



Protocols for Engagement and Consultation with Government & Private Sector

Approved: March 24, 2021

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A. Purpose and Application

1. ***This Protocol sets out Caldwell First Nation (CFN) rules, under its inherent laws for the process and principles for consultation, engagement, and accommodation between CFN, the Crown, and Proponents, about any Activity that is proposed to occur in CFN's Traditional Territory or that might cause an Impact to the Environment or Health therein or CFN's Rights.***

CFN expects the Crown and Proponents to respect this Protocol in all such interactions with CFN and also expects the Crown and Proponents to comply with Canadian law. This Protocol addresses the duty to consult and accommodate under Canadian law and what the Crown, Proponents, and CFN can expect of each other during consultation and accommodation.

Appropriate consultation between CFN and federal, provincial, and municipal authorities serves several purposes. At its heart, appropriate consultation is a dialogue between communities, a mutual engagement, rather than a mere notification of an external party's intention. CFN being fully informed about projects and decisions that may affect the Nation protects its full range of rights and responsibilities, as recognized within traditional Anishinaabe law, in Canada's Constitution, within the jurisprudence of Canada's courts, and in international law.

If you are unsure of whether this Protocol applies to your project, please contact the CFN consultation office or visit consultwithcaldwell.ca

B. Legal Status

1. ***This Protocol does not abrogate, derogate or otherwise restrict any CFN Rights.***
2. ***Nothing in this Protocol may be construed to limit any consultation, engagement, or accommodation obligations owed to CFN by the Crown or any Proponent.***
3. ***Notwithstanding anything in this Protocol, CFN retains the right to challenge, by way of judicial review or any other legal or other process, any Activity within their Traditional Territory.***

C. Context and General Principles to Guide Consultation, Engagement, and Accommodation

1. ***The people of Caldwell First Nation have lived in their Traditional Territory since time immemorial, practicing their ways and living according to their laws and culture. They are a self-defined people.***



2. *CFN continues to assert and exercise Aboriginal title and Aboriginal rights to and in all parts of its land, and to those parts of its Traditional Territory to which it has not been a party to a treaty, including lands under water. A map of CFN's Traditional Territory may be found at Schedule A.*
3. **Community Profile** - *Caldwells are part of the Anishinaabe Nation: Ojibwe, Odawa and Potawatomi, known as the Three Fires Confederacy.*

Caldwell First Nation was historically known as Caldwell's Band of Indians, due to ancestors serving under Colonial Caldwell during battles. Ancestors fought in many wars alongside Chief Tecumseh, Chief Pontiac, and British Allies to protect the traditional territory. Caldwell First Nation's traditional territory spans along Lake Erie from the Detroit River to Long Point.

In 1790, under the McKee Treaty, Chiefs of the Ottawa, Chippewa, Huron, and Pottawatomi Nations engaged in an agreement that included the selling of large parcels of land found in Southwestern Ontario, to the Crown. Representatives from Caldwell First Nation were not present to sign and did not benefit from any of the promises that were made to Indigenous Peoples.

During the War of 1812, Caldwell was recognized for its support and allyship alongside the British Army, resulting in the promise to them that they would receive lands in Point Pelee. However, these promises never came to fruition in any formal agreements as officers who were involved in the promise did not survive the War, and the Crown continued to possess ownership over the land.

The Crowns encroachment of the Caldwell First Nations Traditional Territory resulted in colonization and settlement that displaced many of Caldwell's ancestors from the land, and by the late 1800s many members of Caldwell no longer resided in their ancestral lands; less than 100 members remained in the area.

There were many attempts to drive Caldwell people out of their traditional home territory, part of which is now known as Point Pelee National Park. In a final attempt by the Government in the early 1920s, they sent in the RCMP on horses with whips to drive Caldwell people from their homes. After succeeding, they burned their homes and crops so that they would have nothing to return to. With no 'Reserve' or place to call Home, Caldwell Band Members were displaced and have resided all over North America ever since.

Later referred to as Chippewas of Point Pelee and Pelee Island, and now known as Caldwell First Nation, it took the persistence of many Chiefs throughout the years to finally reach an Agreement In Principle with the Government of Canada. In August of 2010, and after 220 years with no place to call Home, Caldwell First Nation Band Members unanimously voted in favour of a \$105,000,000 land claim settlement. Caldwell can purchase up to 6,540 acres to be designated into Reserve lands, with money specifically designated to certain areas such as land purchases, economic development, and education, to name a few.



Caldwell First Nation has a membership that consists of approximately 385 registered members, encompassing all ages, and we continue to grow.

Caldwell has a Band Office in the core of Leamington, Ontario that houses its Administration. Caldwell owns many parcels of land near Point Pelee National Park, Hillman Marsh, and Pelee Island.

The history of Caldwell First Nation includes the 230-year fight for their homeland where displacement and colonization caused a disconnect between the people and their ancestral territory for the last several centuries. Regardless, Caldwell First Nation and its members persevered. On November 10, 2020, Caldwell received its Reserve designation from the Crown on a two-hundred-acre property located at the corner of Seacliffe Drive and Bevel Line Road in Leamington. This is the first of many properties that will be converted to Reserve lands.

Chief and Council have a priority to purchase land to continue to establish its Reserve in its traditional territory.

- 4. In addition to Aboriginal title, CFN's rights in its Reserve (when established) and Traditional Territory include rights to hunt, fish, and trap, to harvest plants for food and medicine, to protect and honour 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.*
- 5. CFN's laws require CFN to preserve and even enhance a mutually respectful relationship with the Environment, to co-exist with Mother Earth, and to protect this relationship. We have the responsibility to care for its Traditional Territory for future generations, to preserve and protect wildlife, ecosystems, lands, waters, air, and resources. CFN 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 CFN as a people and its members' health, its culture, laws, livelihood, and economy.*
- 6. CFN is recognized as a respected and principled steward of the Environment. CFN'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.*
- 7. All decisions about any Activity that might cause an Impact must be made carefully and in the best interests of CFN sustainability. CFN has suffered significant adverse effects from displacement, development, use, and from taking and using parts of its Traditional Territory including those to which it asserts First Nation title. **Any Activity taking place in the CFN Territory should have the goal of minimizing impacts on the Traditional Territory, and on present and future generations.***
- 8. CFN may decide that consideration of cumulative effects must be included in any consultation, engagement, 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.

9. *It may be necessary for the Crown and/or Proponent to fund cumulative effects analyses, CFN land use and occupancy studies, and other relevant studies to enable informed decision-making about any Activity.*
10. *CFN will play a meaningful role in any environmental assessment ("EA") or related process, including, if CFN 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 CFN 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 CFN.*
11. *CFN recognizes the need to identify and develop new and appropriate ways through which First Nation and non-First Nation parties may create sustainable development opportunities from the resources within CFN's Traditional Territory. CFN's understanding of what is "sustainable" is informed by CFN's traditional knowledge and laws. CFN's laws require CFN to assess an Activity by anticipating its potential effects at least seven generations into the future. CFN defines sustainable development to be the sustainability for now and in the future of:*

- | Nature | Life Support | Community |
|--|---|---|
| <ul style="list-style-type: none"> ● <i>Earth</i> ● <i>Biodiversity</i> ● <i>Ecosystems</i> | <ul style="list-style-type: none"> ● <i>Ecosystem Services</i> ● <i>Resources</i> ● <i>Environment</i> | <ul style="list-style-type: none"> ● <i>Cultures</i> ● <i>Groups</i> ● <i>Places</i> |

And the development of:

- | People | Economy | Society |
|--|--|---|
| <ul style="list-style-type: none"> ● <i>Child Survival</i> ● <i>Life Expectancy</i> ● <i>Education</i> ● <i>Equity</i> ● <i>Equal Opportunity</i> | <ul style="list-style-type: none"> ● <i>Wealth</i> ● <i>Productive Sectors</i> ● <i>Consumption</i> | <ul style="list-style-type: none"> ● <i>Institutions</i> ● <i>Social Capital</i> ● <i>States</i> ● <i>Regions</i> |

This sustainability is measured in terms of interruption of or the ability to work in tandem with the proposed project. CFN does not endorse projects that infringe on its ability to sustain life in its most traditional forms or any which impedes its citizens' ability to provide food, clothing, shelter, or survival for themselves, the broader community, or that of the land, air, water, and animals.

12. *CFN recognizes the need to identify and develop new and appropriate ways through which First Nation and non-First Nation parties may create economic development opportunities from the resources within CFN's Traditional Territory.*



13. *Consultation and accommodation processes must be designed and implemented with flexibility to reflect the nature and importance of the CFN Right or Health or elements or conditions of the Environment that could be affected by the Activity, and the seriousness of the possible Impact. CFN and only CFN might decide in certain circumstances that it does not require further consultation and/or accommodation in respect of an Activity.*
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 CFN by the Crown and Proponents using Memorandums of Understanding, Environmental Assessments, on the ground work, etc.*
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, and open manner.*
16. *CFN must be consulted by the Crown and, if applicable, by Proponents from the earliest stages of any contemplated Activity, so that strategic and long-term planning is facilitated, and CFN'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. CFN's participation in Activity design will be of significant benefit as it streamlines work and greatly reduces the opportunity for conflict in later stages of the project.*
17. *The Crown must always consult with CFN with the intent, and where required by CFN by taking all feasible steps, to accommodate CFN by substantially addressing all of CFN's legitimate concerns about the Activity.*
18. *The Crown may delegate aspects of consultation and accommodation to the Proponent so long as the Crown maintains an oversight role over the entire process.*
19. *Accommodation may include but is not limited to:*
 - *Prevention and remediation of Impacts to the extent feasible (and where CFN 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 to the extent reasonably feasible.*
 - *Provision of compensation and related benefits from the Activity to the extent reasonably feasible in general to compensate for Impacts.*
 - *Measures to increase CFN'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.*
 - *Revenue sharing.*



20. *The Crown is expected to fund, and/or ensure funding is provided by any relevant Proponent for all the reasonable costs of CFN 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 CFN. The workplan and budget will provide good faith estimates of the work that needs to be done; but if unforeseen circumstances arise, the workplan and budget may need to be revised by agreement of the parties. A template version of a budget is attached to this Protocol in Schedule B.*
21. *In respect of accommodation, CFN generally expects Proponents to enter into a Memorandum of Agreement ("MOA"), or the like in respect of Activities that CFN expects to result in some, but not significant, Impacts, and to enter into an Impacts and Benefits Agreement ("IBA") or the like when CFN expects significant Impacts but does not decide to stop the Activity. The Crown is expected to work with CFN when requested to ensure that Proponents meet these expectations.*
22. *CFN has the right to stop any contemplated Crown or Proponent Activity that would likely have a significant Impact.*
23. *The Crown must not dispose of or grant to any third party any interest in land that is part of CFN's Traditional Territory without the prior and informed consent of CFN.*

D. Trigger for Consultations

1. *The Crown must consult with and accommodate CFN and where applicable ensure that the Proponent also consults with and accommodates CFN, in respect of any Activity, when the duty to consult and accommodate is triggered.*
2. *CFN also expects to engage in consultations and negotiations for accommodation at the strategic-planning level, including in respect of the following economic development opportunities:*
 - *Co-management of resources (e.g.: fisheries, wildlife protection plans, and the like).*
 - *Protection and management of watersheds and ecosystems.*
 - *Land use planning for broader areas in the Traditional Territory.*
 - *Resource development within the Traditional Territory.*
3. *Consultations with and accommodation of CFN are triggered when the Crown is contemplating any Crown Activity or is aware of any Proponent Activity that might have an Impact on First Nation or treaty rights.*
4. *Unless CFN otherwise decides, if any Activity has begun or is underway before consultation with CFN is completed, and such consultation would have been triggered, the Crown and where applicable the Proponent must undertake consultation with and ensure*



accommodation of CFN forthwith. CFN expects the Crown to suspend such Activity, until consultations are completed.

E. Consultation and Accommodation Process

Step One: Initial Contact

1. *The CFN Contact is the CFN Consultation Coordinator. The CFN Council retains the authority to designate a point person outside of the CFN Consultation Coordinator when appropriate. It is not appropriate to contact Chief and Council directly about a project as the initial step.*
2. *All project proponents are directed to use CFN's consultation web portal (www.consultwithcaldwell.ca) to enter project notifications. Because of the volume of consultation requests that CFN receives the use of the consultation portal will assist CFN in considering project notifications efficiently, and as such is part of reasonable engagement with CFN. Failure to use the web portal, or to enter information on the web portal completely and truthfully, will lead to delays in CFN's ability to consider the project.*
3. *CFN expects to be updated as more information becomes available about the project, and for the Proponent to use the web portal to provide these updates.*
4. *The Proponent shall also send Notification to the CFN Contact of its Proponent Activity, but CFN expects consultation and accommodation processes to be initiated by the Crown and for the Crown to have oversight unless CFN otherwise requests.*
5. *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 CFN 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 Protocol and it could result in further Impact in the future.*
6. *The CFN Contact will, where possible, confirm receipt of such Notification to the Crown Designate and, if applicable the Proponent, within thirty days of receiving it.*
7. *If the Crown Designate, and Proponent if applicable, do not receive such confirmation within thirty days, they must contact the office of the Director of Operations, to determine if the Notification was received and who the CFN Representative(s) is/are.*

Step Two: Preparation of Work Plan and Budget

1. *The CFN Representative(s) will review the Notification to determine whether other Information is required in order for CFN to develop a work plan and budget for consultation and accommodation in respect of the Activity (e.g.: whether CFN 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). For a project, the primary means by which the CFN Representative will make this determination is by assessing the information given by the project proponent through the web portal. Failure by the proponent to enter information truthfully and completely in the portal will result in delays in CFN's ability to evaluate the project.

2. *The CFN 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 CFN's participation in the process will be forwarded by CFN to the Crown Designate and, if applicable, the Proponent.*
3. *If information is to come in stages over the process, then work plans and budgets may be developed for each stage.*
4. *The CFN Representative(s) will prepare a draft work plan for the process of consultations and negotiations for accommodations, and a budget for CFN to participate in a meaningful and informed way.*
5. *The work plan will generally include:*
 - i. *Provision of all required Information to CFN Representative(s): what information, and when it will be provided.*
 - ii. *Collection of required information from CFN: 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 be collected, and then provided to the Crown Designate and if applicable the Proponent.*
 - iii. *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.*
 - iv. *Legal analysis or input (if required): nature of the work (including assisting CFN in the consultation and negotiation process, evaluation of Information and other relevant documentation from experts and others as to the implications on CFN's Rights of the proposed Activity, and preparation of legal memoranda re same); when each step in the work will be completed.*
 - v. *Consultation and negotiation meetings: their locations, participants, purposes or goals, and timing.*
 - vi. *Work to be accomplished between each consultation and recommendations and expectations (including collection and provision of information, expert and legal analysis and input).*



- vii. *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.*
 - viii. *Negotiating an MOA and/or IBA or the like with the Proponent (if required).*
 - ix. *Ratification of any MOAs, IBAs or the like by the CFN Community (if required): community processes, when each step in such processes will be completed.*
6. *The budget will generally include:*
- i. *Expenses to collect, copy and disseminate information.*
 - ii. *Expert fees and expenses (if required).*
 - iii. *Legal fees and expenses (if required).*
 - iv. *Fees or honoraria and expenses for CFN Representatives for their work in the consultations and negotiations.*
 - v. *Meeting costs (to book rooms and provide refreshments etc.)*
 - vi. *Internal community consultation costs (booking meeting rooms, refreshments for meetings, creating, copying and disseminating written information packages, administrative, and staff work for this).*
7. *CFN expects the Crown and Proponent if applicable to abide by the work plan and budget submitted by CFN, and for the Crown to cover the budgeted costs or to ensure that the Proponent covers such costs.*
8. *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 CFN Representative(s) their proposed changes and reasons for same before taking any other steps in the consultation or negotiation process.*
9. *CFN expects the Crown and Proponent if applicable to negotiate the work plan and budget in good faith with CFN, so all parties may arrive at a mutually agreeable work plan and budget.*

Step Three: Follow Work Plan and Revise When Necessary

- 1. *The parties will follow the work plan to the extent reasonable, and CFN 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.*
- 2. *Consultations may take many forms, and parties should be flexible and patient as the process progresses.*



3. *CFN 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 a need for further consultation with particular families or individuals who might be most affected. The number of meetings and internal consultations will depend on the complexity and significance of the Activity and seriousness of impacts.*
4. *The final phase of the process will often involve the negotiation of an MOA and/or IBA, the terms and conditions of which CFN will analyze to determine whether or not it wishes the Activity to proceed. The CFN 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 CFN to the Crown Designate and Proponent if applicable of a letter or other notice stating CFN agrees the Activity may proceed, may constitute CFN's consent to the Activity on whatever terms and conditions are contained in the MOA or IBA or letter or the like.*

F. General

1. *The Crown and Proponent must disclose all relevant Information to CFN Representatives as it becomes available, throughout the consultation and accommodation process.*
2. *CFN 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 if they are reasonable.*
3. *Any party to consultation and accommodation processes may involve such experts, lawyers, or support persons as are reasonably required.*
4. *In the event that parties do not agree with Caldwell First Nation's determinations regarding the requirements necessary for assessing a project, or a conclusion that a particular project does not fit within the framework of rights or responsibilities, all parties reserve the right to engage in various means of dispute resolution. Should agreement between representatives of the parties be unreachable, continuing discussion should take place between CFN Council, Ministers, deputy ministers, and executives to determine a resolution or next steps.*
5. *Generally, notes of and correspondence related to all consultation and accommodation processes are the responsibility of each respective party.*
6. *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. The Parties may also enter into agreements that specify the ownership of data that is shared between the Parties.*
7. *If CFN requires accommodation through negotiations with the Proponent for an MOA or IBA or the like, the Crown is expected to, when requested by CFN, assist CFN to ensure that the Proponent engages in such negotiations pursuant to the portion of the work plan*



and budget that pertain to same. CFN expects the Crown to not approve the relevant Activity unless and until agreement is reached between CFN and the Proponent on the MOA or IBA or the like.

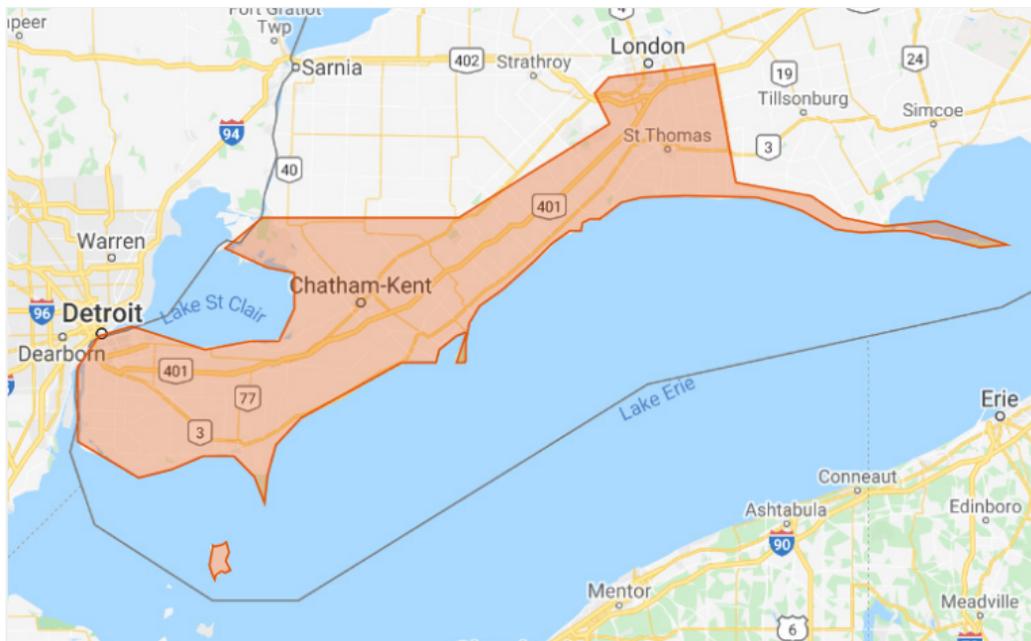
8. This Protocol and any MOA, IBA or the like that CFN might enter into, are all without prejudice to CFN's land claims.

This protocol is subject to revision and further development, determinable by Council, and reflecting, as needed, the consent of Caldwell First Nation citizens.

Schedule A

Caldwell First Nation Traditional Territory Map & Area of Current Caldwell First Nation Land Ownership

Please note: maps contained within this document are non-exhaustive in scope and shall not preclude CFN from future land claims. As more research is done, maps and descriptions of CFN's territory may be updated.





Schedule B

Template Budget

The following is a template for a budget for consultation activities. It is not meant to be illustrative of the kind of work that may be required for any particular project.

Area	Tasks	Time	Per Diem	Total Cost
Engineering	[tasks]	10 days	\$XXXX X	\$XXXXX
Hydrogeology	[tasks]	1.5 days	\$XXXX X	\$XXXXX
Natural Heritage	[tasks]	6 days	\$XXXX X	\$XXXXX
Aquatic ecology	[tasks]	3 days	\$XXXX X	\$XXXXX
Archaeology*	[tasks]	2 days	\$XXXX X	\$XXXXX
	[tasks]	15 days	\$XXXX X	\$XXXXX X
Legal	[tasks]	6 days @	\$XXXX X	\$XXXXX



CFN costs	Per diems, overhead, staff costs			
			Total	\$XXXXX

