

June 8, 2009

VIA EMAIL AND COURIER

Board Secretary
Ontario Energy Board
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Board Secretary:

RE: EB-2009-0078 – REQUEST FOR INTERVENOR STATUS

I am counsel for the Métis Nation of Ontario (MNO). Please accept the following as the MNO's request to the Ontario Energy Board (OEB) for intervenor status in EB-2009-0078.

I recognize this intervention letter request is after the 10 day period set in the Notice of Application and Hearing for EB-2009-0078, but my client only became aware that Hydro One had made a leave to construct application late last week. As such, my client is requesting that the Board extend the 10 day period of its own motion pursuant to Rule 7.01 and accept the MNO's intervention request. However, if this is unacceptable, the MNO will file a notice of motion for late intervention pursuant to Rule 23.05 later this week.

The Intervenor

The MNO represents the citizens of the Métis Nation living in Ontario as well as rights-bearing Métis communities throughout Ontario. The Métis are one of the three Aboriginal peoples in Canada recognized within s. 35 of the *Constitution Act, 1982*. The MNO obtains its mandate to represent the Métis people in this province through a democratic Métis-specific governance structure which includes a centralized citizenship Registry based in Ottawa, over 26 Chartered Community Councils across the province and a Provisional Council that includes regional and provincial representation elected by ballot box every three years. Currently, the MNO has over 15,000 registered citizens (over the age of 16 years). A map outlining the locations of the MNO's current Chartered Community Councils throughout the province is attached to this letter.

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In September 2003, the Supreme Court of Canada, in *R. v. Powley*, [2003] 2 S.C.R. 207, confirmed that the Métis are a full fledged rights-bearing people and that the Métis community in the Sault Ste. Marie region have a constitutionally protected food harvesting right that is grounded in the Métis people's special relationship to the land. In July 2004, based on credible Métis harvesting rights claims throughout the province, the Government of Ontario entered into a province-wide harvesting accommodation agreement with the MNO. This agreement was recently upheld by the Ontario Court of Justice in *R. v. Laurin, Lemieux and Lemieux*, [2007] O.J. No. 2344 (O.C.J.), and remains in place today. For your information, I am attaching a copy of a map that identifies the traditional Métis harvesting areas that have been recognized as a part of the MNO-Ontario accommodation agreement based on credible Métis rights claims.

Interest in Proceeding

The proposed Lower Mattagami Transmission Reinforcement Project (the "Project") is located within the recognized and accommodated traditional Métis harvesting areas of James Bay/Abitibi-Temiscamigue, which are generally outlined in the attached map. The MNO represents over 3,000 rights-bearing Métis citizens living in these territories. Moreover, the MNO, in partnership with its Community Councils in these territories, have created a Regional Consultation Committee to ensure the Crown and proponents adequately consult with the rights-bearing Métis community that lives in, uses and relies on these territories. A copy of the protocol, which creates this regional consultation process, is also attached. The MNO's significant and substantial interest in this proceeding is to ensure the rights, interests and way of life of rights-bearing Métis community in the James Bay/Abitibi-Temiscamigue territories are adequately considered in relation to the Board's authorization of the Project.

Reason for Delay

The MNO did not discover that a leave to construct application had been made on the Project until late last week. While an advertisement on the Notice of Application was placed in the First Nation paper for the region (Wawatay News), no ad was placed in the Métis newspaper (Métis Voyager). As well, while Hydro One sent out letters informing Métis leadership of the Project and offering to meet, these letters did not inform the Métis leadership that a leave to construct application was soon going to be filed with the OEB. Further, meetings between the Métis leadership and Hydro One with respect to the Project have not yet been held.

Scope of Intervention

The MNO's intends to intervene on the issue of whether appropriate consultations been conducted with the Métis with respect to the Project, and, if appropriate, whether appropriate accommodations have been made with the Métis.

Hearing Format

The MNO takes no position on whether the Board should deal with this matter by way of written or oral hearing.

Written Materials

The MNO requests copies of all evidence filed by Hydro One be provided to the address below.

Request on Costs

The MNO is seeking costs in order to participate as an intervenor. As outlined above, the MNO has more than just a “public interest” in these proceedings, as a representative of an Aboriginal people with constitutionally protected rights that may be affected by the Project.

Contact Information

Below is the relevant contact information for correspondence and service of the MNO in this proceeding:

JTM LAW
546 Euclid Avenue
Toronto, Ontario, M6G 2T2

Ph: 416-945-7958
Fax: 416-981-3162
Email: jason@jtmlaw.ca

I look forward to hearing from the OEB. If you have any further questions please feel free to contact me at (416) 945-7958, ext. 4.

Yours very truly,



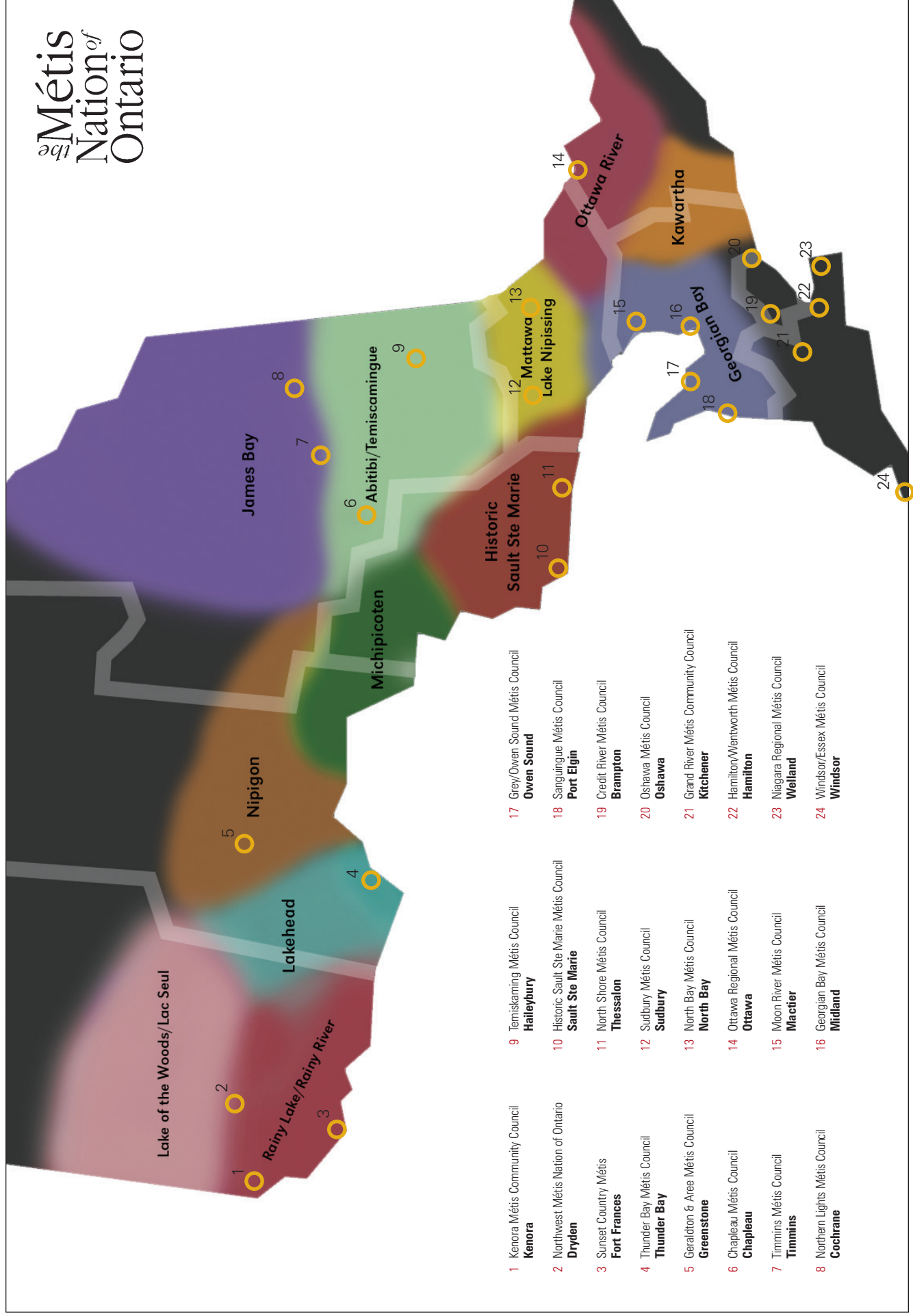
Jason Madden

c.c. Mr. Glen MacDonald, Hydro One Networks Inc. (via email)
Mr. Michael Engelberg, Hydro One Networks Inc. (via email)
Gary Lipinski, President, MNO (via email)
Marcel LaFrance, Chair, James Bay/Abitibi-Temiscamigue Regional Consultation Committee (via email)
Melanie Paradis, Director, MNO Lands, Resources and Consultation (via email)

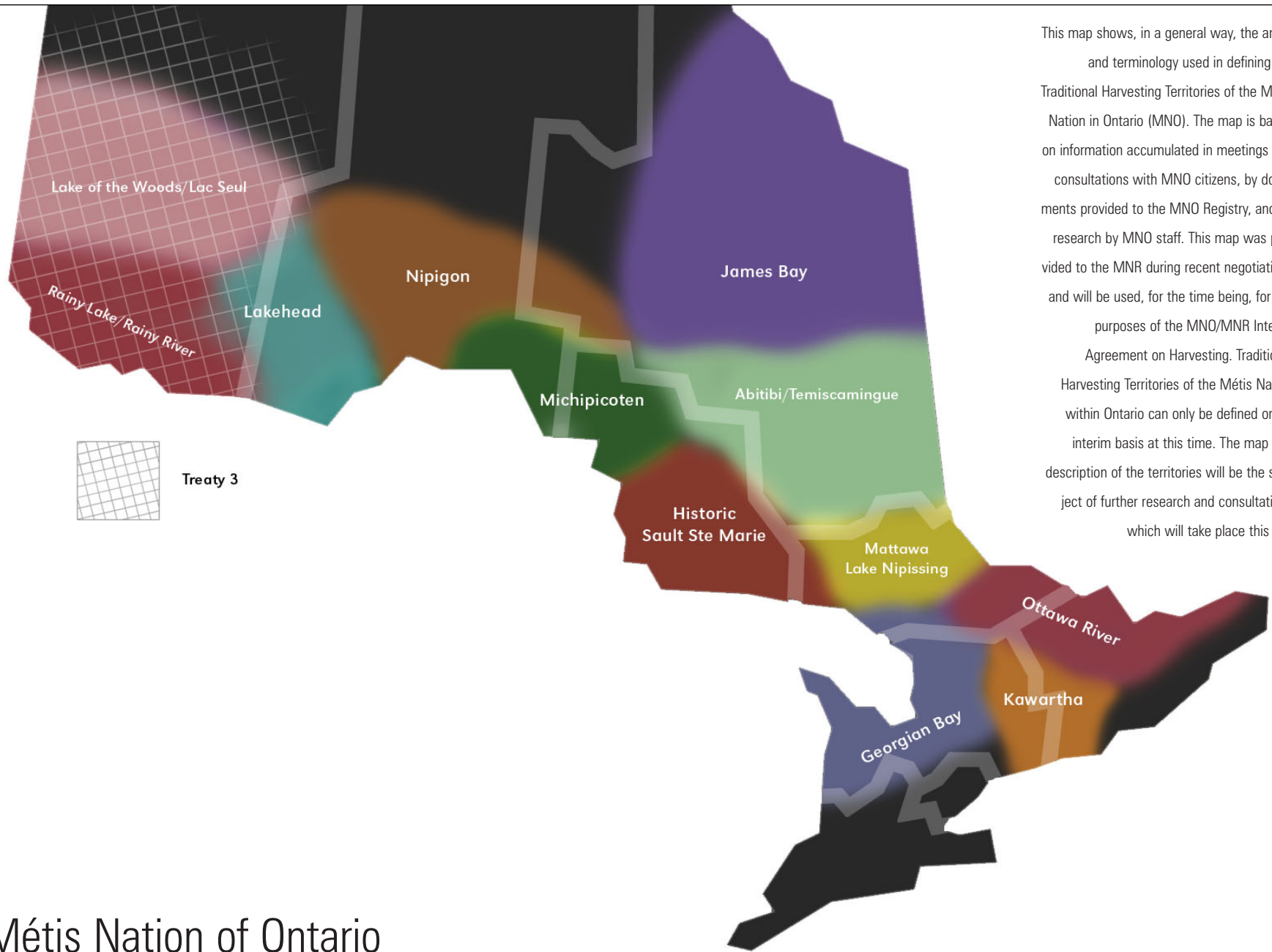
Enclosures (3): MNO Community Council Map
MNO Traditional Harvesting Area Map
James Bay/Abitibi-Temiscamigue Regional Consultation Protocol

MÉTIS NATION OF ONTARIO HARVESTING TERRITORIES & COMMUNITY COUNCILS

the Métis
Nation of
Ontario



This map shows, in a general way, the areas and terminology used in defining the Traditional Harvesting Territories of the Métis Nation in Ontario (MNO). The map is based on information accumulated in meetings and consultations with MNO citizens, by documents provided to the MNO Registry, and by research by MNO staff. This map was provided to the MNR during recent negotiations and will be used, for the time being, for the purposes of the MNO/MNR Interim Agreement on Harvesting. Traditional Harvesting Territories of the Métis Nation within Ontario can only be defined on an interim basis at this time. The map and description of the territories will be the subject of further research and consultations which will take place this fall.



Métis Nation of Ontario Traditional Harvesting Territories

the Métis
Nation of
Ontario

SIGNED ON THE 25TH DAY OF JUNE, IN THE YEAR 2008

CONSULTATION PROTOCOL

for

ABITIBI/TEMISCAMINGUE
& JAMES BAY TERRITORIES





**Consultation Protocol for
Abitibi/Temiscamingue and James Bay Territories**

This Protocol is executed in triplicate this 25th day of June, in the year 2008.

BETWEEN:

Metis Nation of Ontario
[“MNO”]

AND:

Métis Nation of Ontario – Timmins
a Chartered Community Council of the Métis Nation of Ontario
[“Timmins Métis Council”]

AND:

Northern Lights Métis Council
a Chartered Community Council of the Métis Nation of Ontario
[“Northern Lights Métis Council”]

AND:

Temiskaming Métis Council
a Chartered Community Council of the Métis Nation of Ontario
[“Temiskaming Métis Council”]

WHEREAS the Metis people joined together long ago to form a new nation – the Métis Nation;

AND WHEREAS the Metis Nation continues today to be the embodiment of our past, our present and our hopes and aspirations for the future;

AND WHEREAS the Metis, as one of the constitutionally recognized Aboriginal peoples of Canada, have the inherent right of self-determination and self-government;

AND WHEREAS the citizens of the Métis Nation who live in Ontario, desiring to bind our people together to collectively promote a common cultural, social, political and economic well-being, have created the MNO to be their representative body;

AND WHEREAS the MNO, as the representative government of the Métis people and rights-bearing Métis communities in Ontario, negotiates and enters into Community Charter Agreements with Community Councils, which authorize democratically elected Community Councils to represent MNO citizens, within a defined geographic territory, pursuant to the roles and responsibilities set out in those Charter Agreements;

AND WHEREAS there are MNO citizens, who live in locations throughout Ontario, who are not currently represented by a MNO Chartered Community Council, but whose local and regional interests continue to be represented by the MNO’s overall governance structure;

AND WHEREAS MNO Charter Agreements are negotiated and executed for internal governance purposes, and, do not define, constrain or limit the geographic scope of rights-bearing Métis communities in Ontario or the traditional territories of those communities;

AND WHEREAS the Crown has a duty to consult, and, where appropriate, accommodate rights-bearing Métis communities on planning, developments, projects and policies that have the potential to affect Métis rights, interests and way of life, flowing from the honour of the Crown and s. 35 of the *Constitution Act, 1982*;

AND WHEREAS there are projects and developments in the James Bay and Abitibi/Temiscamique Métis traditional harvesting territories, which have the potential to affect the rights, interests and way of life of the rights-bearing Métis community;

AND WHEREAS the MNO, along with its Chartered Community Councils, want to work together to ensure that the Crown fulfills its duty to consult, and, where appropriate, accommodate the rights, interests and way of life of the rights-bearing Métis community;

NOW THEREFORE in consideration of the above, the Parties agree as follows:

1. Name of this Agreement

- 1.1 This agreement shall be called the *Metis Nation of Ontario – Consultation Protocol for the James Bay and Abitibi/Temiscamique Métis Traditional Territories* [hereinafter referred to as “the Protocol”].

2. Definitions

- 2.1 All words and phrases in this Protocol have the same meaning as in the MNO’s by-laws and the MNO Community Council Charter Agreements. To the extent of any conflict, the definitions in the by-laws of the MNO and the Charter Agreement shall prevail.
- 2.2 “Community Charter Agreement” means the agreements executed between the MNO and the MNO Chartered Community Councils, which set out the Parties respective jurisdiction, roles and responsibilities.
- 2.3 “Crown” means Her Majesty the Queen in Right of Canada and Ontario.
- 2.4 “Crown’s consultation duties” means the Crown’s constitutional obligations flowing from s. 35 of the *Constitution Act, 1982* and the honour of the Crown to consult, and, where appropriate, accommodate rights-bearing Métis communities on projects, developments and policies that have the potential to affect Métis rights, interests and way of life.
- 2.5 “Métis Traditional Territory” means the James Bay and Abitibi/Temiscamique Métis traditional territories that are set out as a part of the MNO Harvesters Policy and have been recognized and accommodated by the Crown.
- 2.5 “MNO-Ontario harvesting agreement” means the four point agreement reached between the MNO President and the Ontario Minister for Natural Resources in July 2004.
- 2.5 “MNO” means the Métis Nation of Ontario, as the representative government of the Métis people in Ontario.
- 2.6 “Community Councils” means the Métis Nation Ontario - Timmins, the Temiskaming Métis Council and the Northern Lights Métis Council, which democratically represent the interests of MNO citizens within the geographic territories defined by the respective Community Charter Agreements.
- 2.7 “Parties” means the MNO, the Métis Nation Ontario - Timmins, the Temiskaming Métis Council and the Northern Lights Métis Council.
- 2.8 “Projects” means all projects or developments that are being considered, planned, pursued, reviewed and/or implemented within the James Bay and Abitibi/Temiscamique Métis traditional territories, but are outside the specific geographic territory of a MNO Chartered Community Council.

3. Purpose

- 3.1 The purpose of this Protocol is to:
- a) protect Métis rights, land use, harvesting practices, traditional knowledge, sacred places as well as the rights-bearing Métis community's special relationship to the land within the James Bay and Abitibi/Temiscamique Métis traditional territories,
 - b) ensure the Crown's consultation duties to the rights-bearing Métis community which resides throughout, relies on, and, extensively uses, the James Bay and Abitibi/Temiscamique traditional territories are fulfilled, in relation to any Projects,
 - c) establish a mutually agreeable process between the Parties which ensures all MNO citizens and members of the rights-bearing Métis community are effectively engaged and consulted on the Projects,
 - d) build the capacities of MNO Chartered Community Councils in relation to consultation,
 - e) strengthen the MNO's overall self-government structures and representativeness through collaboration and cooperation between the various levels of Métis government, including, MNO Chartered Community Councils, MNO Regional Councilors, the MNO Captains of the Hunt and the Provincial Council of the Métis Nation of Ontario.

4. Responsibilities of MNO and Community Council

- 4.1 The Parties assert that the Crown's constitutional duties are owed to the entire regional rights-bearing Métis community, which is not defined, limited or constrained by the geographic areas identified within MNO Community Council Charter Agreements or by the MNO's Regions.
- 4.2 The MNO, as the representative government of the Métis Nation and its regional rights-bearing communities in Ontario, has the ultimate responsibility to ensure the entire rights-bearing Métis community is consulted on the Projects.
- 4.3 The Community Councils, through their democratic mandates and their Charter Agreements with the MNO, have the responsibility to ensure the MNO citizens they represent are effectively consulted on the Projects.
- 4.4 The Parties have the responsibility to collaborate and cooperate in order to ensure the regional rights-bearing community is effectively consulted and represented within any Crown consultation processes, regulatory or environmental reviews, engagement with proponents, etc.
- 4.5 The Parties have the responsibility to work together in order to ensure the democratically elected local, regional and provincial governance structures of the Métis people in Ontario are consulted and respected by the Crown, proponents and other relevant groups.

5. Coordinating Committee and Consultation Workplan

- 5.1 A four person Coordinating Committee shall be established, which will include the MNO Regional Councilor and one representative designated by each of the MNO Community Councils.
- 5.2 The regional Captain of the Hunt shall be an ex-officio member of the Coordinating Committee to provide advice and support to the Committee.
- 5.3 The MNO Regional Councilor shall act as the Chair of the Coordinating Committee and shall only vote if consensus is not achieved or in the event of a tie.

- 5.4 The Consultation Committee shall strive for all decisions to be made by consensus.
- 5.5 The Coordinating Committee will work together to develop and implement a mutually agreeable Consultation Workplan to ensure the Crown's constitutional duties to the rights-bearing Métis community are fulfilled in relation to any Projects. This Consultation Workplan will include, but will not be limited to, the following:
- a) an overview of the Projects;
 - b) terms of reference for the Coordinating Committee,
 - c) activities, timelines, roles and responsibilities of the Parties,
 - d) a local and regional MNO citizen engagement plan, which would include meetings with MNO Chartered Community Councils, public meetings, etc.,
 - e) the identification of research and studies required,
 - f) staffing and administration requirements for the Community Councils,
 - g) a communications plan, and
 - h) appropriate budgets.
- 5.6 The Consultation Committee shall meet in person or via conference call as required and determined by the Coordinating Committee.
- 5.7 Members of the Consultation Committee shall be remunerated for their work based on the MNO's policies and procedures, with the exception of Consultation Committee members who are employees of the MNO.
- 5.8 The Parties to this Protocol agree to jointly retain legal counsel advise them and to represent the rights-bearing Métis community in Crown consultation processes, regulatory and environmental reviews, negotiations with proponents, etc.

6. Communications with MNO Citizens

- 6.1 The Parties will work to ensure that all potentially affected MNO citizens are engaged and communicated with in a fair, transparent and open manner.
- 6.2 In order to ensure all MNO citizens have access to information related to Projects, the Parties agree to use the MNO's print and on-line communications tools.
- 6.3 The Coordinating Committee shall report regularly to all MNO citizens and their respective Community Councils through Council meetings, local meetings as well as regional meetings.

7. Communications with the Crown and Proponents

- 7.1 The Coordinating Committee shall provide direction for all written letters and submissions to the Crown, regulatory bodies and/or proponents in relation to any Projects.
- 7.2 Written letters and submissions in relation to the Project, on behalf of the rights-bearing community, shall be from the Chair of the Coordinating Committee or his/her designate.
- 7.3 All written letters and submissions shall be provided to all members of the Coordinating Committee as well as the Presidents of the Parties.

8. Dispute Resolution

- 8.1 Any dispute or inquiry that arises out of this Protocol shall first be referred to Presidents of the Community Councils for resolution.
- 8.2 If resolution is not possible under paragraph 9.1, an Inquiry Panel may be called.

8.3 The Inquiry Panel will be composed of a Chair who is a Senator and mutually agreed to by the Parties, an appointee by the MNO Executive Council, and an appointee by the Community Councils.

8.4 Where a dispute is referred to and Inquiry Panel, the MNO Secretariat shall give 30 days notice in writing to all parties. Such notice shall include the reasons for the inquiry and the materials and persons, which the parties shall provide for the assistance of the inquiry panel. The inquiry shall be held within 90 days of issuing the notice.

8.5 At any inquiry, called pursuant to paragraph 8.2 the panel shall hear representations from persons or entities concerned in the dispute. The inquiry panel may decide whether the representations are to be made orally or in writing. Any written submission must be received at least 30 days before the date of the inquiry.

8.6 Upon termination of the inquiry the panel shall either:

- a) issue a recommendation as to costs
- b) issue a recommendation regarding the substantive issue in dispute; or
- c) issue a recommended procedure on how to resolve the dispute; or
- d) issue a judgment on the merits of the issue in dispute.

8.7 Where an inquiry is held, the panel shall set out its decision in writing. The written decision shall be made available to the parties within 30 days of the inquiry.

8.8 All decisions of the Inquiry Panel shall be final.

9. Communications Between The Parties

9.1 For the purposes of this Protocol, the contact information below will be used by the Parties,

For the MNO:

500 Old St. Patrick Road
Ottawa, Ontario, K1N 9G4
P: 613-798-1488
F: 613-722-4225

ATTN.: Gary Lipinski, President

For MNO Regional Councillor:

347 Spruce St. South
Timmins, Ontario, P4N 2N2
T: 705-264-3939
F: 705-264-5468

ATTN.: Marcel Lafrance, Regional Councillor

For the Timmins Métis Council:

347 Spruce St. South
Timmins, Ontario, P4N 2N2
T: 705-264-3939
F: 705-264-5468

ATTN.: Natalie Durocher, President

For the Temiskaming Métis Council:

217 Niven St., Box 58
Haileybury, Ontario, P0J 1K0
T: 705-272-3883

ATTN.: Lilian Ethier, President

For the Northern Lights Métis Council:

P.O Box 2690
275 Fifteenth Ave.
Cochrane, Ontario, P0L 1C0

ATTN.: Urgel Courville, President

10. General

- 10.1 This Protocol may be amended in writing at any time by agreement of the Parties.
- 10.2 This Protocol may be terminated by either Party by sending written notice to the other Party. Termination shall take effect thirty (30) days after receipt of said written notice.
- 10.3 Nothing in this Protocol limits or shall be interpreted as limiting the ability of the MNO President, the MNO Executive Council or the Provisional Council of the Métis Nation of Ontario to represent the interests of all MNO citizens in bilateral or tripartite discussions with governments, agencies or other organizations.
- 10.4 Nothing in this Protocol limits or shall be interpreted as limiting the ability of the Community Councils in representing the interests of the MNO citizens they represent or leading and engaging in consultation related discussions with the Crown on Projects and developments that are within the geographic scope of the Community Council, which do not have potential regional impacts on the rights-bearing Métis community.
- 10.5 Nothing in this Protocol amends, limits or alters the mandates, roles, responsibilities and jurisdictions set out in the MNO's by-laws, existing and future MNO Community Council Charter Agreements, the MNO Rules or Order or other MNO policies and procedures, as amended from time to time.
- 10.6 This Protocol shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- 10.7 This Protocol is not transferable to any other party.
- 10.8 This Protocol comes into effective upon its execution and shall remain in place until amended or terminated pursuant to the terms set out in this Protocol.

IN WITNESS WHEREOF the Parties have executed this Protocol on the 25th day of June, 2008.



Gary Lipinski
President
Metis Nation of Ontario




Witness



Marcel Lafrance
Region 3 Councilor
Metis Nation of Ontario



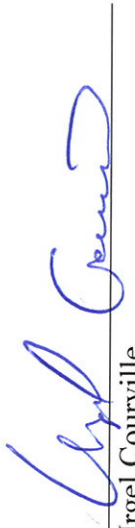
Witness



Natalie Durocher
President
Métis Nation of Ontario – Timmins



Witness



Urgel Courville
President
Northern Lights Métis Council



Witness



Lilian Ethier
President
Temiskaming Métis Council



Witness