Court File No. _____

FEDERAL COURT

B E T W E E N:

FRIENDS OF THE ATTAWAPISKAT RIVER and OMUSHKEGOWUK WOMEN'S WATER COUNCIL

APPLICANTS

e-document-é T-4063-26 ID 1
FILED
FEDERAL COURT
COUR FÉDÉRALE
DÉPOSÉ
September 25, 2026
25 septembre 2026
Jessica Lorch
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- and -

ATTORNEY GENERAL OF CANADA, MINISTER OF THE ENVIRONMENT, CLIMATE CHANGE AND NATURE and MARTEN FALLS FIRST NATION

RESPONDENTS

FEDERAL COURT CANADA COUR FÉDÉRALE

NOTICE OF APPLICATION

APPLICATION UNDER section 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENTS

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local

offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: September 25, 2026

Issued by:

_____
(Registry Officer)

Ottawa Local Office
90 Sparks Street, 5th floor
Ottawa, ON K1A 0H9

Issued on: September 25, 2026
Issued by: Jessica Lorch (Registry Officer)
Address of Local Office: 90 Sparks Street/rue Sparks Ottawa, Ontario K1P 5R5

TO: **THE ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8

AND TO: **MINISTER OF THE ENVIRONMENT, CLIMATE CHANGE AND NATURE**
The Honourable Julie Dabrusin
House of Commons
Ottawa, ON K1A 0A6

AND TO: **MARTEN FALLS FIRST NATION**
c/o Chief Bruce Achneepineskum
Ogoki Post
Marten Falls, ON P0T 2L1

APPLICATION

This is an application for judicial review in respect of the decision of the Minister of the Environment, Climate Change and Nature ("**Minister**") dated August 31, 2026, to issue their decision statement (the "**Decision**") for the Marten Falls Community Access Road Project ("**Project**") to Marten Falls First Nation ("**Proponent**"). The Minister unlawfully justified the project in the public interest despite findings of significant adverse environmental effects within federal jurisdiction, including as found in the Impact Assessment Report ("**Report**"). The Decision authorized the construction and operation of an all-season road that would enable mineral exploration activities and future mineral development for the proposed Ring of Fire in a manner contrary to the *Impact Assessment Act,* SC 2019, c 28, s 1 ("***IAA***" or "**Act**") and the United Nations Declaration on the Rights of Indigenous Peoples ("**UN Declaration**").

The Decision was first communicated to the Applicant on August 31, 2026, when it was published on the Canadian Impact Assessment Registry.

THE APPLICANT MAKES APPLICATION FOR:

(a) An order in the nature of *certiorari* setting aside or quashing the Decision;

(b) An order declaring that the Decision under section 60(1)(b) of the *IAA*, that significant adverse effects within federal jurisdiction likely to be caused by the Project are justified in the public interest, is unreasonable and therefore invalid;

(c) An order declaring that the Report fails to provide the evidentiary basis necessary to support the Minister's public interest Decision based on the factors set out in 63 of the *IAA*;

(d) An order that each party shall bear its own costs, regardless of the outcome of the application; and

(e) Such further relief as may be requested and this Honourable Court may see fit to order.

THE GROUNDS FOR THE APPLICATION ARE:

A. The Parties

Friends of the Attawapiskat River

1. The Applicant, the Friends of the Attawapiskat River ("**Friends**"), is an Indigenous grassroots group formed in 2019 dedicated to protecting the health and integrity of the lands, waters, peoples, and future generations that may be affected by development in the Ring of Fire area, including downstream communities.

2. The Friends are grassroots people whose ancestors were the Headmen who signed Treaty 9 with the Crown to peacefully share the lands. As Omushkegowuk People, they have lived in harmony with these lands given to them by the Creator since time immemorial. They are the Water People; the water gives them life, and they take care of the water in return. This is their duty to the Creator and an ongoing commitment to each other.

3. The Friends are comprised of Indigenous community members, who are Aboriginal and Treaty rights-holders within the meaning of section 35 of the *Constitution Act, 1982.* They are members from First Nations across Treaty 9 territory, including Attawapiskat, Peawanuk, Kashechewan, Fort Albany, and Moose Cree. The Friends do not purport to represent or speak on behalf of the First Nations or elected leadership where its members are based, but rather, as an unincorporated association, share a common purpose, views, concerns, and experiences.

4. The Friends have personal interest standing because they are directly affected by the Decision, which allows the Project to proceed despite the range of recognized significant adverse and cumulative effects to lands and resources, traditional land uses, sites of cultural significance and wildlife, thereby affecting their rights, health, and environment.

5. The Friends also have public interest standing because this matter raises a serious justiciable issue; they have a real stake and genuine interest in protecting the lands and waters that stand to be impacted by the Project; and the proposed suit is a reasonable and effective way to bring this issue before the court.

Omushkegowuk Women's Water Council

6. The Applicant, the Omushkegowuk Women's Water Council ("**Water Council**"), is an Indigenous grassroots and cultural hereditary group formed in 2015. They are an unincorporated association, dedicated to protecting Omushkegowuk lands, waters, resources, and ancestral and Treaty territories, including the waterways, river systems, and coastlines on which Omushkegowuk people rely, as well as the animals, plant life, and medicines that these lands and waters sustain.

7. The women of the Water Council advocate for Omushkegowuk members and families affected by the encroachment and threat of mining development and other land and resource matters, including in the proposed Ring of Fire region. In carrying out this role, the Water Council and its members share a longstanding responsibility to protect their lands and waters from exploitation and degradation and to safeguard them for their grandchildren and those not yet born.

8. The women of the Water Council represent and are from the James and Hudson Bay coastal communities of Treaty 9 territory, including Peawanuck, Attawapiskat, Kashechewan, Fort Albany, and Moose Cree. The Water Council is guided by Omushkegowuk Original Council Fire Laws, Clan Laws, and the Spirit and Intent of Treaty. It is a grassroots group separate and distinct from elected Chief and Band Council systems.

9. The Water Council has personal interest standing because their members and families are directly affected by the Decision, which allows

the encroachment of mining development and associated adverse impacts on Treaty 9 coastal communities, affecting their rights, health, and environment.

10. The Water Council also has public interest standing because this matter raises a serious justiciable issue; they have a genuine interest in protecting the lands, resources, ancestral and Treaty territories consisting of waterways, river systems and coastlines where the Project is proposed; and the proposed suit is a reasonable and effective way to bring this issue before the court.

Marten Falls First Nation

11. Marten Falls First Nation is a First Nation located in Treaty 9 territory in northwestern Ontario. They are the Proponent of the Project.

Minister of the Environment, Climate Change and Nature

12. The Honourable Julie Dabrusin is the Minister of the Environment, Climate Change and Nature and the federal decision-maker responsible for making determinations under sections 60, 63, 64 and 65 of the *IAA*.

13. In administering the Act, the Minister must exercise their powers in a manner that fosters sustainability, respects the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982,* takes into account Indigenous knowledge, considers the cumulative effects of physical activities, applies the precautionary principle, promotes cooperation among jurisdictions and with the Indigenous peoples of Canada, and adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy in keeping with the purposes of the Act set out in section 6.

B. The Project

14. The Project is located in Treaty 9 territory within the Hudson-James Bay

Lowlands, a region of global climate significance dominated by last-of-their-kind peatlands (*muskeg*), pristine rivers, and lakes. These interconnected watersheds support biodiversity, provide immeasurable contributions to carbon sequestration and climate change mitigation, and sustain the health, culture, well-being, rights, and all relations of the Swampy Cree, Omushkego Indigenous peoples.

15. Treaty 9 encompasses some two-thirds of Ontario's landmass, and includes the Hudson-James Bay Lowlands and the Attawapiskat, Kapiskau, Ekwan, Opinnagau, Albany and Winisk Rivers and their watersheds. This region is a place of profound cultural and ecological significance and its undisturbed, interconnected peatlands and watersheds serve as a globally significant and vital carbon store and refuge for wildlife.

16. Among the Project's purposes is to accommodate and enable potential mining activity in a region spanning some 5000 square kilometres, dubbed the Ring of Fire. The Project would involve constructing and operating an approximately 184-kilometre-long, all-season road connecting the northern end of the Painter Lake forestry road to the community of Marten Falls. It is one of three proposed road projects, each undergoing separate impact assessments, that together create a major access corridor to the proposed Ring of Fire.

17. The development of this Project would transform the lands and waters in an otherwise pristine region, and interact with the likely effects of other reasonably foreseeable activities, including the Webequie Supply Road, Northern Road Link Project, mineral exploration, and mining activities associated with the proposed Black Thor, Black Label, Big Daddy, and Eagle's Nest mines, among others.

18. The Project would impact lands and waters of profound importance to the Applicants, who have relied on the Attawapiskat River, its

watersheds, surrounding river systems and the Hudson and James Bay coastal region since time immemorial.

C. The Impact Assessment Process

19. On February 24, 2020, the Impact Assessment Agency of Canada ("**Agency**") commenced the impact assessment ("**IA**") for the Project.

20. The Applicants were active and participated in good faith throughout the IA process. They made best efforts to ensure the Agency was aware of their serious concerns about the project and procedural deficiencies, including:

    a. Adverse impacts overlooked caused by project splitting, including the separate assessment of the Project, the Northern Road Link, and the Webequie Supply Road, and the resulting failure to adequately assess the impacts of the Project, recognizing its core enabling function for other infrastructure and mineral extraction projects;

    b. The cumulative regional, watershed-level and downstream impacts, including contamination pathways through interconnected peatlands, surface water and groundwater, and the resulting impacts on downstream communities and the ability to uphold Indigenous law, and protect the exercise and practice of Indigenous rights;

    c. Potential violations of Aboriginal and Treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, including the treatment and consideration of downstream rights-holders and the rights prescribed to them under the UN Declaration;

    d. Threats to safeguarding the ability of present and future generations to practice their rights and responsibilities, recognizing the Project's interference with traditional practices and an IA process that failed to advance reconciliation, and Indigenous Natural law, including the spirit and intent of Treaty;

e. The Project's effects on the globally significant carbon storage powerhouse that is the peatlands, the stewardship of lands, waters and recovery of biodiversity, and compliance with Canada's domestic and international legal obligations, including Canada's Strategic Assessment of Climate Change and the Kunming-Montreal Global Biodiversity Framework;

f. The Project's perpetuation or exacerbation of environmental racism and the unequal distribution of the Project's risks, burdens, and benefits, whereby downstream Indigenous communities and rights-holders would disproportionately bear environmental, health, cultural, social, and rights-related harms, inconsistent with the environmental justice principles recognized in the *National Strategy Respecting Environmental Racism and Environmental Justice Act, 2024,* SC 2024, c 11*;* and

g. The need to pause the IA pending the completion of the Ring of Fire Regional Assessment ("**RA**"), as the RA is a unique and valuable tool that can overcome many of the challenges inherent to more narrowly scoped IAs, including assessments of cumulative environmental effects and accompanying impacts on Indigenous rights.

21. Throughout the six-year span of the IA process, the Applicants led significant community-based efforts, organizing and hosting community workshops, regional gatherings, and public presentations, while providing extensive written and oral contributions to Indigenous leadership, Crown authorities, and international bodies. Their advocacy addressed issues spanning Indigenous Natural law and Cree cultural perspectives.

22. The Applicants also actively engaged in matters related to the other many and related proposed Ring of Fire projects, including the Webequie Supply Road, Northern Road Link, and RA. Their efforts

included developing declarations on water and land protection; communicating with governments and non-profit organizations on lands, resources, water and Indigenous law matters; providing public statements on community issues; educating on and promoting the Spirit and Intent of Treaty; and holding year-round Council Fire ceremonies.

23. The Applicants' sustained and dedicated efforts were undertaken entirely on a volunteer basis and came in response to the need to protect the animals, plant life, and medicines that they, as Omushkegowuk people, rely on.

D. The Impact Assessment Report

24. On August 26, 2026, the Agency released the Project's Impact Assessment Report ("**Report**"), finding adverse effects in areas of federal jurisdiction, including:

    a. Fish and fish habitat, including significant residual and cumulative effects due to the degradation and loss of habitat and harm to fish populations, and risks associated with contamination and changes to water quality and hydrology affecting surrounding waterbodies, wetlands, and peatlands;

    b. Migratory birds, including displacement due to vegetation clearing, sensory disturbances, and mortality risk due to potential accidental collisions and spills into the surrounding wetland ecosystem during construction and maintenance activities, where most effects would be irreversible;

    c. Wildlife and species at risk, including significant and adverse cumulative effects to caribou and wolverine due to habitat loss and degradation;

    d. Current use of lands and resources for traditional purposes by Indigenous peoples, including disruptions to the practice of traditional

activities such as fishing, hunting, trapping, and harvesting due to changes in resource availability, with effects on hunting caribou and other ungulates being irreversible and significant, taking into account the cumulative effects of the project in combination with other physical activities as more development in the Ring of Fire area occurs;

e. Physical and cultural heritage, including damage or degradation of sites of importance (i.e., travel routes, harvesting sites, cultural, spiritual and ceremonial sites, burial sites), reduced safe access to sites, and sensory disturbances affecting the quality of experience at culturally important sites, with significant effects that would be permanent, continuous, and irreversible; and

f. Health, social or economic conditions of Indigenous Peoples, including added strain on social services, health risks, increased risk of violence and human trafficking, increased substance use, disruption of cultural continuity and the transmission of Indigenous Knowledge, and decreased community well-being, with cumulative strain on social services expected to be irreversible and exacerbated by other proposed road projects and mining activity in the Ring of Fire area.

25. The Report also included the Agency's summary conclusions regarding the public interest factors set out in section 63 of the *IAA,* concluding that:

a. The Project is likely to result in adverse effects on Indigenous peoples, including impediments to the use of lands and resources for traditional purposes, physical damage or degradation of sites of importance, and adverse effects on health, social and economic conditions, and is likely to cause adverse impacts on section 35 rights, including rights to hunt, trap, fish, and a continued way of life;

b. The Project's likely effects would not contribute to Canada's ability to meet its environmental obligations, including obligations to conserve biodiversity (including under the Kunming-Montreal Global Biodiversity Framework and Convention for the Protection of Migratory Birds in the United States and Canada) and protect peatlands (including under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat);

c. The Project's likely effects would not contribute to Canada's ability to meet its commitments in respect of climate change, specifically Canada's greenhouse gas emissions targets, as the Project would emit greenhouse gases during construction and operation and would be a net source of emissions continuing beyond 2050, and would impact peatland ecosystems and carbon storage; and

d. The Project's likely effects on sustainability include negative impacts on the environment, on Indigenous traditional practices, and on community well-being.

E. The Minister's Decision on the Impact Assessment

26. The Report was submitted to the Minister for them to consider, in keeping with paragraph 60(1)(a) of the *IAA,* to determine whether the carrying out of the Project is likely to cause adverse effects within federal jurisdiction.

27. On August 31, 2026, the Minister publicly issued their Decision pursuant to section 65 of the *IAA*.

28. Section 60(1)(a) of the *IAA* required the Minister to determine whether, after taking into account mitigation measures, the adverse effects within federal jurisdiction are likely to be significant and if so, to what extent. In this instance, the Minister determined, based on the Report, that the Project is likely to cause adverse effects within federal jurisdiction that

are significant to some extent.

29. Section 60(1)(b) of the *IAA* required the Minister to determine whether those significant adverse effects were nonetheless justified in the public interest, in accordance with the factors set out in section 63. In this regard, the Minister determined that those effects were justified in the public interest after considering the Report, factors enumerated in the Act and establishing conditions to mitigate adverse effects.

30. The Minister was then tasked with undertaking a cost-benefit analysis to determine whether the federal, direct or incidental effects were justified in the public interest based on the factors identified in section 63 of the *IAA*, including the extent to which the project contributes to sustainability, has adverse federal effects that are significant as indicated in the impact assessment report, has an impact on any Indigenous group or adverse effects on the rights of Indigenous peoples, and contributes to the Government of Canada's ability to meet its environmental obligations and commitments in respect of climate change.

31. Ultimately, the Minister concluded:

    a. With respect to section 63(a) of the *IAA* and the effects that are likely to be caused on any Indigenous groups and section 35 rights-holders, the Project would cause adverse effects on Indigenous peoples and their rights, specifically current use of lands and resources for traditional purposes, physical and cultural heritage, and the exercise of section 35 rights, including rights to hunt, trap, fish, and maintain a continued way of life;

    b. With respect to section 63(b) of the *IAA* and the extent to which the Project's effects would contribute to Canada's ability to meet its environmental obligations, the Project would, to no extent, contribute to Canada's ability to meet its environmental obligations or commitments in respect of climate change. However, rather than

treating those conclusions as weighing against a finding that the Project's significant adverse effects were justified in the public interest, the Minister effectively assigned these findings as having no weight in their public interest analysis;

c. With respect to section 63(c) of the *IAA* and the extent to which the Project's effects would contribute to sustainability, the Project would make a net-positive contribution to a low extent, based on anticipated access, employment, social and economic, and regional development benefits for the Proponent. While the Minister acknowledged ongoing uncertainties regarding potential adverse effects, including to future generations, they failed to assign weight to these findings, narrowing their analysis to only known positive effects; and

d. The Minister relied on the mitigation measures identified in the Report and established conditions under subsection 64(1) of the *IAA* to justify the adverse effects within federal jurisdiction. Those measures and conditions were focused on the Project's immediate footprint and defined study areas and did not address the broader regional and downstream effects associated with the activities stemming from the Project's purpose of enabling future mineral exploration and mining activities in the region.

32. The Minister improperly excluded material considerations from their Decision and cost-benefit analysis of the public interest factors set out in section 63 of the *IAA* when those effects were not favourable. Specifically:

a. The Minister improperly excluded consideration of the project's negative effects on biodiversity and climate change; and

b. The Minister failed to make an integrated decision weighing positive and negative effects by inappropriately limiting the inclusion of negative effects on Indigenous rights and sustainability.

33. The Minister was obliged to consider this information in conducting their public interest determination under section 63 of the *IAA*. Thus, limiting or excluding negative impacts in this cost-benefit analysis resulted in a Decision that is inherently unreasonable, fundamentally flawed and not in keeping with the *IAA*.

34. The Report identifies critical deficiencies, gaps, and unresolved uncertainties in the IA process pertaining to biodiversity, climate change, Indigenous rights and sustainability. Rather than requiring those deficiencies to be remedied before making their Decision, they were overlooked or dismissed by the Minister. No justification was provided as to how the Minister nevertheless concluded that the Project was in the public interest.

35. These fundamental flaws impaired the Minister's ability to assess the statutory factors under section 63 of the *IAA* and decide whether the Project's significant adverse effects were justified in the public interest.

F. The Decision is Unreasonable and Must be Set Aside

36. The Decision that the significant adverse effects of the Project are justified in the public interest is unreasonable because:

    a. The Minister's reasons are not transparent, intelligible and justified and do not disclose an internally coherent and rational chain of analysis supporting the public interest analysis;

    b. The Minister does not sufficiently explain how they determined that the Project is in the public interest in light of the Report and each of the factors referred to in section 63, as required under section 65(2) of the *IAA;*

    c. The Minister's interpretation is untenable in light of the relevant factual and legal constraints, as the Minister did not have the prerequisite information or evidence before them necessary to

discharge their statutory obligations imposed by the governing statutory scheme and the UN Declaration;

d. The Minister failed to adequately consider the Project's adverse impact on Indigenous community members and rights-holders, as required under section 63(a), and failed to meaningfully grapple with the concerns, knowledge, legal traditions and customs raised by the Applicants;

e. The Minister incorrectly interpreted the statutory requirements of section 63(b) by improperly refusing to consider the Report's findings that the Project would not contribute to Canada's ability to meet its environmental obligations or commitments in respect of climate change;

f. The Minister selectively considered the extent to which the Project contributes to sustainability per section 63(c) by singling out potential economic benefits while inappropriately limiting inclusion of the Report's findings of significant and irreversible adverse effects, thereby failing to account for intergenerational equity and the net balance of environmental, social, and economic factors inherent to the definition of sustainability;

g. The Minister unjustifiably relied on the Project's broader regional, economic, and development-related effects to identify anticipated benefits, while assessing the corresponding environmental, cultural, health, and rights-related harms on a substantially narrower basis;

h. The Minister, to justify their Decision, relied on fundamentally flawed mitigation measures that were deeply unresponsive to findings of the Report and were limited to the Project's immediate footprint, disregarding broader cumulative and downstream effects; and

i. The Minister failed to establish conditions proportionate to the significant and irreversible impacts identified in the Report, as required by sections 64(1) and 64(2) of the *IAA*.

37. Given the unreasonable nature of the Minister's decision, it must be set aside in its entirety.

LEGISLATION RELIED UPON

38. The Applicants plead and rely on:

a. *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11;

b. *Federal Courts Act*, RSC 1985, c F-7, ss 18 and 18.1;

c. *Federal Courts Rules*, SOR/98-106;

d. *Impact Assessment Act,* SC 2019 c 28, s1, ss 2, 6, 22, 60, 63, 64, and 65;

e. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14; and

f. *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res 61/295, U.N. Doc A/RES/61/295 (2007)

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

(a) One or more affidavits and exhibits sworn on behalf of members of the Friends of the Attawapiskat River and the Omushkegowuk Women's Water Council;

(b) The Impact Assessment record for the Project, including the record of the Minister in respect of its Decision;

(c) The Impact Assessment Report for the Project, dated August 26, 2026;

(d) The Minister's Decision Statement for the Project, dated August 31, 2026;

and

(e) Such further and other materials as counsel may advise, and this Honourable Court may permit.

RULE 317 REQUEST

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Minister and/or the Agency send to the Applicants and the Federal Court Registry certified copies of the following materials that are relevant to this application, that are in their respective possession, and are not in the Applicants' possession, excluding materials publicly available on the Agency's online Registry page for the Project, including:

(a) All materials provided to, put before, considered by, or relied upon by the Minister in making the Decision, including all briefing materials, recommendations, reports, correspondence and communications relating to the Minister's determination under section 60, consideration of the factors set out in section 63, and the establishment of conditions under section 64 of the *IAA*; and

(b) All materials provided to the Minister by the Agency in connection with the Decision that are not included in paragraph (a).

Date: September 25, 2026

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FRIENDS OF THE ATTAWAPISKAT RIVER et al. v. **ATTORNEY GENERAL OF CANADA et al.** Court File No.
Applicants Respondents

FEDERAL COURT
PROCEEDING COMMENCED AT OTTAWA

NOTICE OF APPLICATION

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Counsel for the Applicants

I hereby certify that the above document is a true copy of the original issued out of/filed in the Court on **September 25, 2026**.

Certified on: September 25, 2026

Certified by: Jessica Lorch