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December 7, 2022

Minister Steven Guilbeault House of Commons Ottawa, ON, K1A 0A6 Email: steven.guilbeault@parl.gc.ca

### **Stephen McCarthy**

Senior Consultation Analyst, Prairie and Northern Region Email: Stephen.mccarthy@iaac-aeic.gc.ca

Dear Mr. Guilbeault and Mr. McCarthy,

# RE: Sayisi Dene First Nation Review of the Alamos Gold Inc. Lynn Lake Gold Project - Environmental Assessment Report and Potential Conditions

I am submitting this review letter, as the elected Chief, on behalf of the Council and Nation members of the Sayisi Dene First Nation ("SDFN"). Throughout the regulatory phases of this Project, Sayisi Dene First Nation has worked diligently to describe the impacts, issues and concerns which our Nation members have in relation to the Alamos Gold Inc. Project. Our spirituality and identities are rooted in our territory and we continue to strive to protect the air, land, water and wildlife to ensure future generations can continue to enjoy and practice our culture unimpeded.

We have reviewed the Impact Assessment Agency of Canada's ("IAAC") Environmental Assessment Report (the "Assessment Report") for the Alamos Gold Inc. ("Alamos") Lynn Lake Gold Project ("the Project"). In the development of the Assessment Report the IAAC relied on Indigenous Nation's comments submitted on the record, while consulting with other government agencies, such as Environment and Climate Change, and the Department of Fisheries and Oceans.

As listed in the IAAC's Practitioner's Guide to the Impact Assessment Act ("Practitioner's Guide") Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples, "consulting and collaborating with Indigenous peoples is a key component of assessing impacts on the rights of Indigenous peoples."<sup>1</sup> Without collaboration from Indigenous Nations, such as SDFN, in the development of the Assessment Report there is no assurance that the information presented in the Assessment Report accurately communicates or represents the perspective of Indigenous Nations, which is described in our comments below.

<sup>&</sup>lt;sup>1</sup> Page 2, The Assessment of Potential Impacts on the Rights of Indigenous Peoples

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### CEAA 2012 Limitations

Further to the above, the Assessment Report is limited by adherence to the *Canadian Environmental Assessment Act,* 2012 ("CEAA 2012"), which focuses on current use of lands and resources for traditional purposes<sup>2</sup>, and is contrary to Canada's evolving relationship with Indigenous peoples. Current use of lands and resources for traditional purposes can be viewed an expression of the exercise of a right, not the right itself.

Rights are more expansive than just the exercise of harvesting rights and can include rights such as the right to govern and steward the environment. SDFN has a set of rules or authority structures which set SDFN apart. These rules include hunting rules, territoriality, a justice system, traditional family law and traditional government. These aspects of SDFN rights cannot be assessed through the narrow view of current use of lands and resources for traditional purposes. This approach is contrary to Canada's purported approach to reconciliation. Reconciliation is meant to end the disempowerment and assimilationist policies and practices of the government; it is meant to be fluid and evolving to address Nations where they are and with what they require from the government; however, the adherence to CEAA, 2012 in this case means the assessment does not allow for a collaborative consideration of the full scope of SDFN rights.

The IAAC's Practitioner's Guide provides guidance on how to assess potential impacts on the rights of Indigenous peoples for designated projects under the *Impact Assessment Act, 2019* ("IAA"). SDFN believes that the Practitioner's Guide presents a better method of assessing impacts on SDFN's rights, therefore, SDFN will be referring to it's methods throughout this letter.

### Report Structure

In general, the Assessment Report lists overall biophysical related concerns and input that SDFN has communicated throughout engagement in this Project. However, the IAAC has lumped, and overgeneralized specific concerns provided by multiple Nations.

This has led to limitations in the discussion of potential Project impacts to our rights. SDFN has a unique traditional territory and relationship to the Project area for practicing our rights, which has both economic and cultural components. This is not understood when broadened or grouped with other Nations. This aggregated approach is illustrated when IAAC refers to the severity of impact for the right to cultural practice which varies from low to moderate per Nation; however, it is not specified which Nation is categorized as 'low' and which is categorized as 'moderate'. It would be inappropriate to assume that all Nations experience the same severity of impacts for their rights and this must be disaggregated to ensure the specific severity can be understood.

We refer you to the Pacific Northwest Project, which was initially filed with the Agency in 2014, where the IAAC (formally the Canadian Environmental Assessment Agency) recognized the importance of describing assessed effects to *each* potentially affected Indigenous group, as their rights and interests are not uniform. The IAAC required the proponent to disaggregate Nation information:

<sup>&</sup>lt;sup>2</sup> As seen throughout the Report, examples found on page ii: "the current use of lands and resources for traditional purposes by Indigenous Peoples", and the entirety of section 7.4 Indigenous Peoples – Current Use of Lands for Traditional Purposes, Physical and Cultural Heritage, and Sites of Significance.

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"The following information on the effects of the Project on Aboriginal peoples remains outstanding. As such, conclusions regarding impacts to rights for each group cannot be properly evaluated. A detailed description of the analysis and conclusions related to impacts to rights and related interests, taking into account the information provided to satisfy other related outstanding information requirements, <u>must be provided for each potentially-affected Aboriginal group</u>."<sup>3</sup>

The IAAC must adhere to direction previously placed on proponents and disaggregate the Assessment Report with more detailed information as provided by each Nation.

### Incorrect Information

Further to the issue with the Assessment Report structure, SDFN identified errors throughout the Report that must be corrected:

- On page 173, SDFN is incorrectly listed as a Treaty 10 signatory rather than Treaty 5 signatory. Confirmation is required to ensure this error did not influence Agency determinations; and,
- The IAAC has stated that "The Agency agrees Sayisi Dene First Nation's recommendation that the Proponent monitor effects to wetlands within the PDAs and LAAs that may be affected by the Project during all phases, particularly during decommissioning/closure, to ensure that wetlands recover from indirect project effects, as predicted, and to inform the need for contingency measures."<sup>4</sup> This is incorrect. SDFN has requested involvement/participation in post-approval monitoring in partnership with the Proponent, not simply Proponentled monitoring. This request to the Proponent remains outstanding.

### Mitigation Measures

SDFN holds rights in the Project area identified in Treaty No. 5. (broadly, harvesting rights). SDFN also holds rights that have been practiced since before European contact. While these rights may currently be distorted by the federally imposed system of governance (e.g., the *Indian Act*), they persist and include a right to self-governance and self-determination, a right to cultural well-being and integrity, and a right to language, etc.

The IAAC concluded that the Project is not likely to cause significant adverse effects on current use of lands and resources for traditional purposes. The IAAC reached this conclusion through its analysis of the proponent's assessment, mitigation measures, monitoring and follow-up measures, alongside information provided by Indigenous nations on the record. In the Report, the IAAC states that "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

<sup>&</sup>lt;sup>3</sup> August 14, 2014, letter from the CEAA to the Proponent

<sup>&</sup>lt;sup>4</sup> Page 86 of the Draft Environmental Assessment Report

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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>5</sup>

SDFN contests that the Proponent has proposed sufficient mitigation measures to address impacts to our Section 35 rights and interests. The Assessment Report lists multiple mitigation measures that have been proposed by the IAAC and the Proponent, without involving or collaborating with SDFN, again, circumventing the governance of SDFN. Despite multiple requests, the key mitigation measures and follow-up programs lack sufficient specificity to provide assurance to SDFN of their continued involvement post-approval. Further, there has been no commitment from Alamos that any SDFN proposed mitigation measure will be applied, including hiring of SDFN members, investment in the community of Tadoule Lake, and provision of capacity funding for participation in the Indigenous Environmental Advisory Committee.

The paragraph referenced above from the Report must clarified, as it currently infers that mitigation measures adequately address impacts to our rights and interests which is yet to be determined. Additionally, when there is low or limited information or uncertainty, assessors and regulators must take a cautionary approach, especially where there is degree of risk and "apply the precautionary principle and consider uncertainty and risk of irreversible harm."<sup>6</sup> Under the precautionary principle, where uncertainty exists, it must not be used as a reason to preclude or postpone actions to prevent harm, such as it has been in this case. Despite acknowledging moderate risks, and levels of uncertainty,<sup>7</sup> there has been limited engagement by the proponent on potential mitigation measures to address impacts to SDFN rights following the submission of the SDFN Report. SDFN requires commitment that SDFN will be involved, post-approval, in a meaningful way to ensure the proposed mitigation is meaningful, proportional and with SDFN interests in mind.

### Post-Construction Monitoring

Further to the issues with mitigation measures mentioned above, monitoring is listed as a mitigation measure, but it is meaningless unless the Proponent provides capacity funding for involvement; particularly in relation to the Indigenous Environmental Monitoring Committee.<sup>8</sup> This involvement in monitoring programs is enshrined within the United Nations Declaration on the Rights of Indigenous Peoples Article 29.1, which states that "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination." Further, condition 15 of the NGTL West Path Delivery 2023 Project approval is to support the ongoing review of NGTL filings by Indigenous peoples and could be successfully adapted to ensure capacity funding is provided and is reasonable for involvement in the IEAC. The condition states:

<sup>&</sup>lt;sup>5</sup> Page iii of the Draft Environmental Assessment Report

<sup>&</sup>lt;sup>6</sup> Principle 4 of the Framework: Implementation of the Sustainability Guidance

<sup>&</sup>lt;sup>7</sup> The IAAC acknowledges many instances of uncertainty. An example can be found on page 245-246 of the Draft Environmental Assessment Report where the IAAC states: "Recognizing that uncertainty remains regarding the location, nature, and suitability of habitat offsets to counterbalance project-related fish habitat losses or alteration, the Agency is of the view that the Proponent's commitment to collect additional baseline data to support offsetting quantifications and the commitment to continue to work with Fisheries and Oceans Canada and Indigenous Nations to develop appropriate habitat offsets would address this uncertainty."

<sup>&</sup>lt;sup>8</sup> In a letter to Alamos, dated July 15, 2022, SDFN requested that the "Proponent confirm that SDFN will be engaged with in the development, implementation and participation of the Surface Water Monitoring and Management Plan ("SWMMP"), Aquatic Effects Monitoring Plan ("AEMP"), Vegetation and Weed Management Plan ("VWMP"), explicitly, and other monitoring and management plans not listed above." This request has not been fulfilled and was not mentioned in the Report.

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NGTL must file with the CER, at least 45 days prior to commencing construction, a capacity-funding report that describes NGTL's support for Indigenous peoples to review NGTL's filings related to conditions. The report should include:

a) A list of potentially affected Indigenous peoples that were offered capacity funding to support the review of NGTL's conditions filings;

b) A list of the conditions that potentially affect ted Indigenous peoples are interested in reviewing;

and

c) A summary of any outstanding concerns raised by Indigenous peoples regarding NGTL's offer of funding to support review of filings by Indigenous peoples, including a description of how these concerns have been or will be addressed by NGTL, or a detailed explanation of why these concerns will not be addressed by NGTL.

A condition of approval similar to the one mentioned above is required to ensure the Proponent is accountable to the regulator and Indigenous groups in relation to capacity funding, including:

- Lists of Indigenous Groups that were offered capacity funding to support post-approval activities and reviews such as the Indigenous Environmental Monitoring Committee;
- Lists of post-approval consultation activities and reviews which affected Indigenous Groups are interested in participating in; and,
- A summary of any outstanding concerns raised by Indigenous Groups regarding the proponents offer of capacity funding to support post-approval consultation and reviews including a description of how these concerns were addressed by the proponent and/or a detailed explanation of why these concerns will not be addressed.

Please see the attached Appendix for a full list of SDFN's suggestions for edits to, or additional Project approval conditions.

### SDFN's Valued Component of Cultural Landscape, Governance, and Stewardship

As defined in SDFN's Impact Assessment ("SDFN Report") for this Project, SDFN's Valued Component ("VC") of Cultural Landscape includes the ability for SDFN's culture and identity (including cultural practices, language, transmission of culture, connection to lands, oral history, sacred and ceremonial sites etc.) to be maintained and to thrive without threats."<sup>9</sup> This VC is linked and dependent on the practice of harvesting and SDFN's VC of Governance and Stewardship; which includes the ability for SDFN to act as stewards of our lands and resources within SDFN traditional territory and to ensure future generations have abundant resources to maintain SDFN way of life.

In the Assessment Report, the IAAC has expressed their "view that the severity of project impacts to governance rights would be low to moderate and reversible following reclamation of the Gordon and MacLellan site PDAs."<sup>10</sup> SDFN does not agree that the severity of impacts would be low. The life of the Project through to reclamation is an expected 30

<sup>&</sup>lt;sup>9</sup> Page 76 of SDFN's Impact Assessment Report for this Project

<sup>&</sup>lt;sup>10</sup> Page 177 of the Draft Environmental Assessment Report

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years for the MacLellan site, and 25 years for the Gordon Site, meaning it would span approximately 10 governance cycles for SDFN. This also means the Project will span more than one generation for SDFN harvesters and land users. There is an entire generation of SDFN members whose rights will be permanently impacted in the project area. This will impact the ability of SDFN to transmit culture/identity to the next generation.

Impacts to governance and stewardship must be mitigated by imposing regulatory oversight in post-approval capacity funding for SDFN participation in post-approval monitoring, further details are provided Appendix A.

We hope through your consideration of this input, that the Assessment Report is sufficiently amended to reflect the outstanding items we have raised and that this information can inform your overall decision on this Project.

Sincerely, <original signed by>

Chief Yassie

CC Lynn Lake IAAC General Iaac.lynn-lake.aeic@canada.ca



# Appendix A

### Sayisi Dene First Nation Comments on Potential Conditions under the Canadian Environmental Assessment Act, 2012 for the Alamos Gold Inc. Lynn Lake Project

The below condition review is divided into two topics to facilitate discussion, suggested amendments to proposed conditions, as well potential additional conditions. These are included sequentially based on the IAAC Potential Conditions document.

### 2 General Conditions, Consultation, Condition 2.3.2

**Condition Text as Proposed by the IAAC** "provide all information available and relevant to the scope and the subject matter of the consultation and a reasonable period of time agreed upon with the parties being consulted, not to be less than 15 days, to prepare their views and information;"

#### Suggested Amendment

provide all information available and relevant to the scope and the subject matter of the consultation and a reasonable period of time agreed upon with the parties being consulted, not to be less than **30** days, to prepare their views and information;

#### Rationale

Indigenous Nations such as Sayisi Dene First Nation require sufficient time to receive, review, and provide comment on information relevant to the scope and subject matter of consultation. A minimum of 30 days allows for this.

#### 2 General Conditions, Follow-up Program, Condition 2.5

**Condition Text as Proposed by the IAAC** 

"The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, determine, as part of the development of each follow-up program and in consultation with the parties being consulted during the development, the following information, unless otherwise specified in the condition:"

#### Suggested Amendment

The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, determine, as part of the **collaborative** development of each follow-up program and in consultation with **Indigenous groups and any other** parties being consulted during the development, the following information, unless otherwise specified in the condition:

#### Rationale

The condition must explicitly reference consultation with Indigenous groups as part of the development of follow-up programs and not have open language to allow for exclusions.

2 General Conditions, Follow-up Program, NEW CONDITION, 2.5.7
Condition Text as Proposed by the IAAC
N/A
Suggested Amendment
Opportunities for Indigenous group involvement.
Rationale
Involvement in post approval activities for Indigenous groups must be specifically referenced to ensure they are a requirement.

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## 2 General Conditions, Follow-up Program, Condition 2.6

Condition Text as Proposed by the IAAC

"The Proponent shall update the information determined for each follow-up program pursuant to condition 2.5 during the implementation of each follow-up program, at the minimum frequency determined pursuant to condition 2.5.3 and in consultation with the parties being consulted during the development of each follow-up program."

#### Suggested Amendment

The Proponent shall update the information determined for each follow-up program pursuant to condition 2.5 during the implementation of each follow-up program, at the minimum frequency determined pursuant to condition 2.5.3 and in consultation with Indigenous groups and any other parties being consulted during the development of each follow-up program.

#### Rationale

The condition must explicitly reference consultation with Indigenous groups as part of the implementation of followup programs and not have open language to allow for exclusions.

### 2 General Conditions, Follow-up Program, Condition 2.7

#### Condition Text as Proposed by the IAAC

"The Proponent shall provide details of the follow-up programs referred to in conditions 3.12, 3.13, 3.14, 3.15, 4.6, 6.4, 6.5, 6.6, 8.2, 9.8 and 11.2, including the information determined for each follow-up program pursuant to condition 2.5, to the Agency and to the parties being consulted during the development of each follow-up program prior to the implementation of each follow-up program. The Proponent shall also provide any update made pursuant to condition 2.6 to the Agency and to the parties being consulted during the development of each follow-up program within 30 days of the follow-up program being updated."

#### **Suggested Amendment**

The Proponent shall provide details of the follow-up programs referred to in conditions 3.12, 3.13, 3.14, 3.15, 4.6, 6.4, 6.5, 6.6, 8.2, 9.8 and 11.2, including the information determined for each follow-up program pursuant to condition 2.5, to the Agency and to **Indigenous groups and any other** parties being consulted during the development of each follow-up program prior to the implementation of each follow-up program. The Proponent shall also provide any update made pursuant to condition 2.6 to the Agency and to **Indigenous groups and any other** parties being consulted during the development of each follow-up program within 30 days of the follow-up program being updated.

#### Rationale

The condition must explicitly reference consultation with Indigenous groups as part of the implementation of followup programs and not have open language to allow for exclusions.



#### 2 General Conditions, Annual Reporting, NEW CONDITION, 2.10.4 (INSERTED) Condition Text as Proposed by the IAAC

N/A

#### Suggested Amendment

2.10.4 for conditions set out in this document for which consultation is a requirement, provide a list of Indigenous Groups that were offered capacity funding to support provision of views and consideration of information.

2.10.4.1 for conditions set out in this document for which consultation is a requirement, provide a list of consultation activities and reviews which Indigenous Groups are interested in participating in; and

2.10.4.2 for conditions set out in this document for which consultation is a requirement, provide a summery of any outstanding concerns raised by Indigenous groups regarding the Proponents offer of funding to support consultation and reviews, including a description of how these concerns were addressed by the Proponent and/or a detailed explanation of why these concerns will not be addressed by the Proponent.

#### Rationale

Involvement in post approval activities are often funded to a lesser degree, and Indigenous groups ability to request and/or dispute these funding amounts is lessened without regulatory oversight. This condition will ensure the Proponent is transparent with both Indigenous groups and the regulator with ongoing capacity discussions.

This condition is based on language from Condition 15 within the Canadian Energy Regulator Report for the NOVA Gas Transmission Ltd. Application for the NGTL West Path Delivery 2023 Project.

### 2 General Conditions, Information Sharing, Condition 2.13

Condition Text as Proposed by the IAAC

"The Proponent shall publish on the Internet, or any medium which is publicly available, the annual reports and the executive summaries referred to in conditions 2.9 and 2.10, the reports related to accidents and malfunctions referred to in conditions 11.6.4 and 11.6.5, the accident and malfunction communication plan referred to in condition 11.7, the schedules referred to in conditions 12.1 and 12.2, and any update or revision to the above documents, upon submission of these documents to the parties consulted in the respective conditions. The Proponent shall keep these documents publicly available for 25 years following the end of operation, or until the end of decommissioning of the Designated Project, whichever comes first. The Proponent shall notify the Agency and Indigenous groups in writing of the availability of these documents within 48 hours of their publication."

#### **Suggested Amendment**

The Proponent shall publish on the Internet, or any medium which is publicly available, the annual reports and the executive summaries referred to in conditions 2.9 and 2.10, the reports related to accidents and malfunctions referred to in conditions 11.6.4 and 11.6.5, the accident and malfunction communication plan referred to in condition 11.7, the schedules referred to in conditions 12.1 and 12.2, and any update or revision to the above documents, upon submission of these documents to the parties consulted in the respective conditions. The Proponent shall keep these documents publicly available for 25 years following the end of operation, or until the end of decommissioning of the Designated Project, whichever comes first. The Proponent shall notify the Agency and Indigenous groups in the method and timing identified in Condition 2.4 of the availability of these documents within 48 hours of their publication.

#### Rationale

This condition must adhere to the requirements and need to Indigenous groups.

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### 2 General Conditions, Information Sharing, Condition 2.14

#### **Condition Text as Proposed by the IAAC**

"When the development of any plan is a requirement of a condition set out in this document, the Proponent shall submit the plan to the Agency prior to construction, unless otherwise required through the condition."

#### Suggested Amendment

When the development of any plan is a requirement of a condition set out in this document, the Proponent shall submit the plan to the Agency **and Indigenous groups** prior to construction, unless otherwise required through the condition.

#### Rationale

To ensure ongoing involvement of Indigenous groups throughout post-approval, this specification must be added.

#### 2 General Conditions, Change to the Designated Project, Condition 2.16

Condition Text as Proposed by the IAAC

"If the Proponent is proposing to carry out the Designated Project in a manner other than described in condition 1.7, the Proponent shall notify the Agency in writing in advance. As part of the notification, the Proponent shall provide:"

### **Suggested Amendment**

If the Proponent is proposing to carry out the Designated Project in a manner other than described in condition 1.7, the Proponent shall notify the Agency **and Indigenous groups** in writing in advance. As part of the notification, the Proponent shall provide:

#### Rationale

To ensure ongoing involvement of Indigenous groups throughout post-approval, this specification must be added.

#### 2 General Conditions, Change to the Designated Project, Condition 2.17

**Condition Text as Proposed by the IAAC** 

"The Proponent shall submit to the Agency any additional information required by the Agency about the proposed change(s) referred to in condition 2.16, which may include the results of consultation with Indigenous groups and relevant authorities on the proposed change(s) and environmental effects referred to in condition 2.16.1 and the modified or additional mitigation measures and follow-up requirements referred to in condition 2.16.2."

#### Suggested Amendment

The Proponent shall submit to the Agency any additional information required by the Agency about the proposed change(s) referred to in condition 2.16, which **must** include the results of consultation with Indigenous groups and relevant authorities on the proposed change(s) and environmental effects referred to in condition 2.16.1 and the modified or additional mitigation measures and follow-up requirements referred to in condition 2.16.2.

### Rationale

While the Duty to Consult occurs along a spectrum, even small changes require notification. Therefore, consultation with Indigenous groups are required for any proposed change.



### 3 Fish and Fish Habitat, Condition 3.1

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and to the satisfaction of Fisheries and Oceans Canada and in consultation with Indigenous groups, and implement an offsetting plan to mitigate residual effects to fish and fish habitat associated with the carrying out of the Designated Project. The Proponent shall share the proposed plan with Indigenous groups and the Indigenous Environmental Advisory Committee, as identified in condition 6.3, at least 30 days prior to formal submission to Fisheries and Oceans Canada, and submit the approved offsetting plan to the Agency prior to implementation."

#### **Suggested Amendment**

The Proponent shall develop, prior to construction and to the satisfaction of Fisheries and Oceans Canada and in consultation with Indigenous groups **as per parameters defined within Condition 2.4**, and implement an offsetting plan to mitigate residual effects to fish and fish habitat associated with the carrying out of the Designated Project. The Proponent shall share the proposed plan with Indigenous groups and the Indigenous Environmental Advisory Committee, as identified in condition 6.3, at least 30 days prior to formal submission to Fisheries and Oceans Canada, and submit the approved offsetting plan to the Agency prior to implementation.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

#### 3 Fish and Fish Habitat, Condition 3.2

#### Condition Text as Proposed by the IAAC

"The Proponent shall, for any fish habitat offsetting measure proposed in any offsetting plan referred to in condition 3.1 that may cause adverse environmental effects not considered in the environmental assessment, develop and implement, following consultation with Indigenous groups and relevant authorities, measures to mitigate those effects. The Proponent shall submit these measures to the Agency prior to construction and implement them through decommissioning."

#### Suggested Amendment

The Proponent shall, for any fish habitat offsetting measure proposed in any offsetting plan referred to in condition 3.1 that may cause adverse environmental effects not considered in the environmental assessment, develop and implement, following consultation with Indigenous groups **as per parameters defined within Condition 2.4**, and relevant authorities, measures to mitigate those effects. The Proponent shall submit these measures to the Agency prior to construction and implement them through decommissioning.

#### Rationale



### 3 Fish and Fish Habitat, Condition 3.8

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, measures to protect fish and fish habitat when undertaking activities in or near water, and in a manner that complies with any authorization issued under the Fisheries Act for the Designated Project. The Proponent shall implement these measures during all phases of the Designated Project. In doing so, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, measures to protect fish and fish habitat when undertaking activities in or near water, and in a manner that complies with any authorization issued under the Fisheries Act for the Designated Project. The Proponent shall implement these measures during all phases of the Designated Project. In doing so, the Proponent shall:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

#### 3 Fish and Fish Habitat, Condition 3.9

#### Condition Text as Proposed by the IAAC

"The Proponent shall consult with Indigenous groups, prior to the salvage and relocation of fish conducted pursuant to condition 3.8.1, to identify opportunities and determine their interest in participating in the salvage and relocation of fish."

#### **Suggested Amendment**

The Proponent shall consult with Indigenous groups as per parameters defined within Condition 2.4, prior to the salvage and relocation of fish conducted pursuant to condition 3.8.1, to identify opportunities and determine their interest in participating in the salvage and relocation of fish.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 3 Fish and Fish Habitat, Condition 3.11

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, and implement and maintain during all phases of the Designated Project, measures to control erosion and sedimentation within the Project development areas in a manner consistent with the Fisheries Act and its regulations, and taking into account Environment and Climate Change Canada's Environmental Code of Practice for Metal Mines, and Fisheries and Oceans Canada's Measures to Protect Fish and Fish Habitat. The Proponent shall submit these measures to the Agency before implementing them. Measures shall include the use of:"

#### **Suggested Amendment**

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, and implement and maintain during all phases of the Designated Project, measures to control erosion and sedimentation within the Project development areas in a manner consistent with the Fisheries Act and its regulations, and taking into account Environment and Climate Change Canada's Environmental Code of Practice for Metal Mines, and Fisheries and Oceans Canada's Measures to Protect Fish and Fish Habitat. The Proponent shall submit these measures to the Agency before implementing them. Measures shall include the use of:

#### Rationale



### 3 Fish and Fish Habitat, Condition 3.12

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as they pertain to adverse environmental effects of the Designated Project on water quality, taking into account Environment and Climate Change Canada's Metal Mine Technical Guidance for Environmental Effects Monitoring. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as they pertain to adverse environmental effects of the Designated Project on water quality, taking into account Environment and Climate Change Canada's Metal Mine Technical Guidance for Environmental Effects Monitoring. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 3 Fish and Fish Habitat, Condition 3.13

Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as they pertain to adverse environmental effects of the Designated Project on water quantity. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups **as per parameters defined within Condition 2.4**, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as they pertain to adverse environmental effects of the Designated Project on water quantity. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:

### Rationale



### 3 Fish and Fish Habitat, Condition 3.14

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to determine the effectiveness of the mitigation measures and verify the accuracy of the environmental assessment predictions identified in Volume 2 Chapter 10 of the Environmental Impact Statement as they pertain to adverse environmental effects of the Designated Project on fish and fish habitat, taking into account Environment and Climate Change Canada's Metal Mine Technical Guidance for Environmental Effects Monitoring. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to determine the effectiveness of the mitigation measures and verify the accuracy of the environmental assessment predictions identified in Volume 2 Chapter 10 of the Environmental Impact Statement as they pertain to adverse environmental effects of the Designated Project on fish and fish habitat, taking into account Environment and Climate Change Canada's Metal Mine Technical Guidance for Environmental Effects Monitoring. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 3 Fish and Fish Habitat, Condition 3.14.3

#### Condition Text as Proposed by the IAAC

"identify, in consultation with Indigenous groups as per parameters defined within Condition 2.4, Fisheries and Oceans Canada and any other relevant authorities, fish species to monitor, including species of cultural importance to Indigenous groups, and highly sensitive fish species. Species shall include lake sturgeon (Acipenser fulvescens), burbot (Lota lota), northern pike (Esox lucius), lake whitefish (Coregonus clupeaformis), and white sucker (Catostomus commersonii); and"

#### Suggested Amendment

identify, in consultation with Indigenous groups, Fisheries and Oceans Canada and any other relevant authorities, fish species to monitor, including species of cultural importance to Indigenous groups, and highly sensitive fish species. Species shall include lake sturgeon (Acipenser fulvescens), burbot (Lota lota), northern pike (Esox lucius), lake whitefish (Coregonus clupeaformis), and white sucker (Catostomus commersonii); and

#### Rationale



### 3 Fish and Fish Habitat, Condition 3.15

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as they pertain to acid rock drainage and metal leaching into the receiving environment from the Project development areas, including from the mine rock storage areas, ore stockpiles, and the tailings management facility, as described in Volume 1 Chapter 5 of the Environmental Impact Statement. The Proponent shall implement the follow-up program through all phases of the Designated Project. In doing so, the Proponent shall:"

#### **Suggested Amendment**

The Proponent shall develop, prior to construction and in consultation with Indigenous groups **as per parameters defined within Condition 2.4**, and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as they pertain to acid rock drainage and metal leaching into the receiving environment from the Project development areas, including from the mine rock storage areas, ore stockpiles, and the tailings management facility, as described in Volume 1 Chapter 5 of the Environmental Impact Statement. The Proponent shall implement the follow-up program through all phases of the Designated Project. In doing so, the Proponent shall:

#### Rationale

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### 4 Migratory Birds, Condition 4.2.2

#### Condition Text as Proposed by the IAAC

"establishing, prior to construction and in consultation with Indigenous groups, and relevant authorities, and maintaining, during vegetation clearing and site preparation activities, buffer zones around nests identified pursuant to condition 4.2.1. for migratory birds and birds that are listed species at risk, including for bank swallow (Riparia riparia), barn swallow (Hirundo rustica), common nighthawk (Chordeiles minor), evening grosbeak (Coccothraustes vespertinus), horned grebe (Podiceps auritus), olive-side flycatcher (Contopus cooperi), rusty blackbird (Euphagus carolinus), short-eared owl (Asio flammeus) and yellow rail (Coturnicops noveboracensis), unless not technically or economically feasible. The Proponent shall take into account Manitoba Conservation Data Centre's Recommended Development Setback Distances and Restricted Activity Periods for Birds by Wildlife Feature Type when establishing buffer zones. If not technically feasible, the Proponent shall develop and implement additional mitigation measures, including nest sweeps, in consultation with Indigenous groups, Environment and Climate Change Canada, and any other relevant authorities. The Proponent shall submit these measures to the Agency prior to their implementation."

#### Suggested Amendment

establishing, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, and maintaining, during vegetation clearing and site preparation activities, buffer zones around nests identified pursuant to condition 4.2.1. for migratory birds and birds that are listed species at risk, including for bank swallow (Riparia riparia), barn swallow (Hirundo rustica), common nighthawk (Chordeiles minor), evening grosbeak (Coccothraustes vespertinus), horned grebe (Podiceps auritus), olive-side flycatcher (Contopus cooperi), rusty blackbird (Euphagus carolinus), short-eared owl (Asio flammeus) and yellow rail (Coturnicops noveboracensis), unless not technically or economically feasible. The Proponent shall take into account Manitoba Conservation Data Centre's Recommended Development Setback Distances and Restricted Activity Periods for Birds by Wildlife Feature Type when establishing buffer zones. If not technically feasible, the Proponent shall develop and implement additional mitigation measures, including nest sweeps, in consultation with Indigenous groups as per parameters defined within Condition 2.4, Environment and Climate Change Canada, and any other relevant authorities. The Proponent shall submit these measures to the Agency prior to their implementation.

#### Rationale



### 4 Migratory Birds, Condition 4.6

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Environment and Climate Change Canada and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds and birds that are listed species at risk, including bank swallow (Riparia riparia), barn swallow (Hirundo rustica), common nighthawk (Chordeiles minor), evening grosbeak (Coccothraustes vespertinus), horned grebe (Podiceps auritus), olive-side flycatcher (Contopus cooperi), rusty blackbird (Euphagus carolinus), shorteared owl (Asio flammeus) and yellow rail (Coturnicops noveboracensis), their eggs and nests. The Proponent shall implement the follow-up program during all phases of the Designated Project."

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups **as per parameters defined within Condition 2.4**, Environment and Climate Change Canada and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds and birds that are listed species at risk, including bank swallow (Riparia riparia), barn swallow (Hirundo rustica), common nighthawk (Chordeiles minor), evening grosbeak (Coccothraustes vespertinus), horned grebe (Podiceps auritus), olive-side flycatcher (Contopus cooperi), rusty blackbird (Euphagus carolinus), shorteared owl (Asio flammeus) and yellow rail (Coturnicops noveboracensis), their eggs and nests. The Proponent shall implement the follow-up program during all phases of the Designated Project.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

#### 5 Current Use of Lands and Resources for Traditional Purposes, Condition 5.2.1

**Condition Text as Proposed by the IAAC** 

"identify, in consultation with Indigenous groups, the location of sites of traditional or cultural importance within or near the Project development areas;"

#### Suggested Amendment

identify, in consultation with Indigenous groups as per parameters defined within Condition 2.4, the location of sites of traditional or cultural importance within or near the Project development areas;

#### Rationale

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### 5 Current Use of Lands and Resources for Traditional Purposes, Condition 5.5

#### Condition Text as Proposed by the IAAC

"The Proponent shall identify statutory holidays and days of cultural importance in consultation with Indigenous groups. The proponent shall conduct blasting activities outside of the identified statutory holidays and days of cultural importance in order to mitigate the adverse effects of blasting on the current use of lands and resources for traditional purposes by Indigenous groups, unless required for safety reasons."

#### Suggested Amendment

The Proponent shall identify statutory holidays and days of cultural importance in consultation with Indigenous groups **as per parameters defined within Condition 2.4**. The proponent shall conduct blasting activities outside of the identified statutory holidays and days of cultural importance in order to mitigate the adverse effects of blasting on the current use of lands and resources for traditional purposes by Indigenous groups, unless required for safety reasons.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 5 Current Use of Lands and Resources for Traditional Purposes, Condition 5.6

#### Condition Text as Proposed by the IAAC

"The Proponent shall use measures other than broadcast spraying when applying herbicides within the Project development areas to mitigate effects to plant species used for traditional purposes by Indigenous groups, unless not technically or economically feasible."

#### Suggested Amendment

The Proponent shall use measures other than broadcast spraying when applying herbicides within the Project development areas to mitigate effects to plant species used for traditional purposes by Indigenous groups, <del>unless not technically or economically feasible</del>.

#### Rationale

Economic feasibility should not be used as a reason to mitigate effects to plant species used for traditional purposes.

### 5 Current Use of Lands and Resources for Traditional Purposes, Condition 5.7 and 5.7.1

#### Condition Text as Proposed by the IAAC

"5.7 The Proponent shall undertake, in consultation with Indigenous groups and relevant authorities, progressive reclamation of areas disturbed by the Designated Project. In doing so the Proponent shall:

5.7.1 Identify, in consultation with Indigenous groups, plant species native to the local assessment area and species of cultural importance to use for revegetation;"

#### Suggested Amendment

5.7 The Proponent shall undertake, in consultation with Indigenous groups **as per parameters defined within Condition 2.4** and relevant authorities, progressive reclamation of areas disturbed by the Designated Project. In doing so the Proponent shall:

5.7.1 Identify, in consultation with Indigenous groups as per parameters defined within Condition 2.4, plant species native to the local assessment area and species of cultural importance to use for revegetation;

#### Rationale

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#### 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.1

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, measures to mitigate emissions of dust and fugitive particulate within the Project development areas, taking into account the standards and criteria set out in the Canadian Council of Ministers of the Environment's Canadian Ambient Air Quality Standards and Manitoba's Ambient Air Quality Criteria. The Proponent shall implement these measures from construction through decommissioning. In doing so, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, measures to mitigate emissions of dust and fugitive particulate within the Project development areas, taking into account the standards and criteria set out in the Canadian Council of Ministers of the Environment's Canadian Ambient Air Quality Standards and Manitoba's Ambient Air Quality Criteria. The Proponent shall implement these measures from construction through decommissioning. In doing so, the Proponent shall:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.3

#### Condition Text as Proposed by the IAAC

"The Proponent shall establish, prior to construction and in consultation with Indigenous groups, and maintain during all phases of the Designated Project, an Indigenous Environmental Advisory Committee (IEAC) related to ongoing designated project activities, including land use planning, and the development and implementation of follow-up programs, and mitigation measures. The Proponent shall invite Indigenous groups to engage in all IEAC activities, and shall consult participating Indigenous groups on the development of Terms of Reference for the IEAC. The Proponent shall strive to reach consensus on the Terms of Reference with participating Indigenous groups. The Proponent shall submit the final Terms of Reference to the Agency. As part of the Terms of Reference, the Proponent shall include:"

#### **Suggested Amendment**

The Proponent shall establish, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and maintain during all phases of the Designated Project, an Indigenous Environmental Advisory Committee (IEAC) related to ongoing designated project activities, including land use planning, and the development and implementation of follow-up programs, and mitigation measures. The Proponent shall invite Indigenous groups to engage in all IEAC activities, and shall consult participating Indigenous groups, as per parameters defined within Condition 2.4, on the development of Terms of Reference for the IEAC. The Proponent shall strive to reach consensus on the Terms of Reference with participating Indigenous groups. The Proponent shall submit the final Terms of Reference to the Agency. As part of the Terms of Reference, the Proponent shall include:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient. Particularly as this is a key mitigation measured used by the proponent and agency.

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6 Health and Socio-Economic Conditions of Indigenous Peoples, NEW CONDITION

Condition Text as Proposed by the IAAC N/A

#### Suggested Amendment

6.3.3.4 provide a list of Indigenous Groups that were offered capacity funding to support involvement in the IEAC.

6.3.3.5 provide a list of activities and reviews which Indigenous Groups are interested in participating in through the IEAC; and

6.3.3.6 provide a summery of any outstanding concerns raised by Indigenous groups regarding the Proponents offer of funding to support participation in the IEAC, including a description of how these concerns were addressed by the Proponent and/or a detailed explanation of why these concerns will not be addressed by the Proponent.

#### Rationale

Involvement in post approval activities are often funded to a lesser degree, and Indigenous groups ability to request and/or dispute these funding amounts is lessened without regulatory oversight. This condition will ensure the Proponent is transparent with both Indigenous groups and the regulator with ongoing capacity provision.

This condition is based on language from Condition 15 within the Canadian Energy Regulator Report for the NOVA Gas Transmission Ltd. Application for the NGTL West Path Delivery 2023 Project.

# 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.3.4

Condition Text as Proposed by the IAAC

"the means by which the Proponent shall evaluate, in consultation with Indigenous groups, the Terms of Reference throughout construction and operation to determine whether administrative or management improvements are required to increase the efficiency and effectiveness of the IEAC."

#### **Suggested Amendment**

the means by which the Proponent shall evaluate, in consultation with Indigenous groups as per parameters defined within Condition 2.4, the Terms of Reference throughout construction and operation to determine whether administrative or management improvements are required to increase the efficiency and effectiveness of the IEAC.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient. Particularly as this is a key mitigation measured used by the proponent and agency.

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### 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.4

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Health Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment as it pertains to adverse environmental effects of changes to the quality of air and country foods on the health of Indigenous Peoples, taking into account available traditional knowledge provided by Indigenous groups related to current use of lands and resources for traditional purposes. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the implementation of the follow-up program, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, Health Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment as it pertains to adverse environmental effects of changes to the quality of air and country foods on the health of Indigenous Peoples, taking into account any available traditional knowledge provided by Indigenous groups either as part of the regulatory phase or during post approval activities as per parameters defined within Condition 2.4 related to current use of lands and resources for traditional purposes. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the implementation of the follow-up program, the Proponent shall:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient. Particularly as this is a key mitigation measured used by the proponent and agency.

#### 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.5

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, in consultation with Indigenous groups, and implement a follow-up program related to the adverse environmental effects on the current use of lands and resources and socio-economic conditions caused by the Designated Project, including the quantity and quality of resources obtained through harvesting, fishing, hunting or trapping activities and the socio-economic impacts of those changes to verify the accuracy of the environmental assessment and to determine the effectiveness of the mitigation measures implemented to address those effects. The Proponent shall implement the follow-up program during all phases of the Designated Project."

#### Suggested Amendment

The Proponent shall develop, in consultation with Indigenous groups as per parameters defined within Condition 2.4, and implement a follow-up program related to the adverse environmental effects on the current use of lands and resources and socio-economic conditions caused by the Designated Project, including the quantity and quality of resources obtained through harvesting, fishing, hunting or trapping activities and the socio-economic impacts of those changes to verify the accuracy of the environmental assessment and to determine the effectiveness of the mitigation measures implemented to address those effects. Where there are gaps within this knowledge, the Proponent will work with the Indigenous group as per parameters defined within Condition 2.4 to collect additional information. The Proponent shall implement the follow-up program during all phases of the Designated Project.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

Additionally, in some cases there are gaps within the project specific harvesting information which may require additional data collection to ensure mitigation is effectively tracked.

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### 6 Health and Socio-Economic Conditions of Indigenous Peoples, Condition 6.6

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to Designated Project effects on Indigenous groups relating to noise and vibration. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4 and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to Designated Project effects on Indigenous groups relating to noise and vibration. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall: Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

# 7 Physical and Cultural Heritage and Structures, Sites or Things of Historical, Archaeological, Paleontological or Architectural Significance, Condition 7.1

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups, and relevant authorities, and implement, during all phases of the Designated Project, an archaeological and heritage resource management plan for any structures, sites or things of historical, archaeological, paleontological or architectural significance discovered within the Project development areas. As part of the archaeological and heritage resource management plan the Proponent shall:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, and implement, during all phases of the Designated Project, an archaeological and heritage resource management plan for any structures, sites or things of historical, archaeological, paleontological or architectural significance discovered within the Project development areas. As part of the archaeological and heritage resource management plan the Proponent shall:

#### Rationale



### 9 Species at Risk, Condition 9.1

#### Condition Text as Proposed by the IAAC

"The Proponent shall conduct, prior to construction and in consultation with Indigenous groups and relevant authorities, pre-construction surveys within the Project development areas to identify northern leopard frog (Lithobates pipiens) breeding timing and habitat, little brown myotis (Myotis lucifugus) and northern myotis (Myotis septentrionalis) maternal roosting sites and hibernacula sites, wolverine (Gulo gulo) denning habitat, and woodland caribou (Rangifer tarandus caribou) calving habitat and calf-rearing periods."

#### Suggested Amendment

The Proponent shall conduct, prior to construction and in consultation with Indigenous groups as per parameters defined within Condition 2.4 and relevant authorities, pre-construction surveys within the Project development areas to identify northern leopard frog (Lithobates pipiens) breeding timing and habitat, little brown myotis (Myotis lucifugus) and northern myotis (Myotis septentrionalis) maternal roosting sites and hibernacula sites, wolverine (Gulo gulo) denning habitat, and woodland caribou (Rangifer tarandus caribou) calving habitat and calf-rearing periods.

#### Rationale

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9 Species at Risk, Condition 9.5
Condition Text as Proposed by the IAAC
"The Proponent shall, during all phases of the Designated Project in consultation with Indigenous groups, Environment and Climate Change Canada and any other relevant authorities, develop and implement measures to mitigate adverse effects from the Designated Project on woodland caribou (Rangifer tarandus caribou) and its habitat. These measures shall be submitted to the Agency prior to implementation, and shall include:
9.5.1 conducting site clearing activities outside of the woodland caribou (Rangifer tarandus caribou) calving and calf-rearing period identified pursuant to condition 9.1;
9.5.2 giving preference to avoiding the destruction or alteration of habitat over minimizing the destruction or alteration of habitat over restoring altered or destroyed habitat on-site, and to restoring altered or destroyed habitat on-site, and to restoring altered or destroyed habitat on-site over offsetting for habitat that must be removed as a result of Designated Project activities; and
9.5.3 as part of progressive reclamation in condition 5.7, removing and reclaiming all linear features, including the distribution line right of way and access roads, when they are no longer required for the Designated Project."
Suggested Amendment
The Proponent shall, during all phases of the Designated Project in consultation with Indigenous groups as per parameters defined within Condition 2.4, Environment and Climate Change Canada and any other relevant authorities, develop and implement measures to mitigate adverse effects from the Designated Project on woodland caribou (Rangifer tarandus caribou) and its habitat. These measures shall be submitted to the Agency prior to implementation, and shall include:
9.5.1 conducting site clearing activities outside of the woodland caribou (Rangifer tarandus caribou) calving and calf-rearing period identified pursuant to condition 9.1;
9.5.2 giving preference to avoiding the destruction or alteration of habitat over minimizing the destruction or alteration of habitat over restoring altered or destroyed habitat on-site, and to restoring altered or destroyed habitat on-site over offsetting for habitat that must be removed as a result of Designated Project activities; and
9.5.3 as part of progressive reclamation in condition 5.7, removing and reclaiming all linear features, including the distribution line right of way and access roads, when they are no longer required for the Designated Project.
Rationale
The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.



### 9 Species at Risk, Condition 9.6

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall participate in regional initiatives related to the management of adverse impacts on woodland caribou (Rangifer tarandus caribou), from construction through the end of operations, at the request of the relevant authorities responsible for these initiatives. In doing so, the Proponent shall determine, in consultation with Indigenous groups and relevant authorities, how the Proponent shall participate. Regional initiatives shall include:"

#### Suggested Amendment

The Proponent shall participate in regional initiatives related to the management of adverse impacts on woodland caribou (Rangifer tarandus caribou), from construction through the end of operations, at the request of the relevant authorities responsible for these initiatives. In doing so, the Proponent shall determine, in consultation with Indigenous groups **as per parameters defined within Condition 2.4** and relevant authorities, how the Proponent shall participate. Regional initiatives shall include:

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

#### 9 Species at Risk, Condition 9.7

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall monitor, during all phases of the Designated Project, woodland caribou (Rangifer tarandus caribou) and wolverine (Gulo gulo) usage of the Project development areas, and provide monitoring results to Indigenous groups, Environment and Climate Change Canada, Manitoba Environment, Climate and Parks and any other relevant authorities."

#### **Suggested Amendment**

The Proponent shall monitor, during all phases of the Designated Project, woodland caribou (Rangifer tarandus caribou) and wolverine (Gulo gulo) usage of the Project development areas, and provide monitoring results to Indigenous groups as per parameters defined within Condition 2.4, Environment and Climate Change Canada, Manitoba Environment, Climate and Parks and any other relevant authorities.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

#### 9 Species at Risk, Condition 9.8

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, in consultation with Indigenous groups and relevant authorities, and implement during all phases of the Designated Project, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to Designated Project effects on habitat, health and mortality for northern leopard frog (Lithobates pipiens), little brown myotis (Myotis lucifugus), northern myotis (Myotis septentrionalis), wolverine (Gulo gulo) and woodland caribou (Rangifer tarandus caribou)."

#### **Suggested Amendment**

The Proponent shall develop, in consultation with Indigenous groups **as per parameters defined within Condition 2.4** and relevant authorities, and implement during all phases of the Designated Project, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to Designated Project effects on habitat, health and mortality for northern leopard frog (Lithobates pipiens), little brown myotis (Myotis lucifugus), northern myotis (Myotis septentrionalis), wolverine (Gulo gulo) and woodland caribou (Rangifer tarandus caribou).

#### Rationale

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### 10 Independent Environmental Monitor, Condition 10.2

#### **Condition Text as Proposed by the IAAC**

"The Proponent shall require the independent environmental monitor to report to the Agency and Indigenous groups, in writing, prior to or concurrent with reporting to the Proponent about the implementation of any condition set out in this document during construction and operation. The Proponent shall require the independent environmental monitor to report the information to the Agency at a frequency and in a format determined in consultation with the Agency."

#### Suggested Amendment

The Proponent shall require the independent environmental monitor to report to the Agency and Indigenous groups **as per parameters defined within Condition 2.4**, in writing, prior to or concurrent with reporting to the Proponent about the implementation of any condition set out in this document during construction and operation. The Proponent shall require the independent environmental monitor to report the information to the Agency at a frequency and in a format determined in consultation with the Agency.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

## 11 Accidents and Malfunctions, Condition 11.1.2

#### Condition Text as Proposed by the IAAC

"design, prior to construction and in consultation with Indigenous groups, Environment and Climate Change Canada, and any other relevant authorities, the Designated Project taking into account projections of climate change-related changes in the frequency and severity of extreme precipitation events, and available Indigenous knowledge of historic flooding in the local assessment areas."

#### Suggested Amendment

design, prior to construction and in consultation with Indigenous groups **as per parameters defined within Condition 2.4**, Environment and Climate Change Canada, and any other relevant authorities, the Designated Project taking into account projections of climate change-related changes in the frequency and severity of extreme precipitation events, and available Indigenous knowledge of historic flooding in the local assessment areas.

#### Rationale

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### 11 Accidents and Malfunctions, Condition 11.2

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, in consultation with Indigenous groups and relevant authorities, and implement, a follow-up program related to the effects of changing permafrost on the Designated Project for current use of lands by Indigenous groups. As part of the follow-up program, the Proponent shall identify the type, degree and extent of residual permafrost remaining following construction within the Project development areas to be incorporated into project design."

#### Suggested Amendment

The Proponent shall develop, in consultation with Indigenous groups as per parameters defined within Condition 2.4, and relevant authorities, and implement, a follow-up program related to the effects of changing permafrost on the Designated Project for current use of lands by Indigenous groups. As part of the follow-up program, the Proponent shall identify the type, degree and extent of residual permafrost remaining following construction within the Project development areas to be incorporated into project design.

#### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 11 Accidents and Malfunctions, Condition 11.3

#### Condition Text as Proposed by the IAAC

"The Proponent shall consult, prior to construction, Indigenous groups and relevant authorities on the measures to be implemented to prevent accidents and malfunctions, including the likelihood, modes of failure and consequences of a dam breach."

#### Suggested Amendment

The Proponent shall consult, prior to construction, Indigenous groups **as per parameters defined within Condition 2.4** and relevant authorities on the measures to be implemented to prevent accidents and malfunctions, including the likelihood, modes of failure and consequences of a dam breach.

### Rationale

The Duty to Consult occurs along a spectrum, and therefore, requirements of each Indigenous group must be defined to ensure an acceptable approach is taken by the Proponent. Otherwise, 'consultation' may be interpreted as basic notification, which is insufficient.

### 11 Accidents and Malfunctions, Condition 11.4

### Condition Text as Proposed by the IAAC

"The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, an accidents and malfunctions response plan in relation to each phase of the Designated Project. The accident and malfunction plan for each phase shall include:"

#### Suggested Amendment

The Proponent shall develop, prior to construction and in consultation with Indigenous groups **as per parameters defined within Condition 2.4** and relevant authorities, an accidents and malfunctions response plan in relation to each phase of the Designated Project. The accident and malfunction plan for each phase shall include:

#### Rationale

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# 11 Accidents and Malfunctions, Condition 11.7

#### Condition Text as Proposed by the IAAC

"The Proponent shall develop, in consultation with Indigenous groups, a communication plan for accidents and malfunctions occurring in relation to the Designated Project. The Proponent shall develop the communication plan prior to construction and shall implement and keep it up to date during all phases of the Designated Project. The plan shall include:"

### Suggested Amendment

The Proponent shall develop, in consultation with Indigenous groups as per parameters defined within Condition 2.4, a communication plan for accidents and malfunctions occurring in relation to the Designated Project. The Proponent shall develop the communication plan prior to construction and shall implement and keep it up to date during all phases of the Designated Project. The plan shall include:

#### Rationale