

# BEAMISH LAW

March 24, 2020

Via email: [iaac.webequie.aeic@canada.ca](mailto:iaac.webequie.aeic@canada.ca) and  
[CEAA.MartenFalls.ACEE@canada.ca](mailto:CEAA.MartenFalls.ACEE@canada.ca)

Impact Assessment Agency of Canada  
Ontario Region  
600-55 York Street  
Toronto ON MSJ 1R7

**Attn: Caitlin Cafaro, Project Analyst, Crown Consultation Coordinator**

Dear Ms. Cafaro,

**Re: Webequie First Nation Supply Road Project and Marten Falls First Nation  
Community Access Road Project - Comments re potential adverse impacts on  
rights and Community-Specific Annex to the IEPP, and additional concerns**

I am counsel for Fort Albany First Nation with respect to the impact assessment processes for the above-noted projects.

This letter is to respond to the Agency's correspondence sent February 24, 2020, regarding the commencement of the impact statement phase of the impact assessments for the Webequie First Nation Supply Road and the Marten Falls First Nation Community Access Road. It also sets out additional concerns related to COVID-19, the Northern Road Link, and the regional impact assessment for the Ring of Fire.

This letter confirms the comments made during our telephone discussion on March 12, 2020.

## **Community-specific annex to the IEPP**

I confirm Fort Albany First Nation's interest in developing community-specific annexes to the Indigenous Engagement and Partnership Plans.

As discussed on March 12, given that this is a new process, Fort Albany cannot state with certainty now what should be included in these annexes, and they will need to be developed and updated on an ongoing basis.

Fort Albany has a definite interest in the Crown facilitating opportunities for meeting and discussing these Projects with other First Nations in the region, particularly those with whom it has shared traditional territory and common interests through Treaty No. 9.

901 King Street West, Suite 400, East Tower, Toronto, ON M5V 3H5  
Phone: (647) 490-5219 Fax: (647) 498-1649  
[sarahbeamish@beamishlaw.com](mailto:sarahbeamish@beamishlaw.com)

### **Potential adverse impacts on rights**

With respect to the versions of the “Attachment 4” provided for both Projects, Fort Albany would like to specify that the impacts on its rights must be understood in relation to its entire traditional territory, not only its reserve location. Fort Albany’s traditional territory is extensive and shared with many other First Nations in the region, and includes both proposed project sites.

Further, in relation to treaty rights, Fort Albany notes that any reference to Treaty No. 9 (including impacts on rights protected thereby) must be assessed in accordance with the whole treaty as it was understood by Fort Albany when it was signed. It is known and documented that the written English version of the treaty is not the same as the treaty as it was verbally presented to and understood at the time of signing.

The points made in the “Attachment 4” for both projects are fairly general, and it is not clear what is intended to be captured by all of them. So for emphasis, Fort Albany repeats the detailed submissions made in its comments dated January 30, 2020.

To add specific points with respect to the Webequie Road, the “Attachment 4” should include:

- Potential impacts on hunting, trapping, and harvesting (not only fishing as currently listed);
- Potential impacts on important sites;
- Potential contamination of country food;
- Potential changes to health related to changes to country foods;
- Potential changes to physical and/or mental health.

Fort Albany may identify further potential impacts on its rights as the assessment processes proceed.

### **Additional concerns related to COVID-19 and the Northern Road Link**

As noted during our telephone call, Fort Albany is concerned at how COVID-19 will impact on consultation processes and that it could greatly reduce their ability to participate meaningfully, if processes are not delayed.

There are currently travel restrictions in the community that make it impossible for visits to the community, and public health needs will also limit the ability for community members to participate in community meetings, interviews, and so on for the foreseeable future. Further, leadership’s attention is heavily focused on emergency response and preparedness, such that there is very little capacity to engage with these consultations right now.

Fort Albany requests an update at the Agency’s earliest convenience as to how the timelines and processes for this impact assessment will be adjusted in light of the COVID-19 pandemic, with a particular focus on how the Agency will ensure that the duty to consult is fulfilled.

Finally, Fort Albany repeats its concerns that the Northern Road Link (NRL) announcement made recently by Ontario, Marten Falls First Nation, and Webequie First Nation complicates these two Projects and impact assessments, as the NRL would clearly amplify and add to the impacts of these Projects. Fort Albany understands that it is the Agency's view that the NRL is a distinct project with different proponents and must be treated separately, but Fort Albany is concerned that this separation is artificial and that the current impact assessment processes are going to be inadequate under this approach.

It appears that under the current impact assessment regime, it may be possible for proponents to undermine the robustness of the process and diminish affected parties' ability to engage effectively by introducing large projects in a series of smaller parts, each of which gets treated in isolation and is individually easier to get approved. Fort Albany is not convinced that the cumulative effects analysis requirement is sufficient to overcome this problem, particularly as they have also been told that the processes will not benefit from the Regional Assessment of the Ring of Fire Area.

Thank you.

Yours truly,  
<original signed by>

Sarah Beamish  
SB/sb

