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**Re: FRIENDS OF THE ATTAWAPISKAT RIVER  
Comments on the Proposed Terms of Reference for the Northern Road Link Project**

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The Friends of the Attawapiskat River (the “Friends”), represented by the Canadian Environmental Law Association (“CELA”), provide the following comments in response to the Ministry of the Environment, Conservation and Parks’ (hereinafter referred to as “MECP” and/or the “Ministry”) notice inviting comments on the Proposed Terms of Reference (“TOR”) for the Northern Road Link Project (the “Project”).<sup>1</sup>

In making these submissions to the Ministry, the Friends note they are not speaking on behalf of the First Nation leadership where its members are based (Attawapiskat, Neskantaga, Peawanuck, Kashechewan and Fort Albany First Nations), but rather providing these comments as Treaty 9 rights holders and community members. Furthermore, these comments do not constitute consultation nor discharge the Crown’s obligations per section 35 of the *Constitution Act, 1982*.

For the reasons outlined below, it is the Friends’ overall opinion that an environmental assessment (EA) prepared in accordance with the proposed TOR would not be consistent with the public interest and the purpose of the *Environmental Assessment Act*, and the Minister must decide not to approve the proposed TOR.

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<sup>1</sup> Ministry of Environment, Conservation and Parks, “Northern road link project”, online: <https://www.ontario.ca/page/northern-road-link-project>.

## **I. BACKGROUND**

### **a. The Friends of the Attawapiskat River**

The Friends are an Indigenous-led coalition of impacted community members and allies dedicated to stewarding and protecting the health of the Attawapiskat River and its watersheds, people, and communities. As Treaty 9 people, the Friends have a shared responsibility to protect Treaty lands from exploitation and degradation. This means safeguarding the integrity of the boreal and muskeg of the Hudson Bay-James Bay lowlands, its significant contribution to mitigating climate change, and the health of their grandchildren and those not yet born.

The Friends have been actively involved in the multiple environmental/impact assessment processes for the Ring of Fire including the federal regional assessment and the impact assessments for the Marten Falls Community Access Road (MFCAR) and the Webequie Supply Road (WSR). Enclosed as **Appendix A** and **Appendix B**, are the comments the Friends have provided to the Impact Assessment Agency of Canada (“IAAC”) on the draft Agreement to Conduct a Regional Assessment in the Ring of Fire Area (Ref No. 80468)<sup>2</sup> and the draft Tailored Impact Statement Guidelines for the MFCAR and WSR.<sup>3</sup> The Friends submit these comments are directly applicable and relevant to the consultation on this TOR, including in defining the scope of the project and informing the values and factors which ought to be prioritized in the EA process.

### **b. The Canadian Environmental Law Association**

The Friends have retained CELA to facilitate their involvement with respect to the above-noted matter. CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues. CELA’s mandate pertains to advancing environmental justice and protection and, as a result, CELA has carefully considered the proposed TOR from a public interest perspective.

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<sup>2</sup> Friends of the Attawapiskat River, “Comments on the draft Agreement to Conduct a Regional Assessment in the Ring of Fire Area,” (2 March 2022), online: [https://cela.ca/wp-content/uploads/2022/03/Comments\\_on\\_draft-Agreement\\_RA\\_Ring\\_of\\_Fire.pdf](https://cela.ca/wp-content/uploads/2022/03/Comments_on_draft-Agreement_RA_Ring_of_Fire.pdf).

<sup>3</sup> Friends of the Attawapiskat River, “Webequie Supply Road Project and Marten Falls Access Road - Comments on the draft Tailored Impact Statement Guidelines and draft Indigenous Engagement Plan,,” (28 Jan 2020) online: <https://cela.ca/wp-content/uploads/2020/01/Comments-from-the-Friends-of-the-Attawapiskat-River-Webequie-Supply-Road-Marten-Falls-Community-Access-1.pdf>.

### c. **The Proposed Northern Road Link Project**

The region dubbed the “Ring of Fire” is located 500km northeast of Thunder Bay, Ontario in the Hudson - James Bay Lowlands region (“HJBL”) and in the lands of Treaty 9.<sup>4</sup> While the area has been touted for its potential abundance of valuable minerals, such as chromite, copper, and gold,<sup>5</sup> the region is also home to nearly 40,000 Indigenous peoples across 34 communities. The HJBL region in northern Ontario is the largest wetland in North America and the second-largest peatland complex in the world, covering over 325,000km<sup>2</sup>. It is the homeland of the Omushkego Nations providing food, and medicine, as well as cultural and sacred spaces for traditional practices and ceremonies. However, mineral extraction both in the HJBL (e.g., De Beers Victor Diamond Mine) and upstream, particularly in the area known as the Ring of Fire, have historically impacted and promise to cause unprecedented change to this ecosystem and its people in the years to come.

The peatland (or muskeg) and the many watersheds that intersect in the Ring of Fire are inherent to Indigenous culture and well-being since time immemorial. Water and the muskeg hold incredible importance in Indigenous spirituality and represent an ongoing relationship with the Creator. The watershed and muskeg are sacred to Indigenous peoples in the area. The 100-year mining development proposed for this area would not only lead to unprecedented cumulative impacts and threaten the land that has been home to Indigenous nations since time immemorial, but carcinogenic exposures and emissions of heavy metals from mining operations would add to many communities’ pre-existing health crises.

In anticipation of the proposed mining development in the Ring of Fire area, Marten Falls First Nation is proposing a multi-purpose, all-season community access road—known as the Marten Falls Community Access Road<sup>6</sup> - to connect the Marten Falls First Nation community with the Ontario provincial highway network. Similarly, Webequie First Nation is proposing an all-season road corridor—the Webequie Supply Road<sup>7</sup> - connecting the Webequie First Nation to the mineral deposit area near McFaulds Lake.

The Northern Road Link Project (“NRL”) is a proposal by both Marten Falls First Nation and Webequie First Nation to build a 120 km road to connect the two other proposed road development projects (the MFCAR and the WSR), providing access to the proposed Ring of Fire mining development area<sup>8</sup> as well as the provincial highway system. As proposed, the Northern Road Link

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<sup>4</sup> Scott et al. "Synthesis Report: Implementing a Regional, Indigenous-Led and Sustainability-Informed Impact Assessment in Ontario’ Ring of Fire” (2020) Osgoode Digital Commons 2807.

<sup>5</sup> *Ibid* at 3.

<sup>6</sup> Ministry of Environment, Conservation and Parks, “Marten Falls community access road project,” online: <https://www.ontario.ca/page/marten-falls-community-access-road-project>.

<sup>7</sup> Ministry of Environment, Conservation and Parks, “Webequie supply road project,” online: <https://www.ontario.ca/page/webequie-supply-road-project>.

<sup>8</sup> Ontario, “Ontario’s Ring of Fire,” online: <https://www.ontario.ca/page/ontarios-ring-fire>.

is to be a two-lane, all-weather, gravel access road with water crossings, built to accommodate both passenger and commercial vehicles.

## **II. PRELIMINARY ISSUES**

### **a. Moratorium on Mineral Exploration in the Ring of Fire**

In November 2020, the Friends, joined by CELA, MiningWatch Canada and the Wildlife Conservation Society Canada asked the provincial government to pause decision making on exploration permits in the Ring of Fire, citing concerns about a piece meal approach to decision making which would allow cumulative environmental impacts to go unnoticed.<sup>9</sup> There are thousands of approved and pending claims for exploration in the Ring of Fire. Continuing to review and approve exploration permits on a case-by-case basis critically diminishes the impacts of the activities which, if considered in their entirety, have profound impacts on the land and environment. The Friends reiterate that the approval of exploration permits in the Ring of Fire should be paused, as they are directly linked and incidental to the WSR, MFCAR and NRL projects.

In 2021, the Friends and five other leading environmental and legal groups again called for a moratorium on development activities in the Ring of Fire until meaningful Indigenous engagement had been undertaken, the Regional Assessment process was complete, and protection plans for sensitive wetlands and watersheds were in place.<sup>10</sup>

Given the lack of meaningful response from both federal and provincial levels of government for the requested moratorium on exploration activities, in January 2022, the Friends provided submissions to the United Nations for the purpose of its Expert Mechanism pursuant to Human Rights Council resolution 33/25 alleging that Canada's approach on the Ring of Fire stands contrary to the principles enshrined in the UNDRIP which safeguard the individual and collective rights of Indigenous people, imposing a duty on Canada to achieve the free, prior and informed consent of Treaty 9 members before any development or use of resources on the land occurs.<sup>11</sup>

**The Friends again reiterate their request that the issuance of exploration permits be put on hold given the ongoing EAs and the lack of any evidence demonstrating that these permits and their cumulative impacts - in what is the world's second largest peatland complex - is**

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<sup>9</sup> Friends of the Attawapiskat River, "Response to Proposals to Issue Multiple Exploration Permits," (12 Nov 2020), online: <https://cela.ca/wp-content/uploads/2020/11/Submission-from-CELA-WCS-MiningWatch-Friends-of-Attawapiskat-River-Multiple-Mineral-Exploration-Permits.pdf>

<sup>10</sup> Friends of the Attawapiskat River et al., "Letter to Impact Assessment Agency of Canada - Planning for Regional Assessment in Ring of Fire Area," (21 January 2021), online: <https://cela.ca/call-for-moratorium-in-ring-of-fire/>.

<sup>11</sup> Friends of the Attawapiskat River, "Submission from the Friends of the Attawapiskat River to the United Nations Expert Mechanism on the Rights of Indigenous Peoples," 28 Jan 2022, online: [https://cela.ca/wp-content/uploads/2022/02/Submission\\_Expert\\_mechanism\\_on\\_the\\_rights\\_of\\_indigenous\\_peoples.pdf](https://cela.ca/wp-content/uploads/2022/02/Submission_Expert_mechanism_on_the_rights_of_indigenous_peoples.pdf).

**tracked by either the proponent or the government. This moratorium on prospecting, exploration, development, and project-specific decision-making in the Ring of Fire should only be released when meaningful Indigenous engagement has been undertaken with Treaty 9 communities and rightsholders, and protection plans are in place to safeguard sensitive wetlands and watersheds.**

### **III. COMMENTS ON THE PROPOSED TERMS OF REFERENCE**

#### **a. The Legal Test for TOR Approval**

Subsection 6(4) of the *Environmental Assessment Act* (“EAA”) provides that:

The Minister shall approve the proposed terms of reference, with any amendments that he or she considers necessary, if he or she is satisfied that an environmental assessment carried out in accordance with the approved terms of reference will be consistent with the purpose of the Act and the public interest.<sup>12</sup>

While the mandatory word “shall” is found in this provision, it does not mean that TOR approval should be automatically granted by the Minister. Instead, on a case-by-case basis, the Minister must closely examine a proposed TOR in order to be “satisfied” that the resulting EA will be consistent with the public interest and the purpose statement in section 2 of the *EAA*.

In other words, the Minister’s discretion to approve a proposed TOR is not open-ended or unfettered. To the contrary, the Minister must carefully consider the proposed TOR and reach an informed decision on the record whether a proposed TOR meets the statutory test for approval. If it does not (and if amendments cannot remedy or “save” the proposed TOR), then the Minister must refuse to approve the TOR.

In this case, it is our opinion that there is no reasonable basis upon which the Minister can conclude that an EA conducted in accordance with the proposed TOR will be consistent with the purpose of the *EAA* and the public interest. To the contrary, the Friends conclude that the public interest and the purpose of the *EAA* will be thwarted or undermined if the proposed TOR were approved, as it would allow for an EA that engages in project splitting, prematurely adopts a narrow view on ‘alternatives to’ the project, and altogether fails to consider the principle of intergenerational equity. In the Friends’ view, the proposed TOR should be rejected accordingly.

We further conclude that no amount of tinkering of the proposed TOR will render it approvable under subsection 6(4) under the *EAA*. Given the below noted deficiencies regarding the projects scope, rationale, and its approach to the EA’s alternative and cumulative effects assessment and

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<sup>12</sup> *Environmental Assessment Act*, RSO 1990, c E18 at s 6(4).

engagement with Indigenous peoples, the Friends conclude that this is not an appropriate case for the Minister to amend and approve the proposed TOR. In our view, unless and until the proponents firmly commit to undertaking a full EA pursuant to subsections 6(2)(a) and 6.1(2) of the *EAA*, the proposed TOR are too deficient to be approved by the Minister.

Therefore, MECP should exercise its discretion under subsection 6(4) of the *EAA* by refusing to approve (or to amend and approve) the proposed TOR. In our view, rejecting the TOR and terminating the EA process for this undertaking at the earliest possible opportunity is consistent with the public interest purpose of the *EAA*.

**b. Project Scope and ‘Project-Splitting’**

As drafted, the TOR state the right-of-way for the roadway will be 100 m, with a cleared area of 60 m.<sup>13</sup> The material for the roadway is to be sourced from the area’s eskers. Due the significant size of the proposed road, the river crossings, the traffic, and ongoing maintenance and upkeep that will be required, the Friends have a number of interrelated concerns. First, is the impact on caribou habitat due to reliance on eskers for aggregates, and second, include impacts to fish and fish habitat (including sturgeon) due to the impacts of road construction and bridge crossings on water flow and quality in the peatlands.

The Friends also object to the scope of the EA as defined in the proposed TOR and argue that the decision to conduct separate EAs for the Project, the proposed MFCAR, the proposed WSR, and the Ring of Fire mine development (the “related projects”) amounts to project-splitting – the intentional breaking up of the project in its components parts in order to circumvent the EA process.<sup>14</sup> Project-splitting impacts the cumulative impact assessment of the development, and compromises considerations of alternatives and impacts to Indigenous rights, which are among the factors which must be taken account as part of the EA process. As a result of project-splitting, the full scale and impact of the project cannot be fully presented, either to the federal government or the public and Indigenous nations.

The Friends submit evidence of project-splitting can be seen in the proposed purpose and rationale for the Project, which cannot even be defined without making reference to the related projects. Section 1 of the proposed TOR describes the purpose of the Project as “the design, construction, and operation and maintenance of a proposed all-season road between the proposed MFCAR and the proposed WSR.”<sup>15</sup> In explaining the rationale for the Project, the TOR states “[t]he Ring of Fire in the Ontario far north is considered one of the most promising mineral development opportunities in the province in over a century, with potential for multi-generational chromite

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<sup>13</sup> TOR at p xi

<sup>14</sup> *Mining Watch v Canada*, 2010 SSC 2, para 40

<sup>15</sup> TOR at p 7

production and significant production of nickel, copper and platinum” and “[t]he Project is an important step in linking the communities, the region and the province in general with the economic opportunities surrounding the Ring of Fire.”<sup>16</sup>

Given the interconnected nature of these projects and their environmental impact, the Friends submit that they cannot be considered independently of one another. In *MiningWatch Canada v Canada (Fisheries and Oceans)*, the Supreme Court explained that “project splitting” occurs when a proponent “[...] represent[s] part of a project as the whole, or propos[es] several parts of a project as independent projects in order to circumvent additional assessment obligations [...]”.<sup>17</sup> The Court then provided an example of how project splitting could be used to “circumvent additional assessment obligations”:

Where the RA or Minister decides to combine projects or to enlarge the scope under s. 15(2) or (3), it is conceivable that the project as proposed by the proponent might have only required a screening. However, when the RA or Minister considers all matters in relation to the project as proposed, the resulting scope places the project in the [Comprehensive Study List]. Where this occurs, the project would be subject to a comprehensive study.<sup>18</sup>

For projects where there are multiple potential impacts on the environment, the cumulative impact must be considered. These means assessing:

- a) Connected actions: closely related, and therefore considered in the same EIS
- b) Cumulative actions: when viewed with other portions of a project have cumulative impacts on the environment
- c) Similar actions: other reasonably foreseeable actions which give reason to evaluate impacts in a single EIS or project<sup>19</sup>

Together, these actions can assist in safeguarding projects from being “split.” If projects are tied together by connected actions, cumulative actions, or similar actions, or if they provide functional or economic dependence on a future project, they must be assessed as a single project for their impact on the environment.<sup>20</sup>

**Based on the proposed Northern Road Link and its interconnectedness with the WSR and MFCAR, the Friends submit it amounts to project-splitting to undertake the NRL as an**

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<sup>16</sup> TOR at p 8

<sup>17</sup> *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at para

<sup>18</sup> *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at para 40

<sup>19</sup> *Ibid*; see also the [National Environmental Policy Act of 1969](#)

<sup>20</sup> *National Wildlife Federation v. Appalachian Regional Com'n*, 677 F. 2d 883 at 888 (C.A.D.C., 1981), quoting *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) 40 C.F.R. 1508.25; *O'Reilly v. U.S. Army Corps of Engineers*, 477 F. 3d 225 at 236 (5th. Cir. 2007), quoting *Fritiofson v. Alexander*, 772 F. 2d 1225 at 1241 (5th Cir.1985)

**individual EA. This should not be accepted by the Minister, as project-splitting can be used as a means to avoid a more rigorous EA. By allowing the Project and the related projects to undergo separate EAs, the proponents are able to lessen the Project’s actual environmental footprint and therefore, can more readily justify its adverse environmental effects.**

**c. Alternatives and Alternative Methods**

The Friends submit that the “Alternatives to the Project” in section 3 of the TOR have been prematurely narrowed, in that the alternatives assessment will only consider the “do nothing” alternative. As the TOR explain:

Since the Project [which is the design, construction, and operation and maintenance of a proposed all-season road between the proposed MFCAR and the proposed WSR] was identified to be an all-season road before the study for this Project commenced under the EA Act, the EA/IA will not re-examine past planning processes and decisions and, therefore, will not assess “alternatives to” the Project other than the “do nothing” alternative.

Sections 6.1 of the *EAA* require that an environmental assessment must consist of alternatives to the undertaking. For the purposes of the EA, it is not optional to opt out nor find this has already been satisfied when the EA has not first been undertaken.

Assessing alternatives to the project allows for a transparent evaluation and comparison of trade-offs. As EA scholars have explained, substantive trade-offs:

involve choices about what purposes to serve, what alternatives to favour, what design features to incorporate, what enhancements and mitigations to consider adequate and what undertakings to approve with what conditions and implementation controls, etc. Most significantly, substantive trade-offs are about the anticipated effects resulting from these choices. They centre on what predicted damages and risks are accepted as the price to pay for what expected benefits.<sup>21</sup>

The EA would be based on flawed evaluation criteria if, per the proposed TOR, “alternatives to” the project were limited to a ‘do nothing’ project. Again, it would be premature to assess the predicted risks of the project without first comparatively evaluating alternatives to the project.

The Friends also object to the limited criteria and factors for evaluating “alternative methods” that are set out in Table 2-6. First, Aboriginal and Treaty rights and interests should not be one factor,

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<sup>21</sup> Gibson, R.B., “Avoiding sustainability trade-offs in environmental assessment” (2013) 31:1 Impact Assessment and Project Appraisal at p 2



but a factor embedded within considerations of physical and biological environments, cultural heritage, and engineering/constructability. Second, inadequate attention has been given to fish and fish habitat, stream crossings and bridges over the Attawapiskat River, and the impact of these activities on the ability of community members to exercise their treaty rights.

Further, as noted in prior comments, community members with whom the Friends have engaged expressed a high degree of concern about woodland caribou, noting that mineral exploration and accompanying activities, such as draining of muskeg and water taking, will impact the land and their habitat. Concerns also arose about disease incidence and how these projects, in tandem with the current health of the ranges, will be impacted.<sup>22</sup> The Friends submit consideration must be given to alternatives which prioritize the protection of species, the health of waters and the muskeg. The muskeg is not a linear corridor and rather, it acts like a sponge, and so water courses, water crossing, and delineations between water bodies do not neatly form.

**The Friends submit the ‘alternatives to’ and ‘alternatives means’ assessment must be robust, and again prioritize alternatives that protect the health of the region, its watersheds, future generations and the treaty rights of the Treaty 9 community members.**

#### **d. Description of the Project and Cumulative Effects Assessment**

The TOR describes the NRL project as being “bookended by the proposed WSR to the north and the proposed MFCAR to the south” and notes that as a part of its cumulative effects assessment, “reasonably foreseeable projects” such as mine development and exploration will be included.<sup>23</sup> As has been noted in previous comments, the Friends do not support this narrow framing of the project<sup>24</sup> and instead recommend the project be defined comprehensively; taking into account all infrastructure, development and industrial activity that is tied to the creation of this road.

**Therefore, we recommend the TOR’s scope be expanded to apply to other reasonably foreseeable projects resulting from the NRL - and not limited to the project’s cumulative effects assessment. We ask this list of projects be included within the project description set out in the proposed TOR:**

- **Construction of upgrades to the Anaconda/Painter Lake Forestry Road;**
- **The construction and operation of the WSR and MFCAR**
- **The Eagle’s Nest Mine;**
- **Mining activities associated with the following deposits: Black Thor, BlackBird, Big Daddy, Black Label;**

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<sup>22</sup> See for instance: online: <https://cela.ca/wp-content/uploads/2020/01/Comments-from-the-Friends-of-the-Attawapiskat-River-Webequie-Supply-Road-Martens-Falls-Community-Access-1.pdf>

<sup>23</sup> TOR at p 51 and 91

<sup>24</sup> See **Appendix B**

- **Increased winter road traffic during Operations and Maintenance by future mining proponents; and**
- **Advanced mineral exploration activities in the Ring of Fire area.**

e. **Indigenous Consultation and Engagement**

The Friends submit the proposed TOR do not uphold the spirit and intent of the United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP), including Article 37 which requires the respect of the Indigenous nations present in Treaty 9 territory.

As Article 37 of UNDRIP states:

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

As the project is proposed on Treaty 9 lands, Ontario must respect and uphold treaty rights, and work alongside Canada – with whom this treaty was originally signed.

The Friends submit Indigenous worldviews must also be considered not only within the framing of the TOR's Indigenous consultation and inclusion of Indigenous knowledge, but throughout the assessment process. While Indigenous worldviews are rooted in relationships, Western views consider objects like lands and natural resources as inanimate. In Indigenous cultures, these lands are considered to have capacity, conscience, and a sacred element in Indigenous spirituality.<sup>25</sup> Further, Indigenous worldviews place a responsibility to each member of the nation to maintain a good relationship with other beings that provide for them. In this sense, the land is seen as a 'being' or having a spirit, and therefore is in a relationship with Indigenous peoples. As such, the land cannot be owned according to their worldview as it has its own capacity and standing in the eyes of the Creator.

**The TOR, through its assessment process and approach to engagement must respect Treaty and inherent rights holders and Indigenous communities' views on engagement and consent, as based on inherent laws and the Spirit of Treaties. To date, obligations to respect**

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<sup>25</sup> Leroy Little Bear, "Jagged Worldviews Colliding," Reclaiming Indigenous Voice and Vision (2000)

**the sacred Treaty have not been met. Nor, has Article 37 of UNDRIP, which seeks to promote and respect treaty rights, been upheld.**

#### **IV. CONCLUSION**

The Friends are of the opinion that there is no reasonable basis upon which the Minister can conclude that an EA conducted in accordance with the proposed TOR will be consistent with the purpose of the *EAA* and the public interest. To the contrary, we find that the public interest and the purpose of the *EAA* will be undermined if the proposed TOR were approved, as it would allow for an EA that engages in project splitting, prematurely adopts a narrow view on ‘alternatives to’ the project, and altogether fails to consider principles of intergenerational equity. In the Friends’ view, the MECP should exercise its discretion under subsection 6(4) of the *EAA* by refusing to approve (or to amend and approve) the proposed TOR.

We hope that our comments provide a voice to communities who stand to be directly affected and those not yet born. We look forward to further engagement on this project and ask to be notified of any future steps in the impact assessment process.

Sincerely,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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Kerrie Blaise  
Northern Services Legal Counsel

*On behalf of*  
**THE FRIENDS OF THE ATTAWAPISKAT RIVER**

# Appendix A

March 2, 2022

Regional Assessment in the Ring of Fire Area  
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Via email [regionalrof-cdfregionale@iaac-aeic.gc.ca](mailto:regionalrof-cdfregionale@iaac-aeic.gc.ca)

**RE: FRIENDS OF THE ATTAWAPISKAT RIVER**  
**Comments on the draft Agreement to Conduct a Regional Assessment in the Ring of**  
**Fire Area (Ref No. 80468)**

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We are the ancestral people of the lands where the Ring of Fire is proposed. We the Oji-cree, Ojibway, and Omushkegowuk people have lived in harmony with these lands given to us by the Creator since time immemorial. We are the Water People. The water gives us life and we take care of the water in return. This is our duty to the Creator.

We are the ancestors of the Headmen who signed Treaty 9 with the Crown to peacefully share the lands. Our Natural Laws teach us to respect the land and to maintain our relationship with the Creator. Our traditional ways do not involve greed or violence to these lands, but love, harmony and an ongoing commitment to each other.

We have seen what these developments and broken promises can do to our people and our lands. We were promised traditional knowledge consultation and money from the DeBeers mine, both of which were not upheld. Our tribal councils have been corrupted by greed and our communities suffer because of it. Many of our communities have not had clean drinking water for years. Our housing crisis is only getting worse which has taken a toll on our young generation, often living with no hope and in quiet desperation.

We ask the government to uphold these treaty promises to our people. Money to our tribal councils does not constitute consent. Our communities rely on openness to thrive and *all* community members must be involved in any process on our lands.

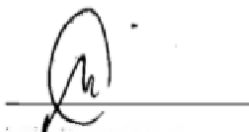
Our community members are often left in the dark over these issues. Our tribal council leaders accept developments without our knowledge, and we pay the price. Our suffering is a testament to that. We need the government to consult *all* communities to gain our free, prior, and informed consent, which is our legal right under UNDRIP and Canadian law.

We call on the government to meet with *all* community members to discuss this development. Meeting with a few members in power has left our communities without any hope.

We call on the government to commit to our joint collaboration throughout the entire process. This meeting must not end on March 2<sup>nd</sup>. The government is legally bound by our Treaty and they must uphold their promises “for as long as the sun shines, as long as the waters flow, as long as the grass grows, as long as the winds blow”.

After 60 days our people will still be here. We will continue to live on our lands peacefully and uphold our treaty promises. We call on the government to do the same and properly consult with all community members prior to the Ring of Fire Regional Assessment.

Sincerely,

A handwritten signature in black ink, appearing to be 'MK', is written over a horizontal line. The signature is stylized and cursive.

Michel Koostachin  
Founder, Friends of the Attawapiskat River

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## INTRODUCTION

The Friends of the Attawapiskat River (the “Friends”), represented by the Canadian Environmental Law Association (CELA), provide the following comments and recommendations to the Impact Assessment Agency of Canada (the “Agency”) on the draft Agreement to conduct a Regional Assessment (RA) for the Ring of Fire area.<sup>1</sup> In making these submissions to the Agency, the Friends note they are not speaking on behalf of the First Nation leadership where its members are based (Attawapiskat, Neskantaga, Peawanuck, Kashechewan and Fort Albany First Nations), but rather providing these comments as Treaty 9 rights holders and community members. Furthermore, these comments do not constitute consultation nor discharge the Crown’s obligations per section 35 of the *Constitution Act, 1982*.

These comments are provided in addition to our previous correspondence and comments to the Agency, including the Friends comments in January 2021, supported by CELA, MiningWatch Canada, Northwatch, Wildlands League and West Coast Environmental Law, which commented on the Agency’s *Information Sheet: Planning the Regional Assessment in the Ring of Fire Area*.<sup>2</sup>

Prior to the release of the draft Agreement on December 3, 2021, the Friends joined by the Omushkegowuk Women's Water Council and the Omushkegowuk Treaty 9 Alliance wrote to Minister Guilbeault at Environment, Climate Change and Canada (ECCC) urging that the RA and its terms be developed in full consultation and consent of Treaty 9 rights holders.<sup>3</sup> Upon the release of the draft Agreement on December 3, 2021, the Friends wrote to the Agency requesting an immediate suspension of the RA process given the circumstances of COVID-19 that prevented the equal and fair participation of Indigenous community members.<sup>4</sup> In both instances, ECCC and the Agency responded that the Friends should participate within this consultation period and dismissed the Friends’ requests for a suspension of the process and its timelines. While an additional 30 days was provided for the Friends to assist in their preparation of these comments, the Agency has indicated there is no overall change to the timeline of the RA, and it remains the aim that the Minister approve the draft Agreement in March 2022.<sup>5</sup>

**The Friends are once again urging the Agency to suspend the RA whose process, timelines and methods of engagement have not been done in full consultation and with the consent of Indigenous community members, their customs, knowledge systems and inherent laws.**

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<sup>1</sup> Impact Assessment Agency of Canada, “Draft Agreement to Conduct the Regional Assessment,” (Ref No. 80468), online: <https://iaac-aeic.gc.ca/050/evaluations/document/142280?culture=en-CA>

<sup>2</sup> Comments from the Friends (21 Jan 2021) online at: <https://cela.ca/call-for-moratorium-in-ring-of-fire/>; Original notice from the Impact Assessment Agency of Canada (IAAC), (12 Nov 2020), online: <https://iaac-aeic.gc.ca/050/evaluations/document/136697?culture=en-CA>

<sup>3</sup> See **Appendix 2**

<sup>4</sup> See **Appendix 3**

<sup>5</sup> IAAC, “Regional Assessment in the Ring of Fire Area” Slide 17, online: <https://iaac-aeic.gc.ca/050/documents/p80468/142509E.pdf>

Proceeding with the RA without first responding to the Friends' recommendations herein, would be contrary to the collective and individual Indigenous rights protections set out in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and question Canada's commitment to 'achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government relationship based on the recognition of rights, respect, co-operation, and partnership.'<sup>6</sup>

## **I. BACKGROUND**

### ***a. The Friends of the Attawapiskat River***

The Friends of the Attawapiskat River ("Friends") are an Indigenous-led coalition of impacted community members and allies dedicated to stewarding and protecting the health of the Attawapiskat River and its watersheds, people and communities. As Treaty 9 people, the Friends have a shared responsibility to protect Treaty lands from exploitation and degradation. This means safeguarding the integrity of the boreal and muskeg of the Hudson Bay-James Bay lowlands, its significant contribution to mitigating climate change, and the health of their grandchildren and those not yet born.

### ***b. The Canadian Environmental Law Association***

The Friends have retained the Canadian Environmental Law Association to facilitate their involvement in the RA. CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues. CELA has participated in a range of administrative and legal proceedings under the *IAA*, and its predecessors including *CEAA 2012*, *CEAA 1992* and the Environmental Assessment and Review Process Guidelines Order. On the basis of our decades-long experience in assessment matters, CELA has carefully considered the draft Agreement for the RA from a public interest and Indigenous rights perspective.

### ***c. Summary of the Friends' Outreach Activities***

The Friends received participant funding through the Agency's public funding stream to support their participation in reviewing the draft Agreement for the RA. While the Friends had applied for funding through the Indigenous funding stream as an eligible Indigenous organization, the application was redirected to the public funding stream. We note that the provision of funds for

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<sup>6</sup> Canada, "Principles respecting the Government of Canada's relationship with Indigenous peoples," online: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>



Indigenous participants is unfortunately not commensurate to the costs the Friends incurred to travel and engage with communities in Treaty 9, within this inordinately short comment period. For instance, travel throughout the North is extremely cost prohibitive whether by air or winter road. As the Friends have previously noted with the Agency, there is also a critical lack of access to internet and technology in the remote communities. The lack of access to computers posed a very real barrier to participation and community engagement, as publicly accessible computers – such as in schools and libraries – were not available due to COVID-19 health restrictions. This barred the Friends and its members from fully participating in virtual events hosted by the Agency and restricted the Friends' efforts to find virtual methods of connecting and reaching out to community members.

In light of the COVID-19 pandemic and the ever-changing and challenging circumstances necessitating community lockdowns, which have occurred since the launch of the RA consultation on December 3, 2021, the Friends' ability to engage directly with community members has been limited. However, with the assistance of community members, we have undertaken the following activities which have directly informed the Friends' comments and recommendations herein. These actions, profiled below, will continue to guide the Friends' efforts to raise awareness about the proposed Ring of Fire in downstream communities and respond to the lack of grassroots voice in the Agency's process and agreements, as evidenced most recently by the draft Agreement:

- **November 25, 2021 – Letter from Treaty 9 Grassroots to Minister Guilbeault**

Prior to the commencement of this consultation period on December 3, 2021, the Friends joined by the Omushkegowuk Women's Water Council and the Omushkegowuk Treaty 9 Alliance requested a meeting with Minister of Environment and Climate Change Canada, Steven Guilbeault, noting “any decision, including engagement on the RA must be done in full consultation and consent of Treaty 9 Rightsholders.” This letter is attached as **Appendix 2.**

The letter also reminder Minster Guilbealt of the continued “call for a moratorium to be put in place until access to clean water, housing, and health services have been secured for all upstream and downstream communities from the proposed Ring of Fire and a proper protection plan is implemented, reflecting any Water Declaration prepared by the Omushkegowuk Women's Water Council and the global significance of the carbon rich Hudson Bay-James Bay Lowlands, including the headwaters of Attawapiskat, Albany and Winisk Rivers, and the thousands of streams that flow into Hudson Bay and James





forced travel restrictions and lockdowns within Indigenous communities. Choosing to continue with consultation, poses a threat to access to justice such that those who stand to be directly affected cannot participate in decisions affecting their inherent and Treaty rights.

The Friends are also concerned about the growing lack of awareness caused by proceeding with the RA and its consultation during COVID-19. As the Friends shared during a 2019 comment to the Agency - based on a series of independently hosted community sessions in the James Bay region - there is a “high level of interest” in the Ring of Fire, however, in the communities of Timmins, Fort Albany, Kashechewan and Attawapiskat, there was a “clear lack of knowledge about the federal IA process and its commencement.”<sup>10</sup> While these comments were made in relation to the Webequie and Marten Falls Impact Assessments, the Friends remain of the view that inadequate engagement and outreach by the Agency has perpetuated a general lack of knowledge about the Ring of Fire within Indigenous communities.

The Friends submit moving ahead with consultation during the COVID-19 pandemic is a very problematic starting point for an RA process which ought to have been Indigenous-led and consent based, and aimed at strengthening understandings of the Ring of Fire’s cumulative impacts and the threats it poses to Indigenous lands, water and future generations. The Agency has not been responsive to community members’ ability to engage in this RA, which has been greatly constrained because of COVID-19. Pre-existing crises including the lack of healthy housing, clean water and access to healthcare, also continue to serve as significant barriers to participation.

Furthermore, without ensuring communities had the requisite background knowledge and ability to respond before commencing this process, the RA violates the intent and purposes of the *Impact Assessment Act (IAA)*. The *IAA* introduced some important changes to federal environmental assessment and significantly increased Indigenous rights protection compared to the former *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* framework. For instance, the *IAA* includes commitments to recognize and respect the rights of Indigenous peoples throughout the preamble, while obligations to promote communication and cooperation with Indigenous peoples and recognize Indigenous and community knowledge are purposes of the Act. In the Friends’ view, these provisions clearly reflect Parliament’s intention to use the *IAA* and its mechanisms to recognize and incorporate Indigenous peoples’ rights within the RA process.

The Friends submit the RA has not kept pace with the new era of IA in Canada, where government-led processes must be done in collaboration and co-developed with First Nations

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<sup>10</sup> Friends of the Attawapiskat River (28 Jan 2020), “Comments from the Friends of the Attawapiskat River – Webequie Supply Road & Marten Falls Community Access”, online: <https://cela.ca/friends-of-the-attawapiskat-river-comments-on-ring-of-fire/>

and community members. The extent to which this RA has failed to uphold the purposes of the IAA further reifies the need to reset and restart early engagement on this RA.

***b. Upholding Treaty rights and responsibilities***

The Friends submit Canada has not upheld the spirit and intent of Article 37 of the *United Nations Declaration for the Rights of Indigenous Peoples* (UNDRIP) and must be accountable to the Indigenous nations present in Treaty 9 territory. Article 37 acknowledges that Indigenous peoples, as a collective and as individuals, have the right to the recognition and observance of treaties and agreements with States, and as such, States will honour these treaties and agreements.<sup>11</sup> This means that Canada cannot, in good faith, move forward with the impact or regional assessment decision without the full and fair involvement, and consent of Indigenous and Treaty 9 rights holders.

The lands where the Ring of Fire exist are subject to Treaty 9. Treaty 9 was signed in 1905 by First Nations and the Crown, however, as many, including legal scholars have remarked, treaties were generally entered in bad faith on the side of the Crown government, resulting in dishonesty, broken promises, and sharp dealings with the Indigenous nations at the time.<sup>12</sup> For instance, one of the most significant treaties signed between the Crown and the Indigenous nations at the time of European arrival was the Treaty of Niagara. This treaty mentions several phrases that claim Indigenous communities were willingly signing over or ‘selling’ their lands in return for Crown protection.<sup>13</sup> However, documented Elder testimony and Indigenous treaty items in the form of wampum, paint a much clearer picture of what was actually agreed upon by the two sovereign nations. Contrary to the text of the written treaty, the agreement did not involve any land ceding at all, but rather, a willingness to peacefully share the lands with colonial settlers.<sup>14</sup> For instance, at the Treaty of Niagara, a wampum belt was given as a symbol of peaceful coexistence with Indigenous nations.<sup>15</sup>

Indigenous leaders have consistently argued that lands were never ceded.<sup>16</sup> In addition to landmark cases which now require the use of holistic evidence when interpreting treaties in Canadian law, the terms of the treaty can reasonably be assumed to be of similar terms as treaties that Indigenous nations have been carrying out for thousands of years with other sovereign nations prior to European arrival. Similar to what the wampum at Niagara truly meant to Indigenous Nations at the time, Treaty 9 represented a solemn agreement with the Government

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<sup>11</sup> UNDRIP, Articles 1 and 37

<sup>12</sup> Sharon H. Venne, “Treaties Made in Good Faith,” *Canadian Review of Comparative Literature/Revue Canadienne de Littérature Comparée* 34, no. 1 (2011)

<sup>13</sup> John Borrows, “Wampum at Niagara: The Royal Proclamation,” *Canadian Legal History*.

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> Coyle & Borrows, (2017) at p 8.

of Canada to peacefully coexist on the lands as two equals. To respect and uphold treaty obligations, the draft Agreement must be amended to require joint consultation in developing, drafting and carrying out the RA's terms with Treaty 9 partners.

*c. Early engagement*

In January 2021, the Friends, joined by CELA, MiningWatch Canada, Northwatch, Wildlands League and West Coast Environmental Law provided comments on the Agency's *Information Sheet: Planning the Regional Assessment in the Ring of Fire Area*.<sup>17</sup> Unfortunately, there is no indication upon thorough review of the draft Agreement that the feedback provided by the Friends has been taken up. For this reason, the Friends again submit their earlier comments (attached as **Appendix 7**) with the request that they be taken into consideration during this consultation opportunity for the draft Agreement.

To summarize, the Friends had asked the following to be prioritized within the RA:

1. Ensure all decision-making and planning is driven by a commitment to advance Indigenous rights of self-determination
2. Complete an assessment of cumulative impacts, based on both scientific knowledge and Indigenous Knowledge, before authorizing prospecting, exploration, and development activities to safeguard watersheds (including the Attawapiskat, Albany, Ekwan and Winisk), the Hudson Bay Lowland, and critical habitat of boreal caribou ranges
3. Critically review the scope and objectives of the Regional Assessment to ensure the future scenarios include any proposed ferrochrome smelter and processing of other metals that may be extracted from the region
4. Address fundamental knowledge gaps, combined with projected scenarios, to identify outcomes which align with Indigenous values and rights, as well as federal and provincial commitments to biodiversity and climate change goals
5. Proactively consider mining-induced change and address legacy impacts of current mineral exploration and developments in the Ring Fire on Indigenous rights, including impacts on cultural values, traditional economies, and ecosystems
6. Address fundamental knowledge gaps and limitations in policy that result in a piecemeal approach to impact assessment on the environment, Indigenous rights, and the public interest
7. Undertake a full review of the De Beers Victor diamond mine project, including predicted and actual effects on the social-ecological system in the Attawapiskat River and

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<sup>17</sup> Comments from the Friends (21 Jan 2021) online at: <https://cela.ca/call-for-moratorium-in-ring-of-fire/>; Original notice from the Impact Assessment Agency of Canada (IAAC), (12 Nov 2020), online: <https://iaac-aeic.gc.ca/050/evaluations/document/136697?culture=en-CA>

Hudson Bay Lowland, to fulfill communities' right to information and to apply "lessons learned" to any proposed future developments

### III. SPECIFIC COMMENTS AND RECOMMENDATIONS

The Friends provide the following comments relating to the framing of the Ring of Fire region and Indigenous knowledge, the use and purpose of the RA for future mining projects, and the proposed assessment and study areas. These comments and recommendations are supplemented by additional provision-specific comments found at **Appendix 1**.

#### *a. Significance of the Ring of Fire area and Treaty 9 Lands*

The Friends object to the framing repeatedly used throughout the draft Agreement which references the 'the area known as the Ring of Fire.'<sup>18</sup> The region dubbed the 'Ring of Fire' is located in Treaty 9 territory, 500km northeast of Thunder Bay in the Hudson-James Bay Lowlands, and is home to nearly 40,000 Indigenous peoples across 34 communities, providing food, and medicine, as well as cultural and sacred spaces for traditional practices and ceremony.

The Friends recognize that the Attawapiskat River has been their provider since the beginning of time. It is where community members go to harvest food and trees to make shelter, and follow the wildlife, as it migrates and travels along the water. The water is a sacred aspect of life; the veins of the Mother Earth. The ecosystem is part of this, with its own purpose to respect and uphold. Those who live in this region are the Water People. As such, the community members hold incredible responsibilities relating to these issues in accordance with their Natural Laws.

**Recommendation No. 1:** References to the 'Ring of Fire' in the Preamble, and sections 1.1, and 2.2 should be amended to include recognition of the 'ancestral lands of Indigenous people, including the Ojibway, Oji-Cree, and Omushkegowuk who have inhabited these lands since time immemorial and whom pursuant to Treaty 9, continue to exercise treaty rights affirmed by the spirit and intent of treaties.'

#### *b. Governing Parties*

The Friends submit the draft Agreement - including the early engagement which has led to its development - is deeply problematic as it excludes Indigenous communities and their members, who have not only inhabited these lands since time immemorial, but have responsibilities to protect the land through their Creator. This ought to have been Canada's first Indigenous-led RA and instead, the draft Agreement sets out Indigenous roles which are purely 'advisory' or

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<sup>18</sup> Draft Agreement, Preamble, ss. 1.1, 2.2, A1.1

‘supportive’ in function.<sup>19</sup> The Friends remain of the view that if Indigenous rights are to be protected, the intent and purposes of the *Impact Assessment Act* upheld, and Treaty obligations respected, the draft Agreement must be withdrawn and the early engagement process restarted such that it is led and agreed to by the Ojibway, Oji-Cree, and Omushkegowuk people of Treaty 9.

The Friends do not support this RA which omits the people of Treaty 9 as parties to the agreement and instead, is drafted as an agreement between Canada and Ontario. The inclusion of community perspectives must not be limited to passive forms of engagement, for instance, the sharing of information, and inviting comments. One-way forms of dialogue do not reflect the concept of meaningful community participation, nor uphold commitments of first seeking the free, prior and informed consent of rights holders before procedural or administrative measures are taken that may affect the individual and collective rights held by Indigenous peoples.<sup>20</sup>

The exclusion of Treaty 9 rights holders is further affirmed in the establishment of the Committee for conducting the RA, which is to be *jointly* established between the federal Minister of Environment and Climate Change and the provincial Minister of Northern Development, Mines, Natural Resources and Forestry for Ontario.<sup>21</sup> The Friends submit the RA must be significantly led by the community members of Treaty 9, recognizing their Treaty land and jurisdiction, and as such, must be parties to the agreement.

**Recommendation No. 2:** The goal of the assessment set out in section 1.1 must be in accordance with Treaty 9, Indigenous Natural Laws, and the honouring of the people of Treaty 9.

**Recommendation No. 3:** The Committee established by the federal Minister of Environment and Climate Change and the provincial Minister of Northern Development, Mines, Natural Resources and Forestry within section 3.0 must be expanded to expressly include Treaty 9 partners, including First Nations and community members.

### ***c. Indigenous-led RA***

The Friends are calling for an Indigenous-led RA for the Ring of Fire region. As discussed below, the Friend’s call for an Indigenous-led RA is in line with Canada’s commitment to upholding UNDRIP and respecting the inherent rights of Indigenous peoples.

There are a number of precedents which exist for Indigenous-led Impact Assessments (IA) in Canada which ought to have served as starting points for this RA. For example, the Squamish

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<sup>19</sup> Draft Agreement, ss 5.0, 5.7

<sup>20</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Preamble, Article 1, Article 19

<sup>21</sup> Draft Agreement, Preamble, ss. 3.0 – 3.9



Nation and the Tsleil-Waututh Nation are two communities who have produced their own Indigenous-led IAs. Indigenous-led IAs have emerged as a process to provide Indigenous communities with meaningful input, participatory rights, and an increased degree of control over project assessments.<sup>22</sup> Many Indigenous communities are attempting to create new governance tools that try to reconcile Canadian laws and processes with Indigenous laws and processes, in response to project assessments, particularly extractive developments within their territories.<sup>23</sup> An Indigenous-led RA could provide a means for Indigenous communities to overcome the exclusionary and restrictive nature of the RA, by providing for a procedure or system controlled fully or in-part by Indigenous communities, independent of Crown control.<sup>24</sup> Both the Squamish Nation and the Tsleil-Waututh Nation produced their own Indigenous-led Impact Assessments (ILIA) as an assertion of their rights and title and to protect their traditional lands and waters.<sup>25</sup> For example, the Squamish Nation opted to create a legally binding ILIA agreement signed with a project proponent, who was cooperative and willing to respect the importance of obtaining consent and ensuring environmental impacts were fully understood, avoided, and minimized.<sup>26</sup>

Existing precedents illustrate Indigenous-led IAs can be completed independently; co-managed, meaning assessments are completed alongside the Crown and Agency; co-developed, meaning the assessment was done in collaboration with the proponent, or a mixture of both.<sup>27</sup> Common to all methods, is ILIA's aim to allow Indigenous communities to collaborate with other parties, have full participatory rights, provide meaningful input on projects, have an increased degree of control over project assessments, and most importantly exercise their inherent right to govern their lands.

Further, through Bill C-15, the *UN Declaration on the Rights of Indigenous Peoples Act*, which was assented to in June 2021, the federal government has acknowledged that more is needed in order to respect the inherent right of Indigenous Nations to engage in self-governance.<sup>28</sup> This, along with Article 32 of UNDRIP,<sup>29</sup> present an opportunity for Indigenous-led RAs to be relied upon when assessments take place and proposed projects are considered.

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<sup>22</sup> Nishima-Miller, J, *Indigenous-led impact assessment: approaches, requirements, and degrees of control*, 2021, University of British Columbia. Online: <<https://open.library.ubc.ca/collections/ubctheses/24/items/1.0397493>> [Nishima-Miller].

<sup>23</sup> Bruce, A., & Hume, E., Ratcliff & Company LLP, *The Squamish Nation Assessment Process: Getting to Consent*, 2015, online: <<https://www.ratcliff.com/wp-content/uploads/2020/10/The-Squamish-Nation-Assessment-Process-Getting-To-Consent-Ratcliff.pdf>> [Ratcliff & Company LLP].

<sup>24</sup> Nishima-Miller, S, at 41.

<sup>25</sup> Ratcliff & Company LLP, *Supra* note 2, at 1, 8.

<sup>26</sup> *Ibid* at 18.

<sup>27</sup> Nishima-Miller, at 60-65, 77-80, 98.

<sup>28</sup> Government of Canada, Fact sheet – The United Nations Declaration on the Rights of Indigenous Peoples Act, online: <<https://www.justice.gc.ca/eng/declaration/fact-fiche.html>>; See also: Government of Canada, Principles respecting the Government of Canada's relationship with Indigenous peoples, online: <<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>>.

<sup>29</sup> United Nations Declaration on the Rights of Indigenous Peoples, online: <[https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)>, Article 32 of UNDRIP states that 1) Indigenous

**Recommendation No. 4:** The Friends urge the Agency to reset and restart the RA as an Indigenous-led process. The Friend’s call for an Indigenous-led RA is in line with Canada’s commitment to upholding UNDRIP and respecting the inherent rights of Indigenous peoples.

*d. Inclusion of Indigenous Knowledge*

The Friends object to the draft Agreement’s conflation of Indigenous knowledge and scientific information. Throughout the draft Agreement, the text references the “integration of both Indigenous knowledge and scientific information.”<sup>30</sup> This framing assimilates IK within science when instead IK is a part of distinct cultural practices and ways of knowing. It is troubling that the integration of IK with science is both an objective of the RA listed in section 1.2(a) and an objective of the Committee Report as set out in B2.2.

**Recommendation No. 5:** All references to integrating Indigenous Knowledge with science must be amended to state IK will guide the RA alongside Western science in accordance with Treaty members’ views and wishes. The objectives must give equal weight to IK and science.

*e. Goals and Assessment Areas*

The Friends do not support the proposed framing of the Assessment which is “centered on the Ring of Fire mineral deposits”<sup>31</sup> and excludes the two proposed access roads (Webequie Supply Road and Marten Falls Access Road). The draft must acknowledge that the Ring of Fire development will affect downstream regions and not just the narrowly defined Assessment Area. To assess intergenerational and distributional impacts to land and water, means downstream areas (including the muskeg of the Hudson-James Bay Lowlands and its many watersheds) and the road projects must be included within the Assessment Area.<sup>32</sup>

The current scope also ignores the global significance of the carbon rich Hudson Bay-James Bay Lowland, including the Attawapiskat, Kapiskau, Albany, Ekwan, Opinnagau and Winisk Rivers and the thousands of streams that flow into Hudson Bay and James Bay. The muskeg of this region is a globally significant carbon store – containing nearly 26 gigatons of carbon –

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peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources; 2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources; and 3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

<sup>30</sup> Draft Agreement, ss. 1.2 and B2.2

<sup>31</sup> *Ibid*, Preamble, s. 2.2

<sup>32</sup> *Ibid*, ss. 2.2 and 2.4

providing important climate regulation services (among others) for Indigenous peoples, Ontarians, and the global community. This region remains the largest wetland in North America and the second largest peatland complex in the world, covering over 325,000km<sup>2</sup>. The Friends submit climate considerations cannot be absent from the RA and must be prioritized as its goal.

Furthermore, the Friends do not support the use of Study Areas, which are defined as ‘one or more Study Areas for the RA defined by the Committee.’<sup>33</sup> First, the Friends submit all suggested Study Areas should be included within the broader Assessment Area. For instance, given the high likelihood of transboundary effects, impacts to the Great Lakes and adjacent First Nation communities, it is critical that any smelter accompanying the Ring of Fire development be included within the review. Secondly, the Friends oppose the use of yet-to-be defined Study Areas to narrow the Assessment Area. This will lead to a piecemeal approach to decision-making and erode the RA’s assessment of project-wide cumulative adverse effects.

**Recommendation No. 6:** It must be a goal of the RA to assess intergenerational and distributional impacts of the proposed Ring of Fire project to land and water. To adequately assess intergenerational and distribution impacts, as well as impacts to climate and cumulative effects, requires the downstream areas, which includes the muskeg of the Hudson-James Bay Lowlands and its many watersheds that intersect in the Ring of Fire, and the road projects to be included within the defined Assessment Area.

**Recommendation No. 7:** To fully assess and consider cumulative impacts to air, land, water and health, the draft Agreement should not rely on individual Study Areas but rather ensure all Ring of Fire activities and ancillary projects are included within the geographic scope of the RA. This includes activities like the proposed ferrochrome smelter in Sault Ste Marie, which would process the ore from the Ring of Fire.

#### *f. Timelines and Future Projects*

The Friends do not support the draft Agreement’s imposition of an 18-month deadline within which the Committee must submit its final report to the federal and provincial Ministers of Environment Climate Change Canada and Northern Development, Mines, Natural Resources and Forestry, respectively.<sup>34</sup> The draft Agreement must require that only if proper joint consultation occurs with Treaty 9 partners, will the process move forward. This means the Crown must acknowledge their Treaty obligations, including requirements to support communities which have lacked clean drinking water for decades. This also includes the requirement to support communities’ housing and mental health crises. The signing of the Treaty meant there would be an ongoing relationship, and as such, this RA must maintain this relationship in accordance with

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<sup>33</sup> *Ibid*, s 2.4

<sup>34</sup> *Ibid*, s 7.6

Indigenous values.

The Friends also strongly object to any use of the RA to “enhance the effectiveness and efficiency” of future impact assessments.<sup>35</sup> This phrase is repeatedly used throughout the text and the Friends oppose any use of this RA to assess or evaluate the effects of future mine developments when as a prerequisite, the free, prior and informed consent from the Ojibway, Oji-Cree, and Omushkegowuk people of Treaty 9 must be sought prior to any such projects moving forward.

**Recommendation No. 8:** Timelines cannot be predetermined, and the RA ought only to proceed if proper joint consultation occurs with Treaty 9 partners.

**Recommendation No. 9:** The RA cannot be used to assess or evaluate the effects of future mines and developments when as a prerequisite, the free, prior and informed consent from the Ojibway, Oji-Cree, and Omushkegowuk people of Treaty 9 must be sought prior to any such projects moving forward.

***g. International obligations and biodiversity***

The Friends are concerned by the failure of lands protection and biodiversity to be recognized goals of the RA. As drafted, the Agreement fails to make any reference to biodiversity. This is contrary to previous comments by the Friends, who have called upon the governments of Canada and Ontario to establish an immediate moratorium in the Ring of Fire in order to protect the region’s biodiversity<sup>36</sup>, and also disconnected from Canada’s international biodiversity commitments.

Canada’s commitments to biodiversity are evident through its long-standing commitment to and participation in the United Nations (UN) Convention on Biological Diversity (CBD), known as the Biodiversity Convention. Canada was the first industrialized country to sign and ratify the CBD in December 1992, and has most recently participated in part 1 of the CBD COP15 conference. The CBD has three main goals: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits arising from genetic resources.<sup>37</sup> Further, the CBD develops national strategies for the conservation and sustainable use of biological diversity, and its outcomes are often seen as the leading documents regarding sustainable development.<sup>38</sup> As a signatory to the CBD, Canada’s own biodiversity strategies and targets, generally known as National Biodiversity Strategies and Action Plans (NBSAPs), should align with their agreed upon international commitments.

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<sup>35</sup> Draft Agreement, Preamble, 1.1, 1.2, 2.3, B.2.2

<sup>36</sup> Online: <https://cela.ca/call-for-a-moratorium-in-the-ring-of-fire-to-protect-watersheds-and-indigenous-rights/>

<sup>37</sup> Convention on Biological Diversity, *Introduction*, online: <<https://www.cbd.int/intro/>>.

<sup>38</sup> *Ibid*

Most recently, in Part 1 of the CBD COP15 meeting in October 2021, Canada signed the Kunming Declaration on biodiversity. The Kunming Declaration calls for “urgent and integrated action” to reflect biodiversity considerations in all sectors of the global economy, and to ensure that the delegate countries have committed to “ensuring the development, adoption, and implementation of an effective post-2020 global biodiversity framework, which includes the provision of the necessary means of implementation.”<sup>39</sup> According to the Declaration, the signatory nations will ensure that the post-pandemic recovery policies, programmes and plans contribute to the conservation and sustainable use of biodiversity, promoting sustainable and inclusive development.<sup>40</sup> Importantly, Commitment 5 of the Kunming Declaration recognizes the rights of Indigenous peoples and local communities to have full and effective participation in the context of area-based conservation.<sup>41</sup>

Canada must consider its international commitments, such as their commitment to the Kunming Declaration, when carrying out Regional Assessments. This RA cannot proceed or operate external to these considerations. Currently, the draft Agreement contains no consideration of biodiversity. However, it is well-known that the Ring of Fire area is a globally significant carbon sink, with the Hudson-James Bay lowlands being the second largest peatland complex in the world. This environmentally significant region is at risk for biodiversity loss due to climate change and industrial development due to the shortcomings of this draft Assessment.

The goals of protecting biodiversity within the RA go hand in hand with Canada upholding its biodiversity goals and targets. Furthermore, given that Canada has signed onto the Kunming declaration explicitly recognizing the rights of Indigenous peoples to have full and effective participation in the context of conservation, and has also committed to upholding international and national commitments to biodiversity, this RA must be Indigenous-led.

**Recommendation No. 10** Canada must consider its international commitments, such as its commitment to the Kunming Declaration - which explicitly recognizes the rights of Indigenous peoples to have full and effective participation in the context of conservation, and calls for “urgent and integrated action” to safeguard biodiversity - when carrying out Regional Assessments. This RA cannot proceed or operate external to these considerations.

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<sup>39</sup> Kunming Declaration from the High-Level Segment of the UN Biodiversity Conference 2020 (Part 1) under the theme: “Ecological Civilization: Building a Shared Future for All Life on Earth” (Final Draft), online: <<https://www.cbd.int/doc/c/df35/4b94/5e86e1ee09bc8c7d4b35aaf0/kunmingdeclaration-en.pdf>> [Kunming Declaration], see commitment #1.

<sup>40</sup> *Ibid*, see commitment #12.

<sup>41</sup> *Ibid*, see commitment #5.

#### IV. CONCLUSION AND RECOMMENDATIONS

The Friends urge the Agency to press reset on this assessment and start again in a way that respects the ancestral lands of Indigenous Peoples. Canada's consultation on the Ring of Fire must include Treaty and inherent rights holders and respect Ojibway, Oji-Cree, and Omushkegowuk views on engagement and consent, as based on their inherent laws and the Spirit and Intent of Treaties.

If Indigenous rights are to be protected, the intent and purposes of the *Impact Assessment Act* upheld, and Treaty obligations respected, the draft Agreement must be withdrawn and the early engagement process restarted such that it is led and agreed to by the Ojibway, Oji-Cree, and Omushkegowuk people of Treaty 9.

Sincerely,



Kerrie Blaise  
Counsel to the Friends of the Attawapiskat River  
Canadian Environmental Law Association

## APPENDIX 1 – DETAILED COMMENTS AND RECOMMENDATIONS<sup>42</sup>

Provision	Comments	Recommendation
<b>Preamble</b>		
<p>WHEREAS the federal Minister of Environment and Climate Change has statutory responsibilities under the Impact Assessment Act.</p> <p>WHEREAS the federal Minister of Environment and Climate Change may establish a committee to conduct a regional assessment of the effects of existing or future physical activities carried out in a region. Where that region is composed in part of federal lands or is entirely outside federal lands, he or she may enter into an agreement or arrangement with another jurisdiction respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.</p> <p>WHEREAS the Government of Canada is committed, in the course of exercising its powers and performing its duties and functions in relation to impact, regional</p>	<p>Fails to recognize the context of Treaty 9 which exists beyond the statutory context of the Minister of the Environment and the IAA</p> <p>Federal minister should not have unilateral authority to establish a committee, this must be done in tandem with Treaty rights holders</p> <p>Framing of ‘Indigenous peoples of Canada’ fails to recognize Indigenous peoples as their own nations, with distinct, autonomous cultures since time immemorial</p> <p>‘Fostering reconciliation’ must take into account what Indigenous groups need and recommend for reconciliation to occur.</p> <p>Governments of Canada and Ontario ‘wish to ensure’ that Indigenous people are given opportunities to meaningfully participate</p>	<p><b>Recommendation No. 11</b> There must be far greater mention of the treaty rights of the people in Treaty 9, which includes the Ojibway, Oji-Cree, and Omushkegowuk people as well as the Crown. It is the parties to the Treaty that must determine, together, how the RA is set up and proceeds. For instance, the Minister’s discretion in the preamble must be subject to the free, prior and informed consent of the Ojibway, Oji-Cree, and Omushkegowuk people.</p> <p><b>Recommendation No. 12</b> The RA must expressly include all communities and all of their members. Relying on tribal councils does not suffice for consent as many community members who as individuals, have inherent and Treaty rights.</p> <p><b>Recommendation No. 13</b> The ‘Area known as Ring of Fire’ should be rewritten to read ‘the ancestral lands of the Indigenous people that the</p>

<sup>42</sup> Based on comments by Jennifer Wabano of the Omushkegowuk Women’s Water Council, Facebook Briefings (21 January 2021), online: <https://www.facebook.com/jennifer.wabano/videos/904498143561003>

Provision	Comments	Recommendation
<p>and strategic assessments under the Impact Assessment Act, to ensuring respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982, and to fostering reconciliation with the Indigenous peoples of Canada.</p> <p>WHEREAS the area known as the Ring of Fire in northern Ontario is inhabited and used by Indigenous peoples within the territory of Treaty #9 who hold and exercise Aboriginal and/or Treaty rights in the area.</p> <p>WHEREAS the Governments of Canada and Ontario wish to ensure that Indigenous peoples and the public have opportunities to participate meaningfully in the planning and conduct of the Regional Assessment that is the subject of this Agreement.</p> <p>WHEREAS the area known as the Ring of Fire in northern Ontario is the location of existing and potential mineral exploration and mine development activities.</p>	<p>minimizes Indigenous involvement, it must be a requirement to work jointly, not simply participate</p> <p>The phrase ‘the Ring of Fire in northern Ontario is inhabited and used by’ should also reference the land and minerals are on Treaty 9 territory</p> <p>To ‘acknowledge sustainable development’ is a lesser standard than ‘fostering sustainability’ as set out in the IAA</p> <p>Seeking to ‘enhance the effectiveness and efficiency of future developments in the area’ predetermines future mines which have not been agreed, for which no consultation has occurred, and for which the free, prior and informed consent of Indigenous people must first be sought, as Treaty rights holders</p>	<p>proposed Ring of Fire area affects, including the Ojibway, Oji-Cree, and Omushkegowuk who have inhabited these lands since time immemorial and pursuant to Treaty 9, exercise treaty rights affirmed by the spirit and intent of treaties.</p> <p><b>Recommendation No. 14</b> The text must mention the requirement that only if proper joint consultation occurs with Treaty 9 partners, will the process move forward. This means the Crown must acknowledge their Treaty obligations, including requirements to support communities which have lacked clean drinking water for decades. This also includes the requirement to support communities’ housing and mental health crises. The signing of the Treaty meant there would be an ongoing relationship, and as such, this RA must maintain this relationship in accordance with Indigenous values.</p>



Provision	Comments	Recommendation
<p>WHEREAS the Governments of Canada and Ontario acknowledge that sustainable development seeks to attain a balance between economic activity and its benefits, environmental protection, and the health, cultural, social and economic well-being of people and communities.</p> <p>WHEREAS the Governments of Canada and Ontario acknowledge the importance of sound decision-making to ensure that economically beneficial and environmentally responsible projects move forward in a manner that fosters sustainability.</p> <p>WHEREAS the Governments of Canada and Ontario wish to support Indigenous peoples in having economic opportunities and access to infrastructure that would benefit their communities, in accordance with their needs and objectives.</p> <p>WHEREAS the Governments of Canada and Ontario wish to enhance the effectiveness and efficiency of impact assessments for future mine development and other</p>		

Provision	Comments	Recommendation
<p>physical activities in the area centered on the Ring of Fire mineral deposits in northern Ontario.</p> <p>THEREFORE, the federal Minister of Environment and Climate Change and the provincial Minister of Northern Development, Mines, Natural Resources and Forestry together hereby agree to establish a Committee to conduct a Regional Assessment in the area centered on the Ring of Fire mineral deposits in northern Ontario, in accordance with the provisions of this Agreement and the Terms of Reference attached as Appendix B.</p>		
<b>Regional Assessment Goal and Objectives</b>		
<p>1.1 The goal of the Regional Assessment that is the subject of this Agreement is:</p> <p>To provide information, knowledge and analysis regarding mine development activities and other existing and future physical activities in the Ring of Fire and their potential effects, in order to enhance the effectiveness and efficiency of future impact</p>	<p>No mention of upholding the spirit and intent of Treaty 9 which are the traditional and ancestral lands of the Ojibway, Oji-Cree, and Omushkegowuk people.</p>	<p><b>Recommendation No. 15</b> The goal of this assessment must be in accordance with Treaty 9, Indigenous Natural Laws, and the honouring of the people of Treaty 9.</p> <p><b>Recommendation No. 16</b> Allowing community members to collaborate with the RA process, throughout, must be added as goal.</p>

Provision	Comments	Recommendation
<p>assessments for these activities in a way that helps protect the environment and health, cultural, social and economic conditions while also creating opportunities for sustainable economic development.</p>		<p><b>Recommendation No. 17</b> The intent for this process to be significantly led by the community members of Treaty 9, recognizing treaty land and jurisdiction, must be a stated goal.</p>
<p>1.2 The objectives of the Regional Assessment are to facilitate the above goal by:</p> <p>a) Providing information, knowledge and analysis related to key, regional-scale environmental, health, cultural, social and economic conditions, values, and issues, with consideration and integration of both Indigenous knowledge and scientific information.</p> <p>b) Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects (both project-specific and cumulative, including potential impacts on Indigenous peoples) as part of future decision-making for mine development activities, in a manner that fosters sustainability.</p>	<p>‘Integration of both Indigenous knowledge and scientific information’ places Indigenous knowledge within the ‘scientific umbrella;’ Indigenous knowledge ought to be considered independently and as having its own meaning</p> <p>Integrating Indigenous Knowledge (IK) with science or using scientific terms to describe it could invalidate IKs meaning</p> <p>‘Recommending mitigation measures’ must be expressed in IK and make reference to Treaty impacts</p> <p>‘Potential positive effects’ cannot be based on solely economic terms or be from the perspective of the proponent</p>	<p><b>Recommendation No. 18</b> Traditional Indigenous knowledge and scientific methods cannot be conflated. Integration of IK and science assimilates a part of cultural practices and way of knowing into Western science and ideologies. IK must guide the RA alongside Western science in accordance with Treaty members views and wishes. The objectives must give equal weight to IK and science.</p> <p><b>Recommendation No. 19</b> Determination of mitigation measures must be informed by Indigenous community members and only once consent is achieved, can they be implemented.</p> <p><b>Recommendation No. 20</b> The weight in decision making must be equal among Treaty signatories.</p>

Provision	Comments	Recommendation
<p>c) Providing an understanding of the regional context that can be used in considering and evaluating the effects of future mine development activities, to inform future impact assessments and the planning and management of cumulative effects; and 4</p> <p>d) Describing how the findings or recommendations of the Regional Assessment could be used to enhance the effectiveness and efficiency of, future impact assessments, as well as other initiatives as applicable.</p>	<p>An ‘understanding of the regional context’ creates a precedent which must safeguard against damage to Indigenous communities.</p> <p>To ‘enhance effectiveness and efficiency of future assessments’ cannot be measured in economic terms; effectiveness just also measure there is proper consultation on the matter.</p>	<p><b>Recommendation No. 21</b> Efficiency for future impact assessments must not be the end-goal. Any future mining activities must also receive the free, prior and informed consent from Treaty 9 partners before occurring. Only when these objectives are agreed to by the Ojibway, Oji-Cree, and Omushkegowuk people can such projects move forward.</p>
<p>Scope of the Regional Assessment</p>		
<p>2.1 Given the known mineral resources and mining potential of the Assessment Area, the Regional Assessment will focus on future mine development activities and their potential effects, as these types of activities are considered the most likely future physical activities to be proposed and carried out in this region in the foreseeable future. Although it is not possible to predict with any certainty the specific nature, location or timing of such mineral</p>	<p>‘Known mineral resources of Assessment area’ lacks regard for ancestral lands and fails to mention Indigenous peoples</p> <p>‘Consider the types of future mining activities’ presupposes how these activities will be agreed to and developed; fails to recognize the role of Treaty nations in deciding what occurs on their lands.</p>	<p><b>Recommendation No. 22</b> The scope must acknowledge these lands are the ancestral lands of Indigenous people, which include the Ojibway, Oji-Cree, and Omushkegowuk and that such lands have been used by them since time immemorial.</p> <p><b>Recommendation No. 23</b> The scope of the RA must not predetermine the types of future mining activities when the free, prior and informed consent of Treaty partners and community members has not yet been sought</p>

Provision	Comments	Recommendation
<p>development activities, the regional assessment will consider the types of future mining activities that are most likely to occur, based on the mineral deposits that are known to be present and the manner in which they could be developed. In doing so, the Regional Assessment will also consider the relationship of, and potential interactions between, the potential effects of future mine development activities with those of other existing and future activities, including the potential for resulting cumulative effects (see Appendix B, Section 2.2, Item h).</p>		
<p>2.2 The geographic boundary of the Assessment Area for Regional Assessment will be as follows: An area centered on the Ring of Fire mineral deposits in northern Ontario, which reflects the specific underlying geological formations that represent the Ring of Fire mineral deposits as set out in Appendix A. This area encompasses the future mine development activities upon which the Regional Assessment's analysis of effects and associated recommendations will focus</p>	<p>Assessment Area omits recognition of the Treaty and that any boundary must also be treaty based</p>	<p><b>Recommendation No. 24</b> The proposed boundaries must acknowledge Treaty 9 territory. This land has been home to several Indigenous nations well before Canada was created.</p> <p><b>Recommendation No. 25</b> Due to the environmentally significant peatlands and watersheds in the area, the assessment area is far too narrow and does not consider the effects to downstream communities connected by these watersheds. The</p>

Provision	Comments	Recommendation
(see Section 2.3 and Appendix B Section 2.2 Items e) to j)).		watershed approach must be taken to adequately determine the environmental effects.
<p>2.3 In identifying and considering potential positive and adverse effects, the Regional Assessment will focus on the following Assessment Priorities. These represent key environmental, social, cultural and economic components which may be affected by future mine development activities in the Assessment Area, but which are often challenging to address solely through individual project-level assessments and decisions, making a regional-scale approach to effects assessment and management appropriate and beneficial. This focus is intended to enable improved efficiency and effectiveness of future project impact assessments:</p> <ul style="list-style-type: none"> <li>a) Surface and groundwater (quality and quantity), including wetlands (peatlands)</li> <li>b) Woodland caribou</li> <li>c) Physical and cultural heritage</li> <li>d) Current use of lands and resources for traditional purposes by Indigenous peoples</li> </ul>	<p>Assessment Priorities must be defined through Indigenous peoples' own standards for negotiations, consent and consultation and in keeping with the terms of Indigenous Treaty rights holders otherwise the priorities as drafted are meaningless</p>	<p><b>Recommendation No. 26</b> The RA Assessment Priorities must be guided by Indigenous community members using IK together with scientific methods to determine what key issues will need to be focused on. Only when Indigenous communities consent to the key issues, can they be determined.</p>

Provision	Comments	Recommendation
e) Economy, employment and business f) Community health and well-being		
<b>Establishment, Purpose and Composition of the Committee</b>		
<p>3.1 A Committee will be established pursuant to subsection 93(1) of the IAA. The Committee will conduct the Regional Assessment in accordance with the IAA, this Agreement, and its Terms of Reference outlined in Appendix B of this Agreement.</p> <p>3.2 The Committee will be a joint committee between the federal Minister of Environment and Climate Change and the provincial Minister of Northern Development, Mines, Natural Resources and Forestry for Ontario.</p>	<p>Committee is not Treaty based but rather established by the IAA and guided by its terms.</p> <p>Complete lack of involvement or collaboration for this committee to be Indigenous-led</p>	<p><b>Recommendation No. 27</b> The Committee's composition should be determined by Indigenous communities and should include Indigenous community members.</p>
<b>Committee Secretariat</b>		
<p>4.2 The Secretariat will be co-managed by, and comprised of staff assigned from, the Agency and the Government of Ontario</p>	<p>Complete lack of involvement or collaboration for this committee to be Indigenous-led</p>	<p>As above.</p>

Provision	Comments	Recommendation
<b>Advisory Supports to the Committee</b>		
<p>5.4 These advisory supports will identify, provide and support the use and integration of Indigenous knowledge and scientific, technical and socio-economic information in the conduct of the Regional Assessment</p> <p>5.7 The Committee will seek knowledge and perspectives from Indigenous peoples on matters relevant to the conduct of the Regional Assessment.</p> <p>5.8 This will include sharing Indigenous knowledge and perspectives on some or all of the topics listed in Appendix C Section C1.1, in accordance with the principles and requirements set out in Appendix B and in keeping with established Indigenous protocols and procedures as applicable.</p>	As above, IK is integrated within scientific information	<p><b>Recommendation No. 28</b></p> <p>Rather than the Committee seeking knowledge and perspectives from advisory supports, the Committee ought to work jointly with First Nations to gain their consent to carry out developments.</p>
<b>Indigenous Talking/Sharing Circle</b>		
6.1 Recognizing and acknowledging the Indigenous ties to and use of lands and waters to conduct traditional and cultural activities that	The Sharing Circle description fails to mention Treaty members or having respect for Treaty 9 territory. Instead, who to	<p><b>Recommendation No. 29</b></p> <p>The Sharing Circle must have equal weight with the Committee and rather than perspectives of the Sharing Circle being reportable</p>



Provision	Comments	Recommendation
<p>may be affected by future mine development activities in the Assessment Area, an Indigenous Talking / Sharing Circle may be established.</p> <p>6.2 The Circle would allow participants, respecting and valuing their relationship to the land and creation, to bring forward and share traditional knowledge, information and perspectives in a collaborative manner for consideration by the Committee in its conduct of the Regional Assessment.</p>	<p>involve and who to consult is left to the discretion of the Committee</p>	<p>for their consideration, Treaty 9 community members must be in a position to lead.</p>
<p>9.0 Costs</p> <p>9.1 Funding will be made available by the Agency to facilitate the involvement of Indigenous peoples, including Indigenous communities and Indigenous organizations, non-government organizations and individuals in the Regional Assessment through the Agency's Participant</p>	<p>Funding is often used to solicit consultation and consent; funding can not be used as an alternative or substitute to seeking consent in accordance with UNDRIP</p>	<p><b>Recommendation No. 30</b> An additional provision should be added stating that funding is never to be proof of or evidence of consultation or consent in reference to the RA or related project. carrying out developments.</p>
<p><b>Appendix A: Regional Assessment Geographic Boundaries</b></p>		
<p>A1.1 The maps below illustrate the "Assessment Area" for the Regional Assessment, which is an area centered on the Ring of Fire mineral deposits in northern Ontario and which reflects the</p>	<p>Those living nearby or downstream will be affected due to the connecting watersheds and must be included within the Assessment Area.</p>	<p><b>Recommendation No. 31</b> Extend the Assessment Area to include the watersheds of the Attawapiskat, Albany, Ekwan and Winisk and smelter in Sault Ste Marie.</p>

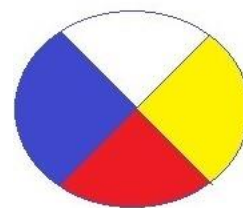
Provision	Comments	Recommendation
specific underlying geological formations that represent the Ring of Fire mineral deposits.		
A1.2 In conducting the Regional Assessment, the Committee will also define one or more Study Areas for the purposes of the description and analysis of the current environmental, health, cultural, social and economic conditions, and for the identification and consideration of potential positive and adverse effects (including cumulative effects) on the Assessment Priorities.	As above.	As above.
<b>Appendix B: Terms of Reference – Committee</b>		
Indigenous Knowledge and Aboriginal and Treaty Rights B1.2 The Committee is mandated to receive information from Indigenous peoples on the nature and scope of any Aboriginal or Treaty rights protected by Section 35 of the Constitution Act, 1982 in the Assessment Area and Study Area(s), as well as information on potential adverse impacts that future mine development activities in the Assessment Area may (individually or cumulatively) have on these rights. Information provided	Regarding ‘potential adverse impacts,’ those living nearby or downstream will be affected. This has already been demonstrated with the De Beers diamond mine, where effluent and mercury has been found further from the site as time passes.	<b>Recommendation No. 31:</b> Remove ‘potential’ adverse impacts from the framing as Treaty rights will be impacted from developments in the Ring of Fire.

Provision	Comments	Recommendation
<p>to the Committee as part of this process may also inform Crown efforts to develop and implement meaningful consultation processes with Indigenous peoples in future project-specific impact assessments and other regulatory decision-making processes.</p>		
<p>B1.6 In conducting the Regional Assessment, the Committee will: Public and Indigenous Participation [...] The Committee will collaborate with Indigenous peoples on the development and implementation of the Indigenous Participation Plan. Once completed these Participation Plans will be posted to the Registry and updated regularly by the Committee, with advice from the advisory supports, to ensure that participants are aware of planned participation approaches and upcoming activities.</p>	<p>Opportunities to ‘collaborate with Indigenous peoples’ means to work jointly and together. Such opportunities should extend beyond the Committee and ought to have informed the development and drafting of this RA</p>	<p><b>Recommendation No. 32</b> Opportunities to ‘collaborate with Indigenous peoples’ means to work jointly and together. The wording must be edited to include the requirement to collaborate with the Ojibway, Oji-Cree, and Omushkegowuk and Treaty 9 signatories and to work jointly in conducting the RA.</p>

## APPENDIX 2 – LETTER FROM TREATY 9 GRASSROOTS



Friends of the  
Attawapiskat River



November 25, 2021

The Honourable Steven Guilbeault  
Minister of Environment and Climate Change  
[ec.ministre-minister.ec@canada.ca](mailto:ec.ministre-minister.ec@canada.ca)

Dear Minister Guilbeault,

**Re: Engagement with Indigenous Grassroots - Treaty 9 Rights Holders and the Regional Assessment for the Ring of Fire Area**

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The Indigenous grassroots of Treaty 9, including the Friends of the Attawapiskat River, the Omushkegowuk Women's Water Council and the Omushkegowuk Treaty 9 Alliance, jointly congratulate you on your recent appointment as Canada's Minister of Environment, Climate Change and Canada.

We are the Indigenous grassroots of Treaty 9, dedicated to protecting the health of the waters, people and communities living downstream of the proposed Ring of Fire. Together, we have a shared responsibility to protect our lands from exploitation and degradation. This means safeguarding the integrity of the boreal and muskeg of the Hudson Bay-James Bay lowlands, its significant contribution to mitigating climate change, and the health of our grandchildren and those not yet born.

**As a first step in establishing a working relationship with you and your staff, we are requesting an opportunity to meet with your office before further actions are taken on the Regional Assessment (RA) for the Ring of Fire. We understand the terms of reference for the RA are soon to be released and request your urgent audience. Any decision, including engagement on the RA must be done in full consultation and consent of Treaty 9 Rightsholders.**

We continue to call for a moratorium to be put in place until access to clean water, housing, and health services have been secured for all upstream and downstream communities from the

proposed Ring of Fire and a proper protection plan is implemented, reflecting any Water Declaration prepared by the Omushkegowuk Women's Water Council and the global significance of the carbon rich Hudson Bay-James Bay Lowland, including the headwaters of Attawapiskat, Albany and Winisk Rivers and the thousands of streams that flow into Hudson Bay and James Bay.<sup>1</sup>

To date, obligations to protect the sacred Treaty have not been met. We go by the inherent laws of the Omushkegowuk Nation. Bodies including Mushkegowuk Council and band councils under the *Indian Act* do not have the jurisdiction to speak on behalf of the Omushkegowuk Cree Nation and are extensions of the Canadian government. We have not given our Free, Prior and Informed Consent for these groups to speak on our behalf and nor does their involvement discharge Canada's duty to work in the best interests of title holders, which is the Indigenous grassroots.

Canada's consultation on the Ring of Fire must include Treaty and inherent rights holders and respect our views on engagement and consent, as based on our inherent laws and the Spirit of Intent of Treaties. It is clear Parliament intended for the *Impact Assessment Act* and its mechanisms to recognize and incorporate Indigenous peoples' rights within IA processes, including the RA. For instance, the preamble of the *IAA* recognizes and respect the rights of Indigenous peoples,<sup>2</sup> there are obligations to promote cooperation with Indigenous peoples and the consideration of Indigenous knowledge within the purposes of the Act,<sup>3</sup> and recognitions that Indigenous (Aboriginal and Treaty) rights are critical impact assessment 'factors' to be considered in the review of projects<sup>4</sup> and to inform Ministerial determinations.<sup>5</sup>

As the Crown in this matter, we remind you of the fiduciary duty you have to uphold and protect the rights that were promised to our ancestors in Treaty 9, and the Spirit of Intent of Treaties which the Omushkegowuk ancestors affirmed in Treaty 9. We intend to protect our Treaty rights promised to us for as long as the sun shines, as long as the waters flow, as long as the grass grows, and as long as the winds blow.

Thank you for considering our concerns. We ask that you provide a response to our request for a meeting by December 3, 2021.

Miigwetch,

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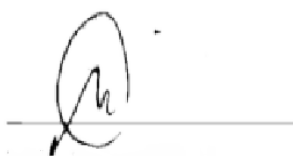
<sup>1</sup> See online: <https://cela.ca/call-for-a-moratorium-in-the-ring-of-fire-to-protect-watersheds-and-indigenous-rights/>, An Open Statement to the Governments of Canada and Ontario,

<sup>2</sup> *IAA* Preamble

<sup>3</sup> *IAA* s 6(1)(e), (f), (g), and (j).

<sup>4</sup> *IAA* s 22(1)(c).

<sup>5</sup> *IAA* s 63(d).



Mike Koostachin  
Friends of the Attawapiskat River



Jennifer Wabano  
Omushkegowuk Women's Water Council



Conrad Iahtail  
Omushkegowuk Treaty 9 Alliance

cc Charles Hookimaw, Attawapiskat First Nation  
Jerry DeMarco, Commissioner of the Environment and Sustainable Development

## APPENDIX 3 - LETTER REQUESTING EXTENSION



December 21, 2021

Regional Assessment in the Ring of Fire Area  
Impact Assessment Agency of Canada  
160 Elgin Street, 22nd floor  
Ottawa, Ontario K1A 0H3

via email [regionalrof-cdfregionale@iaac-aeic.gc.ca](mailto:regionalrof-cdfregionale@iaac-aeic.gc.ca)

**Re: TIME SENSITIVE Request to Extend Deadline for Comments on the draft Agreement for the Ring of Fire Regional Assessment due to Omicron Variant**

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I am writing as legal counsel to the Friends of the Attawapiskat River (“Friends”). The Friends have a direct interest in the Regional Assessment (RA) for the Ring of Fire and are requesting that the public comment period for the draft Agreement of the Ring of Fire RA, currently set for February 1, 2022, be immediately suspended given the circumstances of COVID-19 that prevents the equal and fair participation of Indigenous community members.

The Friends are a community-led organization comprised of members and elders from Attawapiskat and surrounding communities, including Neskantaga, Peawanuck, Kashechewan and Fort Albany First Nations. The Friends aim to advance knowledge about the Ring of Fire in the Attawapiskat watershed and enable community-based participation in decision-making processes which impact the health of the Attawapiskat River.

The Impact Assessment Agency of Canada (IAAC) has not provided an update on the RA since January of 2021, when it sought comments on the planning process for the RA.<sup>1</sup> The IAAC has taken 11 months to produce the draft Agreement for which a 60-day window has been set for individuals, communities and the public to provide comments. **The 60-day deadline to provide comments is an unrealistic and unfair objective in the circumstances. Any decision regarding timelines and engagement in the RA must be done in full consultation and consent of Indigenous community members, their customs, knowledge systems and inherent laws.**

A deadline of February 1 is not only contrary to the intent of the *Impact Assessment Act* that recognizes and respect the rights of Indigenous peoples,<sup>2</sup> but contrary to the purpose of the Act which is to promote cooperation with Indigenous peoples and the consideration of Indigenous knowledge.<sup>3</sup> This 60-day timeline also exacerbates constraints known by the IAAC, including those caused by a lack of internet infrastructure such that communication in the form of in-person gatherings, mail and radio are necessary.

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<sup>1</sup> Online: <https://iaac-aeic.gc.ca/050/evaluations/document/136697?culture=en-CA>

<sup>2</sup> IAA Preamble

<sup>3</sup> IAA s 6(1)(e), (f), (g), and (j).

The COVID-19 pandemic is once again causing communities to limit in person gathering, which prevents the Friends and community members from gathering for in-person workshops and briefings, meeting with Elders and working with youth. Community engagement, which is critical to the Friends and the Indigenous grassroots, cannot occur in January in the midst of the highly transmissible Omicron variant if they are to respect public health measures which limit in-person contact, hosting of events and travel between communities.

Indigenous communities are at disproportionate risk during this health emergency because of pre-existing social and health crises. The IAAC, however, has adopted an approach to public engagement which is inflexible to the urgent struggles posed by the pandemic and seeks to move forward, absent the full, fair and informed inclusion of the Friends, who are themselves Indigenous community members.

**The Friends of the Attawapiskat River request the IAAC immediately suspend the RA process and the February 1, 2022 call for comments. The Friends urge the IAAC to re-evaluate its participation process such that it supports the full, fair and meaningful engagement of Indigenous community members and ask that a minimum 90-day deadline be set only when it is safe to engage in person, per public health guidelines.**

In making this request, we also support the other First Nations, including Fort Albany First Nation joined by Neskantaga, Attawapiskat and Eabametoong First Nations who have requested there be more time to comment on the draft Agreement as the pandemic inhibits their capacity to meaningfully participate.

The Friends of the Attawapiskat River urgently request the IAAC to suspend the February 1, 2022, deadline and request a decision on this time-sensitive matter prior to December 23, 2021.

Regards,



Kerrie Blaise  
Northern Services Legal Counsel  
Canadian Environmental Law Association

cc     Michel Koostachin, Friends of the Attawapiskat River  
         Hon. Steven Guilbeault, Minister of Environment and Climate Change  
         Martyna Krezel, Crown Consultation Advisor  
         Virginia Crawford, Senior Consultation Advisor, Impact Assessment Agency of Canada





# Protecting Indigenous & Treaty Rights

Standing up to Canada to protect our inherent and Treaty rights promised to us for as long as the sun shines, as long as the waters flow, as long as the grass grows, and as long as the winds blow.

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## Background - The Issue

The "Ring of Fire" is the name given to a sizable mineral deposit located in Treaty 9 in the far north of Ontario. Governments are pushing to develop the area, promising roads and jobs in exchange for the destruction of Indigenous lands and an ancient muskeg, which is one of the largest in the world. With a proposed lifespan of over 100 years, this mining project will have direct impacts on the health and environment of future generations.



Image credit: Canadian Geographic

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## The Problem

1. Thousands of claims for mineral exploration have been approved for the Ring of Fire. These claims, together with the proposed mine development, the roads and power generation needed for operations, present a high likelihood of cumulative and negative impacts to the environment and health of the muskeg, boreal, and Indigenous communities.
2. The Ring of Fire is located in the second largest peatland (muskeg) in the world. This ancient muskeg is a significant carbon sink, meaning it has been storing carbon (a greenhouse gas), and helping to stabilize the climate, by keeping the carbon emissions out of the atmosphere. Developing this peatland means losing the climate protection it provides to us all.
3. Canada and Ontario are moving forward with impact and regional assessments for the Ring of Fire project. These processes are not Indigenous-led, but directed by the government. This means the responsibility is on the people of Treaty 9 to protect the lands, water and those not yet born from the proposed mining project.

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## Your Rights

Inherent rights are those that exist independent of any Crown authority and include the right to self-determination and right to practice your culture and customs.

Treaty rights, like a right to hunt or fish, are protected under the Constitution and based on treaties signed between First Nations and the Crown.

The United Nations Declaration on the Rights of Indigenous People imposes a duty on Canada to seek your free, prior and informed consent (FPIC) before any development or use of resources on your land occurs. FPIC is an inherent right.

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## Connect with Us

The Friends of the Attawapiskat River is a grassroots group based in Treaty 9. We formed in 2019 to raise awareness about the Ring of Fire in communities and amplify the voice of Treaty 9 people.

Find us on [Facebook](#) or [email us](#) to join the Friends and stay informed.



PR DPLO VDL .<DC' DP bNσAU'auσP<sub>x</sub>

Canada's approach stands contrary to the following:

- bP<sup>u</sup>σr<sup>b</sup>UσP DP ΔU<sup>q</sup>b<sup>Γ</sup> Δσσ<Δ>P<sub>x</sub> P Δ.Cσ.<Δ>P<sup>2</sup> PR <U<sup>C</sup>dCσ.<Δ>σP Δσσ.<Δ> DP<U<sup>q</sup>σC<sup>d</sup>Δσ.<Δ> PR L<sup>q</sup>rCσ.<Δ>σP b ΔJ ALN<sup>r</sup>Δσσ Vb <Vσba PR P DPu.<C<sup>Γ</sup>σ<sup>r</sup> DP<U<sup>q</sup>σC<sup>d</sup>Δσ.<Δ> PR ΔCL' PR DPLO PR Δσ<sup>a</sup>LC' b ΔJ abC.VσCL' PC<sup>n</sup>Pa<sup>o</sup> b ΔJ a.b' V.<L<sup>J</sup> V<sup>r</sup> σJ.<Δ<sup>r</sup>C<sup>r</sup>' b DPJCR' <ΔN<sup>r</sup>Δ<sup>a</sup> PR V<sup>r</sup> DPaP' b ΔJ Γ<sup>J</sup>bσσ' PC<sup>n</sup>PF<sup>a</sup><sub>x</sub>
- The principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples which safeguards the individual and collective rights of Indigenous people, imposing a duty on Canada to achieve our free, prior and informed consent before any development or use of resources on our land occurs;
- >σ<sup>r</sup>ΓD'Δ<sup>2</sup> σ<sup>n</sup>C .Δ<sup>r</sup><ΔN<sup>r</sup>ΓD'Δσσ<sup>o</sup> baab<sup>r</sup>C' PR DPLO<sub>x</sub> Δ<sup>a</sup> ba<sup>q</sup> C.V<sup>4</sup>σC<sup>c</sup> b P V<sup>r</sup> Δ.Cσ.<Δ>σσ' b<sup>u</sup> V.bσ Λd σd' .V<sup>r</sup>Γ<sup>n</sup>DJ'Δ ALN<sup>r</sup>Δσσ<sup>o</sup> Vσσ<sup>r</sup><Δ' b .Δ ΔJ DC.<Δ' Δσσ.<Δ σ<sup>n</sup>C DP<sup>n</sup>PF<sup>a</sup><sub>x</sub>
- The Truth and Reconciliation Commission of Canada which calls on Canada to reject the 'doctrine of discovery,' long used to justify colonial sovereignty over Indigenous lands;
- b P aP<sup>u</sup>bDaσ.<P<sup>2</sup> <Δ<sup>r</sup>Jσ' σ<sup>n</sup>C aa<sup>b</sup> q<sup>b</sup>a bσC.ΔPP <Δ<sup>r</sup>P' DP<sub>x</sub> σ<sup>n</sup>C Pa<sup>a</sup><sup>o</sup> b ΔJ ba.VσCL' b ΔJa.b' b ΔJ ΔC<sup>r</sup>Δσσ Δ.Cσ.<Δ> Pa<sup>a</sup><sup>o</sup> σd' PR aa**r**C<sup>r</sup>' b ΔJ ΔC<sup>r</sup>' DP .ΔσV<sup>d</sup>' DL <Δ<sup>r</sup> b ΔJ ΓDσ Γ<sup>d</sup>σb<sup>r</sup><σ' b ΔP' b ΔC<sup>r</sup>'<sub>x</sub> b ΔJ Γ<sup>d</sup>σb<sup>r</sup>σb<sup>d</sup>' P<sup>r</sup>ALN<sup>r</sup>Δσa'<sub>x</sub>
- The Convention on Biological Diversity which recognizes our integral role in ecosystem stewardship and dependence on biological diversity. This means protecting the muskeg of the Hudson Bay-James Bay lowlands which plays a critical role in mitigating global climate change and goes hand in hand with the protection of our rights and ways of life.

<P<sup>d</sup>C PR a<sup>n</sup>d<sup>n</sup>CL' DL b.Δ D<sup>r</sup>bU' PR <ΔN<sup>r</sup>Δ<sup>2</sup> b.Δ DPJCR.<Δ' V<sup>d</sup>J a<sup>n</sup>dC Vb PR σJ.<Δ<sup>r</sup>Cσ.<Δ' b P DP V<sup>r</sup> ALN<sup>r</sup><Δ<sup>q</sup>' b P ΔJ a<sup>n</sup>dJaσ.<Δ' b<sup>u</sup> PΔ.Cσ.<Δ>σd<sup>2</sup> Δσd' q<sup>u</sup>b<sup>r</sup>q' Λ<sup>r</sup>c σ<sup>n</sup>C Δσd' q<sup>r</sup>Γ<sup>r</sup><Δ' σΛ' σ<sup>n</sup>C Δσd' qσC.ΔPP L<sup>u</sup>dJ<sup>r</sup> σ<sup>n</sup>C Δσd' q<sup>r</sup>Γσ.V' V.bσ b P ΔJ a<sup>n</sup>dJaσ.<σd<σ Δ<sup>n</sup>Λ b P L<sup>r</sup>aDP<sup>r</sup>aσ.<Δ' PR a<sup>n</sup>dJ.Δ<sup>2</sup> .ΔΛdσbU<sup>o</sup> Lb b P Δ.Cσ.<Δ>σd<σ<sub>x</sub>

We are rising up in opposition to the Regional Assessment for the Ring of Fire to protect our inherent and Treaty rights promised to us for as long as the sun shines, as long as the waters flow, as long as the grass grows, and as long as the winds blow.

## APPENDIX 6 – LETTER CAMPAIGN

### SEND A MESSAGE TO CANADA: Stop the Ring of Fire & Protect Indigenous Rights

I am deeply concerned about the continued pressure on Indigenous lands for the potential development of the Ring of Fire and Canada's failure to support Indigenous-led, consent-based decisions and the protection of their land and waters. I stand with the Friends of the Attawapiskat River in opposition to the proposed Ring of Fire.

Moving ahead with consultation during the COVID-19 pandemic is a very problematic starting point for the Ring of Fire Regional Assessment process which should be Indigenous-led and consent based, and strengthen understandings of the Ring of Fire's cumulative impacts and the threats it poses to Indigenous lands, water and future generations. There is no ability for impacted Treaty 9 communities to meaningfully participate when the COVID-19 pandemic prevents it and the everyday impacts of ongoing colonization, from lack of healthy housing, to clean water and access to healthcare, serve as significant barriers to meaningful engagement.

It's long overdue for Canada to:

- Protect Treaty rights, which were promised for as long as the sun shines, as long as the waters flow, as long as the grass grows, and as long as the winds blow.
- Recognize the fundamental right of water to protection. The health of the Attawapiskat River and its watersheds must be protected for the health of Indigenous communities and all living things that rely on it.
- Abandon divide and conquer tactics which fragment Indigenous rights and create divisions both within and between communities in favour of genuine collaboration. Each community's right to decide, according to their own laws and community-based protocols, must be respected when decisions are being made about their lifeways and homelands.

I understand that Indigenous people are speaking up and contesting that there is no basis for them to meaningfully participate in the Regional Assessment when Canada is not demonstrating an appreciation for their inherent laws, customs and knowledge nor a willingness to move away from colonial assertions of jurisdiction. The Regional Assessment has not been about how to respect Indigenous jurisdiction, but rather how to fit Indigenous values, traditions and knowledge into a Canada-led process.

I stand with the Friends of the Attawapiskat River in calling on Canada to STOP the regional assessment and allow Indigenous peoples to lead a process, in this area which is exclusively occupied by Indigenous communities, to determine the future of their homelands.



Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.

Friends of the  
Attawapiskat River



January 21, 2021

VIA Email: [iaac.regionalrof-cdfregionale.aeic@canada.ca](mailto:iaac.regionalrof-cdfregionale.aeic@canada.ca)

Impact Assessment Agency of Canada  
160 Elgin Street, 22nd floor  
Ottawa, Ontario  
K1A 0H3

**Re: Planning for Regional Assessment in the Ring of Fire Area (Reference No. 80468)**

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The undersigned Environmental and Indigenous organizations provide the following comments regarding planning for the Regional Assessment in the Ring of Fire Area. Currently, the Impact Assessment Agency of Canada is seeking public and First Nations input on the Regional Assessment for the Ring of Fire,<sup>1</sup> in addition to enabling ongoing project-level assessments for two road projects.<sup>2</sup> These project reviews are proceeding in a context where Ontario has not withdrawn lands from claim staking and is actively reviewing and approving numerous requests for mineral exploration permits, including in the Ring of Fire.<sup>3</sup> We reserve the right to provide further refined and supplemental comments, both individually and collectively, with respect to planning for the Regional Assessment as it unfolds.

Continuing with a fragmented and piecemeal approach to the review of infrastructure projects, in the absence of a plan to conserve globally significant wetlands and watersheds and an approach which brings communities together, means we are proceeding without first knowing the

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<sup>1</sup> Impact Assessment Agency of Canada (IAAC), “Regional Assessment in the Ring of Fire Area” (12 Nov 2020), online: <https://iaac-aeic.gc.ca/050/evaluations/document/136697?culture=en-CA>

<sup>2</sup> IAAC, “Webequie Supply Road Project” Ref No. 80183, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80183>; IAAC, “Marten Falls Community Access Road Project, Ref No. 80184, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80184>; Ontario, “Marten Falls community access road project,” online: <https://www.ontario.ca/page/marten-falls-community-access-road-project>; Ontario, “Webequie supply road project,” online: <https://www.ontario.ca/page/webequie-supply-road-project>

<sup>3</sup> See online, “Joint request to pause decision on Ring of Fire exploration” (13 Dec 2020), online: <https://cela.ca/joint-request-to-pause-decisions-on-ring-of-fire-exploration-permits/>

consequences to the environment, human health and Indigenous rights. The Ontario government is also in the midst of wide-ranging environmental deregulations, leading to the weakening of environmental assessment, endangered species protections, and far north planning. The stated intent of this exercise is to remove ‘red tape’, thereby prioritizing development over the environment, and ensure Ontario is “Open for Business”.

It is crucial that the Regional Assessment provide a framework that can effectively guide future decision-making, including as it relates to prospecting, exploration, mining, and any infrastructure necessary to facilitate bringing further development to the region. Although there is great financial interest in the Ring of Fire, its mining potential is based on flimsy and unproven statements<sup>4</sup>; thus, the Regional Assessment offers the opportunity to set the principles, values, and protocols that will ensure the peatlands and watersheds remain healthy for many generations to come.

**Given the importance of the region, both globally and to many First Nations, it is imperative that the governments of Canada and Ontario respect the recent call for a moratorium on activities in the Ring of Fire by some Mushkegowuk Chiefs and Neskantaga First Nation of Treaty 9.<sup>5</sup> An immediate moratorium must be established in the Ring of Fire that includes halting mineral exploration, resource development, and project-specific decision-making, including the Marten Falls Community Access Road, the Webequie Supply Road project assessments, and the potential Northern Road Link. Decision-making should move forward only after meaningful Indigenous engagement has been undertaken to meet the Crown’s obligations towards First Nation communities, the Regional Assessment process has been completed, and protection plans for sensitive wetlands and watersheds are in place.**

Further, we oppose Canada and Ontario proceeding with Ring of Fire discussions and planning when both Matawa and Mushkegowuk First Nation communities have repeatedly communicated that meaningful consultation cannot occur when community members are unable to participate and leadership burdened with critical, pandemic response and social emergencies.<sup>6</sup>

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<sup>4</sup> N. McGee & J. Gray, “The road to nowhere: Claims Ontario’s Ring of Fire is worth \$60-billion are nonsense” (25 Oct 2019), <https://www.theglobeandmail.com/business/article-the-road-to-nowhere-why-everything-youve-heard-about-the-ring-of/>

<sup>5</sup> See Mushkegowuk Chiefs Call for Moratorium no Development Activities in the Ring of Fire to Ensure Sensitive Wetlands and Watersheds are Protected First” (12 Jan 2021), [https://wwf.ca/wp-content/uploads/2021/01/Moratorium\\_.pdf](https://wwf.ca/wp-content/uploads/2021/01/Moratorium_.pdf)

<sup>6</sup> See for instance: Amy Hadley, “Northern Ontario First Nations want pause to mining permits until COVID-19 subsides,” CBC News (30 April 2020); Osgoode Hall Law School, “Letter to the Honourable Greg Rickford Re: COVID-19 and Permitting on Indigenous Territory,” (3 June 2020); Tanya Talaga, “Canada tramples on First Nations treaty rights as it works to pay off its COVID-19 bill” The Globe and Mail (25 September 2020); D. Scott and D. Cowen, “Mining push continues despite water crisis in Neskantaga First Nation and Ontario’s Ring of Fire,” The Conversation (22 Nov 2020); K. Blaise and B. Reid, “Mining injustice: exploration, decision making, community voices in Ring of Fire,” Lawyer’s Daily (22 Dec 2020).

With respect to a Regional Assessment, we recommend that Canada and Ontario:

- 1) Ensure all decision-making and planning is driven by a commitment to advance Indigenous rights of self-determination
- 2) Complete an assessment of cumulative impacts, based on both scientific knowledge and Indigenous Knowledge, before authorizing prospecting, exploration, and development activities to safeguard watersheds (including the Attawapiskat, Albany, Ekwan and Winisk), the Hudson Bay Lowland, and critical habitat of boreal caribou ranges
- 3) Critically review the scope and objectives of the Regional Assessment to ensure the future scenarios include any proposed ferrochrome smelter and processing of other metals that may be extracted from the region
- 4) Address fundamental knowledge gaps, combined with projected scenarios, to identify outcomes which align with Indigenous values and rights, as well as federal and provincial commitments to biodiversity and climate change goals
- 5) Proactively consider mining-induced change and address legacy impacts of current mineral exploration and developments in the Ring Fire on Indigenous rights, including impacts on cultural values, traditional economies, and ecosystems
- 6) Address fundamental knowledge gaps and limitations in policy that result in a piecemeal approach to impact assessment on the environment, Indigenous rights, and the public interest
- 7) Undertake a full review of the De Beers Victor diamond mine project, including predicted and actual effects on the social-ecological system in the Attawapiskat River and Hudson Bay Lowland, to fulfill communities' right to information and to apply "lessons learned" to any proposed future developments

Further detail supporting each of these recommendations is outlined below.

**1) Ensure all decision-making and planning is driven by a commitment to advance Indigenous rights of self-determination**

Canada and Ontario have a duty to respect the rights of Indigenous peoples as recognized by the Royal Proclamation, Treaty No. 9, the *Constitution Act, 1982*, and international human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This duty requires that substantive rights of Indigenous peoples be upheld and respected, including: expressions of self-determination; rights to harvest, culture, religion and non-discrimination in relation to lands, territories and natural resources; rights to health and physical well-being in relation to a clean and healthy environment; and the right of Indigenous



peoples to set and pursue their own community priorities.<sup>7</sup>

These rights and accompanying responsibilities to the land are deeply rooted in the language, culture and practices of Indigenous people. They also reflect the natural laws that are fundamental to who they are, and what they do, including to have strength, to be kind, to share, and to be honest. In advancing these rights, the communities near and downstream of the Ring of Fire cannot be excluded from discussions and any joint agreements between Canada and Ontario. Ring of Fire decision-making must enable and embody collaborative decision-making so that Indigenous communities and their respective legal traditions equally inform governance structures, the identification of decision-makers, processes, and decision-making criteria.

**2) Complete an assessment of cumulative impacts, based on both scientific knowledge and Indigenous Knowledge, before authorizing prospecting, exploration, and development activities to safeguard watersheds (including the Attawapiskat, Albany, Ekwano and Winisk), the Hudson Bay Lowland, and critical habitat of species at risk such as boreal caribou**

The current piecemeal approach to development in the Ring of Fire as well as the decision-making led unilaterally by Ontario must end. Developments and ongoing mineral exploration are occurring in the middle of the world's second largest peatland complex in northern latitudes, covering over 325,000 km<sup>2</sup>. The peatlands, or muskeg, of this region are a globally significant carbon store – containing nearly 26 gigatons of carbon – providing important climate regulation services (among others) for Indigenous peoples, Ontarians, and the global community.

The Far North region has been maintained for millennia by Indigenous people now living in 35 communities. Their values and futures are tied to the land through food networks, medicine, cultural, social, and sacred practices, and responsibilities, which both sustain and depend on the area's extensive ecological systems including intact river systems, abundant fish and wildlife, and globally significant wetland and forest systems.

Therefore, to assess any environmental or social change to this region, it is necessary for Canada and Ontario to recognize the need to permit, licence and evaluate *beyond* site-specific or direct project impacts. Cumulative impact assessment at a broad-scale (eg. regional) must be considered in advance of project-level assessments and sector-based approvals for permits. This is particularly important in the face of climate change which is already impacting First Nation communities and the environment in this area at a faster rate than other parts of Ontario.

A regional-scale cumulative effects assessment that considers Indigenous values, criteria,

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<sup>7</sup> United Nations Human Rights Council, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya – Extractive industries and indigenous peoples" (1 July 2013), A/HRC/24/41: <https://undocs.org/A/HRC/24/41>

objectives, and scenarios together with scientific components is fundamental for the Ring of Fire. Among the valued ecosystem components, there are a number of species that are cultural and ecological keystones that must also be considered at multiple scales. Some of these are designated “at risk” by Ontario and Canada such as boreal caribou, wolverine, and lake sturgeon. For example, the Missisa range of boreal caribou overlaps with the current Ring of Fire mineral tenures. And, given this overlap with areas of high caribou occupancy – and boreal woodland caribou must be protected at the range level – the interconnected impacts from habitat fragmentation, linear disturbances and new travel corridors for predators, and disturbances of noise and dust must be considered in tandem and over time. Further, lake sturgeon in many of the largest rivers represent some of the only populations of sturgeon that are unaffected by hydroelectric development.

There are also considerable concerns about the cumulative impacts of development and Ontario and Canada’s decision-making processes on the rights of Indigenous communities in the area and those living downstream. This was recognized by federal Minister of the Environment and Climate Change, Minister Wilkinson, in February 2020 when he announced a regional assessment centred on the Ring of Fire.<sup>8</sup>

The potential mining region dubbed the Ring of Fire is located or has infrastructure that will impact globally significant watersheds and carbon rich peatlands of the Hudson Bay Lowland. Any scenarios must include protection of these globally significant areas and we urge Ontario and Canada to work together with Indigenous Nations to put in place protection plans, ahead of any mining and infrastructure.

**3) Critically review the scope and objectives of the Regional Assessment to ensure the future scenarios include any proposed ferrochrome smelter and processing of other metals that may be extracted from the region**

We oppose Canada and Ontario’s piecemeal approach – that is, the intentional breaking up of Ring of Fire projects into their component parts – as it evades consideration of cumulative impacts under different paths of development on the region as a whole. It is for this reason an assessment of the proposed ferrochrome facility or facilities, which would process the ore from the Ring of Fire, is essential to the Regional Assessment if we are to understand its impacts to air, water and health.

Given the high likelihood of transboundary effects, impacts to the Great Lakes and adjacent First Nation communities, it is critical any smelter be included within the review given it would otherwise not be designated for an environmental assessment under existing provincial or federal

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<sup>8</sup> See Minister’s Response, online: <https://iaac-aeic.gc.ca/050/evaluations/document/133854>

law. In addition, the impacts of the processing of other metals that may be extracted from the region must also be factored into the Regional Assessment.

As has already been raised in an open letter from medical doctors, the smelter proposed for Sault Ste. Marie would increase the risk of cancer in a city with already heightened cancer rates, and a 50% above national average rate for Acute Myeloid Leukemia.<sup>9</sup> We also know that low-income and Indigenous communities bear a disproportionate burden of health effects from pollution,<sup>10</sup> and are among those most unable to access avenues for justice. Thus, to exclude the smelter from the regional EA would serve to exacerbate the vicious, inter-generational cycle of poverty, to which disproportionate exposure to toxic substances already contributes, compromising the ability of at-risk individuals and communities to participate in decision-making.<sup>11</sup> Canada and Ontario must embrace the opportunity to create a healthy and more equitable economy and demonstrate that sustainable development – and its core recognition of a healthy environment – is more than a privilege.

**4) Address fundamental knowledge gaps, combined with projected scenarios, to identify outcomes which align with Indigenous values and rights, as well as federal and provincial commitments to biodiversity and climate change goals**

Scenario analysis is a tool that allows us to identify the potential impacts of development, protection, and climate change on First Nation and public values, including federal and provincial commitment to biodiversity and climate targets. Working with First Nations to develop scenarios for the future at meaningful temporal and spatial scales, provides an important participatory and visioning exercise for considering impacts to the ecological, social, and economic trajectories in the Ring of Fire.

Scenarios would enable a discussion and decision-making approach to clarifying sustainability in the Ring of Fire and identify desirable futures for First Nation communities, that may be consistent with the public interest such as the protection of the Hudson Bay Lowland's ancient peatlands, and their significant role in cooling the planet and mitigating ongoing and future climate impacts.

**5) Proactively consider mining-induced change and address legacy impacts of current mineral exploration and developments in the Ring of Fire on Indigenous rights, including impacts on cultural values, traditional economies, and ecosystems**

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<sup>9</sup> Sault Online, "Open Letter from Doctors on Ferrochrome Smelter" (19 Oct 2019), online: <https://saultonline.com/2019/10/open-letter-from-doctors-on-ferrochrome-smelter/>

<sup>10</sup> United Nations Human Rights Council, "Visit to Canada – Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes" (14 September 2020), A/HRC/45/12

<sup>11</sup> *Ibid*

It is critical that the legacies of mining and impacts on First Nations, their health and wellbeing, cultural values, and traditional economies such as hunting, fishing, trapping and the collection of medicines from the land be understood before proceeding with any development. In characterizing the severity of effects, current conditions, baselines, and the social crises facing all First Nation communities near and downstream of the Ring of Fire region - including access to clean water and housing - must be considered, alongside considerable challenges to accessing quality healthcare, including in response to COVID-19. There must also be a concerted effort to study existing differential burdens of toxics that may be exacerbated throughout the lifecycle of Ring of Fire projects, if developed.

In any decision by Canada or Ontario that may affect the health and socio-economic conditions of the communities living near and downstream of the Ring of Fire, UNDRIP requires the government first seek Indigenous community's free, prior, and informed consent. Canadian law presumptively conforms with international obligations and thus the Crown is obligated to interpret the need for consultation and accommodation in light of the principles set out in UNDRIP. Similarly, under Treaty No. 9 there is a responsibility to seek engagement with First Nations when land or rights are taken up by Ontario or Canada.

**6) Address fundamental knowledge gaps and limitations in policy that result in a piecemeal approach to impact assessment on the environment, Indigenous rights, and the public interest**

The framework for the Regional Assessment should require that information on existing health and environmental hazards be reportable and impacts understood before steps are taken to advance the Ring of Fire. Any assessment of baseline conditions must account for existing and past development, such as mineral exploration activities, on Indigenous, cultural, and environmental conditions. Further, the Regional Assessment must identify scenarios that include all current and potential land use activities, including for instance, a worse-case scenario that the suite of mineral claims leads to new mines, as well as a scenario of no further development at all.

While the Regional Assessment process might identify these gaps and perhaps ensure the availability of this data before proceeding, it overlooks that exploration activities have already occurred *and are occurring* despite this paucity of scientific study and inclusion of Indigenous Knowledge. Thus, so long as mineral exploration and project-specific decision-making proceeds absent any scoping of baseline studies and the identification of gaps in knowledge, Canada and Ontario will almost inevitably be damaging sensitive wetland ecosystems and precipitating harm to biodiversity and critically endangered species.

**7) Undertake a full review of the De Beers Victor diamond mine project, including predicted and actual effects on the social-ecological system in the Attawapiskat River and Hudson Bay Lowland, to fulfill the communities' right to information and to apply "lessons learned" to any proposed future developments**

Many of the communities downstream of the Ring of Fire have direct experience and exposure to other mine projects. As a number of youth reflected to the Friends of the Attawapiskat River in relation to the IA for the access and supply road projects, *'if the Ring of Fire happens, we won't have the same clean community as before'* and they questioned *'why can't they [the mining proponent] go where it's already been destroyed?'*<sup>12</sup>

Given the familiarity about existing mine sites but a lack of community-based knowledge about the federal and provincial review processes and their commencement in relation to the Ring of Fire,<sup>13</sup> we recommend a review be undertaken of the De Beers Victor diamond mine, to compare predicted effects to actual. This review is critical, and any report and findings must also be shared with communities. In so doing, it would advance community members' right to information which is crucial for the protection of human rights. In addition, by better understanding the gap between predicted versus actual realized impacts of an already closed mine in the region (i.e., the Victor Mine), a "lessons learned" approach can be applied to proposed future developments in the region.

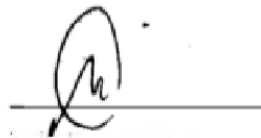
**For these reasons, we urge the governments of Canada and Ontario to respect the recent call for a moratorium on activities in the Ring of Fire by some Mushkegowuk Chiefs and Neskantaga First Nation of Treaty 9 and immediately enact a moratorium on prospecting, exploration, development, and project-specific decision-making in the Ring of Fire. We further recommend that decision-making only move forward when meaningful Indigenous engagement has been undertaken to meet the Crown's obligations towards First Nation communities, the Regional Assessment process has been completed, and protection plans are in place that safeguard sensitive wetlands and watersheds.**

Sincerely,



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Kerrie Blaise, Northern Legal Counsel  
Canadian Environmental Law Association



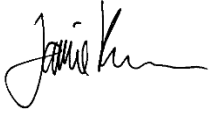
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Mike Koostachin, Founder  
Friends of the Attawapiskat River

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<sup>12</sup> See online: "Friends of the Attawapiskat River comments on the Ring of Fire" (28 January 2020), online: <https://cela.ca/friends-of-the-attawapiskat-river-comments-on-ring-of-fire/>, p 3

<sup>13</sup> *Ibid*



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Jamie Kneen, Co-Manager  
MiningWatch Canada



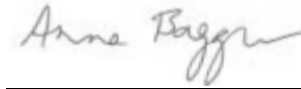
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Brennain Lloyd, Project Coordinator  
Northwatch



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Anna Johnston, Staff Lawyer  
West Coast Environmental Law



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Anna Baggio, Conservation Director  
Wildlands League

January 28, 2020

**VIA EMAIL**

Impact Assessment Agency of Canada  
22<sup>nd</sup> Floor, Place Bell  
160 Elgin Street  
Ottawa ON K1A 0H3

**Re: Webequie Supply Road Project and Marten Falls Access Road  
Comments on the draft Tailored Impact Statement Guidelines and draft Indigenous  
Engagement Plan**

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The Friends of the Attawapiskat River (the “Friends”), represented by the Canadian Environmental Law Association (“CELA”), welcome this opportunity to provide comments and recommendations to the Impact Assessment Agency of Canada’s (the “Agency”) on its draft Tailored Impact Statement Guidelines (“Guidelines”) and draft Indigenous Engagement Plan for the Webequie Supply Road and Marten Falls Community Access Road.<sup>1</sup> Unless otherwise specified, this submission applies to the impact assessments (IAs) for both road projects.

In making these submissions to the Agency, the Friends note they are not speaking on behalf of any of the communities or its leadership where its members are based (Neskantaga, Peawanuck, Kashechewan and Fort Albany First Nations), but rather sharing the views, concerns and messages heard during a series of in-community discussions and workshops held during January 2020. Furthermore, our comments do not constitute consultation in any way, nor discharge the Crown’s duty to consult per section 35 of the *Constitution Act, 1982*.

## **I. BACKGROUND**

### **(a) The Friends of the Attawapiskat River**

The Friends of the Attawapiskat River (the “Friends”) is a community-led organization comprised of members and elders from Attawapiskat and surrounding communities, including Neskantaga, Peawanuck, Kashechewan and Fort Albany First Nations. The Friends aim to advance knowledge about the Ring of Fire in the Attawapiskat watershed and also enable

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<sup>1</sup> Webequie Supply Road Project, online: <https://ceaa-acee.gc.ca/050/evaluations/proj/80183?culture=en-CA>; Marten Falls Community Access Road Project, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80184?culture=en-CA>

community participation in decision-making processes which impact the health of the Attawapiskat River.

The Friends recognize that the Attawapiskat River has been our provider since the beginning of time. It is where community members go to harvest food and trees to make shelter, and follow the wildlife, as it migrates and travels along the water. The water is part of life and is the veins of the Mother Earth. The ecosystem is part of this, with its own purpose which we respect without question.

Once this water is disturbed, we have no means of reversing it to its present state – to the way it was before resource development. If developed, the Ring of Fire will have a hugely negative impact on our way of life, existence and livelihoods. We do not own the land, but rather have a responsibility to ensure we live in harmony with it, its animals and water; this is how we survive.

Those who live here are the water people. As our youth describe it, they are the ‘*youth of the mushkeg*.’ If you look closely throughout our watershed, you will also see we are surrounded with water and through it, connected to the many lakes, rivers, swamp (mushkeg) and the ocean. Our goal, with this submission, is to improve upon the requirements currently set by the Agency to ensure the Attawapiskat River – the water on which our life depends - is protected.

**(b) The Canadian Environmental Law Association**

The Friends have retained the Canadian Environmental Law Association to facilitate their involvement in the Agency’s IA process. CELA is a public interest legal clinic funded by Legal Aid Ontario which for nearly 50 years has provided legal services to low-income communities and those disproportionately affected by environmental pollutants and injustices. CELA, invited by the Friends, attended the in-person workshops held in January 2020.

CELA has participated in a range of administrative and legal proceedings under *CEAA 2012* and its predecessors, *CEAA 1992* and the *Environmental Assessment and Review Process Guidelines Order*. On the basis of our decades-long experience in assessment matters, CELA has carefully considered the draft Guidelines and draft Indigenous Engagement plan provided by the Agency from a public interest perspective. Our recommendations below, build on CELA’s related concerns about other environmental assessment law matters such as the *Impact Assessment Act* (IAA), as highlighted in recent submissions to Environment Climate Change Canada (ECCC) regarding the revised Projects List<sup>2</sup> and briefing notes for the purpose of public legal education.<sup>3</sup>

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<sup>2</sup> Canadian Environmental Law Association, “Submissions to the Government of Canada Regarding *Discussion Paper on the Proposed Project List* and *Discussion Paper on Information Requirements and Time Management Regulatory Proposal*,” (29 May 2019), online: <https://www.impactassessmentregulations.ca/8866/documents/16609/download>

<sup>3</sup> Canadian Environmental Law Association, “Briefing Note on Bill C-69: Overview of Canada’s New *Impact Assessment Act*,” (28 August 2019), online: <https://cela.ca/wp-content/uploads/2019/08/1289-IAA-Briefing-Note-August-6-2019.pdf>



**(c) Our Approach to Engagement**

In an effort to gather community feedback on the Agency's draft Guidelines and Indigenous Engagement Plan, the Friends visited the communities of Timmins, Fort Albany, Kashechewan and Attawapiskat from January 15-20, 2020.

This submission from the Friends is a compilation of the messages and views we heard directly from leadership, community members, elders and youth during our week-long tour to James Bay communities. Travelling over 600 km from Timmins to Attawapiskat by seasonal winter and ice roads, the Friends visited elders, community members and youth to collect their feedback.

The Friends spoke in community centres, meeting rooms and classrooms and engaged at all times of day, from daytime, evening and weekends to be as accessible as possible. While recognizing we could not reach all those interested given the short notice for the public comments and the limitation of a 40-day comment period, best efforts were made to ensure those interested in learning more and wishing to share their input with the Agency had an opportunity to do so. In all, we met with over 100 individuals and reached out to media so that the public, more generally, was also aware of this opportunity to comment.<sup>4</sup>

**(d) Inadequacy of Information Sharing & Engagement by the Agency**

The Friends experienced a high level of interest in the Ring of Fire and the proposed roads' IAs during all community sessions. However, all of the communities we visited displayed a clear lack of knowledge about the federal IA process and its commencement in relation to the Webequie and Marten Falls roads.

Further, we are disappointed by the Agency's inability to meet with the Friends and participate in our in-community sessions. The Friends first reached out to the Agency in November 2019, requesting an in-community meeting with community members (*see Appendix 1*). While the Agency responded that an in-community meeting would occur that month and they would also travel during the public consultation during January 2020, neither of the visits occurred and reasons as to why, not provided.

Our invite to visit was repeated to the Agency upon notice of the 40-day public comment period on December 20, 2019 and this too, was declined. While the Agency welcomed the Friends to either attend in-person or Webex public open houses in Thunder Bay and Geraldton, we note these are not sufficient alternatives to in-community visits. First, travel is cost prohibitive as the Friends' membership live in fly-in communities where it costs thousands to travel by air.

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<sup>4</sup> CBC News "Ring of Fire communities get chance to share concerns with federal government" (16 Jan 2020), online: <https://www.cbc.ca/news/canada/sudbury/communities-ring-fire-1.5429812>

Secondly, Webex is not accessible due to insufficient internet bandwidth and a lack of mobile networks in many of the communities.

The Friends remain disappointed by the Agency's consultation with communities in the Attawapiskat watershed. While the Agency stated to us that they are "actively working with leadership" in many of the communities we visited, the level of awareness about the projects and the commencement of the IAs is critically lacking. This was affirmed by the comments received during the Friends' workshops.

Further, while the Friends appreciate this opportunity to provide comments to the Agency, we reiterate our displeasure at the Agency for choosing to commence a 40-day comment period without first consulting the community. As we have previously communicated to the Agency, commencing a 40-day comment period in light of a youth suicide and death of an elder, critically diminishes our ability and collective capacity to respond.

Moving ahead with decision-making without first ensuring communities have the requisite background knowledge and ability to respond does not respect our rights to equal involvement and engagement in this process. Had the Agency chosen to pre-emptively engage, in the spirit of early engagement, the burden of having to respond within a 40-day window would have been lessened. Given these constraints, the Friends reserve the right to provide further comment in relation to the above noted projects as we continue to assess the impacts of the projects and carry out community outreach efforts.

## **II. SPECIFIC RECOMMENDATIONS TO THE AGENCY**

In response to the draft Guidelines and draft Indigenous Engagement Plan, the Friends make the following observations and accompanying recommendations to the Agency (*see Appendix 2*).

### **(a) Draft Tailored Impact Statement Guidelines**

#### **1. Scope of Project & Applicability of Guidelines**

The project description for both the Webequie Supply Road and Marten Falls Community Access Road state that these roads may enable mineral development in the Ring of Fire area.<sup>5</sup> Unfortunately however, as currently drafted the Guidelines only apply to the more narrow, project-level assessment for the two individual roads. The Friends do not support this narrow framing.

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<sup>5</sup> See online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80184?culture=en-CA> and <https://ceaa-acee.gc.ca/050/evaluations/proj/80183?culture=en-CA>

Further, during our in-community discussions, the Friends were made acutely aware of the concerns shared by community members who live downstream of the proposed Ring of Fire. There was a collective view that a piecemeal approach to decision-making - wherein the effects of the proposed supply and access roads are viewed in isolation of the potential range of adverse affects resulting from the Ring of Fire – was an inadequate means to advancing reconciliation with Indigenous communities and environmental rights. As one participant echoed, there is ‘*no too small a scope*’ given the magnitude of mining activities which could be facilitated by the proposed roads.

Therefore, we recommend the Guidelines’ scope be expanded to apply to other reasonably foreseeable projects resulting from these projects. As currently drafted, the following list of projects are only mentioned in the context of the proponents ‘cumulative effects assessment,’<sup>6</sup> should it be undertaken. We instead ask this list of projects be applicable to all of the Guidelines’ considerations and requirements:

- Construction of upgrades to the Anaconda/Painter Lake Forestry Road;
- The construction and operation of the Northern Road Link (proposed road
- Linking the northern portion of the Marten Falls Community Access Road to the Ring of Fire area);
- A potential East-West Road;
- The Eagle’s Nest Mine;
- Mining activities associated with the following deposits: Black Thor, BlackBird, Big Daddy, Black Label;
- Increased winter road traffic during Operations and Maintenance by future mining proponents; and
- Advanced mineral exploration activities in the Ring of Fire area.

**RECOMMENDATION NO. 1: Expand the Guidelines’ scope so that is applies to other reasonably foreseeable projects resulting from these road projects, including mining activities associated with the Black Thor, BlackBird, Big Daddy, and Black Label deposits, increased winter road traffic during operations by future mining proponents, and advanced mineral exploration. These projects should not only be considered during the proponent’s cumulative effects assessment.**

## **2. Characterization of Wetlands & Inclusion of Mushkeg**

The draft Guidelines provide numerous references to mapping water flow and connectivity among watercourses and detailing changes which may occur, through nutrient loading or

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<sup>6</sup> Draft Guidelines, s 22

disturbance.<sup>7</sup> What is not adequately reflected however, is how the waterways in this predominantly mushkeg environment function. Currently, the draft Guidelines only make a single reference to “muskeg.” While the Guidelines make repeated reference to wetlands, this is too broad a term to capture the ecological and cultural significance held by mushkeg in this region.

As community members described, in mushkeg, water flows under the land. Fish also travel ‘*under the land*’ by making use of tunnels carved within the mushkeg. As one elder described, ‘*we are the water people. The swamps and lakes create mushkeg – it’s a being.*’ As another community member remarked, ‘*the mushkeg is living and breathing. For us, it is our Amazon. It cleans the air, the water – it’s a big lung and filter for everything.*’

Further, mushkeg is not a linear corridor. It acts like a sponge and so water courses, water crossing and delineations between water bodies do not neatly form. We encourage the uniqueness of this ecosystem be better reflected throughout the Guidelines.

**RECOMMENDATION NO. 2: The projects are located in global significantly peatlands (ie. mushkeg). As the draft Guidelines’ framing of water flow, connectivity and water crossings does not adequately reflect the unique ecological and hydrological cycles of this region, it is necessary to update considerations required within the project description (s 3) and effects to valued components (s 15).**

### **3. Water Level Changes & Current Stressors**

In addition to the draft Guidelines’ references to mapping of water flows and connectivity, references are made to water level changes, seasonal variations and accompanying spatial and temporal effects to ground water.<sup>8</sup> What is not expressly considered however, is the effect of breakup in the spring on mushkeg water levels. Indeed, freeze/thaw is only referenced once in the Guidelines.<sup>9</sup>

The effect of seasonal variations and breakup in light of climate change, is also an area not identified in the draft Guidelines. As participants remarked, those living in the Attawapiskat watershed have already observed inland lakes subsiding. Thus, a review of water levels in light of climate change and the Ring of Fire’s footprint is critical.

Further, while climate change is repeatedly mentioned throughout the draft Guidelines, it is primarily in the context of the proposed project’s contribution to greenhouse gas emissions and

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<sup>7</sup> Draft Guidelines, ss 3.1, 8.6, 8.7, 15.1

<sup>8</sup> Draft Guidelines, ss. 8.1, 8.6, 8.9

<sup>9</sup> Draft Guidelines, s 8.6

Canada's climate commitments. The intersection of climate change *with* valued components like changes to the physical environment, the environment and human health is a critical deficiency which should be remedied.

**RECOMMENDATION NO. 3: Greater consideration of breakup and seasonal freeze/thaw patterns in light of climate change should be studied. Effects of climate change *with* valued components like the physical environment, the environment and human should be included in the Impact Statement.**

## **5. Intergenerational Effects & Characterizing the Severity of Impacts**

The draft Guidelines state that proponents are “encouraged” to include a description of intergenerational impacts of the project on community members.<sup>10</sup> Impacts on “generations” is again referenced in regard to the Impact Statement’s characterization of residual effects on valued components.<sup>11</sup>

The Friends find this framing to be too narrow and the consideration of intergenerational effects, altogether deficient. Considerations of intergenerational and intragenerational equity are key sustainability principles and squarely within the purposes of the *Impact Assessment Act*. It is critical that the effect of the projects, at least 100 years into the future, be considered given the estimated operating lifespan of the Ring of Fire.

**RECOMMENDATION NO. 4: Each of the Guidelines’ valued components should require consideration of intergenerational effects and accompanying risks imposed on future generations, in the event the roads be constructed, and future mining exploration and development occur in the Ring of Fire.**

## **6. Cumulative Effects & Pre-Existing Human and Environmental Health Conditions**

In describing baseline conditions, we support the draft Guidelines statement that the Impact Statement must provide a description of “existing environmental, health, social and economic components.”<sup>12</sup> However, in applying this methodology, we further recommend the projects’ assessment of cumulative effects take account of historical changes within the watershed that have been caused by prior human activity and industrial developments. Present-day ecological conditions should not be a marker to which impacts are measured.

**RECOMMENDATION NO. 5: The Guidelines should not rely only on present-day ecological and watershed health conditions but ensure the projects’ cumulative effects**

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<sup>10</sup> Draft Guidelines, s 19.1

<sup>11</sup> Draft Guidelines, s 21

<sup>12</sup> Draft Guidelines, s 7.1

**assessment takes account of historical changes within the watershed that have been caused by prior human activity and industrial developments.**

## **7. Boreal Caribou as a Valued Component**

We support the draft Guidelines' framing that each species at risk, which includes boreal caribou, should individually be considered a valued component. It is critical that the Impact Statement's baseline conditions and cumulative effects assessment<sup>13</sup> consider the Far North caribou ranges because of their migration into regions which will be impacted by the roads and the accompanying mining exploration they will trigger.

During our engagement sessions, community members expressed a high degree of concern about woodland caribou, noting that the exploration activities and accompany activities, such as draining of mushkeg and water taking, will impact the land and their habitat. Concerns also arose about disease incidence and how these projects, in tandem with the current health of the ranges, will be impacted.

**RECOMMENDATION NO. 6: The Far North caribou range should be included within the Impact Assessment's mapping of baseline conditions and assessment of cumulative effects. As migratory animals, they will be impacted by the roads and the accompanying mining exploration triggered by the development.**

## **8. Emergency Preparedness and Management**

As the purpose of both the Webequie Supply Road and Marten Fall Community Access Roads is to provide access to mineral development in the Ring of Fire, the Friends submit it is critical to consider the emergency response capacity of communities living downstream of the proposed projects.

During our engagement sessions, participants made frequent reference to the severe flooding which occurred in 1985. We therefore ask that lessons learned from the Flood of 1985 be expressly considered and adopted into the Guidelines' consideration of emergency response.<sup>14</sup> Impacts of dykes eroding during breakup and infrastructure, including culverts, failing, must all be accounted for in the review of emergency preparedness. The impact of climate change on increasing the frequency and severity of flooding and 'worst case scenarios' must also be taken into account.

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<sup>13</sup> Draft Guidelines, ss 7.4, 22

<sup>14</sup> Draft Guidelines, ss 7.1, 23.1, 26

It is also critical that emergency preparedness measures not be decided upon without incorporating local knowledge from communities who have the experience with breakup, climate impacts and accidents. Therefore, the proponent should also be required to invite public feedback on emergency response and preparedness measures and ensure opportunities for ongoing public review and updates. These plans should be communicated to the public through a robust public awareness campaign. The efficacy of emergency preparedness is directly tied to the level of awareness and preparedness of local residents, prior to any accident or emergency situation.

**RECOMMENDATION NO. 7: Lessons learned from the Flood of 1985 should be expressly considered and adopted in the Guidelines' consideration of emergency response.<sup>15</sup> Impacts of dykes eroding during breakup and infrastructure, including culverts, failing, must all be accounted for in the review of emergency preparedness. The impact of climate change on the frequency and severity of flooding and 'worst case scenarios' must also be taken into account.**

**RECOMMENDATION NO. 8: The proponent should be required to invite public feedback on emergency response and preparedness measures and ensure opportunities for ongoing public review and updates. These plans should be communicated to the public through a robust public awareness campaign.**

## **9. Community Health & Risk Assessment**

The draft Guidelines provide that the proponent must conduct a preliminary model to determine whether a Human Health Risk Assessment is required.<sup>16</sup> We strongly encourage that a Human Health Risk Assessment be made a requirement.

During our engagement sessions, we repeatedly heard about the need to study cumulative effects on human health which include both existing contaminated sites and future health impacts or exposures. There is also a lot of fear in the communities regarding the health impacts of the projects, given the already high incidence of cancers and skin conditions in the communities. Ensuring the projects are being measured in light of their impacts on community health is vital in building trust and ensuring an open and transparent decision-making process.

We also specifically request a study of mercury on human health and the environment, which takes into account the lifecycle of the project and legacy contamination. This would align with commitments made by Canada under the Minamata Convention to protect humans and the environment from anthropogenic emissions of mercury and mercury compounds.

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<sup>15</sup> Draft Guidelines, ss 7.1, 23.1, 26

<sup>16</sup> Draft Guidelines, s 16.1

**RECOMMENDATION NO. 9: We strongly encourage that a Human Health Risk Assessment be made a requirement of the IA. Ensuring the projects are assessed in light of their impacts on community health is vital in building trust and ensuring an open and transparent decision-making process.**

**RECOMMENDATION NO. 10: The Guidelines should be updated to require a study of mercury on human health and the environment, which takes into account the proposed project and legacy contamination.**

**(b) Draft Indigenous Consultation Plan**

We appreciate having the opportunity to provide comments on the Agency’s draft Indigenous Consultation Plan (the “Plan”) as in the past, we have had few opportunities to do so.

From our Cree cultural perspective, we believe that all things - be it plant, animal, person, water, tree, air, rock or Mother Earth – deserve consideration not only in the present but for seven generations. We are here because of the foresight of those before us and we must be mindful of those who are yet unborn. We invite the Agency to do the same as this intergenerational thinking is not reflected in the Plan, as drafted.

While the draft Plan states that the “Agency encourages the early engagement of Chief and Council and other community leadership” within the impact assessment process, it assumes communities have a certain level of pre-existing knowledge about the projects, their scope and IA process. It also assumes that the leadership have the capacity – whether measured in time, financial resources or expertise - necessary to support involvement and undertake such a broad ‘ask’ by the Agency.

The draft Plan also identifies sub-populations, such as a women, elders and youth, as being involved in engagement. The Friends reiterate that it is of critical importance that the Agency ensure the involvement of youth. Among the community visits made by the Friends, were presentations to elementary schools. Students at Peetabek Academy were very keen to be engaged in the IA process and likewise teachers, had a high interest in using the Ring of Fire as a topic for discussion in their classroom and in research projects. We cannot underscore the vital importance of involving the youth, whose letters to the Agency we have appended to this letter (*see Appendix 3*). As one student remarked to the Friends, ‘*no one explains it to us until its too late.*’

Because of these communities’ exposure to other mine projects, there is a familiarity about environmental contaminants and adverse impacts. As one grade 7 student told the Friends, ‘*if the*



*Ring of Fire happens, we won't have the same clean community as before.' As another echoed, 'why can't they [the mining proponent] go where it's already been destroyed?'*

**RECOMMENDATION NO. 11: The Agency should support the involvement of women, elders and youth, as identified in the Plan. There is a responsibility, shared with the Agency, to ensure the Plan enables and not just encourages participation.**

An additional objective to add to the Plan is that development not occur without the community first having knowledge of it. Therefore, we recommend:

**RECOMMENDATION NO. 12: Information sharing must reach beyond leadership and to community members and the public. This is critical in order to build public trust in the Agency, Canada and the proponent's intended developments.**

We also have reservations about the sufficiency of the Plan given the Agency's insufficient notice about this phase of the IA process. While the Plan references "notice," details on how this will be undertaken are not provided. Therefore:

**RECOMMENDATION NO. 13: We recommend that it be a requirement within the Plan that all notices be shared to local communities' Facebook pages, posted physically in groceries stores (ie. Northern Store), health centres and hospitals, local shops, and local news outlets (ie. CBC, Wawatay).**

A further objective to add to the Plan is transparency in decision-making, to remedy the oft heard remark that *'we wrote to them, but never heard back.'* As another participant provided, *'we need to see what was allegedly said – it should not be a black box.'*

**RECOMMENDATION NO. 14: It must be a requirement of Indigenous and public engagement that the Agency provide a disposition of comments received alongside a reason of how they factored into decision making.**

Lastly, we recommend an objective be added that ensures cross-community dialogue. For many of the Friends' members, their communities have already been exposed to the federal EA process prior to the DeBeers diamond mine being brought online. As a lesson going forward, participants reflected that with the Ring of Fire and accompanying projects, they would *'like to have a good idea of where the community is at in their decision-making and what they're saying. We would like an opportunity to come together, along the coast.'*

**RECOMMENDATION NO. 15: An objective be added to the Plan that ensures cross-community dialogue and information sharing.**

### III. CONCLUSION

We sincerely hope the Agency will include the feedback the Friends received from community members and incorporate our recommendations into the final Guidelines. As one elementary student remarked to us during our visit, *'how will we know if the environment has been heard?'*

We hope that our comments and our continued invitation to engage with the Agency provide a voice to communities who stand to be directly affected and those not yet born. We look forward to further engagement on this project and ask to be notified of any future steps in the impact assessment process.

Sincerely,

**THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Kerrie Blaise  
Northern Services Legal Counsel

*On behalf of*  
**THE FRIENDS OF THE ATTAWPISKAT RIVER**

## APPENDIX 1 – LETTER FROM THE FRIENDS



Impact Assessment Agency of Canada  
600-55 York Street  
Toronto, ON M5J 1R7

November 12, 2019

*Sent via email*

**Re: Invitation for Indigenous Engagement from the Friends of the Attawapiskat River**

To whom it may concern:

The Canadian Environmental Law Association (CELA) has been retained to represent the Friends of the Attawapiskat River (the “Friends”) regarding the proposed impact assessments for the Marten Falls Access Road and Webequic Supply Road projects. CELA is a public interest legal clinic funded by Legal Aid Ontario which for nearly 50 years, has been providing legal services to low-income and vulnerable communities.

In furtherance of the *Impact Assessment Act’s* purpose of promoting communication and cooperation with Indigenous peoples of Canada, the Friends invite the Agency to visit their community in Attawapiskat. The Friends have been informed of similar visits occurring in other First Nation communities and encourage the Agency consult more broadly with other interested and potentially affected Indigenous groups and organizations.

The Friends of the Attawapiskat River (the “Friends”) is an unincorporated organization comprised of five community members from Attawapiskat and Peawanuck First Nations. As traditional knowledge holders with a direct interest in the outcome of the projects (ie. intergenerational health, cumulative and environmental affects), their participation and engagement in this IA is particularly relevant to the Agency. The Friends are particularly concerned about cumulative, downstream impacts of the proposed mines to be located near the Attawapiskat River, and request for your attendance to engage at a community meeting preferably between November 21 – 25, 2019.

Thank you for your prompt attention to this matter and we look forward to your response.

Sincerely,

Kerrie Blaise

**Canadian Environmental Law Association**

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • [cela.ca](http://cela.ca)

## APPENDIX 2 – SUMMARY OF RECOMMENDATIONS

**RECOMMENDATION NO. 1:** Expand the Guidelines' scope so that it applies to other reasonably foreseeable projects resulting from these road projects, including mining activities associated with the Black Thor, BlackBird, Big Daddy, and Black Label deposits, increased winter road traffic during operations by future mining proponents, and advanced mineral exploration. These projects should not only be considered during the proponent's cumulative effects assessment.

**RECOMMENDATION NO. 2:** The projects are located in global significantly peatlands (ie. mushkeg). As the draft Guidelines' framing of water flow, connectivity and water crossings does not adequately reflect the unique ecological and hydrological cycles of this region, it is necessary to update considerations required within the project description (s 3) and effects to valued components (s 15).

**RECOMMENDATION NO. 3:** Greater consideration of breakup and seasonal freeze/thaw patterns in light of climate change should be studied. Effects of climate change *with* valued components like the physical environment, the environment and human should be included in the Impact Statement.

**RECOMMENDATION NO. 4:** Each of the Guidelines' valued components should require consideration of intergenerational effects and accompanying risks imposed on future generations, in the event the roads be constructed, and future mining exploration and development occur in the Ring of Fire.

**RECOMMENDATION NO. 5:** The Guidelines should not rely only on present-day ecological and watershed health conditions but ensure the projects' cumulative effects assessment takes account of historical changes within the watershed that have been caused by prior human activity and industrial developments.

**RECOMMENDATION NO. 6:** The Far North caribou range should be included within the Impact Assessment's mapping of baseline conditions and assessment of cumulative effects. As migratory animals, they will be impacted by the roads and the accompanying mining exploration triggered by the development.

**RECOMMENDATION NO. 7:** Lessons learned from the Flood of 1985 should be expressly considered and adopted in the Guidelines' consideration of emergency response. Impacts of dykes eroding during breakup and infrastructure, including culverts, failing, must all be accounted for in the review of emergency preparedness. The impact of climate change on the frequency and severity of flooding and 'worst case scenarios' must also be taken into account.

**RECOMMENDATION NO. 8:** The proponent should be required to invite public feedback on emergency response and preparedness measures and ensure opportunities for ongoing public review and updates. These plans should be communicated to the public through a robust public awareness campaign.

**RECOMMENDATION NO. 9:** We strongly encourage that a Human Health Risk Assessment be made a requirement of the IA. Ensuring the projects are assessed in light of their impacts on community health is vital in building trust and ensuring an open and transparent decision-making process.

**RECOMMENDATION NO. 10:** The Guidelines should be updated to require a study of mercury on human health and the environment, which takes into account the proposed project and legacy contamination.

**RECOMMENDATION NO. 11:** The Agency should support the involvement of women, elders and youth, as identified in the Plan. There is a responsibility, shared with the Agency, to ensure the Plan enables and not just encourages participation.

**RECOMMENDATION NO. 12:** Information sharing must reach beyond leadership and to community members and the public. This is critical in order to build public trust in the Agency, Canada and the proponent's intended developments.

**RECOMMENDATION NO. 13:** We recommend that it be a requirement within the Plan that all notices be shared to local communities' Facebook pages, posted physically in groceries stores (ie. Northern Store), health centres and hospitals, local shops, and local news outlets (ie. CBC, Wawatay).


**RECOMMENDATION NO. 14:** It must be a requirement of Indigenous and public engagement that the Agency provide a disposition of comments received alongside a reason of how they factored into decision making.

**RECOMMENDATION NO. 15:** An objective be added to the Plan that ensures cross-community dialogue and information sharing.

Dear Canada,

We are the youth of mushkeg. Why do you want  
to contaminate the water and land <sup>and</sup> water and land are connect  
If you destroy the mushkeg, we are all hurt. It is our lungs, our air  
and our oxygen. If our land gets affected, it would be on  
you. We won't go hunting, the animals will be sick or die.

NO TO THE RING OF  
FIRE.

From: 

Age: 11 years

Fort Albany, On  
First nation

Dear Canada, We are the youth of Mushkeg  
Why do you want to contaminate the  
Water and land. the lands of Water  
connected.

if you destroy the mushkeg, we are all  
hurt. it is our lungs, our air, and oxygen  
if our land gets effected it would be  
on you! No to the Ring of Fire.

 From: Fort albany first nation ontario.

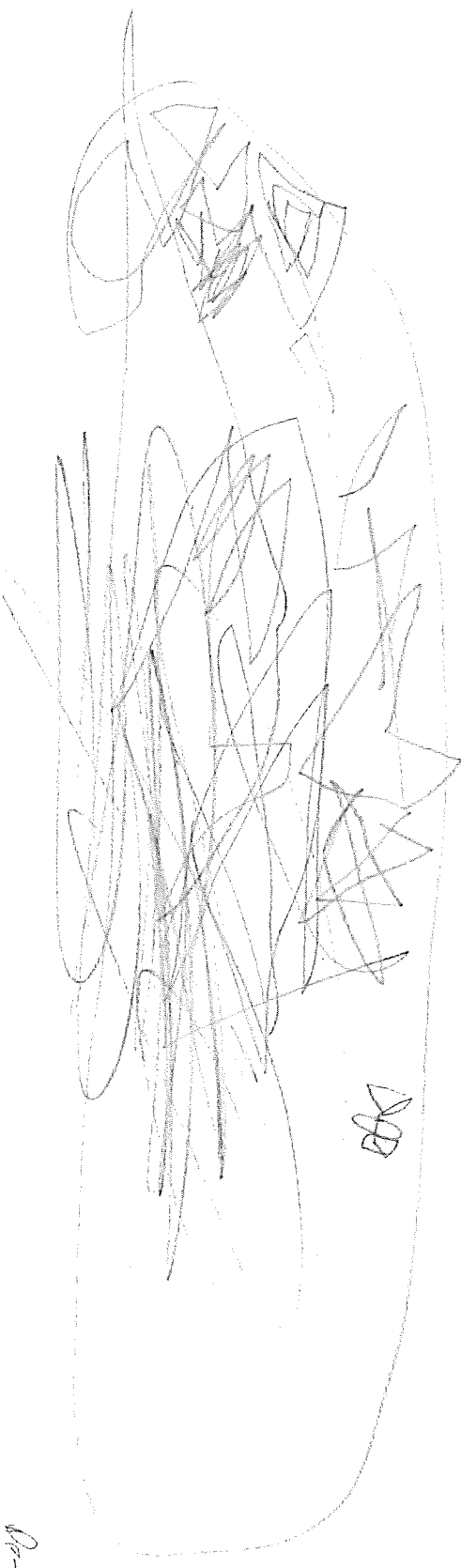
1/1/11

Don't worry, we are the sons of Musikeo. Why do you begin to communicate  
The water and land, the land and waters are connected. If you destroy the water,  
we are our own. It is our lungs, our air, and our oxygen. If our land gets affected, it  
would be on you. **NO**

~~\_\_\_\_\_~~ as the hills of fire

**NO**

~~\_\_\_\_\_~~  
**Grade 6**



As-Hon-b-e-l-a



Friday Jan 17 2020 Fort Albany

From [REDACTED] age 12

Dear Canada

We are the youth of mushKeg. Why do you want to cantaminate the water and land. The lands and water are connected.

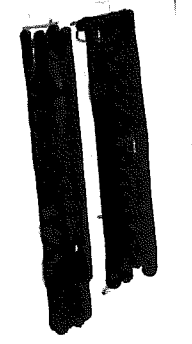
If you destroy the mashKeg, we are all hurt. It is our lands, our air tangs. If our land gets affected it would be on you, W- to the Ring

No to the Ring of Fire

Dear candy

We are the youth of mushkeg. Why do you want to contaminate the water and land. The land and waters are connected. If you destroy the mushkeg we are all hurt.

It is our lungs, our air, our oxygen. If our land gets affected it would be on you. NO to the ring of fire.




.Peetaback Academy

Fort Albung First nation

grade 6

Dear Canada,

, 11 years old, From  
Peetabek Fort Albany.

We are the youth is already a mine there.

Of mushkeg. Why do

You want to contaminate

The water and land. The

land's + Water are connect,

If you destroy the mushkeg,

We are all hurt it's our

lungs. our air and our oxygen.

If our land gets affected it

would be on you No to the

RINGFIRE. We Never did

anything to you guys. There

Dear Caricada,

1300 persons will for the end of this sec

with all the money for the end of this sec

the bonds are given, they are in process

people in business and the more the worth

people in business and the more the worth

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people in business and the more the worth

Stop it  
or  
You'll Regret  
It

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Jan 17, 2020

Dear Canada,

We are the youth of Mushkeg.

Why do you want to contaminate the  
water and land?

If you destroy the Mushkeg, We are all  
hurt, It is our lungs, our air, and OUR  
Oxygen.

If our land gets affected, It would be  
Your fault.

One last time, Stop It Or YOU"ll  
Regret It!

No to the Ring of  
Fire.

Sincerely,



Age: 11

Dear Canada,

Age 11

We are the youth of Muskeg.  
Why do you want to contaminate  
the water and land. The lands  
and waters are connected.

If you destroy the muskeg, we  
are all hurt. It is our lungs, our air,  
and our oxygen. If our land gets  
affected it would be on you.  
No to the Ring of fire