

Consultation Protocol of the Mikisew Cree First Nation

November 24, 2009

*"In our every deliberation we must consider the impact of
our decisions on the next seven generations..."*
- author unknown



Consultation Protocol of the Mikisew Cree First Nation (“the Protocol”)

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Consultation Protocol of the Mikisew Cree First Nation (“the Protocol”)

1.0 General Interpretive Principles

- 1.1 The Mikisew Cree First Nation (“MCFN”) is a community of indigenous peoples descending from the first peoples who occupied our traditional Territory in what is now northwestern Canada.
- 1.2 MCFN has Treaty and Aboriginal rights protected by the Constitution of Canada, including section 35 of the *Constitution Act, 1982*¹. MCFN is entitled to exercise their section 35 rights throughout the area encompassed by *Treaty 8*. For purposes of the Protocol, MCFN is concerned with ensuring that there is adequate and meaningful consultation within the portion of our Traditional Territory outlined in Appendix “A” of this Protocol².
- 1.3 MCFN is determined to preserve, develop and transmit to future generations our ancestral territories and our distinct ethnic identity in accordance with our own cultural patterns and social institutions.
- 1.4 The Crown³ has had, and continues to have, constitutional, fiduciary and legal obligations to ensure that natural resource development and use within MCFN’s Traditional Territory is conducted in such a way as to ensure that the rights of MCFN are impacted as little as possible by development within MCFN’s Traditional Territory and to ensure that MCFN has a meaningful ability to exercise its rights today and for future generations.
- 1.5 MCFN considers Treaty 8 to be a sacred agreement and views the oral and written promises of the Treaty Commissioners to be sacred promises. MCFN has endured periods where the representatives of the Crown have failed to live up to their Treaty promises and constitutional obligations. MCFN honours the promises under Treaty 8 and expects the Crown to do the same.

¹ For purposes of the Protocol, MCFN is concerned with its Treaty 8 rights to hunt, fish, trap and gather protected by section 35 of the *Constitution Act, 1982*. For greater certainty, any reference to MCFN rights in the Protocol means the right to hunt, fish, trap and gather pursuant to Treaty 8.

² The map attached in Appendix “A” sets out the portion of our Traditional Territory where we wish to be consulted pursuant to the Protocol. Depending on further research, mapping, and capacity, MCFN reserves the right to amend the map attached hereto as Appendix “A”.

³ For purposes of the Protocol, the Crown means the Governments of Canada, Alberta, Saskatchewan and the NWT, as the context requires.

General Interpretive Principles (continued)

- 1.6 Any rights of the Crown in and to the lands set out herein in Appendix “A”, pursuant to the Natural Resources Transfer Agreement, 1930 (“NRTA”) are subject to all previous claims and interests in such lands and resources, including those of MCFN pursuant to MCFN’s rights as protected pursuant to section 35 of the *Constitution Act, 1982*.
- 1.7 For the purposes of the Protocol, MCFN expects to be consulted and their concerns accommodated in respect of the direct, indirect and cumulative impacts⁴ of any Proposals⁵ occurring within their Traditional Territories.
- 1.8 MCFN wishes to ensure that it is an active participant in all land-use decisions and Proposals that have the potential to adversely affect its Traditional Territory and to ensure that any activities carried out therein are conducted in a way which:
 - 1.8.1.1 respects, recognizes, and affirms MCFN’s rights;
 - 1.8.2 promotes the economic, social, health and cultural well-being of MCFN;
 - 1.8.3 does as little harm as possible to MCFN’s rights and interests and to the lands, environment and ecosystem on which it relies;
 - 1.8.4 avoids or mitigates the impacts of any damage to MCFN’s rights and to the land, environment and ecosystem on which it relies; and
 - 1.8.5 accommodates MCFN in respect of any adverse affect or impact on its rights and on its communities.

2.0 Purpose

- 1.1 The purpose of the Protocol is to set out how MCFN expects to be consulted by the Crown in regard to any Proposal taking place within the consultation area set out in Appendix “A” attached hereto⁶.
- 2.2 The Protocol:
 - 2.2.1 Sets out the general principles of consultation to be followed by the Crown and third parties in respect of any Proposals taking place within the consultation area attached hereto in Appendix “A”;
 - 2.2.2 Sets out guidelines and processes for consultation with the MCFN, including, but not limited to, how potential impacts on MCFN’s rights are to be addressed; and
 - 2.2.3 Identifies the roles and responsibilities of government, MCFN and third parties in carrying out consultation with MCFN.

⁴ For purposes of the Protocol, “impact” or “impacts” means any potential direct, indirect or cumulative impact or effect of one or more industrial activities on the rights of MCFN and on the health, culture, society and environment of MCFN and its members, including injurious affection related thereto.

⁵ For the purpose of the Protocol, “Proposal” or “Proposals” (including any referral or referrals related thereto), means any application for a project, policy, initiative, agreement, land disposition, statutory or regulatory approval, renewal, expansion, amendment, license, permit or other authorizations, including the granting of an estate or interest in minerals. For greater certainty, “Proposal” or “Proposals” includes any exploratory and seismic activity, including on what a third party considers to be on “previously disturbed” lands.

⁶ MCFN takes the position that the duty to consult and accommodate rests ultimately with the Crown. However, to the extent that a delegation of certain procedural aspects of consultation is legally permissible, the Protocol also sets out MCFN’s expectations in respect of how third parties should consult with MCFN. MCFN wishes to reiterate that it has gone on record as objecting to Alberta’s Consultation Guidelines.

3.0 MCFN Interests In Consultation

- 3.1 MCFN has the following interests which it expects that the Crown and/or third parties will address in any consultations:
 - 3.1.1 Ensuring that MCFN has today, and in the future, a meaningful ability to exercise its rights throughout its Traditional Territory and that there is meaningful consultation with MCFN in respect of the area set out in Appendix “A” of the Protocol;
 - 3.1.2 Preserving MCFN’s cultural, spiritual, and economic relationship to its traditional lands and the resources on those lands. MCFN’s connection to the land is holistic and is an integral part of its culture and identity;
 - 3.1.3 Protecting the use and enjoyment of its Traditional Territory as well as its Reserve lands for the present and future generations;
 - 3.1.4 Preserving our way of life and usual vocations;
 - 3.1.5 Ensuring that the Crown and third parties comply with their obligations to consult with MCFN in accordance with their obligations under the Protocol;
 - 3.1.6 Ensuring that the Crown and third parties are responsive to MCFN’s requests for information in any consultation carried out for a Proposal;
 - 3.1.7 The monitoring, minimization and management of the cumulative social, cultural, health, economic and environmental effects of local and regional development as well as in respect of any Proposal;
 - 3.1.8 Sharing in the wealth created by any industrial development within its Traditional Territory, both on a project-specific basis as well as in respect of revenue sharing;
 - 3.1.9 Participating in the management, including use and access, of its Traditional Lands;

3.0 MCFN Interests In Consultation (continued)

- 3.1.10 Protecting its culture and way of life;
- 3.1.11 Building and sustaining healthy communities;
- 3.1.12 The use of more effective and timely reclamation and MCFN input, including TEK, in reclamation planning and management;
- 3.1.13 Developing the human and financial capacity of MCFN to participate in the economic and social benefits of development, maximizing the potential benefits of development while minimizing the adverse impacts of development on its rights and on our communities;
- 3.1.14 Developing the human and financial capacity to consult and address and manage impacts of Proposals on MCFN's rights;
- 3.1.15 Protecting historical and culturally significant sites.

4.0 MCFN Consultation Principles

- 4.1 Any consultation by the Crown and third parties, as well as the consideration of any Proposal by a Crown decision maker, will be carried out in accordance with, guided by, and measured against the interests set out in section 3.0 of the Protocol as well as by the following Principles:
 - 4.1.1 The Crown's right to take up lands for development is subject to the duty to consult and accommodate;
 - 4.1.2 Consultation is an ongoing process;
 - 4.1.3 Consultation must be conducted with the genuine intention of seriously considering and substantially addressing the concerns of MCFN, and wherever possible, demonstrably integrating the concerns of MCFN within any Proposal;
 - 4.1.4 Consultation must take place early in any Proposal, before important decisions are made, including at the strategic planning stage of any Proposal and includes the tenure-granting/land sale stage;
 - 4.1.5 The duty to consult is not met by addressing only the site-specific impacts of any Proposal, but must also seriously consider and substantially address the potential indirect, derivative, induced and cumulative impacts of other existing, planned, or reasonably foreseeable industrial development(s) on the Proposal, including injurious affection related thereto;
 - 4.1.6 MCFN needs adequate resources to assess the potential impacts of any Proposal on its rights and interests, including the identification of any mitigation and accommodation opportunities in relation to any Proposal. In order to be able to consult in a meaningful fashion, the Crown and third parties will negotiate adequate funding with MCFN that enables MCFN to carry out its consultation obligations in relation to any Proposal;
 - 4.1.7 In carrying out consultation in relation to any Proposal, MCFN, the Crown and, if appropriate, third parties, have reciprocal obligations of reasonableness, good faith, and cooperation;
 - 4.1.8 Any consultation process and its outcome must be responsive to the interests and concerns of MCFN;

4.0 MCFN Consultation Principles (continued)

- 4.1.9 The nature of consultation, compensation and accommodation will vary depending upon the degree of potential adverse impacts on and infringements of the rights of MCFN;
- 4.1.10 Unless MCFN delegates consultation to another entity or organization, any Crown and third party consultation must be specific to the rights, claims and traditional land uses of MCFN which may be adversely affected or infringed by a Proposal;
- 4.1.11 Communication must be open, honest and clear;
- 4.1.12 The Crown and third parties have a positive obligation to provide full information to MCFN on an ongoing basis, including new information as it becomes available, so that the MCFN can understand the potential direct, indirect and cumulative impacts of any Proposal on MCFN's rights before a decision is made;
- 4.1.13 Based on the resources available, MCFN will outline its concerns with clarity, focusing on the potential direct, indirect and cumulative impacts of any Proposal on its rights;
- 4.1.14 In any public regulatory process, the Crown and third parties must consult with MCFN about the design of any regulatory review process for any Proposal, including the role of MCFN in any such process; the screening and scoping of a Proposal for environmental assessment under federal and/or provincial law; the drafting of Terms of Reference ("TOR") for an Environmental Impact Assessment ("EIA") or its equivalent under federal or provincial law; and the development of cumulative effects assessment and socio-economic impact assessment. More generally, the Crown must consult with MCFN about the design of any consultation process, including the Alberta *Consultation Guidelines* and revisions thereto, as well as the design of any consultation processes for any Crown initiatives such as LARP;
- 4.1.15 Consultation is a separate and distinct process from any public consultations conducted by the Crown or by Crown agencies through legislation, regulations or policy and the carrying out of any public hearings for Proposals under federal or provincial law is not a substitute for discharge of the Crown's duty to consult as set out in the Protocol. Consultation in respect of the matters in 4.1.14 will not fulfill all of the Crown and third parties' consultation duties owed to MCFN⁷;

4.0 MCFN Consultation Principles (continued)

- 4.2 In addition to the foregoing, if a Proposal has the potential to infringe MCFN's Treaty or Aboriginal rights, justification and accommodation of such a potential infringement of MCFN rights requires the following:
- 4.2.1.1 *Priority* to be given to MCFN rights versus those of non-aboriginal stakeholders;
 - 4.2.1.2 *Minimal impact* on MCFN rights;
 - 4.2.1.3 *Mitigation measures* to avoid impacts and to ensure that any impact that does occur is "as little as possible" and to ensure that MCFN concerns are "demonstrably integrated" into any plan of action;
 - 4.2.1.4 *Fair compensation* for unavoidable infringements, and;
 - 4.2.1.5 *Other efforts* to ensure sensitivity and respect of MCFN rights;
- 4.2.2 Although MCFN consultation requirements in the Protocol are pre-requisites for the validity of government action, they do not end at the decision-making stage. They are ongoing and continue through the life of any Proposal, including the construction, operation and de-commissioning stages.

⁷ For greater certainty, any consultation pursuant to 4.1.14 and 4.1.15 may fulfill the procedural aspects of consultation in respect of a Proposal but will not fulfill the substantive aspects of consultation in respect of a Proposal.

5.0 Consultation Process and Obligations

- 5.1 Consultation with the MCFN on any Proposals will occur in the following manner:
 - 5.1.1 The Crown and third parties, as the context requires, will provide timely and early notification via a Notice (described in 5.1.5) of any Proposal which may have the potential to have an adverse social, or cultural impact on MCFN, MCFN's rights, the health of MCFN Members or the environment ("the potentially impacted rights"), before such a decision is made, and well in advance of any application being submitted to the appropriate regulator or decision maker⁸;
 - 5.1.2 As part of any notification, the Crown and any third party shall appoint, in writing, an individual who is responsible for carrying out the consultation process;
 - 5.1.3 MCFN Government and Industry Relations ("GIR") is responsible for carrying out the consultation process on behalf of MCFN. Any attempt by the Crown or third parties to attempt to consult with any other MCFN person will not constitute consultation under the Protocol or under the common law, unless a different person or entity is set out in writing by MCFN;
 - 5.1.4 MCFN shall be provided with a minimum of two copies of all information relevant to a Proposal, one electronic copy and one hard copy, including, without limitation, copies of applications and studies in the possession of the Crown or a third party. Such information, including, without limitation, notice of the Terms of Reference for any environmental assessment, shall be provided directly to the MCFN GIR and not through publication in newspapers or some other public process.

5.0 Consultation Process and Obligations (continued) ---

- 5.1.5 The Notice⁹ shall include, but is not limited to, the following information:
- (a) the nature and scope of the Proposal;
 - (b) the nature and scope of any future contemplated conduct, such as regulatory documentation related to the Proposal, or applications for future growth phases related to the Proposal;
 - (c) the reasons for or purpose of the Proposal;
 - (d) the timing of the contemplated conduct, including all applicable regulatory timelines;
 - (e) the location of the contemplated conduct;
 - (f) the duration of the contemplated conduct;
 - (g) the potential risks associated with the contemplated conduct;
 - (i) the proposed measures to be undertaken and methods to ensure inclusion of Traditional Use and Traditional Ecological Knowledge of MCFN;
 - (j) a plan for how MCFN will be consulted and included in the development of studies related to the Proposal, including in the pre-application phase and in all aspects of the regulatory review of the Proposal;
 - (k) the identification of alternatives to the contemplated conduct;
 - (l) identification of who will be involved in carrying out the contemplated conduct, including any agents or contractors working for the Crown or third parties;
 - (m) documents available to be reviewed, in hard copy and electronic form including, but not limited to:
 - i. applications;
 - ii. studies;
 - iii. reports, such as in respect of seismic or exploration phases of the Proposal;
 - iv. any previous assessments, studies or reports in respect of any phase of the Proposal, including the exploratory stage, or in the vicinity of the Proposal that are known to or in the possession of the Proponent; and
 - v. information on applicable legislation, policies, guidelines and regulations related to the Proposal or which will guide decision making under the Proposal by the Proponent(s);
 - (n) information on any deadlines or filing dates related to the Proposal, and;
 - (o) the names, addresses, emails, fax and telephone numbers for any relevant Crown decision makers related to the Proposal as well as identification of contacts for industry Proponents;

5.0 Consultation Process and Obligations (continued) ---

- 5.1.6 The Notice must be given in a form and manner which allows the MCFN GIR to understand the information in the Notice. MCFN GIR will communicate with the Proponent as to the methods and approaches which will best accomplish this objective;
- 5.1.7 Notice may be given in the following ways:
- (a) by facsimile, with an “okay” transmission to MCFN GIR; or
 - (b) by hand delivery of the Notice to MCFN GIR, together with evidence that the Notice was, in fact, received by MCFN GIR.
- 5.1.8 If there is any change to information required to be delivered to MCFN GIR in respect of the Notice, or if new or additional information becomes available during the pre-application or regulatory review of the Proposal, this further information shall be delivered to MCFN GIR in accordance with the provisions of the Protocol;
- 5.1.9 The GIR will conduct a preliminary review of the Notice/Proposal in 5.1.1 and 5.1.3 and, within 30 business days of receipt thereof, will provide a letter to the Crown and/or third party indicating whether MCFN wishes to be consulted in respect of the Proposal and setting out a preliminary list of its concerns in respect of the Proposal;
- 5.1.10 If the GIR and MCFN determine that the Proposal does not have the potential to adversely affect or infringe the potentially impacted rights, if no letter is received pursuant to 5.1.9, or if MCFN indicates that it does not wish to be consulted on the referral, the Crown may proceed to make a decision on the Proposal¹⁰;
- 5.1.11 If MCFN wishes to be consulted, the GIR will contact the appropriate Crown and third party contacts identified pursuant to the Protocol to arrange one or more preliminary meetings to discuss, among other things:
- 5.1.11.1.1 the nature of the Proposal and the regulatory review process or other approval process contemplated for the Proposal, GIR’s initial questions or concerns about the regulatory review process, if any, as well as time lines for GIR’s review of the Proposal;

5.0 Consultation Process and Obligations (continued) ---

- 5.1.11.1.2 the consultation obligations of the Crown and third party in relation to the Proposal, how and when they will be carried out, including appropriate time lines for the GIR to consult in relation to the Proposal;
 - 5.1.11.1.3 appropriate information requirements, including identification of information gaps, for the Crown and third parties to facilitate MCFN's ability to determine and assess the potential impacts of the Proposal on MCFN's rights; and
 - 5.1.11.1.4 an appropriate budget and work plan for MCFN's review of the Proposal and for MCFN to engage fully and meaningfully in the regulatory review process for the Proposal;
- 5.1.12 MCFN's ability to participate fully and meaningfully in consultation is dependent on receiving adequate funding to do so. Provided that adequate technical/financial assistance is made available to the GIR, the GIR will conduct a technical review of the Proposal and will hold internal discussions with MCFN's Chief and Council and Community to determine and document MCFN's concerns in relation to the direct, indirect and cumulative impacts of the Proposal on the potentially impacted rights, including injurious affection in relation thereto.
- 5.1.13 If either the Crown or a third party requires further information from MCFN in respect of its concerns about a Proposal, they shall communicate such a request to the GIR in writing, early in any consultations, and prior to the approval of any Proposal.
- 5.1.14 Following conclusion of the process in 5.1.11, the GIR will communicate any concerns arising thereunder to the Crown and third party, as well as recommendations on how such concerns can be addressed, accommodated, or mitigated, including in relation to any compensation related thereto that may be required.
- 5.1.15 The Crown and third party will engage in consultation with the GIR in accordance with the processes and principles outlined in the Protocol to resolve the concerns set out above.

5.0 Consultation Process and Obligations (continued) ---

- 5.1.16 If consultation is delegated to a third party, the third party will provide monthly reports/consultation summaries to the GIR prior to submitting those reports to the Crown, so that the GIR can verify the accuracy of the information contained therein. If the Crown produces consultation reports or summaries, the GIR will be provided with copies of such information on a monthly basis in order to verify the accuracy of the information contained therein;
- 5.1.17 Prior to making a decision on any Proposal, if requested by the GIR, the Crown will meet with the GIR to discuss, among other things, the basis upon which the decision will be made, how MCFN's concerns in 5.1.14 were addressed, including concerns in relation to information gaps and, if those concerns have not been addressed, the reason(s) why those concerns have not been addressed;
- 5.1.18 In the event that the concerns in 5.1.14, or some of those concerns, cannot be resolved, the GIR will discuss with the Crown and third parties alternative methods of resolving the dispute, including various forms of Alternative Dispute Resolution ("ADR"). However, if MCFN's concerns cannot be resolved in any process set out under the Protocol or through ADR, MCFN retains its full right to participate in any regulatory proceedings related to the referral and to raise its concerns in relation to the potentially impacted rights in any court or other proceeding;
- 5.1.19 Once a decision is made on a Proposal, if requested by the GIR, the GIR will receive a written copy of the decision including information on how MCFN's concerns were addressed. If those concerns were not addressed, the GIR will receive a written explanation for why those concerns were not addressed.

5.0 Consultation Process and Obligations (continued) ---

- 5.2 All TUS and TEK information that MCFN provides to the Crown or third parties in relation to a Proposal will be kept in strict confidence and that any such information will not be released to any third party without the written consent of MCFN, unless disclosure of such information is required by law or unless that information is already in the public domain. MCFN will treat Crown and third party information in the same manner;
- 5.3 MCFN will negotiate with the Crown or any third party the terms and conditions upon which any information in 5.2 can be used in any regulatory review process or court proceeding.

⁸ For greater certainty, MCFN expects to be consulted in respect of any Proposal-related studies (including the role of MCFN, design of study, carrying out of studies, inclusion of MCFN members) when those studies are being designed and carried out, irrespective of whether a formal project application has been made. MCFN also expects to be involved in consultation with proponents of a Proposal as early as possible – the earlier that MCFN is consulted, the greater chance there is of accommodating MCFN concerns, if any, in relation to a Proposal.

⁹ For greater certainty, notice under the Protocol is not the “public notice” that may be required in a regulatory process. As noted in the Protocol, MCFN expects early notice, prior to applications being filed.

¹⁰ For greater certainty, the calculation of time under this section of the Protocol will not include the period between December 21st and January 10th.

¹¹ Depending on the nature of the Proposal and the potential adverse impacts of the Proposal on MCFN’s rights, the budget and work plan will include items such as the carrying out of a traditional use study and collection to traditional ecological knowledge, if such information has not already been gathered within the vicinity of the Proposal, or an updating of information relevant to the vicinity of the Proposal; funding for legal and technical advice related to the Proposal, funding for a third party review of the Proposal (including, but not limited to, a federal or provincial environmental assessment process), funding for community meetings and information sessions related to the Proposal and other related matters. The work plan will also set out time lines and a process for MCFN community engagement in respect of the Proposal. The work plan may also include time lines for GIR’s review of, and input into, various stages of the environmental or regulatory review process such as commenting on TOR for an EA, scoping of the EA, identification of impacts to be studied in the EA, and related matters.

Any funding under the Protocol is in addition to any yearly funding provided to MCFN by the Crown or third parties and will be used for consultation in relation to the Proposal. For greater certainty, any yearly capacity funding from the federal or provincial government will not be adequate to enable MCFN to carry out consultation in relation to such Crown Proposals as the LARP, IFN, and related processes.

6.0 Consultation in Respect of Other Proposals ---

In addition to the processes and steps set out in section 5.0 of the Protocol, the following additional consultation is required in respect of any large-scale Proposals such as those related to oil sands development, uranium, hydro-electric, nuclear power, any Proposal which triggers a federal or provincial environmental assessment, as well as in respect of any Crown-led initiative such as LARP and IFN.

- 6.1 If requested by the GIR, the Crown and any industry proponent of a Proposal will engage in face-to-face consultation concerning the development of TOR for a Proposal. Among other things, such consultation will focus on the information required to be developed by the Proponent (including information required to assess potential direct, indirect and cumulative impacts on the potentially impacted rights, the screening and scoping of the Proposal for regulatory review purposes, the identification of cumulative impacts and effects to be assessed, how MCFN will be consulted in the regulatory review process and how TUS/TEK will be considered and incorporated in the environmental assessment (“EA”) or EIA for the Proposal.
- 6.2 If requested by GIR, the Crown will consult with MCFN prior to any determination that an application for a Proposal under this part of the Protocol is complete for regulatory approval.
- 6.3 In order to ensure that all parties, including the GIR, the Crown (including any applicable regulatory agency) and third parties have full, credible and meaningful information to assess impacts on the potentially impacted rights and ultimately to decide on whether or not to approve a Proposal, the Crown and third parties will consult with the GIR in respect of the following matters prior to the approval of any further Proposals within MCFN’s consultation area falling within this part of the Protocol:
 - a. The development and implementation of local and regional targets for wildlife populations, vegetation, water, air quality, fish and other resources on which MCFN relies to carry out their rights;
 - b. Development and implementation of quality baseline data, benchmarks and meaningful effects modeling, to ensure that the full social, cultural, environmental and economic impacts of Proposals are assessed against the rights of MCFN;
 - c. Credible and detailed reclamation measures;

6.0 Consultation in Respect of Other Proposals (continued) —


- e. Development of traditional resource plans or studies which examine the current and future resource, environmental and ecosystem needs of MCFN to meaningfully carry out their rights now and in the future including, but not limited to:
 - i. Quality and quantity of wildlife species required;
 - ii. Quality and quantity of aquatic species required;
 - iii. Quantity and quality of plants or other things gathered; and
 - iv. Quantity and quality, as the context requires, of air, water and ecosystems required to support the exercise of MCFN's rights;
 - f. Meaningful incorporation of MCFN TUS/TEK information in relation to the assessment of impacts through consultation and in respect of the regulatory review of any Proposal;
 - g. A mechanism to ensure that information gaps in any Proposal or in any regulatory review process are identified and addressed prior to the issuance of any federal and/or provincial approval of a Proposal;
 - h. Development and carrying out of a study of cumulative impacts and effects, including proper baseline data requirements (i.e., a pre-disturbance baseline) which will provide MCFN, the Crown, third parties, and regulatory decision makers with meaningful information;
 - i. To ensure that they fully understand the potential impacts of existing and planned Proposals on the potentially impacted rights, including changes in the patterns of resource use and the exercise of rights by MCFN and the reasons for such changes; and
 - ii. To ensure that the full social, cultural, environmental, health and economic impacts of Proposals are assessed against the potentially impacted rights;
- 6.4 GIR will work with the Crown and third parties to develop a work plan, timelines and budgets to carry out any work flowing from the consultation in this part of the Protocol. GIR recognizes that more than one third party may be involved in collecting this information.
- 6.5 While the outcome of any consultation in respect of the items set out this part of the Protocol cannot be presumed, it must be recognized that legislative and regulatory change may be necessary to implement any outcomes flowing from such consultation.

7.0 Accommodation of MCFN Concerns

- 7.1 Depending on the results of the consultation carried out pursuant to the Protocol, GIR will identify forms of accommodation that are acceptable to MCFN to address MCFN's concerns.
- 7.2 Such forms of accommodation may include, but are not limited to:
 - a. the decision maker rejecting a Proposal, delaying a decision on a Proposal, revocation of the Proposal by a third party or other proponent, or changing the Proposal based on the concerns and/or views expressed by MCFN through consultation;
 - b. addressing the procedural concerns of MCFN, such as by developing specific information requirements to assess the potential impacts of the Proposal on the potentially impacted rights within the regulatory review process or other public processes;
 - c. early engagement of MCFN in planning related to a Proposal, including development of the regulatory review process for a Proposal or other public processes and MCFN roles and participation in such processes;
 - d. negotiation of an Impact-Benefit Agreement, including funding to enable MCFN members and businesses to take advantage of any employment and/or economic opportunities related to the Proposal;
 - e. inclusion of MCFN in revenue sharing or some other means by which MCFN shares in the wealth of the Crown, outside of provisions in an Impacts-Benefit Agreement;
 - f. mitigating the impacts of a Proposal, including a meaningful MCFN role in monitoring of impacts of a Proposal;
 - g. compensation for adverse impacts on or infringements of MCFN rights, including financial or non-financial compensation (such as protected areas for exercise of MCFN rights); and
 - f. Negotiation of other kinds of agreements, such as exploration agreement related to the Proposal.

This Consultation Protocol is hereby approved and confirmed by MCFN,
dated the 24th day of November, 2009


Mikisew Cree First Nation



Chief

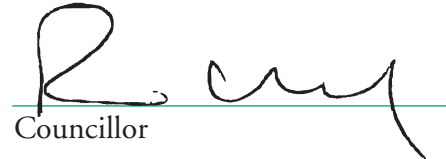

Councillor


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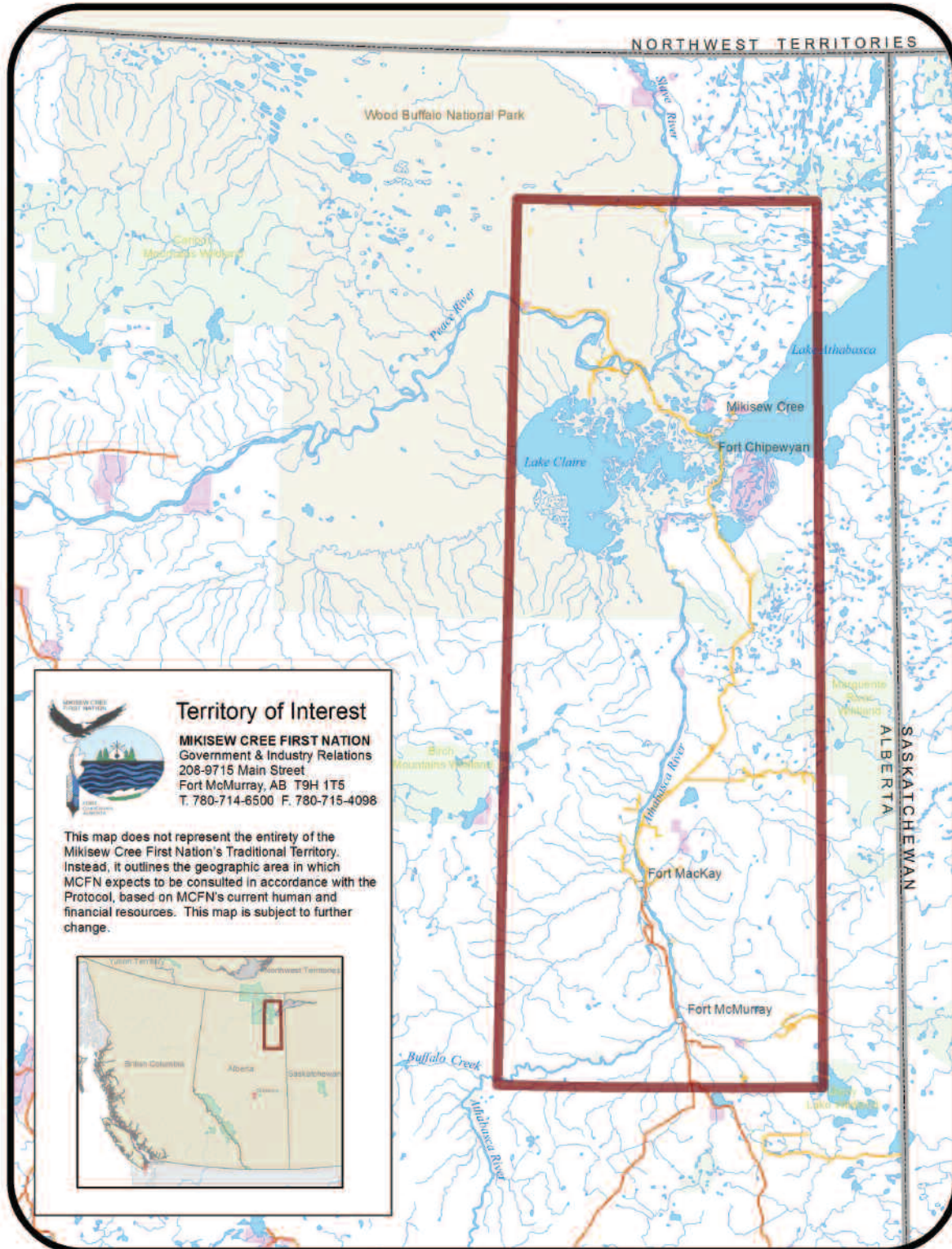

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Appendix "A"

Map of MCFN Consultation Area





Consultation Protocol of the Mikisew Cree First Nation

November 24, 2009