



**Written submission from  
Algonquins of Ontario**

**Mémoire des  
Algonquins d'Ontario**

In the Matter of the

À l'égard des

**Canadian Nuclear Laboratories (CNL)**

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**Laboratoires Nucléaires Canadiens (LNC)**

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Application from the CNL to amend its Chalk River Laboratories site licence to authorize the construction of a near surface disposal facility

Demande des LNC visant à modifier le permis du site des Laboratoires de Chalk River pour autoriser la construction d'une installation de gestion des déchets près de la surface

**Commission Public Hearing  
Part 2**

**Audience publique de la Commission  
Partie 2**

**May and June 2022**

**Mai et juin 2022**



# Algonquins of Ontario

April 11, 2022

Senior Tribunal Officer, Commission Registry  
Canadian Nuclear Safety Commission  
280 Slater Street, P.O. Box 1046, Station B  
Ottawa, ON K1P 5S9

**VIA EMAIL: [interventions@cnsccsn.gc.ca](mailto:interventions@cnsccsn.gc.ca)**

To Whom It May Concern,

**Subject: Request to Intervene in the Public Hearing on Canadian Nuclear Laboratories' Application to Amend its Chalk River Laboratories Site Licence to Authorize the Construction of the Near Surface Disposal Facility Project (Our File CF 48-3)**

On behalf of the Algonquins of Ontario (AOO), we write in response to the Canadian Nuclear Safety Commission's (CNSC) October 28, 2021 Notice (Ref. 2022-H-07) and February 16, 2022 Notice (Ref. 2022 H-07 Revision 1). The purpose of this letter is to provide the CNSC with our request to intervene on Canadian Nuclear Laboratories' (CNL) application to amend its Chalk River Laboratories Licence to authorize the construction of the Near Surface Disposal Facility (NSDF) Project. This letter and associated comments must be given thorough consideration by the CNSC in consideration of its decision on the licensing of CNL's NSDF Project.

## **Background on the Algonquins of Ontario**

The Algonquins of Ontario (AOO) are on a journey of survival, rebuilding and self-sufficiency – a journey of reconciliation. This journey began nearly 250 years ago when the first Algonquin petition was submitted to the Crown in 1772.

The Algonquins lived in present-day Ontario for thousands of years before Europeans arrived. Their territory originally extended from the St. Lawrence River to the French River in the west, south to the Adirondack mountains in New York State, and north above Lake Abitibi. Over the past several hundred years, the description of the unceded AOO Settlement Area has changed to be the lands and waters on both sides of the Kichi-Sibi<sup>1</sup> (Ottawa River) watershed from modern Hawkesbury to Lake Nipissing and north past the headwaters of the Kichi-Sibi. Today, the following ten Algonquin communities comprise the Algonquins of Ontario:

- The Algonquins of Pikwakanagan
- Antoine
- Kijicho Manito Madaouskarini

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<sup>1</sup> The Ottawa River, otherwise known as the Big River, has also been referred to in the Algonquin language as "Kichi-Sibi," "Kichissippi" "Kitchissippi" and "Kichissippi."

- Bonnechere
- Greater Golden Lake
- Mattawa/North Bay
- Ottawa
- Shabot Obaadjiwan
- Snimikobi (Ardoch)
- Whitney and Area

Based on a protocol signed in 2004, these communities are working together to provide a unified approach to negotiate a modern-day treaty. The AOO land claim includes an area of nine million acres within the watersheds of the Kichi-Sibi and the Mattawa River in Ontario. The majority of Algonquin Provincial Park lies within the Ottawa River watershed and thus within the unceded AOO Settlement Area.

The Algonquins of Pikwakanagan First Nation (known at the time as the Algonquins of Golden Lake) commenced the land claim by formally submitting the most recent petition with supporting research to the Government of Canada in 1983 and the Government of Ontario in 1985. The Province of Ontario accepted the claim for negotiations in 1991 and the Government of Canada in 1992. Since then, the negotiations, which are intended to culminate in an Algonquin Treaty, have grown to include ten communities that comprise the AOO.

On October 18, 2016, the Algonquins of Ontario and the Governments of Ontario and Canada reached a major milestone in their journey toward reconciliation and renewed relationships with the signing of the Agreement-in-Principle (AIP). The signing of the AIP is a key step toward a Final Agreement that will clarify the rights of all concerned and open up new economic development opportunities for the benefit of the Algonquins of Ontario and their neighbours in the Settlement Area in eastern Ontario.

The Algonquin Negotiation Team consists of the Chief and Council of the Algonquins of Pikwakanagan First Nation, who are elected under the Pikwakanagan Custom Election Code, and one representative from each of the nine other Algonquin communities, each of whom is elected by the enrolled Algonquin voters of each community for a three-year term.

The unceded AOO Settlement Area, shown in Figure 1 below, includes an area of more than nine million acres within the watersheds of the Kichi-Sibi and the Mattawa River in Ontario, unceded territory that covers most of eastern Ontario, including Ottawa and most of Algonquin Provincial Park. More than 1.2 million people live and work within the unceded AOO Settlement Area. There are 84 municipal jurisdictions fully and partially located within the unceded AOO Settlement Area, including 75 lower- and single-tier municipalities and nine upper-tier counties.

# Algonquins of Ontario Settlement Area Boundary

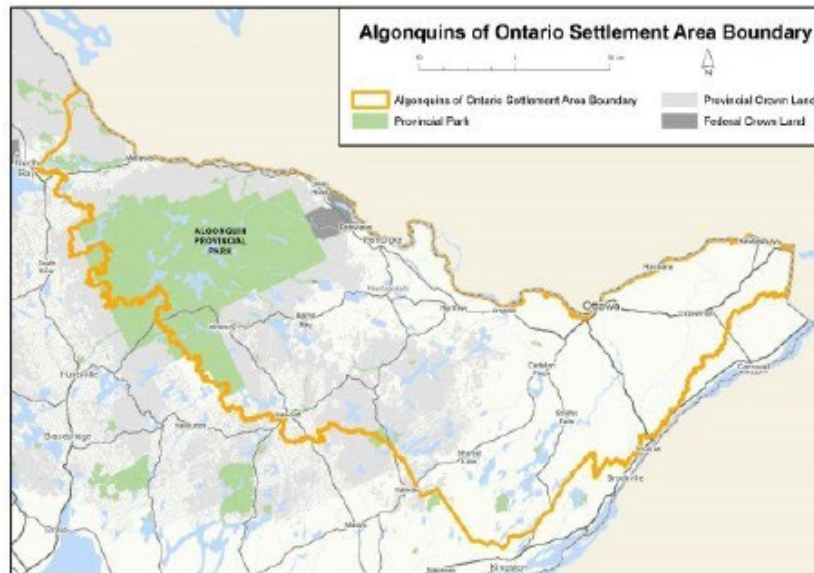


Figure 1. The Algonquins of Ontario unceded Settlement Area Boundary

## Algonquin Values and Teachings

Today, Algonquins in Ontario share a history of common interests, traditions and needs arising from our common heritage. In the following section, we will outline several Algonquin practices and teachings that are fundamental to putting this consultation and accommodation protocol in context.

In developing these comments, we have been guided by the spirit and intent of the Teachings of the Seven Grandfathers. These teachings have been passed down from generation to generation and continue to be practiced today:

- Honesty (Kwayakoziwin): Honesty in facing a situation is to be brave;
- Humility (Tabasenindizowin): Humility is to know yourself as a sacred part of Creation;
- Respect (Manàdjìyàn): To honour all Creation is to have Respect;
- Bravery (Sòngideyewin): Bravery is to face the foe with integrity;
- Wisdom (Nibwàkàwin): To cherish knowledge is to know Wisdom;
- Love (Sàgìhidiwin): To know Love is to know peace; and
- Truth (Tebwewin): Truth is to know all of these things

Our survival on this land for thousands of years required us to apply our teachings to ensure the protection of the lands and waters upon which we rely. These teachings serve as the original instructions or “natural laws” that were built into our way of life. “Sustainability” is a modern term, but sustainability was long in practice by our people and our ancestors. There were consequences that occurred when we strayed from our natural teachings, instructions, and laws. We were constantly monitoring the environment and if changes occurred, we would adapt. It was (and is) a matter of survival. We had, and continue to have, deep connections to

the land.

Some examples of teachings related to the protection of the environment of today and yesterday include the following:

- Harvest one area for one season then move on elsewhere so the area that has been recently harvested can replenish.
- Be conscious of where your feet touch the ground (even as an individual, we can have impacts on the land).
- We are stewards of the land and have a responsibility to protect the lands and waters.
- Show love for all aspects of the environment, down to the smallest part.
- We are all part of nature – we are all equal.

Protection and interaction with the lands and waters of our territory have been central to our existence for thousands of years. We maintained this connection to the land despite the arrival of Europeans to our territory. However, this arrival dramatically impacted our way of life.

Harvesting of flora and fauna for food and trade has been integral to the Algonquin way of life since time immemorial. These practices embody an inherent respect for the environment and a fundamental commitment to the sustainable management of resources which have been passed from generation to generation.

The rights of Aboriginal people in Canada to engage in traditional activities, including the harvesting of wildlife, fish, migratory birds and plants, is recognized by the *Constitution Act, 1982* and upheld by the Supreme Court of Canada. As stewards of our ancestral lands, the AOO recognize the importance of exercising this right in a responsible manner.

In 1991, the Algonquins of Golden Lake (Pikwakanagan) took a ground-breaking step with the establishment of its first Hunting Agreement which led to the development of today's AOO Harvest Management Plan for Algonquin Park and the Wildlife Management Units (WMU) within the Algonquin Territory in Ontario. The Harvest Management Plan is a living document, which is reviewed annually and updated as new information becomes available. Its primary purpose is to clearly articulate the framework in which the Algonquin harvest is conducted by Algonquin harvesters. In particular, the Harvest Management Plan contains clear provisions which specify the season and the geographic locations in which harvesting can occur, what the Sustainable Harvest Target is to be and who is eligible to participate.

Each year, the AOO establishes its Sustainable Harvest Targets for moose and elk for both Algonquin Park and each WMU for the Algonquin Harvest. These Sustainable Harvest Targets are established with input from the Ontario Ministry of Natural Resources and Forestry and are based upon data that addresses wildlife conservation and the sustainability of wildlife populations. The AOO is the one of the first Indigenous groups in Canada that has voluntarily enacted these types of harvest management practices.

To harvest moose and elk under the auspices of the AOO, eligible Algonquins have agreed to participate in a draw-based tag system that is coordinated by the ten individual AOO communities.

Our tradition of collectively sharing food and resources has been practiced by the Algonquins

for millennia. In preservation of this long-held tradition, the sharing of food and resources continues to be commonly practiced today providing meat to Elders and other community members that are unable to participate in the harvest.

Despite such efforts as the Harvesting Agreement, we are now in great competition with many others on this land for the resources that are here.

### **Request for Intervenor Status**

CNL's proposed NSDF Project, located at CNL's Chalk River Laboratories Site (CRL), has the potential to impact the AOO and its Algonquin communities' constitutionally protected rights and interests. As rights holders with a longstanding relationship with the lands and waters at and surrounding CRL, the AOO as an Intervenor will offer an invaluable and distinctive perspective that is integral for CNSC to consider in its decision to authorize the NSDF Project.

Our Algonquin Knowledge and Oral Histories provide a well-established record of historic and current use at CRL that will enhance the CNSC's understanding of how the environment may be impacted by the Project. We undertook an Algonquin Knowledge and Land Use Study (AKLUS) in December 2020 that provided evidence of current and historic use of the lands and waters overlapping and around the NSDF Project as well as culturally significant values that may be impacted by NSDF Project activities. In addition, the AKLUS demonstrated that there are potential impacts to Algonquin Aboriginal rights and interests because of the NSDF Project that require avoidance, mitigation and accommodation measures. Our Algonquin knowledge and values can provide a comprehensive and integrated understanding of new environmental, cultural, and economic effects that may result from the NSDF Project.

#### *Intervenor Information*

The AOO requests to intervene by way of a written submission.

This request to intervene is being made on behalf of the AOO by:

Daniel Charbonneau, Executive Director, Algonquins of Ontario Consultation Office  
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#### *Comments to be Presented to the Commission*

Comments to be presented to the Commission are provided in **Appendix I**. These comments are distinct from previous submissions as they provide timely status updates regarding ongoing consultation and engagement, provides the AOO's perspective on the Commission Member Documents filed by CNSC and CNL and clearly outline the outstanding issues associated with the NSDF Project that have yet to be resolved by CNL or the CNSC.

The AOO's submission spans several of the topic areas outlined in CNSC's February 16, 2022, Public Hearing Notice (Ref. 2022 H-07 Revision 1). This highlights the holistic and interdependent nature of the AOO's outstanding issues and concerns with the NSDF Project. Based on our submission, the AOO's initial view is that our contributions may fit best into the following topics:

- environmental assessment and environmental protection (outstanding concerns 2.1, 2.2, 3.2, 3.4 and 3.6 in Appendix I);
- Indigenous consultation and engagement (outstanding concerns 2.1, 2.2, 3.5 and 3.7 in Appendix I; and,

- long-term safety case (outstanding concerns 3.1 and 3.3 in Appendix I).

All the matters outlined in Appendix I are associated with advancing adequate avoidance, mitigation and accommodation measures for the adverse impacts the NSDF Project will have on the Aboriginal rights and interests of Algonquin community members.

## **Conclusion**

In closing, we highlight our ongoing interest in working with CNL and CNSC to ensure that Algonquin Aboriginal rights and interests are upheld and that commitments that have been made to avoid, mitigate and accommodate the AOO for adverse impacts are effectively implemented throughout the lifecycle of the NSDF Project.

If you have any questions on our submission or wish to discuss these matters further, please do not hesitate to the undersigned either by telephone at 819-360-2292 or by email at [dcharbonneau@tanakiwin.com](mailto:dcharbonneau@tanakiwin.com).

Sincerely,

*Original signed by*

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## **Appendix I – Comments to be Presented to the Commission**

### **1.0 Introduction**

Canadian Nuclear Laboratories' (CNL) proposed Near Surface Disposal Facility (NSDF) Project is located directly within the unceded AOO Settlement Area, where the AOO asserts unextinguished and constitutionally protected Aboriginal rights and title. Our rights and interests at the NSDF Project site and surrounding area are well known and currently subject to modern Treaty negotiations with the governments of Ontario and Canada. As the most significantly impacted Indigenous group on the NSDF Project, we are pleased to share our perspective during the Public Hearing to ensure that Algonquin Aboriginal rights, values and interests are given full consideration and adequately addressed in this process.

Overall, the AOO disagrees with CNL and the Canadian Nuclear Safety Commission's (CNSC) assessment that potential impacts of the NSDF Project on the environment and on Algonquin rights and interests are low. Based on the AOO's participation in various consultation and engagement activities with CNL and CNSC, the AOO have provided evidence that there will be adverse impacts to Algonquin Aboriginal rights and interests from the NSDF Project. The AOO's assessment and conclusions are the outcomes of undertaking an Algonquin Knowledge and Land Use Study (AKLUS), completing technical reviews of CNL's Environmental Impact Statement, providing input on the CNSC's Rights Impact Assessment and Environmental Assessment Report and participating in issue resolution meetings with CNL and CNSC. As a result of these consultation and engagement activities, some of these adverse impacts have been addressed with CNL and CNSC through the identification of acceptable avoidance and mitigation measures. However, there are also adverse impacts that will impact Algonquin Aboriginal rights and interests that remain unaddressed. Our comments in this submission focus on these outstanding matters.

Overall, many of the AOO's outstanding issues stem from the shortcomings of the *Canadian Environmental Assessment Act (CEAA), 2012* that put Algonquin Aboriginal rights and interests at risk. These shortcomings include but are not limited to, the lack of a full cumulative effects assessment that considers impacts to Algonquin Aboriginal rights and interests, lack of a full socio-economic effects assessment that provides a holistic analysis to understand impacts of the NSDF Project on Algonquin health, well-being and socioeconomics, and proposed mitigation, follow-up and monitoring plans not being adequately protective of Algonquin Aboriginal rights and interests. The AOO acknowledges the effort and actions taken by the CSNC to incorporate aspects of the *Impact Assessment Act (IAA), 2019* into the assessment process for the NSDF Project. CNSC involved the AOO in important procedural enhancements which included reviewing and drafting elements of the Rights Impact Assessment and the Environmental Assessment Report. The AOO remain disappointed that the CNSC and CNL were unable to move outside the narrow scope of *CEAA 2012* to meaningfully address inadequacies of the assessment itself in understanding the full scope of impacts to Algonquin Aboriginal rights and interests.

To address outstanding issues, the AOO demands that the CSNC must consider and adopt the conditions outlined by the AOO in this submission.

### **2.0 Impacts to Algonquin Aboriginal Rights and Interests**

The purpose of this section is to provide a high-level overview summarizing the findings of the AKLUS completed by the AOO and submitted to both CNL and the CNSC in December of 2020.

#### **2.1 Contemporary and Historical Ties to the Project and Surrounding Area**

Based on the findings of the AKLUS, which consisted of both spatial and qualitative data, there is both historic and contemporary Algonquin land use and occupancy in proximity to the NSDF Project,



as well as several values overlapping with the NSDF Project and broader Chalk River Laboratories (CRL) site. Algonquin ancestors have occupied the lands and waters throughout the Ottawa Valley since time immemorial, forging deep cultural, spiritual and ecological connections to the area through their traditional way of life.

The Kichi-Sibi is of particular significance to the Algonquins, as it has historically served as a major travel route enabling access to many other tributaries and forests, as well as a productive harvesting grounds. The Algonquins also used many waterways connected to the Kichi-Sibi, including the Nesswabic (Petawawa River) and Pittoiwais (the Barron River) and often congregated at the confluence of these water bodies.

Historical and archaeological evidence confirms that the length of Kichi-Sibi and surrounding lands, including the NSDF Project and surrounding area, were used and occupied extensively by the Algonquins who moved throughout the area in established seasonal patterns to harvest.

The Kichi-Sibi and surrounding area are also home to many Algonquin cultural sites of importance that have been, and continue to be used for spiritual, ceremonial, and sacred purposes. These sites include Oiseau Rock, Pointe au Baptême, and Rocher Capitaine Island.

Algonquins never ceded their lands and waters to the Crown, and never entered a Treaty to allow others to use their lands and waters. After European contact, settlers and industry continued to move in and disrupt their established way of life. Contemporarily, descendants of the Algonquins who used the NSDF Project, and surrounding area are dispersed throughout the unceded AOO Settlement Area and are members of the present-day communities of Mattawa/North Bay, Greater Golden Lake, Bonnechere, Algonquins of Pikwakanagan First Nation, Whitney and Area, Kijicho Manito Madaouskarini, Snimikobi, Ottawa, and Shabot Obaadjiwan.

Evidence of Algonquin land use and occupancy in the NSDF Project and surrounding area includes the presence of:

- Travel routes
- Boat launches or landings
- Personal fishing areas
- Commercial trapping or snaring locations
- Non-commercial trapping or snaring locations
- Commercial harvesting locations
- Fish spawning habitat
- Bird habitat
- Reptile or amphibian habitat
- Species at risk habitat
- Mammal habitat and migration routes
- Plant habitat
- Wildlife harvesting locations
- Plant and natural material gathering areas
- Overnight locations
- Algonquin cultural sites

Within each of these categories, Algonquin Knowledge Holders interviewed for the AKLUS identified key species and other values found within the NSDF Project site and the surrounding area. These include species they reported harvesting to use for various purposes including food and medicines, as well as species of cultural importance to the Algonquins. A list of these species was submitted to both CNL and the CNSC in the original AKLUS.

Though the NSDF Project site remains inaccessible, the AKLUS provides evidence that Algonquins maintain deep connections to the area and continue to use the lands and waters bordering on and surrounding the site to exercise their Aboriginal rights and interests. Given these findings, the AOO contend that potential impacts are not dependent on access to the site, as impacts resulting from NSDF Project activities still have the potential to adversely affect Algonquins' ability to exercise their Aboriginal rights and interests outside of the project footprint area. These project impacts were further explored and demonstrated in the AOO's technical review of the Environmental Impact Statement with outstanding issues further outlined in Section 3.0 below.

As a result, the existing restrictions on public access to the site do not minimize the potential impact and scope of impacts of the NSDF Project. Further, even with existing restrictions on public access in place, the AKLUS highlighted a few potential psychosocial impacts including concerns related to the safety of harvesting country foods and otherwise using the lands surrounding the NSDF Project, including the Kichi-Sibi. These concerns are described in Section 2.2 below and explored in Section 3.0 further.

Overall, the AKLUS findings indicate that the NSDF Project has the potential to impact Algonquin Aboriginal rights and interests. The AOO used the findings from the AKLUS to inform our technical review of the Environmental Impact Statement and subsequent regulatory documents for the NSDF Project. Technical reviews underscored the initial findings of the AKLUS with further evidence surrounding potential impacts to Algonquin Aboriginal rights and interests and provided a deeper understanding of the impacts that may occur because of the project. A description of these outstanding issues can be found below in Section 3.0 of this document.

## *2.2 Additional Interests and Concerns in the Project*

Given the deep historic and contemporary connections Algonquins hold to the NSDF Project site and surrounding areas, as well the potential impacts to Algonquin Aboriginal rights and interests, the NSDF project presents several concerns to the AOO that emerged from the AKLUS. These concerns include:

- Potential impacts to ancestral values, including further loss of connection to and ability to use the lands and waters in the unceded AOO Settlement Area
- Risks associated with the proximity of the project to the Kichi-Sibi, and potential for contamination of culturally and ecologically significant waterways and wildlife, including through bioaccumulation over time
- Threats to Algonquin species of importance and species at risk with Algonquin cultural significance including lake sturgeon and American eel, as well as the mature forest found on the NSDF property which is home to several Algonquin species of interest
- Risks surrounding the safety of country and wild foods harvested in proximity to the site including plants and animals
- Barriers to maintaining safe access to Algonquin cultural sites along the Kichi-Sibi including Oiseau Rock and Pointe au Baptême
- Concerns about archaeological potential of the site being disrupted

In addition to the concerns and interests listed here, Algonquins also expressed concerns surrounding the flow of communication and level of information shared by the CNL and CNSC with the AOO and Algonquin community members. The potential for accidents and emergencies is also of concern to interviewees with a focus on how these incidents will be communicated in a timely and transparent manner throughout the lifecycle of the NSDF Project.

Finally, various assessments of the NSDF Project confirmed the creation of an additional loss of the AOO traditional and unceded land and therefore creating a cumulative adverse effect on the exercise

of the AOO Aboriginal rights around and within the NSDF Project area.

### **3.0 Outstanding Issues and Concerns**

Overall, the AKLUS findings indicate that the NSDF Project has the potential to impact Algonquin Aboriginal rights and interests. The AOO used these findings to inform our technical review of the Environmental Impact Statement and subsequent regulatory documents for the NSDF Project. The AOO's subsequent technical reviews underscored the AKLUS findings with further evidence regarding potential impacts to Algonquin Aboriginal rights and interests and offered additional measures to avoid, mitigate and accommodate the AOO for adverse impacts of the NSDF Project.

In this section, we describe and provide updates regarding the outstanding issues and impacts that have not been adequately addressed by CNL and CNSC in the Commission Member Documents. We also offer recommendations and potential conditions of approval for CNSC's consideration in the interest of working collaboratively with CNL and CNSC to ensure effective avoidance, mitigation and accommodation of impacts on Algonquin Aboriginal rights and interests should the NSDF Project be approved.

#### *3.1 Human Health*

From the AOO's perspective, the quantity and quality of species available for harvest by Algonquins is directly tied to assessing impacts on the ability of Algonquin community members to exercise their Aboriginal rights and interests, including Aboriginal title. Through the AKLUS and technical review, the AOO identified concerns about how species health and abundance may be impacted by the NSDF Project. Should there be further degradation to the quantity and quality of certain species, this could adversely impact the quality of Algonquin members' experience out on the land as well as their ability to exercise their Aboriginal rights and interests.

The AOO have requested that CNL support an AOO-driven country foods study to better inform the creation of a long-term country foods monitoring program. CNL committed to providing capacity to the AOO, through the list of commitments CNL submitted to the AOO on May 3, 2021, to undertake a country foods survey specific to the NSDF Project and using the results of the study to verify project assumptions. This commitment has not been implemented yet. All CNL commitments to the AOO are also outlined in the NSDF Consolidated Commitment Lists (Ref. 80122, p.88-91).

Commission Member Document 22-H7 correctly captures the AOO's concerns regarding radiological and non-radiological contaminant pathways affecting the health of Algonquins who harvest plants, wildlife, fish, medicines, and natural materials from the area near the NSDF Project. The Commission Member Document 22-H7 also accurately captures the AOO's concerns and perspective that CNL's representation of radiological exposure pathways to the Algonquins is insufficient. In response to these concerns, the Commission Member Document 22-H7 has captured the AOO's concerns about the need for a follow-up country foods survey and monitoring program to assess potential contaminant pathways and ensure the safety of foods harvested and consumed by Algonquins in the area surrounding NSDF.

Although CNL has commitment to the AOO to provide capacity for a country foods survey which will be used to verify CNL's project assumptions, as outlined in the NSDF Consolidated Commitment Lists (Ref. 80122, p.88-91), it is important that a condition be imposed on the Project to ensure that these actions are completed. To effectively address impacts of the Project on Algonquin Aboriginal rights and interests, the AOO recommends that the Commission consider the following condition to resolve the AOO's outstanding concerns:

- CNL to provide capacity to the AOO to undertake a country foods survey specific to the NSDF Project. CNL to use the results of the country foods study to verify project assumptions, and to support an AOO-driven long-term country foods monitoring program to analyze potential radiological contaminants in wild foods harvested by the AOO communities.

- Based on the outcomes of ongoing monitoring through the long-term country foods monitoring program, CNL must work collaboratively with the AOO to adopt further actions to adequately avoid, mitigate and accommodate should impacts to Algonquin Aboriginal rights and interests be discovered unanticipatedly.

### 3.2 Fish and Wildlife

The AOO have discussed several concerns with CNL related to the Project's potential impacts to local wildlife, which remain outstanding. CNL has indicated that a Blasting Plan will be developed for Project, however since it is not yet developed very few details regarding blasting mitigations have been provided to the AOO. The AOO will need to review the Blasting Plan once it is developed to ensure that any potential adverse effects to wildlife species of cultural significance to the AOO have been appropriately mitigated.

Similarly, CNL has indicated that they will develop and implement an Invasive Species Management Plan to prevent the production and spread of invasive species at the NSDF Project site. Improper management of invasive species has the potential to significantly impact the flora and fauna valued and harvested by AOO communities. In addition, the AOO have expressed concerns with the loss of mammal habitat (e.g., mast producing red oaks, winter poplar browse) from clearing activities associated with the NSDF Project. This habitat provides a source of hard mast for mammals of importance to the AOO communities, and it is unclear that this foraging habitat is available elsewhere. These concerns don't appear to have been captured in the Commission Member Documents.

The AOO have also raised concerns with CNL related to potential impacts to fish health, including a lack of consideration by CNL to include an assessment endpoint that will address individual fish health such as disease, lesions, and tumors, or to directly monitor fish from Perch Lake for contaminants (as opposed to CNL's plan to only monitor the surface water, unless concentrations exceed the Environmental Impact Statement predictions and could potentially affect fish health). In response, CNL has provided the AOO with the CRL Environmental Risk Assessments for review and has indicated that they will provide capacity funding to support the AOO's technical review of the documents. This commitment was made in writing on May 3, 2021 through the list of commitments CNL submitted to the AOO. The Commission Member Document 22-H7 accurately captures the AOO's concerns about effluent effects on fish health in Perch Lake and a need for ongoing and adaptive aquatic ecosystem monitoring, including a long-term fish tissue contaminant monitoring program for the operations phase of the project. The AOO's concerns and interests in a long-term fish tissue monitoring program have not been fully addressed.

While CNL has provided several commitments to the AOO to address some of the above concerns (as outlined in the NSDF Consolidated Commitment Lists (Ref. 80122 p.88-91) , it is important that corresponding conditions be imposed on the Project to ensure that the commitments are acted upon. To effectively address impacts of the Project on Algonquin Aboriginal rights and interests, the AOO recommends that the Commission consider the following conditions to resolve the AOO's outstanding concerns:

- CNL to provide the Blasting Plan to the AOO once developed by the construction contractor, along with capacity to support the AOO's technical review of the Plan and work collaboratively with the AOO to adopt any measures related to blasting that are put forward by the AOO that are specific to our issues and concerns.
- CNL to provide the draft Invasive Species Management Plan to the AOO for review and comment, along with appropriate capacity support for the technical review, and work collaboratively with the AOO to adopt any measures related to the Plan that are put forward by the AOO that are specific to our issues and concerns.

- CNL to provide the draft Sustainable Forest Management Plan (SFMP) to the AOO, along with capacity to support the AOO's technical review of the Plan, and work with the AOO to co-develop measures for offsetting the loss of northern red oak trees (hard mast production, wildlife forage), as well as promoting the growth of culturally important tree species onsite, where ecologically appropriate.
- CNL to provide capacity funding to support the AOO's review of the Environmental Risk Assessments and work collaboratively with the AOO to adopt further actions and commitments that may arise from the AOO's review.
- CNL to provide capacity funding to support the development of a long-term fish tissue monitoring program in collaboration with the AOO to more effectively monitor impacts of fish health in Perch Lake.

### *3.3 Transportation of Nuclear Waste*

The AOO have outstanding concerns about the potential for additional impacts and risks resulting from transporting nuclear waste to the CRL site for storage. The additional impacts and risks resulting from transporting wastes throughout the unceded AOO Settlement Area could impact Algonquin Aboriginal rights and interests, and the AOO has recommended that CNL commit to involve and collaborate with the AOO to resolve concerns related to transportation. under a Long-Term Relationship Agreement with CNL. The collaborative resolution of AOO's concerns related to transportation of nuclear waste throughout the unceded AOO Settlement Area is subject to ongoing Long-Term Relationships Agreement discussions which have not concluded. As a result, the AOO recommend the Commission consider the following conditions:

- CNL to involve and collaborate with the AOO to resolve concerns related to transportation of nuclear waste throughout the unceded AOO Settlement Area.
- CNL is not permitted to exceed the amount of offsite waste streams as described in the final Environmental Impact Statement for the NSDF Project (i.e., 5% commercial sources and 5% other AECL sites).
- If CNL were to contemplate receipt of any waste stream not currently described in the final Environmental Impact Statement for the NSDF Project, CNL must engage early with the AOO on the receipt of a new waste stream, prior to pursuing regulatory approvals.

### *3.4 Cultural Heritage Values*

The AOO have previously raised with CNL that there are several culturally significant geological sites near the NSDF Project site. In recognition that the construction of the NSDF Project will permanently and irreversibly alter culturally important aspects of the geological environment, the AOO have requested and CNL has committed, through the list of commitments CNL submitted to the AOO on May 3, 2021, to support and assist with the logistics for a location-specific commemoration and/or cultural recognition activities with respect to the NSDF Project, prior to construction. This commitment has not yet been implemented.

Additionally, from the AOO's perspective, there are existing concerns regarding impacts to Algonquin rights and interests, that have the potential to be further exacerbated by the NSDF Project if there is not adequate cultural heritage monitoring, transparent communication about archaeological discoveries, and ongoing outreach with the AOO communities. The AOO is of the position that the proposed NSDF Project will have a negative effect on Algonquin traditional uses in the area, which is a divergent perspective from CNL. Commission Member Document 22-H7 correctly captures CNL's divergent perspective, and states that CNSC staff are of the same perspective of CNL in that the NSDF Project is not expected to lead to new adverse impacts on the AOO's quality of experience.

The Document also describes that the overall severity of impacts would be low.

Despite the divergent perspectives, CNL has committed, through the list of commitments CNL submitted to the AOO on May 3, 2021, to provide the AOO with an opportunity to collaborate on the development and implementation of a Cultural Heritage Protection Plan and support a location-specific commemoration and cultural recognition activities. Although this commitment has been made by CNL, the AOO recommends that the Commission consider the following conditions to ensure that the AOO's outstanding concerns are resolved and that impacts of the Project on Algonquin Aboriginal rights and interests are effectively addressed:

- CNL to provide support and facilitate the logistics for a location-specific commemoration and cultural recognition activities with respect to the NSDF Project, prior to construction, to acknowledge the geologically derived culturally significant sites to the AOO.
- CNL to suspend construction immediately should previously undocumented archaeological resources be discovered during construction of the NSDF Project.
- CNL to contact the AOO Consultation Office should previously undocumented archaeological resources be discovered during construction of the NSDF Project.
- CNL to collaborate and provide capacity funding for the AOO to develop and implement a site-wide Cultural Heritage Protection Plan.

### 3.5 Socio-Economics

The AOO remains deeply concerned by CNL and CNSC's approach to assessing and addressing impacts to Algonquin health, well-being and socio-economics. In the AOO's view, CNL and CNSC's assessment does not provide an interdependent or holistic analysis of impacts of various Valued Components (VCs) that are integral to understanding impacts to Algonquin health, well-being and socio-economics. As a result, the AOO are not confident that the assessment and conclusions of the assessment process have fully conveyed the range and depth of impacts to Algonquin Aboriginal rights and interests.

In Commission Member Document 22-H7, the CNSC continues to maintain that "the approach requested by the AOO for assessing socio-economic effects is considered outside of the scope of the CEAA 2012 and NSCA regulatory processes for the NSDF Project (Commission Member Document, 2022a)". From the AOO's perspective, Section 35 of the *Constitution Act, 1982* and the corresponding duty to consult and accommodate supersedes the limited scope of *CEAA 2012*.

The AOO are steadfast in their interest to move beyond compliance and model true and respectful reconciliation. The AOO have a duty to protect the health and socio-economic wellbeing of the AOO communities, and although CNL and CNSC's assessment consider environmental impacts, human health and socio-economics independently, the inter-connected effect pathways between these subject areas are not being holistically considered and addressed. The interaction between these components in turn result in potential changes to Algonquin health and socioeconomic conditions that have not been fully explored.

In the AOO's view, turning a blind eye to the gaps in the assessment in the interest of strict compliance of *CEAA 2012* and *Nuclear Safety and Control Act (NSCA)* regulatory processes does not uphold the Government of Canada's commitment to reconciliation or the legal obligation of the Government of Canada to ensure adequacy and meaningfulness of consultation. Major changes made to the Government of Canada's environmental assessment regime through the implementation of *Impact Assessment Act, 2019* highlighted the shortcomings of the socio-economic effects assessment under *CEAA 2012*. As a result, the AOO asserts that relying on the insufficient scope of socio-economic effects assessments under *CEAA 2012* poses risks to the CNSC's mandate to ensure that all its licensing decisions under the NSCA and environmental assessment decisions under *CEAA 2012* uphold the honour of the Crown and consider Aboriginal peoples' potential or

established Aboriginal or treaty rights pursuant to section 35 of the *Constitution Act, 1982* (CNSC Reg Doc 3.2.2, 2022c).

In Commission Member Document 22-H7.1, CNL concludes that overall, the Project “may result in small positive effects to Indigenous Peoples through potential contracting or employment opportunities” and that CNL will “continue to engage with Indigenous Peoples on potential employment and contracting opportunities for the NSDF Project (Commission Member Document, 2022b).” Aboriginal title confers on the rights-holding group the right to determine how the land is used and the right to benefit from those uses (*R. v. Sparrow*, 1990; *Delgamuukw v. British Columbia*, 1997; *Tsilhqot’in Nation v. British Columbia*, 2014). Without a formalized agreement or follow-up monitoring commitments in place to ensure that Algonquin members fully experience the socio-economic benefits the NSDF Project represents, the AOO remain at risk of being adversely impacted, without being adequately accommodated. The AOO’s concerns on this matter remain unaddressed by CNL.

In response to the AOO’s concerns, the CNSC in its submission to the Commission encourages the AOO to continue to discuss broader issues and concerns, like the socio-economic effects assessment and socio-economic benefits, with CNL and AECL. as part of ongoing Long Term Relationship Agreement negotiations. Similarly, CNL shares that the “Long-Term Relationship Agreement discussions are relevant to NSDF as it is expected that certain project-specific initiatives and commitments will be implemented or realized under the agreement (Commission Member Document, 2022b).” Given that certain project specific commitments are being discussed through the Long-Term Relationship Agreement, successful avoidance, mitigation, and accommodation of Algonquin Aboriginal rights for the Project are contingent upon the finalization and successful implementation of the Long-Term Relationship Agreement. At the time of this submission, a Long-Term Relationship Agreement has not been finalized and executed with CNL. Without a fully executed Agreement, the AOO does not have certainty regarding key project specific avoidance, mitigation and accommodation measures for the impacts of this Project on Algonquin Aboriginal rights and interests.

To effectively address impacts of the Project to Algonquin Aboriginal rights and interests, the AOO recommends that the Commission consider the following conditions to resolve the AOO’s outstanding concerns:

- CNL to develop, prior to construction and in collaboration with the AOO an “AOO training, employment, contracting and procurement plan 2022-2025”. a follow-up monitoring program to verify and monitor the accuracy of the socio-economic effects assessment and conclusions made by CNL and CNSC.
- CNL to develop, prior to construction and in consultation with the AOO, an approach to track, monitor and report on employment, contracting and procurement initiatives to the CNSC for the Project. The report must include:
  - a summary of agreed to indicators to be monitored;
  - a summary and analysis of Algonquin employment and business opportunities realized during the reporting period; and,
  - a summary of CNL’s consultation with the AOO regarding issues and concerns raised regarding employment and business opportunities and how CNL addressed issues during the reporting period.
- Based on the outcomes of ongoing monitoring through the follow-up monitoring program, CNL must work collaboratively with the AOO to adopt further actions to adequately avoid, mitigate and accommodate should unanticipated impacts to Algonquin Aboriginal rights and interests be discovered.
- CNL to provide capacity for AOO to undertake an integrated assessment of environmental, health and socio-economic impacts of the Project on Algonquin Aboriginal rights and

interests.<sup>2</sup> The outcomes of the assessment would inform additional commitments to avoid, mitigate and /or accommodate the AOO for impacts of the Project and inform follow-up monitoring and reporting commitments outlined above.

### 3.6 Environmental and Cultural Heritage Monitoring

Overall, CNL has advanced several avoidance and mitigation measures that seek to address the potential impacts of the NSDF Project on Algonquin Aboriginal rights and interests. These avoidance and mitigation measures are only truly effective at being adequately protective of Algonquin Aboriginal rights and interests if the facility operates as predicted and the measures are effective. It is imperative that AOO can meaningfully influence and participate in environmental and cultural heritage monitoring and adaptive management throughout the lifecycle of the Project. This is critical to ensure that avoidance and mitigation measures are effective and to minimize potential adverse impacts of NSDF Project activities on Algonquin Aboriginal rights and interests.

In Commission Member Document 22-H7.1, CNL shares that

*“CNL is committed to involving the AOO in the development of the NSDF Environmental Assessment Follow-up Monitoring Program and the CRL site-wide environmental monitoring programs will be a key area of focus with CNL and the AOO. CNL and the AOO are currently working together to establish a budget and workplan to fulfill the 29 commitments. Monthly touch point meetings began in November 2021. The prioritized activities in the workplan for 2022 focus on pre-construction commitments (Commission Member Document, 2022b).”*

The development of a follow-up environmental and cultural heritage monitoring program, and subsequent hiring and training of Algonquin monitors, is also subject to ongoing Long-Term Relationships Agreement discussions which have not concluded. As a result, the AOO recommend the Commission consider the following conditions:

- CNL to develop and provide capacity funding for the AOO to collaborate with CNL on the Environmental Assessment Follow-up Monitoring Program (EAFMP) and Environmental Protection Plan (EPP) prior to construction. The EAFMP and EPP must identify triggers and thresholds for adaptive management actions.
- Prior to implementation of the EAFMP and the EPP, CNL must collaborate with the AOO to incorporate Algonquin VCs into the monitoring program. The monitoring program must also include the hiring and training Algonquin monitors to assist in its implementation.
- CNL to consult with the AOO on future planning for the closure of NSDF Project, including input on the timing and circumstances for cessation of monitoring activities, including collaboration with the AOO on updates to the NSDF Closure Plan every five years.

### 3.7 Cumulative Effects

The NSDF Project is a single project within a landscape that has been significantly impacted by nuclear research and development as well as various infrastructure and community development projects. With the AOO engaged in several environmental and impact assessment processes that are at varying stages of the impact assessment process (e.g., the NSDF Project, Global First Power’s Micro-Modular Reactor Project, CNL’s Nuclear Power Demonstration Closure Project, Public Service and Procurement Canada’s Temiskaming Dam and Alexandra Bridge Replacement Projects), the cumulative impacts of historic, ongoing and future activities are of concern to the AOO. Of particular concern are how historic and future projects have fundamentally altered and will continue to further impact access and ability for Algonquin community members to exercise their Aboriginal rights and

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<sup>2</sup> Two frameworks that may be suitable include the Sustainable Livelihoods Framework and the Millenium Ecosystem Assessment, but the assessment would ultimately be informed and grounded in the Algonquin worldview.



interests along the Kichi-Sibi, a culturally significant river vital to Algonquin culture, history and contemporary land use.

In the assessment, CNL uses a Base Case to represent existing conditions to understand effects of the Project on existing land and resource uses in the area. This approach does not adequately acknowledge or account for the cumulative adverse impacts that CNL's and its predecessors' activities or the various other development projects have on the exercise of Algonquin rights and interests. The Base Case approach allows for new projects to incrementally impact Algonquin Aboriginal rights and interests in seemingly minor and/or negligible ways, which is furthest from Algonquin's lived experience.

The AOO is deeply concerned that regulatory and government agencies continue to apply a narrow view to the cumulative effects assessment under *CEAA 2012*. From the AOO's perspective, *CEAA 2012* considers cumulative effects of a project on the environment only and does not properly consider how historic projects, ongoing operations and future projects will impact Algonquin Aboriginal rights and interests. Overall, the AOO disagrees with the CNSC's assessment that a cumulative effects assessment on the Aboriginal rights and interests of Algonquins is considered outside of the scope of the assessment. From the AOO's perspective, Section 35 of the *Constitution Act, 1982* and the corresponding duty to consult and accommodate supersedes the defined scope of CNSC's regulatory processes and relevant legislation. This is especially concerning given emerging case law (*Yahey v. British Columbia, 2021*) as well as introduction of the new *Impact Assessment Act* that demonstrate the imperatives for robust mechanisms for assessing and considering cumulative effects not only on the environment, but on the exercise of Aboriginal rights and interests.

The AOO are seeking further commitments and actions to reconcile the gaps in the assessment that are directly related to fully understanding the potential impacts of the project on Algonquin's Aboriginal rights and interests. To meaningfully address the AOO's concerns regarding cumulative impacts of the Project on Algonquin Aboriginal rights and interests, the AOO recommends that the Commission consider the following condition:

- CNL to provide capacity for AOO to undertake a cumulative impact assessment that focusses on impacts of the NSDF Project on Algonquin Aboriginal rights and interests. The outcomes of the assessment would inform additional commitments to avoid, mitigate and /or accommodate the AOO for impacts of the NSDF Project.

#### **4.0 Conclusion**

In closing, the AOO disagrees with CNL and the CNSC's assessment that the risks of the NSDF Project causing potential impacts on the environment and on Algonquin Aboriginal rights and interests are low. Based on the contributions the AOO have made during the environmental assessment process for the NSDF Project, the AOO have demonstrated where adverse impacts are anticipated and where gaps in the assessment put Algonquin Aboriginal rights and interests at risk. Although some of these adverse impacts have been addressed, the AOO have highlighted in this submission outstanding impacts to Algonquin Aboriginal rights and interests that have not been adequately avoided, mitigated or accommodated for.

To address these outstanding matters, the CNSC must adopt the conditions outlined in Section 3.0 to effectively protect the Aboriginal rights and interests of Algonquin community members. Any bilateral commitments made by CNL that support avoidance, mitigation and accommodation for adverse impacts of the NSDF Project must be included as conditions. These measures are inextricably linked to the ability for Algonquin community members to exercise their Aboriginal rights and therefore are a matter of Crown consideration under the duty to consult and

accommodate. Without including these conditions as part of the licensing decision under review, adverse impacts to the Aboriginal Rights and interests of Algonquin community members will occur.

We thank the CNSC and CNL for supporting the AOO's participation in the environmental assessment process and look forward to continuing our work together to ensure that the environment and the rights and interests of the AOO and its Algonquin communities are adequately considered and protected throughout the lifecycle of the NSDF Project.

## 6.0 References

- CNL (2022). Written submission from the Canadian Nuclear Laboratories in the matter of the Canadian Nuclear Laboratories, Chalk River Laboratories application to amend its Chalk River Laboratories site licence to authorize the construction of a near surface disposal facility – Commission Public Hearing Part 1 (CMD 22-H7.1).
- CNL (2021). Near Surface Disposal Facility Project Consolidated Commitment Lists (Ref. 80122).
- CNSC (2021). Notice of Public Hearing (Ref. 22-H-07).
- CNSC (2022a). Revised Notice of Public Hearing including Procedural Guidance for Intervenors (Ref. 2022-H-07).
- CNSC (2022b). A licence amendment required approvals for construction of the Near Surface Disposal Facility (NSDF) at the Chalk River Laboratories (CRL) site – Commission Public Hearing Part 1 (CMD 22-H7).
- CNSC (2022c). REGDOC-3.2.2, Indigenous Engagement, Version 1.2.
- Delgamuukw v. British Columbia* 1997 3 S.C.R. 1010.
- Government of Canada (2019). Impact Assessment Act (S.C. 2019, c. 28, s. 1).
- Government of Canada (2012) Canadian Environmental Assessment Act (S.C. 2012, c. 19, s. 52).
- R. v. Sparrow* 1990 1 S.C.R. 1075.
- Tsilhqot'in Nation v. British Columbia* 2014 SCC 44.
- Yahey v. British Columbia* (2021) BCSC 1287.