

26 August 2019

Marten Falls Community Access Road Project (Reference number: 80184)  
Canadian Environmental Assessment Agency  
600-55 York Street  
Toronto, Ontario M5J 1R7

Via email: [CEAA.MartenFalls.ACEE@canada.ca](mailto:CEAA.MartenFalls.ACEE@canada.ca)

**Re: Marten Falls Community Access Road Project Description (Reference number: 80184)**

To whom it may concern:

We are providing comments on the proposal by Marten Falls First Nation (MFFN) to the Canadian Environmental Assessment Agency (CEAA Agency), who are determining whether a federal environmental assessment is required for the designated project (Marten Falls Community Access Road Project; MFCARP), given its potential for causing adverse environmental effects in the far north in Ontario.

**This letter contains our rationale for two principal recommendations: 1) a federal assessment must be undertaken for the MFCARP and 2) Immediate attention by the federal Agency should be focused on the Ring of Fire area as a pilot regional assessment under the new Impact Assessment Act to address anticipated social and ecological cumulative effects.**

**Our expertise:**

We are submitting this feedback in our capacities as Wildlife Conservation Society (WCS) Canada scientists conducting research on species and ecosystems to inform conservation decisions. WCS Canada is a national non-government organization that has been engaged in Ontario since 2004, with research and conservation priorities largely focused in the far north of the province. Dr. Justina Ray was a member of the Far North Science Advisory Panel, the Ontario Wolverine Recovery Team, the Ontario Caribou Science Advisory Panel, and the Committee on the Status of Species at Risk in Ontario (COSSARO). Dr. Cheryl Chetkiewicz has conducted applied research on cumulative effects, promoted [regional and strategic impact assessment](#) in the far north, and is an active board member with Ontario Association of Impact Assessment (OAIA). Dr. Matthew Scrafford leads our Ontario program, and has led our wolverine research in the province since 2017. Importantly, we are some of the few scientists with continuous presence in the region. We and our colleagues support and collaborate with a number of First Nations, including Weenusk First Nation and Moose Cree First Nation on research and community-based monitoring; and, with academic and government researchers conducting ecological and social research in the region.

We have been actively involved in the federal impact assessment (IA) reform process since it was first launched in 2016, have engaged directly with the CEAA Agency and others on multiple occasions, provided public comments, in person and in writing, throughout the process, and are highly familiar with both the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and the new *Impact Assessment Act* (IAA) as well as the significant published literature on impact assessment. Similarly, we are very

familiar with Ontario environmental assessment and land use planning laws, policies and processes; we have provided many written comments to Ontario during the past year on substantial changes being made or considered to many environmental laws, including the proposal to “modernize” Ontario’s *Environmental Assessment Act (EAA)* (ERO No. 013-5101, 013-5102).

**Recommendation 1. A federal assessment must be undertaken for the MFCARP**

Federal engagement in the environmental assessment of projects, including this one, is necessary in the far north given the social, ecological, and economic context. We remain deeply concerned about the piecemeal approach that Ontario and Canada are taking in the Ring of Fire and the general lack of transparency given multiple parallel processes (e.g., the Webequie Supply Road Project, Reference Number 80183<sup>1</sup>; Noront’s Eagle’s Nest Project, Reference Number 63925<sup>2</sup>) associated with industrial development in the far north in Ontario.

The project description summary for the MFCARP states that the goal of the project is “an all-season Community Access Road [CAR] that will connect the Community to Ontario’s provincial highway network (Highway 643) to the south via the existing Painter Lake Road, which is maintained by Aroland First Nation” (page 1). Later in the same document it is stated “Should a future road project connect the CAR to the Ring of Fire, the CAR could also be used as an industry supply road” (page 10). Indeed, the previous Ontario government announced the government was working with MFFN to “plan and construct a year-round access road into the proposed mining development site being pursued by Noront Resources Ltd.”<sup>3</sup> The government also indicated it was “supporting MFFN” to undertake further technical and environmental studies that “could inform planning and development of a north-south access road tied to the development of, and business case for, chromite mining in the Ring of Fire.” This indicates that MFCARP is essentially “Phase 1” and requires a federal assessment in order to address the potential cumulative impacts of Phase 1 and the reasonably foreseeable “Phase 2” road connecting MFFN reserve to the Ring of Fire deposits with anticipated employment and other benefits for MFFN as noted on page 10. This scenario is also evident in Alternative Routes 1 and 4 in Figure 1-1.

The following considerations are germane to the designated project list regulation under CEAA 2012 and IAA:

**1) The proposed road intersects with multiple areas of federal legislative authority (jurisdiction):**

- A maximum of “5%” of the Project is to be located on MFFN reserve land (i.e., federal land) with 47.27 hectares potentially intersected for route Alternatives 1 and 4 and 0.42 hectares of MFFN reserve land potentially intersected by route Alternatives 2 and 3.
- Potential environmental effects on fish and fish habitat, given multiple water crossings and effects on significant wetlands indicating a probable need for *Fisheries Act* authorization; the Project Description notes 15-47 large and small river crossings (page 26) and 15-50 bridges with significant bridges required for the Albany River and, with some alternatives, the Ogoki River.

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<sup>1</sup> <https://ceaa-acee.gc.ca/050/evaluations/proj/80183?culture=en-CA>

<sup>2</sup> <https://ceaa-acee.gc.ca/050/evaluations/proj/63925?culture=en-CA>

<sup>3</sup> <https://news.ontario.ca/opo/en/2017/8/ontario-et-les-premieres-nations-progressent-dans-le-projet-de-construction-dune-route-pour-le-cerc.html>

- Potential adverse effects on migratory birds through removal of nesting habitat, particularly in upland habitats on higher ground, a favoured criterion for transportation routing;
- Potential adverse effects on federally-listed species at risk that frequent the area, but most notably caribou and wolverine, for which multiple studies<sup>4</sup> have found this ecotone between the Hudson Bay Lowland and Boreal Shield to be disproportionately important, and which are known to be sensitive to roads, and not acknowledged as such in the project description;
- Potential changes to the environment that affect First Nations Treaty and Aboriginal rights, but will be disproportionately affected by the process, particularly communities downstream (e.g., communities whose homelands include the Albany River Watersheds) or not currently supportive of the approach being taken by the proponent;
- Regarding changes to the environment that might result from federal decisions:
  - There is no information in this description about who is funding Chief and Council, as part of MFFN, to be the proponent in this process although Ontario has supported work to date and made this a priority with little or no public transparency on the process or outcomes. Marten Falls First Nation was not included in the All-Season Community Roads project funded by the federal government.
  - The Webequie Supply Road Project makes clear that it is only useful in the context of mining or as a resource road, if it is coupled with MFCARP and the missing link of road (currently proponent-less, pending negotiations with First Nations). This suggests a much more significant overall undertaking in spite of the MFCARP description and stated intention as a community access road to the south of the Ring of Fire deposits.

- 2) **The proposed road meets the requirement in the project list regulation for CEAA 2012 and IAA for federal attention**, given the length of this new right-of-way, is proposed at 140 to 250 km.
- 3) **This proposed road is located in a potential area for a pilot regional assessment**, having been put forward as one of 22 potential regions in Canada that require attention<sup>5</sup>. This approach is something we have a strong case for through provincial, federal, and First Nations pathways since 2012. See additional details below.

Although the above reasons should be more than sufficient for the Agency's decision under CEAA 2012, we put forward the following additional considerations for why this project requires federal attention:

- 4) **Project substitution (e.g., by provincial assessment processes), should not be considered for this project**, even if CEAA 2012 or IAA allows it, because:

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<sup>4</sup> e.g., Berglund et al. 2014 Biodiversity and Monitoring Section Technical report TR-147, Ontario Ministry of Natural Resources; Poley et al. 2014. *J. Biogeography* 41:122–132; Ray et al. 2018. *J. Biogeography* 45:1478–1489

<sup>5</sup> Presentation entitled, "Addressing Cumulative Effects of Resource Development" by Dr. David Nanang at the [Cumulative Effects Conference](#), July 5-6, 2019 and subsequent follow-up conversations with Natural Resources Canada staff.

- We note the proponent, under Ontario’s EAA, has volunteered to have the project subject to an individual environmental assessment, under the EAA, and is committed to conducting “a comprehensive and cumulative impact assessment of the preferred route” (page 5). Yet, there is no guidance or standards for cumulative effects assessment in Ontario’s legislation. In our experience, the EAA is inherently weak in consideration of cumulative effects, climate change, and species-at-risk. In addition, the current provincial government has sought public consultation to revise the EAA in an effort to reduce red tape, with a focus to “streamline” project decision making and weaken environmental rules (ERO 13-5101, 13-5102). Furthermore, in our experience, the review processes of EA materials of other projects led by the provincial assessment agency that we have reviewed have been neither thorough nor transparent.
- It is concerning that the Chief and Council are listed as “proponents” in the project description. While not the “owners”, we wonder who is ultimately responsible for the community access road and what may happen if MFFN elections support a new Chief and Council.
- Finally, it seems that Ontario (and ultimately, its taxpayers) is already funding the proponent, community research on the project<sup>6</sup>, while at the same time serving as the regulator and facilitator of mine development in the north. This suggests to us a high risk of a conflict of interest for the province conducting this EA, making an even stronger case for the need for strong federal engagement in the process.

5) **This project description indicates a narrow and conventional approach to the assessment of this project, which will only perpetuate prevailing concerns about project decision making that have underscored the need for the federal impact assessment reform process since 2016.** The federal law reform process underway since 2016 has made clear what is needed to improve CEAA 2012. By this reasoning, we urge federal engagement in this assessment in a coordinated fashion with the province to ensure that the transition to the new IAA is as robust as possible on matters such as tailoring the assessment to the most consequential matters, while broadening the scoping of the assessment to adequately cover Section 22 matters in the IAA, among other things (including myriad social impacts listed on page 31). This would also mean explicit consideration of the impact of the project on Canada's environmental obligations (e.g., biodiversity) and climate change commitments, true consideration of alternative means, and the project's contribution to sustainability.

We are concerned from our reading of the project description that the consultants for the proponent may be on the way to adopting the same boilerplate approach that we have seen many times over under CEAA 2012 and its predecessor acts, resulting in large volumes of material with little meaningful introspection and analysis tailored to the project at hand. For example:

- We note that neither fish and wildlife nor their habitats are not part of the criteria for assessing routes on page 16. While wetlands in the project areas may not be classed as “provincially significant” by Ontario (page 26), but this is just as likely to be because they have never been assessed. This EA will have to acknowledge wetlands as well as eskers for their disproportionate ecological and social values in the far north. For example, the description of the biophysical environment correctly states that the project is located in

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<sup>6</sup> The Ontario Ministry of Energy, Northern Development and Mines (ENDM) is supporting “community research on options for connecting MFFN to the provincial transportation network” (page 1).

the third largest wetlands in the world, but neglects to identify it as a globally-significant peatland complex and carbon storehouse. Standard mitigation for reclaiming wetlands due to transportation as routinely conducted in southern Ontario is highly unlikely to be appropriate in the far north given the significance of the region in climate regulation and the potential for significant CO<sub>2</sub> and CH<sub>4</sub> emissions with soil removal. Roads that cut north-south in this geography could drastically change the hydrology of surrounding peatlands and stimulate associated changes in the carbon balance. We do not anticipate wetland and esker functionality will be restored and anticipate more rigorous assessment of ecosystem services. We have little confidence in the project description that the consulting team is adequately cognizant of the particular ecological context in this region.

- Addressing avoidance of invasive plants and animals. The introduction of invasive species exacerbated by climate change in the far north and highlighted as a key issue by the [Far North Science Advisory Panel \(2010\)](#).
- The description on page 11 identifies the type of vehicles anticipated (e.g., personal vehicles and larger, commercial vehicles), a speed limit (80 km/h), and anticipated daily traffic of less than 300 vehicles/day. However, this does not consider the real potential, stated elsewhere in this document, for this road to be the stepping stone to potential mine access roads or multi-use roads for the Ring of Fire. As such, Noront's Eagle's Nest Project initial proposal anticipated twelve (35 tonne capacity) trucks will transport concentrate to the trans-load facility each day with additional trucks delivering supplies to the mine site and dispose of solid waste to off-site licensed facilities. However, chromite is also reasonably foreseeable given public statements by Noront Resources Ltd. in which case, Cliff's Chromite Project anticipated a basecase of 50 to 100 truckloads of concentrate leaving the site each day during full production. We suggest this scenario must be considered more explicitly regardless of the current narrow scoping to a "community access road".
- Greenhouse gas emissions need to be considered as a cumulative effect and within a much larger context. It is faulty logic to compare this project's projected direct emissions with that of Ontario's or Canada's and interpret the inevitably small emission volume to be inconsequential, as indicated in this initial project description. Rather, impacts should be considered relative to internationally-recognized climate change significance thresholds, which have already been exceeded. Furthermore, there is no indication in the project description that this proponent will consider the carbon in peat or the impacts of mines and additional exploration activity facilitated by the roads. A cumulative effects assessment is needed to determine how this project contributes to GHG emissions in terms of impacts (page 22). Ontario has produced guidance<sup>7</sup> on considering climate change in impact assessment at the provincial level but this is neither enforceable nor tied to a provincial or federal climate test.

**Recommendation 2: Give immediate attention to the Ring of Fire area as a pilot regional assessment under the IAA to address anticipated social and ecological cumulative effects.**

The inability of prevailing (especially provincial) processes to address the potential social and ecological cumulative effects in the Ring of Fire creates high uncertainty given transportation infrastructure

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<sup>7</sup> <https://www.ontario.ca/page/considering-climate-change-environmental-assessment-process>

associated with mines are high risk, require high *public* investment and complex organization, and do not generate high income for the region. We are also concerned by the lack of outcomes from the [Regional Framework Agreement](#) between Ontario and the Matawa First Nations that was considering issues such as regional infrastructure in a more equitable way.

We recommend a regional approach, ideally a regional impact assessment to address the cumulative effects of new roads in the Ring of Fire in advance of decision making on individual undertakings such as the MFCARP as well as the Webequie Supply Road Project and Noront's Eagle's Nest Project. We note that this is now possible through the federal IAA and that the Ring of Fire has been identified as a possible pilot project. Equally importantly, regional infrastructure was an objective under the Matawa Regional Framework Agreement<sup>8</sup>.

In general, transportation has the potential to cause regional environmental impacts, which tend to be far more significant than the more direct and local impacts with which this particular assessment process (judging from the project description) is preoccupied, albeit superficially at this point. Direct impacts of this new corridor will include the creation of physical barriers to animal movement, habitat fragmentation, including stream habitats that are critical for spawning and movement, alteration of soil properties and surface water flows, and increased access through otherwise inhospitable terrain for invasive species, as well as predators, and hunters and anglers. These changes in turn alter interspecies dynamics and affect the abundance and distribution of species, some of which are directly tied to Aboriginal and Treaty rights.

We contend, however, that it will ultimately be much more important to give careful consideration to the more indirect and cascading effects of this road combined with other segments of the road and the projects mining projects that will become more economically vital. Once one road is built, to serve a single purpose or development project as is the case with MFCARP, it opens up the potential for further development, and creates pressure to build more road networks and power transmission lines. Roads invite cumulative effects and are often growth-inducing agents of fundamental change to a region. The effects of roads are incremental and cascading. Although a particular corridor may be built to serve a single purpose or development project, the prevailing pattern is for this to facilitate additional uses for different purposes, more road networks, and power transmission lines.

The project description clearly states that although an environmental assessment is contemplated for the MFCARP, it is expected that there will ultimately be an all-season road connection between the Ring of Fire and the provincial highway system through the MRCARP. Similarly, the project description states that, "It is in this scenario that the potential positive and negative cumulative effects of the Project on Indigenous communities would likely be realized or felt to the fullest." (page 41).

When one considers the potential impacts of the MFCARP, together with the emerging Webequie Supply Road Project and the segment of road that has yet to be claimed by a proponent, but is certainly envisioned, these have the collective potential to play a decisive role in the industrialization of the far north. The MFCARP will have obvious spillover effects on regional development by promoting the aggregation of industry, an increased population in the north, and the well-known legacy impacts associated with mining, including First Nations dependency on the boom-bust economy of mineral exploration and mining while also impacting the land, water and wildlife on which First Nations depend.

In this process, First Nations may see some more immediate economic and social benefits associated with the construction and maintenance of the road as well as providing services for the mine and mineral exploration companies. While we respect the right of Marten Falls First Nation to determine and

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<sup>8</sup> [https://www.mndm.gov.on.ca/sites/default/files/rof\\_regional\\_framework\\_agreement\\_2014.pdf](https://www.mndm.gov.on.ca/sites/default/files/rof_regional_framework_agreement_2014.pdf)

develop strategies for exercising their right to development as well as develop their traditional territories (as per UNDRIP<sup>9</sup> Articles 3, 20, 23, 32, etc.), it is well known from previous experience that the current project-by-project approach is inadequate to address the social, ecological, and economic risks that Marten Falls would take on by both ultimately enabling and depending on mineral exploration and mining on their traditional lands. We note, as with Webequie, that MFFN would need to gain consent from mining claim holders in developing this project even though the claim holders did not seek consent from MFFN in the first place (page 19). This highlights the inequity in development in the far north as we have come to understand it in our 15 years of experience.

Also of concern with the current proposal is the uncertain status of land use planning under the *Far North Act, 2010*. Current pending proposals by the Ontario government (ERO 013-4734) suggest Marten Falls has until December 31, 2020 to complete the land use plan that has been initiated with Ontario. While the zoning in the area of interest for planning may support the MFCARP, Ontario's approach to land use planning also cannot consider the broader issues of cumulative effects, climate change, freshwater, and Aboriginal and Treaty Rights and this concurrent planning process has never been integrated with impact assessment in the Ring of Fire. As such, a regional approach could support an integrated understanding of both land use planning and impact assessment for MFFN.

It is unclear whether current waterway and provincial parks identified in the description are subject to review under land use planning by Ontario and MFFN given the parks which were designated without consent by MFFN. We suggest that the routes and alternatives identified in this project need to explicitly consider proximity to any Dedicated Protected Areas that have already been identified through community-based land use planning with Ontario. These should, for example, be added to Figure 5-1. On the issue of protection, we encourage MFFN to consider other governance mechanisms beyond Ontario legislation, including Indigenous Protected and Conserved Areas (IPCAs)<sup>10</sup>. The federal government has made strong political and financial commitments to supporting IPCAs as an approach to meeting its targets for protection<sup>11</sup>.

Finally, given that the Regional Framework Agreement did not produce any final public outcomes on infrastructure, engagement in impact assessment, monitoring, and jurisdiction and its fate is uncertain at best under the current Ontario government, we suggest the MFCARP, in addition to the Webequie Supply Road Project proposal, is the time to address these concerns.

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<sup>9</sup> <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>10</sup>

[https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE\\_Report\\_2018\\_Mar\\_22\\_web.pdf](https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE_Report_2018_Mar_22_web.pdf)

<sup>11</sup> <https://www.canada.ca/en/environment-climate-change/services/nature-legacy/fund.html>

Moving forward, we would like to be included in any further communications around the project as an interested party (e.g., Table 7-4, page 49). We are available to engage in any discussions regarding our recommendations and comments and you may contact any one of us to do so.

Yours sincerely,



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