

March 7, 2022

**VIA EMAIL** 

Impact Assessment Agency of Canada RegionalRoF / CdFRegionale (IAAC/AEIC) <regionalrof-cdfregionale@iaac-aeic.gc.ca>

Attention: Martyna Krezel

Re: Nibinamik First Nation's Preliminary Comments on the draft Agreement and Terms of Reference for the Ring of Fire Area

As legal counsel for Nibinamik First Nation ("Nibinamik"), I am writing to provide an update on Nibinamik's comments to the Impact Assessment Agency (the "Agency") regarding the draft Agreement and Terms of Reference for the Regional Assessment of the Ring of Fire area (the "Regional Assessment").

At the outset, I must reiterate that Nibinamik fully intends to provide more thorough, detailed comments to the Agency on the draft Agreement and TOR as soon as it is safe for their community to do so. As a remote, Treaty 9 First Nation that is only accessible by air, Nibinamik continues to be severely affected by the COVID-19 global pandemic and public health crisis associated with the new omicron variant. Chief and Council have implemented a stay-at-home order and, in light of recent deaths in the community, are prioritizing the health and wellbeing of their members. Comments on the draft Agreement and TOR must come after working to ensure the ongoing safety of Nibinamik's community, including Elders and traditional knowledge holders.

With that said, Nibinamik understands that the Minister of the Environment and Climate Change (the "Minister") has requested a briefing on the comments received to date and would like to make the following point for the Minister's consideration:

#### The Regional Assessment is for the Ring of Fire area. Not the Ring of Fire.

This <u>area</u> has been Nibinamik's Homelands since time immemorial. This <u>area</u> holds the stories of how their community travelled the rivers and waterways around their home in Summer Beaver. This <u>area</u> is where their members hunt, fish, and trap to feed their families. This <u>area</u> is where they teach their children, bury their Elders, and hold their ceremonies. This <u>area</u> is their store, their church, the very heart and home of their community.

Yet, Canada and Ontario's draft Agreement and TOR fails to recognize any of this. Instead of working with Nibinamik to define the scope and content of the Regional Assessment, Canada and Ontario have unilaterally developed a postage stamp approach focused exclusively—and unjustifiably—on mining. The failures of such an approach for the Regional Assessment are obvious:

- It will not consider the road projects currently undergoing piecemeal federal and provincial assessments, which are the first physical impacts on this otherwise pristine area;
- It will not consider a geographic scope large enough to identify or assess affects on air, watersheds, climate change, and sensitive ecological features such as peatlands and muskeg unique to this area;
- It will not consider foreseeable physical activities that have the potential to impact species at risk or key migratory species, such as caribou, migratory birds, fish, moose and other animals that also make this area their home;
- It will not consider risks to the health, well-being and safety of Nibinamik's community, including Indigenous women and girls, who are particularly vulnerable to resource development activities not directly linked to a specific mine in the area;
- It will not consider how sustainability, including Indigenous stewardship and respect for Nibinamik's continued ability to exercise their Aboriginal and treaty rights, must guide the development objectives for this area; and
- It will not be conducted in cooperation and partnership with the people and jurisdictions that know this area best—including Nibinamik.

In 2020, Nibinamik applauded the Minister's decision to conduct a Regional Assessment of the Ring of Fire area. Nibinamik saw this decision as filling critical gaps in other project-specific impact assessments, addressing cumulative impact concerns, and—finally—providing much needed guidance, including thresholds and targets for future development in the area. The draft Agreement and TOR, however, have fallen so far from this initial promise that it is almost unrecognizable how this Regional Assessment would be any different than an assessment of the Ring of Fire mining development itself.

Nibinamik firmly believes that a robust Regional Assessment of the Ring of Fire <u>area</u> is of critical importance. But it must live up to its potential and fulfill the purpose of the *Impact Assessment Act*, including "to foster sustainability" and "to promote . . . cooperation with Indigenous peoples of Canada with respect to impact assessments" (s.6(1)(a) and (f)). As illustrated by the above failures, the current draft Agreement and TOR fall well short of the mark.

Nibinamik welcomes the opportunity to continue working with the Agency to co-develop an Agreement and TOR that addresses the above deficiencies and is informed by their Indigenous knowledge as the original owners and stewards of their Homelands. To help inform these discussions, please refer to Nibinamik's November 3, 2021 letter and preliminary comments on what should be included in the TOR's scope, boundaries, outcomes and objectives. As outlined above, Nibinamik also intends to provide further detailed comments to the Agency, once the COVID-19 situation in their community allows.

We ask that this letter, as well as Nibinamik's November 3, 2021 letter, be put before the Minister for his consideration as to next steps.

Should you have any questions regarding the above, please feel free to contact me directly.

Sincerely,

### <Original signed by>

Alexandria Winterburn

Encl. November 3, 2021 letter from Nibinamik First Nation to Impact Assessment Agency

cc Chief Michael Sugarhead, Nibinamik First Nation



### NIBINAMIK FIRST NATION

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November 3, 2021

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\*\*\*BY EMAIL\*\*\*

Dear Ms. Crawford and Ms. Myles:

RE: Nibinamik First Nation's Concerns with the Lack of Coordination in the Impact Assessment Agency's Review of the Webequie and Marten Falls Access/Supply Roads and Regional Assessment for the Ring of Fire

As Chief of Nibinamik First Nation ("Nibinamik"), I am writing regarding the Impact Assessment Agency's (the "Agency") review of the Webequie supply road, the Marten Falls community access road, and the Regional Assessment for the Ring of Fire area (collectively the "Federal Assessments"). As further outlined below, the projects and activities these Federal Assessments are considering stand to drastically impact our rights and alter our way of life forever. I am writing because Nibinamik is very concerned that the Agency's is not following a coordinated, harmonized approach to the Federal Assessments and that as a result, impacts of the projects will fall through the cracks between the Federal Assessments.

Specifically, we have been told that the Agency believes a cumulative effects assessment for the road projects can adequately assess regional impacts associated with the Ring of Fire development and that the Regional Assessment can *follow* the individual road assessments. Respectfully, this approach is dangerous and illogical. It creates artificial boundaries between the assessments, underestimates the scope and scale of regional impacts, and places an impossible task on Marten Falls and Webequie First Nations related to the assessment of their road projects. Moreover, it undermines the very purpose of the Federal Assessments, that, consistent with the *Impact Assessment Act*, are meant to foster sustainability and follow a precautionary approach to assessing impacts.<sup>1</sup>

Impact Assessment Act, SC 2019, c 28, ss section 6(1) and 6(2) ["IAA"].

Quite simply, a regional assessment is a significant undertaking. It must be carried out by Canada (not through a cumulative effects assessment by individual First Nations) and it must be done in advance of any more specific project assessments (so that its function to guide responsible development can be achieved). As further outlined below, Nibinamik's position is that:

- the Webequie supply road and Marten Falls community access road (and the Northern Road Link) are forever projects;
- 2. a cumulative effects assessment is inadequate to consider the scope and significance of regional impacts in this situation;
- the Regional Assessment must proceed first if the Federal Assessments are to be effective; and
- 4. a robust Regional Assessment is required.

We have expressed these concerns in discussions with Agency staff, however, recognizing that the *Impact Assessment Act* is relatively new legislation and that this Regional Assessment is only the second that the Agency has ever undertaken, we are writing to set out our concerns in greater detail. We are providing these comments in hopes that the Agency corrects its course and works to harmonize the Federal Assessments.

We are also providing these comments as a preliminary response to the Agency's request for input on the Terms of Reference for the Regional Assessment. We want to emphasize that this letter is a <u>preliminary response only</u>. In particular, due to the ongoing the COVID-19 pandemic, we have not been able to meet with community members or Elders to discuss their concerns and input on the Terms of Reference or other project documents. The health and wellbeing of our community members must come first.

Nibinamik anticipates providing further comments once it is safe for our community to meet. We trust that Canada's assessment process and timelines will be flexible and that no final decisions on any of the Federal Assessments will be made until meaningful consultation has been able to occur.

The remainder of this letter addresses the points above in greater detail.

# 1. The Webequie supply road and Marten Falls community access road are forever projects

As outlined in further detail in our previous letters to the Agency,<sup>2</sup> the Webequie and Marten Falls roads are the first wave of an industrial revolution of our Homelands that will have far

Letters from Nibinamik to the Agency dated: 1 October 2019 [Ref No 46]; 1 October 2019 [Ref No 50]; 1 April 2020 (Marten Falls road); and 1 April 2020 (Webequie road).

reaching environmental, economic, and social impacts.<sup>3</sup> Roads are the key to unlocking Northern Ontario. They will change the landscape of our Homelands, impact our rights, and affect our community forever.

To be clear, Nibinamik is supportive of other First Nations working to connect to the provincial road systems so that they are no longer remote and accessible only by air. As a remote First Nation ourselves, we recognize the important benefits, including access to healthcare and the economy, that flow from road access. We are working together with our neighbouring First Nations to discuss their road projects, however our discussions together have also been impacted by COVID-19 and the need to prioritize the health and safety of our community members. We expect these discussions will continue, according to our own ways of sharing information and traditional protocols, when it is safe to do so.

While our discussions with other First Nations to date have been limited, it does not change the fact that these projects are the first permanent roads that will cut up and cross otherwise pristine territory. Canada must structure an assessment process that can adequately consider the full range of these impacts, including on the region and Canada as a whole.

Among other things, in addition to being the lands and waters on which Nibinamik relies to sustain our way of life and exercise our Aboriginal and Treaty rights, our Homelands are part of an environmentally unique area that has a vital role in absorbing carbon emissions and fighting climate change. This area has been described as a "carbon sink" that has national significance to Canada's carbon and climate change targets. Any projects that have the potential to impact the carbon-reducing function of our Homelands are of serious concern to us, and indeed all Canadians.

Our concerns are compounded when, as is the case here, these road projects are designed to generate further industrial development. All-season road access into our Homelands paves the way for mining, forestry, and other development that otherwise would not be possible without these roads. The first, but certainly not the last, of this development is the Ring of Fire, which in and of itself has untold environmental and climate change impacts.

The function of these roads to enable the Ring of Fire development and initiate the industrialization of the North is not a hidden, secret agenda. It is plainly spelled out in the Project Descriptions for both roads projects.<sup>5</sup> Likewise, the impacts of the roads' industrialization

Webequie Supply Road Project Description (July 2019) [Ref No 3] at 25 ["Webequie Initial Project Description"]; Webequie Supply Road Detailed Project Description (November 2019) at 66 [Ref No 10] ["Webequie Detailed Project Description"].

Response to Impact Assessment Agency of Canada (IAAC) Summary of Issues (Marten Falls) at issue # 16 [Ref No 12] ["Marten Falls Summary of Issues"].

See: Webequie Initial Project Description, *supra* note 3, at 25; Webequie Detailed Project Description *supra* note 3, at 66. The project descriptions in numerous Agency-prepared plans also confirm that the road projects, as proposed, "could enable future access to potential mineral development activities in the Ring of Fire area." See: Public Participation Plans [Ref No 99] and Ref No 100], Permitting Plans [Ref No 97] and Ref No 98], Cooperation Plans [Ref No 98] and Ref No 99], and Indigenous Engagement Partnership Plans [Ref No 100] and Ref No 101].

purpose have been acknowledged by Canada; why else would the Agency require an assessment of these roads as part of advancing the Ring of Fire as part of the Tailored Impact Statement Guidelines?<sup>6</sup>

While Canada seems to have recognized the regional impacts of these proposed roads, the Agency is at serious risk of failing to carry out the necessary work to ensure that the assessment is meaningful and appropriate for the level of change being proposed. Specifically, the Agency has told us that it believes these impacts—those caused by a radical change to the pristine cultural and environmental landscape of the North—can be considered through the cumulative effects assessment for the individual road projects. For the reasons outlined below, this siloed, backwards approach is misguided and wholly unacceptable.

## 2. A cumulative effects assessment is inadequate to consider the scope of regional impacts in this situation

Cumulative effects assessment, as part of individual roads projects, is patently inadequate to identify and assess impacts associated with the Ring of Fire development and the industrialization that will flow on the heels of these road projects. Canada has already acknowledged this when it expressly pointed to how concerns about broader, regional impacts flowing from these roads was a driving feature in deciding that a Regional Assessment was necessary. So how can the Agency now say that these impacts can be adequately considered through a cumulative effects lens?

The development of the Ring of Fire is unprecedented in Ontario's history. It has been referred to as the next oil sands in terms of size and scope of economic potential; its impacts are likewise significant and unprecedented. The Agency cannot expect community-led projects to adequately identify the extensive and lasting regional impacts that will flow from these roads as part of advancing the Ring of Fire. Even experienced proponents and well-resourced provincial and federal governments have struggled with this task. It is naïve to assume that small governments, First Nations' or otherwise, whose previous experience is limited to local infrastructure projects, can adequately undertake the sort of comprehensive regional impacts identification and assessment that is needed.

Marten Falls Community Access Road Project Tailored Impact Statement Guidelines (24 February 2020) at 132-133 [Ref No 101] ["Marten Falls TIS"]; Webequie Supply Road Project Tailored Impact Statement Guidelines (24 February 2020) at 132-133 [Ref No 102] ["Webequie TIS"].

Minister of Environment and Climate Change responses to Aroland First Nation, Wildlife Conservation Society Canada, and Osgoode Environmental Justice and Sustainability Clinic (10 February 2020) [Ref No 1] ["MOECC Response"].

Nibinamik previously participated in discussions with Ontario that envisioned a regional and cumulative assessment process under the Regional Framework Agreement ("RFA") and Joint Jurisdictional discussions. The RFA contemplated, among other things, the co-development of joint Environmental Assessment processes for Ontario and the Matawa First Nations to review and consider the cumulative and regional effects of various Ring of Fire activities (e.g., roads, mining development, affects on watersheds, etc.). The RFA was unilaterally cancelled by Ontario in August 2019.

Among other things, impacts of the road projects as part of advancing the Ring of Fire development will undoubtedly extend beyond the four-square corners of their Project Development Areas ("PDAs"). Canada has acknowledged this and has asked the proponents to identify impacts beyond the scope of the individual PDAs as part of their Impact Statements<sup>9</sup> yet is proceeding to ignore the proponents concerns about their ability to do this.<sup>10</sup>

The Agency's view that these impacts can somehow be identified, assessed, or addressed through a cumulative effects approach is setting the First Nations up for failure. It is setting up the North for potential cultural and environmental disaster and setting up the federal Crown to breach its constitutional obligations to Nibinamik and other affected First Nations. As further outlined below, these are <u>regional impacts</u> that require a <u>regional assessment</u> to adequately identify and address them.

### 3. The Regional Assessment must proceed first in order for the Federal Assessments to be effective

In order for the Federal Assessments to be effective, and not merely a useless and cynical exercise, the Regional Assessment must proceed *before* the road assessments. This is the only way that it can inform the identification and assessment of regional impacts and ultimately provide a forum for how these regional and cumulative impacts will be addressed. Having the Regional Assessment make determinations about baselines, thresholds, and/or standard mitigation measures *after* the road projects have progressed to a point where these impacts are unavoidable is entirely unacceptable and inconsistent with the purpose and provisions of the *Impact Assessment Act* that require a sustainability focus and precautionary approach.

As outlined above, it is highly unlikely that the road assessments will be able to accurately fulfill what Canada has identified is required for a cumulative effects assessment. In which case the Impact Statements must be rejected by the Agency. More significantly, it is completely unreasonable for the Agency to put the burden of assessing and addressing these regional impacts onto these two First Nations. They simply do not have adequate resources and experience to carry out a meaningful and complete assessment of regional impacts, nor are they capable of designing and implementing necessary mitigation measures at a regional level. It is an unreasonable requirement for any individual proponent given the size and scale of the impacts possible here.

Marten Falls TIS, supra note 6, at 131-133; Webequie TIS, supra note 6, at 131-133.

Webequie Supply Road Detailed Project Description: Response to Summary of Issues (November 2019) at 7 (item no. 30) [Ref No 12] states that the Regional Assessment of the Ring of Fire area "is outside the care and control of Webequie First Nation; it lies within the purview of the Minister of Environment and Climate Change Canada and the Impact Assessment Agency of Canada." See: Marten Falls First Nation Detailed Project Description Summary (November 2019) at 77 [Ref No 11] where the proponent notes that the Webequie Supply Road Project "is well outside the MFFN Project study area." See also: Marten Falls Summary of Issues, *supra* note 4, at issues # 43 and 69 where Marten Falls First Nation stated: "While there are ongoing discussions and studies related to roads leading to the Ring of Fire area, timing, ownership, funding and feasibility of those potential future roads are all unknown and therefore a future road or roads to the Ring of Fire area would be a separate project."

To expect that individual project assessments will adequately address and mitigate regional impacts is to accept that these impacts will go unaddressed or will be pushed off onto future proponents—which is antithetical to the purpose of regional assessment and the *Impact Assessment Act*, as well as Crown constitutional obligations. In fact, when Nibinamik's representatives asked how the Federal Assessments were going to take into account future, foreseeable projects such as the Northern Roads Link that Webequie and Marten Falls have recently entered into a voluntary agreement with Ontario about, the Agency's answer was that rather than harmonizing the Federal Assessments now, these future projects would face a much harder assessment process than the current projects. Unfortunately, this backwards approach will only ensure that industrialization will begin without adequate planning or precaution.

These problems are avoided where the Agency takes steps now to align the Federal Assessments so that the Regional Assessment occurs first, or at the very least, so that there is some reasonable and transparent mechanism harmonizing the Regional Assessment with the current road assessments. This would help ensure that where there are impacts identified that cannot be addressed through the road assessments, or where the Regional Assessment identifies additional impacts that the road assessments did not, these impacts are not disproportionately pushed off onto future projects or fall through the cracks.

#### 4. A robust Regional Assessment is required

The Ring of Fire area requires a robust Regional Assessment that is focused on setting thresholds for planning and development, establishing standard mitigation measures that must apply to all future projects, and identifying regional development objectives to guide responsible and sustainable development of the North. These three goals should be clearly identified as the objectives of the Regional Assessment in its Terms of Reference.

While the Agency's policy guidance identifies that Regional Assessments can also focus on data gathering or trend analysis, <sup>12</sup> that lower range of assessment would be entirely inappropriate for the Ring of Fire area given the already-anticipated influx of projects and development. <sup>13</sup> Also, it would be duplicative given the previous assessment work undertaken for the Ring of Fire that includes identifying some of this background information and context. The Terms of Reference should include that the Agency (or Committee, as the case may be) consider and incorporate this existing information, as available and appropriate, rather than re-inventing the wheel through this Regional Assessment.

For example, a licence condition requiring that the conclusions of the Regional Assessment including any standard mitigation measures or thresholds would apply to the roads to the extent that the Regional Assessment identified measures that were greater than those set out in the road licence or required environmental protection or other plans.

See: <a href="https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-act.html">https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-agency/services/policy-guidance/regional-assessment-impact-assessment-agency/services/policy-guidance/regional-assessment-agency/s

See: MOECC Response, *supra* note 7.

To illustrate what is required as part of a robust Regional Assessment, the remainder of this letter focuses on what should be included within the Terms of Reference, under the various headings identified by the Minister's decision letter.

#### a) Scope of Assessment—Type of Activities to Include

A wholistic scope that encompasses the full range of existing and potential projects, developments, and impacts is necessary. The Regional Assessment should not focus on one particular project or development but must include both existing and proposed activities (e.g., the Webequie and Marten Falls roads projects, proposed mine developments, and staked mineral claims) as well as future foreseeable development (e.g., further road proposals such as the Northern Road Link, increased exploration activities, etc.). Only by considering all existing and foreseeable activities can the full scope of impacts on the region be captured.

In addition, the Regional Assessment should expressly include the consideration of impacts on our Aboriginal and Treaty rights, socio-economic conditions, health (including mental health), community well-being (including specifically impacts on Indigenous women, girls, and Two Spirit individuals), and way of life. The Minister acknowledged the potential for these impacts in his decision letter for the Regional Assessment, however, if not expressly identified, these critical issues will be marginalized or ignored entirely.

#### b) Boundaries—Temporal Scope

As outlined above, the projects planned for this area are forever projects and the impacts on Nibinamik's Homelands and our Aboriginal and Treaty rights are forever impacts. This does not mean, however, that Nibinamik's Aboriginal and Treaty rights are not *already* being impacted by previous, uncoordinated development activities in the Ring of Fire area. The Terms of Reference should include temporal boundaries that are both backward and forward looking to reflect this reality.

At a minimum, the temporal boundaries must extend far enough in the past to establish a baseline where Nibinamik's Aboriginal and Treaty rights were unaffected by development in the Ring of Fire area, as well as extend far enough into the future to be equal to the span of the longest reasonably foreseeable project or development in the area. For example, to limit the Regional Assessment to a temporal scope of the next two, five, or even twenty years would be to significantly undermine its effectiveness and to inappropriately accept the status quo of impacts on Nibinamik's Aboriginal and Treaty rights as a baseline. The need to look to the past is not to repeat and/or re-open project inquiries and assessments, but rather to help understand the history of development and impacts in the region, contextualize and account for the already-existing impacts on Nibinamik's Aboriginal and Treaty rights, and to learn from any past mistakes.

#### c) Boundaries—Geographic Scope

Similar to the temporal scope, the geographic scope of the Regional Assessment must be of sufficient size to be able to take into account the range of impacts flowing from the type of activities and developments considered. If the geographic scope of the Regional Assessment will

also be used to determine the area in which any standard mitigation measures for future projects will apply, then it is essential that the geographic scope of the assessment align with the geographic scope of the foreseeable impacts to allow for effective mitigation measures to be deployed in the future. For example, mitigation measures to offset impacts on caribou will only be partially effective if applied to projects within only half of the caribou herd's migration habitat versus applied to an area that includes the whole herd migration habitat.

Mining, road, and other related infrastructure development are currently the most foreseeable physical activities contemplated for the area. Impacts flowing from these sorts of projects and developments include, watershed impacts, impacts on air, impacts on key species of concern such as migratory birds and caribou, and impacts to climate change, among others. The Regional Assessment's geographic boundaries must be flexible and broad enough to include consideration of these impacts. An arbitrary geographic boundary of 100, 200, or even 500 km from the Ring of Fire mine sites not only artificially circumscribes impacts but, importantly, it also significantly limits the ultimate effectiveness of the Regional Assessment in being able to address these impacts. Caribou do not stop at lines drawn in the sand, nor do impacts to our lakes, rivers, and waters end 50 km downstream from a mine.

The Terms of Reference should therefore have geographic boundaries that include, at a minimum, the Winusk, Ekwan, Attiwapiskat, and Albany watersheds. In addition, given the potential climate change implications and impacts on species at risk—both of which are required considerations under the *Impact Assessment Act*<sup>14</sup>—the geographic scope should, to the extent possible, also include sufficient areas of peatlands, boreal forest range (as Canada's "carbon sink"), and the habitats of any species at risk (e.g., caribou) to allow for effective mitigation measures to be imposed in the future.

In addition, the socio-economic and community well-being impacts do not stop at the boundaries of our community. The National Inquiry into Missing and Murdered Indigenous Women and Girls identified specific harms and impacts on our women and girls related to development and industrialization activities, including human trafficking. <sup>15</sup> To accurately consider these impacts, the Regional Assessment Terms of Reference should include a geographic scope that includes links to urban centers such as Thunder Bay, Kenora, Sioux Lookout, and others.

#### d) Identified Outcomes and Objectives

As identified above, the Regional Assessment should focus on three objectives:

Setting thresholds for planning and development activities;

<sup>14</sup> IAA, supra note 1, Preamble, ss 2 sub verbo "effects within federal jurisdiction", 7(1)(a), 22(1)(i), 63(3)(e), 95(2); See also: Impact Assessment Agency, "Strategic Assessment of Climate Change" (1f6 July 2020), online: https://www.canada.ca/en/services/environment/conservation/assessments/strategic-assessments/climate-change.html..

Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls: Reclaiming Power and Place, Vol 1a (2019), Ch 5 at 584–594.

- Establishing standard mitigation measures that must apply to all future projects or developments; and
- Identifying regional development objectives to guide responsible and sustainable development of the North.

A specifically identified outcome of the Regional Assessment should therefore be that it can form the basis for a collaboratively-developed Regional Development Plan for the Ring of Fire area that focuses on ensuring sustainability, protecting Indigenous rights, and respecting Canada's international obligations. This future Regional Development Plan (once complete) would apply to all future federal assessments in the area.

In light of the above, the Regional Assessment should also include the following identified outcomes:

- Identifying a standard set of criteria to be used in impact assessment guidelines related to
  identifying regional and cumulative impacts of future developments (e.g., related to
  impacts on species at risk, Aboriginal and Treaty rights, community impacts, and the
  potential impacts of proposed developments on Indigenous women, girls, and Two Spirit
  individuals, etc.);
- Establishing thresholds against which future developments, including but not limited to the Ring of Fire development, can be measured and assessed (e.g., related to climate change, species at risk, watershed impacts, etc.);
- Identifying standard conditions that must be included as part of any future federal approval of projects in the region (e.g., standard licencing conditions for mitigation measures etc.);
- Establishing a repository for existing baseline information and consolidating traditional and scientific knowledge that has previously been shared or collected related to the Region and that may be shared or collected as part of the Regional Assessment;
- Providing guidance around best practices and processes for shared/joint decision-making
  with Indigenous communities related to future developments, including but not limited to
  the Ring of Fire development, in the region (e.g., in light of Canada's commitment in the
  Impact Assessment Act to respecting Indigenous rights, promoting communication and
  cooperation with Indigenous peoples, and implementing UNDRIP);
- Identifying "triggers" or thresholds upon which the conclusions of the regional
  assessment should be revisited or reassessed—including recommendations for ongoing
  joint monitoring, review, and co-management where appropriate (this could include, for
  example, providing for a collaborative review every 5 years or when certain
  environmental conditions or threshold are reached); and

• Identifying preferred development alternatives or approaches in light of what will best ensure the long-term sustainability of the region and Canada's international obligations (e.g., related to climate change, biodiversity, sustainability, etc.).

While we have not identified specific activities that should be included in the Terms of Reference for the Regional Assessment, our expectation is that all activities be expressly identified as being undertaken in partnership with Nibinamik and other interested and impacted Indigenous communities. Indigenous people and respect for Indigenous jurisdiction and decision-making must be at the heart of the Regional Assessment.

In particular, sufficient flexibility should be provided so that whatever body ultimately conducts the Regional Assessment (e.g., the Agency or a Committee) be able to use various activities that it considers necessary in order to achieve the above objectives and outcomes in partnership with Indigenous communities (e.g., create working groups, advisory groups, task teams, etc.). Should the Regional Assessment be conducted by a Committee, our expectation is that Nibinamik, as well as other Indigenous communities, be consulted on Committee member appointments and that Indigenous representation on the Committee be guaranteed.

We trust that this letter has provided further clarification of why Nibinamik believes that the Federal Assessments must be harmonized, as well as what should be included in a robust Regional Assessment for the Ring of Fire area. To be clear, Nibinamik intends to participate in the Federal Assessments consistent with our traditional land use protocols and inherent rights and jurisdiction that anything taking place on our Homelands requires deep partnership with us.

We look forward to further working together to address Nibinamik's concerns related to the Federal Assessments and the road projects as they move ahead and are reviewed by the Agency. Please be in touch with us should you have any questions regarding this letter. In addition, please copy our legal counsel, Pape Salter Teillet LLP, on all correspondence with Nibinamik related to the Webequie supply road, the Marten Falls community access road, and the Regional Assessment for the Ring of Fire area.

Respectfully,

### <Original signed by>

Chief Sheldon Oskineegish Nibinamik First Nation

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