March 7, 2022

**VIA EMAIL**

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To Whom It May Concern:

**RE: ERO Number 019-4995 - Conservation Agreement for Boreal Caribou in Ontario**

The following comments are provided on behalf of Bingwi Neyaashi Anishinaabek (“BNA”) in response to ERO Number 019-4995 regarding the potential Conservation Agreement for Boreal Caribou in Ontario (“Caribou Conservation Agreement”), which, from what we can gather, Canada and Ontario have been negotiating on a bilateral basis for some time.

BNA is not opposed to a conservation agreement with respect to boreal caribou, in principle. We would expect, however, that the development of such an agreement would not trespass on constitutionally protected Aboriginal title and rights and be informed by meaningful consultation. Unfortunately, to date, the process related to the development of the Caribou Conservation Agreement has failed to meet these expectations.

BNA would like to see the current Caribou Conservation Agreement process terminated and an entirely new process developed which provides our nation with participatory and decision-making rights sufficient to determine the uses to which our Aboriginal title land is put, along with resources necessary to genuinely participate. Such a process should, of course, be in keeping with the honour of the crown, respect our nation-to-nation relationship, recognize our unextinguished rights, and seek to advance reconciliation.

1. *Aboriginal Title and Rights*

The Anishinaabe of BNA were placed on these lands by Gitchi Manitoo and have used and occupied lands and waters within the watershed of Lake Superior approximately in the middle of the area described in the Robinson Superior Treaty of 1850 (the “Treaty”) including along the southeast shores of Lake Nipigon, from time immemorial. Our rights and title are inherent, were confirmed by the terms of the Royal Proclamation of 1763, and were recognized and affirmed by Section 35 of Canada’s Constitution Act 1982.

The Treaty is the instrument by which the Crown purports to have extinguished Aboriginal title and rights within a large swath of territory along the north shore of Lake Superior, in what is now Ontario. BNA is not a party to the Treaty and, therefore, BNA’s inherent title and rights are not extinguished by the Treaty.

Our community asserts and exercises these rights including, among other things, aboriginal title (which, according to the Supreme Court of Canada, encompasses the right to exclusive use and occupation of land, the right to determine the uses to which the land is put, and the right to enjoy the economic fruits of the land), the right to self-government and self-determination, and the right to harvest moose and other resources as was integral to our distinctive culture at the Crown’s assertion of sovereignty, and from time immemorial.

1. *Duty to Consult and Accommodate*

The duty to consult and accommodate is grounded in the need to protect Aboriginal rights and to preserve the future of resources claimed by Aboriginal peoples. The duty also recognizes that actions affecting Aboriginal title or rights can have irreversible effects that are not in keeping with the honour of the Crown.

The Crown is required to engage in consultation from the earliest stage in a project. The fact that a statute authorizes or obliges a Crown official to make a particular decision or do a particular thing does not preclude the duty to consult from applying. The Crown’s constitutional duty to consult cannot be boxed in by legislation. The Crown must identify asserted Aboriginal rights and address them in good faith. The duty to consult and accommodate obliges the Crown and First Nations to engage in a dialogue about the protection of s.35 rights and the Crown’s other objectives, and it encourages them to reach a mutually agreeable resolution of their issues, which in turn furthers the reconciliation process.

A meaningful dialogue around how the development and implementation of a Caribou Conservation Agreement would honour and protect BNA’s unextinguished Aboriginal title and rights has simply not occurred in this case, nor has the Crown sought to reasonably accommodate BNA’s relevant section 35 rights.

BNA would like to see the current Caribou Conservation Agreement process terminated and an entirely new process developed which provides our nation with participatory and decision-making rights sufficient to determine the uses to which our Aboriginal title land is put, along with resources necessary for us to genuinely participate. Such a process must, of course, be in keeping with the honour of the crown, respect our nation-to-nation relationship, recognize our unextinguished rights, and seek to advance reconciliation. The current proposal, outlined in ERO #019-4995, fails to meet those objectives.

Miigwetch,



Jordan Hatton  
Director of Economic Development

Bingwi Neyaashi Anishinaabek