

FURTHER BE IT RESOLVED that nothing in these exploratory talks shall prejudice other political processes and/or initiatives between individual/collective NAN First Nations and the Government of Ontario;

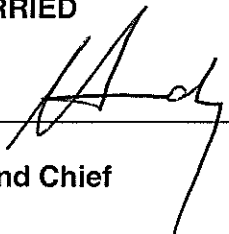
FINALLY BE IT RESOLVED NAN Northern Table CSC be directed to report at the 2008 NAN Winter Chiefs Assembly on progress made to date on the implementation of these directions.

DATED IN TIMMINS, ONTARIO THIS 15th DAY OF NOVEMBER, 2007.

MOVED BY: Chief Joshua Frogg, Wawakapewin First Nation

SECONDED BY: Chief David Babin, Wahgoshig First Nation

CARRIED



Grand Chief



Deputy Grand Chief

ATTACHMENTS

Schedule 1 Principled Approach, Guiding Principles and the Essential Elements of a Protocol
Schedule 2 The Northern Table Chiefs Steering Committee Report (Nov.2007)

Schedule 1

Principled Approach and Guiding Principles

Throughout the CSC worked on principles to guide NAN participation. Those were set out in a document entitled "Protocol for Activities on the Homelands of the Nishnawbe Aski Nations: A Discussion Paper" tabled at the Common Issues table on September 29, 2007. Context and the principles as tabled with Ontario were as follows:

Context and key issues

"The Creator has given the land and its resources to the Nishnawbe Aski people for their survival. It is the responsibility of the people to steward and protect these lands and resources, for the future generations."

"The NAN FN(s) have the inherent right to their lands and resources. Any outside interest must have prior consent to use these lands and resources. This is founded on the NAN FN(s) interpretation of Treaties #5 and #9 and adhesions."

"The failure to consult with FN(s) prior to accessing their lands and resources has been a feature of the operations of government, industry and the private sector. Indeed the Mining Act, with its free entry staking system, virtually guarantees no consultation with FN(s). For over a century intruders have been forced to leave FN(s) lands in the NAN territory."

"Several FN(s) have issued moratoriums on activities on their *majiiwaakee*. Each FN is autonomous and has its individual conditions for the lifting of a moratorium. These conditions may include but are not limited to: protocols ensuring the full, prior and informed consent of the FN have been given for the activity in the form of an IBA or a similar agreement and/or completion and implementation of a community-based, community-led land use plan for the area."

"The key issue for NAN is that Ontario will agree that the free, prior and informed consent by FN(s) is required and will be set out in an agreed upon government to government protocol."

Guiding Principles

1. First Nations

FN(s) are primary governments with law making and decision making authority with respect to proposed activities on their homeland.

2. Treaty

The parties recognize that Treaties Nos. 9 and 5 and adhesions are special forms of agreements between sovereign states and that government to government protocols must honour the spirit and intent of the Treaties signed by NAN FN(s).

3. Rights

The aboriginal and Treaty rights of NAN FN(s) are recognized by Ontario.

4. Consent

Ontario recognizes that NAN FN consent is required for activities within NAN FN Homelands and that such consent could be obtained through IBA(s) or similar agreements.

5. Government to Government Relationship

The NT is a government to government forum for government to government decision making and not a process in which Ontario is attempting to meet its legal requirement to consult and accommodate Nishnawbe Aski FN(s).

6. Consultation

The NT is not a consultation tool or process and does not meet Ontario's Constitutional duty to consult.

7. Protocol

Any activity on the homelands of the Nishnawbe Aski FN(s) will take place with informed consent of the FN(s).

8. Dispute Resolution

A dispute resolution mechanism will be set up to address disputes that may arise during the implementation of this protocol.

9. Community Ratification

FN(s) will determine their ratification procedure which may require that proposed activities on their homelands be subject to community referenda.

10. Resourcing

Ontario will provide appropriate funding for FN(s) to consider and make informed decisions regarding proposed activities on their homelands.

11. Non-derogation of Aboriginal and Treaty Rights

Protocols for obtaining consent to activities in FN Homelands shall not, and shall not be construed so as to or derogate from the aboriginal and Treaty Rights of NAN FN(s) of their members, recognized and affirmed under section 35 of the *Constitution Act, 1982*, regardless of whether such rights are recognized, established, and defined before or after these protocols are developed.

The Essential Elements of a Protocol

Based on the guiding principles, the CSC developed and presented to Ontario what would be required in a protocol. The essential elements of a protocol presented to Ontario are the following:

1. Ontario will require existing holders of leases, licences, permit or other land alienation instruments to obtain written First Nation(s) consent, based on FN law, to their activities.
2. Ontario will record new claims within the homelands of FN(s) only with their written consent, based on FN law.
3. Ontario will issue new leases, licenses, permits or other land alienation instrument only with the written consent, based on FN law, of the First Nation(s) whose homelands are being accessed.
4. Ontario will not issue new leases, licenses, permits or other land alienation instruments in areas of disputed land claims, unresolved community areas, or other places of conflict.
5. Ontario will renew or transfer existing leases, licenses, permits or other land alienation instruments only with the written consent, based on FN law, of the First Nation(s) whose homelands are being accessed.
6. Ontario will undertake activities within the homeland of FN(s) only with their written consent, based on FN law.
7. Ontario will de-designate parks and protected areas which have been established without First Nation's consent unless such consent is obtained through a negotiated government to government protocol.

Schedule 2

1. Land Use Planning Table

Recommendation 1

The CSC recommends that the Land Use Planning Table continue with the following mandate for the NAN representative at that table:

- to prepare and seek Ontario's agreement to a draft framework agreement to guide land use planning for all NAN territory.
- that the following issues be discussed during development of the Framework Planning Agreement:
 - New land designations;
 - Implementation measures including new legislation and regulations;
 - Funding;
 - Organizational structure;
 - Third party consultation;
 - Planning models;
 - Integration of planning scale.
- that NAN land use planning technical representatives will develop recommendations for consideration of the CSC regarding the organization and management of land use planning in the NAN including roles and responsibilities of NAN, Tribal Councils, FN(s) and other FN institutions.
- that the land use planning technical representatives will develop for consideration by CSC appropriate guidelines for the expenditure of the Minister's \$1 million planning fund.

2. Licenses and Permits Table

Recommendation 2

The CSC recommends that the Licences and Permits Table continue with the following mandate for the NAN representatives at that table:

- to develop a web-based notification protocol which will allow FN(s) to identify the area within which they wish to be notified and the types of licences and permits on which they want to be notified. Such a system will be required for NAN FN self-governance and is part of existing FN self-government agreements in other parts of Canada.
- that the notification protocol will provide that all provincial departments will participate in notifying NAN FN(s) through the same notification system.

- that the notification protocol will include the direct actions of provincial ministries that would otherwise require a permit (MTO taking aggregate for example), will also become part of the Notification Protocol.
- that the Notification Protocol process must include:
 - Notification;
 - FN Assessment;
 - Feedback;
 - Accommodation of FN(s) Interests & Concerns.
- the development of a protocol for a joint planning process for a Fisheries Management Plan for a zone within the NAN area which will involve several NAN FN(s).
- the development of a protocol for meaningful involvement of NAN FN(s) in the Wildlife Management planning process.
- to develop capacity building proposals for consideration at the Common Issues Table.

3. Early Exploration Technical Table

Recommendation 3

The CSC recommends that the Early Exploration (Mining) Table continue with the following mandate given to the NAN representatives:

- to develop and seek agreement of Ontario to a template protocol for:
 - early exploration workplans;
 - a funding formula for Ontario to fund the consultation process;
 - delegable procedural aspects of the duty to consult;
 - interim measures;
 - impacts of early exploration;
 - protection and sharing of information;
 - dispute resolution and other matters arising.
- to develop for consideration of the CSC recommendations regarding the funding, organization and management of the technical review and early exploration workplans including roles and responsibilities of NAN, Tribal Councils, FN(s) and other FN institutions.
- to develop with the technical leads of the other tables a collaborative workshop on TEK including custodianship and protection of TEK.
- to develop a strategy to communicate the objectives of the early exploration table to the wider public and the industry.

4. Parks Table

Recommendation 4

The CSC recommends that the Parks Table continue with the following mandate given to the NAN representatives at that table:

- to develop and seek Ontario's agreement to establish a process designed to lead to de-designation of parks for the NAN FN(s) which desire de-designation as set out in the resolutions passed by NAN FN(s) as set out in Schedule 17.
- to continue to seek fundamental amendments to Ontario's *Parks and Protected Areas Act*.
- to develop and seek Ontario's agreement for specific and adequately-funded table(s) to be put in place for NAN FN(s) that wish to discuss issues such as:
 - changing park boundaries;
 - co-management;
 - Parks IBAs regarding benefits to the FN(s) and protection of traditional activities.
- to develop plans such as the following for NAN FN(s) to consider in order to put pressure on Ontario to achieve better results at the Parks Table:
 - on the ground assertion of traditional use and management systems as Elders have directed;
 - formation of traditional cultural groupings to pursue management systems for FN homelands;
 - refusal to acknowledge parks in any way;
 - seek support of non-governmental and other organizations for FN(s) homelands rather than parks.

5. Common Issues Table

Recommendations 5

The CSC recommends that the Common Issues Table continue with the following mandate given to the NAN representatives at that table and at all levels of the NT:

- to develop and seek agreement from Ontario for a resource revenue sharing protocol. The objective would be to put in place a resource revenue sharing agreement with Ontario to implement Ontario's commitment to resource revenue sharing.
- to develop and seek agreement from Ontario that compulsory IBAs be required to implement Ontario's "in-principle" commitment to requiring that IBAs will be compulsory for all phases of proposed resource development on Nishnawbe Aski traditional homeland territory including the early exploration mining phase. (It is important to note that compulsory IBAs will have achieved the objective of First Nation's consent and

respect for FN moratoria in that if the consent of a FN is not obtained through an IBA then activity on FN homelands will not proceed.).

- to consider capacity development proposals developed by the other 4 tables and seek Ontario's commitment to fund capacity development.
- to stress and develop proposals regarding the importance of the custodianship and protection of traditional ecological knowledge.

6. Communications

Recommendation 6

The CSC recommends that communications related to the NT continue and be expanded with particular attention to the following:

- a large increase in funding for communications in order to be successful. The level of interest and participation that developed within the Interim Measures Process was greater than expected, indicating that FN(s) are very interested in the NT process. In order for the NT to be successful and to ensure that the process is led by FN mechanisms for community engagement, participation and input need to be developed, funded and implemented.
- development of a more comprehensive communications strategy needs to be developed including plans for a broad range of communication activities to gather FN input and share information with communities. It should include community meetings, video conferences, focus groups and more use of community radio.
- setting up a NT stand alone website linked to the NAN website homepage. A NT stand alone intranet for internal communications should be developed. The internet is the most used and valued communication today, especially by youth.
- increasing the budget for the quarterly newsletter so that more information can be shared and translated.
- increasing the budget for translation. Cree translation was an issue with some of the radio programs and more programs in Cree should be broadcast in the future. Cree translation was also an issue at the Elders conference. The NT is aware it needs to be more cognizant of providing Cree translation. An increase in the budget for translation will be required.
- increasing the budget for radio programs.
- developing a budget for video conferencing with communities and Tribal Councils. Tribal Councils without video conferencing capacity should be funded to develop it. Video conferencing is an inexpensive and effective communication tool.

7. Treaty Affirmation Statement

Recommendation 7

The CSC recommends that efforts continue to have Ontario and Canada sign the Treaty Affirmation Statement.

Bullet point 1 of Chiefs Resolution 07/04 said that: "Ontario signed a Treaty Affirmation Statement as presented by the NAN."

Based on that direction, the CSC under the leadership of former Grand Chief Bentley Cheechoo, presented the Treaty Affirmation Statement to Ontario and Canada for consideration. On August 15, 2007, Minister Ramsay sent a letter (Schedule 16) to Grand Chief Beardy and in that letter he said:

"On Treaty affirmation, we are prepared to re-enter discussions with NAN and Canada to address our understanding of Treaties Nine and Five. Though Ontario and NAN came to agreement on a Treaty Affirmation Statement in 2005, Canada, as the Treaty-maker, must participate and agree as well. It is my sincere hope that these discussions can commence prior to the end of the 120-day NT LPA."

8. Timeline for Renewed Table Mandates

Recommendation 8

The CSC recommends that a period of one year be established to see how much progress the NT can make on the issues that we recommend be pursued. After one year, the CSC recommends that the Chiefs once again assess progress made and determine whether the NT process should continue.

9. Campaign to Increase NAN Strength at the Negotiating Table

Recommendation 9

The CSC recommends that in addition to the proposed NT mandates that NAN embark on a domestic and international advocacy campaign designed to put pressure on Ontario (and Canada) to meet NAN's objectives.

The CSC recommends that the campaign focus include:

- Canada's and Ontario's failure to live up to Crown treaty obligations.
- Canada's (and Ontario's) failure to live up to international commitments such :
 - (i) International Declaration of Human Rights;
 - (ii) Convention to End Racial Discrimination;
 - (iii) International Covenant on Economic, Social and Cultural Rights;
 - (iv) Convention on the Rights of the Child;
 - (v) United Nations Declaration of the Rights of Indigenous Peoples.
- sending delegations of Chiefs to select European Nations such as Germany and the Netherlands to gain support.
- That detailed statistical profiles of NAN issue or issues (e.g. suicide rates, failure of education system, poverty and rates of unemployment levels) be prepared for use in the advocacy campaign.
- that a well thought out media strategy be developed to maximum Canadian and international media attention to the advocacy campaign.

10.Assertion of Rights

Recommendation 10

In addition to the NT and an advocacy campaign, the Steering Committee recommends that Chiefs support one another as appropriate in assertion of Aboriginal and Treaty rights to NAN FN(s) Homelands when they come under threat from government and industry.