



Six Nations of the Grand River Land Use Consultation & Accommodation Policy

A Policy for Obtaining Free, Prior, and Informed Consent from Six Nations

1. Preamble

Six Nations of the Grand River is the largest First Nation by population in Canada. The current territory spans 46 500 acres and is bordered by the Mississaugas of the New Credit First Nation and the counties of Norfolk, Brant, and Haldimand. This territory 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 and working with all Six Nations Community Members, Six Nations Elected Council (SNEC) on behalf of the people of Six Nations of the Grand River has interests in and a duty to protect land within the Haldimand Tract. These interests include unsurrendered lands; conditionally surrendered lands which are subject to unfulfilled conditions; and the Grand River including the river bed. Additionally Council asserts a responsibility to protect the land, air, and water within the wider area specified by the 1701 Fort Albany/Nanfan Treaty. By 1995, Six Nations has filed with the Federal Crown, 29 specific claims with more to be researched. At this time, the Federal Crown is typically taking between 10-20 years to review and settle specific claims. However, in 1995 when Six Nations commenced a court action against the Crown requesting an accounting of all the real and personal property that Six Nations should have had from the Haldimand Tract, the Government of Canada ceased any attempts to settle the claims submitted under the Specific Claims Policy. The Crown's failure to settle these claims has resulted in land disputes that harm relations and waste both money and resources. This failure has resulted in frustration for developers, municipalities, communities, as well as the people of Six Nations.

2. Policy Statement

Six Nations Elected Council (SNEC) requires that the Crown, Proponents and municipalities consult with SNEC in good faith in order to obtain its free and informed consent on behalf of Six Nations of the Grand River prior to SNEC approval of any project potentially affecting Six Nations' Interests. SNEC 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 mitigate adverse environmental, economic, social, cultural or spiritual impacts. SNEC supports development that benefits the people of Six Nations and is conducted in a manner that is cognisant and respectful of the water, air, land, rights and interests of the people of Six Nations. SNEC fully expects all Proponents, municipalities and the Crown to respect 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) full disclosure including, but not limited to, detailed reports on the project and the property; details of all federal, provincial, and municipal fees and taxes related to the property; and information as to the purchase price of the property.
- 3.2 The decision-making process must be proactive, holistic, and strategic in scope that works toward joint planning approaches. Decisions should be made by consensus wherever possible.
- 3.3 The process shall have an ongoing government-to-government relationship based on the recognition of Six Nations inherent rights, treaty rights, and title. Six Nations 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 Six Nations. SNEC must not be just considered part of a larger Ontario community who might be consulted.
- 3.4 The process shall have respect for the sacred bonds between Six Nations and the land, through long term agreements that provide measures to protect the land and resources that Six Nations relies on to sustain its culture, Community, and economy.
- 3.5 There shall be available financial resources for Six Nation's full and effective participation in all aspects of the consultation and accommodation process.
- 3.6 There must be a willingness to provide accommodation for the reasonable concerns of Six Nations prior to the commencement of the project.
- 3.7 There must be a willingness to engage in a jointly accepted dispute resolution process in the event an agreement cannot be reached.
- 3.8 There must be a commitment to deal with each development on an individual and flexible basis. The controlling question in all situations must be what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and Six Nations peoples with respect to the interests at stake.

4. Application

- 4.1 This policy and related procedures apply to any and all Federal, Provincial and Municipal land use policies or regulations; all land use development projects within the Haldimand Tract; and any proposed land projects outside of the Haldimand Tract that may reasonably be seen to affect the rights and interests of Six Nations as outlined in the Policy Statement section above.
- 4.2 This policy does not apply to land use projects proposed by Members of Six Nations within the Six Nations territory.

5. Enforcement

- 5.1 If a Proponent or the Crown fails to abide by this policy SNEC may take one or more of the following actions:
 - (i) legal action;
 - (ii) publication of projects that are not in compliance with the policy; and
 - (iii) any other action deemed reasonable.

6. Definitions

- 6.1 Accommodation – an amicable agreement achieved by consultation between two or more parties to reconcile Six Nations concerns and to avoid irreparable harm or to minimize the effects of infringement by seeking compromise in an attempt to harmonize any conflicting interests. 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 the Six Nations Community.
- 6.2 Consultation – a deliberation, in good faith, on a matter involving two or more parties, having concern for and consideration of Six Nations' wishes in planning and acting; with a mutual goal of arriving at an agreeable decision prior to any undertaking by either party.
- 6.3 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

- 6.4 Major projects – Projects that SNEC believes have a reasonable potential to cause environmental damage, result in non-compensable damage, or projects on lands to which Six Nations has a strong *prima facie* case for recognition or restoration of beneficial title. These projects may include, but are not limited to:
- (i) Some estate residential developments;
 - (ii) large residential developments;
 - (iii) commercial and industrial developments;
 - (iv) changes to Municipal or Provincial land use policies or plans;
 - (v) major transportation projects;
 - (vi) projects that border and/or cross the Grand River;
 - (vii) aggregate resource projects
 - (viii) energy, electric and water projects, and associated transmission or transportation;
 - (ix) waste management facilities;
 - (x) Any project deemed important by SNEC.
- 6.5 Minor projects – Projects that SNEC believes present very little potential for negative effects on the environment, cultural, social and economic damage, or infringement on Six Nations’ Interests, and Treaty rights. These projects may include, but are not limited to:
- (i) severances;
 - (ii) variances;
 - (iii) lot line adjustments;
 - (iv) garden suites;
 - (v) some estate residential developments; and
 - (vi) the majority of notices outside of the Haldimand Tract
- 6.6 Proponent – A person including corporations, which may include the Crown, who proposes a minor or major project to be implemented that may affect Six Nations’ Interests.
- 6.7 SNEC – Six Nations Elected Council including its authorized agents and employees.
- 6.8 Six Nations Interests – SNEC asserts their interest in the following lands:
- (i) Unsurrendered lands within the Haldimand Tract;
 - (ii) Conditionally surrendered lands which are subject to unfulfilled conditions;
 - (iii) The Grand River including the river bed; and
 - (iv) The 1701 Fort Albany/Nanfan Treaty territory.
- 6.9 Six Nations Land Use Consultation Team – A panel delegated by SNEC, as per the *Six Nations Land Use Consultation Team Terms of Reference*, to carry out the process of consultation and accommodation on behalf of SNEC.
- 6.10 The Crown – Her Majesty in right of Canada and Her Majesty in right of Ontario and their respective governments and agencies.
- 6.11 Third Parties – A person; other than the Crown, SNEC, or the Proponent; who is either directly or indirectly affected by a project.

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 is responsible to:
- (i) operate in good faith;
 - (ii) uphold the honour of the Crown;

- (iii) accommodate Six Nations concerns up to the point of undue hardship where Six Nations rights and interests have been asserted but not necessarily proven;
- (iv) keep abreast of the status of the consultation process throughout and contribute in a meaningful way when necessary;
- (v) participate in consensus decision making;
- (vi) give reasonable consideration to Six Nations' rights and interests;
- (vii) ensure the consultation process is adequately and securely funded; and
- (viii) conduct consultation in the most expeditious manner possible consistent with SNEC internal policies and processes.

9. Responsibilities of SNEC

9.1 SNEC is responsible to:

- (i) operate in good faith;
- (ii) represent the concerns, values, and opinions of all Six Nations Community Members;
- (iii) make a reasonable effort to provide all Six Nations Community Members with adequate notice of all major projects;
- (iv) make a reasonable effort to provide all Six Nations Community Members with an opportunity to comment on major projects;
- (v) promote and encourage the utilization of this consultation and accommodation process;
- (vi) lobby for the necessary resources to operate the consultation and accommodation process; and
- (vii) monitor compliance, by all parties, with the consultation and accommodation process.

10. Responsibilities of Proponents

10.1 Proponents are responsible to:

- (i) operate in good faith;
- (ii) notify SNEC at the onset of the project;
- (iii) adhere to the consultation and accommodation process; and
- (iv) disclose, in a timely manner, all information required by SNEC including but not limited to:
 - (a) a detailed description of the project;
 - (b) a description of the property;
 - (c) the purchase price of the property; and
 - (d) all taxes, including land transfer, paid on the property.

11. Overview of the Early Consultation Process

11.1 This overview shall not be interpreted to be exhaustive of the process for consulting with Six Nations.

For greater clarity please reference the SNEC document, "*Six Nations of the Grand River Land Use Consultation and Accommodation Procedure Manual.*"

11.2 Prior to the onset of the project the Proponent shall notify SNEC, in writing, of their intentions and shall provide SNEC with detailed descriptions of the proposed development.

11.3 Contact between SNEC and a Proponent may be initiated at this time during 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.

11.4 Following receipt of notice as described in 11.2, SNEC shall give notice in conjunction with the Proponent to the Crown requiring it to consult with Six Nations.

11.5 The Proponent shall submit, in a timely manner, any studies, plans, environmental assessments, reports, property descriptions, taxation information, or other related documentation reasonable in the circumstances and relevant to the project that may be requested by SNEC.

11.6 SNEC shall maintain detailed records in order to provide, in writing, to the Crown indication of the financial/human resources utilized to perform a preliminary review of a project.

11.7 Following the preliminary review SNEC will provide the Crown and the Proponent with:

- (i) any preliminary concerns or objections from Six Nations; and
- (ii) notification as to whether the project is being considered as a major or minor project.

12. Minor Projects

- 12.1 If a project is considered minor the Proponent shall submit all documentation requested by SNEC to ensure that SNEC is fully informed on the land being used and the project itself.
- 12.2 SNEC reserves the right to request regular updates on specific aspects of minor projects.
- 12.3 SNEC will notify the Crown and provide the Proponent with a letter indicating the satisfactory fulfillment of consultation when the Proponent has complied with all reasonable requests of SNEC.

13. Major Projects

SNEC recognizes that not all major projects present equal levels of risk to the interests or Treaty rights of the Six Nations Community. The following represents an overview of how SNEC is prepared to address major projects. SNEC reserves the right to deal with each project on an individual basis within this framework.

- 13.1 If a project is considered major, SNEC shall publicize the location and nature of the proposed project.
- 13.2 SNEC will provide the Crown and the Proponent with any concerns, issues or objections. SNEC shall allow an adequate period of time for the Proponent and the Crown to respond to the identified concerns, issues and objections.
- 13.3 When SNEC has acquired all relevant information concerning the proposed project and notified the Crown and Proponent of any concerns or objections, SNEC shall make a reasonable attempt to inform all Six Nations Community Members.
- 13.4 SNEC shall allow adequate time for all Six Nations Community Members to submit objections or support for the project. SNEC shall give all reasonable submissions consideration in drafting a response to the Proponent.
- 13.5 If SNEC decides to consult on the project a Six Nations Council Resolution shall be passed to that effect. This resolution shall require SNEC to engage in meaningful dialogue by way of negotiation and mediation with the Crown and Proponent, to attempt to resolve any identified issues, concerns and objections.
- 13.6 If SNEC decides not to consult on the project a Letter of Objection shall be furnished to the Crown and to the Proponent.

14. Overview of Accommodation Process

- 14.1 Any party that wishes to fulfill the duty to consult with Six Nations shall not be considered to have fulfilled that duty until the concerns of Six Nations Land Use Consultation Team and the Six Nations Community have been heard and any reasonable concerns satisfactorily addressed.
- 14.2 After the Six Nations Land Use Consultation Team and Six Nations Community have been provided with the opportunity to submit comments regarding the project, SNEC shall compile a Report of Concerns detailing the concerns identified throughout the process, as well as recommendations for how to accommodate those concerns. SNEC will then submit the report to the Crown and the Proponent. This report will be made available to the public.
- 14.3 The Proponent and the Crown may opt to agree with the concerns and recommendations suggested in the Report of Concerns.
- 14.4 If the Report of Concerns is not agreed to by the Proponent or the Crown a detailed, written response to the Report of Concerns and alternative means of accommodation shall be furnished to SNEC, in a timely manner, by the disagreeing party.
- 14.5 Upon receipt of any response from the Proponent or the Crown, SNEC and the Proponent shall attempt to reach a mutually acceptable agreement through a process of conciliation.
- 14.6 If a mutually acceptable agreement is obtained by the parties, SNEC shall furnish a letter to the Proponent recognizing the project and indicating that the duty to consult and accommodate has been fulfilled.
- 14.7 If a mutually acceptable agreement is no longer reasonably attainable SNEC shall notify the Crown of its desire to commence a further negotiation process.

14.8 Negotiations shall be carried out in a mutually agreeable, impartial manner. The structure, procedure, timing, location and parties shall be agreed to by the Crown and SNEC prior to the negotiation process being undertaken.

15. Dispute Resolution

15.1 In order to avoid resorting to the court system, if at any point throughout the consultation process the parties feel that an agreement cannot be reached they may opt to pursue a dispute resolution process.

15.2 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.

15.3 The process of consultation shall cease for the duration of a dispute resolution process.

15.4 The Crown, SNEC, and the Proponent must be parties to any dispute resolution process.

15.5 If the parties required in a dispute resolution by subsection 15.4 deem it appropriate they may agree to grant standing to any Six Nations Member or party in a dispute resolution.

15.6 A third party may receive standing in a dispute resolution.

15.7 A dispute resolution process may be sought where the end result of the consultation process is 'no agreement.'

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. Regulations

17.1 SNEC reserves the right to establish procedures, regulations and fees, from time to time, under the authority of this policy. This right may be delegated to agents, successors and employees of Six Nations Elected Council.

18. Authorization

18.1 This policy was approved at the General Council meeting held on June 2, 2009 by SNCR #197-02/06/2009 and #198-02/06/2009 to be effective on June 3, 2009. This policy shall repeal and replace any previous Six Nations Council policies relating to land consultation.