

**SUBMISSION BY KEBAOWEK FIRST NATION  
TO THE IMPACT ASSESSMENT AGENCY OF CANADA  
ON THE TAILORED IMPACT STATEMENT GUIDELINES AND  
INDIGENOUS ENGAGEMENT AND PARTICIPATION PLAN FOR THE  
GAZODUC ENVIRONMENTAL ASSESSMENT  
IAAC REFERENCE NO. 80264**

20 JULY 2020

#### NOTE

This document is the final version of the submission of the Algonquin Nation of Kebawek adopted by the Chief and Council the 20th of July 2020.

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## 1. BACKGROUND AND ESSENTIAL ISSUES

This report is submitted by the Algonquin First Nation of Kebaowek in response to the draft Tailored Impact Statement Guidelines (TISG) and Indigenous Participation Plan developed by the Impact Assessment Agency of Canada (IAAC) on January 30, 2020 for the Gazoduc Inc. project.

The proposed natural gas pipeline project is located within, and has the potential to significantly affect Kebaowek First Nation (KFN) and other communities within the Algonquin Nation rights and title territory.

The deep concern of Algonquin First Nation communities regarding restricted timelines and financial resourcing for the preparatory stage of the Impact Assessment Act (2019) has been demonstrated in numerous letters and meetings including an Algonquin Chiefs meeting with the Impact Assessment Agency of Canada's Director of Crown Consultations, Ian Ketcheson in February 2020.

We remain concerned about the inflexibility of the time management regulations and the fact that this assessment continues to move forward while key regulatory components are yet to be finalized.

KFN believes that the current fast track environmental assessment planning process will need to be amended as part of an Indigenous Co-operation Agreement in order to formalize the review process in concert with the Canada- Quebec Cooperation Agreement for the Gazoduc Inc Impact Assessment Process.

KFN can not accede to this process or Canadian environmental law without negotiating regulatory provisions within this Impact Assessment Process that recognizes Algonquin authority, jurisdiction and stewardship over our lands and waterways through a formal Indigenous Co-operation Agreement.

As such, KFN does not consent to this process and the following comments are not intended to indicate support of the current Impact Assessment regulatory framework as it applies to this project.

It is important to note that in order to safeguard the need for immediate negotiation of an Indigenous Co-operation Agreement for the Gazoduc Inc. Impact Assessment that the following comments are recorded as a consultation under protest and this submission cannot nullify any of our positions, claims, actions or territorial negotiations in any way whatsoever. These comments do not constitute consultation in away, nor discharge the Crown's duty to consult per section 35 of the *Constitution Act, 1982*.

## 2. ALGONQUIN COMMUNITY AND NATION PORTRAIT

The Algonquin Nation is made up of eleven distinct communities recognized as Indian Act bands. Nine are based in Quebec and two are in Ontario. The Algonquin Anishinabe Nation Tribal Council is comprised of six Algonquin first nations: Kebaowek, Long Point, Kitigan Zibi, Lac Simon, Abitibiwinni and Kitcisakik. KFN works in collaboration with the Algonquin Nation to ensure that Impact Assessments can enhance our strengths, our knowledge and our expertise on the territory affected by the Gazoduc project. Ad hoc meetings were held to discuss the policy directives to be analyzed and treated, particularly jurisdiction and the lack of supporting regulation for the Gazoduc project assessment.

The Algonquin Nation has never given up aboriginal title or jurisdiction to our traditional territory. This includes all the lands and waterways within the Ottawa River watershed on both sides of the Ontario-Quebec border. Aboriginal title is held at the community level within the Algonquin Nation where we assert unceded aboriginal rights including title under Section 35 of the Canadian Constitution.

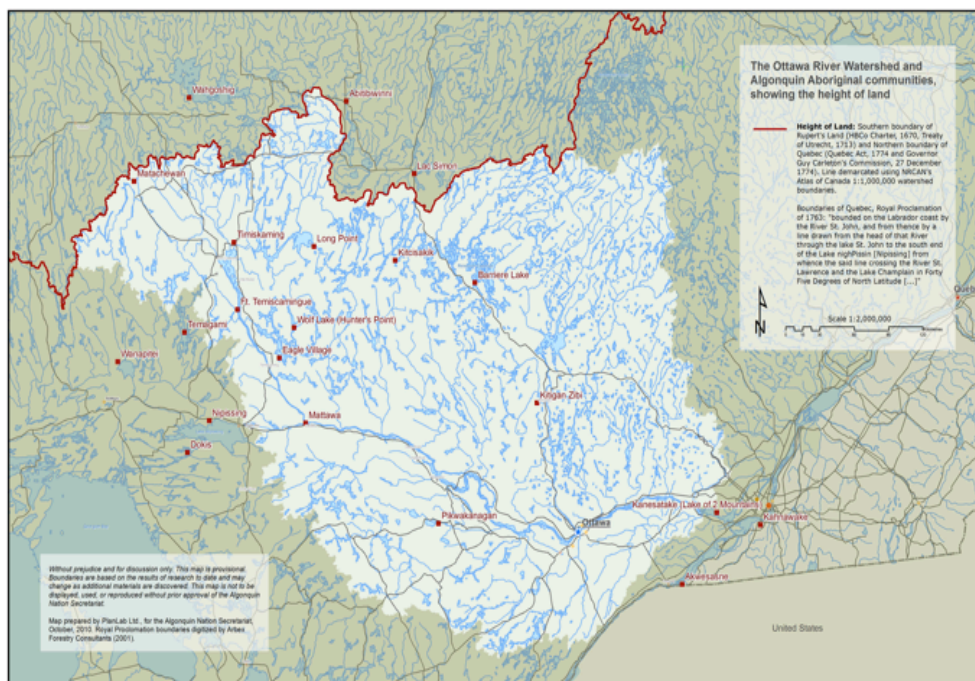


Figure 1: The Ottawa River Watershed and Algonquin Communities

Inherently, our lands and waters are part of the Anishinaabe Aki a vast territory surrounding the Great Lakes in North America. For centuries we have relied on our lands and waterways for our ability to exercise our inherent rights under our own system of customary law and governance known to us as Ona'ken'age'win. This law is based on mobility around the landscape, the freedom to hunt, gather and control the sustainable use of

our lands and waterways for future generations.

Algonquin social, political and economic organization was based on watersheds, which served as transportation corridors and family land management units around the Ottawa River Basin. Algonquins occupy the entire length of the Kichi Sipi or Ottawa River (which literally translates as "big river") from its headwaters in north central Quebec to the sacred sites at Bird Rock, and Akikodjiwan, Chaudière Falls in Ottawa and all the way out to its outlet in Montreal.

Canada has an obligation to recognize and respect the sovereignty of Algonquin peoples who have maintained their social, cultural, and political identity in this Impact Assessment. KFN cannot accept inequitable distribution or limited role of actual Algonquin peoples in consultations on our own unceded territories.

### 3. INDIGENOUS LED IMPACT ASSESSMENT

Not unlike other First Nations in Canada, KFN wants indigenous information to be properly collected and reviewed in impact assessments. If it is done poorly, bad things happen. Historically, KFN and other Algonquin communities have not had a meaningful voice in impact assessment or role in actual decision-making on major projects on Algonquin territory.

KFN has experience working with Canadian environmental assessments in the 2013 Kipawa Rare Earths Project, the 2013 Public Works and Government Services Canada Temiskaming Ontario Dam Replacement and the 2019 Public Services and Procurement Canada Temiskaming Quebec Dam Replacement project assessments.

Although KFN has commented on environmental legislative reform and regulatory development under the new Impact Assessment Act 2019, KFN and other Algonquin requests for regulatory accommodations have remained outside of the regulatory development as it relates to the IAA 2019.

In general, the TISG is well written and reasonably comprehensive considering the ecological, social, and economic context. However, the process continues to appear to be designed to only allow effected First Nations to provide a "narrow range of inputs to the process — largely in the form of baseline traditional knowledge and traditional use information — without having any meaningful control over the process itself, or the outputs in the form of decisions about whether projects go ahead and under what conditions or rules."<sup>1</sup>

Since the summer of 2019, KFN has requested to negotiate a "consultation framework agreement" with the Agency and a "process" agreement with the

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<sup>1</sup>Gibson, G., Hoogeveen, D. and MacDonald, A., 2018. Impact Assessment in the Arctic: Emerging Practices of Indigenous-Led Review. *Gwich'in Council International*. [https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review\\_FINAL\\_web\\_0.pdf](https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review_FINAL_web_0.pdf)

proponent to fund our participation in the development of the Gazoduc Environmental Impact Statement (EIS). Neither have been attempted by either the Agency or the proponent.

Without these agreements in place the proponent has gone ahead and completed its baseline studies in the absence of any Indigenous input. What is more, the Agency has neglected to implement jurisdiction regulations as to the nature of our participation, as prescribed under the Impact Assessment Act.

While the extremely aggressive timelines pursued by the proponent and the Agency proceed, it is KFN's perception that the current Gazoduc impact assessment including the early planning phase was designed less to protect Algonquin rights and title and the environment we depend upon and more to expedite a major industrial development. Therefore, we find the current government-run and proponent-driven impact assessment system for the Gazoduc Inc. seriously flawed despite KFN's the aims of respect and reconciliation enshrined in the preamble to the Act.

We request, accordingly, a process which is designed and conducted to support meaningful Indigenous input and an adequate degree of control by Algonquin communities — on our own terms and with our own approval.

Algonquin communities are dissatisfied with the status quo in provincial and federal impact assessment processes, and the associated lack of protection in environmental assessments for Indigenous culture, rights, and traditional use.

KFN is therefore requesting the establishment of the jurisdictional regulation and a subsequent Indigenous-led impact assessment(s) outside or alongside the formal system that more closely matches Algonquin community priorities, worldviews, and legal customs (e.g., Bruce and Hume 2015).<sup>2</sup>

We disagree with Section 1.5 of the TGIS that the proponent "must describe qualifications of Indigenous individuals preparing sections of the Impact Statement related to environmental, social and health effects and impacts on Indigenous peoples."<sup>3</sup> Algonquin communities have deep-seated ecological and environmental knowledge, acquired through long and intimate association with the land. Furthermore, KFN along with other Algonquin communities have completed and ongoing field based research studies with species at risk, for example, eastern wolf, lake sturgeon, moose where KFN supports and collaborates with other Algonquin communities and organizations on fish and wildlife research, monitoring and technical support for scientific studies related to land and waterway protection.

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<sup>2</sup> Bruce, A. and Hume, E., 2015. The Squamish Nation Process: Getting to Consent. *Ratcliff & Company*.

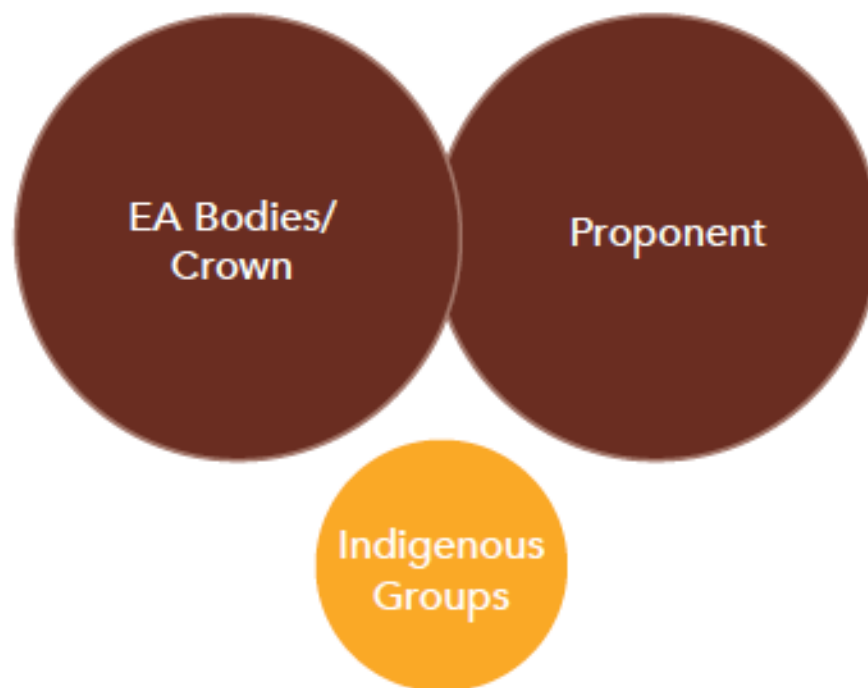
<sup>3</sup> <https://ceaa-acee.gc.ca/050/documents/p80264/135390E.pdf>

In conclusion KFN adopts the following working definition for “Indigenous-led impact assessment” as:

“A process that is completed prior to any approvals or consent being provided for a proposed project, which is designed and conducted with meaningful input and an adequate degree of control by Indigenous parties — on their own terms and with their approval. The Indigenous parties are involved in the scoping, data collection, assessment, management planning, and decision-making about a project.”<sup>4</sup>

KFN can not accept a lesser relationship as offered by the Agency therefore, it seems necessary that the impact study be written as conditional until terms for a fair and meaningful impact assessment process are determined.

## FIGURE 1: RELATIONSHIPS IN TYPICAL EXISTING IMPACT ASSESSMENT SYSTEMS



Gibson, G., Hoogeveen, D. and MacDonald, A., 2018. Impact Assessment in the Arctic: Emerging Practices of Indigenous-Led Review. *Gwich'in Council International*. [https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review\\_FINAL\\_web\\_0.pdf](https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review_FINAL_web_0.pdf)

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<sup>4</sup>Gibson, G., Hoogeveen, D. and MacDonald, A., 2018. Impact Assessment in the Arctic: Emerging Practices of Indigenous-Led Review. *Gwich'in Council International*. [https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review\\_FINAL\\_web\\_0.pdf](https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review_FINAL_web_0.pdf)



## 4. SPECIFIC TGIS RECOMMENDATIONS

As the TGIS guidelines for the Gazoduc Inc. Project have been pre-determined within set timelines KFN for its part, would like to address separately the following subjects not adequately addressed by the current TGIS guidelines.

### **Section 2 Project Description and Activities**

KFN agrees cumulative impacts of the project must be strongly considered. We agree that the project description components must describe "other physical facilities and activities required for the construction of the pipeline"<sup>5</sup>

As mentioned to the Agency in KFN's comments on the Project description the LNG Quebec plant project and the Gazoduq pipeline are not two separate projects. This reality should be presented clearly in the proponent's project description and activities as the two projects are inseparable, both technically and financially.

### **Section 3 Project Purpose, Need and Alternatives Considered**

According to the promoter, the rationale for part of the project is the fight against climate change as it relates to energy consumption of less polluting fuels. By contrast, one of the longest lasting climate impacts of this project is a deforested corridor in an intact boreal forest.

The promoter and Impact Statement should be able to explore and take into account by comparison the ecological cost of cutting through undisturbed boreal forests and wetlands to implement the proponent's need statement.

We suggest that a weighted grid with objective indicators of sustainable development should be essential for both the analysis of low carbon alternative energy options over deforestation and waterway ecological impacts.

### **Section 5 Description of Engagement with Indigenous Peoples**

There is no regulatory clarity on Indigenous engagement without regulations for both jurisdiction and use of Indigenous knowledge being in place by the Agency.

Guidelines should specify what it means for Indigenous knowledge to be

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<sup>5</sup> Supreme Court of Canada, R. v. Powley, [2003] 2 S.C.R. 207, 2003 SCC 43: <http://scc.lexum.org/en/2003/2003scc43/2003scc43.html>  
Ontario Court of Appeal, R. v. Powley  
[2001]: <http://www.ontariocourts.on.ca/decisions/2001/february/powley.htm>

“applicable”. This should not be left to the proponent to determine.

Include provisions for Indigenous led impact assessment.

Qualified individuals would include someone who, through education, experience or knowledge relevant to a particular matter, would be identified by the community to be relied on by to provide advice within their area of expertise. Knowledge relevant to a particular matter may include Indigenous and community knowledge.

Section 5.1: KFN does not acknowledge the Metis Nation of Ontario outside the parameters of the Powley Test.<sup>6</sup>

## Section 5.2 Record of Engagement

The record of engagement needs to be approved by the effected Indigenous communities- KFN is concerned that the proponent will overstate its efforts to engage with affected Indigenous communities. Explanation for the failure to reach a process agreement must be co-drafted.

## Section 6 Baseline Conditions

### Section 6.1 Methodology

KFN is requesting an equal role for Algonquin communities in the legislation that guides impact assessment.

### Section 6.3 Selection of valued components (VC)

We require that the proponents demonstrate how their models are developed, applied and extrapolated with our community(s). The assessment must adopt a complete definition of biodiversity, not limited to specific VCs.

Algonquin customary law sees all components of the environment we live in as relational and does not support a series of criteria that allows a proponent to determine what is most relevant. An Indigenous led assessment will provide a more holistic approach.<sup>7</sup>

Algonquin Anishinabeg have expected criteria concerning aspects such as the duration of time that each study is to be conducted for. For example, environmental studies must include four seasons of data, so that seasonal variation is well-documented. Indigenous knowledge, such as this are relevant and must inform the baseline information.

We are supportive of the focus on an ecosystem approach that considers how the project may affect the structure and functioning of biotic and abiotic

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<sup>7</sup> These rights, long recognized under Algonquin law, have since been affirmed by section 35 of the *Constitution Act, 1982*.

components with the ecosystem and considering the variability due to potential future climate change.

We likewise support the consideration of resilience of relevant species populations, communities and associated habitats to the effects of the project especially such an analysis for caribou (Val d'or herd), moose, turtles and fisheries.

Methodology must address the impact on aquifers, peatlands and waterways for drinking water human and animals, travel, recreation including the inevitable risk of contamination from construction activities or materials; maintenance; leaks; and, as a worst-case scenario, catastrophic failure resulting in fire and/or explosions.

Methodology must address the resultant impacts on aquatic and terrestrial environments, including water systems, fragmentation of boreal forests and wildlife habitat (aquatic and terrestrial) within Algonquin traditional territory; and the resultant impacts on our activities, rights and cultural practices, including our inherent rights to hunt, fish, gather and travel freely within Algonquin traditional territory.

#### Section 6.4 Establishing spatial and temporal boundaries

The appropriate spatial boundary for considering social and cultural impacts of the project is the total ancestral homeland of the Indigenous Nations affected by the linear project proposal.

Boundaries for social, cultural, health, and economic values should be developed with the Algonquin community(s). We suggest these could include: precolonization, Royal Proclamation (1763), post-colonialism to Treaty 9 (1906), residential schools to 1980s, and 1980s to current with the latter period focused on government policy, programs, and projects in the far north based on Canada and Quebec's interests in natural resource extraction, economic development, etc.

Project Planning boundaries must work in relationship to landscape considerations of Algonquin social and cultural values and ecological processes such as fire and large mammal habitats.

### **Section 7- Baseline Conditions- Biophysical environment**

#### Section 7.5 Riparian and Wetland Environments

We support the direction provided particularly relative to the eco-system services they provide and ensuring the wetlands are considered in the context of the larger watersheds of which they are a part.

#### Section 7.7 Fish and Fish Habitat

The productivity and contribution of fish habitat in the project area to regional fish populations (i.e. interconnections between habitat

types/areas) must be documented, this is consistent with an ecosystem approach.

#### Section 7.9 Vegetation and other wildlife and its Habitat

Requires a description of the natural disturbance regime (e.g., fire, floods, droughts, etc.). In this case, historical and current fire disturbances should be considered at the largest spatial scale, including the linear corridor planning area. Any proximate activities that have resulted in changes to fire regimes should also be described (e.g., fire suppression, flooding, insect infestations).

Specifically the proponent should also consider the progression of the spruce budworm epidemic in the impact assessment on vegetation and regional cumulative deforestation effects.

#### **Section 7.10 Species at risk and their habitat**

Although the impact statement requirements for species and risk and their habitat are comprehensive we recommend that the proponent provide an analysis of public investments in the protection of the Val d'Or caribou herd and their habitat, including wildlife management plans, recovery plans to protect the species in the areas targeted by components of the project.

The assessment must adopt a complete definition of biodiversity, not limited to species at risk.

The assessment must embrace and understand the relationship between biodiversity and Algonquin livelihoods and quality of life, rights, values, dependencies, and benefits

The proponent must also take into account the possibility of the spread of invasive species on Algonquin territory, and describe the disturbances that could result.

#### **Section 8 Baseline conditions- Human health**

#### **Section 9 Baseline conditions –Social cultural context**

#### **Section 11- Economic conditions**

These baseline conditions would be determined by Indigenous led community assessments only.

Kwiatkowski (2011) provides a model of Indigenous concepts of health based on the community and other sources (e.g., Union of Ontario Indians and Anishnabek Health Secretariat 2009).<sup>8</sup>

We also recognize there are overlaps between economic, social, health and cultural conditions and suggest the following indicators:

- Community well-being, community safety, community connectedness,

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<sup>8</sup> <http://www.anishinabek.ca/wp-content/uploads/2016/07/Through-the-Eyes-of-a-Child-FN-Enviro-Health.pdf>

economic stability, economic diversity, traditional land use practices, food security, disruption to land connections and food sovereignty.

There is a very obvious need to ensure community led economic, social cultural and health impact studies are considered in project impact assessment to shape the outcome and results of the assessment.

We recommend community based studies along with land use and occupancy are financed forward by the proponent.

### **Section 13.3 Changes to riparian, wetland and terrestrial environments**

KFN believes that the promoter must take into account the work of the Algonquin communities Aki-Sibi protected area project to study scenarios of new Indigenous protected areas (IPCAs) and other effective measures for conservation (OECMs) contributing to meet Canada's commitments to Target 1 of the Aichi Accord of the international convention on biological diversity.<sup>9</sup>

KFN is the lead community for the Algonquin Aki-Sibi project amongst 6 other Algonquin community participants.

### **Section 22 Other effects to consider**

#### **Section 22- 1. Effects of potential accidents or malfunctions**

KFN does not support the current regulations under the Pipeline Safety Act where Indigenous rights holders have restricted pipeline access or access granted upon approval only. Algonquin eyes on the ground are a valuable resource in identification of potential accidents and malfunctions that would need to be further examined as part of this assessment.

KFN supports inclusion of "worst-case scenarios" that assess accidents and malfunctions during any season along the corridor taking into account complicating factors such as weather and access.

Algonquin communities require being party to financial liability and compensation plans pursuant to these events should they occur.

A compensation plan should also be developed for fisheries and wildlife particularly for species Algonquin communities depend upon for food security and regional biodiversity.

### **Section 23- Canada's ability to meet its environmental obligations and its climate change commitments**

KFN supports the inclusion of the three main federal areas of focus based on the Convention on Biological Diversity (CBD), Convention on Wetlands of

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<sup>9</sup> <https://www.cbd.int/sp/targets/>

International Importance, and the Convention for the Protection of Migratory Birds in the United States and Canada.

However, an indigenous led assessment or study must indicate how community and indigenous knowledge has been incorporated into the assessment with respect to the potential positive or negative effects of the project on Canada's ability to meet its obligations.

The focus on biodiversity as limited to Species at Risk is wholly inappropriate. Article 14 of the Convention: "Impact assessment and minimizing Adverse Impacts"<sup>10</sup> -- requires its contracting parties (the signatory governments) to introduce appropriate procedures for impact assessment of proposals that might have effects on biological diversity, and to ensure they have ways of taking biodiversity impacts into account.

#### **Section 24- Description of the project's contribution to sustainability**

This section provides direction for developing a qualitative statement of sustainability. KFN recommends the assessment must address whether this proposal will make a net contribution to environmental, social and economic well-being for: 1) public interest; 2) Unceded Algonquin First Nations 3) Treaty No. 9 nations; and 4) the Provinces of Quebec and Ontario.

We recommend the following generic set of decision-making criteria by Gibson (2013) that could be considered with the proponent and Algonquin communities to further develop context-specific criteria.

- long-term socio-ecological system integrity.
- livelihood sufficiency and opportunity for everyone.
- intra-generational equity.
- resource maintenance and efficiency.
- socio-ecological civility and democratic governance.
- precaution and adaptation.
- immediate and long-term integration.<sup>11</sup>

#### **Section 25.2 Follow- up monitoring**

The direction provided to the proponent regarding monitoring seems adequate.

KFN stresses that Algonquin communities have monitored a number of species at risk including turtles, caribou, lake sturgeon, eastern wolves and wolverine on their own territories.

Many of these species require long-term monitoring given the area and

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<sup>10</sup> Ibid.,

<sup>11</sup> Gibson, R.B., 2013. Avoiding sustainability trade-offs in environmental assessment. Impact Assessment and Project Appraisal 31, 2-12.

habitat requirements (e.g., caribou, wolverine) and longevity (e.g., lake sturgeon) and suggest that the proponent and Agency continue to work with Algonquin communities in the design, implementation, and management of monitoring associated with the project, especially for cultural keystone species.

Quebec and Canada should support these efforts in terms of funding and other resources.

## 5.0 COMMENTS- PROVISIONAL VERSION OF THE INDIGENOUS ENGAGEMENT AND PARTNERSHIP PLAN

KFN wishes to highlight the lack of cohesion and coordination between the federal government and the Impact Assessment Act 2019 in terms of the development of supporting regulation for Indigenous jurisdiction and an Indigenous Cooperation Plan with the Algonquin Nation.

While the objectives of the Indigenous Engagement and Partnership Plan are similar they have not been negotiated with our community therefore there remains no agreement on them.

End of Memoire