

**SAGKEENG FIRST NATION  
SAGKEENG LAWMAKERS ASSEMBLY**

**O'NA-KATCH-TO'O-NA-WA ONAKONIGAWIN  
THE CONSERVATION LAW**

**Ratified: January 13, 2018**

**WHEREAS:**

The Creator made the Anicinabek responsible for their environment and for conservation in their traditional areas and ancestral lands; and

The Anicinabek have made Treaty with Her Majesty the Queen; and

By making Treaty with the Anicinabek in accordance with their traditions, Her Majesty the Queen accepted the sovereignty of the Anicinabek and recognized their governance; and

By the Constitution Act, 1930, lands and resources within traditional areas of the Anicinabek were transferred from Her Majesty the Queen in Right of Canada to Her Majesty the Queen in Right of the Province of Manitoba; and

Her Majesty the Queen in Right of the Province of Manitoba from time to time grants to resource users, licenses or permits to use the land, water, air or other resources within traditional areas of the Anicinabek; and

The Anicinabek assert their absolute right and responsibility to regulate the use of the land, water and air in their Traditional Territory in a manner which promotes their protection, preservation and enhancement.

The Anicinabek recognize that the colonial governments which exercise sovereignty in the Traditional Territory, including Canada, Manitoba and Ontario, have sought to prevent the Anicinabek from discharging their responsibility, given by the Creator, to protect, preserve and enhance the environment.

Resource users whose activities may affect the environment or the exercise of aboriginal or Treaty rights of the Anicinabek in traditional areas must consult with and obtain consent from the Anicinabek; and

In the absence of established means to consult with and obtain consent of the Anicinabek, resource users have damaged the environment and have affected the exercise of Aboriginal and Treaty rights; and

Recognizing that the United Nations Declaration on the Rights of Indigenous Peoples confirms the right of the Anicinabek to give or withhold their consent, and that such consent must be free, prior and informed, and further recognizing Canada's adoption of that Declaration;

Having recognized that The Anishinaabe Nation in Treaty #3 has ratified and proclaimed, by its National Assembly, the *Manito Aki Inakonigaawin*, a law similar in purpose to this Law and desiring to affirm the principles of that law and ensure the appropriate local application of the principles enshrined in that law.

The Anicinabek have determined to provide means for consulting with resource users in respect of activities which may affect the environment or the exercise of aboriginal or Treaty rights, and for establishing conditions which will conserve the environment and improve opportunities for the exercise of aboriginal and Treaty rights;

THEREFORE the Anicinabek, upon the direction of the Lawmakers Assembly, with advice from the Councils and with the benefit of public consultation, and upon acceptance by the Lawmakers Assembly, make this law:

## **NAME**

1. This law shall be known as O'na-katch-to'o-na-wa Onakonigawin.
  - (a) This law may also be referred to by its English name, The Sagkeeng Conservation Law.

## **DEFINITIONS**

2. In this law, In this law, the following words and phrases have the meanings set out herein;
  - (a) "Activity" means any conduct which has the potential to effect the Environment within the Territory, or the exercise of Aboriginal or Treaty Rights;

- (b) "Anicinabek" means the Sagkeeng Ojibway Nation, as set out in the membership codes or laws of the Nation, and honouring ties to the ancestral lands of the nation, as a collective and as individuals;
- (c) "Rights of the Anicinabek" means the inherent Aboriginal rights or Treaty rights of the Anicinabek or any of them;
- (d) "Anicinabe Rights" has the same meaning as the term referred to in the Crown's Law as "inherent Aboriginal Rights";
- (e) "The Commission" means the Sagkeeng Conservation Commission;
- (f) "Consent" means, in every case, the free, prior and informed agreement of the Anicinabek, given or withheld pursuant to the laws of the Anicinabek;
- (g) "Crown" means either or both of Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Manitoba;
- (h) "Crown's Law" means any statute, regulation, or common law or equitable rule imposed on the Anicinabek by the Crown in Right of Canada, the Crown in Right of Manitoba or any derivative authority thereof, including municipal authorities.
- (i) "Development" means the construction, operation, alteration, removal or destruction of any building, structure or other work within the Territory, which may
- (j) "Environment" means the physical and non-physical environment occupied by the Anicinabek, including but not limited to the land, water and air within the Territory, as well as the spiritual, social, and economic environment of the Anicinabek.
- (k) "Impacts" means the effects of a development or activity on the Environment or on the actual or potential exercise of Aboriginal or Treaty Rights of the Nation or its members;

- (l) “Delegates Council” shall have the meaning given to it in Section 5 of the Sagkeeng Onakonigawin;
- (m) “Executive Council” has the meaning given to it in the Sagkeeng Onakonigawin;
- (n) “Fee” means an amount payable, pursuant to this law, in respect of the costs of issuing a Resource User Authorization or pursuant to a condition of a Resource User Authorization, as may be specified from time to time;
- (o) “the Fund” means the Sagkeeng Nation Consolidated Revenue Fund by previous versions of the Conservation Law, and continued;
- (p) “Lawmakers Assembly” has the meaning given to it in the Sagkeeng Onakonigawin;
- (q) “Nation” has the meaning given to it in the Sagkeeng Onakonigawin;
- (r) “Proponent” means an individual, group of individuals or corporation which owns, operates, or otherwise seeks to engage in an Activity regulated by this Law.
- (s) “Sagkeeng Onakonigawin” refers to the Sagkeeng Process Law, as ratified on October 15, 2016 and amended from time to time;
- (t) “Traditional Territory and Ancestral Lands” refers to the geographical areas and environment within those areas in which the Anicinabek have existed since time immemorial, as shown in the Schedule to this Law. For greater certainty, references to Territory include the land, water and air within the said areas.
- (u) “UNDRIP” refers to the United Nations Declaration on the Rights of Indigenous Peoples.

3. Any term not defined herein has the meaning given to it in the *Sagkeeng Onakonigawin*.

## **INTERPRETIVE PROVISION**

4. This Law, and every section of this Law, shall be interpreted so as to give the greatest effect to the objectives of this Law, which are:
  - (a) Honouring the Creator through the conservation and protection of the natural environment;
  - (b) Honouring our ancestors by protecting and enhancing the exercise of our inherent Aboriginal and Treaty rights.
  - (c) Honouring future generations by fostering economic development and opportunities within and around the Territory.

## **APPLICATION**

5. This law shall apply to:
  - (a) All of the lands and everything on, above and below the lands; and
  - (b) All of the water and everything above and below the water;which the Creator gave the Anicinabek the responsibility to protect.
6. The areas referred to in section 5 of this Law shall be shown in a map which shall be attached to this Law as a Schedule and shall form an integral part of this Law.
  - (a) The Map described in section 6 of this Law shall be prepared by the Commission, in consultation with resource users and the Anicinabek generally, and shall be ratified by the Lawmakers Assembly by vote of a simple majority of those present at a Special Lawmakers Assembly called for that purpose.

- (b) Until the Map described in section 6 of this Law is adopted, any questions as to the geography of the application of this law shall be determined by the Elders' Council, whose decision shall be final.
- 7. Any Activity or Development which is ongoing at the time this Law comes into force shall be subject to this Law as if this Law were in place at the time the Activity or Development was proposed.

## **TREATIES BETWEEN NATIONS**

- 8. The Nation may make Treaties with other Nations in respect of matters governed by this law and the Chief may sign any such Treaty after the Treaty is approved by the Lawmakers Assembly.

## **AGREEMENT**

- 9. The Nation may enter into agreements with the Crown or any other Nation, person or organization to provide for coordinated administration of matters governed by this law and the Chief may execute any such agreement, subject to the approval of the Lawmakers Assembly.

## **CONSULTATION**

- 10. The purpose of consultation is for a proponent of a proposed project to seek consent for their project from the Anicinabek.
- 11. The Executive Council and the Delegates Council together, may by regulation establish processes for consultation with resource users or with classes of resource users.
- 12. Whenever a Proponent engages in consultation with the Anicinabek, that consultation must involve providing information to, and receiving feedback from, members of the Anicinabek and not only the leadership.

- (a) The extent to which a proponent is required to consult with members of the Ancinabek other than the leadership of the Executive Council and the Delegate's Council shall be determined by the Delegate's Council.
- 13. Consultations associated with every project will be unique, and must be conducted based on processes and procedures developed between the Ancinabek and the Proponent. No proponent is entitled to dictate the terms of a consultation to the Ancinabek.
- 14. The Ancinabek shall be entitled to require a proponent to fund a consultation process, including, but not limited to:
  - (a) The establishment and operating costs of a consultation secretariat;
  - (b) Legal, accounting, audit and other professional fees;
  - (c) Project-specific expert studies and reports;
  - (d) Honoraria for elders and resource users;
  - (e) Travel costs, and costs associated with community and leadership meetings.
- 15. Upon a request for consultation funding being issued by the Ancinabek, and subject to reasonable negotiation between the Ancinabek and the Proponent, the Proponent shall be required to fund the consultation process as a condition of receiving the consent of the Ancinabek.
  - (a) Funding the consultation process is a necessary, but not sufficient, condition for receiving the consent of the Ancinabek.
- 16. Consultation must take place at the earliest possible opportunity, and not later than when the project design is closed. With the agreement of the Ancinabek, consultation which began prior to the close of the project design phase may continue after that phase.

17. The requirement to engage in consultation prior to the close of the project design does not absolve proponents of existing projects, or of projects which have already progressed past that point at the time this Law comes into effect, or of Proponents of new projects who neglect to consult prior to the end of project design, from the need to consult with the Anicinabek.
18. The proponent must consider and incorporate views of the Anicinabek into the design of the project. Where it does not do so, the Proponent must explain why it did not do so.
19. In every situation, Proponents must engage in consultation with a willingness to change their proposed projects in order to address the needs and concerns of the Anicinabek.
20. Every proponent must design every project in a manner which respects and incorporates the objectives of this Law, as set out in section 1.

## **CONSENT**

21. The Nation may consent to activities and effects of activities in its Traditional Territory and Ancestral Lands after the Anicinabek have been consulted on the proposed activity and potential effects of the activity on the Rights of the Ancinabek.

## **FORM OF CONSENT**

22. Consent of the Nation to effects of activities in traditional areas shall be given in writing.
23. The Executive Council may by regulation prescribe a form of consent and the form may be referred to as a Resource User Authorization.

## **EFFECT OF RESOURCE USER AUTHORIZATION**

24. A Resource User Authorization shall not be deemed to give consent in respect of anything other than the specified activities.

25. A Resource User Authorization shall not be deemed to convey or otherwise affect Anicinabe or Treaty rights.

## **TERM OF CONSENT**

26. The term of a Resource User Authorization shall be deemed to be one year unless it specifies a different term.
27. The term of a Resource User Authorization may extend up to 5 years after the date of issuance and, if expressly authorized by the Lawmakers Assembly, may extend up to 20 years after the date of issuance.
28. A Resource User Authorization may, if expressly authorized by the Executive Council, have retroactive effect up to 10 years before the date of issuance or, expressly authorized by the Lawmakers Assembly, have unlimited retroactive effect.

## **APPLICATION FEES**

29. The Executive Council may by regulation establish the application fee payable by any applicant or any class of applicants for a Resource User Authorization.

## **CONDITIONS**

30. The Executive Council may by regulation prescribe conditions for any Resource User Authorization issued by the Anicinabek as it deems may promote conservation, or improve opportunities for the exercise of Anicinabe and Treaty rights in the Traditional Territory and Ancestral Lands, or protect the Environment.
31. A Resource User Authorization may include a condition requiring the applicant to pay an assessment in respect of potential effects of an activity.
  - (a) In establishing the amount of any assessment, the Executive Council may have regard to the need for and cost of measures for promoting conservation, or improving opportunities for the exercise of aboriginal and

Treaty rights, or protecting the environment, and any relationship between these measures and the resource use or resource user.

32. The Anicinabek shall continue to exercise their inherent Anicinabe and Treaty rights without fee.

## **APPROVAL**

33. The Executive Council may approve a Resource User Authorization in respect of an activity which has modified or may modify:

- (a) the ecosystem of a forest,
- (b) the flow regime of a river, or
- (c) the water level regime of a lake,

only with the consent of the Lawmakers Assembly, and the Resource User Authorization shall provide for review and adjustment if unforeseen consequences arise during its term.

34. The Executive Council's approval of a Resource User Authorization shall be evidenced by signature of the Government Secretary.

## **TERMINATION**

35. A Resource User Authorization shall be irrevocable subject only to termination in accordance with this Law.
36. A Resource User Authorization may be terminated if a condition is breached and the breach is not remedied after reasonable notice in writing.

## **PROCEDURE FOR TERMINATION**

37. A Resource User Authorization may be terminated by joint decision of the Executive Council and the Judicial Council.

38. Procedures for termination shall include such notice and opportunity to be heard as are fair and reasonable in the circumstances.
39. The Executive Council and the Judicial Council shall seek to obtain reasonable compliance with conditions and reasonable compensation for breach of conditions, and shall terminate a Resource Authorization only as a last resort.
40. If the Judicial Council is unable to act in accordance with this section, the Delegate's Council shall act in its place.

### **ANICINABEK USE OF RESOURCES**

41. The Anicinabek and each of them may continue to exercise their inherent Aboriginal and Treaty Rights, and to use resources within the Traditional Territory, as is their custom.
42. The practices of the Anicinabek which fall under the jurisdiction of this Law, and which are integral to the communal identity of the Anicinabek, include, but are not limited to;
  - (a) Hunting;
  - (b) Fishing;
  - (c) Trapping;
  - (d) Harvesting wild rice;
  - (e) Gathering medicinal plants.

### **SAGKEENG CONSERVATION COMMISSION**

43. The Sagkeeng Conservation Commission is hereby established.
44. The Commission shall be made up of three (3) Commissioners, who shall be elected.

45. The Executive Council shall provide such funding as is reasonable, on an annual basis, to allow the Commission to operate.
46. The Commission shall be responsible for coordinating and leading the protection, preservation and enhancement of the environment in the Traditional Territory.
  - (a) In particular, the Commission shall be responsible for protecting, preserving, and enhancing the plants and animals in the Traditional Territory.
47. The Commission shall work with other governmental and non-governmental organizations to achieve its objectives.
48. The Commission may conduct studies to support its objectives.
49. The Commission may recommend policies, procedures and regulations to the Lawmakers Assembly and the Executive Council relating to the protection, preservation and enhancement of the environment and the plants and animals used by the Anicinabek.
50. Any person, other than the Ancinabek, who uses or intends to use resources, including but not limited to plants and animals, in the Traditional Territory must first obtain permission from the Commission or, if the Commission is not operating, the Executive Council.
  - (a) Subject to ratification by the Executive Council, the Commission may set out policies and procedures for granting permission to persons other than the Anicinabek for the use of resources in the Traditional Territory.
51. If any person uses or attempts to use resources in the Traditional Territory in a manner which does not promote the protection, preservation and enhancement of the environment, that person may be subject to a sanction under this Law.
52. The Commission may employ Conservation Officers, who shall be empowered to enforce this Law, and shall have such other powers as may be conferred on

them from time to time by regulation and by agreement between the Anicinabek and the Crown in Right of Manitoba.

53. Conservation Officers may require a person who is hunting, trapping, fishing or gathering plants within the Traditional Territory and Ancestral Lands of the Anicinabek to produce evidence of their right to do so, and on a failure to produce such evidence may record that person's identifying information and refer the incident to the Commission for sanction.

## **SANCTIONS**

54. In the event that a holder of a Resource User Authorization breaches any condition of the Resource User Authorization, the Commission may impose such sanctions as it considers just and reasonable in the circumstance, and may impose more than one sanction in respect of any given breach.
55. The Commission may include sanctions up to an including;
  - (a) Censure;
  - (b) Fine;
  - (c) Imposition of additional conditions on a Resource User Authorization;
  - (d) Mandatory remediation of environmental damage;
56. All sanctions must be proportional to the breach in question.
57. Any sanctions imposed by the Commission must be agreed to by all three commissioners.
58. Prior to imposing any sanction, the Commission must:
  - (a) Inform the holder of the Resource User Authorization of the allegation of a breach and the nature of the alleged breach;

- (b) Permit the holder of the Resource User Authorization to submit, in writing, its position with respect to the alleged breach;
59. The Commission may not terminate a Resource User Authorization, but may refer a breach of a condition to the Judicial Council for determination pursuant to section 37 of the Law. In any hearing of the Judicial Council related to the potential termination of a Resource User Authorization, the Commission shall be entitled to participate as a party.

## **FUND**

60. The “Sagkeeng Consolidated Revenue Fund” created by the 1997 Conservation Law is hereby continued as the “Sagkeeng Governance Fund”.

## **TRANSITION AND FUTURE CONSERVATION**

61. As soon as practicable following the ratification of this Law, the Executive Council and the Commission shall together open negotiations with the Crown in Right of Manitoba and, where necessary, the Crown in Right of Canada, to secure for the Anicinabek such rights and responsibilities as are necessary to give the greatest effect to this Law.
- (a) Until the Commission begins operation, its functions shall be carried out by the Delegate’s Council.
62. Those parts of this Law which Crown Law regulate at the time this Law is ratified shall not be enforced, but shall remain part of this Law, and when authority to regulate those parts are transferred to the Anicinabek, they shall then be enforced.
63. The Lawmakers Assembly shall amend this law as authority is secured for the Anicinabek to regulate:
- (a) Licensing for hunting, trapping, fishing and gathering in the Traditional Territory;

- (b) The imposition of sanctions for hunting, trapping, fishing or gathering in the Traditional Territory without proper authorization, or in a manner which is contrary to rules and regulations which may from time to time to be imposed by the Anicinabek;
- (c) The manner in which hunting, trapping, fishing and gathering can occur, including but not limited to:
  - (i) Geographic restrictions and restrictions based on time of year and time of day;
  - (ii) Quantities and types of animals and plants which can be taken;
  - (iii) Methods by which animals and plants can be taken;
  - (iv) Circumstances by which people or classes of people can be restricted from hunting, trapping, fishing or gathering;
  - (v) Fees associated with hunting, trapping fishing or gathering

**PROCLAIMED:**

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**GOVERNMENT SECRETARY**

\_\_\_\_\_  
**DATE**