



Broad Area Planning

Wabanong Nakaygum Okimawin

"east side of the lake governance"

East Side Planning Initiative

Suite 405 - 326 Broadway Avenue

Winnipeg, Manitoba R3C 0S5

204-945-2980 or 1-800-214-6497

204-948-2948 Fax

wno@gov.mb.ca

RECEIVED

JUN 19 2006

MEMORANDUM

To: Executive Committee of Chiefs

Vice Chief Nelson Keeper

Chief Sheldon Kent

Chief David McDougall

Chief Linda Twoheart

Chief Chris Ross

From: Bernie Wood, WNO Secretariat

Date: June 9, 2006

Re: Draft Protocol #22, and Overview

Attached to this memo is Protocol Agreement Draft #22, and an overview for your review.

The overview of Draft #22 is the views and opinions of Brian Schwartz, a lawyer hired by the Council of Chiefs. The province is also considering the document.

The schedules (chart & budget) will be sent out to accompany the draft protocol when they are completed.

Please review the enclosed documents in anticipation of a meeting between the Executive Committee of Chiefs and the Manitoba government during the week of June 19th, 2006.

You will be notified if there are any schedule changes.

If you have any questions regarding either of the two documents please call Bernie Wood at the WNO secretariat office: 945-1642.

Note: *This protocol agreement is a draft and the final text has not, at this stage, been agreed to by both the WNO and province. Until a final text version is complete and agreed to by both parties, WNO co-Chair Ed Wood is asking that it not be distributed to the general public.*

WABANONG NAKAYGUM OKIMAWIN PROTOCOL AGREEMENT– SUMMARY

The Protocol is a government-to-government agreement. It is legally binding between the Province and any East Side First Nation that chooses to sign it. The Agreement will last for five years and is renewable.



TWO KEY CONCEPTS:

1. New development in the East Side will proceed only with the consent of affected First Nations;
2. The consent requirement will provide East Side First Nations with new opportunities to share in economic benefits and management of new developments in the East Side.

➡ **What is the main principle of this Agreement?**

- This Protocol recognizes that future development in the East Side Planning Area should ordinarily only take place with the consent of First Nations that may be affected by that development.

➡ **How does this Agreement support this principle?**

- The Agreement anticipates that over time, First Nations and the Province will enter into land use plans and resource management agreements, for the co-management and resource sharing of East Side lands and resources. This Agreement is the first step in that direction.
- It also states that until such plans and agreements are in place, the Province will ordinarily not even consider new developments without the consent of affected First Nation Governments.
- This Agreement applies to large scale developments, such as forestry, mining, road-building, as well as smaller scale activities, such as cottage lot and recreation developments.

➡ **How will the consent requirement actually work?**

- Most often developers need to obtain a licence or permit from the Province, before they can proceed with their plans.
- Under this Agreement, the Province will ordinarily not consider issuing a licence, permit etc. to develop/use land or resources on the East Side unless it has received written consent from First Nations that would be "affected" by the development.
- If the Province itself wants to develop or use East Side land or resources, it too will need to get the consent of any "affected" First Nations before it can proceed.

➡ **What does "affected" mean?**

- "Affected" is defined in very broad terms in this Agreement, and includes activities that take place within the traditional territories of a First Nation, as well as on a reserve. It also includes activities that would likely have an adverse impact on the environment or

social or economic fabric of a First Nation.

⇒ ***Do developers need to get First Nations' consent before they can develop land or resources in other areas of Manitoba?***

- No. This Agreement offers a unique legally binding right that only signatory East Side First Nations will have.

⇒ ***What are the practical benefits of the consent requirement?***

- The need to obtain a First Nation's consent will encourage developers to negotiate agreements with affected First Nations that could provide benefits such as job opportunities, revenue sharing or co-management opportunities for those First Nations.
- The consent requirement is not intended to prevent future development on the East Side that would benefit East Side First Nations. Instead, it offers First Nations a legally binding right to have a reasonable amount of control over such developments.

⇒ ***Are there exceptions where development can proceed without an "affected" First Nation's consent?***

- Yes. If a First Nations does not consent, the developer can appeal to the East Side Planning Appeal Board. A three member panel will decide whether the Province should consider the development, based on a weighing of the potential harms and benefits to all, including job opportunities and revenue sharing for First Nations.

⇒ ***Who sits on the Appeal Board?***

- The three member Appeal Board consists of one member nominated by the WNO First Nations Council, a second member nominated by the Province, and a chair who is jointly appointed.

⇒ ***Are there other ways a First Nation can challenge a development, if the Appeal Board rules in the developer's favour?***

- If an appeal is allowed, that does not mean that the development will still go ahead. The First Nation can try to persuade other bodies, such as the Environment Commission, to recommend against granting the license or permit. Furthermore, the province still has the duty to consult with the First Nation if its Aboriginal or Treaty rights are affected.

⇒ ***What about existing licenses and permits, as opposed to new developments?***

- This Agreement only requires that a First Nation's consent be given to new developments. This Agreement does not take away existing rights of license and permit holders.
- An existing license or permit holder can have their license renewed without the consent of First Nations if such a renewal would ordinarily occur. However, the Province does promise to consider comments from a First Nation when considering renewal terms and conditions.
- In the case of existing staked mining claims and mining leases, the Province will require that First Nations benefit from the mining project and are compensated for the negative

impacts, before mining can proceed.

⇒ ***How does this Agreement affect First Nations' uses of their reserve land and traditional territories?***

- First Nations will continue to use their lands in traditional ways without any change. First Nations that need to obtain a licence or permit for specific regulated activities, such as forestry, would need to seek consent from other First Nations that are affected, just like any other developer.

⇒ ***Does this Agreement affect existing Aboriginal and Treaty rights?***

- No. The Agreement is very clear that it does not undermine any existing Aboriginal or Treaty rights. It only offers additional protection to First Nations, and with that, new opportunities to share in the economic benefits of future developments.

⇒ ***What about the need for an all-season road, and other infrastructure, to support development on the East Side?***

- Under this Agreement, the Province agrees in principle that the East Side should have infrastructure that is reasonably comparable to other rural areas of Manitoba, including an all-season road. The Province and East Side First Nations agree to try to find additional sources of funding, including federal contributions, to fund the implementation of this principle.

⇒ ***Who is going to pay for the processes contemplated under this Agreement?***

- The Protocol includes a budget that will allow signatory First Nation Governments to engage in the activities and processes contemplated under the Protocol, such as developing land use plans, resource management agreements, considering development applications, and participating in the appeal process.

⇒ ***How does an individual First Nation sign on to the Agreement?***

- This involves a two step process: **First**, the East Side Council of Chiefs will have the opportunity to vote (on a date to be announced) on whether to recommend further consideration of this Agreement, by each of the 16 East Side First Nations. Nine out of sixteen Chiefs must vote to recommend this Agreement, in order for it to be considered any further. The Chiefs' signatures at this initial stage would not legally bind their First Nations to this Agreement. The Chiefs' signatures would legally bind the Province to holding the Protocol open for signing until at least October 31 2006.
- **Second**, if the initial "recommending" vote is successful, each East Side First Nation will be asked to formally consider whether it wants to sign onto this Agreement. If a First Nation decides that it wants to sign, a representative of that East Side First Nation (who is authorized to do so by a quorum of the band council of that First Nation) must sign the "Attachment" page of this Protocol. When signed at this second stage, this Agreement becomes binding between Manitoba and that First Nation.

This Agreement has been negotiated on behalf of East Side First Nations by the WNO Protocol Negotiating Team, with representatives from the Province and First Nations. It has been reviewed and refined by legal counsel for First Nations and the Province. This Agreement is being distributed to all sixteen East Side First Nations for consideration, prior to the Council of Chiefs vote.

WORKING DRAFT #22

WITHOUT PREJUDICE

WABANONG NAKAYGUM OKIMAWIN PROTOCOL AGREEMENT

BETWEEN

THE SIGNATORY FIRST NATION GOVERNMENTS
LOCATED WITHIN THE EAST SIDE PLANNING AREA

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
MANITOBA AS REPRESENTED BY THE MINISTER OF
CONSERVATION

This Protocol Agreement has been entered into by authorized representatives of the Government of Manitoba and the Wabanong Nakaygum Okimawin Council of Chiefs on

June 20, 2006

<p>Her Majesty the Queen in right of the Province of Manitoba</p>	<p>Wabanong Nakaygum Okimawin Council of Chiefs</p>
<p>the Minister of Conservation</p>	<p><i>Insert number of lines for signatories</i></p>

PROTOCOL AGREEMENT

BETWEEN

THE SIGNATORY FIRST NATION GOVERNMENTS
LOCATED WITHIN THE EAST SIDE PLANNING AREA

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
MANITOBA AS REPRESENTED BY THE MINISTER OF
CONSERVATION

June 20, 2006

WHEREAS

- A. In light of the considerations listed in B to M below, this Protocol has been developed to confirm that the East Side First Nation Governments and their citizens and the Government of Manitoba have agreed to develop a new relationship based on government-to-government consultation and on co-management and revenue sharing;
- B. The First Nations that were the original occupants of the East Side Lake Winnipeg Planning Area now represent 96% of the population of that Area;
- C. The East Side Planning Area, described in the map attached as Appendix "A" to this Protocol, is located within the Area of Treaties 1,3 and 5 (including Adhesions);
- D. In July 2000, the Province announced its acceptance of the *Consultation on Sustainable Development implementation (COSDI) Report* which recommended, among other things, that the implementation of sustainable development include the creation of broad area plans in Manitoba;
- E. On August 9, 2000 the Government of Manitoba announced that it would initiate an "East Side Planning Initiative", consisting of broad area planning on the east side of Lake Winnipeg as a pilot for broad area planning for the province;
- F. The East Side Planning Initiative was launched with the objective of bringing together local communities, First Nations, industry and environmental organizations to develop a vision for land use and resource use in the area that respects both the value of the boreal forest and the needs of the local communities;
- G. The Final Report of Phase 1 of the East Side Lake Winnipeg Broad Area Planning Initiative recommended that a Plan for the Planning Area recognize, affirm and be in compliance with Treaty rights and Aboriginal rights and be consistent with the consultation/protocol guideline recommendations of the *COSDI REPORT* respecting First Nation peoples and Aboriginal peoples;
- H. The East Side First Nations Council (now Wabanong Nakaygum Okimawin Council of Chiefs "WNO First Nations Council") was established to facilitate First Nations participation in the planning process;
- I. As a result of the participation of the East Side First Nations Council in a process with the Government of Manitoba, a Memorandum of Understanding was developed to guide and govern First Nations' participation in the East Side Planning Process. The participation of First Nations in the Planning process is called the "WNO process";
- J. Thirteen of the East Side First Nations signed the Memorandum of Understanding, but all sixteen East Side First Nations are participating in the WNO process;

- K. In November 2004, the East Side Planning Initiative Status Report "Promises to Keep . . . Towards a Broad Area Plan for the East Side of Lake Winnipeg" was presented to the Government of Manitoba for consideration;
- L. In December 2004, the Government of Manitoba agreed to begin implementation of the main recommendations in the report including the development of this Protocol;
- M. The Government of Manitoba and First Nation Governments are agreeing, in accordance with this Protocol, to work together with mutual recognition, respect and reconciliation towards Wabanong Nakaygum Okimawin (WNO) - East Side of the Lake Governance;

The Government of Manitoba and the WNO First Nations Council have developed this Protocol:

1.0 INTERPRETATION

1.01 In this Protocol:

"Aboriginal and Treaty rights" means the Aboriginal and Treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed by section 35 of the *Constitution Act, 1982* and any other constitutional rights that may pertain to First Nations, including but not limited to any rights under the *Natural Resources Transfer Agreement*, which is part of the *Constitution Act, 1930*;

"Activity" means an activity described in paragraph 5.4 in the Planning Area;

"Affected First Nation" means a Participating First Nation that may be affected by a proposed Activity in accordance with paragraph 5.9;

"Affected First Nation Government" means the government of an Affected First Nation;

"Board" means the East Side Planning Appeal Board to be established under Article 5.0;

"East Side First Nations" means Berens River First Nation, Bloodvein First Nation, Bunibonibee Cree Nation, Garden Hill First Nation, God's Lake First Nation, Hollow Water First Nation, Little Black River First Nation, Little Grand Rapids First Nation, Manto Sipi Cree Nation, Norway House Cree Nation, Pauingassi First Nation, Poplar River First Nation, Red Sucker Lake First Nation, Sagkeeng First Nation, St. Theresa Point First Nation and Wasagamack First Nation;

"First Nation Government" means the government of a Participating First Nation;

"Land" is to be interpreted in the manner described in paragraph 1.05;

"Participating First Nation" means a First Nation that is a signatory to this Protocol;

"Participating First Nation Government" means the government of a Participating First Nation;

"Planning Area" means the East Side Planning Area depicted in the map attached as Schedule "A";

"Proponent" means any person or entity that proposes an Activity, which entity may include the Province, the Government of Canada, a government of a First Nation, a "Community" under *The Northern Affairs Act*, or an agency of any of them;

"Province" means Her Majesty the Queen in Right of the Province of Manitoba;

"WNO First Nations Council" means the Wabanong Nakaygum Okimawin Council of Chiefs representing the sixteen First Nations located in the East Side Planning Area;

- 1.02 The definitions in paragraph 1.01 are intended for purposes of this Protocol only and do not have any legal significance except in this Protocol.
- 1.03 Words used in the singular shall include the plural, and vice versa, as the context may require.
- 1.04 The Parties have endeavoured to ensure that the terms of this Protocol are as clear as possible; therefore, in interpreting this Protocol there shall be no presumption or principle of interpretation in favour of or against any Party.
- 1.05 The term "land" in an expression such as "Crown land", "reserve land", "areas of land" or "land use planning" shall be understood as having the same meaning as it would ordinarily have when used in such an expression, and thus may refer to rights or interests involving minerals, watercourses, air, and natural resources, including plants and animals, as well as the surface of the land.
- 1.06 The term "territory" in expressions such as "traditional territories" shall be understood as including rights or interests involving minerals, watercourses, air, and natural resources, including plants and animals, as well as the surface of the land as is appropriate in the context.
- 1.07 The term "Planning Area" shall be understood as including rights or interests involving minerals, watercourses, air, and natural resources, including plants and animals, as well as the surface of the land as is appropriate in the context.

2.0 PURPOSE OF PROTOCOL

- 2.1 This Protocol has been developed to recognize that the Planning Area is primarily intact in its natural state as a boreal forest, primarily as a result of the stewardship of the East Side First Nations people who have protected this area since time immemorial.
- 2.2 This Protocol will serve as foundation and guide for governments of First Nations within the Planning Area to be involved in decisions that will affect their communities and traditional territories, and will lead to land use plans

developed by First Nations with the Province and resource management agreements between East Side First Nations and the Province.

3.0 GOVERNING PRINCIPLES

The Province and First Nation Governments recognize that the following principles will govern their activities under this Protocol:

- 3.1 First Nation Governments and their citizens relate to their lands in both traditional and contemporary ways and intend to continue that relationship regardless of and through this Protocol.
- 3.2 The Planning Area is largely untouched and contains intact boreal forest with eleven watersheds, consequently sustaining the land and water is a governing principle in decision making.
- 3.3 Citizens of the East Side First Nations shall be substantially involved in all decisions affecting land and resources within the traditional territories of that East Side First Nation.
- 3.4 Land Use Planning will provide East Side First Nations an opportunity to be directly involved in resource protection and management for the benefit of First Nation Governments and their present and future citizens.
- 3.5 Land Use Plans and Resource Management Agreements shall be developed in light of the traditional First Nations perspective that all components of the natural environment, including lands, air, waters, minerals, plants, animals and human beings, are part of a single interrelated system.
- 3.6 This Protocol and Land Use Plans and Resource Management Agreements arising out of this Protocol will provide the basis for appropriate sustainable economic development and for capacity building for East Side First Nations.
- 3.7 Aboriginal and Treaty rights of First Nations will be respected and the parties will honour the spirit and intent of the treaties.
- 3.8 This Protocol is without prejudice to First Nation Governments' understanding of the scope and interpretation of Treaties 1, 3 and 5, including Adhesions thereto.
- 3.9 In their activities under this Protocol, the Province and First Nation Governments will seek to include understanding of the perspective of First Nations of the scope and meaning of Treaties 1, 3 and 5.
- 3.10 This Protocol will not affect any of the obligations of the Government of Canada with respect to First Nations' Aboriginal and Treaty rights.
- 3.11 As noted in paragraph 5.1, the pursuits of the Province under this Protocol are not to be considered consultation by the Crown about any proposed decision that might adversely affect the Aboriginal or Treaty rights of the First Nations or other Aboriginal peoples.

- 3.12 The Province will provide funds to First Nation Governments, in accordance with paragraph 6.3, to enable First Nations to engage as equal partners with the Province in the activities and processes contemplated under this Protocol.
- 3.13 Timelines will be agreed upon by the Province and First Nation Governments to ensure that First Nation Governments have sufficient time to prepare and then participate in the activities and process contemplated under this Protocol based upon adequate information.
- 3.14 The Province and First Nation Governments will share information to support and facilitate Land Use Planning and the development of Resource Management Agreements.
- 3.15 First Nation Governments will not be required to use existing sources of federal government funding for engaging in the activities and processes contemplated under this Protocol, such as developing Land Use Plans, negotiating Resource Management Agreements, considering proposed Activities, and participating in the appeal process.
- 3.16 The Province and First Nation Governments agree on the principle that residents in the Planning Area should have infrastructure, including all-season roads, that is reasonably comparable to rural areas in Manitoba. The Province and First Nations will participate jointly to seek additional resources, including resources from the Government of Canada, to enhance the infrastructure of First Nation communities. The Province and First Nation Governments will seek contribution from the Government of Canada for all season roads on a priority basis.
- 3.17 The Province and First Nation Governments agree that development in the Planning Area should ordinarily proceed only where First Nations that would be affected by the development consent. This principle shall be applied with respect to land use plans and resource agreements in accordance with Article 4.0 of this Protocol and to land or resource allocations and dispositions, pending the development of such plans, in accordance with Article 5.0 of this Protocol.

4.0 LAND USE PLANNING AND RESOURCE MANAGEMENT AGREEMENTS

- 4.1 Land Use Plans are intended to be developed for areas within the Planning Area, with the objective of ensuring that First Nation Governments and their citizens are able to:
 - 4.1.1 have all the information that is needed to be substantially involved in making responsible land use decisions that affect them;
 - 4.1.2 develop the capacity necessary to address the outcomes of land use plans and make decisions in accordance with those plans in the long term;

- 4.1.3 ensure that First Nation Governments and citizens benefit directly and indirectly from the land use plans and the resulting outcomes and decisions;
- 4.1.4 inform other governments and people other than First Nations' citizens about how to act with respect on the land;
- 4.1.5 become trained and employed to carry out resource management activities in accordance with traditional knowledge, land use plans and provincial legislation within their traditional territories.
- 4.2 Each First Nation Government may engage in a local land use planning process for the area traditionally used by that First Nation, with the objective of those local plans becoming integrated into one or more broad-area Plans for the Planning Area.
- 4.3 More than one First Nation Government may work together within geographic and/or political arrangements to complete joint land use plans.
- 4.4 Land Use Planning will include, but not be limited to:
 - 4.4.1 collection and documentation of Traditional Anishinaabe/Ininew/Ansininew Scientific data and Western ecological, scientific and geological data related to the land, including existing data;
 - 4.4.2 collecting archaeological data, existing and new;
 - 4.4.3 resolving conflicting uses of land;
 - 4.4.4 mapping;
 - 4.4.5 designating areas of ecological, cultural or historical significance to ensure their recognition and preservation;
 - 4.4.6 designating areas of land for purposes of regulating use through zoning or other methods consistent with traditional ecological knowledge and provincial legislation;
 - 4.4.7 capacity building.

- 4.5 The Land Use Planning process will also assist in allowing for the traditional territories of Participating First Nations to be refined and clearly noted so that all parties will be able to know the lands that are the traditional territories of the Participating First Nations.

Resource Management Agreements

- 4.6 At the request of First Nation Governments, the Province will enter into discussions toward the development of Resource Management Agreements to apply to specific territories/regions in the Planning Area.
- 4.7 These Resource Management Agreements may deal with some or all of the following subjects:
- the establishment of resource management authorities for defined areas of the Planning Area;
 - Activities as per paragraph 5.4;
 - First Nation Government Land Use Plans;
 - traditional pursuits of First Nation members;
 - consultation by the Province with First Nation Governments about decisions to be made by the Province;
 - measures for accommodating adverse effects on First Nations;
 - arrangements for access or sharing of resources and royalties and revenues from resource development;
 - sustainable economic opportunities;
 - funding arrangements.
- 4.8 The Province and First Nation Governments will cooperate in taking appropriate steps to ensure that the Land Use Plans and Resource Management Agreements contemplated under this Protocol, are given full legal effect.

5.0 PROCESS FOR CONSENT OF FIRST NATIONS FOR PROPOSED ACTIVITIES BEFORE LAND USE PLANS OR RESOURCE MANAGEMENT AGREEMENTS ARE IN EFFECT

- 5.1 The Province recognizes that the planning process being developed in accordance with this Protocol is not designed to constitute consultation with First Nations about any government decisions that might adversely affect the Aboriginal or Treaty rights of the First Nations or other Aboriginal peoples.
- 5.2 Until such time as applicable First Nations land use plans are developed and adopted or resource management agreements are made, a Proponent who proposes to apply to the Province for an allocation or disposition of Manitoba Crown land or resources for an Activity described in paragraph 5.4 in the Planning Area is to seek the Consent of any First Nation Government that will

be affected by the proposed Activity before submitting the application to the Province.

- 5.3 Paragraph 5.2 applies to the Province where it is a Proponent, whether or not the Province legally requires an allocation or disposition of Manitoba Crown land or resources in order to conduct the proposed Activity.
- 5.4 The Activities are:
- forestry;
 - mining, subject to paragraph 5.5
 - establishing Provincial or National parks, protected areas or special land designations;
 - tourism and recreation developments, being lodges and outcamps;
 - transportation;
 - cottage lot developments;
 - hydro-electric transmission corridor;
 - allocation of traplines and trappers' cabins; and
 - wild rice propagation, production and harvesting.
- 5.5 Mining Activities will be subject to the following:
- Mining exploration is not an "Activity", but will be subject to the "Manitoba Minerals Guidelines", which will be implemented in consultation with First Nations recognizing the differences between exploration and actual mining activity.
 - To the extent that holders of mining claims and mining leases in the Planning Area as of the date of this Protocol have legal rights under *The Mines and Minerals Act*, the Province will respect those legal rights, but will, in any case where such respect precludes the application of Article 5.6, consider in accordance with paragraph 5.8 comments and suggestions by Affected First Nations about further development under those mining claims and mining leases, including consideration of terms and conditions that may be determined to apply to mining leases under *The Mines and Minerals Act*.
 - In addition, with respect to existing mining claims and mining leases, the Province will, within regulatory and consultation processes, require that members of First Nations benefit from the mining project and are compensated for the negative impacts of mines on the First Nation and its members, before mining can proceed;
 - Article 5.0 applies to any "Mineral Exploration Licences" after the date of this Protocol.
- 5.6 Subject to determination by the East Side Planning Appeal Board in accordance with paragraphs 5.17 to 5.23, the Province will not consider any application for land or resource allocation or disposition of Manitoba Crown lands required for an Activity until consent for the Activity has been demonstrated by the Affected First Nation Government.
- 5.7 In paragraph 5.6, "land or resource allocations or disposition" means:

5.7.1 the transfer of title, the issuance of any lease for occupancy of Crown land, the issuance of any permit authorizing the use of Crown land or the grant or issue of any other estate or interest in Crown land; or

5.7.2 the issuance of any licence or the allocation of any interest in natural resources administered and controlled by the Province;

but does not include:

5.7.3 the approval of annual operating plans under the existing Forest Management Licence Agreement and Integrated Wood Supply allocations;

5.7.4 mining developments pursuant to mining claims or mineral leases in effect as of the date of this Protocol;

5.7.5 the renewal of or consent to the assignment of an interest described in paragraphs 5.7.1 or 5.7.2 which would ordinarily be renewed as a matter of law, established practice or the policy of Manitoba as of the date of this Protocol; or

5.7.6 the change in any of the terms or conditions of an allocation or disposition of Crown land or resources made before the date of this Protocol, which would ordinarily be changed as a matter of law, established practice or the policy of Manitoba as of the date of this Protocol, provided the area of the disposition or the amount of the resource allocated is not increased.

5.8 Where a decision of the Province does not constitute a "land or resource allocation or disposition" by virtue of any of paragraphs 5.7.3 to 5.7.6 inclusive, the Province shall nonetheless in making its decisions, under Article 5.12.1, consider comments or suggestions by Affected First Nations on such matters as whether the holder of a licence or allocation has complied with conditions or whether new conditions should be imposed.

5.9 A Participating First Nation is an Affected First Nation where the proposed Activity would:

5.9.1 take place on reserve land of that First Nation in the Planning Area or on land in the Planning Area that has been identified by the First Nation to possibly become reserve land of the First Nation under a law or policy of the Government of Canada;

5.9.2 take place on any other land owned by that First Nation in the Planning Area pursuant to a Treaty land entitlement agreement or other arrangement ancillary to a Treaty;

5.9.3 take place in the traditional area of that First Nation in the Planning Area, or in any area in the Planning Area identified by the Province in an agreement or legislation as a resource area or resource management area associated with that First Nation;

- 5.9.4 reasonably be expected to have a significant adverse biological, physical, social, or economic effect on an area described in paragraphs 5.9.1, 5.9.2 or 5.9.3 even if the Activity takes place outside those areas, whether or not the effect will be mitigated;
- 5.9.5 take place in an area in the Planning Area that has been used, to a significant extent, in the years preceding the proposed Activity by members of that First Nation for traditional activities such as hunting, fishing or trapping, and would reasonably be expected to adversely affect such traditional uses by those members.
- 5.10 An Affected First Nation Government may identify any conditions of its Consent for an Activity.
- 5.11 An Affected First Nation Government will confirm its Consent to an Activity and any conditions of Consent by a document signed by a quorum of the council of the First Nation Government.
- 5.12 Where an affected First Nation Government Consents to the Activity under this Article 5.0, the Province:
 - 5.12.1 will give due consideration to the conditions of support when considering the application, including possible licensing conditions, where applicable; and
 - 5.12.2 will not approve an application to authorize an Activity inconsistent with the conditions of Consent of the First Nation. Regulatory requirements under applicable laws will apply.
- 5.13 In the event that more than one First Nation Government is affected by a proposed Activity, the Affected First Nation Governments will attempt to come to a consensus about whether they collectively Consent to the proposed Activity.
- 5.14 Where an Affected First Nation Government does not Consent to a proposed Activity, or the Proponent does not agree with conditions of Consent, the Proponent or the Affected First Nation Government may refer the matter to the East Side Planning Appeal Board in accordance with paragraphs 5.17 to 5.23.
- 5.15 The Proponent and Affected First Nation Governments may enter into agreements about proposed Activities, and:
 - 5.15.1 those agreements will be enforceable between the Affected First Nation Government and the Proponent according to its terms; and
 - 5.15.2 where provided by an agreement, the Province will consider the agreement to set out conditions of Consent by the Affected First Nation Government for the Activity.

Notice System for Potential Activities

- 5.16 The Province, at its expense, shall maintain a notice system that enables First Nations to be alerted to the nature and scope of potential Activities on a sufficiently prompt basis to fully exercise their rights under this Agreement.
- 5.16A Where an Affected First Nations is notified of a potential activity – either by the notice system maintained under paragraph 5.16 or by direct notice – the Affected First Nation shall respond to the Proponent within a reasonable time. Where an Affected First Nation advises a Proponent that it wishes to consult with or negotiate with the Proponent, it will be expected that the Proponent will proceed with the Affected First Nation within a reasonable time.

East Side Planning Appeal Board

- 5.17 An East Side Planning Appeal Board ("the Board") shall be established as follows:
- the Board will consist of one First Nation person appointed by the WNO First Nations Council, one person appointed by the Province, and a Chair appointed jointly by the Province and the WNO First Nations Council.
 - The WNO First Nations Council and the Province may each appoint one or more alternates to sit on the Board, in the event the member appointed by that party is not able to participate. The WNO First Nations Council and the Province may appoint Board members to consider a particular appeal, for a fixed term, or indefinitely.
 - The Chair may be appointed to consider a particular appeal, to act as Chair for a fixed term, or to act indefinitely.
 - Where the Province and the WNO First Nations Council do not agree on a Chair, the Chair may be appointed to hear a particular appeal in the manner provided for in *The Arbitration Act* (Manitoba).
 - The WNO First Nations Council and the Province may agree to replace a Chair at any time by agreement in writing.
- 5.18 The Board will consider all appeals under Article 5.0 and may determine:
- 5.18.1 whether a Participating First Nation is affected by a proposed Activity;
- 5.18.2 whether it is reasonable for a Proposal to proceed to be considered further by decision makers of the Province, under applicable Provincial legislation;
- 5.18.3 any conditions to apply to consideration of the Proposal by Provincial decision makers.

- 5.19 The Board may determine its own procedures subject to treating all parties fairly.
- 5.20 Where agreed by the Proponent and the Affected First Nation Government, the Board will adjourn consideration of an appeal to allow for the First Nation Government and the Proponent to consider the matter further or to allow any other relevant process to be completed. These other processes may include public hearings and mediation.
- 5.21 In considering an appeal, the Board shall take into account:
 - 5.21.1 the nature and extent of any adverse effects of the proposed Activity on the Affected First Nation, including any environmental, biological, physical, social, or economic effects;
 - 5.21.2 the nature and extent of any benefits to Affected First Nations of the proposed Activity, including any economic benefits including opportunities for revenue sharing, employment benefits or infrastructure benefits and opportunities to participate in co-management;
 - 5.21.3 the nature and extent of any benefits to any other First Nations, including any economic benefits including opportunities for revenue sharing, employment benefits or infrastructure benefits and opportunities to participate in co-management;
 - 5.21.4 the extent to which the Affected First Nation has been consulted about the proposed Activity and the extent to which concerns of the First Nation have been addressed in the proposal;
 - 5.21.5 the extent to which the failure of the proposed Activity to proceed would cause hardship – including loss of potential benefits – to the Proponent, other persons, or to the public generally;
 - 5.21.6 evidence of best practices relating to the proposed Activity, including practices relating to involvement of First Nations and First Nation people in comparable activities in the Planning Area, Manitoba and Canada.
- 5.22 The Province may consider an application for an Activity in accordance with a decision of the Appeal Board.
- 5.23 A decision of the Board will not affect the Aboriginal or Treaty rights of an Affected First Nation.
- 5.24 The Consent of a First Nation Government for a proposed Activity or a decision of the Board does not affect the right of a First Nation to take any position it wishes in any regulatory process or to challenge any decision in a court of law on the basis that the decision or Activity infringes an Aboriginal or Treaty right.

Note: A chart illustrating the decision-making process for Activities described in this Article is set out in Schedule "C". The Chart is for illustration only and does not constitute a substantive part of this Protocol.

Existing Approvals

- 5.25 The decision-making process in Article 5.0 applies only to dispositions or allocations of Crown land or resources for Activities after the date of this Protocol.
- 5.26 The Province and First Nations Governments will consider the opportunities for First Nation Governments to negotiate arrangements for participation by the First Nations with Proponents in existing Activities, as opportunities arise.

Process to apply where Land Use Plans and Resource Management Agreements not developed

- 5.27 The process set out in Article 5.0 applies in circumstances where Land Use Plans and Resource Management Agreements have not yet been developed and adopted under Article 4.0. The Province and WNO First Nations Council contemplate that Land Use Plans and Resource Management Agreements will set out the processes to apply for applications for allocations or dispositions of Manitoba Crown land or resources for Activities referred to in paragraph 5.4.

6.0 IMPLEMENTATION

- 6.1 The WNO First Nations Council will, in consultation with the Province, monitor implementation of this Protocol.
- 6.2 To maintain the Honour of the Crown in the government-to-government relationship between the Province and East Side First Nations, Provincial Ministers and the WNO First Nations Council commit to meet to conduct substantive discussions about issues of common concern a minimum of two times per year.

Budget for activities and processes under the Protocol

- 6.3 The Province commits to provide funding to the WNO First Nations Council and First Nation Governments in accordance with the budget attached as Schedule "B". Schedule "B" sets out the budget for the first year of activities under the Protocol, being April 1, 2006 to March 31, 2007. The budget for subsequent years' activities under the Protocol will be based on the first year budget set out in Schedule "B". The budget may in any year be adjusted by agreement of the Province and WNO First Nations Council to reflect agreed planned actions. The funding will allow First Nation Governments to engage in the activities and processes contemplated under this Protocol, such as developing Land Use Plans, Resource Management Agreements, considering land or resource allocation or disposition applications, and participating in the appeal process.

- 6.4 As the five-year budget was agreed to prior to the completion of this Protocol, the WNO First Nations Council and the Province agree to re-assess the adequacy of the budget in year two of the funding.
- 6.5 It is recognized that the East Side Planning Appeal Board will need to be funded separately by the Province.
- 6.6 The Province with First Nation Governments will work together to seek new additional funding from other sources such as federal and private funds.

7.0 TERM OF PROTOCOL AND AMENDMENT OF PROTOCOL

- 7.1 This Protocol applies to East Side First Nations who sign on, in accordance with its terms and conditions. These First Nations are "Participating First Nations".
- 7.2 Subject to paragraphs 7.3 to 7.6 inclusive, this Protocol shall remain in effect to June 30, 2011.
- 7.3 The Province and First Nation Governments may amend this Protocol by a further agreement in writing at any time.
- 7.4 The Province and the WNO First Nations Council, representing First Nation Governments, will review this Protocol every two years. As a result of a review, the Province and the First Nations Governments may agree to amend the Protocol under paragraph 7.3.
- 7.5 Unless either the Province or a First Nation Government provides notice in writing to the other on or before December 31, 2010, stating that it does not wish the Protocol to continue, this Protocol will automatically renew for Participating First Nations for an additional period of five years. If the Protocol is renewed in this way, the Province and the WNO First Nations Council will attempt to agree on a budget for that period for the purposes of paragraph 6.3 on a priority basis.
- 7.6 The Province and First Nation Governments may agree in writing to extend the Protocol beyond the initial term under paragraph 7.2 and any extension agreed to under paragraph 7.3.
- 7.7 Where the Protocol is not renewed under paragraphs 7.3 or 7.6, the Province and the WNO First Nations Council will work together to consider how the Province and First Nation Governments will continue to work together. However, because the Protocol will then no longer be in force, this commitment will not constitute a legally-binding term of this Protocol.

8.0 ENFORCEABILITY

- 8.1 Immediately upon signature by a quorum of the WNO First Nations Council, there will be a legally binding commitment on the part of the Government of Manitoba to keep this Agreement open to be signed by individual East Side First Nations until October 31, 2006.

- 8.2. To become a Participating First Nation, a representative of the East Side First Nation, who is authorized to do so by a quorum of the band council of that First Nation, must sign this Protocol by October 31, 2006. Upon such signature, this Protocol is legally binding, and its provisions are fully effective, as between the Province and that First Nation.
- 8.3. The period for signature may be extended from time to time by the Province in consultation with the WNO First Nations Council.
- 8.4. The Province will consider developing regulations pursuant to existing planning legislation within one year of the signing of this Protocol, to assist in the implementation of this Protocol. Stand-alone legislation to recognize the Planning Area will be an objective within five years.
- 8.5. Manitoba will closely consult with the WNO First Nations Council, with respect to the development of regulations and legislation referred to in paragraph 8.4, and with respect to any other instruments to implement this Protocol.
- 8.6. Funding to ensure that the WNO First Nations Council is able to effectively participate in this process is addressed in the budget set out in Article 6.3.
- 8.7. Legislation should include mechanisms for monitoring and compliance to ensure land use planning and resource management decisions made in accordance with this Protocol apply to public and private sector resource users.

9.0 ABORIGINAL AND TREATY RIGHTS

- 9.1 This Protocol shall not affect any Aboriginal or Treaty rights of the East Side First Nations.

10.0 SIGNATORIES

- 10.1. This Protocol is only in force between the government and Manitoba and East Side First Nations that choose to sign it in accordance with paragraph 8.2.
- 10.2 By signing the "WNO/Manitoba" cover page of this Protocol, the WNO First Nations Council does not bind any First Nation to this Protocol. By signing, the WNO First Nations Council confirms that the text of this Protocol is the product of discussions between itself and the Province, and that the WNO First Nations Council is able to recommend that East Side First Nations review the text and give careful consideration to whether they wish to sign it.
- 10.3 Any signature on the "WNO/Manitoba" cover page by the member of any First Nation is made in that person's capacity as a member of the WNO First Nations Council and does not bind that person's First Nation, nor does it represent the final decision by that person on whether his or her East Side First Nation should sign the Protocol.

Attachment (to show approval by each First Nation that approves the Protocol)

The _____ First Nation hereby approves and agrees to the Wabanong Nakaygum Okimawin Protocol that was developed and adopted by Her Majesty the Queen in Right of the Province of Manitoba and the Wabanong Nakaygum Okimawin Council of Chiefs on _____, 2006.

FOR THE FIRST NATION

Chief,
[Insert FIRST NATIONS GOVERNMENT]

Witness

Date

FOR THE PROVINCE

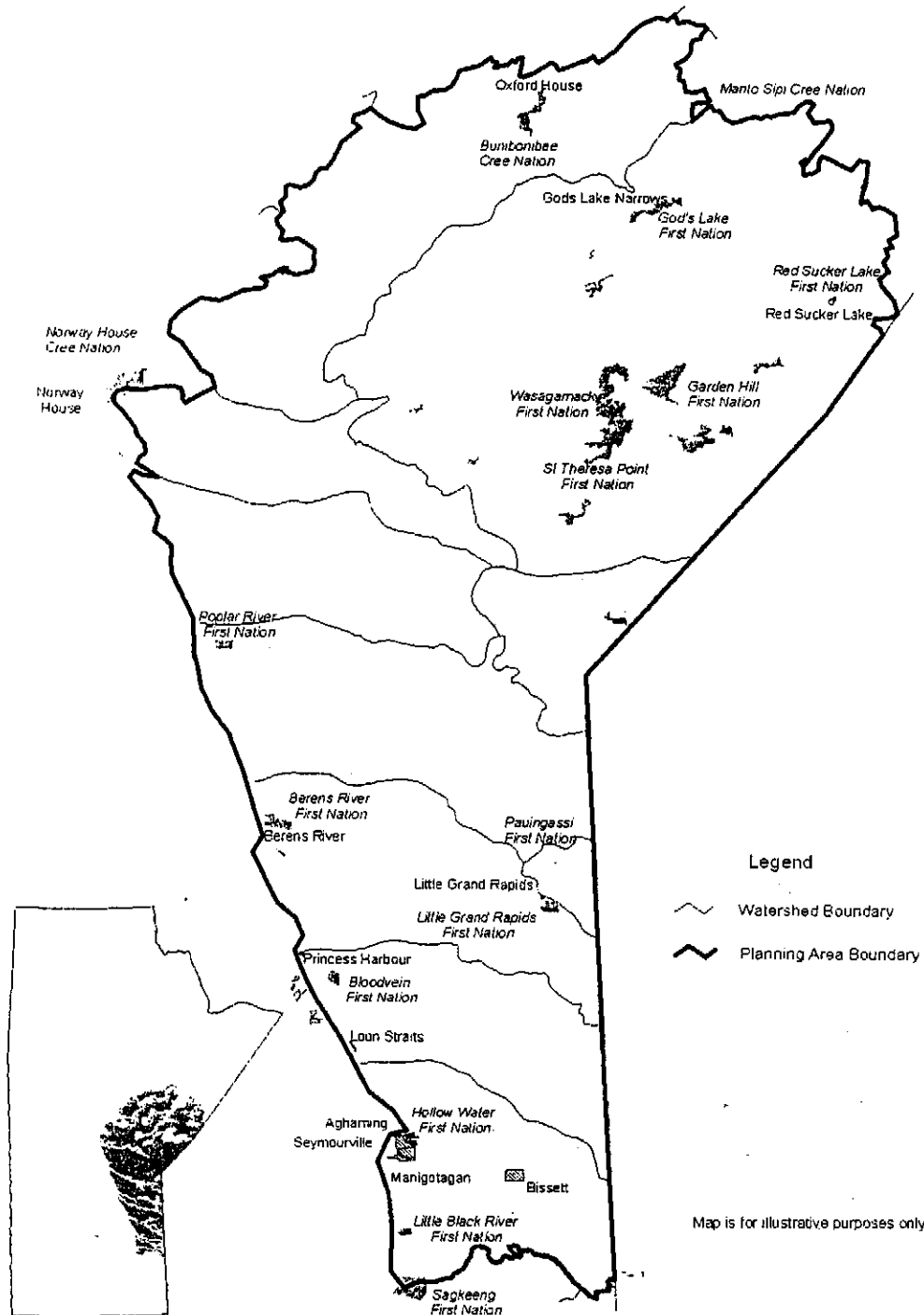
Minister, Manitoba Conservation

Witness

Date

Schedule "A"

Map of East Side Planning Area – This map is to be replaced by the map contained in the "Promises to Keep" Status Report



Schedule "B" – Five-Year Budget for Participation of WNO First Nations Council in East Side Planning Process under the Protocol

Schedule "C" – Chart Depicting Decision-Making Process in East Side Planning Area.

