



Six Nations of the Grand River Environmental Levy 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: June 24th 2024

Date for Review: Annually
Previous Versions: None

1. Preamble

- 1.1 Six Nations of the Grand River is the largest First Nation by population in Canada. The current territory spans 46,500 acres which represents only 4.8% of the 950,000 acres of the Haldimand Tract lands granted to Six Nations by the Haldimand Proclamation in 1784.
- 1.2 As the official governing body of the territory, the Six Nations of the Grand River Elected Council (SNGREC) on behalf of the peoples of Six Nations has interests in and a duty to protect land, air, water, and our Aboriginal First Nations economic base within the Haldimand Tract and the wider area specified by the 1701 Fort Albany/Nanfan Treaty. The Crowns have failed in their fiduciary duty to the peoples of Six Nations which has resulted in land disputes that harms businesses, (natural) resources and economic opportunities (see United Nations Sustainable Development Goals).
- 1.3 The Haudenosaunee – the Six Nations of the Grand River have an obligation to all future generations to protect and improve the flora, fauna, waters, and all living beings throughout our Treaty Lands as we engage with Canada, Ontario, Municipalities, developers and with all persons whom we share our lands.
- 1.4 We are committed to negating the negative impacts past and future development has and will have to everyone and everything, through meaningful consultation and as guided by the Six Nations of the Grand River's (SNGR) Consultation & Accommodation Policy and our Value Statement.
- 1.5 The SNGREC requires that all consultations must adhere to the following levy to enhance all living things within the natural environment.

2. Policy Statement

- 2.1 SNGREC requires improvements to the natural environment through every proponent, Crowns, or Municipality activity to a greater extent than that which is legislatively required by the Federal and Provincial Governments. From SNGREC's perspective, this is required to ensure these natural systems are present, healthy, and functioning for future generations to come.

- 2.2 SNGREC expects multi-seasonal and multi-year assessments for all natural features within the project area, including species not considered under the federal and provincial frameworks (e.g., outside of the Species at Risk (SAR) Act and the Endangered Species Act (ESA)). Special considerations for Haudenosaunee-specific species of importance (e.g., medicinal plants, clan animals, flora and fauna used as country foods or in ceremony). Impacts to all species with observed or assumed presence within the project area should be identified, quantified, and mitigated. Six Nations prefers a 'Before-After-Control-Impact (BACI) approach to assessments to ensure habitats in question are accurately assessed and appropriate mitigation measures are considered.
- 2.3 Regarding harvesting, economic, social, cultural, and spiritual rights, and interests of the peoples of SNGR; Mitigation of impacts to species and natural features of importance to Six Nations of the Grand River, should proceed using the *Ecosystem Offsetting Guidelines* and the *Mitigation Hierarchy*. Avoidance of impacts must be considered first, via proceeding with project activities which avoid sensitive areas and breeding/timing windows of species present. The timing and nature of such efforts should be clearly documented prior to moving on to subsequent steps within the hierarchy. Minimizing impacts is next, in which the proponent must provide clear direction as to how the minimization of impacts is considered within project activities and planning. Mitigation efforts should be considered third, with every opportunity taken to alleviate pressure placed on the survival of native species, ecological resources, and spaces because of project activities. The proponent must provide details surrounding mitigation efforts. Lastly, Offsetting should only be considered as a last resort, with details of the mitigation efforts clearly outlined in project documents. Additional measures such as artificial nesting structures or bird friendly building techniques can and should always be considered, alongside a robust maintenance, contingency and design plan based on current scientific guidance and best management practices to ensure continued usage and quality of structures through time.
- 2.4 SNGREC expects conservative buffers to be implemented during project activities and accommodated within final project designs. Current Legislation does not account for the needs or impacts to wildlife when assigning buffer lengths, nor does it seek to improve natural resiliency. SNGREC's ideal buffer length is based on Best Management Practices and current science, which describe conservative buffer lengths of sixty-one meters to shield wildlife from human impacts in the context of riparian areas, woodlots, meadowlands, or documented wildlife habitat. A minimum buffer of thirty-one meters for flowing water systems (e.g., rivers and streams) to maintain water quality and a minimum buffer of forty-one meters for stagnant, swamp or wetland ecosystems to maintain water quality is required.
- 2.5 Tree Replacement shall be at a ratio of ten newly planted trees, site-appropriate native species, for every one tree removed from project activities. This replacement ratio applies to all trees regardless of size or diameter at breast height. The new trees should be planted at the closest available location where trees may remain protected long-term, to the original tree removal site. New trees shall be planted as soon as

possible, and preferably before project activities impact the project area. A 1:1 tree replacement ratio for standing snags and deadfall also applies. Should the proponent be unable to fulfill the 10: 1 tree replacement policy, they shall contribute to the cost of tree planting at the rate of \$ 7.50 per tree* so Six Nations can carry forward this environmental commitment.

*Cost reflects 2023 rates for bare root seedling stock and other stock costs to be at fair market value and may be updated at time of agreement to reflect the current comparable market values.

- 2.6 Habitat Offset of non-treed environments (e.g. riparian, grass and meadow lands), shall be replaced by the proponent at a 2:1 ratio (2 acres created for every 1 acre removed) given the offset habitat is attached to the original habitat, and 3:1 ratio should the new habitat be created offsite from original habitat. Habitat enhancement of environment should be protected, in perpetuity, from future development and considered for transfer under Indigenous Protected and Conserved Areas (IPCAs).
- 2.7 Should it be determined that land is unavailable for the proponent to replant the tree enhancement or create non-treed habitat the proponent shall pay the amount as dictated by current comparable land value appraisals to *Six Nations Environmental Trust* so land purchases or other arrangements may be made to have the proponent's environmental commitment met.
- 2.8 After the implementation of any tree planting and/or mitigation/offset efforts there should be a comprehensive monitoring plan to ensure that efforts are successful and robust contingency plans are in place should efforts be unsuccessful. Monitoring should be conducted using a multi-season, multi-year approach, for a minimum of 5 years to account for yearly changes in the landscape, wildlife, and trees dying off.
- 2.9 Other site-specific mitigation measures may be advised by the CAP Team and should be adhered to (i.e., living/green shorelines, Stream simulation techniques, additional surveys).

3. Guiding Principles

- 3.1 The following principles shall guide all Environmental Levy consultation and accommodation endeavors.
- 3.2 Article 25 of UNDRIP states:
 - i) 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 Article 28 of UNDRIP states:

- i) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
- ii) Unless otherwise freely agreed upon by the people concerned, compensation shall take the form of lands, territories, and resources equal in quality, size, and legal status or of monetary compensation or other appropriate redress.

3.5 Article 32 of UNDRIP states:

- i) 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.
- ii) 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.
- iii) 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.

3.6 The process shall be based on the recognition of SNGR's inherent rights, treaty rights, and Aboriginal title. SNGREC must have a formal role in all decisions influencing and impacting the territory at all levels necessary to protect the rights and interests of SNGR.

3.7 The process shall be conducted 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.

3.8 Adequate financial resources shall be made available to SNGREC for its full and effective participation in all aspects of the Consultation and Accommodation Process.

3.9 SNGREC is committed to overseeing each development on an individual and flexible basis.

4. Application

4.1 This policy and related procedures apply to existing and new federal, provincial, and municipal land use proposals, policies, or regulations, and all private or public land use development projects within the

Haldimand Tract and the Fort Albany/Nanfan Treaty lands that affect Six Nations of the Grand River's interests and Aboriginal and treaty rights.

- 4.2 This policy does not apply to private land use projects proposed by Members of Six Nations of the Grand River within the SNGR Territory. It does apply where employees of SNGREC have been contracted as employees of SNGREC to perform the work or the project is using SNGREC funds.
- 4.3 The SNGREC is pursuing the development of on-reserve environmental protection community standards, enhancement of by-laws and enforcement instruments for commercial and industrial operations, i.e., waste management within the community

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 accommodation. Accommodation may include, but not limited to:
 - (i) Partnerships.
 - (ii) joint ventures.
 - (iii) revenue sharing.
 - (iv) employment and educational opportunities.
 - (v) other arrangements that benefit SNGR; and
 - (vi) Land Replacements.
- 5.2 **Consultation** – an engagement process involving two or more parties, having concern for and consideration of Six Nations of the Grand Rivers' requests in planning and acting; with the potential to reach an accommodation agreement for the use of SNGR treaty and traditional lands. This process is conducted 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 consultation.
- 5.3 **Consultation and Accommodation Process (CAP) Team** – A team authorized by SNGREC to conduct the process of consultation and accommodation on behalf of SNGR in accordance with the Consultation and Accommodation Process Team Policy
- 5.4 **Endangered Species Act (ESA)** – including the descriptions of Endangered and Threatened species, of which are the only species considered for mitigative action.
- 5.5 **Species at Risk (SAR) Act** – attempts to prevent wildlife species in Canada from disappearing, to provide for the recovery of wildlife species that are extirpated, endangered, or threatened because of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened.
- 5.6 **First Nations Commercial and Industrial Development Act (FNCIDA)** – addresses regulatory gaps for projects taking place on reserve lands, which can be a significant barrier to economic development.

- 5.7 **Regulatory gaps** – exist where provincial regulatory regimes that relate to proposed land use, do not apply to reserve lands; and existing federal laws that apply to reserve lands do not fully address commercial or industrial developments.
- 5.8 **Project Area** – The Area in which the proponent activities are anticipated to take place.
- 5.9 **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 not limited to:
- (i) The hiring of legal representation for legal analysis
 - (ii) The hiring of financial accountants for financial analysis
- 5.10 **Community Engagement of SNGR Council** – means the Six Nations of the Grand River Elected Chief and Council are acting through Six Nations of the Grand River Elected Council Resolutions
- 5.11 **Community Engagement** – engagement with the members of Six Nations of the Grand River
- 5.12 **Fort Albany/Nanfan Treaty** - Nanfan Treaty of 1701 is the treaty lands within present day Southwestern Ontario and the United States that was the trade and economic base of Six Nations as well as our shared traditional hunting, gathering, and fishing territories.
- 5.13 **Haldimand Tract** – the land six miles on either side of the Grand River from its source in Dundalk to its mouth at Lake Erie granted to Six Nations by the Haldimand Proclamation of October 25, 1784.
- 5.14 **Projects** – Activities that are on lands to which SNGR has a strong *prima facie* case for title; or 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 not limited to:
- (i) residential estate depending on location.
 - (ii) large residential developments.
 - (iii) commercial and industrial developments.
 - (iv) changes to policies or plans.
 - (v) major transportation projects.
 - (vi) projects that border and/or cross the Grand River.
 - (vii) aggregate resource projects.
 - (viii) energy, electric and water projects.
 - (ix) extractions.
 - (x) severances.
 - (xi) variances.
 - (xii) lot line adjustments.
 - (xiii) garden suites.
 - (xiv) estate residential developments; and
 - (xv) most notices outside of the Haldimand Tract that are not deemed Special Projects by SNGREC.

- 5.15 **Proponent** – A person(s), organization(s), corporation(s), and any other business entities, which may include the Crowns, who puts forward a proposal to be implemented that may affect Six Nations of the Grand River’s rights and interests.
- 5.16 **Six Nations of the Grand River 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.
 - (ii) The Grand River includes the riverbed.
 - (iii) The 1701 Fort Albany/Nanfan Treaty territory; and
 - (iv) Other treaties as deemed significant by SNGREC.
- 5.17 **SNGREC**—means Six Nations of the Grand River Elected Council. The Six Nations of the Grand River Elected Council includes the Elected Council Members and the Elected Chief.
- 5.18 **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
- 5.19 **Special Projects** – Projects of a significant size or importance that, in the opinion of SNGREC, have reasonable potential to affect Six Nations’ Interests or infringe on SNGR’s rights.
- 5.20 **The Crowns** – Her Majesty in right of Canada and Her Majesty in right of Ontario and their respective governments and agencies.
- 5.21 **Third Parties** – A person(s); other than the Crowns, SNGREC, or the proponent; who is either directly or indirectly affected by a project.

6. Enforcement

- 6.1 If a proponent or the Crowns fail 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 of the Grand River’s 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.
- 7.3 This policy is without prejudice to, and does not intend to abrogate or derogate from, the Aboriginal or Treaty Rights of the Six Nations of the Grand River or any Community Member, and any and all claims of the Six Nations of the Grand River as against His Majesty the King in right of Canada or the Government of Canada and His Majesty the King in right of Ontario or the Government of Ontario, including without limitation the litigation commenced in the Ontario Superior Court of Justice between Six Nations of the Grand River Band as plaintiff and the Attorney General of Canada, His Majesty the King in Right of Ontario as defendants, and the Mississaugas of the Credit First Nation, bearing Court File No. 406/95 issued out of Brantford, Ontario and as amended May 7, 2020 Toronto Court File No. CV-18-594281-0000.

8. Responsibilities of The Crowns

- 8.1 The Crowns, obtaining free, prior, and informed consent is required to:
- (i) operate in good faith.
 - (ii) uphold the honor of the Crowns.
 - (iii) notify and consult on all policy and process changes.
 - (iv) keep abreast of the status of the consultation process throughout.
 - (v) contribute in a meaningful way when necessary.
 - (vi) participate in consensus decision making.
 - (vii) uphold Six Nations of the Grand River's 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 of the Grand River's rights and interests that have been asserted,
 - (xi) monitor compliance with the accommodation agreement(s); and
 - (xii) uphold the UN Resolutions for the:
 - Right to Sanitation
 - Right to Clean Water
 - Right to Clean and Safe Environment

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) follow existing CAP Team policy.
- (vi) negotiate with proponents for adequate resourcing required to ensure due diligence is complete,
- (vii) monitor compliance with the CAP Team Policy
- (viii) negotiate accommodation agreements and ensure that they are complied with; and
- (ix) ensure consistent application of the environmental levy policy to all projects.

10. Responsibilities of Proponents

- 10.1 Proponents are expected to be responsible for:
- (i) operate in good faith.
 - (ii) ensure transparency with the CAP team.
 - (iii) notify SNGR of any proposed projects as early as possible.
 - (iv) follow and abide by CAP Team Policy; and
 - (v) follow the Environmental Levy Process.

11. Projects

- 11.1 If a proponent is proposing a project, the proponent shall submit to SNGREC all relevant documentation on the land being used and the project itself.
- 11.2 The CAP Team will review the documentation provided, and if necessary, request any additional documentation.
- 11.3 The CAP Team reserves the right to request regular updates on specific aspects of projects.
- 11.4 The CAP Team will review submissions by the proponent and determine if they are following this policy.
- 11.5 The CAP Team will meet with proponents to discuss the project and their compliance with Environmental Levy Policy and the CAP Team Policy Engagement
- 11.6 If there is additional accommodation, the environmental levy consultation will be presented along with it when the additional accommodation goes to community engagement.
- 11.7 Community Engagement can include, but is not limited to:
- (i) Door to Door Engagement.
 - (ii) Social Media (Facebook, Instagram, Twitter, Tik Tok).
 - (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) Radio and/or Newspaper advertisement.
- (viii) Feedback/Comments/Questions by Telephone; and/or
- (ix) Mail out feedback forms that are to be dropped off when completed.

11.8 The CAP Team will engage with the community. Engagement after a draft term sheet is approved by SNGREC to go to community engagement. The CAP Team shall conduct engagement in accordance with the process set out in the Community Engagement Process.

12. Approval

- 12.1 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 decisive step.
- 12.2 If the accommodation/agreement is approved by SNGREC then the CAP Team will communicate the acceptance to the proponent/Crowns/Third Party.
- 12.3 If the accommodation/agreement is not approved by SNGREC then the CAP Team will communicate this non acceptance to the proponent/Crowns/Third Party.

13. Dispute Resolution

- 13.1 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.
- 13.2 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.
- 13.3 The process of consultation shall cease for the duration of the dispute resolution process.
- 13.4 A third party may receive standing in a dispute resolution.

14. Responsibility

- 14.1 The CEO is the Procedural Authority and is authorized to approve any procedures, guidelines, applications, and forms required for the implementation of this policy.
- 14.2 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.
- 14.3 The Director of Lands and Resources is the Implementation Body/Position and is responsible for ensuring that the policy is enforced and implemented in a timely manner.

15. Review and Amendment

- 15.1 SNGREC shall review this policy on an annual basis at a minimum.
- 15.2 No ongoing consultations shall not be affected by changes to the policy, unless agreed to by all parties.
- 15.3 SNGREC reserves the right to amend or clarify the policy as it considers necessary to reflect its intended application.

16. Related Documents

- 16.1 Global Solutions Booklet
- 16.2 Six Miles Deep Booklet
- 16.3 Guideline for Determining Ecosystem Compensation. Toronto and Region Conservation Authority. June 2018.
- 16.4 Credit Valley Conservation. (2020). Ecosystem Offsetting Guidelines, Credit Valley Conservation. March 2020.
- 16.5 Ecological Offsetting Policy. Lake Simcoe Region Conservation Authority. July 2021.
- 16.6 Forests Ontario. Stock Standards for Forests Ontario Tree Planting Programs and Initiatives
- 16.7 Beacon Environmental (2012). Ecological buffer guideline review. Prepared for Credit Valley Conservation.
- 16.8 The Community Engagement Process
- 16.9 Nowak, D., McBride, J., Beatty, R. (1990). Newly planted street tree growth and mortality.
- 16.10 Preece, N., van Oosterzee, P., and Lawes, M. J. (2023). Restoration success can be enhanced by improving tree planting methods.
- 16.11 Skinner, F., Shields, F.D. and Harrison, S. (2008). Measures of Success: Uncertainty and Defining the Outcomes of River Restoration Schemes.
- 16.12 Machmer, M., and Steeger, C. (2002). Effectiveness Monitoring Guidelines for Ecosystem Restoration.

17. Key Stakeholders

- 17.1 Six Nations of the Grand River Community
- 17.2 CAP Team
- 17.3 Six Nations of the Grand River Elected Council
- 17.4 Kayanase

18. Authorization

- 18.1 This policy was approved by Six Nations of the Grand River Elected Council on ___1CPL #174 June 24th 2024 by SNGREC to be effective on 06/24/2024. This policy shall repeal and replace previous environmental levies relating to the development of Six Nations lands date.