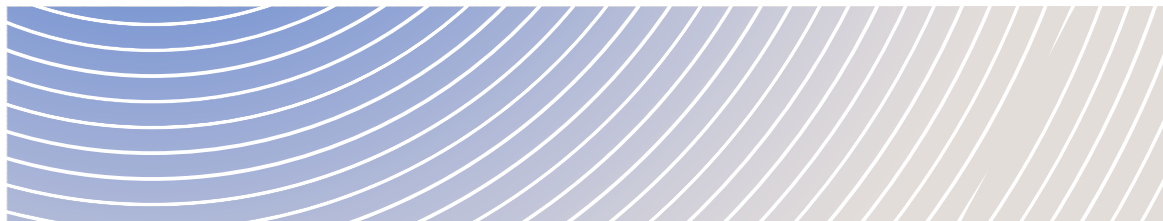


# Executive Summary - Crown Consultation and Accommodation Report – Marathon Palladium Project

November 30, 2022



# Executive Summary

The Impact Assessment Agency of Canada (IAAC), with input from Ontario's Ministry of Mines (MINES), Ministry of the Environment, Conservation and Parks (MECP) and Ministry of Natural Resources and Forestry (MNR), has prepared a Crown Consultation and Accommodation Report (CCAR) that documents consultation with Indigenous groups by Canada and Ontario through the environmental assessment (EA) process for the Marathon Palladium Project (the Project), as proposed by Generation PGM Inc. (the Proponent).

The CCAR summarizes the consultation work undertaken by the governments of Canada and Ontario in fulfilling the procedural and substantive aspects of the Crown's constitutional duty to consult and, where appropriate, accommodate with respect to the Project's potential impacts on established or asserted rights, as recognized and affirmed by Section 35 of the *Constitution Act, 1982* (Section 35 rights). The report also supports decision-making under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and Ontario's *Environmental Assessment Act*.

The following Indigenous groups participated in the EA process and were consulted by the CCT: Biigtigong Nishnaabeg, Ginoogaming First Nation, Métis Nation of Ontario Region 2, Michipicoten First Nation, Netmizaaggamig Nishnaabeg (Pic Moberg First Nation), Pays Plat First Nation, Red Sky Métis Independent Nation and Jackfish Métis Association.

---

## Consultation Process

The Crown Consultation Team (CCT) was co-led by IAAC and MINES, and supported by representatives from MECP and MNR. The CCT coordinated consultation activities to make best use of the harmonized federal and provincial EA process for the Project. In addition to the information received directly from Indigenous groups, the CCT relied on the information collected by the Panel for the purpose of its assessment of the potential impacts of the Project on established or asserted Section 35 rights.

The CCT supported the participation of Indigenous groups potentially affected by the Project in the EA process by making funding available to these groups. Indigenous groups potentially affected by the Project were invited to apply for, and were subsequently allocated, funding from IAAC's Participant Funding Program. A total of \$1,326,427.74 was allocated to Indigenous groups to support participation in the EA. The CCT provided Indigenous groups with opportunities to: learn about the Project and its impacts, either through consultation meetings or public comment periods; co-develop a methodology to assess the severity of impacts on rights; evaluate the Project in relation to their established or asserted Section 35 rights; communicate their concerns to the Crown; and discuss possible mitigation and accommodation measures, as appropriate.

The CCT established a flexible and collaborative consultation process, offering both in-person and virtual meeting opportunities, extending timelines when possible, and working with each Indigenous group and their respective leadership in support of meaningful engagement.

The CCT worked with Indigenous groups to understand concerns, review and explain the applicable regulatory processes, and provide guidance throughout the EA process, including throughout the Joint Review Panel (the Panel) hearing process. All participating Indigenous groups were provided opportunities to participate meaningfully during the EA process. This included opportunities to review, comment and co-draft multiple analysis documents produced in the EA process such as: work plans, draft Panel Terms of Reference and environmental impact statement guidelines, sufficiency analysis on the Proponent's Environmental Impact Statement and Environmental Impact Statement Addendum (including all Information and Supplementary Information Requests by the Panel), the CCT's hearing submissions, hearing presentations, hearing closing remarks and more recently the draft CCAR and proposed EA conditions.

---

## Methodology for Assessing the Potential Impacts of the Project on Established or Asserted Section 35 Rights

Assessing impacts to established or asserted Section 35 rights requires an understanding of the rights of each Indigenous group that may be affected by a project. Established or asserted Section 35 rights are understood to include the ability to maintain a community's culture. As such, the term "rights" is used in this methodology to include the culture and traditional way of life of the community possessing them. "Impacts to rights" is not limited to biophysical effects or residual environmental effects, and intends to better incorporate Indigenous perspectives.

The methodology for assessing the potential impacts of the Project on the exercise of established or asserted Section 35 rights assists the CCT in upholding the Crown's legal obligation to consult and ensure that potential impacts on the exercise of Section 35 rights arising from the Project are adequately considered and accommodated, where appropriate. The CCT established a flexible and responsive methodology with participating Indigenous groups, to ensure that preferred terminology, thresholds, and information were integrated in the final assessment of impacts of the Project on the exercise of established or asserted Section 35 rights.

---

## Panel Findings and Conclusions on Areas of Interest to Indigenous Groups

The Panel completed its evaluation of the potential impacts of the Project in accordance with the requirements under CEAA 2012, and Ontario's *Environmental Assessment Act*. The Panel concluded on the need for the Project and on a number of valued components relevant to

impacts on established or asserted Section 35 rights. The Panel's conclusions covered the aquatic environment, terrestrial environment, atmospheric and acoustic environment, human environment, human health, socio-economics, natural and operation hazards, and Indigenous matters.

The Panel concluded that the Project is likely to cause significant adverse environmental effects on:

- Hydrology of Angler Creek;
- Little Brown Myotis, Northern Myotis and bat habitat;
- Critical habitat of caribou, and habitat connectivity of caribou within the Lake Superior Coastal Range;
- Current use of lands and resources for traditional purposes, physical and cultural heritage and health and socio-economic conditions for Biigtigong Nishnaabeg; and
- Physical and cultural heritage for Pays Plat First Nation.

The Panel concluded that there is likely to be significant adverse cumulative effects on:

- Lake Sturgeon habitat;
- Little Brown Myotis, Northern Myotis and bat habitat;
- Eastern Whip-poor-will;
- Critical habitat of caribou, and habitat connectivity of caribou within the Lake Superior Coastal Range; and
- Current use of lands and resources for traditional purposes, physical and cultural heritage and health and socio-economic conditions for Biigtigong Nishnaabeg.

The Panel made 128 recommendations to both the Proponent and Crown, 17 of those recommendations were directed to the Crown to identify solutions that could address impacts of the Project on established or asserted Section 35 rights.

---

## Assessment of Potential Impacts on Established or Asserted Section 35 Rights

The CCT is of the view that all Indigenous groups potentially impacted by the Project were given sufficient and meaningful opportunities to participate in the EA process. The participation of Indigenous groups contributed to the technical review and assessment of impacts on rights undertaken during the EA.

The CCT assessed the severity of potential impacts from the Project on each Indigenous group's self-identified valued components related to their established or asserted Section 35 rights. A review of the CCT's evaluation of each potential impact for each Indigenous group is included in

Table 1. The assessment of potential impacts on established or asserted Section 35 rights was completed in close collaboration with, and has been communicated to, all Indigenous groups for

whom such an assessment was conducted. Comments provided by Indigenous groups were integrated in the final CCAR, as applicable. For comments that could not be integrated in the assessment, the CCT provided a response to Indigenous groups. The CCT notes that while these issues were discussed and government responses were provided, the affected Indigenous groups may still regard these issues as outstanding or not addressed to the satisfaction of the Indigenous group in question.

The concerns expressed by Indigenous groups consulted regarding the potential adverse environmental effects of the Project were generally related to water quantity and quality, hunting, fishing, trapping and harvesting, other forms of traditional land use, species at risk, and health and socio-economic conditions. Based on the information presented by all Indigenous groups and the Panel's conclusions, the impacts on the established or asserted Section 35 rights and interests of the Ginoogaming First Nation, Métis Nation of Ontario Region 2, Michipicoten First Nation, Red Sky Métis Independent Nation and the Jackfish Métis Association, ranged from negligible to low. The Panel indicated significant impacts for Pays Plat First Nation culture. The highest and most severe or negative impacts were determined for Biigtigong Nishnaabeg.

The CCT is of the view that potential negligible to low impacts on established or asserted Section 35 rights and interests can be addressed through various mitigation measures and commitments made by the Proponent, proposed federal and provincial permitting requirements, and EA conditions. Regarding the CCT's conclusion pertaining to the Project's potential for impacts on Pays Plat First Nation's culture, additional Crown measures were pursued to minimize the impacts. The CCT notes that in two cases there was an overall positive impact found for socio-economic conditions: Jackfish Métis Association and Red Sky Métis Independent Nation.

In its report, the Panel concluded there would be significant adverse environmental effects for each of the Section 5(1)(c) elements of CEEA 2012 as it relates to Biigtigong Nishnaabeg. The CCT acknowledges that this is precedent-setting, as no other EA, conducted by either IAAC or by a Joint Review Panel, has ever determined there to be significant adverse environmental effects across all elements examined for one Indigenous group. Therefore, the CCT acknowledges that Biigtigong Nishnaabeg would experience high negative impacts on all established or asserted Section 35 rights assessed from the Project. The Project is proposed directly within Biigtigong Nishnaabeg's asserted exclusive Aboriginal Title Area, along the banks of the Biigtig Zibi (Pic River), 9.3 kilometres upstream from the community. The CCT further acknowledges that this will likely result in the Project having serious adverse impacts on the environmental, cultural, and socio-economic wellbeing of Biigtigong Nishnaabeg and the continued exercise of Biigtigong Nishnaabeg's asserted or established Section 35 rights for the present and for future generations. Additional measures and actions of the Crown, described in subsequent sections, were required to address these high impacts on Biigtigong Nishnaabeg's established or asserted Section 35 rights.

The technical views of the relevant federal departments and provincial ministries informed the CCT's collaborative assessment with Indigenous groups. Comments from these departments and ministries were integrated into the final CCAR. The technical views of these organizations

can be found in the CCT hearing submission in CIAR #1083, which included a preliminary assessment of impacts on established or asserted Section 35 rights.

**TABLE 1: SUMMARY OF THE CCT'S FINAL ASSESSMENT OF POTENTIAL IMPACT SEVERITY ON ESTABLISHED OR ASSERTED SECTION 35 RIGHTS AND INTERESTS**

Community	Environmental Components related to potential impact on established or asserted Section 35 rights	Level of Potential Impact
Biigtigong Nishnaabeg	Aquatic Environment	High
	Terrestrial Environment	Extremely High
	Socio-economic	High
	Cumulative Impacts	High
Ginoogaming First Nation	Water	Negligible
	Harvesting	Negligible
Jackfish Métis Association	Socio-economic	Positive
	Fishing	Low
	Trapping	Low
Métis Nation of Ontario	Harvesting	Low
	Water quality, fish health and fish harvesting	Negligible to Low
Michipicoten First Nation	Water Quality	Negligible
	Caribou	Low
Pays Plat First Nation	Water Quality and fishing	Low
	Culture	Moderate
	Harvesting	Low
Red Sky Métis Independent Nation	Socio-economic	Positive
	Current Use of Lands and Resources for Traditional Purposes (Traditional Knowledge, Water, Fish and Land Use)	Low

## Accommodation and Other Measures

The CCT has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely affect established or asserted Section 35 rights of Indigenous groups.

The CCT concludes that most impacts on established or asserted Section 35 rights from the Project can be adequately addressed by: federal and provincial permitting requirements; proposed EA conditions; Proponent commitments; and where applicable, Crown accommodation measures.

The CCT acknowledges that the high adverse impacts on Biigtigong Nishnaabeg's established or asserted Section 35 rights that remain outstanding required the Crown to pursue additional Crown accommodation measures to reduce these impacts. The CCT worked jointly with Biigtigong Nishnaabeg leadership to identify and implement existing federal initiatives and specific accommodation measures in order to lessen impacts associated with the Project on Biigtigong Nishnaabeg's established or asserted Section 35 rights to an acceptable level.

These include:

**Cultural Initiatives**—To address Project impacts associated with the loss of the community trapline and restricted access through Camp 19 Road for the practice of harvesting rights and other cultural activities, the CCT has been working with Biigtigong Nishnaabeg on a number of cultural initiatives, including: helping to secure funding of a cultural education and wellness center, allocation of a replacement community trapline, exploring the potential for construction of a new access road, and ongoing consultation and engagement in fisheries management and wildlife management. The CCT has advanced the cultural and wellness centre proposal through Indigenous Services Canada's Strategic Partnership Initiative, and continues to support collaborative efforts between Biigtigong Nishnaabeg and relevant agencies and/or ministries in an effort to identify and implement appropriate solutions.

**Housing and Infrastructure**— To address impacts from Biigtigong Nishnaabeg members returning to live in community and seek employment at the mine, which will add to already strained community infrastructure and health and social services. The CCT has worked with a number of partners to identify solutions such as a new water treatment facility and funding for studies to support the development of a new subdivision in the community. The CCT continues to work with Biigtigong Nishnaabeg and the Canada Mortgage and Housing Corporation on applications for the Indigenous Shelter and Transitional Housing Initiative and the Transitional Housing for Men through the third round of the Rapid Housing Initiative program.

**Health and Social Services**— To address the additive strain on health and social services from the return of Biigtigong Nishnaabeg members to the community as they seek employment at the mine, the CCT continues to work with Biigtigong Nishnaabeg and Indigenous Services Canada's (ISC) First Nations and Inuit Health Branch (FNIHB) to supplement Biigtigong Nishnaabeg's existing health and social services. This will also help address the reality of resource extraction projects and development in rural and northern communities; the presence of mine workers camps often exacerbates racism, violence and safety issues, particularly for Indigenous women and children.

**Stewardship and Monitoring Initiatives**— The CCT has worked with relevant departments to make use of existing initiatives that align with Biigtigong Nishnaabeg's stewardship objectives and enhanced oversight and management of its asserted exclusive Aboriginal Title area. Some of these initiatives include:



- Funding over three years from ISC-FNIHB under the First Nations Baseline Assessment Program on Health and the Environment;
- Funding from IAAC Indigenous Capacity Support Program Stream 3 to assist with community-led water quality, fish tissue and aquatic monitoring;
- Funding from IAAC to assist Biigtigong Nishnaabeg in developing a Principles-Based Monitoring Committee to address potential impacts on its Section 35 rights that cannot be addressed by the Proponent's commitments or proposed EA conditions to develop and establish proposed monitoring programs and committees;
- IAAC and Environment and Climate Change Canada (ECCC) continue to work with Biigtigong Nishnaabeg to support its application for an Indigenous-Led Area-Based Conservation program.

**Caribou**— ECCC is finalizing a contribution agreement with Biigtigong Nishnaabeg to facilitate its involvement in caribou habitat and management, including habitat surveys and building cultural awareness.

---

## Conclusion

The CCT is satisfied that the potential adverse impacts of the Project on established or asserted Section 35 rights have been adequately identified and appropriately addressed in accordance with the Crown's constitutional duty to consult and, where appropriate, accommodate should the Project proceed. This is based on the analysis of potential cumulative and environmental effects of the Project on Indigenous groups, taking into consideration the proposed EA conditions, the Proponent's commitments, other federal and provincial permitting requirements, and mitigation and accommodation measures.