of the Thames First Nation

Wiindmaagewin

CONSULTATION PROTOCOL



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PART I: Introduction and Purpose

1. History of Deshkan Zibiing Aki (Chippewas of the Thames First Nation)

The watersheds of southwestern Ontario have been the home of Anishinaabe people for millennia. Deshkan Zibiing edbendaagzijig, “those that belong to Antler River,” comprise one of the traditional Anishinaabe nations governing the territory of Waawayaatanong or “Round Lake.” This region is known as the third stopping place of the Water Drum on its sacred journey to Madeline Island, centuries before the era of colonization.

The purpose of this protocol is to ensure that our relationships with others develops in ways that respect Deshkan Zibiing’s responsibilities to mother earth and protects the full range of our rights. This protocol shall serve to guide governments and third-party proponents who are interested in pursuing healthy and mutually beneficial relationships with Deshkan Zibiing within our traditional territory.

2. Territory

Deshkan Zibiing edbendaagzijig’s traditional territory was recognized and affirmed by Canada in the Big Bear Creek Land Claim Settlement Agreement (2013). Within this territory, we are also signatory to pre-Confederation Treaties with the British Crown. Traditional Anishinaabe territory in southwestern Ontario includes lands addressed in the McKee Treaty (1790), the London Township Treaty (1796), the Sombra Township Treaty (1796), the Longwoods Treaty (1822), and the Huron Tract Treaty (1827). Deshkan Zibiing is party with other Anishinaabe nations to several of these treaties but is the sole Anishinaabe party to the Longwoods Treaty.

A comprehensive description of our ancestral lands is attached as Appendix “A” together with a map.

We who are Deshkan Zibiing edbendaagzijig continue our commitment to protect the watersheds of the Thames River, Bear Creek, the Au Sable River, and the Erie and Huron

lakeshores. We regard all of our ancestral lands as part of our consultation territory. Our treaties did not “surrender” our lands or waters.

3. Community Profile

As a community, Deshkan Zibiing has always welcomed and incorporated people from other nations. Our families have always shared a common world around the Great Lakes with the families of the Pottawatomis and the Odawas. Delawares (Lenape) and Oneidas were welcomed here between 1791 and 1840 and allowed to create their own communities on land adjacent to and within our homeland. At various times, other Haudenosaunee, Shawnees, Huron/Wendats, as well as Anglo or French traders and settlers marrying our people, have all been incorporated into our society. Today, our population is approximately 3,200 people, with 1,000 residing within Deshkan Zibiing’s unceded reserve land.

4. Historical Relationships

Deshkan Zibiing’s relationships with other nations have generally been pursued through the creation of Treaty partnerships.

The great Treaty of Niagara (1764) emerged from this long practice and is the template for all subsequent treaties between Britain and Deshkan Zibiing. The Two Row Wampum, a belt the Haudenosaunee first used with the Dutch in 1613, recognized a relationship of equals.

The imposition of colonialism and Canada’s shameful conduct in breaking sacred promises contained in our Treaties have had a lasting effect on the people of Deshkan Zibiing. Colonial rule presumed the ‘surrender’ of well over 90% of our traditional territory. Efforts to ‘civilize’ and assimilate our people, through Canada’s unilateral imposition of legislation, harsh policies, and the residential school system have taken a toll on our people and have unlawfully infringed our human rights as well as our Aboriginal and Treaty rights.

However, despite Canada’s assertions of sovereignty over our lands and people, we have remained resilient and have continued to assert our inherent rights as a sovereign nation.

Deshkan Zibiing remains intent on protecting our traditional territory. Our vision for the engagement formalized in this protocol remains that of Tecumseh, our Treaty chiefs, and the Two Row Wampum.

We are fundamentally committed to self-determination and the preservation and restoration of our Anishinaabe jurisdiction and heritage. We expect that those with whom we engage in matters respecting our traditional territories will act in a manner consistent with the principles contained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and shall seek to fulfil the objectives of reconciliation.

We are focused on fair partnerships based on our free, prior, and informed consent and the wise and respectful use of our traditional lands and waters.

5. Principles of Intersocietal Governance and Communication

Our engagement with other communities stems from our recognition of several principles, which derive from our Creator's gifts to us of life and land, and from our Creator having placed us within a world full of relationships with others. Our responsibility to maintain these relationships, in accordance with principles derived from our creation story, is central to our continued wellbeing as a people. These principles guided our ancestors in their Treaty partnerships historically, and they remain foundational today in our dealings with federal, provincial, and municipal bodies. They indicate our fundamental orientation towards all matters of discussion concerning our rights and responsibilities and underpin our approach to "the duty to consult" as articulated by the Supreme Court of Canada in *Haida Nation* (2004) and subsequent cases.

Our principles provide a basis for fruitful and healthy intersocietal development, governance, and communication.

a. Principles of Governance

(1) Gdinawendimi: "We are all related." A basic truth of our creation story is that we are related to everything that shares the world with us. We expect that all consultation and

discussion with governments and third parties will focus on how the proposed project will foster this relatedness.

(2) Mno-bmaadiziwin: “The good life.” We understand that the Creator placed us within our world’s web of spiritual and bio-physical relationships in order for life to flourish. Life flourishes when we base our relationships on the gifts of the Seven Grandfathers: Nbwaakaawin “wisdom,” Zaagidiwin “love,” Minaadendamowin “respect,” Aakde’ewin – or Zoongide’ewin “bravery,” Gwakwaadiziwin “honesty,” Dbaadendiziwin “humility,” Debwewin “truth.” Proposals should enhance the good life for all our relations and discussions regarding those proposals should be grounded in the Seven Grandfather teachings.

(3) Naaknigewin: “Law”. We expect that all consultation and discussion with governments and third parties will aim to respect and embody our laws, including our Chi-Inaakonigewin, as the measure for our decisions provided by the Creator.

(4) Anishinaabe dbendizawin: “Anishinaabe independence,” or “self-determination.” We were created to live as an independent people, and are therefore able to ally with, but not to become subject to, other independent peoples. The Two Row Wampum embodies this alliance of equals, each party free to follow its own way without interference, but each also attentive to the wellbeing of the other. We expect that all proposals from governments will respect this most basic tenet of the Two Row Wampum.

b. Principles of communication

(1) Zgaswediwin: “To smoke together.” When Anishinaabeg met in council, they began with the ceremony of smoking. In our stories, Nanabush provided our ancestors with the pipe of peace to help us foster the path of goodwill and reconciliation towards earth, plants, animals, and our fellow humans. Asemaa, “tobacco,” carries our thoughts and prayers to the Creator, and demonstrates our desire to speak the truth, and to build relationships that reflect

gratitude in our dependence on the natural order. We expect that all consultation will be grounded in truth, reconciliation, and gratitude.

(2) Ginoondiwin: “talk to each other.” Our practice has been to reach decisions in common, after full and satisfying discussion addressing the concerns of all involved. Consultation must be designed and implemented with flexibility, respecting the nature of the rights potentially impacted and the scope of the possible impacts. Deshkan Zibiing expects to determine the level of consultation that is necessary and appropriate where our rights and interests are potentially impacted.

(3) Gii-nenmaasiinaawaan: “they didn’t let them”. In all consultations which impact our Treaty and traditional lands, we expect Crown and Proponents to adhere to the principle of Free, Prior, and Informed Consent, embodied in article 32(2) of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

Chi-dibaakinigewin: a “great judgment,” Our ancestors negotiated with settler governments to reach mutually beneficial agreements. However, colonial governments have ignored obligations under these solemn agreements and have justified erosion of our rights over time. We expect that governments will adhere to the true intent of treaties and agreements and will respect the gravity of the promises that are made.

c. Principles of Co-Existence and Economy

(1) Gdoonaaganinaan: “Our Dish,” the agreement reached with the Haudenosaunee in 1701, enabled our respective peoples to hunt and harvest in mutual safety, and ensured mutual wellbeing, within our ancestral lands. We expect all Proponents to demonstrate how proposed projects will promote mutual safety and wellbeing.

(2) Maatookiiwin: “sharing”. Our Treaties concern our sharing of the lands that the Creator has shared with us. There are no Anishinaabemowin transcriptions of treaties that

use the word *adaawaage*, meaning “to sell.” It is our expectation that in the spirit of sharing what the Creator has provided, benefits related to projects will also be shared.

(3) Gnawenjigewin: “to take care of things.” Our use of the lands and waters of our territory is subject to Anishinaabe principles of stewardship, derived from our creation story, and instilled through the growth of Traditional Knowledge. We expect that all project proposals will respect and incorporate conservation practices and Traditional Knowledge of Deshkan Ziiibiing.

(4) Niigaan-inaabiwin: “looking ahead”. Decision-making that respects the full web of relationships within which the Creator has placed us, and aims to chart the impacts of our choices as far as possible into the future to ensure harmony and balance. We expect project proposals with the potential to affect our lands, waters, air, health and wellbeing to demonstrate as concretely as possible the long- term implications for Deshkan Ziiibiing.

6. Statement of Reserved Rights

The rights that Deshkan Ziiibiing exercises in relation to our traditional lands, Treaty lands, reserve lands, and Addition to Reserve lands, are inherent - grounded most basically in the Creator’s gift of lands, waters, and way of life to *ndodeminaanig*, “our clans.” These rights are embodied in our historical and ongoing occupation of our territory, and in our practice of self- determination as a people.

Our rights as a self-determining people are recognized in several instruments, including, the Royal Proclamation of 1763, our Treaties, s.35(1) of *Canada’s Constitution Act* and the *United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)(2007)*.

UNDRIP recognizes, among other things, the need to respect and promote the inherent rights of Indigenous peoples, including our right to self-determination within our traditional lands and territories. Our rights derive from our political, economic, and social structures and from our cultures, spiritual traditions, histories, and philosophies. UNDRIP encourages States to comply

with and effectively implement all their obligations as they apply to Indigenous peoples under international instruments in consultation and cooperation with the peoples concerned. Relevant articles include, but are not limited to:

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 26:

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Article 32:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or

territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

In June 2021, Canada passed into law the *United Nations Declaration on the Rights of Indigenous Peoples Act* which affirmed UNDRIP as a universal international human rights instrument with application in Canadian law; thereby providing a framework for Canada's implementation of UNDRIP.

This legislation represents a step toward implementing UNDRIP as a framework for reconciliation as recommended by the Truth and Reconciliation Commission of Canada in their "Calls to Action" – which Canada committed to addressing.

Within the *UNDRIP Act*, Canada rejects all forms of colonialism and commits to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance, and respect for human rights. Canada further committed to taking effective measures including legislative, policy and administrative measures, in consultation and cooperation with Indigenous peoples, to achieve the objective of UNDRIP.

This Wiindmaagewin represents a framework for consultation which is consistent with the principles of UNDRIP and Canada's stated commitment to implementing these principles to achieve reconciliation; however, the Wiindmaagewin is based on the Nation's inherent rights which are not dependent on Canada's legal system or recognition.

PART II Obligation to Consult

7. Purpose and Application

7.1. This Consultation Process balances Deshkan Zibiing's laws with the legal principles derived from the western common law as well as international instruments, such as UNDRIP. We adhere to the principle of Free, Prior, and Informed Consent. Therefore, where any proposed Activity within Deshkan Zibiing's Traditional or Treaty Territory, Additions to Reserve Land or any land over which Deshkan Zibiing claims Aboriginal title, may potentially cause an impact to the environment, health or Deshkan Zibiing's rights or asserted rights, including changes to laws, regulations or policies, Deshkan Zibiing expects the Crown and Proponents to respect and follow the processes set forth in this Wiindmaagewin.

7.2. Nothing in this Protocol, nor the process or documents derived from it shall be construed to abrogate or derogate from the rights of Deshkan Zibiing, regardless of whether such rights are recognized, established or defined.

7.3. Nothing in this Protocol may be construed to limit any consultation or accommodation obligations owed to Deshkan Zibiing by the Crown or any Proponent.

7.4. Deshkan Zibiing retains the right to challenge through the legal process, any Activity having the potential to impact the citizens or lands of Deshkan Zibiing.

8. Definitions

- a. Activity** means any Crown or Proponent activity.
- b. Crown** means either or both of the governments of Canada and Ontario and its component parts and agents, as well as its designates including municipalities.

c. Crown Activity means:

- New or changes to legislation, regulations, policies, programs and plans that provide authority to or are implemented or to be implemented by the Crown;
- Issuance, variation, approval, suspension or cancellation of permits, licenses, authorizations, renewals or anything similar by the Crown;
- Any unfunded mandate or obligation sought to be imposed by the Crown upon Deshkan Zibiing without provision of corresponding adequate resources, financial or otherwise;
- Any failure to act by the Crown where the Crown is obligated to take action to protect or given effect to Deshkan Zibiing's Aboriginal or Treaty rights; and
- Any other action which may be authorized or undertaken by the Crown.

d. Proponent means the party (which could include the Crown, a municipality, a Land Use Planning Authority, a corporation, partnership, sole proprietorship, association, organization, person or the like) that proposes to undertake or is undertaking the Proponent Activity but excludes any business in which Deshkan Zibiing has a majority interest or financial control.

e. Proponent Activity means any Activity pursuant or incidental to anything authorized or ordered by the Crown or that the Crown is contemplating authorizing or ordering. This includes Planning Authorities who are required to engage and coordinate with Indigenous communities on land use planning matters and consider our interests when identifying, protecting, and managing cultural heritage and archaeological resources. It does not include any Activity of Deshkan Zibiing or a member of the Nation or a business in which members of the Nation have majority control or interest which Activity Deshkan Zibiing has authorized.

f. Impact means any effect that an Activity may have on the land, economy or environment within or around Deshkan Zibiing's Reserve, Additions to Reserve, Traditional or Treaty territory or any adverse effect on the health of any Deshkan Zibiing member or on the Aboriginal or Treaty rights of Deshkan Zibiing or any of its

citizens. This assessment of impact may relate to the cumulative impacts (long-term, ongoing, intermittent or repetitive) of a Proponent's proposed Activity or it may relate to the cumulative impacts of development generally which, as a whole will have an adverse impact on the right(s) of Deshkan Ziiibiing.¹

g. **Protocol** means this Wiindmaagewin, the Deshkan Ziiibiing Consultation Protocol.

9. Objectives and Responsibilities

9.1. Objectives of Consultation

Appropriate consultation is a dialogue between communities, a mutual engagement, rather than a mere notification of an external party's intention. Consultation ensures Deshkan Ziiibiing is fully informed about Activities that may affect our Nation's rights and interests; it promotes and deepens the path of reconciliation that will ensure a healthier future for both settler and Anishinaabe communities; it encourages the development of projects that are mutually beneficial to all parties; and it ensures that projects have wide legitimacy both within Deshkan Ziiibiing, and also within the larger network of Anishinaabe nations at home around the Great Lakes.

9.2. Responsibilities of the Parties

All parties engaged in consultation activities have responsibilities in common. Among these are the responsibilities to participate in good faith, and to treat each other with respect, transparency, and honesty. In addition, each party has its own unique responsibilities to ensure that the outcome of consultation is successful and good relations endure.

9.2.1 Crown Responsibilities

Where Deshkan Ziiibiing asserts rights or interests which may potentially be impacted, the

¹ This is consistent with evolving case law on cumulative impacts: See *Yahey v British Columbia*, 2021 BCSC 1287 ([Yahey](#))

Crown must act honourably. This requires that any rights that are protected or potentially protected by s.35 of the Constitution are recognized and respected. In all situations, the honour of the Crown requires reasonable, good faith efforts to engage in meaningful consultation and, where appropriate, accommodation to reconcile the interests at stake. Consultation is an ongoing obligation, and this duty may change during the course of consultation based on changing circumstances and information.

Specific Crown responsibilities include, but are not limited to:

- a) Full and complete collaboration with Deshkan Ziiibiing, taking into account the Community's input and perspective in designing and implementing the consultation and accommodation process, respecting Deshkan Ziiibiing 's laws and Traditional Knowledge, and acting with transparency, honour, and good faith, all in the spirit of reconciliation;
- b) Full and timely disclosure of all relevant information from the earliest stages of any contemplated Activity/project and as it becomes available throughout the consultation process;
- c) Effective oversight and coordination with other Crown agencies, departments, and Proponents as required;
- d) Timely and transparent communications with Deshkan Ziiibiing, including whether and how aspects of consultation are being delegated and the scope of that delegation;
- e) Where delegation occurs, ensuring an appropriate designate is appointed to oversee the effectiveness of the consultation process and ensuring the honour of the Crown is maintained during consultation and accommodation;
- f) Approaching every project/Activity with an open mind and an intention to be flexible and accommodate Deshkan Ziiibiing by substantially addressing legitimate concerns raised by the community including concerns related to

- cumulative impacts or effects;
- g) Incorporating Deshkan Ziiibiing as a partner into the strategic planning and decision-making process related to the project; and
- h) Funding for all reasonable costs associated with Deshkan Ziiibiing's meaningful participation, including costs associated with receiving, reviewing, and processing initial notices of proposed activities in the form of reasonable application or processing fees.

9.2.2 Proponent Responsibilities

Deshkan Ziiibiing acknowledges that Proponents are often delegated certain procedural aspects of the Crown's duty to consult when proposed activities potentially affect our asserted rights and interests.

Specific Proponent Responsibilities include, but are not limited to:

- a) Providing full, accurate, and up-to-date information about their projects on an ongoing basis. Such information should be provided as it becomes available and should not be dependent on explicit requests from Deshkan Ziiibiing staff;
- b) Facilitating Deshkan Ziiibiing's full participation in any necessary consultation activities and collaborating on Activity specific protocols which will detail consultation activities, timelines, and funding, including access to resources and expertise where required;
- c) Building consultation capacity within the Nation;
- d) Considering alternative approaches, including potential changes which may mitigate impacts;
- e) Respecting our role as steward and taking into account our Traditional Knowledge, practices, and perspectives;
- f) Responding to requests for information and adjusting timelines to facilitate the consultation process; and

- g) Exploring opportunities to share meaningfully in the range of benefits that might result from the Activity contemplated.

Should consultation proceed past the initial stage, we expect project Proponents to provide us with the following written acknowledgements, as requested:

- i. a statement fully acknowledging our inherent and Treaty rights, and our responsibilities to our territory, as they relate to the Activity;
- ii. a statement indicating that the Proponent will share this acknowledgement of our rights and responsibilities in all subsequent communication about the project with shareholders, the public, government departments, lenders, and others, and that the Proponent's subcontractors would function within the same framework.

9.2.3. Deshkan Ziibiing Responsibilities:

Our Elders have conveyed from the Creator our obligations to protect the land and waters of our traditional territory. Our responsibilities to our partners in consultation are similar to those we undertook together with our historic partner in Treaty.

Specific Deshkan Ziibiing Responsibilities include, but are not limited to:

- a) Upholding the terms of this protocol, as well as of any subsequent agreements arising in regard to the consultation process;
- b) Reciprocal good faith engagement with the Crown and Proponents;
- c) Providing timely information and responses as our capacity allows;
- d) Engaging leadership and our people in a meaningful way regarding proposed Activities;
- e) Stating our rights clearly and facilitating an understanding of how any potential impacts will adversely affect us; and,
- f) Providing input about how Proponents and governments might resolve our concerns in good faith, including participation in commercial relationships and/or

partnerships where appropriate.

PART III: Consultation Process

10. Triggering the Consultation Process

The duty to consult is triggered when the Crown contemplates or becomes aware of any Activity which has the potential to affect our Aboriginal or Treaty rights. At the earliest possible moment, notice of this Activity shall be submitted to Deshkan Zibiing by the Crown and/or Proponents in accordance with the contact procedures outlined below. If any Activity has begun or is underway before the consultation process is initiated, Deshkan Zibiing expects the Crown or Proponent to suspend such Activity until Deshkan Zibiing has been appropriately notified and engaged.

11. Submitting Notice to Deshkan Zibiing

Deshkan Zibiing uses the “NationsConnect” platform to receive consultation and engagement requests.

All inquiries and initial proposals for activities from the Crown and/or Proponents must be submitted to the NationsConnect portal, at the earliest possible moment in the development of a project idea. Notifications sent through regular mail, email, or fax will not receive a response and will not be considered submitted for consultation.

To submit, first go to <https://nationsconnect.ca/> to register. Click on the Sign Up Now button to get started.

Proponents will be required to submit information about their project. A spatial file in .kml, .kmz, or .zip shapefile formats are also required for submission. Once the project has been submitted, additional files can be attached. Communications can also be kept up to date through the Conversations feature on NationsConnect.

Consultation staff will respond to NationsConnect submissions within 45 days. Proponents are prompted to select a response date in the NationsConnect portal. Staff will attempt to respond

by the date noted, but it may not be possible due to capacity restraints.

If you need to contact Consultation staff and are NOT submitting a new consultation, email consultation@cottfn.com or call the office at 519-289-5555. A staff member will respond to emails within seven business days. If you do not receive a response within that time frame, please resend.

Reasonable processing and/or consultation service fees will be charged in accordance with the fee schedule outlined in the appendix of this Protocol. The updated Protocol can be found on Deshkan Zibiing's Website at: cottfn.com under "Duty to Consult."

No action or inaction on the part of Deshkan Zibiing in regard to a failure to provide proper Notice shall be deemed to be a waiver of Deshkan Zibiing's right to be consulted.

12. Notifications for Archaeology Requests

12.1. Deshkan Zibiing participates in archaeological fieldwork occurring within the Nation's Traditional and Treaty Territory by sending Archaeological Field Liaisons (AFLs) to sites. By participating in archaeological fieldwork, the Nation's AFLs help protect the Nation's rights and interests, material culture, and, where applicable, ancestors' remains and sacred items. Treaties, Lands and Environment is developing further protocols around the care of ancestors' remains and potential repatriation of sacred bundles and Anishinaabe material culture. Protocols will be shared when they are finalized.

12.2. The AFL program is managed by the Consultation Unit. Deshkan Zibiing expects to participate in all archaeological fieldwork from Stage 2 to 4. In order to participate in fieldwork, COTTFN and the Proponent or Consultant must execute an Archaeology Field Liaison Agreement. Proponents or Consultants may obtain a copy of this agreement by contacting consultation@cottfn.com.

12.3. Invitations to participate in archaeological fieldwork must be emailed to consultation@cottfn.com. Due to technical and time constraints, archaeology requests must NOT be submitted to the NationsConnect portal. Proponents may submit a copy of archaeology-related documents to an existing project in the NationsConnect portal for record-keeping, as long as the documents are first submitted via email.

12.4. Given the time required to complete the agreement, archaeology requests should be submitted at least two weeks prior to the proposed commencement of fieldwork. Once an agreement is in place, the Consultation Unit requires fieldwork notification at least 48 hours prior to the scheduled start time. If insufficient time is given, COTTFN expects the Proponent/Consultant to reschedule the fieldwork to allow for COTTFN's participation.

12.5. COTTFN requests the opportunity to review draft Archaeological Assessments prior to final submission to the Ontario government, whether the Nation was able to send AFLs to the site or not. The Consultation Unit typically requires one month to review and respond to Archaeological Assessments.

12.6. Proponents and consultants should refer to the AFL agreement for comprehensive terms.

13. Evaluation of Activity and Scope of Consultation

13.1. Upon receiving the Notice, Deshkan Zibiing will undertake an assessment of the Activity and categorize it as follows:

Minimal impact, (a routine or low risk Activity that is unlikely to substantively impact the Aboriginal or Treaty rights and claims of Deshkan Zibiing, for instance: road repair and resurfacing)

Moderate impact (e.g. aggregate pits)

Extensive impact (e.g. nuclear energy waste storage facilities, alternative energy

developments, oil and gas pipelines or facilities, and landfills)

13.2. Minimal Impact Consultation

- a) The Proponent registers through the NationsConnect portal and submits the required information about the Project to the Consultation Department.
- b) The Consultation Department responds within 45 days.
- c) The Consultation Department requests to send Archaeological Field Liaisons to any archaeological fieldwork occurring from Stages 2-4, at the expense of the Proponent.
- d) The Consultation Department screens the proposal and logs details.
- e) Generally, for minimal impact activities, status reports will be requested from the Proponent.
- f) Processing/Consultation Service fees will apply.

13.3. Moderate Impact Consultation

- a) The Proponent registers through the NationsConnect portal and submits the required information about the Project to the Consultation Department.
- b) The Consultation Department responds within 45 days.
- c) The Consultation Department requests to send Archaeological Field Liaisons to any archaeological fieldwork occurring from Stages 2-4, at the expense of the Proponent.
- d) The Consultation Department screens the proposal and logs details.
- e) Within 60 days, and following an internal review of the Activity, the Consultation Department will communicate the results of its assessment of the Activity and its requirements for next steps based on its assessment.
- f) The party may be invited to meet with the Lands & Environment department and may be asked to provide additional information to determine the extent of concern.
- g) Where appropriate, a consultation plan will be developed.
- h) Processing/Consultation Service fees will apply.

13.4. Extensive Impact Consultation

- a) The Proponent registers through the NationsConnect portal and submits the required information about the Project to the Consultation Department.
- b) The Consultation Department responds within 45 days.
- c) The Consultation Department requests to send Archaeological Field Liaisons to any archaeological fieldwork occurring from Stages 2-4, at the expense of the Proponent.
- d) The Consultation Department screens the proposal and logs details.
- e) Processing/Consultation Service fees will apply.
- f) Within 60 days, and following an internal review of the Activity, the Consultation Coordinator will communicate the results of its assessment of the Activity and its requirements for next steps based on its assessment.
- g) For all Extensive Impact Activities, the Proponent will be required to engage in developing a consultation framework together with Deshkan Zibiing.
- h) In this event, Deshkan Zibiing expects that within 30 days following the notice that a consultation framework is required, a meeting will occur between the Crown, Deshkan Zibiing, and the Proponent to discuss:
 - i. the Activity and the sufficiency of the information provided;
 - ii. Deshkan Zibiing's history, rights, claim, and interests that may be impacted by the Activity;
 - iii. Traditional knowledge, laws, values, and stewardship obligations and how these will be considered and respected as part of the Activity design conditions or approvals;
 - iv. Identification of any gaps in information and a process to address those gaps including by considering whether additional studies, environmental assessment monitoring or other studies or reports are required;
 - v. The timeline for the Activity and approvals; and
 - vi. The development of a workplan, schedules and associated budgets in

collaboration with the relevant Crown agency/ department and the project Proponent.

14. Workplan

14.1 The Workplan should include, but not be limited to the following:

- a) Identification of significant milestones and timelines associated with achieving those milestones;
- b) Funding throughout the phases of the proposed Activity to ensure and support effective, meaningful participation of Deshkan Ziiibiing in the consultation process. Deshkan Ziiibiing expects that reasonable costs associated with travel, hosting community engagement sessions, distributing information and providing Elder honoraria would be provided;
- c) Further information required from each party and a process identified to ensure timely information exchange throughout;
- d) Identification of studies, assessments, technical reviews or reports that may be required to collect additional information about potential impacts;
- e) Archaeological monitoring by Deshkan Ziiibiing including through the participation of the Archaeological Field Liaisons;
- f) Identification of community engagement processes;
- g) Mechanisms to incorporate Traditional Knowledge and ensuring same is obtained in accordance with Deshkan Ziiibiing's internal protocols;
- h) Identifying schedule for future meetings and objectives including work plan monitoring; and
- i) Mechanisms for joint and /or independent monitoring of the Activity and its impacts.

14.2. Work plans may need to be revised as consultation proceeds and should be done collaboratively. Should Parties not be able to reach agreement following good faith discussions, the assistance of a mediator may be sought.

15. Nation to Nation Engagement.

15.1. Deshkan Zibiing expects the Crown to respect the Nation to Nation relationship. For any Activity that has been identified as “Extensive Impact”, Deshkan Zibiing expects the Crown will participate in consultation processes, even where consultation or engagement is being undertaken primarily by a Proponent. While administrative staff will be involved, negotiations involving rights will be with the rights-holders.

16. Traditional Knowledge and Confidentiality

16.1. Deshkan Zibiing will advise how Traditional Knowledge informs our assessment of an Activity. Deshkan Zibiing will engage citizens, including Elders and Knowledge Keepers as appropriate in the assessment of the project. We expect the Crown and Proponents to fully respect the internal protocols we have developed regarding the gathering of information from our community members.

16.2. Traditional Knowledge and data collected through the consultation process in relation to the Activity will remain the sole property of Deshkan Zibiing. To the extent that confidential information is shared, parties shall be required to enter into a confidentiality agreement prior to gaining access to this information.

16.3 Where Deshkan Zibiing determines that the knowledge is of such a nature that it should not be in the public realm, the parties shall meet to discuss the concerns regarding this information and the mechanisms to protect same and thereafter, only Deshkan Zibiing shall determine whether any part of it shall be shared.

17. Internal Community Engagement

17.1. Deshkan Zibiing’s practice of governance reflects a long history of community-based decision making. Depending upon the matter for consultation, government departments and project Proponents will need to embrace our approach to internal

community engagement and be willing to work with the processes necessary for Deshkan Ziibiing edbendaagzijig to determine their level of trust and support for the project.

18. Conditions for Providing Consent

18.1. Decisions regarding a project may be achieved in two ways. Those projects having little impact on Deshkan Ziibiing lands, air, waters, health, and wellbeing may be evaluated completely through the efforts of administrative staff, select committees of Council, and/or Chief and Council.

18.2. Those projects with significant potential to impact Deshkan Ziibiing lands, air, waters, health, and wellbeing, will require the scrutiny of the community as whole. Our traditions of governance charge our leaders with gathering and articulating the voices of the community as a whole. Thus, projects raising significant concerns for Deshkan Ziibiing edbendaagzijig will need to be accepted by the community in order for Chief and Council to speak in favour of them.

19. Ongoing Consultation

19.1. In certain cases, consultation may be required past the life of a particular Activity. Where, for instance, decommissioning or cumulative effects raise continuing or additional concerns regarding our rights and interests, we expect consultation to continue.

20. Capacity Requirements:

20.1 Deshkan Ziibiing receives many notifications regarding proposed activities daily. As the duty to consult is reciprocal, Deshkan Ziibiing is required to respond. In an effort to meet the increasing demands, Deshkan Ziibiing has acquired data management systems and employed staff in an effort to respond and handle information flow more efficiently. In order to offset the infrastructure and labour costs associated with the consultation process, Deshkan Ziibiing is required to charge processing and/or consultation service fees in accordance with the services provided.

A complete breakdown of consultation service fees for the varying levels of project impact is attached as Appendix C.

21. Deshkan Zibiing Initiated Research

21.1 In addition to the Crown or Proponent studies, it may be necessary for Deshkan Zibiing to supplement our understanding of the impacts. For instance, we may require additional research on the cumulative effects of an Activity or further assessments of the impacts on biodiversity, endangered species, or water quality. This may be the case where either the existing reports or assessments are deemed deficient or not objective, or where a project is especially contentious. We expect that the costs to engage in such research will be reimbursed by the Crown and Proponents.

22. Crown Delegation

22.2. Although the Crown may delegate aspects of Consultation and Accommodation to a Proponent, the Crown cannot delegate its duty to act honourably or its responsibility to ensure that consultation has been adequately and effectively carried out. In cases where a Proponent has been delegated aspects of the duty to consult, the Crown shall maintain oversight over this process and shall ensure that all Parties involved have received Notice of the Crown's intention to delegate, the scope of the delegation and the name of the designate who shall remain charged with oversight over the Crown's duty to consult.

23. Mitigation Measures and Accommodation

23.1. The protection of our inherent and Treaty rights, and the respect for our obligations to preserve the lands and waters of Deshkan Zibiing, are matters to resolve prior to any discussion of potential benefits that might result from an Activity. Where our lands, waters, health, and wellbeing may be adversely impacted, the Activity cannot proceed without our determining in advance the nature and scope of impacts, how adverse effects will be mitigated, and how our concerns will be accommodated.

23.2. If, through consultation, it is agreed the Activity may proceed, the following represent a non-exhaustive list of measures through which Deshkan Ziibiing edbendaagzijig may embrace the legitimacy of the Activity:

- a) Environmental and protection/monitoring agreements
- b) Stewardship agreements
- c) Co-Management or Recognition agreements respecting resources/jurisdiction
- d) Impact benefits/revenue sharing/ agreements
- e) Compensation
- f) Equity and Partnership agreements
- g) Protection of Intellectual Property and Confidentiality agreements
- h) Lease/royalty/licensing agreements
- i) Training/employment/education and scholarship opportunities

Deshkan Ziibiing expects the Crown to act honourably and provide assistance as requested in the consultation process including in the negotiation of accommodation measures which must be agreed to before the Activity begins.

24. Dispute Resolution Mechanisms

24.1. In the event that Parties have disagreements throughout the consultation process, Deshkan Ziibiing's expects:

- a) Good faith discussions would take place between senior decision makers in an attempt to resolve the dispute.
- b) In the event those efforts fail, the parties may resort to mediation where a mediator is agreed to by all Parties.

- c) Where mediation fails to resolve the disagreement within 60 days, parties may resort to the appropriate court for adjudication of the issue.
- d) The Crown and/or Proponent shall bear all costs of dispute resolution.

Deshkan Ziibiing expects a hold will be placed on the Activity, pending resolution of the issue in dispute.

25. APPENDICES

A. COTTFN Consultation Map

B. Consultation Flow Chart

C. Consultation Service Fees

This protocol is subject to revision and further development as determined by Chief and Council reflecting the consent of Deshkan Ziibiing edbendaagzijig.

For use with permission of Deshkan Ziibiing/Chippewas of the Thames.

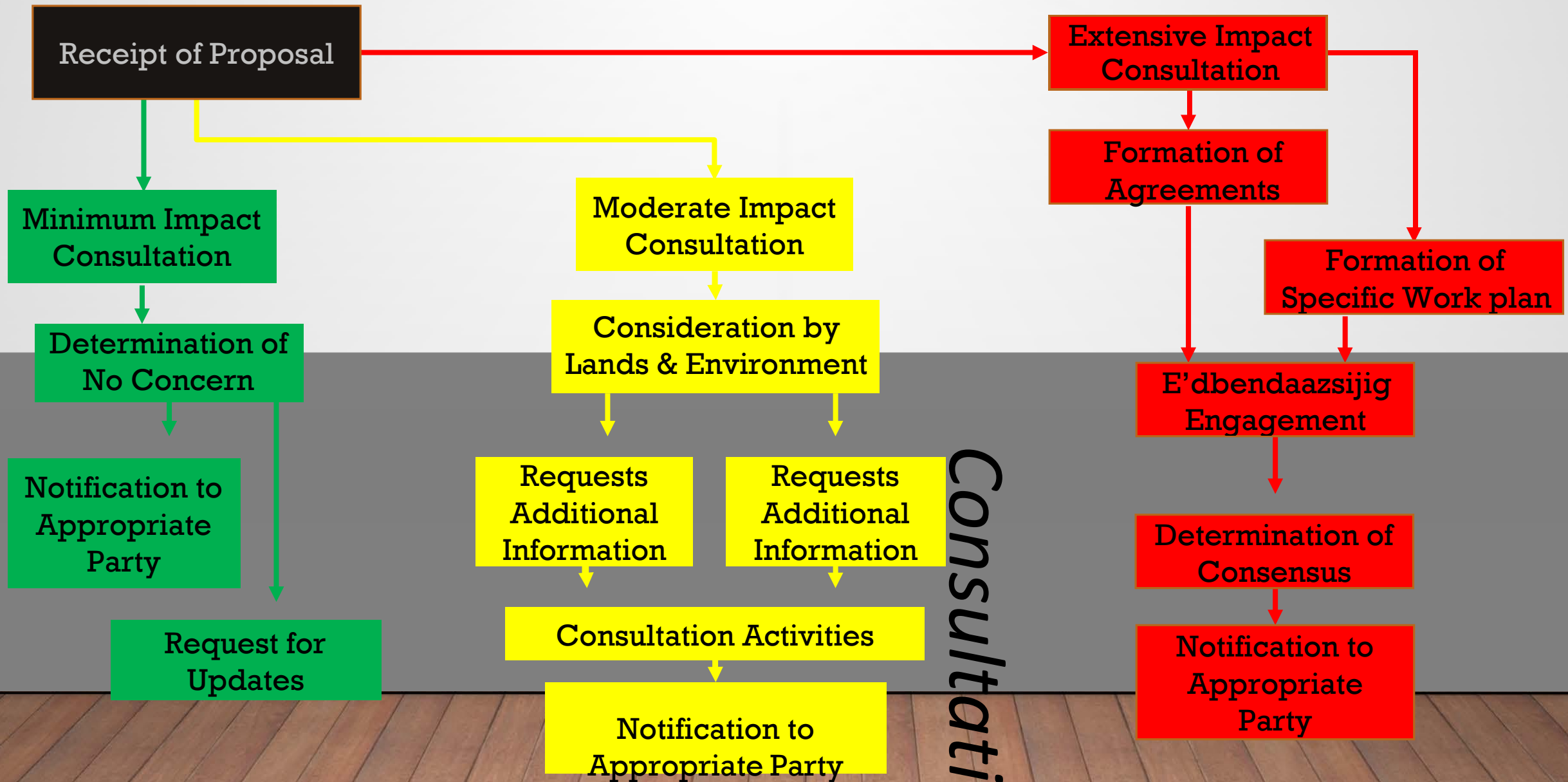
APPENDIX “A”

COTTFN Consultation Map

As recognized in these treaties, the ancestral lands of Deshkan Zibiing includes all the lands and waters between Lake Huron to the north and Lake Erie to the south and stretching eastward from the eastern banks of the St. Clair and Detroit rivers to the Mississaugas of New Credit 1792 treaty lands (see Appendix A for Consultation map). In addition, Deshkan Zibiing’s territory extends into what are now the American states of Michigan and Ohio. Historically, Deshkan Zibiing managed portions of our territory in common with other Anishinaabe nations, and at times in partnership with the Haudenosaunee. However, the lands bordering the northern bank of the Thames River have been solely in the stewardship and possession of Deshkan Zibiing since before the treaty era.

NOTE – COTTFN engages in consultation in the area within the dotted black line (see map on next page). The boundary line for Big Bear Creek Land Selection Area is an approximation, not the exact outline. The Consultation Map is not a comprehensive or definitive outline of the Nation’s Traditional Territory. It is used for consultation purposes.

Deshkan Ziibiing Consultation Flow Chart



Appendix C – Consultation Service Fees

As a department within COTTFN’s Administration, Treaties, Lands & Environment is tasked with carrying out the administrative aspects of Consultation for the Nation. The Nation responds to requests for engagement under the Duty to Consult to protect its rights and interests. The Consultation Unit receives minimal government funding that has not kept pace with the scale of activities occurring within the Nation’s Treaty and Traditional Territory. First Nations should not bear the financial burden of consultation, as affirmed in case law.² For this reason, the Consultation Unit operates on the principle of cost recovery, whereby proponents are invoiced for the time and effort involved in engaging on the project. The payment of fees does not fulfill the Duty to Consult.

COTTFN has developed three levels of response based on the impacts of the project, which are in turn based on several factors that the First Nation has developed to ensure appropriate risk identification and response required on behalf of the Nation.

By identifying various response levels to project proponents, the First Nation is better able to plan for the resourcing that each project requires and to communicate to project proponents the supports or resourcing that may be required for more complex, high impact projects.

The rates listed below are subject to change.

Colour Coded Ranking of Projects

Definition	Colour
Level 1: Minimal Impact	Costs Associated-Standard
Level 2: Moderate Impact	Costs Associated-Standard
Level 3: Extensive Impact	Costs Associated-Standard

² For example, Saugeen First Nation v. Ontario (MNR), 2017 ONSC 3456
Revision: 5 Revision Date: June 12, 2023

LIST OF STANDARD RATES

ITEM	DESCRIPTION OF ACTIVITY	RATE
Filing fee	Fee charged to accept a project for processing and filing retention. Multiple sites for the same project may be submitted as one project with one filing.	\$500 per project
COTTFN staff time (excluding members of COTTFN Senior Management)	Hourly rate for technical services, including assessing project risks, issuing correspondence, meeting with proponents, preparing briefings for Chief and Council, etc.	\$200/hour
TLE Director or another member of COTTFN Senior Management (excluding Executive Administrator)	Hourly rate for project review or meeting attendance.	\$250/hour
Executive Administrator	Hourly rate for project review or meeting attendance.	\$300/hour
Introductory meeting	Flat rate for an introductory meeting for a new project, up to 2 hours in length. The standard staff time rate applies for subsequent meetings and correspondence.	\$500 per meeting
Treaties, Lands and Environment Committee	Reviews projects that have been submitted by the Treaties, Lands and Environment Department and approves recommendations by staff and/or provides further direction on the project.	\$500 per meeting
COTTFN Council meeting	Reviews projects, deliberates, and provides overall direction to Department.	\$1000 per meeting
Councillor	Attendance by a member of Council on a project-related committee	\$250 per meeting (subject to change without notice per Council's <u>honorarium policy</u>)
Travel	For proponent meetings, open houses, site visits.	0.58 per km (subject to change without notice based on CRA quarterly rates)
Community engagement costs	Venue rental, catering costs, Elder honoraria, door prizes, etc.	Varies by item At cost
Administration Charge	Charge that contributes to central mail, phone and internet service, as well as financial services (e.g. payroll, accounts payable and receivable).	15% applied to sub-total

LEVEL 1-ENGAGEMENT EXAMPLE

ENGAGEMENT, CONSULTATION AND ACCOMMODATION					
Level 1					
Project Notice					
Minimal Impact					
Task/Persons Involved	Activity	Daily	Hourly	Units Estimated	
Filing Fee	Fee charged to accept a document for processing and filing retention.	\$ 500.00		1	\$ 500.00
Introductory Meeting	Introductory meeting for new project, up to 2 hours.	\$ 500.00		1	\$ 500.00
Senior Environment Officer	Environmental review for impacts to traditional territory and based on First Nation concerns, such as, but not limited to: noise, air, waste, contaminants, discharges, greenhouse gases, permitting required, cumulative effects. Development of Recommendations and support to the COTTFN Environment Committee.		\$ 200.00	2	\$ 400.00
Consultation Coordinator	Receipt of Information, Risk Identification, Internal Notification of Projects, Entry into Database, Issuing Correspondence, Maintenance of filing system, Library Services. Report production for the COTTFN Environment Committee and administrative support.		\$ 200.00	4	\$ 800.00
				SUB-TOTAL	\$ 2200.00
ADMINISTRATION CHARGE 15%	Central Mail, Financial Services: payroll, reimbursement procedures, accounts payable and receivable, production of financial statements, year-end audit. Photocopying, phone and internet service.			15%	\$ 330.00
				TOTAL:	\$ 2530.00

**These prices are effective June 12, 2023.

LEVEL 2-CONSULTATION EXAMPLE

ENGAGEMENT, CONSULTATION AND ACCOMMODATION					
Level 2					
Project Notice					
Moderate Impact					
	Activity	Daily	Hourly	Units Estimated	Projected Cost
Filing Fee	Fee charged to accept a document for processing and filing retention.	\$ 500.00		1	\$ 500.00
Introductory meeting	Introductory meeting for new project, up to 2 hours.	\$ 500.00		1	\$ 500.00
Director	Review, attending meetings and providing high level direction to staff on the First Nation's response.		\$ 250.00	1	\$ 250.00
Senior Environment Officer	Environmental review for impacts to traditional territory and based on First Nation concerns, such as, but not limited to: noise, air, waste, contaminants, discharges, greenhouse gases, permitting required, cumulative effects.		\$ 200.00	4	\$ 800.00
Consultation Coordinator	Receipt of Information, Risk Identification, Internal Notification of Projects, Entry into Database, Issuing Correspondence, Maintenance of filing system, Library Services. Report production for the COTTFN Environment Committee and administrative support.		\$ 200.00	5	\$ 1000.00
Events Coordinator	Development of internal community consultation communication website and social media update, and event planning		\$ 200.00	5	\$ 1000.00
Treaty Research	Identification of project in relation to traditional territory, Treaty areas, unceded areas, historical occupation.		\$ 200.00	1	\$ 200.00
COTTFN Environmental Committee	Reviews projects that have been submitted by the Treaty, Lands and Environment Department and approves recommendations by staff; and/or provides further direction on the project.	\$ 500.00		1	\$ 500.00
COTTFN Band Council	Reviews projects, deliberates, and provides overall direction to Treaty, Lands & Environment	\$ 1000.00		1	\$ 1000.00
SUB-TOTAL					\$ 5750.00
ADMINISTRATION CHARGE 15%	Central Mail, Financial Services: payroll, reimbursement procedures, accounts payable and receivable, production of financial statements, year-end audit. Photocopying, phone and internet service.			15%	\$ 862.50
TRAVEL	For proponent meetings, workshops, open houses, public meetings.			0.58 / km	TBD
				GRAND TOTAL:	\$ 6612.50

***These prices are effective June 12, 2023.*
**This does not include all engagement costs, such as venue rentals or Elder honoraria.*
**These prices do not include any archaeological monitoring costs.*

LEVEL 3- HIGH IMPACT EXAMPLE

ENGAGEMENT, CONSULTATION AND ACCOMMODATION					
Level 3					
Negotiations and/or Hearings					
Extensive Impact					
Tasks/Persons Involved	Activity	Daily	Hourly	Units Estimated	Projected Cost
Filing Fee	Fee charged to accept a document for processing and filing retention.	\$ 500.00		1	\$ 500.00
Introductory meeting	Introductory meeting for new project, up to 2 hours.	\$ 500.00		1	\$ 500.00
Director	Reviewing, attending meetings, and providing high level direction to staff on the First Nation's response.		\$ 250.00	2	\$ 500.00
Senior Environment Officer	Environmental review for impacts to traditional territory and based on First Nation concerns, such as, but not limited to: noise, air, waste, contaminants, discharges, greenhouse gases, permitting required, cumulative effects. Development of Recommendations and support to the COTTFN Environment Committee.		\$ 200.00	6	\$ 1200.00
Consultation Coordinator	Receipt of Information, Risk Identification, Internal Notification of Projects, Entry into Database, Issuing Correspondence, Maintenance of filing system, Library Services. Report production for the COTTFN Environment Committee and administrative support.*		\$ 200.00	10	\$ 2000.00
Events Coordinator	Development of internal community consultation communication website and social media update, and event planning		\$ 200.00	5	\$ 1000.00
Treaty Research	Identification of project in relation to traditional territory, Treaty areas, unceded areas, historical occupation		\$ 200.00	1	\$ 200.00
COTTFN Environmental Committee	Reviews projects that have been submitted by the Treaty, Lands and Environment Department and approves recommendations by staff; and/or provides further direction on the project.	\$ 500.00		2	\$ 1000.00
COTTFN Band Council	Reviews projects, deliberates, and provides overall direction to Treaty, Lands & Environment	\$ 1000.00		2	\$ 2000.00
Executive Administrator	Reviewing, attending meetings, and providing high level direction to staff on the First Nation's response.		\$ 300.00	3	\$ 900.00
				SUB-TOTAL	\$ 9800.00
ADMINISTRATION CHARGE	Central Mail, Financial Services: payroll, reimbursement procedures, accounts payable and receivable, production of financial statements, year-end audit. Photocopying, phone and internet service.			15%	\$ 1470.00
TRAVEL	For proponents meetings, workshops, open houses, public meetings.			0.58 / km	TBD
				GRAND TOTAL:	\$ 11270.00

**These prices are effective June 12, 2023.
*This does not include all engagement costs, such as venue rentals or Elder honoraria.
*These prices do not include any archaeological monitoring costs.

Fee Schedule Revision History

Revision Number	Date	Description of Changes	Requested By
N/A	3-Dec-13	Design of form	M. Alikakos
1	13-Jan-14	Edition of linked worksheets and COTTFN Band Council rates	M. Alikakos
2	02-Apr-16	Formatted, changed processing fee dates	M. Alikakos
3	14-Jul-16	Name change, removal of flow chart, removal of levels of concern.	F. Burch
4	29-Nov-18	Added filing fee and increased staff fees	F. Burch
5	12-June-23	Increased fees, unified staff hourly rate	F. Burch