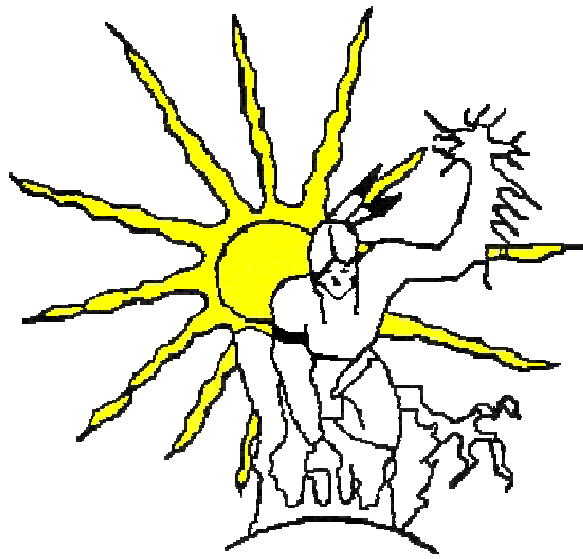


# **Ojibways of the Pic River First Nation**

## *Consultation and Accommodation Law*



October 2008

# ***Pic River First Nation Consultation and Accommodation Law***

## **Preamble**

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Whereas Pic River First Nation possesses Aboriginal and Treaty Rights over lands and resources within our traditional territory;

Whereas Pic River First Nation has asserted these rights against the Crown in a claim, which has not yet been settled or otherwise determined;

Whereas section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada;

Whereas the Supreme Court of Canada, in the *Haida*, *Taku River* and *Mikisew* cases, established that Aboriginal peoples asserting Aboriginal and Treaty rights must be consulted and accommodated prior to occurrence of any decisions, conduct or activities that may have impact on the rights and interests of Aboriginal peoples;

Whereas Pic River First Nation is ready, willing and able to engage in consultations, and if appropriate, to be accommodated with respect to any and all decisions, conduct and activities that have the potential to have an adverse effect on Aboriginal and Treaty Rights respecting lands and resources within the Pic River First Nation traditional territory;

Whereas the Crown and private sector parties seeking to carry on activities within the Pic River First Nation traditional territory should only do so in accordance with this Law and with the free, prior and informed consent of the Pic River First Nation:

## **Name and Adoption of this Law**

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1. This Law shall be known as the *Pic River First Nation Consultation and Accommodation Law*.
2. This Law was adopted by the Pic River First Nation Chief and Council on October 28, 2008, and is in force and effect immediately.

## **Aboriginal and Treaty Rights**

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3. For the purposes of this Law, the term “Aboriginal and Treaty Rights” is used generically in a manner consistent with the use of that term in section 35 of the *Constitution Act, 1982*.

4. Nothing in this Law or any actions, activities, decisions or authorizations thereunder shall derogate from the Aboriginal and Treaty rights of Pic River First Nation; and this Law and all said actions, activities, decisions or authorizations are without prejudice to any claim or claims asserted by Pic River First Nation to Aboriginal and Treaty rights.
5. Nothing in this Law, including Pic River First Nation engaging in consultations and accommodations with any municipality or private sector proponent, absolves the Crown of any obligation to consult with Pic River First Nation and to accommodate the rights and interests of Pic River First Nation, in accordance with the *Constitution Act, 1982*.

### **Application and Definitions**

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6. This Law applies to the territory over which Pic River First Nation asserts Aboriginal and Treaty rights, known as the Pic River traditional territory and identified in Schedule A.
7. This Law applies to all “impacts”, which includes any and all actions, undertakings, activities, conduct, decisions or projects, existing or proposed, which have the potential to adversely affect the rights and interests of Pic River First Nation. Unless otherwise expressly provided, any impacts that have not been reviewed and processed under this Law shall be deemed to not have been the subject of meaningful consultations with Pic River First Nation.
8. Without limiting the generality of the foregoing, this Law applies to:
  - a) Any consultations between Pic River First Nation and the “Crown”, which includes the Crown in right of Ontario or the Crown in right of Canada, and their respective Ministries, agencies, or Crown corporations;
  - b) Any consultations being undertaken or proposed with any municipalities within the Pic River traditional territory; and
  - c) Any proposed development activities on the Pic River traditional territory.
9. This Law also applies to private sector parties undertaking or who propose to undertake exploration or development activities within the Pic River traditional territory who wish to enter directly into consultations with Pic River First Nation.
10. For greater certainty, the term “proponent” includes both the Crown as well as municipal and private sector parties.

11. Notwithstanding any previous decisions or practices of Pic River First Nation or any decisions, authorizations or discussions by any other body purportedly on behalf of Pic River First Nation, whether express or implied, the point of engagement for any consultations and accommodations with Pic River First Nation is the Chief and Council. Unless otherwise expressly provided pursuant to this Law, only the Chief and Council has the authority to participate in any consultations and accommodations on behalf of Pic River First Nation or to authorize or approve any impacts on behalf of Pic River First Nation.

### **Guiding Principles for Meaningful Consultation**

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12. **Reconciliation** – The principle of reconciliation shall govern and guide any and all consultations and accommodations undertaken pursuant to this Law.
13. **Honour of the Crown** – The Crown, in all its dealings with Pic River First Nation, must uphold the honour of the Crown, and undertake consultations honestly, transparently and in good faith.
14. **Good Faith** – Pic River First Nation and all proponents engaging in consultations shall do so in good faith.
15. **Environmental Protection and Sustainable Development** – A paramount consideration with respect to any impact is the extent to which it will harm the environment and the sustainability of the development.
16. **Accommodation** – In fulfilling its obligation to consult under the law, the Crown shall inform, listen-to and faithfully reflect and accommodate the concerns and views of Pic River First Nation with respect to any impact within the Pic River traditional territory.
17. **Sharing in Impact Benefits** – It shall be an over-riding principle that Pic River First Nation is entitled to share in the benefits from any impacts within the Pic River traditional territory.

### **Consultation Process**

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#### **Consultation Triggers**

18. The requirement to consult under this Law is triggered by an “impact” by any proponent, which includes any action, undertaking, activity, conduct, decision or project, existing or proposed, which has the potential to adversely affect the rights and interests of Pic River First Nation.

19. More specifically, and without limiting the generality of the foregoing, the following Crown impacts within the Pic River traditional territory shall trigger consultations under this Law:
- a) Crown sponsored or approved mapping or exploration activities;
  - b) Permitting or in any way authorizing resource exploration, extraction or development activities by third parties or the issuing of licences, permits or approvals;
  - c) Disposing of any lands or interests in lands and resources, including issuances of letters patent or grants of fee simple;
  - d) Disposing of any rights to lands, including any and all leases, licences, permits or approvals;
  - e) All forestry management and energy development activities;
  - f) The construction of any structures, roads, bridges or any infrastructure that has the potential for environmental impact, including impacts to the water, forests and wildlife;
  - g) Undertaking any proposed activity with the potential to disturb or alter known archaeological / historical resources or heritage sites or sites of spiritual or cultural significance to Pic River First Nation; and
  - h) Undertaking any land use planning or management actions or decisions, including adjusting municipal boundaries.
20. Any impact by any municipality or private sector party will trigger consultations and it is incumbent on all proponents to notify Pic River First Nation when it is aware or ought to be aware of any such impacts.
21. The following procedures are to be followed for all consultations except where, by prior agreement between Pic River First Nation and the lead proponent, the procedures may be modified to address specific circumstances.

***Giving Notice of Consultation***

22. The proponent shall communicate its intention to consult by issuing a written Notice of Consultation to the Chief of Pic River First Nation in a timely manner and in clear, concise and understandable language.

23. The Notice of Consultation shall be provided at an early stage of planning, prior to undertaking any activity which affects the rights or interests of Pic River First Nation in the Pic River traditional territory.
24. The Notice of Consultation will contain relevant information and material facts in sufficient form and detail to assist Pic River First Nation to understand the matter in order to prepare a meaningful response. The Notice of Consultation should contain, but not be limited to, the following:
  - a) The nature and scope of the proposed activity;
  - b) The timing of the proposed activity;
  - c) The location of the proposed activity;
  - d) How the proposed activity may affect the Pic River First Nation and its traditional territory;
  - e) Who will be undertaking the activity;
  - f) A description of the consultation process, including intended activities, timelines, expectations and limitations, if any;
  - g) What documents, including applications, studies, assessments, policies are available to be reviewed which are pertinent to the proposed activity;
  - h) What collateral or related processes or approvals are currently underway that affect the activity;
  - i) Documentation of any deadlines or filing dates relating to the activity or the process; and
  - j) Any pertinent names, addresses and phone numbers for contacting the relevant decision makers and those assisting the project.
25. The geographic area of interest and proposed activities shall be mapped and submitted with the Notice of Consultation. If the map is provided in a digital format, it shall be compatible with ESRI's ArcGIS software.
26. As soon as practicable, Pic River First Nation will confirm receipt of the Notice of Consultation and will provide contact information for the appropriate Pic River First Nation representative to whom the proponent shall henceforth direct all communication.

27. If a proponent fails to provide a Notice of Consultation to Pic River First Nation, the First Nation shall give the proponent a written notification of the failure and set a time within which the proponent shall comply with Sections 22 – 25 of this Law.

***Research, Review and Information Sharing***

28. Pic River First Nation may request a face-to-face meeting to discuss the Notice of Consultation with the proponent. Pic River First Nation may wish to support a face-to-face meeting with the proponent with the presence of legal counsel and/or technicians. The full cost incurred for Pic River First Nation to prepare for and host a face-to-face meeting shall be borne by the proponent. A statement of these costs shall be made available to proponents at the onset of the process.
29. The proponent shall provide adequate information, both in advance and in response to questions by Pic River First Nation or its counsel, to permit the First Nation to understand the process and the substance of the impact.
30. The proponent shall provide information in a language and form which is comprehensible to Pic River First Nation, including all necessary technical supporting documents. The proponent will provide assistance to Pic River First Nation, where necessary or requested, in understanding such technical supporting documents.
31. The proponent shall engage in meaningful dialogue with Pic River First Nation with a view to understanding the First Nation's rights and interests and the importance and significance of those rights and interests.
32. Should Pic River First Nation require additional information to assess the benefits and risks of the impact, the First Nation may conduct new research to fill information gaps, undertake field visits, and obtain legal and technical reviews. The full cost of obtaining such additional information shall be borne by the proponent.

***Assessment by Pic River First Nation***

33. Pic River First Nation shall be provided with a reasonable period of time to consider the matter under consultation and the issues raised, having regard to:
- a) The nature and complexity of the matter to be decided;
  - b) Pic River First Nation's need to fully, properly and meaningfully consult and engage with its members;

- c) Pic River First Nation's need to undertake research or other specialized studies or assessments;
  - d) Pic River First Nation's need to obtain specialized, expert, professional or technical advice; and
  - e) Deliberations by Chief and Council following community consultations and engagement.
34. Based on the Notice of Consultation, any face-to-face meetings and any other relevant considerations, Pic River First Nation shall make a determination as to whether to assign the proposal to a regular consultation framework or to a special consultation framework. Pic River First Nation shall communicate that determination in writing to the proponent in an initial letter of response.

#### ***Regular Consultation Framework***

35. A regular consultation framework is a fast-track approach to consultations for routine applications and for applications where the potential for impacts and damages are determined by Pic River First Nation in its sole discretion to be not significant.
36. The regular consultation framework is described in more detail in Schedule B and will be detailed in Pic River First Nation's initial letter of response to the proponent.

#### ***Special Consultation Framework***

37. A special consultation framework is a custom designed process suited for complex applications and where there are potentials for significant impacts from the proposed activities. The special consultation framework shall apply to the following activities, including but not limited to: forest management plans, mining development applications, hydroelectric proposals, and government land use planning processes.
38. The special consultation framework shall require the parties to enter into a Consultation Protocol, which shall be negotiated and mutually agreed upon by the parties and which shall set out in detail the consultation process to be undertaken with respect to the matters under review.
39. The special consultation framework may require the development of a Joint Consultation Committee, composed of representatives from Pic River First Nation and the proponent. If required, the Joint Consultation Committee shall meet on a regular basis to make recommendations about the means to



accommodate Pic River First Nation's interests, including but not limited to the negotiation of an Impact Benefit Agreement and / or a Co-Management Agreement.

40. Pic River First Nation retains the rights to re-assign a proposal from a regular consultation framework to a special consultation framework, through a written notice to the proponent.

#### **Costs**

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41. The full cost of entering into meaningful consultation with Pic River First Nation under this Law shall be borne by the proponent, including but not limited through the provision of technical and financial resources to Pic River First Nation.

#### **Confidentiality**

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42. Raw Pic River First Nation cultural data is the sole property of the First Nation. Any proponent requiring review of Pic River First Nation cultural data shall be required to enter into a confidentiality agreement prior to reviewing the same.
43. All information collected by Pic River First Nation shall be shared with the proponent, subject to entering into a confidentiality agreement and to solicitor-client privilege.

#### **Accommodation**

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44. Any consultations under this Law shall be undertaken in good faith. It is expected that the proponent will be open to changing the original plan, proposal, activity or decision based on the concerns or views expressed during the consultations phase. Any decisions as to whether accommodations are necessary shall be decided collaboratively by the proponent and Pic River First Nation, in the spirit of reconciliation.
45. If, based on the consultations, a decision is made to allow the impact to proceed, the accommodation of Pic River First Nation's interests shall be achieved through the negotiation of an Impact Benefit Agreement or a Co-Management Agreement.

#### **Dispute Resolution**

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46. Any dispute between the parties shall be resolved as follows:

- a) The matter shall be put to the Chief of Pic River First Nation and the senior representative of the proponent for a negotiated resolution.
- b) If the Chief and senior representative of the proponent are unable to reach a negotiated resolution within 30 days, the matter shall be put to mediation. The mediator shall be an individual jointly agreed upon by both parties. The mediator shall attempt to reach a mediated resolution within 60 days of the matter being submitted to him or her.
- c) If the parties are unable to agree to a mediator or if they are unable to reach a resolution as a result of mediation, then, the matter shall proceed to arbitration. The arbitration body shall be composed of one person if the parties are able to agree to one person; if not, then, each party shall name one arbitrator and the two shall name a third. The arbitrators shall make a decision on the dispute within 90 days of the matter being submitted to them.

47. The proponent shall bear all the costs of dispute resolution.

#### **Power to Make Regulations**

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48. Pic River First Nation's Chief and Council may make regulations for carrying out and giving effect to the purpose and provisions of this Law.

#### **Transitional Provisions**

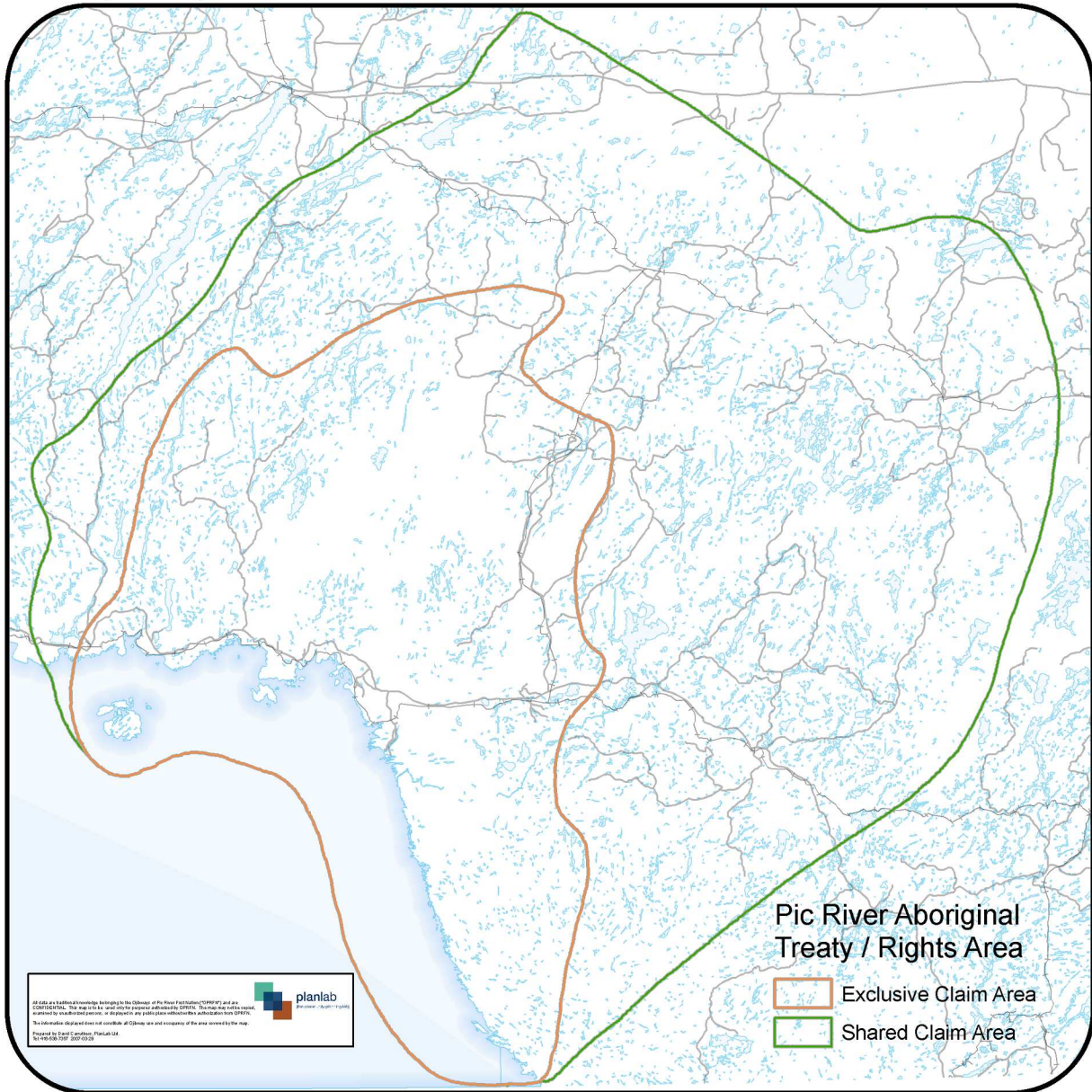
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49. This Law only applies to proponents who have not already entered into any agreements with Pic River First Nation relating to consultations and impacts on Pic River traditional territory.

50. Proponents who have already entered into such agreements with Pic River First Nation, including but not limited to a Memorandum of Agreement and/or a Consultation Protocol, are exempt from the application of this Law with respect to the terms and conditions prescribed by the said agreement.

Schedule A

## Pic River Aboriginal Treaty / Rights Area



## Schedule B – Regular Consultation Framework

The *regular consultation framework* shall be implemented and follow all of the regulations set out in the *Pic River First Nation Consultation and Accommodation Law*.

