

# Beaverhouse

## FIRST NATION



**Beaverhouse First Nation  
Agnico Eagle Mines Limited, Upper Beaver Gold Project  
Impact Assessment Agency of Canada  
Potential Adverse Impacts Report**

CONFIDENTIAL

January 29, 2023

**TO:** Spencer Roth  
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**RE: Agnico Eagles Mines Limited, Upper Beaver Gold Project, Impact Assessment Agency of Canada, Potential Adverse Impacts Report [Reference Number: 82960]**

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Please find enclosed, the Potential Adverse Impacts Report (the “Report”), which provides a summary of potential adverse impacts of the Upper Beaver Gold Project (the “Project”) on Beaverhouse First Nation’s (“BHFN”) Aboriginal title and rights.

This Report is provided as part of the Impact Assessment Agency of Canada’s (the “IAAC”) impact assessment process. It provides initial comments on the potential adverse impacts of the Project to BHFN.

This Report, like the accompanying appendices, herein, contain **confidential information** to BHFN and are to be used for internal purposes only. The views, perspectives, and statements included within the Report and accompanying appendices, shall only be shared beyond BHFN and the IAAC with prior written approval of Chief and Council, and following the principles of OCAP.

The potential impacts to BHFN are evergreen and BHFN reserves the right to amend this Report at any time.

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## **Executive Summary**

Beaverhouse First Nation (“BHFN”) is a group of Anishinaabeg-Algonquin peoples whose Territory spans both Ontario and Quebec, as well as both sides of the height of land separating the watersheds of James Bay and the Ottawa River.

Pre-contact, their laws and government were regulated by life; reflected by the way of living in small, mobile groups. “Law” consisted largely of customary norms that tended to recognize personal and family autonomy through ties of actual and spiritual kinship; communal sharing of resources and possessions; flexible, consensual, community-based decision-making processes; and the necessity of spiritual balance with the natural environment.

BHFN’s laws and government did not cease upon the introduction of British law and institutions into what became Canada. On the contrary, their continuity was recognized, supported, and actively encouraged by colonial and imperial officials. This is seen by the executing of treaties with neighbouring First Nations.

Beaverhouse First Nation believes that its people are given the responsibility as caretakers of Mother Earth. This responsibility, as it relates to its Territory has been, and continues to be, negatively impacted by natural resource development that continues to consume, pollute, and degrade their lands and waters.

BHFN is not opposed to development. However, Beaverhouse First Nation **must be involved** in development decision making. BHFN’s involvement early on in the planning and assessment process is required by case law, as well as their own laws, so that BHFN can ensure that culturally specific sites (those of their ancestors) are preserved and protected in a way that is of an appropriate standard to Beaverhouse First Nation. This will ensure that any developmental activities being contemplated or conducted within BHFN’s Territory, are being done in a responsible and credible way that is consistent with BHFN’s laws, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the common law as it relates to Aboriginal law concepts of the duty to consult and accommodate and the Honour of the Crown.

Within this Potential Adverse Impacts Report (the “Report”), BHFN has outlined its history and background, as a First Nation, as well as the actual and potential impacts that the Upper Beaver Gold Project (the “Project”) has, and likely will have, to its Aboriginal title and rights. Furthermore, given the extent of other resource development projects within its Territory, BHFN will address the potential cumulative effects to its Territory.

Based on the Impact Assessment Agency of Canada’s (the “IAAC”) request to provide information on the potential adverse impacts of the Project to BHFN, the Report will also address these potential impacts as it relates to the following key themes:

- Exercise of BHFN’s Aboriginal and inherent rights;
- Health, Social, or Economic Conditions;
- Physical and Cultural Heritage;
- Current Use of Lands and Resources for Traditional Purposes;

- Structure, Site, or Thing that is of Historical, Archaeological, Paleontological, or Architectural Significance; and
- Consultation and Accommodation.

The Report also includes a number of appendices, which act as a reference only, to illustrate the geographical extent of the above noted themes, by way of a number of maps, which may assist the IAAC in understanding the close proximity of the Project to BHFN's Territory and the extent to which the Project, and other Agnico Eagle Mines Limited ("AEM") projects will impact BHFN.

## **Beaverhouse First Nation History and Background<sup>1</sup>**

### ***Historical Background***

BHFN is a group of Anishinaabeg-Algonquin people whose community is located near Kirkland Lake, Ontario. The Community is located on historic Indigenous travel routes between Lakes Timiskaming and Abitibi.

The traditional hunting grounds of the BHFN people span both Ontario and Québec, as well as both sides of the height of land separating the watersheds of James Bay and the Ottawa River. The Territory of the community has been used for well over 300 years. The area contains a number of sites of cultural value to the community, including sacred sites, gathering sites, heritage areas, harvesting areas, and structures. At the centre of their Territory is their village, Indian Point.

From nomadic beginnings, BHFN established a permanent settlement at the site of the present-day village, at the juncture of three major waterways. The village at Misema Lake, Misemakwish, is located on the Ontario side of the boundary at the northern extreme of the Ottawa River watershed, about 10 kilometres from the height of land.<sup>2</sup> This site is a long-established spring meeting ground for the Indigenous families of the area. According to Elders, the BHFN settlement<sup>3</sup> existed at least as far back as the wars between the Iroquois and the Algonkians in the mid-1600s. The site has been continually occupied since at least 1872.

The main economic activities of the Indigenous peoples of this area, historically, consisted of fishing, hunting, and trapping of small and large animals, especially caribou and moose. Family groups held commonly recognized family hunting territories and managed the resources of these areas during the winter months. Family groups gathered together during the summer when the increased availability of fish, plants, game, and other resources permitted a concentration of people in a small area.

The interconnected waterways draining into James Bay facilitated trade, social relations, and harvesting activities. K.C.A Dawson, an archaeologist, estimated that the northern bands harvested across a territory of between 1100 and 1300 kilometres.

With respect to the BHFN families, they met at the BHFN settlement each spring; returning from their winter trapping territories. The summer gatherings at the settlement served the functions of rekindling and solidifying inter-family relations, socializing children, and arranging marriages. The meetings also provided a means for individuals to resolve any conflicts that had arisen over the winter months, and to reaffirm traditional alliances.

According to community Elders, BHFN existed as early as the 17<sup>th</sup> century in its Territory. At this time, the population of BHFN was estimated to be approximately 500 people. This greatly declined by the late-19<sup>th</sup> century, due to the Iroquoian wars, epidemic, and disease.

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<sup>1</sup> Please note that the details of this section, and other historical sections noted throughout this Report, are from BHFN's Statement of Claim submitted to Canada and Ontario on July 5, 2018, and the associated Research Report.

<sup>2</sup> See Appendix A, Lake Names Map.

<sup>3</sup> The BHFN settlement at Indian Point will be referred to as either BHFN settlement or BHFN community throughout this Report.

As it relates to BHFN's Territory within the Abitibi region, there is evidence of pre-contact Indigenous occupation around the Misema River-Beaverhouse Lake chain. The Beaverhouse Lake area has special spiritual meaning to the First Nations peoples residing there, as demonstrated by "...the many spiritual, mythical, and religious sites in the area...", such as Mount Cheminis, Mount Kanasuta, the Mystery Rocks, and Beaverhouse Rock. These sites were, and are, viewed as sacred prayer sites by the BHFN, or are burial sites.

The Territory used and occupied by BHFN, past and present, runs from the head of Lake Timiskaming/Notre Dame du Nord to Larder Lake and Mount Kanasuta on the east, to roughly Watabeag Lake to the west; with Webster Lake being the centre of the trapping grounds. This Territory straddles the Ontario-Quebec border, as well as the height of land between Treaty 9 and the Robinson Huron Treaty.<sup>4</sup>

The Territory "...was shared on a seasonal basis, with different families using [the] same area at different times for different pursuits." Numerous burial sites, ceremonial sites, rock paintings, and trails are found throughout the Territory; a number leading to Indian Point. Cabins are also found throughout the area.

One BHFN Member noted that approximately 27 cabins were built at Beaverhouse settlement originally, which was the main village. Blueberries and wild rice were traditionally harvested in the Misema Lake and Grassy Lake areas, while raspberries were found at Webster Lake. One of the two main hunting areas, within Katrine Township, is still in use today. Much of the traditional harvesting grounds of the BHFN have been clear-cut by OMNR and third parties.

BHFN's Territory on the Ontario side was included within the boundaries of Treaty 9 in 1905. BHFN did not have a representative who signed Treaty 9.<sup>5</sup> As such, no reserve was set aside for BHFN, be it at Larder Lake, Beaverhouse Lake, or Misema Lake, even though a settlement existed there prior to, and following, the signing of Treaty 9. However, some BHFN Members appear on the Department of Indian Affairs' treaty annuity paylists of neighbouring First Nations, under Treaty 9 and the Robinson Huron Treaty. This was likely due to the depletion of game and fur-bearing animals resulting from the increased settlement of non-native miners and lumbermen in the area. As a result, the BHFN community is made up of both "status" and "non-status" Indians, as defined by the *Indian Act*.

An archaeological study concluded that the Beaverhouse area occupants migrated from neighbouring bands at North Timiskaming, Temagami, Sturgeon Falls, and Abitibi. Archaeological sites nearby, such as at Larder Lake, Howard Lake, and Lake Victoria, are attributed to the Beaverhouse people.

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<sup>4</sup> Please note that BHFN continues to map out its Territory and this reference is provided on a without prejudice basis.

<sup>5</sup> Treaty 9 was signed in 1905 at Osnaburgh, Fort Hope, Marten's Falls, English River, Fort Albany, Moose Factory, and New Post, and in 1906, the treaty was signed at Abitibi, Matachewan, Flying Post, New Brunswick House, and Long Lake #77. By this treaty, the Crown obtained jurisdiction over an extensive area of land in Northern Ontario bounded by the Albany River to the north, James Bay in the east, the northern boundary of the Robinson Treaties to the south, and the eastern boundary of Treaty 3 to the west.



An 1879 survey of the Moose River Basin, located Anishinaabe-speaking people around the height of land near Misema Lake. In 1901, two geological surveyors individually reported on Indian cabins and graveyards along Beaverhouse Lake and in the immediate vicinity. One of the surveyors provided sketches of local features that depicted Anishinaabe names, which indicates that he had contact with the local people.

The first recorded Chief at Beaverhouse, Tonene, traded at Fort Timiskaming until 1888, when he began trading at Fort Abitibi. He also ran an HBC depot at Kanasuta. In 1901, a geological surveyor met Tonene, noting that the Chief lived at the height of land.

The BHFN community numbered about 250 people in the late-19th century. This figure remained relatively stable until about 1914, when diseases took their toll, resulting in many deaths in the BHFN community and in the entire Abitibi region. The missionaries also commented on the epidemic, recording deaths in large numbers at the Abitibi Mission in 1906.

The early-20th century also saw the encroachment of the non-native population onto the traditional lands of BHFN for settlement and development purposes. Treaty 9 was negotiated by the government for the specific purpose of freeing up that portion of Northern Ontario for non-native settlement and the development of industries such as mining, lumbering, and trade.

The exploitation of natural resources became an important source of revenue for both the federal and provincial governments, as well as the private sector, into the early-20th century. In fact, many of the early explorations of the Beaverhouse area were made by prospectors and others. They entered onto the lands with a view to future development, including at the Project site.

A mining rush took place in the Beaverhouse area, where Beaverhouse Lake itself, contained outcrops of copper and iron. As early as 1901, there were reports of mining claims staked on the Beaverhouse Lake shores. Similarly, there were 13 mining and logging camps along the Beaverhouse Lake chain into the early-20th century. Claims were also staked at locations near Larder Lake.

An economic relationship quickly developed between these mining camps and BHFN, which involved the trading of goods and employment for the First Nation peoples, whose means of traditional subsistence was quickly diminishing due to the presence of these settlers.

With the discovery of gold on the northeast arm of Larder Lake in 1906, mining companies quickly established a footing in the area. The “discoverer” of this gold reported that a local Indigenous man named Chief Tonene, who hunted and had a cabin in the area, had shown him to the site.

In 1907, surveyor G.C. Rainboth noted the probable existence of valuable minerals in the Lake Opatika area. He also described the vast natural resources in the region, including fish, moose, caribou, marten, mink, otter, muskrat, lynx, and beaver.

By 1908, Larder Lake was a booming mining area and a site was planned for a town. A road was also opened. By 1920, however, the “gold rush” had tapered off. A number of companies did remain in the region, working in the Kirkland Lake and Larder Lake areas; mining gold and silver.

Related industrial developments continued into the second decade of the 20<sup>th</sup> century. Around 1911, an electric generating plant was established at the foot of Raven Falls on Larder Lake. This plant provided electricity to various properties, including what later became the Argonaut Mine, which is now the Upper Beaver Project site.

The Argonaut Mine was located at the juncture of the Misema River and Beaverhouse Lake. The company held a 30 year lease on its property, and continued to operate into the 1930s. Along with the Argonaut Mine, a number of other mining claims grew in the early-1920s. A total of approximately 8600 acres had been sold and approximately 9100 acres leased within the region during this time; none of which compensated BHFN for the taking up of their Territorial lands. Maps of the Misema Lake area at this time show the presence of Indian cabins.

Trails and portages traditionally used by BHFN continued to be maintained and used despite the growing non-native presence and the building of roads. At the same time, the Indigenous people of the area moved away from the growing towns. Lumbering and the cutting of forests in the early-20th century also forced the dispersal of Indigenous harvesters throughout their traditional hunting territories, so that they could continue to follow the game.

With the development of the mining industry in the area, rail lines and roads also progressed further north. By 1911, the Timiskaming and Northern Ontario Railway had reached Kirkland Lake. However, railway construction within the immediate vicinity of BHFN's Territory did not take place until 1923-24, when a railway spur was built through Larder Lake to the Ontario-Quebec border. A railway to Cheminis was constructed in 1925, which given the number of prospectors and settlers it brought, had a detrimental effect on the hunting activities and traditional way of life of BHFN.

By 1928, non-Indigenous settlement on the hunting territories of BHFN continued to grow. By 1939, the population of the Town of Larder Lake had reached 3000. Power lines were being constructed into Kirkland Lake and lead, zinc, and copper were found in the Ben Nevis area, which was where the Beaverhouse village was situated.

These developments affected the lives and economy of BHFN Members in many ways. As noted above, Ontario had set aside areas for mining, and in conjunction with that, areas of settlement. Ontario also set aside trapping areas, which did not coincide with BHFN's historic boundaries for that purpose.

The Province passed laws and regulations that allocated rights to the new settlers and mining interests, and created a registered trapline system. As Ontario took over jurisdiction of Crown lands, members of BHFN had to adjust to the increased settlement and development of their lands by obtaining employment through guiding, prospecting, and trapping. BHFN Members also continued to pursue their traditional economic activities, such as gathering, fishing, hunting, and land use patterns.

Into the 1920s, BHFN families, who traditionally used the trapping and hunting areas on either side of the provincial boundary, were required to reduce the size of their harvesting grounds and

remain within Ontario. According to oral history, certain families, such as the Wabies, Franks, Blacks, and Bains, settled in the Lowbush area as a result. BHFN also reports having traditionally used the area taken over for Esker Lake Provincial Park.

Even though BHFN Members had to adapt to the changes required by the Ontario and federal governments, BHFN's system of family hunting and trapping territories was successfully maintained into the late-1940s; after which, Ontario Ministry of Natural Resources ("OMNR") imposed registered lines upon the trappers of the Kirkland Lake area. This system "...was also forced upon the natives at the Beaverhouse community. The trapping areas which were traditionally the natives were given to other trappers, as well...some community members were forced to consolidate their gathering areas, and form one trap line."

This encroachment by non-Indigenous peoples on Indigenous trapping grounds and registered traplines south of the Beaverhouse area, including around the Opatatika River, was occurring as early as the 1930s.

#### ***Beaverhouse First Nation Settlement and the Ontario Ministry of Natural Resources***

BHFN remained officially unrecognized as a distinct community by the provincial government until the early-1960s. At that time, the Ontario Department of Lands and Forests undertook to investigate the settlement. Officials indicated that the village at Beaverhouse had been established "for some unknown reason" and was known as Indian Point or referred to as an Indian reserve. The associated buildings were located "...on Provincial Crown Land without authority."

Records from the Ontario Department of Public Welfare and MNR showed at least two Indigenous settlements or encampments in 1962; one at Beaverhouse Lake and one at the Argonaut Mine site. Provincial officials reported that two families lived at the Argonaut site, a third had just moved there, and a fourth was planning to move there. In correspondence from that year, the minister at the Holy Name Parish in Kirkland Lake noted that the occupation was likely temporary, as families continued to move around the townships. The minister did state, however, that the families meeting place in the spring and summer was at Beaverhouse Lake. Not surprisingly, by 1975, BHFN had not abandoned Indian Point. In fact, twelve cabins existed at the site.

Grand Council Treaty #9, now Nishnawbe Aski Nation (NAN), wrote to the OMNR in 1980, on behalf of BHFN because of a proposed development in their area. In the letter from Grand Council Treaty #9, it was noted that the community had no status or tenure and that the residents were concerned about how the proposed developments might affect their hunting, fishing, and trapping.

The letter stated that BHFN "...have been assured that nothing will happen and the Ministry will leave the community as it is." The letter went on to note that BHFN was now seeking "Tenure to their land, boundaries for their use, and benefits as a community for their people and future generations," as well as "a buffer zone around the community that will protect their hunting, fishing and trapping territories."

OMNR staff followed up with BHFN, stating that the concerns would be discussed with District staff. The Province at the time, considered the Beaverhouse village to be an "inhabited reserve" and a Band "...without defacto recognition," with a population of about 20 during the winter, 35

during the summer, and a further 30 not residing at the settlement, and having an area of approximately 47 hectares. The OMNR withdrew the 47 hectares of land under the provincial *Mining Act*; including approximately 11.3 hectares covering the village site, for the approximately half a dozen families residing there.

In May 1984, the Chiefs of Ontario passed a resolution requesting de facto recognition of NAN communities as bands for funding purposes, including Big Beaver House (Beaverhouse First Nation), described as "...communities...who have occupied their current locations for generations, and have never lived in, or been part of a "Parent" Band." The Chiefs of Ontario supported these communities' request for a land base and for recognition of their immediate needs for various programs and services.

In 1986, the OMNR defined BHFN's settlement as an "...inhabited reserve...without defacto recognition." Since the 1990s, however, the BHFN community has experienced significant impact from increased development on its traditional lands.

In 1987, there were 16 log houses in the community and that the "...only sources of income are seasonal trapping, old age security and town welfare." BHFN communicated to Ontario at that time that they had no intention of moving and made reference to a recent cottage development, indicating that they wanted to protect their land base now, but acknowledged that it was difficult to obtain reserve status.

In the early-1990s, the population of BHFN consisted of 11 permanent residents, 46 regular residents, 29 occasional residents, and 30 members who resided outside of the community. According to the 2006 Canada Census, there were 22 permanent dwellings in the village.

Although BHFN has never been recognized as a distinct band by the Government of Canada ("Canada"), BHFN has continued to occupy the lands and harvest resources around Misema Lake, as well as their settlement area and Territory.

#### ***Beaverhouse First Nation Leadership and Governance***

BHFN identifies itself as a "band" and recognizes its members as "band" members. The leadership is comprised of a Chief and Councillors who represent the community in all respects. However, because BHFN is considered by Canada as a "non-status" community, the First Nation is not able to access the programs and resources provided to recognized, status, First Nations; with the exception of some federal funding for health programs, which is supplemented by the provincial and local governments. The community-operated Band Office, located in Kirkland Lake, provides health and social services to its Members. Although, BHFN does not have "band status," as defined by the *Indian Act*, it has continued to occupy the lands and harvest resources around Misema Lake, its settlement area, and its Territory.

In 1990, BHFN became a member of the Nishnawbe Aski Nation (NAN), the political-territorial organization for the portions of Ontario covered by Treaty 9 and Treaty 5, as well as a member of the Wabun Tribal Council. BHFN is also a member of the Chiefs of Ontario.

Because BHFN has not received band recognition under the *Indian Act*, it continues to operate as a self-governing First Nation with its own laws and policies for its administration, as well as its members and leadership. In April 2022, as part of the acceptance of its Claim by Canada, a Recognition of Indigenous Rights and Self-Determination (“RIRSD”) Table was created for BHFN.

The purpose of the RIRSD Table, will be to establish a forum by which BHFN and Canada explore governance models. BHFN and Canada will discuss and negotiate its relationship, as well as negotiate around subject matters that BHFN wishes to assert its jurisdiction in, as it relates to self-government. Once mandates are achieved, BHFN and Canada will negotiate sectoral agreements that will make up “chapters” in its self-government agreement, such as core governance, lands (such as a land code), and waters, to name a few. This entire process will likely take many years to complete. BHFN and Canada will work jointly, to develop a renewed nation-to-nation and government-to-government relationship that advances reconciliation; engages in without prejudice and non-binding discussions to reach shared understandings on concepts of governance; innovative approaches to implementing BHFN’s rights in modern and evolving ways; and resolving BHFN’s land claim.

#### ***Beaverhouse First Nation Band Status and Treaty Reserve Claim***

BHFN has never formally entered treaty, nor has it surrendered its land to the Crown. BHFN **still maintains** Aboriginal title to the land and water within its Territory: BHFN is the **owner** of its land. Due to it not having taken Treaty in 1905/1906, nor in 1929/1930, BHFN submitted a claim (the “Claim”) to Canada and Ontario on July 5, 2018, regarding its band status and lack of having a reserve under Treaty 9.

The Claim is based on the failure of Canada and Ontario to recognize BHFN as an Indian band and subsequently, to treat with BHFN as a separate and distinct First Nation. BHFN asserts that it was, is, and always has been, a separate and distinct First Nation and that BHFN and its ancestors did not sign, nor subsequently adhere, to Treaty 9, nor any other treaty. As a result, BHFN asserts in its Claim that it retains Aboriginal title and rights to its Territory within the Treaty area, and further, that Canada and Ontario have unjustifiably interfered with its Aboriginal title and rights through the issuance of Crown patents, tenures, leases, and other forms of alienation to third parties, without recognizing BHFN as an Indian band under the *Indian Act*, as well as by not obtaining the consent of, nor providing compensation to, BHFN.

Due to the Federal Crown and the Provincial Crown owing an outstanding Treaty reserve obligation to BHFN, as part of the Claim, BHFN seeks a proper reserve based on the Treaty formula, as well as being entitled to damages for lost opportunity of use for the time that BHFN has been without reserve land that they are entitled to pursuant to the Treaty.

On April 19, 2022, BHFN’s Claim was accepted by Canada, who has now recognized BHFN as a First Nation collectivity having section 35 rights under the Canadian Constitution. BHFN has since this time, entered into discussions with Canada (“Crown-Indigenous Relations and Northern Affairs”) on finding a resolution to the Claim. As it relates to Ontario, BHFN’s Treaty Claim is still being assessed and BHFN hopes to hear from Ontario soon. BHFN is hopeful, however, that Ontario will accept its Claim, given that in the 1980s, after expressing concern to the OMNR

regarding the threat to BHFN lands and traditional hunting, fishing, and trapping rights, due to the growing significant impact of development on its lands, OMNR defined BHFN's village site as an "...inhabited reserve...without de facto recognition."

As it relates to its band status, on October 25, 2022, BHFN received a letter from an Indigenous Services Canada ("ISC") senior representative, approving the formal engagement of ISC with BHFN on a path towards band creation under the *Indian Act*. BHFN has continued to pursue discussions with ISC in the hopes of coming to an agreement on band creation in the near future.

As the IAAC knows, the Canadian Constitution recognizes and affirms the existence of Aboriginal and Treaty rights by way of section 35. The Supreme Court of Canada has held that the Crown owes a legal duty to consult Aboriginal People in the *Haida*, *Taku River*, and *Mikisew* cases.<sup>6</sup> The Crown is required to consult, and where appropriate, accommodate Indigenous Peoples prior to project approval or where the Crown contemplates conduct, real or constructive, that may impact Aboriginal and Treaty rights. The duty applies even where Aboriginal rights and title have been asserted but not yet proven. What is required is a credible claim; not proof that the claim will succeed.<sup>7</sup> This legal duty stems from the Crown's fiduciary duty toward Indigenous Peoples and is grounded in the Honour of the Crown.

While the legal duty to consult rests with the Crown, the Crown may delegate certain procedural aspects of consultation to third parties engaged in development activities that require government authorization and may impact constitutionally protected Aboriginal rights. Third parties or Proponents, must recognize the government to government relationship between Indigenous Peoples and the Crown. First Nations may not be treated as just another interest group.

BHFN asserts that, at a minimum, its Aboriginal rights include the following:

- The fundamental right to self-determination;
- The right to continue to be a distinct people living within its Territory;
- The right to be stewards of its Territory;
- The right to be meaningfully involved in decisions that will affect its Territory so that they can protect Mother Earth and their way of life for many generations to come;
- The right to preserve its heritage and maintain their culture, language, and way of life;
- The right to harvest for sustenance, cultural, and livelihood purposes;
- The right to be sustained by their lands, waters, and resources;
- The right to the exclusive use and occupation of their reserve lands, once established; and
- The right to the continued use of their Territory in its entirety.

BHFN's inherent and section 35 rights include the rights to hunt, fish, and trap, to harvest plants for food, medicine, and cultural activities, to protect and honour burial sites and other sacred and culturally significant sites, to sustain and strengthen their spiritual and cultural connection to the land, to protect the environment that supports their survival, to govern themselves, and to

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<sup>6</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v BC (Project Assessment Director)*, 2004 SCC 74; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

<sup>7</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73. Also see *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 7 WWR 633.

participate in all governance and operational decisions about how the land and resources will be managed, used, and protected.

### **Upper Beaver Gold Project and the Nature and Extent of Beaverhouse First Nation's Aboriginal Rights**

#### ***The Upper Beaver Gold Project***<sup>8</sup>

As the IAAC is aware, AEM is planning to develop, operate, and eventually reclaim an underground and open pit, gold and copper mine, at the Project site, located near Kirkland Lake, Ontario. The Project site is approximately 19 kilometres from BHFN's Band Office in Kirkland Lake, and is approximately 5 kilometres from the Beaverhouse settlement at Indian Point. The Project is **extremely proximate** to the BHFN community and is centred within BHFN's Territory. AEM acknowledges that BHFN is the proximate First Nation.

As has been outlined above, the Project site was the location of mining between 1912 and 1971. The new Project will expand on the original underground mine. The mine has some historic liabilities, including openings to the underground, building foundations, and mine wastes (rock and tailings).

Some of the expanded activities may include a new open pit mine partly at the existing York Lake location, routing the Misema River around the open pit, two new channels about, and new dykes to divert the Misema River. This also includes the dewatering of York Lake. Furthermore, potential expansion is being considered of the AEP facility on Beaverhouse Lake, as it relates to the fresh water pump house and potential use or expansion of the AEP effluent pipeline, which is anticipated to discharge to the Misema River downstream of the Ava Lake diversion channel and Victoria Creek confluence. AEM is also considering developing a sand and gravel pit nearby the Project site (location to be determined) to provide construction materials.

The Project site will operate continuously (24 hours per day, every day), year-round, except for periodic maintenance and similar operational disruptions. The overall life of the mine could extend 14 years or more.

Access to the Project site is by way of an existing road, the historic Indian Trail, which connects to Beaverhouse Road. AEM expects that a portion of the road will require re-routing around the open pit, with no public access. The preliminary route has been identified from the existing road near the Victoria Creek crossing, across the Misema River, between Ava Lake and Beaverhouse Lake, ending near the north shore of Beaverhouse Lake.

AEM has also indicated in its Detailed Project Description that possible synergies with the Project will be further assessed after the completion of the merger with Kirkland Lake Gold Ltd, and if conclusive, will be integrated to the Upper Beaver Project design and impact assessment, if required.

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<sup>8</sup> Please note that the details of this section of the Report are from the AEM Detailed Project Description Plain Language Summary.

***Potential Impacts to the Exercise of BHFN's Aboriginal and Inherent Rights***

The Project site and the historical mining that took place at the site, has impacted BHFN almost as long as Treaty 9 has been in place. As noted above, the property has been explored, staked, and mined since approximately 1912.

The impact of this property on the exercise of BHFN's Aboriginal and inherent rights is extensive. Put simply, if BHFN had signed Treaty in 1905/1906, it is **extremely likely that it would have selected the lands where the Project is located at or around the Misema River and Beaverhouse Lake as its reserve land**. The minerals would have been owned by BHFN. The fact that the Crowns missed BHFN at time of Treaty, resulted in an incredible economic loss to BHFN; not only through the loss of use of the lands but also to the resulting economic loss, to which BHFN could have utilized the lands.

This Project highly impacts all of BHFN's rights. In a recent survey of BHFN Members, whereby 23 Members completed the survey, 14 individuals stated that the Project will highly impact their lives. The same number of responses was noted to the question of the Project highly impacting their harvesting rights and practices within the Project area.

The Project area itself, historically, was home to more than ten families. These families were displaced by the historic mining that began in 1912, with one family remaining until their home was eventually torn down. BHFN continues to protect a small area of the Project site where this family lived. The other family sites are identified as archaeological sites.

As is noted above, BHFN's hunting, gathering, trapping, and ceremonial practices were impacted early on by mining activities in the area, and are, and will be, further impacted by the Project. After mining ceased in the 1970s, BHFN members began to use the lands again; slowly taking back some of these areas. Fears remained, and remain, to this day around some of the locations where BHFN Members might exercise their rights, due to contamination.

The Project area was used by Members historically, and currently, to hunt large and small game, fish multiple fish species within the lakes surrounding the community, as well as the Project site, trapping multiple species, snaring rabbits, ceremonies and teaching the younger generation these skills and ceremonies. Gathering plants and berries for medicines, food and ceremonial purposes, also take place, as well as wood collection for building and heating homes, and for ceremonial purposes. These activities occurred, and still occur, within the Project area. Historically, BHFN Members lived at the site where the historical mine, and now the Project, are located.

The community itself is accessible by boat in summer via Howard Lake and also Beaverhouse Lake, although this route is rarely used due to the road going directly through the mine property. This road is BHFN's "Indian trail," which historic maps show as a main travel route for BHFN and other Indigenous peoples.

In the winter, BHFN Members access the community by ski-doo, generally traveling across the frozen lake. Another way to travel to the community is via Larder Lake Station Road by truck and then by ATV or skidoo. This road leads to Kinabek Lake and a trail brings you straight into the community. This hardly gets accessed due to all of the mining activity from cumulative projects



in the area, and the impacts and safety concerns that they bring. Alternatively, the community can be accessed by air.

With all of the resource development taking place in the area around the community, as well as BHFN's Territory at large, privacy for ceremony and the ability to conduct ceremony or any other Aboriginal right without an "audience" is hard to come by.

As is noted above, BHFN has a number of sites that are of cultural importance, including sites located around Beaverhouse Lake, Sourdough Lake, and Ava Lake.<sup>9</sup> These areas are highly sacred areas and are greatly impacted by noise. Drill roads have opened up access to these sacred sites to the public, which further impacts the sacredness and privacy of these sites.

As BHFN maintains Aboriginal title – ownership – to the lands and waters within its Territory, from not being a recognized *Indian Act* status band, BHFN continues to be a self-governing First Nation. It operates under its own laws and policies, which guide its administration, as well as its Members and leadership.

As it relates to the potential impacts that may result from the residual and cumulative effects identified by AEM, it must be highlighted that historical mining operations have taken place in the Project area since 1912. This has created many adverse effects to the land, vegetation, and wildlife. Since the ceasing of mining operations in the 1970s, the lands were beginning to revegetate and wildlife was beginning to return to this location. This current Project will only set this regrowth back by decades. All of BHFN's Aboriginal rights are being impacted with this Project, as it is within the heart of BHFN's community.

The Project will alter BHFN's ancestral grounds. The dewatering of Ava/York Lakes will be greatly impacted; these lakes having significant archaeological value to BHFN. It is important to note, as well, that due to BHFN not being recognized as a status band under the *Indian Act*, the First Nation does not receive much funding to assist in programs and services. This further impacts BHFN's ability to undertake fulsome archaeological studies throughout the Project area specifically, but also its Territory at large. As funding is available, BHFN continues to undertake these studies, so as to identify important cultural values.

Despite the decline in using these lands by Members, Members continue to highly value the impacted lands and waters, and continue to see them as a foundation for BHFN's identity and future livelihood.

BHFN, to date, has logged approximately 197 sites within the immediate area of the Project that it designates as culturally and traditionally important. These sites include structures, areas of sacred/ceremonial importance, hunting, fishing, trapping, and gathering areas, archaeological sites, burial sites, sites of general use, and portages and trails.

Many sites have also been destroyed and knowledge of these areas lost. Lands Department staff believe that more sites could have been logged and subsequently protected, had they not been destroyed by industry.

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<sup>9</sup> See Appendix A for locations of these lakes.

As BHFN's Values Database is a living document, sites and stories of the area continue to be identified through research and/or interviews, as capacity currently allows and grows. However, many Members that held knowledge of these traditional areas within the Project area have passed on and the knowledge they held has been lost. This has also been due to the lack of a community centre, where Elders and Members can come together to share knowledge, due to BHFN not being a recognized First Nation and not having reserve land.

### **Potential Impacts of the Project on the Health, Social, or Economic Conditions of BHFN**

#### ***Hunting Territories of the Beaverhouse First Nation***

The Indian Point settlement was a traditional camping and gathering place for BHFN. BHFN was able to keep its hunting ground system intact, despite the numerous fluctuations in animal population distribution. By the 19<sup>th</sup> century, vaguely defined family harvesting grounds emerged, due to the diminution of big game, and a subsequent increase in relying on smaller game and fish. The typical amount of land comprising a hunting territory was anywhere from 50 to 100 square miles per family.

By the end of the 19<sup>th</sup> century, "...most of the Indians of Northern Ontario operated traplines within specified territories." According to one anthropologist, by the 1930s, the traditional hunting territory of the Indians in the Abitibi District had been reduced, from approximately 22,400 square miles, by almost 50 per cent, following encroachment by settlement, mining, roads, and railroads.

According to community Elders, the specific family trapping areas of ancestors of BHFN consisted of a primary communal hunting area at Shabouqayug, now the North arm of Misema Lake, as well as secondary hunting areas on which a family's traplines were situated. It is estimated that this hunting area may have covered at least 14 townships, and may have extended beyond the present day Ontario-Quebec border. Present "...research shows that 5 clans shared this land use area."

Family hunting territories were the main geographical focus of economic activity for the ancestors of BHFN. Chief Tonene's grounds, for example, extended "...into the Quebec province at least to Kanasuta."

By the latter half of the 19<sup>th</sup> century, government interest in surveying lands in the northern portions of Ontario and Quebec became apparent. In 1873, a surveyor with the Geological Survey of Canada, explored the area between Lake Timiskaming and Lake Abitibi. He traveled the area around the height of land, making notes on the geological description of the region. The boundary line between Ontario and Quebec was surveyed in 1875.

Beginning in the 1900s, several surveys of Northern Ontario and Quebec were undertaken by the federal and provincial governments. The purpose of these surveys was largely economic; that is, the governments' intentions were to survey the land to determine the extent of its resources and its suitability for future settlement.

In 1901, provincial geological surveyor, Willet G. Miller, reported on the area between Lake Timiskaming and the height of land, noting the presence of cabins, an "Indian burying ground,"

Aboriginal people in the vicinity of Beaverhouse Lake, and “an Indian’s tent” on what is now Victoria Lake. Geological surveyor, W.J. Wilson, also explored the area at this time.

Wilson’s field notes describe, what is now Misema Lake and the surrounding area, as well as provide a sketch. “Beaver Rock” is shown on the sketch, most certainly referring to the well-known Indigenous rock site in the area. Wilson’s notes suggest that he received assistance from local people in describing what he saw, as his notes include numerous references to “Indian” sketches and words in Anishinaabemowin. It is highly probable that those who assisted Wilson in his survey were from Beaverhouse. Wilson also noted the existence of Indigenous-owned houses and camps in the vicinity, including a house on what is now, Keith Lake, just north of the height of land; a camp on a small lake just south of what is now Verna Lake; and an “Indian hut” on the western shore of a branch of what is now Howard Lake.

In 1905, Frank Carrel published an article on his canoe trip through Northern Ontario. Carrel mentions crossing Opatatika Lake. He also noted that there was “a wide, log road” parallel to the trail his party was following, on the Lonely River. He noted that it was “...the same which has been used by Indian and white man for the past two hundred years, or since the first discoverer found this great water highway from the St. Lawrence to Hudson Bay.”

A 1911 map by surveyor Morley E. Wilson, shows Chief Spone’s, a BHFN ancestor, cabin on the southern arm of Misemikowish Lake, at the exact location of the present day Beaverhouse settlement. On a 1912 map, Chief Spone’s house is again depicted, and there is also an “Indian hut” on the northern arm of what is now Howard Lake.

In 1919, geologist C.W. Knight, wrote in a report produced for the Ontario Bureau of Mines that “these are log cabins on Wawagoshe, Misema, Marten, Verna, and Webster Lakes. There are inhabited by Indians during the trapping season.” Knight’s map shows three Indian cabins on Misema Lake.

Similarly, a 1920 survey map by A.W. Carlyle, shows an Indian cabin on the north arm of Misema Lake and an Indian camp at the exact location of the present day Beaverhouse settlement on Indian Point. All of these place names and structures point to the settlement of BHFN at Misema Lake/Indian Point in the early-twentieth century.

### ***The Fur Trade in Beaverhouse First Nation Territory***

European trade goods appeared as early as the 1700s, with the coming of the fur trade to the Territory of BHFN. The Territory of BHFN was a busy fur trading hub from the time of Chevalier Pierre De Troyes’ visit in 1686, right through to the 20th century.

French traders established posts at Timiskaming and Abitibi in the 1670s-1680s, followed by posts run by independent/St. Lawrence traders during the 18<sup>th</sup> century; after which the North West Company operated for a time, in conjunction with, and finally being taken over by, the HBC. By the late-19th century, the Beaverhouse settlement became the site of a storage house and a depot for the HBC.

As with other Indigenous peoples, the economy of BHFN changed with the beginning of the fur trade. The Indigenous economy transformed from one of diversified subsistence to that of specialized trapping of small mammals; most notably beaver. As individuals, members of BHFN traded widely throughout their Territory with the various traders who operated there.

The Indigenous peoples of the region typically gathered at these posts during the summer months to trade. Archaeological evidence shows that the Indigenous people living in the Larder Lake region and camping on Pearl Beach (BHFN ancestors) were actively involved in the fur trade. The materials left behind at the site consisted of trade beads, a brass trade pot, gun flints, many beaver bones, and moose and fish remains.

Beaverhouse was also known to be the site of a storage house for the goods and supplies of the HBC stores. Other information indicates there was an HBC depot on an island in Beaverhouse Lake. Chief Tonene, managed a local HBC store at Kanasuta, and it is believed that his frequent contact with the officers of the company resulted in this position. Chief Tonene had accounts at the posts. He traded at Fort Timiskaming up until 1888 and then at Fort Abitibi. There was also an HBC summer store at Summit Lake, from the 1860s to the 1870s. Chief Tonene lived in this location.

As non-native settlement increased, due to miners and lumbermen coming into the area, BHFN's ancestors saw a depletion of game and fur-bearing animals. This led to the loss of economic self-sufficiency of BHFN Members who were still living off of the land.

The Project site and the historical mining that took place at the site, has impacted BHFN almost as long as Treaty 9 has been in place. As noted above, the property has been explored, staked, and mined since approximately 1912.

### ***Impact to Beaverhouse First Nation's Health, Social and Economic Conditions***

The impact of this Project on the health, social, and economic conditions of BHFN is extensive. As has already been identified, if BHFN had signed Treaty in 1905/1906, it is extremely likely that it would have selected the lands where the Project is located at or around the Misema River and Beaverhouse Lake as its reserve land. The minerals would have been owned by BHFN. The fact that the Crowns missed BHFN at time of Treaty, resulted in an incredible economic loss to BHFN; not only through the loss of use of the lands but also to the resulting economic loss, to which BHFN could have utilized the lands. This statement also rings true for the health and social wellbeing of BHFN and its Members.

Due to the lack of recognition as a status band, as well as the lack of reserve land for its Members, BHFN and its community has "...had to deal with the increasing encroachment of civilization upon their traditional lifestyle, or any of it that they [have] been able to maintain." There was cottage construction on Howard Lake in 1992, at the site of one of BHFN's most important gathering places. According to OMNR, BHFN's lack of Indian status prevented them from receiving funds to actively participate in the planning activities related to this project. The report notes that "as Beaverhouse has not been recognized by INAC, the community lacks financial resources to actively participate in many planning activities, but the community has identified approximately 100 values on the TF with funding made available through OMNR."

Like so many other First Nations, BHFN also had to deal with the Crown removing children from the Beaverhouse community in the 1940s and 1950s; placing them in foster care to attend school in Kirkland Lake, or sending them to residential school in either Moosonee or Moose Factory. The removal of these children impacted not only the population at Beaverhouse but the passing on of traditional knowledge and living in a traditional way.

The loss of use of the Indian Trail has also impacted BHFN. This historic main trail was used both in the winter and summer. The loss of this main trail, as well as many other trails and portages, in and around the Project area lands, has greatly impacted Members' health (loss of exercise); economic wellbeing (loss of ability to generate funds from traditional activities, no benefits received for loss of land and traditional lifestyle); mental health (loss of land, traditional knowledge and connection, and loss of heritage sites); and social wellbeing (loss of gathering areas for BHFN Members, as well as gathering places with other First Nations peoples).

Despite a decline in Members' use of the lands and waters within the Project area, Members continue to highly value the impacted lands and waters, and continue to see them as a foundation for their identity and future livelihood as BHFN peoples. In the recent survey of Members, 12 of the 23 respondents noted that their health, be it physical, emotional spiritual or mental, will be highly impacted by the Project. The impacts that 18 of the 23 respondents were concerned about include, but are not limited to, water pollution, air pollution, noise disturbance, fish and wildlife habitats, medicinal plant life, and food sources.

As has been noted previously, BHFN does not have reserve land. There is no infrastructure for services that BHFN and its Members have access to, as it has never been a recognized First Nation. The settlement at Indian Point does have some infrastructure by way of seasonal homes and a church, but there is no power, services, transportation, roads, or healthcare services established there.

The entire Project area is and was used for harvesting plant/trees, hunting, camping, fishing, ceremonial sites, homes, children's play areas, archaeological sites, burial sites, swimming, trapping, and general enjoyment.<sup>10</sup> Sites that have already been destroyed are currently being used by drill pads, new roads, and tailings areas.

Homes once lined the Indian Trail, which is now being used by AEM as the main road to access the mine site and the village of Dobie. Sites such as the McBean pit were once gathering sites, hunting areas, and trapping areas for BHFN. The entire Project footprint is located on sites that were used by all BHFN Members. Currently, more than 20 Members still use the areas located around the Project site, as they are able, for hunting, trapping, fishing, and harvesting.

As it relates to drinking water sources – permanent, seasonal, periodic, or temporary – there were five spring water locations along the Indian Trail, which is now the mine road, all of which have been impacted by mining activities and are no longer useable by Members.

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<sup>10</sup> See Appendix B-F for an approximate detailing of BHFN land use areas. Please note that these maps are provided on a without prejudice basis and are for reference purposes only, so as to give the reader an idea of the extent to which the Project has, is, and will impact BHFN and its Members.

As it relates to country foods, bear, moose, beaver, rabbit, porcupine, partridge, marten, otter, weasel, fisher, and muskrat have all been hunted or trapped historically, and are currently hunted or trapped. They are harvested in the locations of the Project area, as well as around the community, which is within the Project area. More than 20 Members currently hunt, fish, and harvest plants within this region.

Plants and trees that are currently harvested include Spruce, Poplar, White Birch, Yellow Birch, Alder, Willow, White Pine, Balsam Fir, Jack Pine, Cedar, Red Pine, Pin Cherry, Tamarack, Chaga, Ghost Pipe, Yarrow, Plantain leaves and seeds, Golden Rod, [REDACTED] Fireweed, Rose Hips, Horse Tail, Bunch Berry, Red and White Clover, Strawberry Leaf, Raspberry Leaf, Yellow Pond Lily, Cat Tails, Skullcap, Yellow Dock, Wintergreen, Bedstraws, Mullien, Wild Mint, Spearmint, Pineapple Weed and many more.

Blueberry, wild strawberry, and raspberry are also harvested. All the above were and are harvested at select times during the spring, summer, fall, and winter months, depending on what part of the plant or tree is used, such as roots, bark, inner bark, buds, leaves, etc.

More than five youth are beginning to exercise their rights and to learn from previous generations, as it relates to traditional practices. BHFN expects this number to grow to more than 20 youth within the next ten years, as Members come together as a community with the recognition of BHFN as a status band, and anticipated future housing that will be available for the membership to come back home to once BHFN has an established reserve. Of the 23 Members surveyed, 22 of them noted concern for future generations due to the impacts of the Project, which included loss of land, loss of heritage, loss of culture, and loss of viable food sources.

As it relates to the current use of the lands and waters within the Project area for economic activities that may be impacted by the Project, trapping will be most impacted and the use of trapping cabins along the traplines. Craft making, using natural materials, seed collection, and cone collection for revenue will also be impacted. BHFN Members' economic activities have already been greatly impacted as they do not have the option to continue or develop new opportunities due to mining and exploration operations (this Project and many other companies in the area create this cumulative problem), forestry operations, land users not related to BHFN, and tourism operations. All of these activities currently take place around the BHFN community and continue to impede upon what little area BHFN has left in the Project area.

In the recent survey of Members, 19 of 23 respondents are concerned for the negative impacts on the social or economic conditions of the Project to themselves as BHFN Members. The concerns that they identified include, but are not limited to, the housing crisis, economical or physical displacement, rise in crime rates due to unemployment rates when the mine closes, mass destruction of water bodies, and food insecurity.

Due to historical mining operations, contamination has already severely affected BHFN's lands within the Project area. Lakes that were once historically fished are filled with tailings and other metals from abandoned equipment. Land use areas do not revegetate. Animals that were forced to

leave the area to find new habitats, have not returned to pre-mining times. Animals that do remain, are found to be sicker than the average animals not exposed to toxins within the Project area.

Adverse effects will continue to exist and increase in the Beaverhouse Lake area and Misema River due to the Project taking place. This does not take into account the cumulative impacts from other known or anticipated projects in the Kirkland Lake area.

With the potential dewatering of Ava/York Lakes, this will impact BHFN Members highly, who currently use the lake for fishing. The surrounding area and habitat will also be severely impacted, due to the open pit mining operation that is planned.

As it relates to the wellbeing and safety of Indigenous members, including Indigenous women, youth, and two-spirited peoples residing within the community, Indigenous women are already a target. With the influx of mine workers and contract workers to the area, the safety and wellbeing of these women and youth will be put at higher risk, including concerns around increased occurrences of sexual assault, murder, and kidnapping. With the recent recognition by Canada of BHFN as a section 35 rights bearing collectivity, and the work that BHFN is doing to achieve band recognition, it is anticipated that more BHFN Members will return home to an actual land base, which puts even more women, youth, and two-spirited peoples at risk.

Downstream to the Project site, it is anticipated that there will be a loss of hunting, trapping, camping, ceremonial sites, medicines, and food gathering. This has occurred upstream of the Project, as well as boat launches being impacted at both Howard Lake and Argonaut (Beaverhouse Lake).

The impact to the local and regional economy include impacts to trapping, seed collection, cone collection, and other natural materials used to create crafts such as moose calls. Many crafts created by Members use roots of trees and plants, mainly Spruce root and Nettle. Other natural resources used by BHFN Members, as noted above, will also decrease due to the Project, which will impact Members' ability to earn money from such traditional practices.

A large number of BHFN Members have left the community over the years, due to the mining and forestry operations in the area. This has forced Members to use a smaller portion of land to live on, and has removed their ability to fully practice their Aboriginal and inherent rights.

Other impacts to BHFN and its Members from a health, social, and economic perspective, include air emissions and sensory disturbances, such as noise and light. The ongoing operation of the Project will reduce the presence of wildlife in the Project area, which will in turn impact the economic, health, and social wellbeing of BHFN Members in exercising their Aboriginal rights. Similarly, noise and light emissions may also greatly impact the community at Indian Point, and the ceremonies that take place there.

As noted above, there is potential to impact fish and harvest medicines and food from the Project area, due to contaminants being released into the environment, as well as potential impacts from transmission lines. Of the 23 Members surveyed recently, 21 of them identified the following as

concerns for contamination: soil, water, wild life, plant life, air, and aquatics, inclusive of fish and lake vegetation.

Health care services and local services will be inundated with the influx in workers to the local area; services which are already struggling to provide BHFN Members and local residents with adequate services.

Positively, the Project may provide direct jobs and other economic opportunities to BHFN and its Members, through training, employment, money to the community, and the potential for remediation of historic mine tailings. This likely will only take place however, if adequate social and health care services are concurrently provided to support Members who may suffer from substance abuse or mental health challenges.

### **Potential Impacts to Physical and Cultural Heritage**

Some of the impacts to physical and cultural heritage have been identified above. In addition to those impacts already stated, such as loss of access to, and use of, portions of the historic Indian Trail; the ability to access lands and waters, thereby exercising Aboriginal and inherent rights; loss of access to other trails once used; loss of access to portages; local travel ways; and loss of sites of cultural importance, BHFN also has identified the potential impact to, and loss of, burial sites that have not yet been found but are known to be located within the Project area.

As noted above, due to a lack of capacity, BHFN has not been able to dedicate people and dollars to identifying values throughout the Project area and its Territory more broadly. Other sites of cultural importance downstream of the Project include sites where gathering, fishing, hunting, and trapping take place, as well as burial sites and sites of archaeological importance.

The entire Project area, as identified by the maps in Appendices B through F, include multiple sacred sites and important areas of use. The Project area is also used by Members to teach and transfer knowledge and oral histories between generations in English as well as Algonquin and Ojibwe. Ceremony still takes place within the Project area, however Members are given a hard time when discovered in these locations and are told that they cannot be there, as AEM would be held liable if any injury were to occur.

Many legends exist and knowledge transferred from Elders about sacred or culturally important beings. Pictographs are found within the Project area, as well as many sensitive areas of spiritual importance surround the Project site. Many Members have had significant spiritual encounters in these areas. Ceremony was conducted and currently is conducted in this area. The loss of these sacred and ceremonial areas can never be replaced. BHFN notes that plants have spirits and all things are connected, but industry does not take the intangible into account.

There are currently four archaeological sites within the Project area and other sites that surround the Project area. At least three of these sites are of high importance both archaeologically and sentimentally.

Sites that are within the Project area include hunting/trapping areas, cabins/homes, trails, plant gathering areas, ceremonial sites, camping areas and general use areas. Transfer of knowledge



occurs at all of these sites. Reliable, peaceful, and unimpeded access to these areas is integral to the transmission, and the current and future practice of Members' exercise of their Aboriginal rights. Burial sites have also been located along and around Beaverhouse Lake.

### **Potential Impacts to the Current Use of Lands and Resources for Traditional Purposes**

#### ***Description of Lands and Surrounding Area of the Project***

As AEM notes in its Detailed Project Description, the Project property comprises patented mining claims with surface and mining rights, mineral leases with surface and mining rights, and unpatented mining claims with mining rights only. The Project facilities are planned to be placed on patent mining lands having both mineral and surface rights.

The Project property is located in an area of low population density. The nearest seasonal residences are located on Beaverhouse Lake, or close to Beaverhouse Lake. The closest community is Dobie, Ontario, located approximately 5 kilometres southwest of the Project site, and BHFN's settlement is located approximately 5 kilometres to the north.

The Town of Kirkland Lake is located 19 kilometres to the west and the town of Larder Lake is located 8.5 kilometres southeast of the Project site.

The Detailed Project Description states that AEM is in ongoing discussions with local Indigenous Nations to determine historic and current land and resource uses and that the Project property is located on lands that may have been used previously for traditional purposes by the members of BHFN and other Indigenous peoples. It is important to stress the inaccuracy of this statement. BHFN **currently uses** the Project site and the area around the site for traditional purposes.

#### ***Beaverhouse First Nations' Current Use of Lands and Resources***

BHFN currently uses Beaverhouse Lake, Ava Lake, Misema River, Fork Lake, Grassy Lake, Sourdough Lake, Misema Lake, Howard Lake, Kinabek Lake, Dunbrack Lake, Kennedy Lake, Keith Lake, Rat Lake, Victoria Lake, Verna Lake, McTavish Lake, Mud Lake, Crystal Lake, Gull Lake, Dorothy Lake, Joyce Lake, Marjorie Lake, Spectacle Lake, Moosehead Lake, Coate Lake, Binned Lake, Diamond Lake, as well as numerous unnamed, smaller, tributaries along the Misema River and Englehart River systems, which are downstream of the Project.<sup>11</sup> All of these waterbodies are used currently and many more were used historically, prior to BHFN being forced out of portions of its larger Territory. BHFN used multiple trails and portage routes between these lakes and the lands surrounding them for practicing all of their Aboriginal and inherent rights, including for camping, hunting, trapping, fishing, gathering, harvesting, boating, portaging, recreation, and ceremonial and teaching purposes.

Every spring, summer, fall, and winter these lakes and lands are used, depending on the activity being practiced. Fishing occurs at different times of year, depending on the best time to harvest. This is the same for hunting, trapping, and gathering. Ceremony occurs during full moons and other important dates or as needed for different purposes. These practices have been occurring since pre-contact/ancestral times.

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<sup>11</sup> Please see Appendix A for the location of these lakes relative to the Project area. Please note that this list of waterbodies is not exhaustive.

Resources used by the BHFN community and which maintain a cultural connection to the community include, bear, moose, beaver, rabbit, porcupine, partridge, marten, otter, weasel, fisher, and muskrat. These were, and are, hunted or trapped historically and currently. They are harvested in the locations of the Project site and around the community, which is within the Project area. More than 20 Members currently hunt, fish, and harvest plants.

Plants and trees that are currently harvested include Spruce, Poplar, White Birch, Yellow Birch, Alder, Willow, White Pine, Balsam Fir, Jack Pine, Cedar, Red Pine, Pin Cherry, Tamarack, Chaga, Ghost Pipe, Yarrow, Plantain leaves and seeds, Golden Rod, [REDACTED], Fireweed, Rose Hips, Horse Tail, Bunch Berry, Red and White Clover, Strawberry Leaf, Raspberry Leaf, Yellow Pond Lily, Cat Tails, Skullcap, Yellow Dock, Wintergreen, Bedstraws, Mullien, Wild Mint, Spearmint, Pineapple Weed and many more. Blueberry, wild strawberry, and raspberry are also harvested.

Many traditional trails have been destroyed by clearing the land with heavy equipment. This has impacted BHFN's ability to access areas for portaging, canoeing and boating to access wildlife, fish, and plants/trees. In the recent survey of Members, 16 Members identified a high impact of the Project to their current travel ways, while approximately half of that number indicated an impact to their ceremonial practices.

The impact of the Project on how Members will experience the practice of their Aboriginal rights will be negative. Noise is currently an issue due to drilling activity, due to the very close proximity of the Project to BHFN's community. Members can hear the drills while they are gathering at the community, while fishing, hunting, gathering and participating in ceremony. The increase in drill roads has opened up areas not once accessible to the general public and workers at the mine. This potentially impacts what Members harvest, as well as the experience of their practice. BHFN is also surrounded by other mining operations, which leads to a cumulative effect on the exercise of Aboriginal rights.

Another concern for BHFN, is the impact of these individual and cumulative effects on migration routes of certain species in the area and what impact this may have to the exercise of their Aboriginal rights. With the Project operating, as well as the operations of other projects in the area, Members may now have to travel further distances in order to hunt. Similar impacts may be found with species historically, and currently, trapped by Members within the Project area.

Light will also be an issue to the community, mainly in the evening, and will severely impact BHFN's way of living and the enjoyment of any of the areas in which they practice their Aboriginal rights. Other Project impacts in the area of Beaverhouse Lake, will include physical disturbance of BHFN's lands, traffic, noise, and concerns regarding contamination to the environment. These have resulted in general loss of use of the area by many BHFN Members. This loss of use is due, largely, to concerns regarding the quality of resources, including water and meat from the area, and because of the disturbance from traffic, noise, and other industry-related activities. Effects from existing industry in the area have already resulted in shifts in land use by some BHFN Members to the north of Beaverhouse Lake or elsewhere in their Territory. However, with other projects around the community and Territory, the impacts to BHFN will result in even further loss of land use and traditional practices.

Impacts to traditional activities for economic purposes has been addressed above. Similarly, cumulative effects of the Project have been addressed above. By way of reiteration, however, the cumulative loss of habitat of fur bearing animals and aquatic animals; the many sites impacted over time, which do not generate regrowth and hold toxic materials that do not sustain life of any kind; the waters having higher concentrations of toxins resulting in aquatic vegetation being destroyed; and fish and other aquatic species being heavily impacted; the fear for community members of harvesting any foods both on land and water; all impact the way in which BHFN may exercise its Aboriginal and inherent rights. Added to this, are the similar impacts from other projects within BHFN's Territory. This leaves BHFN with very limited clean and natural Territory in which to exercise its Aboriginal rights.

The impact to traditional practices due to the dewatering of York Lake and diverting of the Misema River will be great. Impacts will occur to archaeological sites surrounding these areas and Members will not be able to visit these areas. BHFN Members currently fish at this lake and camp in this area. Potential archaeology sites that could be under water due to time altering shorelines will be impacted. Many Members also use these areas for canoeing and hunting as well. Further to this, the dewatering of York Lake could lead to changes in local species and distribution, leading to a change in what species can be harvested at certain times of the year.

The open pit mine will also lead to an additional area not being accessible by BHFN Members, due to drilling operations, geologists, workers, and eventually operation of the mine.

Community members no longer recognize landmarks that once were part of the original landscape and many historical sites that were once known no longer exist due to destruction over time and large clear cuts. This has resulted in a loss of the transfer of knowledge – oral histories referencing specific formations or landscapes that no longer exist. Drill pads removing vegetation and creating trails and roads that did not originally exist, change the way in which BHFN sees and uses the land. The draining of York Lake will greatly affect the aesthetics of the area as well, and the areas that were once peaceful and restful places will be destroyed and look barren.

### **Potential Impacts to any Structure, Site, or Thing that is of Historical, Archaeological, Paleontological, or Architectural Significance**

#### ***Archaeological Evidence of BHFN's Use of Territory***

BHFN's permanent settlement on Indian Point is believed to have begun before 1870. Archaeological evidence, such as gravesites, arrowheads, tools, and clothing, belonging to the ancestors of the present-day BHFN community, further supports the existence of the ancestors of BHFN within this region.

Archaeologist John Pollack, published in 1972, a cultural history of the Kirkland Lake District. His studies posit that the settlement of Beaverhouse was at least 100 years old, dating it to before 1872. Multiple studies by Pollack in different parts of the region, along with the evidence he found, demonstrates continuous occupation from prehistoric times by Indigenous peoples; ancestors of the present day BHFN.

Other archaeological evidence suggests that the "...site has been a camp site for aboriginal people from prehistoric times." The late prehistoric people who resided in the area "...were the direct ancestors of the present day Ojibwa, Cree and Northern Algonquin peoples, all of whom spoke various Algonquian languages." Studies undertaken determined the materials collected at these sites to be between 6000 and 7000 years old.

Beaverhouse Rock, a massive granite exposure located near the Beaverhouse settlement, is considered by archaeologists to be an important archaeological and sacred site in northeastern Ontario. A study undertaken by Ontario's Ministry of Culture and Recreation, indicates the importance of this site to the Anishinaabe (Beaverhouse) people.

Other sites, such as Mount Cheminis, located in Quebec, also has spiritual and historical meaning to BHFN, which can be traced back to the mid-17<sup>th</sup> century. Oral history states that the Anishinaabeg used the site as a place to safely escape from the Iroquois.

Furthermore, 18 large boulders, known as the "Mystery Rocks," were found at the Pearl Beach site on Larder Lake. These rocks were aligned to the rising and setting of the sun. The Indigenous peoples had established a large quarry nearby this site and an Indian encampment was located just 300 metres away.

Mount Kanasuta, located near the Ontario-Quebec border, is another sacred site to BHFN. Chief Tonene is buried at this place, as well as approximately 100 other graves belonging to BHFN ancestors.

#### ***Potential Impacts of the Project to Beaverhouse First Nation***

Although AEM acknowledges that there are sites for which studies have not shown cultural heritage value or interest but which could still have spiritual, sentimental, and traditional value and interest for BHFN and other Indigenous Nations in the area of the Project, AEM in its Detailed Project Description, notes that some sites within the Project area could potentially be altered by the Project. This raises many concerns for BHFN.

As has been noted above, BHFN, has documented values and information relating to historical, archaeological, paleontological, or architectural significance within the Project area. These have been collected from interviews with Elders and Members, as well as reports from archaeologists. Some of these sites include pictographs, as has been noted above. A database has been created along with a map of these values.<sup>12</sup>

BHFN continues to do research and gather more information to add to its values database. BHFN is looking to undertake further Indigenous or Traditional Knowledge studies in the coming months/years, so as to continue to inform locations and values of importance to BHFN; both historically and presently.

As has been addressed above, there are multiple archaeological sites in the middle of, and around the Project site, including a pre-contact site located directly beside Ava Lake. This is of huge concern to BHFN, as this is where the open pit will be located if AEM drains the lake. The potential

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<sup>12</sup> Please see Appendices B-F for a reference of these areas as it relates to the Project.

for archaeological discovery beneath the water is high as well, since waters historically change and sites of significance near the pre-contact site may now be under water. BHFN Lands Department staff believe that this lake should not be touched nor any operations be conducted around the vicinity of the lake either, so as to protect the archaeological value of the site.

### **Beaverhouse First Nation Consultation and Accommodation**

BHFN asserts that its Aboriginal rights fundamentally entitle it to support itself economically through the lands, waters, and resources of its Territory, and to continue to act as owners and stewards of its Territory; to be involved in decisions that affect it; and to participate in the ongoing, responsible management of the resources it provides, now and into the future; and in modern and evolving ways. This includes the right to share equally in the wealth and benefits BHFN's Territory generates.

It is important to note, however, that BHFN's Territory is the source of its identity as a First Nation and the basis for its many cultural activities and spiritual ceremonies. As noted above, it is home to sacred sites, burial grounds, traditional teachings and meeting places, and sites of profound archaeological and historical significance. As such, BHFN asserts that its Aboriginal rights fundamentally entitle it to preserve its culture and heritage.

BHFN strives to build a community for its people where they may live with dignity and in harmony with each other and nature by providing leadership that will enable BHFN Members to become self-reliant and by keeping with its traditional ways in partnering with others and with the guidance of the Creator in all that BHFN does.

As such, BHFN drafted and approved a consultation and accommodation protocol (the "Protocol") that sets out BHFN's process and principles for consultation, engagement, and accommodation between BHFN, the federal or provincial Crown, its departments, ministries, agencies, groups (the "Crown"), and Proponents, where any activity or project is proposed to occur in BHFN's Territory, or where a project might cause an impact to the environment and health therein, or to BHFN's Aboriginal rights or title.

BHFN expects the Crown and Proponents to respect this Protocol in all such interactions with BHFN and also expects the Crown and Proponents to comply with Canadian law. This Protocol addresses the duty to consult and accommodate under Canadian common law and what the Crown, Proponents, and BHFN can expect of each other during consultation and accommodation.

Appropriate consultation between BHFN and federal, provincial, municipal authorities, and Proponents, serves several purposes. At its heart, appropriate consultation is a dialogue between communities, a mutual engagement, rather than a mere notification of an external party's intention. BHFN, being fully informed about projects and decisions that may affect the Nation, protects its full range of rights and responsibilities, as recognized within traditional Anishinaabe law, in Canada's Constitution, within the jurisdiction of Canada's courts, and in international law.

The Protocol has been previously provided to the IAAC and AEM, with the communicated intention that it will be followed moving forward.

What can also be inferred from the Protocol is that BHFN wants to be involved in all decision-making aspects of a project; and in the present case of this Project, inclusive of planning, mitigation, and enhancement measures to avoid, minimize, offset, or otherwise accommodate for potential adverse impacts on BHFN's rights and community, as has been identified above, as well as to optimize the Project's benefits for BHFN, as may be identified and agreed to.

The Protocol also emphasizes the need for ongoing consultation and accommodation where new projects may arise; either related to, or separate from, existing projects. In the present case, BHFN has grave concerns regarding the possible synergies of the Project and the recent merger with Kirkland Lake Gold Ltd, and the Macassa Project, that may see AEM try to integrate aspects of the Macassa Project into the Project design and impact assessment process. At this time, BHFN would not approve of such an inclusion into the current impact assessment process.

With the Protocol in place, BHFN expects to see more regular, substantive, and transparent communications with, and from, AEM, including any concerns that are raised directly with them. BHFN expects to meet with AEM regularly, so as to gather information on the above noted themes and to understand how the Project may impact BHFN, and to what measures AEM needs to look at to reduce or avoid the potential identified impacts, including within the historical, regional, and community context, the geographic extent of BHFN's Territory, the purpose and importance of the rights to BHFN (i.e. their practices, customs, beliefs, worldviews, and livelihoods), and information on how BHFN's rights have already been affected.

### **Contact Information**

Please direct any and all communications to the Lands and Resources Department Mining Lands and Resources Support Worker at:

Beaverhouse First Nation  
26 Station Road North, P.O. Box 1022  
Kirkland Lake, Ontario. P2N 3L1  
Tel: 705-304-0500  
Email: [mining@beaverhousefn.com](mailto:mining@beaverhousefn.com)

### **With a copy to:**

Band Manager, Beaverhouse First Nation  
26 Station Road North, P.O. Box 1022  
Kirkland Lake, Ontario. P2N 3L1  
Tel: 705-304-0500  
Fax: 705-617-9900  
Email: [bandmanager@beaverhousefn.com](mailto:bandmanager@beaverhousefn.com)

**Closing Comments**

It is difficult for BHFN to fully assess the impacts of the Project to its Members and community when AEM has noted on a number of occasions throughout its Detailed Project Description, as it relates to concerns raised, that further assessment is required and will be assessed in the Impact Statement. A lot of the aspects identified within the Detailed Project Description are difficult for BHFN to assess fully when the impacts, at this time, are unknown. BHFN reserves the right to amend this preliminary Report as more information is made available and a fulsome assessment on the impacts can be undertaken.

**Appendix A**  
**Lake Names**



**Appendix B**  
**Sacred/Ceremonial Uses**

**Appendix C**  
**Hunting, Trapping, and Fishing Uses**

**Appendix D**  
**Archaeological/Heritage Areas**

**Appendix E**  
**General Land Use – Camping/Recreation**

**Appendix F**  
**Overlap of All Land Use Areas**