

# APPENDIX 17-I

## Métis Nation of Ontario Integration Document

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# **Métis Nation of Ontario Integration Document (NextBridge East-West Tie Transmission Project)**

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## Abbreviations and Acronyms

<b>AADT</b>	Annual Average Daily Traffic Volumes
<b>Document or the Document</b>	Métis Nation of Ontario Integration Document
<b>kV</b>	Kilovolt
<b>LSA</b>	Local Study Area
<b>MNO</b>	Métis Nation of Ontario
<b>NextBridge</b>	NextBridge Infrastructure
<b>Project or the Project</b>	The East-West Tie Transmission Project
<b>Regional Study Area</b>	Regional Study Area
<b>ROW</b>	Right-of-Way
<b>TLU Report</b>	Métis Nation of Ontario Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project.
<b>ToR</b>	Terms of Reference
<b>TS</b>	Transformer Station

## **Introduction and Purpose**

Following completion of the *Métis Nation of Ontario Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project Report* ("TLU Report") this document was commissioned by the Métis Nation of Ontario to facilitate the inclusion of the Métis Nation of Ontario Evaluation Criteria and Traditional Land Use information in the Project Environmental Assessment, prior to the identification of collaborative mitigation measures.

This Document includes information on each Evaluation Criteria and detailed guidance on assessing the potential adverse effects to those Evaluation Criteria. This Document also includes description of available Traditional Land Use information and directs the specific sections within the environmental assessment where that information must be considered. This Document is intended to facilitate NextBridge's and MNO's collaborative identification of positive and negative effects to Métis rights and interests that may result from the Project and further assist in ongoing mitigation and monitoring discussions.

### **1.1 Environmental Assessments and Métis Consultation**

There is a natural convergence between the conduct of an environmental assessment process and the Crown's duty to consult and if necessary, accommodate Indigenous peoples<sup>1</sup> for adverse effects to their rights. Broadly, the environmental review process is often the only vehicle used by the Crown to identify and predict whether or not a proposed natural resources development project should proceed. Metis consultation, interwoven into the regulatory review process, can assist in the identification of impacts to Metis rights and assist the Crown in that decision making process.

The conduct of environmental assessment processes are underpinned by the notion that a rational scientific method provides the basis for their execution and that "in order to be credible, the [EA] process must be based on scientific objectives, modeling and experimentation, quantified impact predictions and hypothesis-testing"<sup>2</sup>.

In Canada, the requirement for the conduct of an environmental assessment is codified within legislation, both federal and provincial across the country. However, legislation setting out the Crown's expectations on the requirements of the environmental assessment process, including scope, procedures and methods, are not explicit with respect to the identification of adverse effects to Metis rights. Despite this lack of explicit guidelines, both federal and provincial regulatory authorities often rely on the results of the environmental assessment process as a resource to assist in predicting and managing adverse effects to Metis rights.

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<sup>1</sup> Bankes, Nigel 2009 The Intersection between the law of Environmental Impact Assessment and the Crown's Duty to Consult and Accommodate Aboriginal Peoples. Paper prepared for Continuing Education Conference on the Law of Environmental Impact Assessment, Faculty of Law, The University of Calgary.

<sup>2</sup> Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 4

In the Study Team's opinion, environmental assessment methodology is appropriate for the identification of direct and cumulative effects to Métis rights and interests and is therefore used in this Document.

## **1.2 Regulatory Framework for the Project**

This Project is subject to review under the *Ontario Environmental Assessment Act, 1990* and requires a 'Leave to Construct' under Section 92 of the *Ontario Energy Board Act, 1998*. For this Project, a draft ToR was provided to the MNO in January, 2014 for initial comments. In February, 2014 NextBridge submitted a ToR to the Ministry of the Environment and Climate change for review and approval. MNO reviewed the document and provided comments to NextBridge in February, 2014. This document received a decision in August, 2014; however, NextBridge committed to including Métis specific Evaluation Criteria in the ToR in an erratum dated April, 2014. The ToR is meant to provide a "...framework for the planning and decision-making process to be followed by the proponent during the preparation of the Environmental Assessment (EA) Report"<sup>3</sup>

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<sup>3</sup> Dillion Consulting on behalf of NextBridge Infrastructure, Amended Environmental Assessment Terms of Reference, May 2014, p. 6.

## 2 Scope of Document and Methods

The following sections outline the methods used to prepare this Document. They are derived from a variety of previously completed environmental assessments as well as the professional judgement of Calliou Group. Each method described has been designed to conform to the *Ontario Environmental Assessment Act, 1990* and the Amended Environmental Assessment Terms of Reference (2014), as well as allow for the full assessment of the MNO Evaluation Criteria and Traditional Land Use data.

### 2.1 Selection of Evaluation Criteria

Environmental assessment methodology necessitates the compartmentalization of the human and biophysical environments into manageable units appropriate for scientific study; often referred to as Valued Components (VCs) or valued ecosystem components (VECs)<sup>4</sup>. For the purpose of this Document these components will be referred to as Evaluation Criteria as per the Code of Practice: Terms of Reference<sup>5</sup>.

A fundamental principle for the conduct of an environment assessment is that not all aspects of the biophysical and human environment can or should be examined in the context of a single application. It is important to ensure all potentially affected components of the environment (including human and biophysical components) are considered for inclusion; however, only those components likely to change through interaction with the project at hand should be ultimately included<sup>6</sup>.

As Evaluation Criteria provide the ‘building blocks’ or the foundation for the entire assessment, appropriate selection is an important step in ensuring a complete assessment is conducted. As stated, an environmental assessment process is often the primary vehicle for gathering information about matters of importance to Métis, their rights and interests, and the prediction of changes resulting from a proposed project. Therefore, ensuring that the valued components selected allow for the identification of predicted effects to the exercise of Metis rights and interests are critical.

#### 2.1.1 Evaluation Criteria Guidelines and Regulations

The Project is subject to the Ontario Environmental Assessment process under the *Ontario Environmental Assessment Act, 1999*. This Act does not include specific definitions of Evaluation Criteria; however, there are some definitions of terms commonly used in EAs that allow us to derive overall meaning.

The *Ontario Environmental Assessment Act, 1999* defines environment to mean:

- a) Air, land or water;
- b) Plant and animal life, including human life;

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<sup>4</sup> Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 89

<sup>5</sup> The Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario has Legislative Authority under the Environmental Assessment Act, RSO 1990, Chapter E. 18

<sup>6</sup> Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 89

- c) The social, economic and cultural conditions that influence the life of humans or a community;
- d) Any building, structure, machine or other device or thing made by humans;
- e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- f) Any part of combination of the foregoing and the interrelationships between any two or more of them.<sup>7</sup> [emphasis added]

Environmental effect is further defined as “The effect that a proposed undertaking or its alternatives has or could potentially have on the environment, either positive or negative, direct or indirect, short- or long-term.”<sup>8</sup>

Further, the Code of Practice for Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario (2014) refers to Evaluation Criteria. Specifically, Section 5.2.7: Assessment and Evaluation states:

“The proponent should develop criteria to assess the effects of the alternatives and the undertaking on the environment and present the criteria in the terms of reference.

The preliminary list of criteria is to be linked as much as possible to each component of the environment (such as criteria for the natural, social, economic and cultural environments) as the effects of the alternatives and the undertaking on the environment will need to be described in the environmental assessment. As required, each criterion should have one or more indicators that will identify how the potential environmental effects will be measured for each criterion.”<sup>9</sup>

### **2.1.2 Amended Environmental Terms of Reference**

The amended environmental ToR does not contain a description of what Evaluation Criteria are and how they will be used in the environmental assessment. Instead there is a description of the preliminary potential effects to the natural and socio-economic environment and an Appendix which lists the specific evaluation criteria and indicators for each component of the natural and socio-economic environment for which a potential effect was identified.

### **2.1.3 Métis Specific Evaluation Criteria**

Due to the lack of guidance provided by the provincial documentation and the ToR, the MNO must instead rely on accepted environmental assessment methodology for guidance in the selection of Evaluation Criteria. Based on Calliou Group’s knowledge of

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<sup>7</sup> Ontario Ministry of Environment, Glossary – Terms commonly used in Ontario environmental assessments, January 2014: <https://www.ontario.ca/page/terms-commonly-used-ontario-environmental-assessments>, accessed October 2014

<sup>8</sup> Ibid

<sup>9</sup> Ontario Ministry of Environment and Climate Change, Code of Practice, Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario, Legislative Authority: Environmental Assessment Act, RSO 1990, Chapter E. 18, p. 42

accepted environmental assessment methodology, the following steps were undertaken to develop credible and defensible Evaluation Criteria.

#### 2.1.3.1 Evaluation Criteria Selection Rationale

The selection of Evaluation Criteria suitable for the identification of potential effects to Métis rights and interest begins with an identification of broad concepts or components that are related to the Project and provide a basis for further discussion. Therefore, a preliminary list of potential Criteria was developed by Calliou Group. The Criteria included:

- Governance
- Symbols and Traditions
- Traditional Lifeway & Wellbeing
- Teaching and Transmission
- Harvesting

While this preliminary list was initially broad, the MNO held a workshop with MNO representatives to narrow the Criteria to those that:

- Were present along or in proximity to the proposed Project route;
- Had data that was being collected as part of the Environmental Assessment; and
- Had information available for collection from Métis citizens which could be synthesized into the TLU Report and this Document.

Following the workshop, the Criteria were narrowed to include:

- Métis Way of Life
- Harvesting

In order to facilitate incorporation of the identified Evaluation Criteria into the proposed ToR and subsequent assessment, the criteria were adjusted to conform to the document standard previously used by the proponent in the proposed ToR.

Preliminary List of Métis Criteria and Indicators					
Environment	Criteria	Indicator(s)	Rationale for Selection	Potential Effect(s)	Data Source(s)
Socio-Economic	Way of Life	<p>Métis mobility within the identified Study Area</p> <p>Types of teaching/transmission programs, services and practices within the identified Study Area</p> <p>Spiritual connection to areas within the identified Study Area</p>	<p>Identification and protection of areas or routes critical to Métis mobility within the Study Area</p> <p>Minimize potential adverse effects to Métis teaching/transmission programs, services and practices</p> <p>Reduce disconnection from spiritually key areas within the Study Area</p>	<p>Disruption or loss of areas or routes critical to Métis mobility</p> <p>Land use conflicts with familial or community teaching/transmission practices</p> <p>Qualitative disconnect from areas or sites of Metis tradition</p> <p>Damage or loss of key spiritual areas to Métis Way of Life</p>	<p>Metis Nation of Ontario</p> <p>Field Study</p> <p>Traditional Land Use Study data and associated Mapping</p>
Natural And Socio-Economic	Harvesting	<p>Type of harvesting activities exercised within the identified Study Area</p> <p>Identification of key cultural species harvested by MNO</p> <p>Identification of conditions required for continued harvest</p>	<p>Identification and protection of areas used for Metis harvesting</p>	<p>Reduced access to preferred locations of harvest</p> <p>Loss or alteration of key cultural species harvested by MNO</p> <p>Changes to known harvesting conditions required for continued harvest</p>	<p>Metis Nation of Ontario</p> <p>Field Study</p> <p>Traditional Land Use Data</p>

## 2.2 Methodology Used in this Document

Once the Evaluation Criteria were selected, baseline information was collected in the form of Traditional Land Use data. For details on how this baseline data collection was completed, please see the TLU Report<sup>10</sup>.

Following the data collection, MNO commissioned this Document to advise NextBridge and its consultants on the process for identification of positive and negative changes to those Criteria.

As a starting point, the integration of information should adhere to a principle of environmental assessment methodology referred to as the Precautionary Principle. The Precautionary Principle ensures that potential effects to the Evaluation Criteria are considered in a careful and precautionary manner. The Precautionary Principle requires the assessor to take a cautionary approach, or to err on the side of caution, especially where there is a large degree of uncertainty or high risk<sup>11</sup>. Essentially, "...when considerable uncertainty exists as to whether a proposed activity is likely to cause adverse environmental effects, the lack of certainty should not be..."<sup>12</sup> "...used as a reason to preclude or to postpone actions to prevent harm."<sup>13</sup>

Generally, sound scientific information and its evaluation must be the basis for applying the precautionary approach<sup>14</sup>. This Document relied heavily on collected TLU information to ensure that this sound information was available. Further, the integration methodology was based on approved and peer reviewed social scientific papers, reports and books as relevant sources.

There are two ways that this Document can ensure the Precautionary Principle is used for the NextBridge analysis, including:

- Ensuring any predicted measurable change from existing conditions, no matter how small, is considered to be adverse
- Conservative assumptions are used to ensure that effects are not underestimated<sup>15</sup>

Additionally, two additional methods can be applied as the Project progresses through mitigation discussions between NextBridge and the MNO, including:

- The evaluation of significance of effect will be based on maximum predicted effects, no matter how infrequent or over how small an area

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<sup>10</sup> Calliou Group, Métis Nation of Ontario Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project, 2016

<sup>11</sup> Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEEA Reference No. 17520, p. 46

<sup>12</sup> Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 80

<sup>13</sup> Ibid.

<sup>14</sup> Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEEA Reference No. 17520, p. 46

<sup>15</sup> Ibid.

- The magnitude criterion used within the process to determine significance will be based on criteria that are protective of Métis rights and interests and include a level of conservatism<sup>16</sup>.

### **2.2.1 Integration Methodology**

In order for the information collected by the MNO to be properly integrated into NextBridge's assessment, standard environmental assessment methodology must be applied to the Evaluation Criteria. Once applied, this methodology allows for the fulsome consideration of MNO's identified criteria.

#### **2.2.1.1 Limitations of the TLU Report**

In addition to the broad limitations outlined within the TLU Report, there are some specific limitations that apply for this Document.

Although 25 knowledgeable MNO harvesters and knowledge holders were identified and interviewed for the TLU Report, the information contained in the TLU Report cannot be assumed to be a complete record of the past, current and future resource use (including exercise of Aboriginal rights) by these MNO citizens, or by the MNO more generally. The limited interview format necessary for a project-specific TLUS (e.g. one – three hour interviews) does not adequately capture a participants' full lifetime of knowledge. In order to accomplish this, a much larger study would need to be undertaken including more comprehensive interviews conducted, both in terms of number of interviewees, topics addressed, and area covered in the interview process.

Additionally, following completion of interviews, the NextBridge East-West Tie route was amended. Therefore, the information collected was specific to the original route and identified alternatives.

Finally, a supplemental report is being crafted by the MNO which will provide additional context for the Métis specific Evaluation Criteria which must also be integrated by NextBridge upon completion.

#### **2.2.1.2 Identifying Measurable Parameters**

Following the selection of Evaluation Criteria, the process and standards by which a change (or effect) can be measured must be identified and described. The standards or criteria used to identify and describe the change are known as measurable parameters. The measurable parameters used to describe change to the selected Evaluation Criteria are outlined below.

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<sup>16</sup> Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEAA Reference No. 17520, p. 46

**Table 2.2.2.1-1: Identified Evaluation Criteria and Associated Measurable Parameters**

<b>Effect</b>	<b>Measurable Parameter(s) and Units of Measurement</b>
<b>Métis Way-of-Life</b>	
Change in Métis Mobility	Disruption or loss of areas or routes critical to Métis mobility
Change in Teaching/Transmission programs, services and practices	Land use conflicts with familial or community teaching/transmission practices
Change in Spiritual Connection	Qualitative disconnect from areas or sites of Métis tradition
	Damage or loss of key spiritual areas to Métis Way-of-Life
<b>Métis Harvesting</b>	
Change in the type of harvesting activities exercised	Reduced access to preferred locations of harvest
Change of key cultural species harvested by MNO	Loss or alteration of key cultural species harvested by MNO
Change in the conditions required for continued harvest	Changes to known harvesting conditions required for continued harvest

### 2.2.1.3 Identifying Temporal Boundaries

The temporal parameters establish a frame of reference for assessing potential project effects<sup>17</sup>. They are used to distinguish how different phases of a project may result in different size and scope of effect. The temporal boundaries which could be defined for this Project are:

- **Construction:** 2 years<sup>18</sup>
- **Operation and maintenance:** 50+ years<sup>19</sup>
- **Decommissioning:** Unspecified

For the purposes of integration into the NextBridge Application, the temporal boundaries will be the same for all Métis specific Evaluation Criteria.

<sup>17</sup> Canadian Environmental Assessment Agency, Reference Guide: Addressing Cumulative Environmental Effects, <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=9742C481-1&offset=4&toc=hide>, Accessed November 2016

<sup>18</sup> East-West Tie Transmission Project Environmental Assessment Terms of Reference, Amended, <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=9742C481-1&offset=4&toc=hide>, Accessed November 2016

<sup>19</sup> Ibid.

#### 2.2.1.4 Identifying Spatial Boundaries

Standard environmental assessment methodology dictates consideration of effects at three geographic scales. Typically these scales include the Project Footprint is the land or water that is directly covered by a project and where direct effects can be calculated<sup>20</sup>. The Local Study Area (“LSA”) is the spatial area where local effects are generally assessed in is generally in close proximity to the Project Footprint<sup>21</sup>. The Regional Study Area (“RSA”) is the area that establishes context for determining significance as well as the area within which cumulative effects are assessed.<sup>22</sup>

For this Project, a Generalized Study Area was established by Dillon Consulting which spanned from 7.175 km to 42.898 km from the reference and alternative routes. As no LSA and RSA were identified, the Project Footprint should be assumed to be the reference route and alternative route and the LSA should be assumed to be the Generalized Study Area designated on either side of the reference route and alternative route. A RSA can be developed at a later time through collaborative discussions between MNO and NextBridge for the determination of significance and assessment of cumulative effects on Métis specific Evaluation Criteria.

For the purposes of integration into the NextBridge Application, the spatial boundaries will be the same for all Métis specific Evaluation Criteria.

#### 2.2.1.5 Describing Existing Conditions

For each of the Evaluation Criteria, the NextBridge Application should contain a description of the existing conditions based on information collected specifically for this Project through the TLU Report as well as supplementary information gleaned from any publically available sources.

The existing conditions for each valued component should frame the MNO’s information in such a way as to provide enough context to the Evaluation Criteria that it is understood.

#### 2.2.1.6 Identification of Potential Project Interactions

The identification of a Project effect begins with a project activity or physical work that could result in some form of negative or positive effect. These are referred to as Project interactions<sup>23</sup>. A listing of these interactions must be included in the Project Application, as developed by NextBridge to show the Project Components or Project Activities that have the potential to interact with the Métis specific Evaluation Criteria.

#### 2.2.1.7 Description of Potential Effects

The Application must include a description of how project activities or actions will result in a potential effect to the Métis specific Evaluation Criteria. This can be accomplished

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<sup>20</sup> Canadian Environmental Assessment Agency, Cumulative Effects Assessment Practitioners’ Guide, <http://www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1&offset=11&toc=show>, Accessed November 2016

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

through ongoing engagement between NextBridge and the MNO and is based on information within the NextBridge Application.

#### 2.2.1.8 Description of Proposed Mitigation

Within the ToR, mitigation is defined as something that works to “..eliminate, or minimize, potential effects.”<sup>24</sup> Standard environmental assessment methodology dictates that mitigation be applied prior to the identification of residual effect and determination of significance.

Independent mitigation measures for potential effects to Evaluation Criteria must be developed collaboratively between NextBridge and the MNO.

#### 2.2.1.9 Characterization of Residual Effects

Following the application of mitigation measures after completion of the Integration, residual effects must be calculated for each Evaluation Criteria. Residual effects are effects that remain after mitigation has been applied<sup>25</sup>. In order to accomplish this, criteria must be developed based on the measures listed in the Application, including:

- Direction: the ultimate trend of the environmental effect (i.e. positive, neutral, or adverse);
- Magnitude: the amount of change in a measurable parameter relative to existing conditions (i.e., negligible, low, moderate or high);
- Geographical Extent: the geographic area within which an environmental effect of a defined magnitude occurs (i.e., Project Footprint, LSA, RSA);
- Frequency: the number of times during the Project or a specific project phase that an environmental effect may occur (i.e., once, sporadically, regular or continuous);
- Duration: the period of time that is required until the Evaluation Criteria returns to its existing condition or the environmental effect can no longer be measured or otherwise perceived (i.e., short term, medium term or permanent);
- Reversibility: the likelihood that a measurable parameter will recover from an environmental effect (i.e., reversible or irreversible); and

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<sup>24</sup> East-West Tie Transmission Project Environmental Assessment Terms of Reference, Amended, <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=9742C481-1&offset=4&toc=hide>, Accessed November 2016

<sup>25</sup> Canadian Environmental Assessment Agency, Cumulative Effects Assessment Practitioners' Guide, <http://www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1&offset=11&toc=show>, Accessed November 2016

- Ecological or Socio-Economic Context: the general characteristics of the area in which the project is located or resilience of the area to change (i.e., undisturbed or disturbed; low, medium or high resilience).

These residual effects criteria should be applied as part of the Integration to identify what potential residual effects could occur should no additional mitigation be undertaken by the proponent. However, any characterization of residual effects will be considered **draft** pending mitigation discussions between NextBridge and the MNO.

### **3 Integration of Métis Specific Evaluation Criteria**

This Section includes guidelines for the integration of Métis specific Evaluation Criteria into the NextBridge Application. However, NextBridge should supplement any/all of this information with material from publically available sources or information collected from further consultation with MNO.

#### **3.1 Introduction**

We anticipate that NextBridge will provide an overview of the MNO and Regional Communities, as well as consultation activities with the same, to frame the integration of the Regional Communities' TLU information.

#### **3.2 Existing Conditions for Integration**

Following this introduction, NextBridge should endeavor to describe the Existing Conditions for each Evaluation Criteria. Existing Conditions are the baseline information which was collected as part of the TLU Report organized by each measurable parameter.

#### **3.3 Description of Potential Effects**

The Application must include a description of how project activities or actions will result in a potential effect to the Métis specific Evaluation Criteria. Based on the above listed information related to the existing conditions and through further consultation with the MNO's Lands, Resources and Consultation office, NextBridge can describe the potential effects.

#### **3.4 Description of Proposed Mitigation**

Independent mitigation measures for potential effects to Evaluation Criteria must be developed collaboratively developed between NextBridge and the MNO following description of the potential effects.

#### **3.5 Characterization of Residual Effects**

Following the application of mitigation measures, residual effects must be calculated for each Evaluation Criteria.

## **4 Conclusion**

By following the guidelines outlined herein, NextBridge can ensure the identification of potential effects to Metis specific Evaluation Criteria and further the collaborative consultation process which should characterize the application process for the East-West Tie Project.

## 5 References

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### **Calliou Group**

Métis Nation of Ontario Project Specific Traditional Land Use Study and Evaluation Criteria: NextBridge Infrastructure's East-West Tie Transmission Project, 2016

### **Dillion Consulting on Behalf of NextBridge Infrastructure**

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