

Marten Falls First Nation

Proposed Terms of Reference Marten Falls Community Access Road – Environmental Assessment

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12. Accommodating New Circumstances

The MECP Code of Practice (MECP 2020) and subsection 6.1(1) of the EAA states that the EA for a proposed undertaking must be prepared in accordance with an approved ToR. However, complex undertakings may undergo changes that could prevent the commitments of the ToR from being met. As the ToR cannot be amended if approved, the MECP Code of Practice requires that flexibility be provided in the ToR to accommodate changes and / or unforeseen circumstances that may arise throughout the environmental planning process.

This ToR has been prepared using a conceptual level of design, readily available information, and input received during consultation activities that took place prior to and during preparation of the ToR. It provides an accurate and realistic description of the proposed CAR known at the time of ToR preparation but does not represent the detailed design, location or scope of the Project. Therefore, the content of this ToR is considered preliminary and the detailed design, location and scope is subject to change as more information becomes available throughout the environmental planning process as a result of the advancement of design, technical and environmental investigations and studies, information available through the Indigenous Knowledge Program, feedback from consultation activities, and input received from government agencies during the preparation of the EA.

To accommodate new changes and unforeseen circumstances, flexibility has been incorporated into this ToR, where appropriate. The ToR allows for the EA to have minor changes from the approved ToR to accommodate these factors. Minor changes include, but are not limited to, modifications or variations to the Consultation Plan, study area, alternative methods, effects assessment methods and evaluation criteria, need for modified or additional investigations and studies, and potential permits and approvals applicable to the Project. In this regard, it is understood that certain aspects of the ToR, including the number and location of alternatives for consideration in the EA, may be adjusted without the need to re-start the provincial EA process. Any significant changes from the ToR will be discussed with the MECP to identify whether additional requirements are necessary before proceeding with the change.

13. Other Permits and Approvals

To facilitate the construction of the CAR, including construction activities and temporary infrastructure, MFFN will need to acquire permits and approvals from provincial, federal government and other jurisdictional agencies. A preliminary list of permits and approvals anticipated to be applicable or potentially applicable to the Project are detailed in **Table 13-1**. This list is based on a conceptual level of design, and the final determination of permits and approvals that will be required will occur as the design is defined through the EA process.

Table 13-1: Potential Permits and Approvals for the Project

Approval Authority	Permit / Approval / Authorization	Applicability to the Project
Provincial		
Ministry of Natural Resources and Forestry (MNR)	Work Permit	<ul style="list-style-type: none"> • Work Permit under the <i>Public Lands Act, 1990</i> to authorize works on public lands and / or shore lands. Examples of works include geotechnical investigations, construction of roads and trails, and culverts / bridges. This may require a MOU and Road Use Management Strategy to be appended to the Permit. • Consolidated Work Permit under the <i>Lakes and Rivers Improvement Act, 1990</i>, for work planned on shore land and within water bodies including work and burn authorization for clearing and burning of cleared vegetation.
	Land Use Permit / Occupational Authority	<ul style="list-style-type: none"> • Land Use Permit / Occupational Authority under the <i>Public Lands Act, 1990</i>, for rights to Crown land for construction of the CAR, and for temporary infrastructure for construction (e.g., accesses, camps, laydown areas).
	Letter of Authority	<ul style="list-style-type: none"> • A Letter of Authority under the <i>Public Lands Act</i> may be necessary to allow use of restricted roads for Project activities.
	Forest Resource Licence (Cutting Permit)	<ul style="list-style-type: none"> • Forest Resource License (Cutting Permit) under the <i>Crown Forest Sustainability Act, 1994</i> to harvest and / or cut timber on Crown lands.
	Purchase and Sale Agreement	<ul style="list-style-type: none"> • A Purchase and Sale Agreement under the <i>Public Lands Act</i> may be required for tree removal / harvesting.
	Burning Permit (only required if a restricted fire zone is in place)	<ul style="list-style-type: none"> • Burning Permit under the <i>Forest Fires Prevention Act, 1990</i>, to enable burning of materials from forest clearing, if required.
	Aggregate Permit	<ul style="list-style-type: none"> • Aggregate Permit under the <i>Aggregate Resources Act, 1990</i>, to extract aggregate (e.g. gravel, rock, sand) on all Crown Land and also on private land in areas of the province designated (identified) in the regulations.
	CBLUP Approvals	<ul style="list-style-type: none"> • Terms of Reference for MFFN to prepare a CBLUP has been approved. The CBLUP is under development.
	Licence to Collect Fish for Scientific Purposes	<ul style="list-style-type: none"> • Licence to Collect Fish for Scientific Purposes under the <i>Fish and Wildlife Conservation Act, 1997</i>, to facilitate capture and transfer of fish during in-water works, such as cofferdam construction or dewatering.
	Wildlife Scientific Collectors Permit	<ul style="list-style-type: none"> • Wildlife Scientific Collectors Permit under the <i>Fish and Wildlife Conservation Act, 1997</i>, to facilitate capture and transfer of wildlife from one site to another.
	Approval under the <i>Fish and Wildlife Conservation Act, 1997</i>	<ul style="list-style-type: none"> • Approval under the <i>Fish and Wildlife Conservation Act, 1997</i>, will likely be required as it is expected that Project activities such as clearing, grubbing, blasting, dewatering, and damming will result in the destruction of beaver dams, furbearer dens, black bear dens and / or bird nests and eggs.
	Permit / approval under the <i>Far North Act, 2010</i>	<ul style="list-style-type: none"> • A significant portion of the Project is located in the Far North of Ontario. Permits / approvals under the <i>Far North Act, 2010</i> may be required depending on the type of development and stage of completion of CBLUPs.
	Approval under <i>Lakes and Rivers Improvement Act, 1990</i>	<ul style="list-style-type: none"> • Approval for water crossings, bridges, culverts and causeways.
Ministry of the Environment, Conservation and Parks (MECP)	Environmental Compliance Approvals for wastewater, waste, air and noise	<ul style="list-style-type: none"> • Environmental Compliance Approvals under the <i>Environmental Protection Act, 1990</i>, and <i>Ontario Water Resources Act, 1990</i> for the following activities: <ul style="list-style-type: none"> – to transport waste by haulers from the Project work site; – to enable emissions (e.g., air or noise) from on-site equipment; – to enable the discharge and treatment of wastewater generated from some water taking activities; – to facilitate stormwater management; – to facilitate temporary on-site sewage and water treatment facilities, which may require approval under s.53 of the <i>Ontario Water Resources Act</i> if the rated capacity of the works is over 10,000 litres per day; – to allow for aggregate wash water systems with capacity greater than 10,000 litres per day; – to enable discharge associated with Category 1, 2 and 3 Permits To Take Water; and – to enable discharge associated with Environmental Activity and Sector Registration for construction site dewatering.
	Environmental Activity and Sector Registry or Permit To Take Water	<ul style="list-style-type: none"> • Permit To Take Water under the <i>Ontario Water Resources Act, 1990</i>, if the construction of the Project requires taking greater than 50,000 litres of water in a day from a lake, stream, river or groundwater source (certain exemptions may apply depending on the source and purpose of the activity). • Permit To Take Water applications will follow the province’s technical guidance document for hydrogeological studies. • Registration of the water taking activity in the Environmental Activity and Sector Registry, if the water taking is less than 50,000 litres in a day from the sources identified above. • Permit To Take Water requirements and the applicability of Environmental Activity and Sector Registration for aggregate extraction operations associated with the Project determined in consultation with the MECP.
	Approval	<ul style="list-style-type: none"> • Approval under the <i>Health Protection and Promotion Act, 1990</i>, to facilitate provision of potable water, and on-site sewage treatment and disposal systems at temporary construction camp(s).
	Letter of Advice or Permit	<ul style="list-style-type: none"> • Letter of Advice or Permit under <i>Endangered Species Act</i> if the Project affects a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species.
	Approvals, authorizations and amendment under the <i>Provincial Parks and Conservation Reserves Act, 2006</i>	<ul style="list-style-type: none"> • Approval to cross provincial parks as per the <i>Provincial Parks and Conservation Reserves Act, 2006</i>. • Work Permit for when the proposed road and associated structures (e.g., bridges, culverts) or clearing, is planned within a provincial park or conservation reserve. • Occupational Authority for when the proposed road and associated structures (e.g., bridges, culverts) or clearing, is planned within a provincial park or conservation reserve. • Research authorization from Ontario Parks to conduct research within provincial parks and conservation reserves. • Amendment to management direction for provincial parks and nature reserves under the <i>Provincial Parks and Conservation Reserves Act, 2006</i>.
Ministry of Transportation (MTO)	Various Permits	<ul style="list-style-type: none"> • Following permits may be required under the as per the <i>Public Transportation and Highway Improvement Act, 1990</i>: <ul style="list-style-type: none"> – An Entrance Permit for proposed entrances onto provincial highways; – An Encroachment Permit for any work within, under, or over a provincial highway ROW; – A Sign Permit for all signage erected within 400 m of the limit of a provincial highway; and – A Land Use and Building Permit for construction occurring: <ol style="list-style-type: none"> a. within 45 m of the ROW limit of any provincial highway, b. within 180 m of the intersection of a side road and a “King’s” highway; or c. within 395 m of a controlled access highway.

Table 13-1: Potential Permits and Approvals for the Project

Approval Authority	Permit / Approval / Authorization	Applicability to the Project
Ministry of Energy, Northern Development and Mines (ENDM)	Approval	<ul style="list-style-type: none"> Potential for the Project to obtain Minister approval under the <i>Mining Act, 1990</i> for the withdraw from prospecting, mining claim registration, sale and lease of lands, mining rights or surface rights that are the property of the Crown.
Ministry of Heritage, Sport, Tourism, and Culture Industries (MHSTCI)	Archaeological and Cultural Heritage clearances	<ul style="list-style-type: none"> Archaeological Assessment(s) to be completed as part of the EA under the Ontario Heritage Act, 1990, and submitted to the Ontario Public Register of Archaeological Reports. Built Heritage and Cultural Heritage Landscape screening and, Heritage IA's, where required, submitted to the MHSTCI for review under the EAA.
Ministry of Municipal Affairs and Housing	Letters of Conformity or Zoning Conformity Permits	<ul style="list-style-type: none"> Potential for the Project to be located in unorganized territory. Letters of Conformity or Zoning Conformity Permits required for areas located in unorganized territories.
Ministry of Labour	Notice of Project	<ul style="list-style-type: none"> Filing of a notice of Project prior to construction under <i>Occupational Health and Safety Act, 1990</i>.
Federal		
Environment and Climate Change Canada	Permit	<ul style="list-style-type: none"> Permit under <i>Species at Risk Act, 2002</i>, if the Project activities will occur on federal lands (including First Nations reserve lands) and will destroy or remove a SAR listed under the <i>Species at Risk Act, 2002</i> or its habitat. Permit under the <i>Migratory Birds Convention Act, 1994</i>, if the Project activities will destroy, harm, or harass any migratory birds or their nests.
Fisheries and Oceans Canada	Authorization	<ul style="list-style-type: none"> Authorization under section 34 and section 35 of the <i>Fisheries Act, 1985</i> for any work, undertaking or activity that results in death of fish, or the harmful alteration, disruption or destruction of fish habitat.
	Permit or Letter of Advice	<ul style="list-style-type: none"> Permit or Letter of Advice under the <i>Species at Risk Act, 2002</i>, to authorize an activity affecting a species listed under Schedule 1 of the <i>Species at Risk Act</i>, if it is on federal lands or if an activity is not on federal lands will affect an aquatic species listed under Schedule 1 of the <i>Species at Risk Act, 2002</i>.
	Leases or crossing agreements	<ul style="list-style-type: none"> Leases or crossing agreements for roads, railways, or canals under the <i>Federal Real Property and Federal Immovables Act, 1991</i>
Impact Assessment Agency of Canada (the Agency) (Previously the Canadian Environmental Assessment Agency)	Determination	<ul style="list-style-type: none"> Determination if the Project will require a federal IA under the <i>Impact Assessment Act, 2019</i> since the CAR is a designated project under the Act, or if the provincial EA process is considered sufficient under the Canada-Ontario Agreement on Environmental Assessment Cooperation.
Indigenous Services Canada	Land Use Permit	<ul style="list-style-type: none"> Land use permit or equivalent under section 28(2) of the <i>Indian Act, 1985</i> to use federal lands (i.e., to allow the crossing of First Nation reserves).
Natural Resources Canada	Permit	<ul style="list-style-type: none"> Permit under the <i>Explosives Act, 1985</i> for the use, storage or transportation of explosives.
Transport Canada	Approval	<ul style="list-style-type: none"> Potential for the Project to require approvals under the <i>Canadian Navigable Waters Act, 1985</i>, for potential alterations to navigability to listed waterways.
Other		
Hydro One Networks Inc.	Permit to cross Hydro One transmission lines	<ul style="list-style-type: none"> Permit to cross existing transmission lines, if required.
Local Municipalities	Various Permits	<ul style="list-style-type: none"> Building Permit per the <i>Building Code Act, 1992</i> Permit to Injure or Remove Trees (woodlands / woodlots), as applicable based on municipal by-laws Noise By-law exemptions, as applicable, based on proposed work and municipal by-laws Conformance with local land use policy and zoning (e.g., Official Plan amendments and Site Plan Control Approval in accordance with the <i>Planning Act, 1990</i>). Permits for open-air burning and fires, as applicable.
Canadian National Railway	Clearance Letter	<ul style="list-style-type: none"> Clearance Letter for crossing of Canadian National Railway rail line, if required.
Mining Claim and Crown Interest Holders	Consent	<ul style="list-style-type: none"> Consent from existing claim holders under the <i>Mining Act, 1990</i>.
Thunder Bay District Health Unit	Notice of Camp Opening under the <i>Health and Promotion Act, 1990</i>	<ul style="list-style-type: none"> Notice of Camp Opening under the <i>Health and Promotion Act, 1990</i>
	Permit for sewage holding tank under the <i>Building Code Act, 1992</i> .	<ul style="list-style-type: none"> Permit for sewage holding tank at construction camps under the <i>Building Code Act, 1992</i>.
Other Utility Companies	Permit to cross other utilities	<ul style="list-style-type: none"> Permit to cross other utilities (e.g., existing pipelines, fibre optics).

Note 1: Additional permits, authorizations or approvals may be identified as design progresses and further information becomes available on construction-related activities and temporary infrastructure required for construction and operations. The provincial and federal assessment approvals are outlined in **Section 3** and therefore not included in the table.