

# Biigtigong Nishnaabeg Aboriginal Title Overview

April 5, 2022



BIIGTIGONG  
NISHNAABEG

# Goal and Outline:

## Goal:

- Inform the Panel of the nature and scope of Biigtigong Nishnaabeg's asserted Aboriginal title in the area of the Project.

## Outline:

- Statutory and Referential Architecture;
- Overview of the nature and scope of Aboriginal title;
- Brief Overview of BN Assertion of Aboriginal Title: 1982-Today; and
- Conclusion

# Statutory and Referential Architecture (1)

- *Canadian Environmental Assessment Act, 2012*

5 (1) For the purposes of this Act, the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are

...

(c) with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on

...

- (ii) physical and cultural heritage,
- (iii) the current use of lands and resources for traditional purposes, or
- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

## Statutory and Referential Architecture (2): Amended Terms of Reference, Appendix

Section 2.7: The Joint Review Panel is not mandated to make any determinations as to:

- a. the validity of potential or established Aboriginal and Treaty rights asserted by Indigenous groups or the strength of their claimed rights;
- b. the scope of the Crown's duty to consult Indigenous groups; and
- c. whether the Crown has met its duty to consult Indigenous groups and, where appropriate, accommodate their interests in respect of the potential adverse Environmental Effects of the Project on their rights, recognized and affirmed in section 35 of the *Constitution Act, 1982*.

...


# Statutory and Referential Architecture (3): Amended Terms of Reference, Appendix

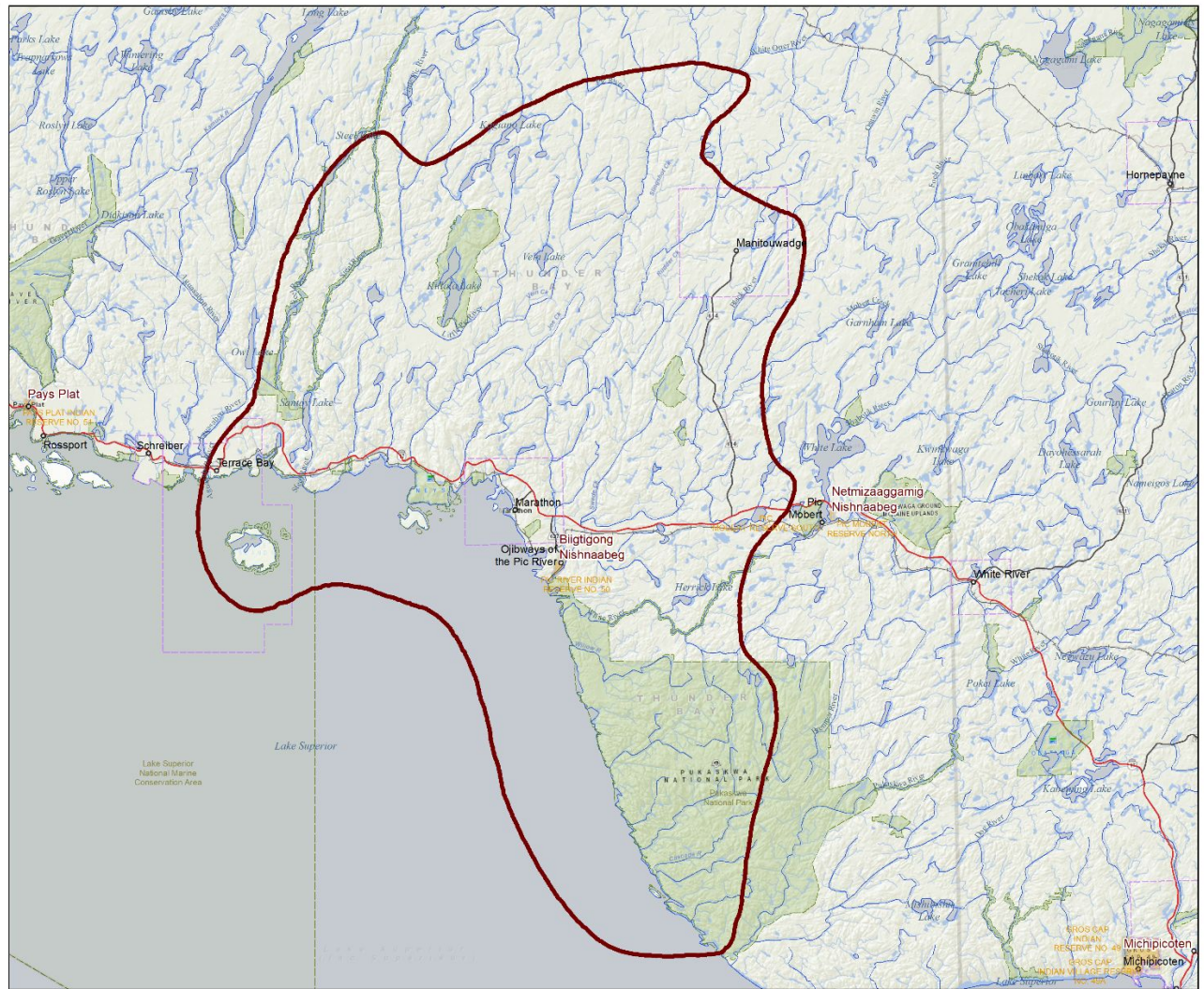
## Section 2.5

2.5. The Joint Review Panel will accept: (a) information presented by Indigenous persons or groups regarding the location, extent and exercise of potential or established Aboriginal or Treaty rights that may be affected by the project; and (b) information presented by participants in the review panel process that relates to any potential adverse Environmental Effects of the Project on potential or 14 established Aboriginal or Treaty rights and related interests

2.8 As the Joint Review Panel is not mandated to make any determinations as to the validity of potential or established Aboriginal and Treaty rights, for the purposes of its report, it shall document the potential or established Aboriginal and Treaty rights and consider the adverse Environmental Effects of the Project on the exercise of Aboriginal and Treaty rights described by the Indigenous groups. [emphasis added]

# Biigtigong Nishnaabeg First Nation Exclusive Title Area

 Biigtigong Exclusive Title Area



*Confidential - not for circulation. Areas mapped are for discussion purposes only. Without prejudice to Aboriginal Rights and Title, including Title case and negotiations with the Crown. Areas mapped are not representative of all priority areas.*



Map Creation Date: January 31, 2022  
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Map layout by David Carruthers  
 Framework: Atlas of Canada 1M  
 Projection: UTM Zone 16N, NAD83



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# Aboriginal Title (1) : The What and The When

What are the rights associated with Aboriginal Title?

- “ Aboriginal title confers ownership rights similar to those associated with fee simple, including: the right to decide how the land will be used ... the right to the economic benefits of the land; and the right to pro-actively use and manage the land.... it is collective title held not only for the present generation but for all succeeding generations.”

When did Aboriginal Title Emerge? Is it still valid?

- “Aboriginal title...arises from possession *before* the assertion of British sovereignty”
- “Aboriginal land rights survived European settlement and remain valid to the present unless extinguished by treaty or otherwise.”
- Section 35 of the *Constitution Act, 1982*: Existing Aboriginal rights are “recognized and affirmed”.

*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44,  
[2014] 2 S.C.R. 256

# Aboriginal Title (2) : The How and The Who

How does Aboriginal Title work in practice?

- “...the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.” *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.
- “The duty to consult is triggered when the Crown has actual or constructive knowledge of a potential Aboriginal claim or Aboriginal or treaty rights that might be adversely affected by Crown conduct.”
- “ The content of the duty, once triggered, falls along a spectrum ranging from limited to deep consultation, depending upon the strength of the Aboriginal claim, and the seriousness of the potential impact on the right.”

Who must consult ?

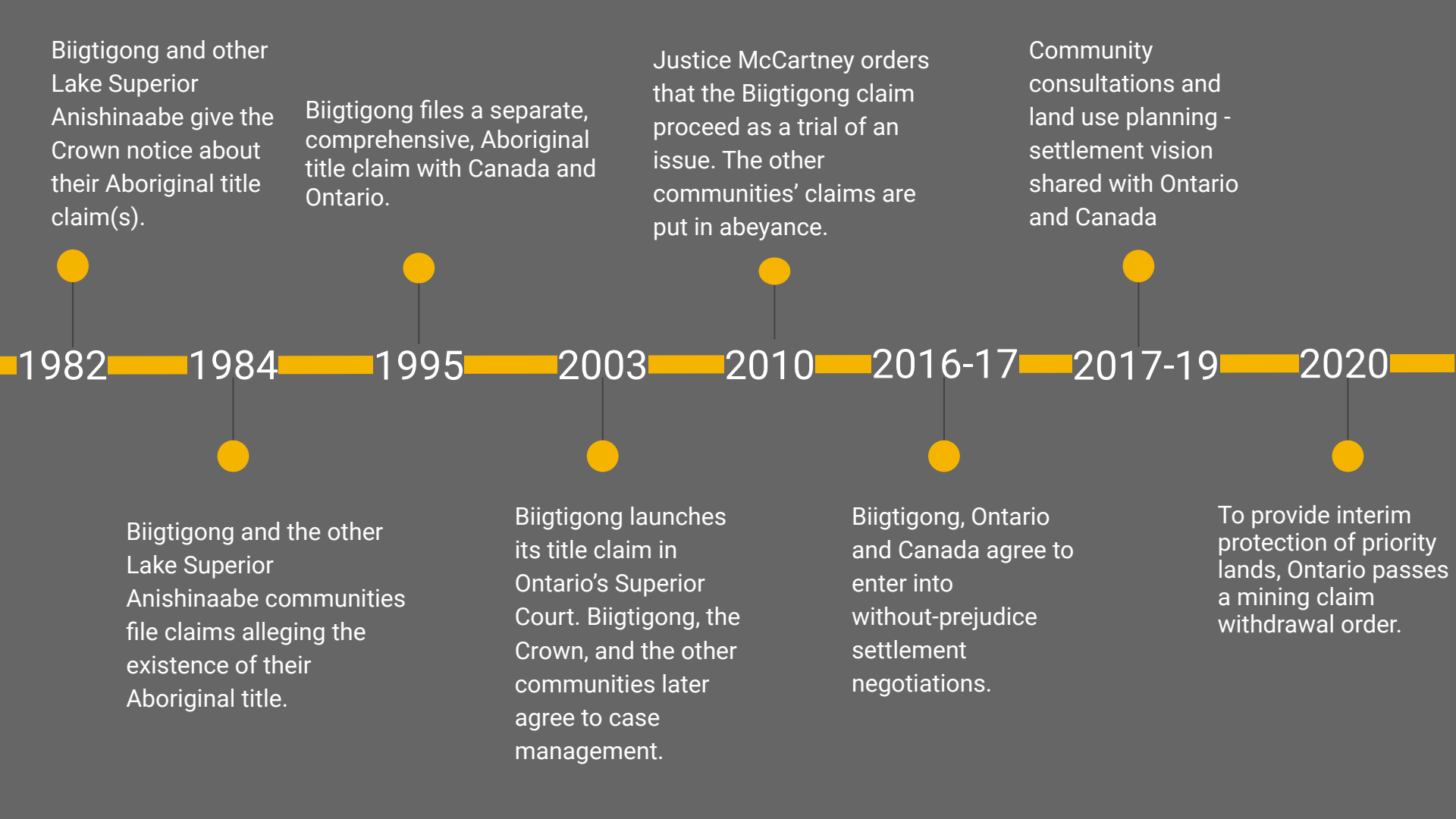
- “The right to control the land conferred by Aboriginal title means that governments and others seeking to use the land must obtain the consent of the Aboriginal title holders.”

*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256

## Aboriginal Title (3) The Big Picture

“Put simply, Canada's Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the *Constitution Act, 1982.* The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.” [emphasis added]

*Haida Nation v. British Columbia (Minister of Forests)*, 2004 CarswellBC 2656, 2004 SCC 73 (S.C.C.) at para. 25



Biigtigong and other Lake Superior Anishinaabe give the Crown notice about their Aboriginal title claim(s).

Biigtigong files a separate, comprehensive, Aboriginal title claim with Canada and Ontario.

Justice McCartney orders that the Biigtigong claim proceed as a trial of an issue. The other communities' claims are put in abeyance.

Community consultations and land use planning - settlement vision shared with Ontario and Canada


Biigtigong and the other Lake Superior Anishinaabe communities file claims alleging the existence of their Aboriginal title.

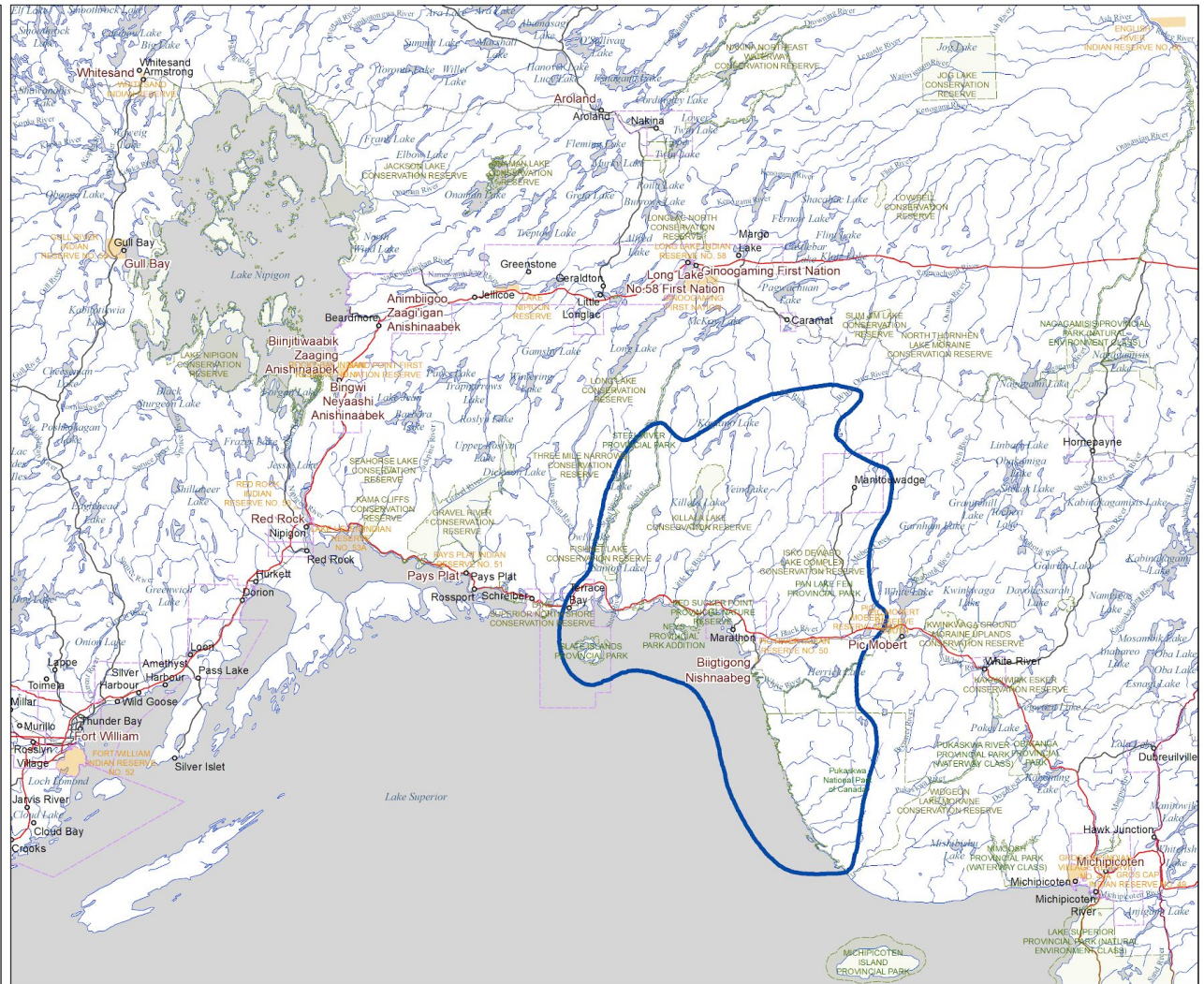
Biigtigong launches its title claim in Ontario's Superior Court. Biigtigong, the Crown, and the other communities later agree to case management.

Biigtigong, Ontario and Canada agree to enter into without-prejudice settlement negotiations.

To provide interim protection of priority lands, Ontario passes a mining claim withdrawal order.

# ENDM's Notice of Caution, the Withdrawal and Bigtongong Nishnaabeg Exclusive Title Area

 Bigtongong Nishnaabeg Aboriginal Title Claim Area



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Map Creation Date: January 22, 2021  
 For more information, contact:  
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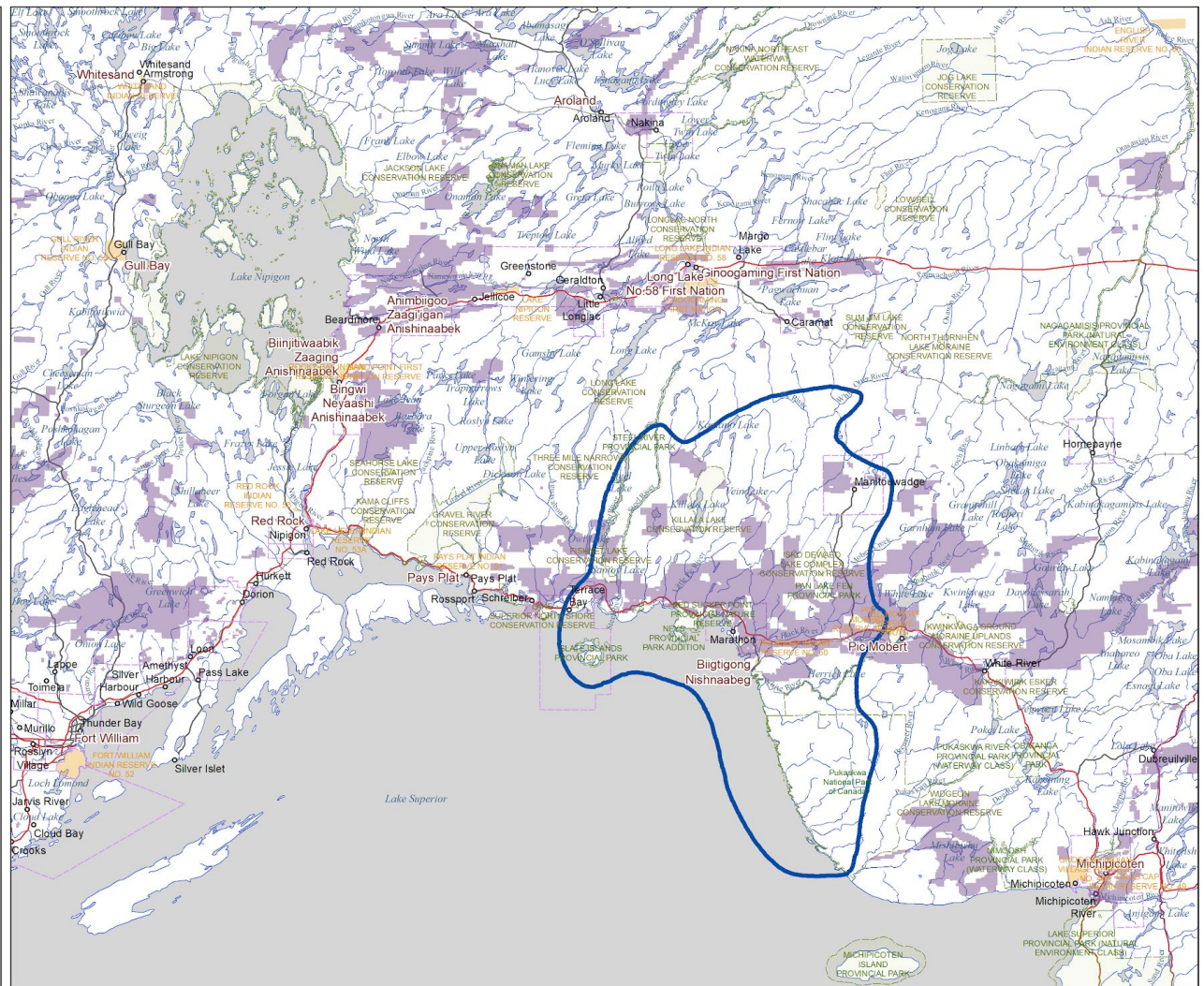


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# ENDM's Notice of Caution, the Withdrawal and Biigtigong Nishnaabeg Exclusive Title Area

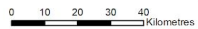
- Active Mining Claims (February 19, 2021)
- Biigtigong Nishnaabeg Aboriginal Title Claim Area



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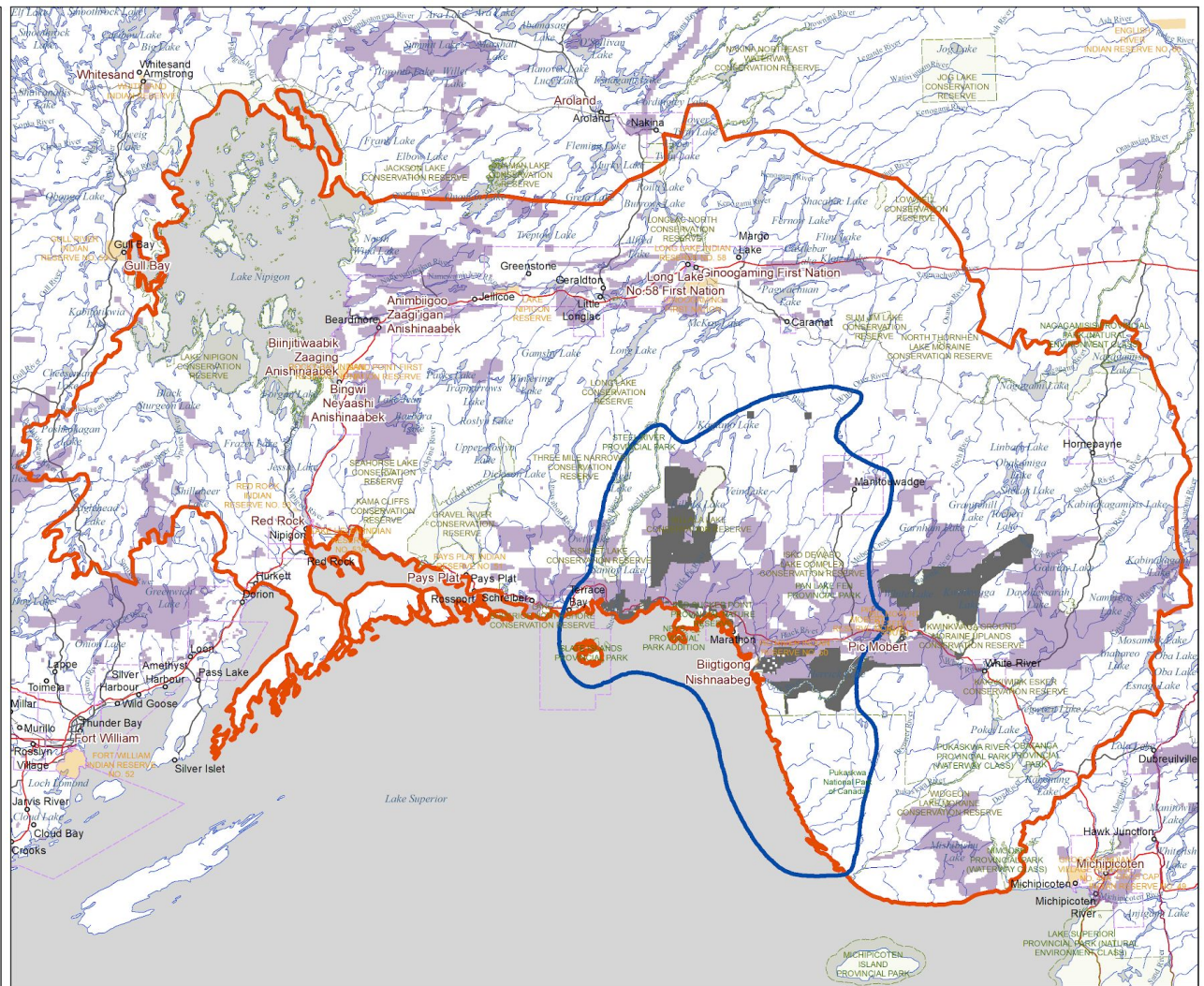
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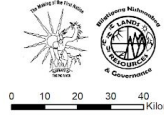


# ENDM's Notice of Caution, the Withdrawal and Biigtigong Nishnaabeg Exclusive Title Area

- Notice of Caution Area
- Withdrawal Order (December 15, 2020)
- Active Mining Claims (February 19, 2021)
- Biigtigong Nishnaabeg Aboriginal Title Claim Area



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## **Notice of Caution**

“Where a First Nation asserts Aboriginal Title, Canadian courts have indicated that the Crown’s duty to consult may fall at the deeper end of the consultation spectrum. ENDM is ensuring proponents are aware that there may be heightened Crown consultation and accommodation obligations for future exploration, development and related activities in this area.”

# Conclusions

- Biigtigong Nishnaabeg has asserted exclusive Aboriginal title rights within the area of the project.
- The nature and scope of Biigtigong Nishnaabeg's asserted Aboriginal rights in the area of the Project are those associated with a community's assertion of exclusive Aboriginal title rights.
- Biigtigong Nishnaabeg asserts that it holds exclusive "ownership rights similar to those associated with fee simple, including: the right to decide how the land will be used ... the right to the economic benefits of the land; and the right to pro-actively use and manage the land."