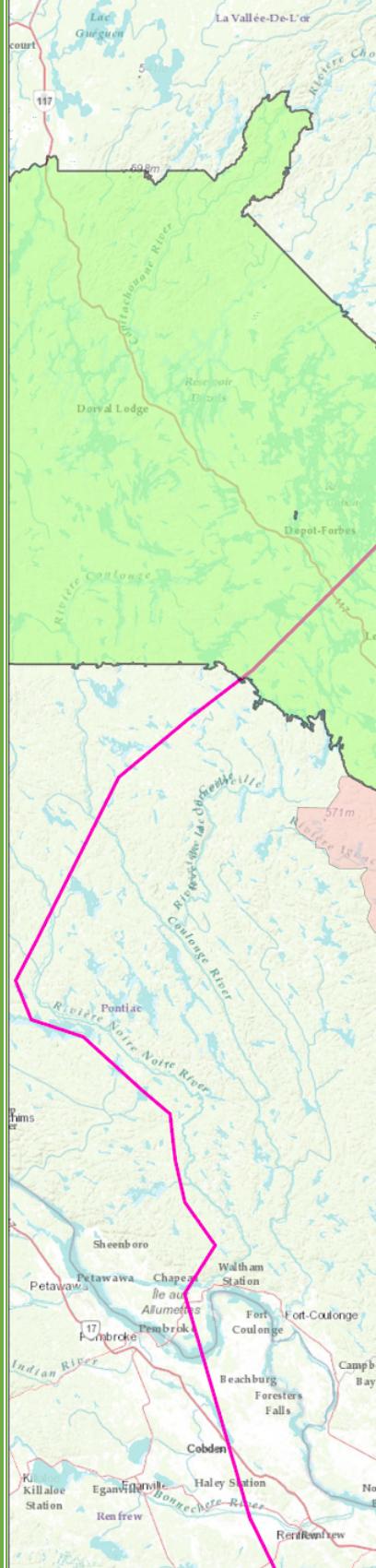


## Kitigan Zibi Traditional Territory

# Kitigan Zibi Anishinabeg First Nation Consultation and Accommodation Policy



2024



### Legend

- KZA Traditional Territory
- Reserve Faunique Papineau Labelle
- Reserve Faunique La Verendrye
- ZEC Bras-Coupé Désert

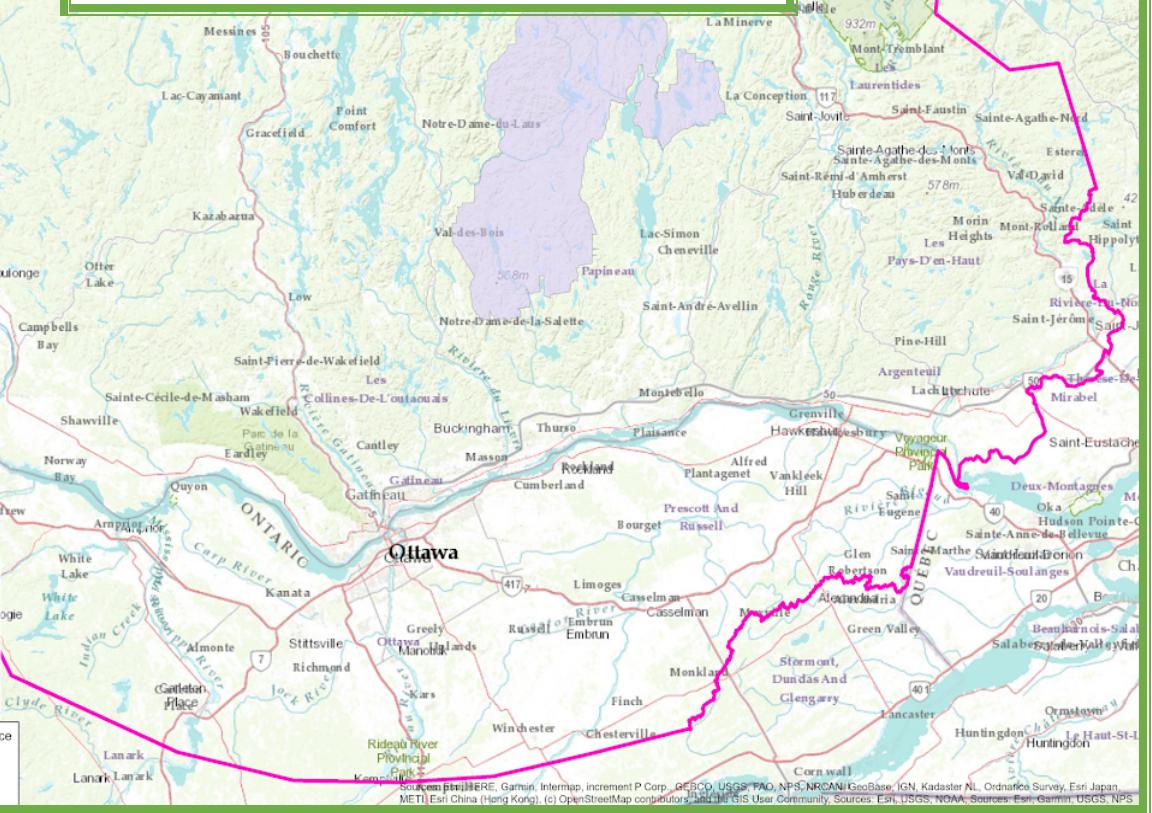
Kitigan Zibi Anishinabeg Wildlife and Natural Resource Office

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# **KITIGAN ZIBI ANISHINABEG**

## **CONSULTATION AND ACCOMMODATION POLICY**



### **1.0. INTRODUCTION**

The Anishinabeg of Kitigan Zibi Anishinabeg First Nation (KZAFN) have lived in their Traditional Territory since time immemorial, practicing our ways and living according to our Inàkonigewin (law) and culture. We are a self-defined and self-determined people.

Anishinabe Inàkonigewin (law) is similarly self-defined and self-determined. It is a product of its People and its Environment. It does not represent a defined set of universally understood truths, but can at times contain them, neither can its source be reduced to a static set of rules, guidelines or mechanisms, but can include them. Differing from the distinctly transactional Canadian forms of law, Anishinabe Inàkonigewin (law) is relational existing in the interdependency of components and systems. It is derived from gathering Knowledge from our own lived Experiences and Traditional Knowledge from the lived experiences of our ancestors preserved and passed down by our cultural practices, and contextualizing this Knowledge within our surrounding Environment and our resiliency that is derived from these constructs.

KZAFN's Inàkonigewin (law) cannot be separated from the People of KZAFN nor from the Traditional Territory. These intrinsic laws are the source of our Rights as the Anishinabe, Rights that are "recognized and affirmed" by both International and Canadian constitutional law as Indigenous or Aboriginal rights. However, due to their inherent nature, these external sources of law cannot create or grant us our Rights. The source remains with the Anishinabe people and their Territory.

The recognition of our rights constitutes the recognition Anishinabe Inàkonigewin (law) as its sole source, and as such, KZAFN continues to assert its jurisdiction to and in all parts of its Environment including its People, its Reserve, and to those parts of its Traditional Territory that have not been party to a treaty. In all other parts of its Traditional Territory, KZAFN maintains aboriginal rights. All decisions about any activity that might have an impact on KZAFN rights and interests must be made carefully and in the best interests of KZAFN Kidji ega angoshkàg (sustainability), as an expression of Anishinabe Inàkonigewin (law) underscored by an understanding of the interconnectivity of all components and systems of our Environment, and guided by a principle to adapt and promote harmonious interactions within it. To do so, meaningful consultations and accommodations are required in order to reach KZAFN's free, prior and informed consent.



## **2.0. PURPOSE**

KZAFNs inherent Inàkonigewin (law) includes an understanding of KZAFN's responsibilities to, and its role within the Environment. Recognizing that the Supreme Court and the Crown continue to exert control over the parameters of discourse on reconciliation, and recognizing that KZAFN continues to assert its inherent jurisdiction – KZAFN creates this policy with the intent of facilitating the ability of all parties to each uphold its own laws, exercise its own rights, and nurture its own relationship with the Environment.

This Policy sets out KZAFN's rules, under its Inàkonigewin (law) and its understanding of respectful application of Canadian law and the honor of the Crown, for the process and principles for consultation and accommodation between KZAFN, the Crown and Proponents, about any Activity that is proposed to occur in KZAFN's Traditional Territory or that might cause an Impact, including cumulative effects, to the Environment or Health therein or KZAFN Rights, Interests and Well Being.

KZAFN expects the Crown and Proponents to agree to this Policy before beginning any consultation, as the first step to ensure the Crown's obligation to consult. KZAFN expects the Crown and Proponents to respect this Policy in all such interactions with KZAFN.

## **3.0. APPLICATION**

### ***3.1. EFFECTIVE DATE:***

This Policy supersedes all previous Consultation and Accommodation directives, policies and guidelines. This Policy takes effect as approved by Band Council Resolution.

Effective immediately, this Consultation and Accommodation policy shall apply and supersedes any previously adopted Consultation and Accommodation policies.

### ***3.2. AMENDMENTS:***

Band Council and Service Directors may directly forward to the Policy Analyst any proposed amendments to this Policy no later than December 31<sup>st</sup> of each year. Any modification or amendment to this Policy is subject to the approval of the Band Council by Resolution.

Amendments that require immediate action or change in operations must be in the form of a Band Council Resolution and then posted on the community website ([www.kitiganzibi.ca](http://www.kitiganzibi.ca)) as a formal “Notice of Amendment”. Formally adopted amendments will be included in the next version of the Policy.



## 4.0. DEFINITIONS

<b>Activity</b>	means any Crown Activity or Proponent Activity.
<b>Canada</b>	means the federal government or the federal Crown, his Majesty the King in right of Canada.
<b>Crown</b>	means either or both of Canada, Ontario and/or Quebec, and any component part of each.
<b>Crown Activity</b>	means: <ol style="list-style-type: none"><li>i. New legislation, regulations, policies, programs, and plans that provide authority to or are implemented or to be implemented by the Crown;</li><li>ii. Changes to legislation, regulations, policies, programs, and plans that provide authority to or are implemented or to be implemented by the Crown;</li><li>iii. Issuance, varying, approval, suspension or cancellation of permits, licenses, authorizations, renewals, or anything similar, by the Crown; and</li><li>iv. Anything else authorized or undertaken by the Crown.</li></ol>
<b>Crown Designate</b>	means such person with or appointed by the Crown to be the lead contact on behalf of the Crown for consultation and accommodation with KZAFN in respect of any Activity.
<b>Day</b>	means a business day and excludes weekends and statutory and band holidays.
<b>Emergency</b>	means a situation that is likely to endanger the life or health of any person, or that is likely to result in an environmental catastrophe.
<b>Environment</b>	means the components and systems of the earth, and includes: <ol style="list-style-type: none"><li>i. Land, water, and air, including all layers of the atmosphere;</li><li>ii. All organic and inorganic organisms including flora and fauna and humans;</li><li>iii. The physical, social, economic, cultural, spiritual, and aesthetic conditions and factors that affect the</li></ol>



physical or socio-psychological health of KZAFN or any of its members;

- iv. Physical and cultural heritage, any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and
- v. Any part or combination of those things referred to in paragraph (i) to (iv), and the interrelationships between two or more of them.

**Health**

means the physical or socio-psychological health of KZAFN or of its members.

**Impact**

means any adverse effect, including cumulative effects, that any activity may cause to the Environment within KZAFN's Traditional Territory or the Health of KZAFN or any of its members or any KZAFN Right.

**Information**

means, to the extent permitted to be disclosed in accordance with applicable law:

- i. Location (including, if possible, a map of the site of an area of impact of the activity if applicable), timing, and as a full a description as possible of the activity;
- ii. A written draft of the Crown activity, if applicable;
- iii. Known or potential Impacts because of the activity;
- iv. The name and contact information for the Crown Designate;
- v. The name and contact information of the Proponent, if applicable;
- vi. All information and documents provided by the Proponent to the Crown in respect of the Proponent activity, if applicable;
- vii. Any other information that the Crown and/or Proponent considers relevant.

**Landscape Scale**

means a term commonly used to refer to action, that covers a large spatial scale, usually addressing a range of ecosystem processes, conservation objectives and land uses.



<b>Notification</b>	means the initial written notice sent to the KZAFN Contact by the Crown and/or Proponent, which shall contain as much Information as is in the possession of the Crown and/or Proponent at this stage after reasonable efforts to acquire the same.
<b>Ontario</b>	means the provincial government or Crown or King in right of Ontario ("Ontario").
<b>Policy</b>	means the Kitigan Zibi Anishinabeg First Nation Consultation and Accommodation Policy.
<b>Proponent</b>	means the party (which could include the Crown, a corporation, partnership, sole proprietorship, association, organization, person or the like) other than KZAFN or a business in which KZAFN has majority control or a majority financial interest, that would undertake or is undertaking the Proponent activity, as the case may be.
<b>Proponent Activity</b>	means any activity pursuant or incidental to anything authorized or ordered by the Crown, or that the Crown is contemplating authorizing or ordering, and does not include any activity of KZAFN or a member of KZAFN or a business in which members of KZAFN have majority control or a majority financial interest which activity KZAFN has authorized.
<b>Reserve</b>	means the unceded reserve of KZAFN which is Kitigan Zibi Anishinabeg Reserve No. 73, which is a reserve as under the <i>Indian Act</i> R.S.C. 1985 c. I-5, as amended (the " <i>Indian Act</i> "). For the purposes of this Policy, the Traditional Territory of KZAFN does not include the Reserve.
<b>Traditional Territory</b>	means that territory as described in Schedule "A" hereto.
<b>Kitigan Zibi Anishinabeg First Nation ("KZAFN")</b>	means the aboriginal people within the meaning of section 35 of the <i>Constitution Act, 1982</i> , which is a First Nation, and a Band pursuant to the <i>Indian Act</i> .
<b>KZAFN Contact</b>	means the person appointed by KZAFN to whom notification is sent and who is mandated to ensure that where applicable KZAFN Representative(s) is/are appointed in respect the activity referred to in the notification.
<b>KZAFN Inàkonigewin (law)</b>	means the laws that the KZAFN self-determine and self-identify to; that relationally exist in the interdependency of components and systems.



**KZAFN Representative(s)** means the person(s) appointed by KZAFN to participate in the consultation and accommodation process about a particular activity, and such person(s) must have the authority to act on behalf of KZAFN regarding the same.

**KZAFN Rights** means any of KZAFN's or its members' aboriginal or treaty rights or the ability to exercise such rights or asserted aboriginal or treaty rights (where there is *prima facie* merit to that asserted right).

**KZAFN Kidji ega angoshkàg (Sustainability)** means the ability of KZAFN to meet our own needs without compromising the ability of future generations to meet their own needs, in order to survive and thrive including through a healthy Environment, through good Health of KZAFN and its members, and through respect for and honoring of KZAFN Rights.

## 5.0. LEGAL STATUS

- 5.1. No KZAFN Right may be abrogated or derogated from through operation of this Policy other than by proper legal authority of KZAFN.
- 5.2. Nothing in this Policy may be construed to limit any consultation or accommodation obligations owed to KZAFN by the Crown or any Proponent.
- 5.3. Notwithstanding anything in this Policy, KZAFN retains the right to challenge, by way of judicial review or any other legal or other process, any activity.

## **6.0. CONTEXT AND GENERAL PRINCIPALS TO GUIDE CONSULTATION AND ACCOMMODATION**

- 6.1. KZAFN is part of the Algonquin Anishinabeg Nation.
- 6.2. The Anishinabeg of KZAFN have lived in their Traditional Territory since time immemorial, practicing their ways and living according to their Inàkonigewin (law) and culture. They are self-defined people.
- 6.3. KZAFN continues to assert its Rights and exercise its inherent jurisdiction to and in all parts of its Environment, which includes its People, its Reserve, and to those parts of its Traditional Territory to which it has not been a party to a treaty (see map attached as Schedule A for parts of Traditional Territory).
- 6.4. In addition to aboriginal title, KZAFN's rights in its Reserve and across its Traditional Territory include rights to hunt, fish and trap, to harvest plants for food and medicine, to protect and honor burial sites and other sacred and culturally significant sites, to sustain and strengthen its spiritual and cultural connection to the land, to protect the Environment that supports its survival, to govern itself, and to participate in all governance and operational decisions about how the land and resources will be managed, used and protected.
- 6.5. KZAFN's Inàkonigewin (law) require KZAFN to preserve and even enhance a mutually respectful relationship with the environment, to co-exist with Mother Earth and protect this relationship. KZAFN under its laws has the responsibility to care for its traditional territory for future generations, to preserve and protect wildlife, lands, waters, air and resources. KZAFN relies on the health of the environment in its traditional territory for its survival. The health of the lands and waters is essential to the continued existence of KZAFN as a people and it and its members' Health, its culture, Inàkonigewin (law), livelihood, and economy.
- 6.6. KZAFN is recognized as a respected and principled steward of the environment. KZAFN's input and perspective in any consultation and accommodation process will include the use of traditional ecological and cultural knowledge alongside knowledge from western scientific and technical sources.
- 6.7. The Crown must not dispose of or grant to any third party any KZAFN's traditional, ecological and cultural knowledge without the free, prior and informed consent of KZAFN.
- 6.8. All decisions about any activity that might have an impact must be made carefully and in the best interests of KZAFN Kidji ega angoshkàg (sustainability). KZAFN has suffered significant adverse effects from development, use and pollution of its Traditional Territory and from taking and using parts of its Traditional Territory including those to which it asserts its jurisdiction. The general purpose of the Crown's duty to consult is to foster reconciliation.



- 6.9. KZAFN may decide that consideration of cumulative effects must be included in any consultation and accommodation process. Cumulative effects include not only those of the activity combined with other existing projects or activities or residual impacts from past activities, but with other planned activities. All types of activities on the territory and the relationship between those activities and their impacts must be considered. Consideration of cumulative effects must be at the landscape scale, encompassing the project's site and its vicinity. It must include impacts on ecosystem services, including cultural, spiritual and aesthetic aspects, and on biodiversity. The baseline condition used to assess cumulative effects must be the pre-colonization baseline condition. Traditional knowledge can be core information to define pre-colonization baseline conditions and assess cumulative effects.
- 6.10. It may be necessary for the Crown and/or Proponent to fund cumulative effects analyses, traditional and community knowledge studies, KZAFN land use and occupancy studies, and other relevant studies to enable informed decision-making about any activity.
- 6.11. KZAFN expects to play a meaningful role in any environmental assessment ("EA"), "Impact Assessment", or related process, including, if KZAFN requests, to have a role in establishing the scope and terms of reference for such EAs and to appoint a member to any EA panel review, and to review and comment on environmental impacts statements, and any screening, study or like reports, but EAs and any role that KZAFN might take in regard to these do not of themselves satisfy the Crown's or any relevant Proponent's duty to consult with and accommodate KZAFN. Should KZAFN find the structure or format of any environmental assessment or related process to be a constraint to the overall consultation process KZAFN reserves the right to distance itself from these processes without giving up its rights or claims to jurisdiction and title. Participation in any EA related or derived consultation processes are structured to meet the goals and requirements of Canadian environmental legislation and are not always best suited to allow KZAFN to adequately express potential Impacts, uphold its inherent Inàkonigewin (law), and fulfill its obligations to the Environment and therefore do not of themselves satisfy the Crown's or any relevant Proponent's duty to consult with and accommodate KZAFN"
- 6.12. KZAFN recognizes the need to identify and develop new and appropriate ways through which aboriginal and non-aboriginal parties may create sustainable development opportunities from the resources found within KZAFN's Traditional Territory. KZAFN's understanding of what is "sustainable" is informed by KZAFN's traditional knowledge and Inàkonigewin (law), and therefore is firmly within its jurisdiction to define with respect of its rights and interests. KZAFN's Inàkonigewin (law) require KZAFN to assess an activity by anticipating its potential effects at least seven generations into the future.
- 6.13. Consultation and accommodation processes must be designed and implemented with flexibility and with KZAFN to reflect the nature and importance of the KZAFN right, value, or health or elements or conditions of the environment that could be



affected by the activity, and the seriousness of the possible Impact. KZAFN and only KZAFN might decide in certain circumstances that it does not require consultation and/or accommodation in respect of an activity, and it may determine the level of consultation and accommodation it considers necessary

- 6.14. It takes time to make good decisions that consider all relevant matters, and it takes time to build and maintain good relations, and sufficient time must be provided for consultation with and accommodation of KZAFN by the Crown and Proponents.
- 6.15. All parties to consultation and accommodation processes are expected to treat each other with respect and act in good faith, in an honest, transparent, open and proactive manner.
- 6.16. KZAFN must be consulted by the Crown and if applicable Proponents from the earliest stages of any contemplated activity or policy, so that strategic and long-term planning is facilitated, KZAFN's input can be taken into account in the consideration of relevant alternatives to such activity (including the alternative of no activity), and in the design of such activity. This should be a significant benefit to the planning exercise, and greatly reduce the potential for conflict at later stages.
- 6.17. The Crown and if applicable Proponents must always consult with KZAFN with the intent, and where required by KZAFN by taking all feasible steps, to accommodate KZAFN by substantially addressing all of KZAFN's concerns about the activity.
- 6.18. If the Crown delegates any aspect of consultation and accommodation to the Proponent KZAFN will participate in said consultation and accommodation only if the Crown maintains an oversight role over the entire process unless KZAFN requests otherwise.
- 6.19. Accommodation will generally include:
  - Prevention and remediation of impacts (and where KZAFN requires as below, by not proceeding with the activity),
  - Mitigation of Impacts to the extent feasible
  - Provision of capacity building and other benefits from the activity
  - Provision of compensation and related benefits from the activity to compensate for Impacts
  - Measures to increase KZAFN's comfort with or trust in the activity, including community monitoring, community liaison or oversight committees, a role on Proponent's board, other decision-making roles, etc.
- 6.20. The Crown is expected to fund, and/or ensure funding is provided by any relevant Proponent for costs and offsetting measures as determined by KZAFN to participate



in a meaningful and informed way in any consultation and accommodation process. These costs will be estimated in a work plan and budget provided by KZAFN. Template versions of a work plan and budget are attached to this Protocol as Schedules B and C, but these are examples only. Using funds from the Crown and/or Proponent does not imply any form of KZAFN consent to the activity, with regard to its right to free, prior and informed consent.

- 6.21. In respect of consultation, KZAFN generally expects Proponents to enter into a Memorandum of Agreement ("MOA") or the like in respect of activities that KZAFN expects to result in some, but not significant, Impacts, and to enter into an Impacts Benefits Agreement ("IBA") or the like when KZAFN expects significant Impacts but does not decide to stop the activity. The Crown is expected to work with KZAFN when requested to ensure that Proponents meet these expectations. A template version of possible topics to be included in an MOA and IBA are attached to this Protocol as Schedule D, but this is an example only.
- 6.22. KZAFN has the right to stop any contemplated Crown or Proponent activity that would likely have a significant Impact.
- 6.23. The Crown must not dispose of or grant to any third party any interest in land that is part of KZAFN's Aboriginal Title Claim Area (see Ontario Superior Court of Justice court file no. 00-CV-189329, and Schedule A to this Protocol), without the prior and informed consent of KZAFN.

## **7.0. TRIGGER FOR CONSULTATIONS**

- 7.1. The Crown must consult with and accommodate KZAFN and where applicable ensure that the Proponent also consults with and accommodates KZAFN, in respect of any activity, when this duty is triggered.
- 7.2. In addition, KZAFN expects where possible to engage in consultations and negotiations for accommodation at the strategic-planning level, including in respect of the following:
  - co-management of resources (e.g.: forestry, fisheries, wildlife protection plans, and the like)
  - protection and management of watersheds and ecosystems
  - land use planning for broader areas in the Traditional Territory
- 7.3. Consultations with and accommodation of KZAFN are triggered when the Crown is contemplating any Crown activity or is aware of any Proponent activity that



might have an impact on KZAFN Traditional Territory, Rights and interests.

7.4. Unless KZAFN otherwise decides, if any activity has begun or is underway before consultation with KZAFN is completed, and such consultation would have been triggered, the Crown and where applicable the Proponent must undertake consultation with and ensure accommodation of KZAFN forthwith. KZAFN expects the Crown to suspend such activity until consultations are completed.

## **8.0. CONSULTATION AND ACCOMMODATION PROCESS**

### **8.1. *Step One:* Initial Contact**

- a. The KZAFN Contact is the KZAFN Consultation Manager or a person standing in for him, or such other person or office as the Band Council from time to time appoints.
- b. All Notifications are to be sent to the KZAFN Consultation Manager, with a copy sent to the KZAFN Chief. If the KZAFN Contact is absent or otherwise unable to fulfill his duties of being the KZAFN Contact, and there is no person standing in for him, the Chief shall appoint the KZAFN Contact.
- c. The Crown Designate must send Notification normally by email, and or registered mail to the KZAFN Contact, of the contemplated activity, at the earliest possible stage.
- d. The Proponent shall also send Notification to the KZAFN Contact of its Proponent activity, but KZAFN expects consultation and accommodation processes to be initiated by the Crown and for the Crown to have oversight unless KZAFN otherwise requests.
- e. Neither the Crown nor the Proponent are required to send such notification and engage in the process in this part, if they are contemplating or taking action to address an emergency situation. However, as soon as possible after dealing with the emergency situation, the Crown or Proponent must send a notification or other notice to the KZAFN Contact of the action taken to address the emergency situation. The Crown and/or Proponent must engage in the process in this part if such action would have otherwise triggered consultations under this Policy and it could result in further impact in the future.
- f. The KZAFN Contact will where possible confirm receipt of such Notification to the Crown Designate and if applicable the Proponent, within 5 days of receiving it.



g. If the Crown Designate and Proponent if applicable do not receive such confirmation within 5 days, they must contact the office of the Chief and/or the office of the Director of Operations, to determine if the notification was received and who the KZAFN Representative(s) is/are. If KZAFN does not respond to further attempts at communication, it does not signify consent or disinterest and generally reflects our lack of capacity to respond to all consultations”

## 8.2. ***Step Two:*** Determination of Consultation and Accommodation Needs and Appointment of KZAFN Representatives if Applicable.

a. The KZAFN Contact will, if possible, within 5 days of receipt of the notification, forward to the Band Council or a committee of or a delegate of the Band Council as the Band Council may determine from time to time:

- The notification;
- A recommendation as to whether consultation and accommodation is required, and if so, the level of consultation that is likely to be required (minor, medium or major);
- If consultation and accommodation is recommended, a request to appoint KZAFN Representative(s) for this consultation and accommodation process within 10 days or a shorter period as the KZAFN Contact reasonably determines is necessary;
- Subject to s. 32(b), the Band Council or a committee of or a delegate of the Band Council as the case may be, will make the determination as to whether consultation and accommodation is required. If so, it will determine the likely level of same, and will appoint KZAFN Representative(s) and inform them of the likely level of same. If no consultation and accommodation is required, it will instruct the KZAFN Contact to provide notice to the Crown and if applicable the Proponent that no consultation or accommodation is required.

b. If no response as above is provided to the KZAFN Contact within the requested time, the KZAFN Contact will:

- If the recommendation made by the KZFN representative is that no consultation or accommodation is required, provide notice to the Crown and if applicable the Proponent that no consultation or accommodation is required;



- If he recommended that consultation and accommodation is required, appoint the KZAFN Representative(s) and inform them of his recommendation as to the level of consultation and accommodation likely to be required (minor, medium or major).
- c. Further steps in this Protocol assume that KZAFN has determined that consultation and accommodation are required.

### 8.3. ***Step Three:*** Preparation of Work plan and Budget.

- a. The KZAFN Representative(s) will review the notification to determine whether all Information as defined in section 4 is complete or other Information is required for KZAFN to develop a work plan and budget for consultation and accommodation in respect of the activity (e.g.: whether KZAFN has enough Information to determine what technical studies it might have to commission, what legal input it might require, what community input it might require).
- b. The KZAFN Representative(s) will contact the Crown Designate and Proponent if applicable as soon as possible after being appointed, to identify him/herself or themselves, to request other Information that is required if any and to determine when it will be delivered, and to set a target date when a work plan and budget for KZAFN's participation in the process will be forwarded by KZAFN to the Crown Designate and if applicable the Proponent. When requested by KZAFN, a start-up meeting with the Crown and Proponent if applicable would allow them to share Information and set a target date.
- c. If information is to come in stages over the process, then work plans and budgets may be developed for each stage.
- d. The KZAFN Representative(s) will prepare a draft work plan for the process of consultations and negotiations, and a budget for KZAFN to participate in a meaningful and informed way. When requested by KZAFN, a draft work plan can be submitted by the Crown and Proponent if applicable to KZAFN for KZAFN's review and use.
- e. The work plan will generally include:
  - Provision of all required Information to KZAFN Representative(s): what information, and when it will be provided.
  - Collection of required information from KZAFN: what information (such as nature and extent of the exercise of affected rights, and how such rights or the environment or health might be impacted by the activity), when it



will collect, and then provide to the Crown Designate and if applicable the Proponent.

- Expert analysis or input (if required): what type(s) (such as environmental experts, Archaeologists, Anthropologists, Forestry experts, etc.); nature of the work (which might include field study, review of Information and other relevant documentation, preparation of a report); when each step in the work will be completed.
- Legal analysis or input (if required): nature of the work (including assisting KZAFN in the consultation and negotiation process, evaluation of information and other relevant documentation from experts and others as to the implications on KZAFN's Rights of the proposed activity, and preparation of legal memoranda); when each step in the work will be completed.
- Consultation and negotiation meetings: their locations, participants, purposes or goals, and timing.
- Work to be accomplished between each consultation and negotiation meeting (including collection and provision of information, expert and legal analysis and input).
- Internal community consultation: what is required (might include community meetings, development and dissemination of material to community members, staff and administrative work); when this work will be completed.
- Negotiating an MOA and/or IBA or the like with the Proponent (if required).
- Ratification of any MOAs, IBAs or the like by the KZAFN Community (if required): community processes, when each step in such processes will be completed and address any cumulative effects.

f. The budget will generally include:

- Expenses to collect, copy and disseminate information.
- Expert fees and expenses (if required).
- Legal fees and expenses (if required).
- Fees or honoraria and expenses for KZAFN Representatives for their work in the consultations and negotiations.



- Meeting costs (to book room, travel and provide refreshments etc.)
- Internal community consultation costs (booking meeting rooms, refreshments for meetings, creating, copying, and disseminating written information packages, administrative and staff work for this).
- Cumulative Effects

g. The KZAFN Representative(s) will forward the work plan and budget to the Crown Designate and Proponent if applicable as soon as it is completed, generally within thirty (30) days of receipt of the notification if the information it contains is sufficient for this purpose.

h. KZAFN expects the Crown and Proponent if applicable to abide by the work plan and budget submitted by KZAFN, and for the Crown to cover the budgeted costs or to ensure that the Proponent covers such costs.

I. If in the opinion of the Crown and/or Proponent, elements of the work plan or budget are not reasonable, they must send to the KZAFN Representative(s) their proposed changes and reasons for same before taking any other steps in the consultation or negotiation process.

j. KZAFN expects the Crown and Proponent if applicable to negotiate the work plan and budget in good faith with KZAFN, so all parties may arrive at a mutually agreeable work plan and budget.

#### 8.4. **Step Four:** Follow Work Plan and Revise When Necessary

- a. The parties will follow the work plan to the extent reasonable, and KZAFN Representative(s) will revise the work plan (and budget if necessary) if circumstances warrant. In case of revision, relevant parts of step three would be repeated.
- b. Consultations may take many forms, and parties should be flexible and patient as the process progresses.
- c. KZAFN often makes decisions with the participation of its members. Work plans may therefore contain provision for internal community consultation. In addition, in some cases there may be need for further consultation with families or individuals who might be most affected. These families and individuals can remain anonymous in the process. The number of meetings and internal consultations will depend on the complexity and significance of the activity and seriousness of impacts.

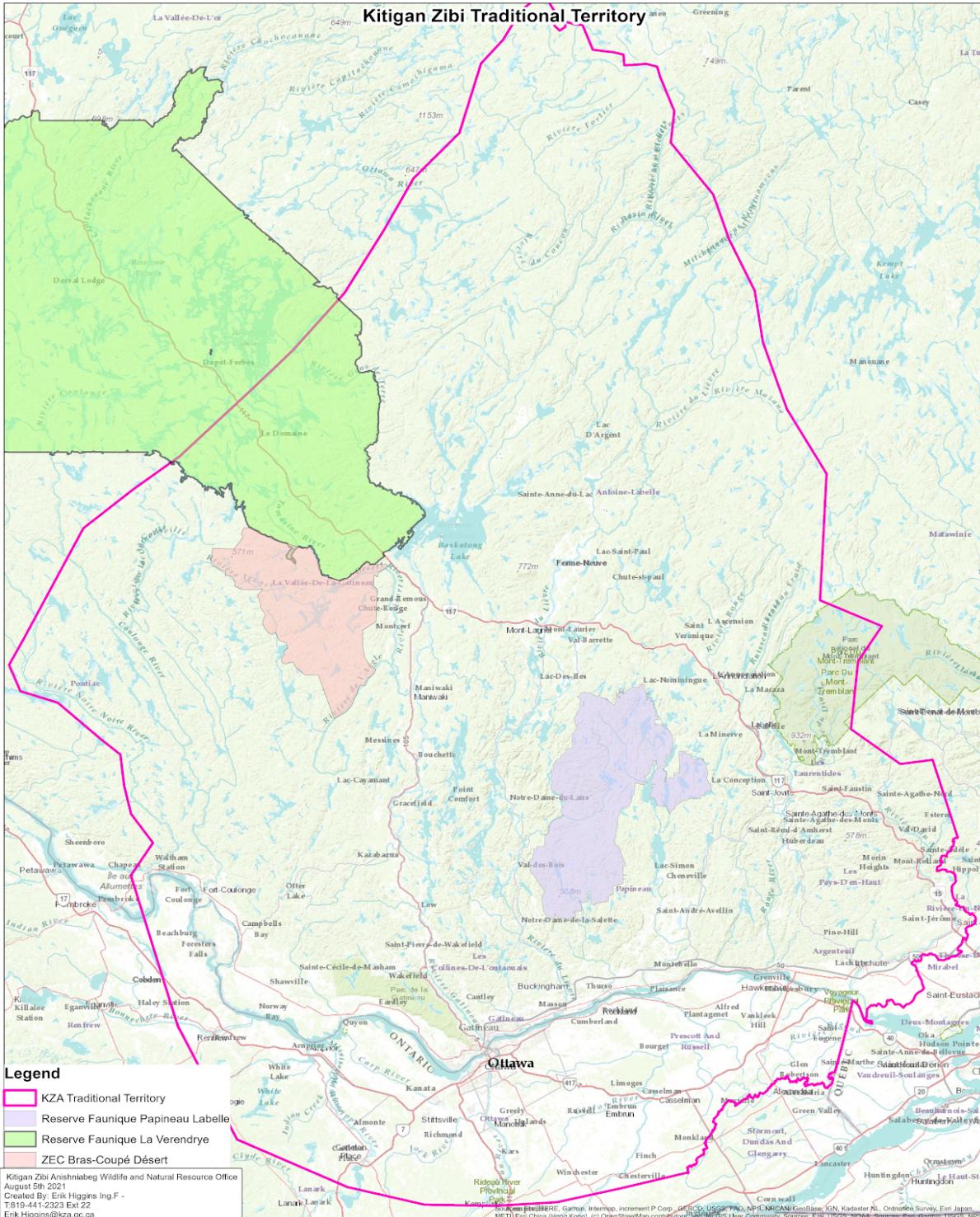
- d. The final phase of the process will often involve the negotiation of an MOA and/or IBA, the terms and conditions of which KZAFN will analyze to determine whether it wishes the activity to proceed. The KZAFN community will often have to ratify or consent to such agreements. The signing of any such MOA or IBA or the like, or if same is not required, the submission by KZAFN to the Crown Designate and Proponent if applicable of a letter or other notice stating KZAFN agrees the activity may proceed, constitutes KZAFN's consent to the activity on whatever terms and conditions are contained in the MOA or IBA or letter or the like.

#### **8.5. General:**

- a. The Crown and Proponent must disclose all relevant Information to KZAFN Representatives as it becomes available, throughout the consultation and accommodation process.
- b. KZAFN may determine whether it wishes to hold any aspect of consultation and accommodation process with the Crown, the Proponent or both, and expects such parties to respect such decisions.
- c. Any party to consultation and accommodation processes may involve such experts, lawyers or support persons as are reasonably required.
- d. Generally, notes of and correspondence related to all consultation and accommodation processes are the responsibility of each respective party.
- e. Parties to consultation and accommodation processes may enter into confidentiality agreements and may agree that all discussions and correspondence pertaining to such processes are confidential to the extent allowed by law.
- f. If KZAFN requires accommodation through negotiations with the Proponent for an MOA or IBA or the like, the Crown is expected to, when requested by KZAFN, assist KZAFN to ensure that the Proponent engages in such negotiations pursuant to the portion of the work plan and budget that pertain to same. KZAFN expects the Crown to not approve the relevant activity unless and until agreement is reached between KZAFN and the Proponent on the MOA or IBA or the like.
- g. This Policy and any MOA, IBA or the like that KZAFN might enter, are all without prejudice to KZAFN's aboriginal title and rights.



**SCHEDULE A**  
**Kitigan Zibi Anishinabeg First Nation's Traditional Territory**  
**consists of the following lands**  
**(see map versions in this Schedule):**



**SCHEDULE B**  
**KITIGAN ZIBI ANISHINABEG FIRST NATION CONSULTATION AND**  
**ACCOMMODATION PROTOCOL**  
**Draft Work-Plan for Consultations/ Negotiations**

STAGE	TASK	DESCRIPTION / COMMENTS	WHO TO COMPLETE	DATE TO BE COMPLETED	STATUS/ DATE ACTUALLY COMPLETED
WORKPLAN & BUDGET	Identification of KZAFN Needs for participation	KZAFN Representatives to work With Crown Designate and Proponent to determine KZAFN Needs to participate in an Informed and meaningful way.	KZAFN Representatives		
	Provision Of Further Information To KZAFN	All further information to be provided by Crown Designate And Proponent To KZAFN Representatives.	Crown Designate		
	KZAFN to prepare draft work plan and budget	KZAFN Representatives to review all information to determine technical advisors and internal requirements and draft work plans and budget.	KZAFN Representatives	30 days after receipt of notification	
	Agreement on Work plan	Parties to negotiate and agree on work plan and budget	Parties	40 days after receipt of notification	
CONSULTATION PRE-MEETING 1	Pre- Meeting; Engage Technical Advisors	KZAFN to engage technical and legal advisors and experts, provide with agendas, work plan, and terms of engagement (including to interview traditional users to determine potential impacts of activity, if required)	KZAFN Representatives	Prior to First Meeting	
CONSULTATION MEETING 1	Meeting 1	All Parties (or Crown and KZAFN if KZAFN so requests) to meet to share and review information, raise questions for need for further information, and discuss potential impacts. Deadlines for work and next steps to be determined.	All Parties. KZAFN Representatives to arrange a meeting		
CONSULTATION POST MEETING 1	Further questions and answers	Further information shared to respond to questions raised at meeting 1.	All Parties	Within X days of Meeting 1 (and ongoing)	
	Technical Reports	KZAFN technical advisors and Experts undertake technical Research and analysis and Reports. Distribute reports to Crown Designate and Proponent.	KZAFN Representatives to oversee and manage.	Within X days of Meeting	

CONSULTATION MEETING 2	Meeting 2	Discussion of all information shared post meeting 1 and determine any need for further information. Discuss options to ensure that KZAFN's concerns are substantially addressed, and measures to ensure this.	All Parties. KZAFN Representatives to arrange meeting.		
CONSULTATION POST MEETING 2	Share proposals	Parties to share proposals on ways to address KZAFN's concerns, which might include MOA or IBA.	All Parties	X days after meeting 2	
NEGOTIATION	Negotiate MOA or IBA, if applicable	KZAFN Representatives, likely with assistance of legal advisor, to prepare draft MOA or IBA and distribute to Proponent and Crown if applicable. Parties to exchange drafts to negotiate MOA or IBA, via email/fax or at in-person meeting(s).	KZAFN Representatives	X days after meeting 2	
	Agree on MOA or IBA, if applicable	Parties to negotiation to come to agreement on MOA or IBA terms, possibly with assistance of Crown if KZAFN so requests.	All Parties to MOA or IBA	X days after meeting 2	
COMMUNITY CONSULTATION	Meetings KZAFN community	KZAFN Representatives to prepare information and present it in community meetings to get input and in some cases the final decision re Activity. Might be more than one meeting required. Crown and Proponent Reps might be requested to attend.	KZAFN Representatives		
	Sharing of Community Response	KZAFN Representatives prepare and present response re community reaction or decision to Crown and Proponent	KZAFN Representatives		
CONSULTATION MEETING 3	If required, meeting 3 if outstanding issues	If agreement not reached between parties by this stage, hold another meeting(s) to determine if agreement can be reached and how, and next steps for doing this.	All Parties. KZAFN Representatives to arrange for meeting(s)		
CONSULTATION AND NEGOTIATION POST MEETING3	Agreement reached if possible	Steps required to ratify MOA or IBA, or for KZAFN to send letter approving Activity or otherwise for agreement between Crown and KZAFN re Activity	All Parties. KZAFN Representatives to oversee.		

## SCHEDULE C TO KITIGAN ZIBI ANISHINABEG FIRST NATION



## CONSULTATION AND ACCOMMODATION PROTOCOL

### DRAFT BUDGET

This Budget may be divided into two parts -- one for Consultation and one for Negotiation - if the Crown pays for Consultation costs and the Proponent pays for costs to negotiate MOA or IBA or the like.

CONSULTATION & NEGOTIATION BUDGET		
ITEM	DESCRIPTION	EXPECTED COST
Administrative Expenses	Copying fees, postage, long distance fees, Percentage overhead for KZAFN administration	
KZAFN Representative Fees / Per Diems	Salary recovery, fee, or per diem for each KZAFN representative (itemize separately)	
<b>KZAFN</b> Representative Expenses	Travel and other expenses	
Consultation / Negotiation Meetings	Meeting rooms, refreshments, etc. (list for each projected consultation meeting)	
Community Meetings Expenses	Copying and dissemination of material, meeting rooms, refreshments, elder or other honoraria (list for each community meeting)	
Internal Technical Advisor/ Expert Fees	Describe which kinds of <b>KZAFN</b> technical advisors/experts required, their deliverables and their fees	
Internal Technical Advisor/Expert Expenses	Travel and other expenses	
Outside Technical Advisor/Expert Fees	Describe which kinds of outside experts or technical advisors required, their deliverables and their fees	
Outside Technical Advisor/Expert Expenses	Travel and other expenses	
Legal Fees	Describe type of work required and fees for consultations	
Legal Expenses	Travel and other expenses	
<b>TOTAL</b>		



## **SCHEDULE D TO THE KITIGAN ZIBI ANISHINABEG FIRST NATION CONSULTATION AND ACCOMMODATION PROTOCOL**

TOPICS THAT MIGHT BE CONSIDERED IN AN MOA OR IBA INCLUDE:

### **THE PROJECT**

- Description of project: nature of it, timing, location, etc.

### **ONGOING INFORMATION SHARING AND CONSULTATION ABOUT PROJECT**

- What sort of information is to be shared?
- How often or at what intervals (triggered by certain events) information is to be shared
- Process for ongoing information sharing and consultation [often committees or working groups comprising First Nation and Proponent representatives are established for this, sometimes with acknowledgement that a Crown representative might also be required]

### **IMPACTS MONITORING**

- Type of monitoring to be done (for example, Environmental impacts, impacts on exercise of treaty and aboriginal rights)
- Who is responsible for the cost of monitoring?
- First Nation participation in monitoring - how will the First Nation participate?
- Reporting process for results of monitoring

## **IMPACTS MITIGATION COMMITMENTS AND MEASURES**

- Proponent responsibility for preventing, remediating or mitigating and or offsetting any potential or actual impact (on environment or exercise of aboriginal or treaty right) from the Project once made aware of impact;
- Once a potential or actual impact has been identified, how prevention, remediation or mitigation measures will be implemented [often a committee is established for this, comprising First Nation and Proponent representatives, sometimes with acknowledgement that a Crown representative might also be required];
- First Nation participation in determining and implementing such measures;
- Who will cover costs of such measures;
- Responsibility to report on potential and actual impacts once known, and results of prevention, remediation or mitigation measures;

## **DECISION MAKING**

- What kinds of decisions about the project the First Nation desires or must be involved in;
- How the decisions will be made [sometimes the First Nation is given seats on the Proponent's Board, or a committee is established comprising representatives of the First Nation and Proponent];
- At what stage this First Nation involvement will begin;
- The process for dispute resolution if a dispute arises about the interpretation and application of the agreement

## **TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

- Preference for First Nation members to work on the project [sometimes there is a commitment for a specific number of such persons to be trained and hired];
- Training for First Nation members to work on the project [sometimes there is a commitment for specified type of training for specific numbers of First Nation members];
- Process for recruitment of First Nation members;
- How to enforce the contractual provisions in collective agreements, with subcontractors, and under human rights legislation;
- Preference for First Nation-owned companies to be suppliers and subcontractors [sometimes specifying the type of goods and services to be supplied];
- Process for identifying such companies and the Proponent's needs that such companies could supply or service;
- Establishment of joint ventures, partnerships etc. to run various aspects of the Project;

## **CAPACITY BUILDING FOR FIRST NATION**

- Provision of training, resources, programs or funds for the First Nation to build its governance, administration or infrastructure capacity outside the immediate parameters of the Project (establishes ongoing commitment by Proponent to work with the First Nation over time, and provides benefits beyond compensation for impacts from Project to reflect more equitable benefit-sharing with Proponent)

## **CULTURAL PROTECTION FOR FIRST NATION**

- Identification of areas and sites within the First Nation's traditional territory that must be protected from project impacts (spiritual or sacred sites, burial grounds, important harvesting areas, etc.);
- Need for and process to identify such areas and sites (such as traditional use, archaeological or anthropological studies) and who will fund this;
- Measures to ensure such areas and sites are protected;
- Other measures to ensure the First Nation's culture is protected while the project is ongoing;

## **COMPENSATION FOR RESIDUAL EFFECTS AND USE OF TRADITIONAL LANDS**

- Set out methods and amounts of compensation [might include: cash or lump sum, royalties or percentage of gross revenue from project, rental fee for land, shares or warrants in company etc.];

## **FUNDING TO FIRST NATION FROM PROPOSER FOR ONGOING PARTICIPATION IN AGREEMENT PROVISIONS**

- Commitment from Proposer to fund all costs for the First Nation to undertake its participation under the Agreement (such as participation in ongoing information-sharing and consultation, in monitoring, in any committees established, in impact prevention and mitigation measures, in its role in training, employment and business opportunities such as identifying members and companies who might participate etc., and for overhead and administration re the above);
- Includes costs for First Nation and any necessary advisors (technical, expert, legal);

## **DISPUTE RESOLUTION**

- Process for dispute resolution [often arbitration is preferred];
- Who will cover costs of this [Proposer often commits to covering its and the First Nation's costs for this process, including legal costs, unless the Arbitrator determines that the First Nation's position is frivolous or vexatious];



## APPENDIX I - BCR



### KITIGAN ZIBI ANISHINABEG

P.O. Box 309, Maniwaki (Quebec) J9E 3C9      Tel: (819) 449-5170  
Fax: (819) 449-5673

Chronological No. - Numéro consécutif

**BCR No. 10**

### BAND COUNCIL RESOLUTION RÉSOLUTION DE CONSEIL DE BANDE

DATE	29	04	AD 20	2024
	DAY - JOUR	MONTH - MOIS		YEAR - ANNÉE

At a duly convened meeting held by the Kitigan Zibi Anishinabeg Council on April 29, 2024, the following resolution was enacted:

**WHEREAS** the Kitigan Zibi Anishinabeg First Nation (KZAFN) have lived in their Traditional Territory since time immemorial, practicing our ways and living according to our Inàkonigewin (law) and culture;

**WHEREAS** meaningful Consultations and Accommodations are required in order to reach KZAFNs free, prior and informed consent;

**WHEREAS** the Kitigan Zibi Anishinabeg Band Council recognizes the need to develop a policy of its own in order to continue to assert its jurisdiction to and in all parts of its Environment, including its People, its Reserve and to those parts of its Traditional territory that have not been party to a treaty;

**WHEREAS** the new Consultation and Accommodation Policy sets out KZAFN's rules, under its Inàkonigewin (law) and its understanding of respectful application of Canadian law and the honour of the Crown, for the process and principals for consultation and accommodation between KZAFN, the Crown and Proponents, about any activity that is proposed to occur in KZAFNs Traditional Territory;

**THEREFORE, BE IT RESOLVED** that all previous Kitigan Zibi Anishinabeg First Nation Consultation and Accommodation policies are hereby superseded by the attached Kitigan Zibi Anishinabeg First Nation Consultation and Accommodation Policy 2024.

**ADOPTED**

A quorum for this Band  
Pour cette bande le quorum est  
consists of  
fixé à 4  
Council Members  
Membres du Conseil

(Chief - Chef)

(Councillor - conseiller)





**Kitigan Zibi Anishinabeg**

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