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VIA EMAIL: IAAC.RegionalRoF-CdFRregionale.AEIC@Canada.ca

January 21, 2021

Re: Request for Information to Inform the Planning of the Regional Assessment in the Ring of Fire

Dear Debra Myles,

The Regional Assessment in the Ring of Fire is a much-anticipated development and provides the Impact Assessment Agency of Canada (IAAC) with a rare opportunity to implement next-generation approaches to impact assessment and honour commitments to reconciliation and nation-to-nation relations. The proposals for mines, all-season roads and related infrastructure in the remote, resource-rich, and ecologically-sensitive area have generated significant controversy and conflict precisely because the potential for wealth generation is very uncertain, while the likelihood of significant and possibly serious, net-negative effects is strong. The expected adverse effects, which include amongst many others, lasting cumulative effects on peatlands and climate, social and cultural disruption to the lifeways of remote Indigenous communities, and serious risks of sexual and gender-based violence to Indigenous women and girls, will derive from the decision to open up the far north through all-season access roads, whether or not any mines are ever built.

The broader region is stewarded by Anishinaabe and Anishinii/Oji-Cree peoples. Historically, and continuing today, the negative impacts of major development and industrial activities are faced disproportionately by Indigenous communities, whose inherent rights, Treaty rights and ways of life are interdependent with the health and wellbeing of the socio-ecological systems that exist across enormous territories. It is absolutely crucial that the peoples whose livelihoods, families, futures and relations rely on the continued ecological and cultural integrity of the region be the drivers of any decision-making processes that will shape Ontario's far north into the future.

In this letter, I write on behalf of Osgoode Hall Law School's Environmental Justice & Sustainability Clinic, one of the original requesters of the Regional Assessment.¹ In considering the planning of the Regional Assessment and the Terms of Reference at this stage, we re-iterate many of the features mentioned

in that original request: that any credible Regional Assessment must be undertaken in genuine partnership with existing Indigenous Governing Authorities (IGA) in the region; that it must be wide in scope and encompass cumulative impacts of all past, present and anticipated developments; and that it must be able to authoritatively guide any subsequent project-level impact assessments.

Recommended Approach to Developing the Terms of Reference

The IAAC's "Information Sheet" indicates that the Province of Ontario is considering how it may participate in the Regional Assessment. Under the *Impact Assessment Act*, the Minister may enter into an agreement with partner jurisdictions to jointly establish a committee. The definition of 'partner jurisdictions' has been broadened in the Act through s.114 when compared to previous environmental assessment legislation. New regulations are required to give the Minister authority to make an agreement with Indigenous governments that are not recognized by a land claims agreement or another Act of Parliament, although partnering with IGAs recognized by land claims agreement is explicitly provided for in the Act.

We would like to draw to the Agency's attention, however, that statements made by the former Minister of Environment and Climate Change, Catherine McKenna, and other government officials during Parliamentary Committee deliberation on the *Impact Assessment Act* indicate a clear intention for the new language to broaden ministerial authority to make agreements with IGAs.² The tenor of these comments indicate that the intention was to create a legislative scheme that would stimulate cooperation with Indigenous jurisdictions on impact assessment, in the spirit of reconciliation.

We have been following progression of project-level assessments conducted at federal and provincial levels for the Marten Falls Community Access Road and the Webeque Supply Road through the media, government press releases and community-sourced awareness. We are becoming increasingly concerned about the extent to which the project-level assessments of proposed roads in the region are advancing out of step with the planned Regional Assessment. For this reason, we urge the Agency to work with Ontario and the proponents to pause the project-level road assessments so that they may benefit from the guidance provided by the Regional Assessment. As mentioned earlier, much is at stake in the decision to irreversibly open up the far north to all-season roads, and the assessment of a broad and wide range of cumulative impacts is essential prior to making that decision.

In this letter, we urge the Minister to begin the necessary conversations with impacted and interested Indigenous communities in the region towards the goal of a joint Regional Assessment in partnership with an Indigenous Governing Authority (IGA). This work must precede any work towards a detailed Terms of Reference for the Regional Assessment.

Recommended Model for the Design of a Regional Assessment

Last spring, I led an interdisciplinary team of researchers in partnership with Neskantaga First Nation to develop a model for an Indigenous-led Regional Assessment for the Ring of Fire. The model was submitted to the Agency and published as a [Synthesis Report](#), outlining guiding principles and the fundamental attributes that should characterize the Terms of Reference for a Regional Assessment. A summary version of that reported is submitted here as Appendix 1 to this letter.

The proposed model emerges from our extensive community engagement and literature review. We wish to put the model on record as one possible, feasible option for undertaking a Regional Assessment that may achieve the buy-in of the region's Indigenous peoples, both in the proximate, affected remote communities and in the downstream or 'down-muskeg' Mushkegowuk communities. The model does not have to be adopted in full, of course, and there are good reasons to debate each of its proposed elements, and to make revisions to the specifics. However, it cannot be said that there are no available models to guide the development of a Regional Assessment in partnership with an Indigenous Governing Authority. In fact, our submission is that Canada must adopt a model that respects existing Indigenous governing authority, implements the free, prior and informed consent (FPIC) standard in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and allows for mitigation of the ongoing social emergencies in the affected communities through the assessment of cumulative impacts, setting of social, cultural and ecological thresholds and development of a regional plan.

On this basis of this research, we recommend the following elements be present in the Terms of Reference:

- a semi-permanent Ring of Fire Commission established by agreement between Canada, Ontario and an Indigenous Governing Authority (IGA) made up of impacted and interested First Nations;
- the Commission, in conjunction with an Elders Council, will develop a framework for cumulative effects; baseline data (including on the ongoing social emergency); criteria for a modified 'positive contribution to sustainability' test; and a regional plan;
- a Joint Review Panel process that operates under the umbrella of the Commission, which is responsible for making subsequent decisions about individual projects proposed for the region, within the parameters established by the Commission; and
- a mechanism for decisions on individual projects to subsequently be made independently by each relevant governing authority.

Rationales for the Major Elements of the Proposed Model:

Local Authority, Indigenous Governing Authority (IGA) and Elders Council

More than mere ‘consultation’ or ‘engagement’ is required where significant Indigenous rights and interests are in play. Indigenous peoples possess inherent jurisdiction and significant governing authority over their homelands, and reconciliation requires the active restoration of that jurisdiction. It is therefore recommended that mechanisms for joint decision-making and co-leadership of the process be central to the organizing structure for the Terms of Reference. It should be for the communities themselves to determine a process for establishing the IGA, once the Minister indicates a willingness to partner.

In conversations with the experts and advisors consulted on the Commission’s structure, it was concluded that an Elders Council should work in an advisory capacity to the Commission. In the [Synthesis Report](#), we provide more detail on parameters for the Elders Council that emerged from our community consultations, but detailed work on defining the scope, mandate and powers of the Elders Council should be conducted by the IGA itself.

State of Social Emergency

Ontario’s far north remains one of the world’s largest, most intact ecological systems. The boreal forest and peatlands play key roles in regulating the climate. Proposed mining in this region has generated significant controversy and conflict because the uncertain potential for wealth generation is accompanied by a likelihood of significant and possibly serious negative impacts and cumulative effects, as recently-proposed infrastructure developments quite literally ‘pave the way’ for multiple mines and generations of extraction. The proposals also present a likelihood of inequitably distributed benefits and risks at a variety of physical and temporal scales, with remote Anishinaabe and Anishini communities and their ways of life particularly vulnerable in this regard. Many of the interested and impacted communities are experiencing an ongoing state of social emergency. Youth suicide is occurring at an alarming rate. This is on top of – as has recently come to national attention in the case of Neskantaga First Nation – boil water advisories that have persisted for up to twenty-six years, and which result in routine evacuations, including one occurrence a few months ago during, moreover, the COVID-19 global pandemic.²

The Regional Assessment process must have these pressing social emergencies at the forefront. This consideration informs the collection of baseline data, which must be very broadly scoped so as to be able to encompass not just the usual ecological, biophysical and human health indices, but also social and cultural wellness, including intergenerational trauma, mental health issues, and the community infrastructure deficits that contribute to and exacerbate them. As such, important baseline data to address in the Terms of Reference will include impacts related to population dynamics, including out-migration

from reserves, barriers to employment, drugs, violence and security, and suicide rates; current socio-economic conditions and relevant trends in the potentially affected communities and in the region of potentially affected communities as a whole, using culturally-appropriate indicators of well-being and quality of life; description of current community wellbeing including information about the capacity, availability, and affordability, where relevant, of local services and infrastructure (ie housing, training, education, day care services, health care etc).

Further, as we detail in the [Synthesis Report](#), opening up the Ring of Fire also presents unique risks for Indigenous women and girls. These include an increase in sex work and human trafficking, increased risks of addiction and substance abuse, gendered violence and assault, and homicide. The Final Inquiry Report into Missing and Murdered Indigenous Women and Girls states explicitly that governments must “do a more thorough job of considering the safety of Indigenous women and children when making decisions about resource extraction on or near Indigenous territories”.³

Because these indicators touch on matters that are local, culturally-specific, and sensitive, it is absolutely imperative that they be examined according to appropriate Anishnaabe and Anishini protocols, giving rise to further justification for why this Regional Assessment must be done jointly with an IGA. In the present moment, communities in the region continue to struggle to deal with ongoing social emergencies, additional to and exacerbated by the COVID-19 global pandemic. As such, a broader and more positive approach that uses the opportunity presented by a Regional Assessment for the Ring of Fire, should be oriented towards finding pathways to durable, positive contributions to sustainability for the region and viable, prosperous futures for its inhabitants in line with their own visions and priorities.

Cumulative Effects Framework and Sustainability Test

As you know, one of the crucial components of an effective Regional Assessment is its consideration of cumulative effects. “Cumulative impacts are the successive, incremental and combined impacts of one, or more, activities on society, the economy and the environment. Cumulative impacts result from the aggregation and interaction of impacts on a receptor and may be the product of past, present and future activities”.⁴ A cumulative effects framework would embed concepts of socio-economic, cultural and environmental sustainability into the Regional Assessment to ensure temporal scopes of impact include the period of effects of past, present and reasonably foreseeable future projects predicted to combine impacts. This special attention to temporal boundaries would ensure consideration of impacts from intensive activities or during valued or sensitive times such as wildlife migration periods, spawning and incubation periods for fish, key harvesting periods and annual cultural gatherings.

The approach of ‘sustainability assessment’ shifts the focus from ‘mitigating significant adverse effects’ to requiring ‘positive contributions to sustainability’ and avoiding adverse effects. Individual and project level assessments are

often centered on mitigation of negative effects and getting projects approved. Adequately considering the relevant sustainability indicators in this case demands a broader lens in order to address the cumulative regional effects of multiple projects and associated infrastructure.

It is our recommendation that the Ring of Fire Commission described above is the most appropriately positioned body to develop the Cumulative Effects Framework and the application of the Sustainability Test. The Commission's generation of a clear vision of what the impacted and affected peoples would like their future to look like will help ensure that the end result is compatible with that vision. This work will generate a regional plan which sets policy guidance for the management of the pace and scale of development, the distribution of revenues, the needed community infrastructure, etc. Without this, the Regional Assessment process is not likely to be accepted by communities in the region.

Conclusion

The Anishinaabe and Anishinii communities that stand to be most impacted by development in the Ring of Fire are remote communities accessible only by air and winter roads. Indigenous peoples are the region's sole occupants. They are the long-term stewards of the lands, and therefore they have the most at stake in both the short and long-term changes in the region. They stand to be the most affected by development and infrastructure as they interact with the land on a regular basis on multiple levels, including culturally, spiritually, socially and economically. They depend on the ongoing ecological integrity of the region to meet livelihood needs, through activities such as hunting, trapping, fishing, and gathering.⁵ But as stewards, the Indigenous Peoples of the area also bring crucial knowledge otherwise unavailable to impact assessment proceedings.

Achieving meaningful accommodation of the significant Indigenous interests affected by the irreversible decision about whether to open this territory up to development requires partnership with an appropriate IGA on the Regional Assessment. This will require a thorough consideration of alternative options and scenarios, so as to determine which projects should go forward, how they should be sequenced in time, and how adverse impacts can be minimized, not just on a project-by-project basis, but overall, on a cumulative level.

The aim of the Regional Assessment should be to foster the necessary respect and reciprocity that can bring potentially impacted communities into substantive, open, and continuous dialogue about visions for the future that deliver sustainable outcomes for the far north region of Ontario.

Sincerely,

<Original signed by>

Dayna Nadine Scott, on behalf of the Osgoode Environmental Justice & Sustainability Clinic

¹ This letter has been written by Dr. Scott with support from JD student Patrick McCaugherty, former MES student Jenna Davidson and several other JD students in the Environmental Justice & Sustainability Clinic (EJSC). Dr. Dayna Nadine Scott is an Associate Professor & the York Research Chair in Environmental Law & Justice in the Green Economy, co-Director of the EJSC, and co-coordinator of the MES/JD program at York University.

² Environment Committee, May 3, 2018; Standing Senate Committee on Energy, the Environment and Natural Resources, February 6, 2019.

² Stefanovich, Dec 18, 2020; Members of Neskantaga came home today to boil water advisory. CBC.

<https://www.cbc.ca/news/politics/neskantaga-boil-water-advisory-water-operator-1.5841277>.

³ National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p 584; Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf.

⁴ Atlin, C., & Gibson, R., 2017; Lasting regional gains from non-renewable resource extraction: The role of sustainability-based cumulative effects assessment and regional planning for mining development in Canada. *The Extractive Industries and Society*, 4(1), 36–52. <https://doi.org/10.1016/j.exis.2017.01.005>.

⁵ Moonias, Peter, 2012; Affidavit of Chief Peter Moonias, filed in *Matawa First Nations v AG (Canada) and Cliffs Natural Resources Inc.* Court File No. T-1820-11.

Implementing an Indigenous-led Regional Assessment in Ontario's Ring of Fire

SUMMARY REPORT BASED ON THE [SYNTHESIS REPORT OF MAY 2020](#)

12 JAN 2021

For many years, Indigenous community leaders and analysts have been calling for a regional process in order to broadly assess the expected impacts of the proposed mining developments in the Ring of Fire. They have noted the complexity of the contemplated infrastructure decisions, the potential for lasting negative impacts, and vast cumulative effects on social and ecological systems. And yet, without this framework in place, provincial and federal environmental regimes are currently proceeding to assess individual road proposals that threaten to open the region up to mining.

PRINCIPLES

The following principles should be applied to the design of a model for Regional Assessment:

- The people in the communities are the real authority; the grassroots and the elders must be heard for any process to be legitimate;
- The process must be led by an Indigenous Governing Authority (IGA) made up of the interested and affected remote and downstream First Nations (on the basis of ecological connectivity, watersheds, and socio-cultural impacts related to probable infrastructure locations);
- An Elders Advisory Council should be an integral element at all stages of decision-making;
- The ongoing state of social emergency must be addressed first, before new projects can be adequately considered. Communities must be satisfied that any potential new projects or infrastructure will mitigate the crises, and enhance long-term social, cultural and ecological sustainability; and,
- Any regional approaches need to provide a framework that can effectively guide project-level assessments and approvals, which in turn lead into community-level consent processes, in line with local protocols.

KEY ELEMENTS OF THE RECOMMENDED MODEL

Stage 1

- a (semi)permanent **Commission on the Ring of Fire** established by “agreement” under s.114(1)(e) of the Act between the Minister and an appropriate Indigenous Governing Authority (IGA) as a partner jurisdiction under s.93(1)(a);
- the IGA will be comprised of a collective of the most-affected First Nations considering both ecosystemic/watershed boundaries and socio-economic and cultural factors related to infrastructure routes;
- the Commissioners will be knowledgeable experts appointed from a roster nominated by and mutually-acceptable to all partner jurisdictions;
- the Commissioners will work in parallel to an Elders Advisory Council made up of a representative from each affected community;
- Both the Commission and the Elders Advisory Council will be supported by a Secretariat comprised of independent commission counsel, a community liaison officer, and researchers;
- The Commission will conduct in-community hearings (in the Anishnaabe or Anishini language, with ceremony, and without cross-examination).

The Commission’s mandate will be to develop the terms and conditions for access to the Ring of Fire region for mining and/or infrastructure and to set a structure for decision-making on future IAs, including:

1. A **cumulative effects framework**, including how traditional knowledge (TK) will be incorporated;
2. **Baseline data**, including on community well-being and the social emergency;
3. A **positive contribution to sustainability test** (including criteria, and a consideration of how various options and alternative visions for the region may demonstrate a potential to improve well-being, protect valued components, and mitigate the social crises); and
4. A **regional plan** and policy guidance derived from comparing future scenarios.

The Commission’s report must be approved by the Elders Advisory Council and will be released publicly.

Stage 2

- All individual projects proposed in the region will then go through a Joint Panel review process (with 3 members appointed that are mutually acceptable to the partner jurisdictions of Canada, ON and the IGA);
- The Joint Panel review process is nested under the framework developed by the Commission and must apply the terms and conditions developed there and approved by the Elders Advisory Council;
- The Joint Panels will conduct hearings in the affected communities, and in the south, and will hear submissions from all interested parties;
- The Joint Panels will render a report and recommendations for each governing authority to make a final decision on – Canada, ON and the IGA; and;
- The IGA will implement a process through which each affected community can decide for itself whether it will provide or withhold “consent” to the project.

For more information, contact Professor Dayna Nadine Scott, dscott@osgoode.yorku.ca

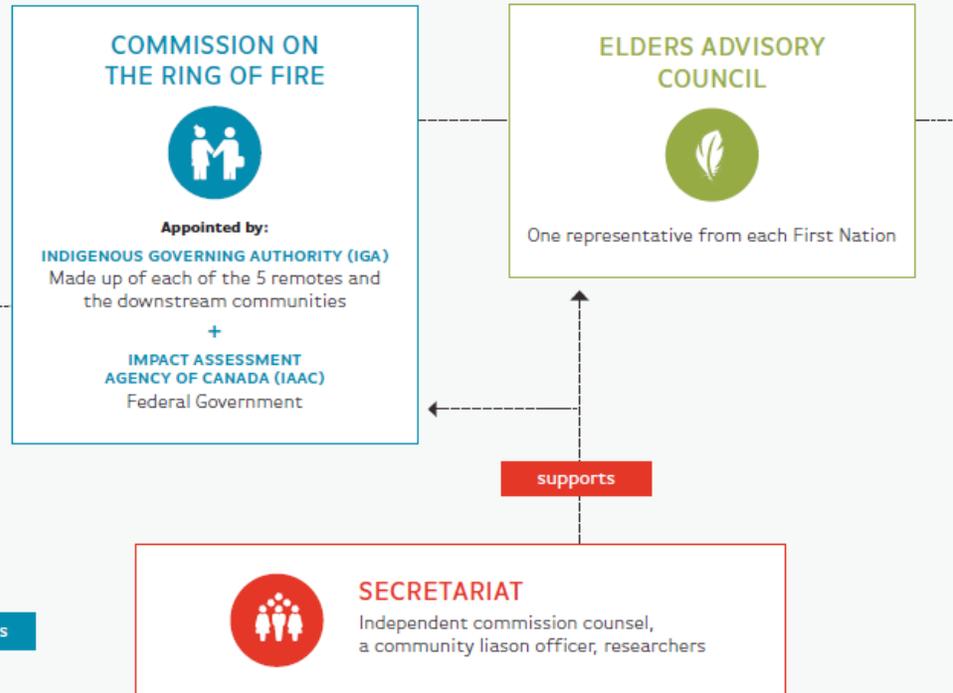
STAGE ONE

Ring of Fire Commission

A.

Composition

The Commission and the Elders Advisory Council work in parallel, and the Secretariat provides support to both.



conducts

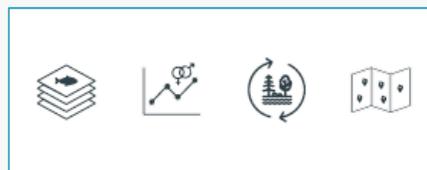


B. Hearings

The Commission will conduct in-community hearings in language, with ceremony, and without cross-examination.

provides input for

to develop



has to approve

C. Terms and Conditions for opening up the North

The Commission will develop:

- i) a **cumulative effects framework**, with thresholds;
- ii) **baseline data**, including on the social emergency;
- iii) a 'positive contribution to sustainability test' that outlines criteria for how projects will demonstrate that they will **enhance social and ecological sustainability**; and
- iv) a **regional plan** derived from the comparative evaluation of future scenarios.

STAGE TWO

Impact Assessment Process in the Ring of Fire Region

