

# Collaborative Consent

**Presenters:**

Scott Mackay, CEO, SVS  
Anthony Laforge, Lands Director,  
Magnetawan First Nation



@sharedvalueCA

sharedvaluesolutions.com



(226) 706 8888

# Who is SVS?

*Shared Value Solutions is a human-environment consulting firm which works primarily for indigenous communities across Canada.*

*We have an unshakeable commitment to a land where all peoples can reach their full potential, share prosperity, and uphold their rights. All of this begins and ends with healthy lands and waters. In the spirit of collaboration, respect and friendship, we work alongside visionary leaders and their communities to fulfill these commitments.*





# Current process of s.35 consultation/accommodation in IA

Messy, difficult and unsatisfactory for all parties!

Often, lingering issues remain and keep coming up through life of project

Does not recognize full range of roles and desired outcomes of Indigenous peoples - guardians, governments, economic partners/co-proponents, community developers



# What is Collaborative Consent?

- Terminology coming from the NWT and Mackenzie Basin Water Management process- CIER/Polis, Fontaine
- Co-decision-making and co-drafting of legislation and policy related to land and resource use/environment with indigenous peoples.
- Focus on collaborative decision-making and outcomes, recognition of sovereignty and jurisdiction.
- All parties' interests need to be satisfied.
- Spans the entire process of production= co-production.



# But...recent SCC Decision- Mikisew

- Reinforces retroactive legal action against enacted legislation or executive decisions vs. proactive requirement for the Crown to consult in advance on legislation
- Honour of the Crown still required in enacting legislation (ratifying and implementing it) when S.35 rights could be impacted
- In effect, it comes back to an project assessment-by-project assessment, decision-by-decision focus



# The effort continues on other fronts

- Amendments to Bill C-68 and C-69 as it makes its way through the law-making process
- Full implementation of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and doctrine of Free, Prior, and Informed Consent (FPIC)
- Private members bill 262- MP R. Saganash- full action plan and requirement to implement it, for UNDRIP and FPIC
- Federal Nation-to-Nation reconciliation promise and recent agreements with organizations such as MMF, modern treaties such as with Sto:lo communities.
- Other factors such as continued implementation and uptake of *First Nations Land Management Act* formalizing land jurisdiction.

Department of Justice Canada / Ministère de la Justice Canada

## PRINCIPLES

Respecting the Government of Canada's Relationship With Indigenous Peoples

The Government of Canada recognizes that:

- 1 All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
- 2 Reconciliation is a fundamental purpose of section 35 of the Constitution Act, 1982.
- 3 The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.
- 4 Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.
- 5 Treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
- 6 Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights on their lands, territories, and resources.
- 7 Respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.
- 8 Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.
- 9 Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.
- 10 A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.



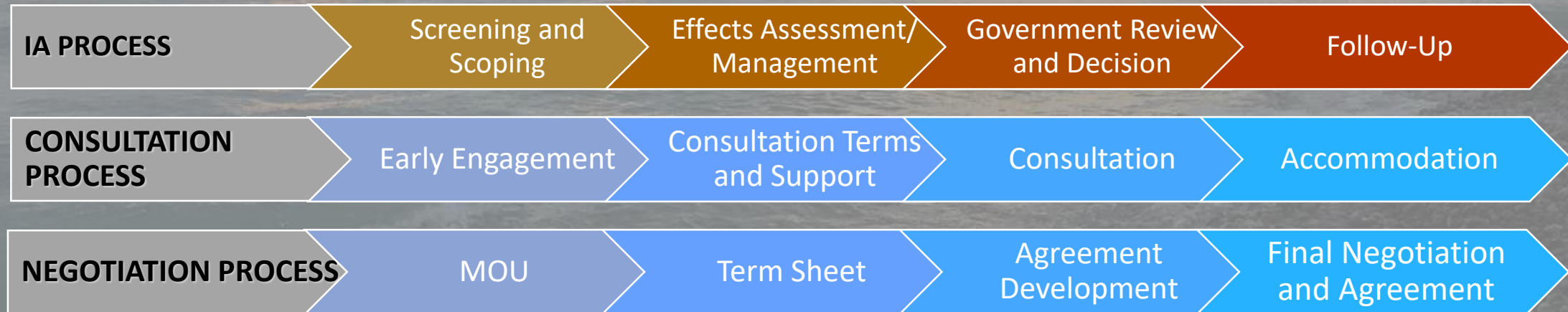
# Collaborative Consent at the IA level

- Emerging examples, piecemeal but promising
- May be helpful to give shape to FPIC
- Can be aligned with IA and IA steps
- Places IA in a wider multi-process sphere
- Multiple ways to achieve outcomes- IA mitigation, IBAs, environmental commitments, conditions of approval, IA/post-IA governance
- Missing piece - overarching framework





# IA Within Multi-Process Collaborative Consent Approach



(Warning- grossly oversimplified!)



# A Smattering of Examples

- Process agreements defining long-term commitment and roadmap
  - May include terms related to consent
- Involvement of affected communities in EA GRTs or advisory committees
- Explicit control over select baseline studies and how they are used
- Enhanced alternatives analyses, additional criteria
- Explicit involvement in developing select significance/effects assessment criteria
- IAMCs, environmental monitoring committees
- Indigenous guardian programs in follow-up/compliance/monitoring phase
- Environmental protections above and beyond regulatory requirements
- Community-based socioeconomic management plans

# Final Thoughts and Questions

- This emerging process is solving problems that other processes are not.
- Implementation and spirit of entry is very important factor
- Indigenous-led or co-led IA is a next frontier, formal recognition across Canada as a jurisdiction under EA legislation.
- Question: Should the process be formalized or codified?
- Question: What barriers need to be addressed? What incentives or enablers would help the process?







**Ontario Association for Impact Assessment  
Conference**

**Thursday October 18, 2018**

**“Collaborative Consent”**




**Anthony Laforge, Lands & Resources Manager**

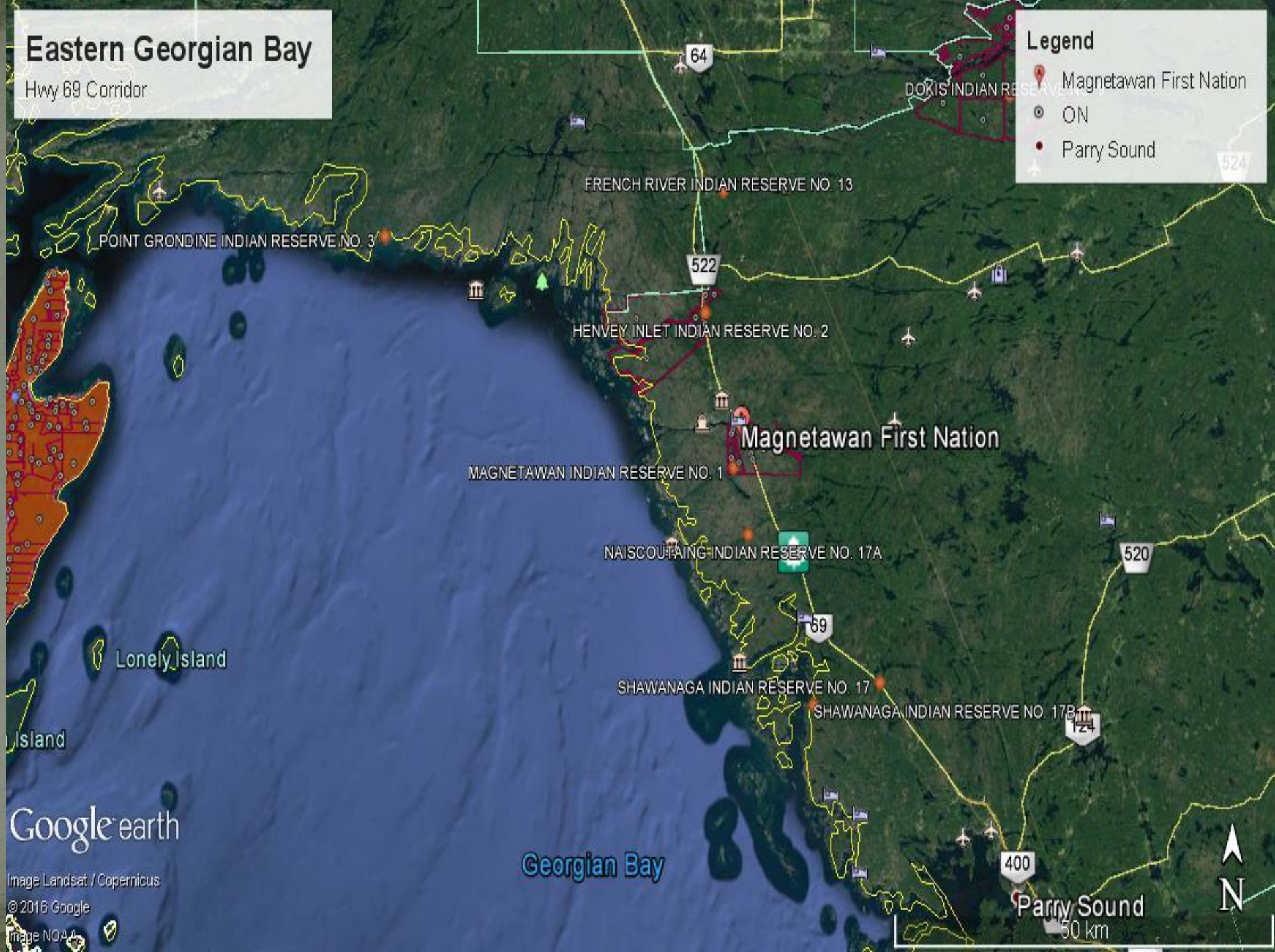


# Eastern Georgian Bay

Hwy 69 Corridor

## Legend

-  Magnetawan First Nation
-  ON
-  Parry Sound



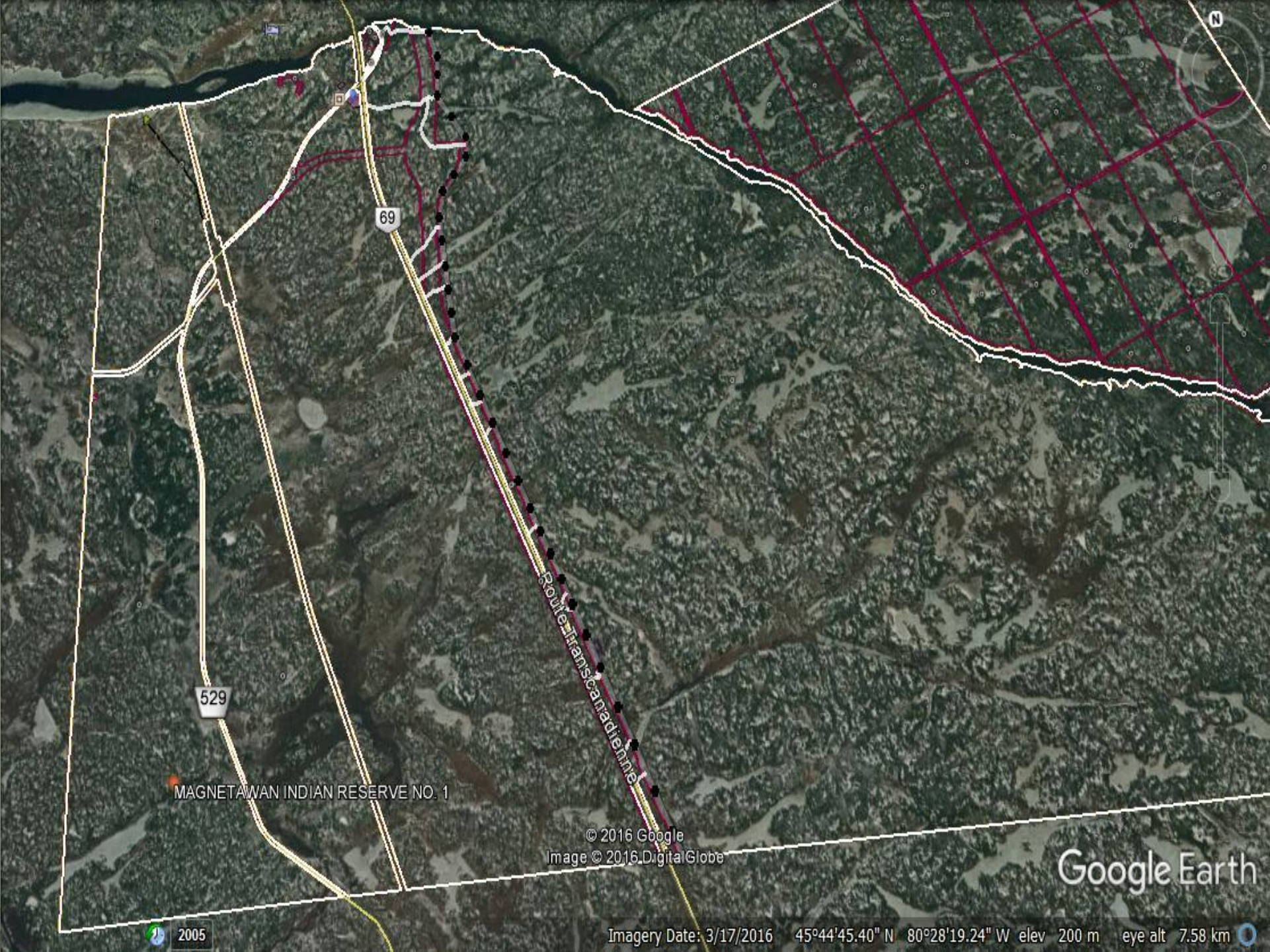
Google earth

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MAGNETAWAN INDIAN RESERVE NO. 1

Route Transcanadienne

© 2016 Google  
Image © 2016 DigitalGlobe

Google Earth

2005

Imagery Date: 3/17/2016 45°44'45.40" N 80°28'19.24" W elev 200 m eye alt 7.58 km



# Collaborative Consent

Hwy 69 Four Laning  
Project

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300 Megawatt Wind Farm  
86 Km Transmission Line

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# Collaborative Consent

- Inherent Indigenous Rights
- Robinson-Huron Treaty of 1850
- Chi-Naaknigewin (Anishinabek Constitution)
- Canadian Constitution Act (Section 35)
- United Nations Declaration of the Rights of Indigenous Peoples
- Framework Agreement on First Nations Lands (Land Code)

# Collaborative Consent

- Right people at the table from the beginning
- Respect, Trust, Patience and Diplomacy
- Cross Cultural Awareness (many cultures on both sides)
- Team members have the Authority to participate & make decisions at the table
  - Legal Counsel/Advisors
  - Chief & Council/Staff Advisors/Lands Committee's
  - Proponents/Owners/Crown
- Recognize and understand both parties Authority
- Interests and both parties "point of view" respected



# Collaborative Consent

## Road Blocks VS Game Changers

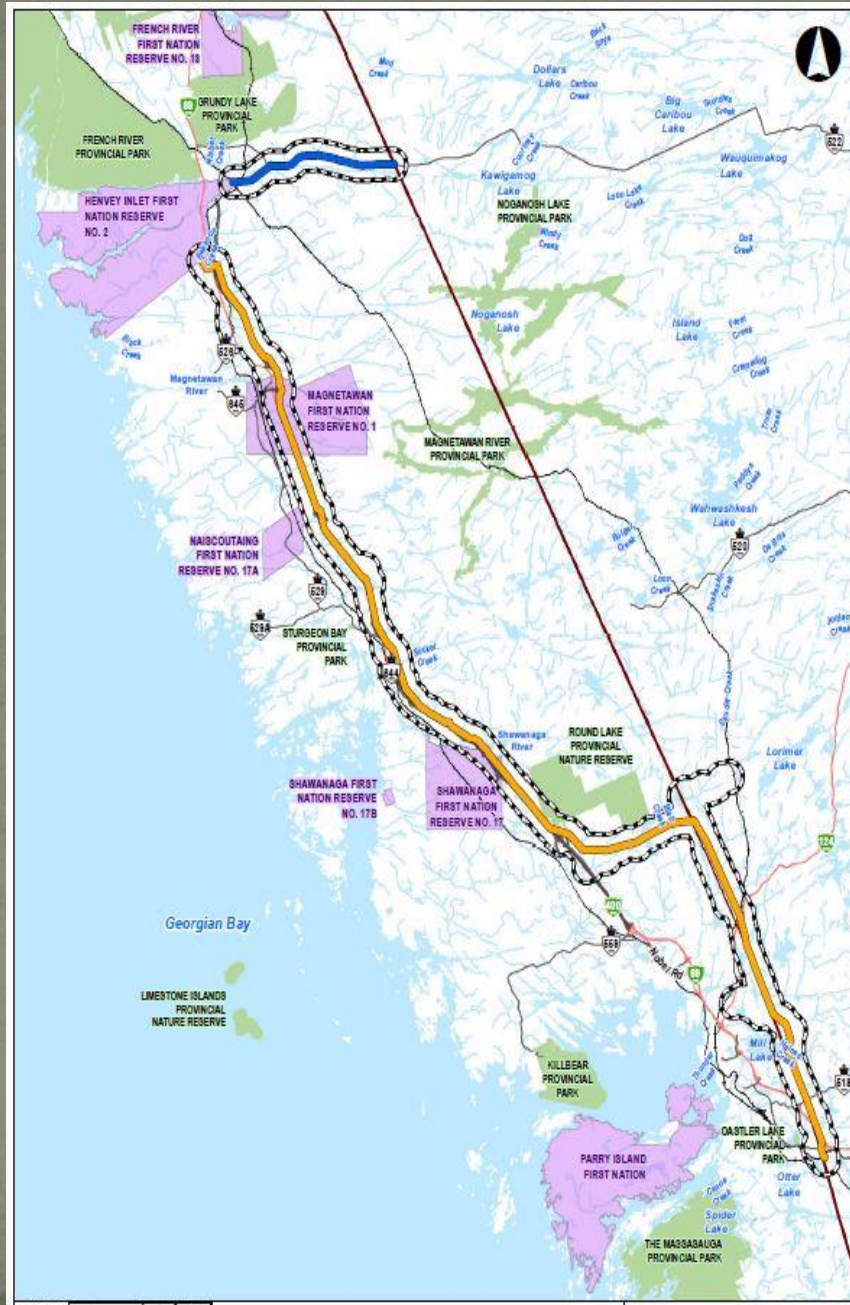
- Archaic Indian Act
- Indigenous & Treaty Rights
- UNDRIP
- Regulatory Risks and GAPS
- Self Government Agreements
- Framework Agreement on F.N. Lands
  - Authority to develop Land Laws
  - Lease Agreements/ Equity Offer/I.B.A.'s/Partnership
- Negotiate work on Traditional Territory
  - Mutual Benefits/Partnerships
  - Economic Opportunities
- Free Prior and Informed Consent
  - Consult early in the process
  - Work with the Indigenous group
- Permits/Timelines/legislation/Politics
- Federal/Provincial/Indigenous Laws



# Collaborative Consent Achieved Henvey Inlet Wind Farm (Fall 2017)

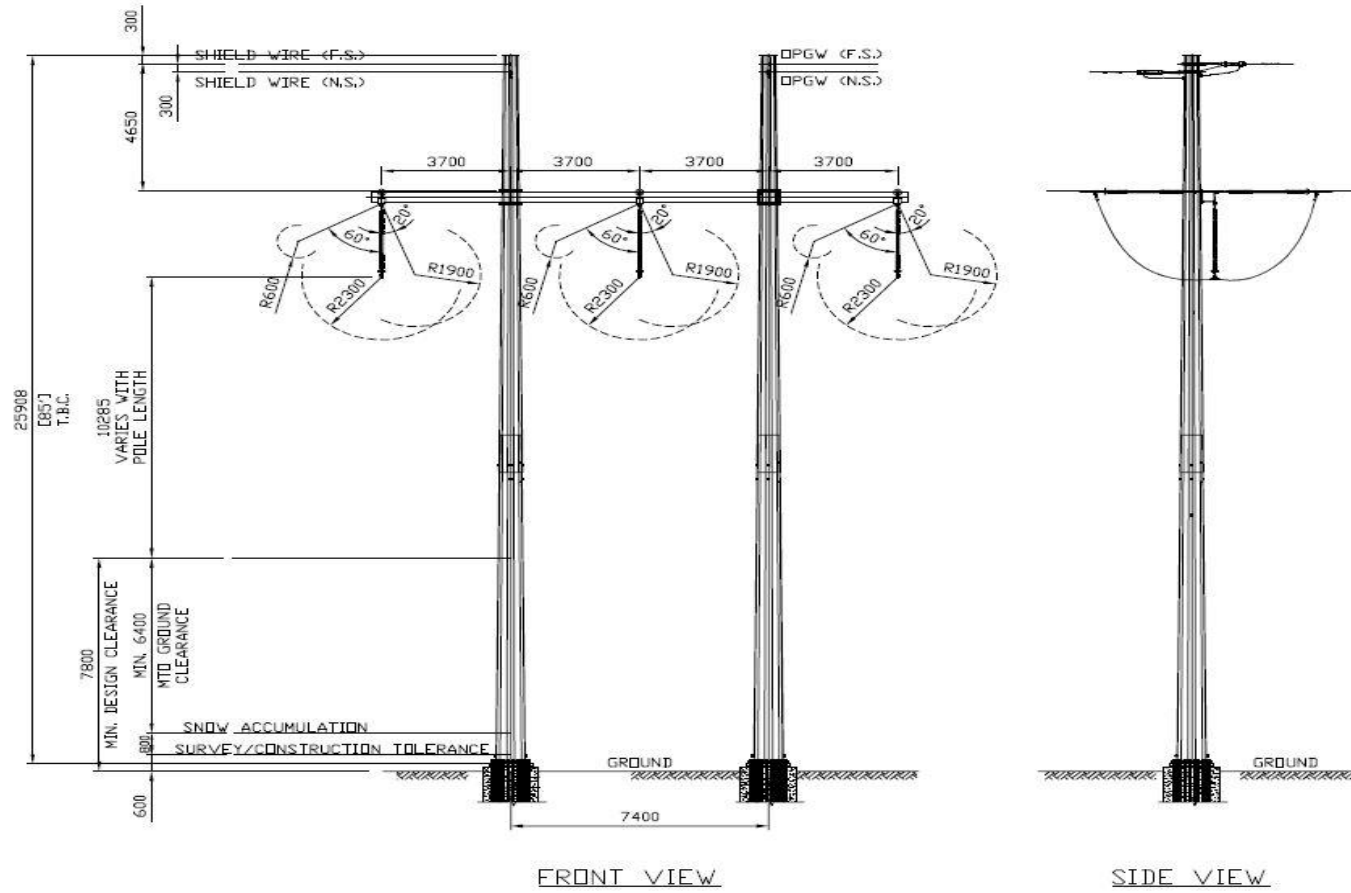
- Identify Risks and Potential Gaps early as possible
- Consulting/Negotiating honestly , fair and early will provide the Project a Scope and Schedule that both sides are comfortable with and ultimately minimize Risk
- Our Group decided to work together to identify Gaps in our “Collaborative Consent” process, due to time being of the essence
- Negotiations ultimately came down to Compensation, Accommodation and more importantly to MFN was *Environmental Protection & Mitigation*
- Strike up a *team* to develop and Draft a Environmental Protection & Permitting Land Law – Set the Bar Higher
- Species at Risk/GBBR/MFN TEK/TLU/Monitoring/Administration / Compliance/Enforcement and an Environmental Commissioner were all considered and have been implemented at this time







# Collaborative Consent Wind Farm T-Line



100CT 230kV TRANSMISSION LINE  
H-FRAMING DOUBLE DEADEND

# Collaborative Consent Achievements

- ✓ **Community Approval of Key T-Line Lease Terms (Ratification)**
- ✓ **Land Code Amendment (Ratification)**
- ✓ **Environmental Protection & Permitting Land Law for the T-Line (Ratification)**
- ✓ **Create the MFN Registry for Land Transactions and Land Laws**



# Collaborative Consent Achievements

- ✓ 25 yr Lease – Compensation/Signing Bonus
- ✓ Economic Benefits and many opportunities to participate (Aggregates/Fuel Supply/Clearing etc)
- ✓ Employment and Training
- ✓ Environmental Protection and Mitigation
- ✓ Long Term Community Planning
- ✓ A good Partnership and a Long term relationship
- ✓ Exercised our Authority having Jurisdiction on our Lands

# Indigenous Environmental Monitors

## HOMELAND SECURITY



Design: www.rpboland.net for www.cale.com

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## FIGHTING TERRORISM SINCE 1492



# Final Thought

“Let us never negotiate out of fear. But let us never fear to negotiate.

*Inaugural Address, January 20 1961*

**John Fitzgerald Kennedy**

**Miigwetch for your time**

**Keep the Circle Strong**

