

WORKING DRAFT #11

"For input, discussion and direction"

PROTOCOL OF AGREEMENT

BETWEEN

THE SIGNATORY FIRST NATION GOVERNMENT
(Insert First Nation)
LOCATED WITHIN THE EAST SIDE PLANNING AREA

OF THE FIRST PART

AND

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

(Hereinafter Referred to as "The Province")

OF THE SECOND PART

February 2, 2006

February 2, 2006

- WHEREAS, This protocol of agreement is intended to confirm that the First Nation governments and citizens and the Province of Manitoba have agreed to develop a new working relationship that consists of a government to government relationship taking into consideration the outstanding issues of joint governance of the land and the sharing of its resources.
- WHEREAS The First Nation Governments and citizens as original occupants of their territories governed the planning area today represent 96% of the population.
- WHEREAS The planning area falls within Treaty 1, 3, 5, including all Adhesions.
- WHEREAS, 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 the province.
- WHEREAS, on August 9, 2000 the Province announced that the government would initiate broad area planning on the east side of Lake Winnipeg as a pilot for broad area planning for the province;
- WHEREAS, 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 and resource use in the area that respects both the value of the boreal forest and the needs of the local communities;
- WHEREAS, the Final Report of Phase 1 of the East Side Lake Winnipeg Broad Area Planning Initiative recommends that the east side plan recognize, affirm and be in compliance with Treaty obligations and Aboriginal rights and be consistent with the consultation/protocol guideline recommendations of the *COSDI REPORT* respecting First Nation and Aboriginal peoples;
- WHEREAS, The First Nations Council was established to facilitate First Nations participation in the planning process;
- WHEREAS, The MOU was signed by 13 First Nations but all 16 First Nations are participating in the WNO process;
- WHEREAS The ESPI Status Report "Promises to Keep . . . Towards a Broad Area Plan for the East Side of Lake Winnipeg" was presented to the provincial government in November 2004 for consideration;
- WHEREAS In December 2004, the Province of Manitoba agreed to begin implementation of the main recommendations in the report including the establishment of the East Side First Nations Council (now named Wabanong Nakaygum Okimawin that means East Side of the Lake Governance;) made up of the 16 First Nations Chiefs and five representatives and the drafting of the protocol between the Chiefs and the Province of Manitoba;
- WHEREAS The parties involved agree to work together with mutual recognition, respect and reconciliation towards Wabanong Nakaygum Okimawin (WNO) - East Side of the Lake Governance.

1.0 DEFINITIONS

1.1 Land for First Nations in the area, means the land, air, water, resources and everything that relates to and around the environment including the animals and people.

1.2 First Nation Governments

2.0 GOVERNING PRINCIPLES

The parties hereby agree to the following:

- 2.1 The First Nation Governments and their citizens relate to and within their lands in both traditional and contemporary ways and intend to continue that relationship regardless of and through this Protocol Agreement.
- 2.2 The planning area affected by this Protocol Agreement is largely untouched and contains intact boreal forest with 11 watersheds, consequently sustaining the land and water should be a governing principle in decision-making.
- 2.3 The First Nation citizens affected by the Protocol Agreement who are represented by their First Nation Governments shall be substantially involved in all decision-making affecting land and resources within traditional territories.
- 2.4 Land Use Planning will provide First Nations an opportunity to be directly involved in resource protection and management for the benefit of present and future First Nations Governments and their citizens.
- 2.5 This Protocol and subsequent Land Use Plans and Resource Management Agreements will provide the basis for appropriate sustainable economic development and for capacity building.
- 2.6 That this Protocol is without prejudice to Treaty and Aboriginal Rights and shall honour the spirit and intent of First Nation treaties and outstanding issues arising there from.
- 2.7 That this Protocol is without prejudice to the First Nation Government understanding of the scope and interpretation of Treaties #1, 3 and 5, including Adhesions thereto.
- 2.8 This protocol will not discharge the federal government of its obligations with respect to First Nations' Treaty and Aboriginal Rights.
- 2.9 If agreement between the parties is not reached regarding any item or issue addressed through this Protocol, the province will not claim that consultation and accommodation has taken place with the First Nation Governments that have been involved.
- 2.10 The provincial government shall provide adequate funds to First Nation Governments so that they can participate as equal partners.
- 2.11 Timelines shall be agreed upon by the parties to ensure that First Nations Governments have sufficient time to prepare and then participate based upon adequate information.
- 2.12 The parties agree to share information to support and facilitate the land use planning process.
- 2.13 To maintain the Honour of the Crown, government-to-government process, the First Nation Governments and Provincial Ministers commit to meet to conduct substantive discussions a minimum of two times per year.

- 2.14 In funding the Land Use Plans and Resource Management Agreements referenced in this Protocol, it is understood that existing sources of federal government funding accessed by First Nation Governments shall not be utilized.

3.0 PURPOSE OF PROTOCOL

- 3.1 The parties agree that the Protocol is being 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 First Nations people who have protected this land for thousands of years.
- 3.2 The protocol will serve as foundation and guide for First Nations Governments within the east side to be involved in decisions that will affect their communities and traditional territories that will lead to land use plans and resource management agreements between First Nations and the Province of Manitoba.

4.0 LAND USE PLANNING

- 4.1 Land use plans are intended to ensure that the FNGs 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 their lives and land;
 - 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 FNGs and citizens benefit directly and indirectly from the land use plans and the resulting outcomes and decisions;
 - 4.1.4 ensure that non-First Nation Governments and citizens know how to act with respect within the land;
 - 4.1.5 become trained and employed to carry out resource management in accordance with traditional knowledge, land use plans and provincial legislation within their traditional territories.
- 4.2 Each FNG may engage in a local land use planning process for the purpose of having those local plans become the Broad Area Plan.
- 4.3 More than one FNG 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 activities such as:
- 4.4.1 collection and documentation of Traditional Anishinaabe/Ininew Scientific data and Western ecological 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 prescribing areas of land or bodies of waters for purposes of regulating use through zoning or other methods consistent with traditional ecological knowledge and provincial legislation;

4.4.7 capacity building;

5.0 INTERIM DECISION MAKING PROCESS

5.1	This process does not discharge the provincial government's duty to consult and accommodate the affected First Nation government(s).
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5.2 Where the proposed activity affects the First Nation(s) in question as a whole, the applicant must seek the support of the affected First Nation Government(s) regarding its proposed application before making application for leases, licenses, parks, permits or any other land tenure the province may grant. Within the areas referenced in the east side status report "Promises to Keep" including:

- Forestry;
- Mining;
- Parks and Protected areas and special land designations;
- Tourism and Recreation;
- Transportation;
- Cottage Lot Developments;
- Hydro Transmission Corridor;
- Trap lines and Trappers' Cabins, and
- Wild Rice Propagation, production and harvesting.

5.3 Subsequent resource management agreements and land use plans will include but not be limited to the land leasing, licencing, and permitting of activities identified in 5.2.

5.4 In the event that more than one First Nation Government is affected by the proposed activity, the affected First Nation Governments must come to consensus.

5.5 The Province will not proceed with an item or activity identified in 5.2 until the applicant provides the Province of Manitoba with written documentation signed by a quorum of First Nation Government confirming its approval and conditions.

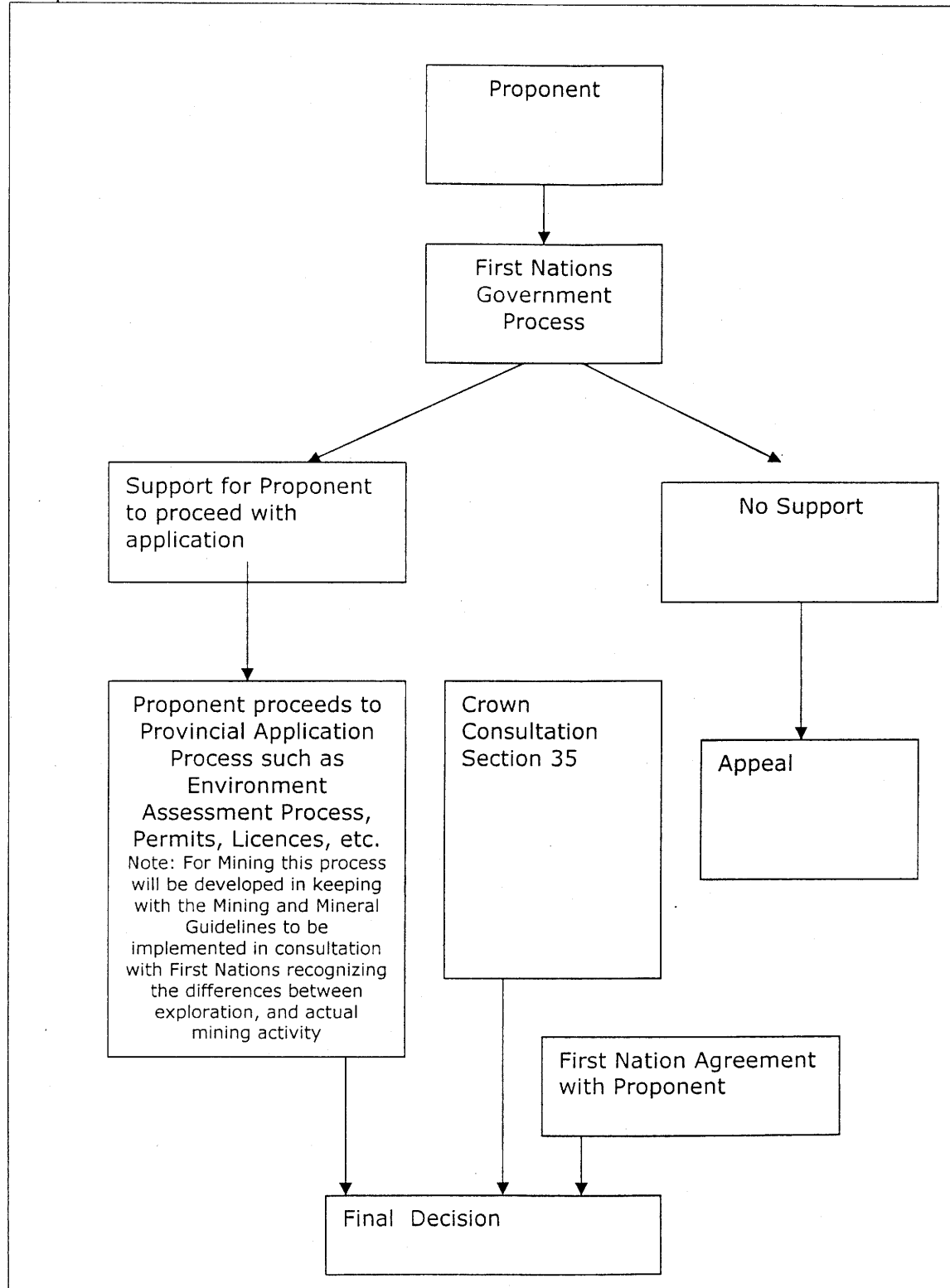
5.6 Enforceability

5.6.1 Once the applicant has been successful in obtaining necessary approvals from First Nation Government(s), the applicant must honour and abide by the provisions laid out in that approval.

5.7 Appeals

5.7.1 An Appeal mechanism shall be established by each First Nation Government and in cooperation with the Province such as a Resource Management Appeal Committee that would make decisions based on principles of justice and focus on collective rather than individual good.

Sample Chart for Interim Process



5.8 Existing Approvals

- 5.8.1 This protocol is a go forward process that respects existing licences, permits and allocations. However, First Nations Governments will be given first opportunity to negotiate provincial buy out of existing licenses as opportunities arise.

6.0 **IMPLEMENTATION**

6.1 Wabanong Nakaygum Okimawin (WNO) Council of Chiefs

The function of the Wabanong Nakaygum Okimawin Council of Chiefs shall be to monitor implementation of this Protocol.

- 6.2 First Nation Governments and the Province of Manitoba may enter into discussions on the establishment of Resource Management Authorities for the different territories/regions of the east side to implement the land use planning and develop Individual or Collective First Nation Government Resource Management Agreements (RMA's).

- 6.3 The First Nation Governments may negotiate individual or collective Resource Management Agreements with the Province that address but are not limited to:

- Land Use Activities as per 5.2 and 5.3;
- First Nation Government Land Use Plans;
- Traditional Pursuits;
- First Nation Government Consultation Requirements;
- First Nation Government Accommodation Agreements;
- Resource, Royalty and Revenue Sharing, and Benefit Agreements;
- Sustainable Economic Opportunities;
- Funding Arrangements.

- 6.4 The Province commits to share existing resources and provide funding on an annual basis for a minimum of five years to implement this Protocol and the resulting Individual and Collective Resource Management Agreements.

- 6.5 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 AGREEMENT**

- 7.1 This agreement shall remain in effect for a period of five years from the date of signing it, and shall be automatically extended for further successive periods unless terminated by any Party upon negotiation with other Parties.

- 7.2 It shall be reviewed every two years by the Parties.

8.0 **ENFORCEABILITY**

- 8.1 The province through legislation recognizes the east side area as an unique planning area.

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8.2 This legislation should include mechanisms to recognize land use plans and resource management agreements within the planning area.

8.3 This legislation should include mechanisms for monitoring and compliance to ensure that both public and private sector resource users comply with components of the protocol and subsequent land use plans and resource management agreements.

9.0 AMENDMENT

9.1 This Protocol may be amended upon agreement of the Parties.

10.0 SIGNATORIES

This agreement only affects and applies to the Signatories.

First Nation Government:
To each signatory of this agreement

Signed this _____ day of _____, 2006.

FOR THE FIRST NATION GOVERNMENT:

Sixteen (16) signatures of Chiefs

Chief, [Insert FNG]

Witness

FOR THE PROVINCE

Minister, Manitoba Conservation

Witness