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December 7, 2022

Dear Mr. Guilbeault and Mr. McCarthy,

**RE: Chemawawin Cree Nation Review of the Environmental Assessment Report in relation to the Alamos Gold Inc. Lynn Lake Gold Project**

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This letter is sent on behalf of the Chief and Council of the Chemawawin Cree Nation. Chemawawin Cree Nation is a member of Swampy Cree Tribal Council and a Treaty 5 signatory Nation with rights and interests affirmed by Treaty 5 and the Natural Resources Transfer Act, 1930, and protected under Section 35 of the Constitution Act, 1982 ("Section 35 Rights").

As Chief and Council of the Chemawawin Cree Nation ("CCN" or "Chemawawin"), it is our responsibility to ensure that our Nation's Section 35 Rights and interests are being maintained and respected in all things that affect our Nation and our members.

Chemawawin Cree Nation has evaluated the Alamos Gold Inc. ("Alamos") Lynn Lake Gold Project ("Project" or "the Project") Draft Environmental Assessment Report ("Report"). It is our view that CCN has not been properly engaged on this Project by Alamos and therefore, the Report is deficient. This lack of engagement has resulted in an incomplete assessment of potential project effects and will result in project approval without discharge of the Duty to Consult; this letter outlines those notable deficiencies.

#### **Engagement**

Within the Report, the Agency notes that Alamos have adequately engaged impacted Indigenous Nations, however, in the case of CCN, adequate engagement was not completed and the identification of potential adverse impacts to CCN rights has not been undertaken. This is particularly apparent in relation to the following passage:

"In May 2020, Chemawawin Cree Nation expressed concerns about the Project and a desire to be engaged; the Proponent began engaging with the community in May 2020.



Chemawawin Cree Nation was provided with the same project information and opportunities to provide input as those above.”

Direct mailed project notifications/information packages and overview presentations are not sufficient efforts from the proponent to constitute meaningful engagement. Further, Chemawawin Cree Nation was not provided the same opportunities as other Nations with reserves in proximity to the Project, who were, in some cases, provided capacity funding by the proponent.

The Duty to Consult is a reciprocal duty whereby information is given, feedback received, and considered; through the execution of this duty there is a feedback loop with which sufficiency can be evaluated. Aspects of this duty have been delegated to Alamos as they are the best source of technical project information, however, engagement with Alamos has not been reciprocal in nature.

Specifically in relation to the Report and the reciprocal nature of the Duty to Consult – the Report was developed in consultation with other government agencies such as the Ministry of Environment and Climate Change Canada and the Department of Fisheries and Oceans. This same level of input was not afforded to Indigenous Groups and, instead, the Impact Assessment Agency of Canada (“IAAC”) relied on comments submitted on the record, or meetings through which meaningful input into the Report could not be substantively shared. This approach is limiting and does not adequately allow for integration of the Nation’s views and concerns in relation to the Project due to capacity constraints.

#### **CCN Rights and Deficiencies in the Process**

While we, as Chief and Council, disagree with the limited view Alamos has with regard to CCN rights (i.e., consideration of harvesting rights), we can confirm that CCN members have exercised their Section 35 harvesting rights in proximity to the Project for hunting (moose, caribou, and migratory birds).

Due to extreme capacity constraints, mapping and documentation of the specifics of the exercise of hunting rights have not been undertaken. Therefore, the extent of these activities can be conservatively assumed to occur within the boundaries of Treaty 5 for the purposes of this Project. There has been no data collected by the Proponent on CCN rights, including hunting rights, and importantly, no discussion of appropriate mitigation for any identified impacts to those rights.

Information related to CCN rights was supplied to the IAAC from CCN on March 28, 2022, through a supplemental letter, and to date, CCN has not received a response either from the IAAC or the proponent.

The below table illustrates the CCN rights which, in our view, have the potential to be impacted by the Project. It is noted within Section 4.1.1 Consultation Led by the Agency, that the Agency provided Indigenous Nations with the opportunity to discuss concerns about the Project’s potential impacts on Section 35 rights. However, there has been no response to CCN’s letter to the Agency to date.



Rights	Description
<b>Harvesting</b>	The right to meaningfully access, use, and harvest natural resources for ceremonial, subsistence, spiritual, and/or economic purposes in a preferred manner and in preferred locations; including having conditions to support this.
<b>Economic</b>	The right to economic opportunities within our Treaty territory
<b>Governance</b>	The right to oversee and manage natural resources within our Treaty territory
<b>Stewardship</b>	The right to ensure future generations have the resources needed to continue their way of life

Further, in a proper consultation process, Indigenous Groups, themselves, can identify a set of priority values associated with community well-being, cultural expression, and their preferred means of exercising their rights. Again, Chemawawin Cree Nation was not afforded an opportunity to develop our own priority values nor to properly assess any potential impacts to our identified values.

In the same letter sent to the IAAC, dated March 28, 2022, CCN identified pathways by which the Project may impact CCN's above noted rights. This consideration includes both tangible and intangible values to our Nation. These were developed without any discussion with the proponent and CCN has not received a reply to this letter (which was also provided to the proponent and the Province of Manitoba). We are reattaching the pathways and advise the Agency to consider them within the Report. By not incorporating these aspects in the Report, to date, the IAAC is not accurately representing CCN's views.

Project VC	Right	Impact
<b>Atmospheric Environment</b>	Harvesting	<ul style="list-style-type: none"> <li>Perceived contamination resulting in reduced access to the area and/or resources from the area for harvest</li> </ul>
<b>Noise and Vibration</b>	Harvesting	<ul style="list-style-type: none"> <li>Increased avoidance of Project area due to annoyance or perceptive-based concerns</li> </ul>
<b>Groundwater</b>	Stewardship	<ul style="list-style-type: none"> <li>Lack of input into the management of groundwater resources</li> </ul>
	Governance	<ul style="list-style-type: none"> <li>Lack of jurisdiction or control of management decisions related to groundwater in proximity to the Project area</li> </ul>
<b>Surface Water</b>	Stewardship	<ul style="list-style-type: none"> <li>Lack of input into the management of surface water resources</li> </ul>
	Governance	<ul style="list-style-type: none"> <li>Lack of jurisdiction or control of management decisions related to surface water in proximity to the Project area</li> </ul>
<b>Fish and Fish Habitat</b>	Harvesting	<ul style="list-style-type: none"> <li>Perceived contamination resulting in reduced access to the area and/or resources from the area for harvest</li> <li>Changes to preferred conditions or preferred areas used in the exercise of fishing rights</li> </ul>
	Governance	<ul style="list-style-type: none"> <li>Lack of jurisdiction or control of management decisions related to fish and fish habitat in proximity to the Project area</li> </ul>
<b>Vegetation and Wetlands</b>	Harvesting	<ul style="list-style-type: none"> <li>Perceived contamination resulting in reduced access to the area and/or resources from the area for harvest</li> <li>Changes to preferred conditions or preferred areas used in the exercise of gathering rights</li> </ul>
	Stewardship	<ul style="list-style-type: none"> <li>Lack of input into the management of vegetation or wetland resources</li> </ul>



	Governance	<ul style="list-style-type: none"> <li>Lack of jurisdiction or control of management decisions related to vegetation and/or wetland habitats in proximity to the Project area</li> </ul>
<b>Wildlife and Wildlife Habitat</b>	Harvesting	<ul style="list-style-type: none"> <li>Perceived contamination resulting in reduced access to the area and/or resources from the area for harvest</li> <li>Changes to preferred conditions or preferred areas used in the exercise of hunting rights</li> </ul>
	Stewardship	<ul style="list-style-type: none"> <li>Lack of input into the management of wildlife or wildlife habitat</li> </ul>
	Governance	<ul style="list-style-type: none"> <li>Lack of jurisdiction or control of management decisions related to wildlife or wildlife habitats in proximity to the Project area</li> </ul>
<b>Labor and Economy</b>	Economic	<ul style="list-style-type: none"> <li>Lack of benefit to CCN contributing to CCN economic prosperity for removal of resources within CCN Treaty territory</li> </ul>
	Governance	<ul style="list-style-type: none"> <li>Lack of acknowledgment of the Treaty 5 Declaration and lack of adherence to the principles outlined therein</li> </ul>
<b>Human Health</b>	Harvesting	<ul style="list-style-type: none"> <li>Perceptive-based impacts leading to reduced subsistence harvesting and dietary changes</li> </ul>

Labor and Economy is an especially important VC to CCN. In the Report, this has been described from a public stakeholder perspective.

The *Declaration on Natural Resources on Treaty 5 Territory*<sup>1</sup> affirms that Treaty 5 Nations have an inherent right to make a living in their territory, including a right to trade and commerce. This Declaration further indicates there must be an equitable sharing of wealth from natural resource extraction. CCN urges the proponent and the Agency to uphold the true meaning of Treaty 5 as described in the Declaration so that all can benefit from the Project.

We also note a limited assessment from the proponent in relation to the Human Health VC. In Appendix C, the Agency acknowledges that the Project may result in residual effects to Indigenous Peoples' health. CCN is dissatisfied with this assessment and requires a more robust analysis by the Agency of cumulative health effects.

### Responsiveness of Proponent

Throughout the impact assessment process, there have been many instances of unresponsiveness from the proponent resulting in a lack of proper engagement regarding CCN rights or how the Nation may be impacted by the Project. We would additionally point out that without proper identification of the impact to CCN rights, the proposed mitigation measures do not lessen, offset or accommodate for potential impacts to CCN.

CCN feels that the Nation and proponent have been in a continual loop since the initiation of engagement whereby Chemawawin describes our rights in the Project vicinity and Alamos requests "evidence" of the exercise of Section 35 rights in or around the Project. While CCN understands that this is based on the requirements under the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* which requires proponents to assess 'current use of lands and resources for

<sup>1</sup><https://static1.squarespace.com/static/61dc8472344b8c1f168f4317/t/628670da25340762854cdb49/1652977883603/Declaration+on+Natural+Resources+on+Treaty+5+Territory+-+Signed.pdf>



traditional purposes' it is contrary to both the additional context provided in the Environmental Impact Statement ("EIS") and the direction within the Information Requests ("IRs"), specifically Round 1, Package 3, IR IAAC-202 which requires a more expansive view.

### Agency's Determination

The Agency states that the Project is not likely to cause significant adverse effects on current use of lands and resources for traditional purposes. This determination was reached through analysis of the proponent's assessment, mitigation measures, monitoring and follow-up measures, and the views expressed by Indigenous Nations. However, CCN input into the analysis is absent. Therefore, the determination includes substantial gaps, the mitigation may not address the impacts, and the duty to consult has not been properly discharged.

Moreover, the Agency accepts the proponent's findings, including that Project effects are reversible in decommissioning and post closures despite this ensuring that impacts will persist for a generation for CCN harvesters and land users. This is problematic for CCN as stewardship of the land is a key concern for the Nation as affirmed by the *Declaration on Natural Resources on Treat 5 Territory*, which states "We further vow to protect our territories so our children may continue to hunt, fish and gather the medicines forever on our territories."

### Capacity Funding

As previously noted, CCN has not been offered any capacity funding from Alamos. While funding was provided by the IAAC for review of regulatory documents and a supplementary workshop which resulted in the March 28, 2022, letter, no funding was allocated for the collection of Alamos' requested "evidence" on the exercise of CCN Section 35 Rights. Regardless, limiting the assessment of impacts to the current use of lands and resources for traditional purposes by CCN will not assist the Crown in fully discharging its Duty to Consult. The IAAC requires Nations, as the best sources of information on their rights, to provide input into the process. This is only appropriate when sufficient capacity is provided by the Proponent, no capacity has been provided to CCN from Alamos Gold. Further, no capacity funding to ensure meaningful involvement in the development and implementation of mitigation measures has been provided to date.

This must be addressed through accountable conditioning of the approval. In our meeting on December 1, 2022, we asked why the Agency cannot require conditions which result in reporting by the proponent on capacity funding provision. The Agency committed to providing us with a detailed response to this item. We require this prior to issuance of the Decision Package to the Minister.

We direct the Agency to the *Policy Context: Indigenous Participation in Impact Assessment of the Practitioner's Guide*, the IAA maintains that:<sup>2</sup>

*"What meaningful consultation looks like in practice will depend on the specific circumstances of each case, but may include, as a minimum:*

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<sup>2</sup> <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/policy-indigenous-participation-ia.html>



- *early notification about the project and process;*
- *education and awareness of the impact assessment process;*
- *sufficient time to participate in consultation, including in the review of technical information;*
- *the ability for the input provided to lead to project changes, or to influence decisions;*
- *timely responses to questions and concerns raised by Indigenous groups during consultations;*
- *the ability to participate in the process, supported by reasonable funding, where appropriate;*
- *two-way dialogue with Crown representatives with adequate authority to respond to concerns raised; and*
- *provision of reasons or rationale for decisions, demonstrating that concerns were considered and how they factored into the decision.”*

We look forward to the Agency's response in relation to condition reporting on capacity funding with this Policy Context in mind.

#### **Indigenous Environmental Monitoring Committee**

The proponent has identified an Indigenous Environmental Monitoring Committee as a key mitigation measure specifically related to Indigenous rights. If, following an assessment of impacts to CCN rights, the Indigenous Environmental Monitoring Committee is deemed as an appropriate measure, CCN has no details from the proponent on how CCN could be involved or whether capacity funding will be provided for the Indigenous Environmental Monitoring Committee.

Without the capacity to support a Nation member sitting on this committee, this mitigation measure is meaningless as the barriers to participation are too high. Based on the proponent's current efforts at engagement with CCN, capacity for involvement is anticipated to be extremely unlikely.

As well, if the Indigenous Environmental Monitoring Committee intends to allow for meaningful engagement with impacted Indigenous Nations, the committee must be more interactive rather than general an oversight process; therefore, CCN require involvement in the development of the Terms of Reference for this Committee.

#### **Combined Approach**

The views currently expressed by Indigenous Nations with the Report are not disaggregated and, therefore, it is difficult to evaluate whether CCN-specific concerns are properly captured. Nation concerns are grouped together in this Report and the comments appear generalized. It is inappropriate to assume that all Nations have the same conclusions of impacts to their rights. The Agency must provide clarity on how it understands the Project impacts per each affected Indigenous Group.

Guidance within the Practitioner's Guide to the Impact Assessment Act states that: "The desired outcome of ... dialogue is to reach a common understanding of the rights of the Indigenous



community that could be impacted by the designated project.”<sup>3</sup>

CCN confirms that a common understanding of rights has not been reached as the proponent has made no effort to understand CCN’s standpoint and the common understanding is lost in the combined approach from the Agency.

#### **Practitioner’s Guide Requirements**

The IAAC is limited by the adherence to *CEAA 2012* and takes a ‘frozen in time’ approach which is contrary to Canada’s purported commitment to reconciliation with Indigenous Nations.

The Practitioner’s Guide to the new *Impact Assessment Act 2019* (“IAA”) is readily available online and provides specific direction to proponents on how to navigate the federal regulatory process and how to proceed with Indigenous consultation. The previous *CEAA 2012* only required consideration of changes to health and socio-economic conditions, physical, and cultural heritage, the current use of lands and resources for traditional purposes, or any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance to Indigenous peoples. The new *Act* supports an assessment of project impacts to the rights held by Indigenous people as affirmed by Section 35 of the *Constitution Act, 1982*.

This new IAA process recommends that proponents collaborate with Indigenous groups to document representative Valued Component (VC) and Indigenous-led studies to meaningfully participate in the regulatory process. This approach should have been employed by Alamos or, at minimum, the Agency in order to properly assess impacts to Indigenous Rights instead of solely relying on *CEAA 2012*.

#### **Mitigation Measures**

The following two sentences must be decoupled as they imply that the proponent has sufficient mitigation measures to address impacts to Aboriginal and Treaty rights, a point which CCN disputes.

*“The Project may also result in residual environmental effects to species at risk, including from habitat loss and effects to wildlife health and mortality, and impacts to Aboriginal and treaty rights, including from loss or alteration of access to sites of traditional and cultural importance, and effects to the availability and quality of lands and resources of importance. The Proponent’s project planning and design incorporates measures to mitigate potential adverse environmental effects of the Project. Mitigation measures include adherence to existing guidelines and regulations and planning to identify, control, and monitor environmental risks.”<sup>4</sup>*

There cannot be sufficient mitigation with out sufficient identification of impact – derived from sufficient engagement with CCN.

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<sup>3</sup> Page 9, Assessment of Potential Impacts on the Rights of Indigenous Peoples, <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-assessment-potential-impacts-rights-indigenous-peoples.html>

<sup>4</sup> Page iii, Executive Summary of the Draft Environmental Assessment Report



It is our view that Alamos Gold did not fulfill its regulatory requirements in relation to the Lynn Lake Gold Project due to a lack of engagement with CCN. These engagement steps are required by IAAC for the proponent and should be fulfilled prior to project approval.

Sincerely,

<Original signed by>

Chief Clarence Easter

CC:

<Email addresses removed>