

# Appendix G

## Memorandum of Understanding

## MEMORANDUM OF UNDERSTANDING

between

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY  
THE MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS (“MECP”)  
AND  
THE MINISTRY OF, NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES  
AND FORESTRY (“NDMNR”)   
(together, “Ontario”)

and

WEBEQUIE FIRST NATION AND MARTEN FALLS FIRST NATION  
(together, the “Proponents”)

(Ontario and the Proponents are collectively referred to as the “Parties”)

**WHEREAS** the Proponents intend to submit an application for approval to proceed with the Northern Road Link road project (the “**Project**”) in accordance with the *Environmental Assessment Act*, R.S.O. 1990, c. E.18 (the “**EAA**”) and is required to meet statutory consultation obligations for the Project in accordance with the EAA;

**WHEREAS** Ontario has determined that it may owe a constitutional duty to consult Aboriginal communities as identified in Schedule A;

**WHEREAS** the Supreme Court of Canada has held that the Crown may delegate procedural aspects of consultation to a third party,

**AND WHEREAS** the Parties wish to delineate in this Memorandum of Understanding clear roles and responsibilities with respect to the consultation process on the Project and, in particular, those procedural aspects of consultation that are being delegated to the Proponents at this time or are being retained by Ontario in relation to the environmental assessment of the Project.

**NOW THEREFORE** the Parties agree as follows:

1. In this Memorandum of Understanding (“MOU”), the following terms have the meanings set out below.
  - (a) “**Aboriginal Communities**” means the First Nations and Métis organization identified by Ontario as having credibly asserted or established Aboriginal or treaty rights that may be affected by the Project, or who may otherwise be

interested in the Project, and for which Ontario, and the Proponents through their delegated duties, shall engage in a consultation process, which at the date of execution of this Agreement, includes those listed in Schedule "A" to this MOU and any other communities or organizations that may be subsequently identified and added to Schedule A in accordance with section 6(c);

- (b) "**Duty**" means the constitutional duty to consult and, where appropriate, accommodate, which Ontario may owe to Aboriginal Communities with respect to the environmental assessment for the Project;
- (c) "**Project**" means the proposed Northern Road Link road project, as subject to Part II of the EAA, for which Webequie First Nation and Marten Falls First Nation are the Proponents; and
- (d) "**Statutory Consultation**" means the consultation obligations to all interested persons related to the terms of reference and environmental assessment applications, as required in the EAA.


2. The Parties acknowledge that:

- (a) Ontario is responsible for satisfying any Duty that it may owe in relation to the Project and, in meeting that Duty, may delegate procedural aspects of consultation to third-party proponents;
- (b) Webequie First Nation and Marten Falls First Nation are responsible for carrying out Statutory Consultation in respect of the Project in accordance with the EAA and will consult with the Aboriginal Communities for that purpose;
- (c) Ontario may rely on efforts by the Proponents in Statutory Consultation in fulfilling the Duty; and
- (d) Ontario is responsible for ensuring that the Duty is met in a manner that is consistent with the honor of the Crown.

3. Schedule "B" to this MOU sets out the respective roles and responsibilities of the Parties in carrying out procedural or substantive elements of the Duty in relation to the Project. For greater certainty, the roles and responsibilities for Ontario include both substantive and procedural aspects of the Duty. The Proponents' roles and responsibilities are limited to procedural aspects of consultation. For further clarity, Schedule B does not address the Proponents' Statutory Consultation obligations.
4. The Parties agree that nothing in this MOU or Schedule "B" is intended to abrogate or derogate from any obligations Ontario may have to Aboriginal Communities.
5. This MOU contemplates actions that MECP and NDMNRF anticipate may be required to meet the Duty in respect of the Project but additional activities may be required and Schedule "B" should not be taken as an exhaustive list.
6. This MOU may be amended, as follows:
  - (a) The body of this MOU and Schedule "B" may be amended in writing at any time by agreement of the Parties;
  - (b) If activities not described in Schedule "B" are identified in the course of the environmental assessment for the Project, the Parties' roles and responsibilities related to those activities and any necessary amendments to Schedule "B" will be discussed and agreed upon by the Parties; and
  - (c) Schedule "A" may be amended in writing at any time by MECP or NDMNRF.
7. This MOU shall not be taken as agreement that the matters set out herein are mandatory components of the Duty in all circumstances.
8. Nothing in this MOU shall be construed as creating a partnership, joint venture or association or a trust, fiduciary or similar relationship.
9. In the event of any dispute regarding the implementation or interpretation of this MOU, the Parties will work together to resolve the dispute in a timely manner.
10. This MOU may be terminated at any time by any of the Parties by providing 30 days notice in writing to the other Party(ies), or upon the agreement of the Parties.

Dated this 20th day of April, 2022.

**WEBEQUIE FIRST NATION**

Per:   
Chief Cornelius Wabasse


**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by**

**The Ministry of the Environment, Conservation and Parks**

Per:   
Assistant Deputy Minister Sarah Paul

**And**

**MARTEN FALLS FIRST NATION**

Per:   
Chief Ambrose Achneepineskum

**And**

**The Ministry of Northern Development, Mines, Natural Resources and Forestry**

Per:   
Assistant Deputy Minister Susan Capling

**SCHEDULE A - List of potentially affected and/or interested Aboriginal communities identified by Ontario for consultation on the environmental assessment for the Northern Road Link road project.**

Based on the information Webequie First Nation and Marten Falls First Nation have provided to date about the Project, the potential effects on the environment, and Ontario's current understanding of Aboriginal and treaty rights in the area, Ontario has concluded that there may be adverse impacts to the constitutionally protected rights of a number of Aboriginal communities, and that other Aboriginal communities may be interested in the environmental effects of the Project.

These Aboriginal communities are set out below. For greater clarity, the following list and division of the list into two parts reflects Ontario's view of its legal responsibilities and does not reflect the perspective of Webequie First Nation or Marten Falls First Nation on their relationships with their neighbours.

This list of potentially affected and/or interested Aboriginal communities, as determined by Ontario, is subject to change as new information becomes available and/or there are changes to the scope of the Project. The approach to consultation with the listed Aboriginal communities may vary based on information shared by each community during the environmental assessment process.

Aboriginal communities who should be consulted on the basis that they have or may have constitutionally protected Aboriginal or treaty rights that may be adversely impacted by the Project are:

- Aroland First Nation
- Attawapiskat First Nation
- Constance Lake First Nation
- Eabametoong First Nation
- Fort Albany First Nation
- Ginoogaming First Nation
- Kasabonika Lake First Nation
- Kashechewan First Nation
- Kingfisher Lake First Nation
- Kitchenuhmaykoosib Inninuwug (KI)
- Marten Falls First Nation
- Neskantaga First Nation
- Nibinamik First Nation
- Wapekeka First Nation
- Wawakapewin First Nation
- Weenusk First Nation
- Webequie First Nation

- Wunnumin Lake First Nation

Aboriginal communities who should be consulted on the basis that they may be interested in the Project are:

- Long Lake #58 First Nation
- Métis Nation of Ontario Region 2
- Animbiigoo Zaagi igan Anishinaabek (AZA)
- Red Sky Métis Independent Nation

**SCHEDULE B – Roles and Responsibilities for the Parties for consultation with Aboriginal Communities for the Northern Road Link (NRL) Environmental Assessment<sup>1</sup> (EA)**

ROLES AND RESPONSIBILITIES (ONTARIO – MECP and NDMNRF) <sup>2</sup>	ROLES AND RESPONSIBILITIES (PROONENTS – Webequie First Nation and Marten Falls First Nation)
<p><b>1. Consultation Planning and Notification</b></p> <ul style="list-style-type: none"> <li>• Advises the Proponents and Aboriginal Communities of its determination as to whether the Duty arises in relation to the Project and to whom it is owed, delineates clear roles and responsibilities for consultation, and provides additional direction throughout the process</li> <li>• Communicates to Aboriginal Communities whether it has delegated procedural aspects of consultation and/or to clarify roles and responsibilities</li> <li>• Notifies the Proponents as soon as possible of any changes to the list of Aboriginal Communities in Schedule A and why they are either added or deleted</li> <li>• Reviews and provides input to the Proponents' Aboriginal consultation plans for the preparation of the terms of reference and environmental assessment, including whether responsibilities related to the Duty are reflected</li> <li>• Provides funding to support the participation of eligible Aboriginal communities in the EA for the Project through the participant funding initiative which is currently in place (NDMNRF).</li> </ul>	<ul style="list-style-type: none"> <li>• Work with Ontario to delineate clear roles and responsibilities for consultation as set out in this MOU</li> <li>• Prepare Aboriginal consultation plans for the preparation of the terms of reference and the environmental assessment and submits to Ontario for review. The consultation plan for the environmental assessment must be submitted as part of the terms of reference. Consultation plans must include:               <ul style="list-style-type: none"> <li>○ Outline of how the Proponents will engage with the Aboriginal Communities and meet Statutory Consultation requirements as part of Ontario's environmental assessment process and the procedural aspects of consultation delegated in this MOU</li> <li>○ Outline how any community consultation protocols have been incorporated, and if not, the reasons why they haven't</li> <li>○ Timetable for completion of all responsibilities</li> </ul> </li> <li>• During the consultation process, consider whether separate engagement plans for each community should be developed in consultation with the Aboriginal Communities for each phase of the environmental assessment process</li> </ul>

<sup>1</sup> Ontario notes that consultation conducted during the environmental assessment process may include information that relates to future permits and authorizations related to the conduct of the EA and (if the Project is given approval to proceed under the EAA) construction of the Project. Information gathered during consultation throughout the environmental assessment may therefore be considered by Ontario to inform those future permits and authorizations.

<sup>2</sup> Unless specified, Ontario's responsibilities are shared across MECP, NDMNRF, and where appropriate other ministries. Where a specific ministry is expected to take the lead, the name is indicated in brackets.



<ul style="list-style-type: none"> <li>• Notifies eligible Aboriginal Communities of the availability of participant funding (NDMNRF)</li> <li>• Addresses funding and other support requests from Aboriginal Communities referred by the Proponents if the requests are beyond what the proponents are able to provide under the Transfer Payment Agreement with the Proponents for the environmental assessment (NDMNRF)</li> <li>• Reviews notices required under the EAA and provides guidance to the Proponents on appropriate distribution (MECP)</li> </ul>	<ul style="list-style-type: none"> <li>• Refer any requests for financial or other support received from Aboriginal Communities to Ontario if the requests are beyond what the Proponents are able to provide under the Transfer Payment Agreement with Ontario for the environmental assessment</li> <li>• Draft notices associated with the environmental assessment process (e.g., Notice of Commencement of Terms of Reference) for MECP review, and the Proponents circulate with input from Ontario on appropriate distribution</li> <li>• Provide Aboriginal Communities with timely notice of the Project to consider possible impacts (e.g., notices required under the EAA)</li> <li>• Provide copies of all environmental assessment related documents to Aboriginal Communities for review and comment</li> <li>• Request acknowledgement of receipt of all statutory notices from Aboriginal Communities (including the notice of submission of final terms of reference, notice of commencement of environmental assessment, and notice of submission of final environmental assessment), and follows up with Aboriginal Communities to confirm receipt if acknowledgement is not received (and maintains a record of these communications)</li> <li>• Request confirmation of receipt of draft terms of reference and environmental assessment documents, and follows up with Aboriginal Communities to confirm receipt if acknowledgement is not received (and maintains a record of these communications)</li> </ul>
<p><b>2. Undertaking Consultation Activities, including Issues Resolution and Follow-up</b></p>	
<ul style="list-style-type: none"> <li>• Works with the Proponents to coordinate consultation activities and identify appropriate times for Ontario participation in Proponent-led activities with the goals of ensuring meaningful consultation and to avoid duplication of effort by Aboriginal Communities, the Proponents, and Ontario (e.g., coordination through biweekly calls)</li> </ul>	<ul style="list-style-type: none"> <li>• Work with MECP and NDMNRF to coordinate consultation activities and identify appropriate times for Ontario participation in Proponent-led activities with the goals of ensuring meaningful consultation and to avoid duplication of effort by Aboriginal Communities, the Proponents, and Ontario (e.g., coordination through biweekly calls)</li> </ul>

<ul style="list-style-type: none"> <li>• Supports Proponent-led consultation activities, including at the request of the Proponents or Aboriginal Communities, throughout the environmental assessment process to: <ul style="list-style-type: none"> <li>○ Explain the regulatory and approvals processes that apply to the Project to Aboriginal Communities and to answer technical questions</li> <li>○ Clarify roles and responsibilities related to the Duty to the Aboriginal Communities</li> <li>○ Facilitate relationship building, and identify and address issues that come up during consultation activities that are outside of the scope of the environmental assessment process for the proposed Project</li> <li>○ Discuss concerns raised by Aboriginal Communities about potential adverse impacts the Project may have on constitutionally protected Aboriginal and treaty rights and where appropriate accommodate potential impacts</li> <li>○ Provide opportunity for Aboriginal Communities to discuss changes to Project design, monitoring and adaptive management plans</li> <li>○ Provide oversight and advice relating to any assertions raised over the course of consultation activities, including ongoing assessment of depth of consultation</li> </ul> </li> <li>• Provides ongoing oversight of Proponent-led consultation activities (e.g., through bi-weekly calls) including with respect to the cumulative effects assessment</li> <li>• Receives and is available to review Proponents' materials, dates and timing of distribution of materials</li> <li>• Addresses requests related to financial or other support, including capacity funding, for participation in the consultation process and the environmental assessment process (NDM/NRF)</li> <li>• Assists in resolving any disputes relating to consultation activities, timing, scheduling of meetings, or roles and</li> </ul>	<ul style="list-style-type: none"> <li>• Lead the procedural aspects of consultation activities throughout the environmental assessment process to: <ul style="list-style-type: none"> <li>○ Provide Aboriginal Communities with information about the Project</li> <li>○ Explain the role the Proponents will have in consultation related to the Duty and Statutory Consultation</li> <li>○ Identify concerns Aboriginal Communities may have about potential adverse impacts the Project may have on constitutionally protected Aboriginal or treaty rights, including inviting Aboriginal Communities to share Indigenous Knowledge or information about traditional land use that may be impacted by the Project</li> <li>○ Seek input on measures to avoid, mitigate, or offset potential impacts</li> <li>○ Provide opportunity for Aboriginal Communities to discuss changes to Project design, monitoring and adaptive management plans</li> </ul> </li> <li>• Prepare materials in plain language and arranges for translation, if required, sets up meetings with Aboriginal Communities, arranges logistics for Proponent-led activities</li> <li>• Provide funding for logistics for Proponent-led consultation activities (meeting spaces, hospitality, including costs associated with translation, document printing and distribution)</li> <li>• Refer to Ontario, any concerns raised by Aboriginal Communities that are beyond the responsibility of the Proponents. The Proponents and Ontario will then work together to determine how to address them.</li> <li>• Refer any requests for financial or other support, including capacity funding, received from Aboriginal Communities to Ontario if the requests are beyond what the proponents are able to provide under the Transfer Payment Agreement with Ontario for the environmental assessment.</li> </ul>
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<p>responsibilities of the Proponents and Aboriginal Communities</p> <ul style="list-style-type: none"> <li>• To complement the delegated consultation responsibilities of the individual proponents of the proposed Project, the proposed Marten Falls Community Access Road, and the proposed Webeque Supply Road, consults throughout the respective EA processes such that Ontario is in a position to consider, address, and accommodate, as appropriate, concerns about potential adverse cumulative impacts on constitutionally protected Aboriginal or treaty rights. <ul style="list-style-type: none"> <li>○ For clarity, this does not replace the Proponents' responsibility to conduct a cumulative effects assessment and consult on it during its EA process</li> </ul> </li> <li>• For Ontario-led activities, develops and distributes notification materials and follows-up with Aboriginal Communities to confirm receipt of information if acknowledgement of receipt not received <ul style="list-style-type: none"> <li>○ Follows-up, as appropriately with Aboriginal Communities on issues raised through Ontario-led activities with the goal of addressing them in a timely manner where possible</li> </ul> </li> <li>• Where questions, comments or concerns raised by Aboriginal Communities, either directly to Ontario or to the Proponents, are beyond the Project Proponents' responsibilities to address in the environmental assessment, or beyond the mandate of individual ministries, will work with other ministries to see how best the matter may be considered by Ontario (NDMNR), and identify who should respond accordingly to Aboriginal Communities in a timely manner</li> <li>• Reviews information provided by the Proponents that they have received on potential impacts of the Project to ensure information has been clearly and sufficiently documented, and identifies where there are information gaps for follow-up</li> </ul>	<ul style="list-style-type: none"> <li>• Work with Aboriginal Communities to resolve issues and address concerns raised throughout the process, including: <ul style="list-style-type: none"> <li>○ Providing additional information about the Project and discuss how any changes to the Project could address potential impacts to rights (e.g., changes to Project design to avoid impacts, mitigation strategies, monitoring, adaptive management plans)</li> <li>○ Following up with Aboriginal Communities on issues related to Project impacts and document how issues were addressed during all phases of the environmental assessment process</li> </ul> </li> <li>• To complement Ontario's consultation throughout the EA process on all of the proposed road projects, will share information as may be requested by Ontario to support Ontario-led consultation efforts, as appropriate.</li> <li>• Implement relevant consultation requirements as set out in the Terms of Reference, if approved.</li> <li>• Integrate Indigenous knowledge and land use studies received from Aboriginal Communities into environmental assessment documentation, as appropriate, and documents how information was incorporated in the record of consultation</li> <li>• Advise Ontario within two weeks of receipt of: <ul style="list-style-type: none"> <li>○ Any actual, potential or asserted adverse impact of the Project on established or credibly asserted constitutionally protected Aboriginal or treaty rights, whether Webeque First Nation or Marten Falls First Nation become aware of such impact or assertion through its consultation activities or otherwise</li> <li>○ Any notice or statement by any Aboriginal Community that some or all of its constitutionally protected Aboriginal or treaty rights concerns in connection with the Project have been resolved, how they have been addressed and whether the Aboriginal Community is supportive of the Project</li> </ul> </li> </ul>
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<ul style="list-style-type: none"> <li>• Reviews any actual, potential or asserted adverse impacts to constitutionally protected Aboriginal or treaty rights, assesses the depth of consultation required with Aboriginal Communities based on those impacts, and advises the Proponents and any applicable Aboriginal Communities if there are changes to the list of Aboriginal Communities that should be consulted with on the basis that they have established or credibly asserted constitutionally protected Aboriginal or treaty rights that may be adversely impacted by the Project</li> <li>• Assesses whether the consultation process in relation to the Project is adequate, which may include contacting Aboriginal Communities to discuss the adequacy of consultation and any proposed accommodation</li> <li>• Determines whether accommodation of any adverse impacts of the Project on rights is required, and if so, its adequacy</li> </ul>	<ul style="list-style-type: none"> <li>○ Any questions, comments or concerns raised by Aboriginal Communities that the Proponents' believe are beyond their responsibilities to address in the environmental assessment</li> </ul>
<p><b>3. Record Keeping</b></p> <ul style="list-style-type: none"> <li>• Works with the Proponents to develop a common template to record consultation that meets both Statutory Consultation and Duty obligations</li> <li>• Receives and reviews quarterly reports from the Proponents to provide ongoing oversight, understand issues, and identify any gaps</li> <li>• Keeps Proponents informed of any relevant Ontario records (e.g. meetings, calls, correspondence) as they are received through the bi-weekly coordination calls, or other appropriate and timely means (i.e., within a month of receipt)</li> <li>• Documents and records Ontario's consultation activities using a common template</li> <li>• Notifies the Proponents of issues and correspondence received by Ontario for response and incorporation into environmental assessment documentation, as appropriate</li> <li>• Documents how issues were addressed at the end of the process (e.g., during Ministry Review) (MECP)</li> </ul>	<ul style="list-style-type: none"> <li>• Work with Ontario to develop common templates to record consultation that meets both Statutory Consultation and Duty obligations</li> <li>• Submit quarterly consultation reports to Ontario (using template)</li> <li>• Keep detailed and organized records of all consultation activities (e.g., meetings, calls, correspondence) and analyzes input received from Aboriginal Communities using common template</li> <li>• Integrate Indigenous knowledge and land use studies received from Aboriginal Communities into environmental assessment documentation, as appropriate, and documents how information was incorporated in the record of consultation</li> <li>• Prepare and submit record of consultations for the terms of reference and environmental assessment to Ontario, including detailed records of correspondence, meetings, receipt of notices, etc., issues raised and how they were resolved or</li> </ul>

<ul style="list-style-type: none"> <li>• Reviews Proponents' and Ontario's records of consultation and assesses sufficiency of consultation at decision points</li> <li>• Confirms accuracy of the Proponents' records of consultation with Aboriginal Communities</li> </ul>	<p>addressed. Includes primary records as appendices to the records of consultation</p>
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