

# Consultation Protocol Policy of the Alexis Nakota Sioux Nation

## WHEREAS:

- A. The Alexis Nakota Sioux Nation (“Alexis”) is comprised of aboriginal peoples within the meaning of the *Constitution Act 1982*.
- B. Alexis and its Members exercise Treaty and Aboriginal rights within the Province and its Traditional Territory and such rights are protected by section 35(1) of the *Constitution Act, 1982*.
- C. The governments of Canada and of the Province are constitutionally bound to respect the rights of the First Nation and stand in a fiduciary relationship to the First Nation.
- D. Actions of the Crown and Crown authorized Activities may impact or affect the rights of Alexis and those that claim rights through the Crown are obligated to ensure justification and limited infringement of those rights, through consultation, in accordance with constitutional and fiduciary principles set out by the Supreme Court of Canada.
- E. Alexis wishes to ensure that should any Company propose any Activity in its Traditional Territory that Alexis will have a meaningful understanding of existing and potential Impacts on its constitutionally protected rights and the opportunity for meaningful participation in developing Mitigation and other strategies to minimize and address any Impacts.
- F. Alexis wishes to ensure that there are appropriate structures, protocols, and processes in place to ensure effective consultation that addresses the constitutional and other obligations of the Company and provides certainty for the Company and Alexis.
- G. In partial fulfilment of the Company’s legal obligations, Alexis requires the Company to conduct consultation based on this Policy.

## 1 Definitions

### 1.1 In this Policy:

- (1) “Activity” means any act or activity performed on or in relation to the Traditional Territory that is permitted by an Authorization;
- (2) “Alexis” means the Alexis Nakota Sioux Nation, being a body of persons comprising a Band recognized by Her Majesty the Queen in right of Canada

as defined in the *Indian Act*, R.S.C. 1985, c. I-5, as amended and any successor;

- (3) “Application” means any process by which a person applies to a Decision Maker to obtain an Authorization;
- (4) “Authorization” means the grant of any interest, tenure, approval, permit, license, usufruct or permission of any kind that may or will create an Impact that is issued to a person by a Decision Maker that will allow the person to occupy, use, traverse, or exploit lands or resources, including fish and wildlife, in any manner and, without limiting the generality of the foregoing includes a disposition of Crown lands and mines and minerals;
- (5) “Band Council Resolution” means a resolution of Council of the Alexis Nakota Sioux Nation passed in accordance with the requirements of the *Indian Act*, R.S.C. 1985, c. I-5, as amended;
- (6) “Company” means and includes any person, firm, trust, partnership or Limited Partnership;
- (7) “Council” means the Chief and Council elected to public office pursuant to the applicable election or leadership selection laws of Alexis as amended or replaced from time to time;
- (8) “Decision Maker” means any person, agency, or other body empowered by the Company to give an Authorization;
- (9) “Extent of the Impact” means, in respect of an Impact, the degree of the potential adverse effect having regard for:
  - (1) the nature of the proposed Activity or Policy Enactment;
  - (2) the duration of the proposed Activity or Policy Enactment;
  - (3) the location of the Impact;
  - (4) the number of persons who will suffer the effects of the Impact; and
  - (5) the environmental and socio-economic effects of the Impact;
- (10) “First Nation Lands” means:
  - (1) the lands set apart as reserves for the use and benefit of the First Nation by Her Majesty the Queen in right of Canada; and

- (2) the Traditional Territory of Alexis identified in the map attached as Schedule “A” to these Policies;
- (11) “Fully Mitigated” means that the Mitigation has addressed all Impacts to the satisfaction of Alexis;
- (12) “Impact” means any potential adverse effect on the exercise of a recognized or potential Treaty or Aboriginal right of Alexis or a Member which is exercisable on First Nation Lands, irrespective of whether the Treaty or Aboriginal right has been the subject of a judicial determination and includes effects in the nature of:
  - (1) the imposition of an undue hardship on the person exercising the right;
  - (2) the denial or limitation of a preferred means of exercising the right;
  - (3) the failure to accord the right the highest priority;
  - (4) the failure to ensure minimal infringement; or
  - (5) an effect that results from the cumulative effects of the proposed activity in conjunction with past or continuing activities;
- (13) “Member” means a person recognized as a member or citizen of Alexis pursuant to the applicable membership or citizenship laws of the Alexis as amended or replaced from time to time;
- (14) “Mitigation” means any measure that may:
  - (1) reduce or ameliorate an Impact or the Extent of an Impact;
  - (2) monitor or enforce ameliorative measures respecting an Impact or the Extent of an Impact;
  - (3) provide for compensation including compensation in the form of:
    - 1. business development and community support;
    - 2. employment and contracting opportunities; or
    - 3. training, education, and career development.

- (15) “Policy Enactment” means the formal adoption of any public policy decision that may or will have an Impact, by any process by which the Company may implement public policy decisions and includes the enactment of laws and regulations within its responsibility;
- (16) “Traditional Territory” means those First Nations Lands which have long been occupied and used by Members in their traditional pursuits of hunting, trapping and gathering or for sacred or cultural practices.

**2 Obligation to Consult**

- 2.1 The Company shall not exercise the rights provided by a grant of any Authorization, allow or cause any Activity to occur unless it has consulted with Alexis pursuant to the terms of these Policies.
- 2.2 Alexis promises that it will, in good faith, respond to the Company in a timely manner and otherwise participate in consultation pursuant to these Policies.

**3 Consultation Principles**

- 3.1 Consultation pursuant to these Policies will be based on:
  - (1) timely and responsive consultation;
  - (2) a focus on establishing and implementing reasonable Mitigation; and
  - (3) pro-active identification of Impacts, Mitigation and consultation practices, including the development of long term relationships at senior political, managerial, technical and administrative levels.

**4 Consultation Process**

- 4.1 Before an Authorization is granted or an Activity permitted and before any major decisions are made in relation to an Application or Activity, the Company shall give notice of it to Alexis.
- 4.2 The Company shall, in addition to the provision of notice, provide in a clear and understandable format, such additional relevant information as may be necessary in the circumstances to ensure Alexis have sufficient opportunity to assess the Impacts, the Extent of the Impacts, any potential Mitigation, and to meaningfully participate in the consultation process. Relevant information may include expert environmental and technical information, environmental impact assessments, and conservation and reclamation plans. In addition to this information the Company will provide but not be limited to:

- (1) a description, including the nature, scope and location, of the proposed activity;
  - (2) map(s) at an appropriate scale to illustrate the location, nature, and extent of the activity;
  - (3) site or development plans;
  - (4) the proposed timing;
  - (5) a copy of any records, including applications, studies and assessments that would help the Alexis Nakota Sioux Nation to assess the impact of the proposed activity;
  - (6) a summary of other activities that the Company has undertaken or plans in the area of the proposed activity;
  - (7) the particulars with respect to the appropriate contact person within the company; and
  - (8) any other information relevant to the proposed activity that may assist the Alexis Nakota Sioux Nation in the referral process.
- 4.3 Alexis shall immediately advise the Company of any deficiency in the information disclosure and the Company shall, forthwith, remedy such deficiencies and deliver any documents reasonably requested by Alexis as necessary to assess Impacts, Extent of the Impacts, or potential Mitigation of the proposed Authorization or Activity.
- 4.4 Each of the Company and Alexis shall, within 30 days of the delivery of notice to Alexis, conduct an independent preliminary assessment of:
- (1) the Impacts;
  - (2) the Extent of the Impacts;
  - (3) Mitigation;
  - (4) the need for any internal consultation process within Alexis including reference to elders, community or special interest groups;
  - (5) the person or persons best suited to represent the interests of that party in the consultation process; and

- (6) whether the involvement of any third parties, including a person who has made an Application, is necessary or desirable.
- 4.5 If Alexis consents to the Application, they shall provide notice in writing of their consent to the Company.
- 4.6 If Alexis does not consent to the Application, then, within 60 days of the delivery of notice to Alexis, the parties shall meet and:
  - (1) exchange information on their respective assessments pursuant to section 4.4;
  - (2) determine whether there is any common ground in respect of their Mitigation proposals;
  - (3) establish the need for any third party expert advice, including the need for independent third party environmental assessment or Mitigation advice; and
  - (4) establish whether there is a need for and a process for resolving outstanding issues including the need for further consultation meetings or any other steps necessary to resolve their differences.
- 4.7 Without limiting the generality of section 5, the costs of third party expert advice which both the Company and Alexis agree are necessary to achieving appropriate consultation shall be paid by the Company.
- 4.8 In the event that the parties agree that a process pursuant to section 4.6(d) is appropriate, they shall record their agreement in a consultation memorandum. The parties agree that the purpose and intent of any consultation memorandum is to facilitate a flexible, clear, and fair process for satisfying consultation obligations and each shall participate fully and in good faith, in meeting the terms of any consultation memoranda.
- 4.9 The Company shall, in respect of either an Application and, having regard for the Extent of the Impacts, demonstrably incorporate any reasonable Mitigation measures proposed by Alexis.
- 4.10 Where Alexis has communicated its assessment that the Extent of the Impact is severe, or where the Company has knowledge that the Impact may involve potential extinguishment of a constitutionally protected right, the Company shall not proceed with its application for Authorization or undertake an Activity, without the consent of Alexis.

4.11 Where the Extent of the Impact is of a transient, minor or moderate nature and the Impacts are not Fully Mitigated, the Company shall provide, in respect of Alexis proposed Mitigation measures not incorporated by the Company, a complete explanation as to the reasons for the rejection of those measures. Nothing in this section releases the Company from their obligation to explore and implement all reasonable Mitigation measures in respect of an Impact and, notwithstanding any other provision in these Policies, Alexis shall be entitled to pursue a claim for appropriate compensation for any Impact that has not been Fully Mitigated.

## 5 Funding

5.1 Within 90 days of receiving these Policies and thereafter for each fiscal year during which the Company intends or proposes an Activity in the Traditional Territory of Alexis, the parties shall negotiate reasonable funding arrangements for the implementation of these Policies. In considering the level of appropriate funding, the parties shall have regard for the following factors:

- (1) the number and scope of the Activities, the Authorizations, and the Extent of the Impacts;
- (2) the funding should facilitate meaningful participation in consultation;
- (3) the funding should be reasonably stable and flexible;
- (4) the funding should build capacity including the development of consultation expertise within Alexis; and
- (5) the funding should contemplate reasonable and regular access to expert advice including legal and scientific advice.

## 6 Alternative Dispute Resolution

6.1 If the parties are unable to reach a consensus on Impacts, Extent of the Impact, or Mitigation, they may refer the disagreement to a mediator for the purposes of facilitating a resolution and achieving appropriate consultation.

6.2 If the Company agrees to participate in a mediation process, it shall pay the reasonable costs of the mediator.

## 7 No Prejudice to Alexis or Members

7.1 These Policies are limited to the articulation of a consultation process between the parties in respect of Activities, Authorizations or Policy Enactments.

- 7.2 These Policies do not define the existence or extent of any Treaty or Aboriginal right of any of either Alexis or its Members and without limiting the generality of the foregoing, does not create, expand, extinguish or replace any Treaty or Aboriginal right.
- 7.3 These Policies do not limit the exercise of any Treaty or Aboriginal right within the Province or the Traditional Territory, including any Treaty or Aboriginal right to hunt, fish or trap according to law.
- 7.4 These Policies are not a Treaty or land claim agreement within the meaning of Section 35 of the *Constitution Act, 1982*, and the rights conferred under these Policies are not Treaty rights.
- 7.5 These Policies do not prevent or preclude Alexis from seeking a judicial determination of the nature and extent of its Treaty and Aboriginal rights nor does it prevent Alexis from negotiating an agreement with the Company with respect to such rights.
- 8 Release
- 8.1 Provided that the Company has complied with its obligations under these Policies in respect of an Activity, Authorization, or a Policy Enactment and provided that all Impacts have been Fully Mitigated, Alexis shall release the Company from any and all actions, causes of action, contracts, (whether express or implied), claims and demands for damages, loss, or injury, suits, debts, sums of money, expenses, interest, costs, agreements, commitments, promises of any and every kind and nature whatsoever, at law or in equity, in relation to the Companies obligation to consult with Alexis.
- 8.2 Alexis agrees that it shall be estopped from commencing or maintaining any claim for relief in the nature of an injunction based on a failure to consult in respect of an Activity, Authorization, or Policy Enactment that has been the subject of proper consultation pursuant to these Policies. Nothing in these Policies, however, prevents Alexis from seeking compensation before any competent authority in respect of Impacts that have not been Fully Mitigated.
- 9 Term of these Policies
- 9.1 These Policies commence on the date above written and, unless terminated or superceded by a new consultation protocol, shall continue for a period of five (5) years.

**10 Assignment of Rights**

10.1 The rights which accrue to a party by these Policies shall pass to its successors or assigns.

**11 Waiver**

11.1 The waiver by either party of any breach or violation of any provision of this Policy shall not operate or be construed as a waiver of any subsequent breach or violation.

**12 Modification of Policy**

12.1 Any material modified to this Policy must be in writing, and be provided to a Company or it shall have no effect and shall be void.

**13 Notices**

13.1 Any notice required or permitted to be given by this Policy to Alexis shall be sufficiently given if delivered personally, couriered, mailed by registered mail, or delivered via facsimile to the following addresses:

Alexis Nakota Sioux Nation  
P.O. Box 7  
Glenevis, AB T0B 0X0

Tel: (780)967-2225  
Fax: (780)967-5484

Attention: Nelson Alexis, Lands Manager (Director - Alexis Consultation Office)

**These Policies and Procedures are hereby ratified by the Band Council of the Alexis Nakota Sioux Nation as reflected in Band Council Resolution Number 06-07/6-3 Dated on November 6, 2006, 2006:**


**SIGNED:**

  
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**Chief Cameron Alexis**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Clayton (Tony) Alexis**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Darwin Alexis**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Henry (Hank) Alexis**  
**Alexis Nakota Sioux Nation**

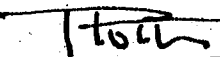
  
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**Councillor Sandy Alexis**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Bruce Potts**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Elmer Potts**  
**Alexis Nakota Sioux Nation**

  
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**Councillor Gloria Potts**  
**Alexis Nakota Sioux Nation**

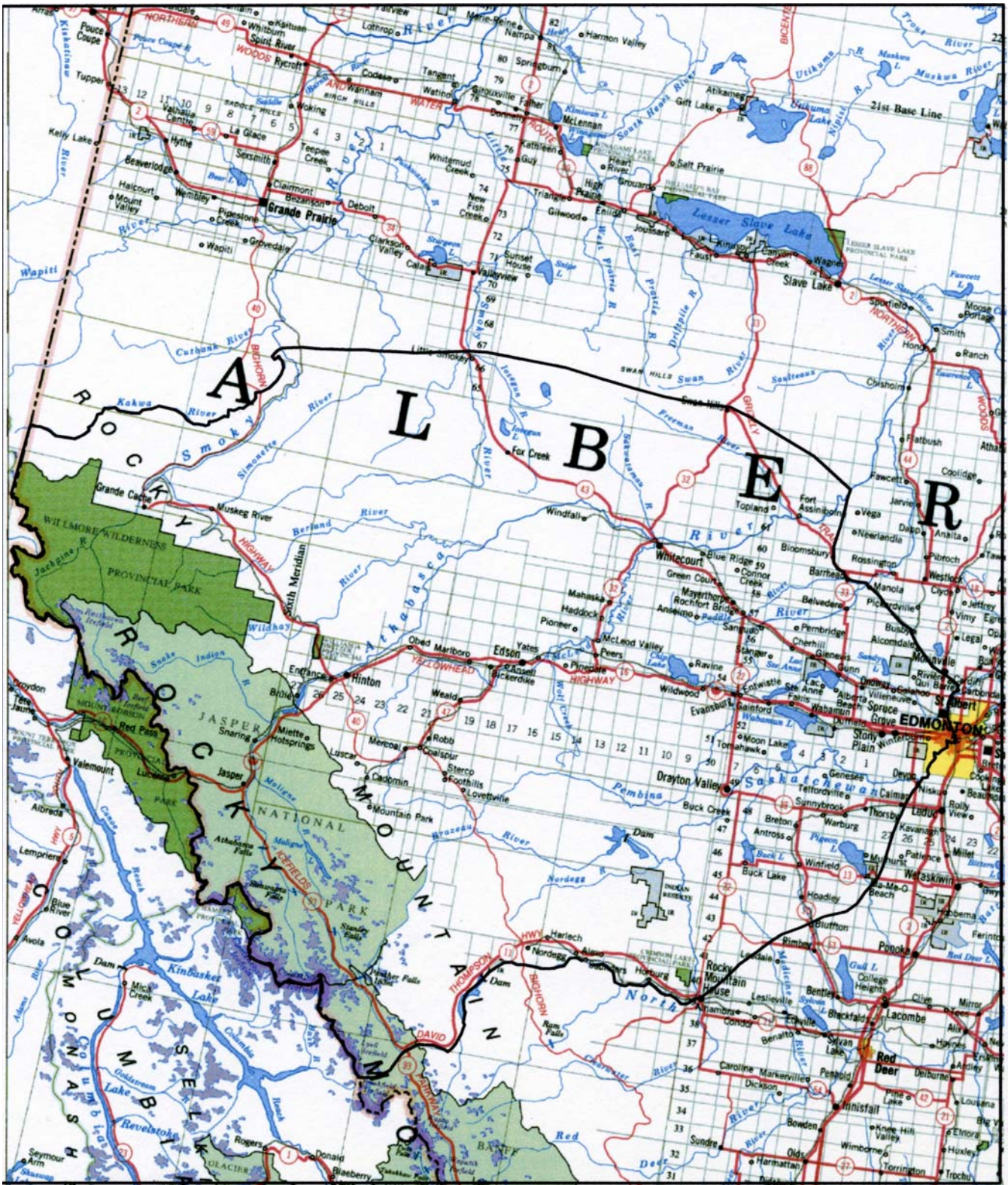
**All of the signatures of Chief and Council witnessed by:**

  
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**Date:** Nov 6/2006

**SCHEDULE "A"**

**ALEXIS TRADITIONAL TERRITORY MAP (Preliminary Draft)**



**SCHEDULE “B”**

**SCHEDULE OF CAPACITY CONTRIBUTIONS**

This schedule applies to all oil, gas, water, pipeline, processing and any other oilfield related activities within the Traditional Area of the Alexis Nakota Sioux Nation, or otherwise affecting the Treaty or Aboriginal Rights of the Alexis Nakota Sioux Nation.

1. Ground disturbance begins with tree felling, but does not include surveying.
2. For consultation on any activities where ground disturbance occurs, the following contributions shall be provided by the proponent company, to reimburse the Alexis Nakota Sioux Nation for expenses incurred in assisting the parties in carrying out their consultation obligations pursuant to the First Nation Policy and to the requirements of the common law:

<u>Type of Consultation</u>	<u>Estimated Costs for Reimbursement</u>
a) Well sites:	one (1) wellhead per site: \$ 750.00
b) Multiwell Padsites:	in addition to 2(a) contributions will be made as follows: each additional wellhead - \$500.00 <sup>1</sup>
c) Seismic:	\$150.00 per hectare of new clearing area determined by type of seismic activity on a project basis.
d) Pipelines:	\$200.00 per hectare disturbed.
e) Major Installations:	Minimum of \$3,000.00 for each major installation <sup>2</sup>

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<sup>1</sup> Payment covers additional disturbance and space required to safely drill the additional well(s) all in accordance with and determined by the appropriate regulatory agencies.

<sup>2</sup>Due to the amount of technical input and community involvement required for major installations, Alexis Nakota Sioux Nation estimates the cost to be a minimum of \$3,000.00 for each major installation for the Alexis Nakota Sioux Nation to review and assess such major installations.