



PO Box 10
Aroland, Ontario
P0T 1B0
Phone: (807) 329-5970
Fax: (807) 329-5750

SENT BY EMAIL

Caitlin Cafaro, Senior Consultation Analyst
Crown Consultation Coordinator
Northern Road Link Project
Impact Assessment Agency of Canada
500-55 York Street
Toronto, ON M5J 1R7
NorthernRoad-RouteDuNord@iaac-aeic.gc.ca

March 23, 2023

RE: Northern Road Link Impact Assessment Initial Project Description

On behalf of Aroland First Nation ("AFN"), I provide the following comments to the Impact Assessment Agency of Canada ("IAAC") on the Initial Project Description ("IPD") of the Northern Road Link Project ("the Project") to inform IAAC's review of the IPD, the development of a summary of issues for the Project and subsequent documents such as the Tailored Impact Statement Guidelines.

1. We have significant concerns related to the potential environmental impacts of the Project on the region and the potential impacts of the Project on our Treaty and Aboriginal Rights and interests which we have raised in numerous submissions to members of the proponent group and the Province of Ontario. Documentation related to the Provincial Environmental Assessment Terms of Reference states that "the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the proposed [Marten Falls Community Access Road]" and "enable economic activity by facilitating the transport of goods, services and resources." IAAC's invitation for comments on the IPD similarly states that the Project will "become part of a future all-season road network connecting mineral development activities in the Ring of Fire area to the provincial highway system at Nakina, Ontario." Section 8.2 of the IPD states that the Project "will complete the necessary transportation infrastructure link between Webequie First Nation, the Ring of Fire and the highway network to facilitate economic development in the region" and "is an important step in linking the communities, the region and the province in general with the economic opportunities surrounding the Ring of Fire." Taken together, this reflects AFN's long-standing concern that the Project will directly facilitate major development in mining, exploration, and related infrastructure, and that extensive industrial traffic resulting from the Project will be inevitable along the proposed Marten Falls Community Access Road and existing Painter Lake and Anaconda Roads, which pass directly through our Traditional Territory and our reserve community. While AFN has been rightly included in Section 4.1 of the IPD as an Indigenous community identified for consultation and engagement, the IPD must also therefore include AFN in Section 14.4 and all subsequent sections of the IPD as an Indigenous community that will be primarily affected by the Project.
2. We are concerned by Ontario's colonial approach to decision-making in the Provincial Environmental Assessment process to date, agreeing only to recognize decision-making by the small number of First Nations who will gain all-season road access from the roads projects and who have expressed their support for the related mineral development the road developments will facilitate. To be clear, AFN is not expressing blanket opposition to all-season roads: we recognize the need and right for First Nations to be connected to the provincial highway network. However, we are deeply concerned with the ongoing absence of approaches to shared decision-making that involve AFN and all of the First Nations whose Aboriginal and Treaty Rights and interests are impacted by the proposed Project. It is absolutely essential

that this is not the case in the Federal Impact Assessment process. IAAC must consider AFN to be a shared decision-maker in all stages of the Impact Assessment process and should consider the formation of a Joint Assessment Committee that includes AFN, or include equivalent shared decision-making measures in a community-specific engagement and consultation plan developed between AFN and IAAC. Further, the following amendments must be incorporated into Section 4 and Section 5 of the IPD and reflected in all subsequent requirements issued to the proponent by IAAC related to Indigenous consultation and engagement:

- a. The approaches to engagement and consultation included and referenced in the IPD were developed without consultation or involvement of AFN and should not be considered to foster an appropriate degree of participation by AFN. While Section 5.3 sets out guiding principles for engagement that reflect the “culture and traditions of Marten Falls First Nation and Webeque First Nation as Indigenous proponents of the Project” it does not incorporate the consultation protocols of AFN and other Nations impacted by the Project. Section 4.3 and Section 5 must include commitments to the development of an AFN-specific Engagement Plan and Consultation Agreement, finalized before the proponent commences any work related to the development of the Impact Statement, that formalizes how the proponent will discharge the procedural aspects of the Duty to Consult and Accommodate with AFN, and any other measures required to ensure a meaningful consultation and accommodation process that incorporates our protocols and laws and creates a pathway to AFN’s free, prior and informed consent for each step of the Impact Assessment.
 - b. The issues resolution process described in Section 5.5 must be updated to include commitments to obtaining the consent of First Nations and providing the confirmation of First Nations impacted by the Project that all concerns have been substantially addressed prior to any approvals being issued for the Impact Assessment.
 - c. Section 5.7 must be updated to include AFN’s involvement in the *co-development* of valued components, spatial and temporal boundaries, description of the baseline environment, assessment of impacts, development of mitigation measures, and assessment of residual impacts. The current description of consultation and engagement activities facilitating “input” and culminating in the proponent “providing responses” to comments is wholly insufficient.
3. AFN is deeply concerned that the proponent has provided a description of the baseline environment and potential effects of the Project throughout the IPD and in Appendix F at this preliminary stage of the Impact Assessment given the lack of consultation and engagement with AFN to date. We are particularly concerned with the proponent’s description of the baseline environment and potential effects on Cultural Heritage Resources (Section 16.3), Aboriginal and Treaty Rights and Interests (Section 16.4) and Indigenous Physical and Cultural Heritage, Current Use of Lands and Resources for Traditional Purposes (Section 22) as the Local Study Area and Regional Study Area for these aspects of the Impact Assessment referenced in the IPD (e.g., p. 107) were not developed with any involvement of AFN and the descriptions and assessments were completed without any consultation with AFN. Study area boundaries for these and other relevant components of the Impact Assessment must encompass the transportation corridor’s connection to the provincial highway network to consider all the possible direct and indirect effects of the Project on AFN. Study areas presented to AFN in the context of the Provincial Environmental Assessment, which we assume the conclusions presented in the IPD are based on, are entirely insufficient as they only extend as far south as Ogoki Lake.
 4. Due to the massive scale the potential impacts of the development of the Project may have on AFN, our Traditional Territory and the entire region, the Impact Assessment should not be approved until the completion of a Regional Assessment that covers all potential development in the entire James Bay Lowlands area. The Regional Assessment must be co-developed, co-implemented and co-enforced by a body of all the affected First Nations in the region. This will ensure that our consent to all or part of the Project, and to decisions made by IAAC related to the Impact Assessment, are made in a fully informed manner. Section 7.1 of the IPD and the Project’s Tailored Impact Statement Guidelines must reflect such a

relationship between the Impact Assessment for this Project and the Regional Assessment in the Ring of Fire Area.

5. Given that there are three road projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development, and access to the Ring of Fire, we propose that the Webequie Supply Road, the Northern Road Link, and that portion of the Marten Falls Community Access Road that connects the Webequie Supply Road and Northern Road Link be viewed as a single project that is considered in a single federal Impact Assessment. Separate, fragmented Environmental Assessment and Impact Assessment processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-economic and cultural impacts the development of this area represents. At a minimum, the proponent group for both the Webequie Supply Road and Marten Falls Community Access Road projects, as well as the Northern Road Link Project, must develop and implement a coordinated approach across the three Environmental Assessment/Impact Assessment processes, subject to recommendations from the Regional Assessment, which should be reflected in the IPD.
6. IAAC should note that Section 4.2 and Appendix D do not accurately characterize the concerns raised by AFN to the proponent to date and that there are numerous outstanding concerns which have not been addressed by the proponent in correspondence with AFN or in the responses included in Table D-3. We have included, as an attachment to this submission, two written submissions provided to the proponent and the Province of Ontario during the Terms of Reference stage of the Provincial Environmental Assessment Process which set out our outstanding concerns with more accuracy and detail for IAAC's reference.

We require a written response to this submission that addresses each of our comments in the letter above.

Respectfully,

<Original signed by>

Chief Dorothy Towedo
Aroland First Nation

Cc:
Aroland First Nation Council
Chief Bruce Achneepineskum and Council, Marten Falls First Nation
Chief Cornelius Wabasse and Council, Webequie First Nation
Debra Myles, Impact Assessment Agency Canada
Debbi Stanyer, Shared Value Solutions
Andrew Peach, Shared Value Solutions



PO Box 10
Aroland, Ontario
P0T 1B0
Phone: (807) 329-5970
Fax: (807) 329-5750

SENT BY EMAIL

Sasha McLeod and Dorothy Moszynski
Special Project Officers
Ministry of the Environment, Conservation and Parks - Environmental Assessment Branch
135 St. Clair Avenue West, 1st Floor,
Toronto, ON M4V 1P5
416-268-5984
sasha.mcleod@ontario.ca and Dorothy.moszynski@ontario.ca

June 28th, 2022

RE: Northern Road Link Individual Environmental Assessment Draft Terms of Reference

On behalf of Aroland First Nation ("AFN"), I write in response to the Ministry of Environment, Conservation and Parks ("MECP") publication of the draft Terms of Reference (ToR) for the Northern Road Link Project ("the Project").

The Project proposes to connect two other proposed road segments, which would create a transportation corridor connecting the Ring of Fire mining area to the Provincial highway network. This will open the region to major development in mining and related infrastructure, with all traffic funneling directly through AFN's reserve community. Because of the massive scale of potential impacts these developments may have on AFN, our traditional territory and the entire region, we submit that nothing should be approved until there has been a regional assessment that covers all potential development of the entire James Bay Lowlands area, and that assessment is co-developed, co-implemented and co-enforced by a body of affected First Nations in the region. Until this is in place no further steps should be taken to approve the Project.

We have raised concerns about the role the Project will play in enabling the Transportation Corridor in previous submissions to Ontario and members of the Proponent group. However, you insist on proceeding with planning and assessment activities related to road projects in the region. We therefore submit these comments under duress and with protest in order to protect our Aboriginal and treaty rights, and it must be understood that these comments do not comprehensively represent the entirety of AFN's concerns related to the ToR or the Project in general.

It is AFN's position that MECP should not proceed with the Environmental Assessment phase for the Project, and any other related planning or permitting until the conditions outlined in the second paragraph above have been met.

The consideration of the Project's impacts in isolation without considering the cumulative effects of other proposed all-season road and mining projects in the region will inevitably under-represent the potential impacts of the Project. The results of a First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire are absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region. Once constructed the impacts of this Project will be compounded by the impacts of the connecting all-season roads which together will enable extensive mineral exploration and mining development activities with widespread cumulative effects on our people, our way of life, our community well-being, and our inherent and established Aboriginal and Treaty rights. To proceed any further with this Individual Environmental Assessment without the foundation of the results of the Regional Assessment would be

negligent in the practice of environmental impact assessment and unconstitutional in the consideration of impacts to Aboriginal and Treaty rights.

We have significant concerns related to the potential environmental impacts of the Project on the region and the potential impacts on our Treaty and Aboriginal rights and interests. The statements in the public Notice of Submission for the ToR that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the proposed [Marten Falls Community Access Road]” and “enable economic activity by facilitating the transport of goods, services and resources” confirm AFN’s long-standing concern that industrial traffic is inevitable along the proposed Marten Falls Community Access Road and existing Painter Lake and Anaconda Roads, which pass directly through our Traditional Territory and our community.

Because of the location of our community and the way traffic would be funneled through our territory and reserve we submitted numerous requests to be included in the planning and decision-making processes. Barring our participation as decision-makers we would normally insist that we be considered a primarily impacted Nation in this assessment process, which would necessitate our involvement in the co-development of the ToR, approaches to Indigenous consultation and the integration of Traditional Knowledge, and clear commitments to requiring our free, prior and informed consent for the Project. To date, no meaningful steps have been taken to this end. As such, we object to this Project moving ahead. To the extent this Project will directly impact and need the use of Aroland territory for the southern “continuation” of your road network into the highway system, you require Aroland consent and we do not give it.

We insist that nothing move forward until a comprehensive First Nation co-led and co-developed regional assessment is completed and at that point depending on its results, Aroland will make a decision on whether to consent to aspect of proposed development. We must make such decisions in an informed way not under duress.

To be clear, AFN is not expressing blanket opposition to all-season roads or mineral exploration in principle, but instead our objection and deep concern is with the fragmented approach to assessing regional impacts through various impact and environmental assessment processes. This ensures that no one will understand what the full impacts will be and will make decisions in the dark that will likely end up hurting us. These processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-economic and cultural impacts the development of this area represents.

Our concerns are further exacerbated by Ontario’s colonial approach to decision-making by creating duress and only agreeing to recognize any decision-making of those small number of First Nations who agreed to support mining in order to be able to get road access. Given that there are three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development and access to the Ring of Fire, AFN requires that the WSR, the Northern Road Link and portion of the MFCAR that connects the WSR and Northern Road Link be considered in a single assessment of the entire region. We will continue to advocate for an integrated review process that considers the full range of regional impacts and this work must be approached in a way that brings together all our affected First Nation neighbors to the table.

In addition to the comments above, we have included a series of comments on the proposed ToR in the Appendix below. We would typically approach a review of this nature with the aim of making recommendations to modify or improve specific aspects of a ToR. However, we have found this ToR to be so far removed from anything that could be considered meaningful or honorable to the Nations impacted by the Project and from adequate standards of assessing the impacts and cumulative effects of the Project that the focus of our comments is instead on high-level deficiencies in the ToR and the Proponent’s approach to the environmental assessment to date that warrant their being scrapped and restarted in true partnership with AFN and other affected Nations.

We require a written response to this submission that addresses each of our comments in the letter above and the appendix below. It is our express request that Ontario not proceed with the environmental assessment phase for this Project until our concerns raised in this submission have been substantively addressed.

Respectfully,

<Original signed by>

Chief Dorothy Towedo
Aroland First Nation

Cc:

Aroland First Nation Council

Andrew Lock, Ring of Fire Operations Manager, Indigenous Consultation and Partnerships Branch, NDMNRF

Mary Hennessy, Director, Ring of Fire Policy Coordination Branch, NDMNRF

Chief Bruce Achneepineskum and Council, Marten Falls First Nation

Chief Cornelius Wabasse and Council, Webequie First Nation

Caitlin Cafaro, Ontario Regional Director, IAAC

Deborah Myles, Senior Advisor – Strategic and Regional Assessment, IAAC

Jeremy Shute, Shared Value Solutions

Andrew Peach, Shared Value Solutions

APPENDIX: Aroland First Nation comments on Draft Terms of Reference

#	Reference	Comment	Recommendation
	<p>Project Understanding (Section 1.1)</p>	<p>In Section 1.1, the TOR states that “the development of the proposed NRL project is dependent on development of the proposed MFCAR project” (p. 1). Despite acknowledging the Project’s interdependence with other all-season road projects, all funded by Ontario and with overlapping proponent and planning teams, these projects continue to be advanced and assessed separately.</p> <p>These separate, fragmented processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-economic and cultural impacts the development of this area represents. Our concerns are further exacerbated by Ontario’s colonial approach to sharing it’s decision-making with an arbitrarily selected subset of First Nations in the region. Given that there are three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development and access to the Ring of Fire, AFN requires that the WSR, the Northern Road Link and portion of the MFCAR that connects the WSR and Northern Road Link be considered in a single assessment of the entire region.</p>	<p>The EA Coordination Team for both the WSR and MFCAR projects, as well as the Northern Road Link, must develop and implement a coordinated approach across the three EA/IA assessment processes, subject to recommendations from the regional assessment. This approach is reasonable from an administrative and operational perspective, but is also mindful and supportive of community engagement needs. Aroland does not view the WSR, MFCAR and Northern Road Link as separate projects. Rather, consistent with how the TOR characterizes these projects, AFN sees the proposed development of a single road that starts in AFN’s territory and the Ontario provincial road network, and ends at the Webequie Airport via McFaulds Lake. With this perspective in mind, it is critical that AFN is engaged and the Project is assessed through this holistic and cultural lens that considers the full suite of road project impacts in the region.</p>
	<p>Project Understanding (1.1) Purpose and Rationale of the Project (Section 1.4)</p>	<p>In Section 1.1 and Section 1.4 of the Draft TOR states that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the MFCAR...the Project would enable economic activity by facilitating the transport of good, services and resources...the Project will complete the necessary transportation infrastructure link between the Ring of Fire and the highway network to facilitate mine development and operations...the Project will also reduce the cost of exploration activity and is likely to help increase future exploration activity for minerals.”</p> <p>Despite this being the stated purpose of the Project and the range of development the Proponent sees it enabling and accomplishing in the region, AFN is deeply concerned that the subsequent descriptions of the scope of the effects assessment in the Draft TOR are limited to the construction and use of the road itself, without considering the effects of this extensive activity the Proponent is aiming to bring about with the Project. It feels as though one scope and purpose of the Project is being used to promote the economic viability of the Project and a different scope and purpose of the Project is being</p>	<p>Due to the significant scale of development and scale of related potential impacts the stated purpose of this Project is meant to facilitate, we submit that Ontario should not proceed with the Environmental Assessment phase for the Project, and any other related planning or permitting until there has been a Regional Assessment that covers all potential development of the entire James Bay Lowlands area, and that assessment is co-developed, co-implemented and co-enforced by a body of affected First Nations in the region.</p>

	<p>used to minimize the Proponent’s obligations with respect to assessing the effects of the Project and the Duty to Consult and Accommodate.</p> <p>A Comprehensive EA completed under the provincial EA Act is simply not a sufficient tool to assess these complex, regional effects of the scope of development proposed by the Proponent. The consideration of the Project’s impacts in isolation without considering the possible cumulative effects of these other mining exploration projects, mining development projects and related infrastructure, including the several other all-season roads proposed in the region for the same purpose, will inevitably under represent the potential impacts of the Project. The results of a First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire are absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region.</p>	
<p>Proponent (Section 1.2)</p>	<p>In the description of the Proponent in Section 1.2, the ToR states “the proponents of the Project EA/IA and preliminary design are MFFN and WFN...proponent options for road ownership, maintenance activities and liability are being considered in discussion with the province of Ontario. Funding for the costs of the EA/IA for this Project is being provided by the Province of Ontario” (p. 4). This statement lacks clarity, which has been reflected throughout consultation related to all-season road development to date, about the constituents in the proponent group and the definition of the Project.</p>	<p>Further rationale needs to be provided as to why Ontario is not considered to be a member of the proponent group if their planning processes identified the need for the Project, they are actively advancing and supporting the Project and exclusively funding the Project.</p>
<p>Crown’s Duty to Consult (Section 4.1.4) Environmental Assessment Consultation and Engagement Plan (Appendix B) Memorandum of Understanding (Appendix G)</p>	<p>In characterizing the Crown’s Duty to Consult, the Proponent states “it is understood the Crown may rely on efforts by the Proponent’s Statutory Consultation in fulfilling its Duty to Consult” (p. 69). The Proponent goes on to cite the MOU between MECP, NDMNRF and the MFF and WFN as the document that provides clarity about which procedural aspects of consultation are being delegated by Ontario to the Proponent. The responsibilities set out in Schedule B of this MOU for the Proponent include developing a consultation plan for the environmental assessment and “considering whether separate engagement plans for each community should be developed in consultation with the Aboriginal Communities for each phase of the environmental assessment process.”</p> <p>AFN is deeply concerned that, despite being listed as an affected Aboriginal Community in Schedule A of the MOU and standing to be one of the primarily impacted Nations by the Project, no engagement or consultation took place</p>	<p>The Environmental Assessment for the Project should not proceed until the Proponent demonstrates that the terms of a Consultation Plan have been mutually agreed upon with AFN, and that the mutually agreed upon terms of an Engagement Agreement with the Proponent for the Project are developed that reflect AFN’s protocols and laws.</p>

		<p>related to the Proponent’s development of the Consultation Plan for the TOR, and the Proponent has not made any steps toward the development of a separate engagement agreement with AFN, despite numerous requests and efforts of our First Nation to this end. While the draft Consultation and Engagement Plan provided in Appendix B discussing “paying special attention to maintaining the vision and mutual guiding principles MFFN and WFN” and “reflecting the culture and traditions of MFFN and WFN as Indigenous proponents of the Project” (Section 2.2.2), the Proponent has not made any efforts to incorporate the consultation protocols of AFN and other Nations, and have not provided rationale for why this hasn’t taken place, which is a stated requirement in Schedule B of the MOU included as Appendix G. Given that AFN is a First Nation impacted by the Project, it is expected that any consultation plan developed for the Project would be done so collaboratively with our Nation, and it is our protocol that a project-specific engagement agreement is developed with a project proponent prior to the commencing of any environmental assessment or permitting activity.</p>	
	<p>Consultation and Engagement Purpose, Objectives, Principles (Section 4.1) Record of Consultation (Appendix A)</p>	<p>Despite acknowledging in Section 4.1.1 that a minimum requirement for the consultation program includes maintaining a Record of Consultation for each community that contains “all related non-confidential communications” and a summary of “issues raised and how they have been addressed” (p. 63), the Proponent grossly misrepresents the issues AFN has raised to date related to the Project, limiting them to concerns with time constraints and “development of the Ring of Fire.”</p> <p>It should also be made clear that to date, many of AFN’s significant concerns with the Project and the Proponent’s approach to environmental assessment and Indigenous consultation are outstanding and remain unaddressed and in fact have been ignored by the Proponent.</p>	<p>The Proponent must update Section 4.2.2 of the Record of Consultation to accurately reflect the issues raised by AFN in correspondence and communications to date, and outline which concerns remain unaddressed. The Proponent should be required to verify that First Nations have been given the opportunity to verify how their concerns and perspectives have been characterized in the Record of Consultation before they are published.</p>
	<p>Assessment of Project Effects (Section 6.2) Valued Components Preliminary Spatial Boundaries (Appendix D)</p>	<p>In its description of the Spatial Boundaries used for the assessment, the Proponent states that the Local Study Area (LSA) “is a study within which direct Project interactions are expected to occur” and a Regional Study Area (RSA) “encompasses the area outside of the LSA used to measure broader-scale existing environment conditions and provide regional context for the maximum predicted geographic extent of direct and indirect effects of the Project...the RSA is typically used to assess the cumulative effects of the Project” (p. 86).</p>	<p>Without appropriate spatial boundaries identified in collaboration with impacted First Nations, the environmental assessment should not be able to commence, as they represent confirmation that the scope of the environmental assessment will be adequate in relation to the potential effects of the Project on AFN. The Preliminary Spatial Boundaries must be developed in consultation with impacted Indigenous Nations, and until they are modified, no further approvals should be granted for the TOR.</p>

	<p>AFN is deeply concerned at the proposed boundaries presented in this Appendix, and especially for the LSA and RSA included in Figure D-1, which represent the Preliminary Study Areas that will be used to assess impacts to Indigenous Use of Land and Resources and Cultural Continuity and Well-Being. The southern-most extents of this RSA appear to be west of Ogoki Lake, which is not adequate to consider the possible direct and indirect effects of the Project to AFN's reserve and Traditional Land Use.</p> <p>The RSAs used to assess these impacts must be inclusive of the range of impacts associated with the connection of the Ring of Fire to the provincial highway system, inclusive of environmental, social, economic and cumulative impacts directly and indirectly related to the existence of proposed road access connected to the Ring of Fire mining area that will facilitate development of the Ring of Fire mining area, and transportation of materials, supplies and people to and from the Ring of Fire mining area. The preliminary study areas included in Appendix D were developed without any consultation with AFN, and in apparent disregard of concerns raised by AFN to date and must be modified.</p>	
<p>Conducting a Cumulative Effects Assessment (Section 6.7.2).</p>	<p>In the description of Assessment Methods in the Executive Summary, the Proponent states that "the methods used in the EA/IA will be consistent with available guidance documents and current best practices for EAs in Ontario and Canada" (p. ES-xiv). However, in the discussion of the proposed approach to a cumulative effects assessment in Section 6.7.2, the Proponent states that "the methodology the Project will follow to assess cumulative effects is consistent with evolving best practice and the federal approach under the Canadian Environmental Assessment Act, 2012." In this section of the ToR, supposedly based on tools and guidance developed under CEAA, the Proponent focuses only on the net <i>environmental</i> effects of the Project in concert with past, present or reasonably foreseeable projects.</p> <p>The current scope of the proposed approach to cumulative effects assessment is too narrow, and is not consistent with new guidance being developed at the federal level regarding cumulative effects assessment approaches. For example, under the new Impact Assessment Act, cumulative effects assessment must include and consider cumulative effects on the rights of Indigenous peoples. Further, the proposed approach to cumulative effects assessment in this section lacks the detail and clarity necessary to assess whether or not it will be sufficient to assess the reasonably foreseeable</p>	<ol style="list-style-type: none"> 1. The Proponent must modify the TOR to incorporate the latest guidance from IAAC with respect to cumulative effects assessment and ensure that cumulative effects on the rights of Indigenous peoples is included. 2. Given how vital the cumulative effects assessment is to accurately assessing the potential effects of the Project to the environment and the rights and interests of Indigenous Nations, a much more detailed approach to cumulative effects assessment must be developed before the ToR are approved. The Proponent must be required to confirm that this approach has been developed in collaboration with impacted Nations, and demonstrate how the results of the Regional Assessment for the Ring of Fire will inform the basis of this cumulative effects assessment for this Project.

		projects included in the scope of development the stated purpose of the Project proposes to enable.	
	Alternative Methods of Carrying out the Undertaking (ES 2.2)	Section 2.2 of the Executive Summary characterizes the process used to arrive at the current set of alternate routes “an iterative process that considered input from members of the MFFN and other neighboring communities.” This, along with portraying that “Indigenous Knowledge Considerations” were used in the analysis of Initial Corridor Alternatives (p. 26) is a misrepresentation of the level of engagement that occurred, as the Proponent’s engagement with AFN related to alternative routes for the Project has been non-existent to date. Further, the Proponent largely relies on engagement related to alternative route analysis completed for other road projects in the region. Given that the scope and proposed use of this Project differs drastically from any other project that has been historically proposed in the region, engagement for those projects should not be considered adequate or sufficient to inform the alternative route analysis for this Project that the Proponent claims has taken place to date. Identifying alternative routes is a critical step in the EA process, as it scopes and limits all further assessment and engagement from that point onward.	It is AFN’s position that alternative route analysis and the development and assessment of initial and preliminary corridor alternatives needs to be redone and more fully informed by engagement completed for this specific Project with Aroland, and with all of the other Nations impacted by the Project. No approval should be issued for the ToR until this has taken place.



PO Box 10
Aroland, Ontario
P0T 1B0
Phone: (807) 329-5970
Fax: (807) 329-5750

SENT BY EMAIL

Kathleen O'Neill
Director, Environmental Assessment Branch
Ministry of the Environment, Conservation and Parks
135 St. Clair Avenue West, 1st Floor,
Toronto, ON M4V 1P5
416-268-5984
Kathleen.oneill@ontario.ca

December 9th, 2022

RE: Northern Road Link Individual Environmental Assessment Terms of Reference, Ontario responses to Aroland First Nation Comment Submission

On behalf of Aroland First Nation ("AFN"), I write in response to the Ministry of Environment, Conservation and Parks ("MECP") letter of November 17, 2022, outlining Ontario's responses to Aroland First Nation's comment submission on the Draft Terms of Reference of June 28, 2022.

Upon review of Ontario and the Proponent's responses, our concerns have not been addressed. As such, the Duty to Consult and Accommodate related to the review of the Draft Terms of Reference has not been fulfilled and therefore the Minister should not provide approvals for the Draft Terms of Reference and the MECP should not proceed with the Environmental Assessment phase for the Project, and any other related planning or permitting until all issues have been resolved.

A more detailed assessment of Ontario's responses and outstanding issues can be found in Table 1 below, however we wish to highlight the following:

1. It remains our position that given the three "separate" roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) all in some way support exploration, development and access to the Ring of Fire, the Webequie Supply Road, the Northern Road Link and portion of the Marten Falls Community Access Road that connects the WSR and Northern Road Link should be considered a single project and considered in a single assessment of the entire region. Consistent with how the Draft Terms of Reference characterizes these projects, AFN sees the proposed development of a single road that starts in AFN's territory and the Ontario provincial road network, and ends at the Webequie Airport via McFaulds Lake. This view is affirmed in Ontario's November 17, 2022 response, which states that the purpose of the NRLP is to "connect the Ring of Fire mineral deposits to the highway network via the proposed MFCAR in order to link the communities, the region and the province with the economic opportunities surrounding the Ring of Fire." The Proponent and Ontario's proposed approach to splitting the projects will result in fragmented environmental assessment processes that do not fully account for the cumulative environmental, socio-economic and cultural impacts the development of this area represents, create unnecessary and unmanageable capacity burdens on First Nations that will inevitably result in oversight and error, and is therefore a violation of good faith in the Duty to Consult and Accommodate.
2. It remains our position that especially given the fundamental inadequacies in consultation and engagement to date by the Proponent and the absence of a consent based process with AFN for the NRLP, the provincial Individual Environmental Assessment process and the current iteration of the ToR is insufficient to assess and address the cumulative effects of the Project. The consideration of the Project's

impacts in isolation without considering the cumulative effects of other proposed all-season road and mining projects in the region will inevitably under-represent the potential impacts of the Project. The results of a First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire are absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region. Once constructed the impacts of this Project will be compounded by the impacts of the connecting all-season roads which together will enable extensive mineral exploration and mining development activities with widespread cumulative effects on our people, our way of life, our community well-being, and our inherent and established Aboriginal and Treaty rights. To proceed any further with this Individual Environmental Assessment without the foundation of the results of the Regional Assessment would be negligent in the practice of environmental impact assessment and unconstitutional in the consideration of impacts to Aboriginal and Treaty rights.

3. Despite Ontario and the Proponent stating that the development of the NRLP should be considered separately from the impacts of mining development and advancing the Project under the guise of improving community access for remote communities, the Proponent states in the public Notice of Submission for the ToR that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the proposed [Marten Falls Community Access Road]” and “enable economic activity by facilitating the transport of goods, services and resources.” Section 1.1 and Section 1.4 of the Draft ToR also states that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the MFCAR...the Project would enable economic activity by facilitating the transport of good, services and resources...the Project will complete the necessary transportation infrastructure link between the Ring of Fire and the highway network to facilitate mine development and operations...the Project will also reduce the cost of exploration activity and is likely to help increase future exploration activity for minerals.” Taken together with Ontario’s confirmation in their November 17, 2022 responses that it is the provincial Ministry of Mines providing funding support for the NRLP, this conclusively confirms AFN’s long-standing concern that if the NRLP advances, significant mining development will follow closely behind, and industrial traffic will be inevitable along the proposed Marten Falls Community Access Road and existing Painter Lake and Anaconda Roads that pass through our Traditional Territory, which will result in significant and irreversible impacts to our Aboriginal and Treaty rights and interests. To portray this Project and other corresponding road segments as having any other primary purpose than facilitating mining development in the Ring of Fire is a grave misrepresentation and is a violation of good faith in the Duty to Consult and Accommodate.
4. We are deeply concerned at the proposed boundaries of the Preliminary Study Areas presented in the Draft Terms of Reference and in a subsequent November 17, 2022 memo from the Proponent, which depict the LSA and RSA that will be used to assess impacts to Indigenous Use of Land and Resources and Cultural Continuity and Well-Being. The southern-most extents of this proposed RSA appear to be west of Ogoki Lake, which is not adequate to fulfill the Proponent’s stated purpose of the RSA which “encompasses the area outside of the LSA used to measure broader-scale existing environment conditions and provide regional context for the maximum predicted geographic extent of direct and indirect effects of the Project... typically used to assess the cumulative effects of the Project” (Draft Terms of Reference, p. 86). The RSAs used to assess these impacts must be expanded considerably to be inclusive of the range of impacts associated with the connection of the Ring of Fire to the provincial highway system, inclusive of environmental, social, economic and cumulative impacts directly and indirectly related to the existence of proposed road access connected to the Ring of Fire mining area that will facilitate development of the Ring of Fire mining area, and transportation of materials, supplies and people to and from the Ring of Fire mining area. The preliminary study areas included in the Draft Terms of Reference were developed without any consultation with AFN, and in apparent disregard of concerns raised by AFN to date. The Preliminary Spatial Boundaries must be modified in consultation with impacted Indigenous Nations, and until they are modified, no further approvals should be granted for the TOR. To proceed in any other way would be a violation of good faith in the Duty to Consult and Accommodate, would inevitably result in an effects assessment that misrepresents the actual impacts of the Project to Aboriginal rights and interests and would undermine the informed decision-making of First Nations and provincial and federal regulators.

Aroland First Nation maintains jurisdiction over its traditional lands and never ceded and surrendered this right in Treaty 9. We will exercise our jurisdiction and continue to express our opposition to Ontario and the Proponent's current approach to the Environmental Assessment for this Project and the corresponding road segments as long as our concerns remain unaddressed.

We require a written response to this submission that addresses each of our outstanding concerns outlined in this submission. Ontario should not proceed with the environmental assessment phase for this Project until receiving our confirmation that concerns outlined in this submission and raised to date have been substantively addressed.

Respectfully,

<Original signed by>

Chief Dorothy Towedo
Aroland First Nation

Cc:

Aroland First Nation Council

Sasha McLeod, Ministry of the Environment, Conservation and Parks

Dorothy Moszynski, Ministry of the Environment, Conservation and Parks

Andrew Lock, Ring of Fire Operations Manager, Indigenous Consultation and Partnerships Branch, NDMNRF

Mary Hennessy, Director, Ring of Fire Policy Coordination Branch, NDMNRF

Chief Bruce Achneepineskum and Council, Marten Falls First Nation

Chief Cornelius Wabasse and Council, Webequie First Nation

Caitlin Cafaro, Ontario Regional Director, IAAC

Debra Myles, Senior Advisor – Strategic and Regional Assessment, IAAC

Jeremy Shute, Shared Value Solutions

Andrew Peach, Shared Value Solutions

Table 1: Assessment of Ontario and Proponent responses to Aroland's comments on the Northern Road Link Draft Terms of Reference

COMMENT ID #	TOR SECTION	AFN JUNE 28 COMMENTS	MFFN/WFN OCTOBER 28, 2022 RESPONSE	ONTARIO NOVEMBER 17, 2022 RESPONSE	AFN DECEMBER 14, 2022 ASSESSMENT OF ONTARIO AND PROPONENT RESPONSES
ArFN-02		<p>The consideration of the Project's impacts in isolation without considering the cumulative effects of other proposed all-season road and mining projects in the region will inevitably under-represent the potential impacts of the Project. The results of a First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire are absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region. Once constructed the impacts of this Project will be compounded by the impacts of the connecting all-season roads which together will enable extensive mineral exploration and mining development activities with widespread cumulative effects on our people, our way of life, our community well-being, and our inherent and established Aboriginal and Treaty rights. To proceed any further with this Individual Environmental Assessment without the foundation of the results of the Regional Assessment would be negligent in the practice of environmental impact assessment and unconstitutional in the consideration of impacts to Aboriginal and Treaty rights.</p> <p>We have significant concerns related to the potential environmental impacts of the Project on the region and the potential impacts on our Treaty and Aboriginal rights and interests. The statements in the public Notice of Submission for the ToR that "the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the proposed [Marten Falls Community Access Road]" and "enable economic activity by facilitating the transport of goods, services and resources" confirm AFN's long-standing concern that industrial traffic is inevitable along the proposed Marten Falls Community Access Road and existing Painter Lake and Anaconda Roads, which pass directly through our Traditional Territory and our community.</p> <p>Because of the location of our community and the way traffic would be funneled through our territory and reserve we submitted numerous requests to be included in the planning and decision-making processes. Barring our participation as decision-makers we would normally insist that we be considered a primarily impacted Nation in this assessment process, which would necessitate our involvement in the co-development of the ToR, approaches to Indigenous consultation and the integration of Traditional Knowledge, and clear commitments to requiring our free, prior and informed consent for the Project. To date, no meaningful steps have been taken to this end. As such, we object to this Project moving ahead. To the extent this Project will directly impact and need the use of Aroland territory for the southern "continuation" of your road network into the highway system, you require Aroland consent and we do not give it.</p> <p>We insist that nothing move forward until a comprehensive First Nation co-led and co-developed regional assessment is completed and at that point depending on its results, Aroland will make a decision on whether to consent to aspect of proposed development. We must make such decisions in an informed way not under duress.</p> <p>To be clear, AFN is not expressing blanket opposition to all-season roads or mineral exploration in principle, but instead our objection and deep concern is with the fragmented approach to assessing regional impacts through various impact and environmental assessment processes. This ensures that no one will understand what the full impacts will be and will make decisions in the dark that will likely end up hurting us.</p>	<p>The Environmental Assessment/Impact Assessment (EA/IA) for the NRL Project (the Project) will include a cumulative effects assessment, as described in Section 6.7 (Cumulative Effects Assessment) of the Proposed ToR. The cumulative effects assessment will consider the proposed MFCAR project and WSR project, among other past, present and reasonably foreseeable physical activities, including reasonably foreseeable mineral exploration and mining development projects, as well as other all-season road projects (i.e., MFCAR and WSR). It is anticipated that the cumulative effects assessment will also include the construction of upgrades to the Anaconda and Painter Lake forestry access roads as reasonably foreseeable developments.</p> <p>In November 2020, the federal Minister of Environment and Climate Change (the Minister) determined that a Regional Assessment will be conducted in an area centered on the Ring of Fire mineral deposits in northern Ontario. The Minister directed the Impact Assessment Agency of Canada (the Agency) to engage with Indigenous groups, non-government organizations, the Province of Ontario and other federal departments to discuss appropriate activities, outcomes and spatial and temporal boundaries for the Regional Assessment.</p> <p>Relevant information generated through the Regional Assessment for the Ring of Fire Area will be used to inform the Project's effects assessment, as the developed information becomes available. This may include informing the baseline studies, effects prediction, cumulative effects assessment, the consideration of possible mitigation and enhancement measures, and follow-up programs, as applicable.</p> <p>With respect to the possible implications of the Project's EA/IA process proceeding before a comprehensive First Nation co-led and co-developed regional assessment in the Ring of Fire Area is completed, this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.</p> <p>As stated in Section 4.2.1 (Indigenous Communities) of the Proposed ToR, Aroland First Nation is included in the list of Indigenous communities and Indigenous organizations whose Aboriginal and/or Treaty Rights may be potentially affected by the Project and may have an interest in the Project. The proponent acknowledges Aroland First Nation's concerns related to the potential environmental impacts of the Project on the region and the potential impacts on their</p>	<p>The federal government through the Impact Assessment Agency of Canada (the Agency) is in the planning stage of a Regional Assessment "centred on the mineral deposits in the Ring of Fire." The Agency and Ontario released a draft Agreement and Terms of Reference for the conduct of the Regional Assessment for review and input in December of 2021 through to March of 2022. At this time no decision has been made by Canada on the next steps for a Regional Assessment. Currently, Ontario is aware that the Agency is continuing to engage with interested Indigenous communities on a proposed approach for a Regional Assessment that could be co-led by the Agency, Indigenous communities and Ontario. Ontario has not made any final decision on its participation.</p> <p>Ontario has robust planning and regulatory requirements through the Environmental Assessment Act (EAA) that require proponents to identify potential impacts and address them in their project-level planning. Marten Falls First Nation and Webequie First Nation (the proponent) requested to enter into an agreement with the Minister of the Environment, Conservation and Parks under the EAA to make their proposed project subject to the requirements of the EAA. The proponent has committed in section 6.7.1 of the proposed ToR to consider in the cumulative effects assessment, where appropriate, any publicly available information that may be generated through the federal regional assessment that is considered to be relevant to the project.</p> <p>We understand that Marten Falls and Webequie First Nations intend to continue with the EA process, if their ToR is approved by the Ontario Minister of the Environment, Conservation and Parks. The Northern Road Link (NRL) EA would continue in parallel with any federal Regional Assessment process.</p> <p>The proponent-driven time limits for federal impact assessments are managed individually and independently from the Regional Assessment. The Agency has confirmed that the Regional Assessment will therefore not affect the timing of the federal impact assessments of the proposed road projects. Ontario understands that the Agency has indicated that as planning and scheduling for</p>	<p>AFN's concerns have not been addressed.</p> <p>It remains our position that especially given the fundamental inadequacies in consultation and engagement to date by the Proponent and the absence of a consent based process with AFN for the NRLP, the provincial environmental assessment and the current iteration of the ToR is insufficient to assess and address the cumulative effects of the Project. The Proponent has not provided substantive evidence in the ToR that they will adequately consider the potential impacts of the connecting all-season roads, which together will enable extensive mineral exploration and mining development activities with compounding effects on our people, our way of life, our community well-being, and our inherent and established Aboriginal and Treaty rights. The Proponent and Ontario acknowledge the importance of the Regional Assessment to inform the provincial environmental assessment and refer to general aspirations that the federal Regional Assessment may in some way inform the Project's effects assessment if information is available in time. However, they have not made any clear commitment to allowing the Regional Assessment to be completed before seeking approvals for this project-specific environmental assessment. A First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire is absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region.</p> <p>Aroland also does not share the Proponent's "confidence" that the consultation and engagement program for the Project, as described in the Proposed ToR, fosters an appropriate degree of participation by AFN. As AFN stated in our June 28, 2022 comment submission, barring our participation as a proponent or decision-maker in the NRLP, we insist that beyond just "participating in planning processes," the potential impacts of the Project on our Aboriginal and Treaty rights and interests necessitate our involvement in the co-development of the ToR; , approaches to Indigenous consultation; the integration of Traditional Knowledge into the EA; , and</p>

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		<p>These processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-economic and cultural impacts the development of this area represents.</p>	<p>Treaty and Aboriginal rights and interests. In Section 6.7 (Cumulative Effects Assessment) of the Proposed ToR, the proponent has committed to consulting with Indigenous communities on the proposed cumulative effects assessment methodology. In addition, through the Consultation and Engagement Plan and the Indigenous Knowledge Program, the proponent aims to collaborate with Indigenous communities in characterizing baseline conditions, predicting potential project impacts, and determining appropriate mitigation and monitoring methods. This includes the collection of Indigenous Knowledge that may be used in the cumulative effects assessment.</p> <p>With respect to Aroland First Nation's requests to be included in planning and decision-making processes, the proponent is confident that the consultation and engagement program for the Project, as described in the Proposed ToR, adheres to legislative and regulatory requirements, including established provincial codes of practice governing the preparation of environmental assessments (as cited in Section 1.6 [Regulatory Framework] of the Proposed ToR), and fosters a high degree of participation by all potentially affected and interested parties.</p> <p>With respect to Aroland First Nation's request to be considered a primarily impacted Nation in this assessment process, Section 4.1.4 (Crown's Duty to Consult) of the Proposed ToR cites the responsibility of the Crown to determine whether a duty to consult has been triggered by a Project and, if so, identify the Indigenous communities to be engaged and the appropriate consultation to be undertaken with those communities. This requirement has been fulfilled and Aroland First Nation has been included in the list of First Nations potentially affected and to be consulted. The "primacy" of potential effects directly related to the Project will be determined through the environmental assessment process described in the Proposed ToR.</p> <p>You have expressed concerns with the perceived "fragmented approach to assessing regional impacts through various impact and environmental assessment processes". The Ontario EA process is proponent-led. The proponents for each of the three proposed all-season road projects (MFCAR, WSR, and NRL) separately requested to enter into agreements with the Minister of the Environment, Conservation and Parks under the EA Act to make their respective projects subject to the requirements of the EA Act. As a result of those agreements, each of the three proposed road projects are undergoing Individual</p>	<p>the Regional Assessment proceeds, it would continue to explore and consider the relationships between it and the federal assessment for the NRL project, including the potential for the Regional Assessment to contribute information and other inputs for consideration in the road assessment where relevant, and future project assessments, as appropriate.</p> <p>Indigenous communities and organizations will continue to have numerous opportunities to participate in the EA. MECP encourages Aroland First Nation to continue to participate in the consultation process for the proposed project.</p>	<p>clear commitments to requiring our free, prior and informed consent for the Project and each step of the environmental assessment. As such a consent-based approach and AFN specific Engagement Plan and Consultation Agreement has not yet been developed, and no meaningful steps have been taken to this end, we object to this Project moving ahead.</p>

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ArFN-03

Our concerns are further exacerbated by Ontario’s colonial approach to decision-making by creating duress and only agreeing to recognize any decision-making of those small number of First Nations who agreed to support mining in order to be able to get road access.

Given that there are three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development and access to the Ring of Fire, AFN requires that the WSR, the Northern Road Link and portion of the MFCAR that connects the WSR and Northern Road Link be considered in a single assessment of the entire region. We will continue to advocate for an integrated review process that considers the full range of regional impacts and this work must be approached in a way that brings together all our affected First Nation neighbors to the table.

EAs, which is the most comprehensive form of EA in Ontario.

Under the Individual EA process, it is up to each proponent to plan and design the EA for their respective project. The proposed projects are distinct and unique, with different purposes designed to meet the specific community objectives of their respective proponents. Other projects in the area such as mineral exploration projects and mining development projects may be required to undergo their own EA processes under the EA Act.

With respect to the comment on “Ontario’s colonial approach to decision-making”, this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. Acknowledgment of the Crown’s statutory duty to consult is cited in Section 4.1.1 (Purpose) of the Proposed ToR; the initial steps in fulfilling these obligations are described in Section 4.2.1 (Indigenous Communities) of the Proposed ToR and the response to Comment ArFN-02. We have referred your comment to Ontario in case they have any further responses on this matter in the context of the initial steps taken in their duty to consult.

With respect to the comment that Ontario is only recognizing “those small number of First Nation who agree to support mining in order to be able to get road access”, Webequie First Nation and Marten Falls First Nation have large traditional territories and the Northern Road Link Project lies at the center of those traditional territories. Webequie and Marten Falls First Nations are conducting the EA/IA for the Northern Road Link so they can generate the required information in order to make informed decisions about this Project. Any proposed mine developments will undergo separate regulatory processes, which none is currently active. Conducting the NRL’s EA/IA does not mean that Webequie and Marten Falls First Nations support any individual mining project in the region. That will be a separate conversation with mining proponents in the future.

Your request that the WSR, the NRL and portion of the MFCAR that connects the WSR and NRL be considered in a single assessment of the entire region appears to be an extension of the concern regarding the perceived fragmented approach to assessing regional impacts expressed in Comment ArFN-02. Please see the responses to Comments ArFN-01 and ArFN-02.

Marten Falls and Webequie First Nations are the proponent for the NRL EA and are accountable for decisions about the project planning and design during the preparation of the EA (concept, location, alternatives, studies, mitigation, etc.).

In response to the proponents’ desire to advance the environmental assessment process for the NRL, the Ministry of Mines (MINES) is providing funding to support the proponent in its EA.

The funding provided does not commit or direct the proponent to any specific project elements or outcomes.

Ontario also has established a Participant Funding Initiative for the NRL project to support meaningful consultation with eligible Indigenous communities who may have established or credibly asserted Aboriginal or treaty rights that may be adversely affected by the project.

In addition to consultation required under the Environmental Assessment Act, Ontario recognizes that, as the Crown, it has a constitutional duty to consult, and where appropriate, accommodate Aboriginal communities where it contemplates decisions that may adversely impact asserted or established Aboriginal or treaty rights. Ontario is committed to meeting its duty to consult.

AFN’s concerns have not been addressed.

Ontario has not provided sufficient justification for the selection and recognition of only a subset of First Nations as proponents and decision-makers in the Project. Despite the Proponent’s assertion that the NRLP lies at the center of their traditional territories which justifies the exclusion of other First Nations, a broader perspective and approach is required for Project decision-making is required that reflects the reality that the impacts of the Project and related all-season roads together will enable extensive mineral exploration and mining development activities with impacts on the Aboriginal and Treaty rights of First Nations throughout the region. Given that there are three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development and access to the Ring of Fire, AFN requires that the Webequie Supply Road, the Northern Road Link and the portion of the Marten Falls Community Access Road that connects the Webequie Supply Road and Northern Road Link be considered in a single assessment of the entire region. We will continue to advocate for an integrated review process that considers the full range of regional impacts and this work must be approached in a way that brings together all our affected First Nation neighbours to the table. The Proponent has acknowledged in their responses that “under the Individual EA process, it is up to each proponent to plan and design the EA for their respective project” which would suggest they do have

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					<p>the ability to develop such a coordinated approach.</p> <p>Despite the Proponent stating that the development of the NRLP should not be equated with the impacts of mining development, their own statement in the public Notice of Submission for the ToR reads that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the proposed [Marten Falls Community Access Road]” and “enable economic activity by facilitating the transport of goods, services and resources.” Section 1.1 and Section 1.4 of the Draft ToR states that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the MFCAR...the Project would enable economic activity by facilitating the transport of good, services and resources...the Project will complete the necessary transportation infrastructure link between the Ring of Fire and the highway network to facilitate mine development and operations...the Project will also reduce the cost of exploration activity and is likely to help increase future exploration activity for minerals.” Taken together with Ontario’s confirmation in their November 17, 2022 responses that it is the provincial Ministry of Mines providing funding support for the NRLP, this conclusively confirms AFN’s long-standing concern that if the NRLP advances, significant mining and industrial traffic will be inevitable along the proposed Marten Falls Community Access Road and existing Painter Lake and Anaconda Roads. These roads pass directly through our Traditional Territory, traditional land use areas, and our community and which will result in significant and irreversible impacts to our Aboriginal and Treaty rights and interests.</p>
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ArFN-05	Project Understanding (Section 1.1)	<p>In Section 1.1, the TOR states that “the development of the proposed NRL project is dependent on development of the proposed MFCAR project” (p. 1). Despite acknowledging the Project’s interdependence with other all-season road projects, all funded by Ontario and with overlapping proponent and planning teams, these projects continue to be advanced and assessed separately.</p> <p>These separate, fragmented processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-</p>	<p>Your concerns here regarding perceived project fragmentation and separation appear to be an extension of those expressed in Comment ArFN-02 and ArFN-03, and our response is similar.</p> <p>The three proposed all-season road projects (MFCAR, WSR, and NRL) are not a single continuous road project from an Environmental Assessment (EA) process standpoint. The three proposed all-season</p>	<p>As noted in the proponent’s response, Ontario’s EA process is proponent-led. The proponents for each of the three proposed road projects (MFCAR, WSR and NRL) separately requested to enter into agreements with the Minister of the Environment, Conservation and Parks under</p>	<p>AFN’s concerns have not been addressed.</p> <p>It remains our position that given the three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) all in some way support exploration, development and access to the Ring of Fire, the Webequie Supply Road, the Northern Road Link and</p>
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	<p>economic and cultural impacts the development of this area represents. Our concerns are further exacerbated by Ontario's colonial approach to sharing it's decision-making with an arbitrarily selected subset of First Nations in the region. Given that there are three separate roads projects (Webequie Supply Road, Northern Road Link and Marten Falls Community Access Road) that in some way support exploration, development and access to the Ring of Fire, AFN requires that the WSR, the Northern Road Link and portion of the MFCAR that connects the WSR and Northern Road Link be considered in a single assessment of the entire region.</p> <p><i>Recommendation</i></p> <p>The EA Coordination Team for both the WSR and MFCAR projects, as well as the Northern Road Link, must develop and implement a coordinated approach across the three EA/IA assessment processes, subject to recommendations from the regional assessment. This approach is reasonable from an administrative and operational perspective, but is also mindful and supportive of community engagement needs. Aroland does not view the WSR, MFCAR and Northern Road Link as separate projects. Rather, consistent with how the TOR characterizes these projects, AFN sees the proposed development of a single road that starts in AFN's territory and the Ontario provincial road network, and ends at the Webequie Airport via McFaulds Lake. With this perspective in mind, it is critical that AFN is engaged and the Project is assessed through this holistic and cultural lens that considers the full suite of road project impacts in the region.</p>	<p>road projects are distinct and unique, with different purposes designed to meet the specific objectives of their respective proponents.</p> <p>The Ontario EA process is proponent-led. The proponents for each of the three proposed all-season road projects (MFCAR [MFFN], WSR [WFN], and NRL [MFFN and WFN, collectively the "proponent"]) separately requested to enter into agreements with the Minister of the Environment, Conservation and Parks under the EA Act to make their respective projects subject to the requirements of the EA Act. As a result of those agreements, each of the three proposed road projects are undergoing Individual EAs, which is the most comprehensive form of EA in Ontario. The individual EA will include a cumulative effects assessment. The data that will be considered will be the overall data set publicly available in the region to date as well as the data collected by the Project. This will enable the proponent to understand broad project cumulative impacts.</p> <p>Separating large projects into smaller ones (i.e., project splitting) has been attempted in the past by some proponents to: i) avoid regulatory thresholds like the federal Impact Assessment or, ii) have the ability to understate project impacts. The proponent is not doing either. The proponents chose to undertake separate projects because their purpose is different.</p> <p>With respect to Aroland First Nation's recommendation that the EA Coordination Team for the WSR, MFCAR and NRL projects must develop and implement a coordinated approach across the three EA/IA assessment processes, subject to recommendations from the regional assessment, this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.</p>	<p>the EAA to make their respective projects subject to the requirements of the EAA.</p> <p>The proposed projects are distinct and unique, with different purposes designed to meet the specific objectives of each First Nation proponent.</p> <p>As required by the EAA, the proponent of the NRL is required to describe the purpose and rationale for its proposed project. The proposed ToR states the proponent's stated purpose and rationale for the NRL, which is to connect the Ring of Fire mineral deposits to the highway network via the proposed MFCAR in order to link the communities, the region and the province with the economic opportunities surrounding the Ring of Fire.</p> <p>Should the ToR be approved, the proponent will be required to revisit and build on the purpose statement that was outlined in the approved ToR. At the end of the planning process, the proponent will be required to provide a detailed definition of the purpose of the undertaking.</p> <p>MECP is reviewing the proposed ToR for the NRL to ensure that the proponent has met the requirements of the EAA and the expectations in MECP's Codes of Practice. MECP is also reviewing how the proponent has responded to concerns raised, the overall record of consultation, and whether an EA prepared in accordance with the proposed ToR would be consistent with the purpose of the EAA and the public interest.</p> <p>Please see responses to ArFN-06 below regarding the assessment of cumulative effects and the Crown Consultation Approach for the Ring of Fire.</p> <p>If a federal Impact Assessment (IA) for this project is required, MECP anticipates coordinating, where possible, EA activities that are the responsibility of the Crown with the Agency, for the separate EA/IA processes for the proposed road project. In addition, MECP anticipates that the proponent would prepare one body of documentation to meet both federal and provincial EA/IA requirements, should an IA be required.</p> <p>Please also see response to ArFN-02 regarding the Regional Assessment.</p>	<p>portion of the Marten Falls Community Access Road that connects the WSR and Northern Road Link should be considered a single project and considered in a single assessment of the entire region. The three proposed all-season road projects are not distinct and unique, and share far more in common in terms of objective and purpose than they might have in minor nuanced differences in terms of their development. Consistent with how the ToR characterizes these projects, AFN sees the proposed development of a single road that starts in AFN's territory and the Ontario provincial road network, and ends at the Webequie Airport via McFaulds Lake. This view is acknowledged in Ontario's November 17, 2022 response, which states that the purpose of the NRLP is to "connect the Ring of Fire mineral deposits to the highway network via the proposed MFCAR in order to link the communities, the region and the province with the economic opportunities surrounding the Ring of Fire."</p> <p>Separate, fragmented Individual EA processes have proven ineffective in engaging First Nations and fully accounting for the cumulative environmental, socio-economic and cultural impacts the development of this area represents. The EA Coordination Team for both the WSR and MFCAR projects, as well as the Northern Road Link, must develop and implement a coordinated approach across the three EA/IA assessment processes, subject to recommendations from the regional assessment.</p>

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ArFN-06

Project Understanding (Section 1.1)

In Section 1.1 and Section 1.4 of the Draft TOR states that “the Project will connect the Ring of Fire mineral deposits in the McFaulds Lake area to the highway network via the MFCAR...the Project would enable economic activity by facilitating the transport of good, services and resources...the Project will complete the necessary transportation infrastructure link between the Ring of Fire and the highway network to facilitate mine development and operations...the Project will also reduce the cost of exploration activity and is likely to help increase future exploration activity for minerals.”

Despite this being the stated purpose of the Project and the range of development the Proponent sees it enabling and accomplishing in the region, AFN is deeply concerned that the subsequent descriptions of the scope of the effects assessment in the Draft TOR are limited to the construction and use of the road itself, without considering the effects of this extensive activity the Proponent is aiming to bring about with the Project. It feels as though one scope and purpose of the Project is being used to promote the economic viability of the Project and a different scope and purpose of the Project is being used to minimize the Proponent’s obligations with respect to assessing the effects of the Project and the Duty to Consult and Accommodate.

A Comprehensive EA completed under the provincial EA Act is simply not a sufficient tool to assess these complex, regional effects of the scope of development proposed by the Proponent. The consideration of the Project’s impacts in isolation without considering the possible cumulative effects of these other mining exploration projects, mining development projects and related infrastructure, including the several other all-season roads proposed in the region for the same purpose, will inevitably under represent the potential impacts of the Project. The results of a First Nation co-developed and adequately scoped Regional Assessment for the Ring of Fire are absolutely necessary to assess the true impacts of potential mineral development activity and its supporting infrastructure throughout the region.

Recommendation

Due to the significant scale of development and scale of related potential impacts the stated purpose of this Project is meant to facilitate, we submit that Ontario should not proceed with the Environmental Assessment phase for the Project, and any other related planning or permitting until there has been a Regional Assessment that covers all potential development of the entire James Bay Lowlands area, and that assessment is co-developed, co-implemented and co-enforced by a body of affected First Nations in the region.

The EA/IA for the Project will include a cumulative effects assessment, as described in Section 6.7 (Cumulative Effects Assessment) of the Proposed ToR. The cumulative effects assessment will consider the proposed MFCAR project and WSR project, among other past, present and reasonably foreseeable physical activities including reasonably foreseeable mineral exploration and mining development projects.

As noted in Proposed ToR Section 4.1.4 (Crown’s Duty to Consult), the Crown has a legal obligation to consult with Indigenous communities when it contemplates decisions or actions that may adversely impact asserted or established Aboriginal or treaty rights. Boards, tribunals, regulatory authorities and proponents all play a role in the consultation process; however, the Crown retains the responsibility to ensure that the necessary consultation and, if appropriate, accommodation has occurred. The Proponent has prepared a Consultation and Engagement Plan to meet the requirements of the EA Act, included as Appendix B of the Proposed ToR. The plan was developed in accordance with the requirements of the EA Act, the ToR Code of Practice (MOE, 2014a), the EA Code of Practice (MOE, 2014b) and the Code of Practice: Consultation in Ontario’s Environmental Assessment Process (MOE, 2014c). Consultation and engagement activities will include relationship-building activities that extend beyond the statutory and procedural requirements of consultation, where possible, based on the interest and willingness of other parties. It is noted that consultation and engagement activities conducted within a provincial EA process may be relied on by Ontario towards fulfilling its constitutional duty to consult with Indigenous peoples.

With respect to Aroland First Nation’s comment that “a different scope and purpose of the Project is being used to minimize the proponent’s obligations with respect to assessing the effects of the Project and the Duty to Consult and Accommodate”, the “Duty to Consult and Accommodate” portion of this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.

We would be happy to meet with you for further discussion to better understand your concerns and how you can continue to be involved in these processes.

With respect to your comments that the purpose of the NRL is being used to minimize the proponent’s obligations with respect to assessing the effects of the project and the Duty to Consult and Accommodate, Ontario, as the Crown, has a constitutional duty to consult, and where appropriate, accommodate Aboriginal communities where it contemplates decisions that may adversely impact asserted or established Aboriginal or treaty rights. Ontario is committed to meeting its duty to consult with respect to any decisions in the Project area. Although the legal responsibility to meet the duty to consult lies with Ontario, Ontario may delegate procedural aspects of consultation to third parties.

With respect to your comment that the comprehensive EA process is not a sufficient tool to assess regional effects of the scope of the project, MECP’s Code of Practice for Preparing and Reviewing EAs encourages proponents to include information about potential cumulative effects of the project in combination with past, present and reasonably foreseeable future activities where possible, and refers to federal government guidance to proponents on cumulative effects assessments.

Section 6.7 of the ToR states that the EA will include a cumulative effects assessment to identify and characterize project effects that are likely to interact cumulatively with the effects of other past, present or reasonably foreseeable projects and/or activities in the vicinity of the Project. Results of the consultation undertaken at key project milestones will provide input into the cumulative effects study plan and cumulative effects assessment.

As indicated in section 6.7.3 of the ToR, the proponents have made a commitment that “Indigenous communities... will be consulted on the cumulative effects assessment study plan, methodology, results and mitigation/impact management measures during the preparation of the EAR/IS. This

AFN’s concerns have not been addressed.

As stated above, AFN does not share Ontario’s confidence that the current project EA requirements will be sufficient to ensure consideration of potential environmental effects, both positive and negative, including cumulative effects. Separate, fragmented Individual EA processes carried out under MECP’s Code of Practice have proven ineffective in engaging First Nations and for fully accounting for the cumulative environmental, socio- economic and cultural impacts the development of this area represents. The EA Coordination Team for both the WSR and MFCAR projects, as well as the Northern Road Link, must develop and implement a coordinated approach across the three EA/IA assessment processes, subject to recommendations from the regional assessment.

AFN also remains unsatisfied with the proponent’s proposed EA consultation plan which is cited by Ontario as the mechanism for the Proponent fulfilling its responsibilities for procedural aspects of the Duty to Consult and Accommodate. The MOU between MECP, NDMNRF and the MFFN and WFN is intended to provide clarity about which procedural aspects of consultation are being delegated by Ontario to the Proponent. The responsibilities set out in Schedule B of this MOU for the Proponent include developing a consultation plan for the environmental assessment and “considering whether separate engagement plans for each community should be developed in consultation with the Aboriginal Communities for each phase of the environmental assessment process.” AFN is deeply concerned that, despite being listed as an affected Aboriginal Community in Schedule A of the MOU and standing to be one of the primarily impacted Nations by the Project, no engagement or consultation took place related to the Proponent’s development of the Consultation Plan for the ToR. The Proponent has not made any steps toward the development of a separate

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		<p>With respect to Aroland First Nation’s comment that “a Comprehensive EA under the provincial EA Act not being a sufficient tool to assess these complex, regional effects of the scope of development proposed by the Proponent”, this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.</p> <p>With respect to Aroland First Nation’s recommendation that Ontario should not proceed with the Environmental Assessment phase for the Project, and any other related planning or permitting until there has been a Regional Assessment that covers all potential development of the entire James Bay Lowlands area, and that assessment is co-developed, co-implemented and co-enforced by a body of affected First Nations in the region, this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.</p>	<p>will include targeted consultation opportunities to participating Indigenous communities, including methods of engagement that the Indigenous communities might request.” The EA will include a “cumulative effects consultation report to accompany the cumulative effects assessment within the EA” and will include a “summary of the consultation completed with Indigenous communities... regarding the development of the cumulative effects assessment” and “comment-response tables showing how comments from Indigenous communities... were considered and incorporated, as appropriate in the development of the cumulative effects assessment.”</p> <p>Ontario is confident that its EA process and that the current project EA requirements help ensure consideration of potential environmental effects, both positive and negative, including cumulative effects. If the ToR is approved and an EA submitted, at that time the ministry will evaluate the sufficiency of the cumulative effects assessment in the EA, taking into consideration comments received through consultation. The ministry intends for this individual EA process to provide an effective means to appropriately consider potential cumulative impacts that may be related to the proposed road – recognizing its connection, among other things, to other proposed road projects – and will carefully consider the proposed ToR with this in mind.</p> <p>Through the EA Terms of Reference comment period for the Northern Road Link, Marten Falls Community Access Road and Webequie Supply Road, Ontario heard concerns from Indigenous communities and other interested parties about Ontario meeting its duty to consult in these EA processes, particularly related to potential cumulative adverse impacts on Aboriginal and treaty rights, with respect to these roads in combination with each other.</p> <p>In response to these concerns, in late 2021 Ontario developed a Ring of Fire Crown Consultation Approach which is designed to help ensure meaningful consultation in relation to potential adverse impacts on s.35 rights, including potential cumulative impacts</p>	<p>engagement agreement with AFN, despite numerous requests and efforts of our First Nation to this end. While the draft Consultation and Engagement Plan provided in Appendix B discussing “paying special attention to maintaining the vision and mutual guiding principles MFFN and WFN” and “reflecting the culture and traditions of MFFN and WFN as Indigenous proponents of the Project” (Section 2.2.2), the Proponent has not made any efforts to incorporate the consultation protocols of AFN and other Nations, and have not provided rationale for why this hasn’t taken place, which is a stated requirement in Schedule B of the MOU included as Appendix G. Given that AFN is a First Nation impacted by the Project, it is expected that any consultation plan developed for the Project would be done so collaboratively with our Nation, and it is our protocol that a project-specific engagement agreement is developed with a project proponent prior to the commencing of any environmental assessment or permitting activity. The Environmental Assessment for the Project should not proceed until the Proponent demonstrates that the terms of a Consultation Plan have been mutually agreed upon with AFN, and that the mutually agreed upon terms of an Engagement Agreement with the Proponent for the Project are developed that reflect AFN’s protocols and laws.</p> <p>While Ontario cites the possible future presentation of a Ring of Fire Crown Consultation Approach which is intended to help ensure meaningful consultation in relation to potential adverse impacts on s.35 Rights, including potential cumulative impacts across three proposed road projects, this has not been mutually developed, reviewed or agreed upon by AFN and therefore cannot be considered to address AFN’s concerns with regard to this environmental assessment.</p>

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ArFN-07	Purpose and Rationale of the Project (Section 1.4)	<p>In the description of the Proponent in Section 1.2, the ToR states “the proponents of the Project EA/IA and preliminary design are MFFN and WFN...proponent options for road ownership, maintenance activities and liability are being considered in discussion with the province of Ontario. Funding for the costs of the EA/IA for this Project is being provided by the Province of Ontario” (p. 4). This statement lacks clarity, which has been reflected throughout consultation related to all-season road development to date, about the constituents in the proponent group and the definition of the Project.</p> <p>Recommendation</p> <p>Further rationale needs to be provided as to why Ontario is not considered to be a member of the proponent group if their planning processes identified the need for the Project, they are actively advancing and supporting the Project and exclusively funding the Project.</p>	<p>The Ontario EA Act defines "proponent" as a person (or entity) that: carries out or proposes to carry out a project, or is the owner or person having charge, management or control of a project. The proponent of the Project's EA/IA and preliminary design are Marten Falls First Nation (MFFN) and Webequie First Nation (WFN), referred to collectively as 'the proponent'. The proponent has entered into an agreement with the Minister of the Environment, Conservation and Parks under the Ontario EA Act to make the Project subject to the requirements of the EA Act. As a result of this agreement, the Project will undergo an Individual EA in compliance with the Terms of Reference once these are approved.</p> <p>MFFN and WFN are committed to the sustainable development of their traditional territories. MFFN and WFN are remote Indigenous communities in northwestern Ontario and are not currently accessible by all-season roads. MFFN is undertaking the development of the Marten Falls First Nation Community Access Road (MFCAR) to connect its community to the highway network to the south and to improve the community's well-being by facilitating the transport of goods, services, and resources. WFN is undertaking the development of the Webequie Supply Road (WSR) between its community and the McFaulds Lake area of the Ring of Fire to facilitate the movement of materials, supplies and people from the</p>	<p>across three proposed road projects. It is intended to complement the proponents' consultation efforts under the individual EA processes currently underway to help ensure that the Crown's duty to consult is satisfied. This approach is intended to offer additional opportunities for Indigenous communities to engage directly with Ontario on concerns about the potential for adverse impacts of the three road projects taken together that may be beyond the scope of the individually proposed road projects and proponents to address. You will hear more about the Ring of Fire Crown Consultation Approach in the coming months.</p> <p>With respect to your comments that Ontario should not proceed with the EA phase for the project until there has been a Regional Assessment for the James Bay Lowlands area, please see Ontario's response to ArFN-02 pertaining to the federal Regional Assessment.</p>	<p>AFN's concerns have not been addressed.</p> <p>It remains AFN's position that the current configuration of proponentcy, funding and decision-making for the Project does not adequately address the impacts of the Project to the Aboriginal and Treaty rights and interests in the region. Insufficient rationale has been provided as to why Ontario is not considered to be a member of the proponent group if their planning processes identified the need for the Project, they are actively advancing and supporting the Project and exclusively funding the Project. Further, AFN is concerned that in the absence of a consent-based process developed in collaboration with AFN, and an integrated review process that considers the full range of regional impacts across the three EA/IA assessment processes approached in a way that brings together all our affected First Nation neighbours to the table, this could represent a possible significant conflict of interest if Ontario is also the primary party responsible for approvals of the Project.</p>

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ONTARIO NOVEMBER 17, 2022
RESPONSE

AFN DECEMBER 14, 2022 ASSESSMENT
OF ONTARIO AND PROPONENT
RESPONSES

Webequie Airport to the proposed mine development and mineral exploration activities. Together, MFFN and WFN are undertaking proponentcy of the NRL Project, which will be a multi-use road between the proposed MFCAR and the proposed WSR. By providing an opportunity to connect the MFCAR to the WSR, the Project will complete the necessary transportation infrastructure link between WFN, the Ring of Fire and the highway network to facilitate economic development in the region. The Project is an important step in linking the communities, the region and the province in general with the economic opportunities surrounding the Ring of Fire.

Improved land access to remote communities (in this case, to Webequie First Nation) is widely recognized as a mechanism for achieving social and health benefits (in addition to economic benefits), elevating levels of community well-being, and is an integral component of provincial growth and development policies for the region.

Funding for the costs of the Environmental Assessment/Impact Assessment (EA/IA) for the Project is being provided by the Province of Ontario. However, the Province of Ontario is not currently a proponent of the Project. Proponent options for road ownership, operation/maintenance activities and liability are being considered in ongoing discussions with the Province of Ontario. It is recognized that should there be a change in Project proponentcy, all Project conditions, commitments and responsibilities agreed upon during the EA/IA planning phase and the EA/IA, including proposed mitigation, would be transferred to or shared by the new proponent.

With respect to the recommendation that "Further rationale needs to be provided as to why Ontario is not considered to be a member of the proponent group if their planning processes identified the need for the Project, they are actively advancing and supporting the Project and exclusively funding the Project.", this comment is outside the scope of what MFFN and WFN are responsible for responding to as the proponent for the Northern Road Link Project. We have referred your comment to Ontario so they can respond directly to you on this matter.