

March 2, 2022

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

Via email 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)

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 2nd. 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,

<Original signed by>



Michel Koostachin
Founder, Friends of the Attawapiskat River

Contents

INTRODUCTION	4
I. BACKGROUND	5
a. Friends of the Attawapiskat River	5
b. Canadian Environmental Law Association.....	5
c. Summary of the Friends’ Outreach Activities	5
II. PRELIMINARY ISSUES & PROCEDURAL CONCERNS	8
a. COVID-19, Consultation & Respecting Indigenous Rights	8
b. Upholding Treaty rights and responsibilities	10
c. Early engagement.....	11
III. SPECIFIC COMMENTS AND RECOMMENDATIONS.....	12
a. Significance of the Ring of Fire area and Treaty 9 Lands	12
b. Governing Parties.....	12
c. Indigenous-led RA	13
d. Inclusion of Indigenous Knowledge	15
e. Goals and Assessment Areas	15
f. Timelines and Future Projects.....	16
g. International obligations and biodiversity.....	17
IV. CONCLUSION AND RECOMMENDATIONS.....	19
APPENDIX 1 – DETAILED COMMENTS AND RECOMMENDATIONS	20
APPENDIX 2 – LETTER FROM TREATY 9 GRASSROOTS	33
APPENDIX 3 – LETTER REQUESTING EXTENSION.....	34
APPENDIX 4 – BACKGROUND ON INIDIGENOUS AND TREATY RIGHTS	35
APPENDIX 5 – PETITION FOR TREATY 9	36
APPENDIX 6 – LETTER CAMPAIGN.....	38
APPENDIX 7 – EARLY ENGAGEMENT COMMENTS	39

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.¹ 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*.²

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.³ 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.⁴ 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 2022.⁵

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.

¹ 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>

² 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>

³ See **Appendix 2**

⁴ See **Appendix 3**

⁵ 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.'⁶

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

⁶ 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

Bay.”⁷

The Friends did not receive a response to this letter until January 18, 2021, many weeks after the commencement of the RA consultation period. The letter was not responsive to the Friends’ concerns and simply advised them of this consultation opportunity on the draft Agreement for the RA.

- **January 5, 2022 – Factsheet on Indigenous and Treaty Rights**

The Friends created a Ring of Fire and Treaty rights factsheet, available in Cree and English, with the aim of increasing awareness about the project in Treaty 9 communities. This document was shared widely with teachers and community leaders in many James-Bay communities, and on social media. As documents from the Agency were not made available in Cree, this backgrounder aimed to provide information about the proposed project to communities which will be impacted by the Ring of Fire development. This factsheet is attached in full at **Appendix 4**.

- **January 5, 2022 - Petition for Treaty 9 Members**

The Friends launched a petition as one means for the voice of Treaty 9 community members to reach both federal and provincial officials overseeing the Ring of Fire RA.⁸ The petition has received 85 signatures from Treaty 9 members and the text is attached in full at **Appendix 5**.

The petition reads:

We are rising up in opposition to the proposed Ring of Fire and Canada’s Regional Assessment for this mineral resource development project. We cannot meaningfully participate in the Regional Assessment when Canada fails to respect our inherent laws, Treaty rights, customs and knowledge. There must be a willingness on Canada’s part to move away from colonial assertions of jurisdiction – we demand an Indigenous-led process.

σ_αηδ^ηU_αδ^η ΔL b ·ΔΔΓ^ηU^η b P Δ·Cσ·Δ^η PΓ Δ^ηΔ^ηΔ^η Δ^ηΔ^ηΔ^η PΓ Δ^ηPL^η b·Δ
Δ<<Δ^η η^ηC b·Δ ααC·Δ P^ηΔσC^η ΔσΔ^η Δ^ηbα b ·ΔΔα·ΔP^ηx b Δ^η C·VCL^η Lb

⁷ See online: ∇ Δ<<ΔLΓ^η bPα^η PΓ Δ^ηPL·Δ^η PΓ ·ΔCLΓ^η PΓ Δ^ηCα^ηΔ^ηP·Cσ·Δ^η Δ^ηΔ^ηΔ^η Δ^ηΔ^ηΔ^η Δ^ηΔ^η Δ^η Δ^η Δ^η ∇Lα^ηΓCσ·Δ^η P^ηΔ^η η^ηC Δσσ·Δ^η Δ^ηU<Δ^ησCΔ^ηΔ^ηΔσ·Δ^ηx, An Open Statement to the Governments of Canada and Ontario, <https://cela.ca/call-for-a-moratorium-in-the-ring-of-fire-to-protect-watersheds-and-indigenous-rights/>

⁸ Friends of the Attawapiskat River, “α^ηδ^ηΔ^η Petition,” online: <https://attawapiskatriverprotectors.com/have-a-say-in-the-environmental-assessments>

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.”¹⁰ 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

¹⁰ 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.¹¹ 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.¹² 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.¹³ 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.¹⁴ For instance, at the Treaty of Niagara, a wampum belt was given as a symbol of peaceful coexistence with Indigenous nations.¹⁵

Indigenous leaders have consistently argued that lands were never ceded.¹⁶ 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

¹¹ UNDRIP, Articles 1 and 37

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

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

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ 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*.¹⁷ 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

¹⁷ 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.'¹⁸ 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

¹⁸ Draft Agreement, Preamble, ss. 1.1, 2.2, A1.1

‘supportive’ in function.¹⁹ 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.²⁰

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.²¹ 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

¹⁹ Draft Agreement, ss 5.0, 5.7

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

²¹ 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.²² 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.²³ 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.²⁴ 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.²⁵ 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.²⁶

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.²⁷ 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.²⁸ This, along with Article 32 of UNDRIP,²⁹ present an opportunity for Indigenous-led RAs to be relied upon when assessments take place and proposed projects are considered.

²² 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].

²³ 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].

²⁴ Nishima-Miller, S, at 41.

²⁵ Ratcliff & Company LLP, *Supra* note 2, at 1, 8.

²⁶ *Ibid* at 18.

²⁷ Nishima-Miller, at 60-65, 77-80, 98.

²⁸ 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>>.

²⁹ United Nations Declaration on the Rights of Indigenous Peoples, online: <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.”³⁰ 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”³¹ 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.³²

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 –

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.

³⁰ Draft Agreement, ss. 1.2 and B2.2

³¹ *Ibid*, Preamble, s. 2.2

³² *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 325,000km². 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.’³³ 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.³⁴ 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

³³ *Ibid*, s 2.4

³⁴ *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.³⁵ 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 biodiversity³⁶, 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.³⁷ 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.³⁸ 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.

³⁵ Draft Agreement, Preamble, 1.1, 1.2, 2.3, B.2.2

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

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

³⁸ *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.”³⁹ 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.⁴⁰ 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.⁴¹

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.

³⁹ 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.

⁴⁰ *Ibid*, see commitment #12.

⁴¹ *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,

<Original signed by>

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

APPENDIX 1 – DETAILED COMMENTS AND RECOMMENDATIONS⁴²

Provision	Comments	Recommendation
Preamble		
<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>Recommendation No. 11 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>Recommendation No. 12 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>Recommendation No. 13 The ‘Area known as Ring of Fire’ should be rewritten to read ‘the ancestral lands of the Indigenous people that the</p>

⁴² 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>Recommendation No. 14 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>		
Regional Assessment Goal and Objectives		
<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>Recommendation No. 15 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>Recommendation No. 16 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>Recommendation No. 17 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>Recommendation No. 18 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>Recommendation No. 19 Determination of mitigation measures must be informed by Indigenous community members and only once consent is achieved, can they be implemented.</p> <p>Recommendation No. 20 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>Recommendation No. 21 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>Recommendation No. 22 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>Recommendation No. 23 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>Recommendation No. 24 The proposed boundaries must acknowledge Treaty 9 territory. This land has been home to several Indigenous nations well before Canada was created.</p> <p>Recommendation No. 25 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"> a) Surface and groundwater (quality and quantity), including wetlands (peatlands) b) Woodland caribou c) Physical and cultural heritage d) Current use of lands and resources for traditional purposes by Indigenous peoples 	<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>Recommendation No. 26 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		
Establishment, Purpose and Composition of the Committee		
<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>Recommendation No. 27 The Committee's composition should be determined by Indigenous communities and should include Indigenous community members.</p>
Committee Secretariat		
<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
Advisory Supports to the Committee		
<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>	<p>As above, IK is integrated within scientific information</p>	<p>Recommendation No. 28 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>
Indigenous Talking/Sharing Circle		
<p>6.1 Recognizing and acknowledging the Indigenous ties to and use of lands and waters to conduct traditional and cultural activities that</p>	<p>The Sharing Circle description fails to mention Treaty members or having respect for Treaty 9 territory. Instead, who to</p>	<p>Recommendation No. 29 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>Recommendation No. 30 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>Appendix A: Regional Assessment Geographic Boundaries</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>Recommendation No. 31 Extend the Assessment Area to include the watersheds of the Attawapiskat, Albany, Ekwan and Winisk and smelter in Sault Ste Marie.</p>

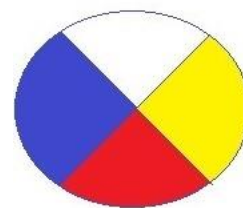
Provision	Comments	Recommendation
specific underlying geological formations that represent the Ring of Fire mineral deposits.		
A1.2 In conducting the Regional Assessment, the Committee will also define one or more Study Areas for the purposes of the description and analysis of the current environmental, 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.
Appendix B: Terms of Reference – Committee		
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.	Recommendation No. 31: 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>Recommendation No. 32 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

Dear Minister Guilbeault,

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

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.¹

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,² there are obligations to promote cooperation with Indigenous peoples and the consideration of Indigenous knowledge within the purposes of the Act,³ and recognitions that Indigenous (Aboriginal and Treaty) rights are critical impact assessment 'factors' to be considered in the review of projects⁴ and to inform Ministerial determinations.⁵

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,

¹ 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,

² *IAA* Preamble

³ *IAA* s 6(1)(e), (f), (g), and (j).

⁴ *IAA* s 22(1)(c).

⁵ *IAA* s 63(d).

<Original signed by>



Mike Koostachin
Friends of the Attawapiskat River

<Original signed by>

Jennifer Wabano
Omushkegowuk Women's Water Council

<Original signed by>

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

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

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.¹ 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,² but contrary to the purpose of the Act which is to promote cooperation with Indigenous peoples and the consideration of Indigenous knowledge.³ 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.

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

² IAA Preamble

³ 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,

<Original signed by>

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.

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

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.

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.

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' >> bNσAU'auσP_x

Canada's approach stands contrary to the following:

- bP^uσr^bUσP >C ΔU^qb^Γ Δσσ<Δ>P_x P Δ·Cσ<Δ>P<? PR <UUCdCσ<Δ>σP Δσσ<Δ> >U<9σCdl'Δσ<Δ> PR L^ulCσ<Δ>σP b ΔJ ALNl'x ∇b <∇σba PR P >au<Δ>CΓσl >U<9σCdl'Δσ<Δ> PR ·ΔCL' PR DPLO PR Δσ^uLC' b ΔJ au<∇σCL' PC^oPa^o b ΔJ au<b' ∇<LJ V^r σJ<au'Cr' b >JCr' <ΔNl'Δu PR V^r >Nau^l b ΔJ ΓJbσσ^l PC^oPF^u°_x
- 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;
- >σΓD'Δ^o σ^oC ·Δr<ΔNl'ΓD'Δσσ^o ba^ubfC' PR DPLO_x Ju ba⁹ C·V4σC^c b P V^r Δ·Cσ<Δ>σσ^l b^u ∇·bσ Λd σd⁻ ·∇Γ^oNdJ·Δ ALNl'Δσσ^o ∇σ^lσ<Δ> b ·Δ ΔJ DC<Δ> Δσσ<Δ> σ^oC >C^oPFσ^o_x
- 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 au^ub>auσ<Δ>P<? <Δl'Jσ^l σ^oC au^b° q·ba bσC·ΔPP <N^ol' >P_x σ^oC Pa^u° b ΔJ ba<∇σCL' b ΔJau<b' b ΔJ ΔC^l'x Δ·Cσ<Δ> Pa^u° σd⁻ PR au^ubfC^l' b ΔJ ΔC^l' >U·ΔσVd^l >L <Δ> b ΔJ ΓDσ Γd^ubf<σ^l b ΔP^l b ΔC^l'x b ΔJ Γd^ubf^ubd^l' P^uALNl'Δσau^l'_x
- 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^oDC PR au^od^oCL' >L b·Δ >P^u PR <ΔNl'Δ^o b·Δ >JCrσ<Δ> ∇dJ au^odC ∇b PR σJ<au'Crσ<Δ> b P >P V^r ALNl'<Δ>q^l' b P ΔJ au^odJauσ<Δ> b^u PΔ·Cσ<Δ>σd<? Δσd^l q^ubb^lq^l Λ^lc σ^oC Δσd^l q^ulΓ^o<Δ> σ^l' σ^oC Δσd^l qσC·ΔPP L^udJ^l σ^oC Δσd^l q^ulΓσ·∇^l ∇·bσ b P ΔJ au^odJauσ<Δ>σd<σ Δ^oΛ b P L^l'au>Nl'auσ<Δ> PR au^odJ·Δ^o ·ΔΛdσbU° Lb b P Δ·Cσ<Δ>σd<σ_x

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

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)

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,¹ in addition to enabling ongoing project-level assessments for two road projects.² 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.³ 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

¹ 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>

² 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>

³ 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 statements⁴; 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 9.⁵ 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.⁶

⁴ 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/>

⁵ 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

⁶ 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.⁷

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 km². 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,

⁷ 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.⁸

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

⁸ 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.⁹ We also know that low-income and Indigenous communities bear a disproportionate burden of health effects from pollution,¹⁰ 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.¹¹ 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

⁹ 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/>

¹⁰ 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

¹¹ *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?'*¹²

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,¹³ 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,

<Original signed by>

Kerrie Blaise, Northern Legal Counsel
Canadian Environmental Law Association

<Original signed by>

Mike Koostachin, Founder
Friends of the Attawapiskat River

¹² 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

¹³ *Ibid*

<Original signed by>

Jamie Kneen, Co-Manager
MiningWatch Canada

<Original signed by>

Brennain Lloyd, Project Coordinator
Northwatch

<Original signed by>

Anna Johnston, Staff Lawyer
West Coast Environmental Law

<Original signed by>

Anna Baggio, Conservation Director
Wildlands League