

Lip Service or Substance?

Did Manitoba's East Side Planning Initiative Promote Consensus Building & Public Participation

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Executive Summary

The boreal forest region located in Manitoba between the eastern shore of Lake Winnipeg and the Manitoba-Ontario border (Manitoba's East Side), travelling north toward Hudson Bay, has been described as one of the largest areas of continuous undeveloped boreal forest in North America. At present, there are calls to make this forest accessible to industrial development such as logging, hydroelectric development, and road building. Given the increasing world-wide rarity of large, relatively undisturbed forest ecosystems, special attention must be paid to the protection of the ecological health of boreal forests such as those on Manitoba's East Side. To establish a plan or blueprint for how human use of this landscape should be managed *before* use begins to intensively take place, the Manitoba Government, on August 9, 2000 launched the East Side Planning Initiative (ESPI). The ESPI is a large area land-use planning process (LALUP) for planning land and resource use in Manitoba's East Side.

Our review of other land-use planning processes has established that meaningful public involvement is a key component of any good land-use planning process. Accordingly, the guiding purpose of this report is to examine how well the ESPI has fostered public involvement.

At the beginning of the ESPI, it was stated that public involvement would be achieved through two methods. The first method was to be a consensus building process involving those with identifiable interests in the East Side, such as First Nations, industry and environmental organizations. The second method was to gather input from the general public through a public participation process which was not described.

After conducting a literature review, this report arrives at a set of guiding principles for consensus building and for public participation against which the efforts of the ESPI were compared. The results of these comparisons show that the East Side Planning Initiative has clearly failed to date to be a valid consensus-building process or a meaningful public participation process for the broader public.

The report concludes with a series of recommendations regarding how some defects in the ESPI public involvement process may be ameliorated and how public involvement should be undertaken in future land-use planning processes in Manitoba, including any continuation of the ESPI.

Introduction and purpose of this report

Canada's boreal forest, as one of Earth's remaining large forest ecosystems, is globally important for the environmental services it provides such as clean air and water, for being a storehouse of natural biodiversity, and for being the continuing homeland of many of Canada's aboriginal communities. With this understanding has also come the recognition that the ecological health of this great forest and the health of the communities that depend upon it must be maintained.¹ The boreal forest region located in Manitoba between the eastern shore of Lake Winnipeg and the Manitoba-Ontario border (Manitoba's East Side) is worthy of special attention because it is "one of the largest areas of continuous undeveloped boreal forest in North America."² (See Appendix IV.)

At present there are many, and often conflicting, ideas about how or what this region of boreal forest should be valued for and which uses should occur. Should logging be allowed in the region and if so, where? How much of the area needs to be protected to ensure its ecological health is maintained? How can the needs of local communities be equitably met? To establish a plan or blueprint for how industrial human use of this landscape might be managed *before* this use begins to intensively take place, the Manitoba Government, on August 9, 2000 launched the East Side Planning Initiative (ESPI).

The ESPI is a large area land-use planning process (LALUP) for planning land and resource use in Manitoba's East Side.

"The objective of the east side planning process is to bring together local communities, First Nations, industry and environmental organizations to develop a vision for land and resource use in the area that respects both the value of the boreal forest and the needs of the local communities. It is expected that the east side process will result in a blueprint for the area that will address protected areas, traditional activities, transportation needs and economic development. It is also expected that the east side process may result in recommendations on further study or consultation that may be needed following the submission of the east side plan."³

An integral part of any land-use planning process is the participation of the public, or "publics" in the formulation of the final land-use plan,⁴ as there is a wide diversity of views on how the land in question should be conserved, protected and used. The guiding purpose of this report is to examine how well the ESPI fostered public involvement.

Why is an evaluation of the consensus and public participation processes for the East Side Lake Winnipeg Planning Initiative necessary?

Do the ends justify the means? Would a "perfect" land-use plan for the East Side be acceptable if it was written without input from local residents and the public at large? Because we live in a democracy, the

¹ See for example: Canada Senate (Senate Subcommittee on the Boreal Forest). 1999. *Competing Realities: The Boreal Forest at Risk*. Parliament of Canada: Ottawa. Available at www.parl.gc.ca/36/1/parlbus/commbus/semate/com-e/BORE-E/rep-e/rep09jun99-e.htm

² Government of Manitoba, Department of Conservation. 2002. *Next Steps: Priorities for Sustaining Manitoba's Forests*, at p.5. Available at www.gov.mb.ca/natres/forestry/index.html

³ Government of Manitoba, Department of Conservation. 2002. *East Side Lake Winnipeg Broad Area Planning Initiative, Phase 1-Preliminary discussions- Final report*, at p.1. Available at <http://www.gov.mb.ca/conservation/eastsideplan/pdf/executive-summary.pdf>

⁴ For example see Brown, D.W. 1996. *Strategic Land Use Planning Source Book*. Commission on Resources and Environment: Victoria, B.C. and Randolph, J. 2004. *Land Use Planning and Management*. Island Press: Washington.

answer to this question is “no”.⁵ Since the late 1960s, Canadians have increasingly been demanding direct participation in decisions affecting the environment, particularly with regard to forest management.⁶ Participants in forest land use management planning expect the decision-making processes to be legitimate, meaning that the process be transparent, open, and fundamentally democratic.⁷ This trend is evident throughout much of the world.

Many benefits of public participation have been recognized. The U.S. Department of Energy, Environment, Safety and Health (DOE) – Office of National Environmental Policy Act (NEPA) describes six benefits of public participation in environmental decision-making.

“Open the Decision Making Process and Build Credibility. A good public participation program enables those who are interested in or affected by a proposal to have an opportunity to influence the outcome. Presenting information openly, evaluating issues and alternatives fairly, and following through on commitments all build credibility.

Identify Issues. Decision making can benefit from a diversity of opinion and expertise. When afforded the opportunity, interested citizens with varied backgrounds and experiences can contribute useful information, historical data, and new perspectives to the decision making process. The public may identify issues and alternatives that DOE would otherwise overlook.

Enhance Mutual Understanding. Public participation activities promote substantive communication and improve understanding on all sides. By responding to comments and questions, DOE can help the public understand the technical aspects of a particular proposal, as well as the broader policy, political, and legal framework within which DOE makes decisions. DOE, in turn, can better understand the effects of its proposed actions on the local community and the environment by listening to those directly affected.

Make Better Decisions. Public participation helps DOE make informed decisions that take into account public concerns and preferences as well as legal, technical, environmental, economic, and social factors. When a decision acknowledges disparate views and addresses the reasons why other views were not accepted, it stands a better chance of successful implementation.

Enhance Community Support and Minimize Delays. An effective public participation program will not necessarily eliminate all conflicts and controversies accompanying a DOE proposal. However, a community that has a voice in the process and is clearly influencing the final decision will be less angry and frustrated with the process than one that feels shut out or ignored. Public workshops, meetings, hearings, and other communications will provide information and help dispel rumors, fears, and misunderstanding. By addressing public concerns up front, DOE may avoid time-consuming litigation or at least strengthen its position in the event of a subsequent legal or regulatory challenge.

Promote Environmental Justice. Executive Order No. 12898 directs Federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and

⁵ Treasury Board Secretariat Consultation and Citizen Engagement Policy. September 2001. Government of Canada policy on consulting and engaging Canadians – Draft for discussion. Available at http://publiservice.pco-bcp.gc.ca/comcon/docs/pdfs/TBS_consultation_policy_sept2001_e.pdf

“Consulting citizens on issues that affect their lives is a fundamental principle of responsible government in a parliamentary democracy. Citizens must have meaningful opportunities to participate in the development of government policies, programs, services and initiatives, and in reviewing outcomes.” (at p.5)

⁶ Blouin, G. 1998. Public involvement processes in forest management in Canada. *The Forestry Chronicle* 74(2): 224-226.

⁷ Mascarenhas, M. and R. Scarce. 2004. “The intention was good”: legitimacy, consensus-based decision making, and the case of forest planning in British Columbia, Canada. *Society and Natural Resources* 17:17-38. They also note, “In instances where alternative dispute resolution is practiced, the legitimacy of the decision-making process is far more significant than the actual plan itself.” (at pp.24-25)

environmental effects of their programs, policies, and activities on minority and low-income populations. A targeted public participation program can help to identify any disproportionately high and adverse impacts upon these populations.”⁸

To fulfill the desire of Canadians to participate in environmental decision-making and to achieve the benefits of this participation requires legitimate opportunities for Canadians to participate. Accordingly, the first reason to evaluate the ESPI process is to determine whether this want of Canadians, and therefore Manitobans has been met. The second reason is to determine whether the Government has met its duties under the Principles and Guidelines of Sustainable Development in Manitoba and the COSDI (Consultation on Sustainable Development Implementation) Report. Has it through the ESPI established a forum which encourages and provides opportunity for consultation and *meaningful* participation in decision-making processes by Manitobans?⁹ Finally, when announcing the ESPI, the Government stated, “The initiative will set the standard for public involvement for wide area planning in the future.”¹⁰ Without an evaluation of the public involvement processes used for the ESPI it is unclear whether this is a standard that should be followed.

Further to the above, and as will be discussed throughout this report, good land use planning processes seek and foster meaningful public involvement. Accordingly, the purposes of this report are:

- To examine and document how well the ESPI has followed the guiding principles for good consensus building and public participation processes.
- To explain the differences between “consensus building” processes and processes designed to promote the participation of the “general” public.
- To determine a set of guiding principles for consensus building and public participation processes against which the ESPI can be measured.
- To determine whether the East Side Planning Initiative is a good model for future public involvement.
- Provide recommendations that can be implemented to improve the public involvement component of the East Side Planning Initiative.
- Provide recommendations for furthering and improving the public involvement component of future land use planning processes in Manitoba.

Note that pursuant to s.35 of the Canadian Constitution (1982), First Nations and Métis peoples are to be “meaningfully consulted” before decisions are made regarding the use of their traditional homelands. It is the position of this report that it is for the East Side aboriginal communities to determine whether they were meaningfully consulted. Accordingly, no evaluation of the consultation of these communities and peoples will be undertaken in the report.

⁸ U.S. Department of Energy, Environment, Safety and Health – Office of NEPA Policy and Assistance. August 1998. Effective public participation under the National Environmental Policy Act (2nd). (at Part 1 – Introduction) Available at <http://www.eh.doe.gov/nepa/tools/guidance/pubpart2.html>

⁹ See Note 11 - Guideline for Sustainable Development #2(a).

¹⁰ Government of Manitoba. August 2000. Wide area planning to begin for east side of Lake Winnipeg. News release available at www.gov.mb.ca/chc/press/top/2000/08/2000-08-09-02.html

A Little History

Sustainable Development in Manitoba

The Sustainable Development Act of Manitoba was proclaimed on July 1, 1998.¹¹ The purpose of the Act “is to create a framework through which sustainable development will be implemented” in the Province of Manitoba. It also sets out a number of principles and guidelines for attaining sustainable development in Manitoba. Of particular relevance to this report are:

Principles:

5. Conservation and Enhancement

Manitobans should:

- a) maintain the ecological processes, biological diversity and life-support systems of the environment...
- c) make wise and efficient use of renewable and non-renewable resources ...

Guidelines:

2. Public Participation – which means:

- a) establishing forums which encourage and provide opportunity for consultation and meaningful participation in decision-making processes by Manitobans;...
- c) striving to achieve consensus amongst citizens with regard to decisions affecting them.

3. Access to Information – which means:

...

- a) promoting the opportunity for equal and timely access to information by all Manitobans.

4. Integrated Decision Making and Planning – which means encouraging and facilitating decision-making and planning processes that are efficient, timely, accountable, cross-sectoral and which incorporate an inter-generational perspective of future needs and consequences.

What the Act does not do is set out *how* these principles and guidelines are to be implemented. This was to be determined after the Act was proclaimed through a multi-stakeholder consultation process (COSDI).

The heart of this process was a government appointed, eighteen-member committee, the “Core Group”, was to prepare a series of recommendations on how sustainable development could be implemented in Manitoba. During their eighteen months of work, the Core Group was assisted by a sixty member Advisory Committee. The purpose of the Advisory Committee was to review and comment on the work of the Core Group at various stages throughout the eighteen months. The Advisory Committee consisted of a number of stakeholder groups such as environmental organizations, resource communities, industry representatives, and social organizations.

In June 1999, the Core Group released its Report of the Consultation On Sustainable Development Implementation (COSDI Report)¹² which contained a series of recommendations grouped under seven themes which built upon the Manitoba principles and guidelines of sustainable development. Theme #3 Planning at Large Area Level and Theme #5 Public Participation and their subsequent recommendations are of particular importance to this report. The Core Group’s purpose for #3 Planning at Large Area Level

¹¹ The Act is available at <http://web2.gov.mb.ca/laws/statutes/ccsm/s270e.php>

¹² Available at <http://www.gov.mb.ca/conservation/susresmb/pub/cosdireport.html>

was planning should drive development, and for #5 Public Participation was “[t]here be opportunity for effective/meaningful public participation and consultation processes at all levels of planning, significant resource allocation and effects assessment and review...”.

On June 29, 2000, the then recently elected NDP government announced its acceptance of the COSDI Report and outlined a strategy to implement the report’s recommendations.¹³ This was followed by an August 9, 2000 announcement of the beginning of the ESPI.¹⁴ The government press release “encouraged” the public to participate in the ESPI and stated the initiative will “provide the opportunity to develop a consensus among [the public, local communities, industry and First Nations] with a common vision for land and resource use now and in the future.”

The East Side Planning Initiative

The ESPI was originally divided into two phases. A team of three government employees conducted Phase I. After meetings with a number of government departments, stakeholders, aboriginal communities and prominent individuals, the Phase I team drafted a series of recommendations regarding how Phase II, the actual large area land-use planning process, should be conducted. The stated goal of Phase II was to “develop a work plan, conduct public meetings and provide recommendations on a wide area plan for the east side of Lake Winnipeg.”¹⁵ Phase II was to conclude in June 2004 with the release of the above recommendations¹⁶.

The consultation process outlined for Phase II was modelled upon the process used to create the COSDI Report.

- **The ESLWPI Round Table** is comprised of representatives of affected local, Aboriginal, and First Nations communities; a Trappers Association; one Conservation Organization; the Manitoba Mining Association; a Forestry company; a model forest; the Manitoba Métis Federation; Academia, and northern community councils. The Round Table is chaired by Mr. Phil Fontaine, who is the Assembly of National Chiefs elected Grand Chief. The role of the Round Table is to collect information, undertake research, and communicate with the First Nation Council, the Stakeholder Advisory Committee, and communities regarding the vision, goals, objectives, and issues for the plan. The Round Table is also to direct and provide recommendations to the ESPI Secretariat in the preparation, content and implementation of a draft plan.
- **A First Nations Council** of a representative from each of the First Nations in the planning area is to provide direction to the Round Table in the area of conducting public meetings and consultation, the goals, objectives, values for the plan, options for addressing issues, integration of community land use plans, and the inclusion of traditional knowledge.
- **A Stakeholder Advisory Committee** comprised of social, environmental, community, recreational, and tourism groups, plus industry provides input to the planning table in the area of conducting public meetings and consultation, the goals, objectives, values for the plan, options for addressing issues, etc.

¹³ Government of Manitoba. June 2000. Conservation Minister announces sustainable development strategy. News release available at <http://www.gov.mb.ca/chc/press/top/2000/06/2000-06-29-02.html>

¹⁴ See Note 10 - August 9, 2000 press release..

¹⁵ See Note 10.- August 9, 2000 press release.

¹⁶ Phase II did not follow the timelines laid out initially and a request for an extension to the June 2004 deadline was made to the Minister of Conservation in early 2004. The Minister requested that that ESPI provide recommendations regarding certain priority areas for the June 2004 deadline. The ESPI report, which was not released until late November 2004, became a status report; no actual planning for the East Side was accomplished during Phase II. The November 2004 status report contained recommendations as to how to proceed with Phase III of the ESPI, among other things.

- **A secretariat of government staff and contractors**, including a project manager assists with organization, logistics, and information management in support of the ESPI table and both advisory groups and the working groups. It is the responsibility of the Secretariat and the table members to ensure that the goals, objectives and terms of reference for the ESPI are upheld and to draft a plan for Manitoba's East Side based upon the recommendations of the Round Table.¹⁷

The addition of the First Nations Council was necessary to the integrity of the process. Ninety-six percent of the population of the planning region are people of aboriginal origins and the planning region encompasses the traditional lands of a number of First Nation communities. When land-use decisions may affect such traditional lands, the affirmation of aboriginal and treaty rights in section 35 of the Canadian Constitution, and court decisions interpreting section 35, requires that aboriginal peoples be "meaningfully consulted". This requires aboriginal communities not be treated as a "stakeholder", (i.e. as industry and environmental organizations) but rather as individual groups/communities with unique interests in the land in question. Although the ESPI is a planning process mandated to provide recommendations to the government as to how land use should occur on Manitoba's East Side, the government ultimately makes decisions regarding land designation, tenure and land allocation. Formal consultations under section 35 are required for such decisions. To this end, in parallel with the ESPI, the government has committed to establish a protocol for relationships with First Nations and with Métis peoples.

Despite commitments to put in place consultations standards or guidelines with respect to Aboriginal peoples that would be housed in aboriginal, constitutional and treaty rights, the Manitoba government has not yet confirmed consultation standards. This is potentially an impediment for the ESPI.

¹⁷ The description of these four groups comes from www.manitobawildlands.org/lup_esp.html, where greater detail on the ESPI can be found.

Characteristics of good consensus and public participation processes
What are the characteristics or principles of meaningful and effective consensus and public participation processes?

When announcing the ESPI, the Government sought to develop “a consensus amongst these interests”, described as being the public, local communities, industry and First Nations, and a process in which the “public is encouraged to participate and provide their input”.¹⁸ As outlined by Cormick *et al.* there are distinct differences between the purposes of these two activities.

“Consensus processes share a number of attributes with other [public participation] processes that are not consensus-based. For example, citizen participation and public involvement processes also involve diverse interests and parties, often in face-to-face discussions.¹⁹ *The essential difference is that these processes are intended to advise decision makers by providing them with a diversity of opinions and advice. In contrast, consensus processes are designed to find the common ground and a mutually acceptable decision that can be implemented or recommended for implementation.*” (emphasis added).²⁰

Accordingly, for the ESPI these are separate processes requiring clarification and in turn their own evaluation.

CONSENSUS

The Consensus Building Institute (CBI), a non-profit organization started in 1993 that provides dispute resolutions services to public agencies, non-governmental groups, and corporations, defines consensus as:

“Consensus building is a process of seeking unanimous agreement. It involves a good-faith effort to meet the *interests* of all stakeholders. Consensus has been reached when everyone agrees they can live with whatever is proposed after every effort has been made to meet the *interests* of all stakeholding parties.”²¹

The CBI describes *interests* as being the participants’ in the consensus process “underlying values and needs”. They are not demands or positions but rather what each participant seeks to achieve and that often reflect deeply held beliefs.²² As an example, someone may demand a 10% raise, but the underlying need is that they be paid a fair wage for the work they do. Maybe this can be met through more benefits or holidays. In other words, there may be other ways to satisfy the underlying need than simply through more pay.

Consensus building also takes place through a relatively small group of stakeholders. The larger the group the greater number of interests that need to be met - making consensus that much more difficult to attain to a point where it becomes unworkable. The CBI defines stakeholders as “persons or groups likely to be affected by (or who think they will be affected) by a decision—whether it is their decision to make or not.”²³

¹⁸ See Note 10 - August 9, 2000 press release.

¹⁹ Public meetings for example.

²⁰ Cormick, G. *et al.* 1996. Building consensus for a sustainable future. National Round Table on the Environment and the Economy: Ottawa. (at p.5)

²¹ Susskind, L. 1999. An alternative to Robert’s Rules of Order for groups, organizations, and ad hoc assemblies that want to operate by consensus. In Susskind, L. *et al.*, editors. The Consensus Building Handbook – A comprehensive guide to reaching agreement. SAGE Publications Inc.: California. (at p.6) Note also that although unanimity is sought in consensus-building, it is understood there may be holdouts from the final agreement that are doing so for valid and compelling reasons. (at p.6-7)

²² See Note 20 – Susskind, L. at p.6.

²³ See Note 20 – Susskind, L. at p.13.

Each of these stakeholders brings their own interests to the consensus building process. In the case of decisions regarding natural resource or land use, such as the ESPI, it is believed each stakeholder, in representing its interests also represents a segment of the broader public that shares those same interests. Therefore, the ESPI consensus building exercise is part of the “public” involvement process.

Regarding the ESPI, and most other large area land-use planning processes in Canada, it is important to recognize that the First Nations’ and Métis communities are not stakeholders. Their interest and connection to the land goes much beyond that of stakeholders. Therefore, such communities should be treated as governments during consensus building processes.

PUBLIC PARTICIPATION

Public goods such as natural resources or land belong to all members of the state which governs the use of the public goods. Stakeholders in a consensus building process cannot represent all the various interests of this broader public. As Brown notes,

“...the majority of the population will always be excluded [from consensus building processes], because although they have *general* interests in the management of public lands, they do not have *specific* interests and, therefore, may be insufficiently motivated to become directly involved.”²⁴

For example, the ESPI Advisory Group includes representatives from environmental groups and user groups such as fisherman and trappers. They represent distinct, identifiable interests. Who though represents the vast majority of Manitobans who do not identify with these or other identified stakeholders but still are concerned with the fate of Manitoba’s East Side? LALUPs also require a way for the broader public, who is not captured by the consensus building process, to meaningfully participate in the decision-making process.²⁵

²⁴ See Note 4 – Brown, D.W. at p.75.

²⁵ See Note 4 – Brown, D.W. who states, “While face-to-face dialogue among constituency representatives may have central place in modern planning, the wider unaffiliated public has an important stake in the debate, and efforts must therefore be made to solicit and integrate those views and priorities.” (at p.75)

CHARACTERISTICS OF CONSENSUS BUILDING

In 1993, the Canadian National Round Table on the Environment and the Economy (NRTEE) defined what it proposed to be ten guiding principles for how to build consensus. The following table sets out these ten principles.²⁶

NRTEE Guiding Principles for consensus building

Guiding Principle #	NRTEE definition
#1 Purpose driven	People need a reason to participate in the process. The parties should have a common concern and believe that a consensus process offers the best opportunity for addressing it.
#2 Inclusive not exclusive	All parties with a significant interest in the issues should be involved in the consensus process.
#3 Voluntary participation	The parties who are affected or interested participate voluntarily.
#4 Self design	The parties design the consensus process. Designing a consensus process enables the participants to become better acquainted before they deal with substantive issues.
#5 Flexibility	Flexibility should be designed into the process.
#6 Equal opportunity	All parties have equal access to relevant information and the opportunity to participate effectively throughout the process.
#7 Respect for diverse interests	Acceptance of the diverse values, interests and knowledge of the parties involved in the consensus process is essential. Increased understanding fosters trust and openness, essential for consensus building.
#8 Accountability	The participants are accountable both to their constituencies and to the process that they have agreed to establish.
#9 Time limits	Realistic deadlines are necessary throughout the process.
#10 Implementation	Commitment to implementation and effective monitoring are essential parts of any agreement.

Other examples of guiding principles of consensus building

The following table sets out guiding principles for consensus building enunciated by several other organizations, such as the U.S. Forest Service, and LALUPs. Comparing these principles to those of the NRTEE shows that the NRTEE's guiding principles, although using different definitions, capture the criteria for consensus building outlined by others. Thus, the NRTEE's ten guiding principles are a good model against which to compare the consensus building process employed during the ESPI.

Organization and Guiding Principles	NRTEE Guiding Principle									
	# 1	# 2	# 3	# 4	# 5	# 6	# 7	# 8	# 9	# 10
U.S. Forest Service²⁷										
Voluntary participation			X							
"face to face" interaction among stakeholders	X									
Mutual agreement to process and										

²⁶ National Round Table on the Environment and the Economy. 1993. Building consensus for a sustainable future: guiding principles: an initiative undertaken by Canadian round tables. Ottawa.

²⁷ McCool, S.F., K. Guthrie and J. Kapler Smith. 2000. Building Consensus: Legitimate Hope or Seductive Paradox? Res. Pap. RMRS-RP-25. USDA – Forest Service, Rocky Mountain Research Station: Fort Collins, CO. (at pp.2-4)

settlement				X				X		
Common definition of problem	X									
Agreement that the problem can be solved through public part.			X							
Inclusiveness of affected parties		X					X			
General, though not unanimous agreement	X									
Equal amount of knowledge						X				
Permission to the agency to initiate actions										X
Consensus Building Institute²⁸										
Who initiates and who designs a process - who should design a consensus process				X						
Determine whether consensus building is appropriate - considering the nature of the issues - determining parties' willingness to negotiate	X		X							
Additional issues - social and cultural factors							X			
Structuring a specific consensus process - defining the problem - determining the goal or outcome - selecting a general approach to building consensus - identifying process steps - determining other process components and activities - identifying participants - clarifying roles in the process - agreeing on logistics	X X X			X X X X X X	X X	X X	X X	X X		X X
		X	X				X		X	
CORE²⁹ (D. Brown)³⁰										
Widely inclusive, yet manageable		X	X					X		
Acceptance of the legitimacy of other values and knowledge							X			
Focus is on underlying interests	X						X			
Self-design				X						
Fairness						X				
Search for integrating solutions	X									
Objective evaluation				X						
Time limited									X	
Clarity on role and relationship										X

²⁸ Carpenter, S. 1999. Choosing appropriate consensus building techniques and strategies. In Susskind, L. *et al.*, editors. The Consensus Building Handbook – A comprehensive guide to reaching agreement. SAGE Publications Inc.: California. (at pp.61-97)

²⁹ British Columbia - Commission on Resources and Environment (CORE)

³⁰ See Note 4 – Brown D.W. at pp. 13-14.

Characteristics Of Meaningful Public Participation For The “General” Public

The International Association of Public Participation (IAP2)³¹ has developed the "IAP2 Core Values for Public Participation" for use in the development and implementation of public participation processes. The IAP2 states, “These core values were developed over a two year period with broad international input to identify those aspects of public participation which cross national, cultural, and religious boundaries. The purpose of these core values is to help make better decisions which reflect the interests and concerns of potentially affected people and entities.”³² As outlined in the table below, they will be used as a starting point for determining a common set of guiding principles for what is required by decision-makers to provide opportunities meaningful public participation by the general public.

IAP2 Core Values for the Practice of Public Participation³³

Core Value	This report’s definition of Guiding Principle
The public should have a say in decisions about actions that affect their lives.	#1 Access to decision-makers
Public participation includes the promise that the public’s contribution will influence the decision.	#2 Influence decision
The public participation process communicates the interests and meets the process needs of all participants.	#3 Way process designed shows respect to participants
The public participation process seeks out and facilitates the involvement of those potentially affected.	#4 Inclusivity fostered
The public participation process involves participants in defining how they participate.	#5 Input into process design #6 Clear mandate
The public participation process provides participants with the information they need to participate in a meaningful way.	#7 Timely access to information
The public participation process communicates to participants how their input affected the decision.	#8 Transparent #9 Substantive responses

³¹ The International Association for Public Participation is an association of members who promote and improve the practice of public participation decisions that affect the public interest in nations throughout the world.

³² Quote taken from IAP2 available at <http://www.iap2.org/corevalues/index.shtml>

³³ See Note 31.

Other examples of guiding principles of meaningful public participation

The following comparison shows that the nine guiding principles of public participation taken from the IAP2's list of Core Values of Public Participation provide a good set of criteria for the evaluation of the ESPI's public participation process for the broader public.

Organization and Guiding Principles	Public Participation Guiding Principles								
	# 1	# 2	# 3	# 4	# 5	# 6	# 7	# 8	# 9
Voices from the forest ³⁴									
Access to the process	X			X					
Power to influence process/outcomes		X			X				
Access to information							X	X	X
Structural characteristics to promote constructive interactions (good meetings)			X	X					
Facilitation of constructive personal behaviors			X						
Adequate analysis (gathering and analysis of data from social and natural science and local knowledge so decisions made on facts not politics)	NC								
Enabling of social conditions necessary for future processes (i.e. resolving conflict, building relationships)	NC								
**NC – suggested guiding principle not captured by IAP2 Guiding Principles									
Health Canada ³⁵									
Equal opportunity for participation and receipt of information	X	X		X			X		
Mutual understanding			X			X			
Early public involvement					X	X			
Outcomes are not predetermined		X						X	
Shared responsibility and evaluation	NC								
Accountability						X			
Decisions widely communicated								X	X
Public evaluation of result and process	NC								
**NC – suggested guiding principle not captured by IAP2 Guiding Principles									
US EPA Resource Conservation and Recovery Act - public participation ³⁶									
Informing public of the consequences of taking or									

³⁴ Tuler, S. and T. Webler. 1999. Voices from the forest: What participants expect of a public participation process. *Society and Natural Resources* 12: 437-453.

³⁵ Health Canada. November 2001. Public Involvement: A Rationale and Conceptual Framework. Available at http://www.hc-sc.gc.ca/hpfb-dgpsa/ocapi-bpcp/framework_guides_doc3_e.html (see "Operating Principles")

³⁶ U.S. EPA. 1996. RCRA Public Participation Manual. Office of Solid Waste, Permits Branch: Washington. Available at http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/chp_2.pdf

(see Chapter 2 – Guidelines for a Successful Public Participation Program at p.2-5) Also note that:

"Public officials have ethical obligations to the public that have a practical value in building the foundation necessary for successful communication ..." (at Chapter 2, p.2-5)

not taking proposed action									X
Showing people how to participate			X						
Keeping the public informed during the process about significant issues						X			
Equal access to information and decision makers	X						X		
Government fully considers public's concerns		X							
Seeking the full spectrum of opinion within the community				X					
Treasury Board of Canada³⁷									
Government commitment to process and to integrating consultation results in official recommendations or decisions		X							
Government commitment to participate in good faith and to ensure that adequate resources and time are allocated			X						
Understanding among all participants of the purpose and process						X			
Respect for the legitimacy and views of all participants			X	X					
Inclusiveness in the process so that it involves the broadest possible range of groups or individuals ...				X					
Equal accessibility to the process ...				X					
Transparency throughout the process based on open lines of communication and the provision of timely, accurate, clear and objective information							X	X	
Active listening by officials to assure that the views of citizens are carefully considered in decision-making	X	X							
Provide feedback reports on the full range of views expressed and how those views have been considered in the decision-making process									X
Manitoba Conservation³⁸									
SHARED PROCESS			X			X	X		
RESPECT		X		X	X			X	
COMMITMENT		X							
TIMELINESS		X	X				X		
COMMUNICATION			X	X			X	X	
RESPONSIVENESS			X		X				
ACCOUNTABILITY							X		X

³⁷ See Note 5 – Treasury Board Secretariat at p.7.

³⁸ Manitoba Conservation. April 1997. Public Participation Guidelines. Information Bulletin No.: 97-02E. Manitoba Conservation: Winnipeg. Available at <http://www.gov.mb.ca/conservation/envapprovals/pubs/public-part-info.pdf> Note that these guidelines were prepared for public participation in environmental assessments in Manitoba. However, they still provide a good example of guidelines for public participation in environmental decision-making in general. Please see Appendix II for the complete guidelines.

Evaluations

Evaluation of ESPI as a Consensus-Building Process

A summary of the results of the evaluation shows that the ESPI adheres to zero to two out of nine NRTEE guiding principles for consensus building.

NRTEE Guiding Principles	ESLWPI evaluation
#1 Purpose driven	Yes/No
#2 Inclusive not exclusive	No
#3 Voluntary participation	No
#4 Self design	Yes/No
#5 Flexibility	Unintentional or NA
#6 Equal opportunity to participate, access to information	No
#7 Respect for diverse interests	No
#8 Accountability	No
#9 Time limits	No
#10 Implementation	??

Guiding Principle #1: Purpose driven – YES/NO

As the NRTEE notes, people need a reason to participate in the consensus-building process. This requires that those participating in the process “have a common concern and believe that a consensus-building process offers the best opportunity for addressing it”.

Meetings of the ESPI Round Table and Advisory Committee revealed their members had a common concern, which was the fate of the East Side.³⁹ However, there was never a formal way for the members of the Advisory Committee to know other members’ interests and their reasons for participating in the process. Nothing was done to determine whether all Advisory Committee members had the same understanding of what the process could or should achieve. As such, it was never clear whether all participants in the process agreed to the stated objective of the planning initiative that had been put forth by the government.⁴⁰ It was also unclear whether all participants believed the process was the best way to achieve the government objective or determine an appropriate fate for the East Side.

This shortfall could have been addressed through what the CBI calls a conflict assessment. It is described as:

“[A] document that spells out what the issues are, who the stakeholding interests are, where they disagree, and where they might find common ground. It is usually prepared by a *neutral outsider* based on confidential interviews with key stakeholders. ... The recommendations resulting from a conflict assessment are not the final word. Only the stakeholders themselves can decide whether or not they want to proceed and, if so, how they want to organize their efforts.”⁴¹ (emphasis added)

³⁹ As discussed in the “purposes” section of this report, it is for the aboriginal communities on the East Side to make their own determination whether they were “meaningfully consulted” during the ESPI. Therefore, no evaluation of the consultation of East Side aboriginal communities and peoples will be undertaken in this report.

⁴⁰ See Note 3. For example, a review of the meeting notes and submissions received for Phase I of the ESLWPI shows there were a variety of views on a variety of issues regarding the planning process held by different interests who later participated in Phase II.

⁴¹ See Note 20 - Susskind, L. at p.10-11.

In the case of the ESPI it was clear there were differing views on how and what human use of the East Side should take place. However, the results of the interviews and meetings conducted by the Phase I team were not compiled in a way that would provide for a conflict assessment. Accordingly, it was unclear whether all participants had the same understanding of the purpose of their participation in the process.

The greatest difficulty with the ESPI is that it did not employ a true consensus-building process. Members appointed to the east side round table were to “represent the public interest and not their organizations.”⁴² Why this is a problem will be discussed in greater detail below. For now, it is important to remember that the core of consensus-building is interest based negotiation, which is not what took place in the ESPI and is contradictory to the notion of representing the public interest. As well, the Advisory Committee had no mandate to operate via consensus to make decisions. Accordingly, although participants in the process may have had common concerns, because they did not have to work in a true consensus-building process, it was never clear whether they thought this was the best way to address those concerns.

Guiding Principle #2: Inclusive not exclusive – NO

NRTEE states that all parties with a significant *interest* in the issues should be involved in the consensus process. Some of the parties identified by the NRTEE include those parties affected by an agreement, those needed to successfully implement the agreement, or who could undermine it if not included in the process. The individuals who sit on the ESPI Round Table were appointed by the government and they are to act in the public interest, not the interests of the sector of the public they represented, i.e. trappers. As a result, it could be argued that no interests are actually represented on the Round Table and therefore the process is not inclusive.

To address this problem, all of those parties who believed they had an interest in the fate of the East Side should have been invited to an initial planning meeting, which may have had over 100 organizations and groups in attendance. (The Advisory Committee has approximately 60 organizations listed as members). Those parties with similar interests could have then been grouped into caucuses, and each caucus determines, through their own process⁴³, their representative(s) on the smaller consensus-building working group.⁴⁴ As noted above, the way the ESPI Round Table was established resulted in its members not representing any interest.

Guiding Principle #3: Voluntary participation – NO

NRTEE states the parties who are affected or interested participate in the consensus process voluntarily. “Consensus means having all parties say yes; but yes is not meaningful unless they could have said no,” and “It must be made very clear to parties that should they decide not to participate or if consensus fails, they will not have lost or diminished their ability to pursue their interests through other more conventional

⁴² See Note 3 – Phase I Final Report, Recommendation #29

⁴³ NRTEE Principle #2 also notes that “the integrity of a consensus process may be compromised if the parties are not given the opportunity to determine their own representatives through their own processes and mechanisms.

⁴⁴ For further suggestions on building consensus when there are a large number of parties interested in the decision, see Note 19 – Cormick *et al.* at pp.31-33.

means.”⁴⁵ The ESPI Round Table members participate voluntarily but because they do not represent identified interests, an individual member’s dissent or withdrawal from the process can be taken as irrelevant.

The members of the First Nation Council could be taken as participating involuntarily, or under duress, as if they do not participate their interests could be at risk. However, the ESPI has been put forward by the government as the only game in town for input into the fate of the East Side. Therefore, member groups and communities of the Advisory Committee and First Nations Council run the risk of having no say in the decision should they decide not to participate in the process, whether they want to or not.

Guiding Principle #4: Self design – YES/NO

NRTEE states that all parties must have an equal opportunity to participate in designing the process. Despite some changes made in response to comments from the public and affected parties, the structure of the ESPI outlined by the government at the beginning of Phase I was used to conduct Phase II of the process. This is particularly true with regard to the participation of members of the Advisory Committee. For this reason, the ESPI does not meet this principle. Also the addition of the First Nations Council, and then the working groups was based on decisions taken by the Manitoba government staff, and contractors for the ESPI.

At the same time, the Round Table was given, or demanded, an opportunity to determine its own terms of reference. The result was review of the terms of reference as provided by government. Accordingly, this portion of the ESPI did have an element of self design.

Guiding Principle #5: Flexibility – Unintentional or NA

As the NRTEE states, “Flexibility is important. The initial design may evolve as the parties become more familiar with the issues, the process, and each other.” The problem with the ESPI is that it lacks so many of the components of a consensus-building process, there is nothing regarding consensus to be flexible about. For example, Cormick *et al.* have listed a number of items that during a consensus process may require flexibility in the process and by the participants.

“As negotiations begin, participants usually operate under the following assumptions:

- current representatives will continue to speak for their constituencies,
- all significant interests are represented,
- the issues have been well identified and defined,
- the parties have a good grasp of the facts of the situation,
- the outside world will stay much as it is for the duration of the process,
- the time needed to accomplish specific tasks and reach final agreement is known and sufficient,
- the parties will ultimately find grounds for a settlement acceptable to one another and their constituents; that is, a solution within reach, and
- if an agreement is concluded, implementation can proceed as laid out in a final settlement plan.”⁴⁶

⁴⁵ See Note 19 – Cormick *et al.* at p.35 and p.35-36.

⁴⁶ See Note 19 – Cormick *et al.* at p.51.

Because the Round Table does not represent interests or a conflict assessment was never prepared, Cormick *et al.*'s first three items assumptions cannot be met. The same is true for the Advisory Committee. In addition little was done to confirm whether its members had a good grasp of the facts of the situation.

This is not to say the ESPI has not been flexible. For example, towards the end of Phase II, Working Groups were created consisting of members of the Round Table, First Nations Council and Advisory Committee. Three of these Working Groups, titled North, Central and South, were created to determine and examine issues particular to each region of the East Side. They were asked to make recommendations to the Round Table for input into its final set of recommendations. The establishment of these Working Groups was not envisioned at the start of the ESPI but became necessary as the original process failed to adequately assess regional issues. Unfortunately these working groups also did not fulfill consensus building principles cited in this report.

Guiding Principle #6: Equal opportunity to participate, access to information – NO

NRTEE states that to promote equal opportunity, consideration needs to be given to providing:

- training on consensus processes and negotiating skills
- adequate and fair access to all relevant information and expertise
- resources for all participants to participate meaningfully

Although the ESPI was described as a consensus process and members of the Advisory Committee were invited to participate in such a process, no training on consensus processes was provided. Minutes of Round Table meetings and other information provided to them was often given late to the Advisory Committee or not at all. At one point the Advisory Committee did not meet for nine months. During this period, the Round Table was meeting on a regular basis. This large gap between meetings made it difficult for members of the Advisory Committee to build relationships or catch up on the activities of the Round Table. Finally, members of the Round Table attended meetings in the East Side communities. No provision was made for representatives of the Advisory Committee to attend these meetings. While others in the decision making process had first hand knowledge of these communities concerns, members of the Advisory Committee received late and spotty second hand reports on the community meetings.

Within the Round Table itself, there were also difficulties related to access to information. There was one instance where a Round Table member had to repeatedly ask for specific information over the course of several meetings (and months) before finally receiving it. Paper copies of presentations made in meetings were often not provided until several months after a meeting. Finally, and most critically, in the months leading up to the submission of the Status Report, the Round Table was not receiving all the input and information from each of the Working Groups as they developed and refined recommendations that were to be included in the Status Report.

Throughout the three years since the ESPI Round Table started to meet there have been problems regarding access to documents from recent meetings, and materials relevant to upcoming meetings. Also the public registry has been as much as a year out of date, and the final 6 months of meetings are remarkable for the lack of any minutes.

For these reasons and a number of others, the ESPI has not adhered to NRTEE Guiding Principle #6.

Guiding Principle #7: Respect for diverse interests – NO

Again, the Round Table members do not represent any identified interests. Accordingly, Guiding Principle #7 cannot be met.

However, supposing that the Advisory Committee is representative of the various interests, has Guiding Principle #7 been met? Again the answer is no. NRTEE states that respect for diverse interests requires acceptance of (not conversion to) the diverse values, interests and knowledge of the parties involved in the consensus process is essential. This requires learning about all other parties' interests, building relationships and trust, and an opportunity to explore and create ways of accommodating all interests. This takes time and effort. Meeting less than half-a-dozen times and with no detailed discussion of each member's interests simply did not allow the Advisory Committee to develop an environment where true respect for the diverse interests could be created.

Suggestions and requests for specific Aboriginal and First Nation content for Round Table meeting agendas were not acted on. When such content was provided, it was tabled without discussion.

Guiding Principle #8: Accountability – NO

"To be accountable is to be answerable to someone for decisions and actions. It means not being able to say yes or no to terms of an agreement without taking account of how acceptable that deal may be to others. It is about having to explain actions or proposed actions and obtain approval for these."⁴⁷ Like many of the other Guiding Principles, #8 cannot be met because the Round Table does not truly represent interests. No one from the Round Table has come to the various environmental organizations, an interest recognized in the ESPI, and asked whether they agree with decisions made by the Round Table throughout the process.

The Advisory Committee also cannot satisfy this principle because the approval of its members is not required by the Round Table before it makes a decision. The Working Groups discussed in Guiding Principle #5 did not have to seek the approval of the Advisory Committee before making their recommendations to the Round Table.

Finally, the process itself has not been accountable to the members of the Round Table, First Nations Council, or the Advisory Committee. On November 16, 2004, the Round Table presented its report to the Minister of Conservation.⁴⁸ The report was submitted to the Minister without final review by the Round Table itself (final drafting was done by the Secretariat, whose role was facilitation, technical, organizational, and support services). The Working Groups (including Round Table, First Nations Council, and Advisory Committee members) that drafted certain of the recommendations contained in the ESPI status report also did not have the opportunity to review the final draft. Those recommendations included in the draft report

⁴⁷ See Note 19 – Cormick *et al.* at p. 79.

⁴⁸ Government of Manitoba. November 2004. Province receives report on future of East Side of Lake Winnipeg. News release available at <http://www.gov.mb.ca/chc/press/top/2004/11/2004-11-16-01.html>

which did not arise from Round Table, working group, First Nation Council or Advisory Committee were not identified, reviewed, or discussed as such.

It should be noted that in addition to the fact that the final draft status report was not signed off by the Round Table members, some of the Round Table members confirmed that they didn't even receive a copy of the final draft. Most of the review of drafts was conducted where only the text of possible recommendations was reviewed. Essentially the text of the Report released in November 2004 was never reviewed by the Round Table, Advisory Committee, First Nation Council or working group members.

Clearly the ESPI was not designed with accountability in mind.

Guiding Principle #9: Time limits – NO

NRTEE states that clear and reasonable time limits for working towards a conclusion and reporting on results should be established. This requires the use of milestones. The timetable, schedule and plan for the operation of the Round Table were in constant flux and the reality of the June 2004 deadline was essentially ignored until six months before the scheduled date for completion of Phase II. Any effort to develop and maintain a project management schedule with timelines and milestones was not evident to the observer. As mentioned above, reports of the work of the Round Table were late in coming. The ultimate example of the process not adhering to Guiding Principle #9 is that the Round Table was unable to deliver a series of recommendations to the government for an East Side land use plan in June 2004.⁴⁹ It instead provided the government with a status report. There are a number of reasons why the Round Table was unable to meet its deadline, including a lack of resources and support, and no provision of an independent professional facilitator.

Guiding Principle #10: Implementation – N/A ??

NRTEE states that a commitment to implementation and effective monitoring are essential parts of any agreement.

Section 20 of the ESPI Executive Summary states that the completed plan will include procedures for the regular review and amendment of the approved plan. There are currently no available details on issues concerning: public review for appropriateness; application of the East Side Plan; implementation; or monitoring of the plan, once completed. Nor is there any information regarding how recommendations in a planning document would be applied, or how any subsequent decisions would be made. Nor is there any plan for the Manitoba east side at this time.

Therefore, it is considered premature to assess this particular guiding principle in the context of this memorandum.

⁴⁹ See Note 3 – Phase I Final Report, Recommendation #19.

Evaluation of ESPI Public Participation Process for the Broader Public

A summary of the results of the evaluation shows that the ESPI adheres to 2 to 4 out of 9 guiding principles for public participation.

Guiding Principles of Public Participation	ESLWPI evaluation
#1 Access to decision-makers	Yes
#2 Ability to influence decision	Uncertain
#3 Way process designed shows respect to the participants	Yes/No
#4 Inclusivity fostered	Yes/No
#5 Input into process design	No
#6 Process has clear mandate	Yes
#7 Timely access to information	No
#8 Transparent	No
#9 Substantive responses	No

Guiding Principle #1: Access to decision-makers – Yes

As discussed earlier, there has been increasing demand by the public for opportunities to have input into government decision making, particularly with regard to environmental matters. For a number of reasons, the public wants a more participatory democracy in which it is part of the decision making process. The public wants access to political elites and insulated bureaucracy. Simply put, the public wants its voice heard.

Whatever its flaws, the ESPI is a public process. The government has made it known that decisions regarding the East Side are going to be made. It has not simply announced the creation of a land use plan for the East Side. This is a vast improvement over the 1980s when tenure was granted to vast areas of Manitoba's boreal forest without any input from the public.⁵⁰

Cabinet ministers have often attended or spoken to ESPI Round Table or First Nation Council meetings.

Guiding Principle #2: Ability to influence decision – Uncertain

Having your voice heard is one thing, being listened to is another. The public participation process should not simply be done for show with all decisions being made behind closed doors, or based on decisions made prior to the start of the public process.

There is some concern that this is the case for the ESPI. At the beginning of Phase I, the government used as a starting point a number of issues that it had self-identified as being important, such as the building of an all-weather road and increased logging. The difficulty is that prior to the beginning of the ESPI, the government and its bureaucracy had already indicated it wanted these things to occur. Therefore, the process started out not with the public having input into whether or not more logging should take place on

⁵⁰ Environmental assessments were conducted. However, the decision to turn the land over to tenured industrial forestry was made behind closed doors. What was left to the public was input into what stands would be cut this or next year and the location of stream crossings.

the East Side, but rather where it should take place. These same issues found their way into Phase II of the process. There was little opportunity for public input into what the issues to be discussed were.

The other difficulty with the process to date is it is unclear where public input has gone. Members of the public do not know what each other are saying regarding the East Side. Working group work products, minutes and sets of recommendations were not made available to each working group during their parallel work. This makes it hard to determine what the public wants regarding the East Side and therefore whether it had influence over the final decision. More of this problem will be discussed in Guiding Principle #s 8 and 9.

At the same time, it would be uncharitable to suggest the government established the ESPI as a sham process. Therefore, whether Guiding Principle #2 has been met is uncertain.

Guiding Principle #3: Way process designed shows respect to the participants – YES/NO

The broader public includes both those living in and outside the planning region. As most land involved is public land, the Manitoba general public will be affected by decisions. Therefore, the process must meet the needs of this broad range of people. For this reason, having a representative from each First Nation community in the planning region on the First Nations Council does not ensure that all the voices or interests from that community are heard. Believing an Aboriginal community can be represented by one person on as complex an issue as land use planning is to assume that the members of the community are homogenous in their thinking on the issue. Like the members of a large urban community, this is clearly not true. Just like large urban communities, there is a broad range of opinions and concerns regarding land use.

This potential for diversity of opinion in First Nation communities was recognized and accommodations were made to hear these different opinions. Meetings were held in each community at which community members could have their voices heard. In March 2004, several Manitoba Government cabinet ministers visited fourteen communities in the planning region to hear first hand the opinions of members of these communities.⁵¹ As a result of these efforts, the process aimed to show respect to the needs of the members these communities.⁵² These 2004 meetings became necessary as two years of Round Table meetings had not assured the communities that their voices were being heard.

At the same time, little was done to meet the process needs of possible participants from larger urban centres such as Winnipeg. There was little advertisement of the entire process in Winnipeg. No attempt was made to condense the large amount of information into balanced and concise summaries. Only one open house was held and this being late in the process with little advertisement and information provided. In order for public participation processes to reach a large audience requires the use of a variety of public involvement techniques of which open houses is just one.⁵³ As a result, it is not surprising that Phase I only generated responses from about fifty members of the broader public and around 85 people attended the

⁵¹ See <http://www.gov.mb.ca/conservation/eastsideplan/minister/index.html>

⁵² As per the purposes section and Note 38, the author is not making a determination whether the above efforts amounted to the members of these communities were “meaningfully consulted”, simply that process showed respect to the needs of the communities’ members.

⁵³ See for example Sinclair, J. and A. Diduck. 1995. Public education: an undervalued component of the environmental assessment public involvement process. *Environ Impact Assess Rev* 15: 219-240. Other techniques include polls, conferences, videos, etc.

Phase II open house. Accordingly, the process was not respectful of the needs of members of the general Manitoba public.

Guiding Principle #4: Inclusivity fostered – YES/NO

For many of the same reasons as Guiding Principle #3, the process at times fostered or promoted the inclusion of diverse voices and at other times it did not. Active efforts were made to include aboriginal people in the process. Historically, this has been a group that has been excluded from or had barriers established to their participation in decision making processes. At the same time, little was done to promote the inclusion of the general public in the process. Manitoba environmental organizations were limited to one table member, and at no time in 3 years of meetings was a Manitoba environmental organization asked to provide input, advice, presentation or technical information to Round Table or First Nation Council meetings. This is despite the fact that the East Side is nearly entirely Crown land and 60% of Manitobans live in Winnipeg. Fairness dictates that efforts should be made to include the majority of people in decision making processes that affect state owned resources.

Guiding Principle #5: Input into process design – NO

The reasons for the process not adhering to Guiding Principle #5 are much the same for consensus building Guiding Principle #4 – Self design. Little change was made to Phase II from what was outlined by the government in Phase I. This can be attributed to two possible reasons. The first is that the government never intended to make changes to the process. The other possible reason is that not enough effort was made to gather input from the broader public as to how they wanted the process designed. For example, members of the public could have been asked to choose two out of five methods for how they would like information on the East Side delivered to them.⁵⁴

It should be noted that a partnership of three Manitoba environmental organizations submitted detailed suggestions for how Phase II could be designed. No government or ESPI secretariat follow-up or response to these suggestions occurred.

Guiding Principle #6: Process has clear mandate – YES

From the beginning of Phase I, the government has continually stated that the purpose of the process is to generate recommendations for creation of a land use plan for Manitoba's East Side. There have been no mixed messages regarding what the process is supposed to be about. Accordingly, the process does have a clear *stated* mandate. However, given the uncertainty over the ability of participants to influence the final decision (Guiding Principle #2); whether this mandate has any meaning is yet to be seen.

Of greater concern is the lack of focus, perhaps avoidance on/of the ESPI Terms of Reference and goals through three years of meetings.

⁵⁴ For example: open houses, newspaper inserts, bill boards, television, or polling.

Guiding Principle #7: Timely access to information – NO

Any member of the public would have had a difficult time attempting to be actively engaged in the process. The same is true for ESPI participants. Minutes of the meetings of the various committees were usually, if at all, posted several months after the meeting took place. In the interim, several other meetings usually had taken place. This meant that outside observers were never up-to-date. As well, not all presentations made to the Round Table were placed in the public registry or posted on the ESPI (government-hosted) website. A synopsis of the two and a half years of work was never developed. Therefore, late-comers to the process would have a difficult time in getting up to speed. The storyboards from the Winnipeg open-house or the comment sheet were not posted on the ESPI website. Finally, there was even a paucity of news releases regarding such an important process.⁵⁵

For all of these reasons and more, the process overwhelmingly failed to meet this guiding principle.

Guiding Principle #8: Transparent - NO

It is difficult for any process that does not provide timely access to information to be transparent. More so, the making of the decision after the public has participated and has given its input must be transparent. On November 16, 2004 the ESPI Round Table presented its report to the Minister of Conservation. The report contains 102 recommendations. The report was not immediately made available to the public and after its release, no plans details were made for its public review and comment. How the government will act on the report is also unclear. All of this makes any decisions regarding the East Side, or the next stage of ESPI difficult to monitor and therefore not transparent.

Guiding Principle #9: Timely responses - NO

A better question to ask regarding the ESPI might be, “What responses?” At the Winnipeg public open house no information was provided as to how the government would incorporate the comments from members of the public. Those who attended the Phase II open house did not receive a letter answering their comments or a report containing the comments of the public. The comments of the public were not placed in the East Side public registry file.

The initial release of the ESPI interim report in November 2004 did not include the comments and ESPI recommendations from environmental groups. No review and sign off of the reports on community meetings was designed into the process. And as noted in this report, delay or lack of access to information increased confusion over three years of meetings.

⁵⁵ A search of the term “planning initiative” or “east side” in the Government of Manitoba’s News Release database found ten direct references to the ESLWPI.

Conclusion

As can be seen from the above evaluations, the East Side Lake Winnipeg Planning Initiative clearly failed to be a valid consensus-building process or a meaningful public participation process. While an understatement, the deficiencies of the process are captured by the following statement contained in the Status Report published by the Manitoba government East Side Planning Initiative November, 2004:

While much remains to be completed in this process, it is clearly evident that all participants have committed themselves to as rigorous and thorough a public process as resources will permit. (emphasis added)⁵⁶

This failure is unfortunate for a variety of reasons but particularly because Canadians are concerned about the fate of the environment and the fate of Canada's forests. Eight out of ten Canadians believe that environmental protection is more important than economic growth and that "98 percent of Canadians view nature in all its variety as essential to its survival".⁵⁷ Many Canadians equate nature with forests and 93 percent agree or strongly agree that "forests should be managed for a wide variety of benefits and uses rather than for timber production alone."⁵⁸ Designing or carrying out processes that are promoted as fostering public participation but do not do so are a recipe for fomenting public cynicism and dissent and could lead to a "war in the woods" in Manitoba's East Side.

Recommendations

The evaluation of the ESPI as a consensus-building exercise and as an initiative that effectively and meaningfully engages the public has brought to light a number of deficiencies in the process. As a result, several recommendations are outlined below and are organized into two categories:

Recommendations Concerning the November 2004 ESPI Status Report

- A process outlining how the status report will be dealt with (including steps for public participation) must be clearly spelled out. Simple review and comment at this time is meaningless because the public has no idea what has or is going on.
- To accomplish this, establish a true consensus-process (with interests represented) aimed at reviewing the Status Report⁵⁹ and implementing those recommendations in the report that were initially agreed to through consensus, and are consistent with the existing regulatory and policy framework, and review of the public policy framework for any plan for the east side.

Recommendations Concerning the Next Phase (Phase III) of the ESPI

- The ESPI terms of reference must continue to be in place for further stages of the ESPI, and the process should actually function in accordance with the stated goals and objectives.

⁵⁶ East Side Planning Initiative. September 2004. "Promises to Keep..." *Towards a Broad Area Plan for the East Side of Lake Winnipeg*. A status report. See section 4.3 – Public Participation Process. Available at <http://www.gov.mb.ca/conservation/eastsideplan/status-report/index.html#status>

⁵⁷ Boyd, D.R. 2003. *Unnatural Law – Rethinking Canadian environmental law and policy*. UBC Press: Vancouver at p.4. (both percentages)

⁵⁸ Robinson, D., M. Robson, and R. Rollins. 2001. *Towards increased citizen influence in Canadian Forest Management*. *Environments* 29(2): 21-41 at p.27. Robinson also notes that 74 percent of respondents endorsed citizen participation in setting management goals for public forests. (At p. 25)

⁵⁹ See note 55.

- Clarity regarding the *difference* between development plans, and conservation based land use planning is needed as the basis for ESPI planning.
- All parties (Round Table, ESAC, First Nations Council and Working Group members) to acknowledge and agree to mission statement and consensus building process; interests of Round Table members must be acknowledged and respected.
- The timeline for this consensus building process must be generous and flexible, as to date no planning has occurred.
- Address gaps in interests in Round Table or council membership – non-timber forest product values, fishers/commercial fishers, conservation, labour, independent scientists, elders, and traditional knowledge experts.
- Engage an independent, professional facilitator experienced in facilitating cross-cultural planning processes, for this consensus building process.
- The methods of engagement, and standards for all meetings and discussions for Phase III should be made clear to all participants, as per this report's findings.
- Findings and recommendations of the Sierra Club of Canada July 2004 report, *Integrated Land-Use Planning and Canada's New National Forest Strategy*, should be adopted and implemented in Phase III of the ESPI (See Appendix III of this report).
- The Minister of Conservation must confirm that all future steps regarding land use planning on the East Side of Manitoba will continue to be public, with access to information for the public and all participants assured, including through use of the public registry and other information tools.
- All 'public submissions' regarding the ESPI must be made public, placed in the public registry file as they are received, and provided to all ESPI participants
- Update and maintain the ESPI public registry file; gap between meeting or event and filing of materials in public registry should be no more than 30 days.
- All future ESPI evaluations, operational and planning materials must be transparent and public, including during review periods.
- A variety of tools to educate the public about the East Side and multiple opportunities for public and community input must be employed by the ESPI; this must not simply be an 'information-out' process.
- Enable all stages of community planning from occupancy study, to traditional use study, to community based plans for all communities in the ESPI geographic scope.
- Consultation standards regarding resource allocation for both Non-Aboriginal and Aboriginal Manitoba communities must be in place for ESPI decision-making.

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APPENDIX II – Manitoba Conservation Public Participation Guidelines

Organization and Guiding Principles	Public Participation Guiding Principles								
MANITOBA CONSERVATION	# 1	# 2	# 3	# 4	# 5	# 6	# 7	# 8	# 9
<p>SHARED PROCESS The Process will be administered so as to be easily understood by all participants. The administration of each review should explain:</p> <ul style="list-style-type: none"> - expectations and objectives of all participants - roles and responsibilities - ways and means of sharing resources - timelines - constraints and boundaries - ways of handling disagreements 			X			X X			
<p>RESPECT The Process will be conducted in a manner that demonstrates respect for all participants by:</p> <ul style="list-style-type: none"> - honouring diverse cultures, perspectives, values, and interests - recognizing the right of individuals to participate in decisions that affect them - interacting with all participants honestly, openly, and ethically - seeking to bridge differences - acknowledging participant's professional codes of practice - adhering to commitments and protocols agreed upon for the process 		X		X				X	
<p>COMMITMENT The Process will demonstrate commitment to public involvement by:</p> <ul style="list-style-type: none"> - incorporating input from all participants - following through on commitments made during the process - maintaining a constructive, problem solving process 		X			X				
<p>TIMELINESS The Process will demonstrate that time is a valuable and limited resource by:</p> <ul style="list-style-type: none"> - sharing information early and often in order to assist all participants to prepare and to act knowledgeably; - providing early and adequate notice of opportunities for involvement; - negotiating, where possible, appropriate timelines for all participants; - establishing and adhering to realistic deadlines; - responding in a timely fashion to questions and requests. 		X	X				X		
COMMUNICATION							X		

<p>The Process will be based upon effective communication which fosters understanding through:</p> <ul style="list-style-type: none"> - careful listening - honest and open explanations - use of plain language - the timely exchange of information 			X	X			X	X	
<p>RESPONSIVENESS The Process will demonstrate responsiveness by:</p> <ul style="list-style-type: none"> - recognizing that public involvement is a dynamic process - building flexibility into the process from the beginning - designing and using feed-back mechanisms - evaluating and modifying the process on an on-going basis. 			X	X					
<p>ACCOUNTABILITY The Process will demonstrate accountability by:</p> <ul style="list-style-type: none"> - encouraging participants to solicit input from their members, if appropriate, and to communicate progress and decisions on a regular basis - providing all information in writing and in advance of formal hearings. 							X		X

APPENDIX III – Executive Summary – Sierra Club of Canada Report *Integrated Land-Use Planning and Canada’s New National Forest Strategy*

Executive Summary

The purpose of this report is to examine what integrated land-use planning should entail if it is to be conducted in accordance with an ecosystem-based management framework, as stipulated in the new National Forest Strategy (2003–2008).

The National Forest Strategy is a consensus-based document developed by provincial and territorial forest ministers, Aboriginal Peoples, diverse forestry practitioners (from woodlot owners to industrial companies), environmental organizations and university-based researchers. It identifies ecosystem-based management of Canada’s forests as its first objective.

Ecosystem-based management is grounded on the principle that forest-based cultures, communities, industries and activities ultimately depend upon healthy ecosystems whose structure, function and composition have been maintained. Unfortunately, in Canada, planning processes have generally ignored this fundamental principle and operated without regard for ecosystem-based management, often resulting in land-use allocations that have fragmented and impaired forest ecosystems.

In contrast, integrated land-use planning processes can help to ensure that development activities fit sustainably within ecological limits and that conservation objectives guide land-use decisions. This is especially relevant for the future of Canada’s forested ecosystems as approximately half of Canada’s vast boreal forest is unallocated but undergoing planning processes that, over the next decade, will determine future allocation status.

Integrated land-use planning processes have the potential to bring together those who are affected by land-use decisions so that they can participate in decision-making, coordinate their activities and mitigate negative impacts, including cumulative impacts. Ideally, integrated land-use planning also addresses governance issues, including the coordination of policy, regulatory and management regimes. Where government agencies act, for example, under separate legal mandates and budgets, integrated land-use planning can ensure adequate coordination of activities and standard-setting. In so doing, it can deal with the cumulative environmental impacts of human activities and lead to development based on a precautionary approach. Key ecological objectives include:

- representing the full spectrum of ecosystems across their natural range of variation, in protected areas,
- maintaining viable populations of all native species in natural patterns of abundance and distribution, and
- sustaining ecological and evolutionary processes within their natural ranges of variability.

PART 1 of this report sets out a list of indicators according to which integrated land-use planning processes can be evaluated. In addition to key ecological indicators, the report also identifies several important process-oriented indicators, organized within the following categories: clear goals and terms of reference; scope; stakeholder and Aboriginal participation; knowledge base; and approval and implementation.

In PART 2 the indicators are used to assess four significant integrated land-use planning processes. These evaluations are followed by brief discussions examining the degree to which ecosystem-based management objectives were met, the impact of the participation (or non-participation) of various parties on the process, and the role of political will.

PART 3 reviews the critical issues that emerged from the four case studies. These include: the need for both protected and special management areas, the paramount need to honour and uphold Aboriginal and treaty rights and to recognize the fact that Aboriginal Peoples are more than stakeholders in planning processes, the importance of having all parties at the table, the need for an adequate time frame to work through complex issues, the importance of providing adequate resources, both financial and knowledge-based, and the need for an adequate follow up and implementation framework — ideally one that involves planning participants.

The report concludes with a set of recommended actions to be taken by the federal, provincial and territorial governments with regard to ecosystem-based land-use planning generally and each of the four planning initiatives specifically. These recommendations are:

For the Federal government:

- The development of a framework to bring provinces and territories together to collaborate on means for ensuring the maintenance of national ecosystems such as the boreal forest.
- The completion of Canada's network of national protected areas.
- The development of an accounting system that includes the values of the ecological services provided by forest ecosystems.
- The creation of a publicly accessible forest information system that provides high-quality information on the status of forests across Canada to fill knowledge-based information gaps.
- The provision of capacity-building resources for meaningful participation in planning processes (especially for Aboriginal communities).

For Provincial/Territorial governments:

- Clear articulation of ecosystem-based management objectives to guide planning initiatives.
- High level political involvement to coordinate inter-departmental government initiatives and planning.
- Comprehensive data collection and dissemination of information to participants, including full economic and social valuations of different management models; assistance/support for mapping of traditional Aboriginal use and occupancy of land and resources; full disclosure of industrial expansion interests and data on wildlife habitat needs and areas of high conservation value.
- The provision of capacity-building resources for meaningful participation in planning processes (especially for Aboriginal communities).

For Provincial governments, with regard specifically to the planning initiatives discussed in this report:

Lands for Life

- As promised under Ontario's Living Legacy, develop detailed implementation strategies for Enhanced Management Areas with the participation of stakeholders so that industrial activities do not adversely affect identified forest values in these special management areas.

East Side of Lake Winnipeg

- Extend the East Side Planning Initiative (ESPI) to allow it to fulfill its original mandate and goals, enabling actual planning and the establishment of protected areas to occur as per the ESPI Terms of Reference.
- Provide adequate funding to ensure community and citizen participation, and an independent and transparent process, in order to realize credible plans, recommendations and actions.
- Support the preliminary need for Aboriginal communities to conduct occupancy studies and data collection regarding traditional territories.
- Utilize the next phase of the ESPI to follow through on public policy commitments and the ESPI Terms of Reference for the establishment of protected areas in the ESPI Natural Regions, including the First Nation-led World Heritage Site nomination.
- Include a full carbon inventory, carbon loss, and greenhouse gas budget and data to be applied to future decisions regarding the ESPI regions.
- Publicly release all existing information and data about the ESPI region.

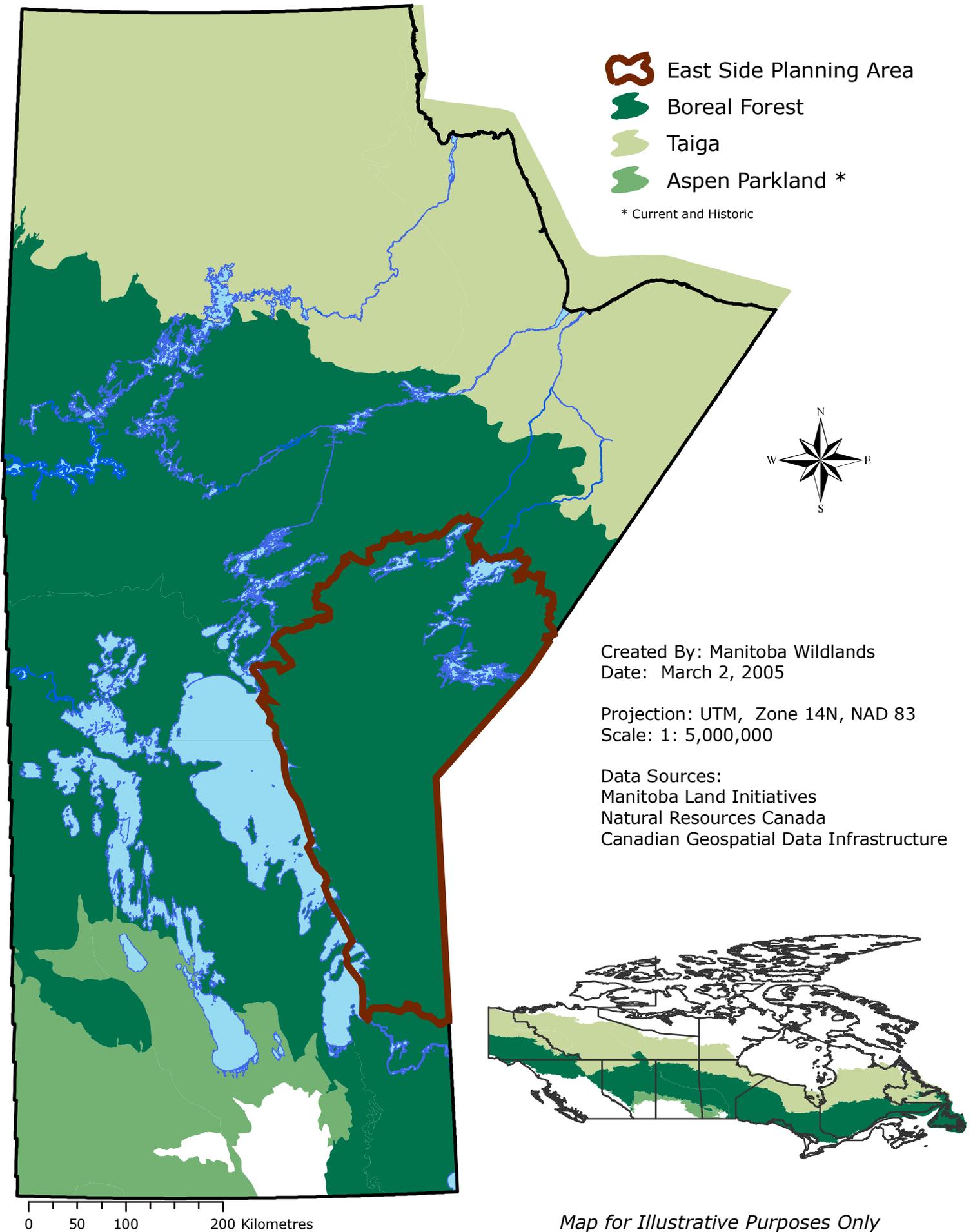
Muskwa-Kechika

- Renew and reinvigorate the long-term funding and mandate of the Muskwa-Kechika Management Area.
- Delay awarding of oil and gas tenures until completion of a conservation area design, a wildlife management plan and a park management plan.
- Devolve more power to Aboriginal Peoples by forming a co-management authority.

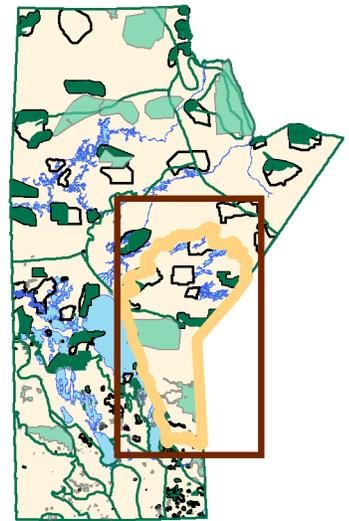
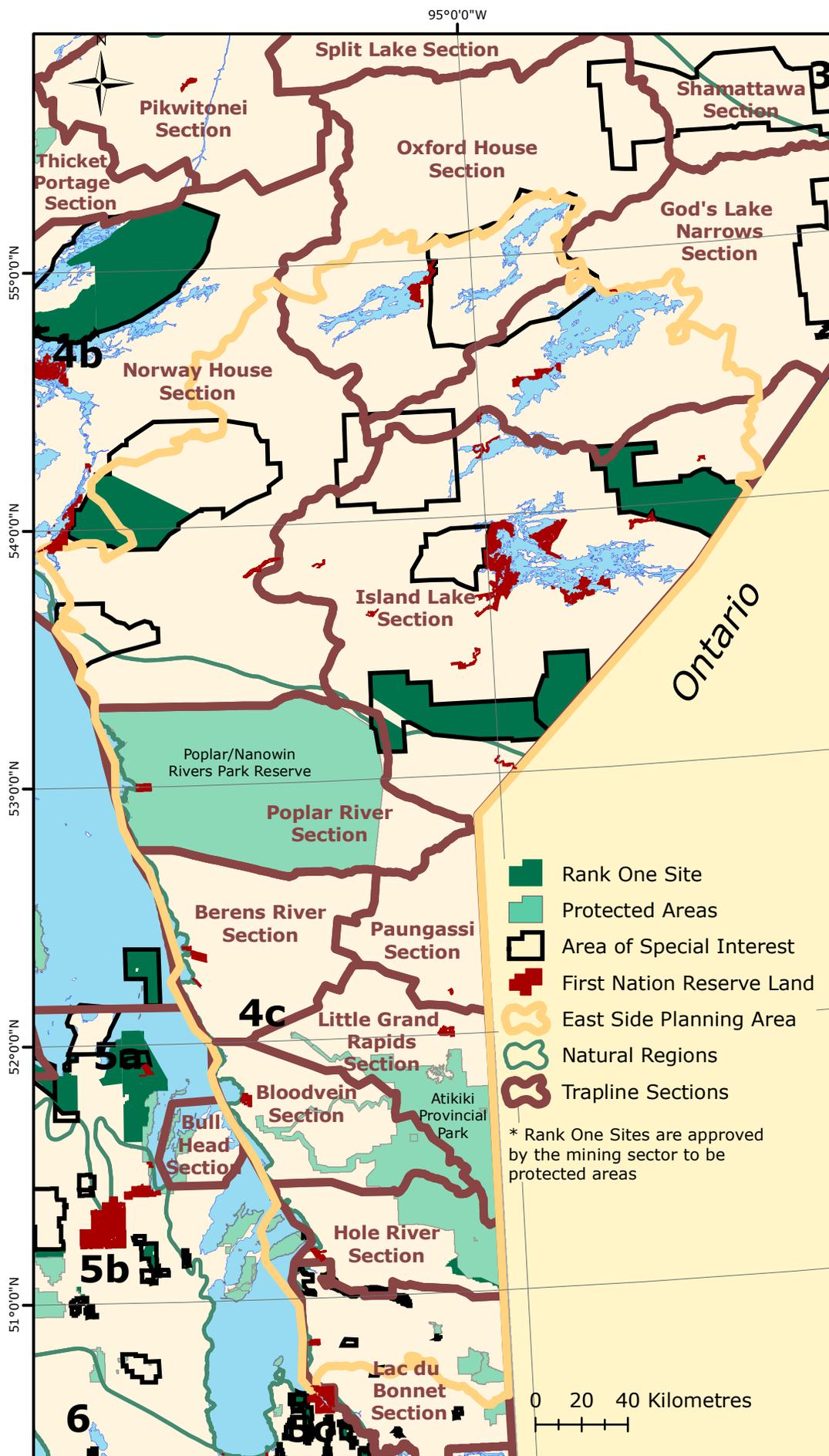
Athabasca

- Ensure that industrial activity does not occur within protected areas.
- Require co-management (including Aboriginal and community representation) approval for industrial initiatives that are proposed within the planning area (outside of protected areas).

East Side of Lake Winnipeg Planning Area in Canadian Boreal



Mining Rank One Areas - East Side Planning Initiative



Natural Region Codes

- 3 - Hudson Bay Lowlands
- 4 - Precambrian Boreal Shield
 - 4b - Hayes River Upland
 - 4c - Lac Seul Upland
- 5 - Manitoba Lowlands
 - 5a - Mid Boreal Lowland
 - 5b - Interlake Plain
 - 5c - Lake of the Woods
- 6 - Aspen/Oak Parkland

Created By:
Manitoba Wildlands
March 2, 2005

Projection:
UTM, Zone 14N, NAD 83
Scale: 1:2,500,000

Data Sources:
Manitoba Land Initiatives
<http://web2.gov.mb.ca/mli/>
Manitoba Geological Survey - GIS Map Gallery
<http://www.gov.mb.ca/iedm/mrd/geo/gis/>
Natural Resources Canada - Geogratis
<http://geogratis.cgdi.gc.ca/>

* Rank One Sites are approved by the mining sector to be protected areas