

Enclosure 1: Federal Authority Advice Record

Response due by September 13, 2023

Great Bear Gold Project

Agency File: 85832

All comments should be submitted via the [Submit a Comment](#) feature available on the Project's Canadian Impact Assessment Registry page¹. Letters and forms can be uploaded using this feature. If you have any difficulties submitting this way, please contact the Agency at GreatBear@iaac-aeic.gc.ca.

Department/Agency	Crown Indigenous Relations and Northern Affairs Canada (CIRNAC)
Lead Contact	James Neary
Full Address	25 EDDY ST, Gatineau, Quebec K1A OH4
Email	james.neary@rcaanc-cirnac.gc.ca
Telephone	613-355-7285
Alternate Contact	Michael Rowan michael.rowan@rcaanc-cirnac.gc.ca and Jessica Steffano jessica.steffano@rcaanc-cirnac.gc.ca

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1. (a) Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Great Bear Gold Project (the Project) to enable it to proceed?

If yes, specify the Act of Parliament and that power, duty or function.

(b) Please describe any Indigenous or public consultation that will be undertaken in relation to the exercise of that power, duty or function, including when it would take place.

It is not probable that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) will exercise a power or perform a duty or function related to the Project to enable it to proceed as CIRNAC is not a regulatory department with respect to the proposed project. CIRNAC facilitates communication and coordination of expertise within the department to external departments and agencies involved in impact assessment processes in Canada.

¹ <https://iaac-aeic.gc.ca/050/evaluations/proj/85832>

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2. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to the conduct of an impact assessment of the Project?

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has expert information, knowledge, and tools that may benefit impact assessment or regulatory processes relative to the proposed project. Please note that the federal government has a legal obligation to consult and, where appropriate, accommodate when contemplating conduct that may adversely impact asserted or established Aboriginal and/or treaty rights, that are recognised and affirmed by section 35 of the *Constitution Act, 1982*. This duty is supported through related jurisprudence, legislation, policy, and treaties. Many Indigenous groups have a special relationship with the Government of Canada (The Crown) through recognition of Indigenous rights and self-determination tables (RIRSD), modern treaties or self-government agreements, and other related negotiations and processes.

Expert Information and Knowledge

- a) Section 35 Aboriginal and Treaty Rights are recognised and affirmed by Section 35 of the *Constitution Act, 1982*. These are reflected in court decisions, historic treaties, modern treaties, and some self-government agreements. There are elements involving s.35 rights outlined in agreements stemming from recognition of Indigenous rights and self-determination processes and other related agreements:
- CIRNAC provides guidance and advice to federal officials for fulfilling the legal duty to consult and, where appropriate, accommodate, when contemplating activities that may adversely impact upon established and asserted Section 35 rights. CIRNAC continues to work on updating the [2011 Guidelines for Federal Officials to Fulfill the Duty to Consult](#);
 - CIRNAC supports the whole-of-government approach to implementing obligations pursuant to modern treaty, self-government and related agreements, including specific consultation-related provisions and protocols. Where project impacts on Modern Treaties have been identified, federal departments and agencies must engage Indigenous Modern Treaty partners on a bilateral basis as early as possible. CIRNAC provides guidance on engagements and tailored contacts for reach out to Modern Treaty partners. [Canada's Collaborative Modern Treaty Implementation Policy](#) (2023) and the [Cabinet Directive on the Federal Approach to Modern Treaty Implementation](#) (2015) provides further guidance to departments and agencies in implementing Modern Treaties; and
 - CIRNAC leads negotiations of modern treaty, self-government, and related agreements (including consultation protocols) on behalf of the Government of Canada.

Publicly Available Tools

- b) [The Aboriginal Treaty Rights Information System](#) (ATRIS) is a web-based, geographic information system intended to help users identify the location of Indigenous groups, and to provide users with information pertaining to each Indigenous group's established and/or asserted Section 35 rights. ATRIS provides access to profiles, documents and maps that can be used to assist governments in determining their consultation obligations and other interested parties in carrying out consultation and engagement research. CIRNAC can offer assistance in navigating, and engaging with the ATRIS system.

Additional Considerations

- c) [United Nations Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#):
- The Government in Canada in implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)*, which affirms the Declaration as a universal international human rights instrument with application in Canadian law. Justice Canada is the federal lead on UNDA, and CIRNAC has an important role due to its relationships with Indigenous partners. CIRNAC's advice and actions in relation to the initiative under consideration will be consistent with the rights-based approach endorsed by UNDA.

- Canada has worked in cooperation and consultation with Indigenous partners to develop the UNDA Action Plan. This Action Plan includes a number of measures which relate directly to Indigenous decision-making and participation and must be taken into account where Indigenous rights may be affected.

d) **Reconciliation:** All departments continue to work on implementing all 94 Calls to Action from the [Truth and Reconciliation Commission Final Report](#).

3. Has your department or agency considered the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action that would allow the Project to proceed in whole or in part?

Specify.

No, CIRNAC will not exercise a power or performed a duty or function under any Act of Parliament in relation to the Project, or take any course of action that will allow the Project to proceed in whole or in part.

4. Has your department or agency had previous contact or involvement with the Proponent or other party in relation to the Project? (for example: an enquiry about methodology, guidance, or data; introduction to the Project)

CIRNAC has had no previous contact or involvement with the proponent or other party in relation to the proposed project.

5. Does your department or agency have advice for the Proponent on whether and how they can provide information as part of the impact assessment process to streamline any permits, approvals or authorizations that may be required for the Project by your department or agency?

Specify as appropriate.

CIRNAC is not a regulatory department with respect to the proposed project, and does not possess information on streamlining permits, approvals or authorizations.

6. Does your department or agency have additional information or knowledge not specified, above, including information on the geographic, environmental, economic or social context of the project? (e.g. location of protected or sensitive areas, previous history between local communities and Proponent or similar projects, local or regional social or economic concerns)?

CIRNAC is developing guidance for federal officials on the following matters arising in consultation and engagement processes, and departments or agencies may contact CIRNAC for more detailed information:

Self-Identifying Indigenous Collectives: There has been a rise in self-identifying Indigenous collectives, from within Canada and abroad, who assert Section 35 rights in specific regions within Canada.

- A variety of colonial factors have contributed to these scenarios such as the imposition of *Indian Act* electoral systems, and the definition of interprovincial and international boundaries. In some instances these Indigenous collectives may be owed a duty to consult depending on factors such as the strength of their claim and evidence that the leadership actually represents an Indigenous group that potentially holds Section 35 rights. In situations where Canada is of the view that there is no

legal duty to consult, Canada may nevertheless engage with Indigenous groups to support relationship building and foster learning about the group and who they represent. In such case, it is important to convey that consultation is not a rights recognition process.

Accommodation: Accommodations measures seek to reduce, avoid or eliminate the potential impacts of a project on Indigenous people's rights. The principle of accommodation does not apply to engagement. Nevertheless, when engaging, there may be cases in which Canada assesses the circumstances and decides to provide benefits to the relevant groups to support reconciliation.

Assessing Impacts on Rights: During this process, it is important to consider and assess the cumulative impacts of the potential Project on the exercise of Section 35 rights. Recent court decisions have shown the cumulative effects of major projects can impact Indigenous people and their treaty rights.

Information relative to Canada's relationships with Indigenous people: This may include modern treaties or self-government agreements, and Recognition of Indigenous Rights and Self-Determination tables (RIRSD) in the project area.

The Initial Project Description identified the Grassy Narrows First Nation, Lac Seul First Nation, Wabausukang First Nation and the Metis Nation of Ontario-Region 1 as potentially being impacted by the project:

- There are currently no established RIRSD tables in relation to the Grassy Narrows First Nation, Lac Seul First Nation, Wabausukang First Nation or the Metis Nation of Ontario-Region 1. However, CIRNAC is in preliminary RIRSD discussions with Grassy Narrows First Nation.
- Grassy Narrows has engaged the Province of Ontario regarding licensing for mining, forestry and other activities within their traditional territory. They have expressed concerns with these activities due to mercury poisoning that had significant negative effects on their community in the 1960s. They have asked for moratoria on these activities in efforts to avoid further contamination.

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7. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

CIRNAC can provide the Impact Assessment Agency of Canada and partner departments and agencies with guidance related to their legal duty to consult and with respect to Canada's relationships with Indigenous groups. CIRNAC does not facilitate the technical review of proposed projects or administer the legislative or regulatory mechanisms required to manage effects related to projects approved under the *Impact Assessment Act*.

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8. What are the key issues likely to be relevant to the public interest decision, based on the mandate and area(s) of expertise of your department, and which should be addressed in an impact assessment of the Project, should the Agency determine that one is required?

For each key issue:

- Describe the effect or the nature of the issue, including any relevant context;
- Provide the rationale and/or evidence for why it is a key issue;

- Identify briefly solutions to the issue, including any information or studies that should be required in the Tailored Impact Statement Guidelines, potential mitigation measures, and/or regulatory requirements relevant to the issue;
- Provide a concise, plain-language summary of the issue for inclusion in the Summary of Issues.

The information provided will be used by the Agency to determine if and an impact assessment is required and where appropriate to develop project-specific draft Tailored Impact Statement Guidelines that focus on the key issues likely to be relevant to the public interest decision.

Please use **Table 1: Key Issues to inform decision-making** to respond to this question.

9. Where possible, identify any clarifications or additional information the Proponent could include in the Detailed Project Description or in the response to the Summary of Issues that would:
- give confidence that an issue or effect could be addressed and managed;
 - inform the decision as to whether an impact assessment is required; or
 - aid in tailoring the Impact Statement Guidelines if an impact assessment is required.

These clarifications and additional information will be included as specific questions in the Summary of Issues provided to the Proponent.

Please use **Table 2: Clarification or additional information the Proponent could include in the Detailed Project Description or in the response to Summary of Issues** to respond to this question.

CIRNAC Crown Indigenous Relations
Northern Affairs Canada

Name of Departmental / Agency
Responder

Senior Director Bruno Steinke

Title of Responder

September 14 2023

Date

Link List

Principles respecting the Government of Canada's relationship with Indigenous peoples
<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

Statement of Principles on the Federal Approach to Modern Treaty Implementation
<https://www.rcaanc-cirnac.gc.ca/eng/1436288286602/1539696550968>

Cabinet Directive on the Federal Approach to Modern Treaty Implementation

<https://www.rcaanc-cirnac.gc.ca/eng/1436450503766/1544714947616>

Canada's Collaborative Modern Treaty Implementation Policy

<https://www.rcaanc-cirnac.gc.ca/eng/1672771319009/1672771475448>

United Nations Declaration on the Rights of Indigenous Peoples Act

<https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>

United Nations Declaration Act – Action Plan

<https://justice.gc.ca/eng/declaration/ap-pa/index.html>

Aboriginal and Treaty Rights Information System

https://sidait-atris.aadnc-aandc.gc.ca/atris_online/home-accueil.aspx

Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfil the Duty to Consult

<https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729>

Table 1: Key Issues to inform decision-making

The Agency asks that federal authorities align expert advice to comment on whether potential project effects² in areas of federal jurisdiction have been accurately³ characterized and adequate⁴ mitigation to minimize those effects have been presented by the proponent. The Agency requires that advice consider the context and setting of the Project, and the regulatory mechanisms that may be in place to oversee effects in areas of federal jurisdiction. In identifying key issues relevant to the public interest decision, federal authorities should be mindful of the Project’s context (size, scope, location), Indigenous knowledge and perspectives, and public concerns. Key issues that may be relevant to the public interest decision include:

- effects that in areas of federal jurisdiction and that may be significant, based on federal experts’ knowledge and experience with past projects;
- effects that may impact Indigenous peoples and their rights, based on Indigenous knowledge and perspectives or experience with past projects;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or effects that may result from novel project activities, components or technology;
- effects with large uncertainties, including in the effectiveness of mitigation measures;
- transboundary effects where mitigation measures are limited;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous peoples; and
- key concerns raised by Indigenous or local communities.

Effects that are anticipated to be minor or which can be managed using well understood mitigation measures, existing guidance, and/or other regulatory processes may have simplified information requirements or may be removed entirely. Measured advice from federal authorities on key issues and solutions —and on the scope and detail of any required information and studies — will enable the Agency to focus assessments on issues that are important to participants and to decision-makers.

Comment ID	Valued Component or Factor to Consider	Description of Key Issue (Context and Rationale)	Solutions	Plain language summary for inclusion in Summary of Issues
<p><i>Please identify comments by organization and comment number.</i></p> <p><i>e.g.: IAAC-01</i></p>	<p><i>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the effect or issue applies.</i></p>	<p><i>Provide a brief description of the issue and rationale for being a key issue.</i></p> <p><i>Include, where relevant,:</i></p> <ul style="list-style-type: none"> • <i>the pathway of effects;</i> • <i>social, economic or environmental context which are relevant to it being a key issue;</i> • <i>key uncertainties that should be addressed in the impact assessment;</i> • <i>Indigenous or public concerns or perspective;</i> • <i>potential for differential effects among diverse subgroups;</i> • <i>scientific evidence or traditional knowledge, including from past project experience, which supports inclusion as a key issue.</i> 	<p><i>Where applicable, briefly identify solutions to address the potential issue or effects including</i></p> <ul style="list-style-type: none"> • <i>Information or studies required to describe and characterize the effect, should an impact assessment be required; including any guidance for data collection and/or analysis or existing data sources to inform the assessment;</i> • <i>Any powers, duties or functions that your department or agency has that may mitigate, manage, or set conditions related to the effect;</i> • <i>Guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities; and/or</i> • <i>Commitments the Proponent could make to respond to the issue.</i> <p><i>Where available, please refer to existing text in the TISG template.</i></p>	<p><i>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the key issue and any questions or directions for the Proponent.</i></p>

Please insert additional rows as necessary

² Effects in this context means effects in areas of federal jurisdiction as defined in section 2 of the *Impact Assessment Act*.

³ For effects in areas of federal jurisdiction, “accurately” means whether the proponent made sufficient effort to clearly (supported by baseline or studies undertaken or planned to be undertaken) characterized the effect (including magnitude, geographic extent, duration, frequency, reversibility, context, etc.).

⁴ For effects in areas of federal jurisdiction, “adequately” means, in relation to project design and/or selection of mitigation measures, whether the proponent has identified reasonable measures to manage and minimize effects in the context of the Project (including, if applicable, follow-up monitoring, and adaptive management).

Table 2. Clarifications or additional information the Proponent could include in the Detailed Project Description or in the response to Summary of Issues

Comment ID	Relevant section of the Initial Project Description	Description of Issue, Concern or Uncertainty	Clarification or additional information	Plain language summary for inclusion in Summary of Issues
<p>Please identify comments by organization and comment number. e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference. You may also choose to copy the relevant text here.</p>	<p>Provide a description of the issue, concern or uncertainty the Proponent could address in their detailed project description that would give confidence that the issue will be addressed and managed, or which could aid in tailoring the Guidelines</p>	<p>Provide recommended clarification or additional information to be included in the Detailed Project Description to address the issue, concern or uncertainty, for example</p> <ul style="list-style-type: none"> • Clarifications to project description (e.g. components, activities, locations or alternatives); • Project design changes that could avoid effects; • Evidence that could be presented to demonstrate there is no effect pathway or that effects will be negligible; • Evidence that standard mitigations will address potential effects; • Commitments the Proponent could make to respond to the issue, including the implementation of federal operational policies or guidance documents. 	<p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the issue and of the question or direction for the Proponent.</p>

Please insert additional rows as necessary.