

ATIKAMEKSHENG ANISHNAWBEK  
(Whitefish Lake First Nation)  
Mineral and Aggregate Resources  
Development Policy



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CEO, Atikameksheng Anishnawbek

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Policy Title: **Mineral and Aggregate Resources Development Policy**

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## **1.0 BACKGROUND**

- 1.1** Atikameksheng Anishnawbek forms part of the Ojibway Nation of North-Central Ontario. Atikameksheng Anishnawbek is signatory to Robinson – Huron Treaty of 1850. Atikameksheng Anishnawbek is a growing and vibrant community, which is striving to develop its people, resources and livelihoods for the present and future generations.
- 1.2** In general, Atikameksheng Anishnawbek is supportive of economic development within our territory provided there is an understanding and respect of our relationship and connection with our land and the stewardship responsibilities we have over any exploration/mining activity. Fundamental to any proposed Resource Development is that the Benefits will be shared with Atikameksheng Anishnawbek.
- 1.3** This Policy is based on the relationship that Atikameksheng Anishnawbek has with the land and requires proponents operating in Atikameksheng Anishnawbek First Nation land and Traditional Territory to respect our vision and work collaboratively in a way that protects the land and its resources for future generations.
- 1.4** The proponent will acknowledge this Policy by way of letter addressed to Chief and Council. The letter will also contain an invitation to meet and begin discussion on any existing or proposed project.

## **2.0 PURPOSE**

Atikameksheng Anishnawbek has developed this Mineral and Aggregate Resources Development Policy to:

- 2.1** Ensure that Atikameksheng Anishnawbek continues to protect their prior, existing and future rights to the land and resources by:
  - 2.1.1** Communicating in an open and transparent manner;
  - 2.1.2** Confirming that this Policy and processes implemented are community driven and monitored;
  - 2.1.3** Supporting Atikameksheng Anishnawbek members in the continued exercise of their Aboriginal and Treaty rights;
  - 2.1.4** Instituting processes that allow for community development and growth; and
  - 2.1.5** Serving as a guide and tool for the future generations in resource management;

- 2.2 Ensure that the intent of the Robinson Huron Treaty 1850 is protected which states that the Atikameksheng Anishnawbek “shall have the right to pursue their hunting, trapping, and fishing throughout the tract surrendered as heretofore described”. These rights are further protected in the Canadian Constitution Act 1982 section 35(1) which states “The existing Aboriginal and Treaty Rights of the Aboriginal peoples of Canada are hereby recognized and affirmed”.
- 2.3 Ensure that all development activities within Atikameksheng Anishnawbek First Nation land adhere to the Atikameksheng Anishnawbek Land Code that took effect on September 2008.
- 2.4 Recognize that Atikameksheng Anishnawbek have never surrendered or ceded their rights to lands and resources as stated in Atikameksheng Anishnawbek G’Chi-Naaknigewin that was approved under Band Council Resolution 2015-2016-04 dated May 13, 2015.
- 2.5 Ensure that the rights protected and advanced through court action by Atikameksheng Anishnawbek to uphold our Aboriginal and Treaty Rights with respect to our land and resources are not prejudiced in any way.
- 2.6 Guide for proponents engaged in Mineral and Aggregate Resources Development.

### 3.0 POLICY OBJECTIVES

- 3.1 To protect Atikameksheng Anishnawbek interests and rights, including the right to harvest, gather, hunt, fish, among other enjoyment and use of our Asserted territory lands.
- 3.2 To protect environment, to ensure environmental monitoring and to mitigate any potential impacts to Atikameksheng Anishnawbek interests.
- 3.3 To work collaboratively with proponents on all activities involving resource management and decisions affecting lands and resources in Atikameksheng Anishnawbek First Nation land and our asserted territory.
- 3.4 To provide a clear framework on which proponents will engage Atikameksheng Anishnawbek community in Mineral and Aggregate Resources Development.
- 3.5 To work towards an Agreement that can be executed as a standalone Agreement or as a schedule to a broader Agreement.

### 4.0 DEFINITIONS

#### 4.1 Aboriginal and Treaty Rights

Atikameksheng Anishnawbek has Aboriginal and Treaty Rights over our land, waters, and resources within the territory that are protected by s. 35 of the *Constitution Act, 1982*. These rights are further protected by the Robinson-Huron Treaty of 1850 and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Atikameksheng Anishnawbek asserts that our rights derive from a sacred trust bestowed on us from the Creator to protect the natural environment and to ensure that any use of, or developments within our Traditional Territory respect the rules, regulations, and procedures with respect to the environment that are set out in our Traditional Knowledge and Teachings and in the laws as passed by Chief and Council.

## 4.2 Abrogate

Does not: annul, cancel; destroy; abolish; revoke, repeal, rescind, reverse, retract, recall; abolitionize; overrule, override; set aside; disannul, dissolve, quash, nullify, declare null and void; disestablish, disendow; deconsecrate

## 4.3 Agreements

Agreements are written commitments between Atikameksheng Anishnawbek and the proponent outlining the terms and conditions on how proponents will operate in Atikameksheng Anishnawbek Asserted Territory for the benefit of Atikameksheng Anishnawbek. These may include

- i. Memorandum of Understanding (MOU),
- ii. Participation Agreements
- iii. Negotiation Agreements
- iv. Environment Agreements,
- v. Impact & Benefit Agreements (IBA), and others.

## 4.4 Atikameksheng Anishwabek Asserted Territory

The Atikameksheng Anishnawbek Asserted Territory which is located within North-Central Ontario. It is described as follows, per the Robinson Huron Treaty, 1850, by Chief Shawenakishick “A tract of land now occupied by them, and contained between two rivers, called Whitefish River and Wanabitaseke, Seven Miles in Land”. Whitefish River is represented by the Whitefish Branch of the now called Vermillion River and Wanabitaseke is the now called Wahnapietae River.

## 4.5 Band Member

A Band Member is a person whose name appears on the Atikameksheng Anishnawbek Indian Band membership list or who is entitled to have his or her name appears on that list.

## 4.6 Benefits

These are considerations from the proponent for the use, occupation, removal and utilization of resources. These considerations will contribute to the enhancement of the community.

## 4.7 Community Member

A Band Member, a spouse of a Band Member, or a child of a Band Member residing within the Whitefish Lake First Nation (WFLN) Reserve No. 6, according to the WFLN Residency Code.

## 4.8 Compensation

A mechanism which first recognizes damage (financial or otherwise) and then seeks to recover for damages such as a loss of use of a resource, an adverse impact and/or irreparable damage caused by the proponent.

**4.9 Confidentiality**

Information shared (written and/or oral) with the proponent and/or Atikameksheng Anishnawbek, which if released into the public domain, could be damaging to Atikameksheng Anishnawbek and/or proponent.

**4.10 Consultation**

A mutually agreed upon process with the clear intent by both parties (defined later in Section 4.21) to engage in flexible discussions where the outcome of a particular issue is not yet known and comprises of:

- 4.10.1 a process which facilitates the exchange of information between the parties;
- 4.10.2 the information exchanged assists in making fully informed decisions;
- 4.10.3 the process is intended to be characterized as a two-way dialogue;
- 4.10.4 the proponent acknowledges that the process requires the inclusion of Atikameksheng Anishnawbek input and recommendations;
- 4.10.5 the proponent must demonstrate that they acted on those mutually discussed and mutually accepted recommendations arising from joint discussions between Atikameksheng Anishnawbek and the proponent.

Without limiting the forgoing, the parties agree that this definition of consultation only applies within this Policy. For better understanding, see 13.1.

**4.11 Derogate**

Does not: detract, take away and minimize.

**4.12 Environmental Protection**

The act of protecting the environment and the community's indigenous values by way of developing management prescriptions, buffers and identifying where Resource Development activities are allowed or not allowed by Atikameksheng Anishnawbek.

**4.13 Equitable**

Dealing fairly and equally with all concerned.

**4.14 First Nation Business**

Business entity controlled and managed by Atikameksheng Anishnawbek, or an Atikameksheng Anishnawbek Band member.

**4.15 First Nation Land**

Any portion of Atikameksheng Anishnawbek (Whitefish Lake Indian Reserve #6) that is subject to Atikameksheng Anishnawbek Land Code as defined in Atikameksheng Anishnawbek Land Code, September 2008, Revision 7.

**4.16 G'Chi-Naaknigewin**

Means big law in the Anishnaabemowin language. It translates to the English word “Constitution”, as defined in Atikameksheng Anishnawbek G’Chi-Naaknigewin Constitution ratified July 24, 2015.

#### **4.17 Impact and Benefit Agreement**

An Impact and Benefit Agreement is a contractual arrangement between the proponent and the Atikameksheng Anishnawbek First Nation, which is intended to manage any negative or positive impacts to the land and people as development takes place. The benefits to the community refer to the land being protected and sustained, while also realizing compensation and a form of sharing of revenues or royalties. The contents and the negotiations of these Agreements will be guided by the community.

#### **4.18 Irreparable damage**

Actions that cause harm to the land, environment and people that cannot be restored to an original or natural state.

#### **4.19 Mitigation Measures**

Approaches to address identified impacts to minimize harm to Atikameksheng Anishnawbek.

#### **4.20 Negative Impacts**

Actions that adversely affect the Atikameksheng Anishnawbek’s traditional lands, environment, resources, people, health and livelihood and cause harm.

#### **4.21 Parties**

Refer to Atikameksheng Anishnawbek and the Proponent.

#### **4.22 Polluter Pays Principle**

Is the principle requiring the party responsible for producing pollution or permitting it to occur responsible for paying for the damage caused by it.

#### **4.23 Project**

Any activity existing or proposed, being investigated, developed, and utilized and/or when a resource is removed.

#### **4.24 Proponent**

An individual, corporation and/or government, who is proposing any development, including, but not limited to, resource exploration, Resource Development and/or resource production.

#### **4.25 Resource Development**

Resource Development for the purpose of this Policy includes the act of investigating, developing, utilizing and/or removing of a mineral or aggregate resource.

#### **4.26 Standards**

All projects shall meet the following standards: no waste, no garbage, original state, and useable and safe state.

#### **4.27 Resources**

- Mineral resources mean all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel, peat, gas or oil as per the Ontario Mining Act, R.S.O. 1990.
- Aggregate resources mean gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock or other prescribed material as per the Ontario Aggregate Resources Act, R.S.O. 1990. Note, “earth” does not include topsoil and peat.

#### **4.28 Traditional Knowledge**

Traditional Knowledge is knowledge that has been generated by Anishnawbek People since time immemorial and has been passed down from generation to generation, constantly being tested and confirmed, and is meant to be used as a decision-making tool and to help communities adapt for the future. Traditional Knowledge includes knowledge of the community including location of medicinal plants, gathering places, canoe routes, burial grounds, sacred spiritual and ceremonial places, old villages, camping grounds, seasonal spawning areas, specific harvesting and hunting areas, pictographs, cabins (trappers), timber, esker, and nesting areas. This is not meant to be an exhaustive list, but will evolve as more values are identified.

## **5.0 PRINCIPLES**

Before any Resource Development activities can commence within the Atikameksheng Anishnawbek First Nation land or our asserted territory, it is necessary for the proponent and/or its assignees and Atikameksheng Anishnawbek Chief and Council to commit to work together and to enter into an Agreement(s) encompassing the following elements and basic principles:

- 5.1** Atikameksheng Anishnawbek members will be involved in decisions that affect their rights and livelihoods, through an open and transparent process. Such a process provides for accountability to its members;
- 5.2** No Resource Development activity shall take place without a meaningful consultation with Atikameksheng Anishnawbek in accordance with the Atikameksheng Anishnawbek Consultation and Accommodation Protocol.
- 5.3** Initially a MOU and subsequently an Agreement should be signed between the parties for any Resource Development project;
- 5.4** A joint Working Group will be established upon approval from the Chief and Council, Atikameksheng Anishnawbek and the proponent, which shall be comprised of two (2) members selected at the sole discretion of the Chief and Council of Atikameksheng Anishnawbek and two (2) members selected at the sole discretion of the proponent to represent the proponent. The team will also be responsible for negotiating the provisions of MOU/Agreements when they reach the negotiation stage.



- 5.5** For early mineral resource exploration, the proponent agrees to share with Atikameksheng Anishnawbek 1.5% or a mutually agreeable percentage of all costs the proponent incurs annually through mineral resource exploration activities (the “Exploration Costs”), payable in each subsequent calendar year in which the proponent undertakes exploratory drilling, on or before the first date of drilling in that subsequent calendar year or at the end of the first quarter of the subsequent calendar year, whichever comes first. The Exploration Costs shall be determined based on budgets for the mineral resource exploration activities that are later adjusted, as required, based on costs submitted to, and accepted by, the Ontario Ministry of Energy, Northern Development and Mines (“ENDM”) as eligible “assessment work credits”, as such term is described by the ENDM (as may be amended or modified from time to time). Where Exploration Costs for a previous year are amended (including following the completion of an assessment by ENDM), the shortfall or excess value of the amended Exploration Costs as compared with the value used in calculating a payment to Atikameksheng Anishnawbek, may be added or subtracted (as applicable) by the proponent from the calculation of Exploration Costs for a subsequent year.
- 5.5.1** For advanced mineral resource exploration, an Advanced Exploration Agreement would be signed between the parties;
- 5.5.2** An IBA would be signed between the parties prior to initiation of any mineral development activities;
- 5.6** For aggregate resource development projects, in addition to employment and training opportunities, the Proponent agrees to share in the economic benefit of the Project by means of an annuity that is in line with For Ontario Ministry of Natural Resources and Forestry fee and royalty rates for Aggregate resources, see 13.2. Tonnage reports for material removed from the pit/quarry will be sent to Atikameksheng Anishnawbek on a monthly basis and the annuity will be paid to Atikameksheng Anishnawbek on an annual basis.
- 5.7** Assurance that Resource Development activities will not cause any irreparable damage. The Proponent must avoid negative impacts on the community and if such cannot be avoided, then mitigation measures must be jointly developed between the parties and be put in place;
- 5.8** Ensure that all the Resource Development activities are conducted in accordance with the Polluter Pays Principle. Atikameksheng Anishnawbek will also consider the past performance of a Proponent in evaluating a proposed Resource Development Activity.
- 5.9** Ensure that the Resource Development activities will not jeopardize, prejudice or otherwise compromise Atikameksheng Anishnawbek’s Aboriginal, Treaty or Constitutional rights and the jurisdiction of the First Nation including any impact on traditional lifestyle activities;
- 5.10** In the event that Resource Development is to proceed, the Proponent must ensure that the project will support Atikameksheng Anishnawbek community in respect of:
- Traditional Ecological Knowledge Study/monitoring of the area
  - Training and employment of band members

- Business opportunities arising out of early exploration, advanced exploration of mineral resources, and extraction of aggregate resources
  - Benefits sharing as would evolve in MOU, Agreements and later in IBA.
- 5.11** Ensure that the widest possible opportunity for education and related training are provided for Atikameksheng Anishnawbek members (on and off-reserve) in connection with the project;
- 5.12** Ensure that the widest possible employment and business opportunities are provided for Atikameksheng Anishnawbek and our members (on and off-reserve) in connection with the project;
- 5.13** Ensure that the widest possible support is provided for Atikameksheng Anishnawbek business services, which the Proponent and/or its contractors may require;
- 5.14** A communication framework, which ensures that on-going information, is shared with community members. The communication framework must address who, what, where, when and how information will be shared both internally (within Atikameksheng Anishnawbek) and externally (public);
- 5.15** To harmonize all land use activities with traditional activities.

## **6.0 ABORIGINAL AND TREATY RIGHTS**

Nothing in this Policy:

- 6.1** Shall be construed so as to abrogate or derogate from, or define the content of any existing or claimed Aboriginal rights, titles and interests in or to the First Nation land and Traditional Territory or in any part thereof;
- 6.2** Shall be construed so as to abrogate or derogate from any fiduciary duties or other obligations owed by the Crown to any Aboriginal peoples in respect of their Aboriginal rights, titles and interests; and,
- 6.3** Is intended to create a partnership, joint venture or other relationship whereby the Parties hereto may be liable for the acts or debts of the other Party hereto.

## **7.0 PENALTIES**

If the Proponent does not wish to comply with this Policy, Atikameksheng Anishnawbek will oppose the proposed project until the Proponent complies with this Policy.

## **8.0 IMPLEMENTATION**

### **Monitoring, Enforcement & Compliance**

The Chief and Council or their designated group (by recommendations from the community) are responsible for ensuring the implementation of this Policy.

## **9.0 FEES**

The Proponent will be required to pay the fees specified in Sections 5.5 and 5.6 and an administration fee to facilitate community consultation and communication. The administration fee will be determined between the parties on a case-by-case basis depending on the magnitude of the project.

## **10.0 APPLICATION**

This Policy will be applied to proponents who are band members, individuals, companies and governmental organizations that have and/or are proposing projects within Atikameksheng Anishnawbek First Nation land, asserted and traditional territory.

## **11.0 AMENDMENT**

This Policy can only be amended from time to time by the Chief and Council of Atikameksheng Anishnawbek and will be reviewed annually by the Management Team of Atikameksheng Anishnawbek.

## **12.0 CONCLUSION**

This Policy applies to all the Proponents including community members, other individuals, and government agencies that propose Mineral and Aggregate Resources Development activities within Atikameksheng Anishnawbek First Nation land, asserted territory and traditional territory and also to those Proponents who are already operating on Atikameksheng Anishnawbek First Nation land and asserted territory.

When Proponents and Atikameksheng Anishnawbek can reach Agreements embracing the points listed above, the Atikameksheng Anishnawbek community, Proponents and others connected to the project will enjoy equitable benefits from each Resource Development activity undertaken.

## **13.0 APPENDICES**

- 13.1 APPENDIX B - ATIKAMEKSHENG ANISHNAWBEK COMMUNITY CONSULTATION AND ACCOMODATION PROTOCOL**
- 13.2 APPENDIX C - ONTARIO MINISTRY OF NATURAL RESOURCES AND FORESTRY FEES AND ROYALTY RATES FOR AGGREGATE RESOURCES**