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**RE: Peter Ballantyne Cree Nation Review of the Impact Assessment Agency's
Environmental Assessment Report for the Alamos Gold Inc. Lynn Lake Project**

We write to provide Peter Ballantyne Cree Nation's ("PBCN") comments on the Impact Assessment Agency's (the "Agency") draft Environmental Assessment Report (the "Draft Report") and Potential Conditions for Alamos Gold Inc.'s (the "Proponent") Lynn Lake Project (the "Project").

PBCN has remained committed throughout this environmental assessment process to engaging with the Proponent and the Agency to evaluate the severity of potential impacts to our interests and rights under Section 35 of the *Constitution Act*, 1982 ("Section 35 Rights"). Indeed, as the Agency is aware, PBCN has attempted to engage with the Proponent on numerous occasions in the review process to identify Project impacts on PBCN's Section 35 Rights and interests without ongoing Proponent capacity funding to do so. PBCN's participation in this review process has been thereby inhibited. If the Crown has chosen to heavily rely on the Proponent to meet its Constitutional obligations to PBCN and other Indigenous groups, then the Crown must ensure Indigenous groups are provided capacity by the Proponent to adequately understand and respond. The Proponent has not done so throughout this review. Furthermore, as we have expressed throughout the review process, PBCN maintains significant concerns about the nature of the potential impacts on our Section 35 Rights that have been identified and the sufficiency of the mitigations that have been proposed.

PBCN has organized its comments on the Draft Report and Potential Conditions below under the following subjects: (1) the consideration of Indigenous rights; (2) the draft report structure; (3) the consideration of impacts; (4) the sufficiency of proposed mitigations; (5) comments on the Potential Conditions; and (6) additional conditions to be included.

1. Consideration of Indigenous Rights

As an overarching comment, in our view, the Draft Report's assessment of impacts is notably limited by the application of the repealed legislation, the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012"). While PBCN understands that the Proponent filed their Project Description prior to the Act's repeal, it is important to note that, with respect to Indigenous rights, the requirements of CEAA 2012 focus primarily on the current use of lands and resources for traditional purposes.

Current use is but one expression of a right – specifically, the exercise of that right – and does not represent the totality of the right itself. For example, a hunting right is not constituted merely by the availability (quality and quantity) of species to harvest, but will also have economic components (such as cost, community trade, etc.) and cultural components (such as teaching, sharing, being on the land). By limiting the assessment to current use of lands and resources, the consideration of Indigenous rights as a whole is severely limited, including of PBCN's rights.¹

Relatedly, another result of the application of the process under CEAA, 2012, is that there has been no opportunity for collaborative development of the Draft Report. While the Agency relied on other government agencies, such as the Department of Fisheries and Oceans, there was no opportunity for collaborative input from PBCN or other Indigenous Nations whose territories and rights are potentially impacted by the Project. Rather, the Agency has only provided Indigenous Nations with the opportunity to submit comments through the review process and only 30 days to review and consult on the Draft Report and Potential Conditions (as stipulated under the CEAA 2012 process).

We submit that this is inconsistent with Canada's purported modern relationship with Indigenous peoples and the application of the *United Nations Declaration of the Rights of Indigenous Peoples Act*.² This relationship is correctly grounded in a recognition of rights and an understanding that Section 35 contains a "full box" of rights and recognition of inherent jurisdiction.³ Reconciliation is intended to end the disempowerment and assimilationist policies and practices of the government. The adherence to this limiting approach under CEAA, 2012 means the assessment fails to ensure for a collaborative consideration of Indigenous Nations' rights and interests.

2. Draft Report Structure

Throughout the Draft Report, the Agency has identified a number of PBCN's biophysical-related concerns and input that PBCN has communicated throughout the impact statement phase. However, throughout the Draft Report, and particularly in Appendix C, the Agency has aggregated and overgeneralized specific concerns provided by multiple Indigenous groups. This has resulted in a mischaracterization of identified potential Project impacts to PBCN rights.

For example, stewardship has been identified as an important valued component for PBCN in the Peter Ballantyne Cree Nation Supplemental Assessment Report (the "PBCN Report").⁴ Indeed, stewardship was specifically identified as an expression of PBCN inherent jurisdiction and laws. Despite this, in the Draft Report, stewardship is cursorily included as a component of "governance rights" and is referred to as "incidental to the exercise of rights."⁵ This fundamentally disconnects stewardship from the distinct description and importance emphasized by the findings of the PBCN Report.

¹ PBCN acknowledges that the Agency did request additional information from the Proponent within Information Request Round 1 Package 3 IR IAAC-202, which reflects the more holistic requirements under the *Impact Assessment Act*, 2019. However, in our view, the completion of this Information Request has been inadequate, particularly in relation to the severity of the potential impacts on PBCN Valued Components and the mitigation measures proposed to specifically address impacts to Indigenous rights. This comment is discussed further below under (3) and (4).

² *United Nations Declaration of the Rights of Indigenous Peoples Act*, SC 2021, c 14.

³ *Principles respecting the Government of Canada's relationship with Indigenous peoples*, p 3.

⁴ The PBCN Report was shared with the Agency on June 17, 2022.

⁵ At page 177 of the Draft Environmental Assessment Report.

Issues with the aggregated approach are further emphasized where the Agency repeatedly discusses the severity of impacts to rights in given areas as varying from low to moderate among several identified Indigenous groups. Through the current aggregated approach, it is unclear which Indigenous groups have been determined to experience a low impact and which have been determined to be likely to be subject to a moderate impact. This distinction must be clarified prior to the Draft Report being provided to the Minister of Environment and Climate Change.

We note that the requirement for a disaggregated approach is consistent with previous Agency direction. For example, in 2014, the Pacific Northwest Project submitted their Environmental Impact Statement and the impact statement was returned to that proponent for further disaggregation so that impacts to Indigenous groups could be sufficiently understood and evaluated. In a letter to that proponent, the Agency stated:

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, must be provided for each potentially-affected Aboriginal group.⁶

The Agency must similarly ensure that the Draft Report is displayed in a disaggregated manner, with more detailed information about the concerns and comments of individual Nations in order to facilitate the Minister's understanding of Nation-specific impacts and proposed mitigations.

3. Consideration of Impacts

The Agency has concluded that the Project is not likely to cause significant adverse effects on current use of lands and resources for traditional purposes. The Agency reached this conclusion through its analysis of the Proponent's assessment, mitigation measures, monitoring, and follow-up measures, alongside information provided by Indigenous groups on the record. It is noted within the Draft Report that the Agency provided Indigenous Nations with the opportunity to discuss concerns about the Project's potential impacts to Section 35 rights. On the basis of the Draft Report, it is clear that the Agency is relying heavily on the engagement completed by the Proponent with the Indigenous groups. We must emphasize, once again, that this engagement was not undertaken by the Proponent to identify impacts in a meaningful or expansive way. Rather, it was largely left for Indigenous groups to attempt to assess the impacts without adequate capacity funding and with limited-to-no discussion on specific mitigation measures to address the impacts that were identified (an issue discussed in the next section). Accordingly, in our view, the Agency has not sufficiently discharged its obligation to ensure that PBCN is meaningfully consulted with.

The Draft Report does include an acknowledgement that while impacts to availability and quality of resources are limited, that there may still be adverse impacts as a result of perceived effects. These adverse impacts are deemed low to moderate. However, this determination is noted without assessment of perceived effects by either the Proponent or the Agency. While the PBCN Report did discuss this concept, there was very limited engagement on this aspect by the Agency and the Proponent failed to engage with PBCN on this issue altogether.

In cases where there is such uncertainty about potential impacts then the precautionary principle

⁶ August 14, 2014 letter from the Canadian Environmental Assessment Agency to Pacific NorthWest LNG.

must be applied by assessors and regulators to ensure they are understood as much as possible. Moreover, mitigations must be developed to address the potential risks involved. The Proponent has declined to apply this precautionary principle in characterizing and addressing these uncertain impacts, but the Draft Report should be revised to do so.

Throughout the Draft Report, the Agency accepts nearly all of the Proponent's findings on impacts. This notably includes the assessment that all impacts and effects are reversible in decommissioning and post closure within a generation. The Draft Report and the Proponent have framed this timeframe positively. But this clearly constitutes impact inequity for PBCN and other neighbouring Indigenous Nations. Given the nature of Indigenous Nations' rights and interests and relationships with the land, our land users and governing bodies are likely to experience present and future impacts disproportionately compared to other potentially affected parties. PBCN wishes to note that a generation is generally considered to be approximately 20-30 years. That period also comprises approximately 6-8 election cycles for an Indigenous Nation's government. This means that effects of the Project will not be reversible for at least one and possibly several generations of harvesters – a timeframe that will also include multiple governance cycles for the individual Indigenous Nation. In PBCN's view, this disproportionality of impact was not adequately considered and addressed by the Proponent or in the Draft Report.

4. Sufficiency of Mitigations

In the Executive Summary, the Draft Report states that, "the Proponent's project planning and design incorporates measures to mitigate potential adverse environmental effects of the Project", and that "[m]itigation measures include adherence to existing guidelines and regulations and planning to identify, control, and monitor environmental risks."⁷ This statement should be qualified. As noted in PBCN's Response Letter to the Proponent's IR #2 Responses, the Proponent continually failed to work with PBCN to develop targeted mitigation for PBCN identified impacts, including those in the PBCN Report. Throughout the review process, the Proponent simply responded to PBCN's concerns and suggestions by stating that the Environmental Impact Statement is sufficient in that it is in conformity with the (lesser) legislative requirements under CEAA 2012.⁸

This response is both inappropriate and inadequate. Mitigation measures are meant to prevent, reduce or control adverse effects and to be targeted to all of the identified impacts that may negatively impact Indigenous rights. To the extent that this treatment is reflected in the Draft Report, in PBCN's view there are significant gaps remaining in mitigation development which could result in the residual effects to PBCN's rights being of a higher severity. This caveat should be noted and also be reflected in the significance determination in respect of the impact on those rights.

We also note that the Draft Report and Potential Conditions rely heavily on the establishment of the Proponent's proposed Indigenous Environmental Advisory Committee ("IEAC") as a form of mitigation for impacts on Indigenous rights. The IEAC is to include members of affected Indigenous Nations and is to be constituted "following approval of the Project by government and prior to construction of the Project."⁹ The Proponent has also noted plans of "developing environmental monitoring and management plans in collaboration with potentially affected

⁷ At page iii of the Draft Environmental Assessment Report.

⁸ Example found on Page 157 of the Appendix B Attachment of Alamos IAAC-R2 Responses.

⁹ IAAC-R2-79.

Indigenous Nations.”¹⁰

Despite multiple requests by Indigenous Nations,¹¹ details on the scope, structure, and funding of the IEAC have still not been provided by the Proponent. Even more disconcertingly, the Potential Conditions, as currently drafted, fail to require this detail and capacity funding for participation. PBCN understandably skeptical that the IEAC will be a sufficient or even meaningful mitigation measure, as currently required in the Potential Conditions. PBCN expect the Agency to enforce this Condition and hold the Proponent accountable. Notwithstanding this concern, although PBCN acknowledges that monitoring is an important measure for ensuring Indigenous rights are protected, it fails to provide direct mitigation to the more specific concerns identified by PBCN and referred to above.

5. Comments on Potential Conditions

In respect of the Potential Conditions themselves, there are a number instances where additional language must be included to clarify important Potential Conditions and to properly ensure compliance by the Proponent with the intent of those Potential Conditions. We note that these amendments are particularly critical given the identified lack of certainty about the Projects impacts on potentially impacted Indigenous Nations noted above.

To begin with, Condition 2.3.2 currently provides a timeframe of at least 15 days for affected parties to provide their views and information where the Proponent is required to consult. On the basis of the Proponent’s continued approach of mailing information to Indigenous groups, and particularly given the geographic location of most of the impacted Indigenous groups, 15 days is insufficient time for Indigenous Nations to receive the information, review it, and formulate a response – particularly given the ongoing failure of the Proponent to provide capacity funding for these activities. The minimum timeline in Condition 2.3.2 should be increased to a minimum of 30 days, but more time may be appropriate.

We also note that there are a variety of Conditions that do not specify consultation with Indigenous groups where, in our view, it should be included. Indigenous group is a defined term at 1.22 of the Conditions and includes PBCN. The Conditions must be amended to specifically reference Indigenous Groups wherever “parties being consulted” is used. As currently drafted, this lack of specificity is problematic as, on the basis of the Proponent’s engagement with Indigenous groups to date, they are likely to interpret the language in these instances to suit their interests rather than ensuring Indigenous groups are appropriately consulted with or notified in each instance. To this end, PBCN request that the following language be added for the Conditions identified (suggested language underlined for clarity):

- Condition 2.5: “...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...”
- Condition 2.6: “...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.”

¹⁰ IAAC-R2-04.

¹¹ As mentioned throughout the Response Materials, for example, in the Context and Rationale column of the Response Materials ID number IAAC-R2-03.

- Condition 2.7: "...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."
- Condition 2.14: "...submit the plan to the Agency and Indigenous groups prior to construction, unless otherwise required through the condition."
- Condition 2.16: "...shall notify the Agency and Indigenous groups in writing in advance. As part of the notification, the Proponent shall provide:"

Condition 2.4 requires that the proponent must discuss with each Indigenous group a consultation system to satisfy their ongoing consultation requirements, including: the method of notification; the type of information that will be shared; the period of time for seeking input; the process to be used to consider views and information presented; and the period of time to advise Indigenous groups of how their information was considered. This requirement should be directly referenced throughout the other Conditions, where appropriate, to ensure the Proponent adheres to each Indigenous group's unique needs. For example, this direct reference should be included in Condition 3.1, which we suggest should read:

- 3.1 The Proponent shall develop, prior to construction and to the satisfaction of Fisheries and Oceans Canada and in consultation with Indigenous groups, consistent with the requirements of Condition 2.4, and implement an offsetting plan to mitigate residual effects to fish and fish habitat...

This language should also be applied to Conditions: 2.13; Condition 3.1; Condition 3.2; Condition 3.8; Condition 3.9; Condition 3.11; Condition 3.12; Condition 3.13; Condition 3.14; Condition 3.14.3; Condition 3.15; Condition 4.2.2; Condition 4.6; Condition 5.2.1; Condition 5.5; Condition 5.7; Condition 5.7.1; Condition 6.1; Condition 6.3; Condition 6.3.4, Condition 6.4, Condition 6.5; Condition 6.6; Condition 7.1; Condition 9.1; Condition 9.5; Condition 9.6; Condition 9.7; Condition 9.8, Condition 10.2; Condition 11.1.2; Condition 11.2; Condition 11.3; Condition 11.4; and Condition 11.7.

Another notable example is Condition 6.5, which requires the Proponent to develop a follow-up program for adverse environmental effects on current use of lands and resources and the socio-economic conditions. Additional language must be added to this Condition to specify that the proponent will work with the Indigenous groups in compliance with the parameters defined in Condition 2.4 to collect the additional information required for the program.

6. Additional Required Conditions

PBCN is of the view that additional conditions must also be added to ensure that the Proponent continues to engage with and adequately provides capacity to potentially impacted Indigenous groups in order to ensure that their rights and interests are protected. To that end, PBCN requests that the following conditions be added:

- Proposed Potential Condition 2.5.7: Add to the Condition Listing "Opportunities for Indigenous group involvement." This is required as post approval activities for Indigenous

groups must be specifically referenced to ensure they are a requirement rather than a good governance procedure completed by the Proponent.

- Proposed Potential Condition 2.10.4:

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 summary 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.

This condition text 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. This language is intended to ensure that involvement for post-approval activities has oversight from the Agency. Post-approval activities may underfunded, even where the activities are required as part of the conditions. By adding these proposed conditions, it will ensure the proponent is transparent to both Indigenous groups and the regulator in respect of ongoing capacity funding and engagement.

- Proposed Potential Condition 6.3.3.4, 6.3.3.5 and 6.3.3.6:

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 summary 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.

As above, these additional conditions will ensure the proponent is transparent with both the regulator and Indigenous groups regarding the provision of ongoing capacity. Particularly as the IEAC is listed as a mitigation measure throughout the Draft Report.

7. Closing Comments

Participation in meaningful engagement and consultation with an iterative exchange of views is critical for developing a full understanding of the impacts to Indigenous rights and interests of significant development projects such as this Project. Throughout the pre-approval engagement

stage, PBCN has consistently expressed concerns related to impacts on our Section 35 Rights, and yet these comments and concerns were repeatedly largely dismissed or ignored by the Proponent. To a large extent, in our view, this disregard is currently reflected in the Draft Report and the Potential Conditions. PBCN therefore requests that the Agency address the comments set out above and include the amendments and conditions that have been listed in this letter.

If you have any questions or wish to discuss any of the comments above, please contact our Land Manager, Ted Merasty, at <Email address removed> We look forward to engaging with the Agency further in respect of any of these comments.

PBCN reserves the right to provide further comments, as it deems necessary.

Sincerely,

<Original signed by>

Ben Merasty, Executive Director, PBCN

Cc. PBCN Chief and Council
Ted Merasty, Land Manger, PBCN

Amisk Lake Deschambault Lake Kinoosao Pelican Narrows Prince Albert Sandy Bay Southend Sturgeon Landing
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