



Northern Road Link Project
Impact Assessment Agency of Canada
500-55 York Street
Toronto, Ontario M5J 1R7

Via email NorthernRoad-RouteDuNord@iaac-aeic.gc.ca

July 20, 2023

**RE: FRIENDS OF THE ATTAWAPISKAT RIVER
Comments on the draft Tailored Impact Statement Guidelines and draft Indigenous
Engagement and Participation Plan for the Northern Road Link Project (Ref No. 84331)**

We are the ancestral people of the lands where the Ring of Fire is proposed. We the Oji-cree, Ojibway, and Omushkegowuk people have lived in harmony with these lands given to us by the Creator since time immemorial. We are the Water People. The water gives us life and we take care of the water in return. This is our duty to the Creator.

We are the ancestors of the Headmen who signed Treaty 9 with the Crown to peacefully share the lands. Our Natural Laws teach us to respect the land and to maintain our relationship with the Creator. Our traditional ways do not involve greed or violence to these lands, but love, harmony and an ongoing commitment to each other.

We have seen what these developments and broken promises can do to our people and our lands. We were promised traditional knowledge consultation and money from the DeBeers mine, both of which were not upheld. Our tribal councils have been corrupted by greed and our communities suffer because of it. Many of our communities have not had clean drinking water for years. Our housing crisis is only getting worse which has taken a toll on our young generation, often living with no hope and in quiet desperation.

We ask the government to uphold these treaty promises to our people. Money to our tribal councils does not constitute consent. Our communities rely on openness to thrive and *all* community members must be involved in any process on our lands.

Our community members are often left in the dark over these issues. Our tribal council leaders accept developments without our knowledge, and we pay the price. Our suffering is a testament to that. We need the government to consult *all* communities to gain our free, prior, and informed consent, which is our legal right under UNDRIP and Canadian law.

We call on the government to meet with *all* community members to discuss this development. Meeting with a few members in power has left our communities without any hope. We call on the government to commit to our joint collaboration throughout the entire process. The government is legally bound by our Treaty and they must uphold their promises “for as long as the sun shines, the grass is green, the water flows and the Anishinaabe are here.”

Sincerely,

<Original signed by>

Michel Koostachin
Founder, Friends of the Attawapiskat River

INTRODUCTION

1. The Friends of the Attawapiskat River

The Friends of the Attawapiskat River (the “Friends”) welcome this opportunity to provide comments and recommendations to the Impact Assessment Agency of Canada (the “Agency”) on its draft Tailored Impact Statement Guidelines (“Guidelines”) and draft Indigenous Engagement and Participation Plan (“Plan” or “IEPP”) for the Northern Road Link Project.¹

The Friends of the Attawapiskat River are an Indigenous-led coalition of impacted community members and allies dedicated to stewarding and protecting the health of the Attawapiskat River and its watersheds, people and communities. As Treaty 9 people, the Friends have a shared responsibility to protect Treaty lands from exploitation and degradation. This means safeguarding the integrity of the boreal and muskeg of the Hudson Bay-James Bay lowlands, its significant contribution to mitigating climate change, and the health of their grandchildren and those not yet born.

These comments are in addition to our comments given to Agency staff at the in-person information session held July 5, 2023, in Timmins, where we were the only attendee. We encourage the Agency to rethink how it communicates and engages with Treaty 9 communities, with the in-person gathering in Timmins – where we were the only attendee – emblematic of the lack of awareness about this project, and other impacts assessments occurring in the Ring of Fire and the deficiencies in the Crown’s approach to engagement with rights holders.

In making these submissions to the Agency, the Friends note they are not speaking on behalf of any of the communities or its leadership where its members are based (including Neskantaga, Peawanuck, Kashechewan, Attawapiskat and Fort Albany First Nations), but rather sharing the views and concerns of the grassroots. Furthermore, our comments do not constitute consultation in any way, nor discharge the Crown’s duty to consult per section 35 of the *Constitution Act, 1982*.

2. The Proposed Northern Road Link Project

The region dubbed the “Ring of Fire” is located 500km northeast of Thunder Bay, Ontario in the Hudson - James Bay Lowlands region (“HJBL”) and in the lands of Treaty 9. While the area has been touted for its potential abundance of valuable minerals, such as chromite, copper, and gold, the region is also home to nearly 40,000 Indigenous peoples across 34 communities.

The HJBL region in northern Ontario is the largest wetland in North America and the second-largest peatland complex in the world, covering over 325,000km. It is the homeland of the Ojibwe Nations providing food, and medicine, as well as cultural and sacred spaces for traditional practices and ceremonies. Mineral extraction both in the HJBL (e.g., De Beers Victor Diamond Mine) and upstream,

¹ Northern Road Link Project, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/84331>

particularly in the area known as the Ring of Fire, have historically impacted and promise to cause unprecedented change to this ecosystem and its people in the years to come.

In anticipation of the proposed mining development in the Ring of Fire area, Marten Falls First Nation is proposing a multi-purpose, all-season community access road - known as the Marten Falls Community Access Road (MFCAR)² - to connect the Marten Falls First Nation community with the Ontario provincial highway network. Similarly, Webequie First Nation is proposing an all-season road corridor - the Webequie Supply Road (WSR)³ - connecting the Webequie First Nation to the mineral deposit area near McFaulds Lake.

The Northern Road Link project (“NRL”) is a proposal by both Marten Falls First Nation and Webequie First Nation (the “proponents”) to build a 120 km road to connect the two other proposed road development projects (the MFCAR and the WSR), providing access to the proposed Ring of Fire mining development area⁴ as well as the provincial highway system. As proposed, the Northern Road Link is to be a two-lane, all-weather, gravel access road with water crossings, built to accommodate both passenger and commercial vehicles.

I. RESPECT FOR THE MORATORIUM IN THE RING OF FIRE

The Friends remind the Agency to respect our continued call for a moratorium in the Ring of Fire region until access to clean water, housing, and health services have been secured for all upstream and downstream communities and a proper protection plan is implemented, reflecting any Water Declaration prepared by the Omushkegowuk Women’s Water Council and the global significance of the carbon rich Hudson Bay-James Bay Lowlands, including the headwaters of Attawapiskat, Albany and Winisk Rivers, and the thousands of streams that flow into Hudson Bay and James Bay.

This moratorium, set out in full below, has been supported by hundreds of individuals and allied organizations.⁵ This call for a moratorium on development activities in the Ring of Fire until meaningful Indigenous engagement had been undertaken, the federal Regional Assessment process complete, and protection plans for sensitive wetlands and watersheds in place, remains. To date, no action has been taken by any level of government to respect or uphold the moratorium.

² Ministry of Environment, Conservation and Parks, “Marten Falls community access road project,” online: <https://www.ontario.ca/page/marten-falls-community-access-road-project>; IAAC, “Marten Falls Community Access Road Project,” online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80184>

³ Ministry of Environment, Conservation and Parks, “Webequie supply road project,” online: <https://www.ontario.ca/page/webequie-supply-road-project>; IAAC, “Webequie Supply Road Project,” online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80183>

⁴ Northern Road Link, Initial Project Description, p 38

⁵ Online: <https://attawapiskatriverprotectors.com/how-to-support/ring-of-fire-moratorium/>

Indigenous worldviews also place a responsibility on each member of the nation to maintain a good relationship with other beings that provide for them. In this sense, the land is seen as a ‘being’ or having a spirit, and therefore is in a relationship with Indigenous peoples. As such, the land cannot be owned, and it has its own capacity and standing in the eyes of the Creator. While the draft Guidelines make reference to cultural/spiritual practices and ceremony, we do not see reference to the land and water as having spirit.

Recommendation 1: The Guidelines ought to recognize lands and waters as ‘beings’ or having spirit. Lands and waters have their own capacity and standing in the eyes of the Creator.

2. Climate Change, Vulnerability & Muskeg

Communities across Treaty 9 lands are located on the largest peatland complex in North America. Sub-arctic climates such as those around throughout the James Bay region are at an increased risk of irreversible impacts from climate change due to more severe weather events, permafrost thaw, wildlife and plant biodiversity loss, and sea-ice changes (among others).

The peatland (or muskeg) and the many watersheds that intersect in the Ring of Fire are inherent to Indigenous culture and well-being since time immemorial. Water and the muskeg hold incredible importance in Indigenous spirituality and represent an ongoing relationship with the Creator. The watershed and muskeg are sacred to Indigenous peoples in the area.

The draft Guidelines provide numerous references to mapping water flow and connectivity among watercourses and detailing changes which may occur, through nutrient loading or disturbance.⁶ What is not adequately reflected however, is how the waterways in this predominantly muskeg environment function.

Currently, the draft Guidelines only make a single reference to “muskeg.” While the draft Guidelines make repeated reference to wetlands, this is too broad a term to capture the ecological and cultural significance held by muskeg in this region.

In the muskeg, water flows under the land. Fish also travel *‘under the land’* by making use of tunnels carved within the mushkeg. As one elder has described to the Friends, *‘we are the water people. The swamps and lakes create mushkeg – it’s a being.’* As another member of the Friends puts it, *‘the mushkeg is living and breathing. For us, it is our Amazon. It cleans the air, the water – it’s a big lung and filter for everything.’*

Further, muskeg is not a linear corridor. It acts like a sponge and so water courses, water crossing and delineations between water bodies do not neatly form. We encourage the uniqueness of this ecosystem be better reflected throughout the Guidelines.

⁶ Draft Guidelines, p 12, 65, 69, 70, and 72

In addition to the draft Guidelines' references to mapping of water flows and connectivity, references are made to water level changes, seasonal variations and accompanying spatial and temporal effects to ground water. While we support the inclusion of incorporating annual freeze-thaw cycles and break-up in the projects review of effects on the environment, including framing of baseline conditions and vulnerabilities due to climate change,⁷ the Guidelines must expressly consider the effect of breakup in the spring on muskeg water levels.

Recommendation 2: The project is located in a globally significant peatland (i.e. muskeg). The draft Guidelines ought to be updated to reflect the uniqueness of muskeg, its water flow, connectivity and water crossings, and the ecological and hydrological cycles of this region.

Recommendation 3: Those living in the Attawapiskat watershed have already observed inland lakes subsiding. Thus, a review of water levels in light of climate change and the Ring of Fire's footprint is critical. The Guidelines must expressly consider the effect of breakup in the spring on muskeg water levels.

3. Intergenerational Impacts & Those Not Yet Born

We welcome the draft Guidelines recognition that the Impact Statement "must" describe intergenerational impacts over the lifetime of the project.⁸ Considerations of intergenerational and intragenerational equity are key sustainability principles and squarely within the purposes of the *Impact Assessment Act*. It is critical that the effect of the projects, at least 100 years into the future, be considered given the estimated operating lifespan of the Ring of Fire.

The Friends recognize that the Attawapiskat River has been our provider since the beginning of time. It is where community members go to harvest food and trees to make shelter, and follow the wildlife, as it migrates and travels along the water. The water is part of life and is the veins of the Mother Earth. The ecosystem is part of this, with its own purpose which we respect without question.

Once this water is disturbed, we have no means of reversing it to its present state – to the way it was before resource development. If developed, the Ring of Fire will have a hugely negative impact on our way of life, existence, livelihoods and future generations. We do not own the land, but rather have a responsibility to ensure we live in harmony with it, its animals and water; this is how we survive.

Those who live here are the water people. As our youth describe it, they are the '*youth of the mushkeg*.' If you look closely throughout our watershed, you will also see we are surrounded with water and through it, connected to the many lakes, rivers, swamp (mushkeg) and the ocean. Our goal, with this

⁷ Draft Guidelines, p 148, 72

⁸ Draft Guidelines, p 118

submission, is to improve upon the requirements currently set by the Agency to ensure the Attawapiskat River – the water on which our life and those not yet born depend - is protected.

4. Cumulative Effects & Denial of Treaty Rights

The IA must strengthen understandings of cumulative impacts and the threat the project poses, by opening up lands for other industrial and extractive purposes, to Indigenous lands, waters and future generations. We know that continuing with a fragmented and piecemeal approach to the review of infrastructure projects means we are proceeding without first knowing the consequences to the environment, human health and our rights.

In describing baseline conditions, we support the draft Guidelines inclusion of “historical and existing mineral developments” and “other historical infrastructure projects” in its framing of cumulative effects.⁹ However, we further recommend the project’s assessment of cumulative effects take into account consideration of Indigenous values and impacts of colonization and assimilationist practices on our people and communities, which have resulted in the wrongful denial of Treaty rights.

The lands where the Ring of Fire exists are subject to a treaty known as Treaty 9. Treaty 9 was signed in 1905 by First Nations and the Crown, representing a solemn agreement to peacefully coexist on the lands as two equals. The terms of treaty have been violated for the past century with residential schools, assimilationist practices, and the lack of clean drinking water and health services provided to Indigenous communities, all of which are essential in settler areas in Canada. It continues in the context of the Ring of Fire, where mining development continues absent the free, prior, and informed consent of Treaty 9 members and commitments by Canada to uphold and respect Treaty 9 rights.

Recommendation 4: The project’s assessment of cumulative effects must take into account consideration of Indigenous values and impacts of colonization and assimilationist practices on our people and communities, which have resulted in the wrongful denial of Treaty rights. The terms of treaty have been violated for the past century with residential schools, assimilationist practices, and the lack of clean drinking water and health services provided to Indigenous communities.

5. Boreal Caribou & Species Protection

The Friends have a high degree of concern about woodland caribou, noting that the road building activities, such as draining of muskeg, water taking and the creation of aggregate pits, will impact the land and their habitat. Due the significant size of the proposed road, the number of river crossings, the traffic, and ongoing maintenance and upkeep that will be required, the Friends have a number of interrelated concerns about impacts on caribou habitat due to reliance on eskers for aggregates, and impacts to fish and fish habitat (including sturgeon) due to the impacts of road construction and bridge crossings on water flow and quality in the peatlands.

⁹ Draft Guidelines, p 50

It is critical that the Impact Statement's baseline conditions and cumulative effects assessment consider the Far North caribou ranges because of their migration into regions which will be impacted by the roads and the accompanying mining exploration they will trigger.

The Friends submit particular emphasis must be reflected in the Guidelines to understanding, modelling and mapping of impacts to carbon sinks, wildlife – including their movement and corridors – and species protection more generally.

Recommendation 5: It is critical that the Guidelines require the understanding, modelling and mapping of impacts to carbon sinks, wildlife – including their movement and corridors – and species protection more generally. The Impact Statement must recognize the impacts to caribou ranges, whose summer and wintering grounds as well as migration routes in the regions will be impacted by the roads and the accompanying mining exploration they will trigger.

6. Emergency Preparedness and Management

As the purpose of the Northern Road Link is to provide access to mineral development in the Ring of Fire, the Friends submit it is critical to consider the emergency response capacity of communities living downstream of the proposed projects.

Impacts of dykes eroding during breakup and infrastructure, including culverts, failing, must all be accounted for in the review of emergency preparedness. The impact of climate change on increasing the frequency and severity of flooding and 'worst case scenarios' must also be taken into account.

It is also critical that emergency preparedness measures not be decided upon without incorporating local knowledge from communities who have the experience with breakup, climate impacts and accidents. Therefore, the proponent should also be required to invite public feedback on emergency response and preparedness measures and ensure opportunities for ongoing public review and updates. These plans should be communicated to the public through a robust public awareness campaign. The efficacy of emergency preparedness is directly tied to the level of awareness and preparedness of local residents, prior to any accident or emergency situation.

Recommendation 6: Impacts of dykes eroding during breakup and infrastructure, including culverts, failing, must all be accounted for in the review of emergency preparedness. The impact of climate change on the frequency and severity of flooding and 'worst case scenarios' must also be taken into account.

Recommendation 7: The proponent should be required to invite public feedback on emergency response and preparedness measures and ensure opportunities for ongoing public review and updates. These plans should be communicated to the public through a robust public awareness campaign.

7. Community Health & Risk Assessment

The draft Guidelines provide that the proponent must conduct a preliminary model to determine whether a Human Health Risk Assessment is required.¹⁰ We strongly encourage that a Human Health Risk Assessment be made a requirement and not optional.

There is also a lot of fear in communities regarding the health impacts of the project, given the already high incidence of cancers and skin conditions. Ensuring the projects are being measured in light of their impacts on community health is vital in building trust and ensuring an open and transparent decision-making process.

We also specifically request a study of mercury on human health and the environment, which takes into account the lifecycle of the project and legacy contamination. This would align with commitments made by Canada under the Minamata Convention to protect humans and the environment from anthropogenic emissions of mercury and mercury compounds.

Recommendation 8: We strongly encourage that a Human Health Risk Assessment be made a requirement of the IA. Ensuring the projects are assessed in light of their impacts on community health is vital in building trust and ensuring an open and transparent decision-making process.

Recommendation 9: The Guidelines should be updated to require a study of mercury on human health and the environment, which takes into account the proposed project and legacy contamination.

III. COMMENTS ON DRAFT ENGAGEMENT AND PARTICIPATION PLAN

The Friends provide the following comments on the Agency's draft Indigenous Engagement and Partnership Plan ("Plan" or "IEPP").¹¹

1. Meaningful Consultation & Engagement

To be meaningful, participation must first establish the needs and values the dialogue, or engagement, must be responsive to. Our experience to date – including recent participation in the Agency's open house event in Thunder Bay and Timmins – is that opportunities are being provided for the sharing and receiving of information, but less opportunities are being provided to influence decisions. We submit this must be a core purpose of meaningful engagement as set out in the project description.

The Friends submit the Plan must further clarify how it will achieve Canada's commitment to 'achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government relationship based on the recognition of rights, respect, co-operation, and partnership.'

¹⁰ Draft Guidelines, p 129

¹¹ Online: <https://iaac-aeic.gc.ca/050/documents/p84331/152059E.pdf> [Indigenous Engagement Plan]

To advance and respect these rights, the Friends submit it is critical that community members from First Nations, who are the grassroots, be included in the development and undertaking of IAs. This means decision-making within an IA must enable and embody collaborative decision-making with Indigenous grassroots, and not only band councils based on the colonial Indian Act, to ensure their respective legal traditions equally inform governance structures, the identification of decision-makers, processes, and decision-making criteria. Canada has a fiduciary duty not just to Chief and Councils, but Treaty rights holders who are the grassroots people.

Recommendation 10: Engagement processes must enable the full and fair participation of Indigenous community members and any decision-making must be undertaken with the consent of Indigenous community members, in keeping with their customs, worldviews and inherent laws.

2. Community-specific Consultation Plans

The Plan notes that community-specific consultation plans may complement the IEPP.¹² The Friends submit the existence or negotiation of consultation-plans should not preclude engagement, the provision of capacity funding, and outreach by the Agency with the grassroots. In many instances, community-specific consultation plans involve only Agency staff and Band council, and do not directly engage First Nation community members who are the rights holders.

As the Friends raised during the Agency's open house on the Northern Road Link Project that took place in Thunder Bay in February 2023 and again in Timmins in July 2023, the Indigenous grassroots are not aware of what is being proposed by virtue of the government and proponents failing to engage beyond Chief and Council. Discussions, plans and decisions about resources cannot be made without first consulting the Treaty rights holders.

This approach stands contrary to the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which safeguard the individual and collective rights of Indigenous people, imposing a duty on Canada to achieve the free, prior and informed consent of Treaty 9 members before any development or use of resources on the land occurs. The Friends are among the Indigenous grassroots who have been wrongfully denied their inherent and Treaty rights promised by Treaty 9 "for as long as the sun shines, the grass is green, the water flows and the Anishinaabe are here."

The Friends have communicated this violation of Canada's obligation to uphold the spirit and intent of Treaty 9 to the UN Human Rights Council, noting Canada's failure to honour and respect the Treaty are contrary to Article 37 of UNDRIP which states "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements".

¹² Indigenous Engagement Plan, p 1

Recommendation 11: The Friends submit the existence or negotiation of consultation-plans should not preclude engagement, the provision of capacity funding, and outreach by the Agency with the grassroots. In many instances, community-specific consultation plans involve only Agency staff and Band council, and do not directly engage First Nation community members who are the rights holders.

3. Availability of Documents in Cree

While the draft Guidelines note ‘translators and/or interpreters will be provided to support meetings between Indigenous communities and the Agency,’¹³ the Friends are yet to see this in practice. No translation or availability of materials in Cree has been available at any of the in-person open houses or information sessions we have attended. Nor, are the central IA documents (like the draft Guidelines) available in Cree.

We also note the draft Guidelines states translation is available “where requested and reasonably possibly”. The Friends submit ensuring documents are available in the preferred language of community members is a prerequisite to meaningful engagement.

Recommendation 12: We continue to recommend that all engagements, including open houses hosted by the Agency, must be conducted in both English and Cree, and in the community of choosing by the Indigenous organization or nation. Ensuring documents are available in the preferred language of community members is a prerequisite to meaningful engagement.

4. Timelines

The Plan notes to ensure meaningful consultation throughout the impact assessment process, it will ‘Consider cultural needs including seasonal issues (e.g., harvesting and hunting periods), cultural protocols (e.g., offerings, such as tobacco) and spirituality (opening prayers) when scheduling consultation activities.’¹⁴ While the Friends support this recognition, we again are yet to see this practice occurring based on interactions to date.

In many instances, the Friends have requested extensions of time due to youth-suicide crisis in the communities, funerals or crises (i.e. evacuations), which impair the ability of communities to meet short comment periods. It takes much effort and capacity by the Friends to make requests for more time when the Agency should instead be monitoring to ensure its activities align with the ability of communities to engage.

Recommendation 13: The Agency should be monitoring to ensure its activities align with the ability of communities to engage. Extensions of time should not be the burden of Indigenous grassroots to seek

¹³ Indigenous Engagement Plan, p 5

¹⁴ Indigenous Engagement Plan, p 5

and argue for. For instance, the timing of the release of these draft Guidelines and Plan and start of the 30-day public comment window aligned with the evacuation of community members in Fort Albany, where many Friends are based, due to severe forest fire risk. The Agency should not, in keeping with the principles and commitments to meaningful engagement it posits to support, have started consultations on the draft Guidelines and Plan.

5. Funding for Indigenous Grassroots

While the Friends appreciate the participant funding support provided by the Agency, we continue to note that the provision of funds for Indigenous participants is unfortunately not commensurate to the costs the Friends incur to travel and engage with the Friends' members throughout Treaty 9 nor time to engage with the Agency in meetings and at its in-person events.

Travel throughout the North is extremely cost prohibitive whether by air or winter road. As the Friends have previously noted with the Agency, there is also a critical lack of access to internet and technology in the remote communities. The lack of access to computers poses a very real and ongoing barrier to participation and community engagement.

Recommendation 14: At a minimum, costs borne by the Indigenous grassroots as a result of this project ought to be funded by the Agency.

6. Sharing of Information

We note the Plan references "notice" will be given via email and the IAAC Registry. We have concerns about the sufficiency of this approach and instead recommend the provision of notice in means accessible to Treaty 9 community members.

A further objective to add to the Plan is transparency in decision-making, to remedy the oft heard remark that '*we wrote to them, but never heard back.*' We need to see what was allegedly said – it should not be a black box. We recommend an objective be added that ensures cross-community dialogue. For many of the Friends' members, their communities have already been exposed to the federal EA process prior to the DeBeers diamond mine being brought online. However, community members often do not have a good idea of where the community is at in their decision-making and what they're saying. It is critical there be opportunity for cross-community dialogue if we are to work against a divide and conquer approach.

Recommendation 15: It should be a requirement within the Plan that all notices be shared to local communities' Facebook pages, posted physically in groceries stores (ie. Northern Store), health centres and hospitals, local shops, and local news outlets (ie. CBC, Wawatay).

Recommendation 16: It must be a requirement of Indigenous and public engagement that the Agency provide a disposition of comments received alongside reasoning of how they factored into decision making. The Plan must also require cross-community dialogue and information sharing.

IV. CONCLUSION

We hope that our comments and our continued invitation to engage with the Agency provide a voice to communities who stand to be directly affected and those not yet born. We look forward to further engagement on this project and ask to be notified of any future steps in the impact assessment process.

Sincerely,

<Original signed by>

<Original signed by>

Mike Koostachin
Founder, Friends of the Attawapiskat River

Kerrie Blaise
Legal Counsel