

the Métis
Nation *of*
Ontario

SIGNED ON THE 20TH OF APRIL IN THE YEAR 2009

CONSULTATION PROTOCOL

for
THE GEORGIAN BAY
TRADITIONAL TERRITORY



the Métis
Nation *of*
Ontario

**Regional Consultation Protocol
Georgian Bay Traditional Territory**

This Protocol is executed in triplicate this 20th day of April in the year 2009.

BETWEEN:

Métis Nation of Ontario
["MNO"]

AND:

The Georgian Bay Métis Council
a Chartered Community Council of the Métis Nation of Ontario
["Georgian Bay Métis Council"]

AND:

The Grey-Owen Sound Métis Council
a Chartered Community Council of the Métis Nation of Ontario
["Grey-Owen Métis Council"]

AND:

The Moon River Métis Council
a Chartered Community Council of the Métis Nation of Ontario
["Moon River Métis Council"]

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

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

AND WHEREAS the Métis, 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 Georgian Bay traditional harvesting territory, 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 *Métis Nation of Ontario – Consultation Protocol for the Georgian Bay Traditional Territory* [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 Georgian Bay Traditional Territory, which is 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 Georgian Bay Métis Council, the Grey-Owen Sound Métis Council and the Moon River 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 Georgian Bay Métis Council, the Grey-Owen Sound Métis Council and the Moon River Métis Council.

2.8 “Projects” means all projects or developments that are being considered, planned, pursued, reviewed and/or implemented within the Georgian Bay Traditional Territory.

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 Georgian Bay Traditional Territory,
 - b) ensure the Crown's consultation duties to the rights-bearing Métis community which resides throughout, relies on, and, extensively uses, the Georgian Bay Traditional Territory 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 Councillors, the MNO Captains of the Hunt and the Provincial Council of the Métis Nation of Ontario.

4. Responsibilities of MNO and Community Councils

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. Consultation Committee and Consultation Workplan

5.1 A four person Consultation 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 Consultation Committee to provide advice and support to the Committee.

5.3 The MNO Regional Councilor shall act as the Chair of the Consultation Committee and shall only vote if consensus is not achieved or in the event of a tie.

5.4 MNO shall designate a staff person to work with the Consultation Committee in order to provide technical advice and support.

5.5 The Consultation Committee shall strive for all decisions to be made by consensus.

5.6 The Consultation 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 Consultation 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.

5.7 The Consultation Committee shall meet in person or via conference call as required and determined by the Consultation Committee.

5.8 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.

5.9 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.

5.10 The Consultation Committee will develop terms of reference for their work related to this Protocol.

5.11 In developing budgets and funding allocations related to this Protocol, the Consultation Committee will make best efforts to address issues relating to the unique geography and Métis population distribution in the Region.

5.2 In developing any Protocol related processes, the Consultation Committee will make best efforts to include Elders and youth in all activities, consultations and accommodations.

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 Consultation 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 Consultation 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 any Project shall be from the Chair of the Consultation Committee or his/her designate.

7.3 All written letters and submissions shall be provided to all members of the Consultation Committee as well as the Presidents of the Parties, including, the President of the MNO.

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 an 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:

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

For the MNO Regional Councillor

Pauline Saulnier
4 Richelieu St.
Penetanguishene, ON L9M 1H8
T: 705-549-4410

For the Georgian Bay Métis Council:

Alden Barty, President
355 Cranston Crescent,
Midland, ON L4R 4K6
T: 705-526-6335
F: 705-526-7537

For the Grey-Owen Sound Métis Council:

Malcolm Dixon, President
370 2nd Ave East
Owen Sound, ON N4K 2E9
T: 519-376-1922


For the Moon River Métis Council:

Larry Duval, President
Box 386
7678 McNiece Crescent
Washago, ON., L0K 2B0
T: 705-689-3941

10. General

- 10.1 This Protocol may be amended in writing at any time by agreement of the Parties.
- 10.2 Additional Chartered Community Councils within the region can be added as Parties to this Protocol at any time by way of amendment.
- 10.3 This Protocol may be terminated by either Party by sending written notice to the other Party, but thirty (30) days prior to any Party sending such a termination letter a Party must communicate its intention to terminate to the other Parties and the Consultation Committee. Termination shall take effect thirty (30) days after receipt of said written notice.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 This Protocol shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- 10.8 This Protocol is not transferable to any other party.
- 10.9 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.

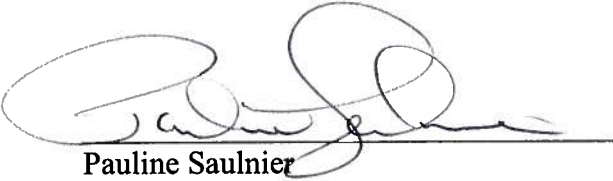
IN WITNESS WHEREOF the Parties have executed this Protocol on the 20th day of April in the year 2009.



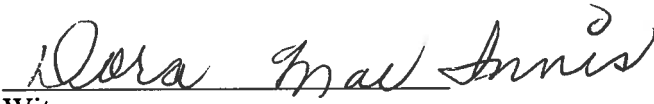
Gary Lipinski
President
Métis Nation of Ontario




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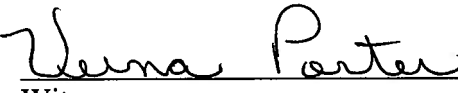
Pauline Saulnier
Region 7 Councillor
Métis Nation of Ontario



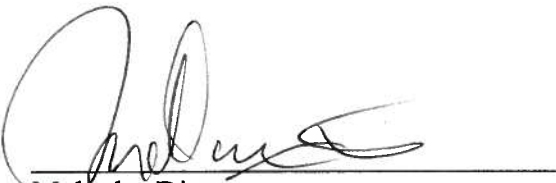
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Alden Barty
President
Georgian Bay Métis Council



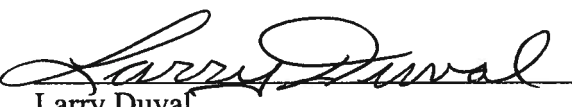
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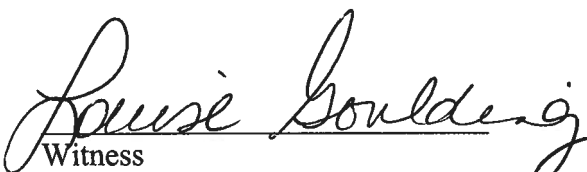
Malcolm Dixon
President
Grey-Owen Sound Métis Council



Witness



Larry Duval
President
Moon River Métis Council



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Terms of Reference for Regional Consultation Committee

Pre-Consultation

Prior to engaging in any consultation or accommodation on any Project, the Crown and/or proponents must participate in a pre-consultation process with the Committee which consists of the following steps:

- a. notice of Project to committee,
- b. assessment of Project's consultation requirements by Committee,
- c. Committee's response to Crown or proponent on issues and next steps, and
- d. addressing issues and next steps in Committee's response,
- e. formal consultation begins.

Consultation

Based on the MNO's NRECR Branch's preliminary assessment and recommendation(s) on any Project, the Committee will determine what kind of consultation process is required.

If the Committee determines that a Project requires only a localized consultation process, one Community Council may take the lead with respect to consultation on that specific Project. The designated Community Council shall report back to the Committee on these consultation activities as required, but it will have responsibility to undertake consultation on the designated Project.

If the Committee determines that a Project may have potential regional impacts on Métis rights, interests and way of life in the Region, a regional consultation process will be triggered.

Regardless of whether the Committee determines a Project triggers a localized or regional consultation process, the following consultation steps shall be followed:

- a. securing capacity and funding for Métis participation to support the consultation activities determined to be required,
- b. information exchange between Métis, Crown and proponent,
- c. assessing effects of the Project on Métis rights, interests and way of life.

In order to achieve an effective regional consultation process, the Committee will work together to develop and implement a mutually agreeable Consultation Workplan to ensure the Crown's constitutional duties owing to the Métis on the Project are fulfilled. This Consultation Workplan is meant to determine a Project's potential impacts to Métis rights, interests and way of life and may include, but will not be limited to, the following:

- a. an overview of the Project(s);
- b. activities, timelines, roles and responsibilities of the Parties;
- c. a local and regional MNO citizen engagement plan, which would include, where necessary or appropriate, Métis citizen meetings, open houses, consultations, or other means of gathering community input that are appropriate in the circumstances;
- d. the identification of research and studies (i.e. Way of Life Framework development, historic, land use, sociological, economic, environmental, etc.) that may be required;
- e. staffing and administration requirements for implementing the Consultation Workplan;
- f. a communications plan, and
- g. appropriate budgets.

The Parties also recognize that some Projects may require either multi-Region or provincial consultation processes. Nothing in this Protocol precludes the Committee from working with other Regions or the MNO to address these types of Projects.

Accommodation

Upon completion of the consultation steps set out above, an accommodation may need to be negotiated. An accommodation may include, but is not limited to, the following:

- a. avoidance measures,
- b. mitigation to reduce adverse environmental, social, economic and cultural impacts,
- c. measures to offset effects remaining after avoidance and mitigation efforts are concluded, including economic measures,
- d. monitoring activities to ensure application and effectiveness of agreed-to avoidance and mitigation measures and to learn from experience,
- e. reclamation initiatives.

The Parties agree that any resulting Project related accommodation measures that are secured will be structured in the following order of preferential treatment: local Métis living near the Project, Métis living in the Region, Métis living throughout the Province of Ontario

Inclusion of Youth and Elders

The Committee will ensure there is opportunity for inclusion of Métis youth, women and Elders in all consultation and accommodation related activities.