

ATTAWAPISKAT FIRST NATION

P.O. Box 248
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January 28, 2020

Caitlin Cafaro
Project Analyst - Crown Consultation Coordinator
Marten Falls Community Access Road / Ontario Region
Impact Assessment Agency of Canada / Government of Canada

Submitted by email to: ceaa.martenfalls.acee@canada.ca

Re: Attawapiskat First Nation Preliminary Comments on the Draft Tailored Impact Statement Guidelines, Marten Falls Community Access Road Project

Dear Ms. Cafaro:

As per the Impact Assessment Agency of Canada's request, Attawapiskat First Nation is providing preliminary comments on the Marten Falls Community Access Road - Draft Tailored Impact Statement Guidelines.

Please note that submission of these comments does not signal the consent of Attawapiskat First Nation for any developments within the area commonly known as the "Ring of Fire", including developments related to transport and resource exploitation within that area. The community's position remains that it is unable turn its mind to a good faith and complete assessment of the pros and cons of any engagement with resource development within the Ring of Fire. Any engagement will require reaching a satisfactory resolution of Attawapiskat First Nation's outstanding legacy issues with De Beers Canada, and evidence that Canada and Ontario are fully committed to, and are working towards, honouring the commitments set out in Mino-Wha-Ko-Me-To-Win Protocol, signed by Canada, Ontario, and Attawapiskat First Nation signed on July 29th, 2019.

Also note that Attawapiskat First Nation reserves the right to submit additional comments and information requests at a later date, at our discretion.

General comments

Concerns about cascading effects of the road. If built, the proposed road will open up the potential for resource development and create enormous pressure to build additional roads. Attawapiskat First Nation is deeply concerned about the long-term cumulative impacts from the opening of the western portion of our territory to development. The location of the proposed road corridor is located in an ecologically sensitive area – it is near the headwaters of many rivers that drain our territory, and it is also a transition zone between the Hudson-James Bay Lowlands and the Ontario Shield, of particular importance to



ATTAWAPISKAT FIRST NATION

P.O. Box 248
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caribou, wolverine, and other species. Many fish and wildlife populations depend on intact habitats across this large geographic area.

The incremental, cumulative, and regional effects of a developing road network need to be evaluated so that we can determine the effect of the proposed project to our rights and interests. Attawapiskat First Nation believes that access routes, power lines and other infrastructure development must take into account the waters, lands and wildlife populations that are a shared resource with other First Nations. Attawapiskat First Nation finds that project-by-project reviews using individual impact assessments cannot adequately address the cumulative effects of all-season roads and future mining developments on Omushkegowuk territory.

The IAAC has stated that it will not consider the impacts of foreseeable, future development in the Ring of Fire as part of the present IA (Draft Indigenous Engagement and Partnership Plan for the Marten Falls Community Access Road Project IA, p. 2). We are surprised by this decision, especially when it is clear that Ontario is facilitating the road project for the purpose of opening the region to mineral development.

The Draft Tailored Impact Statement Guidelines (the Guidelines) state that “the cumulative effects assessment must include consideration of cumulative effects to rights of Indigenous peoples and cultures, for all potentially impacted groups including those located in the Greenstone mineral belt which will be impacted by increased access to the region by exploration and mineral development projects” (Section 22, p. 105-107). We are concerned about the lack of detailed guidance and the lack of integration with other components of the IA for this critical part of the analysis. The IAAC must require the proponent to detail future development scenarios and their specific impacts on all environmental, social, cultural, and economic components covered in the IA.

Concerns about the consultation process. Attawapiskat First Nation is concerned by statements in Section 6.1 (p. 14) in which the IAAC suggests that the proponent will analyze not only the potential effects on the environmental, health, social and economic conditions of each Indigenous group, but also the “predicted degree (e.g. high, moderate, low) of those effects and resulting impacts on the exercise of Aboriginal and Treaty rights of Indigenous people.” Analyses of impacts to the exercise of our Aboriginal and Treaty rights must be done by Attawapiskat First Nation, not by third parties.

The proponent has thus far carried out almost no consultation with Attawapiskat First Nation. The only instance in which we met with the proponent was on August 13, 2019, when an individual from the proponent’s team of technical consultants held an informal lunch meeting with Charles Hookimaw, Director of Lands and Resources for Attawapiskat. Attawapiskat First Nation is deeply concerned that the proponent will now attempt to hold community engagement meetings at which Indigenous knowledge will be collected, with the assessment of effects on the exercise of Aboriginal and Treaty rights left to the proponent’s consultants. Attawapiskat First Nation is alarmed by the suggestion, in Section 13.1 (p. 58)



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

that “characterizing effects should be based largely on the level of concern expressed through engagement with the impacted Indigenous groups and community members.”

In consulting with Attawapiskat First Nation, the proponent must strive to thoroughly inform us of baseline conditions, project activities, and the project’s predicted effects on the lands and waters. Attawapiskat First Nation needs to have detailed, up-to-date information on the various long-term development scenarios resulting from the proposed road, and information on the cumulative impacts the road will bring to the territory. Attawapiskat First Nation requires independent technical assistance so that we can respond knowledgeably to the technical issues raised by the proposed road project. Only through meaningful consultation will our community be in a position to assess the project’s impacts to our rights and interests.

In other words, Attawapiskat First Nation is not prepared to participate in engagement activities at which our community’s knowledge and concerns are collected by the proponent (see Section 6.2, p. 14). The proponent must first approach Attawapiskat First Nation to arrange a series of informational meetings at which the community can learn about all aspects of the project and the IA process and ask questions. The proponent must provide us with all the necessary information in a timely way before we are able to express our concerns. The proponent should then fund a series of internal Attawapiskat First Nation meetings at which our land users can discuss the project and its potential impacts to the exercise of our Aboriginal and Treaty rights. Our land users must also have the opportunity to discuss internally what knowledge we are in a position to share as part of the proponent’s collection of baseline information.

The Guidelines state that Indigenous knowledge will be used to propose mitigation measures. Attawapiskat First Nation reminds the proponent that mitigation does not equal accommodation. The basis of accommodation is the nation-to-nation relationship between the Crown and Attawapiskat First Nation.

Attawapiskat First Nation must be consulted by IAAC and the relevant federal departments on the issuance of any authorizations that affect the exercise of our Aboriginal and Treaty rights. The authorizations on which we require consultation include, but are not limited to, those issued by DFO under the Fisheries Act and Environment Canada under the Species at Risk Act.

Concerns about Ontario’s role as project facilitator and proponent. Marten Falls First Nation is named as the proponent, yet Ontario’s Long-Term Infrastructure Plan clearly states that the province is supporting Marten Falls First Nation to plan and construct an access road connecting the community to the existing provincial highway network at Aroland/Nakina. According to *Building Better Lives: Ontario’s Long-Term Infrastructure Plan* (2017), “Ontario will continue to support Marten Falls to undertake further technical and environmental studies that could inform planning and development of a north-south access road tied to the business case for, and development of, chromite mining in the Ring of

ATTAWAPISKAT FIRST NATION

P.O. Box 248
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Fire. Building these roads is a critical step in realizing the economic benefits of one of the largest mineral-development opportunities in Ontario in almost a century [emphasis added].” The Plan goes on to say that “Ontario is working to support these First Nations as they address all regulatory requirements, so that this unique environment is protected” (p. 93).

Attawapiskat First Nation questions whether the MFFN Community Access Road Project is truly “community-led” and requests information on Ontario’s role in addressing regulatory requirements, given the apparent conflict of interest between Ontario’s role as environmental regulator and Ontario’s role as project facilitator.

Concerns about the WaWang’Wajing Supply Road. Attawapiskat First Nation is concerned that the WaWang’Wajing Supply Road will be evaluated separately when it is clear from the provincial draft EA Terms of Reference that provincial interest is for one road to be built to serve both community access and industrial supply needs. It can reasonably be expected that if the MFFN Community Access Road project moves ahead, the WaWang’Wajing Supply Road will also be built. Attawapiskat First Nation therefore requires that the WaWang’Wajing Supply Road be evaluated as part of the impact assessment for the MFFN Community Access Road.

Specific comments

Section 3.2, p. 2: The Guidelines state that the Impact Statement will “focus on activities with the greatest potential to have environmental, health, social and economic effects on Indigenous people and the impacts to the exercise of Aboriginal and Treaty rights of Indigenous peoples.” There has been no consultation with Attawapiskat First Nation to discuss which project activities have the potential for impacts to the exercise of our Aboriginal and Treaty rights. The Guidelines go on to say that the proponent must include sufficient information “to adequately predict adverse and positive environmental, health, social, and economic effects, the interaction between those effects and any disproportionate effects for diverse subgroups.” Attawapiskat First Nation is concerned that the proponent is permitted to begin data collection for impact assessment without first carrying out meaningful consultation with Attawapiskat. Our community must itself be in a position to determine (1) the activities with the greatest potential for negative effects, and (2) the criteria that should be used to predict adverse impacts. Attawapiskat First Nation underlines that asking our community for input on these matters during the data collection phase of the impact assessment does not meet our standards for meaningful consultation.

Section 3, p. 1-6: Attawapiskat First Nation requires that the Impact Statement clearly describe the ownership and control of the project and its components.

ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

Section 4.1, p. 7: Attawapiskat First Nation understands that Marten Falls First Nation is the proponent for the purpose of the impact assessment process, but that it is not the owner of the road, nor will Marten Falls First Nation be funding the construction and maintenance of the road. For this reason, the purpose and need for the project must be detailed, not only from the point of view of Marten Falls First Nation, but also from the point of view of those parties with a financial and ownership stake in the road.

Section 4.2, p.7: The Guidelines state that “the proponent may report the comments or views of Indigenous peoples ... on the proponent’s need statement.” The decision on whether or not to include Indigenous views in the need statement should not be left to the proponent. Attawapiskat First Nation requires that our comments on the Need Statement be included in the Impact Statement.

Section 4.2 and 4.3, p. 7: As described in our General Comments above, Ontario has tied its funding and support for this road to the supposed business case for mineral development in the Ring of Fire. Attawapiskat First Nation is therefore concerned that the Guidelines do not require the proponent to ensure that the *project* is technically and economically feasible (an analysis that would include the economic feasibility of mineral extraction in the Ring of Fire), but do require that *alternatives to the project* be justified in terms of technical and economic feasibility.

Section 4.4, p. 8-9: The Guidelines state that the Impact Statement must identify studies with respect to the region related to the designated project. Attawapiskat First Nation has not yet finalized its Community Based Land Use Plan and is concerned that the proposed road project interferes with Attawapiskat’s decision-making authority over areas of shared use. Attawapiskat First Nation emphasizes that land use plans cannot be used to assess the sustainability of the road and the future development scenarios arising from it. The cumulative, regional effects of the proposed road project must take into account biodiversity, freshwater, climate change, and aboriginal and Treaty rights – matters that are not addressed by the land use plans of individual First Nations.

Section 6, p. 13: Attawapiskat First Nation emphasizes that our Indigenous knowledge is not simply input to be manipulated and assessed by third parties. Our First Nation must have control over how our knowledge is applied and interpreted, and how it relates to the Indigenous rights and interests that could be impacted by the project.

Section 7.1, p. 17: Attawapiskat First Nation is concerned that the indicators and measures used to determine ecosystem health and integrity have already been identified by the proponent and the IAAC, without the input of Attawapiskat First Nation.

Section 7.1, p. 17: Current conditions in Omushkegowuk territory should not be taken as baseline conditions with which to compare the effects of future road and resource development. The baseline conditions section of the IA must include details on the historic range contraction of wildlife such as



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

caribou, as well as information on the existing, cumulative effects to the exercise of our Aboriginal and Treaty rights.

Section 7.2, p. 21 and Section 8.11, p. 41: Attawapiskat First Nation is concerned that the Guidelines prescribe a narrow approach to the use of existing information sources – “limited to the goals of estimating the species likely to occur in the study areas, and to identifying the potential timing of migration passage ... or the general dates of breeding.” Attawapiskat First Nation requires that baseline data include studies of how changing patterns of forest disturbance, predation, and other ecological factors affect wildlife use of habitat. Sources of information for caribou must include MNRF data on critical habitat, existing levels of disturbance, and population status and trend for the relevant caribou ranges.

Section 7.4, p. 23: Spatial boundaries for evaluating climate impacts should extend beyond Canada. The Hudson Bay Lowlands comprise one of the world’s largest carbon stores and the peatlands in this ecozone play a major role in moderating climate change by sequestering atmospheric carbon.

Section 7.4, p. 24-25: Attawapiskat First Nation notes that a PSA plus a 10-40 km buffer is likely inadequate for wolverine and caribou, as these are species with large spatial requirements, low population growth rates, and high sensitivity to human disturbance.

Section 8.1, p. 26: Dust deposition must be monitored with particular attention to impacts on wildlife, including caribou, which may avoid vegetation affected by dustfall during road construction and operation.

Section 8.5, p. 29-30: Attawapiskat First Nation must be involved in identifying a regional study area of sufficient size to capture effects to wetlands.

Section 8.8, p. 33 and Section 14.3, p.64: Attawapiskat First Nation requires that the proponent examine all alternatives for vegetation control (including manual vegetation control methods). If herbicide use is proposed as part of an integrated vegetation management system, the predicted impacts must be detailed with specific reference to water and wetlands and to the climate/soils of the boreal forest and James Bay lowlands.

Section 8.9, p. 34: Attawapiskat First Nation requires that baseline studies of lakes which are usually focused on pelagic habitats not overlook the littoral margins, as littoral margins have high biodiversity, are particularly sensitive to land use changes, water levels, and climate change, and can provide a useful monitoring tool for measuring future environmental change. Attawapiskat First Nation notes that baseline data collected now will already show the impacts of climate change (longer open-water period, increased production), so that what is being measured are not truly “baseline” conditions. This needs to be acknowledged the results of the baseline monitoring interpreted accordingly.



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

Section 8.12, p. 42-46: Attawapiskat First Nation does not support collar or aerial surveys for caribou as these are disruptive to the animals, especially during the calving season, and would yield little information that would be relevant to the road IA. We prefer knowledge and information provided by hunters and other users of the land to identify and assess the importance of caribou habitat.

Section 10, p. 51: As currently drafted, the Guidelines state that “in preparing a baseline, the proponent must identify the social area of influence of the project and prepare a community profile.” The Guidelines go on to suggest that “baseline data can often be found in secondary information sources, such as census data, government publications and academic literature. Where secondary sources are unable to provide the required information, primary sources such as surveys, key informant interviews, focus groups or other primary research methods should be used.” Attawapiskat First Nation questions how the proponent will determine the likely health and social impacts on Attawapiskat First Nation. Attawapiskat First Nation is not in a position to determine the health and social impacts of the project until our land users have reviewed the IA, have had independent technical advice on the IA, and are in a position to understand how the project and future development scenarios associated with the project will affect our lands, waters, and wildlife populations.

Section 11, p. 52, Section 12.2, p. 55-56, and Section 18, p. 84-87: Attawapiskat First Nation notes that the Guidelines for documenting baseline economic conditions do not require the proponent to consider the mixed (hunting-wage) economy of neighbouring Indigenous communities such as Attawapiskat. Our hunting, fishing, and trapping economy provides the economic basis for the exercise of our Aboriginal and Treaty rights. The economic component of “current use of lands and resources for traditional purposes” (Section 12.2) must therefore be described in both the baseline and effects assessment sections of the IA.

Sections 14.2 and 14.3, p. 61-63: Attawapiskat First Nation requires that assessments of impacts to surface water and fish include an assessment of how soil disturbance from the construction of the road, access roads, work camps, quarries, and other sites, will contribute to mercury methylation and the mobilization of methyl mercury through changed water flows. Attawapiskat First Nation is concerned about the downstream impacts of methyl mercury to waters and fish and how climate change will exacerbate these effects.

Section 14.3, p. 63: Attawapiskat First Nation notes that the aggregate needed for road construction will be mined in the headwaters of rivers that flow through our territory. Gravel will be sourced from eskers and other deposits of glacial till that have potentially high chromium levels. The IA must consider how the facilities required to produce aggregate, the rock stockpiles, waste materials, and road construction will impact downstream levels of chromium and other metals.



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

Section 15.1, p. 64-67: Attawapiskat First Nation is concerned that the proposed road project will result in a decline in sturgeon populations that are shared with Marten Falls and other First Nations. Sturgeon gather in spring spawning aggregations in fast flowing water at precisely the locations favoured for road construction across rivers. The IA must examine the impact of road crossings on spawning sturgeon. The IA must also examine how road crossings will contribute to the accessibility of spawning sturgeon and increase the vulnerability of sturgeon to potentially unsustainable harvesting pressure.

Section 15.2, p. 67-69: Ducks and geese are important components of First Nations diets, and waterfowl habitats are significant wildlife habitats. Waterfowl migration staging/stopover areas should be assessed separately from the planned breeding bird surveys and Indigenous knowledge must be used to identify habitats important for waterfowl migration.

Section 15.3, p. 69: In addition to Indigenous knowledge, the Caribou Screening Tool (CST) should be used for reviewing the proposed road and assessing it for adverse effects on caribou and caribou habitat. The CST is an analytical tool that tracks ongoing cumulative disturbance. It provides a consistent method of screening activity proposals against caribou values in each of the caribou ranges.

Section 15.4, p. 71: The Guidelines make incorrect use of the recommended 500m buffer zone in analyzing impacts of disturbance to caribou. The *Scientific Assessment to Inform the Identification of Critical Habitat for Woodland Caribou, Boreal Population* (2011), cited on p.71 of the Guidelines, indicates that a 500m buffer is to be used only to estimate total range-level disturbance to caribou, with the assumption that the habitat within 500m of roads or other developments is functionally unavailable to caribou. As stated on p. 8 of the *Scientific Assessment* document, the 500m buffer is “an area assumed to be functionally unavailable to caribou due to its proximity to anthropogenic development.” The 500m buffer should therefore not be used to represent the combined effects of increased predation and trends in disturbance to habitat.

Section 15.4, p. 71: Attawapiskat First Nation is deeply concerned that disturbance to caribou will be measured only in terms of the immediate impacts of the proposed road, and not with reference to the cumulative effects of the roads and mining developments that will inevitably follow. For example, the Guidelines ask the proponent to “determine whether the project is expected to compromise the ability of ranges to be maintained at the disturbance management threshold and provide a rationale for the conclusion.”

Section 15.4, p. 74: Both road avoidance and the risk of vehicular collisions must be evaluated with respect to the projected levels of traffic resulting from various development scenarios in the Ring of Fire. Attawapiskat First Nation questions how the IAAC arrived at the 10km guideline for assessing indirect impacts of the road to caribou.



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

Section 15.5, p. 76: Attawapiskat First Nation requires that the IA include an analysis of how environmental impacts resulting from the project will be exacerbated by climate change. For example, scientific analyses suggest that even in the absence of land use change, caribou herd viability is likely to decrease as climate change allows for an expansion of moose – and associated predator – populations. Mercury mobilization is also expected to increase in northern lakes and wetlands as a result of climate change.

Section 19.1, p. 88: As noted in the general comments above, mitigation does not equal accommodation. Mitigation measures such as general guidelines for the timing of construction activities may help to limit the overall scale of the impact, but these measures are not a substitute for the accommodation of Aboriginal and Treaty rights.

Section 19.1, p. 89: Attawapiskat First Nation is concerned that the measures listed here, including employment and procurement opportunities and cultural sensitivity training for non-Indigenous employees are being suggested to the proponent as potential mitigation and accommodation measures, before the proponent has consulted with us and neighbouring communities on the nature and scale of project impacts.

Section 20, p. 91 and Section 21, p. 101: Attawapiskat First Nation is concerned that the IAAC is leaving it up to the proponent to decide which mitigation and accommodation measures are “technically and economically feasible.”

Section 20, p. 98: The Guidelines suggest that the proponent rather than the IAAC will be applying the mitigation hierarchy. Since compensation measures will happen off-site or after the damage has already been done, the existence of offsetting as an option means that earlier stages of the mitigation hierarchy – the avoidance or minimization of harm – are not always fully considered.

Section 20, p. 100: The Guidelines suggest that mitigation of project impacts is a type of accommodation measure. Attawapiskat First Nation underlines that mitigation does not equal accommodation.

Section 21, p. 101: Attawapiskat First Nation objects to the idea that the proponent, equipped with knowledge of “best practice or evidence-based thresholds,” “multi-criteria analysis,” and “risk assessment and modelling,” will determine the nature, magnitude, timing, and reversibility of residual effects. The impacts of residual effects to Attawapiskat First Nation’s rights and interests can only be assessed by our community, not by third parties. The “level of concern” expressed by our land users during engagement sessions does not enable the proponent to determine the scope and nature of impacts to the exercise of Aboriginal and Treaty rights.



ATTAWAPISKAT FIRST NATION

P.O. Box 248
Attawapiskat, Ontario P0L 1A0

Section 21, p. 103-104: The Guidelines suggest that the scope of residual impacts can be measured in terms of the percentage of habitat or the percentage of a wildlife population that is eliminated by the project. Attawapiskat First Nation considers these measurements as arbitrary, and not necessarily consistent with how our community members characterize the severity of impacts to Omushkegowuk territory.

Section 26, p. 114: Attawapiskat First Nation must be consulted directly on follow-up monitoring programs. Such programs should not be designed without the input of our land users and without consideration of ongoing impacts to the exercise of our Aboriginal and Treaty rights.

Section 26, p. 116-117: Attawapiskat First Nation reiterates that we do not support collar or aerial surveys for caribou as these are disruptive to the animals, especially during the calving season, and would yield little information that would be relevant to the road IA. We prefer knowledge and information provided by hunters and other users of the land to identify and assess the importance of caribou habitat.

Yours Truly,

<Original signed by>

Chief David Nakogee
Attawapiskat First Nation

CC: Charles Hookimaw, Director of Lands and Resources, AttFN
Deputy Chief, Louis Edwards, AttFN
Wayne Turner, CEO, AttFN