

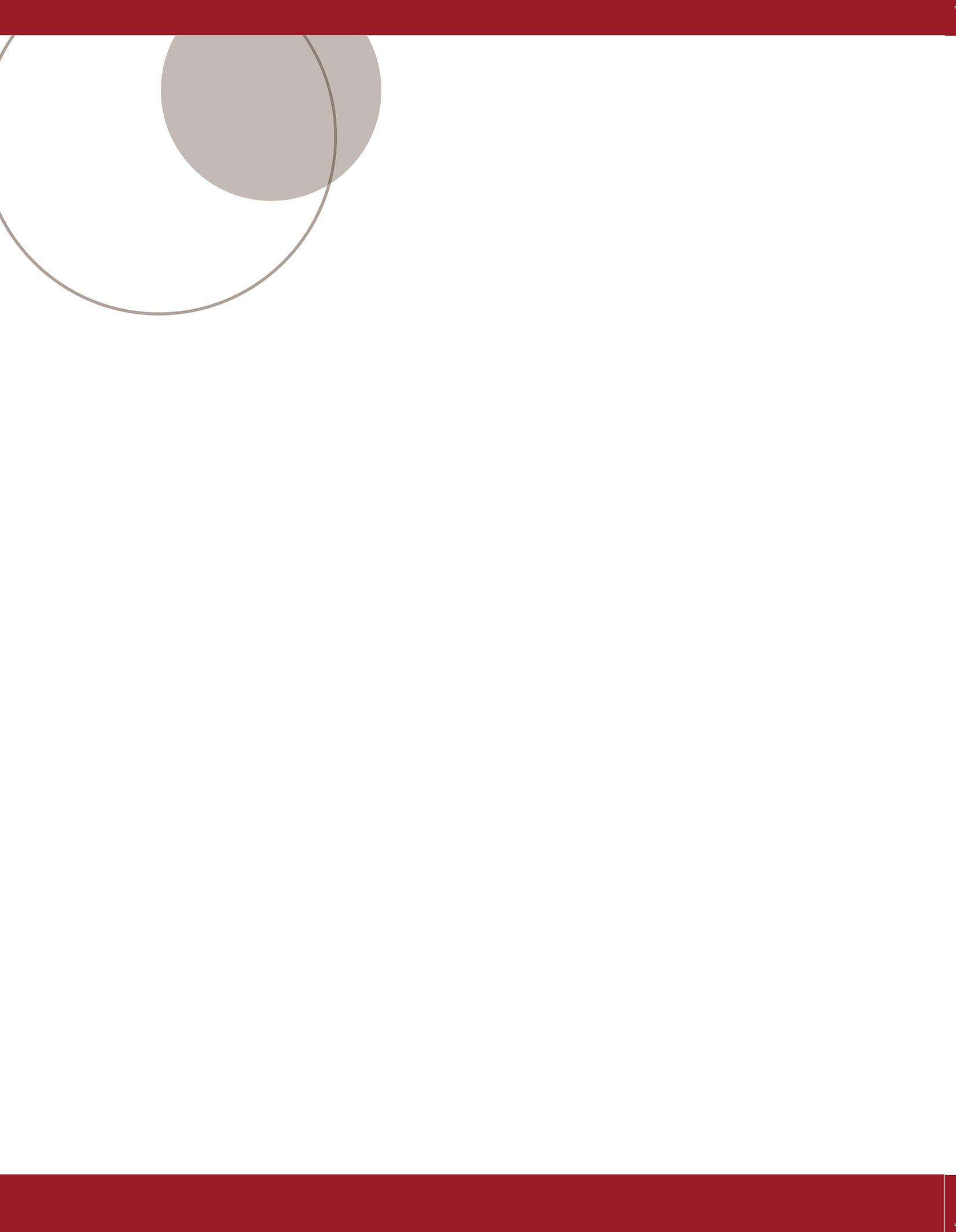


SOUTHWEST

Mines and Northern
Development Regional
Round Table

SPRING 2018





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ACKNOWLEDGEMENTS

This round table summary report was funded by the Ministry of Northern Development and Mines. Photos are courtesy of the Anishinabek Nation. We thank all the Anishinabek community members and staff for participating, sharing their stories, and providing recommendations.





NGO DWE WAANGIZID ANISHINAABE **One Anishinaabe Family**

**Debenjiged gii'saan anishinaaben akiing giibi dgwon
gaadeni mndoo waadiziwin.**

Creator placed the Anishinabe on the earth along with the gift of spirituality.

**Shkode, nibi, aki, noodin, giibi dgosdoonan
wii naagdowendmang maanpii shkagmigaang.**

Here on mother earth, there were gifts given to the Anishinabe to look
after: fire, water, earth and wind.

**Debenjiged gii miinaan gechtwaa wendaagog Anishinaaben
waa naagdoonjin ninda niizhwaaswi kino maadwinan.**

The Creator also gave the Anishinabe seven sacred gifts to guide them. They are:

**Zaagidwin, Debwewin, Mnaadendmowin, Nbwaakaawin,
Dbaadendiziwin, Gwekwaadziwin miinwa Aakedhewin.**

Love, Truth, Respect, Wisdom, Humility, Honesty and Bravery.

Debenjiged kiimiingona dedbinwe wi naagdowendiwin.

Creator gave us sovereignty to govern ourselves.

**Ka mnaadendanaa gaabi zhiwebag miinwaa nango megwaa
ezhwebag, miinwa geyaabi waa ni zhiwebag.**

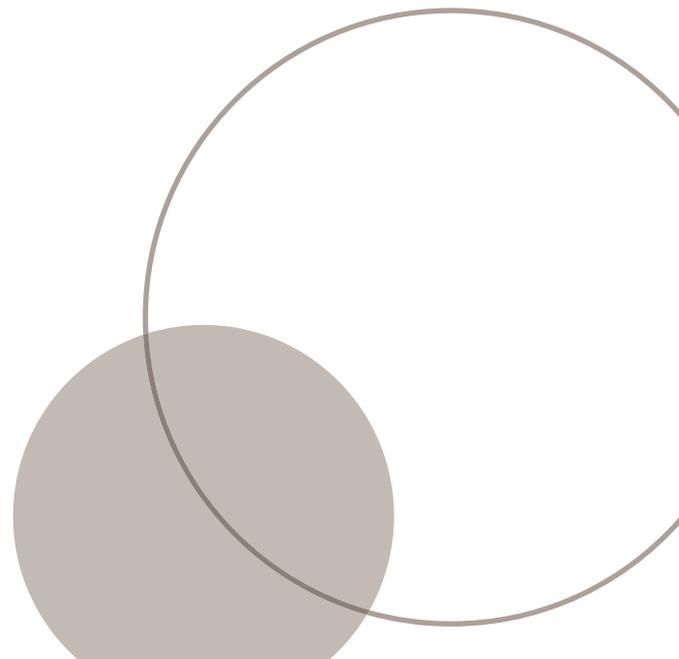
We respect and honour the past, present and future.

Preamble to the Anishinabek Nation Constitution
– as adopted by the Grand Council in June 2011 (UOI, 2012)

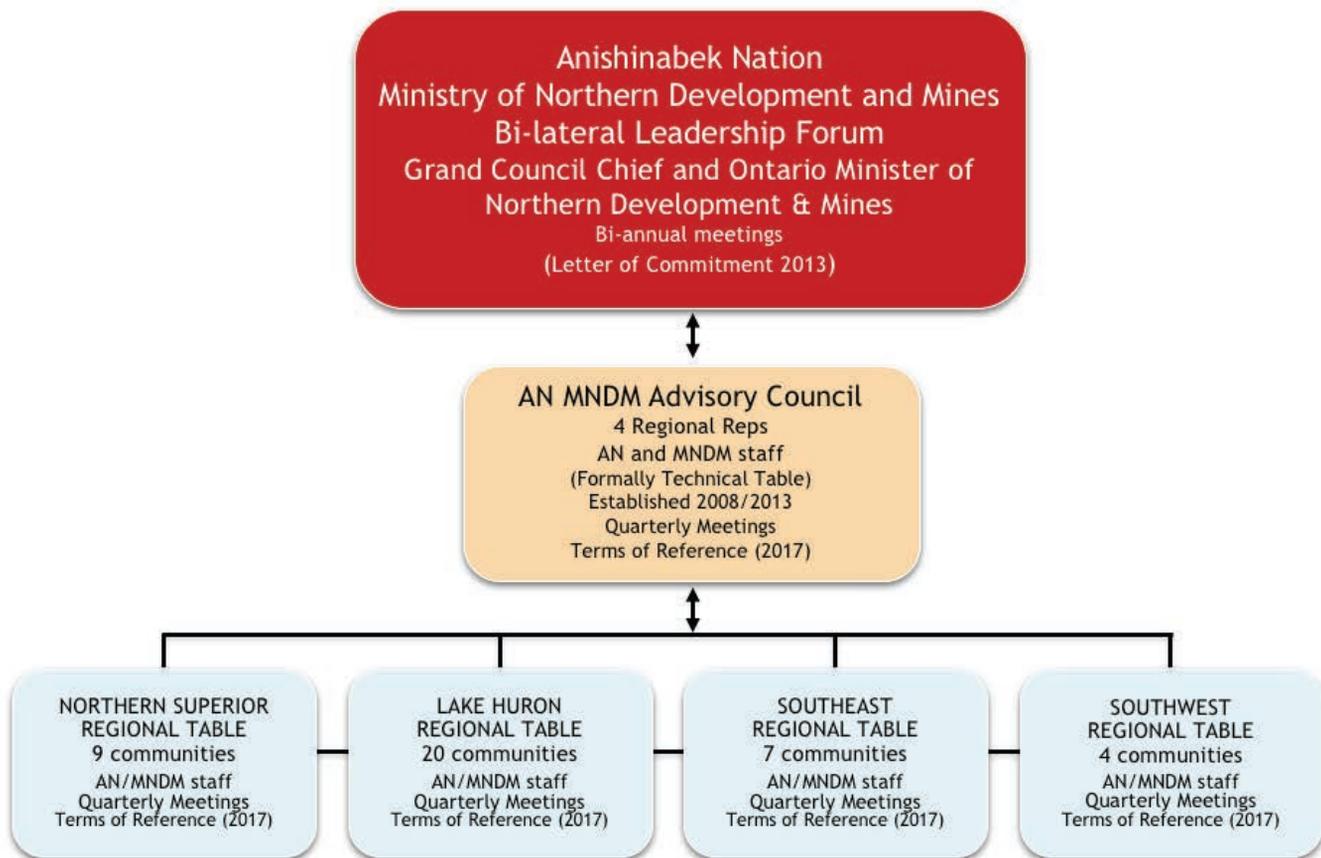


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The work of the Regional Table helps to support other elements of the relationship between the AN and MNDM. Issues identified at a Regional Table that are of a technical nature or those that may impact more than one region can be sent to the AN-MNDM Joint Advisory Council, where a smaller group made up of representatives from all four Anishinabek Regions and the MNDM can focus on exploring options and recommending actions. The Table also provides an important link between localized communities and the AN-MNDM Bi-lateral Leadership Forum. The following figure depicts the relationship between the Regional Table and other bodies that constitute the institutional relationship between the AN and MNDM.



Fourteen First Nation leaders, portfolio holders and technicians from the Southeast and Southwest Region attended the Table. These Anishinabek representatives were joined at the Table by staff from the Lands and Resources Department of the Anishinabek Nation. The Ministry of Northern Development and Mines was represented by a number of staff. The following are those who were in attendance at the Table.

First Nation Participants:

Dana Monague, Beausoleil First Nation
Dave Mowat, Mississaugas of Scugog Island First Nation
Dave Simpson, Alderville First Nation
Errnol Gray, Aamjiwnaang First Nation
Jan Leroux, Algonquins of Pikwakanagan First Nation
John Adams, Aamjiwnaang First Nation
Julie Kapyrka, Curve Lake First Nation
Kaitlin Hill, Curve Lake First Nation
Merv Sarazin, Algonquians of Pikwakanagan First Nation
Elder Myrna Watson, Chippewas of Rama First Nation
Chief Roger Thomas, Munsee-Delaware Nation
Sharilyn Johnston, Aamjiwnaang First Nation
Skye Anderson, Alderville First Nation
Sue Copegog, Beausoleil First Nation

Anishinabek Nation Participants:

Cameron Welch, Policy Analyst, Lands and Resources Department
Tammy Desmoulin, Program Coordinator, Lands and Resources Department

MNDM Participants:

Brian Laine, Mineral Exploration and Development Consultant
Brittany Just, Intern
Clayton Ralph, Senior Advisor, North Bay
David Big Canoe, Intern
Mary Perry, Manager, Indigenous Relations Branch
Raymond McCarthy, Lands Technician

FIRST NATION CAUCUS

This meeting of the Table included a First Nation Caucus. During this Caucus, Anishinabek representatives discussed their relationships with MNDM and mining companies. They also received an update on the mining and minerals related activities of Anishinabek Nation staff as well as activities of the Bi-lateral Leadership Forum and the AN-MNDM Advisory Council. The Caucus provided an important opportunity for AN representatives to openly discuss a number of issues and share experiences with one another without the presence of the representatives of the MNDM.

AN-MNDM ROUND TABLE

This meeting of the Table focused on two primary topics. The first was the process related to applying for withdrawal of Sites of Aboriginal Cultural Significance. The other major item was preparing AN communities for the conversion to on-line staking and claim-management. The meeting included a live demonstration of the new Mining Lands Administration System (MLAS).

SITES OF ABORIGINAL CULTURAL SIGNIFICANCE (SOACS)

Process

Clayton Ralph from MNDM began the conversation about Sites of Aboriginal Cultural Significance (SOACS), with a presentation that was meant to introduce the SOACS policy, discuss alternatives to a SOACS withdrawal and to discuss the process of a First Nation application for a SOACS withdrawal. MNDM's SOACS policy allows for the withdrawal from prospecting, staking, sale or lease of an area up to 25 hectares that is of cultural significance to an Aboriginal group. SOACS are withdrawn in increments of 4,9,16 or 25 hectares and are to be a shape of a 4-sided polygon.

MNDM representatives stressed that the process was community driven. The application must come from the community with the support of the community and its leadership. MNDM pointed to 41 SOACS withdrawals that have been completed across the province. Some of these withdrawals were done by MNDM on behalf of Anishinabek communities. SOACS can only be done if the area in question has not already been claimed by a company or individual. A SOACS withdrawal results in the inability of anyone to claim the area both pre and post conversion to the new Mining Lands Administration System. SOACS that were withdrawn before transition to the new system remain withdrawn. When a First Nation applies for a SOACS withdrawal there is an expectation that the area covered by the SOACS will remain withdrawn from claiming for the foreseeable future. However, although no existing SOACS withdrawal has ever been reversed, it is possible that as a result of a similar community-driven process, an area that was withdrawn as a SOACS could be dissolved and the area would then be open to claim.

The Table also discussed the factors that a First Nation may consider when contemplating a SOACS application. An Anishinabek Nation representative pointed out that communities may have already identified areas of cultural significance to them. It was pointed out that it might make sense to start to identify those areas and apply for SOACS withdrawals of lands that are of higher mineral potential that are more likely to be claimed and potentially developed. To this end, the Table had already identified the need and willingness for the Ontario Geological Survey to provide localized maps of mineral potential to the communities of the AN. The Table also identified the new AN Values Mapping Project as a potential tool to assist communities in applying for SOACS. One AN participant framed SOACS as a tool for protection of important areas and asked who she should work with to find and access information about previous exploration in her traditional territory. She was particularly concerned about mineralization that was identified in the past as not being economically feasible but may be so today or tomorrow. MNDM stated that the Aboriginal liaisons with MNDM will assist community leaders or staff in finding this information.

The following is the contact information for the Aboriginal liaisons with MNDM:

| | | |
|-------------|-------------------------------------|------------------------------------------------------------------------------------------------------------------|
| NORTH BAY | Clayton Ralph Senior Advisor | 447 McKeown Ave. Suite 203, North Bay, ON P1B 9S9 Email: Clayton.Ralph@ontario.ca 705-494-4080 |
| TIMMINS | David Shaw Senior Advisor | 5520 Hwy 101 East, South Porcupine, Timmins, ON P0N 1H0 Email: David.Shaw2@Ontario.ca 705-235-1621 |
| THUNDER BAY | Melanie Mathleson Senior Advisor | 435 James Street South, Suite 332, Thunder Bay, ON P7E 6S7 Email: Melanie.Mathleson@ontario.ca 807-475-1100 |
| | Maggie Parker Senior Advisor | Email: Maggie.parker@ontario.ca 807-475-1580 |

Ontario Regulation 45/11 sets out a definition and limitations for SOACS. The following is taken directly from that regulation:

9.10 (1) Land, with a surface area of 25 hectares or less, may be considered as a site of Aboriginal cultural significance for the purposes of the Act if the following criteria are met:

- 1. The site is strongly associated with an Aboriginal community for social, cultural, sacred or ceremonial reasons or because of its traditional use by that community, according to Aboriginal traditions, observations, customs or beliefs.*
- 2. It is in a fixed location, subject to clear geographic description or delineation on a map.*
- 3. Its identification is supported by the community, as evidenced by appropriate documentation.*

Therefore, the following is needed to have a SOACS withdrawn in your territory:

- A. The area is not already claimed
- B. A completed application
- C. A map depicting a fixed location on a map that is 25 hectares or less (approx. 62 football fields or less)
- D. Evidence of community support such as a Band Council Resolution or other documentary proof

Some AN participants at the Table insisted that it should be the First Nation that defines what is culturally significant. These same participants also argued that a Band Council Resolution should be enough to demonstrate the cultural significance of a particular area. MNDM stated that the types of documentation need not create new information but rather, gather what they have to support their application for a SOACS withdrawal. Types of information that typically serves to satisfy MNDM's information requirements include:

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Testimonials (written or audio/video recorded) as to use and or significance to the community collected from Elders, land users or other community knowledge holders |
| Transcripts of oral history and stories pertaining to the area identified |
| Existing reports or land use studies that document the site |
| Documentation created for other purposes (land claims, mapping projects, archaeological studies etc.) |
| Historic references in secondary sources |

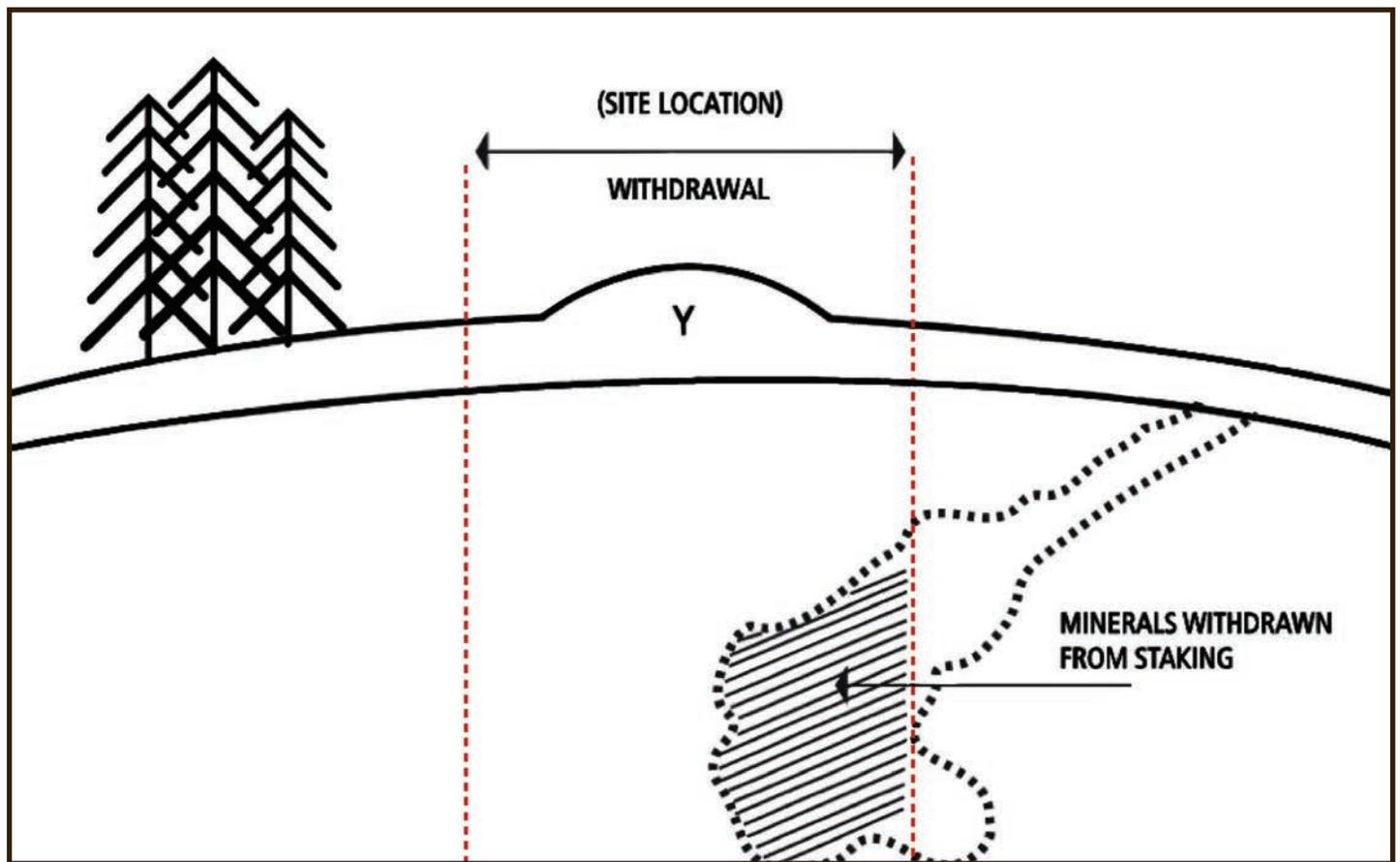


Figure 2 SOACS withdrawal above and below the surface

Once a SOACS is withdrawn, rights to explore for or exploit mineral resources under that SOACS area is prohibited. The SOACS withdrawal extends to the center of the earth. The image above (Figure 2) was shared by MNDM during their SOACS presentation.

Terms and Conditions

As mentioned above, SOACS can only be withdrawn if the area in question is not already claimed by an individual or company. However, sites of cultural significance to Anishinabek communities may still be protected through terms and conditions on an exploration permit issued by MNDM. Certain exploration activities carried out on the ground require the claim holder to apply to the Ontario government through the MNDM for a permit. MNDM can then put terms or conditions on the permit that serve to limit the exploration activities of the claim holder over space and time. An example of a term or condition would be the inability of the claim holder to work within a certain distance of a feature of significance to an Aboriginal community. A buffer that must be respected around a body of water is another example. If an area of significance to an Aboriginal community is identified during consultation about proposed exploration activities, terms and conditions may be used to accommodate Aboriginal interests in a particular area covered by a mining claim.

Surface Rights Restriction

Another tool that is potentially available to the AN to protect areas of cultural significance is a surface rights restriction. If terms and conditions on a permit are not sufficient to protect the area in question then a surface rights restriction may be imposed on the claim. There is no separate application process for a surface rights restriction. However, it is important to note that a surface rights restriction is considered by MNDM to be a last resort. It is not possible to apply directly for a surface rights restriction. If you apply for a SOACS withdrawal of an area that is already under claim, the first option would be to work with the claim holder to determine

ways in which they can meet your needs to protect your value. If agreement cannot be reached with the claim holder or the proponent on voluntary measures taken to protect your culturally significant value, then the next option would be to protect your area of cultural significance through terms and conditions on the exploration permit, if one exists. Where terms and conditions of an exploration permit are not adequate then a surface rights restriction may be imposed on the claim for the SOACS. It is also important to note that the adequacy of terms and conditions imposed by a permit or voluntary measures taken by a claim holder are at the sole discretion of the Minister. This underscores the value of early and meaningful consultation, accommodation and identification of AN values on a particular claim.

Concerns

As the SOACS presentation moved along several concerns with the existing policy were identified by the AN representatives. The first set of concerns related to what types of land areas, features, and uses are currently eligible and those that are ineligible for withdrawal under SOACS. The current policy states that the following land areas and uses are eligible and ineligible to be withdrawn as a SOACS under Section 35 of the *Mining Act*:

| Sites of Aboriginal Cultural Significance | |
|-------------------------------------------|--|
| Eligible Sites | |
| Burial grounds | |
| Places of worship | |
| Traditional teaching sites | |
| Ceremonial lands | |
| Pictographs | |
| Ineligible Sites | |
| Trap lines | |
| Hunting grounds | |
| Waterways | |
| Wildlife migration routes | |
| Travel or trade routes | |

Table 1: Eligibility for SOACS

AN representatives raised several questions as to why some important areas would not be eligible. One AN representative stressed the interconnectedness of Anishinaabe and animals and questioned the ineligibility of wildlife migration routes. MNDM suggested that animal migration routes may change over time and pointed out that due to the shifting nature of migrations, SOACS policy does not allow for such a withdrawal as the static area must be identifiable on a map. It was suggested that wildlife migration routes may be better protected by a form of wildlife protection area. Another AN representative suggested that the starting point should be what the AN community has identified as culturally significant and then MNDM should work with the community and other provincial and federal ministries to identify a suitable form of protection for that site or sites.

Another concern raised by the AN was the ineligibility of waterways. AN representatives stressed the importance of water to Anishinaabe, and the role of Anishinabek communities and *Anishinaabe Kwe* (Anishinabek women) in protecting the water. The importance of protecting water and lakebeds was also

expressed through a desire to withdraw areas that are being used for wild rice harvests in the southern areas of the AN. An MNM representative pointed out that there is an existing SOACS withdrawal in the province for a particular area of wild rice harvest.

MNDM representatives pointed out that some areas are better protected via policies outside of the control of MNM. Anishinabek representatives also expressed frustration with a lack of communication between ministries. The following Table participant used trap lines as an example of a culturally significant land and resource use that is ineligible for withdrawal under the SOACS policy. He shared the following: *“How much dialogue is going on between Ministry of Natural Resources and Forestry (MNR) and MNM? Our territory is quite large. We do have several trap lines. What I am hearing here is all that hunting and trap lines are ineligible. I don’t know how you can move forward without consulting us.”* Other concerns related to a lack of communication and coordination between ministries related to species at risk and archeological assessments. MNM stressed that they do their best to communicate with other ministries but that their powers of enforcement are limited to what is covered by the *Mining Act*.

There were also concerns raised about how the SOACS application fits in with the timing of consultation. AN representatives and MNM stressed that there is a need for early and on-going communication between First Nations and proponents. AN representatives outlined a role for MNM in ensuring early contact with First Nations and ensuring that First Nation consultation protocols are adhered to. An MNM staff member pointed out to the Table that he had seen prospectors walk away from a claim after learning of First Nation’s values on the land. This discussion prompted one AN representative to share the following with the Table: *“They (claim holders) are finding out about (Anishinabek values) only after they explore the land. Why can they not figure this out from the outset? Why are our rights always second to development?...Why can’t MNM say this claim is on this First Nation’s territory and they have these values on that territory...From my perspective we have not surrendered everything forever. Our idea was to share the land.”*

MNDM representatives pointed out that the ministry remains committed to maintaining the confidentiality of the content of a SOACS application. The ministry is subject to the *Freedom of Information and Protection of Privacy Act (FIPPA)*, and may be compelled to disclose information that has been collected in support of a withdrawal or surface rights restriction in some cases. MNM also stressed that the Ministry of Indigenous Relations and Reconciliation (MIRR) has been working to exempt such culturally sensitive Indigenous information from FIPPA and there is an expectation that the FIPPA will change to allow such information to remain confidential. MNM also pointed out that over the last six years MNM has not received any FIPPA requests related to a SOACS withdrawal. In the meantime, AN representatives expressed dissatisfaction with having to provide such sensitive cultural information and the fact that by engaging in a SOACS, a First Nation could potentially lose control of culturally sensitive information on and about their territory and traditional practices. Several AN representatives stated that they were not comfortable with this state of affairs and that they may not wish to fill out a SOACS application if the information contained in the application could not be kept confidential. Several participants explained that they wished to use a SOACS withdrawal to protect their cultural values and that they pointed to the possibility that someone else may use the SOACS process to identify the location of such values for their own purposes. The destruction of pictographs was used as an example of what can happen when the location of such culturally significant sites are discovered.

The discussion on SOACS led many Table participants to conclude that the current SOACS policy was not meeting their needs. In addition to the concerns outlined above, many AN participants shared the basic concern and insight that the size limitation imposed by the current SOACS policy is simply insufficient to protect the areas that are culturally significant to members of the Anishinabek Nation. One participant put this common feeling to the Table as follows: *“As a tool, SOACS does not meet the needs of First Nations. There is more than 25 hectares at risk, especially for ecosystems.”* AN participants also strongly objected to having MNM evaluating or qualifying what is culturally significant to Anishinabek communities. The following shared

There is no way that a First Nation will give you (MNDM), sensitive information that can be found out through FIPPA
(AN Representative)

by an AN participant captures this sentiment well: *“We (AN communities), go through all those things you (MNDM), require and we still don’t fit under those categories. We tell you those things are significant. It still does not fit under your category...But it is a culturally significant area and it is ineligible. Therefore, it is not protecting us.”* Many AN participants questioned the wisdom or possibility of MNDM deciding to approve an application for a SOACS without input from AN community. In the words of an AN participant: *“It (SOACS application), is reviewed by MNDM. Is it reviewed by First Nations too? You (MNDM), are defining what is culturally significant—are there First Nations people sitting with MNDM to help define what is significant?”*

The Way Forward

After a lengthy discussion the Table discussed how they might work to improve the SOACS application process and results and how to make the SOACS policy more relevant to the needs of Anishinabek communities. One potential solution that was shared was to form a joint AN and MNDM panel that would review SOACS applications coming to MNDM from Anishinabek communities. An additional task would be for this panel to work with MIRR to identify what types of protections are available from other ministries and to assist the AN community to apply for such protection for the site or area of cultural significance. This would ensure that if a value did not fit within the limitations of the SOACS withdrawal then the community would be assisted in obtaining the protection of their culture.

SOACS application, with its limitations, does not reconcile with the worldview of our First Nations. It does not fit in with the way that First Nations are caring for our lands. There are times it could work. But generally, there is a level of frustration. It (SOACS), is not as useful tool as we may like. To protect Anishinabek values, the process has led to frustration and alienation from reconciliation. ...Most of our communities welcome mining in their communities but it must be on their terms.. That experience of the SOACS application is demeaning.

(AN Representative)

MINING LANDS ADMINISTRATION SYSTEM DEMONSTRATION

The majority of the afternoon session was devoted to an online demonstration of the new Mining Lands Administration System (MLAS). The demonstration was preceded by a presentation by MNDM. This presentation covered the history of Mining Act modernization that led up to new MLAS system. The presentation also included an explanation of differences between the CLAIMaps system and the new MLAS viewer. The changes that have been made to First Nation notifications were also discussed. MNDM staff stressed the fact that email is now the format MNDM will be using to communicate changes in land tenure to First Nations. This means that electronic notifications of claims made and plans and permits applied for will now come to Anishinabek communities via email. These emails are usually directed to the Chief of a



Figure 2 Table takes in a live demonstration of the new MLAS Viewer

community unless the Anishinabek community has identified another recipient with MNDM. While such digital communication is faster than regular letter, this change presents a challenge to many communities that are struggling with capacity to deal with these communications. Another challenge is ensuring that email communication does not get lost due to the high volume of email received by the communities of the AN.

The presentation was followed by a live demonstration of MLAS Viewer. The facilitator from MNDM walked the Table through how things look in the new system and demonstrated tools that can assist technicians at the community level in dealing with requests for comment, communication and consultation. This demonstration also allowed many of the AN representatives to hone their skills that were learned during the previous training on CLAIMaps. AN participants reminded MNDM of the need for a treaty layer embedded in the new system and the possibility for new claims to appear in a different colour for a defined period of time.

SUMMARY

This meeting of the Southwest Regional Table was a success. The lively and informative discussion and exchange of information and viewpoints was of value to both the AN and MNDM. The Table provided an excellent opportunity to increase the capacity of community-level technicians and AN leaders to use MLAS Viewer. The questions and points of discussion are illustrative of the utility of the Table for improving relationships and understanding between the AN and MNDM.

ACTION POINTS

| ACTION | RESPONSIBLE PARTY(IES) |
|-------------------------------------------------------------------------------------------------|------------------------|
| Follow up with MNDM on active claim in relation to Curve Lake | MNDM |
| Provide local or regional maps of areas of higher mineral potential to AN communities | MNDM/OGS |
| Determine how encumbered cells apply to the Williams Treaty negotiations | AN/MNDM (T. McDonald) |
| Bring SOACS issue to Joint Advisory Council | AN/MNDM |
| Work to implement suggested improvements to the MLAS system (treaty layer and new claim colour) | MNDM/AN |

TOPICS FOR FURTHER DISCUSSION

| |
|--------------------------------------------------------|
| AN participation in Aggregate industry (with MNRF) |
| Responding to plans and permits in the new MLAS system |
| On-going and historic treaty negotiations |



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