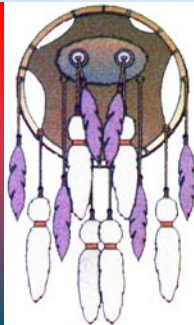


2015 - 2016



**Implementation Monitoring Committee
Annual Report**

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EXECUTIVE SUMMARY

On behalf of the Implementation Monitoring Committee (IMC) and in accordance with the Manitoba Framework Agreement Treaty Land Entitlement (MFA-TLE) Paragraph 34.09 (10)(b), the IMC Independent Chairperson provides an Annual Report to the Parties of the 1997 MFA-TLE represented by the President of the Treaty Land Entitlement Committee (TLEC), the Minister of Indigenous and Northern Affairs Canada (INAC) and the Minister of Manitoba Indigenous and Municipal Relations (MIMR).

This Annual Report covers a 12 month period ending March 31, 2016. The Chairperson's appointment commenced on January 13, 2015 for a fifteen (15) month term expiring on March 31, 2016. The Senior Advisory Committee has extended the appointment of the IMC Chairperson until March 31, 2017.

This is a summary of the progress of implementing the MFA-TLE and Treaty Entitlement Agreements (TEAs), the issues or matters in dispute that have been brought to the IMC by the Parties or the First Nations, the 'Referrals', resolved or outstanding during 2015/2016, areas for improvement that have been identified and the steps being taken to build on opportunities for improvement. The IMC is generally responsible for facilitating the implementation of the MFA-TLE and providing the Senior Advisory Committee (SAC) with recommendations for the improvement of the implementation of the MFA-TLE and any TEA. The IMC is responsible for an Annual Work Plan jointly developed by the Parties. The IMC makes recommendations as it sees fit in relation to its work plan activities.

In nineteen (19) years of MFA-TLE implementation, the Parties have set apart a total of 464,281.48 acres of land for reserve comprised of 117 separate Selections and 27 Acquisition parcels which represent 42% of the total land amount committed to the 21 EFNs. There were five parcels of land that were set apart as reserve during the 2015-2016 fiscal year, for a total of 1,554.23 acres.

Land totalling 48,205.72 acres was identified in the Three Party Strategic Plan which was part of the Treaty Land Entitlement (TLE) Annual Work Plan to be set apart as reserve under "Schedule A" of the 2015-2016 Work Plan. However, the primary reason these lands were not set apart as reserve according to Canada, is as a result of their decision that they must discharge the duty to consult with Aboriginal groups prior to setting apart the Selections/Acquisitions as reserve, as this obligation had not been addressed by either the provincial or federal government. Canada has made requests for Manitoba Orders-in-Council in January 2015 to transfer Crown Land from Manitoba while simultaneously addressing the duty to consult obligation. Previous Annual Reports identify the land parcels remaining to be transferred are generally smaller and often the most complex Selections or Acquisitions confirmed by the EFNs. Canada is of the view that the duty to consult requires resolution before TLE lands can be set apart as reserve. It is critical to identify mutual obligations that are apparent to implement any of the MFA-TLE TEA. TLEC is of the view that Canada does not owe a duty to consult other Aboriginal Groups on TLE as a result TLEC made sent a letter to the IMC on January 5, 2016 alleging material failure to implement the MFA-TLE. Manitoba is of view that it does not have a duty to consult other Aboriginal Groups about transferring lands to Canada for reserve creation.

Seven (7) IMC Referrals remain unresolved at the end of the fiscal year. These Referrals are:

- | | |
|----------------------|--|
| 1. 1999-BPFN-001 | Selections in Provincial Park; |
| 2. 1999-BPFN-002 | Reed River Selection of the Bed and Shore |
| 3. 1999-NCN-003 | TEA Effective Date; |
| 4. 2004-BLFN-002 | Material Failure re Land in Severalty (LIS); |
| 5. 2003-BON-001 | Surplus Federal Land – Kapyong; |
| 6. 2006-Manitoba-001 | Material Failure – Knee Lake Lodge; |
| 7. 2007-TLEC-002 | Hydro-Easement (HE). |

In 2015/2016, Canada issued new survey contracts for 7 parcels totalling 6,327.55 acres. It was anticipated that 54 parcels were to be set apart as reserve by March 31, 2016, but this did not occur. Some of the annual survey funds in a given fiscal year are for multi-year contracts. The surveyed parcels on Schedule A of the 2015-2016 Three Party Annual Work Plan totals 48,205.72 acres and was to be set apart by March 31, 2016. The number of parcels on Schedule B of the 2015-2016 Work Plan total is 39 parcels and 57,540.69 acres which will be targeted to be set apart as reserve by March 31, 2017. The pace of transfer of lands to reserve is affected by the availability of parcels without significant outstanding issues such as complex Third Party Interests (TPIs) or hydro-easements, the ability to resolve the TPI and related costs, and the capacity of qualified survey contractors. These factors limit the amount of land being surveyed to approximately less than 10,000 acres per year thereafter. In the 2012/2013 IMC Annual Report it was noted that, based on this pace, it will take between 17 and 30 additional years to implement the MFA-TLE for the existing 15 EFNs with TEAs.

Six of the twenty-one (21) Entitlement First Nations (EFNs) that have not signed a TEA under the MFA-TLE are:

1. Fox Lake Cree Nation;
2. Marcel Colomb First Nation;
3. O-Pipon-Na-Piwin Cree Nation;
4. Sayisi Dene First Nation;
5. Shamattawa First Nation; and,
6. York Factory First Nation.

One EFN (Fox Lake Cree nation) is anticipated to sign their TEA in the next fiscal year.

The IMC Independent Chairperson is pleased to offer the following recommendations to improve and facilitate the implementation of the MFA-TLE:

1. **Duty to Consult:** During the 2015-2016 Fiscal year Canada has continued to implement its Crown obligation regarding the duty to consult with Aboriginal Groups prior to setting apart Selections/Acquisitions. It is recommended that Canada develop a consultation process with timelines for each stage of the process from: notification, identification of issues, dialogue, accommodation, and decision (reserve creation).
2. **Issue/Matter in Dispute Referral Management by IMC:** During 2015/2016 there remained seven (7) unresolved Referrals. Some referrals have been inactive for years without new information or progress toward resolution. One has advanced to Binding Arbitration, but has been adjourned to proceed in the new fiscal year. It is recommended that the referrals be reviewed through the 2016-2017 IMC Work Plan with a committed view to moving the referrals forward in a timely manner in accordance with the provisions of the MFA-TLE.
3. **Hydro-Easement (2007-TLEC-002):** The Hydro-Easement matter in dispute affects the progress of the greatest number of parcels which totals approximately 80,500 acres. It is recommended that the Parties and Manitoba Hydro continue discussions to address the Hydro-Easement Agreement proposed by Brokenhead Ojibway Nation and confirm a Hydro-Easement agreement, as required by the MFA-TLE. If there is no agreement reached then the matter should be brought back to the IMC table through the TLEC IMC referral for resolution through the MFA-TLE dispute resolution process.
4. **Strategic Planning:** It is recommended that the Strategic Planning and Annual Work Plan continue with the Parties sharing the work load and that the Parties target April of each year for the release of each Annual Work Plan and March of each year for the results to be shared with the EFNs. The Parties should work toward creating focussed strategic goals within the Work Plan. The IMC Chairperson should remain as facilitator/chair of this strategic planning process.
5. **Third Party Interests:** The IMC needs to continue to engage the Agreed Forms process set out under the MFA-TLE to form a work plan with all Parties to facilitate the completion of agreed forms to address the following: Mines and Minerals on Crown and Private Lands, Municipal Development Services Agreements (MDSA), Consultation, easements and permits.
6. **Acquisition Rates and Time Periods:** The Parties need to confirm that the principles of the MFA-TLE will apply, to provide a clear process for implementation and to prevent uncertainty. A possible solution to address this issue is for an amendment to the MFA-TLE or a subsequent referral by the Parties that is focussed on clarifying this matter.
7. **Survey Capacity Limitations:** It is recommended that the Parties review the survey capacity now that Public Services and Procurement Canada are controlling the contracting for the surveys and its affect on the pace of MFA-TLE implementation. The Parties in collaboration with the EFNs need to work together in order to determine where the exterior boundary of a parcel requires demarcation (cut line) and where it is not needed. It is understood that this is a major contributing factor to the cost of surveys. Along with providing additional financial resources to the survey budget, INAC needs to confirm the use of additional Canada Land Surveyors from other provinces. Light Detection and Ranging (LIDAR) may also be any area where technology can assist with making the survey process more cost efficient.
8. **Consistency of MFA-TLE Implementation Steps:** It is recommended that the parties develop an online project management tool that operates in real time with correspondence and tracking of each implementation process step and parcel of land.

9. **Human and Financial Resources:** It is recommended that both Canada and Manitoba staff at least three Project Managers/Agreements Coordinators whose sole purpose is to facilitate the selections/acquisitions through the LTRCP specifically under the MFA-TLE.
10. **Selections/Acquisitions Along Highways:** It is recommended that MI develop a process whereby a TLE acquisition that is required for road right of way improvements has pre-identified lands that can be provided to the EFNs in exchange for the lands required. There should be at least three properties of equal or greater value than the TLE acquisition that is required for road right of way improvements for the EFNs to choose from.

1.0 INTRODUCTION

MANITOBA FRAMEWORK AGREEMENT ON TREATY LAND ENTITLEMENT

Nineteen (19) years have passed since the Treaty Land Entitlement Committee of Manitoba, Inc. (“TLEC”), the organization representing 21 First Nations in Manitoba with entitlement to land under Treaties 1, 3, 4, 5, 6 and 10, signed the May 29, 1997 *Manitoba Framework Agreement on Treaty Land Entitlement* (“MFA-TLE”), an agreement with Canada and Manitoba to secure outstanding reserve land owed under Treaties with the Crown in right of Canada.

All of the 19 First Nations initially comprising the membership of the TLEC were entitled to individually choose to accept the terms of the MFA-TLE and, if so, enter into a specific Treaty Entitlement Agreement (“TEA”) with Canada, Manitoba and TLEC. After the MFA-TLE was signed, a portion of the membership of two of the original 19 First Nations were independently recognized as two additional First Nations, with the result that there are now 21 First Nations entitled to sign TEAs under the MFA-TLE located throughout Manitoba¹. A map illustrating the geographical location of the Entitlement First Nations (EFNs) eligible to enter into TEAs under the MFA-TLE is included as **Appendix A – Map of Entitlement First Nations**.

Under the terms of the MFA-TLE, the combined 19 (now 21) EFNs secured entitlement to 1,100,626 acres (approximately 1,720 square miles) of land to become reserve. Circumstances encountered during the negotiations led to the distinction between the “selection” of Crown Land as anticipated by the Treaties, and the purchase or “acquisition” of private land on the open market as set out in the following **Chart 1**. Although all of the First Nations secured entitlement to select Crown Land, six of the EFNs were also provided funds to purchase a portion of their Treaty Land Entitlement (TLE) on the open market, due to the lack of sufficient Crown Land of suitable quality being available in the vicinity of their existing reserves. Accordingly, if all 21 EFNs entered into agreements, the 21 EFNs would collectively be entitled to select a total of 985,949 acres of provincial Crown Land for reserve. In addition, six of those EFNs - the Brokenhead Ojibway Nation, Buffalo Point First Nation, Opaskwayak Cree Nation, Rolling River First Nation, Sapatawayak Cree Nation, and Wuskwi Sipiik First Nation are entitled to purchase or otherwise acquire the balance of 114,677 acres of land for reserve.

As of March 31, 2016, 15 of the 21 EFNs have entered into a TEA. For various reasons, the six EFNs that have not entered into TEAs to date are: Shamattawa First Nation, Fox Lake Cree Nation, Sayisi Dene First Nation, York Factory First Nation, Marcel Colomb First Nation, and O-Pipon-Na-Piwin Cree Nation. The EFNs that have not signed TEAs continue to have outstanding TLE rights. Canada, TLEC, and Manitoba remain prepared to enter into TEAs with these six (6) EFNs. The O-Pipon-Na-Piwin Cree Nation has completed the Community Approval Process required by the MFA-TLE and the Marcel Colomb First Nation has completed all activities to support the signing of their TEA that is anticipated to be signed in the next fiscal year.

This Annual Report pertains to the fiscal year 2015/2016 that ended March 31, 2016, covering the 12 month period that the Implementation Monitoring Committee (IMC) has reached a quorum of representatives. The 2015/2016 IMC Annual Report is an update of activities on the IMC Work Plan 2015/2016 and utilizes certain chart formats of previous Annual Reports for reference or to reflect progress. The previous IMC Annual Reports are available on the IMC website at www.tleimc.ca

¹ Canada declared divisions of the Mathias Colomb Cree Nation and Nisichawayasihk Cree Nation after the MFA-TLE settlement, accordingly, adding the Marcel Colomb First Nation (as of March 30, 1999) and the O-Pipon-Na-Piwin Cree Nation (as of November 25, 2005) to the list of MFA-TLE Entitlement First Nations. As of March 31, 2015, these two “new” First Nations had not executed TEAs under the MFA-TLE.

Chart 1: Dates of Treaty Entitlement Agreements and Amount of Crown Land and Other Land for Entitlement First Nations under the Manitoba Framework Agreement

Entitlement First Nations	Treaty Number	Date Treaty Entitlement Agreement (TEA) Signed	Crown Land (Acres)	Crown Land Set Apart	Other Land (Acres)	Other Land Set Apart	Total (Acres)
BARREN LANDS FIRST NATION	10	June 23, 1999	66,420	0	-	-	66,420
BROKENHEAD OJIBWAY NATION	1	September 9, 1998	4,344	672.00	10,137	7.46	14,481
BUFFALO POINT FIRST NATION	3	March 24, 1998	3,432	2,369.70	607	0	4,039
BUNIBONIBEE CREE NATION	5	February 17, 1999	35,434	31,342.34	-	-	35,434
FOX LAKE CREE NATION	5	Unsigned	26,391	-	-	-	26,391
GOD'S LAKE FIRST NATION	5	May 28, 1999	42,600	16,301.75	-	-	42,600
MANTO SIPI CREE NATION	5	May 19, 1999	8,725	5,375.20	-	-	8,725
MARCEL COLOMB FIRST NATION	6	Unsigned	17,007	-	-	-	17,007
MATHIAS COLOMB CREE NATION	6	October 1, 2003	217,364	172,538.49	-	-	217,364
NISICHAWAYASIIK CREE NATION	5	September 1, 1998**	61,761	33,816.01	-	-	61,761
NORTHLANDS FIRST NATION	10	November 9, 1999	94,084	4,134.00	-	-	94,084
NORWAY HOUSE CREE NATION	5	November 12, 1998	104,784	42,045.53	-	-	104,784
OPASKWAYAK CREE NATION	5	January 22, 1999	47,658	24,375.30	8,410	0	56,068
O-PIPON-NA-PIWIN CREE NATION	5	Unsigned	17,674	-	-	-	17,674
ROLLING RIVER FIRST NATION	4	March 6, 1998	2,356	2,350.70	44,756	3,580.90	47,112
SAPOTAWAYAK CREE NATION	4	September 1, 1998	108,134	99,701.73	36,045	.14	144,179
SAYISI DENE FIRST NATION	5	Unsigned	22,372	-	-	-	22,372
SHAMATTAWA FIRST NATION	5	Unsigned	24,912	-	-	-	24,912
WAR LAKE FIRST NATION	5	May 28, 1999	7,156	480.40	-	-	7,156
WUSKWI SIPIHK FIRST NATION	4	June 9, 1998	44,168	25,189.83	14,722	0	58,890
YORK FACTORY FIRST NATION	5	Unsigned	29,173	-	-	-	29,173
TOTAL			985,949	460,692.98	114,677	3,588.50	1,100,626

** The effective date of the NCN TEA is an issue that has been referred to the IMC by NCN. File: 1999-NCN-003

After 19 years of implementation, the work that the Parties to the MFA-TLE have undertaken has resulted in 464,281.48 acres of land being set apart as reserve. This total is comprised of 117 separate selections and 27 separate acquisitions of land, representing approximately 48% of the overall TLE of the 15 EFNs that have signed their respective TEAs. The total amount of Crown Land for the 15 EFNs that have signed is 848,420.00 acres of which 54% has been set apart as reserve. There is an additional 15,706.43 acres of Crown Land and 201.00 acres of Other Land that Manitoba has signed Provincial Orders In Council transferring 50% of the 15 EFNs Total Land

Amount to Canada for reserve creation. The Total Land Amount for the 15 EFNs is 963,097.00 acres, which is 88% of the Total Land Amount and the remaining 12% of the Total Land Amount is allocated to the Unsigned EFNs for Crown Land selections.

The following **Chart 2** illustrates the acreage and number of parcels of land set apart as reserve annually since the signing of the MFA-TLE on May 29, 1997.

Chart 2: Acreage and Parcels Set Apart as Reserve Pursuant to the MFA-TLE between May 1997 and March 31, 2016

DATES	SELECTIONS		ACQUISITIONS		TOTAL	
	Acres	Parcels	Acres	Parcels	Acres	Parcels
May 29, 1997 – March 31, 1998	0	0	0	0	0	0
April 1, 1998 – March 31, 1999	0	0	0	0	0	0
April 1, 1999 – March 31, 2000	1,275.18	2	0	0	1,275.18	2
April 1, 2000 – March 31, 2001	0	0	0	0	0	0
April 1, 2001 – March 31, 2002	0	0	0	0	0	0
April 1, 2002 – March 31, 2003	0	0	0	0	0	0
April 1, 2003 – March 31, 2004	4,894.75	2	0	0	4,894.75	2
April 1, 2004 – March 31, 2005	7,040.30	9	0	0	7,040.30	9
April 1, 2005 – March 31, 2006	9,333.55	11	0	0	9,333.55	11
April 1, 2006 – March 31, 2007	24,362.48	13	158.14	1	24,520.62	14
April 1, 2007 – March 31, 2008	140,465.95	25	0	0	140,465.95	25
April 1, 2008 – March 31, 2009	123,874.29	21	2,571.39	19	126,445.68	40
April 1, 2009 - March 31, 2010	38,757.65	17	0	0	38,757.65	17
April 1, 2010 - March 31, 2011	100,604.70	13	0	0	100,604.70	13
April 1, 2011 – March 31, 2012	8,881.0	1	395.78	3	9,276.78	4
April 1, 2012 – March 31, 2013	112.0	1	0	0	112.0	1
April 1, 2013 – March 31, 2014	0	0	0.14	1	.14	1
April 1, 2014 – March 31, 2015	0	0	0	0	0	0
April 1, 2015 – March 31, 2016	1091.20	2	463.03	3	1,554.23	5
TOTAL	459,601.85	117	3,125.47	27	464,281.53	144

It is important to re-emphasise that during the MFA-TLE negotiations, Canada had estimated that the average period of time from the date of Selection or Acquisition of a parcel of land to the date the land was set apart as reserve was expected to be 2.97 years. It is noted in the 2011/2012 Annual Report that this estimated time period has, among other things, been impacted by the volume of TLE settlements and parcels of land going through the process of reserve creation in Manitoba. Volume affects the rate of processing and staff complements do not proportionately increase with each additional Settlement Agreement (i.e., there were no additions to Manitoba and Canada staff levels when the Peguis First Nation TLE Settlement Agreement was signed in 2008.) A former IMC Chairperson's (Mr. Lloyd Grahame) review on the approximate time required to process a parcel from the date that confirmation is received to the date it is set apart as reserve concluded that on average, Acquisitions have taken approximately 9 years and Selections have taken approximately 7.4 years. All Parties have acknowledged that as the majority of land selections were confirmed shortly after a TEA was executed by an EFN with Manitoba, Canada, and the TLEC, the average time period required to set the Selections apart as reserve has lengthened. The IMC has extended the time frames for Selections at an IMC meeting allowing for the Principles to continue applying to new selections. There is a question however, if the Principles legally continue to apply. The excerpt from the 2009-2010 IMC Annual report reads as follows:

“At an IMC meeting dated January 22, 2009, the Representatives noting the lack of extensions for the target time periods set for EFNs to complete their Crown Land Selections, reached a consensus that the matter was not an issue for the Parties and with the extent of technical issues to be dealt with to improve TLE implementation/turn around times, etc. would not address the matter until or if it was raised as an issue by a Party or affected EFN. In

the meantime, the Parties will continue to act as if the periods had been extended and the Principles and other provisions continue to apply to each EFN. Plans for the completion of Selections and Acquisitions are expected to be further defined next fiscal year as multi-year strategic planning begins to be implemented by the Parties.”

The MFA-TLE provides detailed guidelines in the form of Principles for Land Selections and Acquisitions to provide direction for the EFNs with respect to Crown Land Selections and Acquisition of private land. The MFA-TLE Parties agreed that land selected or acquired in accordance with the Principles would be eligible to be set apart as reserve provided the requirements of the MFA-TLE were satisfied. If issues or matters in dispute arise, the MFA-TLE provides for a detailed process and a structure for dispute resolution, which includes guidelines for means and methods and suggested timelines and procedures, and the IMC.

The IMC is generally responsible for facilitating the implementation of the MFA-TLE process and providing the Senior Advisory Committee (SAC) with recommendations for the improvement of the implementation of the MFA-TLE and any TEA. The IMC is responsible for an annual Work Plan that is jointly developed by the Parties, and the findings of the IMC in relation to its work plan activities lead to recommendations.

This Annual Report is a summary on the progress of implementing the MFA-TLE and TEAs, the issues or matters in dispute that have been brought to the IMC by the Parties or the First Nations, the ‘Referrals”, resolved or outstanding during 2015/2016; to inform the Parties and EFNs, of the issues faced by the Parties and EFNs during the past fiscal year, the areas for improvement that have been identified, and the steps being taken to build on opportunities for improvement to achieving the Work Plan target results under the three parts of the **IMC Work Plan 2015/2016 - Appendix B**.

IMC STRUCTURE AND WORK PLAN FOR 2015 - 2016

Under the terms of the MFA-TLE, the IMC is comprised of five members, two representatives appointed by the TLEC, one representative appointed by each of Canada and Manitoba and an Independent Chairperson. The Chairperson is appointed by the consensus of the President of the TLEC (First Nations), the Deputy Minister of Manitoba Indigenous and Municipal Relations (Manitoba) and the Regional Director General of the Manitoba Regional Office of Indigenous and Northern Affairs Canada (Canada).

In this fiscal year, the IMC Chairperson, Representatives, and Alternates were as follows:

Laren Bill	Independent Chairperson (April 1, 2015 – March 31, 2016)
Merrell-Ann Phare	TLEC IMC Representative (April 1, 2015 – March 31, 2016)
Councillor Paul Chief	TLEC IMC Representative (April 1, 2015 – March 31, 2016)
Chris Henderson	TLEC Alternate Representative (April 1, 2015 – March 31, 2016)
Stew Sabiston	Manitoba IMC Representative (April 1, 2015 – September 30, 2015)
Jason Fontaine	Manitoba IMC Representative (October 1, 2015 – March 31, 2016)
Mona Bencharski	Manitoba IMC Alternate (December 1, 2015 – March 31, 2016)
Winona Embuldeniya	Canada IMC Representative (April 1, 2015 – December 9, 2015)
Diana Watson	Canada IMC Alternate (April 1, 2015 – April 30, 2015)
Darryl Neufeld	Canada IMC Alternate Representative (May 1, 2015 – March 31, 2016)

Section 31 of the MFA-TLE states that the Parties, TLEC, Canada and Manitoba agree that they will, in good faith, use their best efforts to fulfill the terms of the MFA-TLE, and that includes their assignment of appropriate personnel to discharge the IMC obligations under the MFA-TLE and all undertakings and work supplemental to the IMC. Section 32 of the MFA-TLE provides that each EFN that executes a TEA will have the responsibility for the Selection and Acquisition pursuant to their TEAs using their best efforts in its implementation.

Each Annual IMC Work Plan is jointly developed by the MFA-TLE Parties Representatives of the IMC and assigns the lead role for an activity to either a Representative of a Party appointed to sit on the IMC, or the Chairperson. The Work Plan describes the issues or tasks, the actions required and targeted results, with agreed upon dates.

Summary of IMC Work Plan for April 2015 – March 2016

Part 1 addresses the 7 IMC Referrals: 1999-BPFN-001: Land in a Provincial Park; 1999-BPFN-002: Reed River Selection of Bed and Shoreline; 1999-NCN-003: Effective Date of Agreement; 2003-BON-001: Disposal of Surplus Federal Land and the MFA-TLE Process; 2004-BLFN-002: Lands in Severalty; 2006-MANITOBA-001: Material Failure Allegation – Knee Lake Lodge; 2007-TLEC-002: Hydro-Easements.

Part 2 addresses the resolution of a Third Party Interest under Article 10 to generate consensus by March 31, 2016 with the Parties on a Surface Rights Access Agreement for Crown/Private owned Mines and Minerals as well as Crown/Private Oil and Gas rights that can be adopted by the IMC as an “Agreed Form”.

Part 3 to investigate the development of a Consultation Protocol on TLE selections/acquisitions with TLEC First Nations, TLEC, Canada and Manitoba, which could be expanded to include other TLE Manitoba First Nations.

Part 4 addresses issues that arise between First Nations and Municipal Governments – work toward the development of an agreed to form of MDSA to assist the EFNs and Municipalities with services agreements.

Part 5 focuses on Improving Access to Information respecting the Processing of TLE ATR Proposals – Investigate options for making the TLE process more readily accessible by the parties for tracking purposes.

Specific Tasks:

- Coordinate and Facilitate IMC Meetings;
- Record and Finalize IMC Meeting Minutes including Undertakings and Decisions;
- Coordinate and Facilitate SAC Meetings;
- Record and Finalize SAC Meeting Minutes;
- Facilitate Strategic Planning Meetings and Record Meeting Minutes;
- Work with the Parties to Facilitate agreed to options for resolving TPIs/Encumbrances (i.e., Agreed to Future Mineral Access Agreement);
- Review MFA-TLE principles to illustrate the Pros and Cons for each party;
- Review current Agreed to Form MDSA to assess its relevance and revise accordingly;
- Review and revise the MIT Bulletin;
- Maintain and Revise the IMC Website with current and relevant information;
- Review previous IMC reports to work toward implementation of recommendations;
- Carry out the necessary tasks to complete Activities 1-5 in the Work Plan.

IMC ROLE AND RESPONSIBILITY

The IMC is responsible to facilitate the implementation of the MFA-TLE by, among other things:

- Monitoring of the progress in implementation;
- Making recommendations to the Parties for the resolution of an issue or matter in dispute relating to the implementation of the MFA-TLE or any TEA referred to it by any Party or EFN; and
- Considering the appropriate method of resolution of an issue or matter in dispute; and

Under the general direction of the Independent Chairperson:

- Maintaining and distributing a record of decisions, awards and other pertinent information;
- Determining the sufficiency of information provided to the IMC in relation to implementation;
- If necessary, requesting that appropriate steps be taken to provide information as may be deemed appropriate related to implementation;
- In relation to the resolution of issues or matters in dispute, proposing time periods for responding to referrals, directing the completion of reports, identifying strengths and weaknesses of proposed solutions; directing IMC members to assist in resolving issues or matters in dispute and proposing solutions;
- Retaining technical, special or legal advisors to provide advice, guidance and opinions to assist in the proper discharge of the duties of the IMC, in dealing with implementation matters or handling of issues or matters in dispute, with or without the agreement of the IMC;
- Recording the means of resolution or inability of the IMC to determine a means of resolution of an issue or matter in dispute referred to the IMC.

Referring any matter the IMC cannot resolve by consensus to the SAC along with a statement of the issue, means recommended for resolution by the IMC Chairperson, summary of directions given and response of each IMC Party

to the recommendation; and preparing and tabling annual and other special reports to the Parties on the overall state of implementation, including a summary of issues addressed and resolved and recommendations for improvement of any aspect of the MFA-TLE implementation process.

2.0 PROGRESS ON THE 2015/2016 IMC WORK PLAN

The IMC is generally responsible for facilitating implementation of the MFA-TLE and any TEA that includes monitoring the progress of the Parties and the EFNs with implementation, and making recommendations to facilitate implementation, and assisting the Parties with the resolution of any matters or issues in dispute under the MFA-TLE.

The Work Plan represents the IMC's agreed scope of activities in the 2015/2016 fiscal year, but it does not replace nor is it intended to alter the terms of neither the MFA-TLE nor any of the obligations of the Parties or the IMC set out in the MFA-TLE. This section of the Annual Report is formatted to generally follow the IMC's 2015/2016 Work Plan.

IMC WORK PLAN: RESOLVING OR REFERRING DISPUTES

The IMC provides for management of Referrals of Issues or Matters in dispute received by the IMC. The IMC prioritized Referral resolution in its 2015/2016 Work Plan. With respect to the unresolved issues/matters (I/M) in dispute referred to the IMC, the IMC process follows a structured submission approach. In accordance with the I/M Referral Protocol, once the Representatives' role in the I/M is detailed and each Party/EFN's views and opinions are reflected accurately and comprehensively, the IMC goal is to resolve the I/M by consensus.

Depending on if the I/M is broad based in nature or specific to an individual parcel of land, and the nature of the views and opinions submitted by the Parties, the Chairperson may recommend that: (i) a discussion paper be developed to analyze the situation and clarify linkages to the MFA-TLE provisions, or (ii) a Focus Group meeting(s) be convened to discuss the matter in detail, clarify misunderstandings if any, and arrive at a consensus.

If the IMC discussions of the Chairperson's summary document, and/or discussion paper and/or Focus Group discussions do not result in a consensus; the Chairperson may update his/her summary document, based on the IMC and Focus Group discussions, and add two additional sections, (i) The Proposed Interpretation of the MFA-TLE by the Chairperson, and (ii) Chairperson's Proposed Resolution as per MFA-TLE Paragraph 34.09(5)(e), and circulate this updated summary document to the IMC with a time frame for comments.

If the updated Chairperson's summary document does not result in a consensus, the Chairperson's summary document serves as the information required pursuant to MFA-TLE 34.09(7) and (9) for a referral of the I/M to the SAC (i.e. the I/M summary, any means recommended by the Chairperson for resolving the I/M, any direction to the members to consider the recommendation within a specified time period, any response of the IMC members provided to a recommendation of the Chairperson, and the Chairperson's recommendation on the proposed time period within which the SAC should attempt to resolve the I/M).

During 2015/2016, there were seven (7) Referrals of issues/matters in dispute before the IMC, by year end none of the Referrals had been closed.

IMC POLICIES AND PROCEDURES

The IMC discussed proposed revisions to the **IMC Policies and Procedures Manual - Appendix C** with regard to the terms abeyance and abandon. The process resulted in some additional clarifications to the policy with regard to time frames and further guidance for the IMC on the two approaches to address a Referral. The first being where a file is placed into Abeyance when the Referral is directly related to an issue that may be before the Courts. The second being with regard to abandoning of a Referral and providing for three attempts to contact a Party and allowing sixty days after the last attempt to contact a Party before considering a Referral to be abandoned. There was further discussion on identifying how a Referral would be different from an issue placed before a Court. It was noted that the questions being asked before the Court and the IMC cannot be the same question.

If a Party has an issue in abeyance they will need to provide the IMC with notice that they wish to continue with the file at the IMC table. The concern was discussed that a Party should not be able to place an issue on hold or in abeyance indefinitely. The language within the revised Policies and Procedures document with regard to the legal aspects for placing a Referral on hold or in abeyance and the legal aspects of abandonment of a Referral have been addressed through amendments to the IMC Policies and Procedures document.

The current status of the seven (7) IMC Referral Files are presented as listed in the **2015/2016 IMC Work Plan Appendix B** and summarized on the following **Chart 3**.

There are seven (7) Referral files currently before the IMC. The IMC Referrals are:

1. 1999-BPFN-001 - Selections in Provincial Park is parcel specific and affects 116.4 acres, (Birch Point Park) which was referred to Binding Arbitration on February 2015;
2. 1999-BPFN-002 - Selection of the Bed and the Shore along a Non-Navigable waterway and the implications with regard to eligibility in determining if the waterway is Navigable or non-Navigable.
3. 1999-NCN-003 - TEA Effective Date relates to a three month time period where the signing ceremony was held and the subsequent signature of the Minister on the TEA after the ceremony;
4. 2003-BON-001 - Surplus Federal Land – Kapyong is in relation to Canada's characterization of the lands as "Strategic Disposal" of the lands and process steps under the MFA-TLE;
5. 2004-BLFN-002 - Material Failure re Land in Severalty (LIS) had been referred to binding arbitration and awaiting information from the Barren Land First Nation (BLFN). BLFN, Manitoba and Canada are in negotiation on a set of principles to implement LIS. This affects 36,800 acres of BLFN selections;
6. 2006-Manitoba-001 - Material Failure re Knee Lake Lodge is a BCN allegation that Manitoba has failed to comply with a fundamental term or condition of the MFA-TLE – Manitoba did not remedy the issue as a result Manitoba referred the issue to the IMC;
7. 2007-TLEC-002 - Hydro Easement referral, TLEC agreed to allow Brokenhead Ojibway Nation (BON) to lead discussion with Manitoba and Manitoba Hydro.

Chart 3: March 31, 2016 Status of IMC Referrals

REFERRAL FILE	SHORT TITLE	ACRES AFFECTED	STATUS	RESPONSIBILITY FOR NEXT STEP
1999-BPFN-001	Selections in Provincial Park	116.4	The SAC decided to forward this issue to Binding Arbitration on February 23, 2015. Binding Arbitration is pending.	Arbitrator
1999-BPFN-002	Reed River – Bed and Shoreline	0	The IMC is currently reviewing the Referral Protocol	IMC Chairperson
1999-NCN-003	TEA Effective Date	0	INAC sent a letter to NCN on April 15, 2015 and NCN responded on October 28, 2015. A response is further required from INAC	Chairperson NCN
2003-BON-001	Surplus Federal Land - Kapyong	160	This referral is in abeyance. Discussions are ongoing between Canada and the EFN.	Chairperson
2004-BLFN-002	Material Failure re Land in Severalty (LIS)	230 members x 160 acres = 36,800	The Parties have agreed to place the Referral in Abeyance while negotiation continues on the implementation of LIS principles for selections.	Chairperson BLFN Canada Manitoba
2006-Manitoba-001	Material Failure re Knee Lake Lodge	1,511	This Referral is to be referred to Binding Arbitration pursuant to 36.01(5).	IMC Chairperson BCN
2007-TLEC-002	Hydro-Easement (H/E)	65,800	TLEC has placed their Referral into abeyance while BON continues discussions with Manitoba and Manitoba Hydro on a Form of Hydro-Easement Agreement.	IMC

For further information on background details please refer to the previous Annual Reports that provide the history of each Referral.

2.1 REFERRAL - #1999-BPFN-001: LAND IN A PROVINCIAL PARK

Referral Date: June 23, 1999.

Issue or Matter in Dispute: The Buffalo Point First Nation (BPFN) wrote to the IMC Chairperson and referred its Birch Point selection pursuant to MFA-TLE Subsection 6.02(8) of 116.4 acres that included Birch Point Provincial Park that had been determined as ineligible by Manitoba. BPFN states its understanding of the MFA-TLE 3.03(6) that EFNs may not ‘generally’ select lands in Provincial Parks may be interpreted so that the word “generally” implies that exceptions may be made, and that Manitoba erred in MFA-TLE Subsection 3.02(12) to the Selection.

In 2010/2011 the Chairperson circulated the Referral Protocol on January 19, 2011 and requested comments from the Parties, as well as copies of any additional documents/information that each Party believes to be relevant to a full consideration of this referral. In particular, the Chairperson requested that the sections entitled “Interpretation of the Relevant Provisions of the MFA-TLE” and “Proposed Resolution and Options Considered” be submitted by TLEC and Canada, by April 2011. This referral was sent to the SAC in September 2013.

PROGRESS DURING 2015/2016:

The IMC went through the process of finalizing the Referral Protocol document for information to provide to an Arbitrator. The IMC also finalised the **Adjudication Reference Document - Appendix D** that would assist the Arbitration in answering the questions relating to this referral. The IMC discussed the administration of the funds associated with managing the contract for the Adjudicator and clarified that the parties managed the process independently for the previous Arbitration. The IMC agreed that the IMC would manage this process this time around in order to have a complete record of the process with the IMC.

The IMC placed a call for proposals to specific Arbitrators to determine their interest in hearing the case being referred to Binding Arbitration. The IMC deliberated on the proposals submitted to the IMC and chose Ms. Sherri Walsh of Hill Sokalski Walsh Olson LLP as the Arbitrator for the Binding Arbitration hearing. The hearing has been referred to an Arbitrator for a decision on whether or not a selection of a recreation park should be deemed an eligible selection. The Arbitration hearing is set for October 17 & 18 in Winnipeg.

2.2 REFERRAL - #1999-BPFN-002: REED RIVER BED AND SHORELINE

Referral Date: June 23, 1999.

The Buffalo Point First Nation (BPFN) selected parcels of land adjacent to their existing reserve known as Reed River 36A, consisting of approximately 116 acres, on December 21, 1998 by BCR #265-175 and BCR #265-176 in partial fulfillment of its Treaty Land Entitlement. It is located adjacent to Buffalo Bay and Lake of the Woods. The issue in dispute relates to the exclusion of the bed and shores of the Reed River of which the original selection was approximately 5,443.9 acres.

Manitoba advised that the portion of the Gould's Point/Poplar Point Selection that encompasses the bed and shore of the Reed River is not available in accordance with MFA-TLE Subsection 12.02 of the Framework Agreement which states that the land is available for transfer to the ordinary high water mark of the Reed River. In addition Manitoba advised that the portion of the BPFN Selection conflicts with an area identified in Timber Sale agreement MSB 1301 SPM, Boutang Enterprises Ltd. and Timber Sale Agreement MST, 1303 SPM J. Hovorka & Sons Ltd. to be harvested or subject to road construction within three years of the Date of Selection and may be eligible for Selection if the requirements of Subsections 3.03(25) to 33 inclusive of the Framework Agreement are met.

Manitoba further advised that the following Third Party Interest will have to be resolved to the satisfaction of Canada, Manitoba, the Entitlement First Nation and the holder of the Third party interest in accordance with Section 10 of the Framework Agreement prior to the transfer of administration and control of the land by Manitoba to Canada. The holder and interest identified was a Mining claim MtK22SV8830 and Mat 26SV8782 in favor of Indicator Explorations Ltd. 57 Greenway Crescent Winnipeg, Manitoba.

The aspects of the Framework Agreement that are relevant in determining the eligibility of this original selection are found in the definition of a Navigable Waterway under Article 1.01(62). Within this definition there is reference to a common law understanding of what constitutes a Navigable Waterway. The limiting factor of what defines a Navigable Waterway is found within the definition whereby, "does not include a waterway which does not ordinarily have a discernible surface outlet suitable for navigation or transportation." To fully understand what a Navigable Waterway is, the only provision in the Framework Agreement is a definition of a Non-Navigable Waterway, which simply states, "a body of water that is not a Navigable Waterway". This demonstrates that there may be circumstances encountered by the Parties involving a Non-Navigable body of water may be Non-Navigable. The Framework Agreement provides further guidance with respect to selections or acquisitions of a non-Navigable waterway in Article 12 Water Interests.

While BPFN disagrees with the characterization of the Reed River as a Navigable Waterway the MFA-TLE Article 12 addresses both scenarios where a waterway is navigable and Non-navigable. BPFN and TLEC take the view that this waterway is a Non-Navigable Waterway and should be made available and inclusive of the original selection.

The MFA-TLE Article 12.01 provision is clear that should a water body be deemed Non-Navigable an Entitlement First Nation may Select or Acquire land which includes the bed of that water body.

PROGRESS DURING 2015/2016:

The IMC has completed the Draft Referral Protocol and will need to discuss the protocol once it has been finalized by the IMC Chairperson.

2.3 REFERRAL - #1999-NCN-003: EFFECTIVE DATE OF AGREEMENT

Referral Date: August 25, 1999.

The Nisichawayasihk Cree Nation (NCN) referred this issue to the IMC in disagreement with Canada on the 'Effective Date of Agreement' of NCN's Treaty Entitlement Agreement (TEA). The NCN and Manitoba signed the TEA in Nelson House at a ceremony on July 30, 1998 whereas the Federal Minister of INAC, who was unable to attend the July 30 ceremony, did not sign the TEA until September 1, 1998.

Issue or Matter in Dispute (I/M): The NCN alleged that the effective date of their TEA was July 30, 1998, as this was the date that was typed on the TEA, and the date of the signing ceremony in Nelson House. All parties signed the TEA that day and Canada had a representative initial beside the signature block. Canada subsequently sent the TEA to the Minister's office where it was signed by Minister Jane Stewart (INAC).

The July 30, 1998 date is the 90th anniversary date of NCN's signing its adhesion on July 30, 1908 to Treaty No. 5. Canada provided its position on May 12, 2011 that the date of execution is "September 1, 1998". Canada references MFA-TLE Section 30.03 that reads "Coming into Force, 30.01 Effective Date of Agreement. This Agreement shall come into force as between the parties on the Date of Execution" and stated this is to mean when signatures are executed by all the Parties."

PROGRESS DURING 2015/2016:

On April 15, 2015 INAC sent NCN a letter proposing to acknowledge the date of their TEA as July 30, 1998. The letter also indicates that in order for INAC to acknowledge this date NCN would need to waive any claim associated with the acknowledgement of this date.

Based on the amount that would be generated from the principal and compound interest it is estimated that there would be approximately \$16,361.00 that would require a waiver to be signed by NCN. INAC has indicated that they will not pay this amount, but are looking to confirm whether Federal Orders in Council or other legal documents would be need to be adjusted.

There are also questions relating to the separation of O-pipon-na-piwin Cree Nation (OPCN) and what percentage may be owing to OPCN and whether they would need to sign a waiver as well. The amount would most likely be the same percentage that was distributed as part of the Land Quantum that OPCN received from NCN when they separated under their TEA.

INAC will be sending NCN the letter to Chief and Council for a response in the new fiscal year. It is anticipated that this issue will also be resolved during this time period.

2.4 REFERRAL - #2003-BON-001: DISPOSAL OF SURPLUS FEDERAL LAND AND THE MFA-TLE PROCESS

Referral Date: January 22, 2003.

Issue or Matter in Dispute (I/M): The Brokenhead Ojibway Nation (BON) referred the issue or matter in dispute to the IMC pursuant to MFA-TLE Section 34 alleging that Canada failed to forward notice of Surplus Federal Land; re the Kapyong Barracks to the BON, and Canada erred in interpreting that the MFA-TLE provisions dealing with Surplus Federal Crown property did not apply to the Kapyong Barracks and its classification of the lands as a "strategic disposal" under the Treasury Board Policy on the Disposal of Surplus Real Property and that it would be transferred to the Canada Lands Company for disposal.

The BON selected a parcel of approximately 160 acres of surplus Federal Crown land (Kapyong Barracks in Winnipeg, Manitoba). On December 4, 2002, Canada advised BON that the Kapyong Barracks had been designated as a "strategic disposal" under the Treasury Board Policy on the Disposal of Surplus Real Property and that it would be transferred to the Canada Lands Company for disposal. In addition Canada advised that the MFA-TLE did not apply to the strategic disposal process, as the interest of the EFN's cannot be considered on a priority basis.

On January 13, 2011 this Referral was formally placed in abeyance by the IMC due to continuing litigation of this matter by the Treaty No. 1 First Nations (including BON) who filed for an application for judicial review on January 25, 2008. A decision was rendered on September 30, 2009 in favour of the First Nation and appealed by Canada. The appeal was allowed and the matter returned to the Federal Court. Subsequently, Canada appealed to the Federal Court of Appeal to a second ruling in favour of the First Nations of November 2012. The court action effectively ended with the August 2015 decision of the Federal Court of Appeal, which was accepted by the litigants without further challenge. Negotiations between Canada and various First Nations, including BON, are in progress. The BON has formally advised the IMC it had extracted itself from the legal proceedings. Mr. Maurice Law, on behalf of BON, filed a Motion of Partial Discontinuance in the Federal Court of Canada on September 29, 2011 and thereby BON discontinued its participation as an Applicant in Action No. T-139-08.

PROGRESS DURING 2015/2016:

The Federal Court of Appeal decision was rendered unchallenged, and the various parties commenced negotiations in an attempt to resolve the matter based on the Federal Court of Appeal's guidance. As a result of these negotiations the referral remains in abeyance. The IMC is awaiting a response from BON as to whether they intend to proceed or abandon the referral at the IMC.

2.5 REFERRAL - #2004-BLFN-002: LAND IN SEVERALTY

Referral Date: May 5, 2004.

Issue or Matter in Dispute (I/M): Barren Lands First Nation (BLFN) alleges that Canada had materially failed to comply with a fundamental term of the MFA-TLE regarding the LIS issue, that although its members had given Canada notice of their election to take LIS in accordance with MFA-TLE Subsection 9.01(1), Canada had failed to enter into discussion with those members pursuant to MFA-TLE Subsection 9.01(4).

The Annual Report 2011-2012 describes the IMC discussion and correspondence between the BLFN and Canada on Canada's proposal for an alternative approach rather than bringing this matter to arbitration. The Referral was initially forwarded to binding arbitration in 2005 and reactivated. It was again placed into abeyance in February 2006. A Binding arbitration process is set out in the MFA-TLE Subsection 36.01 (on allegations of) "Material Failure to Comply with Fundamental Term or Condition."

The BLFN Chief and Council are to reach a decision on how BLFN intends to proceed. Once the information is received from the BLFN, the Parties are to be re-engaged to discuss alternate forms of resolving the I/M, and next steps to advance towards resolution and the precise nature of the action and to BLFN intentions.

PROGRESS DURING 2015/2016:

The IMC Interim Chairperson met with Canada and BLFN's Legal Counsel and Consultant numerous times throughout the year to discuss a proposal based on Certificates of Possession to be presented to Chief and Council and the BLFN members. The BLFN have now agreed to proceed with a form of Certificates of Possession for those members that have elected to take Lands in Severalty. The BLFN Legal Counsel and Consultant along with Canada have begun to draft a set of principles for selections for Lands in Severalty.

BLFN Chief and Council and some of the members have had a thorough briefing on the issues regarding LIS. The direction that BLFN legal counsel received is to continue to explore the idea of issuing Certificate of Possession (CP) under the *Indian Act* to the Barren Lands First Nation citizens who elected LIS, in lieu of continuing to attempt to agree on a definition of LIS. To that end, work on contacting as many members who elected LIS as possible to gather their input is ongoing. The response from BLFN Chief and Council and those who attended the briefing session was positive in relation to CPs. There are some outstanding issues that need to be discussed with government. In particular, there will be a need to reach an understanding on the approach to land selections which is consistent with what is understood to have been the principles of LIS as articulated in the MFA-TLE.

At this point, BLFN has chosen not to withdraw the referral to Arbitration. They have elected to continue with negotiations on implementation of principles for LIS and have placed the referral into abeyance while these discussions take place.

2.6 REFERRAL - #2006-Manitoba-001: KNEE LAKE LODGE MATERIAL FAILURE ALLEGATION

Referral Date: February 3, 2006.

Manitoba in accordance with MFA-TLE subsection 36.01(2), in response to a January 13, 2006 allegation of material failure pursuant to MFA-TLE subsection 36.01(1) chose to refer the matter to the IMC.

In this referral, the Bunibonabee Cree Nation (BCN) alleged that Manitoba breached its MFA-TLE obligations contained in MFA-TLE Subsection 6.02(6) by not registering the BCN selection known as the Knee Lake Lodge in the Crown Lands Registry, which then enabled several registrations to be made against the lease (Third Party Interest) that currently encumber the property, including an Assignment for collateral purposes that created the authority for a creditor to make a disposition to an interested purchaser pursuant to a receivership of the assignee.

PROGRESS DURING 2015/2016:

The IMC Chairperson proposed to Manitoba that they write a letter to BCN determining their interest in removing their allegation of Material Failure. The **Manitoba letter to BCN dated July 14, 2015 - Appendix E** was sent to BCN, but no response was received. The IMC Chairperson spoke to the BCN Chief and indicated to him that they could be expecting a letter outlining a potential resolution to this matter. The Chief indicated that he would await the letter and provide a response upon receipt of the letter.

2.7 REFERRAL - #2007-TLEC-002: HYDRO EASEMENTS

Referral Date: August 27, 2007.

Issue or Matter in Dispute (I/M): In its referral TLEC asserted that Manitoba is not entitled to retain partial constitutional jurisdiction that the Crown (Manitoba) asserts is required to support a hydro-easement required by Manitoba Hydro; and secondly that the hydro-easement should set out a resolution process whereby the EFNs can address alleged impacts on the EFN's existing Aboriginal and Treaty rights, as well as any potential claim to compensation in respect of the hydro-easement area.

PROGRESS DURING 2015/2016:

The IMC Interim Chairperson met with Brokenhead Ojibway Nation (BON) in August to obtain a better understanding of the BON proposal for a Hydro-Easement Agreement.

The IMC Representatives met to discuss the opinion that Ms. Cathy Sproule provided to the IMC Chairperson. The Chairperson acknowledged that Manitoba and Canada IMC Representatives cannot speak directly to the opinion until they have received legal opinions on the Ms. Cathy Sproule legal opinion.

The IMC Independent Chairperson reminded IMC Representatives that the opinion is intended to assist the Parties with looking outside the box to find solutions to these long standing issues. The opinion is intended to clarify the use of the *Manitoba Claims Settlement Implementation Act* (MCSIA) as well as begin to look into the *First Nations Land Management Act* (FNLMA) as a means to address Third Party Interests.

TLEC's IMC Representative provided an update on the discussions with Manitoba and BON with regard to the Hydro-Easement Agreement. The BON has since passed their Land Code as of December 13, 2014, which eliminates application of 32 sections of the *Indian Act* with respect to BON Land Management. As a result of this jurisdictional change, the First Nation now has the authority to manage their lands and resources.

In his capacity as INAC Director General – TLE Completion, Mr. Martin Egan provided additional comments as to the importance of the use and relevance of the *MCSIA*. The *MCSIA* provides authority for the Minister of INAC to set apart land as reserve in accordance with the terms of a claim settlement agreement such as the MFA-TLE. The Parties need to investigate the full spectrum of options available to address Third Party Interests. It would appear that at the very least the *MCSIA* and the MFA-TLE "in any other way" clause support the use of the FNLMA-related land tenure instruments to address Third Party Interests as contemplated in Ms. Cathy Sproule's Legal Opinion in the 2014-2015 IMC Annual Report.

1. What is the scope of and the limits on the words "in any other way which ... the Parties ... may agree" in the context of Article 10.02(1)(h) of the Manitoba TLE Framework Agreement?

I am of the opinion that the parties to the MFA-TLE could deal with any third party interest by either an agreed upon common law easement, a federal statutory licence pursuant to the *Indian Act*, the *First Nations Land Management Act* or the *Federal Real Property and Federal Immovables Act*, or by a contractual agreement.

2. To what extent does the *Manitoba Claim Settlements Implementation Act* support whatever flexibility exists by virtue of Article 10.02(1)(h) to resolve Third Party Interests?

In my opinion, the answer to Question #2 is that section 11(2)(b) of the *MCSIA* provides an opportunity to create a *FRPFIA* interest prior to reserve creation under the MFA-TLE, an option which did not unequivocally exist at law at the time the MFA-TLE was signed. The phrase "in any other way" in Article 10.02(1)(h) would certainly include this option.

3. Is the draft Surface Rights Access Agreement sound, and if not, what if anything can be done to render it useful?

“The issue of access at some undetermined point in the future is difficult. The main issue is that it requires an agreement for something that may or may not take place. In this case, it would be where lands are selected that have disposed minerals or oil and gas rights that are not presently being exploited. These rights would come from a disposition agreement or lease from the province. The third party disposition holder has a right to access those minerals if and when access is needed. This could be tomorrow, in a month, or never.

In order to protect this future right, an agreement is required. Section 10.03(4) of the MFA-TLE requires an agreement “between Canada, the Entitlement First Nation and the Third Party [to provide] the Third Party a right of access on or across the land to exercise its rights in the Mineral Disposition...” The quandary is that until such time the Mineral Rights Holder knows exactly where it requires access; there is no way to create an actual permit or licence to enter. The next best thing is an agreement to agree. While not legally binding, it does indicate intent, and should aim to protect all parties in the event there is a dispute when actual access is required. There may be some risk that at some point in the future the parties will not be able to reach an agreement and that court action is taken, but I am of the opinion that the risk is minimal and it is a risk worth taking to allow the parties to avoid further delays in implementing treaty obligations.”

First Nations may include in their land code a process for accepting lands for reserve creation that would combine the interest within the reserve acceptance process. Currently, there are two EFNs that are operating under an *FNLMA* Land Code (Brokenhead Ojibway Nation and Opaskwayak Cree Nation) and another two in the inventory for becoming *FNLMA* certified Nisichawayasihk Cree Nation and Norway House Cree Nation). These four EFNs have selections where lands have been identified as requiring a hydro-easement.

BON continues to take a lead role in discussions with Manitoba with regard to reaching agreement on a form of agreement with respect to hydro-easements on TLE selected lands for reserve creation. The IMC and TLEC have agreed to await the outcome of negotiations between the two Parties in an effort to resolve this issue/matter.

The resolution of this issue has the potential to assist those First Nations that also have hydro-easements identified on their TLE selections, specifically, Nisichawayasihk Cree Nation, Opaskwayak Cree Nation, Norway House Cree Nation and, Mathias Colomb Cree Nation.

Entitlement First Nation	Acres	% of Crown Land Quantum (acres)	# of Parcels with Hydro-Easement Requirement	% of Total # of Parcels with Hydro-Easement Requirement
Brokenhead Ojibway Nation	3,141.49	72%	5	45%
Mathias Colomb Cree Nation	4,774.99	2%	5	24%
Nisichawayasihk Cree Nation	29,969.84	38%	22	54%
Norway House Cree Nation	17,239.53	16%	40	39%
Opaskwayak Cree Nation	25,396.70	53%	10	31%
Total Acres Encumbered	80,522.55	18%	82	36%

3.0 MONITORING AND FACILITATING MFA-TLE IMPLEMENTATION

The IMC Work Plan assigned to the IMC by the Parties directs the IMC to monitor key topics and make recommendations to achieve the targeted results/goals developed for each activity. In particular the IMC has requested that the Chairperson monitor and facilitate the progress of the Parties by Chairing the Three Party Strategic Planning meetings. Through facilitation of the process the Chairperson is challenging the Parties to begin looking at the strategic aspects of the work plan through a coordinated effort. Included in the Annual Work Plan as with previous Work Plans, are the EFN priority parcels that the First Nations would like to see specific attention and focus on. The purpose of this focus is specific to the resolution of Third Party Interests. The EFNs have also provided priority parcels that have development plans for economic generating ventures.

The IMC has addressed the issue of the acquisition time frames through the formal referral made in 2012 by Canada and Manitoba, but have agreed that continued focus on this issue is required. Specifically, the time frames for acquisitions while utilising the principles of the MFA-TLE have expired for all six Schedule B EFNs in the 2015-

2016 fiscal year. The Parties have agreed to take a proactive approach to resolving this issue and are developing a strategy through the IMC to do so.

While the parties have addressed a number of issues through the Annual Work Plan, the Parties have not developed a concrete plan to address the issues relating to the Unsigned EFNs. The Parties at the very least should be working together to outline the steps required of each EFN should they intend to sign their TEA.

There are other specific issues that have not been included in the IMC Work Plan for 2015-2016, but are of importance to the IMC and SAC. In particular, SAC has requested that the IMC work toward addressing the Duty to consult issue. These other issues include the Barren Lands First Nation and the Reindeer Lake selections; the IMC Chairperson is working closely with SAC, Crown Land Selections, and continued renewal of TPIs.

3.1 DUTY TO CONSULT

The IMC has requested INAC to provide ongoing updates on the status of Consultations with the Aboriginal Groups that INAC has identified and that have requested to be consulted. INAC has indicated that a 15 page letter has been received from the MMF stating that they are unhappy with the proposal received from INAC on April 10, 2015. The letter was received from Al Benoit the Senior Policy Advisor for the MMF. The letter requests INAC not to proceed with any TLE and that the MMF are in active negotiations with Manitoba about the harvest area.

There were 11 parcels that were sent to INAC Headquarters. The proposals were for the following First Nations: Rolling River (5), Buffalo Point (1), Manto Sipi (2), Norway House (1) and Mathias Colomb (2). One parcel for WSNF and one for OCN did not go to INAC Headquarters due to further consultation with the MMF.

At this stage in the process there has not been any contemplation about accommodation measures to address any of the issues raised by the Aboriginal Groups through the consultation process. INAC has indicated that if a First Nation agrees to provide access that there could be a 28(2) permit issued which provides permission, it is not a right in perpetuity. They would need an easement for access to lands for so long as needed. There is no mandate for INAC to negotiate a formal agreement under Section 35 of the Constitution. The Federal government has no jurisdiction on Provincial Crown Lands. For the Federal government to enter into negotiations of accommodation on hunting and access to crown lands is outside of federal jurisdiction. The Province has issued Exclusive Use Permits on most of these TLE lands a number of years ago, which in turn has resulted in Manitoba relieving themselves of the duty to consult. INAC holds some EFN titled lands that the MMF has not expressed any concerns about. These are lands that have been acquired and are located within the Metis harvesting Area.

INAC advised throughout the year that some of the parcels would proceed to reserve creation once the issues regarding consultation had been resolved. As a result INAC transferred five parcels of land to reserve prior to the end of the 2016 fiscal year. A joint protocol agreement was discussed, (**Draft Consultation Protocol October 20, 2015 – Appendix F**) but the parties advised that they were not prepared to sign an accord that would facilitate these parcels of land through the consultation process to reserve creation.

INAC received more correspondence from the MMF on TLE. In particular, the MMF has stated that they were opposed to the settlement agreement reached with the Sayisi Dene First Nation. The MMF is opposing any land to be transferred to the EFNs under TLE that is to the EFNs benefit. INAC is moving forward with consultation on 39 parcels with the MMF and is seeking specific concerns with regard to each individual parcel. Once consultation is complete these parcels were to proceed to Headquarters.

The following parcels are:

- | | |
|------------------------------|------------|
| • Norway House Cree Nation | 13 Parcels |
| • Northland First Nation | 9 Parcels |
| • Rolling River First Nation | 3 Parcels |
| • Manto Sipi Cree Nation | 6 Parcels |
| • Wuskwi Sipihk First Nation | 2 Parcels |
| • War Lake First Nation | 3 Parcels |
| • Bunibonibee Cree Nation | 2 Parcels |
| • God's Lake First Nation | 1 Parcel |

TOTAL 39 Parcels

These parcels were to advance to the MMF for specific comments on the impact these parcels have on the MMF harvesting right. MMF has provided notice that they do have concerns with one War Lake First Nation parcel and one Opaskwayak Cree Nation parcel. INAC indicated that a request had been made to Manitoba for all of the

Exclusive Use Permits (EUP) for the analysis of the pre-consultation phase. The EUP was to be reviewed to determine if there is any exercise of right or if any knowledge has been received on the use of these lands by Métis harvesters or if any permission have been given to the Metis to harvest on these lands.

The question of accommodation remains unanswered and INAC indicated that the MMF should be providing information as to what they see accommodation being. Additionally, are the EFNs accommodating the Metis - as is the case in Saskatchewan where a First Nation has signed an agreement in order to accommodate Métis use and access to lands in the future? Manitoba has offered to discuss with their Natural Resource Officers in the Region at the NRO Office in Thompson to determine if they have any knowledge of the use of lands by Metis harvesters

Metis hunters are allowed to hunt on registered traplines even if they are registered to a First Nation person. The use of the trapline is for commercial purposes only, but traditional harvesters can still use Crown Land. INAC has made a request to Manitoba for an ArcView GIS layer of the Métis harvest area that has been agreed to by Manitoba. Manitoba has agreed to provide the data of the Metis harvest areas to INAC. Manitoba clarified that they do not provide notice to the Metis on the issuance of these Exclusive Use Permits.

Manitoba further expressed that no group other than the EFNs would know about the issuance of these Exclusive Use Permits as they are not posted on any Manitoba Government Website. Manitoba Conservation also has a Shapefile of the Metis harvesting area that Manitoba will provide to INAC. INAC explained that there have been discussions with the EFNs regarding the use of the First Nations Gazette to post EFNs TLE parcels as a form of notification to the public including the Metis. INAC indicated that it would be a worthwhile process to consider posting the Land Transfer and Reserve Creation Process Tracking Charts (LTRCP) to the First Nations Gazette as well.

The purpose of using the First Nations Gazette is so that notice is given on a publicly accessible website and there is no response from the MMF then INAC can move forward with the selection/acquisition. It is anticipated that the Parties would operate in a manner similar to the Mines Branch wherein they provide notice and if there is no response within 30 days then they proceed to issue the disposition. Manitoba Mines Branch still has all of the TLE sites on their Integrated Mining and Quarry and Quarry System (iMaQs) website:

<https://web33.gov.mb.ca/imaqs/page/flex/index.html?keepSyncToken=keepSyncToken&ts=1475082282891>

INAC has about 144 TLE parcels of which 40 have been sent to the MMF for response for specific concerns 13 parcels are at INAC headquarters and 3 parcels have been identified by the MMF with specific concerns.

INAC has tasked Mr. Thomas Isaac with the role of the Ministerial Special Representative out of Ottawa to work with the Consultation issue with the MMF. INAC will provide a copy of the critical path once it is complete. INAC has also begun work on a matrix and funding approval from headquarters. INAC is also assisting the Manitoba Region with the consultation process with the Manitoba Métis.

The MMF have requested funding for Phase one for work to develop a matrix to help frame the level of consultation and the notification process. INAC indicated that there are 20 parcels of land or more that are within walking distance of the next parcel of land that the MMF would consider being one parcel of land that they would be reviewed. The MMF is objecting to other ATR as well that are not under the MFA-TLE, in particular the Lake St. Martin "Operation Return Home" file as well as the Dene settlement agreement. The MMF considers the Crown to be indivisible and any information that is available to the Crown or accessible by the Crown the MMF has been requested. The type of information being requested includes migratory bird routes, wildlife management areas and migration routes. INAC has sought the assistance of Geo Manitoba who was involved in the Manitoba Land Initiative.

The aspect of accommodation measures continues to be discussed. Some of the examples discussed were, amending the boundary of a TLE selection, granting access or limited access. The MMF view consultation and accommodation hand in hand and linked to the overall consultation process.

Manitoba shared some of the items that they include in their consultation process. Specifically:

- Development of a plan;
- Correspondence back and forth;
- Responses to a questionnaire on use of the land and impacts to rights;
- Determination of the level of consultation required, scope and the cost associated with the length of time for consultation.

INAC has a **Consultation and Accommodation Guidelines March 2011 - Appendix G** that they use to assist them with conducting consultation and accommodation.

The IMC had begun to develop a consultation protocol and discuss the purpose of this agreement protocol. The intention of the protocol is to provide the EFNs with a process step that is being implemented to address the Crown's Duty to Consult. The protocol is intended to provide the EFNs with a clear understanding of where their parcels are at within the consultation process and timelines associated with each step in the process. The goal is to have a signed protocol agreement that the Parties to the MFA-TLE can agree upon as the Duty to Consult obligation continues to be implemented.

INAC provided updates that there are 20 parcels that the government has a strong willingness to move through the MMF consultation framework. It is anticipated that there will be no concerns expressed by the MMF for any of the Northlands First Nation selections as they will be outside of the MMF harvest area.

Manitoba has assisted by providing the IMC with a copy of the expanded boundary of the MMF harvesting area. Manitoba indicated that their Consultation process regarding TLE is on a case by case basis and there has not been a case where they have needed to consult the MMF on TLE.

It is expected that Canada will be requesting approximately 58 Orders in Council (OIC) from Manitoba for Orders in Council (OIC). Manitoba will provide Canada with the timeline that they will require the request to be made in order to have cabinet sign off on the transfer of lands.

On November 18 INAC sent the MMF 20 parcels for their Matrix vetting process. Currently the EFNs are not involved in the MMF consultation process, and TLEC has also indicated that they will not be involved in the process. The EFNs can also provide notice of their selections/acquisitions utilizing the First Nations Gazette. It is an excellent tool for information sharing.

There was some discussion on the 60 parcels that are ready for the request of Manitoba Orders in Council and the last date that the legal descriptions can be sent to Manitoba by Canada. TLEC has been in consistent contact with the Associate Deputy Minister of INAC in Ottawa to address issues and concerns.

3.2 THREE PARTY STRATEGIC PLANNING

This is the fourth year that the Parties have been engaged in the Three Party Strategic Planning process in order to aid each Party to implement its responsibilities under the MFA-TLE. The total amount of acres identified in the Work Plan is 292,151.52 acres. Coordination and communication is essential to implementing any multi-party agreement. The same can be said for work required to implement the MFA-TLE. The MFA-TLE not only requires coordination amongst the three Parties, but the 15 First Nations as well is critical to navigating through a multi-step process, involving hundreds of parcels of land. The key objectives of the Strategic Planning initiative was to reach consensus on a three Party work plan, and have it based on consultation with EFNs, and then share it with the EFNs, so that they EFNs can understand and anticipate the timeframes to co-ordinate their efforts with those of the Parties to resolve issues on parcels of land anticipated to be set apart as reserve.

During Strategic Planning meetings the Parties confirmed that their **2015-2016 Annual Work Plan Results - Appendix H** by fiscal year needed to include at a minimum the work/tasks required to advance:

- the parcels on Schedule "A" 48,205.72 acres which were to be set apart as reserve by fiscal March 31, 2016;
- the parcels on Schedule "B" 57,540.69 acres which are to be set apart as reserve by March 31, 2017;
- the parcels on Schedule "C" 20,658.30 acres which are to be set apart as reserve by March 31, 2018; and,
- the parcels on Schedule "D" 108,381.71 acres (which are anticipated to take more than three years to be set apart as reserve).
- the parcels on Schedule "E" 57,365.10 acres (which are anticipated to take more than three years to be set apart as reserve).

The parcels of land that are in Schedule E have been referred to the IMC for resolution. The total amount of acres targeted for transfer within **Schedules A-E is 292,151.52 acres.**

The planning process begins with an annual three Party assessment of the land transfer steps that can be completed during the fiscal year for each parcel. If it is determined by the Parties that a particular parcel can meet the dates for transfer during the fiscal year, it is listed on Schedule A of the Work Plan. If the remaining steps will take two years to complete it is included on Schedule B, and if the remaining steps will take three years to complete

it is included on Schedule C. For some time the Parties have recognized that the degree of effort and administrative overhead required to transfer small parcels of land is comparable to that required to transfer large parcels of land, and with the largest parcels now transferred, the Parties recognized that it would be difficult to maintain the rate of implementation moving forward. (**Chart 2** compares the acreage and number of parcels set apart annually).

PROGRESS DURING 2015/2016

The IMC Chairperson facilitated the Three Party Strategic Planning meetings throughout the fiscal year. The meetings identified the importance of coordination and regular communication necessary for self-monitoring of the Three Party Strategic Planning process. The IMC discussed the importance of the Strategic Planning as a positive support to implementing the IMC Work Plan in conjunction with the Strategic Plan the past two years since this planning was implemented. Canada has taken the lead in the first two years and requested one of the other Parties take a lead. It is recommended to SAC and the IMC that the Strategic Planning and Annual Work Plan continue with the Parties finding a solution to work load sharing, and that the Parties target April for the release of each fiscal year's Annual Work Plan.

The IMC and all Parties believe the Annual Plan should be shared with the EFNs earlier in the fiscal year, and the target date for release of the 2015-2016 Annual Work Plan and subsequent Annual Work Plans is June of each year.

In 2015/2016, the EFNs were;

- provided updated Annual Work Plans in September 2015 confirming progress made during the first 6 months of the fiscal year (between April 1st and September 30th)
- advised of the Annual Plan and parcel by parcel milestone goals in July 28, 2015.

3.3 EFN PRIORITY PARCELS

Over the past few years, TLEC has annually submitted listings to Canada and Manitoba identifying the selections and acquisitions deemed by the EFNs to be their Priority Parcels. The 2015/2016 Annual Work Plan illustrates 78 priority parcels that have been chosen by the EFNs that are comprised of selections and acquisitions. The primary reason these parcels were chosen is to focus on the resolution of the Third Party Interests and Encumbrances. Once these parcels are free and clear of TPIs and Encumbrances the parcels can be included in the Annual Work Plan Schedules. It is anticipated that in the 2015-2016 fiscal year that these priority parcels will feed into one of the Schedules A, B or C to allow for survey work to be completed on these parcels.

PROGRESS DURING 2015/2016

The three Parties have confirmed which of the milestone goals set for 2015/2016 were completed by year-end, and which would need to be carried forward on the 2015-2016 Annual Work Plan. The following milestone targets for priority parcels were set and the achievements monitored as follows.

The main issues delaying the advancement of the Priority Parcels is the unresolved TPIs, encumbrances and concluding Municipal Development and Services Agreements (MDSAs) with municipalities.

In the 2015/2016 three Party Annual Plan the Parties decided to place the priority parcels further along in the process on Schedules A, B, and C; with the remainder found on Schedule D. In 2015/2016 the priority parcels are located as follows:

- 1 on Schedule "A", and targeted to be set apart as reserve by March 31, 2016.
- 1 on Schedule "B", and targeted to be set apart as reserve by March 31, 2017.
- 10 are on Schedule "C", and targeted to be set apart as reserve by March 31, 2018.
- 51 are on Schedule "D", (no associated time frame for reserve creation).
- 7 are on Schedule "E", (no associated time frame for reserve creation).

In summary, while the EFNs consider these parcels as their priorities, they are heavily encumbered with TPIs and encumbrances, and many require municipal discussions and possibly MDSAs. Accordingly, the majority cannot be targeted for reserve status before 2015-2016. In terms of interim achievements, it is clear from the above assessment that little progress was achieved with respect to advancing the EFN priority parcels during 2015/2016. A strategic focus to address the resolution of these matters will assist the progress of the priority parcels through the land transfer process.

3.4 DRAFT DISCUSSION PAPER ON AMENDMENTS TO THE MFA-TLE

The IMC Referral on the Acquisition Time Periods was referred to the IMC in 2012 as a result the IMC decided to extend the Time Frames for the Schedule B EFNs as per the MFA-TLE. This resulted in the two, one-year time frame extensions being granted to the 6 Schedule B EFNs. These timeframes have all since lapsed for all six Schedule B EFNs. The Parties recognize that the Principles do assist with the implementation of the MFA-TLE and agreed to continue looking at mechanisms in order to allow for the Principles to remain relevant after the time frames have lapsed.

The result of this commitment was a series of focus group meetings on a **Draft Discussion Paper on MFA Principles April 17, 2015 - Appendix I** that outlines some key questions since the MFA-TLE principles would no longer apply. In particular, if the Principles no longer applied to Schedule B EFN acquisition lands would Manitoba continue to be responsible to pay the taxes once an MDSA is signed or the RM provides a letter indicating they have no concerns. The same question arises with regard to the Remission Order and the GST exemption under Article 31 of the MFA-TLE.

The discussion began with a review of the draft paper on the key principles that the Parties would like to see amended within the MFA-TLE to allow the process of acquisitions for TLE continue. One of the comments made by INAC was specific to the Treasury Board Policy and that only Specific Claims are indicated in the policy, TLE is not included.

Each party reviewed the Draft Discussion Paper on proposed amendments and determined which clauses they would like to see amended. These clauses are not specific to the Schedule B EFNs as it was mentioned that there may be other clauses that the Parties would like to see amended. The Draft discussion paper has now shifted to a draft list of amendments to the MFA-TLE on selections and acquisitions.

Some of the key elements that have been identified to remain in the MFA-TLE are the Environmental Assessment and Surveys process. It is clear that the Manitoba Claims Settlement Agreement would continue to apply as the authority would not end. There are various versions of the ATR Policy that have been done over the years and it would be for the First Nations to decide if they would like to adopt the newest version of the ATR policy by BCR.

If there amendments are to occur both Federal and Provincial Cabinets will need to validate the amendments. The IMC agreed to draft a list of the proposed amendments to the MFA-TLE along with the mechanism(s) to utilize in order to have the amendments approved. The IMC will continue the process of developing a package that would support the amendments to the MFA-TLE. Some of the examples discussed include: Expiring time periods, TPI Account and the impacts and beneficial clauses that each of the Parties would like to see amended.

PROGRESS DURING 2015/2016

The IMC was initially involved with the development of a list of amendments in order to address the issues that have lagged the TLE process over time. The IMC is no longer facilitating this process as the Parties have to take the lead on reviewing the MFA-TLE in order to assess the needs to the TLE process and amend the necessary aspects of the MFA-TLE to improve the process.

Discussions continue on how best to formalize the process for the EFNs as it has been noted that the main issue for INAC is having the authority to continue to do the things they currently do under the MFA-TLE. A Focus Group was convened in order to go through the principles and the means to have the key principles continue to be implemented. The Chairperson remains to be involved in this process by participation on the working group to amend the MFA-TLE.

3.5 SURVEYS

The Public Works and Government Services (PWGS) of Canada and INAC have entered into an interdepartmental agreement for surveys. INAC is providing the funds to PWGS who specializes in conducting surveys. There is a supply arrangement covering Manitoba, Alberta and Saskatchewan that is relied upon for surveys for TLE. This allows the surveys to be done by increasing the list of surveyors to conduct the work. Contractors are still required to submit a bid. INAC will no longer receive invoices for the contracts or deal with other administrative aspects of the survey process. Regional Surveyor Maps once signed, will be provided to PWGS Survey Division for contracting the work. The on the ground work will be up to the contractor that is awarded the survey to hire EFNs, as has been the case in the past. The process will be the same for EFNs, it is an administrative change within INAC.

The survey dollars cannot be provided to the First Nations to do the contracts as the funds are under Vote 1. In order for funds to be provided to the First Nations it must be Vote 10 and while the two Votes can be interchanged

there are financial penalties for doing this. The survey funding is Vote 1 and Natural Resources Canada is involved in surveys for existing reserves. The National Land Managers Association (NALMA) also assists with contracting surveys under the Lands and Economic Development Support Program.

The TLE implementation money is provided to the Manitoba region as part of the Region's A-base, but Peguis First Nation is different and is guaranteed until 2022. The money for MFA-TLE is not guaranteed.

The parcels that are left, 65% of them are less than 1000 acres and these parcels that are smaller and in remote locations can quickly drain a survey budget. In order to reduce costs of surveys it is being recommended that the line cutting be done only in areas where it would be important to demarcate the line. The Government of Canada does not mandate line cutting, it has been Manitoba that has requested line cutting be done. There is no legislation or legal requirement for the cutting of lines through the forest; it has been applied as a rule of thumb.

There is new technology that will allow surveys to be done without having to cut lines for the boundaries. This technology is referred to as Light Detection and Ranging (LIDAR). Where there is a need for line cutting is on shorelines inland about 100 meters in order to demarcate the boundary of a TLE selection or acquisition. Manitoba would be willing to share the LIDAR information with First Nations to allow them to develop more accurate land use planning tools. A First Nation would need to send a letter to Manitoba making the request for the information. The specific department that handles this information is the Manitoba Director of Surveys. A presentation was done for the IMC on the survey process using the LIDAR. Manitoba Director of Surveys explained the difference between the LIDAR and the photogrammetric information.

Canada reviewed the budget for TLE surveys in May of 2015 and determined the amount needed for the fiscal year. There has not been a guaranteed amount for surveys for the past 5 years; it is the region that determines how the money is spent on surveys. Travel expenses are also sourced from the Region's A-base.

There are certain permissions required for the reallocation for dollars from headquarters (this only applies to Peguis First Nation as the other funds spent on TLE are Regional), but this request for reallocation is not done until October, or November, INAC waits as long as possible before making the request to reallocate funds.

3.6 OUTSTANDING TREATY ENTITLEMENT AGREEMENTS (TEAS)

By the end of the 2015/2016 fiscal year, six EFNs which are entitled to enter into TEAs under the MFA-TLE had not executed a TEA. None of these six EFNs is included in Schedule "B", and their entitlement is comprised of 100% Provincial Crown land, and totals 137,529.00 acres. These six EFNs are; Shamattawa First Nation, Fox Lake Cree Nation, Sayisi Dene First Nation, York Factory First Nation, Marcel Colomb First Nation, and O-Pipon-Na-Piwin Cree Nation.

At the meeting of the IMC there was consensus amongst the IMC Representatives on that the lead role should not be assumed by IMC, but rather it is a responsibility of the Parties to drive this process. As a result of this decision the IMC will no longer have this item on the IMC agenda.

The IMC Work Plan calls for a follow-up on the IMC recommendation arising from the review of the low level summary report prepared by the IMC Chairperson in 2012. The task is for the Parties to develop a proactive Action Plan specific to each EFN currently without a TEA. Upon receipt and review of the Three Party Action Plan, the IMC would monitor implementation.

Marcel Colomb First Nation has had an election and a resulting dispute has delayed the signing of the TEA. The voting process is through their Band Custom Election Code. The status of the Trustees will also need to be verified. INAC has provided the First Nation with funding to ratify their TEA, but it is uncertain if this will be completed by the end of the fiscal year.

Sayisi Dene First Nation (SDFN) is nearing completion of their relocation claim. Manitoba has indicated that they will sign the claim agreement on condition that the First Nation signs their TEA. INAC will be providing funding to SDFN in the new fiscal year for the ratification of their TEA.

The funding for Fox Lake Cree Nation, York factory First nation, and Shamattawa First Nation has been moved to the next fiscal year (2016-2017). O-Pipon-Na-Piwin Cree Nation is waiting to complete the process for their Land Transfer Agreement with Canada prior to signing their TEA. The IMC has noted that a majority of the Unsigned EFNs have made pre-selections outside of their Community Interest Zones that have already gone through the Manitoba circulation process. As a result of these pre-selections having gone through this process these lands are now restricted from the issuance of dispositions on the land. Based on the Manitoba Treaty Land Entitlement

Selections (TRELES) reports a majority of these selections are also free of Third Party Interests and Encumbrances.

PROGRESS DURING 2015/2016

The Parties have not developed an EFN specific Work Plan as recommended by the IMC into the Three Party Strategic Plan process for 2015/2016. The intent is to continue this action plan through future plans. Canada, TLEC, and Manitoba remain prepared to enter into TEA with the six First Nations and discussions are held with the First Nations at their option from the MFA-TLE Parties. There have been no TEAs signed by the Parties during this reporting period. There have been numerous attempts by the Parties to confirm the signing of these TEAs and an information session was hosted by TLEC where the Parties could update the EFNs on the status of TLE as well as answer questions relating to the TLE process.

The Parties would benefit by outlining the specific tasks required for each EFN in order for them to sign their TEA. This can be achieved through work plan similarly with work plans developed for the 15 EFNs with signed TEAs. Once the Parties develop the specific steps required for each First Nation to sign their TEA the Parties can provide this work plan to new TLE implementation staff within government and TLEC. This would also be useful for new First Nation governments that may not be familiar with the TLE process and the required next steps to complete.

3.7 THIRD PARTY INTEREST RESOLUTION

The IMC representatives agree that there is a need to improve the progress of resolving outstanding Third Party Interests (TPIs). There are a number of third party interests and encumbrances affecting the MFA-TLE selection and acquisition lands. The latest information obtained from Manitoba notes that there are 80,000 acres affected by hydro-easements, 28,339.73 acres Private and Crown Mines-Minerals-Quarry Leases-Permits-Licenses-Claims-Aggregate-Petroleum-Natural Gas interests, 9,160.88 acres with lands in municipalities, and a number of utility and general permits. The resolution of TPIs requires the First Nations, Canada, Manitoba and the TPI Holder to reach consensus on the method of resolving the TPIs.

Article 10.01(2) states that:

“Third Party Interests which affect any land which is otherwise eligible to be set apart as reserve in accordance with the Principles must be resolved to the satisfaction of Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the holder of the Third Party Interest prior to:

The transfer by Manitoba to Canada of administration and control of the Crown Land or any interest in the Crown Land; or

(b) the Entitlement First Nation or a Person on behalf of the Entitlement First Nation providing to Canada a registerable transfer of title to the Other Land.”

The resolution of these outstanding TPIs essentially requires agreement amongst the four parties where an interest exist on the land. In most cases the interest will continue on the land once it becomes reserve. There are agreements that have been reached with respect to the resolution of utility permits known as 28(2) permits, but there is more work required to complete additional agreed forms.

PROGRESS DURING 2015/2016

Canada, Manitoba and TLEC as signatories to the MFA-TLE have been successful in resolving some Third Party Interests and Encumbrances throughout this fiscal year. In particular there were 3 MDSA's signed between War Lake First Nation and the Town of Ilford. These agreements were for:

- Waste Disposal - November 25, 2015
- Waste Water Service - April 30th, 2015
- Water Service - April 30th, 2015

Wuskwi Sipihk First Nation (WSFN) resolved 3 TPIs involving hydro distribution lines and private lands that impacted 2 selections and 1 acquisition. WSFN also resolved 1 other issue that was outstanding regarding property taxes that impacted 12 acquisitions.

Rolling River First Nation resolved 2 MDSAs, one was signed for an acquisition parcel within the RM Headingley and one letter was received from the RM of Park that they had no concerns and that an MDSA would be signed in the future if required.

Sapotaweyak Cree Nation resolved 1 encumbrance with Manitoba Infrastructure and Transportation regarding an encroachment agreement on the Former Billows Gas Bar/Mefeking acquisition parcel.

Norway House Cree Nation resolved 1 Tourist Camp (out-camp) at Max Lake and was confirmed by letter to INAC and the owner that exclusive use would be to NHCN members.

34.08 Technical Support and Independent Professional Advice

The Chairperson may, where the members of the IMC agree, retain technical support and independent professional advisors, including legal counsel, as necessary from time to time to assist in the proper discharge of the responsibilities of the IMC, including the responsibilities of the Chairperson.

The Chairperson began work to host a Strategic Planning Workshop with the assistance of a consultant. The workshop results will be provided in the 2016-2017 Annual Report.

3.8 OTHER SPECIFIC ISSUES

Other matters of concern may be identified from time to time. In this event, the IMC will analyze the matter, determine if IMC's involvement is appropriate, if so determine the nature of IMC's involvement, and integrate the matter into the IMC Work Plan. The specifics of the approach will be dependent upon the issue, but in general will include:

- Issue analysis, and development of an IMC consensus on how best to resolve the matter,
- Enabling implementation of the MFA-TLE, and
- Advancing land parcels through the land transfer process.

The SAC has also requested that the IMC assist the Parties with resolving the Duty to Consult issue as is referenced in the IMC Meeting of November 27, 2014. Although these topics have not been included in the IMC Work Plan for 2015-2016 they have been addressed or are of importance to the IMC. In particular, the issue with respect to the Barren Lands First Nation and the Reindeer Lake selections where SaskPower is operating a dam that regulates the water level on Reindeer Lake that has resulted in a requirement for a hydro-easement for the TLE selections along the shoreline. The IMC Chairperson is to begin to work more closely with SAC in terms of discussing the IMC Referrals to determine if there is a way the SAC can resolve some of the longstanding issues. The IMC will be looking at the Crown Land Selections and determining if the Parties can facilitate the completion of the Crown land Selections. Also, the Manitoba Government has released a **Crown Land Acquisition Policy February 27, 2015 - Appendix J** that the IMC reviewed to determine if this policy assists with the completion of the Purchase of Other Land. It was clear that the policy does not aide the completion of purchase of the Other Land Amounts. The IMC has begun to look at the continued renewal of TPIs as it relates to Mines and Minerals interests. The Manitoba Government has provided copies of the Leases and Licenses issued to companies to assist the IMC with understanding the mechanism for which the Manitoba Government uses to continue to renew these licences and leases.

PROGRESS DURING 2015/2016

There have been ongoing updates provided by INAC with respect to where the consultation process is at with regard to moving the EFN parcels along the Land Transfer and Reserve Creation process. With this additional step being introduced as a result of Canada's attempt to fulfil its duty to consult, it has prolonged the transfer of parcels of lands that otherwise may have been transferred to reserve.

The latest update from Canada was provided on March 6, where in the discussion on the topic of the Duty to Consult centered on an update from INAC on the status of consultation with the Metis and Aboriginal Groups. There were 11 parcels going to the Ministers Office by the end of March 31. There were 5 parcels that were Rolling River First Nations, 1 Buffalo Point First Nation, 2 Manto Sipi Cree Nation, 2 Mathias Colomb Cree Nation and 1 Norway House Cree Nation. It was anticipated that by March 10 the Department of Justice would have completed its review of the TLE Additions to reserve submissions to be sent to the Minister and allow the Minister to sign off on the reserve creation for March 31.

INAC indicated that the Manitoba Metis Federation (MMF) is raising objections to any reserve creation within Manitoba. INAC believes that they have exhausted all avenues with regard to the consultation process for certain parcels and are now proceeding with recommending reserve creation. There have been specific concerns raised by

the MMF with regard to 5 parcels of land selected for TLE. Three of the parcels are Wuskwi Sipihk First Nation's (WSFN) and two are Opaskwayak Cree Nation's (OCN).

TLEC asked for further information concerning the quality of the information that the MMF contest these lands for reserve creation and INAC has indicated that the MMF have not provided any specific or detailed information, but stated that they have concerns with these lands becoming reserve status. Additionally, WSFN and OCN have offered an invitation to the MMF to meet to discuss their concerns with the 5 parcels that the MMF has identified. The Local Chapter of Metis in both instances has deferred any requests to meet to the MMF. The MMF has not yet replied whether they will meet with the First Nations.

INAC sent a letter to TLEC identifying 11 parcels for reserve creation that went to the Minister for final approval. There are however, an additional 40 parcels that require Provincial Order in Councils and have not been sent to the MMF for response. INAC intends on sending these to the MMF once these 11 parcels have been sent to the Minister.

INAC has the potential of sending out the 40 parcels to the MMF as soon as possible in order to determine if a response will be received or not. INAC's response was positive in that they would consider this once Department of Justice has completed their analysis of the 11 parcels that are going to the Ministers office. The MMF has stated that they are in active negotiations with Manitoba to expand the harvest area that has been recognised by Manitoba. MANA confirmed that there is no intention to expand the harvest area.

The IMC discussed whether or not the Metis would be considered a Third Party Interest given that they are preventing TLE lands from becoming reserve. INAC is of the view that they would not be considered a Third Party Interest.

The IMC Representatives discussed the benefits of beginning with a discussion paper that would allow the parties to provide examples of where the Metis and First Nations are working together. Such examples include Child and Family Services, and Commercial Fishing.

INAC added that there are 200 more MFA-TLE parcels that have not been sent to the MMF for a response, but that not all of these parcels will trigger the duty to consult. Currently, 144 parcels have been sent to the MMF for review and response. INAC also explained that it views that provincial government as having a role in the duty to consult as well, particularly since the federal government is not the government with jurisdiction over many of the issues, which has increased the challenge of the federal government to address the duty.

The status with regard to the Reindeer Lake selections made by Barren Lands First Nation is connected to the SaskPower operation of the Whitesands Dam in Saskatchewan. The Barren Lands First Nation has been in contact with SaskPower to attempt to resolve the issue as a result there has been no solid movement on resolving this issue.

The IMC has agreed with the IMC Interim Chairperson's recommendation that the Chairperson assist SAC with attending the meetings to facilitate, advise and record the results of decisions from the SAC. There have been six meetings where the Chairperson has chaired SAC. A formal **SAC Policy and Procedures Manual September 2015 - Appendix K** was formalized to assist SAC and the IMC Chairperson with roles and responsibilities under the MFA-TLE.

The IMC has advised the EFNs of the final Manitoba Acquisition of Crown Land Policy that is intended to assist the Schedule B EFNs with purchasing their remaining acquisition acres. It is anticipated that the amendment working group will have an opportunity to discuss this policy and how it benefits the EFNs with realizing their full land amounts as Schedule B EFNs.

The IMC is also monitoring how Manitoba processes TPIs on EFN selections and acquisitions. In particular, the IMC is becoming aware of how Manitoba renews mining claims, mineral licenses and leases on these parcels of land. Manitoba has provided information as requested by the IMC in order for the IMC to better understand this internal government process.

4.0 REPORTING

4.1 EFFECTIVE IMC OPERATIONS

Since 2007 the MFA-TLE Parties had been in agreement to establish a separate office of the independent Chairperson of the IMC to assist them in improving the MFA-TLE implementation process. The relocation of the IMC Office to its current location at 4820 Portage Avenue Swan Lake First Nation - Headingley, Manitoba is an independent office. The relocation was completed on May 12, 2015 and it is noted in the IMC meeting summary of proceedings that an inventory was completed and an administrative agreement was developed between the IMC and TLEC.

In summary the main revisions were that; an IMC Work Plan would be developed by the Parties (and attached to the Chairperson's Service Agreement), the Assistant Chairperson and Executive Assistant positions would no longer be utilized, and the Chairperson would include with the service agreement with TLEC costs for the use of TLEC's Finance Officer and Executive Assistant, subject to the allocations provided in the IMC annual budget. This structure has been in place for fiscal years 2010-2016. In January 2015 the IMC Chairperson entered into a Terms of Service Agreement between the IMC and TLEC for TLEC to provide the IMC with Financial and Administrative Assistance Services for a one-year term ending March 31, 2016.

PROGRESS DURING 2015-2016:

The Chairperson has maintained a full record of all IMC meeting minutes. Included within these minutes are the Undertakings, Decisions and action items of the IMC. The IMC held fourteen meetings throughout the fiscal year to address the IMC referrals and other issues that arose throughout the year. Each meeting resulted in a meeting summaries recording progress towards the targeted results and were confirmed and circulated. The majority of action items were completed for each meeting.

The Financial Management items are reported regularly with quarterly review by the IMC Meetings and the Chairperson advises the SAC as required. At the IMC meeting of July 9, 2016 the unaudited statement was complete and the circulation letter sent with copies at month's end and the Party representatives undertook to provide comments by July 24, 2016. The Annual unaudited statement was approved.

5.0 SUMMARY AND RECOMMENDATIONS OF THE IMC CHAIRPERSON

It is an honour and privilege to have been re-appointed Chairperson of the IMC by SAC to be a part of contributing to the transfer of land to reserve that arises from the Treaty obligations. Specifically Treaties No. 1, Treaty No. 3, Treaty No. 4, Treaty No. 5, Treaty No. 6, and Treaty No. 10 through the Manitoba Framework Agreement on Treaty Land Entitlement of May 29, 1997 and the resulting Treaty Entitlement Agreements for each of the Entitled First Nations.

My focus over this past year in the IMC office in 2015-2016 has been to push the parties to begin to look at the mechanisms by which these referrals can be dislodged from the ruts that seem to plague resolution of these long standing issues. As IMC Chairperson I have also looked at some of the issues that pose a challenge to the parties, but are not reflected in a formal referral with the IMC, but remain issues preventing the implementation of the MFA-TLE. The Chairperson has a role under the MFA-TLE provisions to assist the MFA-TLE Parties in resolving the Issues and Matters in dispute that have been brought before the IMC by the IMC Parties and the EFNs. I have also continued to further the excellent work done by previous Chairpersons.

On behalf of the Implementation Monitoring Committee established under Section 34.01 of the 1997 Manitoba Framework Agreement on Treaty Land Entitlement, I respectfully submit this Annual Report of the IMC to the President of the TLE Committee, the Minister of Indigenous and Northern Affairs Canada, and the Minister of Indigenous and Municipal Relations for Manitoba, for the reporting period ending March 31, 2016.

Article 34.09 (10) (b) as my authority, which states:

will, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba an annual written report including:

- (i) a summary of the progress of implementation of this Agreement and any Treaty Entitlement Agreement;

- (ii) the recommendations of the Implementation Monitoring Committee for the improvement of the implementation of this Agreement and any Treaty Entitlement Agreement;
 - (iii) a summary of the issues or matters in dispute which have been resolved during the reporting period;
 - (iv) a summary of the issues or matters in dispute still outstanding at the end of the reporting period; and
 - (v) recommendations for improvement of the implementation of this Agreement and any Treaty Entitlement Agreement;
1. **Duty to Consult:** The Parties and the EFNs address this as a priority issue or matter to be resolved as it is a critical component of the implementation of the MFA-TLE and TEA obligations. A joint protocol agreement should be developed to facilitate these parcels of land through the consultation process to reserve creation. Within this protocol there needs to be timelines associated with each phase of the consultation process.
 2. **Issue/Matter in Dispute Referral Management by IMC:** It is recommended that the Referrals be reviewed through the 2016-2017 IMC Work Plan with a committed view to moving the Referrals forward in a timely manner in accordance with the provisions of the MFA-TLE.
 3. **Hydro Easement (2007-TLEC-002):** The Parties and Manitoba Hydro continue discussions to address the draft Hydro Easement Agreement proposed by Brokenhead Ojibway Nation and confirm a Hydro Easement agreement, as required by the MFA-TLE. If there is no agreement reached then the matter should be brought back to the IMC table through the TLEC IMC referral for resolution through the MFA-TLE dispute resolution process.
 4. **Strategic Planning:** The Parties continue to alternate responsibility for mailing out the beginning of the fiscal year work plan and the final results of the Annual Work Plan. The Parties should work toward creating focussed strategic goals using the process outlined in the Strategic Planning workshop within the Work Plan as well as develop a work plan for the Unsigned EFNs. The IMC Chairperson should remain as facilitator/Chair of this Work Plan process.
 5. **Third Party Interests:** The Parties and EFNs affected have a minimum of two special sessions focussed on the development of a strategy to address the low rate of resolution of TPIs and encumbrances; and that this strategy include an examination of the methods available to resolve specific TPIs and to attain consensus amongst stakeholders on the most appropriate course of action. The Parties confirm agreement on the instruments that have been agreed to and develop agreements where there are none. The resolution of these TPIs requires the consensus of all Parties to the MFA-TLE. It is recommended that the Agreed Forms Committee be re-established to form a work plan with all Parties to facilitate the completion of agreed forms to address the following: Mines and Minerals on Crown and Private Lands, Municipal Development Services Agreements (MDSA) – where needed and any other form of agreement that will resolve outstanding issues.
 6. **Acquisition Rates and Time Periods:** The Parties confirm that the principles of the MFA-TLE will apply, to provide a clear process for implementation and to prevent uncertainty in implementation of the MFA-TLE. Possible solutions to address this issue are for an amendment to the MFA-TLE or a subsequent referral by the Parties that is focussed on clarifying this matter.
 7. **Survey Capacity Limitations:** The Parties review the survey capacity now that Public Works and Government Services are controlling the contracting for the surveys and its affect on the pace of MFA-TLE implementation. The Parties in collaboration with the EFNs need to work together in order to determine where the exterior boundary of a parcel requires demarcation and where it is not. It is understood that this is a major contributing factor to the cost of surveys. Along with providing additional financial resources to the survey budget INAC needs to confirm the use of additional Canada Land Surveyors from other provinces.
 8. **Consistency of MFA-TLE Implementation Steps:** In order for consistency of implementing the MFA-TLE process steps the Three Parties meet to review these steps in advance of meeting with the EFN. The new personnel of any of the Three Parties should be provided with the Land Transfer and Reserve Creation Process Manual and walked through this process for each of their respective TLE files. This will provide new personnel the opportunity to understand the process steps prior to meeting with the EFNs and provide the current implementation personnel with a refreshed look at the TLE process steps. Connected to the process steps is the need to develop an online project management tool that all parties can have access to and update in real time.

9. **Human and Financial Resources:** The Parties all have a responsibility to ensure that the parcels that have been selected and acquired continue to progress through the Land Transfer and Reserve Creation Process (LTRCP). It is clear that the TLEC has been developed as a result of this legal obligation to assist the EFNs with this process. Both Canada and Manitoba have likewise created positions to assist with facilitating this process, however, this is not the sole responsibility of staff within each department. It is recommended that both Canada and Manitoba staff at least three Project Managers/Agreements Coordinators whose sole purpose is to facilitate the selections/acquisitions through the LTRCP specifically under the MFA-TLE.
10. **Selections/Acquisitions Along Highways:** There are a number of selections/acquisitions that have been made along highways that require the direct involvement of Manitoba Infrastructure (MI). In most cases these lands are specifically required for road right of way improvements. In other cases there are Winter Roads or existing roads that need to be excluded from the selection. Where the scenario arises that MI is planning to make some improvements to a road then there is a need to discuss the purchase price of the land or an exchange of lands. It is recommended that MI develop a process whereby a TLE acquisition that is required for road right of way improvements has pre-identified lands that can be provided to the EFNs in exchange for the lands required. There should be at least three properties of equal or greater value than the TLE acquisition that is required for road right of way improvements for the EFNs to choose from.

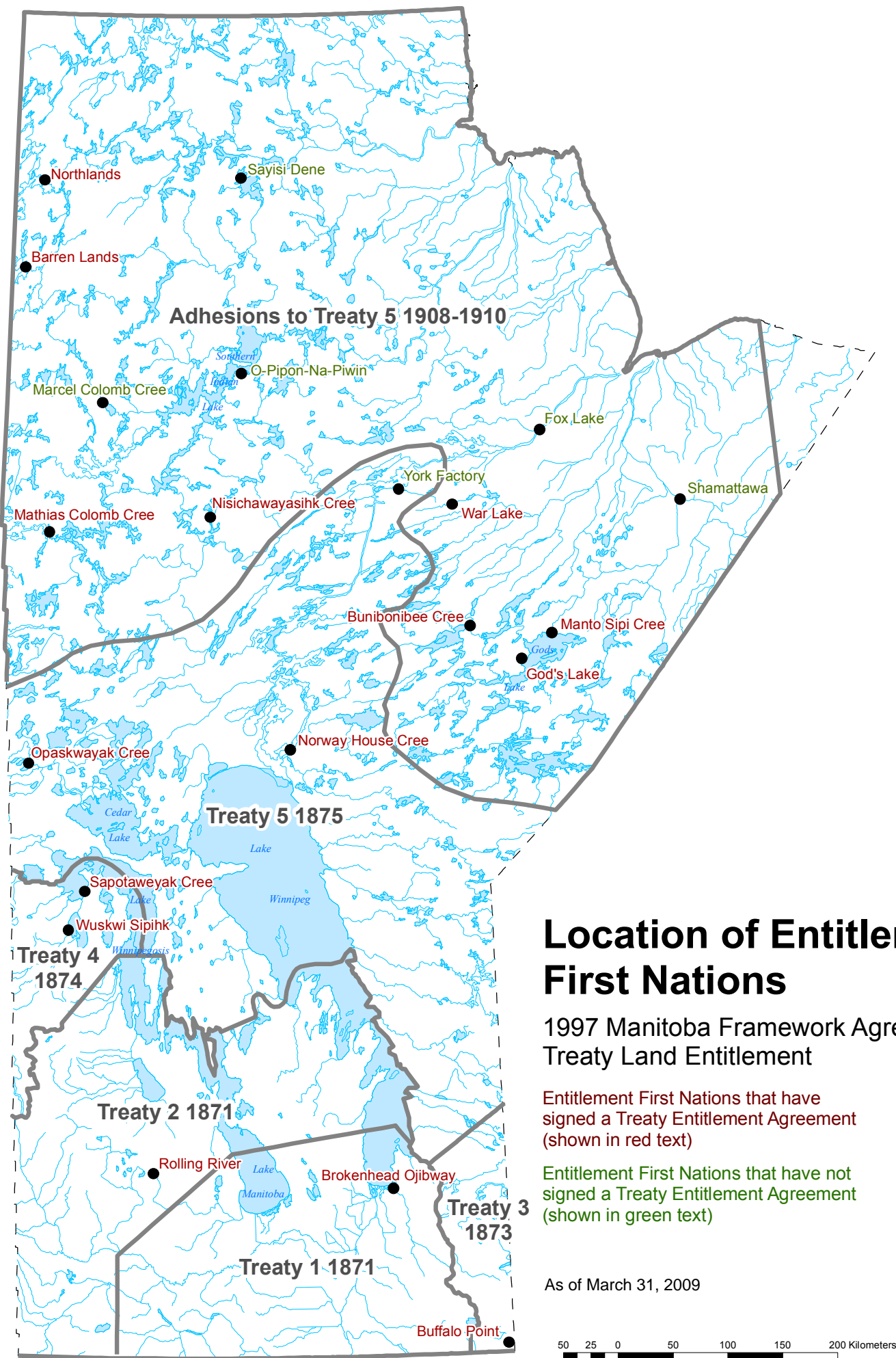


Laren Bill
Independent Chairperson, IMC

6.0 SUMMARY OF APPENDICES

Appendix A	Map of Entitlement First Nations
Appendix B	2015 - 2016 IMC Work Plan
Appendix C	IMC Policies and Procedures Manual October 20, 2015
Appendix D	1999-BPFN-001: Adjudication Reference Document April 30, 2015
Appendix E	Manitoba Letter to BCN re: Knee Lake Lodge July 14, 2015
Appendix F	Draft Consultation Protocol October 20, 2015
Appendix G	INAC Consultation and Accommodation Guidelines March 2011
Appendix H	2015 - 2016 Three Party Annual Work Plan Results
Appendix I	Draft Discussion Paper on MFA Principles April 17, 2015
Appendix J	Crown Land Acquisition Policy February 27, 2015
Appendix K	SAC Policy and Procedures Manual September 2015

Map of Entitlement First Nations



2015-2016 IMC Work Plan

IMC WORK PLAN
April 2015 March 2016

#	Activity	Expected Results	MFA Authority	Resources
1	Resolution of Matters In Dispute: Facilitate discussions amongst the parties leading to solutions, or develop consensus on next steps for Dispute Resolution.	<p>2007-TLEC-002: HYDRO EASEMENTS - Determine if the Parties and Manitoba Hydro can agree on the form of the Hydro Easement Agreement, or if this is not possible then develop consensus on and execute the documentation necessary to initiate the appropriate Dispute Resolution option.</p> <p>2004-BLFN-002: LAND IN SEVERALTY - In discussion with the Barren Lands and Northlands First Nations, determine if it would be possible to develop a proposal that would substantially implement the Lands in Severalty option that exists in Treaty No. 10, without creating a governance and/or land management jurisdictional gap.</p> <p>1999-BPFN-001: LAND IN A PROVINCIAL PARK - Complete the process of referring the Issue/Matter in Dispute to SAC for decision as per the MFA-TLE.</p> <p>1999-NCN-003: EFFECTIVE DATE OF AGREEMENT - Prepare documentation to refer the matter to SAC for a decision as per the MFA-TLE.</p> <p>2012-CANADA/MANITOBA-001: ACQUISITION TIME PERIODS - Determine options available to resolve this dispute.</p> <p>2006-MANITOBA-001 – MFA directs Chairperson to refer matter to Binding arbitration.</p>	<p>34.07(1)(c) (d) (e)</p> <p>34.09(7) (8) (9) 38.01(5)</p>	

IMC WORK PLAN
April 2015 March 2016

#	Activity	Expected Results	MFA Authority	Resources
2	Develop an Agreed Form Surface Rights Access Agreement	Generate consensus by the Parties work on a finalizing a template Surface Rights Access Agreement for Crown/Private owned Mines & Minerals as well as Crown/Private Oil and Gas rights that can be adopted by the IMC as an “Agreed Form”.	11.03 (4)	
3	Develop a Consultation Protocol	Investigate the options for the development of a Consultation Protocol on TLE Selections/acquisitions with TLEC First Nations, Canada and Manitoba, which could be expanded to include other TLE Manitoba First Nations.	34.07(1)(c)	
4	Assist First Nations and Municipal Governments	Work to develop an Agreed to Form of MDSAs to assist relevant Parties: <ul style="list-style-type: none"> - Brokenhead Ojibway Nation w/RM ESP/City of Winnipeg; - Wuskwi Sipihk First Nation w/Town of The Pas; - Rolling River First Nation w/RM of Headingley 	32.02(f) 33.02(e)(vii)	
5	Improve Access to Information Respecting the Processing of TLE ATR Proposals	Investigate the options to make the TLE ATR process more readily accessible by the Parties for tracking purposes.	34.07(1)(c)	

Specific Tasks:

- Coordinate and Facilitate IMC Meetings;
- Record and Finalize IMC Meeting Minutes Including Action Items and Decision Points;
- Coordinate and Facilitate SAC Meetings;
- Record and Finalize SAC Meeting Minutes;
- Facilitate Strategic Planning Meetings and Record Meeting Minutes;
- Work with the Parties to Facilitate agreed to options for resolving TPIs/Encumbrances (i.e., Agreed to Future Mineral Access Agreement);
- Review MFA-TLE Principles to illustrate the Pros and Cons for each Party;
- Review current Agreed to Form MDSA to assess its relevance and revise accordingly;
- Review and Revise the MIT Bulletin;
- Maintain and Update the IMC Website with current and relevant information;
- Review previous IMC reports to work toward implementation of recommendations;
- Carry out the necessary tasks to complete Activities 1-5 in the work plan.

IMC Policies and Procedures Manual October 20, 2015

MANITOBA TREATY LAND ENTITLEMENT FRAMEWORK AGREEMENT IMPLEMENTATION MONITORING COMMITTEE (IMC)

POLICIES AND PROCEDURES

Introduction

The Manitoba Treaty Land Entitlement Framework Agreement (the “FA”) contains a number of provisions setting out the roles and responsibilities of the Independent Monitoring Committee (the “IMC”) and the Senior Advisory Committee (the “SAC”) as well as procedures for dispute resolution.

Part I of this document summarizes the provisions of the FA to provide guidance in regard to the mandate and role of the IMC. Part II of the document sets out policies and procedures developed in accordance with Article 34 that are intended to complement the FA and to facilitate the resolution of issues or disputes that may arise in implementing the FA or any Entitlement First Nation’s Treaty Entitlement Agreement (“TEA”). Part II may have to be amended from time to time to respond to changing circumstances and to address new issues as this process evolves.

PART I – THE FRAMEWORK AGREEMENT

1. Establishment of the IMC – Art. 34

- Comprised of 5 members, one appointed by Canada, one by Manitoba, two by the TLEC, and one Independent Chairperson appointed by all three parties – s. 34.01
- A member of the IMC may designate in writing an alternate to attend a meeting of the IMC – s. 34.02(2)
- The parties may change their members from time to time by providing notice in writing to the other parties – s. 34.02(3)
- Quorum of IMC is 4, with at least one member representing each of the parties and the Chairperson in attendance unless a member not in attendance has agreed otherwise – s. 34.02(4)

2. Consensus Model Decision Making – s. 34.06

- Except in matters requiring the direction of the Chairperson under Articles 34, 35, and 36, the IMC will operate with and by the consensus of all of its members
- Where the IMC is unable to resolve an issue or matter in dispute, it shall refer the matter in dispute for resolution in accordance with Article 34 and 35
- The IMC “will be guided by the principle that the parties each have a continuing obligation to act in good faith in implementing this Agreement and any Treaty Entitlement Agreement (TEA) including the resolution of any issue or matter in dispute.”
- IMC may make rules of procedure to govern its operation not inconsistent with Article 34

3. *Responsibilities of the IMC – s. 34.07*

- The IMC shall be “generally responsible for facilitating the implementation of this Agreement and any Treaty Entitlement Agreements”, including:
 - (a) establishing a budget of the reasonable estimated costs of its operation for each fiscal year from April 1 to March 31;
 - (b) monitoring the progress of implementation;
 - (c) making recommendations to the parties for the resolution of any matter in dispute relating to implementation;
 - (d) resolving any issue or matter in dispute relating to implementation which is referred to it by a party or an Entitlement First Nation (EFN);
 - (e) considering the appropriate method of resolution of an issue or matter in dispute in accordance with Art. 35
- The IMC shall meet upon the call of the Chairperson subject to Subsections 34.03(1) and 34.05(1)
- The IMC shall operate within the budget unless the parties agree otherwise

4. *Technical Support and Independent Professional Advice – s. 34.08*

- The Chairperson may, where the other members agree, retain technical support and independent professional advisors, including legal counsel, from time to time as necessary to assist in the proper discharge of its responsibilities
- Technical advisors shall provide advice, guidance, opinions to the IMC and the Chairperson to assist in the resolution of disputes
- Where the members of the IMC do not agree to retain technical advisors, the Chairperson may retain technical support or advisors on behalf of himself within the established budget

5. *Responsibilities of Chairperson – s. 34.09*

- In addition to other responsibilities set out in Art. 35 and 36, the Chairperson will be responsible for the general administration of the IMC including:
 - (a) calling meetings;
 - (b) chairing all meetings;
 - (c) keeping written minutes and records of meetings and decisions of the IMC, decisions and notices of the Senior Advisory Committee (SAC), decisions and Awards of Adjudicators, and all other information necessary to complete the Annual Report;
 - (d) distributing minutes to members of IMC on timely basis;
 - (e) recommending budget of estimated costs of operation for fiscal year to IMC;

- (f) submitting to each of the parties an invoice for the reasonable costs incurred by the IMC and the Chairperson in each month;
 - (g) maintaining records of all costs and preparing annual financial statements;
 - (h) ensuring timely payment of expenditures of the IMC upon receipt of payment from parties;
 - (i) if directed by parties, engaging an independent auditor to complete audit of IMC financial affairs.
- The Chairperson shall call a meeting of the IMC at least once every 3 months or at the request of at least two members representing at least two parties – the Chairperson shall provide at least 14 days notice in writing unless all members agree otherwise
- The Chairperson shall assist the IMC in determining the sufficiency of information relating to implementation and may, if necessary, request any member of the IMC to take steps the Chairperson deems appropriate to ensure the sufficiency of that information
- In order to facilitate the resolution of issues or matters in dispute, the Chairperson may:
 - (a) propose time periods for the parties to respond to an issue or dispute;
 - (b) direct any member to submit a report to the IMC about any issue or matter in dispute and propose solutions within a time period identified by the Chairperson;
 - (c) identify strengths and weaknesses of proposed solutions to an issue or matter in dispute;
 - (d) direct members of the IMC to assist in resolving an issue or dispute by consensus;
 - (e) propose solutions to an issue or dispute
- where the IMC makes a decision on a means to resolve an issue or dispute, the Chairperson shall record the decision in the minutes or records and provide notice of the decision to the parties and any EFN specifically effected
- where the Chairperson determines the IMC is unable to make a decision on a means to resolve an issue, the Chairperson will record that no decision was made, any means recommended by the Chairperson and any direction to IMC members to consider the recommendation within a specified time period, and any response by the IMC members to the recommendations of the Chairperson
- where an issue is not resolved by the IMC, the Chairperson will refer the issue or matter in dispute to the SAC – the Chairperson may set out in writing to the SAC any means recommended by the Chairperson for resolving the issue or matter in dispute, any response of the IMC members to recommendations of the Chairperson, and the Chairperson's recommendation on the proposed time period within which the SAC should attempt to resolve the issue

- the Chairperson:
 - (a) may request and receive recommendations from any IMC member on any aspect of implementation of this Agreement or a TEA;
 - (b) will, on behalf of the IMC, provide to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba an annual report including: a summary of progress of implementation; recommendations of the IMC for improvement of implementation; a summary of the issues or matters in dispute which have been resolved during the reporting period; a summary of the outstanding issues or matters in dispute at the end of the period; and recommendations for improvement of implementation;
 - (c) may provide other reports to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba on behalf of the IMC as he deems appropriate;
 - (d) will provide an unaudited annual financial statement to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba on behalf of the IMC including a statement of all funds received by the IMC from the parties during the fiscal year, how funds were disbursed, and a statement of all contributions in kind to the costs of the IMC;
 - (e) the annual report for each year shall be delivered on or before June 30

6. *Senior Advisory Committee – s. 34.10*

- The SAC consists of the President of the TLE Committee, the Regional Director General (Manitoba) or the Asst. Deputy Minister (Claims and Indian Government) of DIAND, and the Deputy Minister of Northern Affairs for Manitoba
- One member of the Council for an EFN specifically effected by an issue may also participate in meetings of the SAC where that issue is addressed
- The SAC shall meet only when all members are in attendance unless a member not in attendance has agreed otherwise
- Decisions of SAC shall be by consensus
- Where the SAC makes a decision on a means to resolve an issue, it shall set its decision in writing and send it to the Chairperson who will record the decision in the minutes or records of the IMC
- Where the SAC does not make a decision on a means to resolve an issue within the time period proposed by the Chairperson or such longer period that the SAC may agree on, the SAC shall provide notice in writing to the Chairperson who will record in the minutes or records of the IMC that the SAC made no decision on a means to resolve an issue and the appropriate dispute resolution mechanism to be used to resolve the issue where the SAC agrees on the mechanism to be used

- Where the SAC provides notice in writing to the IMC as above, the IMC will within 30 days: (a) where the SAC agrees on a means to resolve an issue, refer the matter for resolution in accordance with that agreement; or (b) where there is no agreement by the SAC, refer the matter to an appropriate method of dispute resolution in accordance with s. 35.02
- Where the IMC does not refer the issue for dispute resolution within 30 days, the Chairperson shall refer the matter for dispute resolution in accordance with s. 35.02

7. *Dispute Resolution – Art. 35*

- S. 35.01 provides for the identification by the IMC of persons qualified in alternative dispute resolution to act as Adjudicators, the appointment of Adjudicators from time to time to resolve issues or matters in dispute, and the determination of rates of remuneration by the IMC
- S. 35.02 defines the “methods of dispute resolution” as (a) fact finding; (b) mediation; (c) non-binding arbitration; and (d) binding arbitration in accordance with the *Commercial Arbitration Act* – the resolution of issues or disputes shall be through a *progressive process* from fact finding to binding arbitration unless determined otherwise by the SAC in accordance with para. 34.10(6)(b) or by the Chairperson in accordance with para. 34.10(7)(b)
- All matters resolved by binding or non-binding arbitration will be in writing by the Adjudicator
- An Adjudicator appointed to resolve an issue may not be appointed to deal with the same issue or dispute unless all parties, including the EFN, agree
- S. 35.03 sets out the procedure for dispute resolution other than by binding arbitration – subject to directions provided by the IMC or SAC, the Chairperson has the responsibility in consultation with members of the IMC to:
 - (a) Prepare written directions to the Adjudicator for the dispute resolution process;
 - (b) Provide the Adjudicator with information about the issue or matter in dispute, including a written definition of the issue, any report on or proposed solution of the issue submitted to the IMC by any party, and any means of resolving the issue recommended by the Chairperson;
 - (c) To determine a time period for completion of dispute resolution recognizing that the parties agree the following time frames should apply unless the issue is complex: (i) 3 days for fact finding; (ii) 5 days for mediation; and (iii) 7 days for binding or non-binding arbitration
 - (d) To determine other appropriate procedures to ensure a timely and cost efficient resolution of the issue
- Procedure for Binding Arbitration – s. 35.04
 - The IMC shall prepare and submit to the Adjudicator a reference setting out in writing the questions to be determined and any other terms of reference to define his/her jurisdiction

- Where the IMC does not prepare and submit a reference on a timely basis or the Chairperson refers the matter for binding arbitration, the Chairperson shall prepare and submit a reference to the Adjudicator after consulting with other members of the IMC
- The Adjudicator shall make an Award addressing the issue which may include a determination of the facts, an interpretation of the FA or TEA, a determination that one or more of the parties or EFNs is required to take certain action to give effect to the FA or TEA, or a finding that an Event of Default has occurred
- An Adjudicator shall not have jurisdiction to make an Award which:
 - (a) requires any of the parties or an EFN to change any of its policies but the Adjudicator may identify inconsistencies or deficiencies in such policies and make recommendations which affect the implementation of the FA or TEA – the party which receives such recommendations shall have due regard for its obligations under the FA or TEA
 - (b) subject to s. 36.04(2), requires any party or EFN to make a payment for damages or loss alleged to have been suffered
- the resolution of an issue referred to binding arbitration that is resolved by the consent of the parties and any EFN involved shall issue as an Award
- Appeal of Binding Arbitration Awards – s. 35.05
 - An Award, other than one issued as a result of the matter being resolved by consent, may be appealed to the Manitoba Court of Queen's Bench within 30 days of the date of the Award on the grounds of: (a) failure of the Adjudicator to consider the matter fairly; (b) bias; (c) failure of Adjudicator to act within jurisdiction; (d) error of law, including an error in the interpretation of the FA or TEA
 - The Court of Queen's Bench may (a) dismiss the appeal; (b) allow the appeal and remit the matter to the Adjudicator or IMC to appoint a different Adjudicator to be reconsidered; (c) allow the appeal and substitute its decision in place of the Award where this would reasonably resolve the issue; and (d) make an order for costs
 - There is no right of appeal from a decision of the Court of Queen's Bench
- Default of Obligations in Dispute Resolution Methods – s. 35.06
 - Where a party withdraws the issue or matter in dispute, the method of dispute resolution will end
 - Where a party does not comply with a time period for the provision of information to the Adjudicator, the method of dispute resolution may proceed

- Where a party does not appear at any hearing, the method of dispute resolution will proceed based on the information before the Adjudicator and a finding, direction, decision or Award may be rendered
 - Costs of Dispute Resolution – s. 35.07
 - The costs of dispute resolution will be paid equally by the parties involved except where a party does not comply with time periods to provide information or does not appear at a hearing in which case the Adjudicator may determine the payment of costs as may be reasonable in the circumstances taking into account the Manitoba Court of Queen’s Bench rules on costs and the principle that the unsuccessful party normally pays the reasonable costs of the proceedings and other parties
 - The Adjudicator may determine the allocation and payment of costs of binding arbitration
 - Where a binding arbitration is resolved by consent of the parties, the Adjudicator may determine costs unless the parties have agreed otherwise
 - Record and Report of Issues or Matters in Dispute and Events of Default – s. 35.08
 - The Chairperson will maintain a record of all issues or matters in dispute and Events of Default and the means identified to resolve them
 - The record may be used to identify problem areas in implementation which require consideration by the parties, as information to assist the Adjudicator, or for the annual report or any other reports furnished by the IMC
- 8. *Material Failure – Art. 36***
- Where a party or EFN alleges failure to materially comply with a fundamental term or condition of the Framework Agreement or TEA, notice in writing shall be provided to the other party containing:
 - (a) identification of the fundamental term or condition of the Framework Agreement or TEA;
 - (b) a description of the circumstances of alleged material failure; and
 - (c) a statement that
 - (i) the party receiving the notice may remedy the material failure or refer the matter to the IMC within 30 days of receipt of the notice; and
 - (ii) where the matter is not remedied within 30 days the matter may be referred to binding arbitration to determine whether the party has failed to materially comply with that term or condition
 - The party in receipt of such notice may, within 30 days, remedy the alleged material failure or refer the matter to the IMC

- Where a party in receipt of such notice refers the matter to the IMC, the IMC shall consider the matter on a priority basis within 30 days of the matter being referred to it
- Where a party in receipt of such notice does not remedy the matter within 30 days, the party or EFN which has provided notice of an alleged material failure may refer the matter directly to the Chairperson by notice in writing
- Where the IMC does not resolve the matter on a priority basis or a matter is referred to the Chairperson in accordance with subs. (4), the Chairperson shall refer the matter directly to binding arbitration to determine whether the party or EFN against which the allegation has been made has failed to materially comply with a fundamental term or condition
- Matters Constituting Events of Default – s. 36.02
 - The following constitute Events of Default by a party or EFN:
 - (a) failure to comply with any Award of an Adjudicator in binding arbitration within the time period specified or, where no time period is specified, within a reasonable time period provided that no appeal of the Award has been filed pursuant to subs. 35.05(1) or the failure of that party to comply with the Award does not result from the failure of any other party to undertake or perform any action as an obligation under the Framework Agreement or TEA or a condition precedent to complying with the terms of the Award;
 - (b) an Adjudicator in binding arbitration has determined that (i) a party or EFN has, repeatedly and in a manner which clearly establishes a pattern, materially failed to comply with its obligations under the Framework Agreement or TEA; and (ii) the failure of a party to comply with its obligations was not the result of a party, an EFN or any Person to undertake or perform any action as an obligation or condition precedent to complying with the Framework Agreement or TEA
 - (c) a party or EFN has failed to comply with a decision of the Manitoba Court of Queen's Bench made in accordance with Subs. 35.05(2) within the time period specified or within a reasonable time period if none is specified, provided that the failure of that party to comply with the decision does not result from the failure of any other party to undertake or perform any action as an obligation under the Framework Agreement or TEA or a condition precedent to complying with the terms of the decision
 - (d) an Adjudicator in binding arbitration has determined that a party or an EFN has materially failed to comply with a fundamental term or condition of the Framework Agreement or TEA and has not remedied that material failure within 30 days of receipt of notice in writing from another party in accordance with Subs. 36.01(1)
- Identification of Means of Resolving Events of Default – s. 36.03
 - Any party or EFN that admits, or is determined by an Adjudicator to have committed, an Event of Default shall determine and identify reasonable means of remedying the Event of Default

- Loss or Damage as a Result of an Event of Default – s. 36.04
 - Where an Adjudicator has determined that party or EFN has committed an Event of Default, a party or EFN which has suffered loss or damages may refer the matter of that loss or damage to the IMC as an issue or matter in dispute
 - Where an issue or matter in dispute relating to loss or damages suffered is referred to an Adjudicator to be resolved by binding arbitration, the Adjudicator may make an award setting damages to be paid by the party or EFN committing the Event of Default to the party or EFN suffering the loss or damages

9. *Issues or Matters in Dispute Which May be Referred to IMC*

The following is a summary of provisions in the Framework Agreement which provide for issues or matters in dispute to be referred to the IMC for dispute resolution. This summary is not exhaustive:

- **3.01(5)** – Any issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land which are not addressed by the General Principles for Land Selection or Acquisition may be referred to the IMC if the parties are unable to address such issues on their own
- **3.02(6)** – Disputes between Manitoba and an EFN re: selection of a parcel less than 1,000 acres
- **3.03(4)** – Disputes between Manitoba and an EFN re: determination of a “reasonable use area” for Tourist Lodge or Outcamp
- **3.03(30) and (31)**– Where there is a conflict between the Selection of Crown Land within a Forest Plan and an area to be harvested or subject to road construction within 3 years, the IMC may assist an EFN and Forest Operator in negotiating an agreement
- **3.03(33)** – The IMC may resolve a dispute where Canada and Manitoba considers that a selection within land subject to forest plans is not eligible for selection
- **3.03(37)** – The Mathias Colomb Cree Nation may refer issues pertaining to the selection dated June 27, 1996 to IMC on priority basis if agreement not reached with Forest Operators within one year of date of execution of its TEA
- **3.11** – Any issues or matters in dispute relating to the Selection or Acquisition of land not resolved by the parties
- **4.02** – Requests for the extension of an EFN’s land selection period
- **6.02(8)** – Where Canada or Manitoba advises an EFN that a selection or acquisition is not eligible to be set apart as reserve in accordance with the Principles set out in the Framework Agreement, the matter may be referred to the IMC if not resolved by the parties within 120 to 180 days

- **8.06** – Where Canada does not set apart land as a reserve despite a recommendation by the Minister of Indian Affairs to do so
- **9.01(6)** – Where the parties are unable to reach agreement on the nature and extent of a right to land in severalty
- **11.03(5) and (6)** – Where an EFN and a third party owning mineral rights are unable to reach an agreement with respect to reasonable access to the surface of land selected or acquired by an EFN, the IMC may determine the terms and conditions for reasonable access
- **20.11(6) and 21.11(7)** – Where the opinion of the auditor of the Third Party Interest (TPI) and Implementation Accounts are not unqualified or where it is to the effect that the TLEC is not operating the Accounts in accordance with the Framework Agreement
- **27.03(5)** – If Manitoba breaches any of its obligations under the Framework Agreement, Canada or any EFN may refer the matter to the IMC
- **34.07(1)(d)** – Any issue or matter in dispute relating to the implementation of the Framework Agreement or any Treaty Entitlement Agreement may be referred to the IMC by a party or an EFN
- **36.01** – Where a party or an EFN alleges that another party has materially failed to comply with a material term or condition of the Framework Agreement or a Treaty Entitlement Agreement

As a general comment, it is important to carefully review the specific provisions of the Framework Agreement to ensure that the parties have fulfilled any procedural requirements before referring a matter to the IMC. For example, certain provisions may set out notice requirements to other parties involved in the dispute, impose a requirement to consult, set a specified time period to remedy a problem before a matter may be referred to dispute resolution, or require that the parties exhaust reasonable efforts to resolve the issue on their own before referring a matter to the IMC.

PART II – IMC POLICIES AND PROCEDURES

10. *IMC Meetings*

- The main responsibilities of the IMC are two-fold in nature:
 - (i) to monitor the progress of implementation; and
 - (ii) to facilitate the resolution of any issue or matter in dispute relating to implementation referred to it by a party or an EFN
- The Chairperson shall generally call a meeting of the IMC every 4 – 6 weeks, and at least once every 3 months by distributing written notice and a draft agenda to all members of the IMC, or by agreeing on the next meeting date at an IMC meeting. The required quorum is 4, with at least one member representing each of the parties and the Chairperson in attendance unless a member not in attendance has agreed otherwise.

- With respect to Alternate Representatives of the Parties, Alternate Representatives may be appointed for up to a one year period subject to further notice, rather than on a meeting by meeting basis, however prior to a meeting whereat an Alternate Representative will be serving as the Party representative, written notice is to be provided to the Chairperson and the other Party representatives.
- Other persons involved in the implementation of the Framework Agreement and any TEA may be invited by members of the IMC to participate in the meetings to address a matter and thereby assist the IMC in monitoring the progress of implementation or resolving any issue or matter in dispute. Where an IMC member intends to bring other personnel to the IMC meeting, they should notify the Chairperson and other IMC members in writing at least two working days prior to the meeting. For example, the IMC members may invite representatives from Manitoba Hydro, the Canada Customs and Revenue Agency, Department of Finance, etc. where it is necessary to discuss issues within their respective areas of responsibility. The involvement of non IMC member participation in the discussion, including Alternate Representatives identified by the Parties who are not serving as their Party's representative for that specific meeting, is limited to providing information, and is subject to approval by the Chairperson. Where the IMC considers it appropriate, they may invite such persons to actively participate in a discussion of such issues but they may not participate in any decisions made by the IMC. Where appropriate, such decisions may be made during *in camera* sessions of the IMC.
- The Chairperson is to distribute a draft agenda setting out the proposed items for discussion to members of IMC two weeks before the scheduled meeting date.
- The draft agenda may contain three parts to assist the IMC in discharging its responsibilities:
 - (i) a section for general status reports from the parties in relation to the community approval process, land selections, acquisitions, the reserve creation process, responses to undertakings accepted by a Party at a previous IMC meeting, and any other matter that will assist the IMC in monitoring the progress of implementation of the Framework Agreement and any TEA;
 - (ii) a section for discussion of specific issues raised by the Chairperson, an IMC member, or any of the parties to the Framework Agreement or TEA for discussion purposes at an IMC meeting; and
 - (iii) a section providing for discussion of general issues relating to the administration of the IMC, such as review of meeting summaries, reviewing budgets, scheduling meeting dates, and other such matters.
- Where the Chairperson, an IMC member, or any of the parties wishes to raise a specific issue for discussion at an IMC meeting, they shall respond to the Chairperson's circulation of a draft agenda with a written request that a topic be added to the agenda, and when requested by the Chairperson provide a brief written summary of the issue and any relevant documents to the Chairperson one week prior to the next IMC meeting wherever practicable. The summary and documents shall be distributed to IMC members and they should provide sufficient information to allow for meaningful discussion of the issue among members of the IMC. The requirement to provide a summary of the issue in advance may be dispensed with by the Chairperson where he is satisfied

that IMC members already have sufficient information to allow for meaningful discussion of the issue.

- Where a specific issue has been raised for discussion, other members of the IMC should furnish a brief written reply to facilitate discussion at the meeting.
- In some cases, issues or matters in dispute may be resolved by agreement of the parties at an operational level. In other cases, the IMC may be asked to make a decision with respect to the issue by consensus among members of the IMC. Where such issues cannot be resolved by agreement of the parties or by consensus, they may be referred to dispute resolution in accordance with the Framework Agreement.
- The representatives of the Parties are to make best efforts to submit their response to their undertakings from previous IMC meetings to the Chairperson at least one week in advance of the next IMC meeting to facilitate meaningful discussion on the matter at that meeting. Upon receipt, the Chairperson is to ensure that representatives of all other Parties receive a copy of these submissions. If the party is not able to submit documentation in advance of the meeting, they will request extended time on the Agenda to review the document with IMC members, so as to ensure that decisions are not unduly delayed.
- The Chairperson is to distribute a draft summary of the meeting to all members of the IMC within 1 week of the meeting. The IMC members are to review and provide any comments or suggested revisions to the Chairperson within 1 week of receipt. The Chairperson is then, if required, to circulate a revised second draft to all members of the IMC within 3 days, and the IMC members are to review and provide any comments within 2 days of receipt. Wherever possible, the meeting summary will be finalized and confirmed within 3 weeks.
- While all IMC members are to respond to draft meeting summaries which have been distributed by the Chairperson, by either providing comments or confirming that they are in agreement with the meeting summary; lack of a response by a Party representative within these target time frames will be interpreted by the Chairperson and the IMC as agreement with the meeting summary.
- In appropriate cases, the Chairperson may direct that the parties provide a written report and documents to facilitate discussion of a certain issue within a time period identified by the Chairperson. Generally, the role of the Chairperson is to facilitate discussion and to seek consensus among IMC members, but the Chairperson may take a proactive role in any discussions by identifying the strengths and weaknesses of proposed solutions or making recommendations to the parties on how to resolve a particular issue or matter in dispute.
- When an issue is not resolved by consensus among the IMC or SAC and it is necessary to appoint an Adjudicator, the IMC shall include a written definition of the issues in dispute, any report on the proposed solution of the issue submitted by any party, and any means of resolving the issue recommended by the Chairperson. Any admissions or reports and information provided by the parties on a “without prejudice” basis shall not be disclosed to the Adjudicator unless the parties consent in writing to the release of such documents.

APPROVED BY THE IMC AND CHAIRPERSON ON October 20, 2015

This document has been reviewed and approved by the IMC as indicated by the signature of the IMC Chairperson.



IMC Independent Chair

Attachment #1: IMC Process Upon Receipt of an Issue or Matter in Dispute (I/M)

IMC PROCESS UPON RECEIPT OF AN ISSUE OR MATTER IN DISPUTE (I/M)

There are three main documents to be reviewed in determining the steps that IMC normally follows upon receipt of a referral of an “issue or matter in dispute” (I/M):

I) DOCUMENTS CONSULTED by the IMC:

- 1) MFA: The MFA is the Agreement that describes the roles and responsibilities of the IMC, and any and all other documents need to be consistent with the MFA.
- 2) Policies and Procedures Manual: The Implementation Monitoring Committee may from time to time make rules of procedure to govern its operation not inconsistent with Article 34, MFA. (MFA 34.06(4))

- The IMC Policies and Procedures Document (June 23, 2010) has been adopted by the IMC pursuant to MFA Article 34.06(4)
- The IMC Policies and Procedures Document is divided into two parts.

Part I summarizes the provisions of the MFA to provide guidance in regard to the mandate and role of the IMC.

Part II sets out policies and procedures developed in accordance with MFA Article 34 that are intended to;

- a) complement the MFA, and
 - b) facilitate the resolution of issues or matters in dispute that may arise in implementing the MFA, or the TEA of any EFN.
- 3) This Protocol developed by the IMC for the Referral and Review of an I/M: The Protocol for the Referral and Review of an I/M is intended to be utilized by a Party or EFN when either is referring an I/M to the IMC. It is essentially a full description of the I/M from the point of view of the referring Party/EFN. The protocol is intended to ensure that all of the relevant data is submitted to enable the referral to be dealt with as soon as possible.

II) PURPOSE:

When a referral is made by a Party or an EFN, the IMC’s responsibility is to resolve any issue or matter in dispute relating to the implementation of the Agreement or any TEA (Article 34.07(1)(d) and consider the appropriate method of resolution of an issue or matter in dispute relating to the implementation of the Agreement or any TEA in accordance with Article 35 of the Agreement 34.07(1)(e).

III) IMC DECISION MAKING:

- 1) Except in matters requiring the direction of the Chairperson, the IMC operates with and by the consensus of all of its members. (34.06(1))
- 2) Where the IMC is unable to resolve an I/M on a consensual basis, it shall refer the I/M for resolution as provided in MFA Articles 34 and 35. (34.06(2))
- 3) In order to facilitate the resolution of the I/M, the Chairperson may take a number of steps set out below (34.09(5))
 - a) Propose time periods for Parties to respond to the referred I/M,
 - b) Direct any IMC member to submit a report about the I/M and propose solutions to that I/M within time periods identified by the Chairperson,
 - c) Identify strengths and weaknesses of all solutions proposed to resolve an I/M,
 - d) Direct the IMC members to assist in resolving an I/M by consensus,
 - e) Propose solutions to an I/M.

IV) STEPS FOR CONSIDERING AN I/M REFERRAL LEADING TOWARDS CONSENSUS:

- 1) While there is a need for IMC consistency when considering referrals, there is also a need for flexibility to ensure the review process is best suited for the specific referral.
- 2) Depending upon the characteristics of the referral, a number of processes/methods have been followed with a goal of arriving at an IMC consensus on how the I/M should be resolved. When these initiatives fail to reach consensus, the IMC is to consider the appropriate method of resolving the I/M in accordance with MFA Article 35.
- 3) Generally, there is a need for a Referral Protocol to be developed to;
 - a) precisely determine the I/M,
 - b) assemble of the relevant facts,
 - c) assessment/interpretation of the applicable provisions of the MFA,
 - d) identify options or alternatives for resolution of the issue, and
 - e) consider the recommendations of the Chairperson.

In the event the IMC is unable to resolve an I/M, the Chairperson is obliged to provide the SAC with the Referral Protocol containing the above stated information and results of the IMC review of the referral.

- 4) The processes/methods used to reach consensus usually include:
 - a) Ensure all IMC representatives have copies of the referral, Referral Protocol, and relevant materials.
 - b) Review the referral submitted.

- c) Discuss the referral at the next IMC Meeting, as a priority, in order for IMC to decide upon a course of action, and at that meeting discuss;
 - (i) Review the specific provisions of the MFA to ensure that the referring Party/EFN has fulfilled any procedural requirements before referring an I/M to IMC. (page 10 of Policy and Procedures Manual) For example certain provisions may;
 - set out notice requirements to the other Parties involved in the dispute,
 - impose a requirement to consult, (See Appendix “A” for list of MFA provisions requiring consultation)
 - set a specified time period to remedy a problem before a matter may be referred to dispute resolution, or
 - require that the Parties exhaust reasonable efforts to resolve the I/M between themselves before referring the I/M to IMC, and to
 - (ii) Ensure that all of the information required to make an informed analysis of the I/M is contained therein, or decide if this should be requested of the referring Party/EFN,
 - (iii) Determine if an operational meeting should be convened, and attended by the Chairperson to allow the Parties an opportunity to review and resolve the I/M prior to proceeding with the reference to IMC, and to ensure that the matter is not being referred prematurely,
- d) In general the Chairperson (under 34.09(5)) requests all Parties to provide the same information as asked of the referring Party in the “Protocol for the Referral and Review of an I/M”, including;
 - (i) Definitions
 - (ii) The Issue or Matter in Dispute (in the other Parties view)
 - (iii) The Facts (in the other Parties view)
 - (iv) Interpretation of the MFA (in the other Parties view)
 - (v) Proposed Resolution and Options Considered (in the other Parties view)
 - (vi) Interpretation of the MFA by the Other Involved Parties
 - (vii) Background Information (correspondence, maps, meeting summaries, and any other documents considered important by the other Parties when IMC considers the referral)
- e) Depending on the nature of the I/M, and the views submitted by the Parties to the I/M, the Chairperson may recommend that; (i) a discussion paper may be developed to analyze the situation and clarify linkages to the MFA provisions, or (ii) a Focus Group meeting be convened to discuss the matter in detail, clarify misunderstandings if any, and arrive at a consensus.
- f) If the exchange of discussion paper drafts or Focus Group meetings leads to a common understanding on matters upon which the Parties previously held divergent

perspectives and opinions, the Parties will have reached consensus on the referral in accordance with the IMC Policy and Procedures Manual and will advise the referring Party. It may also be deemed appropriate and beneficial to issue an IMC Bulletin on the topic as per the IMC Policy and Procedures Manual. Once the referral has been closed the Parties will be sent a letter advising them of the decision from the IMC and the referral will be closed.

- g) If the IMC discussions of the Chairperson's Referral Protocol, and/or discussion paper and/or Focus Group discussions do not result in a consensus; the Chairperson may update his/her summary document, as per the IMC and Focus Group discussions, and add two additional sections, And circulate this updated summary document to IMC with a time frame for comments.
- h) If the updated Chairperson's summary document does not result in a consensus, the Chairperson's summary document serves as the information required pursuant to MFA 34.09(7)&(9) for a referral of the I/M to SAC. (i.e. the I/M summary, any means recommended by the Chairperson for resolving the I/M for consideration of the members of the IMC and any direction to the members to consider the recommendation within a specified time period, any response of the IMC members provided to a recommendation of the Chairperson, and the Chairperson's recommendation on the proposed time period within which the SAC should attempt to resolve the I/M.)

(V) PARTICIPATION IN THE DISPUTE RESOLUTION PROCESS INCLUDING NOTICES TO WITHDRAW, REQUEST TO PLACE MATTERS IN ABEYANCE AND THE ABANDONMENT OF REFERRALS

The members of the Implementation Monitoring Committee will be guided by the principle that the parties each have a continuing obligation to act in good faith in implementing the Agreement and any Treaty Entitlement Agreement, including the timely resolution of any issue or matter in dispute. As such the active participation of the parties to a referral is important.

Notice of Withdrawal:

The term withdraw in the context of an IMC Referral means a Referring Party to the Referral has chosen to permanently close the Referral thus removing the Referral from the IMC process.

Where a Party to a Referral has chosen to withdraw their referral, a letter from the Party stating they wish to withdraw the referral is sufficient for the Chairperson to close the referral file. The Chairperson will provide notice and date of closure to the Parties of the withdrawal and will note its closure in the Annual Report.

Request to place an I/M in Dispute into Abeyance:

The term abeyance is defined by the IMC as being when a matter enters a period of temporary inactivity. A referral that has been referred to the IMC for dispute resolution can be placed into abeyance at the request of the referring party for one year when ongoing negotiations directly related to the resolution of the subject matter of the referral continue between the Parties involved in the initial Referral.

To ensure the necessary approvals have been obtained, where a Party requests that a referral be placed in abeyance, a letter confirming that the subject matter of the referral is in active negotiations between the parties, will be required prior to the IMC agreeing to place the matter into abeyance.

As an abeyance is a temporary period of inactivity, the Chairperson will seek confirmation at the one year anniversary of the matter being placed into abeyance that: (a) the Referring Party wishes to continue the abeyance period and that (b) the other party is not opposed to the approval of a further abeyance period. Where there is no opposition to the extension, the Chairperson will note in the referral file and in the Annual Report that a further one-year abeyance period was granted.

If the Referring Party requests a further extension of a referral in abeyance and the opposing Party does not agree with the request for an extension then the Chairperson may facilitate the resolution in accordance with Article 34.09(5). The Chairperson also has the ability to deny the request for an extension where the Parties have not demonstrated action on the activities to resolve the issue or participation in the resolution of the Referral that is in abeyance.

In the event that the Protocol for the Referral and Review of an I/M in dispute or the corresponding response document from the Party(s) to the Referral are incomplete or the IMC has not received any requested information from the Parties to the Referral in order to determine the next steps to address an I/M, the IMC can place the Referral into abeyance for a period to be determined by the Chairperson, which will not exceed 8 months.

Where a matter is to be referred to Binding Arbitration the Chairperson shall give reasonable notice of 30 days for a response to be provided confirming to proceed with the process step. Where the IMC the Chairperson receives notice from the referring Party indicating that they are not prepared to continue to Binding Arbitration the IMC will close the file.

Where an I/M has been submitted to IMC and subsequently the referring party proceeds to engage in other forms of dispute resolution outside of the process provided in the Framework Agreement, such as litigation, the presumption – based on the principle that the same matter cannot proceed simultaneously in two venues, and the principle against venue picking - will be the party wishes to close their Referral. To ensure the record reflects this, the IMC will require the referring party to indicate if they are closing the Referral, and if they wish to actively maintain the Referral, they will be requested to identify how the Referral is unique from the matter proceeding outside of the IMC.

The IMC will then seek a response from the respondent party to confirm that the matters being disputed are distinct and where the respondent party agrees that the matters are distinct and agrees that the matter can be placed in abeyance, the IMC will approve a one-year abeyance period. Further abeyance periods will be subject to annual review and granted by the Chairperson as per Article 34.09(5). The Chairperson also has the ability to deny the request for an extension where the Parties have not demonstrated action on activities or participation in the resolution of the Referral that is in abeyance. Seeking independent legal advice to assist with this decision as per the MFA.

ABANDONMENT OF A REFERRAL:

The term abandon is defined by the IMC as a total desertion or absolute relinquishment. Where the IMC and/or Chairperson has made repeated attempts (a minimum of four (4) attempts over a maximum of two (2) years to obtain necessary information from a referring Party and 60 days has lapsed from the time of the last contact attempt, the IMC/Chairperson will consider the Referral as having been abandoned by the referring Party.

The Chairperson will send a letter to the Parties/EFN involved in the I/M in dispute advising that the I/M has been formally closed due to abandonment and will report the closure of the file in the annual report.

PROCEDURE FOR CLOSING A REFERRAL

When a referral file is being closed the following steps will be carried out by the IMC:

1. The IMC will document in the minutes that a decision has been reached to close the file;
2. A letter will be sent to both the referring Party and the Party to the referral indicating how a decision was reached to close the file;
3. The IMC will draft a Bulletin outlining the results of the decision and how this decision was reached i.e., Arbitrators ruling, Party's agreed to resolution, IMC reached a consensus, SAC reached a consensus.

Appendix "A"

List of MFA provisions requiring consultation:

The MFA references consultation requirements for Parties, EFNS, and outside related interest groups in a number of MFA provisions. These include the following:

3.03(4)(a)
3.03(8)(a)(iv)
3.03(34)
3.08(1)(b)
3.08(6)
12.04 – heading
12.04(2)
12.04(3)
12.04(4)
12.04(5)
12.08(5)(a)
12.09(2)
22.01(2)

22.02(2)

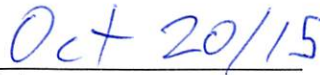
35.03

35.04(2)

Schedule "H" – 3.02(b) and 4.01(b)



Laren Bill
IMC Independent Chairperson



Date

1999-BPFN-001: Adjudication Reference Document April 30, 2015

IMPLEMENTATION MONITORING COMMITTEE
MANITOBA FRAMEWORK AGREEMENT, TREATY LAND ENTITLEMENT, May 29, 1997

FINAL - ADJUDICATOR REFERENCE FOR BINDING ARBITRATION

IMC REFERRAL FILE: 1999-BPFN-001

I. Purpose

1. The Manitoba Framework Agreement on Treaty Land Entitlement ("MFA"), Implementation Monitoring Committee ("IMC") Adjudicator Reference for Binding Arbitration ("Reference") is established in accordance with the MFA Section 35.04.

II. Definitions

2. In the Reference, the definitions will include:

"Adjudicator" means a person qualified in the technique of alternate dispute resolution identified by the Implementation Monitoring Committee in accordance with Section 35.01.

"Binding arbitration," MFA Section 35.02 Methods of Dispute Resolution subsection (d) being a hearing in accordance with the *Commercial Arbitration Act* before an Adjudicator at which all parties to the issue or matter in dispute have an opportunity to be fully heard (orally or in writing) on the issue or matter in dispute after which the Adjudicator will make a decision in writing and the resulting decision is legally binding on them."

"Commencement date" the Arbitration has commenced when the Arbitrator has signed a contract agreement to provide adjudicative services for the IMC.

III. Procedure for Binding Arbitration – MFA Section 35.04

(1) Subject to Subsections (2) and (4), where binding arbitration is used as a means to resolve an issue or matter in dispute, the Implementation Monitoring Committee shall prepare and submit to the Adjudicator a reference setting out in writing:

(a) a question or the questions for the Adjudicator to determine; and

(b) any other terms of reference to define the jurisdiction of the Adjudicator.

IV. Application

1. The Reference applies to all MFA identified Arbitrators for Binding Arbitration.

V. Questions to be answered by the Adjudicator specific to IMC Referral File 1999-BPFN-001

1. *Is the Birch Point Selection by Buffalo Point First Nation (BPFN) eligible to be set apart as reserve in accordance with the Principles for Land Selection and Acquisition, having regard to Subsection 3.03(6) of the Manitoba Treaty Land Entitlement Framework Agreement?*

2. *In considering question 1, the Arbitrator may consider if the word “generally” enables the EFN to select lands within a provincial park under Subsection 3.03 (6);*

(a) what are the circumstances under which such a selection could be considered eligible, and,

(b) What are the criteria and information that must be provided by Manitoba and the Entitlement First Nation in determining the eligibility of selections?

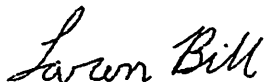
3. *A determination as to the costs of the proceedings as per 35.07(3) of the MFA.*
4. *To answer any other question that the Arbitrator deems necessary to resolve the issue(s) in dispute, including procedural matters.*

VI. Binding Arbitration Time Period for Completion

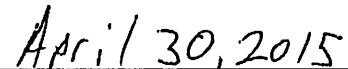
1. MFA Section 35.03 (c) (iii) "... binding arbitration should be completed in no more than seven days of hearing;"
2. Preparation Pre-hearing: Three days.
3. Research Post-hearing: Three days.
4. Binding Arbitration to be completed and a decision rendered in writing within three months of the commencement date.
5. Scheduling of Hearing dates is to be confirmed by the Arbitrator based on consultation with the Parties
6. A written brief will be submitted by BPFN and will be responded to in by a written brief from Manitoba.

VII. Costs

1. The cost of the binding arbitration and the rates of remuneration of the Arbitrator will be determined by contract agreement with the IMC taking into consideration the Arbitrator's proposed budget in the Arbitrator's Expression of Interest.



Laren Bill, IMC Chairperson



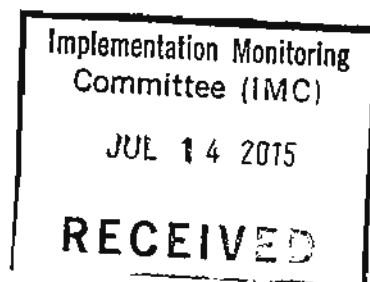
Date:

Manitoba Letter to BCN re: Knee Lake Lodge July 14, 2015



Aboriginal and Northern Affairs

Aboriginal Affairs Secretariat
Agreements Management & Aboriginal Consultations Branch
200 – 500 Portage Avenue, Winnipeg MB R3C 3X1
T 204-945-2510 F 204-945-3689
www.gov.mb.ca/ana



July 14, 2015

Emailed

Chief Irvin Sinclair
Bunibonibee Cree Nation
General Delivery
Oxford House MB R0B 1C0

Dear Chief Sinclair:

IMC Referral – 2006-Manitoba-#001

I am the Manitoba representative on the Implementation Monitoring Committee (IMC) and manager of the Agreements Management & Aboriginal Consultations Branch. I am writing to advise you of recent discussions I have had with the IMC Chairperson (Laren Bill) regarding the Referral 2006-Manitoba-001. As you are aware, in January 2006, Bunibonibee Cree Nation (BCN) wrote to Manitoba alleging of material failure against Manitoba related to the Knee Lake Lodge. In February 2006, Manitoba referred to matter to the IMC for resolution. This matter has since remained unresolved.

As suggested by the IMC Chairperson, the following option is proposed as a way to move forward and hopefully resolve this matter. Manitoba is prepared to withdraw the IMC Referral (2006-Manitoba-#001) pending BCN's concurrence to withdraw the allegation of material failure against Manitoba. If you agree with this suggested approach, please provide a written response to me and the IMC Chairperson.

If you have any questions or concerns, please do not hesitate to contact me at (204) 918-6339 or by email at stewart.sabiston@gov.mb.ca or Jason Fontaine (Manitoba IMC alternate) at (204) 805-0028 or by email at Jason.fontaine@gov.mb.ca.
Thank you.

Sincerely,



for
Stew Sabiston

Manitoba
spirited energy

c: Bunibonibee Cree Nation Council
Laren Bill, IMC Chairperson
Chris Henderson, TLEC of Manitoba Inc.
Jack Grieves, TLE Coordinator
Jason Fontaine, ANA

Draft Consultation Protocol October 20, 2015

Draft - Treaty Land Entitlement Consultation Protocol

Background

The Duty to Consult on Treaty Land Entitlement (TLE) first became an issue in 2013, when Aboriginal Affairs and Northern Development Canada (AANDC) notified Rolling River First Nation that AANDC had a Duty to Consult on TLE. Since this time AANDC has been attempting to address their Duty to Consult through meetings with and notifications to Aboriginal groups with interests in specific TLE selections and acquisitions.

In March 2014, letters were sent to various First Nations and the Manitoba Métis Federation for 144 parcels of land identified for reserve creation under the Manitoba Framework Agreement – Treaty Land Entitlement. AANDC sent an additional parcel out in October 2014.

A single First Nation identified a concern with one parcel of Crown Land. Specific information was requested of the First Nation as to the nature of the Aboriginal and Treaty right being exercised on the parcel of land being proposed for reserve creation.

The Manitoba Métis Federation (MMF) requested additional time to provide a response and an extension was granted until June 30, 2014. A further extension was requested and granted.

Introduction

The Duty to Consult has been formulated as a result of Supreme Court of Canada decisions. The Duty to Consult rests with the Crown and is triggered through a series of scenarios that have the potential to adversely impact Treaty and Aboriginal Rights. These rights are recognised through the Constitution of 1982 Section 35. There may also be potential to impact rights that have not yet been defined or asserted, but are also protected by the Constitution.

Where there is conduct being contemplated by the Crown, the Crown needs to assess where along the series of decision points there may be impact with respect to the Treaty Land Entitlement Agreement. This includes the availability of Crown Lands for selection by a First Nation and the decision by the Crown to set a specific parcel of land apart as reserve for the use and benefit of a particular First Nation. The result of this land being set apart for a specific First Nation is that it may prevent another First Nation or Aboriginal group from accessing those lands to exercise their Aboriginal and Treaty rights. The specific rights that may be adversely impacted may include the right to hunt, trap, fish and gather. There may also be rights that have yet to be asserted.

Consultation Process

The process of consultation must be addressed in a specific manner that allows the involvement of all interested Parties, where both the potentially affected Party is being consulted and the First Nations parcel of land that is being contemplated over. This will involve a parcel by parcel review with all interested Parties, with parameters on how this process unfolds. AANDC has begun to undertake a pre-consultation analysis of each parcel to determine where there may be an interest asserted by a neighbouring First Nation or Aboriginal Group.

Where the First Nation whose parcel of land is being contemplated over has available to it, information on the historical or current use of their selected or acquired parcel of land, this will be helpful to provide to AANDC in their analysis. The principles that will be generally implemented by AANDC will include:

- As part of the ATR Proposal the AANDC will conduct a pre-consultation analysis to determine the extent of consultation required on each parcel (i.e., review of maps, TLUS, other Natural Resource data, land titles searches);
- Contact, by letter with all Aboriginal Groups including the MMF whose home community is located within a 70 KM radius of the selection or acquisition proposed for reserve creation;
- Requesting the Aboriginal Group(s) to outline any adverse impacts the proposed reserve creation may have on potential or established Treaty and Aboriginal rights;
- A timeframe of response from the Aboriginal Group(s) for lands that have been acquired (Other Land) as fee simple lands will be 30 days;
- A timeframe for a response from the Aboriginal Group(s) will be 60 days for selected Crown Lands;
- Where an Aboriginal Group requests an extension of time to review information then a determination will be made to grant that request;
- Preparing Federal Ministerial Orders where the Provincial Orders in Council have been received from Manitoba;
- Notifying the Aboriginal Groups of the next set of parcels to move forward in the reserve creation process – specifically where the next step is the Provincial Order in Council;
- Preparing a Work Plan for the 90 parcels or remaining parcels of land in the various stages of the process for which consultation letters have already been sent;
- Conducting a pre-consultation analysis and prepare and send letters, where appropriate, for the 200 parcels MFA-TLE parcels remaining.

Where appropriate the Treaty Land Entitlement Committee (TLEC) will assist the First Nations with coordination of meetings and correspondence.

INAC Consultation and Accommodation Guidelines

March 2011



Government
of Canada

Gouvernement
du Canada



Aboriginal Consultation and Accommodation

Updated Guidelines for Federal Officials
to Fulfill the Duty to Consult

March 2011

Canada

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EXECUTIVE SUMMARY

In the Haida and Taku River decisions in 2004, and the Mikisew Cree decision in 2005, the Supreme Court of Canada held that the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. The Court explained that the duty stems from the Honour of the Crown and the Crown's unique relationship with Aboriginal peoples.

To demonstrate Canada's commitment to address issues of Aboriginal consultation and accommodation, a federal Action Plan was announced in November 2007. The Consultation and Accommodation Unit (CAU) was established within Aboriginal Affairs and Northern Development Canada (AANDC) in early 2008 to implement the Action Plan. Some of the accomplishments of the Action Plan were the release of the February 2008 Interim Guidelines, the training provided to over 1700 federal officials across the country, the engagement with Aboriginal communities and organizations, provinces and territories and industry representatives and the development of tools to support officials in their consultation and accommodation activities.

In more recent decisions, the Court further explained that: the duty to consult is a constitutional duty; applies in the context of modern treaties; officials must look at treaty provisions first; and where treaty consultation provisions do not apply to a proposed activity, a "parallel" duty to consult exists. The Court has also clarified, that depending on their mandate, entities such as boards and tribunals may also

play a role in fulfilling the duty to consult; that high level strategic decisions may now trigger the duty to consult; and, that the duty applies to current and future activities and not historical infringements.

The Interim Guidelines have been updated with the collaboration of federal departments and agencies. This document reflects evolving case law and engagement with Aboriginal organizations and communities, provinces and territories and industry representatives. A key element of the Updated Guidelines is the Guiding Principles and Consultation Directives which provide clearer direction on the government-wide responsibility of departments and agencies to fulfill the duty to consult. The Updated Guidelines focus on the increased need for policy leadership, coordination and collaboration, federal accountability, strengthening partnerships and strategic and practical guidance, training and support. These new or enhanced elements demonstrate the progress made by the federal government to address consultation and accommodation issues.

Departments are responsible for integrating the Guiding Principles and Directives within their own day-to-day activities. The Updated Guidelines also reference the Consultation Information Service and the Aboriginal and Treaty Rights Information System and other tools developed to assist officials in determining the scope and nature of consultations.

Additional information can be found on the AANDC Consultation and Accommodation Unit web site:
<http://www.aandc-aadnc.gc.ca/eng/1100100014649>

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PART A

Overview

I INTRODUCTION

The Government of Canada consults with Canadians on matters of interest and concern to them. Consulting is an important part of good governance, sound policy development and decision-making. Through consultation, the Crown seeks to strengthen relationships and partnerships with Aboriginal peoples and thereby achieve reconciliation objectives. In addition to pursuing policy objectives, the federal government consults with Aboriginal peoples for legal reasons. Canada has statutory, contractual and common law obligations to consult with Aboriginal groups. The process leading to a decision on whether to consult includes a consideration of all of these factors and their interplay.

The Updated Guidelines provide practical advice and guidance to federal departments and agencies in determining when the duty to consult may arise and how it may

be fulfilled, as described by the Supreme Court of Canada in the *Haida*, *Taku River* and *Mikisew Cree* decisions (See Annex B Legal Case Summaries).

The Guidelines are informed by Canada's understanding of the legal parameters of the duty and provide policy-based guidance to assist officials in their efforts to effectively incorporate consultations and, where appropriate, accommodation into government activities and processes.

The Guidelines are divided into three parts: Part A – Overview; Part B – Getting Ready for Consultation and Accommodation; Part C – Step-by-Step Guide to Consultation and Accommodation. Part C includes a detailed list of questions and considerations to assist departments and agencies when managing their consultation and accommodation activities.

Good governance / Policy Reasons

- ❖ Make informed and appropriate decisions
- ❖ Create and improve working relations with all those affected
- ❖ Address new business and policy developments

Legal Reasons

- ❖ S. 35 Common law requirements
- ❖ Statutory requirements
- ❖ Agreements / Contractual requirements

II COMMON LAW DUTY TO CONSULT

The common law duty to consult is based on judicial interpretation of the obligations of the Crown (federal, provincial and territorial governments) in relation to potential or established Aboriginal or Treaty rights of the Aboriginal peoples of Canada, recognized and affirmed in section 35 of the *Constitution Act*, 1982. The duty cannot be delegated to third parties.

Section 35 of the *Constitution Act*, 1982 provides that:

- (1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*
- (2) *In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.*
- (3) *For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.*
- (4) *Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

In the *Haida* and *Taku River* decisions in 2004, and the *Mikisew Cree* decision in 2005, the Supreme Court of Canada (SCC) held that the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. This duty has been applied to an array of Crown actions and in relation to a variety of potential or established Aboriginal or Treaty rights.

In these decisions, the SCC determined that the duty to consult stems from the Honour of the Crown and the Crown’s unique relationship with Aboriginal peoples. The Court explained that it will look at how the Crown manages its relationships with Aboriginal groups and how it conducts itself when making decisions that may adversely impact the rights recognized and affirmed by section 35. In the more recent decisions of *Rio Tinto* and *Little Salmon Carmacks* the Court has further explained that the duty to consult is a constitutional duty that invokes the Honour of the Crown and that it must be met. The context will inform what is required to meet the duty and demonstrate honourable dealings.

The duty to consult and, where appropriate, accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty by the Crown and continues beyond formal claims resolution through to the application and implementation of Treaties. The Crown’s efforts to consult and, where appropriate accommodate Aboriginal groups whose potential or established Aboriginal or Treaty rights may be adversely affected should be consistent with the overarching objectives of reconciliation.

Reconciliation has two main objectives: 1) the reconciliation between the Crown and Aboriginal peoples and; 2) the reconciliation by the Crown of Aboriginal and other societal interests. Consultation and accommodation play a key role in the fulfillment of these two objectives.

As the consultation and accommodation processes are being developed and implemented, the Crown will be guided by principles that have emerged from the case law and from government consultation practices. The Guiding Principles and Consultation Directives set out below highlight how these key principles may be applied in the planning and design of government activities (Refer to Part A, Section VI of the Updated Guidelines).

III GOVERNMENT'S RESPONSE

The courts have generally left to government the detailed exercise of implementing processes that seek to fulfill the duty to consult. An awareness of the duty and a consideration of when and how it might apply must become part of the government's daily business. A wide array of consultation practices exist and are being implemented by federal departments and agencies across the country to better fulfill the duty to consult and, where appropriate, accommodate. Examples include consultations with Aboriginal groups that occur within the context of environmental assessments and regulatory processes as well as separate consultation activities undertaken in relation to specific projects and agreed to processes set out within treaties.

Since 2004, the federal government has been engaging in dialogue with First Nations, Inuit and Métis communities and organizations as well as provinces, territories and industry representatives to address key consultation and accommodation issues. Discussions have focussed on the scope of the duty, what constitutes meaningful consultation, capacity to participate in a consultation process, Crown coordination, consultation guidelines and protocols, accommodation, and the reconciliation of the evolving duty with other legal obligations to consult such as statutory requirements and provisions in comprehensive land claim agreements and self-government agreements.

An Action Plan on consultation and accommodation was announced in November 2007 led by Aboriginal Affairs and Northern Development Canada (AANDC) and

Justice Canada. A Consultation and Accommodation Unit was established within AANDC in early 2008 to implement Canada's Action Plan on consultation and accommodation. Interim Consultation Guidelines were released in February 2008 and related training has been provided to over 1700 federal officials across the country.

Within AANDC, a Consultation Information Service and an information system on the location and nature of potential and established Aboriginal and Treaty rights has been created to provide baseline information to federal officials. As well, the Regional Consultation Coordinators within AANDC will act as liaison between federal departments, provincial and territorial governments and aboriginal organizations and communities to facilitate relationships on key consultation files and to ensure that Canada's interests are addressed.

Guiding Principles and Directives have been developed to further guide federal officials in implementing the duty and are included in the Updated Guidelines. Initiatives to better integrate Aboriginal consultation with environmental assessments and regulatory processes were also undertaken, including in relation to major natural resources and infrastructure projects.

These elements of Canada's approach to consultation and accommodation are being expanded upon and others will continue to be developed over time to enable the Crown to fulfill the duty in a more consistent, coherent, and efficient way across the federal government.

IV CONTEXT ACROSS CANADA

Consultation with First Nations, Métis and Inuit communities must be understood in the broader context of the evolving relationship between Aboriginal Peoples and the Crown.

Departmental and agency approaches to consultation should integrate, to the extent possible, the fulfilment of consultation obligations with departmental policy objectives and with other overarching government policy objectives. For example, in pursuing reconciliation objectives, Canada continues its efforts to improve its relationship with Aboriginal peoples. This includes through its historic apology in 2008 to former students of the residential school system, the subsequent establishment of the Truth and Reconciliation Commission and the recent Apology for relocation of Inuit families to the High Arctic. These important steps build on progress that has been made in negotiating Aboriginal self-government and land claims agreements; and, partnership approaches to economic development, education, health and other issues.

The development of a federal approach to consultation and accommodation is not intended to be a one-size-fits-all approach. Differences in history, geography, demographics, governance, relationships and other circumstances of Aboriginal communities and organizations in Canada are relevant when considering how to address any consultation obligations that may arise. Thus, understanding the historical, geographic and legal context relevant to Crown activities is essential. Differences in contexts can require different approaches to fulfilling the duty to consult and, where appropriate, accommodate.

1. Historical and Geographical

The application of common approaches to consultation and, where appropriate, accommodation across the country must be reconciled with the fact that potential or established Aboriginal or Treaty rights vary in both scope and content. Such rights vary depending on the historical presence of Aboriginal groups, including the historical relationship

between particular Aboriginal communities and between the Aboriginal communities and the Crown, in different areas of the country. For example, Aboriginal communities may be signatories to historic treaties, comprehensive land claim agreements, and self-government agreements or be claiming many different kinds of Aboriginal rights and overlapping territories.

Issues addressed in consultation are specific to the location and nature of the activity. Consultation procedures and approaches must be adapted to address the different kinds of rights and Crown obligations that are at issue. There is significant variability across the country.

For example, in British Columbia and Quebec, there are a few Treaties but many overlapping assertions of Aboriginal rights and title, when compared with the Peace and Friendship Treaties in the Maritimes and the historic Treaties in Ontario and in the Prairie provinces. This landscape differs from the modern Treaties in the territories, northern B.C., and in James Bay, some of which contain specific consultation provisions.

2. Legal

In addition to the common law duty to consult, there are a number of other legal reasons for the Crown to consult with Aboriginal groups, including specific requirements to consult that are set out in statutes and regulations as well as provisions in land claim agreements, self-government agreements and consultation agreements.

It is important to identify the legal source of potential consultation obligations as this will inform and guide what is required in the particular context, including the interplay between these other legal reasons to consult with Aboriginal groups and the common law duty. Departments and agencies should work with their counsel to understand what legal considerations are relevant to their activities.

3. International

On November 12, 2010 Canada issued a Statement of Support endorsing the United Nations Declaration on the Rights of Indigenous peoples (Declaration), an aspirational document, in a manner fully consistent with Canada's Constitution and laws. The Declaration describes a number of principles such as equality, partnership, good faith and mutual respect. Canada strongly supports these principles and believes that they are consistent with the Government's approach to working with Aboriginal peoples.

However, Canada has concerns with some of the principles in the Declaration and has placed on record its concerns with free, prior and informed consent when interpreted as a veto. As noted in Canada's Statement of Support, the Declaration is a non-legally binding document that does not change Canadian laws. Therefore, it does not alter the legal duty to consult. A copy of Canada's statement of support, along with other materials, can be found at: <http://www.aandc-aadnc.gc.ca/eng/1309374407406>

V UPDATED CONSULTATION GUIDELINES

The Interim Guidelines were developed to provide direction to federal departments and agencies when assessing the common law requirements for consultation and, where appropriate, accommodation with Aboriginal groups, including how to prepare for meaningful consultations.

Since the release of the Interim Guidelines in February 2008, much has been learned about consultation and accommodation which is reflected in these Updated Guidelines. Changes to the Guidelines have been informed by developments in the case law and engagement with Aboriginal organizations and communities, provinces and territories and industry representatives. Discussions and information-sharing during training sessions held with federal officials across the country have also contributed to these changes.

This updated edition provides a more detailed step-by-step guide to consultation and accommodation. It also stresses the importance for departments and agencies to prepare, in advance, to effectively carry out their consultation and accommodation responsibilities by developing a departmental or agency wide approach instead of addressing consultation files simply on a case by case basis.

The evolution of case law and federal policy development combined with “lessons learned” and best practices from within and outside the federal government will continue to influence the content of the Guidelines, which will evolve over time. As part of this ongoing process, departments

and agencies need to continue reviewing their Aboriginal consultation and accommodation approaches to ensure that they are consistent with the Guidelines and with evolving legal and policy developments.

In many instances, departments and agencies have developed departmental or agency specific policies or guidelines to support their officials in handling consultation files. The implementation of these Guidelines is a step towards greater consistency in federal practices and approaches.

The objective of the Guidelines is to provide an approach to consultation and accommodation that:

- ❖ acknowledges and respects the Crown’s unique relationships with Aboriginal peoples;
- ❖ promotes reconciliation of Aboriginal and other societal interests;
- ❖ integrates consultation into government day-to-day activities, e.g. environmental and regulatory processes;
- ❖ reconciles the need for consistency in fulfilling the Crown’s duty to consult with the desired flexibility, responsibility and accountability of departments and agencies in determining how best to do so; and
- ❖ fosters better relations between the federal government and Aboriginal peoples, provinces, territories, industry and the public.

VI GUIDING PRINCIPLES AND CONSULTATION DIRECTIVES

As part of its on-going efforts to better address Aboriginal consultation and accommodation, the federal government approved the following *Guiding Principles*

and *Consultation Directives* which will guide federal officials in their efforts to address the duty to consult and, where appropriate, accommodate.

The Government of Canada consults with First Nation, Métis and Inuit people for many reasons, including: statutory and contractual; policy and good governance; and the common law duty to consult. The Supreme Court of Canada affirmed, in a number of landmark decisions, such as *Haida* (2004), *Taku River* (2004) and *Mikisew Cree* (2005) that the Crown has a duty to consult when three elements are present:

- ❖ Contemplated Crown conduct;
- ❖ Potential adverse impact; and
- ❖ Potential or established Aboriginal or Treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

GUIDING PRINCIPLE NO. 1

The Government of Canada, in carrying out its activities, will respect the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit people by consulting with Aboriginal groups whose rights and related interests may be adversely impacted by a proposed Government of Canada activity.

Consultation Directive

The Government of Canada, in its consultation with Aboriginal groups, seeks to identify potential adverse impacts of federal activities on potential or established Aboriginal or Treaty rights and related interests and find ways to avoid or minimize these adverse impacts. If there is information available or that becomes available during the planning or implementation of the proposed activity about potential adverse impacts on potential or established rights exercised by an Aboriginal group in the area of an activity, federal officials must undertake the appropriate consultations.

Government actions that may adversely impact Aboriginal and Treaty rights can include decisions with respect to a pipeline that may affect wildlife movement, supply and access; decisions with respect to pollution from construction or use that may affect flora or animal populations; change in regulation or policy that may restrict land use; federal life cycle of land management that may affect legal obligations and relationships with Aboriginal groups; or decisions with respect to use of natural resources that may limit supply and use by Aboriginal groups.

Officials from federal departments and agencies can gather information on Aboriginal and Treaty rights assertions in their proposed activity area by accessing the following resources at all stages of a consultation and accommodation process:

- ❖ Officials within your department or agency;
- ❖ The Consultation Information Service, which includes the Aboriginal and Treaty Rights Information System, at AANDC – this service provides a single point of access to information on Aboriginal and Treaty rights assertions held by AANDC. The information includes contact information for Aboriginal groups and their leadership, information on multipartite agreements, historic Treaties, comprehensive land claim agreements, self-government agreements, Treaty Land Entitlement agreements, comprehensive and specific claims and other assertions;

- ❖ Aboriginal groups in the area of your activity with which your department or agency has relationships;
- ❖ AANDC's Consultation Information Service, Treaties and Aboriginal Government and the Department of Justice, which can assist with more detailed assessments of complex situations, overlapping claims to lands or resources, title, etc.; or,
- ❖ Other government departments and agencies, provinces, territories and industry with which your department or agency has relationships.

GUIDING PRINCIPLE NO. 2

The Government of Canada will assess how proposed federal activities may adversely impact on potential or established Aboriginal or Treaty rights, Aboriginal groups and their related interests. As part of this assessment, the Government of Canada will identify when consultation should form part of their operations and ensure that consultations are initiated early in the planning, design or decision making processes.

Consultation Directive

Departments and agencies must assess their activities, policies and programs that may adversely impact potential or established Aboriginal or Treaty rights and related interests. Based on this review, federal officials will ensure that appropriate consultation activities with Aboriginal groups are carried out. Key departments involved in Aboriginal consultation should develop a consultation approach that is responsive to the needs of the department or agency and reflects its operational realities. This approach should build from the guidance set out in the Updated Guidelines.

GUIDING PRINCIPLE NO. 3

Early consultations will assist the Government of Canada in seeking to identify and address Aboriginal concerns, avoid or minimize any adverse impacts on potential or established Aboriginal or Treaty rights as a result of a federal activity and assess and implement mechanisms that seek to address their related interests, where appropriate.

Consultation Directive

Federal officials must be able to demonstrate in decision making processes that Aboriginal concerns have been addressed or incorporated into the planning of proposed federal activities. As such, early discussions with the Aboriginal groups who may be adversely impacted by a federal activity are crucial. It is possible that there could be multiple Aboriginal groups impacted by a proposed activity, therefore they should be part of the consultation process.

GUIDING PRINCIPLE NO. 4

Consultation and accommodation will be carried out in a manner that seeks to balance Aboriginal interests with other societal interests, relationships and positive outcomes for all partners. A meaningful consultation process is one which is:

- ❖ *carried out in a timely, efficient and responsive manner;*
- ❖ *transparent and predictable;*
- ❖ *accessible, reasonable, flexible and fair;*
- ❖ *founded in the principles of good faith, respect and reciprocal responsibility;*
- ❖ *respectful of the uniqueness of First Nation, Métis and Inuit communities; and,*
- ❖ *includes accommodation (e.g. changing of timelines, project parameters), where appropriate*

Consultation Directive

The Government of Canada and its officials are required to carry out a fair and reasonable process for consultations. A meaningful consultation process is characterized by good faith and an attempt by parties to understand each other's concerns, and move to address them. Federal officials can begin a consultation process by applying the Updated Guidelines in concert with any tools, policies or guidelines developed by their department or agency. Federal officials, during a consultation process, must reasonably ensure that Aboriginal groups have an opportunity to express their interests and concerns, and that they are seriously considered and, wherever possible, clearly reflected in a proposed activity. Aboriginal groups also have a reciprocal responsibility to participate in consultation processes.

The Government of Canada will conduct consultation activities, in a timely and efficient manner, including, when appropriate, the development of a consultation plan and the provision of relevant information to Aboriginal groups, to inform and support decision-making processes. Federal officials must seek to develop processes that move beyond a project-by-project approach to consultation and move towards one that facilitates the inclusion of Aboriginal perspectives, timely decision making, integrates with and strengthens regulatory processes and promotes economic benefits for all Canadians.

GUIDING PRINCIPLE NO. 5

The Government of Canada recognizes that Aboriginal consultation is a Crown responsibility that flows from Government activities. The Government of Canada will ensure that a lead federal department or agency is identified and made accountable for any consultation processes that may be carried out for federal government activities. Should a consultation process move a department or agency beyond their mandate, mechanisms will be in place to address additional issues raised in a consultation process.

Consultation Directive

To manage Aboriginal consultation and accommodation, the Government of Canada will facilitate efficient and effective cooperation among and within federal departments and agencies via senior federal official governance structures which will assign a lead in a consultation process where the lead is not clear. When consultation and accommodation activities move a department or agency beyond their identified mandate, memorandum of understanding and other processes will be developed to coordinate other departments and agencies and processes whose function and expertise can support an effective consultation process.

GUIDING PRINCIPLE NO. 6

The Government of Canada will use and rely on, where appropriate, existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes in which Aboriginal consultation will be integrated, to coordinate decision making and will assess if additional consultation activities may be necessary.

Consultation Directive

A whole of government approach for Aboriginal consultation will be used in the regulatory review process for major natural resource projects. Consultation will be integrated into environmental assessment and regulatory approval processes. To assist in this approach, each major project will have a Crown consultation coordinator, who will develop and use a consultation plan to integrate the activities of all departments throughout the environmental assessment and regulatory processes. The interdepartmental committee process and interdepartmental memoranda of understanding will assist in providing clarity to these issues. The Government of Canada may rely on, where possible, existing consultation mechanisms, processes and expertise (e.g. provincial or territorial government or industry consultations) to streamline decision making and will assess if additional consultation activities may be necessary.

Federal officials must align consultation processes to existing regulatory or legislative processes, to the extent possible. Officials should, however, consider that:

- ❖ issues that arise during the consultation may be beyond the mandate of the existing process therefore additional consultation activities may need to occur;
- ❖ the existing process must allow for appropriate, meaningful consultation; and,
- ❖ consultation may be required throughout the lifecycle of an activity, thus they must ensure that any existing process is appropriate for all stages of the activity.

GUIDING PRINCIPLE NO. 7

The Government of Canada will coordinate consultation and accommodation activities with its partners (e.g. Aboriginal groups, provinces, territories and industry). While the Crown cannot delegate its obligation, the Government of Canada will, where appropriate, use consultation processes and accommodation measures carried out by its partners to assist it in meeting its commitments and responsibilities.

Consultation Directive

The Government of Canada and its officials can rely on its partners, such as Aboriginal groups, industry and provinces and territories, to carry out procedural aspects of a consultation process (e.g. information sessions or consultations with Aboriginal groups, mitigation measures and other forms of accommodation, etc.). The information collected during these processes can be used by the Government of Canada and its officials in meeting its consultation obligations.

GUIDING PRINCIPLE NO. 8

The Government of Canada will carry out its activities and related consultation processes in accordance with its commitments and processes involving Aboriginal groups. The Government of Canada will seek out opportunities to develop and maintain a meaningful dialogue with Aboriginal groups in support of building relationships with its partners.

Consultation Directive

The Government of Canada, in carrying out consultation processes, must act in accordance with its existing commitments and processes (e.g. Treaties, Treaty land entitlement agreements, settlements and consultation agreements). Federal officials need to inform themselves and be aware of Canada's policy approach and legal commitments to Aboriginal groups and how these commitments and processes may be aligned with department and agency consultation processes. Federal officials should also seek to develop positive, long-term relationships with Aboriginal groups. These positive relationships and the dialogue that results from them will assist the federal government in moving forward on future activities.

PART B

Getting Ready for Consultation and Accommodation

I ROLES & RESPONSIBILITIES

Federal Departments and Agencies

An effective consultation process requires collaboration with Aboriginal groups and coordination and cooperation within the federal government and with other jurisdictions and stakeholders, as appropriate.

The Crown as a whole must fulfill its duty to consult and, where appropriate, accommodate. In turn, each federal department or agency must support the Crown's efforts in meeting this obligation. To do so, departments and agencies must assess the consultation requirements that relate to their respective activities and develop approaches to consultation and accommodation that will allow the Crown as a whole to meet its duty. Some departments and agencies may have existing processes and/or mandates which may assist in fulfilling the duty.

Coordination between the relevant federal departments and agencies is essential to ensure that the Crown is responsive and able to relate effectively with the Aboriginal groups involved. Limitations on the mandate of any one department, agency or other federal entity will not limit what is required of the whole Crown in the circumstances (Refer to Guiding Principle and Directive # 5).

The designation of a lead department, agency or committee is recommended to oversee and track all consultation efforts and the issues raised by Aboriginal groups. The lead will follow up with relevant departments and agencies to ensure that they take appropriate action in relation to any consultation processes that may be carried out for federal government activities. The lead will also act as the federal point of contact for Aboriginal groups, industry representatives and various stakeholders.

As mentioned in Guiding Principle and Directive # 6, in seeking to ensure that its obligations towards Aboriginal groups are satisfied, Canada will use and rely on, where appropriate, existing consultation mechanisms, processes and expertise, such as environmental assessments

and regulatory approval processes that allow it to gather information and address issues raised by Aboriginal groups.

Agencies, boards, commissions and tribunals, including the National Energy Board (NEB) and the Canadian Nuclear Safety Commission (CNSC) have a role to play in assisting the Crown in discharging, in whole or in part, the duty to consult. The role to be played by any given board, commission or tribunal is determined by its statutory mandate or its terms of reference. More specifically, an ability to address questions of law and an ability to remedy or address consultation related issues will inform the role of such boards, tribunals and commissions in Crown consultation processes.

Departments with responsibilities for real property management such as disposal should be aware of Aboriginal interests in federal Crown land under their management. While decisions to dispose of federal Crown land is the most common trigger for a duty to consult in real property matters, there are other aspects of land management, such as access restrictions, management of burial sites and infrastructure. Guidance on this subject can be found in the Treasury Board Secretariat's *Guide to Real Property Management: Aboriginal Context* <http://www.tbs-sct.gc.ca/rpm-gbi/doc/grpmac-ggbica/grpmac-ggbica-eng.aspx>

Provinces and Territories

The Crown's duty to consult applies to provincial and territorial governments. Some have instituted their own Crown consultation processes, policies and guidelines for projects within their jurisdictions. Departments and agencies should look at provincial, territorial and community websites for additional information on provincial, territorial, regional or community-specific consultation agreements and protocols, processes and policies. They can also contact the AANDC Regional Consultation Coordinator. Inquiries can be sent to CAU-UCA@aandc-aadnc.gc.ca

Guiding Principle and Directive # 7 speaks to Canada coordinating its consultation and accommodation activities with those of its partners (e.g. Aboriginal groups, provinces, territories and industry). For initiatives involving federal, provincial and territorial governments, opportunities to coordinate efforts between jurisdictions should be pursued to the maximum extent possible, to increase efficiency by minimizing duplication.

Departments and agencies are encouraged to develop long-term working relationships and processes rather than work together only on an *ad hoc* or case-by-case basis. Where both federal and provincial or territorial governments are involved in an activity, their consultation efforts should be coordinated. In some instances, Canada, with their agreement, may wish to use provincial or territorial consultation processes to fulfill, in whole or in part, its consultation obligations. Federal departments and agencies will need to assess these processes to ensure that they lead to a meaningful consultation and are capable of addressing matters related to federal activities.

AANDC, on behalf of Canada, will engage with provincial and territorial partners to explore the potential for developing memoranda of understanding aimed at reducing duplication, working collaboratively, sharing information and improving collaboration on Aboriginal consultation. Consultation agreements with provinces/territories and First Nation, Métis or Inuit groups may also assist in addressing consultation and accommodation issues.

In 2007, federal, provincial and territorial Deputy Ministers Responsible for Aboriginal Affairs agreed to establish an ongoing information- and priority-sharing process on Aboriginal consultation and accommodation across their respective jurisdictions. The Federal/Provincial/Territorial working group has made real progress in relation to the duty to consult. Key areas that have been explored include: capacity, the duty to consult and the Métis, traditional land use studies as a tool to inform consultation processes, developing information repositories, coordination, inter-jurisdictional challenges and approaches to dealing with municipalities.

Aboriginal Groups

In keeping with court decisions on consultation, Guiding Principle and Directive # 4 makes it clear that First Nation, Métis and Inuit groups have a reciprocal duty to participate in reasonable processes and Crown efforts to consult and accommodate them. It is in the interest of all concerned parties to develop effective processes and agreements that reflect shared interests and contribute to a consultation process that creates clarity, certainty, trust and reliability. In that respect, the Crown may reasonably expect Aboriginal groups to:

- ❖ clearly outline in a timely manner any potential adverse impacts of the Crown activity, or that of a third party, on the nature and scope of their potential or established Aboriginal or Treaty rights and related interests;
- ❖ make their concerns known to the Crown and share any other relevant information that can assist in assessing the strength of their claim or the seriousness of any impacts on their potential or established Aboriginal or Treaty rights and related interests;
- ❖ attempt to resolve any issues with any other Aboriginal groups with overlapping claims and interests;
- ❖ attempt to reach a mutually satisfactory resolution to a particular situation;
- ❖ consider that they do not have a veto over the proposed project; that consultation may not always lead to accommodation or that there may not always be agreement on what accommodation measures may be appropriate.

Third Parties

All industry sectors seek predictable timelines, clarity on the respective roles of parties, certainty and criteria to determine the adequacy of consultation and accommodation. Industry representatives indicate that earlier government consultations at the federal, provincial and territorial levels would help to establish a transparent process for the proponent, Aboriginal communities and the Crown.

The Crown could discuss with industry proponents early in the process about the possibility and extent to which it may rely on the proponent's engagement with Aboriginal groups as part of the formal consultation and accommodation process. Creating this understanding early in the planning stages of a project could help to define each party's roles and responsibilities and expectations.

Third parties, such as proponents, do not have a legal obligation to consult Aboriginal groups. The Crown may delegate to the proponent such aspects of consultation as the gathering of information about the impact of the proposed project on the potential or established Aboriginal or Treaty rights. The Crown should clearly communicate what is expected of third parties to industry proponents, Aboriginal groups and various stakeholders. The role that a third party can play in carrying out consultation and accommodation processes should be incorporated into any Crown consultation plans and efforts. The information collected during these processes, for example, can be used by the federal government and its officials in its decision-making process.

Industry's overall relationship with Aboriginal groups, including its business practices, can assist the Crown's overall consultation and accommodation efforts. Industry proponents are often in the best position to accommodate an Aboriginal group for any adverse impacts on its potential or established Aboriginal or Treaty rights, for example, by modifying the design or routing of a project. Canada will seek to benefit from the outcomes of a third-party consultation process and any accommodation measures undertaken by third parties. However, the ultimate responsibility for consultation and accommodation rests with the Crown as the Honour of the Crown cannot be delegated.

There are some formalized processes for industry involvement in Aboriginal consultation such as in the case of oil and gas development in the Treaty 8 area within B.C.'s north-east. Ontario's new mining legislation includes measures to ensure that proponents consider Aboriginal consultation.

II DEVELOPING A DEPARTMENTAL OR AGENCY APPROACH TO CONSULTATION AND ACCOMMODATION

This section outlines how departments and agencies should prepare for consultation and accommodation and, building on the Updated Guidelines, develop a departmental or agency approach that assists the Crown in fulfilling the duty while supporting other departmental and agency objectives.

Creating an approach that is consistent with the Updated Guidelines allows departments and agencies to integrate Aboriginal consultation into their activities and ensures consistency in addressing consultation and accommodation issues (refer to Guiding Principle and Directive # 8). Such an approach can support the overall objective of reconciliation highlighted by the Supreme Court of Canada in decisions such as *Haida* and *Taku River*.

1) Identify Crown conduct in relation to the duty to consult

Crown conduct refers to the Crown's own activities, such as land disposal, park creation, infrastructure development, Treaty implementation, or to Crown activities and authorizations and permits for projects to be carried out by a third party. Refer to Guiding Principle and Directive # 1 for some examples of government actions that may adversely impact potential or established Aboriginal or Treaty rights.

The duty extends to “strategic, higher level decisions” that may have an impact on potential or established Aboriginal or Treaty Rights. These could include structural or organisational changes that reduce the Crown's oversight and decision-making ability.

By becoming familiar with their departmental or agency mandate and objectives and the related activities that may adversely impact on the rights of Aboriginal groups, departments and agencies will:

- a) be able to identify which of their activities, policies and programs may give rise to the duty to consult;

- b) be able to support a department or agency to support the consultation or accommodation activities of other departments or agencies whose Crown conduct has given rise to a duty to consult. This may apply even when their own activities do not give rise to a duty to consult.

See “Part C, Phase 2 – Crown Consultation Process” for a detailed list of questions for consideration.

2) Assess potential adverse impacts of departmental and agency activities

As highlighted in Guiding Principle and Directive # 3, by assessing, in advance, what might be the adverse impacts of their activities, departments and agencies can determine how these impacts could be avoided or mitigated and what related measures may be taken by the federal, provincial and territorial governments and/or industry.

Departmental and agency officials should anticipate the types of accommodation measures that may be needed to address the kinds of adverse impacts that their activities may have on potential or established Aboriginal or Treaty rights and related interests. This will help managers and officials prepare for consultation processes, as the department or agency will define, in advance, the role it can generally play in relation to accommodation, examine the potential role of other federal departments and agencies or other governments, the role of the proponent, the steps that can be taken by each, the approvals that may need to be sought, the authorities required, etc. See “Part C, Phase 3 – Accommodation” for more information on accommodation.

3) Identify potential or established Aboriginal or Treaty rights and related interests

Managers should be familiar with the nature and location of these rights in their respective regions so that they are able to anticipate how these rights may be adversely impacted by their Crown conduct. A departmental approach must also take into account the diversity of potential or established Aboriginal or Treaty rights in each region across Canada.

Canada's Treaty relationship with groups is an important consideration in assessing how to proceed with Crown conduct in a Treaty area. Departments and agencies will also need to obtain information about relevant Treaty land entitlement agreements, comprehensive land claims agreements, self-government agreements or negotiations in a region.

An Aboriginal group may also have interests related to its potential or established Aboriginal or Treaty rights that may be adversely impacted by the proposed Crown conduct. The Crown may, for policy reasons, seek to address these related interests. As a result of a consultation process, the Crown may determine that there is no duty to accommodate, however it may still choose, for policy reasons, to address a related interest that is expressed by the Aboriginal group in the context of the activity.

For example:

- a) An Aboriginal group may have an established hunting right that could be impacted by an activity and express a related interest in declaring a certain area of their traditional territory as a wildlife conservation zone to maintain a viable population of the wildlife.
- b) The Crown is implementing measures to mitigate an adverse impact on an Aboriginal right. It can decide at the same time to address an expressed related interest from the Aboriginal group for economic development funding to take part in the project.
- c) In the context of claims negotiations, an Aboriginal group expresses a related interest for federal lands that are being considered for disposal. After assessing any requirement to consult, the Crown may also choose to engage with the group for policy reasons.

4) Develop a departmental or agency approach to consultation and accommodation

The four previous steps lay the groundwork for the development of a departmental or agency approach to consultation and accommodation that is consistent with the Updated Guidelines and appropriate for the different types of activities of a department or agency. However, given the breadth of activities carried out by most departments, a departmental approach may have to include elements that would be specific to various programs and directorates.

Principle # 4 states that officials should seek to develop consultation processes that move beyond a project-by-project approach to a comprehensive approach that will support their officials when making case-specific decisions. Developing consultation processes that can be consistently applied is more effective than consulting on a one-off basis. Some existing consultation practices may already be in place within a region or department or agency and may offer a foundation upon which to build effective consultation processes.

The overall relationship between the Crown and an Aboriginal group will influence, and be influenced, by how consultation and accommodation issues are being addressed by each department and agency. Managers must keep an eye on the "big picture" as their department's handling of a consultation file may strengthen or weaken Canada's relationship with a particular First Nation, Métis or Inuit group, thereby influencing not only their own department's or agency's future dealings with that community, but also the future dealings of other departments and agencies.

Determine whether there are any statutes or regulations that require the department or agency to consult with Aboriginal groups in relation to their activities or consider traditional knowledge (such as provisions in the *Species at Risk Act*, *Canada National Parks Act*).

Determine whether there are contractual requirements to consult in relation to departmental and agency activities such as consultation agreements or consultation provisions in comprehensive land claim agreements.

It is the responsibility of departments and agencies to develop consultation processes that respect consultation agreements or modern Treaty obligations. There may be other agreements, such as interim measures

agreements or notification agreements, that contain guidance related to how the parties should be notified about Crown activities or how the parties can work together to resolve issues.

EXAMPLES OF CONSULTATION AGREEMENTS

Mi'kmaq/Nova Scotia/Canada consultation process – A province-wide consultation process was established as part of a larger tri-partite negotiations process dealing with Aboriginal and Treaty rights issues. Although the consultation process established therein is optional, the Parties hope that the Terms of Reference for a Mi'kmaq/Nova Scotia/Canada consultation will become the preferred choice for government departments and agencies whenever the duty to consult with the Mi'kmaq in Nova Scotia arises.

Algonquins of Ontario Consultation Process Interim Measures Agreement – In 2009, Canada, Ontario and the Algonquins of Ontario reached an agreement on consultation that sets out a means for Canada and Ontario to consult the Algonquins of Ontario and the ten Algonquin communities they represent on proposed activities or projects within the claimed territory while negotiations of an Agreement-in-Principle are ongoing to resolve the Algonquin land claim in eastern Ontario. For the Algonquins of Ontario, this process is coordinated by a new Algonquin consultation office (ACO).

Consultation Protocols with the Dene Tha' First Nation – In July 2007, as part of an out-of-court settlement to resolve the Dene Tha' First Nation's concerns related to the Mackenzie Gas Project (MGP), two consultation protocols were signed between Canada and the First Nation – one for the MGP and Connecting Facilities and the other (the Federal Authorization Consultation Protocol) for other projects where federal authorizations are required.

MODERN TREATIES

Some modern Treaties include consultation provisions in relation to Crown activities and officials must consult in accordance with the consultation terms of those Treaties. Implementing Treaties is a responsibility of the Crown as a whole.

The duty to consult operates in law independently from the terms of a Treaty and can therefore apply where Crown actions have the potential to adversely impact Treaty rights provided for under a Treaty or Modern Land Claims Agreements. However consultation can be shaped and even fully addressed by the terms of an agreement for specific situations where such is made clear. Therefore, the first step for federal officials is to determine whether there are relevant consultation provisions within the Treaty itself.

Departments and agencies should contact the Aboriginal Affairs and Northern Development Canada Implementation Branch, Justice Canada and, in some cases, the AANDC regional offices to obtain advice and assistance in developing approaches for consulting Treaty groups.

Treaties are an important part of the process of reconciliation and provide guidance for the on-going relationship of the Crown and Aboriginal groups.

Developing effective working relationships through networks and forums with Aboriginal communities as well as with other departments and agencies in the region, with provincial and territorial counterparts and with industry will, in the long run, assist federal managers and their officials in leading consultation and accommodation efforts.

Departments and agencies with the advice of AANDC may also want to consider whether consultation agreements could support consultation activities. These arrangements between the Crown and Aboriginal groups can help to define roles and responsibilities, identify points of contact, determine timelines and steps to be followed and sometime address capacity needs. They can create clarity for the parties, and allow them to strengthen their relationship while making consultation more efficient.

Consultation agreements can facilitate the coordination of consultation processes that involve multiple departments and agencies (federal, provincial and territorial) and stakeholders. The AANDC Regional Consultation Coordinators will explore and negotiate consultation arrangements

and protocols with Aboriginal groups and provinces and territories to achieve coordinated and efficient processes for Crown consultations.

Officials should assess whether provisions in land claim agreements or self-government agreements require that consultation take place in relation to legally binding international instruments. Second, officials must determine whether legislation requires Canada to consult on international instruments. Officials should seek legal advice, which will support the broader departmental or agency assessments and decision-making processes.

Federal horizontal policies

Horizontal policy objectives such as those related to Gender Equity, Sustainable Development and Official Language Minority Communities need to be considered during any interaction between Canada and Aboriginal peoples. These are Treasury Board policies that should be reflected in any activities, processes, programs and policies related to consultation and accommodation.

National Aboriginal Organizations such as the Native Women's Association of Canada, Pauktuutit and the Assembly of First Nations have created Culturally-relevant Gender-Based Analysis tools to promote fairness and equity of federal programs, services and processes directed at Aboriginal women and men. In the context of the engagement process on consultation and accommodation, Native Women's Association of Canada and Pauktuutit have examined Aboriginal consultation and accommodation using the Culturally-relevant Gender-Based Analysis lense and proposed some questions to be considered when preparing for consultations with Aboriginal communities such as:

1. At what stage of a consultation process should gender issues be considered? How can a Culturally-relevant Gender-Based Analysis be used to ensure adequate consideration of gender?
2. What should be the role of the Crown, if any, in ensuring that a consultation process and any ensuing agreements between a community and industry are inclusive of gender issues? How can this be achieved?
3. What questions and issues should the proponent and an Aboriginal community routinely consider in any consultation process to ensure that the perspective of both women and men are sought in the examination of the nature and extent of impacts on the community and options for addressing them?

5) Coordinate with partners, and/or rely on other consultation processes

Federal coordination and designation of lead

More than one federal department or agency may be involved in Crown conduct that requires consultation or may have a role in consulting or accommodating potential adverse impacts. It is important that all departments and agencies work collaboratively, as the Crown, to assess roles and responsibilities, manage the consultation process together and address accommodation, where appropriate (Refer to Guiding Principle and Directive # 5). To accomplish this, departmental or agency officials must:

- ❖ ‘Map out’ all elements of the Crown conduct, including all of the potential decisions; roles and responsibilities of the federal, provincial and territorial departments and agencies, boards and tribunals that may be involved; subject areas or focus of each entity; any limitations on timelines or mandates etc.;
- ❖ Determine which departments and agencies or provincial and territorial ministries may have responsibility to consult and, where appropriate, accommodate. Designate a federal lead department to coordinate with partners;
- ❖ Identify whether there are gaps that may need to be filled to address consultation and accommodation issues.

Further to Guiding Principles and Consultation Directives # 5 and # 6 in Part A, the Canadian Environmental Assessment Agency serves as the Crown consultation coordinator for major resource projects and comprehensive studies under the *Canadian Environmental Assessment Act*. This lead role is fulfilled in cooperation with federal departments and agencies who serve as responsible authorities and federal authorities under the *Act* as well as the Major Projects Management Office.

In cases where these existing processes are not sufficient to fulfill the Crown’s duty to consult and additional consultation activities are required, the Agency, in collaboration with federal departments and agencies, should ensure that any additional consultation activities supplement but do not duplicate the environmental assessment and regulatory review processes.

The *Canadian Environmental Assessment Act* was amended in July 2010 to improve timeliness of federal environmental assessment, establish clear accountability and focus resources where they would produce the greatest benefit to the environment and the economy. For comprehensive studies under the *Act*, the Canadian Environmental Assessment Agency will exercise the powers and perform the duties and functions of a responsible authority, except for those regulated by the National Energy Board and Canadian Nuclear Safety Commission.

For projects which are subject to public review processes under the *National Energy Board Act* or the *Canadian Nuclear Safety Act*, the National Energy Board and the Canadian Nuclear Safety Commission processes are used. Supplementary Crown consultation activities may be required to address the concerns of Aboriginal communities that fall outside the mandate of the National Energy Board or the Canadian Nuclear Safety Commission processes.

Use of existing federal processes

The Courts have not required a separate process for Crown consultation where the assessment or review or regulatory, statutory or contractual process that is in place can provide a sufficient consultation process (e.g., *Taku River – B.C.’s Environmental Assessment Act* process as implemented was sufficient. By contrast, in the *Mikisew Cree* case, while the statutory requirements of the relevant Acts were all met, the involvement of the Aboriginal community in the public review process was found not to be sufficient). Where a board or tribunal is involved, legal advice as to what role it may play may be needed early on in the planning process. The Crown must be satisfied that it can or that it has, through these processes, fulfilled its duty to consult.

Consultation or accommodation issues can arise during an existing review process or assessment or during any regulatory, statutory or contractual process by a federal department or agency. Departments and agencies should consider whether any of these issues are beyond the mandate of the given process or of the responsible federal department or agency.

Consequently, additional consultation and accommodation activities may need to occur. Departments and agencies have the ultimate responsibility for identifying and filling any gaps that could prevent the Crown from fulfilling its duty. The consultation process must allow for meaningful consultation throughout the lifecycle of an activity and must be adaptable to all stages of the activity to allow federal officials to respond to any Aboriginal concerns, and if appropriate, accommodate any adverse impacts on potential or established Aboriginal or Treaty rights. (Guiding Principle and Directive # 6).

The environmental review process is generally viewed by Aboriginal groups and third parties (See Summary of Input from Aboriginal Communities and Organizations on Consultation and Accommodation) as the most effective method managed by the Crown to identify environmental effects of proposed activities and related changes. Officials should assess early in the planning stages for proposed activities whether reliance on existing processes such as environmental assessments will be sufficient to fulfill the duty. If not, the Crown's efforts may need to include additional consultation activities or further efforts to address accommodation, where appropriate.

Environmental assessment, regulatory decision making, and Aboriginal consultation

Canada takes a whole-of-government approach to Crown consultation. With respect to major resource projects (See definition below), and all projects that are assessed as Comprehensive Studies under the *Canadian Environmental Assessment Act*, this approach involves the federal Crown integrating its Aboriginal consultation activities into the environmental assessment and regulatory process to the greatest extent possible.

Note: A major resource project is defined as a large-scale resource project south of 60 that is subject to a comprehensive study, review panel, or a complex (or multi-jurisdictional) screening under the *Canadian Environmental Assessment Act*. Resource sectors typically include mineral and metal mining, oil sands development and processing, and energy generation and transmission.

This approach capitalizes on the strength of the federal environmental assessment and regulatory process to gather information about potential impacts of Crown conduct on Aboriginal and Treaty rights in a consistent and coordinated way. It enables the efficient use of departmental resources and facilitates effective communication and relationship-building with Aboriginal groups. The approach also supports ongoing Crown efforts to satisfy the duty to consult before federal decisions are made. There should be timely efforts to coordinate with provincial and territorial environmental assessment processes.

The whole-of-government approach typically begins once the Crown becomes aware of a proposed project for which Crown conduct may be contemplated (e.g. submission of a Project Description). This phase commences with an analysis of the project's potential adverse impacts in the geographic area in which Aboriginal groups could have rights. The scope of the consultation is determined by the severity of the adverse impacts and the strength of the claims and any other relevant considerations.

This analysis is intended to support the establishment of an appropriate consultation process and to inform the development of an Aboriginal consultation work plan. All Aboriginal groups identified for involvement in the environmental assessment process are contacted to inform them of the intended consultation approach. Aboriginal groups should have the opportunity to provide the Crown with information about their potential or established Aboriginal or Treaty rights and any adverse impacts of the proposed activity. As well, Aboriginal groups may be invited to participate in the Environmental Assessment project committee as a way of better integrating Aboriginal consultation into the Environmental Assessment process.

Where government is seeking to rely on an environmental assessment process for identifying, assessing and guiding consultations, it will be necessary to determine what kinds of Aboriginal concerns may be considered or addressed through that process and to what extent it can assist the Crown in discharging its duty.

Once the environmental assessment commences, the Crown should continue to consider and address the potential need to consult additionally and, where appropriate, seek to accommodate potential adverse impacts of the Crown conduct. Consultation obligations that cannot be fulfilled in the course of the environmental assessment are to be undertaken prior to any final regulatory decisions that are being issued for the project.

Prior to the completion of the environmental assessment process, the Crown determines whether or not it has, so far, honourably discharged its duty to consult. Outstanding issues are summarized and carried forward into the regulatory approvals phase, where appropriate consultation and/or accommodation may be considered by the suitable regulatory authorities.

The consultation process should then carry on to the end of the project life cycle, as the Crown has a responsibility to ensure that measures put in place to accommodate impacts to potential or established Aboriginal or Treaty rights and related interests, are implemented. Throughout the environmental assessment, an official Crown consultation record is created and maintained. The Major Projects Management Office keeps a centralized database while relevant federal departments and agencies keep the original documents of their consultations.

Beyond the duty to consult, there are other reasons for including Aboriginal groups in the environmental assessment process. These include obligations under the *Canadian Environmental Assessment Act* to consider “environmental effects,” including any change in the environment that affects the current use of lands and resources for traditional purposes by Aboriginal persons (s. 2 of the *Act*). Also, s. 16.1 of the *Act* provides the opportunity to include Aboriginal traditional knowledge in the environmental assessment. Finally, the federal government may have obligations relating to the environmental assessment under modern Treaties and self-government agreements.

Due to the complexity and size of major natural resources projects, the federal government has put in place the Major Projects Management Office to fulfill a Crown coordinating function.

Major Projects Management Office

The Major Projects Management Office (housed within Natural Resources Canada) was created in 2008 to provide a single point of entry into the federal regulatory system as well as to provide overarching management of the federal regulatory process for major resource projects in the provinces south of 60, in both operational and policy areas.

The Major Projects Management Office initiative was launched to foster a more accountable, efficient, transparent, and effective whole-of-government approach to the review of major resource projects in Canada. The Government’s initiative was targeted at providing additional capacity and expertise to key federal regulatory departments and agencies to enable these organizations to deliver their environmental assessment, regulatory and Aboriginal consultation responsibilities in a timely and predictable manner.

The primary role of Major Projects Management Office is to provide overall project management, accountability and policy leadership with respect to the performance of the overall regulatory system. Working collaboratively with federal departments and agencies, the Major Projects Management Office serves as a single window into the federal regulatory process, coordinating project agreements and timelines between federal departments and agencies and tracking the progress of major resource projects through the federal regulatory review process.

The Major Projects Management Office also oversees the implementation of the whole of government approach to Crown consultation on major resource projects. The Major Projects Management Office works closely with the Canadian Environmental Assessment Agency, Aboriginal Affairs and Northern Development Canada and other federal departments and agencies to ensure that the federal government fulfills its consultation responsibilities for these projects in a consistent, adequate and meaningful manner.

Regional project-specific teams of federal and, where relevant, provincial officials are established on a project-by-project basis to ensure the consistent and coordinated delivery of any Crown consultation requirements. These

teams are coordinated by the Canadian Environmental Assessment Agency or other relevant environmental assessment manager (as Crown Consultation Coordinator) throughout the environmental assessment process. Crown reliance and oversight mechanisms have been established for National Energy Board projects under the Major Projects Management Office. The Canadian Nuclear Safety Commission takes on the Crown Consultation Coordinator role when it is a Responsible Authority. Once the environmental assessment phase has been completed, a lead federal department or agency may be assigned to carry out outstanding consultation requirements in respect of their regulatory decision-making responsibilities.

Northern Projects Management Office

The Northern Projects Management Office (NPMO) was established in September 2009 within the Canadian Northern Economic Development Agency (CanNor). The mandate of the Northern Projects Management Office is to provide government-wide leadership in developing a systematic approach for federal participation in the environmental assessment and regulatory review and approvals of northern projects.

The Northern Projects Management Office is responsible for federal coordination, project management, project tracking and coordination of consultations for northern projects in the three territories. It ensures the federal government meets its obligations to consult. Its main functions are to:

- ❖ provide clear direction and assistance to proponents regarding the regulatory review and consultation process;
- ❖ coordinate the work of federal regulatory departments and agencies during the environmental assessment and permitting phases;
- ❖ create and maintain a repository of Crown consultation records for projects that fall within its mandate.

For the purposes of Crown consultation the Northern Projects Management Office proposes to act as a coordinator or facilitator for northern projects that include all projects that undergo an environmental assessment, joint

or panel review. Also included are smaller scale projects that the Northern Projects Management Office considers to be of potential economic interest or complex projects that could benefit from the coordination of the Northern Projects Management Office.

Individual departments or agencies are responsible for determining which Aboriginal groups may be impacted by a project, for carrying out strength of claim assessments, for monitoring and evaluating the robustness of third party consultations and where required for undertaking targeted Crown consultations. As well, departments or agencies are responsible for accommodating, when appropriate.

The mandate of the Northern Projects Management Office in the territories complements the mandate of the Major Projects Management Offices in the provinces south of 60. However, because of the differences and complexities of the northern regulatory environment, the Northern Projects Management Office was established as a separate entity.

The Northern Projects Management Office is headquartered in Yellowknife, Northwest Territories, with staff in each of the other two territories. These regional offices coordinate the early engagement of all federal players in resource development, work with territorial governments and boards, and coordinate federal Aboriginal consultation efforts with relevant federal departments.

Use of existing provincial and territorial processes

In developing and implementing a departmental or agency approach, managers and their officials are encouraged to learn as much as possible about provincial and territorial approaches as set out in consultation policies, guidelines and practices with the view to better coordinating federal consultation and accommodation efforts with those of its provincial and territorial partners.

In the planning phase of any Crown conduct (See Part C, Phase 1 for a full list of pre-consultation activities), federal officials must assess the Aboriginal consultation requirements related to the conduct. The federal department or agency may be able to use provincial or territorial consultation processes to assist in fulfilling, in whole or in part, its consultation obligations.

Federal departments and agencies are encouraged to learn about any concurrent provincial or territorial conduct and relevant consultation processes and discuss how these processes might assist the Crown in meeting its consultation obligations.

A departmental approach might include details of how and when a provincial or territorial consultation process may be relied on to fulfill the federal Crown's duty.

Federal officials may consider the following factors:

- ❖ Can federal issues be discussed (e.g. fish habitat, migratory birds, safe and accessible waterways)?
- ❖ Will the federal, provincial or territorial process include meaningful participation of all Aboriginal groups whose involvement is required to fulfill the federal duty?
- ❖ What is the mandate of the provincial or territorial department or agency and are there any limits to it that could have an impact on consultation activities, specifically in the case of boards or commissions?
- ❖ Will federal departments and agencies need to anticipate additional consultation activities?
- ❖ Are there any accommodation measures that have been established within the provincial or territorial process on which the federal Crown could rely?

Memoranda of understanding may be in place with certain provinces or territories to guide how federal, provincial and territorial governments can work together on Aboriginal consultation.

Reliance on industry consultations

Where departments and agencies are responsible for approving third-party activity, Crown decision makers will need to determine the role that third parties, such as industry proponents, will play in relation to consultation and accommodation.

Departments and agencies will need to inquire about the following before they decide whether or not and to what extent they can rely on third party consultation:

- ❖ To what extent have the proponents consulted Aboriginal groups? With which groups have they consulted?
- ❖ Does the Crown have access to the consultation record to date?
- ❖ Are future consultations anticipated and what are the timelines?
- ❖ Should federal officials attend the consultation sessions and if so, what would be their role?
- ❖ What procedural aspects of the consultation is the Crown delegating, if any?
- ❖ Will there be a consultation record for future consultations and will the Crown have access to that record?

The Crown is ultimately responsible for ensuring that the duty to consult and, where appropriate, accommodate is fulfilled. Therefore, it will need to evaluate whether the proponent has adequately consulted with Aboriginal groups and whether further consultations are required to be undertaken by the Crown to fulfill its consultation obligations.

III ORGANIZING YOUR DEPARTMENT OR AGENCY FOR CONSULTATION AND ACCOMMODATION

This section identifies some issues to be addressed by managers to organize their department or agency for consultation and accommodation. This includes evaluating financial, human resources and training requirements, as well as assessing the need to involve Department of Justice counsel. Step-by-step tasks to be undertaken by managers and practitioners will be described in Part C.

1) General considerations

- ❖ Ensure that officials are adequately equipped with the appropriate tools, resources and training to carry out meaningful and reasonable consultation efforts in each case. The development of a departmental or agency approach will support them in addressing case-specific issues.
- ❖ Put into place a records management system and procedure to document and file agendas, meeting notes, correspondence, actions, decisions, and ensure that procedures are used consistently by officials. Recording in a consistent format and storing in an accessible and retrievable location all relevant consultation meeting records and correspondence with Aboriginal groups is important to ensure that a complete record of the process, the concerns raised and the efforts to address such concerns are documented. Where more than one department or agency is involved, departments and agencies are encouraged to use a central or shared document storage system, wherever possible.
- ❖ Ensure officials are aware that all meetings and correspondence are “on the record” to enable the Crown to rely on such information, if necessary, in court. Information provided to government may be subject to *Access to Information Act* requests. Therefore specific measures may be required before agreeing to any confidential or off-the-record discussions or treatment of documents. Consult Department of Justice Counsel before determining how discussions or particular materials exchanged in the course of the consultation process may be treated or classified.

2) Organizational, financial and human resources considerations

Throughout the development and implementation of Crown activities and any corresponding consultation processes, officials must ensure meaningful consultation such as: timely sharing of detailed information about the activity; providing support, as required, to Aboriginal groups to achieve the objective of meaningful participation in consultation processes; providing enough time for Aboriginal groups to assess adverse impacts and present their concerns, promoting discussion with communities about impacts and ways these can be avoided or mitigated, etc.

To achieve this, departments and agencies need to have access to financial, human and technological resources that can be used for consultation and accommodation activities. They must also identify what role could be played by other partners to support the fulfillment of the duty.

Departmental or agency approaches should take into account the following:

- ❖ Assessment of departmental and agency activities that may give rise to a duty to consult;
- ❖ Assessment of any potential adverse impacts of departmental and agency activities, the severity of impact and the strength of any potential or established Aboriginal or Treaty rights to determine the scope of the duty to consult and related consultation processes;
- ❖ Frequency of consultation-related activities;
- ❖ Assessment and documentation of resource requirements for Aboriginal consultation and accommodation activities. For example, departments and agencies should consider the cost implications for the participation of Aboriginal groups, which includes determining whether their program and financial authorities can assist them in funding Aboriginal consultation-related activities;

- ❖ Records management systems to document the consultation and accommodation process;
- ❖ Human resources required to plan, research, implement and monitor reasonable and meaningful consultation processes, namely a skilled, trained and informed staff;
- ❖ Other departmental and agency policies, programs, initiatives that may complement and support the fulfillment of the duty;
- ❖ Opportunities, through protocols or Memoranda of Understanding, for collaboration, relationship building and sharing costs of consultation and accommodation with other federal departments and agencies, provincial and territorial governments and industry, and opportunities to better integrate consultation processes;
- ❖ Internal and external communications related to consultation activities;
- ❖ Approval processes and procedures;
- ❖ Evaluation of consultation and accommodation activities undertaken;
- ❖ Existing financial authorities that can support internal or external consultation and accommodation related expenditures such as capacity funding to Aboriginal groups, where appropriate. For example, the Canadian Nuclear Safety Commission and the National Energy Board have participant funding programs to support Aboriginal consultation in the review of major energy projects. The Canadian Environmental Assessment Agency can provide funding in relation to projects that are assessed by a review panel or a comprehensive study under the *Canadian Environmental Assessment Act*. The Canadian Environmental Assessment Agency participant funding program includes an Aboriginal funding envelope to provide support to Aboriginal groups to assist them with regard to Aboriginal or public consultation activities;
- ❖ Financial resources at the disposal of the departments and agencies and opportunities to seek additional resources (e.g. Treasury Board submissions). For

example, federal officials can refer to legislation and to Treasury Board Secretariat guidelines on expenditures as well as departmental or agency-specific policies, directives, guidelines and practices; and,

- ❖ Other consultation-related needs such as dispute resolution processes.

In some instances, First Nation, Métis or Inuit groups may seek financial assistance to support their participation in the consultation process. Officials should first determine if there are other means available to support Aboriginal capacity to participate in the consultation process, for example, whether other partners are able to contribute to capacity funding or other forms of assistance to Aboriginal groups.

See “Part C, Phase II – Crown Consultation Process” for more details on ways to support meaningful consultation.

3) Training considerations

Training of federal officials is critical to a consistent understanding and implementation of the duty to consult and, where appropriate, accommodate. It should:

- ❖ increase awareness and understanding of what the duty to consult, and accommodate entails;
- ❖ situate the duty to consult and accommodate in the larger context of the relationship between the Crown and Aboriginal peoples, including how the duty relates to other reasons to engage with Aboriginal groups;
- ❖ promote an understanding of the roles and responsibilities of the entities involved in the consultation process such as the Crown, Aboriginal groups and third parties;
- ❖ allow officials to understand how the duty to consult may apply in the context of their departmental or agency mandates and activities and how they can fulfill it;
- ❖ identify the specific implications of developments in case law, consultation policies and practices and the public environment for their departments and agencies and for the Crown as a whole;

- ❖ explain where officials can obtain information and practical tools that will support their consultation and accommodation activities;
- ❖ provide examples of best practices and opportunities for federal officials to share their experiences of implementing the duty to consult and accommodate;
- ❖ promote the development and efficient implementation of mechanisms for interdepartmental and intergovernmental coordination and collaboration; and,
- ❖ provide a basis for the development of common consultation approaches and practices within federal departments and agencies and across government.

Training on consultation and accommodation continues to be offered by the Consultation and Accommodation Unit of AANDC in conjunction with the Department of Justice. Federal officials or their managers seeking more information on training or wishing to register for the training sessions may contact: consultation-sessions@aandc-aadnc.gc.ca

Various departments and agencies have also developed department and agency specific training on consultation and accommodation. For example, the Canadian Environmental Assessment Agency offers training on the integration of Aboriginal consultation into the environmental assessment process.

4) Engaging Justice counsel in the consultation and accommodation process

The Department of Justice is not responsible for conducting consultations or collecting the appropriate factual information regarding potential or established Aboriginal or Treaty rights and potential adverse impacts of an activity. However, the duty to consult is a legal obligation and raises a number of legal issues. Therefore, it is important to work closely with Justice when assessing if and how consultation may need to be incorporated into departmental or agency activities and approaches for identifying and addressing this duty.

In addition there will be situations where departments and agencies will need to engage counsel to assist in reviewing or advising on how best to do the various assessments discussed in Part C of these Guidelines. Justice provides an important advisory role to departments and agencies on the legal aspects of consultation policy choices, especially as it relates to consistency in legal advice across government and as the case law in this area continues to develop.

As departments and agencies become more familiar with the consultation requirements associated with their operations and build Aboriginal consultation and accommodation into their operations through these Guidelines as well as other policies and procedures, the need for legal advice on routine matters may decrease.

Remember:

- ❖ When identifying consultation requirements related to general departmental and agency activities or other factors that may influence consultation requirements, managers should seek their counsel's assistance. By keeping Justice informed at the outset about your approach to consultation and the nature of departmental activities, you may reduce the need for your officials to seek guidance from Justice late in the process or for every consultation process. It is also important to work with them to establish and maintain good record-keeping processes.
- ❖ Developing standard departmental and agency consultation approaches will reduce the need for advice on a case-by-case basis.
- ❖ Make sure that your officials gather all relevant information about their anticipated activities and related assessments as to how these activities may adversely impact potential or established Aboriginal or Treaty rights and related interests. Counsel will be available to review such assessments and provide advice based on the factual information provided.

- ❖ When your officials gather information and do their initial assessment of a situation, make sure they identify the legal issues and questions that may need to be answered. **Not everything is a legal question.** Your department could also benefit from prioritizing questions needing legal clarification on various files and from relevant departments and agencies working on a common consultation file, thereby streamlining requests for legal advice.
- ❖ In most instances, depending on the information gathered and the initial assessment made, departmental officials will be able to determine whether a duty is triggered and consultation is required. Identifying, in advance, which departmental activities may trigger a duty to consult will help officials more efficiently make case-specific initial assessments. As this question is a question of law, it will be assessed on a standard of correctness should this assessment be reviewed by a court.
- ❖ The information gathered by your officials from relevant sources such as others in the federal government, provincial and territorial governments, affected Aboriginal groups will allow them to 1) identify if their activities may adversely impact any potential or established Aboriginal or Treaty rights; 2) assess the severity of the potential adverse impact and the nature and/or strength of claims; 3) determine the appropriate approach and scope of consultation required; and 4) develop a reasonable approach to consultation. Counsel could assist in ensuring that a statement of a government's intentions and planned undertakings is reasonable and appropriate from a legal perspective.
- ❖ Officials will need to seek counsel's advice to answer specific legal questions such as how to address title and exclusive use claims, treaty interpretation, sufficiency of Crown responsiveness, gaps in regulatory or environmental assessment processes, linkages to litigation or negotiations files and other novel legal questions.
- ❖ Departments need to do a preliminary assessment of a claim and determine whether groups in the area have raised any concerns regarding the activity or notified the Crown that any activities in a given territory require consultation. Justice can assist in the determination of whether that Crown or third party activity requires consultation and assist in addressing new or novel claims that raise new legal or policy issues that may arise with new kinds of proposed activities or in the course of consultation processes.
- ❖ Assess whether a more detailed strength of claim analysis from Justice or other appropriate experts or other key legal analysis are warranted in the circumstances and plan accordingly (baseline information to provide to Justice, delay to obtain analysis, costs, etc.).
- ❖ Justice does not make decisions on how departments and agencies should carry out their mandates and activities. Legal advice will complement the broader departmental or agency assessments and decision-making processes which will include good governance and other policy considerations.
- ❖ Departments and agencies should keep their counsel informed of their adverse impact assessments for their various activities. As well, departments and agencies can seek Justice advice on their consultation approaches and plans, consultation records, consultation adequacy assessments and accommodation measures that are being considered.
- ❖ Where appropriate, discuss document disclosure and the creation and maintenance of a record of the consultation with your counsel.
- ❖ Where appropriate, seek counsel's advice when assessing the implementation of an activity and determining whether adjustments are required.

PART C

Step-by-step Guide to Consultation and Accommodation

INTRODUCTION

Part C provides a step-by-step, chronological guide for federal officials when fulfilling the Crown's duty to consult and, where appropriate, accommodate. The same basic steps are appropriate for consultation for good governance and other policy reasons.

Crown activities that may trigger the duty vary and therefore the consultation and accommodation approach taken may vary as well. The steps, tips and factors outlined below will apply to a wide variety of government conduct. Such conduct may involve, for example, management of federal real property (e.g. the disposal of a federal building or a change in the use of federal lands). It may also involve government approvals and authorizations for an activity proposed by a third party (e.g., issuance of licenses, permits, authorizations for the use of lands or resource extraction).

Officials can use this step-by-step guide when developing and implementing their overall departmental or agency approach to consultation and accommodation (See Part B).

Depending on the circumstances, a process for consultation and accommodation with Aboriginal groups may involve up to four phases. The following sections will discuss each phase and provide guidance on the steps to consider in each one. Where there is more than one federal department or agency or other government(s) involved, the steps should be carried out collaboratively.

The positive relationships that departments and agencies develop with Aboriginal groups over time and the resulting dialogue will assist the federal government to implement the following phases.

PHASE 1: PRE-CONSULTATION ANALYSIS AND PLANNING

The departmental or agency approach to consultation and accommodation (See Part B) will be useful in this phase. As early as possible, officials need to assemble information to assess whether the Crown has a duty to consult, the scope of that duty, and how to design a consultation process. Officials will first need to assess the potential adverse impacts of the proposed Crown conduct and then determine if there are any potential or established Aboriginal or Treaty rights in the area of the activity that may be adversely affected.

Step 1: Describe and “map out” the proposed Crown conduct

The first step involves describing the contemplated Crown conduct such as a Crown activity or an approval of a third party activity and determining which department or agency is responsible for the conduct. In their departmental or agency consultation and accommodation policy approaches or assessments, departments and agencies should have already identified activities, policies, programs or strategic, higher level decisions that may give rise to a duty to consult (See Part B).

Departments and agencies should identify other federal departments and agencies and other orders of government that may be involved in the activity, including the decisions they are responsible for making and any regulatory, statutory and other program timelines that may apply. Where multiple departments and agencies are involved, a lead department must be identified and the contact information communicated to the relevant departments and agencies and to Justice.

Some questions to consider at this step include:

- ❖ What is the nature of the proposed Crown conduct? For example a) Crown activity such as the construction of a building, the creation of a park, the disposal of Crown land; b) Crown authorization of a third party project, issuance of a permit; c) other Crown activity that enables the project to proceed such as funding; d) strategic higher level decisions such as structural or organizational changes that reduce the Crown’s oversight and decision-making ability.

- ❖ What is the purpose of the initiative?
- ❖ What are the details of the project? What is the project’s geographic scope? Identify all of its components. Is there more information that is needed to fully understand the project?
- ❖ Where the proponent is a third party, has it provided a detailed project description?
- ❖ What are the key decisions to be made and related timelines?
- ❖ Are there any maps of the project site and surrounding areas?
- ❖ What other departments and agencies and other orders of government, corporation(s), or authorities are involved? Who is responsible for authorizing the project or carrying it out?
- ❖ Have Aboriginal groups in the area raised concerns about the proposed activity or any other activities (in the past/present)?

Step 2: Identify potential adverse impacts of Crown conduct

Officials must anticipate the potential adverse impacts of the proposed activity. The nature and severity of adverse impacts depends on a variety of factors including: the scope and size of the activity, its environmental effects, and whether the impact is permanent or temporary.

Officials must determine whether the current Crown conduct in question may have an adverse impact on potential or established Aboriginal or Treaty rights. Where departments and agencies are responsible for approving third-party activity, a detailed understanding of the nature and scope of that activity will assist Crown officials to anticipate its potential adverse impacts.

Where adverse impacts are uncertain, it is important to identify those groups whose potential or established Aboriginal or Treaty rights may be impacted. Early engagement with them regarding the proposed activity will enable them to articulate any concerns they may have about the

activity. This provides officials with time to adequately assess potential adverse impacts, and identify measures to avoid or mitigate such impacts (Guiding Principle and Directive # 3).

Questions and issues for consideration include:

- ❖ What is the likely or potential impact of the activity on the land, water and resources? If there are any impacts, what changes to the current condition or use of lands, water or resources are likely to occur as a result of the activity? Are these changes significant?
- ❖ Are departmental or agency officials aware of any communication from groups which are raising concerns about the particular activity or similar activities in the area?
- ❖ Have any groups notified Canada of any concerns about the proposed activity and suggested any remedial measures that may accommodate the adverse impacts on their rights? Discussing accommodation options with the relevant decision-makers as early as possible in the consultation process will allow federal officials to discuss them appropriately with Aboriginal groups later in the process.
- ❖ Does the activity involve lands or resources that are currently the subject of treaty negotiations or are part of existing comprehensive land claim agreements or self-government agreements?
- ❖ Are the potential adverse impacts you've identified likely to be of a temporary or permanent nature?
- ❖ Have any environmental or other assessments of the proposed activity been carried out? Have any environmental or other assessments been undertaken for similar activities in the vicinity of the proposed activity? If so, what adverse impacts on rights are revealed, if any, by these assessments?
- ❖ Are there any other activities occurring in the same area? Is this activity likely to have any cumulative effects in combination with other activities in the same or surrounding area?

In the design or planning stages of contemplated Crown conduct, in the federal environmental assessment process and throughout the consultation process, managers and

officials need to identify measures that could be implemented to avoid or mitigate potential adverse impacts of the project on potential or established Aboriginal or Treaty rights and related interests.

The Courts have emphasized the need for flexibility and responsiveness; for an ability and willingness to adjust the activity in question; to provide options for addressing the interests and concerns raised in the course of consultations; and to do so in good faith. It is also important to be clear and explain the limits to what changes can be made to the proposed activity. In the end, the Crown must demonstrate that it sought to reconcile Aboriginal concerns with other societal interests and that its consultation process was carried out with a view to reconciliation.

Step 3: Identify which Aboriginal groups are in the area of the proposed Crown conduct and ascertain their respective potential or established Aboriginal or Treaty rights and related interests

To assess whether the proposed Crown conduct will have any potential adverse impacts on potential or established Aboriginal or Treaty rights in the area(s), officials must gather information about those specific rights. These may include the right to hunt, fish, trap, gather and trade and may either be established by a court or in a Treaty, or may be asserted by an Aboriginal group, for example, in litigation or for the purpose of Treaty negotiations.

Where Aboriginal rights are asserted, the Crown must make a preliminary assessment as to whether there is a credible basis for such claims and compare their assessment with the information gathered through consultation with Aboriginal groups. In the event that the proposed activity may have adverse impacts on the rights of Aboriginal groups living in the area, learn more about the potential or established Aboriginal or Treaty rights in question such as: what are their traditional practices; when and where were these practices historically carried out; are these practices still carried out today; where, by what means, and at what time of the year?

Departments and agencies are encouraged to obtain and to share, internally and with other federal departments and agencies, information about the potential and established

rights of Aboriginal groups in various regions of the country. The exchange of regional information will help officials to anticipate potential adverse impacts on rights, and plan proposed federal activity in such a way as to avoid or mitigate those impacts.

Information about potential or established Aboriginal or Treaty rights across the country will also help officials to design and tailor their consultation approach and could support broader departmental or agency priorities to establish and maintain long-term working relationships with First Nation, Métis and Inuit groups.

Keep in mind that even if only one department or agency is aware of an asserted right, the federal Crown as a whole (i.e. every department and agency) is deemed to have knowledge of it. The Crown and its officials are also deemed to know about established Aboriginal and Treaty rights.

Managers must ensure officials can obtain relevant information on potential or established Aboriginal or Treaty rights and related interests, which includes having access to the Aboriginal and Treaty Rights Information System and the Consultation Information Service at AANDC.

Aboriginal and Treaty Rights Information System

The Aboriginal and Treaty Rights Information System is an electronic system that will bring together information on the location of Aboriginal communities and information pertaining to their potential or established Aboriginal or Treaty rights. It is a web-based application that leverages Geomatic Information System technology to geo-reference electronic data that is stored in existing AANDC databases.

The purpose of the Aboriginal and Treaty Rights Information System is to display this information using one system and to make it available to federal officials. It will display baseline information on First Nation, Métis and Inuit communities. The Aboriginal and Treaty Rights Information System has the ability to display maps to assist federal officials to locate information on communities, claims, Treaties and litigation. The Aboriginal and Treaty Rights Information System may evolve over time to include information from other federal sources.

Consultation Information Service

The Consultation Information Service of AANDC – which will be responsible for the Aboriginal and Treaty Rights Information System – provides a single point of access for other government departments and external stakeholders, particularly those which do not have access to the Aboriginal and Treaty Rights Information System or require additional AANDC information on potential or established Aboriginal or Treaty rights in Canada.

The Consultation Information Service will provide contact information for Aboriginal groups and their leadership, information on multipartite agreements, historic and modern Treaties and their provisions, comprehensive and specific claims, litigation and other assertions. Queries regarding specific projects can be sent to: CAU-UCA@aandc-aadnc.gc.ca. Officials will first seek information through the Aboriginal and Treaty Rights Information System before sending queries for additional information to the Consultation Information Service.

Other sources of information include:

- ❖ departmental and agency records on Aboriginal claims asserted in litigation, in negotiations, or through prior consultation or other transactions with the department;
- ❖ the AANDC Regional Consultation Coordinators should be contacted to assist in the coordination of consultation efforts as they may be aware of on-going or contemplated consultation processes;
- ❖ information provided by proponents to departments and agencies and specific boards and tribunals involved in the decision making process;
- ❖ traditional Use Studies, for example, those prepared in the context of Environmental Assessments and in land disposal contexts;
- ❖ colleagues who have worked with or consulted with Aboriginal groups in the area;
- ❖ the databases and records of other government departments and agencies, provinces and territories;
- ❖ the websites and information of Aboriginal groups;



- ❖ records of consultations between federal, provincial or territorial, industry and Aboriginal groups;
- ❖ court websites (federal, provincial and territorial) listing decisions, proceedings on Aboriginal and Treaty rights assertions and interpretation of potential and established rights; and,
- ❖ press coverage and public statements, in which Aboriginal groups have asserted rights, expressed concerns and proposed desired outcomes.

Federal officials must gather all relevant information. Justice can then assist with legal issues that may arise in an assessment of the strength of the claim, overlapping claims, and assertions of rights and title. Justice counsel can also advise on the appropriate consultation approach when the Crown is involved in litigation or negotiations with an Aboriginal group with whom the Crown may also need to consult.

Step 4: Make an initial determination as to whether there is a duty to consult

Next, an initial assessment of the information gathered in Steps 1, 2 and 3 must be undertaken to determine whether or not there is a common law duty to consult. This information will also lay the groundwork for determining, in Step 5, the extent of the duty and, in Step 6, an appropriate consultation process.

Three factors are required to trigger the common law duty to consult:

- (1) There is a proposed Crown conduct;
- (2) The proposed Crown conduct could potentially have an adverse impact on potential or established Aboriginal or Treaty rights; and
- (3) There are potential or established Aboriginal or Treaty rights in the area.

For a duty to consult to exist, all three factors must be present.

CROWN CONDUCT	+	POTENTIAL TO ADVERSELY IMPACT ON RIGHTS	+	EXISTENCE OF POTENTIAL OR ESTABLISHED ABORIGINAL OR TREATY RIGHTS	=	DUTY TO CONSULT
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The threshold to determine if a duty is triggered is low. The objective of the duty is to ascertain if conduct that is being contemplated by the Crown may adversely impact potential or established Aboriginal or Treaty rights before any adverse impacts are caused. To do so will require knowledge of the rights that may be affected by departmental or agency specific activities and a process for discussing any potential concerns early in the planning phases and decision making process.

Departments and agencies can seek Justice's advice when determining whether such a duty exists. For good governance and other policy reasons, your department or agency may decide to consult regardless of whether there is a duty, and this approach should be expressed to the Aboriginal groups being consulted.

(i) No Duty to Consult

The initial analysis indicates that there is no duty to consult. For example:

- ❖ There is no Crown conduct;
- ❖ No adverse impact is anticipated;
- ❖ No credible basis to support a claim;
- ❖ The claim does not include Treaty rights or activities or practices that could meet the test for Aboriginal Rights.

It is important to remember that the threshold to assert a credible claim to Aboriginal rights, informed by the need to maintain the Honour of the Crown, is not high. While the existence of a potential claim is essential, proof that the claim will succeed is not. The courts have consistently stated that the Crown must adopt a generous and purposive approach when assessing whether it has a duty to consult.

The department or agency may want to communicate its determination to the Aboriginal group. If the Aboriginal group brings forward new evidence supporting a claim or if they provide new information on potential adverse impacts, then the Crown must re-examine its determination that there is no duty to consult.

(ii) Uncertainty about the Duty to Consult

Where it is uncertain from the initial analysis whether the proposed Crown conduct is likely to have adverse impacts on potential or established Aboriginal or Treaty rights, the Crown may wish to verify the results of their initial analysis with the Aboriginal group.

Further discussions about the potential adverse impacts of the proposed Crown conduct on their potential or established Aboriginal or Treaty rights and related interests as well as the nature and basis for those rights and interests may assist the Crown when determining whether there is a duty to consult and what role, if any, consultations may play in the planning of the proposed activity.

If it is uncertain whether a duty to consult exists, officials must consider whether there are other legal reasons or policy considerations for consulting.

(iii) A Duty to Consult Exists

If the analysis indicates that the proposed Crown activity may adversely impact potential or established Aboriginal or Treaty rights, the Crown has a duty to consult and, where appropriate, accommodate.

Step 5: Assess the scope of the duty to consult and, where appropriate, accommodate

The scope of the consultation and any appropriate accommodation will be informed by the strength of the claim and the severity of adverse impacts on potential or established Aboriginal or Treaty rights. A number of factors should be considered.

Where rights have been established (e.g. in a Treaty or where a court has found an Aboriginal right), a strength of claim assessment is not usually necessary and a more extensive consultation process is generally required.

Where potential rights are claimed, the scope of consultation will need to be proportionate to the seriousness of the potential adverse impact(s) of the proposed Crown conduct and the strength of the potential Aboriginal right(s) claimed (See Figures 1 and 2 below).

Determine the level of seriousness of the potential adverse impact on the right(s), as depicted in Figure 1 below, keeping in mind that re-assessment may be required as the consultation process proceeds and new information comes to light.

Figure 1

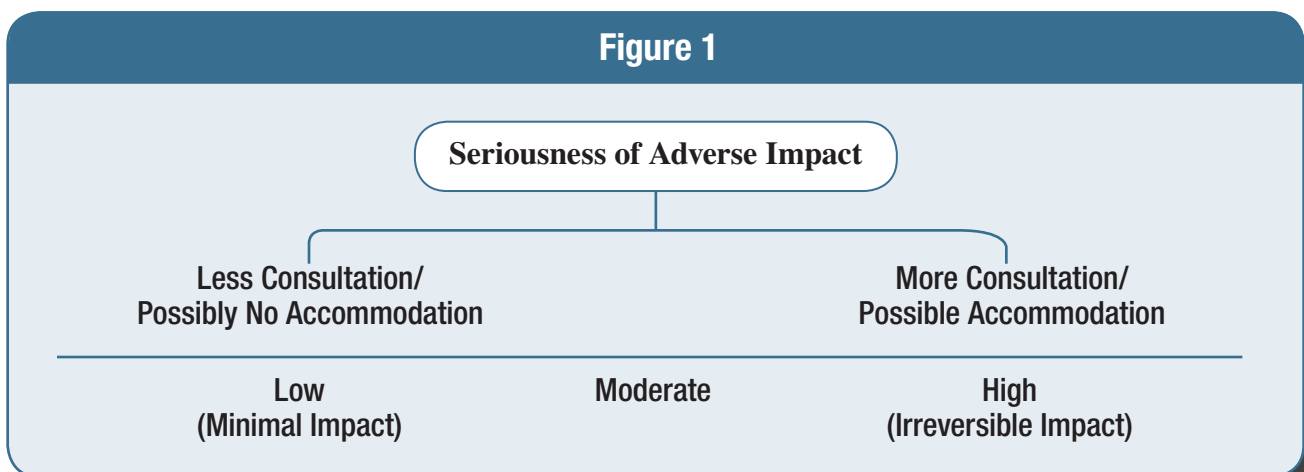
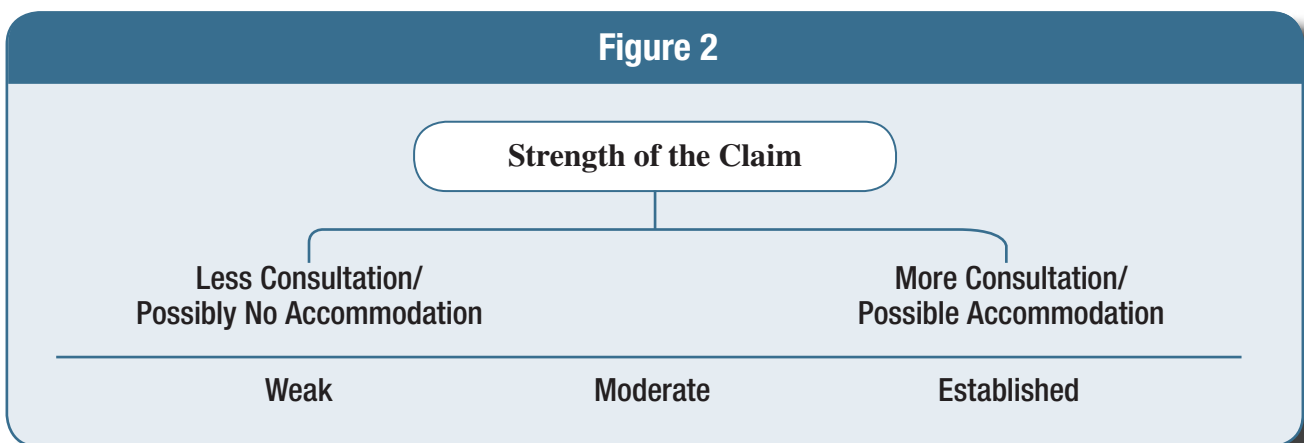


Figure 2



Based on experience, officials should be able to anticipate the potential adverse impacts of the Crown conduct in which their departments and agencies typically engage (See Part B). The nature and seriousness of potential adverse impacts of a proposed activity will become more apparent to officials as information from Aboriginal groups is gathered as part of an on-going relationship and information sharing, or during a consultation process.

Strength of claim assessment is an historical and anthropological analysis of the facts of a particular claim asserted by an Aboriginal group in the area of the proposed activity. In conducting the assessment, federal officials should gather the following information:

- ❖ What are the nature and scope of these asserted rights?
- ❖ Has the Aboriginal group(s) continually occupied the area?
- ❖ Does the group still occupy the area? If the Aboriginal group does not still occupy the area, at what period of time did they occupy it?
- ❖ What were their traditional practices historically and what are their practices today?
- ❖ Is the Aboriginal group alleging that the claimed rights were exercised prior to European contact (or for the Métis, prior to effective control)? Do they continue to exercise these rights today in a traditional or modernized form?

Justice can advise managers and their officials as to when to seek legal advice in the development of strength of claim analysis.

Documents that may alert the Crown to the existence of a claim or contain historical information in support of a claim include: protective writs and other court actions filed by Aboriginal groups; public statements made by Aboriginal groups or their letters to the Crown about their potential or established Aboriginal or Treaty rights; ethno-historical research and reports or similar research submitted by Aboriginal groups for the purposes of a

claims negotiation process; traditional knowledge and use studies prepared by Aboriginal groups for an environmental assessment process; or materials prepared by Aboriginal groups for the purposes of litigation. Confidentiality issues related to the above-noted sources of information may need to be addressed.

Other factors may influence the Crown's decision to consult with an Aboriginal group such as participation of the group in a comprehensive or specific claims negotiation process.

When the Crown is dealing with an Aboriginal group with a modern land claim treaty, the first step is to look at its provisions and try to determine the parties' respective obligations, and whether there is some form of consultation provided for in the treaty itself. It is important to be aware that, while consultation may be shaped by agreement of the parties in a treaty, the Crown cannot contract out of its duty of honourable dealing with Aboriginal people – it is a doctrine that applies independently of the treaty itself.

In some cases the treaty itself will set out the elements the parties regarded as an appropriate level of consultation (where the treaty requires consultation) including proper notice of a matter to be decided in sufficient form and detail to allow that party to prepare its view on the matter; a reasonable period of time in which the party to be consulted, and an opportunity to present such views to the party obliged to consult; and full and fair consideration by the party obliged to consult of any views presented.

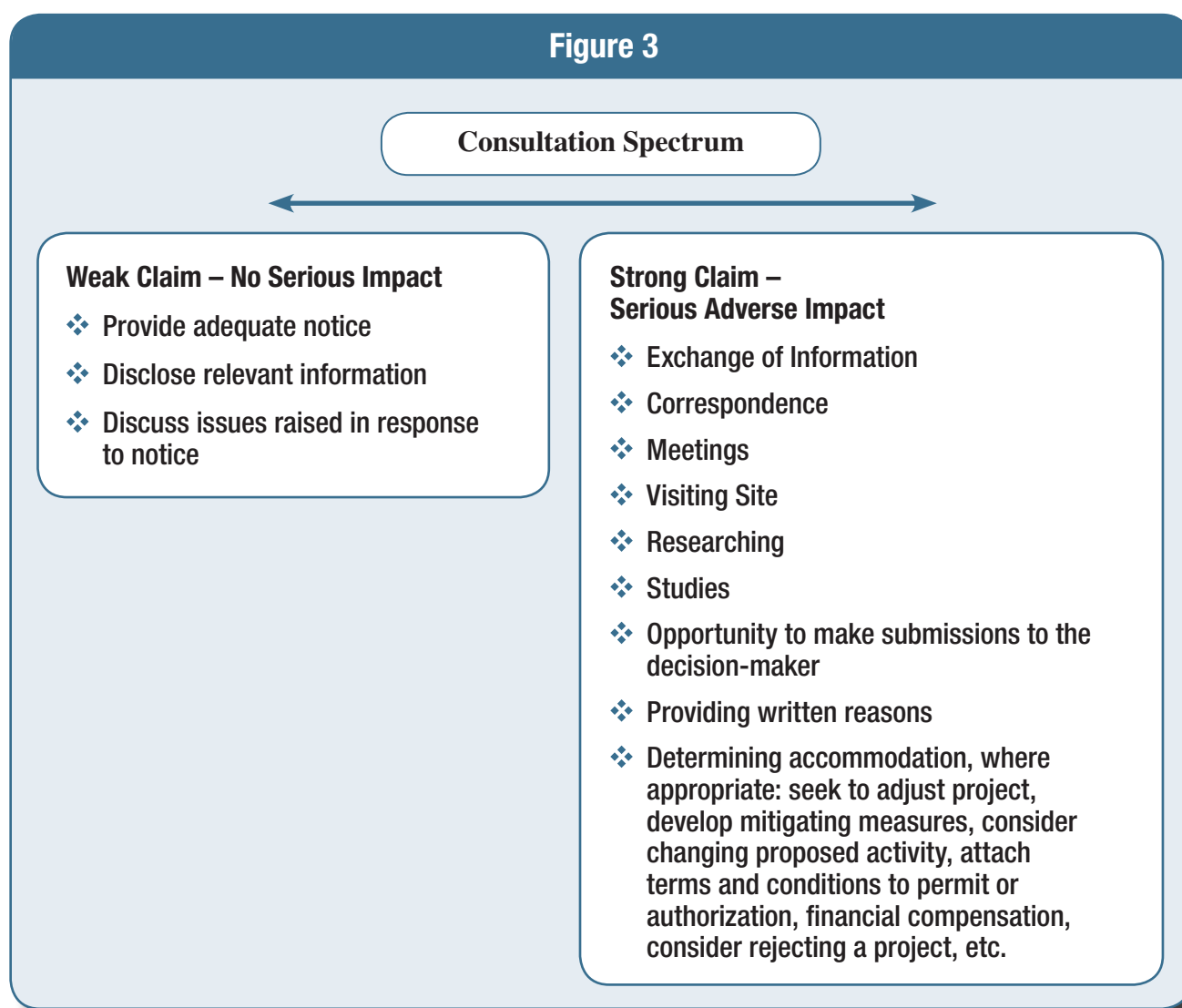
Once it has been established that the Crown has a duty to consult, departments and agencies involved in the activity need to work together to assess the scope of that duty. The initial assessment of the scope of consultation may change as the consultation unfolds and more information comes to light about the potential adverse impacts of the proposed activity on the community's Aboriginal or Treaty rights.

Departments and agencies must ensure that assessments of the scope of the duty are well documented. Managers can support officials to assess the scope of the duty to consult by ensuring they have access to previous assessments of similar activities in the vicinity. However, it is important to remember that Crown consultation, including strength of claim analysis, is not a rights determination process designed to establish the rights of an Aboriginal group.

The design of the consultation process should reflect the assessment and any changes made to it (See Figure 3 below).

Step 6: Design the form and content of the consultation process

The Crown's assessment of the scope of the duty to consult, and where appropriate, accommodate together with departmental and agency approaches to consultation (See Part B) will guide the development of a consultation process. As the consultation process unfolds, and new information becomes available, its form and content may also evolve to reflect resulting changes to the scope of consultation. The consultation process must therefore be flexible. When designing a consultation process, officials should become aware of existing



interactions, processes and dealings between the relevant Aboriginal groups and other federal departments and agencies that may support an effective consultation process.

It is important to establish goals and objectives and develop evaluation questions that will assist federal officials in determining the effectiveness of actions and decisions made at key stages of the process. Further, as officials prepare to implement their activity, they should focus the consultation process on avoiding or minimizing adverse impacts of the Crown conduct on the potential or established Aboriginal or Treaty rights and addressing any related interests, to the greatest extent possible.

Guiding Principle and Directive # 4 sums up the key elements of a meaningful consultation process and reflects what Aboriginal groups across the country have stated during the preparatory discussions (2005-06), the engagement process under Canada's Action Plan (2008-10) and in other forums on consultation and accommodation as follows:

- ❖ A Crown approach that is forthcoming, flexible and responsive;
- ❖ Inclusive processes to manage issues, decision-making and ensure accountability;
- ❖ Early consultation and policy-based discussions with communities on accommodation with the objective of avoiding or minimizing adverse impacts;
- ❖ Pro-active solicitation of Aboriginal involvement and active listening to their concerns;
- ❖ Real opportunities to inform and influence decisions before they are made;
- ❖ Assistance to support Aboriginal groups' meaningful participation in a consultation process;
- ❖ Time lines for information-sharing and responses that are appropriate and adapted to the specific circumstance;
- ❖ Serious consideration of feedback during the consultation process and prior to any decisions being final;
- ❖ Clear and direct responses on how concerns have been addressed or why they cannot be addressed;
- ❖ Better coordination, cooperation and collaboration between Crown and industry with respect to Aboriginal consultations;
- ❖ Consideration of accommodation as part of a meaningful consultation process. When looking at accommodation options, seriously consider Aboriginal perspectives, concerns and options for addressing impacts on potential or established Aboriginal or Treaty rights and related interests;
- ❖ Sustainable economic development balanced by an awareness of cumulative impacts and environmental stewardship;
- ❖ Openness to altering the original proposal and if necessary, not going forward at all with the project or decision.

Identify roles and responsibilities and opportunities for coordination

Where more than one department or agency is involved in Crown consultations for a proposed activity, officials should determine the contribution that their departments and agencies could make to the consultation and accommodation effort, having regard to their respective mandates. Effective collaboration and coordination mechanisms such as inter-departmental teams and memoranda of understanding will be essential in carrying out consultations. Coordination mechanisms should be reviewed periodically by managers to address challenges and ensure efficiency. As set out in Guiding Principle and Directive # 5, coordination includes the identification of a lead department for consultation.

Federal officials must determine:

- ❖ if other departments and agencies need to be involved, based on their mandates. If more than one federal department or agency is involved, has an inter-departmental team been assembled? For example, have the First Nation or AANDC been contacted when the proposed activity is to be located on a reserve, or could possibly affect a reserve or when the lands are the subject of Treaty settlements or negotiations, Self-Government or Specific Claims?

- ❖ if other Crown entities such as federal Crown corporations and Canadian Port Authorities, and provincial or territorial governments or third parties may be involved. If so, do they have jurisdiction over the land or resources that may be affected by the federal activity in question?
- ❖ if boards and tribunals will be involved in the Aboriginal consultation process and, if so, how? What are their mandates and terms of reference?
- ❖ if the proposed Crown conduct is subject to statutory or non-statutory timelines. In the case of an activity initiated by a third party proponent, inquire about the timelines for the project;
- ❖ a lead for the Crown consultation process. The lead may change as the project shifts from the environmental assessment process to a regulatory permitting phase. When identifying a lead department or agency, consider which department or agency is: undertaking the proposed activity, such as a Crown infrastructure project or real property disposal; responsible for issuing any form of approval for the proposed activity; likely to cause more significant adverse impacts; best positioned to assume the responsibility for leading the consultations and addressing Aboriginal concerns;
- ❖ the contact information for the lead federal department or agency. Has this information been clearly communicated to all parties involved in the consultation?
- ❖ what federal programs and policies might inform or otherwise be relevant to the consultation process or to addressing the concerns of Aboriginal groups (comprehensive claims negotiations, specific claims negotiations, self-government negotiations, treaty land entitlement, additions to reserve, economic development, procurement policies, relevant Treasury Board Guidelines on transfer payments, etc.)?
- ❖ if the proposed activity is contemplated to take place on a reserve, or could have adverse impacts on a reserve. It is important to note that the Crown's obligation to consult applies in these circumstances. However, decisions about activities on reserves may also be subject to various legislation such as the *Indian Act*,

the *First Nations Land Management Act* or the *First Nations Commercial and Industrial Development Act* as well as approval processes. By-laws enacted by First Nations may also apply. Contact the First Nation directly for information on their laws, land codes and administrative procedures. You may contact the AANDC Regional Lands Officer to find out which legislation applies;

- ❖ if a proposed activity that is contemplated to take place on a reserve may have potential adverse impacts on the rights or interests of other communities? If so, they may also need to be consulted;
- ❖ in relation to other Crown activities, what consultation processes within your or in another department or agency are ongoing with the same Aboriginal groups? Is it possible to coordinate your efforts with theirs to avoid consultation fatigue?
- ❖ are there any existing working forums and relationships between the Crown and Aboriginal groups (e.g. committees, Councils, round tables, consultation agreements) that can assist you when you need to undertake consultations?

Reliance on other processes to support decision-making

Officials should find out whether other processes with a consultation component have been or will be carried out by federal, provincial or territorial entities including boards, panels and tribunals or by third parties. Officials can then determine the extent to which the Crown can use information gathered in processes such as environmental assessments, other public review or regulatory processes that include Aboriginal consultation to assist them in fulfilling their duty to consult. If the processes that the Crown is seeking to rely on do not result in meaningful consultation, federal officials will need to undertake additional consultations. Please refer to Guiding Principles and Directives # 6 and # 7.

Communication and coordination throughout the consultation process is important in the early identification of issues and solutions.

Federal officials must determine:

- ❖ if there are any statutes or agreements that require Aboriginal consultation. Consultation requirements under these statutes or agreements must be fulfilled. Identify the degree to which they can assist in fulfilling the Crown's duty to consult and, where appropriate, accommodate;
- ❖ if the third party proponent or the provincial or territorial government plans to consult with potentially affected Aboriginal groups. For example, a provincial or territorial government may consult as part of an environmental assessment process or other public review process;
- ❖ if there are opportunities for the federal department or agency to participate in the third party or provincial or territorial consultation process, or to rely on the information gathered during any of those processes to assist it in fulfilling its duty to consult. Did the process that the Crown is seeking to rely on include all of the elements necessary for a meaningful consultation process? (Refer to Guiding Principle and Consultation Directive # 4);
- ❖ if the proposed activity will be subject to a federal environmental assessment process, a National Energy Board or Canadian Nuclear Safety Commission hearing or a regulatory review process. Seek to incorporate the results of those processes into your departmental or agency consultation;
- ❖ if there are limits to the extent to which the federal department or agency can rely on third party, federal, provincial or territorial processes and the information generated by these processes to meet the duty? If so, what is the nature of those limitations?
- ❖ if, in specific circumstances, it is possible to access the relevant consultation records of third parties (i.e. industry), the provincial or territorial Crown or Boards. Determine the usefulness of these consultation records in assisting the Crown to fulfill its duty to consult.

Federal and provincial or territorial collaboration

Once a lead contact has been established at the provincial or territorial level, develop an approach for collaboration. This discussion may include:

- ❖ agreement on the roles of the federal departments and provincial or territorial ministries during the consultation process (e.g. federal presence at consultation sessions, federal department or agency hosting some sessions and the province or territory hosting others, federal department or agency relying, in whole or in part, on provincial consultation report, inclusion in agreements or other arrangements of measures to address concerns related to the potential adverse impacts, etc.);
- ❖ agreement on how information is going to be shared between federal, provincial or territorial departments and agencies. There may be strategic or policy reasons why information cannot be fully shared between levels of government. Federal officials should not assume that they will be privy to all information gathered during a provincial consultation process;
- ❖ agreement on how to notify Aboriginal groups of the proposed activity. This notification can be joint with the province or territory, separate notification letters or other communication can be sent. The notification must be provided in advance of the consultation so that Aboriginal groups are aware of the process;
- ❖ agreement on timelines.

Aboriginal groups that would be consulted must be notified that Canada intends to rely, in whole or in part, on the provincial or territorial consultation process and on any accommodation measures or agreement that may be reached to fulfill its consultation obligations. Aboriginal group(s) may opt to share different information in a provincial or territorial process than in a federal one. If the provincial process does not include meaningful participation of all Aboriginal groups required to discharge the federal duty to consult, it may be necessary for a federal department or agency to expand upon the provincial process.

Taking into account the information gathered through other processes, federal officials must determine what else needs to be included in the design of the Crown consultation process. What type of information is still needed? What issues may still need to be discussed with Aboriginal groups? Taking into account any expertise required to address outstanding issues, are there other departments and agencies that need to participate in this consultation?

Determine with whom to consult

The Crown must consult directly with the Aboriginal communities with potential or established Aboriginal or Treaty rights. It is important to remember that political organizations are not necessarily the rights holders although they may be authorized to speak on behalf of the Aboriginal communities which hold the rights.

Prior to consulting with any representative organization of affected rights holders, the Crown needs to ensure that the leadership and their members agree. For example, the representative organization can provide the department or agency with a letter confirming the community's acceptance to be represented by them in relation to the activity. The role of such organizations is generally to provide informational, organizational, administrative and political support to the Aboriginal communities they represent. If it is difficult to ascertain who are the appropriate spokespersons for the rights holders, or if there appears to be differences of opinion within the groups as to who represents or speaks on behalf of the communities, seek legal advice.

Verify if there are any Aboriginal groups with overlapping claims in the area of the proposed activity. If so, you may need to invite them to participate in the consultation process.

Determine if the project is going to be carried out on, or may have effects on a reserve. If so, consult with the relevant First Nation. If the activity may have impacts off the reserve in question, for example, on the rights of any other Aboriginal groups located in the area, consultation may also need to take place with these groups.

Learn about and understand the context and current situation of the Aboriginal groups with which you will be consulting (e.g. language, geography, cultural practices,

seasonal activities, interactions with departmental and agency officials). For example:

- ❖ What are the characteristics of the community (e.g. language, history, culture, socio-economic conditions, location or remoteness)?
- ❖ What is important to community leadership and community members (e.g. interests, aspirations, consultation policies or guidelines they may have developed, etiquette as to how to approach meetings and relationship building, etc.)?
- ❖ What are their relationships with neighbouring communities?
- ❖ Have memoranda of understanding, agreements or protocols been negotiated between the Crown and the communities?
- ❖ Are they currently involved in litigation with the federal or provincial Crown?
- ❖ Are there any other considerations?

For the purpose of developing appropriate consultations, a strong knowledge of community and regional issues can assist federal officials in accurately assessing the impacts of the proposed activity on individual communities and their traditional territories and their claims.

Knowledge of the Aboriginal groups with which you will be consulting is important, as is early engagement with them regarding the proposed activity, so that they have an opportunity to outline how their potential or established Aboriginal or Treaty rights and any related interests may be adversely affected by the proposed activity.

Questions and issues for consideration include:

- ❖ Which Aboriginal communities might be affected by the activity?
- ❖ What is known about the Aboriginal communities which live in the area and assert or hold Aboriginal or Treaty rights?
- ❖ What knowledge does the Crown have about the potential or established rights of the Aboriginal groups?

- ❖ What are the current and past uses by Aboriginal groups of the land, water or other natural resources potentially affected by the proposed activity? Are there traditional use studies for this area that have been shared, in whole or part, with the Crown?
- ❖ Is there more than one Aboriginal group that is claiming rights to the same area (i.e. overlapping claims)? If so, what rights are claimed for which areas and by which Aboriginal groups? Is any Aboriginal group claiming title (e.g. exclusive occupation and rights to the land, water or other natural resources in the location and area of the activity)?
- ❖ Is the Aboriginal group in Self-Government, Treaty or Specific Claims negotiations? Inform yourself about the history, nature and status of those negotiations;
- ❖ Have the Aboriginal rights been declared by a court? Have Treaty rights been negotiated in an historic Treaty or a comprehensive land claim agreement? Has the Aboriginal group concluded a self-government agreement?
- ❖ What are the potential adverse impacts of the proposed activity on potential or established Aboriginal or Treaty rights such as hunting, fishing, trapping, gathering and trade, and on related interests? For example, will there be any impacts on wildlife or habitat, water quality or temperature, restricted access to lands or water ways, disruption of traditional techniques or timing of harvesting activities?
- ❖ What is the potential adverse impact of the proposed activity on Aboriginal archaeological sites, burial grounds, or other areas of Aboriginal interest?
- ❖ Are there any reserves in the area? Does the activity overlap or have an adverse impact on reserve lands?
- ❖ Where possible adapt the content and the process to respect the circumstances of the Aboriginal group. Identify potential challenges to the Crown consultation process in this regard.
- ❖ Many First Nation, Métis or Inuit groups have developed consultation policies, guidelines or protocols and request that the Crown adhere to them. Officials must follow the Updated Guidelines and their departmental or agency approaches. However, understanding the policies, guidelines or protocols of the Aboriginal group may become the starting point for a discussion on an effective and meaningful consultation process.
- ❖ Establish reasonable timelines for consultation activities. Meaningful consultation may require more time than anticipated; ensure that your plan is flexible.
- ❖ Design the consultation process to begin as early as possible. Take into account existing federal, provincial or territorial processes such as environmental assessments or regulatory reviews.
- ❖ Consider board and tribunal hearings that are involved in the decision-making and that the Crown may rely on to fulfill its duty. In some circumstances, the Crown could be required to demonstrate adequate consultation efforts to boards or tribunals. Early consultation enables parties to: determine whether changes to Crown conduct and other appropriate accommodation measures are needed; explore what these changes could be; and provide sufficient time to make appropriate changes (Guiding Principles and Directives # 2 and # 3).
- ❖ The duty to consult does not require the Crown and the Aboriginal communities to agree on how to resolve the issues raised during the consultation process. Nevertheless, there may be benefit in considering various means to overcome disagreements, such as dispute resolution mechanisms, to minimize conflicts, as they arise, and provide alternatives to litigation in the course of consultation or during the implementation of accommodation measures.
- ❖ In the context of established Aboriginal and Treaty rights, given the strength of those rights, federal departments and agencies must work closely with Aboriginal groups to seek ways to avoid adverse impacts on those rights. Federal officials should do the same when there is a severe adverse impact.

Design effective consultation processes

When designing a consultation process, consider the following:

- ❖ Consider involving Aboriginal groups in the design of effective consultation processes. For example, agreeing on meeting objectives, in advance, can help all parties to focus their efforts and develop effective working relations.

Anticipating requests for support

As noted earlier, in some instances, Aboriginal groups may seek support (financial or otherwise) to participate in the consultation process. As a general rule, the courts have indicated that consultation must be meaningful and that the process must be reasonable. Courts look favourably upon government providing assistance, where needed, to support Aboriginal participation in the consultation process.

Support can take many forms, including in-kind assistance that could be provided by the Crown (federal, provincial or territorial) or, in many instances, by the proponent. This could include proponent or other expert technical expertise and information; assuming the costs of translation and interpretation; document production; travel; providing Aboriginal groups with access to government technical expertise or other relevant contextual data about the resource sectors and related statutes; organizing meetings; and modifying timelines that will assist Aboriginal groups to assess the potential adverse impacts on their rights.

If financial support is requested, departments and agencies must assess whether financial support should be provided and the extent of that support. Where a department or agency seeks to transfer funds to Aboriginal groups, it must ensure it has the appropriate departmental program and financial authorities in place. Officials should identify departmental authorities or potential programs or initiatives that may assist in providing capacity to Aboriginal groups, where appropriate. Financial support may also come from the participant funding programs of the Canadian Environmental Assessment Agency, National Energy Board or Canadian Nuclear Safety Commission.

The following provides a list of capacity areas for which financial support has been provided to Aboriginal groups in the context of consultation and accommodation processes:

- ❖ information-sharing and awareness-raising;
- ❖ participation at meetings including honorarium for elders and others;

- ❖ travel costs;
- ❖ preparation of scientific, technical and legal reviews to provide advice in relation to the consultation;
- ❖ analysis and reporting related to the consultation and accommodation activities and to potential impacts on potential or established Aboriginal or Treaty rights and related interests;
- ❖ training;
- ❖ professional fees (for example, for facilitation, writing of documents, translation and interpretation);
- ❖ communications and printing;
- ❖ research and development;
- ❖ land use, traditional knowledge and use or targeted resource planning, management and implementation;
- ❖ administrative fees.

Officials must:

- ❖ monitor transfers of funding for consultation purposes and reporting, as directed by legislation and Treasury Board Secretariat policies, directives, guidelines and practices;
- ❖ seek opportunities, through protocols or memorandum of understanding with other federal departments and agencies, provincial and territorial governments and industry, to share capacity requirements for consultation. Open dialogue and transparency can enhance efficiencies and reduce costs for all involved in a consultation process;
- ❖ seek opportunities, where appropriate, to foster aggregations among Aboriginal groups (if they do not already exist) to enhance efficiencies and reduce costs through collective efforts. However, caution should be exercised not to impose aggregations as a cost and time saving measure at the risk of alienating the concerned Aboriginal groups.

Step 7: Ensure that a records management and filing system is in place

Federal departments and agencies should approach Aboriginal consultation with the awareness that they may be required to (1) access their own or other Crown records during the consultation process and (2) demonstrate the completeness and integrity of the process at a later date. To this end, federal departments and agencies that do not have a record management system for Aboriginal-Crown consultations should develop and maintain a consistent approach and format to record keeping for each step in the consultation and accommodation process.

An efficient record keeping system should ensure that the information is accessible, searchable, retrievable and reliable. It should also enable the sharing of documents between federal departments and agencies, and take into account security classification levels and privacy issues. Where multiple departments and agencies are involved in a consultation process, a centralized record keeping system is essential to maintain a complete record of consultations. For example, the Major Projects Management Office and the Canadian Environmental Assessment Agency have created a centralized Crown consultation records management system for federal departments and agencies working on Aboriginal-Crown consultations on major resource projects.

Examples of information that qualifies as a Crown record may include:

- ❖ background/technical information about the proposed project;
- ❖ any relevant information about the Aboriginal group(s) which might be affected by the proposed activity;
- ❖ a consultation plan;
- ❖ correspondence and meeting notes between federal departments and agencies and the Aboriginal group(s) in relation to the proposed activity;
- ❖ correspondence detailing each contact made with Aboriginal group(s) in relation to the proposed activity (e.g. letters, phone calls);
- ❖ letters of opinion from Aboriginal groups related to the proposed project or Crown conduct;
- ❖ an adverse impact assessment of the proposed activity;
- ❖ a strength of claim analysis on asserted Aboriginal rights;
- ❖ legal advice sought at any point during the consultation process;
- ❖ notices of consultation sessions or funding issuance (e.g. participant funding program);
- ❖ issues management tracking table.

A consultation record typically includes:

- ❖ date and time of correspondence or meeting;
- ❖ where the meeting took place and who attended;
- ❖ information shared with Aboriginal group(s) regarding the proposed activity and related consultation process;
- ❖ feedback received from Aboriginal groups;
- ❖ departmental or agency responses to the concerns and information requests made by Aboriginal group(s) related to the consultation process;
- ❖ rationale for key decisions taken in relation to the activity.

All correspondence with the Aboriginal groups (e.g. letters, e-mail messages, notes on telephone calls, notes from each meeting with the Aboriginal group) should be recorded and filed in their records management system.

It is also recommended practice for federal officials to indicate who created the record and who performed the activity recorded.

PHASE 2: CROWN CONSULTATION PROCESS

Officials will need to implement their consultation plan and corresponding process and adjust it as may be appropriate. The departmental or agency approach and the work done during the “Pre-Consultation Analysis and Planning” phase will help officials to anticipate and address issues and carry out a meaningful consultation process.

Step 1: Implement the consultation process

- ❖ Notify the Aboriginal group(s) of the proposed activity, provide a government contact for any questions or concerns, and, where appropriate, offer to meet to discuss the proposed activity and any concerns they may have about it;
- ❖ In a timely manner, provide Aboriginal groups with clear and relevant information relating to the proposed activity and any adverse impacts that may be anticipated, to enable them to provide meaningful feedback;
- ❖ To ensure that Aboriginal groups are adequately notified and able to meet timelines, federal departments and agencies should send information to them by a variety of means including registered mail, email and fax. Using registered mail ensures that recipients have an original copy on file; however, this method of correspondence can be slow. E-mails and faxes ensure timely receipt of documents. Follow-up phone calls are recommended. Timely communication facilitates an open and respectful dialogue between the Aboriginal community and the Crown;
- ❖ Confirm who is authorized to represent Aboriginal group(s) in relation to their Aboriginal or Treaty Rights and related interests;
- ❖ Identify and determine the nature of any overlapping claims that may exist in the area of the activity;
- ❖ Provide the Aboriginal group(s) with enough time to assess any adverse impacts of the proposed activity on their rights and to prepare their views on the matter. Officials should follow-up to discuss concerns, as necessary;
- ❖ Ensure that the Crown responds in a coordinated and timely fashion to communication received from Aboriginal groups. To facilitate these efforts, managers may wish to establish service standards or letter templates;
- ❖ Consider the concerns of Aboriginal groups, and respond in a meaningful way by ensuring that the Crown's responses consider and address Aboriginal representations, questions and concerns;
- ❖ Throughout the consultation process, consider ways and means to avoid or mitigate potential adverse impacts of the activity on potential or established Aboriginal or Treaty rights and related interests;
- ❖ Depending on the nature of the concerns, ensure that the third party proponent is involved in the discussion of measures to prevent or reduce any potential adverse impacts of the project. A proponent is typically in the best position to alter the project to avoid or mitigate adverse impacts (e.g., placement of docks, routing of pipelines, alignment of roads, etc.);
- ❖ Review periodically, throughout the consultation process, the extent to which environmental assessments or regulatory processes, as they are implemented, can be relied upon and how the information generated in those processes can be used to fulfill the Crown's duty in whole or in part;
- ❖ Review periodically whether the Crown has demonstrated to the board or tribunal, where appropriate, that adequate consultation has occurred;
- ❖ Ensure that throughout the consultation process, all relevant information is shared with government departments and agencies involved in the consultation. To achieve effectiveness, managers are encouraged to periodically review coordination and information sharing practices;
- ❖ Follow agreed upon dispute resolution mechanisms to resolve conflicts as they arise, and to avoid litigation related to the consultation and accommodation process.

Step 2: Document, catalogue and store all Crown consultation meeting records and other correspondence

Good practices to consider in relation to record keeping include:

- ❖ update records regularly;
- ❖ provide the same level of information detail consistently and as needed to relevant departments and agencies involved in Crown consultations;
- ❖ share information in a timely way with departments and agencies;
- ❖ ensure that the records are filed according to a set standard in a records management system that is accessible by all departments and agencies involved in the consultation process;
- ❖ ensure that all records are easily accessible and filed using an appropriate security classification; and,
- ❖ preserve corporate memory of a consultation file.

Step 3: Develop and maintain an issues management tracking table

An issues management table should be created and should include a summary of:

- ❖ Aboriginal concerns about potential adverse impacts of an activity on potential or established Aboriginal or Treaty rights, as conveyed to government decision makers;

- ❖ Crown's efforts to address concerns raised by Aboriginal groups about potential adverse impacts of the activity on potential or established Aboriginal or Treaty rights;
- ❖ any communication sent to Aboriginal groups informing them of steps taken to address their concerns;
- ❖ any outstanding issues remaining between the Crown and Aboriginal groups with information about why these issues have not been resolved and some of the challenges encountered in relation to these issues. If the intention is to address these issues at a later date, provide a rationale for the timing and a plan for implementation and follow-up.

Step 4: Adjust the consultation and accommodation process, as necessary

The consultation process should be responsive and flexible. Officials need to adjust the process as new information about the strength of claim or the severity of adverse impacts comes to light, or if a new Aboriginal group, with a credible claim, alleges that their potential or established Aboriginal or Treaty rights may be impacted by the project. If the processes being relied on by the Crown will not allow it to fulfill its consultation obligations, additional steps must be taken.

PHASE 3: ACCOMMODATION

The courts have said that consultation would be meaningless if, from the outset, it excluded any consideration of the potential need to accommodate the concerns raised by Aboriginal groups. Consultation may reveal a need to accommodate. Accommodation may take many forms.

The primary goal of accommodation is to avoid, eliminate, or minimize the adverse impacts on potential or established Aboriginal or Treaty rights, and when this is not possible, to compensate the Aboriginal community for those adverse impacts. In some circumstances, appropriate accommodation may be a decision not to proceed with the proposed activity. The Crown may be able to rely on what the industry proponent does in terms of accommodation, to fulfill, in whole or in part, the Crown's duty to consult, and where appropriate, accommodate.

The examples included below are not an exhaustive list but present a range of accommodation options. Making changes to the project design early in the planning stages of the project can help avoid or eliminate adverse impacts.

When such impacts are unavoidable or cannot be eliminated, the focus of accommodation must turn to mitigating those impacts. Sometimes this may be accomplished by making changes to the activity. The proponent is often in the best position to modify the project to avoid, eliminate or minimize the adverse impacts.

In its regulatory role, the Crown may also place terms or conditions on any permits, licences or authorizations to avoid or minimize adverse impacts. It can also enter into agreements with the proponent pursuant to which the proponent undertakes to carry out measures designed to reduce the adverse impacts.

Where it is not possible to avoid, eliminate, or substantially reduce adverse impacts, it may be appropriate to compensate the Aboriginal group for any adverse impacts on their potential or established Aboriginal or Treaty rights. Compensation could take a variety of forms including habitat replacement; providing skills, training

or employment opportunities for members of the Aboriginal group; land exchanges; impact-benefit agreements; or cash compensation.

Where accommodation is appropriate, departments and agencies should work with the Aboriginal group to identify solutions that balance the interests of the Aboriginal group with the societal interests of all Canadians. While there is no obligation on the Crown and Aboriginal group to agree on what is appropriate accommodation (i.e. Aboriginal groups do not have a veto), all parties must make reasonable efforts to find solutions that will accommodate the adverse impacts of the project on potential or established Aboriginal or Treaty rights.

Where accommodation measures proposed by the proponent or other parties are acceptable to the Aboriginal group, the federal Crown will need to determine if it is appropriate to rely on these measures in the fulfilment of its duty to consult (Guiding Principle and Directive # 7). In relying on accommodation measures proposed by a proponent or other parties, the Crown needs to be satisfied that these measures appropriately accommodate the Aboriginal group for the adverse impacts on their Aboriginal and Treaty rights.

When considering appropriate accommodation options, departments and agencies need to:

- ❖ work collaboratively to understand how the mandates of participating federal departments and agencies can be used to assist the Crown to accommodate the adverse impacts on potential or established Aboriginal or Treaty rights (Guiding Principle and Directive # 5);
- ❖ determine whether it is appropriate to involve other departments and agencies or other orders of government when any proposed accommodation measures fall outside your department's or agency's mandate. The mandates of federal departments and agencies should not limit the options for accommodation available to Aboriginal groups;
- ❖ understand and be aware of how the approval and decision-making processes within each department or agency may serve as a vehicle for accommodation; and,

- ❖ assess the extent to which the mitigation measures proposed through environmental assessment, regulatory or other consultation processes may serve as accommodation.

The following section outlines four steps for identifying appropriate accommodation measures during and following the consultation process. This section will be informed by future policy direction and practical experience in dealing with accommodation.

Step 1: Gather and analyze information supporting the basis for accommodation

The following factors are relevant when federal departments and agencies consider whether accommodation is appropriate in the circumstances. This information will be gathered during the “Pre-consultation Analysis and Planning” and the ‘Crown Consultation Process’ phases of the process (See Phases 1 and 2). Some of this information will be contained in the issues management tracking table.

- ❖ What potential or established Aboriginal or Treaty rights stand to be adversely impacted by the project?
- ❖ In the case of potential Aboriginal rights, what is the strength of the claim?
- ❖ What is the degree and severity of the adverse impacts on the potential or established Aboriginal or Treaty rights and related interests?
- ❖ the extent to which any proposed accommodation measures may reduce the adverse impacts of the proposed activity on potential or established Aboriginal or Treaty rights;
- ❖ whether the adverse impacts of the proposed activity on potential or established Aboriginal or Treaty rights can be eliminated or reduced, and if not, whether some sort of compensation may be appropriate;
- ❖ the cost to the Crown of each possible accommodation measure and the existing sources of funds (e.g. Treasury Board submissions, existing authorities, shared cost with other federal departments and agencies, other levels of government or industry);
- ❖ whether there are consultation protocols with Aboriginal groups that serve as a basis to discuss, and where appropriate, to implement accommodation measures;
- ❖ whether there are any existing or new financial authorities that are necessary to implement accommodation measures?
- ❖ whether the mandates of federal departments and agencies enable them to proceed with selected accommodation options?
- ❖ what other departments and agencies can offer in terms of accommodation, having regard to their mandates, financial authorities and legislation. For example, Human Resources and Social Development Canada – job training; Public Works Government Services Canada – sale or purchase of lands; Parks Canada – commemoration of Aboriginal sacred sites; such measures may meet the concerns and interests without requiring new resources.

Step 2: Identify possible accommodation measures and options

After determining that accommodation is appropriate in the circumstances, the next step is to assess the range of possible accommodation measures and discuss these measures with Aboriginal groups. In identifying possible accommodation measures, officials may take into account:

- ❖ options identified by Aboriginal groups or the proponents to eliminate or reduce the adverse impacts of the proposed project (e.g. changes to the design or approach to the project);

This assessment allows the Crown to identify accommodation options for discussion with rights holders. It is essential that federal departments and agencies have the appropriate internal approvals in place. It is also important that proposed accommodation measures are approved by senior management with decision-making and financial authority. Federal officials must ensure that internal approvals are obtained prior to presenting accommodation options to Aboriginal groups.

The mandates and processes of boards, tribunals or commissions and other regulatory, statutory or contractual processes that may be relied on by the Crown may not be sufficient to address certain accommodation measures or options. Therefore, the Crown may need to supplement these processes.

A clear distinction is required between accommodation of potential or established Aboriginal or Treaty Rights by avoiding or mitigating any adverse impacts on those rights and other socio-economic measures that are offered to address the Aboriginal communities' interests in relation to the activity. These latter activities are business initiatives that are linked to the project or other corporate or governmental programs that support communities. They do not always serve as accommodation measures necessary for the Crown to fulfill its duty.

Step 3: Select appropriate accommodation options

Informed by its discussions with Aboriginal groups during the consultation process, the Crown must select appropriate accommodation option(s). Generally, the most appropriate measure(s) are those which are most effective in eliminating or reducing adverse impacts on potential or established Aboriginal or Treaty rights while taking into account broader societal interests.

The duty to consult does not include an obligation on the Crown to agree with Aboriginal groups on how the concerns raised during consultations will be resolved.

Selecting accommodation measures requires cooperation amongst federal departments and agencies and effective inter-departmental mechanisms for collaboration.

Step 4: Communicate and document selected accommodation measures

It is important to document and communicate to all parties, in writing, the accommodation measures. The following factors may assist departments and agencies in communicating accommodation decisions:

- ❖ A description of the steps in the consultation process that led to the accommodation decision;
- ❖ Evidence that the selected options are supported by information provided to the Crown during the consultation process;
- ❖ Evidence that the consultation process was meaningful and reasonable and that the Crown acted in good faith;
- ❖ The reasons for selecting the chosen accommodation measure(s);
- ❖ How Aboriginal concerns and suggestions for accommodation measures were addressed or the reasons why the accommodation options suggested by Aboriginal groups were not selected;
- ❖ Roles and responsibilities of all parties involved in implementing the accommodation measures (e.g. Crown, rights holders, third parties); and,
- ❖ How to communicate the selected accommodation measures to all parties. Such communication should be coordinated if more than one federal department or agency or the provincial or territorial government is involved in the consultation process. In the issues management tracking table, the federal lead department or agency should maintain a list of the various accommodation measures proposed by all participants in the consultation process.

PHASE 4: IMPLEMENTATION, MONITORING AND FOLLOW-UP

In this Phase, departments and agencies will implement the Crown's decision and accommodation measures. This typically involves taking steps to put the accommodation measures in place and carrying out monitoring or other follow-up activities. Officials should verify whether the accommodation measures are in place and advise whether they are effective in eliminating or mitigating the adverse impacts of the activity on potential or established Aboriginal or Treaty rights and related interests.

Step 1: Communicate and implement the decision(s)

In some circumstances, departments and agencies will find it helpful to develop, in collaboration with the Aboriginal groups and other parties, if appropriate, an implementation plan that sets out the steps necessary to put the accommodation measures in place, and to guide and track the Crown's monitoring and follow-up activities. Departments and agencies can look to their departmental or agency approaches to consultation (See Part B) and the issues management tracking table for guidance in the development of an implementation plan.

Step 2: Monitor and follow-up

Departments and agencies need to coordinate their roles in carrying out monitoring or other follow-up activities. A coordinated effort will help them assess whether accommodation measures are effective in eliminating or mitigating the adverse impacts of the project.

If monitoring and follow-up activities reveal that some accommodation measures are ineffective in mitigating the adverse impacts, the Crown needs to work collaboratively with Aboriginal groups, the proponent and other parties to find appropriate accommodation measures, and monitor the effectiveness of the new measures. The Crown discharges its duty to consult, and, where appropriate, accommodate, and strengthens its working relationship with Aboriginal groups when it puts in place effective accommodation measures. (Refer to Guiding Principle and Directive # 8).

This could be facilitated by an implementation plan to guide and track the Crown's monitoring and follow-up activities. The plan may include:

- ❖ designation of a federal lead for the reporting and issues management tracking process, and for on-going communication with Aboriginal groups and proponent, as necessary. Where more than one department or agency is involved, the lead is responsible for ensuring that appropriate action is taken;
- ❖ requirements and measures that ensure that adverse impacts on rights continue to be addressed during the life cycle of the activity; and
- ❖ existing or newly developed tracking and reporting processes for each of the accommodation measures implemented, federal and regulatory activities, management and disposal of Crown land, financial requirements.

Step 3: Evaluate the consultation process

Following the implementation of the selected accommodation measures, departments and agencies should evaluate the results of their consultation and accommodation activities. A Crown consultation record, if well developed and consistently maintained, will facilitate the analysis of whether or not Aboriginal concerns about any adverse impacts on potential or established Aboriginal or Treaty rights and related interests have been adequately addressed.

Evaluating a process as it proceeds enables officials to verify the effectiveness of actions and decisions taken along the way and to correct them in a timely fashion. Therefore, undertaking an evaluation of a consultation and accommodation process at key stages will allow the Crown to ensure that it continues to act in accordance with the goals and objectives or to adjust them as new developments occur or new information becomes available. The Audit and Evaluation Unit Staff of the departments and agencies involved can assist in developing a useful evaluation process that can be shared to improve various aspects of future consultations.

When developing a process for evaluating the consultation and accommodation process, departments and agencies should take into consideration the:

- ❖ design of evaluation criteria at the outset so the goals, objectives and outcomes are clear and can be tracked over a reasonable period of time;
- ❖ advice and guidance from the Audit and Evaluation units of the departments and agencies involved on how to effectively evaluate a consultation and accommodation process; and
- ❖ potential involvement of Aboriginal groups in the development of the evaluation criteria.

Some evaluation questions to be considered:

- ❖ What Crown processes were used? What worked, what didn't?
- ❖ Were all the relevant parties properly identified and appropriately involved?
- ❖ Were roles and responsibilities in the process appropriate and understood?
- ❖ Did the consultation plan and process reflect the respective objectives and interests of the parties?
- ❖ Was the consultation process reasonable, meaningful, flexible and achievable?
- ❖ Did the consultation process reflect the nature, scope and complexity of the intended project, activity or decision?
- ❖ Were all parties clear on process objectives and outcomes?
- ❖ On what proponent activities did the Crown rely? To what extent did they assist in fulfilling the Crown's consultation obligations?
- ❖ Was the consultation process well documented in an official record and is the information generated during the process easily accessible?
- ❖ Were decisions justified and clearly communicated to the appropriate parties?
- ❖ Was legal advice sought appropriately?

The evaluation should also include information about whether or not the Crown acted in a manner consistent with the following standards, principles and relevant legal tests:

1. Has consultation been meaningful? Is the depth of consultation adequate given the circumstances? Has it been carried out in a timely and reasonable manner? Has the Crown been responsive to the concerns raised?
2. Have any concerns raised by Aboriginal groups not been addressed? Have any concerns been overlooked?
3. Is the recorded response to a concern meaningful? Is there any sense of lack of clarity or avoidance in the response? Has the Aboriginal group raised any concerns about the response?
4. Are there accommodation measures that should be implemented now? Can the consultation to date be deemed adequate, even if accommodation has not been undertaken or has been put off to a later stage of the project?
5. In the event of new information, was the scope of the consultations reassessed? Specifically, does the new information affect the strength of the claim or the significance of the adverse impact?

Evaluation questions on the procedural aspects of a consultation process to determine if the Crown has conducted a thorough and reasonable consultation process could include:

1. Has each Aboriginal group's concern been consistently considered and followed-up on?
2. Has each response been communicated to the Aboriginal group(s)?
3. Has the Crown tried to solicit Aboriginal views and concerns?
4. Has there been a good flow of information? Have all Aboriginal groups been appropriately informed through such means as information packages?
5. Have there been face-to-face meetings and, if not, were they necessary? Did groups request such meetings? If so, what was the response?

6. Is there a good correspondence record? For example, copies of correspondence, phone calls and face-to-face meetings?
7. Is there a good consultation record?
8. Was a particular board or tribunal relied on for the consultation process? Was a provincial or territorial process relied on? Was it sufficient to address the Aboriginal groups' concerns?
9. Is a third party proponent involved? Who was it and what was their role?
10. What concerns were raised and how has the third party proponent responded? What was the follow-up and monitoring process used?
11. Were the affected Aboriginal groups able to participate in the consultation and accommodation process? How were issues of capacity addressed? Was it through monetary or non monetary means or both? Were funding authorities in place? Was funding available in the department or agency to support capacity? Is a funding agreement in place? Were other departments and agencies or governments contributing to support capacity? Were final and financial reports provided in relation to transfer payments? Have transfer payments contributed to consultation objectives? Have recommendations been made for future consultations?
12. Did your department or agency lead the consultation? If so, what follow-up and monitoring processes were implemented? If not, was a lead department or agency identified?

Annexes



ANNEX A – DEFINITIONS

Aboriginal group: A community of First Nations, Inuit or Métis people that holds or may hold Aboriginal and Treaty rights under section 35 of the *Constitution Act, 1982*.

Aboriginal rights: Practices, traditions and customs integral to the distinctive culture of the Aboriginal group claiming the right that existed prior to contact with the Europeans (*Van der Peet*). In the context of Métis groups, Aboriginal rights means practices, traditions and customs integral to the distinctive culture of the Métis group that existed prior to effective European control, that is, prior to the time when Europeans effectively established political and legal control in the claimed area (*Powley*). Generally, these rights are fact and site specific.

Aboriginal title: An Aboriginal right to the exclusive use and occupation of land. It is possible that two or more Aboriginal groups may be able to establish Aboriginal title to the same land.

Activity: Any Crown or proponent undertaking, application, proposal, project, regulatory, policy or other initiative or decision that is contemplated and may have an adverse impact on potential or established Aboriginal or Treaty rights and related interests.

Capacity: It is the ability of Aboriginal groups to understand the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights.

Common law: In general, a body of law that develops through judicial decisions, as distinguished from legislative enactments.

Comprehensive land claim: Comprehensive claims deal with the unfinished business of treaty-making in Canada through a negotiation process. These claims arise in areas of Canada where Aboriginal land rights have not been dealt with by past treaties or through other legal means. In these areas, forward-looking modern treaties are negotiated between the Aboriginal group, Canada and the province or territory. Comprehensive land claim negotiations address concerns raised by Aboriginal peoples, governments and third parties about who has the legal right to own or use the lands and resources in areas under claim.

Constructive knowledge: *Black's Law Dictionary (Eighth Edition)* states: "Knowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person". Therefore, if one part of the Crown has knowledge of potential rights, other Crown entities will be deemed to know.

Crown: Refers to all government departments, ministries (both federal, provincial and territorial) and Crown agencies.

Crown conduct: Means the exercise of the Crown's jurisdiction and authority whether the Crown may be in charge of the activity or may be approving an activity through permits and authorizations. In either context, its actions would constitute Crown conduct.

Crown knowledge: The Supreme Court of Canada stated that the duty to consult arises when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights of which the Crown has real or constructive knowledge.

Cumulative Environmental Effects: "The concept of cumulative environmental effects recognizes that the environmental effects of individual human activities can combine and interact with each other to cause aggregate effects that may be different in nature or extent from the effects of the individual activities. Cumulative environmental effects can be characterized as the effect on the environment of a proposed project when combined with those of other past, existing and imminent projects and activities, and which may occur over a certain period of time and distance" http://www.ceaa.gc.ca/9742C481-21D8-4D1F-AB14-55521160443/Addressing_Cumulative_Environmental_Effects.pdf

Duty to Consult: The duty to consult is an obligation of the government as a whole. In *Haida, Taku River* and *Mikisew Cree*, the Supreme Court of Canada held that provincial and federal governments have a legal obligation to consult when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.

Engagement: Examples of engagement includes discussion groups and formal dialogue, sharing knowledge and seeking input on activities such as policy, legislation, program development or renewal.

Existing Aboriginal and Treaty rights: “Existing” includes potential or established Aboriginal or Treaty rights.

First Nation: A term that came into common usage in the 1970s to replace the word “Indian” which some people found offensive. Although the term First Nation is widely used, no legal definition of it exists. Among its uses, the term “First Nations peoples” refers to the Indian peoples in Canada, both Status and non-Status. Some Indian peoples have also adopted the term “First Nation” to replace the word “band” in the name of their community.

Inuit: An Aboriginal people in Northern Canada, who live in Nunavut, Northwest Territories, Northern Quebec and Northern Labrador. The word means “people” in the Inuit language, Inuktitut. The singular of Inuit is Inuk.

Métis: For purposes of section 35 rights, the term Métis refers to distinctive peoples who, in addition to their mixed First Nation, Inuit and European ancestry, developed their own customs, and recognizable group identity separate from their First Nation or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

Proponent: In the Updated Guidelines, proponent refers to industry, foreign governments or any other parties which initiate or propose an activity.

Reserve: As specified by the *Indian Act*, a tract of land, the legal title to which is vested in Her Majesty the Queen in Right of Canada and that has been set apart by Her Majesty for the use and benefit of a First Nation.

Traditional territory: Any designated lands and boundaries to which First Nations, Métis and Inuit communities claim or have established traditional use or occupation.

Treaty rights: Rights that are defined by the terms of a historic Treaty, rights set out in a modern land claims agreement or certain aspects of some self-government agreements. In general, Treaties (historic and modern) are characterized by the intention to create obligations, the presence of mutually binding obligations and a measure of solemnity (*Simon, Sioui*). A treaty right may be an expressed term in a Treaty, an implied term or reasonably incidental

to the expressed Treaty right. The scope of Treaty rights will be determined by their wording, which must be interpreted in accordance with the principles enunciated by the Supreme Court of Canada (*Badger* 1996, *Sundown* 1999, *Marshall* 1999)

Where the parties disagree on the scope of obligations or what rights are provided for, a number of principles unique to Treaty interpretation apply. For example, Treaties should be liberally construed; ambiguities ought to be resolved in favour of the signatories in the context of historic Treaties; the goal of Treaty interpretation is to find the common intention and the result that best reconciles the interests of both parties at the time the Treaty was signed; the integrity and Honour of the Crown is presumed in such interpretations; the courts cannot alter the terms of the Treaty and Treaty rights cannot be interpreted in a rigid or static way as they must be updated to provide for modern exercise (*Marshall* 1999; 2005).

Trigger: Any of the three elements that are necessary for a duty to consult to exist. Specifically, a Crown conduct, a potential adverse impact and potential or established Aboriginal or Treaty rights that might be adversely affected.

With or Without Prejudice: Describes communication, either written or verbal. To designate a communication as “without prejudice” is to declare that the party does not waive its right to non-disclosure of the communication. Such communications may be referred to as being “off- the-record”. This term is often used during negotiations and litigation. Should there be a request for without prejudice or off-the-record discussion, advice from legal counsel should be sought.

In the context of consultation, if agreements or protocols are being entered into for the purposes of meeting Crown obligations to consult as per the *Haida*, *Taku River*, *Mikisew Cree* or *Sparrow* cases, it is recommended that the agreement be “with prejudice”. With prejudice means that the Crown can use this documentation in court as evidence that it has fulfilled its duty to consult obligations, and that the Aboriginal group may use the documentation in relation to its legal positions. Such communications may be referred to as being “on-the-record”.

ANNEX B – LEGAL CASE SUMMARIES

The case law outlined below relate to consultation and accommodation matters. However, federal officials should also consider judgements or cases that speak to potential or established Aboriginal or Treaty rights and title. These cases may influence or dictate government decisions on questions such as who to consult as well as the nature and extent of consultations and the requirement for accommodation.

1. Duty to Consult

Seminal Supreme Court of Canada cases

***Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73**

The Supreme Court of Canada dismissed the Province's appeal and allowed the appeal of Weyerhaeuser Company Ltd. The Court held that the Province has a duty to consult with the Haida about decisions relating to the harvest of timber from an area of the Queen Charlotte Islands over which the Haida have asserted, but have not yet proven, Aboriginal rights and title. The Court stated that good faith consultation may in turn lead to an obligation to accommodate Haida concerns in the harvesting of timber, although what accommodation if any may be required could not yet be ascertained. The Court found that the Province had failed to engage in any meaningful consultation. The Court also found that Weyerhaeuser did not owe the Haida any duty to consult or accommodate. The Court held that the duty to consult does not extend to third parties.

The Court stated that the Crown's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the Honour of the Crown which derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation. The duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.

The scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title

claimed. As to the content of the duty, the Court said that, at all stages, good faith on both sides is required and sharp dealing is not permitted. The effect of good faith consultation may be to reveal a duty to accommodate.

The Court said that this process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim; nor does it impose a duty to reach an agreement. The Court also stated that, although the Crown may delegate procedural aspects of consultation to industry proponents of a particular development, the ultimate legal responsibility for consultation and accommodation rests with the Crown. The Honour of the Crown cannot be delegated.

***Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74**

The Supreme Court of Canada, applying its analysis in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] SCC 73, released concurrently with this decision, allowed the Province's appeal and held that the process engaged in by the Province under the *Environmental Assessment Act* fulfilled the requirements of the Crown's duty to consult with the First Nation and to accommodate its concerns.

At issue was whether the Crown had a duty to consult prior to approving the re-opening of a mine and the construction of an access road to the mine through territory over which the First Nation claimed, but had not yet proven, Aboriginal rights and title. In *Haida*, the Court confirmed the existence of the Crown's duty to consult Aboriginal peoples prior to proof of rights or title claims. The Court found that the Crown's duty to consult was engaged in this case because the Province was aware of the First Nation's claims through its involvement in the Treaty negotiation process and knew that the decision to reopen the mine and to build the access road had the potential to adversely affect the substance of the rights and title claims.

The Court concluded that the Crown had fulfilled its duty to consult on the basis that the First Nation was part of the Project Committee, participating fully in the environmental review process; its views were put before

the appropriate Ministers and; the final project approval contained measures designed to address both immediate and long-term concerns of the First Nation.

The Court also stated that the Province was not under a duty to reach agreement with the First Nation and its failure to do so did not breach its duty of good faith consultations. The Court also confirmed that the Honour of the Crown cannot be interpreted narrowly or technically, but must be given full effect in order to promote the process of reconciliation between the Crown and Aboriginal peoples as mandated by s. 35(1) of the *Constitution Act, 1982*.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69

The Supreme Court of Canada allowed the First Nation's appeal, quashed the Minister's decision to approve the construction of a winter road through Wood Buffalo National Park, Alberta, and returned the matter to the Minister for further consultation and consideration.

The Court held that the Crown's duty of consultation, which the Court said flows from the Honour of the Crown and its obligation to respect the existing Treaty rights of Aboriginal peoples, was breached in this case because the Minister failed to adequately consult with the First Nation in advance of the decision to build the road. The Court stated that when the Crown exercises its right under Treaty 8 to "take up" land, it is not correct to move directly to a *Sparrow* justification analysis even if the proposed measure, if implemented, would infringe a Treaty right. Rather, the Court said that it must first consider the process by which the "taking up" is planned and whether it is compatible with the Honour of the Crown.

The question in each case is to determine the degree to which conduct contemplated by the Crown would adversely affect the rights of the Aboriginal people so as to trigger the duty to consult. In this case, the Court found that the duty to consult was triggered because the impacts of the proposed road were clear, established, and demonstrably adverse to the continued exercise of the First Nation's hunting and trapping rights over the lands in question.

The Court found that the Crown's duty to consult in this case lies at the lower end of the spectrum because the proposed road is fairly minor and situated on surrendered lands where the First Nation's treaty rights are expressly subject to the "taking up" limitation in Treaty 8.

With respect to the content of the duty to consult, the Court found that the Crown was required to provide notice to the First Nation and to engage it directly. This engagement should have included the provision of information about the project, addressing what the Crown knew to be First Nation's interests and what the Crown anticipated might be the potential adverse impact on those interests.

The Crown was also required to solicit and to listen carefully to the First Nation's concerns and to attempt to minimize adverse impacts on the First Nation's hunting, fishing and trapping rights. Had the consultation process gone ahead, the Court confirmed that it would not have given the First Nation a veto over the alignment of the road. The Court reiterated that consultation will not always lead to accommodation and accommodation may or may not result in an agreement.

David Beckman, in his capacity as Director, Agriculture Branch, Department of Energy Mines and Resources et al. v. Little Salmon/Carmacks First Nation et al., 2010 SCC 53

This decision builds on the prior *Mikisew Cree* decision (2005) by setting out how the duty to consult applies to federal, provincial and territorial government conduct that may adversely impact lands and resources covered by more recent Land Claim Agreements. The Court held that the duty of consultation stems from the honour of the Crown and operates in law independently to treaties. A duty to consult can apply where Crown conduct may adversely impact treaty rights. The Little Salmon Carmacks First Nation (LSCFN) Treaty was not a "complete code" of all of the obligations that may exist as between the parties.

When assessing how the duty to consult applies to matters covered by a treaty, the first place to look is at the specific treaty terms. Treaties may shape how consultation is to be addressed.

The Court reiterated the importance of the honour of the Crown as a constitutional principle that inform all Crown dealings with Aboriginal people, including the interpretation and implementation of treaties. The Court reiterated the importance of treaties as part of the process of reconciliation and as providing guidance for the on-going relationship of the Crown and Aboriginal groups.

Treaty Interpretation Principles

Marshall: R. v. Marshall, [1999] 3 S.C.R. 456

The accused, a Mi'kmaq Indian, was charged with three offences set out in the federal fishery regulations: the selling of eels without a licence, fishing without a licence and fishing during the close season with illegal nets. The only issue at trial was whether he possessed a treaty right to catch and sell fish under the treaties of 1760-61 that exempted him from compliance with the regulations.

The court held that extrinsic evidence of the historical and cultural context of a treaty may be received even if the treaty document purports to contain all of the terms and even absent any ambiguity on the face of the treaty. Thirdly, where a treaty was concluded orally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written ones. There was more to the treaty entitlement than merely the right to bring fish and wildlife to truck-houses. While the treaties set out a restrictive covenant and do not say anything about a positive Mi'kmaq right to trade, they do not contain all the promises made and all the terms and conditions mutually agreed to.

Nowegijick: Nowegijick v. The Queen, [1983] 1 S.C.R. 29

Mr. Nowegijick is an Indian within the meaning of the *Indian Act* and a member of the Gull Bay (Ontario) Indian Band. During the 1975 taxation year Mr. Nowegijick was an employee of the Gull Bay Development Corporation, a company without share capital, having its head office and administrative offices on the Gull Bay Reserve. All the directors, members and employees of the Corporation live on the Reserve and are registered Indians.

The Federal Court of Appeal concluded that the tax imposed on Mr. Nowegijick under the *Income Tax Act* was not taxation in respect of personal property within the

meaning of s. 87 of the *Indian Act*. Indians are citizens and, in affairs of life not governed by treaties or the *Indian Act*, they are subject to all of the responsibilities, including payment of taxes, of other Canadian citizens.

Ted Moses: Attorney General of Quebec v. Grand Chief Dr. Ted Moses, et al., 2010 SCC 17

The Vanadium case concerns the applicability of the *Canadian Environmental Assessment Act* ("CEAA") to a proposed mine project located in the territory contemplated by s. 22 of the James Bay and Northern Quebec Agreement ("JBNQA"). While the Vanadium case is nominally about environmental assessments, it is also relevant as the first Supreme Court decision to interpret the provisions of a modern treaty. While both sets of reasons are clear in taking the position that the JBNQA is a treaty covered by s. 35 of the *Constitution Act, 1982*, they diverge in the amount of analysis they provide as to how a modern treaty should be interpreted. It is clear that the Court sees a difference between how historic treaties and modern treaties are to be interpreted.

While it would seem to be correct to continue to posit that modern treaties are not to be interpreted in the exact same way as historic treaties, it will be interesting to see if the dissent's approach is adopted by a majority of the Court in a future decision, as that would help to clarify how the interpretation of modern treaties should differ.

The majority clearly took a contractual approach to interpreting the provisions of the JBNQA and sought to discern the common intention of the parties, but it remains to be seen whether they would take the same approach in other cases. Based on the Vanadium decision, it is clear that courts should pay careful attention to the terms of the agreement that comprises the modern treaty.

Interpretation and Application of Duty to Consult by Lower Courts

Since the seminal Supreme Court decisions noted above, lower courts across Canada have been assessing and applying the duty to consult to a variety of different kinds of Crown conduct and in relation to a number of different Aboriginal and Treaty rights. For a listing and greater details on these decisions contact your legal advisor.

2. Legal Tests for Assessing Interference with and Existence of Aboriginal and Treaty Rights

Interpretation of s. 35 (1): Test for Crown justification for infringement of s. 35(1) rights

***R. v. Sparrow*, [1990] 1 S.C.R. 1075**

Mr. Sparrow was prosecuted by the Attorney General of Canada under the federal *Fisheries Act* for fishing contrary to the terms of his Band's food fishing licence. The Supreme Court of Canada held that Mr. Sparrow enjoyed an Aboriginal right to fish for food which was protected by section 35 of the *Constitution Act, 1982*. According to the Court, the Crown must demonstrate a "clear and plain" intention to extinguish Aboriginal rights. In this case, the test had not been met by the Crown's evidence.

The Court also found that there is a fiduciary relationship between the Crown and Aboriginal peoples based on the need for the Crown to act honourably. Therefore, section 35 must be interpreted in a manner consistent with this relationship. The Court placed a high burden on the Crown to justify any infringement with the enjoyment of Aboriginal rights protected by s. 35.

See also *R. v. Badger* wherein the Court held that the justification test developed in *R. v. Sparrow* applied to Treaty rights.

Test for Aboriginal Title

***Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010**

This action involved a claim by the Gitksan and Wet'suwet'en hereditary Chiefs for Aboriginal title and an inherent right to self-government over 58,000 square kilometers of British Columbia. The Supreme Court of Canada ruled that, due to evidentiary problems with the case, a new trial is required to determine whether the plaintiffs enjoy the claimed Aboriginal title and self-government rights.

While not providing any guidance on the issue of rights of self-government, the Court made general pronouncements on the scope and content of Aboriginal title. In essence, if an Aboriginal group can establish that, at time of sovereignty, it exclusively occupied a territory to which a substantial connection has been maintained, then it has the communal right to exclusive use and occupation of such lands. The

Aboriginal group can use the lands for far ranging purposes including economic exploitation. The only limitations are that the lands can not be disposed of without surrender to the Crown nor can they be used in such a fashion that would destroy the Aboriginal group's special bond with the land.

The Court also ruled that both the federal and provincial Crown can justifiably interfere with an Aboriginal group's Aboriginal title. The Court rejected the province's counter-claim regarding provincial power to extinguish Aboriginal rights in finding that, since Confederation, only the federal Crown has such a power.

Roles of Boards and Tribunals

***Rio Tinto Alcan Inc. et al v. Carrier Sekani Tribal Council*, [2010] SCC 43**

The Supreme Court of Canada unanimously held that the BC Utilities Commission (the Commission) had properly exercised its jurisdiction in relation to the duty to consult and had correctly determined that a duty to consult did not arise in this case.

The Supreme Court of Canada set out guidelines for determining whether a tribunal can assess the adequacy of consultation, when it can do consultation and when it cannot do either. The Court provided further guidance on what is required to engage a duty to consult and explained that it applies to current and future activities and impacts, not historical infringements.

In this case, the Commission had the authority to assess whether adequate consultation had occurred because it could decide questions of law and determine if the contract in issue was in the public interest. It also had the authority to consider any "other relevant factors" and make any order it considered advisable in the circumstances. These features of its statutory mandate authorized and required the Commission to address whether the duty to consult was triggered and if there had been adequate Crown consultation and accommodation. The Commission did not, however, have jurisdiction to engage in consultation itself.

The Court confirmed that the duty to consult is a constitutional duty.

Tests for Aboriginal Rights

***R. v. Van der Peet*, [1996] 2 S.C.R. 507; *R. v. Gladstone*, [1996] 2 S.C.R. 723;**

***R. v. NTC Smokehouse Ltd.*, [1996] 2 S.C.R. 672**

These cases involve the question of whether section 35 of the *Constitution Act, 1982* includes, as an Aboriginal right, a right to fish commercially. In the *R. v. Van der Peet* case, the Court outlined the test for identifying Aboriginal rights protected under section 35. Essentially, an Aboriginal group must establish that, at time of contact with Europeans, the particular activity claimed as an Aboriginal right was a practice, tradition or custom that was integral to the society's distinctive culture.

Applying the above test to the facts of the cases, the Court ruled that the accused in *R. v. Gladstone* had established an Aboriginal commercial fishing right. However, the Court also indicated that, in the context of Aboriginal commercial fishing rights, there are no internal limitations to the right. As such, the *R. v. Sparrow* justification test had to be refined for Aboriginal commercial fishing rights. Other considerations, apart from conservation goals, are to be taken into account in determining whether governmental restrictions were justified.

Objectives such as the pursuit of economic and regional fairness, as well as, the historic non-native participation in the fishery are relevant objectives in the context of the justification analysis. Aboriginal rights have to be given priority but they also have to be reconciled with other rights and interests. The case was remitted for trial on the question of whether the regulation of the accused's Aboriginal commercial fishing rights could be justified.

***R. v. Powley*, [2003] SCC 43**

The accused were charged with unlawfully hunting moose and possessing game contrary to ss. 46 and 47(1) of the *Ontario Game and Fish Act*. The central issue was whether two individuals from the Sault Ste. Marie area, who self-identify as Métis, can establish Métis Aboriginal rights to hunt that are protected by s. 35 of the *Constitution Act, 1982*.

The Supreme Court of Canada held that the impugned legislation was of no force or effect with respect to the accused on the basis that, as members of the Métis community in and around Sault Ste. Marie, the accused have an Aboriginal right to hunt for food under s. 35(1). The Court concluded that the lack of recognition of any Métis right to hunt for food in the legislation infringed the Métis Aboriginal right and conservation concerns did not justify the infringement. The Court held that, to support a site-specific Aboriginal rights claim, the claimant must demonstrate membership in an identifiable Métis community with some degree of continuity and stability as established through evidence of shared customs, traditions and collective identity, as well as demographic evidence.

The Court modified the pre-contact aspect of the *R. v. Van der Peet* test to reflect the distinctive history and post-contact ethnogenesis of the Métis. The test for Métis rights should focus on identifying those practices, customs and traditions that are integral to the Métis community's distinctive existence and relationship to the land after a particular Métis community arose but before it came under the effective control of European laws and customs.

The Court found that the term "Métis" in s. 35 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. While not setting down a comprehensive definition of who is a Métis for the purpose of asserting a claim under s. 35, of the *Constitution Act, 1982*, the Court cited three broad factors as indicia of Métis identity: self-identification, ancestral connection and community acceptance.

2015 - 2016 Three Party Annual Work Plan Results

Work Plan Wrap Up - 2015-2016

Q1 April 01 to June 30
Q2 July 1 to September 30
Q3 October 1 to December 31
Q4 January 1 to March 31

Schedule A to E Definitions:Refer to the November letter to EFNs on 2015-2016 TLE Annual Work Plan mid-year update.

Finalized on May 1st, 2016

First Nation	Site Name (Site#) Acres	Site#	Acres	Canada Process Steps / Target Date	Canada Status as of Date	Manitoba Process Steps / Target Date	Manitoba Status as of Date	TLEC / EFN Process Steps / Target Date	TLEC Status as of Date	EFN Status as of Date	TPIs/Encumbrances/Comments	Schedule
Bunibonibee	Atik Lake (1-02) 1,310.64	1-02	1,310.64	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Bunibonibee	Addition to Lynx Bay 10.89 acres	Site 10-02-01	10.89	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
God's Lake	Kanuchuan Rapids Addition (3-2000) 3,906.23	3-2000	3,906.23	ESA update required 2.33 INAC forwards legal description to MB Q4	ESA DONE	EUP issued ('09) as per MFA 6.03 (1) (2)					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent March 2014 Garden Hill expressed concern. (Garden Hill consultation concern, not TPI.)	A
God's Lake	DNR Lot (3.02) 2.20	3.02	2.20	ESA update required 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q4	ESA DONE 2.20 - Met				BCR sent March 28/14	Pre-Transfer Use Agreement- to be completed by April 30/15 - complete	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent March 2014. TPI Hydro Distribution and MTS Facilities unresolved.	A
God's Lake	Lot 6 Grp 424 (10) (Hyers Lot) 13.10	10	13.10	ESA update required 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q4	not met				BCR sent March 28/14	Complete: Pre-Transfer Use Agreement to be completed by April 30/15-	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent in March 2014	A
Manto Sipi	Allen Rapids (amended) (3-01) 2.00	3-01	2.00	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Manto Sipi	God's River - North of Lodge (20) 106.15	20	106.15	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met, 2.37b not met			2.21a EFN resolves TPI/Encumbrances Q3		Access Agreement - Offtake Drain Maintenance (for airport). Require NRCAN Approved Legal Description	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Manto Sipi	Neekwaskan Lake (15.2) 78.86	15.2	78.86	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Manto Sipi	Neekwaskan Lake (15.4) 22.64	15.4	22.64	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Manto Sipi	Sturgeon Falls Camp (6.A) 8.86	6.A	8.86	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A

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Manto Sipi	Wasekuscusik Bay (16) 85.17	16	85.17	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met 2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Belfie Lake Parcel B (26-04) 855.08	26-04	855.08	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Brigden Lake (2-04) 428.34	2-04	428.34	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Cochrane River Parcel A (4-04A) 582.27	4-04A	582.27	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Fort Hall Lake (7-04) 759.80	7-04	759.80	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Keewatinkinokumaw Lake (3-04B) 251.52	3-04B	251.52	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Koona Lake (revised) (9-04) 1,388.64	9-04	1,388.64	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 met, 2.37B not met	2.35 MB approves transfer by OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A

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Northlands	Maria Lake A (11-04A) 266.63	11-04A	266.63	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Maria Lake D (11-04D) 384.60	11-04D	384.60	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Snyder Lake A (18-04A) 689.97	18-04A	689.97	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Tatowaycho Lake (revised) (21-04) 1,744.51	21-04	1,744.51	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Complete: Unregistered Occupation - Pre-transfer Use Agreement required. Agreement has been signed by EFN, Canada has received agreement from Legal October 29, 2013. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	West of Brochet Bay (25-04) 428.95	25-04	428.95	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Northlands	Maria Lake B (11-04B) 569.91	11-04B	569.91	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by OiC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A

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Northlands	Belfie Lake (1-04) 5,457.00	1-04	0.00	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.16 Met, 2.33 not met, 2.37B not met	2.35 MB approves transfer by Oic					Complete: Unregistered Occupation- Pre-transfer Use Agreement required in Q1- for step 2.33 to occur Agreement has been signed by EFN, Canada received agreement from Legal Oct. 29, 2013. Legal received from NRCan. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	A
Norway House	Painted Stone Portage North Shore (11-02) 399.66	11-02	399.66	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Requires ESA Report to complete ATR Submission. Consultation will need to be addressed prior ot forwarding legal to MB - Consultation letters sent in March 2014.	A
Norway House	Robinson Lake A (43-01A) 268.34	43-01A	268.34	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3		2.30a EFN approves survey plan by BCR Q1 2.30b EFN names new reserve by BCR Q1			Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	B
Norway House	Bolton Lake A (3-01A) 134.29	3-01A	134.29	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Bolton Lake B (3-01B) 230.90	3-01B	230.90	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Gunisao Lake A (13-01A) 308.63	13-01A	308.63	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Gunisao Lake B (13-01B) 2,396.30	13-01B	2,396.30	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Gunisao Lake C (13-01C) 722.15	13-01C	722.15	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Gunisao Lake D (13-01D) 10.05	13-01D	10.05	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A

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Norway House	Lebrix Lake A (21-01A) 800.00	21-01A	800.00	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. TPI identified (General permit No. 3351)	A
Norway House	Lebrix Lake B (21-01B) 391.00	21-01B	391.00	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Little Bolton Lake B (22-01B) 25.34	22-01B	25.34	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Logan Lake A (23-01A) 4,636.00	23-01A	4,636.00	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3				<i>plans are to be registered upon FN BCR</i>	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Logan Lake B (23-01B) 497.00	23-01B	497.00	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3				<i>plans to be registered upon FN BCR</i>	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Max Lake (25-01) 1,425.81 <i>PRIORITY PARCEL</i>	25-01	1,425.81	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					TPI - GP 5734 - Tourist Outcamp (M) - Corp of NHCN Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Max Lake South Shore (8-02) 1,451.82	8-02	1,451.82	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Provincial Road 373A (42-01A) 244.55	42-01A	244.55	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Norway House	Provincial Road 373C (42-01C) 1,222.71	42-01C	1,222.71	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. confirmation of possible nfa issue maybe selected twice	A
Norway House	Provincial Road 373 Parcel C Additions (12-02) 832.67	12-02	832.67	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Opaskwayak	Rocky Lake Interior (1-06) 5,400.33	1-06	5,400.33	2.37b INAC submits MO submission to HQ Q4		2.35 MB approves transfer by Oic: Provincial OIC received March 21, 2012				CAP completed: Membership voted to approve on October 16, 2014.	Consultation will need to be addressed. Provincial OIC dated March 21, 2012 has been received).	A

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Opaskwayak	Atik Lake (2-03) 1,181.34	2-03	1,181.34	2.37b INAC submits MO Submission to HQ Q2 2.38 INAC MO establishes reserve Q4						Complete:-CAP completed:- Membership voted to approve on October 16, 2014.	Consultation must be addressed prior to parcel proceeding further.	A
Opaskwayak	Surplus Federal Crown Land - City of Thompson (2-04) 1.74 Priority parcel	2-04	1.74	2.20 INAC considers/grants AIP Q4 Environment Site visit dated May 2010 will staledate in 2015, requested a new site visit for Fiscal 15/16.		2.24 MB notifies INAC< EFN and TLEC of results of review of preliminary photo base map		2.21 EFN resolves TPI/encumbrance by Q4			TPI - Stittco caveat on the property. Partial Discharge initiated by the FN (unusual caveat, for future services). Updated EA required. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Community Approval Process is required	B
Rolling River	Cameron (5-01) 157.92	5-01	157.92	2.33 INAC forwards legal description to MB Q4 2.37B INAC submits MO Submission to HQ Q4	2.33 not met, 2.37b not met	3.21 MB drafts provincial OIC		3.11a EFN/TLEC negotiates settlement of TPI/Provincial interests/encumbrances and confirms the method of resolution for all issues in writing. Q4	Complete:-3.11a- not met Awaiting confirmation of road closure/sale from RM		RM road is closed, however title will remain under the RM name and then effect transfer to the RRFN. Consultation must be addressed prior to parcel proceeding further.	A
Rolling River	Ronald Hill (3) 163.00	3	163.00	2.33 INAC forwards legal description to MB Q4 2.37B INAC submits MO Submission to HQ Q4	2.33 not met, 2.37b not met	3.21 MB drafts provincial OIC					Caveat 87-5032 NLTO - MTS - 28(2) Permit Hydro Distribution Line - 28(2) Permit Once the registration is complete at LTO, and consultation has been addressed, AANDC can proceed with step 3.20. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Rolling River	SW 1/4 19-17-18 (Ronald Hill) (4) 154	4	154.00	2.33 INAC forwards legal description to MB Q4 2.37B INAC submits MO Submission to HQ Q4	2.33 not met, 2.37b not met	3.21 MB drafts provincial OIC					Once the registration is complete at LTO, and consultation has been addressed, AANDC can proceed with step 3.20. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
War Lake	Atkinson Lake A (2-02) 1,610.38	2-02	1,610.38	2.33 INAC forwards legal description to MB Q4 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OIC Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
War Lake	Atkinson Lake B (3-02) 993.30	3-02	993.30	2.33 INAC forwards legal description to MB Q4 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OIC Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A

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War Lake	Atkinson Lake C (4-02) 76.59	4-02	76.59	3.20INAC forwards legal description to MB Q4 3.23d Canada accepts transfer of title 3.24 INAC submits MO submission to HQ Q4		2.35 MB approves transfer by OiC Q4					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
War Lake	Atkinson Lake (now Fox Lake) (1-05) 100.58	1-05	100.58	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.33 INAC forwards legal description to MB Q4	2.20 not met	2.35 MB approves transfer by OiC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Cyril Lake (7-02) 302.08	7-02	302.08	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.33 INAC forwards legal description to MB Q4	2.20 not met	2.35 MB approves transfer by OiC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Dafoe River (8-02) 187.64	8-02	187.64	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.33 INAC forwards legal description to MB Q4	2.20 not met	2.35 MB approves transfer by OiC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Moose Nose Lake (10-02) 35.14	10-02	35.14	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.33 INAC forwards legal description to MB Q4	2.20 not met	2.35 MB approves transfer by OiC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	War Lake amended (13-02) 771.70	13-02	771.70	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.33 INAC forwards legal description to MB Q4	2.20 not met	2.35 MB approves transfer by OiC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Wuskwi Sipihk	Bell Lake (2-02) 201.90	2-02	201.90	2.37b INAC submits MO submission to HQ Q4	2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Wuskwi Sipihk	Kettle Hills Addition (1-01) 737.00	1-01	737.00	2.37b INAC submits MO submission to HQ Q4	2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Wuskwi Sipihk	North Kettle Hills (4-02) 2,652.00	4-02	2,652.00	2.37b INAC submits MO submission to HQ Q4	2.37b not met						Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	A
Wuskwi Sipihk	Antler Corner (1-02) 1,463.12	1-02	1,463.12	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 not met, 2.37b not met	2.34 MB draft provincial OIC					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.Noted MMF reviewing this parcel and awaiting comment.	A
Wuskwi Sipihk	Bell River/PTH 10 Addition (3-01) 3,520.66	3-01	3,520.66	2.33 INAC forwards legal description to MB Q3 2.37B INAC submits MO Submission to HQ Q4	2.33 met, 2.37b not met	2.34 MB draft provincial OIC					OiC requested Jan 2016. Noted MMF reviewing this parcel and awaiting comment.	A

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Bunibonibee	Jacobs Point (amended) (1-07) 10.03 Priority parcel	1-07	10.03	2.28c provisional plan distributed to Mb conservation, DOS, and AANDC Q4	2.32b met				2.30b met		Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Joint federal/provincial legal review of access agreement is underway (Q3)	B
Bunibonibee	Jacob's Point (2-2000) 32.85 Priority parcel	2-2000	32.85	2.28c provisional plan distributed to Mb conservation, DOS, and AANDC Q4	2.32b met			2.21a EFN resolves TPI/Encumbrances Q4. 2.29 TLEC assists in securing BCR from EFN approving survey by Q4 2.30b TLEC assists in securing naming BCR from EFN approving survey by Q4	2.30b met		Access Road - Hydro - Plan # 38682 Parcel B (M) (access agreement required for road) Hydro Distribution and MTS Facilities - 28(2) Permits; House - Pre-Transfer Use Agreement required. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
God's Lake	East End of God's Lake (4-02) 195.81 Priority parcel	4-02	195.81	ESA update required 2.20 INAC RDG/DM considers/grants AIP Q4	not met			2.11 TLEC/EFN will analyze methods of resolution Q4			Private Land - Pcl A, Plan 23524 PLTO Private Land - Pcl B, Plan 2386 PLTO Access Agreement - Lodge to Airstrip Consultation letters sent in March	B
Manto Sipi	Pine Rapids (4-01) 76.49	4-01	76.49	2.28b LTO provides tentative approval Q3	2.28b met			2.11 TLEC/EFN analyze methods of resolution Q2 2.25a EFN signs RSM with conditions noted, if any. Q3	2.11 met	2.11 met 2.25a met in Q3	Complete: Surrender of GP 2742 Tourist Outcamp received by MB – permit to be canceled by MB upon reserve creation. RSM mylar to be corrected to reflect surrendered GP and initialled by all Parties.	B
Mathias Colomb	Granville Lake 2B (2B) 1,770.33	2B	1,770.33	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 not met							B
Mathias Colomb	Pawistik Falls (14) 838.74	14	838.74	2.20 INAC RDG/DM considers/grants conditional AIP Q4	2.20 not met	2.21b MB confirms agreement with the methods proposed to resolve all issues			Assist with BCR	Phase 2 EA acceptance BCR needed	Potential contamination to be addressed	B
Northlands	Fort Hall (6-04) 689.09	6-04	689.09	2.27a Survey contracted continues in 2015/16 2.31b Reviews & signs plan Q4	2.27a met, 2.31b not met	2.31a MB DOS issues tentative approval Q		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN	met 2.29 and 2.30b BCR-317-318 Sept 2, 2015	Desk audit letter received November 7, 2013	BCR 317-293 dated April 18/13 selected Manitoba boundary.	B
Northlands	Lac Brochet IR 197A (1- 12)	1-12	10,232.25	2.27a Survey contracted continues in 2015/16	2.27a met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			BCR 317-301 dated Sep. 23/13 amended boundary to include and exclude certain areas.	B

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Northlands	Misty Lake (13-04) 964.21	13-04	964.21	2.27a Survey contracted continues in 2015/16	2.27a met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			BCR 317-293 dated April 18/13 selected Manitoba boundary. Survey work began October 2013.	B
Northlands	North Arm (14-04) 181.24	14-04	181.24	2.27a Survey contracted continues in 2015/16 2.31b Reviews & signs plan Q4	2.27a met, 2.31b not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN	met 2.29 and 2.30b BCR-317-316 Sept 2, 2015		BCR 317-293 dated April 18/13 selected Manitoba boundary.	B
Northlands	Putahow Lake Site A (15-04A) 1,726.52 Priority Parcel	15-04A	1,726.52	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q4	2.16 Met	2.31a MB DOS issues tentative approval 2.35 MB approves transfer by Oic					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Complete: EFN provided BCR- approving survey plan and naming- selection.	B
Northlands	Putahow Lake Site B (15-04B) 1,233.55	15-04B	1,233.55	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q4	2.16 Met, 2.33 not met	2.31a MB DOS issues tentative approval Q2					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Complete: EFN provided BCR- approving survey plan and naming- selection.	B
Northlands	Putahow Lake Site C (15-04C) 416.87	15-04C	416.87	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q4	2.16 Met, 2.33 not met	2.31a MB DOS issues tentative approval Q2					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Complete: EFN provided BCR- approving survey plan and naming- selection.	B
Northlands	Putahow Lake Site D (15-04D) 490.01	15-04D	490.01	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q4	2.16 Met, 2.33 not met	2.31a MB DOS issues tentative approval 2.35 MB approves transfer by Oic					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Complete: EFN provided BCR- approving survey plan and naming- selection.	B
Northlands	Putahow Lake Site F (15-04F) 2,086.55	15-04F	2,086.55	2.16 INAC site visit/screening Q2 [ESA update required] 2.33 INAC forwards legal description to MB Q4	2.16 Met, 2.33 not met	2.31a MB DOS issues tentative approval Q2					Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Complete: EFN provided BCR- approving survey plan and naming- selection.	B

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Northlands	Kasmere Lake Parcel B (8-04B) 1,332.44	8-04B	1,332.44	2.27a Survey contracted continues in 2015/16 2.31b Reviews & signs plan Q4	2.27a met, 2.31b not met	2.31a MB DOS issues tentative approval Q		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN	met 2.29 and 2.30b BCR-317-317 Sept 2, 2015		BCR 317-293 dated April 18/13 selected Manitoba boundary.	B
Northlands	Thlewiaza Lake (22-04) 1,488.61	22-04	1,488.61	2.32a survey to be filed at LTO Q2 2.33 INAC forwards legal description to MB Q4	2.32 Met, 2.33 not met	2.31a MB DOS issues tentative approval Q1	2.31a not met survey - not submitted for review				Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Thuycholeeni Lake (23-04) 15,048.32	23-04	15,048.32	2.27a Survey contracted continues in 2015/16 2.31b Reviews & signs plan Q4	2.27a met, 2.32b met	2.31a MB DOS issues tentative approval Q1	2.31a met final Jan 30/13	2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN	met 2.29 and 2.30b BCR-317-313, 314, 315, Aug 5, 2015, named in 3 parts			B
Norway House	Belanger River (1-02) 3,701.17	1-02	3,701.17	2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts ESA checklist or final report BCR Q4		2.17 met	Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014. Site visit in 2011, ESA report still outstanding	B
Norway House	Bolton River (4-01) 1,949.25 Priority Parcel	4-01	1,949.25	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.11 TLEC/EFN analyze methods of resolution 2.21a EFN resolves TPI/encumbrances Q4	2.11 met	2.21a not met	TPI - GP 4497 - Trapper's Cabin . Consultation to be addressed - Consultation letters sent in March 2014. Portage/Access contact established Pre-Transfer Use Agreement required for the structure	B
Norway House	Butterfly Lake A (5-01A)	5-01A	2,338.87	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.2 cabins on site **Pre-Transfer Use Agreement was provided in 2014 for FN legal counsel	B

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Norway House	Butterfly Lake B (5-01B)	5-01B	123.82	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Hairy Lake (4-02) 124.11	4-02	124.11	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Hayes River Ridge B (15-01B) 180.58	15-01B	180.58	2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Logan Lake North Shore (7-02) 625.84	7-02	625.84	2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Opiminegoka Lake (35-01) 702.83	35-01	702.83	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation will need to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Pakatawacun Lake (37-01) 324.07	37-01	324.07	**Pre-Transfer Use Agreement 2.20 INAC RDG/DM considers/grants conditional AIP Q4							Cabin as per ESA - Pre Transfer Use Agreement to be completed. Consultation letters sent in March 2014.	B
Norway House	Hayes River Ridge A (15-01A) 2,236.08	15-01A	2,236.08								Letter Dec. 24, 2015 received from MB to include in transfer for reserve creation with resolution of Portage issue	B
Sapotaweyak	Pelican Rapids Access Road Phase 3 (5-02) 4,061.28 Priority Parcel	5-02	4,061.28	2.20 INAC RDG/DM grants conditional AIP Q4 2.28B LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					May 20, 2015 EFN advised Provisional Plan signed by SCN sent to AANDC. CSW & MANA to contact Geo MB to do Road Closing Plan.EFN target request for M.O. Pland to Close, then confirmation by Canada, Fiel Road Closure Plan.	B
Wuskwi Sipi hk	DT Lagace Property (NW 5-41-24 WPM) (2) 160.00	2	160.00	3.12 INAC continues survey requirements	3.13b met	3.21 MB drafts provincial OIC					Consultation analysis must be completed prior to parcel proceeding.	B
Wuskwi Sipi hk	Plamonden Property (All 30-41-24 WPM) (3) 640.00	3	640.00	3.12 INAC continues survey requirements	3.13b met	3.21 MB drafts provincial OIC					Boundary inspection report showed 2 houses on the property. Currently one house on property. Building condition reports will be required for these houses. Consultation must be addressed prior to parcel proceeding further.	B

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Wuskwi Sipi hk Priority Parcel	NW 8-41-24 WPM (former Watson Property) (1) 160.00	1	160.00	3.12 INAC continues survey requirements	3.13b met	3.21 MB drafts provincial OIC					CanPar Ltd. FMAA signed by WSNF does not include letter from CanPar. EFN will need to secure letter from CanPar and amend FMAA by selecting applicable clause, or alternatively signing a new FMAA. Consultation must be addressed prior to parcel proceeding further.	B
Barren Lands	Paskwachi Bay PR 394 (3PR) 95.65	3PR	95.65	2.20 INAC RDG/DM considers/grants conditional AIP Q4	2.20 not met	2.35 MB approves transfer by OIC		2.17b EFN accepts ESA checklist or final report BCR			Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
Brokenhead	Parcel 1-01A, 1-01B (Lac du Bonnet South) Priority Parcel	1-01A, 1-101B	944.37	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC	2.17a not met, 2.20 not met, 2.27a met, 2.27b met, 2.27c not met, 2.28 not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.13 EFN concludes MDSA negotiations Q4 2.17b EFN accepts ESA checklist or final report Q4			EFN and R.M. Lac Du Bonnet participants in MDSA Wrkg Grp to address MDSA.MDSA not required. MTS line identified during survey, EFN to decide how to resolve. EFN advised NO Services required.	C
Brokenhead	East St. Paul CT#2343345 (5-11) 144.00 Priority Parcel	5-11	144.00	3.8b INAC completes ESA checklist or final report 3.10b INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements, if any	3.8b not met, 3.10b not met, 3.12 not met	3.21 MB drafts provincial OIC		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul - 2 meetings held b/w EFN Council and ESP Council, open house exchanges held summer 2015. Ceveat#235786 - MTS Allstream Inc. - legal description required from AANDC Hydro Distribution - 28(2) Permit required legal description required from AANDC Easement #A17145 - Winnipeg Pipe Line Co. Ltd. EFN held 2 meetings with Imperial Oil. EFN advised Imperial Oil it seeks a new Easement Agreement. Next meeting Nov.2/15. Imperial Oil to conduct line Depth of Cover Survey fall 2015. EFN holding follow up meeting with ESP - February 2016-coordinated by MANA.	C
Brokenhead	East St. Paul CT#2343348 (6-11) 9.00 Priority Parcel	6-11	9.00	3.8b INAC completes ESA checklist or final report 3.10b INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements, if any	3.8b not met, 3.10b not met, 3.12 not met	3.21 MB drafts provincial OIC		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Legal description needed for insertion into 28(2) permit. Easement #A16594 - Winnipeg Pipe Line Co. Ltd. require legal description from AANDC prior to executing 28(2) EFN advised Imperial Oil it seeks a new Easement Agreement. Imperial Oil won't provide Depth of Cover Survey done in fall 2015 until EFN provides land development plan.	C

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Bunibonibee	Trout Falls (15-02) 619.6	15-02	619.60	2.27a identified for future survey contract	2.27a met							C
Bunibonibee	Wipanipanis Portage (20-02) 326.79 Priority parcel	20-02	326.79	2.27a identified for future survey contract (requires revised RSM due to all weather road planning)	2.27a not met						Winter Road has been excluded from the parcel, BCR 301-988. The FN is in current discussions with ESRA concerning a proposed all weather road on this seelction. Once discussions complete - a revised RSM will be required.	C
Mathias Colomb	Kipahigan Lake (24) 502.69	24	502.69	2.20 INAC RDG considers/grants AIP 2.25c INAC signs RSM with conditions noted, if any QTBD	2.20 not met. 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts results environmental assessment Q2 2.21a EFN resolves TPI/Encumbrances Q2	Assist with BCR	Phase 1 acceptance BCR needed	TPI - GP 1972 - Fish Camp Treatment of fish camp must be addressed before signing the RSM Phase 2 EA recommended for Fish Camp.	C
Mathias Colomb	Mile 99 (26) 391.83 Priority Parcel	26	391.83	2.20 INAC RDG/DM considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted, if any QTBD	2.20 not met. 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts results of Phase II environmental assessment Q2 2.21a EFN resolves TPI/Encumbrances Q3 2.25a EFN signs RSM with conditions noted if any Q3	Assist with BCR	Phase 2 acceptance BCR needed	TPI - GP 4720 - Primary Residence There is another house without a GP - Pre-Transfer Use Agreement schedule is required Private land and Hydro 66KV Transmission Line to be excluded by BCR MTS Facilities - EFN has concerns with Ph 2 EA but area is adjacent to TLE selection	C
Northlands	Tice Lake (24-04) 1,599.24	24-04	1,599.24	2.27a identified for future survey contract	2.27a met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			BCR 317-294 dated April 18/13 selected Canada boundary.	C
Northlands	Maria Lake C (11-04C) 624.12	11-04C	624.12			2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			BCR 317-294 dated April 18/13 selected Canada boundary.	C
Northlands	Maria Lake E (11-04E) 690.77	11-04E	690.77	2.27a identified for future survey contract	2.27a met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			BCR 317-294 dated April 18/13 selected Canada boundary.	C

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Northlands	Snyder Lake B (18-04B) 598.19	18-04B	598.19	2.27a identified for future survey contract	2.27a met						to be surveyed	C
Northlands	Snyder Lake C (18-04C) 887.70	18-04C	887.70	2.27a identified for future survey contract	2.27a met						to be surveyed	C
Northlands	Seman River (16-04) 256.82	16-04	256.82	2.27a identified for future survey contract	2.27a met						to be surveyed	C
Norway House	Bolton Lake C (3-01C) 494.79	3-01C	494.79								Survey required for 2015/16 - RSM Status needs to be verified	C
Opaskwayak	Cemetery Lake (6-2000) 1,116.00 priority parcel	6-2000	1,116.00			2.21b MB confirms agreement with the methods proposed to resolve all issues- <i>Mining claim</i>		2017b TLEC assists in securing the acceptance EA BCR Q4 2.21a EFN resolves TPI / encumbrances Q4			Community Approval Process required Land in a Municipality - RM of Kelsey Privately held mines and minerals issue to be resolved.	C
Opaskwayak	Egg Lake Access Road Phase 2 (1-05R) 5.19	1-05R	5.19					2.17b TLEC assists in securing the acceptance EA BCR from EFN by Q3 2.21a EFN resolves TPI / encumbrances Q3 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q4			Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Hydro Distribution for Plan # 50047 Access - Public Access Road - Egg Lake (M) ROW permit under OCN Land Code.	C
Opaskwayak	Egg Lake Acquisition (former rehab centre, Surplus Prov Crown Land) (1-08) 45.50	1-08	45.50					2.17b TLEC assists in securing the acceptance EA BCR from EFN by Q2 2.21a EFN resolves TPI / encumbrances Q3 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q4			Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Hydro Distribution Facility - Permit under OCN Land Code required.	C
Opaskwayak	Springwater (3-03) 958.39	3-03	958.39								Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Consultation will need to be addressed prior to AANDC requesting Prov. OIC BCR# 315-2019, accepting survey and naming reserve received April 3, 2013 <u>EFN intend to rescind selection</u>	C

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Opaskwayak	Barrier Settlement (Acquisition) 137.67		137.67	The selection and the acquisition of the same name will move together.				5.10 EFN negotiates purchase price of property with PWGSC - Q4		Execution of Purchase Agreement required. Community Approval Process required.		C
Rolling River	Manns (12-01) 156.25	12-01	156.25	3.20INAC forwards legal description to MB	3.20 not met	3.21 MB drafts provincial OIC		3.11a EFN/TLEC negotiates settlement of TPI/Provincial interests/encumbrances and confirms the method of resolution for all issues in writing. Q4	3.11a not met Awaiting confirmation of road closure/sale from RM; awaiting confirmation from Canada on method of resolution for Harvard Energy TPI	TPI Harvard Energy - mines and minerals Potential road encroachment	RM road is closed, however title will remain under the RM name and then effect transfer to the RRFN. Consultation must be addressed prior to parcel proceeding further. Private Minerals not addressed to satisfaction of TPI holder, Harvard International. RRFN awaiting confirmation of AANDC to issue FMAA or Permit?	C
Rolling River	Lot 1 Plan 21180 WLTO in RL 87 and 88 Parish of St. Charles (Former Dairy King Property) Priority Parcel	1-13	119.00	3.8b INAC completes ESA checklist or final report 3.12 INAC determines survey requirements, if any	3.8b not met, 3.12 not met on hold pending LEDSP application from FN			3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			RRFN agreed to have MIT surveyed out. Environment report requires boundaries confirmed before closing off report. MANA request MIT to provide report to AANDC. MDSA signed Dec. 22, 2015	C
Rolling River	1-11-19W (Brownridge Farms) (1-09) 534.23 Priority Parcel	1-09	534.23	3.12 INAC determines survey requirements, if any Q3	3.12 not met			2.21a EFN resolves TPI/encumbrances Q4		EFN awaiting confirmation of AANDC to issue Eric Stanzelite FMAA for 2/5 mineral interest.	EFN concern with no result in 6 yrs. from R.M. Elton who wants MDSA but does not have Essential Services to provide to EFN. Currently City of Brandon provides.FMAA to be revisited with new template - Draft to be confirmed from Working Group.	C
Rolling River	N 1/2 of NW 1/4 of 20-16- 19 WPM (Former Strand) (7-11) 160	7-11	80.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C
Rolling River	SW 1/4 35-16-19 WPM (Former Strand) (8-11) 160 Priority Parcel	8-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C
Rolling River	NE 1/4 27-16-19 WPM (Former Strand) (2-11) 160	2-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C
Rolling River	NW 1/4 27-16-19 WPM (Former Strand) (3-11) 160	3-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C

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Rolling River	SE 1/4 27-16-19 WPM (Former Strand) (1-11) 160	1-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C
Rolling River	NE 1/4 28-16-19 WPM (Former Strand) (4-11) 160 Priority Parcel	4-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MDSA negotiations with RM of Harrison	C
Rolling River	NW 1/4 28-16-19 (Former Strand) (5-11) 160 Priority Parcel	5-11	160.00	3.7a INAC begins ARC submission, 3.8a INAC/EFN EA site visit/screening	3.7a not met, 3.8a not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MITwants 24 acres to enhance PR 270. RRFN provided terms to MIT. Meeting to be scheduled following a meeting with AANDC.(see 6-11 & 8-11)	C
Rolling River	NW 1/4 13-19-21 (Stuart Lake Selection)	1-14	5.12	2.9 INAC commences land use/title search 2.10a INAC begins ARC submission	2.9 not met, 2.10a not met						R.M. of Harrison Park sent letter that MDSA not required. MTS Buried cable is addressed by a 28(2). Environment site visit to be scheduled. Survey instruction to exclude road allowance. Survey potential 2015-2016.Consultation Notificaiotn letter to go out. This is the only issue holding up Pre- Consultation.AANDC proposed	C
Rolling River	N 1/2 of the SW 1/4 28- 16-19 WPM (Former Strand) (6-11) 160 Priority Parcel	6-11	160.00	3.7a INAC begins ARC submission, 3.12 Canada determines survey requirements, if any.	3.7a not met, 3.12 not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4			MITwants 24 acres to enhance PR 270. RRFN provided terms to MIT. Meeting to be scheduled following a meeting with AANDC. See 5-11 7 6-11)	C
Rolling River	Undeveloped Road Allowances (URA-02)				3.1 not met					Meeting held with CSW, awaiting confirmation letter from MB	EFN contacting CSW on letter from April 2015 meeting	C
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 605 Block 1 Lot 5 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN Priority Parcels, Empty and surveyed Crown lot comments combined Phase 2 Ilford: Hydro Distribution MTS Facilities Road Access Agreement: complete CLRS Resv - Public Reserve Closure Required Private Land - MHRC Housing Caveat 40140N (Canada): complete Caveat 40142N (Canada): complete Caveat 40143N (Canada): complete	C
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 605 Block 1 Lot 6 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 21 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 3 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 4 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 20 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Charges on CT: 1) Hydro - 39483N 2) INAC - 40140N 3) INAC - 40142N 4) INAC - 40143N	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 22 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 3 Lot 1 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 3 Lot 2 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 10 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues. Manitoba ANA to release interest at time OiC requested		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Encumbrance found on Crown Land Records: WSS 08112 E RESV (ANA to Confirm)	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 13 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 1 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 2 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 completed by AANDC as per letter June 2015 no date	2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels	C
Wuskwi Sipiik	NE 1/4 6-39-26 WPM & NW 1/4 5-39-26 WPM - former Kirkpatrick properties (7-10) (8-10) 204 96	7-10	143.09	3.10b INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any	3.10b not met, 3.12 not met	3.11b Manitoba confirms agreement to method of resolve				Permit in works	Hydro Distribution - Electrical Lines - legal description required from AANDC. Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	NE 1/4 6-39-26 WPM & NW 1/4 5-39-26 WPM - former Kirkpatrick properties (7-10) (8-10) 204 96	8-10	160	3.10b INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any	3.10b not met, 3.12 not met						Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands (6-99B2)	6-99B2	624.00	2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC	2.20 not met 2.27/2.28 not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands	6-99B5	312.00	2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC	2.20 not met 2.27/2.28 not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands	6-99B6	157.00	2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC	2.20 not met 2.27/2.28 not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b TLEC assists in securing BCR from EFN accepting ESA checklist or final report Q4			Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipi hk	Crown/Agricultural lands Priority Parcel	6-99B9	155.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.17a met, 2.20 not met 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.25a EFN signs RSM with conditions noted if any Q4			Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	Crown/Agricultural lands	6-99B10	159.00	2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC	2.20 not met 2.27/2.28 not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	Crown/Agricultural lands Priority Parcel	6-99B12	446.00	2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.20 not met, 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.25a EFN signs RSM with conditions noted if any Q4			CanPar Ltd. - correspondence sent, no response - AANDC to decide if a FMAA or Permit will be issued Hydro Distribution - Legal description needed for insertion into 28(2) permit. Drain to be excluded. Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	Bell River North (3-02) 1,955.27	3-02	1,955.27	2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.20 not met, 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.21a TLEC assists EFN in resolution of TPI/encumbrance Q4			Road Drain - Plan 1489 (M) - to be excluded Access Agreement - Bell Canyon Lookout Point (m) Prov Forest Withdrawal Porcupine (internal task). Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	Porcupine Ridge (6-02) 651.02	6-02	651.02	2.17a INAC completes ESA checklist of final report 2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.17a met, 2.20 not met 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	N 1/2 36-40-25 WPM (former Burwash property) Priority Parcel (1-10) 314.00	1-10	314.00	3.10 INAC RDG considers/grants conditional AIP 3.13c INAC/contractor completes survey	3.10 not met, 3.13b met, 3.13c not met	3.21 MB drafts provincial OIC				Permit in works	MTS Facilities - buried cable Caveat #1032626 (MTS) Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	W 1/2 of NW 1/4 30-40- 24 WPM (former Burwash property) (2-10) 78.48	2-10	78.48	3.10 INAC RDG considers/grants conditional AIP 3.13c INAC/contractor completes survey	3.10 not met, 3.13b met, 3.13c not met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipi hk	SW 1/4 36-40-25 WPM (former Burwash property) (3-10) 150.63	3-10	150.63	3.10 INAC RDG considers/grants conditional AIP 3.13c INAC/contractor completes survey	3.10 not met, 3.13b met, 3.13c not met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipihk	Lot 22 Plan 820 DLTO (Former McKay Property) (4-10) 7.00	4-10	7.00	3.10 INAC RDG considers/grants conditional AIP	3.10 not met	3.21 MB drafts provincial OIC				Permit in works	MTS Facilities - cable and pedestal - Legal description needed for insertion into 28(2) permit. Hydro Distribution - electrical lines - Legal description needed for insertion into 28(2) permit. Resolved: Land in a Municipality - RM of Mountain North - MDSA negotiations are ongoing. Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipihk	Lot 25 Plan 1069 DLTO (former McKay property) (5-10) 16.60	5-10	16.60	3.10 INAC RDG considers/grants conditional AIP	3.10 not met	3.11b MB confirms agreement with the methods proposed to resolve all issues.				Permit in works	MTS Facilities - cable - Legal description from AANDC needed for insertion into 28(2) permit. Hydro Distribution - electrical lines - Legal description needed from AANDC for insertion into 28(2) permit. Consultation analysis must be completed prior to parcel proceeding.	C
Wuskwi Sipihk	NE 1/4 25-40-25 WPM (former McGregor property) (6-10) 155.22	6-10	155.22	3.10 INAC RDG considers/grants conditional AIP 3.13c INAC/contractor completes survey	3.10 not met, 3.13b met, 3.13c not met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipihk	Red Deer River NorthPriority Parcel (5-01) 1,163.11	5-01	1,163.11			2.21b MB confirms agreement with methods proposed to resolve all issues.					Hydro Distribution - need legal description to complete agreed to form 28(2) TPI - GP 845 - Primary Residence	C
Wuskwi Sipihk	Red Deer River South (7-02) 1,547.97	7-02	1,547.97			2.21b MB confirms agreement with methods proposed to resolve all issues.						C
Barren Lands	Paskwachi Bay Priority Parcel (3) 8,529.17	3	8529.17	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody Consultation letters sent in March 2014.	D
Barren Lands	Reserve East Priority Parcel (1-06) 11,101.27	1-06	11,101.27	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody Consultation letters sent in March 2014.	D
Barren Lands	Sawbill Priority Parcel (5) 694.64	5	694.64	Next steps to be determined following receipt of response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody Consultation letters sent in March 2014.	D

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Brokenhead	East St. Paul CT#2343338 (1-11) 2.00 Parcel Priority	1-11	2.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - Legal description needed from AANDC for insertion into 28(2) permit. Road - MIT - PTH 59 & 101 Right of Way Requirement - BON met with MIT to review Plans Caveat#2211448- RM of East St. Paul MDSA negotiations in progress.	D
Brokenhead	East St. Paul CT#2343339 (2-11) 5.0 Parcel Priority	2-11	5.00			3.11b Manitoba confirms agreement to method of resolve Q3		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - Legal description needed from AANDC for insertion into 28(2) permit. Road - MIT - PTH 59 & 101 Right of Way Requirement -BON met with MIT to review Plans MDSA negotiations in progress	D
Brokenhead	East St. Paul CT#2343341 (3-11) 54.00 Parcel Priority	3-11	54.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & 101 Right of Way Requirement - BON met with MIT to review Plans Easement#A16372 - Winnipeg Pipe Line Co. Ltd.Easement#A16 Caveat#209804 - Manitoba Hydro Electric Board Caveat#2211442- RM of ESP. EFN advised Imperial Oil it seeks a new Easement Agreement. Imperial Oil won't provide Depth of Cover Survey done in fall 2015 until EFN provides land development plan.	D
Brokenhead	East St. Paul CT#2343342 (4-11) 155.00 Parcel Priority	4-11	155.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#199722 - MTS Allstream Inc. Caveat#3498425 - MTS Allstream Inc. Road - MIT - PTH101 & Wenzel St. Right of Way Required	D

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Brokenhead	East St. Paul CT#2343352 (7-11) 14.00 Parcel Priority	7-11	14.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PR 202 Right of Way Requirement Caveat#2257312- RM of East St. Paul Caveat#3339966- RM of East St. Paul	D
Brokenhead	East St. Paul CT#2343354 (8-11) 51.00 Parcel Priority	8-11	51.00			3.11b Manitoba confirms agreement to method of resolve Q3		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#235805 - MTS Allstream Inc. Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PT 202 Right of Way Requirement Caveat#2257312-RM of East St. Paul Caveat#3339966-RM of East St. Paul Caveat#3413094-SSS/MRM Guide Rail Inc.	D
Brokenhead	East St. Paul CT#2343355 (9-11) 44.00 Parcel Priority	9-11	44.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#235394 - MTS Allstream Inc. Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PR 202 Right of Way Requirement MDSA negotiations in progress.	D
Brokenhead	Parcel 2A (Lac du Bonnet South) (2-01A) 278.64 Parcel Priority	2-01A	278.64	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.22' (7.5%)	D

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Brokenhead	Parcel 2B (Lac du Bonnet South) (2-01B) 501.90 Priority Parcel	2-01B	501.90	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.22' (6.8%)	D
Brokenhead	Parcel 2C (Lac du Bonnet South) (2-01C) 125.15 Priority Parcel	2-01C	125.15	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 839.57' (31.7%)	D
Brokenhead	Lac Du Bonnet North Shore (3-01) 1,057.13 Priority Parcel	3-01	1,057.13	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 841.86' (5.4%)	D
Brokenhead	Bannock Point Petroforms			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park EFN hosted parks forum with other First Nations and invited MB, Oct 5 & 6, 2015. BON co-host FN Gathering at Manito Api Whiteshell May 21 -24, 2016 to Options.	D
Brokenhead	Bannock Point Rehabilitation Camp			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park EFN hosted parks forum with other First Nations and invited MB, Oct 5 76, 2015.BON co-hosting FN Gathering at Manito Api Whiteshell May 21 -24, 2016 to Options.	D

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Brokenhead	Pine Point			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park EFN hosted parks forum with other First Nations and invited MB, Oct 5 & 6, 2015. BON co-hosting FN Gathering at Manito Api Whiteshell May 21 -24, 2016 to Options.	D
Brokenhead	Tie Creek Petroforms			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park EFN hosted parks forum with other First Nations and invited MB, Oct 5 & 6, 2015. BON co-hosting FN Gathering at Manito Api Whiteshell May 21 -24, 2016 to Options.	D
Brokenhead	Parcel 1-01B1, B2, B3 & 1-01C (Lac du Bonnet South) (1-01B) (1-01C) TBD	1-01-B1,B2,B3 1-01C	TBD	All of these parcels are affected by hydro easements				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.			WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.88' (1.5%) By letter dated January 30, 2013, AANDC requested that MB provide a breakdown of the TPIs & acreages for each of the phases of Lac du Bonnet South Parcel 1-01 (A, B, B1, B2, B3 & C).	D
Buffalo Point	Birch Point (1) 138.75 Priority Parcel	1	138.75					This parcel is in a provincial park. MB has advised it is not available.			IMC confirmed proceeding to Binding Arbitration.	D
Buffalo Point	Waterlot Parcels A, B, and C Plan 17479 WLTO	(1-12)	0.00					EFN to meet with DFO on whether DFP prepared to divest ownership of Wharf.			Waterlot connected to 'Galley Restaruant' parcel. MANA letter to BPFN Oct. 24, 2012 -Concern with Parcel A re:small craft safety -structures in waterway. Meeting held with DFO Dec. 2015, prepared to relinquish interest on all 3 Waterlots A,B,& C back to MB required by reversionary clause. Procedure to be identified, To includes Breakwater structure.	D
Buffalo Point	Cochrane Island (ON) (None) 540 Priority Parcel		540.00					EFN to decide next steps. Ontario has advised this parcel is unavailable for selection			NOT ON TRELES Selection in Ontario	D
Buffalo Point	Eagles Rock (ON) (None) 970 Priority Parcel		970.00					EFN to decide next steps. Ontario has advised this parcel is unavailable for selection.			NOT ON TRELES Selection in Ontario	D

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Buffalo Point	PTH 12 Acquisition (1-06) 70 Priority Parcel	1-06	70.04					EFN and MIT to discuss resolution of the set back line.			Hydro Distribution Facilities Road PTH # 12 - fa 13.03c Taxes paid - Tax Certificate issued Meeting held Oct. 8, 2015- MIT, MANA, TLEC. MIT seeks to maintain 'control zone'. Further meeting required to discuss Options. Meeting to be held April, 2016 with BPFN, ANA, MIT, TLEC, INAC. Canada Border Services owns and intends to continue administration of Kitts Duty Free Shop & not interested in selling. CBS Building Expansion plans. MIT to provide new Appraisal.	D
Buffalo Point	Thunder Lake Island (1-10) 41.96 Priority Parcel	1-10	41.96					This parcel is in a provincial park. MB has advised it is not available.				D
Buffalo Point	Lands nearby Middlebro,MB (1-14)	1-14	1,494.00			MANA to identify the area of private land. Private land: E1 / 2NW 5 & NW 6-1-16 EPM (excluded)		EFN to provide notice of Land selection letter to RM and identify is MDSDA required.			Land in Municipality R.M. of Piney, Road - Prov, PTH 12-FA 13.03; 28(2) permits required to Hydro distribution line, 2 MTS Easements, MTS Facilities and Navigable Water - Bob's Lake & Creek FA 12.02	D
God's Lake	Elk Island (2-2000B) 193.2	2-2000-B	193.20								TPI - Mining Claim - GoGo Abandoned Mine Site Clean-Up Program	D
God's Lake	Little Stull Lake (9) 8,421.12 Priority parcel	9	8,421.12	Next step to prepare RSM if possible to survey a portion without land locking.				2.11 TLEC/EFN analyze methods of resolution - to follow after the Q3 Meeting EFN response after Q4 Meeting		EFN sent BCR and map BCR 296-974 dated March 11, 2015 phasing selection for survey	TPI - Mining Claim - Katie 1 - W50856 TPI - Mining Claim - Katie 2 - W50857 TPI - Mining Claim - Katie 3 - W50858 TPI - Mining Claim - Gail 1 - W50863 TPI - Mining Claim - Gail 2 - W50864 TPI - Mining Claim - Island 2 - W52235 TPI - Mining Claim - Ken 1 - W52561	D
God's Lake	Elk Island (2-2000) 11,499.70 Priority parcel	2-2000	11,499.70								Parcel is contaminated and cannot proceed. Can this be transferred with industrial designation?	D
God's Lake	Kanuchuan Rapids (1-2000) 544.17 priority parcel	1-2000	544.17							remediation clean up site program -EFN to send proposal to Minees Branch		D

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Manto Sipi	Johnson Bay (Amended) (6-01) 512.38 Parcel Priority	6-01	512.38	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Independent review completed on the validity of interest by June 30, 2011					TPI - Mining Claim - Godslith - W45426 318.28 acres are encumbered by the mining claim. MSCN filed statement of claim against MB in 2015. Negotiation table option under review.	D
Manto Sipi	Kistigan Lake (12) 1,600.15 Parcel Priority	12	1,600.15	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2			TPI - Mining Claim - Andrew 1 - W50853 TPI - Mining Claim - Cole 1 - W52072 TPI - Mining Claim - Cole 2 - W52073 TPI - Mining Claim - Cole 3 - W52074 TPI - Mining Claim - Otter 1 - W52079 TPI - Mining Claim - Otter 2 - W52080	D
Manto Sipi	Little Stull Lake (Amended) (7-01) 818.33 Parcel Priority	7-01	818.33	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2			TPI - Mining Claim - Cabin 2 - W50862	D
Manto Sipi	Little Stull Lake (Additional) (12-01) 542.4 Parcel Priority	12-01	542.40	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2	2.11		TPI - Mining Claim - Andrew 1 - W50853 (M) TPI - Mining Claim - Andrew 2 - W50854 (M) TPI - Mining Claim - Andrew 3 - W50855 (M) TPI - Mining Claim - Cole 1 - W52072 TPI - Mining Claim - Cole 2 - W52073 TPI - Mining Claim - Cole 3 - W52074 TPI - GP 6476 Pt NE 28-64-9E 2nd FIPPA request made.	D
Manto Sipi	Wapawaka Bay (Edmund Lake) (13) 50.69 Parcel Priority	13	50.69			Letter from MB dated December 7, 1999 advises this selection is not available because it is "pristine wilderness".		EFN to meet with lodge owner tentatively in June 2011. EFN to send request to MB by Q# with respect to location of lodge.			TPI - GP 4527 - Lodge Tourist Operation Impact	D
Manto Sipi	Elk Island (17.1) 15.50	17.1	15.50								Parcel is surveyed. Parcel is contaminated and cannot proceed.	D
Manto Sipi	Elk Island (17.2) 17.18	17.2	17.18								Parcel is surveyed. Parcel is contaminated and cannot proceed.	D
Manto Sipi	Elk Island (17.3) 30.27	17.3	30.27								Parcel is contaminated and cannot proceed.	D

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Manto Sipi	Elk Island (17.4) 25.48	17.4	25.48								Parcel is contaminated and cannot proceed.	D
Manto Sipi	Elk Island (17.5) 50.92	17.5	50.92								Parcel is contaminated and cannot proceed.	D
Manto Sipi	Elk Island (17.6) 22.68	17.6+C16	22.68								Parcel is surveyed. Parcel is contaminated and cannot proceed.	D
Manto Sipi	Johnson Peninsula (18) 292.79	18	292.79	2.17a INAC completes ES checklist or final report Q1							Private Minerals. - AANDC to determine if a FMAA or Pre-Permit will be issued.	D
Manto Sipi	Lot 1 Plan 2491 and Pt Plan 4955 (B) (B) 10.75	B	10.75	confirm whether this is a TLE parcel							GP - Lodge	D
Manto Sipi	Neekwaskan Lake (15.1) 125.53	15.1	125.53								MSCN has indicated they wish to proceed with this parcel -burial site. Parcel is listed in AANDC March 2014 Consultation Letter -	D
Manto Sipi	Neekwaskan Lake (15.3) 28.39	15.3	28.39								MSCN has indicated they wish to proceed with this parcel-burial site. Parcel is listed in AANDC March 2014 Consultation Letter -	D
Manto Sipi Parcel is contaminated - moved to Schedule E	Jowsey Island (17.A) 11.97	17.A	11.97								The utility of a Phase II must be discussed since this parcel did not pass the Phase I due to arsenic contamination.	D
Mathias Colomb	Granville Lake 2A Phase 2 Priority Parcel (2A Ph2) 36.37	2-A(Ph2)	36.37								WPR Withdrawal Churchill River (internal task) - MCCN currently addressing MB Housing issues on this selection - Hydro easement requirement removed on 25-Apr-2012.	D
Mathias Colomb	Russell Lake 6A Priority Parcel (6A)135.79	6A	135.79								Hydro Easement Required 1072.80' (56.7%) WPL Withdrawal Laurie River Final (internal task) This parcel cannot advance any further without agreement on the hydro easement.	D
Mathias Colomb	Russell Lake 6B Priority Parcel (6B) 308.95	6B	308.95								Hydro Easement Required 1072.80 This parcel cannot advance any further without agreement on the hydro easement.	D
Mathias Colomb	Sandy Bay (SK) Priority Parcel 115 Priority Parcel		115.00								MCCN working with SK INAC region to implement ATR.	D

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Mathias Colomb	Burntwood Lake (4) 1,189.60	4	1,189.60					2.17b EFN accepts results of environmental assessment Q4			TPI - GP 2723 - Lodge Tourist Operation Impact	D
Mathias Colomb	Granville Lake 2A Phase 1 (2A Ph 1) 1,118.23 <i>PRIORITY PARCEL</i>	2A(Ph1)	1,118.23								Hydro Distribution MTS Facilities Land in a Northern Community (Granville Lake) TPI interests - Granville Lake - Northern Affairs Hydro Easement requirement was withdrawn 25-Apr-2012 Lagoon Road - Access Agreement	D
Nisichawayasihk	Birch Tree Brook (2-2000) 598.33 Priority Parcel	2-2000	598.33			Hydro Easement. EFN to reply to MB on prioritizing of parcels encumbered by an easement Q#		Mtg. in May with MB Hydro and NCN to discuss matter of lands physically required. Hydro Easement. Mining claim issue 2.11 TLEC/EFN to analyze methods of resolution. EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL	TPI - Mining Claim - Falcon 26 Land in a Municipality - RM of Mystery Lake WPR Withdrawal Burntwood River (internal task) Hydro Communication Cable Hydro Lands Physically Required TPI - Mining Claim - Man 10	D
Nisichawayasihk	Birch Tree Brook (Addition) (3-2000) 400.82 Priority Parcel	3-2000	400.82			Hydro Easement. EFN to reply to MB on		Mtg. in May with MB Hydro and NCN to discuss matter of lands physically required. Hydro Easement.		PRIORITY PARCEL	Hydro Lands Physically Required TPI - Mining Claim - Falcon 12 TPI - Mining Claim - Falcon 26 Land in a Municipality - RM of Mystery Lake	D
Nisichawayasihk	Kepuche Falls (8-2000) 1,424.21 Priority Parcel	8-2000	1,424.21			Hydro Easement.		2.11 TLEC/EFN to analyze methods of resolution. EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL	Hydro Lands Physically Required Hydro Easement Estimate 698.8' (60.9%)	D
Nisichawayasihk	Mile 17 A (Revised) (1-05) 308.29	1-05	308.29					EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#			Hydro Lands Physically Required - Road & Work Cp Hydro Transmission Line	D
Nisichawayasihk	Osik Lake (13-01) 5,195.00 Priority Parcel	13-01	5,195.00					EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL	Aggregate - NW 3-80-10 WPM MIT - Figure 1 Hydro Easement Required 810' WPR Withdrawal Burntwood River (internal task) WPL Withdrawal Churchill River (internal task)	D

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Nisichawayasihk	Parcel W (Plan 5965) (1-2000) 10.52	1-2000	10.52					EFN to reply to MB on prioritizing of parcels encumbered by an easement and a response required to MB re: Less than 1,000 acres by Q# Mining Leases 2.11 TLEC/EFN to analyze methods of resolution.		PRIORITY-PARCEL	TPI - Mining Lease - M4875 TPI - Mining Lease - M5280 TPI - Mining Lease - M5281 TPI - Mining Lease - M5282 TPI - Mining Lease - M5283 TPI - Mining Lease - M5293 Hydro Distribution Hydro Easement Required 635' WPL Withdrawal Churchill River (internal task) WPR Withdrawal Burntwood River (internal task) Less than 1000 - Competing Consideration (Hydro) MTS Facilities	D
Nisichawayasihk	Driftwood Rapids to Grindstone Rapids (4-01) 1,028.35	4-01	1,028.35					2.29 TLEC assists in securing BCR from EFN approving survey plan			ESA Report April 2010 This parcel moving with Driftwood Rapids to Grindstone Rapids Addition Consultation will need to be addressed	D
Nisichawayasihk	Driftwood Rapids to Grindstone Rapids Addition (3-06) 80.04	3-06	80.04					2.29 TLEC assists in securing BCR from EFN approving survey plan			ESA Report June 2010 This parcel moving with Driftwood Rapids to Grindstone Rapids Consultation will need to be addressed	D
Nisichawayasihk	Wuskwatim Brook (23-01) 367.03	23-01	367.03					2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			ESA Report June 2010 This parcel moving with Wuskwatim Lake South. Consultation will need to be addressed	D
Nisichawayasihk	Wuskwatim Lake South (26-01) 998.01	26-01	998.01					2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			ESA Report June 2010 This parcel moving with Wuskwatim Brook. Consultation will need to be addressed	D
Nisichawayasihk	Manasan Falls (5-2000) 186.05	5-2000	186.05								Hydro lands physically required; Portage/Access; TPI: Mining Claim, Mineral Leases (2), Private land, water recording site.	D
Nisichawayasihk	Mile 17B (1-06) 1,146.89	1-06	1,146.89								Hydro transmission line; access road privately owned; 100 meter exclusion to access road; TPI issues.	D

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Nisichawayasihk	Moak Lake (11-01) 3,326.61 PRIORITY PARCEL	11-01	3,626.61								Aggregate, LGD Mystery Lake, over 100 Mineral Leases, Road, Private Lands.	D
Nisichawayasihk	Notigi (6-2000) 149.74	6-2000	149.74								Hydro lands physically required.	D
Nisichawayasihk	Notigi Lake (7-2000) 172.32	7-2000	172.32								Hydro lands physically required.	D
Nisichawayasihk	Reserve 170 to Junction (16-01) 1,043.99	16-01	1,043.99								Hydro Easement required, aggregate, Hydro transmission line, Hydro distribution, Northern Community (Nelson House), Private lands.	D
Northlands	Kasmere Lake (Parcel A) (8-04A) 3,994.11 Priority	8-04A	3,994.11					2.21a EFN resolves TPI/encumbrances. EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 4497 - Trapper's Cabin Portage/Access	D
Northlands	Nahilin Falls (12-04) 1,498.11 Priority	12-04	1,498.11					2.21a EFN resolves TPI/encumbrances. EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 4541 - Trapper's Cabin WPR Withdrawal Nelson River (internal task)	D
Northlands	Shannon Lake (17-04) 441.36 Priority	17-04	441.36					2.21a EFN resolves TPI/encumbrances. EFN Lodge		EFN provided desk audit letter November 7, 2013	Tourist Operation Impact	D
Northlands	Putahow Lake (Site E) (15-04E) 991.97 Priority	15-04E	991.97					2.21a EFN resolves TPI/encumbrances. EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 6757 - Tourist Outcamp	D
Northlands	Burnie Lake (3-04A) 417.70	3-04A	417.70					2.21a EFN resolves TPI/Encumbrances Q4		EFN provided desk audit letter November 7, 2013	TPI GP 2873 - Outcamp (M) Tourist Operation Impact. Less than 1000 acres. ESA acceptance BCR has been received.	D
Northlands	Charcoal Lake Saskatchewan (?)			province has advised that this parcel is not eligible.								D
Northlands	Snyder Lake D (18-04D) 852.26	18-04D	852.26							EFN provided desk audit letter November 7, 2013	MB response letter Jan 5, 2015, amended selection BCR-317-308, Sept 24, 2014-TPI MEL	D
Northlands	Stevens Lake (20-04) 152.60 Priority	20-04	152.60							EFN provided desk audit letter November 7, 2013	TPI - Tourist Operation Impact - Less than 1000 acres - competing consideration (tourist)	D
Norway House	Mission Island (9.02) 136.63	9-02	136.63	2.16 enviro confirm status - potential site visit.		Access agreement to TLEC by Q#		EFN to coordinate meeting with Northern Affairs Community			Private Land - NW 18-57-3 WPM Access Agreement - Private Lands WPR Withdrawal Nelson River (internal task) Hydro Distribution Land in a Northern Community - Norway House	D
Norway House	Big Birch Islands (2-01) 45.34	2-01	45.34							EFN to provide desk audit letter Q3	Hydro Easement	D

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Norway House	Butterfly Lake C (5-01C) 10.72PRIORITY PARCEL	5-01C	10.72		AIP signed.						NFA Overlap	D
Norway House	Costes Lake A (6-01A) 21.04	6-01A	21.04								Cabin - RSM Status needs to be verified	D
Norway House	Gunisao Lake E (13-01E) 160.39PRIORITY PARCEL	13-01E	160.39		NFA overlap						NFA Overlap	D
Norway House	Gunisao River (3-02) 4,503.95	3-02	4,503.95								No ESA - scheduled 2016-2017? SURVEY is done- MOVE to B?	D
Norway House	Nelson River East Channel A (33 -01) 3596	33 -01	3,596.00								Pending litigation - b/w Gossan Resources & Cross Lake Mineral Exploration -MANITOBA advised JAN. 25, 2016 a hearing to withdraw litigation is scheduled JAN 27, 2016. Order being finalized to discharge the litigation	D
Norway House	North Molson Lake A&D Plan 39 (3-ISLB) 317.2 PRIORITY PARCEL	3-ISLB	317.20								Unauthorized structures - RSM Status to be verified	D
Norway House	PR 373B (42-01B) PRIORITY PARCEL	(42-01B)									Aggregate site TPI	D
Opaskwayak	No. 10 Addition (Formerly 4) (2) 550.32 priority parcel	2	550.32	PRIORITY PARCEL.				The private lands are not eligible and must be acquired.			Private Land to be excluded, BCR required. Land in a Municipality - RM of Kelsey Hydro Distribution MTS Facilities *Env Report dated 2001	D
Opaskwayak	Parcel B, Plan 38784 PLTO Post Office, Acquisition (1-04)	1-04	0.00								MDSA with Town of The Pas required.	D
Opaskwayak	Yawningstone (2-2000) 7,381.32 priority parcel	2-2000	7,381.32					EFN development of easement under Land Code			TPI - GP 4446 - Trapper's Cabin Hydro Easement Estimate 848.1' (11.7%) Grave Site WPR Withdrawal Sask River-Grand Rapids (internal) ESA Visit October 13, 2007	D
Opaskwayak	Barrier Settlement (8) 9.85	8	9.85	The selection and the acquisition of the same name will move together.				2.21a EFN resolves TPI / encumbrances Q4		Unregistered Interest - Cabin Community Approval Process required.	Unresolved unregistered interest (cabin)	D

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Opaskwayak	Fisher Island (8-2000) 798.27	8-2000	798.27								ESA visit July 2002 Riparian Rights issue Ducks Unlimited Control Structure Community Approval	D
Opaskwayak	Lot 8, Block 65, Plan 559 (Food Town, Acquisition)		0.00					EFN to negotiate MDSA with town of The Pas.			MDSA required Utilities Permit under OCN Land Code required	D
Opaskwayak	Mitchell Lake Road (1-10) 133.55		133.55								Not eligible - to be rescinded.	D
Opaskwayak	Parcel A, Plan 38771 (Hogan Ave. formerly Lots 1-7 , Surplus Fed Crown)		0.00	Surplus Federal Crown Land, has not yet been acquired. Appraisal completed and submitted to DOJ for review. Next step: Offer to Purchase.							MDSA required Utilities Permit under OCN Land Code required	D
Opaskwayak	Parcel A, Plan 38769 (Paul Ave., formerly Lot 69 Surplus Fed Crown)		0.00	Surplus Federal Crown Land, has not yet been acquired. Appraisal completed and submitted to DOJ for review. Next step: Offer to Purchase.							MDSA required Utilities Permit under OCN Land Code required	D
Opaskwayak	Saskeram WMA (1) 1,439.59	1	1,439.59								Ducks Unlimited Private Land Community Approval	D
Opaskwayak	Trapline (7-2000) 157.41	7-2000	157.41								ESA visit July 2002 Riparian Rights issue Ducks Unlimited Full Supply Line Community Approval	D

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Sapotaweyak	Former Bilow Gas Bar (Acquisition Mafeking) (1-09) 1.55 Priority Parcel	1-09	1.55	Phase II ESA revealed contamination. AANDC reviewed the report and will require the EFN to remediate the lands.		3.21 MB drafts provincial OIC	Hydro Distribution - 28(2) Permit Caveat # 95- 5194 - MIT Encroachme nt Land in a Municipality - RM of Mountain	2.17a Phase II environmental assessment is required and will be conducted by the EFN. Q2		2.17a completed in Q1	Caveat #39929 - MTS - 28(2) Permit Hydro Distribution - 28(2) Permit Caveat # 95- 5194 - MIT Encroachment Agreement Land in a Municipality - RM of Mountain. Caveat 37173 was discharged April 2012. RM of Mountain has confirmed a water line crosses the property. AANDC to reweiv draft waterline easment agreement. R.M. Mountain to provide survey/map to see if a "tie-in doc"/survey pin is on eastern boundary to address metes and bounds description on location of waterline. MIT approved discharge of Caveat 95-5194 transfers encroachments to MB,MIT gave notice to CRLPA to discharge- EFN signed off on BCRs for MTS and Hydro permts -MTS will not discharge Caveat 39929 unless SCN consents to updated MTS permit on main reserve. SCN provided consenting BCRs to AANDC in April 2013 for Hydro and MTS permits. EFN & RM Mountain met May 20, 2015 on Services Agreement areas.	D
Sapotaweyak	Pelican Rapids Access Road Phase 2 (Amended) (1-03) 5,281.93 Priority Parcel	1-03	5,281.93			2.21b MB confirms agreement with methods proposed to resolve all issues.					SCN meeting with Graymont & MB on Easement Agreement TPI Quarry Lease - QL 1209 TPI Quarry Lease - QL 1211 TPI Quarry Lease - QL 1210 TPI Quarry Lease - QL 516, 567, 566, 565, 517, expired May 7, 2012. TPI GP 956-All weather Road Access TPI-GP 1351 - Remote Cottage (hunting/fishing) TPI-GP 1882 -Remote Cottages (recreation) Cottages to be exluded upon signing of the RSM. Phase II EA completed.MIT to provide report to AANDC on tank & pump removal.	D
Sapotaweyak	Red Deer Lake (1-02) 1,815.01 Priority Parcel	1-02	1,815.01			2.21b MB confirms agreement with methods proposed to resolve all issues.		EFN to confirm whether this parcel will be rescinded.			EFN advised no Municipal services provided to sole resident - EFN to seek Claim who is SCN member. MANA advised it will check with RM of Barrows if any services provided. Boundary needs to be amended.	D

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Sapotaweyak	The Bluff (3-99) 1,922.20 Priority Parcel	3-99	1,922.20			2.21b MB confirms agreement with methods proposed to resolve all issues.		EFN to confirm whether this parcel will be rescinded.			EFN addressing Third Party Interests (primary residents) 1 of 5 occupants to excluded with Access permit 28(2)- AANDC to prepare map of hatch-out of one residence to prepare RSM sign off.	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 855 Block 1 Plan 1 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, indentified by MB as clear -Charge on CT: MTS-42755N -Encumbrance on Crown Land Record: EASMHYD19600CAGRE	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 855 Block 1 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, indentified by MB as clear -Charge on CT: MTS-42755N -Encumbrance on Crown Land Record: EASMHYD19600CAGRE	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan West of 905 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, indentified by MB as clear	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 28106 Block 1 Lot 5 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE ROW ILFORD RESV	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 28106 Block 1 Lot 6 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 28106 Block 1 Lot 7 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record:	D
War Lake	Ilford Phase 2 (Site 3- 05) - Plan 28106 Block 1 Lot 8 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record:	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. Lot rescinded Feb 23, 2015 (letter from WLFN)		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels (Empty Lot - Public Reserve?)	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.	2.21b met	2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels (Empty Lot - MB to verify if clear)	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 1 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: ROW ILFORD RESV EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 3 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 4 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 Lot 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 Lot 3 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues. House to be transferred to Moosecoot Housing Authority		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot with MHRC housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 2 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 4 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 11 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 12 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 15 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 5 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 8 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 9 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Land to be converted back to Crown		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 2 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot, not eligible	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 18 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot, not eligible	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 19 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot, not eligible	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 6 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot, not eligible	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 7 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Moosecoot Housing Authority	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 14 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.Private lots		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot, not eligible	D
War Lake	North of Ilford (Amended) (11-02) 6.52 (white)	11-02	6.52			2.21b MB confirms agreement with methods proposed to resolve all issues.					INAC to advise if parcel on 16/17 survey list.	D
War Lake	Weir River (14-02) 872.91 (white)	14-02	872.91					EFN to undertake discussions with Fox Lake			Competing Interest - Fox Lake FN (as per INAC & TRELES) Access - Abandoned Railway WMA - Cape Churchill - No concerns	D
Wuskwi Sipihk	NW 1/4 6-39-26 WPM (former Koutecky Property) (9-10) 143.09	9-10	143.09	3.8b The ESA Report will be finalized once the houses on the property are relocated.						Permit in works	Hydro Distribution - electrical lines There are houses on the property that are being relocated - The ESA Report will be finalized once this is done Building condition reports will be required for the remaining housing on the property.	D
Wuskwi Sipihk	Lot 14-16 Block 29 Plan 426 PLTO (Former Town of the Pas property) (10-10) 0.78 PRIORITY PARCEL	10-10	0.78							Permit and agreement w The Pas in works	Hydro Distribution - electrical lines Land in an Urban Area - Town of the Pas	D

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Wuskwi Sipihk	Nicholls (1-14) (406.64)	1-14	406.64	3.8b INAC completes ESA checklist of final report 3.10 INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements							Provincial Waterway (Schlagg Drain) Plan No. 2518 DLTO runs along the south boundary of the selection and will be excluded	D
Wuskwi Sipihk	Lot 1 Plan 54719 DLTO (Swan River Acquisition) (1-14A) (TBD)	1-14A	TBD	3.8b INAC completes ESA checklist of final report 3.10 INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements						MDSA in progress, Priority for Chief, 28(2) permit required	MB Hydro has electrical services affecting this acquisiton - Caveat 1093383/6. Swan Valley Gas Corporation has a natural gas line traversing this acquisition - Caveat 1018299/6. Centra Gas Manitoba Inc has applied to the Public Utilities Board to acquire the assets of the Swan Valley Gas Corporation. Mts Allstream Inc has a 5 metre easement along the southerly, northerly, and westerly 5-metres of this acquisition.	D
Barren Lands	Long Point Parcel (6) 2,973.61	6	2,973.61	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody - BLFN addressing SP with legal counsel Consultation letters sent in March 2014.	E
Barren Lands	Lower Cochrane Priority Parcel (2) 4,837.55	2	4,837.55	Next steps to be determined following response from SASK POWER dated March 28, 2012							Portage/Access - Kamechayt Rapids Portage/Access - West of winter road Sask Power Regulation of Waterbody Winter Road Consultation letters sent in March 2014	E
Brokenhead	Certificate of Title #1960361/1 - Lots 140, 141, and 142 Block 2 Plan 129 WLTO (W. Div) in RL 1 Parish of St. John (360 Broadway Ave, City of Winnipeg) (1-14) TBD	1-14	TBD								By follow-up letter dated May 2015 the BON requested meeting with new Winnipeg Mayor.In discussion with SERDC. No response fromCity of WPG. EFN to contact again by letter on MDSA.	E
Bunibonibee	Knee Lake Lodge (1-2000) 1,511.09 --priority parcel	1-2000	1,511.09					2.11 TLEC/EFN to analyze methods of resolution. EFN to advise on outcome of meeting with lodge owner Q4			TPI - MISC 3482 - Airstrip TPI - MISC 3482 - Lodge Tourist Operation Impact - Reasonable Use Area	E

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Mathias Colomb	Kamuchawie Lake (8) 1,412.35 <i>PRIORITY PARCEL</i>	8	1,412.35					2.17b EFN accepts results of environmental assessment Q2			TPI - GP 2500 - Tourist Outcamp WPL Withdrawal Laurie River Final (internal task) Hydro Easement Estimate - Easement Line Photo Map This parcel cannot advance any further without agreement on the hydro easement.	E
Nisichawayasihk	Chipewyan Bay (3-01) 820.88	3-01	820.88								Hydro Easement required.	E
Nisichawayasihk	Early Morning Rapids (4-06) 1,760.79	4-06	1,760.79								Hydro Easement required.	E
Nisichawayasihk	Gauer River Addition (4-03) 1,766.39	4-03	1,766.39								Hydro Easement required.	E
Nisichawayasihk	Leaf Rapids to Gate Falls (8-01) 2,369.78	8-01	2,369.78								Hydro easement; Hydro monitoring station.	E
Nisichawayasihk	Manasan Falls (revised) (1-02) 1,003.98	1-02	1,003.98								Hydro Easement; Hydro lands physically required; multiple TPI issues.	E
Nisichawayasihk	Mynarski Lakes (12-01) 492.59	12-01	492.59								Hydro Easement required.	E
Nisichawayasihk	Reading River (15-01) 1,171.68	15-01	1,171.68								Hydro Easement required.	E
Nisichawayasihk	Taskinigup Falls (4-2000) 1,631.75	4-2000	1,631.75								Hydro lands physically required.	E
Nisichawayasihk	Taskinigup Falls Addition (18-01) 300.24	18-01	300.24								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake E (20-01) 5,381.44	20-01	5,381.44								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake SW (21-01) 948.89	21-01	948.89								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake W (22-01) 1,852.12	22-01	1,852.12								Hydro Easement required.	E
Nisichawayasihk	Wuskwatim Lake North (24-01) 1,700.93	24-01	1,700.93								Hydro Easement required; Hydro monitoring station.	E
Nisichawayasihk	Wuskwatim Lake Northeast (25-01) 312.12	25-01	312.12								Hydro Easement required; Hydro monitoring station.	E
Nisichawayasihk	Wuskwatim Lake West (27-01) 669.89	27-01	669.89								Hydro Easement required; Hydro monitoring station.	E

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Finalized on May 1st, 2016

First Nation	Site Name (Site#) Acres	Site#	Acres	Canada Process Steps / Target Date	Canada Status as of Date	Manitoba Process Steps / Target Date	Manitoba Status as of Date	TLEC / EFN Process Steps / Target Date	TLEC Status as of Date	EFN Status as of Date	TPIs/Encumbrances/Comments	Schedule
Norway House	Dennison Point (7-01) 32.57	7-01	32.57								Hydro Easement	E
Norway House	Flett Islands (10-01) 169.54	10-01	169.54								Hydro Easement; Cottage; Northern Community	E
Norway House	Flett Point Islands (11-01) 31.62	11-01	31.62								Hydro Easement	E
Norway House	Goose Islands (12-01) 22.73	12-01	22.73								Hydro Easement	E
Norway House	Hart Point Islands (14-01) 45.21	14-01	45.21								Hydro Easement	E
Norway House	Jackfish Islands (17-01) 89.46	17-01	89.46								Fish camp; Cottage; Hydro easement	E
Norway House	Kettle Islands (18-01) 57.97	18-01	57.97								Hydro Easement	E
Norway House	Kiskitto Lake (5-02) 82.04	5-02	82.04								Trapper's cabin; Dyke & road required by Hydro; Hydro easement	E
Norway House	Kiskittogisu Lake A (19-01A) 30.20	19-01A	30.20								Hydro Easement	E
Norway House	Kiskittogisu Lake B (19-01B) 4.07	19-01B	4.07								Hydro Easement	E
Norway House	Kiskittogisu Lake C (19-01C) 20.12	19-01C	20.12								Hydro Easement; Fish camp	E
Norway House	Kiskittogisu Lake D (19-01D) 80.52	19-01D	80.52								Hydro Easement	E
Norway House	Kiskittogisu Lake E (19-01E) 114.52	19-01E	114.52								Hydro Easement	E
Norway House	Kiskittogisu Lake West Shore (6-02) 1,681.64	6-02	1,681.64								Hydro easement; Hydro requires land for Borrow Pit, Dyke(s) and Road	E
Norway House	Lac Du Bonnet North Shore (1-2001) 2,517.36	1-2001	2,517.36								Private lands - 3; 2 Permits - TPI's; Hydro easement; GRA Closure	E
Norway House	Lebrix Lake C (21-01C) 162.24PRIORITY PARCEL	21-01C	162.24		NFA overlap						NFA Overlap	E
Norway House	Logan Lake C (23-01) 128.93 PRIORITY PARCEL	23-01	128.93		NFA overlap						NFA Overlap	E
Norway House	Malcolms Landing (24-01) 19.86	24-01	19.86								Hydro Easement; Fish camp	E

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Norway House	McLeod Islands (26-01) 25.86	26-01	25.86								Hydro easement Land in northern community	E
Norway House	McLeod Island Point (27-01) 38.98	27-01	38.98								Hydro easement Land in northern community	E
Norway House	Menow Bay A (28-01A) 317.92	28-01A	317.92								Hydro Easement	E
Norway House	Menow Bay B (28-01B) 545.04	28-01B	545.04								Hydro Easement	E
Norway House	Menow Bay C (28-01C) 753.96	28-01C	753.96								Hydro Easement	E
Norway House	Metchanais Island South (29-01) 33.07	29-01	33.07								Hydro Easement	E
Norway House	Montreal Point (31-01) 46.67 <i>PRIORITY PARCEL</i>	31-01	46.67		NFA overlap						Hydro Monitoring Station; Hydro easement; NFA Site overlap	E
Norway House	Namayo Point Islands (32-01) 9.75	32-01	9.75								Hydro Easement	E
Norway House	Nelson River East Channel Addition (10-02) 915.83	10-02	915.83								3 Hydro Monitoring Stations (survey pins) - awaiting letter from MB Hydro	E
Norway House	Painted Stone Portage B (36-01B) 64.34	36-01B	64.34		AIP complete.						Portage	E
Norway House	Playgreen Lake A (38-01A) 32.73	38-01A	32.73								Hydro Easement	E
Norway House	Playgreen Lake B (38-01B) 3.73	38-01B	3.73								Hydro Easement	E
Norway House	Playgreen Lake C (38-01C) 5.08	38-01C	5.08								Hydro Easement	E
Norway House	Playgreen Lake Ridge A (39-01A) 6,814.55	39-01A	6,814.55								Hydro Easement	E
Norway House	Playgreen Lake Ridge B (39-01B) 1,163.40	39-01B	1,163.40								Hydro Easement	E
Norway House	Playgreen Lake South Shore A (41-01A) 6.48	41-01A	6.48								Hydro Easement	E

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Norway House	Playgreen Lake South Shore B (41-01B) 724.61	41-01B	724.61								Hydro Easement <1000 competing interest (Hydro)	E
Norway House	Playgreen Lake South Shore C (41-01C) 233.10	41-01C	233.10								Hydro Easement	E
Norway House	Playgreen Lake South Shore D (41-01D) 355.18	41-01D	355.18								Hydro Easement	E
Norway House	Playgreen Lake South Shore E (41-01E) 273.64	41-01E	273.64								Hydro Easement <1000 competing interest (Hydro)	E
Norway House	Playgreen Lake South Shore F (41-01F) 743.30	41-01F	743.30								Hydro Easement <1000 competing interest (Hydro)	E
Norway House	Playgreen Point Island (40-01) 2.09 <i>PRIORITY PARCEL</i>	40-01	2.09								Hydro Easement	E
Norway House	Robinson Lake B (43-01B) 86.18 <i>PRIORITYPARCEL</i>	43-01B	86.18		NFA overlap						NFA Overlap	E
Norway House	Sandy Bar (44-01) 717.84	44-01	717.84		NFA overlap						NFA Site overlap Hydro easement TPI	E
Norway House	Tait Islands (45-01) 59.81	45-01	59.81								Hydro Easement; Fish camp	E
Norway House	Taylor Islands (46-01) 863.31	46-01	863.31								Hydro Easement	E
Norway House	Whitefish Islands (48-01) 26.10	48-01	26.10								Hydro Easement	E
Opaskwayak	Guy Hill School (4)		0.00								Not eligible - to be rescinded.	E
Opaskwayak	NW 15-55-26 WPM North of Young's Point Road (Site No. 1-14)	1-14	10.48								Manitoba Hydro has electrical distribution line along northwest limit of Young's Points Road and distribution line which crosses the gov't rd allowance bet'n NW 15 and NE 16-55-26 WPM ROW will be excluded Land in a Municipality RM of Kelsey. <i>ENLMA - Community Approval</i>	E

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Opaskwayak	NE 16-55-26 WPM (Site No. 2-14)	2-14	30.52								Hydro distrubtion-FNLMA-Utility permit RD-Mun-Plans-4769&22590-FA 13.01 &13.03; Drain Prov-Pan 4928-and extension to be excluded-Land in a Municipality-RM of Kelsey- FNLMA-Community Approval	E
Opaskwayak	NE 21-55-26 WPM (Site 3-14)	3-14	160.40								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E
Opaskwayak	NE 28-55-26 WPM (site 7-14)	7-14	117.00								Land in a Municipality-RM of Kelsey FNLMA-Community Approval Access to NW27-55-26 WPM TBD	E
Opaskwayak	NE 29-55-26 WPM (site 11-14)	11-14	144.00								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E
Opaskwayak	NE 32-55-26 WPM (Site 15-14)	15-14	40.00								Land in a Municipality-RM of Kelsey FNMLA-Community Approval	E
Opaskwayak	NW 15-55-26 WPM (site 1-14)	1-14	10.00								Hydro distribution-FNMLA-utility permit FNLMA-Community Approval Road Mun-Plans 4769 &22590 FA 13.01 13.03 Land in a Municipality -RM of Kelsey	E
Opaskwayak	NW 21-55-26 WPM (Site 4-14)	4-14	34.00								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E
Opaskwayak	NW 22-55-26 WPM (site 6-14)	6-14	61.00								Land in a Municipality-RM of Kelsey FNMLA-Community Approval Access to SW 27-55-26 WPM TBD	E
Opaskwayak	NW 28-55-26 xWPM (site 8-14)	8-14	160.00								Land in a Municipality RM of Kelsey	E
Opaskwayak	NW 29-55-26 WPM (site 12-14)	12-14	42.00								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E
Opaskwayak	NW 32-55-26 WPM (site 16-14)	16-14	35.00								Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E
Opaskwayak	NW 33-35-26 WPM (site 19-14)	19-14	40.00								Land in a Municipality-RM of Kelsey FLNMA-community Approval	E
Opaskwayak	SE 21-55-26 WPM (site 5-14)	5-14	113.00								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey-FNLMA-Community Approval	E

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Opaskwayak	SE 28-55-26 WPM (site 9-14)	9-14	161.00								Land in a Municipality of Kelsey Community approval SW 27-55-26 WPM TBD RM FNLMA Access to	E
Opaskwayak	SE 29-55-26-WPM (site 13-14	13-14	13.00								Drain-Prov-Plan 4928 to be excluded Hydro 230 KV Transmission Line and Access; Land in a Municipality-RM of Kelsey FNLMA-Community Approval	E
Opaskwayak	SE 31-55-26 WPM (site 14-14)	14-14	4.00								Land in a Municipality-RM of Kelsey FNMLA-Community Approval	E
Opaskwayak	SE 32-55-26 WPM (site 17-14)	17-14	160.00								Land in a Municipality-RM of Kelsey FNMLA-Community Approval	E
Opaskwayak	SW 32-55-26 WPM (site 18-14)	18-14	153.00								Hydro -230 KV Transmission line and access in a Municipality RM of Kelsey FNMLA -Community Approval Land	E
Opaskwayak	Landry Lake (4-2000) 2,805.48	4-2000	2,805.48								ESA visits October 2007, July 2008 Hydro Easement Community Approval	E
Wuskwi Sipihk	Birch River Community Pasture	Site 2-14										E
		Total acreage: 292,151.52										

Draft Discussion Paper on MFA Principles April 17, 2015

TREATY LAND ENTITLEMENT AGREEMENT – EXPIRING TIME PERIODS AND

Received DATE: April 17, 2015

- As a result of particular wording contained in the Manitoba Framework Agreement on Treaty Land Entitlement (the Agreement), the parties need to consider the potential impacts of the expiry of particular time limits expressed in the Agreement as the parties may wish to continue to:
 - recognize the general principles on selection/acquisitions of lands, despite the time limits that have been established;
 - provide for the reasonable costs incurred in connection with the implementation of the Agreements, for such activities as environmental screening and surveys even where Canada's obligation to do so (as this seems linked to the is time limited in the Agreement;
 - seek an extension to the time period to disburse remaining funds in the Third Party Interest Account; and
 - also ensure that it is clear that the provisions of the *Manitoba Claims Settlement Implementation Act* can be utilized to enable the processing of the Additions to Reserve proposals by way of Ministerial Order.

CONSIDERATIONS

(a) Timelines for acquisition or selection of lands

- The Manitoba Framework Agreement on TLE , the reserve land clauses stipulates a period of time, which upon expiry, the principles of acquisition or selection as outlined in the TLE Agreement would no longer apply but the First Nations could continue to acquire or select its reserve land amounts except that the Additions to Reserve Policy in effect on the date of selection or acquisition is deemed to apply (as opposed to the 1991 ATR Policy).
- The Period of Selection of Crown Lands (Section 4.01 (a)) is within three years from the date of the TEA Agreement of the EFN coming into force
- The Period of Acquisition of "Other Land" is within 15 years of the date the TEA of the EFN comes into force.
- Extension period are identified in Section 4.02
- Section 4.03(1) identifies that the principles of Selection and Principles of Acquisition expire at the end of the Selection or Acquisition
- Section 4.03(2) identifies that the right to an EFN to select and acquire continues, despite section 4.03(1), except that the ATR policy in effect on the date a selection or acquisition is made shall apply.

(b) Principles of Acquisition and Selection

- Found in Part II Section 3.(1) through 3.11
- Specific concerns have been raised with:
 - Section 3.10 Specific Principles for Acquisition of Surplus Federal Land
- Similar concerns could be raised with:
 - Section 3.09 Specific Principles for Acquisition of Surplus Provincial Land

(c) Environmental Audit and Survey of Land

- Section 23.01 (a) and (b) identifies that Canada will undertake (at its cost) an environmental audit and survey of land selected or acquired if the land is confirmed is eligible to be set apart in accordance with the Principles.
- It appears unclear if Canada is responsible for these costs if the principles no longer apply and this needs to be clarified.

(d) Third Party interest account to be paid out 25 years from agreement execution

- The TLE Committee is to disburse any funds remaining in the TPI Account in 2022. This is only seven years from now, so if we are seeking any amendments, this might be the time to also seek an extension to this if TLEC is interested.

(e) Use of the Manitoba Claims Settlement Implementation Act

- Arguably, the MCSIA would still apply even after the principles expire as Section 4.03(2) identifies that the rights of the First Nations to acquire or select in accordance with this Agreement shall continue. The Agreement is identified in the MCSIA.

Next Steps:

- 1. Confirm that these are the only clauses in the Agreement that are impacted by time limits.**
- 2. Confirm if the parties are wanting to amend all or some of the clauses (as noted above) in the Agreement to address the expiring time limits.**
- 3. Canada and Manitoba will need to engage in internal discussions to determine whether amendments to the agreement are needed or will be possible and the mechanism by which that could be undertaken.**

Crown Land Acquisition Policy February 27, 2015

Acquisition of Crown Land for TLE as presented on February 27, 2015

Conservation and Water Stewardship and Aboriginal and Northern Affairs sought direction on the ability for certain First Nations to purchase Crown land to fulfill their Treaty Land Entitlements.

- Manitoba has implemented the 1997 Treaty Land Entitlement Framework Agreement (FA) and the 2008 Peguis Treaty Entitlement Agreement on the basis that Manitoba contributed a set amount of Crown land for Selection in accordance with the Principles set out in the agreements.
- Manitoba has considered that “Other Land” to be acquired will generally be private land owned by a third party acquired on a “willing buyer-and willing seller” basis.
- During the TLE agreements negotiation it was known that land had already been disposed of by Canada prior to 1930 and by Manitoba after 1930 and was no longer Crown land. Generally, in southern Manitoba there are significant areas of private land and fewer areas of Crown land remaining.
- The determination of the Crown Land Amount and “Other Land” Amount for each Entitlement First Nation (EFN) in part considered there would be a reduced amount of suitable unoccupied Crown land available for Selection by Brokenhead, Buffalo Point, Opaskwayak, Rolling River, Sapotaweyak, Wuskwi Sipihk (also known as Schedule “B” EFNs) and Peguis First Nation.
- The six Schedule “B” EFNs and Peguis First Nation are entitled to received a Land Acquisition Payment from Canada under their agreements as well a defined a Minimum Entitlement Acres and an Other Land Amount.
- Manitoba recognizes that under clause 1.01 (66) (d) of the FA and 1.01 (59) (d) of the Peguis agreement *“Other Land” means Crown Land that Manitoba agrees to sell on a “willing buyer and willing seller” basis....* Based on this definition, it is noted that Manitoba is not required to sell Crown land unless it is willing to do so.
- Although we had heard that some EFN’s were having difficulty finding suitable private land to acquire, the matter was raised through correspondence and meetings by Chief Nelson Genaille and later by Wuskwi Sipihk Cree Nation. Chief Genaille’s request was that the province should consider the transfer of Crown land as “Other Land” for no fee to First Nations to fulfill outstanding TLE (including their Other Land amount).
- Although the current provincial policy to sell Crown land at market value plus forestry values, and other related costs, subject to agreement by the province to sell, was an option currently available to these First Nations, we understood that both the cost and the process are considered prohibitive. As a result, no applications were received.
- Following a detailed review of the request the province decided to change its sale policy, but only for the purpose of supporting the fulfillment of treaty land entitlement, and more specifically to these First Nations that have both a Crown land amount and an “Other Land” amount.

Crown land that Manitoba agrees to sell will be made available for acquisition by six Schedule “B” EFNs and Peguis First Nation as “Other Land” for a fixed cost per acre (range between \$197-\$446/acre), based on the individual First Nation’s land acquisition payment as a representation of the value of “Other Land” at time of agreement, subject to;

- a request being received within three years of approval by Manitoba,
- made available only to EFNs that have fulfilled their Crown land amount, and
- limited to an amount not to exceed the minimum entitlement amount;

Note: If the estimated market value plus forestry costs would be less than the fixed costs per acre the lesser would be used.

- It is known that there is not an abundance of unencumbered Crown land in southern Manitoba and the amount of Crown land that may be made available to acquire is likely to be limited, however this policy change may allow for flexibility when a First Nation is near fulfillment of their Crown Land Amount and possibly other opportunities under TLE.

Requests to purchase Crown land for the purpose of becoming "Other Land" for TLE:
General parameters and considerations (defined by Manitoba):

- Once an Entitlement First Nation's has had their total Crown land amount Selected and those Selections have progressed to at least the stage of issuance of an Exclusive Use Permit, the province is prepared to consider requests to purchase Crown land for TLE up to an EFN's minimum entitlement amount.
- First Nations will provide a Band Council Resolution and map to the Conservation and Water Stewardship office in Neepawa setting out the Crown land to be considered for purchase. The land will be circulated provincially utilizing generally the same administrative methods carried out by the unit to review Crown land TLE Selection requests. This will ensure that a timely review of requests occurs and that the requests are tracked in a way familiar to EFNs.
- Crown land involved in a request to purchase would not become "Other Land" until Manitoba has determined whether the land can be sold, therefore the principles guiding the determination of eligibility or time restrictions set out in the TLE Framework Agreement would not apply during the request and review stage. However, Manitoba would still expedite and be reasonable in its review of lands requested.
- One significant change from the "Selection" of Crown land for TLE is that requests to acquire lands will not be accepted for consideration and review where existing third party interests exist, there are defined public purpose requirements, designations exist such as Wildlife Management Areas, Community Pastures or where the lands are known to contain matters that have not yet been resolved through the TLE process.
- The requested Crown lands will be reviewed by the Neepawa office before the provincial circulation occurs and any Crown land with existing encumbrances or designations would not be processed further and the EFN would be advised.
- Following the provincial review of the request other reasonable exclusions may be required by Manitoba.
- The EFN would be advised of the results of the provincial review. Should the EFN wish to proceed with the purchase of Crown land as "Other Land" a Sale agreement would be entered into. (Note: Consultation requirements to be determined.) The Crown lands could then be considered as "Other Land" and the EFN would provide appropriate notice to Canada (no further provincial circulation would be required.)

Note: Requires fulfillment of an EFN's Crown land amount prior to the transfer of Crown land as "Other Land". Crown lands to be acquired as "Other Land" will be transferred by Order in Council from Manitoba to Canada including mines and minerals and residual interests, upon completion of surveys by Canada and acknowledgement of AIP of ATR.

Presented by Lori Stevenson, Director of Lands, Conservation and Water Stewardship
February 27, 2015

SAC Policy and Procedures Manual September 2015

Senior Advisory Committee Policy and Procedures Manual

Introduction

The Manitoba Treaty Land Entitlement Framework Agreement (the "FA") contains a number of provisions setting out the roles and responsibilities of the Independent Monitoring Committee (the "IMC") and the Senior Advisory Committee (the "SAC") as well as procedures for dispute resolution.

Part VI under **Implementation** summarizes the provisions of the FA to provide guidance in regard to the mandate and role of the SAC. Part II of the document sets out policies and procedures developed in accordance with Article 34 that are intended to complement the FA and to facilitate the resolution of issues or disputes that may arise in implementing the FA or any Entitlement First Nation's Treaty Entitlement Agreement ("TEA"). Part II may have to be amended from time to time to respond to changing circumstances and to address new issues as this process evolves.

Definitions:

"Senior Advisory Committee" means the committee to be established in accordance with Section 34.10

34. Implementation Monitoring and Senior Advisory Committees

34.03 Appointment of Independent Chairperson

- (1) The members of the Implementation Monitoring Committee representing the TLE Committee, Canada and Manitoba shall consider the availability of persons resident in Manitoba that may have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall, within 90 days of the Date of Execution or such longer period as the parties may agree, recommend to the Senior Advisory Committee a person to be appointed Chairperson.
- (2) The Senior Advisory Committee shall, within 30 days of the date of receipt of the recommendation referred to in Subsection (1), appoint a person as Chairperson.

34.05 Appointment of Chairperson upon Vacancy

- (1) In the event of a vacancy in the position of Chairperson, the members of the Implementation Monitoring Committee representing the TLE Committee, Canada and Manitoba shall consider the availability of persons resident in Manitoba that may have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall, within 90 days of the vacancy occurring or such longer period as the parties may agree, recommend to the Senior Advisory Committee a person to be appointed Chairperson.
- (2) The Senior Advisory Committee shall, within 30 days of the date of receipt of the recommendation referred to in Subsection (1), appoint a person as Chairperson.

34.09 Responsibilities of Chairperson

- (1) In addition to the specific and other responsibilities of the Chairperson set out in this Article and Articles 35 and 36, the Chairperson will be responsible for the general administration of the Implementation Monitoring Committee including:

- (c) ensuring that written minutes and records are kept of:
 - (ii) decisions and notices of the Senior Advisory Committee;

*Bullets 2 – 7 from the MFA are not relevant duties in relation to assisting the SAC.

- (8) Where an issue or matter in dispute is not resolved by the Implementation Monitoring Committee, the Chairperson, on behalf of the Implementation Monitoring Committee, will refer the issue or matter in dispute to the Senior Advisory Committee.
- (9) The Chairperson may, when referring a matter to the Senior Advisory Committee on behalf of the Implementation Monitoring Committee in accordance with Subsection (8), set out in writing to the Senior Advisory Committee:
 - (a) any means recommended by the Chairperson for resolving the issue or matter in dispute made in accordance with Paragraph (7)(b);
 - (b) any response of the members of the Implementation Monitoring Committee provided in accordance with Paragraph (7)(c); and
 - (c) his or her recommendation on the proposed time period within which the Senior Advisory Committee should attempt to resolve the issue or matter in dispute.

34.10 Establishment of the Senior Advisory Committee

- (1) A Senior Advisory Committee representing the parties will be established consisting of:
 - (a) the President of the TLE Committee for the TLE Committee;
 - (b) the Regional Director General (Manitoba Region) or the Assistant Deputy Minister (Claims and Indian Government) of the Department of Indian Affairs and Northern Development for Canada; and
 - (c) the Deputy Minister of Northern Affairs for Manitoba.
- (2) One member of the Council of an Entitlement First Nation specifically affected by an issue or matter in dispute may also participate in any meetings of the Senior Advisory Committee at which that issue or matter in dispute is addressed.
- (3) A meeting of the Senior Advisory Committee shall not be held without all members in attendance, unless a member not in attendance has agreed otherwise.
- (4) Decisions of the Senior Advisory Committee shall be by consensus of all of the members in attendance.
- (5) Where the Senior Advisory Committee makes a decision on a means to resolve an issue or matter in dispute, the Senior Advisory Committee will set out in writing the decision and will send it to the Chairperson who will record the decision in the minutes or records of the Implementation Monitoring Committee.

(6) Where the Senior Advisory Committee does not make a decision on a means to resolve an issue or matter in dispute within the time period proposed by the Chairperson or such longer time period as the Senior Advisory Committee may agree, the Senior Advisory Committee will give notice in writing to the Chairperson who will record in the minutes or records of the Implementation Monitoring Committee:

(a) that the Senior Advisory Committee has not made a decision on a means to resolve the issue or matter in dispute; and

(b) the appropriate dispute resolution mechanism to be used to resolve the issue or matter in dispute in accordance with Section 35.02, where the Senior Advisory Committee agrees on the mechanism to be used.

(7) Where the Chairperson receives a notice from the Senior Advisory Committee in accordance with Subsection (6), the Implementation Monitoring Committee will, within 30 days of notice from the Senior Advisory Committee:

(a) where there is an agreement among the members of the Senior Advisory Committee on the appropriate method of dispute resolution to be used, refer the issue or matter in dispute to be resolved in accordance with that agreement; or

(b) where there is no agreement among the members of the Senior Advisory Committee on the appropriate method of dispute resolution to be used, refer the matter to an appropriate method of dispute resolution in accordance with Section 35.02.

(8) Where the Implementation Monitoring Committee does not refer the issue or matter in dispute to an appropriate dispute resolution process within 30 days in accordance with Subsection (7), the Chairperson shall, within 30 days, refer the issue or matter in dispute to an Adjudicator to be resolved in accordance with Section 35.02.

35.02 Methods of Dispute Resolution

(3) Subject to Subsection 36.01(5), the resolution of issues or matters in dispute shall be a progressive process, from fact finding to binding arbitration, unless determined otherwise by the Senior Advisory Committee in accordance with Paragraph 34.10(6)(b), the Implementation Monitoring Committee in accordance with Subsection 34.10(7) or the Chairperson in accordance with Paragraph 34.10(7)(b).

35.03 Procedure for Dispute Resolution other than Binding Arbitration

Subject to any directions provided by the Implementation Monitoring Committee or Senior Advisory Committee, except where binding arbitration is being used to resolve the issue or matter in dispute, the Chairperson has the responsibility, in consultation with the members of the Implementation Monitoring Committee:

(a) to prepare appropriate written directions to the Adjudicator for the completion of the dispute resolution process;

- (b) to provide the Adjudicator with information about the issue or matter in dispute, including a written definition of the issue or matter in dispute, any report on or proposed solution of the issue or matter in dispute submitted to the Implementation Monitoring Committee by any party, and any means of resolving the issue or matter in dispute recommended by the Chairperson;
- (c) to determine a time period for the completion of the method of dispute resolution recognizing the parties agree that the following time frames should apply for each method unless an issue or matter in dispute is of a complex nature:
 - (i) fact finding should be completed in no more than three days of review;
 - (ii) mediation should be completed in no more than five days of meetings; and
 - (iii) non-binding and binding arbitration should be completed in no more than seven days of hearing; and
- (d) to determine other appropriate procedures in order to ensure the issue or matter in dispute is resolved in a timely and cost efficient manner.

Procedures of Senior Advisory Committee Meetings

- (1) The IMC Chairperson will call a meeting of the SAC where a decision is required from SAC;
- (2) The IMC Chairperson will chair the meeting and guide the SAC through the agenda items;
- (3) The IMC Chairperson will record the meeting minutes and decisions arising from the SAC meeting;
- (4) The IMC Chairperson will provide a copy of the SAC Meeting minutes within one week of the SAC meeting;
- (5) The SAC will finalize the meeting minutes at the next SAC meeting;
- (6) The SAC meeting minutes will be signed off by the SAC members;
- (7) In the event that there is a vacancy of the IMC Chair the IMC Representatives can agree to fulfill the procedures listed in 1-6 above.

This document has been approved on this day 4 of the 12 month in the year 2015.


Regional Director General, Aboriginal Affairs and Northern Development Canada


Deputy Minister, Manitoba Aboriginal and Northern Affairs


President of the Treaty Land Entitlement Committee of Manitoba