Indigenous Consultation and the Drainage Act

50th Annual Drainage Engineers Conference
Friday October 26th, 2018
AGENDA

1. Why is Indigenous Consultation Relevant to Drainage Projects?

2. What is the Duty to Consult?

3. How Do I Consult?
RELEVANCE continued

Why is it important to think about consultation?

- Consultation questions are becoming more common on permit and funding applications

<table>
<thead>
<tr>
<th>Indigenous Consultation:</th>
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<tbody>
<tr>
<td>Is the proposed project/activity on Crown land or does/would it alter access to Crown land? *</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Is the proposed project/activity in an open or forested area where hunting, trapping or plant gathering could occur? *</td>
<td>Yes</td>
<td>No</td>
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<td>Does the proposed project/activity involve the clearing of forested land? *</td>
<td>Yes</td>
<td>No</td>
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<td>Could the proposed project/activity impact a water body (e.g., direct discharge) or alter access to a water body? *</td>
<td>Yes</td>
<td>No</td>
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RELEVANCE

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Through the Ontario Community Infrastructure Fund, you provided consultation information under the Duty to Consult Assessment Questions section of your application or project report regarding the above-noted project. This notice will provide the details related to aspects of the project that may trigger Aboriginal consultation duties.
WHAT IS THE DUTY TO CONSULT?

• The Crown has an obligation to consult with Indigenous communities on decisions that could affect Aboriginal or Treaty Rights.
ROYAL PROCLAMATION, 1763
Ontario is covered by 46 treaties and other agreements, such as land purchases by the Crown. These agreements were signed between 1781 and 1930.

Source: https://files.ontario.ca/treaties_map_english.pdf
TREATY PROVISIONS

Treaties were designed to move indigenous people off the land to open up areas for settlers.

Most treaties included provisions to settle First Nation people on reserves.

First Nations often gave up title to their traditional lands but retained rights to hunt and fish on those lands.

Most treaties did not include the beds of lakes or rivers.

Painting of Treaty signing with the Blackfoot. Source: http://www.canadahistoryproject.ca/1871-97/index.html
RIGHTS

• Aboriginal Rights
  ➢ Rights associated with practices, customs or traditions which are integral to the distinctive culture of the Aboriginal community claiming the right.

• Treaty Rights
  ➢ Rights which were specified in historic treaties signed between Aboriginal people and the Crown.

• Both are protected under Section 35 of the Constitution Act, 1982.
Truth and Reconciliation Commission was established to review the past treatment of Indigenous people.

Identified 94 Calls to Action

One of those Calls to Action was to sign on to the United Nations Declaration on the Rights of Indigenous People.
UNDRIP

• Section 32.2.
  ➢ “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”.
SUMMARY

• There are a number of legal and policy frameworks that support Indigenous Consultation:
  • Treaties
  • Constitution
  • UNDRIP

• Includes rights to hunting and fishing, rights to participate in decisions about natural resources, including water.
WHEN TO CONSULT

- Drains in a watershed passing through reserve lands.

WHEN TO CONSULT continued

• Drains in Treaty lands and Traditional Territories.

Source: http://activehistory.ca/2011/04/active-history-on-the-grand-we-are-all-treaty-people/sixnmap/
WHO TO CONSULT?

Treaty Maps

MECP or OMAFRA

Municipal Planners

ATRIS*

*Aboriginal Treaty Information System
HOW TO CONSULT

• Goal is to enable meaningful participation; full participation

• Every Indigenous community consultation process is unique
  • Some Indigenous communities have established their own consultation protocol that should be reviewed prior to engagement or consultation with the community.
CONSULTATION PROCESS

• Initial Project Notification
• Follow-up Phone Calls
• Confirm Level of Interest/ Methods for ongoing consultation
• Meet with Band Council/ Staff monitors/ Site Visits
• Accommodate Concerns
BEST PRACTICES

• Engage early
• Provide full project information
• Follow-up
• Focus on pre-forming positive relationships
• Recognize and respect cultural differences
• Review consultation protocols
• Be open and honest
QUESTIONS?

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