

SAWRIDGE FIRST NATION

AN ACT FOR THE PROTECTION OF THE NATION'S RIGHTS AND INTERESTS THROUGH A PROCESS OF CONSULTATION, ACCOMMODATION, COMPENSATION AND RECONCILIATION

Introduced at a General Assembly Held – January 17, 2015

First Reading – January 17, 2015

Second Reading – March 21, 2015

Third Reading – May 2, 2015

Came in to Force – July 31, 2015

*An Act for the Protection of The Nation's Rights and
Interests through a Process
of Consultation, Accommodation, Compensation and
Reconciliation*

Preamble

WHEREAS the Cree People of the Sawridge First Nation, have inherent responsibilities, rights and powers to govern themselves and the lands and waters to which they belong and which from time immemorial were granted to them by the Creator for as long as the grass grows, the wind blows and the water flows;

WHEREAS the Sawridge People wish to continue to live for many future generations in the territory which they have occupied since time immemorial;

WHEREAS the Sawridge People are charged with the obligation and responsibility on behalf of past generations and their grandchildren and future generations to protect the sacred land, waters, and natural resources of their territory which have been and will be essential to their survival as a people;

WHEREAS the Sawridge People have the right to apply their own worldview, understanding of Natural Law, and system of values which is a part of their history and culture in determining what is acceptable and not acceptable, permissible and not permissible;

WHEREAS the Sawridge People reject as being contrary to the principles of Treaty, contrary to jurisprudence of Canada, and contrary to international law

- a) the concept that their rights must be reconciled with other societal interests;
- b) the concept that the Crown's obligation to consult and accommodate is limited only to the management and development of Crown lands and natural resources;
- c) the concept that impacts on rights and interests are limited to hunting, fishing and trapping for food and that impacts on rights may or may not trigger a duty to consult;
- d) any attempt to restate as policy the terms of jurisprudence; the law speaks for itself;
- e) any effort of the Crown to delegate its responsibilities to consult and accommodate and achieve reconciliation to any third party with regard either to procedural matters or to substantive matters; and
- e) any notion that the Crown has the right to unilaterally decide how the consultation, accommodation and compensation process will be carried out, since these are matters which themselves are subject to consultation and accommodation;

WHEREAS through their Constitution, the Sawridge People have declared their inherent right to govern themselves as was recognized in Treaty #8 and affirmed by section 35 of the Canadian Constitution Act (1982);

WHEREAS their Constitution mandates the Sawridge People to defend and protect their lands, waters, resources, air space, rights and Treaty relationship;

THE SAWRIDGE PEOPLE IN ASSEMBLY HEREBY ADOPT THIS LAW:

1. The Title of this Law is *An Act for the Protection and Conservation of the Sawridge First Nation's Rights and Interests Through A Process of Consultation, Accommodation, Compensation and Reconciliation.*

Interpretation

2. In this Act,

“activity” means any course of conduct which has potential to affect the environment or have a negative impact upon the rights and interests of the Sawridge First Nation, on Sawridge Lands or on its traditional Territory or any other place in Treaty #8 Territory where it has rights and interests;

“authorization” means the consent in writing of the Nation granted in respect of the effects of a development or activity affecting the rights and interests of the First Nation;

“Conservation Officer” means an officer appointed by resolution of the Council to issue authorizations pursuant to this Law as well as having other duties;

“Environment” means the entire environment in which the First Nation sustains its existence, including its spiritual, social, physical, ecological or economic aspects;

“Lands” includes lands, wetlands, rivers, streams, ponds, lakes, and both the air above the lands and the subsurface of the lands.

“proponent” includes individuals, corporations, organizations and governments and includes members of the First Nation (proposed but not yet adopted)

Traditional Lands

3. Pursuant to the mandate set out in the Sawridge Constitution relating to Sawridge Lands and Traditional Lands, all Members of the First Nation shall be alert for opportunities to protect the lands, waters and resources which were provided to the Sawridge people by the Creator and recognized by Treaty #8 as their Traditional Lands and collectively constituting the Sawridge First Nation's “Traditional Territory.”

- a) All officials engaged in the operation of this Act shall ensure that all applicable traditional protocols relating to Traditional Lands and Waters will be honoured.
- b) Council will establish policies which set and apply standards to be upheld with regard to any use of or development of Traditional Lands and Waters.

Constitutionally- and Treaty-Mandated Obligations of External Governments

4. Acting on behalf of the Crown in Right of Canada, the Government of Canada has an independent duty to consult with the Sawridge First Nation in any and every case where it has knowledge, actual or constructive, of the potential existence of aboriginal title, an aboriginal right, a treaty right or an interest of the First Nation which may be or is affected by its conduct or any decision which may have an adverse impact on such right or rights.
5. Acting on behalf of the Crown in Right of Alberta, the Government of Alberta has an independent duty to consult with the Sawridge First Nation in any and every case where it has knowledge, actual or constructive, of the potential existence of aboriginal title, an aboriginal right, a treaty right or an interest of the Sawridge First Nation which may be or is affected by its conduct or any decision which may have an adverse impact on such right or rights.
6. The Sawridge First Nation holds each government accountable and responsible for fulfilling the Crown's duties in both procedural and substantive ways and to maintain the Honour of the Crown.

Reports to Assembly

7. In reporting to the Legislative Assembly on any Consultation and Accommodation discussions, negotiations or proposed agreements which are warranted, pending, or completed, the Council shall inform the Assembly of the degree to which the following principles have been observed by the proponent or government, together with any recommendations or comments the Council may wish to make:
 - a) the duty to consult and accommodate is required to reconcile the sovereignty of the Sawridge First Nation by virtue of its prior occupation with the assumed sovereignty of the Crown;
 - b) by entering into Treaty #8, the Sawridge First Nation consented to the Crown exercising its sovereignty in certain ways and with certain limits and conditions and the proposed activity and/or decision is consistent with those limits and conditions;
 - c) the duty to "Consult and Accommodate" arises from both procedural and substantive rights held by the Sawridge First Nation, and the duty of the federal and the provincial government, acting on behalf of the Crown, to observe both rights.

Establishing an Offense

8. Any municipal government, governmental agency, private individual, organization or company which, without permission of the Sawridge First Nation, acts in a manner which has an adverse impact on the Sawridge First Nation's aboriginal title, aboriginal rights, or treaty rights or damages its Traditional territory shall be guilty of an offense which at the option of the First Nation's Council, may be prosecuted in a court of competent jurisdiction.
9. Any municipal government, governmental agency, private individual, organization or company which does or will require a decision, permit, or other approval of either the federal or provincial government may elect to participate in a collaborative process with the Sawridge First Nation to reach agreement that the proponent has satisfied the First Nation with a plan for any mitigation, accommodation or compensation which might be required and that conditional upon the plan being fulfilled, the federal or provincial government issue the appropriate approval.
10. The Sawridge First Nation may recognize as a legitimate party for consultation, accommodation and compensation only those parties or agencies which the First Nation concludes have explicitly acknowledged they are consulting, accommodating or compensating on behalf of the Crown, have the competence and authority to engage in such Consultation and to provide the mitigation, accommodation, or compensation which is required, and where the federal or provincial government specifically acknowledges that it has fully delegated its responsibilities and powers of consultation, accommodation or compensation to such a third Party.
11. In such a collaborative process, there may be exchanges of information, identification of adverse impacts; development of mitigation, accommodation or compensation measures, and the development of a working relationship.
12. The rights and interests of the Sawridge First Nation exist a) on Sawridge Lands; b) in Sawridge First Nation's traditional territory, and c) anywhere in Treaty #8 territory except for lands properly taken up after proper consultation, accommodation or compensation or where expressly agreed to by the Sawridge First Nation, and only to the extent agreed to by the Sawridge First Nation..
13. At the explicit option of the Council of the Sawridge First Nation, the Sawridge First Nation may engage in the consultation, accommodation and compensation process together with another First Nation or group of First Nations.

Responsibility of the First Nation

14. Wherever a request for the First Nation to participate in a consultation, accommodation or compensation process has been received, or if the First Nation becomes aware of an activity or decision which has the potential of impacting upon its rights and interests, the Council may engage independent advice from acknowledged experts in any field required as to the a) nature of title, rights, or interests which might be affected by the proposed or actual activity or decision; b) the extent of impact which may be experienced as a result of the activity or decision; c) mitigation measures which might be taken to lessen the impact; d) accommodation of the right or interest which might be required and appropriate; e) the degree to which the Crown has a compelling interest in proceeding even if the right is affected, in which case f) the amount of compensation or other measures which would be adequate and g) any other matter that the Council feels would be appropriate in respect of the request or activity.

15. When the proponent or a government acting on behalf of the Crown, provides information regarding a) the rights which might be affected; b) how the rights might or might not be affected; c) the process of consultation, accommodation, and compensation it wishes to undertake; d) the mitigation, accommodation or compensation it proposes, the Council may ask appropriate consultants for analysis and comment and will take that information into account in its considerations and decisions.

Objectives of Consultation and Accommodation

16. Before, during and after the process of consultation and accommodation, the Council will engage in the process in a manner which simultaneously protects the interests of the First Nation as they are currently as well as the interests of the First Nation's future to its Seventh Generation, while seeking a mutually-beneficial continuing positive relationship with any proponent or government involved.

Responsibilities of Proponents

17. A proponent of a proposed activity or development should initiate consultation as early as possible, and certainly before preparing engineering or construction plans for the development.

Application and disclosure

18. A proponent shall apply in writing for engagement in the consultation process, and the application shall disclose all information with respect to all effects of the development or activity impacting on the environment.

Consultation related to alteration or decommissioning of existing developments

19. Persons responsible for any decisions relating to an existing activity or development shall consult or whenever written request of the Council is issued and is obliged to do so whenever there are plans for any alterations or decommissioning.

Principal proponent

20. If an owner or operator accepts responsibility for an activity, proposal, project, or development, the Council may release other sub-proponents from responsibility for consultation.

Duty to Respect environment and rights

21. A proponent, in collaboration with the Sawridge First Nation, shall ensure that an activity or development is designed, constructed, operated and decommissioned with the least possible impact upon the rights and interests of the Sawridge First Nation, and to mitigate, remedy, or make accommodation in respect of any negative impacts.

Consultation process

22. A proponent shall engage in the consultative and accommodation process established by the Sawridge First Nation.

Authorizations

23. When a proponent wishes to engage in some activity which may have an adverse impact on a right or interest of the Sawridge First Nation or requires permission of the Sawridge First Nation to engage in an activity, or if a person is found to be engaged in such activity and is inadvertently acting without authorization, a Conservation Officer may issue an authorization with or without conditions as may be appropriate for a specified period of time not to exceed 12 months, or the Conservation Officer may refer such proponent or person to the proper office of the Council to request authorization.
24. A proponent or other person who, acting in good faith, requests and acts pursuant to an authorization including observation of any conditions imposed, is acting in accordance with this Act.
25. A duly issued authorization may be introduced in evidence in any proceeding as evidencing the support of the Sawridge First Nation for acting as provided for by the authorization subject to any conditions which might be set.
26. An authorization shall specify the person to whom it is issued, the development or activity in respect of which consent is given, the term of the authorization, and the location or area to which it applies.

Authorization for Major Activities

27. Where a proposed activity is of major dimensions or complex interactions or involving significant investment or with potential for having lasting impacts or consequences, a request for an authorization shall be referred to the Council for processing. The Council may make regulations setting out the definitions of major dimensions, complex interactions, significant investment and the potential for having lasting impacts or consequences.

28. Prior to the issuing of any authorization for a major activity the Council may, if it deems it advisable, seek the input of the electors or a resolution of the Assembly by
- a) posting a notice of the proposed request for authorization in the Sawridge First Nation's Principal Offices and sending out a notice to all electors at least thirty days prior to considering the proposal at a duly held meeting of Council; or
 - (b) placing the matter on the Agenda of the next Legislative Assembly of the Sawridge First Nation in the form of a written resolution which expresses the action which Council recommends to the Assembly; and
 - (c) including in the written resolution a summary of any objection or other comment which has provided to Council in writing by any member of the Sawridge First Nation together with any comments which Council wishes to add.

Transfer of authorization

29. An authorization is not transferable by the party to whom it was issued, but permission to transfer may be granted by the office of the Sawridge First Nation which issued the authorization providing the new party agrees to abide by the terms and conditions of the authorization, or, as the Sawridge First Nation might decide, a new authorization might be issued subject to the same or different terms and conditions.

Record of Decision

30. The decision of Council regarding the application shall be recorded in the minutes of the meeting and set out in a resolution of Council, including such conditions as Council deems necessary in the interests of good governance, conservation of the Natural World, and the protection of the rights of the people now and to the Seventh Generation.

Standard Conditions or Limitations

31. Pursuant to this Act or other Acts, Council may impose standard conditions for specific activities, limitations or prohibitions regarding certain areas or locations and these shall be reflected in authorizations issued.

Deliberate or Negligent Violation of this Act or Violation of Terms of an Authorization

32. A proponent who is known to have failed to obtain an authorization or has been negligent or disrespectful or in breach of fulfilling the terms of an authorization will have those facts taken into account in considering an application for any new authorization or variance to an authorization.

Required Publication

33. As soon as practical after the passage of this Act, notice of the passage of this Act shall be publicized through any media deemed appropriate by the Council and where any activity is taking place which might be affected by the passage of this Act, the Council shall take appropriate steps to ensure any parties engaged in such activities or planning such activities are notified.

Regulations regarding forms

34. The Council may establish regulations prescribing forms to be used in the application of this Act.

Regulations regarding fees

35. The Council may establish regulations prescribing fees to be paid.

For Greater Certainty

36. For greater certainty, nothing in this Law affects the right of the Sawridge First Nation to be consulted about and to give or withhold its consent to any development or activity which may affect it.

37. For greater certainty, this Law does not authorize the alienation of land or any interest in land.

Coming Into Effect

38. This Act shall come into effect 90 days after its passage by the Legislative Assembly.