



ST'ÁUTW FIRST NATION

ST'ÁUTW FIRST NATION

CONSULTATION PROTOCOL AND POLICY

APRIL 2024





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PREAMBLE

Our creation stories contain teachings from the Creator, XÁLS. These are our laws, and they are integral to every aspect of our relationship with SṪÁUTW territory.

HOW THE MOUNTAINS WERE CREATED

The Creator paddled over to the east side of the Tsawout village and found some shiny black stones on the beach. He threw one inland, and a mountain grew out of the stone.

He filled his basket with more shiny black stones and went to the top of this mountain. And, then people followed him up to that mountain and there's a rock face cliff on the mountain where they went. Once there, he threw more shiny stones around him and that's how the other mountains came to be.

And, then when he was finished with that work, and then he grabbed some of our people, one by one, our ancestors, and he threw them out into the straits.

And, as he tossed them out into the straits he said "QENT E TṪEN SCÁLEĆE, QENT E TṪEN SCÁLEĆE, QENT E TṪEN SCÁLEĆE, QENT E TṪEN SCÁLEĆE": "Look after your relatives, look after your relatives, look after your relatives." And, as he threw them out into the straits, and as they landed into the straits, and then they became those islands that are still there today. What they call the Gulf and San Juan Islands.

Those were our original ancestors that got changed by the Creator.

These directions to look after our relatives are our laws. These are the kinds of things we speak about with respect to the Natural Laws. For us, a belief and a law are the same.

The names we have for different parts of the natural world are in relative terms. For instance, the SENĆOFEN word for Salmon is *older cousin*, while the SENĆOFEN word for deer is *grandson*. The word for Island means "*Relative of The Deep*." Our word for Rock, Boulder and Mountain means "*My gift*". Our word for Earth means "*Wish for the People*."

SḶÁUTW̱ First Nation is a Coast Salish Nation and one of five villages that constitute the W̱SÁNEĆ peoples. The W̱SÁNEĆ peoples originated in SḶÁUTW̱ — as told in our creation stories, it was from the SḶÁUTW̱ village that the Creator, XÁLS, threw the first stone to create ŁÁU,WELṈEW̱ (Mount Newton).

As Saltwater People, our way of life — in our SENĆOŦEN language, our ŚXENÁNS — is intimately connected to the Salish Sea. Since time immemorial, SḶÁUTW̱ has observed an annual round, travelling throughout SḶÁUTW̱ territory to various villages and harvesting sites, carefully managing resources to ensure abundance for both present and future generations. As SḶÁUTW̱ peoples, we have a sacred legal obligation to both our ancestors and future generations to protect and care for this territory, in accordance with our laws.

SḶÁUTW̱ territory extends from southern Vancouver Island to mainland British Columbia — in particular, regions around the south arm of the Fraser River and Boundary Bay — and includes all the islands in between. These islands, known today as the Gulf and San Juan Islands, are our ancestors who were cast out into to the straits by the Creator, XÁLS, and who we are obligated by law to take care of.

SḶÁUTW̱ has inherent rights, which include both Aboriginal and Treaty Rights, including Aboriginal title, throughout SḶÁUTW̱ territory. Members of SḶÁUTW̱ are the descendants of signatories to the North Saanich Treaty and the South Saanich Treaty, both of which were entered into with Governor James Douglas in 1852 (the “Douglas Treaties”). The Douglas Treaties promised the protection of several inherent rights, including the right to our village sites and enclosed fields, and the right to hunt and carry on our fisheries as formerly.

The repercussions of breaching the Douglas Treaties at the onset continue to reverberate through our traditional terrestrial and marine territory today.

Land reductions and omissions of SḶÁUTW̱ peoples’ history of achievement and thriving in freedom, living in kincentric ecology, have met with aggressive efforts to displace, assimilate, and colonize SḶÁUTW̱ peoples. In the face of such oppression, SḶÁUTW̱’s youth population continues to grow, driving hopes of revitalization of language, history, cultural teachings, and opportunities.

Today, many of our members live on a small portion of SḶÁUTW̱ territory, known as East Saanich Indian Reserve No. 2, or the SḶÁUTW̱ First Nation main village, located on the eastern shore of the Saanich Peninsula, about 15 minutes north of the City of Victoria. SḶÁUTW̱ also has reserves on W̱EN,NÁ,NEĆ (Salt Spring Island), SELEKTEL (Goldstream), S,DÁ,YES (Pender Island), TEKTEKSEN (Saturna Island), and XOXDEL (Mandarte Island).



STATEMENT OF PRINCIPLES

WHEREAS	Sḵáutw First Nation has inherent rights, customs, traditions and the inherent right to self-government as defined in the Douglas Treaty and reinforced through Section 35 of the <i>Constitution Act, 1982</i> and the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (the “Declaration”);
AND WHEREAS	the <i>Declaration on the Rights of Indigenous Peoples Act</i> affirms the application of the Declaration to the laws of British Columbia;
AND WHEREAS	the <i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> affirms the application of the Declaration to the laws of Canada;
AND WHEREAS	as an aspect of our inherent right of self-government and as an incident of Sḵáutw First Nation’s Douglas Treaty rights, Sḵáutw First Nation has the jurisdiction to manage Sḵáutw territory;
AND WHEREAS	Sḵáutw First Nation has jurisdiction and authority over Sḵáutw lands, waters, resources, and interests through our unextinguished Aboriginal title to Sḵáutw territory;
AND WHEREAS	the Supreme Court of Canada has affirmed that Indigenous peoples must be consulted prior to any decisions or activities that might adversely affect established or asserted Aboriginal or Treaty Rights;
AND WHEREAS	the Declaration confirms that the Crown must obtain Sḵáutw’s free, prior, and informed consent prior to adopting legislative or administrative measures that may affect Sḵáutw (Article 19) and before approving any project that may affect Sḵáutw’s lands, territory, and other resources (Article 32);
AND WHEREAS	early engagement and effective consultation processes are essential to Sḵáutw’s ability to exercise our jurisdiction and law-making authority over Sḵáutw territory and build productive relationships with the Crown that recognize legal pluralism;
AND WHEREAS	Sḵáutw First Nation is willing to engage in meaningful consultation, and expects to be consulted and, if required, accommodated, regarding all Activities that may impact on Sḵáutw rights, territory, and peoples;
AND WHEREAS	the Crown and Proponents seeking to carry out Activities that may impact Sḵáutw rights, territory, and peoples may only do so in accordance with this Protocol and Sḵáutw’s laws, and with Sḵáutw’s free, prior, and informed consent;
NOW THEREFORE	the Council of Sḵáutw First Nation at a duly convened meeting, enacts as follows, the Sḵáutw First Nation Consultation Protocol and Policy No. 01-2024.

2 DEFINITIONS

1. In this Protocol:

- (a) **Aboriginal and Treaty Rights** means the aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- (b) **Activity or Activities** includes any of the following activities undertaken or under consideration by the Crown and/or a Proponent:
 - i. current and proposed projects, works, or undertakings in the Sᑭᐱᐅᐅᐅ Consultation Area;
 - ii. amendments to or the introduction of legislation, regulations, policies, and programs by the Crown;
 - iii. the issuance, variation, approval, suspension, cancellation, transfer or renewal of permits, licences, tenures, certificates, orders, or other authorizations granted or to be granted by the Crown; and
 - iv. operational and policy decisions that are to be made or implemented by the Crown.
- (c) **Crown** includes local, regional, provincial, and federal governments, and any component part of each.
- (d) **Declaration** means the *United Nations Declaration on the Rights of Indigenous Peoples*.
- (e) **Proponent** means any entity (which could include the Crown, a corporation, a sole proprietor, association, organization, academic institution, natural person, etc.) proposing an Activity that may have an impact on Sᑭᐱᐅᐅᐅ' s rights, territory, or peoples.
- (f) **Protocol** means this Sᑭᐱᐅᐅᐅ First Nation Consultation Protocol and Policy.
- (g) **Sᑭᐱᐅᐅᐅ Consultation Area** means the area shown in Schedule A.

3 PURPOSE

3.1 OVERVIEW

- (a) This Protocol sets out the process and principles for consultation, accommodation, and relationship-building between Sᑭᐱᐅᐅᐅ, the Crown, and Proponents in relation to Activities with potential to impact Sᑭᐱᐅᐅᐅ' s rights, territory, or peoples.
- (b) The Protocol also provides direction and guidance to the Crown and Proponents respecting:
 - i. Sᑭᐱᐅᐅᐅ' s Douglas Treaty rights;
 - ii. reconciliation and the implementation of the Declaration;



- iii. the Crown's legal obligations to Sḵáútw̱; and
- iv. the assessment of cumulative effects,

each of which is discussed in greater detail below.

- (c) While the duty to consult and accommodate remains an important legal framework for protecting Aboriginal and Treaty Rights in Crown decision-making processes, recognizing Indigenous jurisdiction and implementing the Declaration requires moving beyond mere consultation. It requires establishing collaborative decision-making frameworks and fostering respectful relationships with the Crown and Proponents that acknowledge Sḵáútw̱'s jurisdiction and law-making authority.
- (d) Sḵáútw̱ also recognizes that Proponents and other community organizations may want to engage with Sḵáútw̱ or discuss opportunities for partnership prior to engaging in Crown regulatory processes.

3.2 Sḵáútw̱'S DOUGLAS TREATY RIGHTS

- (a) The Douglas Treaties did not grant rights, but rather promised the protection of several inherent rights.
- (b) The written terms of the Douglas Treaties include the following promises:
 - i. **land rights:** that "our village sites and enclosed fields" would be kept for our own use and the use of future generations; and
 - ii. **harvesting rights:** that we would be "at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly."
 - i. that "our village sites and enclosed fields" would be kept for our own use and the use of future generations; and
 - ii. that we would be at liberty to harvest, hunt over the unoccupied lands, and to carry on our fisheries as formerly.
- (c) The terms of the Douglas Treaties also include oral promises made during treaty negotiations, including the promise that we would be able to hunt over unoccupied lands and carry on our fisheries, and harvest with the same freedom as when we were the sole occupants of the country.
- (d) Several cases have considered the scope of the Douglas Treaty rights to hunt, carry on our fisheries, and harvest as formerly:
 - i. the Douglas Treaties also grant other incidental rights, for example, the right to travel to and from the fishery (*Saanichton Marina Ltd. v. Claxton*, [1989] BCWLD 1269 (BCCA) [*Saanichton Marina*]);



- ii. the Douglas Treaties bestowed a right to hunt on unoccupied public or private land in all the traditional hunting and harvesting locations, not only within the area described in the treaties, i.e. the Saanich Peninsula (*R. v. Bartleman*, [1984] 55 BCLR 78, 12 DLR (4th) 73 [*Bartleman*]);
 - iii. in 1852, the economy of W̱SÁNEĆ peoples was based on hunting and fishing at traditional locations throughout a large geographic area, so as to have access to resources when and where they were in the best supply (*Bartleman*);
 - iv. the Douglas Treaties protect both traditional hunting methods and the modern hunting methods that have evolved from those traditional practices (*R. v. Morris*, [2006] 2 S.C.R. 915, 2006 SCC 59);
 - v. the word “fishery” denotes not only the right to catch fish but the place where the right may be exercised (*Saanichton Marina*); and
 - vi. conservation measures must respect the constitutional priority of SḶÁUTW’s Douglas Treaty rights (*R v Joseph*, [1990] 4 CNLR 59 (BCSC)).
- (e) Treaty rights are not frozen in time and may evolve in modern ways. Nevertheless, traditional manners of harvesting may also continue as well, which means that the Douglas Treaty rights extend to access to all the materials necessary to carry on traditional harvesting, including cedar trees for canoes, reef-net materials such as willow tree inner bark and beach-grass bunches, cedar, and balsam branches for herring spawn.
- (f) In *Saanichton Marina*, the British Columbia Court of Appeal considered SḶÁUTW’s Douglas Treaty rights in relation to a proposed marina in Saanichton Bay. Saanichton Bay has historically been and continues to be significant to SḶÁUTW as a year-round source of food and an integral component of SḶÁUTW economic, societal, social, and spiritual life. The Court held that the construction of a marina would infringe the Douglas Treaty rights to access and carry on a fishery in Saanichton Bay and granted a permanent injunction in favour of SḶÁUTW. **The Court’s findings in *Saanichton Marina* form an important part of SḶÁUTW’s ongoing work to secure and protect our Douglas Treaty rights.**

3.3 RECONCILIATION AND IMPLEMENTATION OF THE DECLARATION

- (g) This Protocol sets out a process for the Crown and Proponents to engage SḶÁUTW on decisions with potential to impact SḶÁUTW’s rights, territory, and peoples. It is intended to guide and structure our relationship with the Crown and Proponents to:
- i. ensure that consultation, accommodation, and other engagement processes are carried out in accordance with SḶÁUTW’s Indigenous law and use methodologies that reflect SḶÁUTW’s values and perspectives;
 - ii. enable SḶÁUTW to effectively manage our territory and resources in a manner that upholds our rights; and



- iii. help the Crown and Proponents understand what is required to obtain Sḵáutw's free, prior, and informed consent.
- (h) Both the Governments of Canada and British Columbia have committed to achieving reconciliation with Indigenous peoples and implementing the Declaration. The Declaration affirms Sḵáutw's right to own, use, develop and control its lands and resources, and requires states to give legal recognition and protection to these rights. A key element of the Declaration is the principle of free, prior, and informed consent—it mandates that the Crown obtain Sḵáutw's free and informed consent prior to adopting legislative or administrative measures that may affect Sḵáutw (Article 19) and before approving any project that may affect Sḵáutw's lands, territory, and other resources (Article 32).

3.4 LEGAL OBLIGATIONS: FIDUCIARY DUTY

- (a) This Protocol provides guidance to the Crown and Proponents to help ensure that the Crown fulfills its fiduciary obligations to Sḵáutw.
- (b) The Crown has fiduciary obligations to protect Sḵáutw's Aboriginal and Treaty Rights. The Government of Canada and the Government of British Columbia are constitutionally and legally bound to respect and protect these rights and are subject to legal recourse when they fail to do so.

3.5 LEGAL OBLIGATIONS: DUTY TO CONSULT

- (a) This Protocol provides guidance to the Crown and Proponents to help ensure that the duty to consult and accommodate is met.
- (b) Consultation is a distinct constitutional process that requires the Crown and Indigenous peoples to work collaboratively to reconcile divergent Crown and Indigenous interests.
- (c) The Crown has a legal duty to consult and accommodate Indigenous peoples when the Crown contemplates conduct that might adversely affect established or asserted Aboriginal or Treaty Rights. This duty is grounded in the Honour of the Crown and the constitutional protection provided for Aboriginal and Treaty Rights.
- (d) The Crown may delegate procedural aspects of consultation to Proponents. The ultimate responsibility for ensuring that the duty is fulfilled remains with the Crown.
- (e) There are three conditions that must exist for the duty to consult to arise:
 - i. actual or constructive knowledge;
 - ii. contemplated Crown conduct; and
 - iii. a potential adverse effect on Aboriginal or Treaty Rights.



- (f) The duty to consult is triggered at a low threshold —knowledge of a credible but unproven claim will trigger the duty. The duty seeks to ensure that Aboriginal rights are *identified, protected, and preserved* while furthering the goals of reconciliation between Indigenous peoples and the Crown.
- (g) Many Crown decisions trigger the duty to consult, including regulatory project approvals, the issuance of licence or permits, policy decisions, and operational decisions. The consultation process focuses on the impact of a project or decision on Aboriginal and Treaty Rights.
- (h) The Crown must inform itself of the impact and substantially address the concerns of Indigenous peoples. This applies to areas of Crown and private holdings that hold evidence of Sḵáutw settlement, use and occupation, funerary and artifact remains, architecture that includes great houses, house posts, and travel canoes, that have been shielded by Crown legislation and practice, and policy indifference.
- (i) The scope of consultation is fact-specific and based on: (1) the strength of the claim, and (2) the potential impacts on rights. Courts have set out a spectrum of obligations from notification (weaker claims, lower potential for impacts) to deep consultation (stronger claims, higher potential for impacts). Deep consultation may require procedural protections, including capacity funding, Indigenous-led studies, oral hearings, and detailed reasons that describe how Indigenous concerns were considered and accommodated.
- (j) Good faith consultation may lead to an obligation to accommodate. Accommodation may take many forms, including abandonment of the project, making significant modifications to a project (scope, timing, location), attaching legally binding conditions to an authorization, and compensation.

3.6 CUMULATIVE EFFECTS

- (a) This Protocol provides guidance to the Crown and Proponents to ensure that consultation processes acknowledge and assess the cumulative effects of Activities in Sḵáutw territory.
- (b) This Protocol is intended to help:
 - i. transform the way cumulative effects in Sḵáutw territory are assessed and managed;
 - ii. reform land and resource decision-making regimes; and
 - iii. ensure that Sḵáutw's rights are recognized and respected.
- (c) Much of Sḵáutw territory has been taken up by private property and other land uses that are incompatible with our way of life and the exercise of our rights. The degree of settlement and taking up of lands in Sḵáutw territory has far exceeded what the Douglas Treaties contemplated and left few viable sites for hunting, fishing, and cultural practices. Pollution and other impacts of development have also reduced the capacity of Sḵáutw territory to support adequate populations of fish and wildlife that are suitable for harvest and consumption. The



lack of enforceable mechanisms within provincial and federal regulatory regimes and the failure of decision makers to consider Sḵáútw̱'s rights has contributed to this "death by a thousand cuts".

- (d) In *Yahey v British Columbia*, [2021 BCSC 1287](#), the Court recognized that there is a threshold, or tipping point, at which an Indigenous group will no longer be able to meaningfully exercise its treaty rights due to cumulative disturbances and impacts within their territory. In Sḵáútw̱ territory, the cumulative effects of development have already surpassed this threshold, which triggers the Crown's fiduciary duty.

4 GUIDING PRINCIPLES

4.1 Sḵáútw̱ LEGAL PRINCIPLES

- (a) Consultation, accommodation, and engagement processes must be guided by the Indigenous laws, practices, and traditions of Sḵáútw̱ peoples, which include the key principles and teachings that come from the following and are binding laws on the Sḵáútw̱ peoples:
- i. Sḵáútw̱ peoples' creation story;
 - ii. Sḵáútw̱ peoples' SMİLEHÁUTW̱ protocol;
 - iii. the SENĆOᖅFEN language.

4.2 RESPECTFUL RELATIONSHIPS

- (a) The Crown and Proponents must demonstrate respect and honour for:
- i. Sḵáútw̱'s current realities;
 - ii. Sḵáútw̱'s inherent rights, including our Aboriginal and Treaty Rights; and
 - iii. Sḵáútw̱'s obligations to Sḵáútw̱ territory and to future generations.

4.3 EARLY ENGAGEMENT

- (a) Proponents must engage Sḵáútw̱ at the earliest possible opportunity respecting all Activities with potential to impact Sḵáútw̱'s rights, territory, or peoples. Coordinated engagement and planning is key to:
- i. building and maintaining good relations;
 - ii. assessing and managing cumulative effects;
 - iii. enabling substantive mitigation measure; and



- iv. obtaining Sḵáutw's free, prior, and informed consent.

4.4 LAND RESTITUTION

- (a) Land restitution focuses on redressing the injustices of colonial land dispossession. Reconciliation requires that Sḵáutw lands be returned to Sḵáutw. Without a sufficient land base, Sḵáutw cannot realize self-determination and self-government. When considering Activities in Sḵáutw territory, the Crown and Proponents should consider whether it is possible to transfer title of lands or control of resources to Sḵáutw.

4.5 GOOD FAITH CONSULTATION AND ACCOMMODATION

- (a) All parties must work together in good faith to:
 - i. identify and address Sḵáutw's interests and concerns; and
 - ii. obtain Sḵáutw's free, prior, and informed consent before undertaking Activities that may impact Sḵáutw's rights, territory, or peoples.
- (b) The Crown and Proponents must promptly provide all relevant information as it becomes available and allow adequate time and resources for Sḵáutw's review. Any failure by Sḵáutw to respond within a deadline requested by the Crown or Proponent must not be deemed as declining a request for consultation. Rather, the Crown or Proponent should follow up with Sḵáutw after a reasonable period and, if necessary, provide additional time for Sḵáutw to respond.
- (c) Consultation must be conducted with the primary objective of avoiding impacts to Sḵáutw's rights. If avoidance is not possible, good faith accommodation may require Proponents and the Crown to abandon the project or propose modifications or alternative solutions to minimize or mitigate impacts to Sḵáutw's rights or provide fair compensation for unavoidable infringements. The burden to propose effective accommodation measures lies with the Crown and Proponent, not Sḵáutw.

4.6 REVENUE SHARING & PARTNERSHIP OPPORTUNITIES

- (a) Consultation is not limited to assessing the potential impacts to Sḵáutw's rights. Another aspect of consultation is exploring opportunities for partnership in sustainable and responsible economic development. Sḵáutw must be a full partner in the development of Sḵáutw territory. Sḵáutw must also mutually benefit from Activities in Sḵáutw territory.
- (b) During early engagement and throughout the consultation process, the Crown and Proponents should consider:
 - i. opportunities for mutually beneficial partnerships; and
 - ii. opportunities for revenue-sharing.

4.7 CAPACITY

- (a) The Crown and Proponents are responsible for the costs of Sᑭᐱᐅᐅᐅ's meaningful participation in consultation processes, including costs for the following:
- i. staff time, expenses, and training;
 - ii. travel and honoraria costs for Elders and members;
 - iii. additional studies and assessments required to assess the potential impacts to Sᑭᐱᐅᐅᐅ's rights, territory, and peoples; and
 - iv. community meetings and engagement.
- (b) Where the Crown or Proponents are considering long-term Activities, or are seeking to consult on several related Activities, Sᑭᐱᐅᐅᐅ may request to enter into comprehensive capacity funding agreements.

5 CONSULTATION PROCESS

5.1 NOTIFICATION

- (a) Proponents must request consultation with Sᑭᐱᐅᐅᐅ on all Activities with potential to impact Sᑭᐱᐅᐅᐅ's rights, territory, or peoples by providing written notice at the earliest possible opportunity. The notice should include, at minimum, the information set out in the Consultation Request Checklist (Schedule B).
- i. Referral packages must be submitted through the [LOUIS Toolkit](http://www.louistoolkit.ca/en/) (www.louistoolkit.ca/en/) portal for review. Proponents will need an [Organization Account](http://www.louistoolkit.ca/en/about/organizations/) (www.louistoolkit.ca/en/about/organizations/).
 - ii. All other inquiries must be sent by email to the Referrals Coordinator (referrals@tsawout.ca).
- (b) Because Proponents and governments must provide notice at the earliest possible opportunity, Sᑭᐱᐅᐅᐅ First Nation recognizes that some of the information requested in Schedule B may not yet be available, in which case Proponents can indicate in the notice when they anticipate the requested information will be available.
- (c) **Referrals and inquiries must not be sent directly to the Chief and Council.** If necessary, Sᑭᐱᐅᐅᐅ will direct requests for consultation to Chief and Council in accordance with the Consultation Flowchart (Schedule D).

5.2 INITIAL REVIEW

(a) The Referrals Coordinator will:

- i. confirm receipt of the referral package or inquiry;
- ii. review the Referral Request Checklist (Schedule B) and request additional information, if necessary;
- iii. advise of any initial fees and costs to undertake the initial review (see Schedule C);
- iv. advise of any applicable Sᑭᐱᐅᐅᐅ laws or policies; and
- v. provide an estimated timeline for review.

(b) Once Sᑭᐱᐅᐅᐅ has sufficient information, the Referrals Coordinator will:

- i. direct the referral or inquiry to the appropriate department (see Schedule D) and provide the Proponent with contact information for the Sᑭᐱᐅᐅᐅ staff member responsible for ongoing communication with the Proponent; or
- ii. if Sᑭᐱᐅᐅᐅ decides to decline or defer the request to consult, provide the Proponent with notice of that decision.

5.3 ANALYSIS OF IMPACTS

(a) Sᑭᐱᐅᐅᐅ will conduct an internal review of the Activity. Depending on the nature and scope of the Activity, this review may involve:

- i. engagement with Sᑭᐱᐅᐅᐅ members and Elders;
- ii. community meetings or focus groups; and
- iii. site visits.

(b) Sᑭᐱᐅᐅᐅ may request meetings with the Proponent and/or Crown to discuss, among other things:

- i. the Activity;
- ii. Sᑭᐱᐅᐅᐅ' s review process; and
- iii. the potential impacts to Sᑭᐱᐅᐅᐅ' s rights, territory, and peoples, including potential accommodation measures.

(c) Sᑭᐱᐅᐅᐅ may provide feedback to the Crown and/or Proponent throughout the consultation process.

(d) Sᑭᐱᐅᐅᐅ may also involve external consultants, experts, and legal counsel, as required.

5.4 DECISION-MAKING

- (a) The objective of the consultation process is to obtain Sᑭᐱᐅᐅᐅ' s free, prior, and informed consent to an Activity.
- (b) During early engagement Sᑭᐱᐅᐅᐅ, the Crown or a Proponent may propose to enter a consent or joint decision-making agreement respecting the development, assessment, and approval of Activities.
- (c) Sᑭᐱᐅᐅᐅ will determine, in its sole discretion, the adequacy of any consultation process and accommodation measures, and decide whether to consent to the Activity.
- (d) Sᑭᐱᐅᐅᐅ will provide the Crown and/or a Proponent with written notice of Sᑭᐱᐅᐅᐅ' s decision, which may outline conditions or requirements respecting Sᑭᐱᐅᐅᐅ' s consent.
- (e) The Crown and Proponent must provide, if requested by Sᑭᐱᐅᐅᐅ, a detailed explanation of how the Crown and Proponent considered Sᑭᐱᐅᐅᐅ' s feedback respecting any decisions made in relation to an Activity.

5.5 INFORMATION SHARING/EXCHANGE

- (a) The consultation process may require an ongoing exchange of information. Sᑭᐱᐅᐅᐅ may request to enter into agreements to facilitate the exchange of information, including agreements respecting:
 - i. sharing technical data;
 - ii. confidential information; and
 - iii. the use, management, and protection of any Indigenous Knowledge shared as part of the consultation process.

5.6 CAPACITY FUNDING

- (a) The Crown and Proponents must ensure that funding is provided for the costs of Sᑭᐱᐅᐅᐅ' s participation in consultation processes in accordance with Schedule C.
- (b) Depending on the nature and scope of the Activity, Sᑭᐱᐅᐅᐅ may also require that the Crown or Proponent enter into a capacity funding agreement.
- (c) For Sᑭᐱᐅᐅᐅ to provide informed consent, Sᑭᐱᐅᐅᐅ may require a Proponent to undertake additional studies or provide funding for the completion of Sᑭᐱᐅᐅᐅ-led studies respecting the impacts of the Activity on Sᑭᐱᐅᐅᐅ' s rights, territory, or peoples.
- (d) The Crown and Proponent may also be able to contribute to Sᑭᐱᐅᐅᐅ' s capacity by providing technical support and training.

6 ADDITIONAL REQUIREMENTS

6.1 OVERVIEW

- (a) In addition to undertaking consultation in accordance with this Protocol, an Activity may also engage other SḵÁUTW̱ laws and policies, including under:
- a. the *Tsawout First Nation Land Code*, as amended on June 25, 2013 (the “Land Code”);
 - b. the *Community Impact Assessment Requirements and Procedures* policy No. 01-2009 (the “Community Impact Assessment Policy”);
 - c. the SḵÁUTW̱ First Nation *Marine Use Law* No. 2023-01 (the “Marine Use Law”); and
 - d. the QEN,T Marine Protected Area management plan,
- each of which is discussed in greater detail below.

6.2 LAND CODE

- (a) The Land Code, which came into force and effect on May 29, 2007, sets out SḵÁUTW̱’s authority to manage the use and development of SḵÁUTW̱ lands and resources.
- (b) Section 6 of the Land Code provides SḵÁUTW̱ with the authority to enact rules and procedures, to make policies ancillary to any laws with respect to the management of SḵÁUTW̱ territory.
- (c) The Crown or Proponent may be required to:
- i. act in accordance with a rule, procedure, or policy enacted under section 6 of the Land Code; and
 - ii. obtain a licence under section 7 of the Land Code.

6.3 COMMUNITY IMPACT ASSESSMENT

- (a) The Community Impact Assessment Policy sets out a process for assessing the impacts of Activities in community impact assessment areas designated under SḵÁUTW̱’s Comprehensive Community Plan, or as determined by the SḵÁUTW̱ Lands Department.
- (b) If an Activity takes place in a community impact assessment area, a Community Impact Assessment may be required.

6.4 THE SḵÁUTW̱ FIRST NATION MARINE USE LAW

- (a) On June 16, 2021, SḵÁUTW̱ enacted the Marine Use Law, which applies to commercial and industrial undertakings within the marine and coastal areas of SḵÁUTW̱’s Marine Territory (see



Schedule A to the Marine Use Law) and requires that persons carrying on these activities obtain a licence.

- (b) During the licensing process, applicants are required to submit a Marine Use Plan and other supporting information. This process allows SḶÁUTW to (1) gather information on the commercial and industrial marine activities taking place in SḶÁUTW Territory, and (2) assess the impact of these activities on SḶÁUTW's ability to exercise our rights.
- (c) The Marine Use Law applies to "Marine Use Operations", which is defined as "the carrying on of a commercial or industrial undertaking of any kind or nature for the purpose of gain or profit, within the marine and coastal areas of SḶÁUTW Territory, but does not include any activities carried on by SḶÁUTW First Nation and its members or W̱SÁNEĆ members exercising Aboriginal and Treaty Rights, protected by section 35 of the Constitution Act, 1982".
- (d) In addition to any other requirements set out in this Protocol, Proponents must obtain a licence in accordance with the Marine Use Law prior to undertaking "Marine Use Operations".

6.5 THE QEN,T MARINE PROTECTED AREA

- (a) On June 21, 2023, SḶÁUTW declared the creation of a new Indigenous Protected and Conserved Area (IPCA) — the QEN,T Marine Protected Area.
- (b) The QEN,T Marine Protected Area protects an approximately 155 square kilometer tract of ocean off the eastern coast of the Saanich Peninsula on Vancouver Island. SḶÁUTW has a long history of use and occupation of this area, which includes many spiritual and cultural places, medicine and gathering places, harvesting locations, village sites, and burial sites.
- (c) QEN,T is a SENĆOŦEN word meaning 'to be looking after', 'caring for', or 'protecting something or someone'. The protected area was named by Elder Helen Jack. The creation of the QEN,T Marine Protected Area not only recognizes SḶÁUTW's role in marine stewardship and environmental protection, it is also intended to protect and preserve SḶÁUTW First Nation's ability to meaningfully exercise its rights and practice its culture.
- (d) SḶÁUTW is currently developing a management plan for the QEN,T Marine Protected Area that outlines our vision for the future. The management plan will identify allowable uses and activities within the protected area, as well as research and monitoring priorities. SḶÁUTW is also implementing an Indigenous Guardians program to support ongoing management and monitoring activities of the IPCA.
- (e) Any use of the QEN,T Marine Protected Area must be consistent with the management plan. Proponents contemplating Activities in the QEN,T Marine Protected Area should contact SḶÁUTW for more information.

7 CONTACT

1. Please direct any inquiries about this Protocol or the consultation process to the Sṭáutw First Nation Referrals Coordinator:

Referrals Coordinator
Tsawout First Nation
7728 Tetayut RD
Saanichton, British Columbia. Canada V8M 2E4

Phone: 250.652.9101
Fax: 250.652.9114
Email: referrals@tsawout.ca



8 RATIFICATION

STÁUTW First Nation Consultation Protocol and Policy No. 01-2024 is hereby endorsed and accepted by the Chief and Council at a meeting held April 17, 2024.

Chief Abraham Pelkey

SMOŁETET

Councillor George Horne

ŲKOŁEĆTEN ŲITE,LEK

Councillor Samantha Etzel

PIŲELÁNEWOT

Councillor John Etzel

YEXPILEM

Councillor Blake Joseph

FELŲILEM

Councillor Harvey Underwood

ŲOLEWESTEN

Councillor Stan Sam

ŲISELEK

Councillor Donald Williams

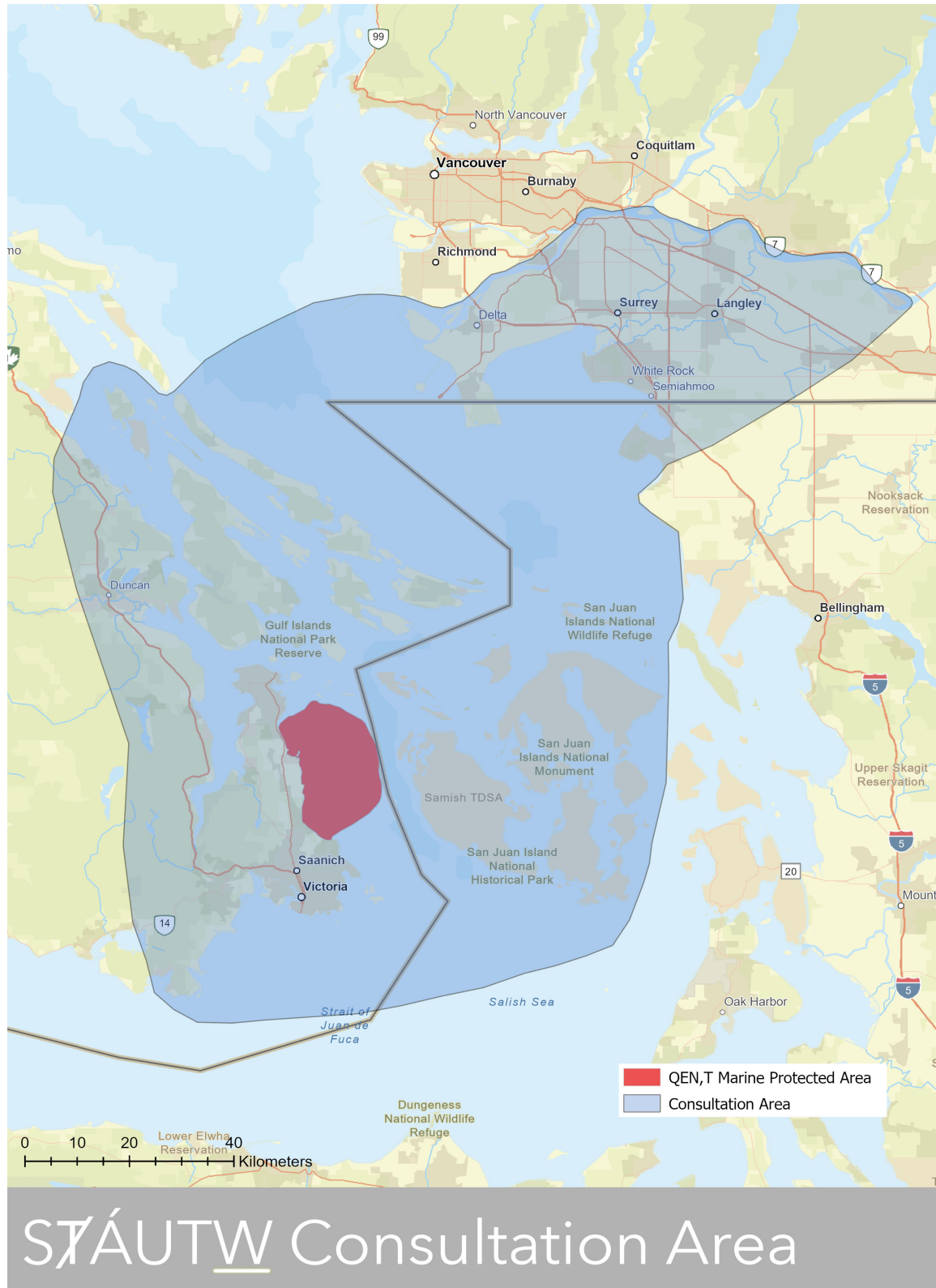
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Councillor John Wilson

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SCHEDULE A: SṭÁUTW CONSULTATION AREA



SCHEDULE B: CONSULTATION REQUEST CHECKLIST

BACKGROUND INFORMATION

- ☐ Applicant contact information:
 - Name
 - Title/position
 - Email
 - Phone number
 - Type (individual, academic institution, corporation, sole proprietor, government, non-profit organization, joint venture, etc.)
- ☐ Proponent contact information (if different from above):
 - Proponent name
 - Proponent type (individual, academic institution, corporation, sole proprietor, government, non-profit organization, joint venture, etc.)
 - Proponent contact (name, title/position, email, and phone number)
- ☐ Any relevant background information respecting:
 - The Applicant and/or Proponent's relationship with Sᑭᐱᐅᐅᐅ First Nation (for example, MOUs, partnerships on past projects, etc.)
 - Past or present Activities in the Sᑭᐱᐅᐅᐅ Consultation Area that the Applicant and/or Proponent are involved with
- ☐ Any relevant Crown or Proponent policies (for example, reconciliation action plans, Indigenous procurement policies, etc.)

ACTIVITY INFORMATION

- ☐ Activity Description
 - Type
 - Location (including detailed maps, site description, and access information)
 - Scope
 - Timing
 - Objective
 - Anticipated timeline (including start/end dates)
 - ☐ Any studies or assessments completed to date (for example, archaeological, environmental, or hydrological information)
 - ☐ Description of any anticipated studies or assessments
 - ☐ Description of:
 - any Crown regulatory processes engaged by the Activity
 - any Crown permits, licences, tenures, or other authorizations required to undertake the Activity/Project, including whether any such authorizations have been obtained
 - ☐ Key contacts for any Crown regulatory processes, authorizations, or decisions
-

- ☐ Supporting files:
 - Maps/spatial files
 - Designs
 - Site/development plans
 - Permit applications

CONSULTATION INFORMATION

- ☐ List of any Sṭáutw laws or policies that the Activity may engage (for example, the Sṭáutw First Nation *Marine Use Law*, the *Community Impact Assessment Requirements and Procedures*, etc.)
- ☐ Whether the Activity is located in or may impact the QEN,T Marine Protected Area
- ☐ Information respecting available capacity funding
- ☐ Description of any:
 - anticipated Activity benefits and/or impacts to Sṭáutw First Nation
 - opportunities for partnerships, joint ventures, and/or revenue sharing
- ☐ Key dates that the Applicant or Proponent would like Sṭáutw First Nation to consider when developing a timeline for review
- ☐ Any applicable application or review fee, as set out in Schedule C

SCHEDULE C: CONSULTATION FUNDING

Administration and Processing Fee per Notification	
\$ 350.00	

Other Services (if required):	
Monitor/ Field Assistant/Elders/Trappers Honoraria (including meals) (up to 4 hours) (including meals)	\$500.00 / day \$250.00/ half day
Consultants (including environmental, technical, legal, financial, etc.)	Rate plus incurred expenses
Business Use of Private/Band Owned Vehicle (i.e. Van/crew truck)	\$200.00 / day \$100.00/half day
Business Use of Private ATV with/without trailer	\$150.00/day
Air Travel	Receipt
Accommodation	Receipt
Car Rental	Market rate including Insurance
Parking	Receipt
Meals	When not included above \$110.00/ day
Other travel expenses with prior agreement	Receipt
Meeting room	Market rate
Catering	Market rate
Gifts (tobacco, sweetgrass, blankets)	Market rate
Cancellation fee	Rate plus incurred expenses



SCHEDULE D: CONSULTATION FLOWCHART

