

Consultation Protocol Agreement

Between

Mississaugas of the New Credit First Nation

(“MNCFN”)

And

Her Majesty the Queen in Right of Canada

as represented by the Minister of Indian Affairs and Northern Development Canada

(“Canada”)

(collectively the “Parties” or individually a “Party”)

WHEREAS MNCFN are the direct descendants of the Mississaugas of the Credit River, whose ancestors have used and benefited from the land and waters of their Territory for countless generations;

WHEREAS MNCFN have entered into a number of treaties with Canada between 1781 and 1820 with respect to areas within MNCFN traditional territory;

WHEREAS MNCFN asserts unextinguished Aboriginal rights, including Aboriginal title to the waters, beds of waters, and foreshore in its Territory, and Aboriginal title to the Rouge River Valley (collectively the “Aboriginal Title Claims”);

WHEREAS MNCFN has submitted to Canada and Ontario the Aboriginal Title Claims for the negotiation of an agreement reconciling their Aboriginal Title Claims with the Crown;

WHEREAS a federal duty to consult may arise in relation to a proposed federal activity or decision that may have an adverse impact on the treaty rights or the Aboriginal rights including title claims of the MNCFN;

WHEREAS the Parties acknowledge that Canada’s duty to consult is grounded in the honour of the Crown and that the fundamental goal of consultation is reconciliation between the Parties;

WHEREAS the Parties acknowledge that a federal duty to consult and, where appropriate, accommodate, in relation to a proposed federal activity or decision will be informed by the historical context, including any cumulative effects, and the present realities;

WHEREAS, for MNCFN this context includes the heavy urbanization and industrialization of MNCFN’s Territory and the increasing and ongoing pressures and strains of cumulative development activities and decisions on the land and waters in MNCFN’s Territory;

WHEREAS MNCFN has established the Department of Consultation and Accommodation (“DOCA”) to engage with Canada, Ontario, and others in consultation and accommodation discussions on its behalf;

WHEREAS the Parties entered into discussions and signed a Memorandum of Understanding, Recognition of Indigenous Rights and Self-Determination Table on June 9, 2017, acknowledging the need for reconciliation and a renewed relationship between them;

AND WHEREAS further to those discussions the Parties wish to set out a process by which consultation and accommodation will be undertaken between them as part of this renewed relationship and based on a recognition of rights, respect, and in a spirit of partnership.

NOW THEREFORE the Parties have reached agreement on the process for undertaking consultation and accommodation discussions (the “Consultation Protocol”):

1. Purpose

- 1.1. The Parties recognize that Canada has a duty to consult Indigenous people where it contemplates actions or decisions that may adversely impact their asserted or established Aboriginal or treaty rights.
- 1.2. The Parties recognize that consultation is an opportunity to promote reconciliation and build stronger long-term relationships between the Parties.
- 1.3. The Parties intend that the consultation process described in the Consultation Protocol be the preferred choice for consultation between Canada and the MNCFN.
- 1.4. For greater certainty, this Consultation Protocol does not prevent the Parties from agreeing to consultation independent of this process or concluding other consultation agreements.

2. Canada’s Participation

- 2.1. Canada participates in the consultation process conducted pursuant to this Consultation Protocol through the federal departments and agencies responsible for the contemplated Project.
- 2.2. Where practicable, federal departments and agencies will adopt a coordinated approach regarding consultation and, where appropriate, accommodation in order to promote the effectiveness and efficiency of the process.
- 2.3. Where appropriate, Canada uses and relies to the extent possible on the processes of other parties (e.g. boards, industry, province) to assist it in fulfilling its duty to consult and, where appropriate, accommodate.
- 2.4. Where Canada intends to rely on the process of another party to assist it in fulfilling its duty to consult and, where appropriate, accommodate, Canada will provide timely notice to MNCFN of its intent and the parties will seek to come to a common understanding on how that process will contribute to the consultation activities described in this protocol.

3. Notice of Projects

- 3.1. When Canada contemplates a proposed project, activity, development, or action (collectively a “Project”) that has the potential to impact MNCFN’s Aboriginal or treaty rights it shall provide written notice to MNCFN.
- 3.2. Written Notice shall be directed to the attention of the Consultation Manager at DOCA.
- 3.3. This Notice shall contain, to the extent reasonably available:
 - 3.3.1. A description of the Project;

- 3.3.2. Where applicable, a map of the Project identifying the location of the Project in relation to MNCFN reserve lands;
 - 3.3.3. Any technical or other reports, information, or studies prepared or provided in connection with the Project;
 - 3.3.4. Any initial assessment of identified potential impacts or effects of the Project by Canada;
 - 3.3.5. Contact information for the ministry, department, or other group, organization or proponent responsible for the Project;
 - 3.3.6. Timelines for the Project, including the identification of key milestones, description of the regulatory framework, decision-points and approvals related to the Project including guidelines and policies being relied on; and
 - 3.3.7. A copy of any preliminary assessment or other analysis of the potential impacts on MNCFN's rights, claims, or interests prepared by Canada.
- 3.4. This Notice shall be provided as soon as reasonably possible, and in all cases sufficiently in advance of a final decision so that MNCFN can have a meaningful opportunity to provide information and so that the Parties can fulfill the activities outlined in this Protocol.
- 3.5. For greater clarity, the imperative of providing early notice, as soon as reasonably possible, takes precedence over the Notice containing all information identified in section 3.3 and it is contemplated by the Parties that additional or supplementary information will be exchanged between them throughout the consultation process.
- 3.6. DOCA, on behalf of MNCFN, will respond to acknowledge receipt of this Notice within 30 days and it is agreed that this response is not intended or to be construed as an indication as to the sufficiency of information or a conclusion of the consultation process.
- 3.7. DOCA will be the primary point of contact between MNCFN and Canada on all matters concerning this Consultation Protocol.

4. Consultation Process

- 4.1. Upon receiving the Notice, DOCA will undertake an assessment of the Project and categorize it as either "Low Concern" or "High Concern".
- 4.2. A Low Concern Project means: as determined by DOCA, a Project of a routine or inconsequential nature that is unlikely to have an impact on the Aboriginal or treaty rights and claims of the MNCFN.
- 4.3. A High Concern Project means: as determined by DOCA, a Project other than a Low Concern Project.
- 4.4. Within 15 days of acknowledging its receipt of the Notice referred to in clause 3.6 DOCA will communicate the results of its assessment of the Project and its requirements for next steps based on its assessment.
- 4.5. For all High Concern Projects, a meeting between DOCA and Canada will occur no later than 30 days following DOCA providing Notice of its assessment, where the Parties will:
 - 4.5.1. Discuss the Project, and the sufficiency of the information provided to DOCA in the Notice;
 - 4.5.2. Discuss MNCFN's history, its rights, claims, and interests that may be impacted by the Project;

- 4.5.3. Discuss MNCFN's traditional knowledge, laws, values, and stewardship obligations, and how these can be considered and respected as part of the Project design, conditions, or approvals;
 - 4.5.4. Identify any gaps in information and identify a process to address those gaps, including by considering whether additional studies, environmental assessment criteria, monitoring, or other investigations are required;
 - 4.5.5. Discuss any capacity needs of MNCFN and identify a plan to meet those needs, including by engaging with proponents involved in the Project, federal departments and agencies; and
 - 4.5.6. Discuss the timeline for the Project and approvals by Canada related to it, in light of the need for MNCFN to engage with its members.
- 4.6. For all Low Concern Projects, a meeting between DOCA and Canada may be necessary and will occur at the request of either Party to discuss the application of this Protocol including Sections 5 and 6.
- 4.7. The Parties will consider opportunities to invite proponents, companies or other organizations involved in the Project to participate in such meetings, as appropriate.

Consultations regarding Aboriginal Title Claims

- 4.8. The Parties agree that any Projects that have the potential to impact MNCFN's Aboriginal Title Claims are High Concern Projects.
- 4.9. The Parties agree that, given the unique considerations that are involved in consultation over MNCFN's Aboriginal Title Claims, where requested by MNCFN, Canada will participate in consultation processes when impacts may result to MNCFN's asserted title rights, claims, and interests even where consultation or engagement is being undertaken primarily by a proponent or third party.

5. Elements for a Successful Resolution

- 5.1. The Parties acknowledge that appropriate accommodation or interim protection measures will be informed by the historical context, including any cumulative effects, and the present realities.
- 5.2. The Parties further acknowledge that the perspective of MNCFN on the nature, scope, and extent of its rights and impact to those rights will be considered in designing a successful accommodation or interim protection measure.
- 5.3. The Parties agree that, accommodation discussions will be undertaken with an open mind, seeking creative and innovative solutions to resolve concerns and minimize impacts, and that discussions about appropriate accommodation measures will be discussed and considered for each Project.
- 5.4. The Parties agree that accommodation options to be considered may include cultural, environmental, or economic interests or agreements, as well as a role for MNCFN in decision-making related to a Project.
- 5.5. For all High Concern Projects, the Parties will meet within 60 days of the date of the meeting referred to in 4.5 and as necessary to discuss potential accommodation or interim protection measures, including:
 - 5.5.1. Environmental assessments, environmental monitoring and requirements of MNCFN in any environmental study, plan, or assessment processes;

- 5.5.2. Archaeological monitoring by MNCFN, including through the participation of its Field Liaison Representatives (“FLR”) in accordance with MNCFN Archaeological Standards and Guidelines;
- 5.5.3. Changes to the timing or location of Project activities to minimize impacts on MNCFN’s Territory, and its rights or interests or exercise of the same;
- 5.5.4. Any studies, assessments, or technical reviews that may be required to collect additional information about potential impacts, environmental, or other concerns;
- 5.5.5. Changes to the Project or any conditions that would be required as part of any approval related to the Project;
- 5.5.6. Any opportunities for MNCFN participation in the Project, including through employment opportunities, partnership, or impact benefit agreements; and
- 5.5.7. Other appropriate accommodation or protection measures that may be necessary.

6. Resolution

- 6.1. The Parties agree that the shared goal of the consultation process is a mutually satisfactory outcome that addresses MNCFN rights, claims, and interests in a way that allows decisions and projects to proceed efficiently and with minimal impacts.
- 6.2. The Parties agree that to advance this shared goal, no final decisions with respect to a Project will be made until the Parties have made best efforts at reaching a mutually satisfactory outcome.
- 6.3. The Parties will consider opportunities for relationship building agreements and ways for MNCFN to be involved in follow-up, ongoing monitoring and review of Projects, as possible.

7. General

- 7.1. Nothing in this Consultation Protocol shall be construed as recognizing, denying, creating, extinguishing, abrogating, derogating from or defining or interpreting any of MNCFN’s Aboriginal Title Claims or Aboriginal or treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 7.2. Nothing in this Consultation Protocol is intended to alter or define the common law, or alter any statutory or regulatory requirement to which Canada is subject.
- 7.3. The Parties can agree to modify the timelines provided for under this Consultation Protocol for any particular Project, as required, by mutual agreement in writing.
- 7.4. This Consultation Protocol may be amended with the written consent of the Parties.
- 7.5. This Consultation Protocol will come into force on the date of its signature by both Parties and will continue in force unless terminated by one of the Parties.
- 7.6. Either Party may terminate this Agreement upon providing written notice to the other Party hereto that they are withdrawing.
- 7.7. At the request of either Party, the Parties shall meet annually to:
 - 7.7.1. Exchange information regarding the progress of existing or upcoming consultation activities to facilitate improved consultation processes and preparedness; and
 - 7.7.2. Discuss the application of this Consultation Protocol and provide any recommendations to senior officials that may improve this Consultation Protocol.

8. Funding provided by Canada

- 8.1. The Parties recognize that MNCFN and DOCA will require financial capacity for their effective participation in the implementation of the Consultation Protocol and will endeavour to ensure that sufficient funding is made available.
- 8.2. Contribution funding as determined by the Department of Indian Affairs and Northern Development will be paid to MNCFN to support the activities of DOCA as related to this Consultation Protocol. Such funding will be provided based on an annual budget submitted by MNCFN and subject to annual appropriations by Canada.
- 8.3. Notwithstanding 8.2, each federal department and agency involved in consultation with MNCFN conducted under this Consultation Protocol will examine the requirements in connection with consultation relating to proposed Projects and, where appropriate, determine whether and how to fund the needs specific to the consultation and accommodation process.

9. Confidentiality

- 9.1. This document is not confidential and may be made public.
- 9.2. In respect of any consultation conducted pursuant to this Consultation Protocol, records and information may be provided and received in confidence. In each case where information is intended to be provided, received and held in confidence, the Party providing the information shall so notify the other Party. Both Parties shall determine whether the records or information in question should be provided, received and held in confidence. If the Parties determine the records or information should be provided and received in confidence, the record shall so be marked to indicate it was provided and received in confidence. It is the intention of the Parties that such record and information be held in confidence, unless such disclosure is required by law.
- 9.3. Notwithstanding 9.2, any records and information provided in confidence to any department or agency consulting under this Consultation Protocol, shall be deemed to have been provided as confidential to the Government of Canada and may be shared freely amongst federal departments and agencies for the purposes of consultation, unless otherwise agreed in writing.
- 9.4. Nothing in this section of this Consultation Protocol is intended to prevent any Party from tendering records or information as evidence in a court of law or in other legal proceedings when the record or information is relevant to an issue of whether a duty to consult was or was not met.
- 9.5. Unless otherwise stipulated by a Party, documents and information, whether received in confidence or otherwise for the purposes of one consultation, may be used by Canada for the purposes of other consultations with MNCFN. In such a case, Canada shall verify with DOCA that the document or information is relevant and complete as regards the other consultation(s).

10. Parties May Proceed Without Prejudice

- 10.1. Notwithstanding any other provision of this Consultation Protocol, the Parties to a consultation process under this Consultation Protocol may agree that, at any time before or during the consultation, discussions may be held and information exchanged until further notice on a without prejudice basis in order to permit frank, cooperative, and solution oriented interaction without concern for the legal significance of admissions, concessions, positions, and discussions for the period of time specified or agreed upon.

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This Agreement is signed and agreed to by the Parties on the dates set out below.

Mississaugas of the New Credit First Nation

Per:

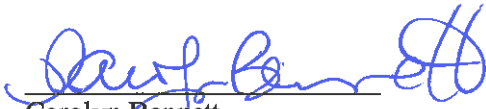


R. Stacey Laforme
Chief, Mississaugas of the New Credit First Nation

Date: SEPTEMBER 6, 2018

Her Majesty the Queen in Right of Canada

Per:



Carolyn Bennett
Minister of Indian Affairs and Northern Development

Date: SEPTEMBER 6, 2018

