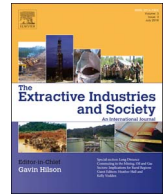




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Original article

## Ethnographic refusal in traditional land use mapping: Consultation, impact assessment, and sovereignty in the Athabasca oil sands region

Tara L. Joly<sup>a,\*</sup>, Hereward Longley<sup>b</sup>, Carmen Wells<sup>c</sup>, Jenny Gerbrandt<sup>d</sup><sup>a</sup> University of Saskatchewan, 55 Campus Drive, Saskatoon, SK, S7N 5B1, Canada<sup>b</sup> University of Alberta, 2-28 Tory Building, Edmonton, AB, T6G 2H4, Canada<sup>c</sup> McMurray Métis, 441 Sakitawaw Trail, Fort McMurray, AB, T9H 5E7, Canada<sup>d</sup> 142 Magpie St, Fort McMurray, AB, T9K 0L5, Canada

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## ABSTRACT

Traditional land use (TLU) mapping is a key mechanism for Indigenous communities to defend their land use and occupancy in environmental impact assessments. Yet, when faced with TLU interview questions, some Métis community members express reluctance to share sensitive land use information. TLU mapping is linked to a broader history of cartographic colonialism that forces Indigenous peoples to subject themselves to western systems of geographic knowledge. This paper asks: what do moments of ethnographic refusal convey about TLU assessments and consultation? Refusal – a practice of rejecting state-driven recognition and asserting Indigenous sovereignty – reveals several methodological flaws with TLU studies that undermine the efficacy of consultation. Based on our TLU research with the McMurray Métis community, the authors describe how TLU studies can undervalue Indigenous geographic knowledge by deemphasizing cultural landscapes, compromising land use locations, and reducing understanding of impacts to site-specific analyses. These problems stem directly from state regulation that deems development inevitable and positions TLU studies as a catch-all mechanism for competing processes: impact assessments and the duty to consult. Attending to ethnographic refusal in TLU studies inspires a more culturally appropriate methodology that asserts Indigenous sovereignty of lands identified for resource extraction in Canada and worldwide.

### 1. Introduction

Conflicts surrounding resource extraction and land use are struggles of competing geographies and interests in the land. Underlying the vast forests and muskegs that blanket northeastern Alberta lies the Athabasca bitumen deposit (known as oil or tar sands) one of the largest hydrocarbon reserves on the planet. More than a hydrocarbon-rich place, the Athabasca region of northeastern Alberta is the homeland of Cree, Dene, and Métis peoples who are both impacted by and benefit from oil sands development. Since the onset of large-scale oil sands extraction in the 1960s and following rapid increases in oil prices in the early 2000s, the Alberta oil sands industry has rapidly expanded, fragmenting and often destroying Indigenous land (Westman, 2006; Huseman and Short, 2012; Joly and Westman, 2017; Longley, 2015). Many Indigenous communities in resource extraction areas face a difficult balance between preserving places integral to their cultural

identity while also participating in the resource economy to maintain a livelihood.<sup>1</sup> As a response, communities such as the Fort McMurray Métis community (hereafter McMurray Métis) increasingly participate in land use planning and impact assessments (IA), and strive to reduce impacts to social and physical environments while also leveraging benefits from industrial development in their homelands (Wanvik, 2016; Wanvik and Caine, 2017; Westman, 2017).

Among many other tools of political and economic self-determination (e.g. Zalik, 2016), Indigenous communities across the globe practice land use and occupancy mapping to show the geographic extent of their land use, assert their Indigenous rights, and report the adverse impacts of resource extraction. Indigenous land use and occupancy mapping emerged in the Canadian North in the 1970s as a mechanism for communities to prove use of their territories in land claims and IA processes (Freeman, 1976; Berger, 1977; Nahanni, 1977; Asch et al., 1986). Traditional land use (TLU) studies involve interviewing

\* Corresponding author.

E-mail addresses: [tj987@mail.usask.ca](mailto:tj987@mail.usask.ca) (T.L. Joly), [hereward@ualberta.ca](mailto:hereward@ualberta.ca) (H. Longley), [heritage@mcmurraymetis.org](mailto:heritage@mcmurraymetis.org) (C. Wells), [jlg205@mail.usask.ca](mailto:jlg205@mail.usask.ca) (J. Gerbrandt).

<sup>1</sup> In this paper, we refer to specific names of Indigenous communities, when possible, and provide a specific case study of the McMurray Métis community. We sparingly use the blanket term 'Indigenous' to discuss legal or regulatory issues, such as the duty to consult, that apply to many communities facing resource development, or to discuss specifically named things like Indigenous Land Use and Occupancy mapping. We use the term Aboriginal when referring to Canadian law.

Indigenous community members and documenting their land uses on a digital or paper map, which researchers then compare with potential and actual extractive projects (Olson et al., 2016).<sup>2</sup> These land uses may include travelling trails and waterways, camping, visiting trapline cabins, hunting, trapping, fishing, plant gathering for medicine or food, and other ceremonial activities. TLU refers not only to the material act of harvesting, but also the social, cultural, and economic wellbeing that accompanies those activities (Lacombe 2012:4–5; Nadasdy, 2003; Ghostkeeper, 2007; Joly, 2017). TLU mapping is now a widely used and federally recognized mechanism for researchers to assess the potential impacts of a proposed industrial project on Indigenous communities (CEAA, 2012). Communities such as the Métis in Fort McMurray (hereafter McMurray Métis) are using TLU mapping to their benefit, as a method for strategic engagement in resource development (see Wanvik and Caine, 2017).

The authors of this paper – one Métis community member (Wells) and three newcomers to Alberta (Joly, Longley, and Gerbrandt) – have a combined 16 years of experience as TLU researchers with the McMurray Métis community. The McMurray Métis is a community of around 300 members who live and have historic roots in Fort McMurray, Alberta, as well as widespread traditional land use and familial connections extending throughout the Athabasca and Clearwater River valleys (Clark et al., 2015). The McMurray Métis government represents the community in a wide array of political, business, cultural, and administrative functions, such as interacting with oil sands companies and the various levels of government. The community's leadership uses TLU studies as a powerful tool to aid in negotiating with oil companies and governments. However, in our TLU research, we observed that some Métis study participants – while providing high quality TLU data and actively engaging in studies – at times resisted sharing certain land use information. If TLU mapping is a tool to advance Indigenous self-determination in Canada, why do some community members refuse to map certain information? In this paper, we analyze individual examples of ethnographic refusal to comment on pitfalls and opportunities afforded in TLU studies, and community-level acts of asserting sovereignty.<sup>3</sup> Specifically, ethnographic refusal, as it pertains to TLU interviews, demonstrates how TLU studies in Alberta are methodologically flawed as a product of a state-dictated consultation process in which community members feel that development is inevitable.

In this paper, we characterize these moments in which Métis community members have not always been willing to share information as examples of Mohawk scholar Audra Simpson's (2014) concept of ethnographic refusal. Refusal, at face value, is the act of saying 'no' to a gift, event, or structure. Ethnographic refusal can also be a method employed by researchers who wish to conceal sensitive information and protect communities. More recently, scholars have recognized ethnographic refusal as a concept that is also theoretically generative as it illuminates historical processes and political structures, revealing more than it conceals (McGranahan, 2016). In her ethnography, *Mohawk Interruptus*, Simpson (2014:78) articulates refusal as a tool long employed by Mohawk people in their relationships with the state. For Simpson, refusal is a means of rejecting state sovereignty and the logics of settler colonialism, while making a claim for Mohawk sovereignty (Simpson, 2014; cf. McGranahan, 2016; TallBear, 2016).

<sup>2</sup> In keeping with our argument about ethnographic refusal, we do not include an example of a TLU map in this paper. For an example, please see Tobias (2009), McMurray Métis (2012:80–160), or the Canadian Environmental Assessment Agency and Alberta Energy Regulator databases for TLU maps on the public record.

<sup>3</sup> In this paper we use the term "refusal" in specific reference to Audra Simpson's (2014) concept of ethnographic refusal, which we broadly define as moments of resistance to ethnographic research, or, in this case, the land use consultation process. We do not state or otherwise imply that McMurray Métis members provide anything other than accurate land use information to the TLU consultation process. The McMurray Métis community consistently participates in all regulatory and consultation processes in an accurate, punctual, and professional manner.

Similarly, reluctance to share land use information in TLU research is both a means of rejecting an existing methodology of IA and consultation, as well as generating alternative IA methods which may be more inclusive of Indigenous voices and the possibility of consent; ultimately, it is a means of asserting Métis sovereignty. Examples of ethnographic refusal in this paper reveal how TLU mapping is a problematic practice that forces Indigenous peoples to conform to western mapping systems that can be culturally inappropriate and linked to a broader history of cartographic colonization (Eades, 2015; Edney, 1996; Harley, 2001; Harris, 2003). The moments of reluctance in TLU studies we describe are subtle,<sup>4</sup> reflecting issues of privacy in a cultural context of reciprocal relations with the land (Scott, 1996; Ghostkeeper, 2007). We assert that ethnographic refusal stems in part from the fact that resource maps are fundamental tools of industrial colonization that portray the Athabasca region exclusively as a resource extraction zone. As a result, in some instances, the TLU process violates both the confidentiality and nature of Indigenous geographic knowledge, which leads Métis community members to evade the disclosure of certain land uses. This ethnographic refusal, at a community level, is a means of rejecting settler colonial structures and ongoing dispossession of Métis homelands, and an assertion of self-representation and self-government in a context of state-defined rights.

Using a case study of the McMurray Métis community, we critique problems with consultation and IAs with international importance for resource extraction and Indigenous rights in Alberta. In Sections 2 and 3 of this paper, we describe the theoretical, methodological, and political context of TLU studies. TLU mapping is an invaluable (and often the only) way for Indigenous communities to contest the portrayal of their traditional lands as extraction spaces and to negotiate with industry and government for economic benefits and protection of rights and the environment. However, the process of TLU mapping misrepresents Indigenous geographic knowledge in several ways, which leads to community members' reluctance to share land use information. We outline these moments of resistance in Section 4.

TLU mapping requires Indigenous peoples to translate their geographic knowledge into a western medium that freezes, codifies and simplifies a complex and changing relationship with the land. By mapping their historic and current land use, communities feel they are restricting any future expansion of their land use, which is necessary for subsistence, cultural growth, and to ensure adaptive capacity given the growing realities of climate change impacts. TLU mapping further forces land users to reveal knowledge of their environment to an unlimited number of outsiders, an act that compromises the places and ecosystems they reveal and that is disrespectful to the land itself. The IA process places the responsibility to provide evidence of Indigenous rights practice (i.e. occupancy and use of land) on Indigenous communities themselves, rather than on the Crown or proponent. Many of these issues are amplified by the structure of consultation in Alberta. In almost all instances of development, the Government of Alberta delegates the duty to consult to the proponent (Laidlaw, 2016:26; Passelac-Ross and Potes, 2007). The proponent typically fulfills this duty by funding a TLU study while also using the TLU study results in its Environmental Impact Assessment. However, consultation and IA are two separate processes, and by combining them, the Alberta regulatory process serves to limit Indigenous land use rights. In the final section, we conclude with principles that have the potential to render TLU mapping a more culturally sensitive and less problematic method for

<sup>4</sup> These moments of ethnographic refusal should not be confused for the rejection of oil sands development altogether. Indeed, while many communities in Canada "say no" to development by rejecting it outright (e.g., Bowles and MacPhail, 2017; Kunkel, 2017; Veltmeyer and Bowles, 2014), many communities in the Athabasca region, including the McMurray Métis, aim instead to slow development and work to minimize impacts and maximize benefits for their communities. The ethnographic refusal we document in this paper, then, is about improving a process of development and consultation for Indigenous communities.

Indigenous communities to assert use and occupancy of spaces chosen for resource extraction. Attending to the relationships ethnographic refusal reveals, we argue, is necessary for upholding the honour of the Crown including as it concerns the matter of free, prior, informed consent in natural resource development contexts. As a collective and individual act, ethnographic refusal in this context both methodologically and theoretically generative: it is an act of controlling self-representation of Indigenous geographies, but also an assertion of control over the consultation and IA processes, and, ultimately, a hopeful and willful act of asserting an alternative power structure that would take seriously Métis sovereignty in their homelands.

## 2. Resource cartography and Indigenous counter-mapping

Critical cartography literature describes maps as living, purposed texts that act as tools of spatial knowledge production and that evolved in response to colonialism. To exercise power over land and people, states aim to make territories “legible” through standardization (Scott, 1998:2), including through surveying and mapping, which in turn erases the heterogeneous complexity of the socio-political landscape and presents a territory as a controllable unit. Maps are a primary means through which governments or polities exert power over property, territories, and populations (Crampton and Elden, 2007). More than a mere simple, static representation of place, maps exercise and reinforce discursive power (Harvey 1996:112). Resource maps in particular are powerful tools of representation that colonize space by privileging the presence of natural resources, while often ignoring Indigenous occupancy and land use. When developers identify spaces as extraction zones, these places experience a process of material and discursive othering (Saïd, 1979; Voyles, 2015) in which they are presented as wastelands where extraction will add value to otherwise useless topography (Voyles, 2015:8). With tools such as maps, commodity spaces are presented as depopulated regions that are temporally and spatially unmoored, represented only in the image of the commodity (Bridge, 2001:2149). In short, governments and project proponents construct resource extraction zones as spaces rendered valuable through the application of settler colonial ideals of extraction.

Indigenous communities in what is now Canada have had a conflicted relationship with surveying and mapping. Historically, the Canadian government used maps as a tool to gain control of space. With the impetus of exploiting natural resources, the Crown took legal control of the region when it signed Treaty 8 with local Indigenous peoples in 1899. Indigenous treaty signatories, however, viewed Treaty 8 as an agreement to share the land (Asch, 2014:114). Treaty 8 provided some Indigenous peoples land use rights to hunt, fish, and trap throughout the territory, while others, such as the Métis, were left out of the process. While the Dominion of Canada instead offered the Métis land scrip of 160 acres per person at the time of Treaty, the Dominion government had not completed the township surveys nor opened land offices in what is now northern Alberta, so scrip holders could only convert scrip to money (Larmour, 2005:104). In the early 20th Century, in response to settlement and oil exploration in northern Alberta, government surveys laid out the township system and mapped abundant bitumen deposits, enabling development while minimizing and omitting the presence of Indigenous peoples and land use (Larmour, 2005:103–119; Longley, 2016). The Dominion government’s surveys of township grids and reserve lands laid the framework for agricultural settlement, railway construction, and resource extraction. These projects employed Indigenous (especially Métis) peoples as guides and labourers, yet also constrained Indigenous peoples’ freedom of movement and settlement in their homelands. For instance, in 1885 Métis people famously resisted surveying at the Red River settlement in Manitoba, but were ultimately overruled by the Canadian government. Similarly, in 1900 and again in 1910, early settlers in Fort McMurray worked to overlay pre-existing Métis geography by fencing off their land and trying to evict Métis families (Lamour 2005:117–120). In short, the role of

guiding and facilitating access to the land is a part of a longer Métis history in the North in which Métis sold their experiential geographic knowledge to explorers and surveyors; yet, these same tools have also facilitated Métis dispossession from their homelands. Survey maps, therefore, represent an evolving relationship between knowledge, land, and newcomers.

Contemporary Indigenous land use and occupancy maps are created within the context of this complex past. Land use maps are in part a means for Indigenous peoples to challenge not only the impacts of resource development projects on their land use activities, but also their cartographic erasure.<sup>5</sup> In other words, traditional land use maps made in collaboration with Indigenous peoples can serve to resist unfettered development in their traditional territories and also as linked to broader aspirations concerning rights and title recognition and Indigenous sovereignty. Using the language of western cartography (e.g. space is ordered, linear, and rationalized and information is presented with alphanumeric codes, with a scale, direction, legend, and latitude and longitude), Indigenous maps visually represent ongoing relationships to the land by presenting trail systems, hunting areas, berry patch locations, or other sites of cultural significance. This co-optation of colonial tools is not a new phenomenon; colonized peoples have a long history of appropriating European mapping technologies and turning them against imperial powers, and towards the interests of anti-colonial nationalist movements (Edney, 2009:44). In the context of resource extraction and state relations, Indigenous land use mapping resonates with Nancy Peluso’s (1995) concept of counter mapping. As Indigenous peoples take control of the tools of cartography, communities can map their use and occupancy of resources and socio-cultural landscapes. By putting themselves back on the map, Indigenous communities contest state resource maps using the same medium, appropriating “the state’s techniques and manner of representation to bolster the legitimacy of ‘customary’ claims to resources” (Peluso, 1995:384).

However, incorporating TLU into oil sands consultation and impact assessment poses similar problems as noted in the literature on Traditional Ecological Knowledge (TEK) and natural resource management, including: epistemological difference and the mistranslation of TEK into western governance and scientific discourse; the treatment of TEK as an object for science rather than a knowledge system in its own right; and the universalization of TEK, which is place-specific (Berkes, 2008; Cruikshank, 2004; Ellis, 2005; Nadasdy, 2003; Usher, 2000; Wenzel, 2004; Sandlos and Keeling, 2016). The TLU map is limited in its ability to disrupt state processes. Echoing Audre Lorde’s oft-quoted phrase, the “master’s tools will never dismantle the master’s house” (Lorde, 1984:112). In the case of Western-oriented cartography, TLU mapping becomes a limited solution for resolving the social, environmental, economic, and political problems that Western development creates, which in turn has (and continues to) compromise Indigenous livelihoods and identities. Glen Coulthard critiqued the systems of recognition of Indigenous rights (within which TLU studies operate) as being rooted in “the legal and political framework of the Canadian state” (2014:1–2), not legal orders of Indigenous communities. Within the context of flawed state-defined consultation and impact assessment processes, TLU mapping is limited in affording Indigenous peoples the means to address impacts to the homelands in their own terms, and the recognition of their rights and sovereignty (Coulthard, 2014).

<sup>5</sup> Indigenous peoples create land use maps for diverse purposes, such as: for consultation with industrial developers or the state, or for community heritage or oral history projects. We focus on those created for conversation with industrial proponents or the state for land claims or to uphold land use rights.

### 3. Consultation, impact assessment, and traditional land use assessments in Alberta

TLU maps strive to document a given community's interest in the land by showing the extent of their activities within their territories (Tobias, 2009:32). After 1951, when the federal government lifted its ban on communities raising funds to pursue land claims, Indigenous communities in Canada began to actively pursue these claims. In several cases in the 1970s, including *Calder v. British Columbia* (1973), *Kanetewat* (1972), and *Paulette* (1973), the Supreme Court held that claimants must show historical use and occupancy to specific territories to advance a land claim (Usher et al., 1992:123). Communities and researchers thus oriented the first land use and occupancy studies towards meeting legal requirements to prove Indigenous interests in claimed areas – a trend which continues today.

Communities simultaneously used land use and occupancy mapping to assert land claims and show land use conflicts with proposed industrial projects. In the 1970s, the Dene Nation developed the Dene Mapping Project, a large-scale land use study that interviewed over 600 land users, to assert the Dene Nation's land claim, and to challenge the proposed Mackenzie Valley Pipeline (Nahanni, 1977; Berger, 1977; Asch et al., 1986). Put simply, the map biography method employed – which was pioneered in Milton Freeman's (1976) Inuit Land Use Occupancy Project (ILUOP) and is now standard – consists of interviewing land users, either on-the-land or in an office setting and asking the story of their lives through land use. On paper or digital maps (Olson et al., 2016), researchers record and map information including hunting, fishing, and gathering areas, shelters and campsites, traditional trails and waterways, known wildlife habitats, Indigenous place names, and ceremonial grounds. The researchers then aggregate the data of individual land users into maps that portray the community's land use areas across various categories. Since the ILUOP and Mackenzie Valley Pipeline Inquiry, Indigenous communities use the map biography as a standard method to create land use and occupancy maps in support of land rights and title, to assess potential impacts of proposed industrial projects, and for consultation (Garvin, 1999; Hrenchuck, 1993; Usher, 1990; Brice-Bennett, 1977; Brody, 1981; Natcher, 2001; Tobias, 2009).

The Crown's duty to consult – one impetus for TLU mapping – emerged from Supreme Court cases which developed the Aboriginal rights affirmed in Section 35 of the Constitution Act 1982 (Lambrech 2013:xxv). In *R. v. Sparrow* (1990) the Supreme Court of Canada found that Aboriginal harvesting rights remain unextinguished and cannot be infringed without clear justification. The *Delgamuukw* (1997) case held that Aboriginal harvesting rights can be specific to a land base and constitute Aboriginal title. It stated that the Crown was obliged to engage in a consultation process but did not determine what constitutes adequate consultation (Natcher 2001:114–115). In *Haida* (2004) the Supreme Court found, pertaining to a forestry license, that the Crown has a duty to consult with and accommodate the interests of Aboriginal peoples whose rights and title may be adversely affected by the Crown's conduct. A year later, in *Mikisew Cree First Nation v. Canada*, (2005), a case pertaining to the construction of a winter road through Mikisew Cree traditional territory, the Supreme Court of Canada found that the Crown is required to consult before “taking up” lands for industrial development as allowed by Treaty 8, and that these lands not be developed to the point that there is no meaningful right left to hunt. Importantly, *Haida* (2004) affirmed that the honour of the Crown, and thus the duty to consult, cannot in good faith be delegated to third parties. However, the procedural aspects of the duty to consult can be delegated to third parties, which makes it possible for the Government of Alberta to delegate consultation to industrial proponents.

In addition to avoiding rights infringement, *Delgamuukw* also affirms that some cases of consultation “may even require the full consent of an aboriginal nature” (para. 168). This ideal of consent is also upheld in the international standard for consultation outlined in the *United Nations Declaration on the Rights of Indigenous Peoples* (2008)

(UNDRIP). The biggest divergence of UNDRIP as compared with Canadian policy is that UNDRIP requires states obtain free, prior, and informed consent from Indigenous communities before approving projects which affect Indigenous land. Although the Canadian federal government has endorsed UNDRIP in principle, it has declined to adopt consent into law as the Canadian economy is dependent on the proceeds of natural resources extracted from Indigenous land.

As the Crown's duty to consult and accommodate became a prerequisite to industrial development, TLU studies became a catch-all method in partial fulfillment of the duty and as a part of the impact assessment process in Alberta (Berger, 1977, Brody, 1981, Natcher, 1999, Fort McKay, 1994). Indigenous peoples in Alberta have a negative historical relationship with the provincial government in relation to industrial development (Daschuk and Marchildon, 2006). Alberta has resisted the emergence of the duty to consult, and now takes the narrowest possible interpretation of the duty. In particular, Alberta has yet to produce a Métis consultation policy, despite ongoing negotiations and a decade of repeated calls from the Métis Nation of Alberta (Laidlaw, 2016:6). Alberta's consultation policy for First Nations is implemented by the Aboriginal Consultation Office (ACO), which determines whether consultation is required. In Alberta, the Crown delegates the procedural aspects of the duty to consult to project proponents (Laidlaw 2016:26; Métis Nation of Alberta 2009:1). Once the ACO determines if an Indigenous community must be consulted (Métis communities may be included, but the policy requires First Nation consultation only), the proponent must send notifications to the communities. Communities have between 15 and 20 working days to reply to notifications for proposed projects, and if they do not, the ACO can deem the communities to have consented to the project (Laidlaw, 2016:46–49). If communities do respond, industrial proponents often fund TLU studies to determine the level of impacts on the community, including this process in both their consultation logs and in their IA. The ACO, not the community, determines if consultation was adequate, and the community uses TLU reports to negotiate an agreement with the proponent or to challenge the project through a regulatory process or in court.

In the Alberta oil sands region, Indigenous communities produce TLU maps that contest the image of the *tabula rasa* resource extraction zone. However, the Government of Alberta dictates how TLU maps are created and whether the information represented is valid or adequate to assess impacts to traditional land use. Simpson refers to such practices as “specific technologies of rule” (2007:67). Regulatory bodies in Alberta refuse to assess rights; rather, they are intent on only determining the issue of impacts. The conundrum of such ongoing practices of governmental intransigence poses problems for Métis communities: To negotiate with oil companies and the government, communities must translate their relations to the land into a language of territorial sovereignty, intelligible to lawyers and politicians (see Nadasdy, 2012). State prioritization of territoriality and rationality (Jackson, 1997) often eclipses Indigenous legal orders and relationality, sometimes requiring a shift in social and political organization of communities (Thom, 2009; Nadasdy, 2012; Pearce and Louis, 2008; Roth, 2009; Olson et al., 2016). Thus, to mitigate impacts and access benefits of resource development, Métis communities must participate in colonial cartographic processes that can shroud their land, history, and rights.

The TLU mapping process is problematic because it is used to address two different issues: impact assessment and the duty to consult. However, the potential impact of a proposed project and whether it is acceptable to Indigenous communities are distinct issues. While the ACO may consider the completion of a TLU study adequate consultation, local communities view the TLU study as only one of many avenues of engagement with proponents and regulators. If mere participation in the TLU process is taken, wrongly, by the regulator to signal consent, the regulatory process is effectively co-opting Indigenous knowledge and participation to legitimate the perceived rigor of the

regulatory process.

Land use consultation presents a double bind for Indigenous communities. If communities do not contribute to a TLU study, their relationships to particular areas are not documented, and their ability to influence project planning or claim compensation is diminished. Yet if land users participate in the study, “they run the risk that proponents will mistake their involvement for consent” (Dokis, 2015:158). The Alberta Energy Regulator (AER) has approved 99% of projects (Behr, 2017), regardless of the expected impact and Indigenous concerns regarding projects (Westman, 2013; McCormack, 2016). In the recent Shell Jackpine Mine Expansion hearing, for example, the Joint Review Panel found that the Project would have significant adverse cumulative effects on the physical environment and on Aboriginal TLU, rights, and culture. However, the panel considered “these effects to be justified and that the Project is in the public interest” (Federal Minister of Environment and Energy Resources Conservation Board, 2013:2). Within a context in which industrial development is seemingly inevitable, TLU studies hold little power to substantially alter project decisions. TLU mapping then appears less a process of mitigating impacts and affording Indigenous participation in resource development, and instead a wrong-headed practice used to justify oil sands project approval.

At a fundamental level, mapping TLU in response to a state-driven process can misrepresent land use information in ways that do not always advance community interests (Natcher, 2001:118). A TLU map may be manipulated to support perspectives counter to community interests or ignored completely. For instance, maps created by industrial proponents and government quantify Indigenous land use and do not articulate the cultural significance of Indigenous relationships with the land – a fundamental component of TLU (Natcher, 2001; Lacombe, 2012). This shortcoming stems from the fact that regulators emphasize the physical components of a landscape, which neglects or simplifies its cultural or spiritual aspects (see Westman, 2013). Site specific TLU analyses, which mark instances of documented land use (e.g., a kill site) with points, present land use as unique to particular places. Empty spaces between map points incorrectly imply the area is unused, unimportant, or “free, unencumbered, and available for development” (McIlwraith and Cormier, 2015:40), echoing colonial assumptions of *terra nullius*. Furthermore, the TLU assessment process evaluates projects on a case-by-case basis and not as a cumulative regional land use assessment (ABMI, 2013; Noble et al., 2014; Kennett, 2007). Impact assessments often present land use and occupancy maps in a piecemeal fashion that does not adequately assess, in the community’s terms, local and regional land use or cumulative of existing projects and environmental impacts.

Although TLU mapping appears to be a tool for Indigenous communities to refute resource geographies that marginalize their existence and land use, government and industry work to shape and constrain the efficacy of TLU mapping. By conflating IA and the duty consult, regulatory processes mobilize TLU studies to present a façade of accommodation and consent in front of development decisions. The state continues, then, to recognize rights of Indigenous peoples only within their own legal and political systems (Coulthard, 2014), thus denying authority and self-determination to Indigenous communities in development decisions. Within this context, many land users have become reluctant to give up their land use information to what they perceive to be a rigged process.

#### 4. Cases of ethnographic refusal in traditional land use assessment

In TLU study interviews with Métis community members, we sometimes observed a reluctance to share certain geographic information. Ethnographic refusal, as a method in qualitative research, has been critiqued as a means of “thinning” ethnographic data (Ortner, 1995:190). Yet, recent scholarship in anthropology and settler colonial studies maintains that refusal, as a subject and method, embodies an

affective critique of power (McGranahan, 2016; Simpson, 2014; Graeber, 2013; Tuck and Yang, 2014). Refusal is not synonymous with resistance in the sense that theories of resistance “posit an a priori landscape of domination and resistance” (McGranahan 2016:320) that overestimates the power of the state and describes Indigenous peoples as overwhelmingly powerless (Simpson, 2016). Acts of refusal instead challenge and reshape socio-political relations by forging possible alternatives to institutional structures (McGranahan 2016:323). In her seminal articulation of the concept, Simpson (2007,2014) demonstrates how Kahnawà:ke refuse Canadian citizenship – for example – to generate a new kind of socio-political space beyond that of the Canadian state and to assert their independent sovereignty. Applied to TLU studies in Alberta, ethnographic refusal (subtle reluctance to provide certain information) is a means by which Métis community members challenge the problems in TLU methodology and assert self-determination in a flawed, state-driven process. The Métis community is a proponent for TLU studies and other research projects but endeavour to be in control of research and how it represents their community. Ethnographic refusal in the context of TLU studies can then be read as a methodological process of self-representation, but also a community “critique and [move] away from statist forms of recognition” (Simpson, 2014:78) and a political assertion of sovereignty (2014:107). Here we outline three examples of Métis community members challenging the TLU study process by challenging the documentation of sensitive locations of a trail access, berry patch, and hunting site. We chose these three examples because they are representative of a broader trend of typical responses or dialogues we encountered in many TLU studies, and they address three primary issues regarding TLU studies at methodological and theoretical levels.

The first example is from an interview conducted for a 2014 TLU study which assessed potential impacts of an open pit mine north of Fort McMurray (the project has since been approved). In the interview, Len Hansen,<sup>6</sup> a middle-aged male Métis trapper, avoided pinpointing specific locations where an animal was taken. He questioned the validity of site-specific methods from his hunting knowledge and experience. When asked by Wells and a community researcher about where he hunts, Hansen replied,

It’s hard to—you know...the thing is, like, what do you classify as hunting? Like we’ve always got the rifle with us when we’re going, right? So, we’re just kind of scoutin’ out, you know, looking for whatever, and see what kind of signs goin’ around, right, for what kinda animals, what kind of fur is up there. Just touring around, you know, the area, right. So, yeah you could call it hunting because we got the rifle with us.<sup>7</sup>

Hansen objected to the reduction of hunting in TLU mapping to a single point on a map, confined to specific activity (shooting an animal), practiced at a specific time (the moment the animal falls), and in a specific place (the kill site). For this respondent, hunting was a more regional, temporally continuous, and socially complex activity. Indigenous land use is dependent on the ecological integrity of regional ecosystems, not individual land use sites. For Hansen, a hunting area is defined through a cultural practice of travelling through and reading the landscape. Moreover, hunting is a means of maintaining relationships with other Indigenous community members and with the land itself. For this reason, a point on the map is a misrepresentation of a cultural landscape of regional relations. In questioning the TLU method which requests site-specific hunting data, Hansen challenged resource-based modes of inquiry that often undermine representations of cultural

<sup>6</sup> At the request of McMurray Métis leadership, we include names in this paper. Naming participants situates their quoted information and renders the source of knowledge visible – a task related to ethnographic refusal as a method, challenging the anonymized nature of IA data and instead placing dominion over representation in the hands of the community (Simpson, 2007; Legat, 2012).

<sup>7</sup> McMurray Métis TLU interview, code: TECTLU2014-01.

landscapes.

Second, in the same interview, Wells and Longley invited Hansen to map trails to his trapline cabin to assess if they intersected with the footprint of the proposed oil sands project. Hansen responded:

There's a few different ways to get in there, and we don't like to tell too many people because...a lot of people think there's only one way. So if there's a blockage of some type, nobody goes in there. But we know there's other ways to get in there, right, so we don't tell anybody.<sup>8</sup>

Hansen expressed concerns about an area being opened to outside use. Many Métis community members describe how, once a trail or road is opened or widely known, outsiders vandalize or steal property and deplete animals or plants on Métis traplines. In a TLU interview, individual land users may not share specific access locations to prevent outsiders from accessing resources they rely on, to avoid over-use or destruction of a given area. This example of ethnographic refusal or reluctance thus reflects a common privacy concern about the places TLU data makes available to the project proponent, the regulator, and, sometimes, the public.

Third, in a 2013 interview, Joly and another TLU researcher mapped berry locations with a male Métis Elder. The interview was conducted as part of a joint TLU study assessing potential impacts of several in-situ (Steam Assisted Gravity Drainage) operation expansions and a proposed pipeline (these projects have since been approved, constructed, or stalled due to the oil downturn). To strengthen the claim in the IA, the Elder was asked whether a historic berry patch is still used today. The Elder replied,

I'm not going to tell you that, because then you'll go up there and then you'll pick [the berries]...You do not share your patches with anybody...you'll get the same story when you ever ask anybody about good berry spots...They'll say, "None of your business!" But I'm being very polite. No, I'm not telling you.<sup>9</sup>

Similar to the trail accesses above, this ethnographic refusal protects an area from outsiders who may deplete resources in the area. The Elder also described a collective community protocol to respect the location of berries. In Cree and Métis ontology, if respect and reciprocity are not shown to a berry patch, the berries will not return the following year (Baker, 2016; Scott, 1996; Ghostkeeper, 2007). This act of refusing to share the precise details of a berry patch is therefore a means for the family or wider community to maintain cultural relations with the land and to ensure plentiful resources in the future.

In the three above examples, Métis community members resist sharing certain information in part because they feel that the TLU process places the onus of proof on Indigenous people to demonstrate land use to maintain their rights to use a given area (McNeil, 1999). That is, to establish and uphold rights to an area, Indigenous communities must prove their own contemporary and historic use of that area to the Government of Alberta. The government requires no such justification of their rights to the same place.

From the perspective of some community members, TLU methodology can be invasive and insensitive. Questions about where, when, and for what purpose an individual used the land (camped, hiked, harvested food) are regarded as personal. In TLU studies, Métis peoples are asked to tell their stories publicly. After (perhaps reluctantly or uncomfortably) sharing their stories of land use, Government of Alberta offices have at times communicated to the Métis Local council that their land use information are not "sufficient" enough to uphold a title or rights claim (Joly, 2017:74-77). Labelling information presented by community members as insufficient undermines the validity of traditional knowledge (Cruikshank, 2005; Agrawal, 1995; Nadasdy, 2005)

and disrespects the information shared by Elders and other community members in TLU studies, while perpetuating a state-driven process of recognition (Coulthard, 2014).

The above three examples show political, methodological, and ontological justifications for refusing or being reluctant to map land use in TLU assessments. Importantly, refusing to share information does *not* mean that the Métis respondent is unaware of the information or that there is no land use in the area being discussed. Instead, the interviewee's reluctance may be due to: (1) a struggle to represent a regional activity in ways required by the impact assessment methodology, (2) practicing a cultural protocol of respect and reciprocity, (3) responding within a context of cumulative effects on a cultural landscape, or, relatedly, (4) a reflexive response of land users to protect their resources from exploitation by outsiders who may use their land use information to access their hunting grounds and berry patches. The Government of Alberta, as stated in their Consultation Guidelines (Government of Alberta, 2016; see also Laidlaw 2016:49), can falsely interpret non-response from a community as completed and adequate consultation, and, by extension, consent to a proposed oil sands project. Likewise, IAs deem a map with no specific points marked as unused or unoccupied. However, this silence or blank space could also be interpreted as a refusal, which Simpson describes as "the revenge of consent" (2016:330).

Ethnographic refusal is a means of both rejecting state authority and asserting rights and sovereignty (Simpson, 2007, 2014). It involves "very deliberate, wilful, intentional actions that [Kahnawà:ke] people were making in the face of expectation that they consent to their own elimination as a people, that they consent to have their land taken, their lives controlled, and their stories told for them" (Simpson 2016:327–328). As the revenge of consent, refusal rejects these conditions and the institutional structures of the state (Simpson, 2016). In McMurray Métis TLU studies, refusal is a community-level means of rejecting of the inevitability of resource development, the assumption of fair consultation, and a flawed assessment process. By refusing to share certain information or otherwise questioning the TLU study process, the Métis community resists state-defined IA and consultation in order to preserve future land use and uphold their rights. Ethnographic refusal in TLU studies is a rejection of a colonial politics of recognition (Coulthard, 2014). It is a rejection of the status quo, a commitment to protecting a place, and a hopeful assertion for alternative Métis-state relations that affirm Métis sovereignty.

## 5. Attending to ethnographic refusal and improving the TLU assessment process

Can the ethnographic refusal of a Métis community in relation to TLU studies help redefine political relationships and structures of consultation and oil sands regulation? Can the TLU process more equitably accord Indigenous spatial knowledge? Ethnographic refusal is a direct response to a TLU assessment process that does not adequately address Indigenous rights or consent. Currently, Indigenous communities are forced to participate in a consultation and IA process that does not slow or alter project plans and can misrepresent geographic knowledge. Yet ethnographic refusal is also a political assertion for an alternative process that addresses Indigenous sovereignty and self-representation. Improving TLU assessments requires TLU practitioners, government officials, and industry proponents pay careful attention to ethnographic refusal in order to better balance state and Indigenous community interests in both IA methodology and consultation.

Methodologically, to complete a TLU study that responds to ethnographic refusal might seem maladaptive to IA practitioners, and could be understood as a thinning of data. Instead, we attest that moments of reluctance or refusal are just as, if not more, important to TLU assessments than sharing specific map points. Refusals can redirect the focus of research to processes of power and set limits as to what issues are known by and responded to through the logics of settler colonialism (Tuck and Yang, 2014). Refusals create potential for Indigenous

<sup>8</sup> McMurray Métis TLU interview, code: TECTLU2014-01.

<sup>9</sup> McMurray Métis TLU interview, code: JMLU2013-02.

communities to say no to the dominant TLU research paradigm and conduct TLU assessments in their own ways, reorienting IAs towards Indigenous methodologies (Wilson, 2008; Smith, 1999; Gaudry, 2015; Louis, 2007; Denzin and Lincoln, 2008). Recognising that “methods have a place” in that Indigenous methodologies are embedded in particular place-based knowledge systems that are not universal or transferable (Levac et al., 2017:15), methods for conducting TLU assessments according to Indigenous methodologies will and should be distinct for each community.<sup>10</sup> While we do not advocate abandoning quantitative spatial data entirely, attending to ethnographic refusals can better incorporate Indigenous methodologies in TLU studies (Smith, 1999; Wilson, 2008). As a means of initiating dialogue, we offer several considerations, related to self-representation and sovereignty, for improving TLU methods based on our TLU work with McMurray Métis members.

First, impact assessments must recognize that TLU is not a static process that can be represented in its full capacity as a point on a map. As Sara Loutitt, a Métis community leader and researcher, explained to us (Joly field notes, July 2014), Indigenous knowledge and land use is not a static activity of the past, but a living and growing part of each community member. Métis scholar Zoe Todd explains that Indigenous thinking, including land use, “is an active process that is at once dynamic and rooted, that is alive, that is communicated through multiple media” (2015). Like Traditional Ecological Knowledge, TLU “is not simply a storehouse of scientific data on plants and animals” (Sandlos and Keeling, 2016:278). For the McMurray Métis community, land use is not purely about the place where the moose was killed, but a process of relationship building with other community members and the land (Lacombe, 2012; Joly, 2017). We echo Olson et al. (2016:352) who suggest TLU practitioners shift from understanding TLU sites as “data” to “values”, and advocate for the development of Indigenous quality indicators for TLU values. By doing so, TLU information becomes a representation of the value of a place, as well as a spatial indicator, and therefore less reductionist. TLU maps, by proxy, would be represented not as static entities, but living documents that embody an ongoing, active way of thinking and being.

Second, TLU research must assume that all land in a community's territory is used and important. When asked to identify any areas of particular importance to them near the project footprint, TLU study respondents frequently expressed to us the cultural importance of the landscape as a whole. The frustrations expressed by Métis community members when requested to map a specific hunting point, rather than the regional practice of travelling the landscape and reading signs that Hansen described (Joly, 2017:195–200), suggests that TLU assessments must take better account of regional ecosystem integrity and the ways Métis community members think about land, knowledge, and maps. TLU studies therefore necessitate cumulative effects analyses. Further, assuming that the entirety of a territory is being used in some way would create more space for refusal to share certain locations out of respect for the land. Assuming that a blank space on a map holds cultural importance would allow community members to keep sacred locations private, should they so choose, in order to maintain respectful, ongoing relationships with that place.

Based on these two assumptions, one methodological intervention community researchers and members expressed to us is the use of on-the-land interviews. As compared to an office setting, in which a consultant guides the digital map view and records TLU data, on-the-land interviews also show respect to the research participant by meeting

them in a place in which they feel at home and comfortable. Further, on the land interviews recognize the embedded experience of land use (see Basso, 1996; Thornton, 2008; Gerbrandt, 2015), with the potential to produce a higher quantity and quality of place-specific stories and information than direct-to-digital or paper-based map biographies. On-the-land mapping can allow for more precise data collection in terms of map locations, but the data itself is also more nuanced in that it is reflective of the land user's reality of moving along trails (cf. McCormack, 2017), “looking for signs”, as the Métis trapper above stated. Therefore on-the-land mapping moves TLU methodologies away from merely modern cartographies – which displace other, embodied ways of knowing the land – towards an Indigenous methodology.

Following these methodological interventions, TLU studies require a clarified purpose and position in the consultation and IA process. TLU studies should be part of the IA process, separate from consultation. The Crown should execute consultation only *after* the community has completed their study according to their own methodologies. Governments and industry proponents must ensure, however, that funding and adequate time is provided to communities to ensure their ability to carry out these studies. Already, many communities in northern Alberta do not have sufficient funding or personnel to respond to oil sands project referrals. Consultation timelines are too short for more than a rapid TLU study (see Joly and Westman, 2017). Time and funding would allow communities to complete their own assessments according to Indigenous methodologies and decide upon whether they agree to accept, reject, or conditionally support a proposed project.

Consultation, then, should shift its focus away from an assessment of current use of the land and what will be lost after a project is developed. Such an approach focuses on current use, rather than mitigation issues. Instead, companies and the government should focus on how to maintain use and relations to the land at present and into the future. Such an approach would not rely solely on the documentation of map points, but rather a conversation directly with community members about access and the maintenance of community-defined land use values throughout the lifespan of the project and after project closure. Each community will have different protocols regarding how they wish to be consulted; these community consultation protocols should be the foundation for engagement, rather than a state-imposed consultation process.

At its best, TLU mapping approaches a representation of place as experienced by Indigenous community members, tracing narrative accounts of relations in place to form a map biography. At its worst, TLU mapping reconfigures Métis land uses in relation to standards dictated by the state (cf. Kirsch, 2006:201–202), erasing lived experiences and embodied ways of knowing. Although TLU studies present counter maps (Peluso, 1995) to those of resource extraction zones, government and industry work hard to limit the effect of TLU maps. The practice of TLU mapping challenges resource maps, but only when communities control the research process and the terms of consultation. Ethnographic refusal in TLU mapping in the oil sands region reflects problems inherent in the Alberta regulatory system that undermine the ability of these maps to promote community self-determination in the industrial development process.

In conclusion, there is currently an over-reliance on TLU studies in IA and consultation. IA practitioners need to rely on more qualitative research methods than TLU assessments, which better represent Indigenous relations to the landscape. Moreover, on its own, the completion of a TLU study does not represent adequate consultation. The consultation process should be a method by which communities can consent to or reject a project; instead, Indigenous communities are placed in a double bind, in which both accepting and rejecting a project will create the same result: a project being approved. For consent to be meaningful and ethically achieved, a community must have the fundamental right to refuse a proposed project and alter the course of its development (Simpson, 2016). If the Governments of Canada and Alberta are serious about reconciliation and adopting the *United Nations*

<sup>10</sup> At the time of writing, the authors have not formally discussed methods for improving the TLU study process with McMurray Métis community members. This section is therefore based on informal conversations with community members and our own suggestions as TLU practitioners. The McMurray Métis Heritage Department is beginning a process by which to review TLU study methodologies with community members. We hope that the information provided in this paper may stimulate these conversations with the McMurray Métis.

*Declaration on the Rights of Indigenous Peoples*, they must adopt consent in the consultation process. Ethnographic refusal in TLU studies represents a critique of settler colonial politics of recognition (Coulthard, 2014) and asserts Métis self-representation and self-governance. Refusal presents an opportunity to improve the ability of Indigenous communities to participate in development decisions that will affect their traditional territories and, ultimately, to take seriously Indigenous sovereignty.

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