

## AGREEMENT ON CONSULTATION AND ACCOMMODATION

Between

The Abenaki

acting through the Grand Council of the Waban-Aki Nation and represented by the Abenaki  
Chiefs and Councils of Odanak and Wôlinak

(hereinafter “the Abenaki”)

and

The Gouvernement du Québec

represented by the Ministre responsable des Affaires autochtones, and the Ministre responsable  
des Relations canadiennes et de la Francophonie canadienne,

(hereinafter “Québec”)

(hereinafter referred to collectively as “the Parties”)

### PREAMBLE

WHEREAS the Abenaki are an Aboriginal people asserting Aboriginal and treaty rights on their traditional territory called Ndakina;

WHEREAS Québec acknowledges this assertion and considers it with respect;

WHEREAS the Supreme Court of Canada has recognized that the government has a duty to consult and, in certain circumstances, accommodate Aboriginal peoples when it has knowledge of the potential existence of an asserted Aboriginal right or title and is contemplating measures that may adversely affect it;

WHEREAS Québec acknowledges its consultation and accommodation obligations toward the First Nations of Québec;

WHEREAS the Parties wish to enter into a consultation and accommodation agreement regarding measures contemplated by the Gouvernement du Québec;

WHEREAS the Parties consider that the consultation processes provided for in this agreement, where applicable, contribute to the fulfilment of Québec’s obligations towards First Nations;

WHEREAS on July 8, 2016 the Abenaki submitted to Québec a historical research report entitled “le Ndakina de la Nation W8banaki au Québec, document synthèse relatif aux limites territoriales”;

WHEREFORE the Parties hereby agree as follows:

## **1. DEFINITIONS**

- 1.1. Measure: Means a decision or action contemplated by Québec that may adversely affect the rights claimed by the Abenaki and the related interests in the territory covered by this agreement. A measure that is general and impersonal, such as a bill, draft regulation or draft policy, is not considered a Measure for the purposes of this agreement.
- 1.2. Applicant: Means any person, including a company, or any other entity who submits an application to the Gouvernement du Québec for a permit, a right or any other authorization.
- 1.3. Québec: For the purposes of section 7, “Québec” refers to the department responsible for making a decision with respect to the Measure or the department responsible for conducting the consultation or accommodation process, as the case may be.

## **2. OBJECTIVES**

- 2.1. The purpose of this agreement is to:
  - a) Establish the principles and process for consultation and accommodation that apply to the Measures. The process may vary depending on the nature of the Measure being considered;
  - b) Identify the territory to which this agreement applies;
  - c) Enable the Abenaki to express their concerns about the Measures and, if applicable, enable the Parties to identify ways of accommodating such concerns;
  - d) Improve and strengthen the relationship between the Parties;
  - e) Encourage the involvement of the Applicants in the consultation and accommodation process, as appropriate;
  - f) Prevent disputes between the Parties as to the interpretation and implementation of this agreement and facilitate their resolution as needed;
  - g) Make the consultation and accommodation process set out herein known to the government and Ndakina Office representatives responsible for consultation as well as to the public, including the Applicants.

### **3. THE NDAKINA OFFICE OF THE GRAND COUNCIL OF THE WABAN-AKI NATION**

- 3.1. The Ndakina Office was established and constituted by the Abenaki Councils of Odanak and Wôlinak, to which it reports.
- 3.2. The Ndakina Office has been mandated by the Abenaki Councils of Odanak and Wôlinak to carry out the consultations conducted under this agreement.
- 3.3. The Abenaki will participate in the consultations conducted under this agreement exclusively through the Ndakina Office, which acts as a coordinator and intermediary for the transmission of information for consultation purposes.
- 3.4. The Ndakina Office will maintain a close relationship with the members and elected officials of the Abenaki Councils of Odanak and Wôlinak in order to relay to them all information related to the various requests pertaining to the consultation and accommodation process.

### **4. FUNDING**

- 4.1. Québec will financially support the Ndakina Office to allow for the full participation of the Abenaki in the consultation and accommodation process; funds will be provided through existing programs provided for this purpose, subject to budgetary appropriations voted by the National Assembly, the availability of funds and in accordance with the programs' terms and conditions.
- 4.2. Québec will endeavour to process consultation funding requests by the Ndakina Office as promptly as possible.
- 4.3. Should the existing programs not be renewed, Québec commits to searching for an alternative source of funding.

### **5. TERRITORY OF APPLICATION**

- 5.1. The area to which this agreement applies is shown on the map in Schedule A (the "Territory of Application").

For consultations on the integrated forest development plans (*plans d'aménagement forestier intégré*), the entirety of the development unit 05151 is included in the Territory of Application.

- 5.2. The Parties agree that the Territory of Application they have identified is to be used solely for the purposes of this agreement and is without regards to the Abenaki's land claims or Québec's position regarding those claims.

- 5.3. The Territory of Application, as provided for in section 5.1, does not affect the obligation that Québec may have to consult and accommodate the Abenaki with respect to measures that may have potential adverse effects outside of the Territory of Application.

## 6. GUIDING PRINCIPLES FOR THE CONSULTATION AND ACCOMMODATION PROCESS

- 6.1. The consultation and accommodation process described in section 7 is developed and implemented in compliance with the following principles:

- a) **Upstream consultation.** The consultation and accommodation process is initiated as early as possible in the decision-making process for each Measure so that the concerns of the Abenaki can be taken into account.
- b) **Cooperation.** The consultation and accommodation process will be carried out in a spirit of cooperation. The Parties will make all reasonable efforts to participate fully in the process. They must act with diligence, flexibility and good faith and each Party must take into consideration the needs and constraints expressed by the other.
- c) **Communications.** The purpose of the consultation and accommodation process is to ensure the communication and exchange of clear, comprehensible and relevant information. The Parties will promote exchanges and dialogue with the objective of reaching a mutual understanding of the issues, particularly with regards to concerns expressed by the Abenaki and potential accommodation measures.
- d) **Flexibility.** The consultation and accommodation process may vary in content, scope and initial timeframe, depending on the nature of the Measure and the extent of its potential adverse effects on the rights claimed by the Abenaki.
- e) **Applicants.** When a Measure arises from an Applicant's project, the Parties will ask the Applicant to cooperate and actively participate in the consultation and accommodation process, as needed by the Parties.

If an Applicant provides Québec with information pertaining to rights claimed by the Abenaki and Québec intends to take the said information into account when deciding on a Measure, Québec must confirm the said information with the Ndakina Office.

- f) **Deadlines.** The timetable for the consultation process must provide reasonable deadlines, factoring in the Parties' respective needs, in particular and when possible, the semi-annual closed periods of the Ndakina Office and the Wôlinak and Odanak Councils, so that the Ndakina Office may respond properly to requests. Either Party may request a modification of the deadlines, which the other Party may not refuse without a valid reason.

- g) **Emergencies.** Québec may derogate from the consultation process in emergency situations like those related to public safety, public health or environmental emergency. In such cases Québec will immediately notify the Ndakina Office in writing of the exceptional situation and provide the reasons for the derogation. It will then make every reasonable effort to adequately address the concerns expressed by the Ndakina Office.

## 7. THE CONSULTATION AND ACCOMMODATION PROCESS

- 7.1 In order to promote cooperation between the Parties and the efficiency of the consultation and accommodation process, Québec may, when it receives a request for an authorization, permit or right, inform the Ndakina Office that a notice triggering a consultation process will be sent as soon as possible. This provision does not affect the definition of “Measure” in section 1.1.
- 7.2. Québec will send a written notice to the Ndakina Office to initiate a consultation process pursuant to this agreement. The said written notice will state that it is intended to trigger a consultation for a Measure and includes the following information:
- (a) A detailed description of the Measure, including available, relevant and necessary information to enable the Ndakina Office to determine whether the Measure may adversely affect the rights claimed by the Abenaki and the interests related to those rights;
  - (b) The layout or surface area of the proposed Measure, including geomatics files when possible;
  - (c) The time period and duration of the work, if applicable;
  - (d) The proposed deadline for a response from the Ndakina Office;
  - (e) Contact information for the designated person who is available to conduct the consultation.
- 7.3. The Ndakina Office will send Québec a written response within the deadline indicated in the notice or otherwise agreed upon, detailing how the Measure is likely to have adverse effects on the rights claimed by the Abenaki, as well as on the interests related to those rights, and proposing any accommodation measures it deems appropriate.
- 7.4. The Ndakina Office may request additional information within the deadline specified in the notice or otherwise agreed upon so that it can better understand the Measure and

assess its adverse effects. Québec will respond to such requests for information as quickly as possible.

- 7.5 After the written response from the Ndakina Office has been received, the Parties may communicate and meet as required, in particular to allow for a better understanding of the concerns expressed by the Abenaki and their consideration by Québec. The Ndakina Office can also provide additional information as needed. Additional discussions on appropriate accommodation measures may take place if the Parties deem it necessary.
- 7.6 If the Ndakina Office has had exchanges with the Applicant in relation to the Measure and such information is relevant to the consultation process, the Ndakina Office may inform Québec how the Applicant plans to take the concerns of the Abenaki into account. In addition, if the Parties agree and if applicable, the Applicant may be invited to participate in exchanges to discuss Abenaki issues and concerns with the Parties and facilitate the exchange of information.
- 7.7 Québec will inform the Ndakina Office in writing of any decision made with respect to the Measure. The notice will include a summary of the consultation process carried out, describe how Québec has taken the concerns communicated to it by the Ndakina Office into account, and provide information on the retained accommodation measures or, where possible, on the accommodation measures that have not been retained.

This section is not to be interpreted as excluding the possibility that the information on the accommodation measures that have not been retained may include explanations regarding the decision not to retain them.

## **8. EXCHANGE OF INFORMATION AND PROTECTION OF INFORMATION**

- 8.1. Subject to applicable laws regarding access to information and to confidentiality measures that may be agreed upon with a third party, the Parties will exchange relevant and available information.
- 8.2. When providing information as part of a consultation under this agreement, the Parties will determine whether the information exchanged needs to be treated as confidential and, if so, will implement the necessary confidentiality measures, subject to applicable laws.
- 8.3. Québec will provide the Ndakina Office with as much relevant and available information as possible.
- 8.4. The Ndakina Office will provide Québec with relevant and available information during the consultation process so that Québec may understand the concerns of the Abenaki. Such information relates, in particular, to the nature and scope of the claimed rights in question and the interests related to them, as well as the anticipated adverse effects on

them, the sensitivity of the sites of interest identified by the Abenaki and the way they occupy and use the territory.

The Ndakina Office may obtain the information described above from the members of Odanak and Wôlinak on a confidential basis. The Parties undertake to maintain the confidentiality of such verbal or written information exchanged as part the consultation and accommodation process provided for in this agreement, subject to applicable laws.

- 8.5. Should a consultation require the transfer of information received from the Abenaki between departments, these departments may transmit the said information to each other solely for the purposes of carrying out this consultation, subject to advising the Ndakina Office in writing beforehand.

## **9. LIAISON COMMITTEE**

- 9.1. On the Date of entry into force of this agreement, the Parties will set up a liaison committee (the “Liaison Committee”) composed of two (2) Québec representatives and two (2) Abenaki representatives, appointed by each of the Parties respectively. The Parties’ representatives must have the authority needed for the Liaison Committee to carry out its mandate.
- 9.2. The role of the Liaison Committee with respect to the matters covered by this agreement is to improve relations between the Parties, act as a forum for exchanges and intervene, where appropriate, to help resolve any disputes that may arise between the Parties.
- 9.3. The Liaison Committee will also be responsible for the review of this agreement, as provided for in section 13.1.
- 9.4. At any time, if a Party considers that a final judicial decision changes the legal framework for the consultation of Aboriginal peoples applicable in Québec, it may raise this issue with the Liaison Committee set up under section 9.1 of this agreement.
- 9.5. The Liaison Committee meets once a year or as the Parties deem necessary.

## **10. SCHEDULES FOR TARGETED MEASURES**

- 10.1. The Parties agree that Schedules to this agreement may be negotiated to provide for consultation processes tailored to targeted Measures.
- 10.2. Where such a schedule is agreed upon, the processes set out therein may supplement, specify or amend, as the case may be, the process described in section 7 for the targeted Measures.

## 11. DISPUTE RESOLUTION

- 11.1. For the purposes of the dispute resolution procedure, a dispute is defined as any controversy, claim or disagreement arising out of the interpretation or implementation of this agreement that is formally raised by either Party for such purpose.
- 11.2. If a dispute arises under this agreement despite close cooperation between the Parties, the Parties undertake to seek a negotiated solution to the dispute before the exercise of any legal recourse.
- 11.3. The dispute resolution process is initiated by written notice from one Party to the other Party specifying the subject of the dispute and the issue(s) to be resolved. The Secrétariat aux affaires autochtones will inform the departments concerned by the Measure of the said notice.

The notice must be accompanied by a signed written document confirming an intention to suspend prescription for the duration of the dispute resolution process, but by no more than six (6) months in accordance with the law. The other Party undertakes to sign and return the said written document within ten (10) days of receipt.

- 11.4. Upon receipt of such notice, each Party will designate a representative with the authority necessary to seek a jointly negotiated resolution of the dispute. For Québec, the representative will be a manager from each department concerned by the Measure. For the Abenaki, the representative will be the Director of the Ndakina Office. Each representative may bring any other person required in the circumstances.
- 11.5. If the Parties' representatives fail to resolve the dispute within ten (10) days of delivery of the written notice, the dispute will be referred by written notice to the Liaison Committee set up under section 9 of this agreement, unless the Parties' representatives agree to extend the deadline.
- 11.6. Upon receipt of the written notice, the Liaison Committee will hold a meeting within fourteen (14) days to seek a negotiated solution to the dispute. The Liaison Committee may agree to extend the time limits for consultation, further document the issue, bring in an expert, refer the dispute to an independent and impartial third party for mediation or decide to end the dispute resolution process.

Each Party will bear its own costs in connection with the mediation process. The costs of the mediation process, including the costs and fees of the mediator and experts, will be agreed upon and borne equally by the Parties.

- 11.7. The deadlines provided in section 11 may be modified at any time with the written consent of the Parties, in particular to accommodate the semi-annual closed periods of the Ndakina Office and the Wôlinak and Odanak Councils.



11.8. The notice referred to in section 11.3 must be sent in writing to the following addresses:

- Directeur des négociations et de la consultation  
Secrétariat aux affaires autochtones  
905 Honoré-Mercier Ave., 1st floor  
Quebec, Quebec, G1R 5M6

- Ndakina Office  
Grand Council of the Waban-Aki Nation  
10175 Kolipaio St., Wolinak, Quebec, G0X 1B0

Any change of address by either Party must be communicated to the other Party without delay.

## **12. DATE OF ENTRY INTO FORCE, TERM, TERMINATION AND AMENDMENT**

- 12.1. This agreement will come into effect (60) days after the date of the last signature (the “Date of entry into force”).
- 12.2. The term of this agreement is ten (10) years from the Date of entry into force, renewable for ten (10) year periods with the written consent of the Parties.
- 12.3. Either Party may terminate this Agreement by sending the other Party three (3) months’ written notice.
- 12.4. The legal effects of sections 5.2 and 14.6 will continue to apply and remain in effect notwithstanding the termination of this agreement for any reason. The legal effects of sections 8.2 and 8.4 will continue to apply, provided the information referred to in those sections was exchanged or communicated while this agreement was in effect.
- 12.5. This agreement may be amended at any time by mutual consent of the Parties.

## **13. REVIEW OF THE AGREEMENT**

- 13.1. This agreement will be subject to a comprehensive review by the Liaison Committee two (2) years after it comes into effect and every five (5) years thereafter.
- 13.2. For purposes of the review, the Committee will consider, as appropriate:
  - (a) amendments to Québec legislation bearing on consultation with and possible accommodation of Aboriginal peoples or any relevant policy emanating from such legislation;
  - b) final court rulings that both Parties believe will change the legal framework applicable to the consultation of Aboriginal peoples in Québec.

**14. GENERAL PROVISIONS**

- 14.1. The preamble and schedules form integral parts of this agreement.
- 14.2. The deadlines in this agreement are expressed in calendar days. If the deadline for doing something expires on a holiday, the deadline is extended to the next working day.
- 14.3. The Parties agree that the consultation and accommodation process provided for in this agreement is intended to enable Québec to fulfill its duty to consult with and accommodate the Abenaki.
- 14.4. This agreement does not affect the duty to consult and accommodate that Québec may have toward the Abenaki with regard to any measures not covered by the agreement.
- 14.5. This agreement is not a treaty or a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 14.6. Nothing in this agreement has the effect or is to be construed as having the effect of recognizing, denying, creating, extinguishing, repealing, defining or derogating from any right recognized and confirmed by section 35 of the *Constitution Act, 1982* that the Abenaki may have, including Aboriginal title. For greater certainty, this agreement is entered into without prejudice to any position that a Party may take with respect to the existence, scope and extent of such rights.
- 14.7. The fact that an Applicant participates in the consultation and accommodation process provided for in this agreement does not have the effect of releasing Québec from the duty to consult and accommodate that may arise with respect to the Abenaki.
- 14.8. The participation of the Abenaki in discussions or negotiations with an Applicant concerning any socio-economic cooperation or impact benefit agreement, or the ratification by the Abenaki of such an agreement, does not have the effect of exempting any Measure related to the activity of such Applicant from the consultation and accommodation process provided for in this agreement, including the provisions of such process relating to accommodation measures.
- 14.9. This agreement does not affect Canada's responsibilities to the Abenaki.
- 14.10. This agreement does not affect the obligations that Québec may have toward any Aboriginal group that is not a party to this agreement, nor does it affect the means at its disposal to meet the said obligations.
- 14.11. This agreement is written in both English and French. Only the French version is signed and authoritative.

- 14.12. The Parties undertake to make this agreement known to the public, including the Applicants. They will work on their communication activities together, including when issuing a press release and organizing information meetings with the people concerned.
- 14.13. The Parties declare that they have all the requisite authority to enter into this agreement. The Abenaki declare that their signatory(ies) is/are duly mandated by resolution of the Abenaki Councils of Odanak and Wôlinak to represent them.

IN WITNESS WHEREOF, the Parties have signed this agreement on the dates and in the places indicated:

FOR THE ABENAKI

2022

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	signed on	place
Richard O'Bomsawin Chef de la communauté d'Odanak		

2022

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	signed on	place
Michel R. Bernard Chef de la communauté de Wôlinak		

FOR THE GOUVERNEMENT DU QUÉBEC

2022

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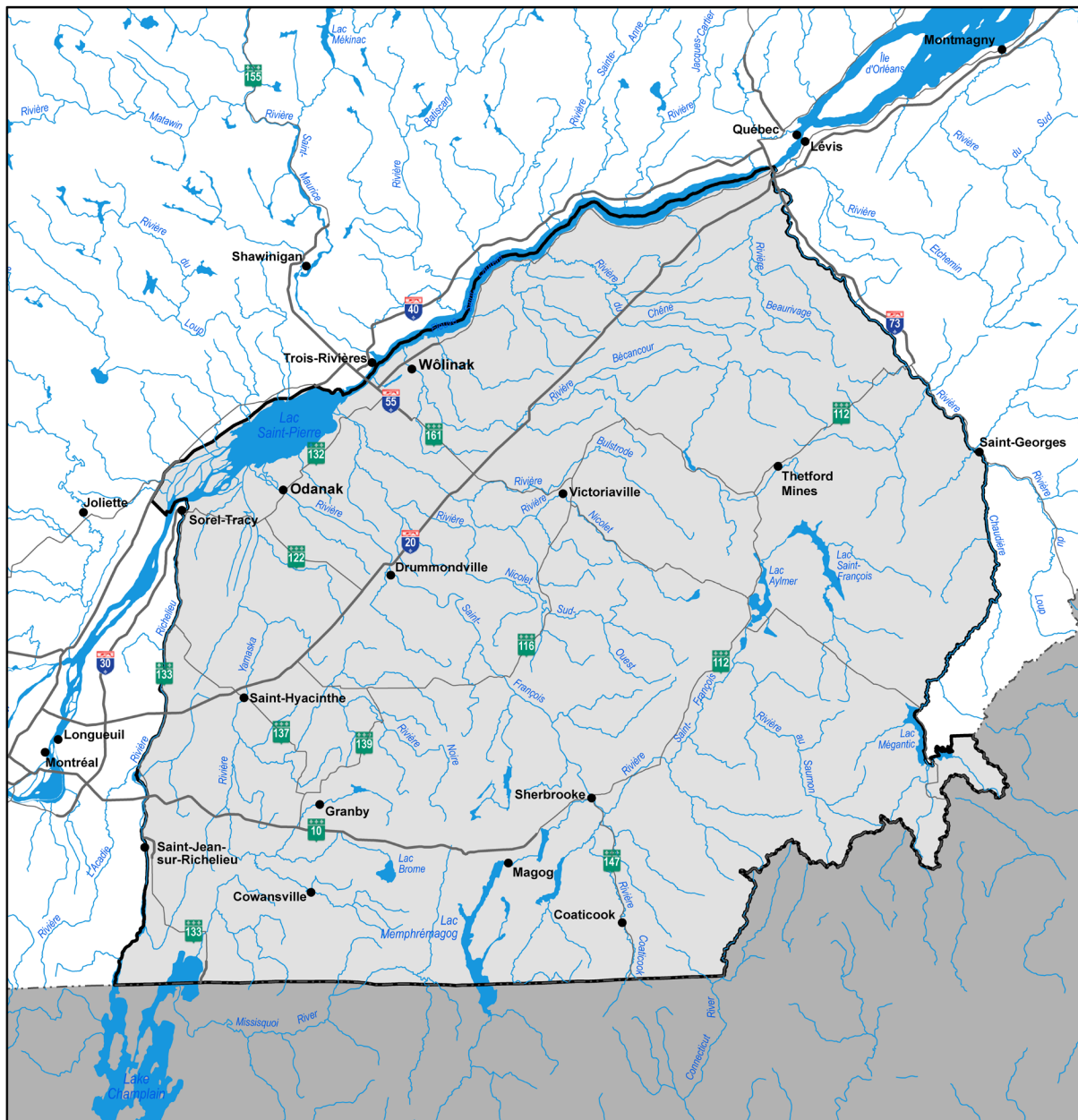
	signed on	place
Ian Lafrenière Ministre responsable des Affaires autochtones		

2022

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	signed on	place
Sonia LeBel Ministre responsable des Relations canadiennes et de la Francophonie canadienne		

## Territory of Application



 Territoire d'application

## Métadonnées

Projection cartographique	Transverse de Mercator fuseau 8
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## Sources Données

Fond cartographique

**Organisme**  
MERN

MERN

Année  
2022

2022

## Réalisation

Ministère de l'Énergie et des Ressources naturelles  
Direction des affaires autochtones et environnementales

Note : Note: Cette carte sert uniquement à l'application de la présente entente.

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