

Potential conditions established under section 64 of the *Impact Assessment Act*

The Impact Assessment Agency of Canada is contemplating the following potential conditions in relation to the Marten Falls Community Access Road Project (the Designated Project) located in Ontario for recommendation to the Minister of Environment (the Minister) for inclusion in a Decision Statement issued under the *Impact Assessment Act*. If the Designated Project is allowed to proceed, any condition established by the Minister in the Decision Statement issued under the *Impact Assessment Act* would become legally binding. The Designated Project would be allowed to proceed if: the Minister decides that the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — of the Designated Project are, in light of the factors referred to in section 63 of the *Impact Assessment Act* and the extent to which these effects are significant, in the public interest; or if the Minister refers the matter of whether these effects are in the public interest to the Governor in Council, and the Governor in Council determines that these effects are, in light of the factors referred to in section 63 and the extent to which these effects are significant, in the public interest.

If a Decision Statement for the Designated Project is issued by the Minister, any condition established by the Minister in the Decision Statement issued under the *Impact Assessment Act* would become legally binding on Marten Falls First Nation (the Proponent) and the Proponent would be required to substantially begin (definition 1.32) to carry out the Designated Project within 5 years after the day the Minister issues the Decision Statement, or within any extension of that period established by the Minister in accordance with subsection 70(2) of the *Impact Assessment Act*. If the Proponent does not substantially begin to carry out the Designated Project by the end of that period, the Decision Statement will expire.

1 Definitions

- 1.1 *Adverse federal effects* means “adverse effects within federal jurisdiction” and “direct or incidental adverse effects” as defined in section 2 of the *Impact Assessment Act*.
- 1.2 *Agency* means the Impact Assessment Agency of Canada.
- 1.3 *Baseline* means the environmental, health, social and economic conditions prior to initiating construction of the Designated Project.
- 1.4 *Caribou Local Study Area* means the area that extends 10 kilometres from the centreline, in both directions, of the Designated Project route and 500 metres around all other Designated Project components identified in Schedule 1 of this document.
- 1.5 *Construction* means the phase of the Designated Project during which the Proponent undertakes the site preparation, building or installation of any components of the Designated Project, including periods during which these activities may temporarily cease.
- 1.6 *Days* means calendar days.
- 1.7 *Designated Project* means the Marten Falls Community Access Road Project described in Schedule 1 of this document.

- 1.8 *Environment and Climate Change Canada* means the Department of the Environment as established under subsection 2(1) of the *Department of the Environment Act*.
- 1.9 *Fish* means “fish” as defined in subsection 2(1) of the *Fisheries Act*.
- 1.10 *Fish habitat* means “fish habitat” as defined in subsection 2(1) of the *Fisheries Act*.
- 1.11 *Fisheries and Oceans Canada* means the Department of Fisheries and Oceans as established under subsection 2(1) of the *Department of Fisheries and Oceans Act*.
- 1.12 *Follow-up program* means “follow-up program” as defined in section 2 of the *Impact Assessment Act*.
- 1.13 *Heritage value* means the aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations.
- 1.14 *Impact assessment* means “impact assessment” as defined in section 2 of the *Impact Assessment Act*.
- 1.15 *Indigenous groups* means the following Indigenous peoples: Animbiigoo Zaagi'igan Anishinaabek, Aroland First Nation, Attawapiskat First Nation, Constance Lake First Nation, Eabametoong First Nation, Fort Albany First Nation, Ginoogaming First Nation, Kashechewan First Nation, Long Lake #58 First Nation, Marten Falls First Nation, Neskantaga First Nation, Nibinamik First Nation and Webequie First Nation.
- 1.16 *Indigenous peoples* means “Indigenous peoples of Canada” as defined in section 2 of the *Impact Assessment Act*.
- 1.17 *Local Study Area* means the area that extends 2.5 kilometres from the centreline, in both directions, of the Designated Project route and 500 metres around all other Designated Project components identified in Schedule 1 of this document.
- 1.18 *Migratory bird* means “migratory bird” as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*.
- 1.19 *Mitigation measures* means “mitigation measures” as defined in section 2 of the *Impact Assessment Act*.
- 1.20 *Monitoring* means collecting, analyzing, and using information to measure the adverse federal effects of the Designated Project and/or to verify the accuracy of the impact assessment and/or to determine the effectiveness of any mitigation measure.
- 1.21 *Operation* means the phase of the Designated Project during which public access to the Designated Project is allowed, including periods during which public access to the Designated Project may be temporarily interrupted.
- 1.22 *Participate* means to directly or indirectly assist or support initiatives through the provision of resources, including knowledge, time, data, access and other means that are economically and technically feasible and within the care and control of the Proponent.

- 1.23 *Plant Harvesting Local Study Area* means the area that extends 3 kilometres from the centreline, in both directions, of the Designated Project route and 500 metres around all other Designated Project components identified in Schedule 1 of this document.
- 1.24 *Progressive reclamation* means reclamation which is carried out by the Proponent concurrently with all phases of the Designated Project to progressively return any physically disturbed areas to a state as close to the baseline as possible, or better, as soon after the disturbance as feasible.
- 1.25 *Proponent* means Marten Falls First Nation and its successors or assigns.
- 1.26 *Qualified individual* means someone who, through education, experience and knowledge relevant to a particular matter, provides the Proponent with advice within their area of expertise. Knowledge relevant to a particular matter may include community and Indigenous knowledge.
- 1.27 *Record* means "record" as defined in section 2 of the *Impact Assessment Act*.
- 1.28 *Relevant authority* means federal, provincial and/or municipal authorities that are in possession of specialist or expert information or knowledge, or that have a responsibility for the administration of a law or regulation, with respect to the subject matter of a condition set out in this document.
- 1.29 *Reporting year* means January 1 to December 31 of the same calendar year.
- 1.30 *Species at risk* means "species at risk" as defined in subsection 2(1) of the *Species at Risk Act*.
- 1.31 *Structure, site or thing of historical, archeological, paleontological or architectural significance* means a structure, site or thing that is determined by a qualified individual, on the basis of heritage value, to be associated with an aspect of the history or culture of the people of Canada, including Indigenous peoples.
- 1.32 *Substantially begin* means initiating the following components and activities required to carry out the Designated Project:
- 1.32.1 construction of a worker camp;
 - 1.32.2 construction of a temporary water crossing required to support the road construction;
 - 1.32.3 establishment of one or more quarry or pit sites; and
 - 1.32.4 site preparation, including clearing and earthwork, for the preferred route corridor.
- 1.33 *Wetland* means land that is saturated with water long enough to promote wetland or aquatic processes as indicated by poorly drained soils, hydrophytic vegetation and various kinds of biological activity which are adapted to a wet environment and as further defined in the Canadian Wetland Classification System.

Potential conditions

These conditions may be established for the sole purpose of the Decision Statement issued under the *Impact Assessment Act*. They do not relieve the Proponent from any obligation to comply with other legislative or other legal requirements of the federal, provincial, or local governments. Nothing in this document shall be construed as affecting what may be required of the Proponent to comply with all applicable legislative or legal requirements. In this document, a reference to a statute will include every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it.

2 General conditions

- 2.1 The Proponent shall ensure that its actions in meeting the conditions set out in this document during all phases of the Designated Project are considered in a careful and precautionary manner, are informed by the best information and knowledge available at the time the Proponent takes action, including the most recent version of policies, guidelines and directives and community and Indigenous knowledge, are based on methods and models that are recognized by standard-setting bodies, are undertaken by qualified individuals, and have applied the best available economically or technically feasible technologies, or both.

Consultation

- 2.2 The Proponent shall, where consultation is a requirement of a condition set out in this document:
 - 2.2.1 provide a written notice of the opportunity for the parties being consulted to present their views and information on the subject matter of the consultation;
 - 2.2.2 provide all available information that is relevant to the scope and the subject matter of the consultation and a reasonable period of time not less than 30 days, or as otherwise agreed upon with the parties being consulted, to prepare their views and information;
 - 2.2.3 undertake an impartial consideration of all views and information presented by the parties being consulted on the subject matter of the consultation; and
 - 2.2.4 advise as soon as feasible in writing the parties being consulted on how the views and information received have, or have not, been integrated into the subject matter of the consultation by the Proponent and provide a justification.
- 2.3 The Proponent shall, where consultation with Indigenous groups is a requirement of a condition set out in this document, communicate with each Indigenous group with respect to the manner to satisfy the consultation requirements referred to in condition 2.2, including:
 - 2.3.1 methods of notification;
 - 2.3.2 the type of information and the period of time to be provided when seeking input;
 - 2.3.3 the process to be used by the Proponent to undertake impartial consideration of all views and information presented on the subject of the consultation; and
 - 2.3.4 the period of time and the means to advise Indigenous groups of how their views and information were considered by the Proponent.

Follow-up requirements

- 2.4 The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, develop the follow-up program taking into account any guidance documents provided by the Agency and determine, as part of the development of each follow-up program and in consultation with the parties being consulted during the development, the following information, unless already specified in the condition:
 - 2.4.1 a description of the effects predictions or mitigation measures or both that will be evaluated through the follow-up program as required in the particular follow-up program condition;
 - 2.4.2 the methodology, location, frequency, timing and duration of monitoring associated with the follow-up program;
 - 2.4.3 the scope, content and frequency of reporting of the results of the follow-up program to the parties consulted for the development of the follow-up program;
 - 2.4.4 the minimum frequency at which the follow-up program must be reviewed and, if necessary, updated;
 - 2.4.5 the levels of environmental, health, social or economic changes relative to baseline that would require the Proponent to implement modified or additional mitigation measures, including instances where the Proponent may require Designated Project activities causing the change to be stopped;
 - 2.4.6 the technically and economically feasible mitigation measures to be implemented by the Proponent if monitoring conducted as part of the follow-up program shows that the levels of change referred to in condition 2.4.5 have been reached or exceeded in order to return changes to levels below those referred to in condition 2.4.5;
 - 2.4.7 the specific quantifiable end points that must be achieved before the follow-up program can end. Those end points should indicate that the accuracy of the impact assessment has been verified or that the mitigation measures are effective or both; and
 - 2.4.8 the details of the results of the follow-up program to report to the Agency pursuant to condition 2.7.5.
- 2.5 The Proponent shall update the details determined for each follow-up program pursuant to condition 2.4 during the implementation of each follow-up program, at the minimum frequency determined pursuant to condition 2.4.4 and in consultation with the parties being consulted during the development of each follow-up program.
- 2.6 The Proponent shall provide the details of the follow-up programs referred to in conditions 3.1, 6.8 and 6.9, including the information determined for each follow-up program pursuant to condition 2.4, to the Agency and to the parties being consulted during the development of each follow-up program prior to the implementation of each follow-up program. The Proponent shall also provide any update made pursuant to condition 2.5 to the Agency and to the parties being consulted during the development of each follow-up program within 30 days of the follow-up program being updated.

- 2.7 The Proponent shall, where a follow-up program is a requirement of a condition set out in this document:
- 2.7.1 implement the follow-up program according to the information determined pursuant to condition 2.4 and any requirement specified in conditions specific to each follow-up program;
 - 2.7.2 conduct monitoring and analysis to verify the accuracy of the impact assessment predictions as it pertains to the particular condition or to determine the effectiveness of any mitigation measure or both;
 - 2.7.3 determine whether modified or additional mitigation measure(s) are required based on the monitoring and analysis undertaken pursuant to condition 2.7.2;
 - 2.7.4 if modified or additional mitigation measure(s) are required pursuant to condition 2.7.3, develop and implement these mitigation measure(s) as soon as feasible and monitor them pursuant to condition 2.7.2. The Proponent shall notify the Agency in writing within 24 hours of any modified or additional mitigation measure being implemented. If the Proponent implements any additional or modified mitigation measure not previously submitted to the Agency pursuant to condition 2.4.6, the Proponent shall submit a detailed description of the measure(s) to the Agency within 7 days of their implementation; and
 - 2.7.5 report all results of the follow-up program to the Agency no later than 3 months following each reporting year during which the follow-up program is implemented and, subject to information determined pursuant to condition 2.4.3, to the parties being consulted during the development of the follow-up program. As part of reporting the results of the follow-up program, the Proponent shall, for each follow-up program, provide an analysis and conclusion about the accuracy of the effects predictions made during the impact assessment and effectiveness of mitigation measures.
- 2.8 Where consultation with Indigenous groups is a requirement of a follow-up program, the Proponent shall discuss the follow-up program with each group and shall determine, in consultation with each group, opportunities for their participation and resources required to support their participation in the implementation of the follow-up program, including the conduct of monitoring, the analysis and reporting of follow-up results and whether modified or additional mitigation measure(s) are required, as set out in condition 2.7.

Annual reporting

- 2.9 The Proponent shall prepare an annual report for each reporting year that sets out:
- 2.9.1 the activities undertaken by the Proponent to comply with each of the conditions set out in this document;
 - 2.9.2 how the Proponent complied with condition 2.1;
 - 2.9.3 for conditions set out in this document for which consultation is a requirement, how the Proponent considered any views and information that the Proponent received during or as a result of the consultation, including and Indigenous knowledge;

- 2.9.4 the information referred to in conditions 2.4 for each follow-up program and any update to that information made pursuant to condition 2.5;
 - 2.9.5 a summary of the information reported pursuant to condition 2.7.5 for each follow-up program;
 - 2.9.6 for any condition where implementation is stated to be dependent in whole or in part upon technical and/or economic feasibility, and the Proponent has determined it is not technically and/or economically feasible, a justification for that determination;
 - 2.9.7 for any plan that is a requirement of a condition set out in this document, any update(s) to the plan that have been made during the reporting year; and
 - 2.9.8 any modified or additional mitigation measure implemented or proposed to be implemented by the Proponent, as determined pursuant to condition 2.7.
- 2.10 The Proponent shall submit the annual report referred to in condition 2.9 to the Agency, including a plain language executive summary in both official languages, no later than 3 months following the reporting year to which the annual report applies.
- 2.11 The first reporting year for which the Proponent shall prepare an annual report pursuant to condition 2.10 shall start on the day the Minister issues the Decision Statement pursuant to subsection 65 (1) of the *Impact Assessment Act*.

Information sharing

- 2.12 The Proponent shall publish on the Internet, or any medium which is publicly available, the annual reports and the executive summaries referred to in conditions 2.9 and 2.10, the schedules referred to in conditions 2.18 and 2.19, the Indigenous Communities Communication Plan referred to in condition 7.3, the accidents and malfunctions response plan referred to in condition 9.1 and any update or revision to the above documents, upon submission of these documents to the parties consulted for the respective conditions. The Proponent shall keep these documents publicly available for 25 years following their publication. The Proponent shall notify the Agency and Indigenous groups of the availability of these documents within 3 business days of their publication.
- 2.13 When the development of any plan is a requirement of a condition set out in this document, the Proponent shall submit the plan to the Agency prior to implementation, unless otherwise required through the condition.

Change of Proponent

- 2.14 The Proponent shall notify the Agency and Indigenous groups in writing no later than 30 days after the day on which there is any transfer of ownership, care, control or management of the Designated Project in whole or in part.
- 2.15 The Proponent shall notify the Agency in writing of any change to the contact information of the Proponent within 30 days of the change in contact information.

Change to the Designated Project

- 2.16 If the Proponent is proposing to carry out the Designated Project in a manner other than described in Schedule 1 of this document, the Proponent shall notify the Agency in writing in advance of carrying out the proposed activities. As part of the notification, the Proponent shall provide:
- 2.16.1 a description of the proposed change(s) to the Designated Project and the adverse federal effects that may result from the proposed change(s);
 - 2.16.2 any modified or additional measure to mitigate any adverse federal effects that may result from the proposed change(s) and any modified or additional follow-up requirement;
 - 2.16.3 an explanation of how, taking into account any modified or additional mitigation measure referred to in condition 2.16.2, the adverse federal effects that may result from the proposed change(s) may differ from the federal effects of the Designated Project identified during the impact assessment; and
 - 2.16.4 the results of consultation with Indigenous groups on the proposed changes, if the proposed changes may adversely affect those Indigenous groups, including any views on the adverse federal effects referred to in condition 2.16.1 and on the modified or additional mitigation measures and follow-up requirements referred to in condition 2.16.2.
- 2.17 The Proponent shall provide to the Agency any additional information required by the Agency about the proposed change(s) referred to in condition 2.16, which may include the results of consultation with relevant authorities on the proposed change(s) and adverse federal effects referred to in condition 2.16.1 and the modified or additional mitigation measures and follow-up requirements referred to in condition 2.16.2.

Schedules

- 2.18 The Proponent shall submit to Indigenous groups, the Agency and any other relevant authorities, no later than 30 days prior to the start of construction, a schedule outlining all activities planned to fulfill each condition set out in this document, including consultation activities pursuant to condition 2.2. The schedule shall indicate commencement and estimated completion month(s) and year(s) for each of these activities.
- 2.19 The Proponent shall submit to Indigenous groups, the Agency and any other relevant authorities, and no later than 30 days prior to the start of construction, a schedule outlining all activities required to carry out all phases of the Designated Project. The schedule shall indicate the commencement and estimated completion month(s) and year(s) and duration of each of these activities.
- 2.20 The Proponent shall submit to Indigenous groups, the Agency and any other relevant authorities in writing an annual update to schedules referred to in conditions 2.18 and 2.19 every year no later than 3 months following each reporting year, until completion of all activities referred to in each schedule.

Record keeping

- 2.21 The Proponent shall maintain all records relevant to the implementation of the conditions set out in this document, in physical or electronic form and make them available to the Agency throughout construction and operation and for 25 years following their publication. Records retained electronically shall be stored on servers or electronic storage media that are physically located in Canada and remain under the control of the Proponent. The Proponent shall provide the aforementioned records to the Agency upon request within the timeframe specified by the Agency.
- 2.22 The Proponent shall provide the Agency with the Canadian location(s) where the records retained in accordance with condition 2.21 are stored and accessible. The Proponent shall notify the Agency at least 30 days prior to any change to those location(s).

3 Fish and fish habitat

- 3.1 The Proponent shall develop, prior to in-water work or ground disturbing work, whichever comes first, and implement, during construction and operation of the Designated Project, a follow-up program to verify the accuracy of the impact assessment and determine the effectiveness of mitigation measures with respect to effects from the Designated Project on fish and fish habitat resulting from changes to water quality. The Proponent shall develop the follow-up program in consultation with Marten Falls First Nation with respect to waterbodies located on the Marten Falls First Nation reserve, and in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and the Ontario Ministry of Natural Resources with respect to waterbodies located on non-federal lands within the Local Study Area. As part of the follow-up program, the Proponent shall:
- 3.1.1 monitor, beginning during in-water work and ground disturbing work and continuing until a three-year trend analysis during operation indicates that water quality will not change due to effects attributed to the Designated Project, water quality parameters in groundwater and in waters frequented by fish, including total suspended solids, acidity (pH), electrical conductivity, ammonia, sulphates, nitrates, dissolved organic carbon, methylmercury and heavy metals and metalloids, including aluminum, total mercury, arsenic, copper, iron, lead, manganese, nickel, and zinc;
- 3.1.2 compare the monitoring results in condition 3.1.1 to the Canadian Council of Ministers of the Environment's *Canadian Water Quality Guidelines for the Protection of Aquatic Life*. If the interpretation of monitoring results indicate an exceedance of these guidelines in relation to fish and fish habitat from changes to water quality, implement modified or additional measures and notify Indigenous groups within 30 days; and
- 3.1.3 make the monitoring results available to Indigenous groups as soon as feasible.

4 Migratory birds

- 4.1 The Proponent shall carry out the Designated Project in a manner that protects migratory birds and avoids capturing, killing, taking, injuring or harassing migratory birds or destroying, taking or disturbing their eggs, or damaging, destroying, removing or disturbing nests protected under the *Migratory Birds Convention Act, 1994* and its regulations or the *Species at*

Risk Act, or both, while taking into account Environment and Climate Change Canada's *Guidelines to Avoid Harm to Migratory Birds*.

- 4.2 The Proponent shall determine, under the direction of a qualified individual, the presence or likely presence of migratory bird nest(s) protected under the *Migratory Birds Convention Act, 1994* and its regulations and residences protected under the *Species at Risk Act* that may be adversely affected by any Designated Project activity prior to initiating the activity. The Proponent shall use non-intrusive methods to determine the presence or likely presence of migratory bird nests.
- 4.3 The Proponent shall establish and delineate, under the direction of a qualified individual, setback distances around the nest(s) and residence(s) whose presence or likely presence is determined pursuant to condition 4.2 within which that activity shall not occur while those nests are protected under the *Migratory Birds Convention Act, 1994* and its regulations or the *Species at Risk Act*, or both. When establishing setback distances, the Proponent shall take into account Environment and Climate Change Canada's *Guidelines to Avoid Harm to Migratory Birds*.
- 4.4 The Proponent shall develop, prior to establishing pits and quarries and under the direction of a qualified individual, and implement during all phases of the Designated Project, measures to prevent bank swallow (*Riparia riparia*) from nesting in pits and quarries, taking into account Environment and Climate Change Canada's document [Bank Swallow \(*Riparia riparia*\): in sandpits and quarries](#).

5 Health and socio-economic conditions of Indigenous peoples

- 5.1 The Proponent shall develop, within four months of the start of construction, and in consultation with Indigenous groups and relevant authorities, and implement within four months of the start of construction and during operation of the Designated Project, measures to promote safe, respectful and inclusive conduct in the workplace and community to mitigate adverse federal effects on the health and social conditions of Indigenous peoples. In doing so, the Proponent shall:
 - 5.1.1 implement a workplace anti-harassment, anti-bullying, anti-discrimination and anti-violence policy that incorporates gender-appropriate, gender-specific, and culturally appropriate policies and processes, including sexual harassment and assault counselling as well as confidential and culturally sensitive care;
 - 5.1.2 implement a workplace policy on the use and possession of drugs and alcohol, which prohibits the use of, or being under the influence of, illicit drugs or alcohol during work hours;
 - 5.1.3 establish a worker code of conduct that outlines expectations and requirements in relation to the measures developed to promote safe, respectful and inclusive conduct in the workplace and the community while incorporating the policies and training referred to in conditions 5.1.1, 5.1.2 and 5.1.3; and
 - 5.1.4 implement a fair and timely process to investigate and resolve incidents and complaints from Designated Project employees.

6 Current use of lands and resources for traditional purposes

- 6.1 The Proponent shall establish, prior to construction, and implement, during construction, a process for receiving and addressing complaints related to the effects of Designated Project activities on noise, dust, air quality and water quality. Once established, the Proponent shall communicate the process to Indigenous groups. As part of the process, the Proponent shall:
 - 6.1.1 address complaints within 48 hours of receipt; and
 - 6.1.2 implement corrective measures, as applicable, to reduce exposure in a timely manner. The Proponent shall inform Indigenous groups of these corrective measures.
- 6.2 The Proponent shall mitigate adverse federal effects on the current use of resources for traditional purposes from sensory disturbance related to the Designated Project. In doing so, the Proponent shall:
 - 6.2.1 establish thresholds for dry and high-wind conditions that could cause sensory disturbance and notify the Agency of these thresholds prior to construction;
 - 6.2.2 restrict Designated Project activities during periods of dry and high-wind conditions;
 - 6.2.3 schedule Designated Project activities expected to reduce air quality and elevate noise levels in consultation with Indigenous groups; and
 - 6.2.4 notify, as soon as feasible and prior to the Designated Project activities referred to in condition 6.2.3, Indigenous groups of the timing when and locations where reduced air quality and elevated noise levels are expected to occur to avoid or minimize exposure.
- 6.3 The Proponent shall conduct progressive reclamation of areas disturbed by the Designated Project. In doing so, the Proponent shall:
 - 6.3.1 identify, in consultation with Indigenous groups, plant species for use in establishing self-sustaining vegetation communities; and
 - 6.3.2 use a seed mix that includes the plant species identified in condition 6.3.1 when conducting progressive reclamation, to the extent possible; and
 - 6.3.3 conduct vegetation clearing outside sensitive breeding periods, including winter months, for wildlife of importance to Indigenous groups. In doing so:
 - 6.3.3.1 the Proponent shall not use herbicides for vegetation clearing, unless mechanical and manual methods of clearing are not technically feasible.
- 6.4 The Proponent shall establish and delineate, under the direction of qualified individuals, setbacks and buffer zones around wetlands, riparian habitats, and known wildlife features and seasonal habitats, including nursing areas, for wildlife of importance to Indigenous groups.
- 6.5 The Proponent shall provide, prior to vegetation clearing near known harvesting sites, opportunities for:
 - 6.5.1 Marten Falls First Nation to harvest plants on Marten Falls First Nation reserve; and

- 6.5.2 Indigenous groups to harvest plants on non-federal lands within the Plant Harvesting Local Study Area.
- 6.6 The Proponent shall train Designated Project employees and contractors on wildlife awareness to mitigate adverse federal effects from the Designated Project on wildlife of importance to Indigenous groups.
- 6.7 The Proponent shall implement, during construction and operation, mitigation measures to control fugitive dust emissions attributed to the Designated Project on the Marten Falls First Nation reserve to mitigate adverse federal effects on air quality. In doing so, the Proponent shall implement, at a minimum, the use of water or an environmentally acceptable alternative to stabilize the surface of Designated Project roads and areas within the Marten Falls First Nation Reserve that may generate dust.
- 6.8 The Proponent shall develop, prior to construction, and implement, during construction and during maintenance activities during operation of the Designated Project on the Marten Falls First Nation reserve, a follow-up program to verify the accuracy of the impact assessment and determine the effectiveness of mitigation measures with respect to sensory disturbance attributed to the Designated Project on the current use of lands and resources for traditional purposes. In doing so, the Proponent shall:
- 6.8.1 monitor, at various locations on the Marten Falls First Nation reserve:
 - 6.8.1.1 air quality contaminants including levels of dust, PM₁₀, PM_{2.5}, diesel particulate matter, sulphur dioxide, nitrogen dioxide, acrolein, benzene, benzo(a)pyrene, hexavalent chromium, iron, and nickel; and
 - 6.8.1.2 noise levels;
 - 6.8.2 implement additional or modified mitigation measures if monitoring shows exceedances of human health thresholds for air contaminants, including thresholds in the *Canadian Ambient Air Quality Standards* or *Ontario's Ambient Air Quality Criteria*, whichever is more protective of human health, or noise thresholds; and
 - 6.8.3 notify Indigenous groups of any exceedances pursuant to condition 6.8.2 and include with the notification the monitoring results pursuant to condition 6.8.1 within 30 days.
- 6.9 The Proponent shall develop, prior to construction and in consultation with Marten Falls First Nation for monitoring on the Marten Falls First Nation reserve and with Indigenous groups and relevant authorities for monitoring on non-federal lands within the Caribou Local Study Area, and implement, during all phases of the Designated Project, a follow-up program to verify the accuracy of the impact assessment and determine the effectiveness of mitigation measures with respect to adverse federal effects from the Designated Project on the current use of lands and resources for traditional purposes related to wildlife of importance to Indigenous groups, including caribou (*Rangifer tarandus*). As part of the follow-up program, the Proponent shall:
- 6.9.1 monitor adverse effects to the population, habitat and predator/prey dynamics of wildlife of importance to Indigenous groups, including caribou (*Rangifer tarandus*); and

6.9.2 provide the monitoring results to Indigenous groups as soon as feasible.

7 Physical and cultural heritage of, and structures, sites or things of historical, archaeological, paleontological or architectural significance to, Indigenous peoples

7.1 The Proponent shall identify, prior to construction and in consultation with Indigenous groups, the sites and areas of historical, archaeological, paleontological or architectural significance where work shall not be conducted. In doing so, the Proponent shall:

7.1.1 provide the opportunity for Indigenous groups to provide information on the sites and areas of significance; and

7.1.2 inform Designated Project employees and contractors of the locations of the sites and areas of significance identified in condition 7.1.1 and designate those locations as no-work zones.

7.2 The Proponent shall develop, prior to construction, and implement, during construction, a chance-find protocol to mitigate adverse federal effects on structures, sites or things of historical, archaeological, or paleontological significance for any previously unidentified structures, sites or things of historical, archaeological, paleontological or architectural significance discovered within the Local Study Area. The Proponent shall provide the protocol to the Agency prior to implementation. As part of the chance-find protocol, the Proponent shall:

7.2.1 immediately halt work at the location of a discovery;

7.2.2 delineate an area around a discovery as a no-work zone;

7.2.3 notify Indigenous groups and the Agency within 24 hours of a discovery and allow Indigenous groups to monitor archaeological works; and

7.2.4 develop mandatory training on chance finds, which includes the identification of sensitive locations within the Local Study Area and the implementation of conditions 7.2.1, 7.2.2 and 7.2.3, and deliver this training to all employees and contractors associated with the Designated Project.

7.3 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, an Indigenous Communities Communication Plan to share information with Indigenous groups on adverse environmental effects of Designated Project activities as they relate to impacts on structures, sites or things of historical, archeological, paleontological or architectural significance, and on sites currently used for traditional purposes including hunting, fishing, trapping and harvesting sites of importance to Indigenous groups, including as a result of potential accidents and malfunctions. The Proponent shall implement and maintain the Plan during all phases of the Designated Project. The Indigenous Communities Communication Plan shall include:

7.3.1 when and how Indigenous groups would be notified of the impacts identified in condition 7.3; and

7.3.2 opportunities for Indigenous groups to assist with the measures implemented to mitigate the impacts identified in condition 7.3.

8 Species at risk

- 8.1 The Proponent shall not undertake any activity associated with the Designated Project that could harm the nesting of birds that are species at risk on the Marten Falls First Nation reserve, and to avoid the destruction of nests, eggs or nestlings. In doing so, the Proponent shall:
- 8.1.1 determine, under the direction of a qualified individual, the dates of relevant nesting periods for birds that are species at risk located on the Marten Falls First Nation reserve. The Proponent shall inform the Agency of these dates;
 - 8.1.2 not undertake or continue any activity likely to harm nesting within the nesting periods determined under condition 8.1.1, unless not technically or economically feasible; and
 - 8.1.3 provide a justification to the Agency if it is not technically or economically feasible to carry out any activity that could harm nesting outside the nesting periods determined in accordance with condition 8.1.1 and develop and implement additional mitigation measures to avoid adverse federal effects on birds during nesting. The Proponent shall provide these measures to the Agency before implementing them.
- 8.2 The Proponent shall conduct, in consultation with Environment and Climate Change Canada and relevant authorities, construction and maintenance activities during operation , including blasting, on the Marten Falls First Nation reserve outside of the period of May 1 to August 31 to mitigate adverse federal effects to little brown myotis (*Myotis lucifugus*) and northern myotis (*Myotis septentrionalis*), except otherwise authorized under the *Species at Risk Act*.
- 8.3 The Proponent shall establish and delineate, during construction and maintenance activities during operation and under the direction of a qualified individual, a vegetation setback of 120 metres from any maternity roosting habitats of bat species at risk on the Marten Falls First Nation reserve.
- 8.4 The Proponent shall ensure Designated Project employees and contractors are trained to identify maternity roosting habitat of little brown myotis (*Myotis lucifugus*) and northern myotis (*Myotis septentrionalis*) on the Marten Falls First Nation reserve. In doing so, the Proponent shall, at a minimum:
- 8.4.1 immediately halt work at the location of a discovery of a maternity roosting habitat;
 - 8.4.2 delineate an area around a discovery as a no-work zone;
 - 8.4.3 notify, within 48 hours, Marten Falls First Nation, Environment and Climate Change Canada and the Agency of the discovery; and
 - 8.4.4 maintain the no-work zone around identified maternity roosting habitat.

9 Accidents and malfunctions

- 9.1 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, and maintain, during construction, an accidents and malfunctions response plan in relation to the Designated Project. The accidents and malfunctions response plan shall include:

- 9.1.1 a description of the potential accidents and malfunctions that may cause adverse federal effects, including severe structural failure, major spill, fire, explosion and extreme weather events;
 - 9.1.2 the measures to be implemented in response to each type of accident and malfunction referred to in condition 9.1.1 to mitigate any adverse federal effect caused by the accident or malfunction taking into account Environment and Climate Change Canada's *National Wildlife Emergency Response Framework*; and
 - 9.1.3 for each type of accident and malfunction referred to in condition 9.1.1, the roles and responsibilities of those involved in the implementation of the measures referred to in condition 9.1.2, including the Proponent, each relevant authority, and any other party that may be called upon to respond to an accident or malfunction.
- 9.2 The Proponent shall maintain the accidents and malfunctions response plan referred to in condition 9.1 up to date during construction. The Proponent shall submit any updated accidents and malfunctions response plan to the Agency and to parties consulted for the development of the plan within 30 days of the plan being updated.
- 9.3 In the event of an accident or malfunction with the potential to cause adverse federal effects during construction, including an accident or a malfunction referred to in condition 9.1.1, the Proponent shall immediately implement the measures appropriate to remedy the accident or malfunction, including any measure referred to in condition 9.1.2, and shall:
- 9.3.1 notify, as soon as feasible, relevant authorities with responsibilities related to emergency response, including environmental emergencies, in accordance with applicable legislative and regulatory requirements;
 - 9.3.2 notify, as soon as feasible, Indigenous groups of the accident or malfunction and notify the Agency in writing no later than 48 hours following the accident or malfunction. In doing so, the Proponent shall specify:
 - 9.3.2.1 the date and time when and location where the accident or malfunction occurred;
 - 9.3.2.2 a summary description of the accident or malfunction;
 - 9.3.2.3 a list of any substance and estimated quantities potentially released into the environment as a result of the accident or malfunction; and
 - 9.3.2.4 a list of the relevant authorities notified pursuant to condition 9.1.3 and of the relevant authorities engaged in response to the accident or malfunction.
 - 9.3.3 submit a written report to the Agency no later than 60 days after the day on which the accident or malfunction occurred. The written report shall include:
 - 9.3.3.1 a detailed description of the accident or malfunction and of its adverse federal effects;
 - 9.3.3.2 a description of the measures that were taken by the Proponent to mitigate the adverse federal effects caused by the accident or malfunction;
 - 9.3.3.3 any view from Indigenous groups and advice from relevant authorities received with respect to the accident or malfunction, its adverse federal effects and the measures taken by the Proponent to mitigate these adverse federal effects;

- 9.3.3.4 a description of any residual adverse federal effects and any modified or additional measure required by the Proponent to mitigate residual adverse federal effects;
- 9.3.3.5 a description of the changes made to avoid a subsequent occurrence of the accident or malfunction; and
- 9.3.3.6 details concerning the implementation of the accidents and malfunctions response plan referred to in condition 9.1.

Description of the Designated Project

The Designated Project is the construction and operation of an all-season, multi-purpose road on provincial Crown land and Marten Falls First Nation reserve land in northwestern Ontario. The Designated Project is a two-lane gravel public highway approximately 184 kilometres (km) long, connecting the northern end of Painter Lake forestry road to the community of Marten Falls (Figure 1).

The Designated Project includes the following physical activities and components.

Physical activities

Construction

Construction would require the following physical activities:

- field surveys, staking and layout;
- vegetation clearing and grubbing;
- earth excavation, grading and hauling;
- operation of pits and quarries in aggregate source areas;
- construction of project components; and
- reclamation of temporary infrastructure.

Operation (indefinite)

Operation would require the following physical activities:

- road maintenance including maintenance of the access road and drainage system;
- operation of pits and quarries in aggregate source areas; and
- dust control.

Components

The Designated Project components shown in Figure 1, includes the following:

- approximately 184 km of two-lane gravel road approximately 13 metres (m) wide within a right of way of approximately 100 m wide that is cleared to a width of 60 m;
- water crossings including bridges and culverts;
- maintenance facilities, rest areas and pull-out areas;
- permanent access roads;
- quarries, pits and associated infrastructure;

- temporary construction camps with storage and laydown yards and associated infrastructure including waste handling and storage facilities; and
- temporary access roads to quarries, pits, laydown areas, and construction camps.

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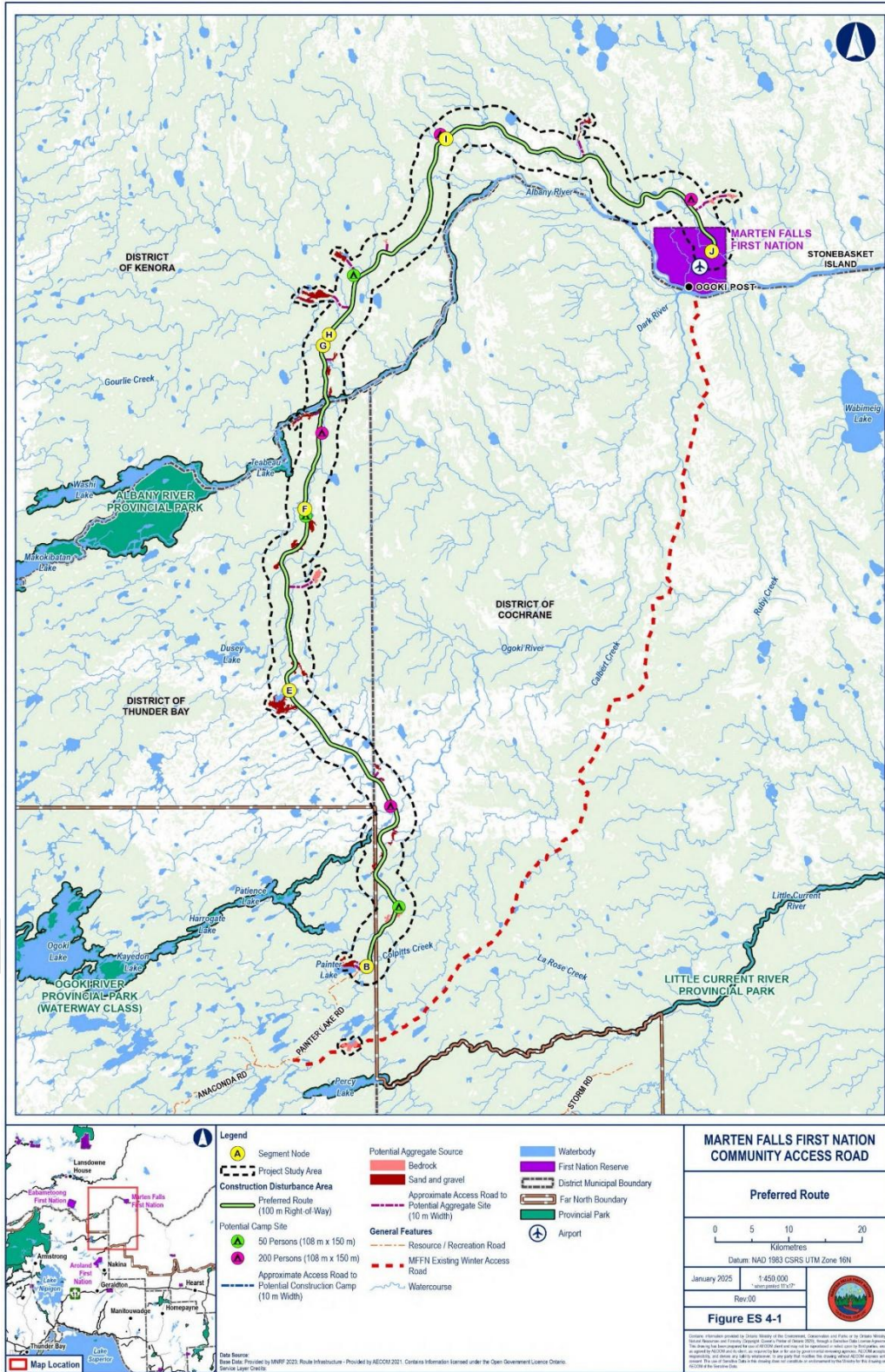


Figure 1: Project location and key components