



# *Asubpeeschoseewagong Netum Anishinabek*

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May 29, 2026

**Attention:** Anjala Puvanathan (Director, Ontario Region) ([greatbear@iaac-aeic.gc.ca](mailto:greatbear@iaac-aeic.gc.ca))  
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Ontario Region  
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**RE: Grassy Narrows Preliminary Comments on Great Bear Gold Project Impact Statement**

On behalf of Asubpeeschoseewagong Anishinabek (“ANA” or Grassy Narrows First Nation”), we write to share with you Grassy Narrows’ preliminary submission with respect to the Impact Statement (“IS”) prepared by Great Bear/Kinross for the Great Bear Gold Project. This submission is in addition to the expert reports identifying major deficiencies with the IS and risks of the Project, the comments on the IS from our legal counsel, and our previous submissions on the Project that we have shared with you.

Grassy Narrows continues to be extremely concerned that Kinross wants permission to put more dangerous pollution into our life-giving river. The purpose of the Impact Assessment (“IA”) is to evaluate the potential environmental, economic, health, and social impacts of the Great Bear Gold Project. We do not believe that the IS prepared by Kinross provides the Impact Assessment Agency of Canada (“IAAC”) with accurate, sufficient, reliable, and scientifically defensible information to proceed with the Impact Assessment.

We believe, based on what our experts tell us and our own traditional knowledge and experience, that the Project will cause unbearable and irreparable impacts on our environment, health, and rights. Grassy Narrows has already suffered far too much from the cumulative impacts of industry that has been forced on our lands, waters, and people with terrible consequences. Our people are sick, our fish are unsafe to eat, the animals we rely on are scarce, our medicines are tainted, and our sacred landscape is desecrated. This harm has gone too far, and we cannot bear any more.

We urge IAAC not to move forward with the IA until Kinross has provided a revised IS that meaningfully and fully considers and incorporates our concerns, and Grassy Narrows is meaningfully consulted, accommodated, and we provide our consent to the IS and the Great Bear Gold Project.

## **The Impact Assessment process has not been fair, and the Impact Statement is incomplete**

From the beginning, IAAC has repeatedly told us that it wants to carry out the IA in genuine partnership with Grassy Narrows. Yet every time we have asked for a fair process, IAAC has said 'no', from carrying out the first phase of the IA without us, our request for a pause to catch up, our request for capacity support before deadlines pass, our request for a Review Panel, and our request to include Advanced Exploration, which includes construction of major parts of the mine, within the scope of the IA.

We were only given around eight weeks to review the IS, which is thousands of pages long and includes dozens of lengthy technical documents. To ask our First Nation to review and comment on the IS within this time period is completely unreasonable. How do you expect us to meaningfully review this information, consult with our experts, engage in our governance processes, and provide a response within such a short time frame? This amount of time is insufficient in the best of circumstances, let alone for our First Nation who continues to deal with a serious mercury crisis and youth suicide crisis, when we are losing our community member prematurely, and where we are also being asked to consult on numerous other exploration activities and mining projects in the area. When we asked for an extension, we were given an additional two weeks to provide comments but were told by IAAC that there would not be enough time for the important independent External Technical Review ("ETR") Panel on methylmercury to review our comments if we submit them later than May 29, 2026. While some content was provided by the company earlier, it was impossible to assess without the critical information on mercury and other foundational elements missing. You have given us no choice but to submit our preliminary comments now. The comment period for the IS is unreasonable and inconsistent with the Crown's duties to Grassy Narrows, including the Honour of the Crown, and the spirit of reconciliation.

Grassy Narrows has also repeatedly asked that IAAC pause the IA process until the information necessary for meaningful engagement has been provided to us and we have had time to adequately review and provide a response. Our experts have continued to raise concerns about the accuracy and adequacy of the crucial ML-ARD and baseline data relied upon by Kinross. The ETR Panel on methylmercury was established by IAAC in order to provide objective expert guidance to discern between the dramatically conflicting conclusions reached by Kinross and Grassy Narrows' experts. The scientists on the ETR were jointly chosen by IAAC, Kinross, and Grassy Narrows based on their excellent credentials in the fields required to assess the mercury-related impacts from the Project. The ETR concluded that Kinross' mercury study plan, the keystone of Kinross' attempt to assess mercury impacts from the Project, "does not provide a scientifically defensible baseline nor reliable methods for predicting future impacts." However, despite these warnings from independent and qualified scientists and engineers, IAAC has moved forward with the IA process. The fact that Kinross has moved forward with the mercury study without a revised study plan

reviewed and accepted by the ETR and Grassy Narrows should itself lead IAAC to the conclusion that there is not accurate and sufficient information available for it to move ahead with the IA of the Great Bear Gold Project. How can the impacts of this project on Grassy Narrows be stated and assessed without reliable information about mercury methylation? They cannot.

As well, Kinross has moved forward with the IS without the information needed to adequately assess potential impacts on Grassy Narrows. For example, the sound scientific data is missing for our experts to adequately assess potential impacts on our environment, water, food sources, and health. Grassy Narrows is also in the process of completing a Preliminary Land Use and Occupancy Study in and around the Project area for the Great Bear Gold Project. We have hired an anthropologist, Dr. Anna Willow, to complete this study with us. Dr. Willow has advised that it typically takes between three to ten years to complete a full Land Use and Occupancy Study within a First Nations community, but we are working diligently to prepare a Preliminary Study. We have updated Kinross and IAAC many times that we need more time to complete this important Preliminary Study. However, Kinross has completed the IS, including Section 12: Predicted Changes to Indigenous Peoples – Asubpeeschoseewagong Anishinabek”, without this critical information.

Dr. Willow has already conveyed to Kinross in a letter dated May 29, 2025 that we can “confidently report” that “the vicinity of the proposed Great Bear Mine in particular was used by Grassy Narrows families in the past and continues to be used by members of the community for traditional subsistence and cultural practices (i.e., hunting, fishing, trapping, gathering, and travel) today. We have also documented community members’ extensive concerns about potential water contamination as a result of proposed mining activity in that area.” But Kinross did not wait for our Preliminary Study to complete the Impact Statement and once again moved forward without us.

Grassy Narrows remains deeply concerned that the IA process has not been fair and is moving ahead quickly without us and without the necessary information to complete a reasonable and scientifically rigorous assessment. The IS is yet another example that demonstrates how our concerns about the Great Bear Gold Project have not been meaningfully considered nor addressed. A flawed process that rejected our important concerns has led to a fundamentally flawed and unreliable IS that falsely minimizes the impacts that this project will have on Grassy Narrows.

**Our experts say that the IS has deficiencies, and their serious concerns have not been addressed**

For years, Grassy Narrows has been raising concerns clearly and with good evidence by highly respected and experienced independent scientists and engineers. Our experts continue to tell us that in spite of raising these concerns repeatedly, Kinross has not corrected major deficiencies. After reviewing the IS, our experts’ concerns remain.

We have enclosed expert reports from Dr. Kevin Morin, Dr. Brian Branfireun, and Dr. Rina Freed with their comments on the Great Bear IS. Grassy Narrows has previously provided you with reports from these experts, and submissions by Grassy Narrows and our legal counsel, with respect to the Great Bear Gold Project and we continue to expect that you consider all of their reports when reviewing, assessing, and commenting on the IS.

Our experts tell us that, among many other deficiencies:

1. The mine will generate a lot of sulphate, and the IS underrepresents this. Sulphate accelerates the methylation of mercury and has been a primary concern raised by Grassy Narrows and our experts.
2. The sulphate generated by the mine will not be reliably fully removed by the treatment proposed by Kinross. Our experts estimate that the Chukuni River will become contaminated far worse than Kinross suggests in the IS.
3. The added sulphate load to the environment will stimulate downstream methylation and increase mercury in downstream fish. This will happen even at levels of sulphate loading predicted by the IS, but sulphate loading will likely be higher than predicted. Kinross' conclusion that there will be little to no impact of the Project on methylmercury in fish or fish consumers was based on flawed methodologies and modelling.
4. There are no natural background sites which makes it impossible to reliably predict, prevent, and detect impacts. The predictions in the Mercury Bioaccumulation Study underestimate mercury concentrations and methylation and should not be relied upon.
5. The IS does not validly consider cumulative impacts in relation to other past, present, and planned projects in the watershed upstream of Grassy Narrows. This is a serious deficiency of the IS and is central to our concerns – the cumulative impacts of Crown policy and industry on our people already exceed any reasonably threshold of impacts on our rights, way of life, people, and environment, and this is not adequately captured in the IS, nor are the dozens of other mines being planned upstream from Grassy Narrows whose contaminants will combine with those from Great Bear and from the infamous Dryden pulp mill.
6. The guidelines used by Kinross, including the water quality guidelines, are not reliable because they do not take into account site-specific factors such as bioaccumulation, cumulative impacts, and past exposure to mercury and other contaminants.
7. Grassy Narrows cannot tolerate any increase in mercury exposure and cannot tolerate any more impacts on our Treaty rights.

Our experts continue to tell us that Kinross is relying on inaccurate or incomplete data, methodologies, and modelling, and so their conclusions in the IS are not reliable. Our experts continue to warn us that there are serious likely impacts from the Great Bear Project, particularly regarding the release of sulphate and the methylation of mercury in our river system, which is a serious concern for our community which continues to suffer from a decades-long mercury crisis. These impacts are minimized and underrepresented in the IS in a scientifically invalid way. However, even the impacts that the IS acknowledges, such as a 44% increase in sulphate loading to the Chukuni River, are unacceptable. In light of this, it would be unreasonable for IAAC to move forward with the IA of the Great Bear Gold Project at this time.

### **Grassy Narrows' concerns remain outstanding**

On March 6, 2024, we submitted to you Grassy Narrows' preliminary position with respect to the Great Bear Gold Project. In that submission, which is enclosed, we raised many serious preliminary concerns, including our concerns about adverse impacts to our sacred landscape and on our inherent, Aboriginal and Treaty rights. We explained to you that we have a holistic, interconnected, and spiritual relationship to the land, and that what happens to the land happens to us and to our children for many generations. All of our territory is core to our way of life and our connection to the land.

Our concerns have not been adequately understood, addressed, assessed, nor mitigated by Kinross in the IS. In particular, Kinross has not adequately nor sufficiently addressed the heart of many of our concerns which relate to landscape level impacts and cumulative impacts. Project impacts are not isolated to the Project area and the entire landscape, including past, present, and future impacts in the region, must be meaningfully considered when assessing impacts.

For example, the fact that the broader area, including Grassy Narrows' territory, has already been significantly harmed by industry does not give companies carte blanche to pollute it further. It means that our environment has already been harmed way beyond what is reasonable, and what is safe for the fish and animals who rely on that environment, and for the health of our people who consume those fish and animals as part of our traditional practices and in exercising our inherent, Aboriginal and Treaty rights. It means that any additional pollution is completely unacceptable and infringes on our rights, particularly in light of Crown promises to remediate the river system.

Far from taking these excessive pre-existing cumulative impacts into account meaningfully, the Project falsely uses them to establish artificially high, contaminated baseline values for key pollutants like sulphate and arsenic. Rather than protecting Grassy Narrows from cumulative impacts and allowing us to heal our environment and our people, the project illegitimately uses the existing impacts as a way to hide their own dangerous emission of toxics. Rather than accepting the expert evidence that we are already harmed and cannot tolerate any additional toxic harm, the IS uses the extreme existing harm to falsely claim that the harm they create will be small in comparison.

With respect to future impacts, the IS does not take into account whatsoever how the impacts from Great Bear will combine and interact with the expected impacts from over a dozen other planned mines in the watershed upstream from our community. This is the kind of blinkered, erroneous, and negligent thinking that has led to our community suffering harm on top of harm in the past including damming, relocation, residential schools, mercury pollution, clearcut logging, mining, and pulp mill effluent.

The following are examples of our outstanding concerns, and we expect IAAC to consider all of our concerns raised in previous comments and expert reports when assessing and commenting on the IS:

- **Landscape-level impacts of the Project.** Looking at the Great Bear Project site in isolation fails to see the landscape as a whole and its many processes and functions that sustain life. Intact forest landscapes, for example, are critical for stabilizing terrestrial carbon storage and harboring biodiversity. We have already experienced this in the southern part of our territory, where multiple industrial impacts over time made the landscape unable to sustain caribou. Caribou are a sentinel species for the many other species and ecological processes that rely on intact forests. Grassy Narrows is not satisfied that the IS addresses our concerns regarding landscape-level impacts (see more in bullet points below).
- **Impacts on Species at Risk.** The Great Bear Project has a strong potential to impact Species at Risk (“SAR”), including Woodland Caribou, Wolverine, Sturgeon, bat species, migratory birds, and other species. Kinross confirms in the IS that the removal of habitat for mine infrastructure will result in a direct loss of SAR habitat. Site preparation and mining operations will also increase the risk of mortality to SAR, affect and degrade SAR habitat quality, predator-prey dynamics, and/or populations dynamics.<sup>1</sup> Kinross is also carrying out extensive exploratory work in a very large area surrounding the project which is further fragmenting the forest and creating linear disturbances and clearings that degrade forest intactness and forest recovery. Grassy Narrows is not satisfied that the IS provides sufficient information or proposed mitigation of impacts on SAR and SAR habitat, including the cumulative impacts on the critical ranges of SAR, nor does it adequately consider our concerns.
- **Impacts on caribou.** Caribou are an important clan animal for our people (Atik) and are an indicator of the health of a landscape. Woodland Caribou are listed as a threatened species by both Canada and Ontario. The Project site is within the range of the Sydney Caribou Herd, which recent assessments found to be approximately 63% disturbed and unlikely to support a viable caribou population. Since those assessments, wildfires and mining activity have likely increased the percent of disturbance on the range. The range is in need of recovery, and the entire range is considered critical habitat.

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<sup>1</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 196.

Kinross acknowledges in the IS that the recovery of the Sydney Caribou Herd population depends on improving connectivity of the landscape and that the Project contributes to increased fragmentation in and around the Project area.<sup>2</sup> However, the company concludes that “the impact will be limited due to the existing cumulative disturbance in the area and the low probability of occurrence for Boreal Caribou.”<sup>3</sup>

This conclusion fails to adequately account for the Ontario *Range Management Policy in Support of Woodland Caribou Conservation and Recovery* (2014), the Ontario *Woodland Caribou Conservation Plan* (2020), and the federal-provincial *Agreement for the Conservation of Caribou, Boreal Population in Ontario* (2022), which outline actions to be taken to conserve and recover Boreal Caribou in Ontario and which require the management of cumulative disturbances. Cumulative disturbances are defined as those that, when combined together, cause significant change to landscape-level ecological functions for Boreal Caribou habitat and/or the probability of Boreal Caribou living or persisting in a geographic area. It also contravenes federal policy on Woodland Caribou recovery which requires that intactness be restored in Woodland Caribou ranges where disturbance exceeds thresholds for the viability of the caribou herd.

Kinross’ position in the IS is that the impact on caribou – a threatened species of cultural significance to our people and in the critical range area of the Sydney Caribou Herd – is acceptable because of the existing cumulative disturbance in the area. This position demonstrates a lack of understanding of cumulative disturbances and is inconsistent with the policies and agreements listed above, as well as SAR legislation.

The IS does the opposite of a protective and legal response to pre-existing cumulative impacts. Rather than preventing further impacts and supporting restoration, it uses existing cumulative disturbance as an illegitimate excuse for further disturbance.

The Project will add to past and present disturbances, further degrading the ability of the range to sustain caribou and increasing the likelihood that Woodland Caribou will be extirpated from this area. It will also combine with other planned disturbances from industrial logging and other mining and mining exploration projects in the range. The IS fails to address the heart of our concerns and apply a sound analysis regarding cumulative impacts and is fundamentally flawed as a result.

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<sup>2</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 191.

<sup>3</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 204.

- **Impacts on lake sturgeon.** Sturgeon are an important clan animal in Grassy Narrows (Numeh, the leadership clan). When they were plentiful, sturgeon were a very important food source for the Anishinaabe of the Treaty 3 area and large gatherings were often held at sturgeon fishing areas because they provided abundant and reliable food for large numbers of people. The damming of the English River has had a big impact on sturgeon. A small and delicate population remains in the river, which we are trying to protect and recover. Sturgeon live for many years, migrate far, are sensitive to industrial disturbances, and can accumulate large amounts of toxins in their bodies.

The Committee on the Status of Endangered Wildlife in Canada (“COSEWIC”) has designated the populations of lake sturgeon in the English River as endangered. Industrial activities, including industrial effluents, are a threat to lake sturgeon and their habitats with a risk of high impacts.

In the IS, Kinross suggests that there are no lake sturgeon resident in and around the Project area<sup>4</sup> and does not consider the potential impacts of the Project on sturgeon in the river system, which are highly sensitive to industrial disturbances and effluent, can travel long distances, can accumulate large amounts of toxins in their bodies, are endangered, and are important to our people. This is a significant omission.

- **Impacts on wolverine.** Wolverine also play an important and unique role in our ecosystem and in the balance of life. Kinross acknowledges in the IS that “Wolverine require large tracts of undisturbed area for denning and foraging and may avoid high-quality habitat due to sensory disturbances.”<sup>5</sup> They also confirm that “habitat modelling identified extensive areas of foraging and movement habitat for Wolverine” and “high frequency natal and/or maternal denning” in and around the Project area.<sup>6</sup>

COSEWIC reports that wolverine prefer ecologically intact areas and avoid disturbance. Kinross acknowledges that connectivity in and around the Project area will be reduced as a result of the Project.<sup>7</sup> Due to past degradation of southern habitats, wolverine left Grassy Narrows’ area. However, our success in stopping logging has resulted in the beginning of a return of wolverine. Grassy Narrows is near the southern edge of the currently occupied range of wolverine. If the Project goes ahead, wolverine will leave our area and may not come back, further disrupting the balance of the landscape.

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<sup>4</sup> Section 8 – Analysis of Changes to Fish and Fish Habitat, p. 23.

<sup>5</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 195.

<sup>6</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 193.

<sup>7</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, p. 205.

- **Impacts on moose.** Moose are very important to our people and moose hunting is an important part of our Anishinaabe way of life. Moose are significant to our sustenance, identity, way of life, and spirituality. Impacts from industry and government regulation over time have led to the near elimination of our once healthy moose population. As a result, the dense mature conifer forests that moose require for winter shelter have become too small, fragmented and scattered to support moose. And new roads and trails related to industrial projects allow non-Indigenous hunters to gain easier access for hunting moose.

Kinross acknowledges that the Project will both directly remove moose habitat and change the quality of moose habitat, affecting moose survival, movement, and dispersal, but concludes that there is still habitat availability around the Project area for moose.<sup>8</sup>

Kinross' conclusion fails to take an ecosystem or landscape-level approach to moose and does not consider the cumulative impacts on moose from decades of logging and mismanagement by Ontario. For example, Ontario has once again moved forward with moose tag quotas for non-Indigenous hunters in the areas that overlap with our territory that are far too high to support a healthy and sustainable moose population. Grassy Narrows has gone to great lengths to restore our moose population in the face of industry and Ontario's mismanagement, and impacts on moose and moose habitat as a result of the Great Bear Gold Project will simply contribute to and exacerbate these cumulative impacts on our inherent, Aboriginal and Treaty rights.

- **Cumulative impacts.** In the IS, Kinross acknowledges that “the Project may contribute to ongoing avoidance of traditional land use areas, reduced opportunities for land-based healing and cultural continuity, and diminished transmission of knowledge,” although the company insists that the impacts of the Project on Grassy Narrows' rights are of “low severity.”<sup>9</sup> This conclusion fails to adequately consider the past, present, and future cumulative impacts of industry on our environment, waters, way of life, and health. It also fails to acknowledge that due to past cumulative impacts, the northern part of the Territory, where Great Bear is located, is one of the only remaining parts of the Territory where critical cultural practices such as moose hunting can be viably carried out. Telling our people that we can practice our rights elsewhere, when so much of our Territory has already been degraded by other projects, is unfair and unlawful.

Our Territory has already experienced a great deal of harm from industrial activities including mercury, damming, industrial logging, and mining. The cumulative effects of historical and existing industrial impacts have already passed the point of an unreasonable, unjustifiable impact on the exercise of our Treaty rights and on our health and wellbeing. As a result, our community suffers

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<sup>8</sup> Section 7C – Analysis of Changes to Pathway Valued Components, Vegetation and Wildlife Pathway Valued Components, pp. 98-99.

<sup>9</sup> Section 15 – Cumulative Effects Assessment, pp. 92-93.

from unusually high rates of conditions including poverty, food insecurity, disease, neurological and other health conditions, conditions affecting learning, premature death, and child and youth suicide. The social conditions created by mercury poisoning and the cumulative impacts of industry place us in an ongoing extreme crisis. We cannot bear any more harm to our environment, waters, and health. The IS fails to adequately capture and assess these cumulative impacts.

### **The standard is consent**

IAAC must meaningfully consult with and obtain our consent on the Great Bear Gold Project. An accurate and scientifically defensible IS would find that this Project has impacts that are high on the spectrum, that we already suffer from an unreasonable level of cumulative impacts, and that our rights are established. We continue to expect that you will meaningfully consult, accommodate, and obtain our consent in a manner consistent with the Crown's duty to consult, the Honour of the Crown, the *United Nations Declaration on the Rights of Indigenous Peoples*, and Grassy Narrows' own laws, including the *Asubpeeschoseewagong Anishinabek Aaki Declaration*.

We remind you that Measure 51 of Canada's *UNDRIP Act* Action Plan states that "the Impact Assessment Agency will implement the *Impact Assessment Act* (IAA) in a way that aligns with the objectives and spirit of the UN Declaration," which includes the requirement of free, prior and informed consent.

We also urge you to consider this Project within the context of the *National Strategy Respecting Environmental Racism and Environmental Justice Act* which recognizes that establishing environmentally hazardous sites in areas inhabited primarily by members of Indigenous communities is a form of racial discrimination. There is no greater example of environmental racism in Canada than the long legacy of industrial harm that has been forced on Grassy Narrows against our will with terrible consequences to our environment and people that continue today.

If these statutes are to have any meaning, and if Canada intends to honour its commitment to reconciliation and to preventing environmental racism, it must lead Canada to place the highest level of scrutiny and caution on any proposal for activities that risk more harm to Grassy Narrows. The proposed Great Bear Gold Project is precisely such a project and IAAC has a critical role to play in ensuring that the potential impacts from the Project are accurately stated and reasonably assessed and that both the IA and the Project do not move forward without Grassy Narrows' consent.

### **Grassy Narrows does not consent**

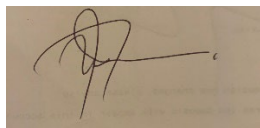
As a First Nation living immediately downstream from this project, we will live with the consequences for many generations to come. It is our children who will drink the water, eat the fish, pick the wild rice, swim, and learn what it means to be Anishinaabe on this river whose waters will carry the effluent from this gold mine if it is built. It is our people who will search in vain for moose and caribou to hunt on the landscape that has had its

forests fragmented and degraded by access roads, clearcuts, seismic lines, pits, trenches, clearings, and mines. It is our people who will be impacted if the tailings dam fails. It is our people who will be poisoned when toxics leach into the water. It is our people whose fear and anxiety, already far too high and fatal due to the mercury crisis, will be heightened by the threat this mining project poses to our wellbeing.

Grassy Narrows does not consent to the Great Bear Gold Project. And Grassy Narrows does not consent to the IS which contains inaccurate, insufficient, unreliable, and scientifically indefensible information about the impacts that are most dangerous to us, the first downstream community. The IS does not accurately nor sufficiently capture and assess the potential impacts of the Project on our environment, health, way of life, and ability to exercise our inherent, Aboriginal and Treaty rights, including the cumulative impacts of the Project and past, present, and future industrial activities.

We urge IAAC not to move forward with the IA until Great Bear has provided a revised IS that meaningfully considers and incorporates our concerns including our Preliminary Land Use and Occupancy Study, the ETR and Grassy Narrows' experts have had an opportunity to review and comment on a revised Mercury Study Plan and confirm that the Plan is scientifically valid and has been carried out in a sound way that yields reliable information prior to moving forward with a new Mercury Study, and Grassy Narrows is meaningfully consulted, accommodated, and provides our consent to the IS and the Great Bear Gold Project.

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Joseph B. Fobister  
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Cc:

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# *Asubpeeschoseewagong Netum Anishinabek*

GRASSY NARROWS, ONTARIO P0X 1B0 • PHONE: (807) 925-2201 • FAX: (807) 925-2649

March 6, 2024

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Boozhoo MINES, IAAC, Kinross and Great Bear Resources:

**RE: The Great Bear Gold Mine Project**

On behalf of Asubpeeschoseewagong Anishinabek ("ANA" or "Grassy Narrows First Nation"), we write to share with you Grassy Narrows' preliminary position with respect to your activities in relation to the Great Bear Gold Project.

**The Project will have an adverse impact and requires an impact assessment**

Grassy Narrows is deeply concerned by the Great Bear Gold Project being pursued by Kinross and Great Bear Resources with support from the Ministry of MINES as well as the process recently begun by the Impact Assessment Agency of Canada (IAAC).

Decades of industrial activity, authorized and encouraged by Ontario and contrary to Grassy Narrows' will, have led to well-documented and extensive harm to our Territory, our way of life, our rights, and our health. As a result, our people suffer intensely from impacts including premature death, disease, poverty, and suicide.

The Great Bear Gold Project falls within the area that Grassy Narrows people have historically and currently use for the exercise of our rights and way of life. It is also upstream from our community. Pollutants in the water and impacts on the surrounding land, fish and wildlife will have a direct impact upon us and could also exacerbate mercury contamination in our waterways.

ANA has repeatedly and clearly communicated with the Crown and the mining industry that our people are in crisis, the environment which supports us is severely impacted, our health is failing. The cumulative impacts continue to significantly interfere with our treaty, Aboriginal and inherent rights.

The Great Bear Gold Project will have an impact upon areas that Canada claims as within federal jurisdiction, such as species at risk, fisheries, waterways and Indigenous peoples. Grassy Narrows asserts that the IAAC must conduct an impact assessment in the circumstances.

**The Crown's outstanding obligations to Grassy Narrows should be resolved in a nation-to-nation process.**

For many years, ANA has written to Ontario to invite the Crown to a government-to-government table to address fundamental issues between us, including the Crown's unmet obligations to us about our rights, our land, our self-determination, and the impacts of industry and government policy on our land and people. These issues have been unresolved between our governments for many decades. Reaching agreement in good faith through a government-to-government table is the way to resolve these important issues and to put in place effective measures to protect us from further harm.

Ontario and Canada have yet to accept this invitation. Most recently, by letter dated November 27, 2023, Ontario explicitly refused to participate in a table to discuss "jurisdictional issues" raised and rejected nearly all of the issues proposed by ANA including most of those related to mining.

Instead, Ontario has explicitly recommended that mining companies explore on and around our Territory, has unilaterally granted roughly 6,000 mining claims on our Indigenous Protected and Conserved Area, and allowed companies to pursue increasingly advanced work towards mines that pose a serious threat to Grassy Narrows. This activity has occurred without our consent, without meaningful consultation and accommodation, and usually without even prior notice under the antiquated "free entry" mining regime.

**Grassy Narrows' concerns about the process**

Until recently, the Crown and the companies associated with the Great Bear Gold Project have shown little willingness to meet with us, nor respond substantively to many of our communications. Indeed, we have only recently learned that the Crown and companies provided notice to other Indigenous Nations of permit applications concerning the Great Bear Gold Project

as early as 2017 and have signed Advanced Exploration Agreements with Wabauskang and Lac Seul First Nations. In contrast, Ontario approved a number of permits without notice of any kind to Grassy Narrows.

Now that gold has been found, the Crown and Kinross are suddenly interested in giving the appearance of consulting with us, but only to the extent that it furthers the already advanced plans, made without Grassy Narrows' involvement, to develop an industrial gold mine in our headwaters.

Even if Ontario had complied with its own laws, Ontario's "free entry" mining exploration and mine development process is not the correct way to make key decisions between our two governments. This process is deeply unfair and biased in the favour of multi-billion-dollar mining companies. It ignores our laws, our vision for our land and people, and our processes for making decisions affecting our territories.

Our ongoing and urgent crisis leaves us unable to meaningfully engage about mining. To make matters worse, we receive no support from Ontario to inform ourselves, gain technical and legal advice, and to engage in a fair way about mining. The IAAC has offered a mere \$5,000 in capacity funding to respond to a 100-page technical Initial Project Description and the funding was made available only after the submission deadline for comments has passed.

### **The path to reconciliation**

We are on a healing journey to recover from the extreme damage that colonization, and attempted forced assimilation have done to our people, including through the imposition of Crown policy and regulatory schemes related to residential schools, dams, relocation, mercury contamination, child apprehension, industrial logging, and mining. We need to allow the land to heal because healthy land will help to heal our people. This is what reconciliation means to Grassy Narrows. Let us protect our land and water so that we can heal our people.

The boom in mining exploration in our area is causing great anxiety and fear among our people. It is setting back our healing. If the Crown decides to allow mining, and the risk of further pollution and other impacts, there will be more heartache, sickness and loss for our people. This mining activity will only lead to more grassroots resistance, litigation, and public controversy over conflict minerals. It will take the relationship between the Crown and Grassy Narrows further away from the path of healing and reconciliation.

Grassy Narrows says 'no' to the Great Bear mine and related activities.

We strongly urge the Crown and your companies to reconsider your unilateral and bullying approach to pushing mining activity on our First Nation. We urge you to seize this opportunity to set a course for a future that is free of conflict over mining in Ontario.

We call on the Crown and your companies to respect the healing path for Grassy Narrows and not to further impair the exercise of our constitutionally protected Aboriginal and treaty rights, our inherent Indigenous rights, our health, and wellbeing.

### **Grassy Narrows provides preliminary comment on the project under duress**

We know that Ontario and Canada will move ahead with approvals for damaging mining activity if we do not speak up. For that reason, we are writing to you under duress to express our preliminary concerns about this project before it advances any further. These serious concerns with both how the project has been pursued and the impacts on our rights and interests, are set out in the attached document. These submissions are by necessity preliminary in the absence of capacity and support to conduct our own studies and obtain expert technical advice.

Please ensure that you copy our Land Protection Team on all communications on this and related matters.

Awsa,

Asubpeeschoseewagong Anishinabek (Grassy Narrows First Nation) Chief and Council (quorum of three)



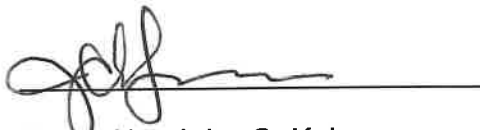
Chief Rudy Turtle

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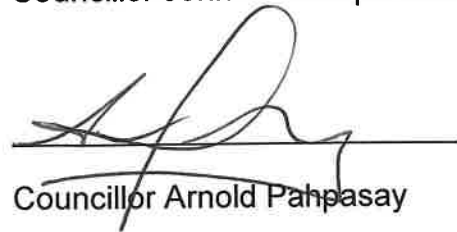
Councillor Sherry Ackabee



Councillor Bear Copenace



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cc:

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# ANA PRELIMINARY CONCERNS ABOUT THE GREAT BEAR GOLD PROJECT

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## I. The Context

### ***Who is Grassy Narrows***

Asubpeeschoseewagong Anishinabek (Grassy Narrows First Nation) is an Anishinaabe First Nation with traditional territory in what is called northwestern Ontario. Grassy Narrows people exercise inherent Indigenous rights, and Aboriginal and Treaty rights. We have cared for and lived on our lands for countless generations. Grassy Narrows people hunt, trap, fish and practice our Anishinaabe way of life to provide for ourselves, our families and community.

We exercise our inherent right to self-determination and law-making powers. Our inherent rights are given to us by the Creator. In addition to our inherent rights, Grassy Narrows people exercise Aboriginal rights and established Treaty 3 rights which are protected by section 35 of the *Constitution Act, 1982*.

In 1873, the Anishinaabe adhered to Treaty 3. The Treaty 3 Commissioner promised the Anishinaabe that the Treaty promises would protect our harvesting practices forever, which would allow our people to hunt, fish, trap, gather, and harvest throughout the Territory as they had before “as long as the sun shone and the waters flowed.” This promise was more than a continuation of our pre-existing harvesting rights. The Anishinaabe did not agree to the erosion of our harvesting rights.<sup>1</sup>

Our territory is located in the Boreal Shield ecoregion in a mixed forest transition zone from the Great Lakes St Lawrence Forest to the Boreal Forest. The Whiskey Jack Forest is the English name of the forest that covers a large portion of the Territory; the English-Wabigoon River System is a central waterway in the Territory. The land and waterways of the Territory sustain Grassy Narrows peoples’ way of life.

Grassy Narrows’ Territory is the foundation of who Grassy Narrows people are as Anishinaabe people. We follow the teachings of the Elders to be responsible for the Territory and to *Manaachitootaa Aki* (protect the land).

### ***Social and Cultural Impacts of Crown Law and Policy.***

Despite these sacred promises, for many generations the Crown has imposed harmful law and policy on us, including through the *Indian Act*, the banning of our ceremonies, regulation of our hunting and trapping, residential schools, regulation of the wild rice, relocation, the 60s scoop, the underfunding of our schools, inadequate health care, and the ongoing removal of our children from the community.

These policies have caused grave harm to our people and impaired the exercise of our rights. They have undermined our strong society and way of life and have left us more

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<sup>1</sup> *Keewatin v Minister of Natural Resources*, 2011 ONSC 4801 [*Keewatin* ONSC], rev’d 2013 ONCA 1158, aff’d 2014 SCC 48 [“*Keewatin* litigation”].

vulnerable to the impacts of industry.

***The Cumulative Effects of the Mercury Crisis and Industrial Activities Impacts.***

Starting in at least 1962, a chlor-alkali plant in Dryden, Ontario, began discharging mercury into the English-Wabigoon River system. Approximately 9,000 kilograms of mercury were discharged into the river system that flows through our Territory and is a lifeline for Grassy Narrows people. Our live-giving river became a source of invisible poison.

The impacts of the mercury contamination have been devastating to the people of Grassy Narrows and our Territory. The presence of mercury led to the methylmercury contamination of the fish and Grassy Narrows people. The local commercial fishery shut down; Grassy Narrows' economy collapsed; Grassy Narrows people descended into poverty; Grassy Narrows people suffered, as they continue to do, from debilitating health symptoms and premature death; and our Anishinaabe way of life was gravely threatened and changed when we could no longer safely eat fish and exercise our fishing practices as we had before.

In the 1970s and 1980s, Grassy Narrows called on Ontario to respond to the mercury crisis by taking concrete action, including by agreeing that Grassy Narrows would control our Territory. As the river was poisoned, we wanted to have more control over our Territory and the natural resources in it to be able to protect and benefit from the part of our Territory that was still healthy – the land. Instead, Ontario authorized extensive clearcut logging in the Territory from roughly 1980 to 2008, which likely released new, or additional, sources of mercury into the watershed, and increased methyl mercury contamination of fish.

Multiple expert reports and publications have detailed the impacts of mercury contamination on the health of Grassy Narrows people, including the following, which are enclosed:

- 2015 Expert Report of Dr. Donna Mergler
- Grassy Narrows Community Health Assessment Summary Reports, 2018
- Philibert et. al. (2020), “Mercury exposure and premature mortality in the Grassy Narrows First Nation community: a retrospective longitudinal study”, *The Lancet: Planetary Health* Vol. 4(4), E141-E148
- Philibert et. al. (2022), “Past mercury exposure and current symptoms of nervous system dysfunction in adults of a First Nation community (Canada)” *Environmental Health* 21:34.
- Mergler. D. et. al. (2023), “The Contribution across Three Generations of Mercury Exposure to Attempted Suicide among Children and Youth in Grassy Narrows First Nation, Canada: An Intergenerational Analysis” *Environmental Health Perspectives* 131(7).

These reports highlight the grave impacts of mercury on the health and wellbeing of

Grassy Narrows. They establish that Grassy Narrows people cannot withstand further impacts from the release of new mercury into Grassy Narrows' land, lakes, rivers, fish, and people, nor an increase in the net methylation of existing mercury. Our rights have already been highly compromised by the mercury crisis. Our nation cannot withstand further infringements of rights. No further impairment of our rights, our health, and our wellbeing can be justified.

Our fish in the Wabigoon River remain the most mercury contaminated in the province. Our people of all ages continue to suffer from mercury related diseases and loss of wellbeing. Our employment remains far below what it was in the 1960s following the collapse of our subsistence, sport, and commercial fishery due to mercury.

The mercury crisis is but one in a long series of industrial attacks which have been imposed on us against our will. These include the damming of our rivers, industrial logging, and mining activity. Each of these industrial attacks has had grave impacts on its own. In addition, each of these industrial attacks has compounded the existing harm that remains from previous attacks, creating unbearable cumulative impacts, thereby prolonging, and exacerbating our inter-generational crisis.

These extreme and compounding industrial impacts have been authorized and encouraged by the Crown without any serious consideration of their cumulative effects on Grassy Narrows and the exercise of Grassy Narrows' rights. We have raised clear concerns since at least the 1970s that our environment, rights, way of life, and our health, were at or beyond, the breaking point due to the impacts of industry on the resources on which we have heavily relied for our wellbeing, livelihood and the viability of our community. In the 1980s, and again in 2007, we declared moratoria on further industry on our Territory so that we could heal our people and rebuild our independence and wellness.

And yet, to this day, with respect to our Territory and vicinity, Ontario has failed to increase our control and use, failed to conduct a collaborative Landuse Plan; failed to complete a source water protection plan; failed to carry out a comprehensive environmental assessment; and failed to undertake an assessment of cumulative effects. The repeated failures of the Crown to act honourably to resolve the crisis have resulted in serious, compounding adverse impacts over time, including:

- (1) Severe cumulative impacts on our territory and Treaty harvesting, hunting and fishing rights, making these rights impossible to exercise in a meaningful way;
- (2) Severe adverse health effects and death, including, as found in recent scientific research, high rates of conditions impacting learning in children, disease, suicide attempts, and the premature death of our people; and
- (3) Extreme poverty, food insecurity, loss of Anishinaabe way of life, and other poor socio-economic indicators of wellbeing which are ranked significantly worse than average Indigenous communities in Ontario and Canada.
- (4) Collective impacts to our society and community.

Ontario ignored our pleas and our moratoria and continued to allow industrial activity, including the granting of mining claims on our Territory against our will, and advancement of mines all around us, without considering how mining activities add to, compound, exacerbate, and prolong previous harms. The cumulative impacts of industry have been devastating. The impacts include, but are not limited to:

- Our river that gives us life remains poisoned.
- Our walleye are unsafe to eat.
- Our sturgeon are rare.
- Our moose are scarce.
- Our caribou are nearly extirpated.
- Our pine marten habitat is depleted.
- Our forests are fragmented.
- Our medicines are tainted.
- Our sacred landscape is desecrated and scarred and traplines have been clear cut.
- Our way of life is diminished.
- Our people suffer from poverty, food insecurity, disease, premature death, and suicide.
- Our inherent, aboriginal, and treaty rights are impaired
- Our health has been harmed.
- We have been discriminated against.

## **II. Ongoing Breaches of Crown Obligations: The 1978 Memorandum of Understanding, Honour of the Crown, and Fiduciary Duty**

Ontario and Canada (collectively, the “Crown”) are our treaty partners. As elaborated below, through the treaty relationship and Crown actions over time, including entering into legal agreements following the start of the mercury crisis, the Crown assumed obligations and duties owing to Grassy Narrows. The Crown must uphold the treaty promises, uphold terms of its agreements, and act honourably in its dealings with Grassy Narrows.

Authorizing and permitting mining activities in our territory without our consent violates Ontario’s and Canada’s outstanding obligations and duties to Grassy Narrows and violates the Crown’s duty to act honourably in all its dealings with Grassy Narrows.

### ***1978 MOU and Dishonourable Conduct.***

In 1978, Ontario and Canada signed a Memorandum of Understanding with Grassy Narrows in which the Crown committed to resolve in good faith the impacts of mercury on the environment that Grassy Narrows people rely upon for the viability of our community, and the related health, social, economic, cultural, and environmental impacts on the people of Grassy Narrows (“1978 MOU”). It was agreed that the issues would be resolved through a combination of financial compensation and land, and

furthermore in a manner that would enhance Grassy Narrows' self-determination, self-sufficiency, and control over local affairs wherever possible.

Some agreements were reached that partially implemented some of the 1978 commitments. For example, agreements were reached with Canada in 1984 and with Canada, Ontario and the mercury polluters in 1985.

However, the Crown has outstanding obligations owing under the 1978 MOU. These outstanding obligations include (but are not limited to) increasing Grassy Narrows' access to, protection of, and control over lands and natural resources in our Territory.

Moreover, the Crown has engaged in a course of dishonourable conduct before, during the negotiations, and since, and has consequently failed to meaningfully support Grassy Narrows' recovery from the mercury crisis.

### ***The Crown's unmet fiduciary duties***

The Crown and Grassy Narrows have a *sui generis* fiduciary relationship, and our treaty rights attract fiduciary obligations. In the time since the Crown and Grassy Narrows entered into a treaty relationship, the Crown seized functional management and control of our lands and water. The Crown assumed a duty to Grassy Narrows when exercising that control over our Indigenous interests including our pre-existing legal interests in exercising our fishing, hunting and trapping rights and other traditional practices such as medicine gathering and wild rice picking.

Grassy Narrows has been at the mercy of the exercise of Ontario's imposed fiduciary decision-making over our land as Ontario unilaterally authorized industrial activity, and otherwise has made decisions that affect the land, water and other natural resources of our area which we rely on to exercise our rights, practice our way of life, and maintain our health.

Under imposed Crown management and discretionary control, the health of our land and our people have seriously declined, our way of life has been degraded, and the exercise of our treaty rights has been impaired.

### ***The Crown's abandonment of negotiations required by the 1978 MOU***

From the outset of our discussions under the 1978 MOU, Grassy Narrows was clear that to recover from the impacts of mercury and other harms, we need Crown recognition of Grassy Narrows' ownership, control, and protection of a large part of Territory, which will allow Grassy Narrows to make decisions with respect to our land that support our way of life and our livelihood. In the 1970s, 1980s, and 1990s Ontario committed to negotiate increased Grassy Narrows control over our lands, in addition to providing meaningful compensation for our people.

In the 1980s, and since, we called for a moratorium on industrial activity in our Territory until our negotiations with Ontario were concluded. However, rather than honour this moratorium, the treaty promises, and the 1978 MOU obligations, Ontario unilaterally

abandoned the negotiations in the mid 1990s and exercised its imposed control in a way that further unleashed industry on our area to our detriment.

Ontario has repeatedly acted unilaterally to encumber and degrade our Territory against our will, including by granting industrial logging licenses and nearly 6,000 mining claims; industrially logging our forests; and constructing industrial access roads and bridges (e.g. The Separation Lake Road and bridge) to facilitate further resource extraction and environmental degradation. Canada has stood by and watched, allowing our lands, waters, rights, and way of life to be trampled.

The Crown's dishonourable conduct and abandonment of its fiduciary obligations continue. Ontario's Ministry of Mines has granted thousands of mining claims against our will, including granting mining exploration permits without any prior notice to us.

***Ontario has failed to accurately identify the ANA Area of Interest on mining activities.***

The Ontario Ministry of Mines has never meaningfully addressed the question of the extent of Grassy Narrows' area of interest with respect to mining.

In the 1980s, the Ontario Ministry of Natural Resources created its own map to identify a Grassy Narrows Traditional Land Use Area (the "1980s TLUA Map") for the purposes of mediated negotiations between Grassy Narrows and Ontario with respect to a section of the Territory required by Grassy Narrows to restore its economic self-sufficiency. The map used straight lines, which are not reflective of the boundaries of the full Territory and does not include the northern portion of the Territory.

Between 2008 and 2017 Grassy Narrows and Ontario engaged in discussions on forestry pursuant to the Grassy Narrows Ontario Process Agreement (the "Process Agreement"). As part of that process, Grassy Narrows submitted a map of the "Grassy Narrows area of interest for forestry", which included areas that are outside the 1980s TLUA Map boundaries.

When Grassy Narrows passed our Land Declaration in 2018, we shared a map of an area we have identified as the "Indigenous Protected and Conservation Area" (IPCA). The IPCA boundaries mirror part of the area of interest for forestry. The IPCA boundaries have always been provisional, as Grassy Narrows continues to engage in a process of reviewing the knowledge of our historical and current land use. In addition, the western notion of linear boundaries on maps conflicts with our Indigenous knowledge systems, which are based on relationships and complex webs of protection, use, kinship, sharing, travel and trade that do not begin and end at a line.

Shockingly, Ontario relied on the 1980s TLUA Map as the consultation area for mining, despite having knowledge that the map was not accurate.

Grassy Narrows is currently pursuing litigation challenging nine mining exploration permits (not related to the Great Bear Gold Project) that Ontario approved without

notice to Grassy Narrows.<sup>2</sup>

Among other relief, Grassy Narrows seeks the following remedies in the litigation:

a declaration that Ontario cannot consider mining activities in the subject area of the Territory, including issuing exploration permits, until the parties negotiate and reach agreement on **timely enforceable mechanisms to assess and manage the cumulative impacts of mining, logging, hydro-electricity projects, other industrial development, mercury contamination, and governmental policies or programs that may infringe Grassy Narrows' treaty rights, and to ensure that these constitutional rights are respected;**

These mechanisms are not yet in place and the judicial review remains unresolved.

As further described below, Grassy Narrows has only very recently learned that the Ministry of MINES approved a number of permits for the Great Bear Gold mine with no notice to Grassy Narrows.

It is only in very recent times, and after much conflict, that Ontario has begun to ask Grassy Narrows about what our area of interest for mining is. After many years of advocacy by Grassy Narrows, Ontario's Minister responsible for mines finally responded on November 1, 2022 with a new map that Ontario proposed as the area for consultation on mining related activities.

Ontario's proposed consultation area on mining appeared to deliberately carve out the Great Bear Project Area. The information provided by Ontario to explain how they arrived at the proposed boundaries was cursory and insufficient for understanding how the boundaries were arrived at. Grassy Narrows informed the Ministry that their proposed map is not complete and requested capacity support to do the work necessary to respond. However, no support has been provided to date.

On November 2, 2023, Grassy Narrows provided two versions of a map setting out our Interim "Area of Interest" for mining. The maps differed in scale only. The map was provided with the following cautions:

- The maps are an interim product created under duress arising from the escalation of imposed mining activity by the Crown and industry and for the sole purpose of identifying an interim area for negotiations on mining related activity.
- The maps are not a complete representation of Grassy Narrows' area of interest. Due to the unique circumstances and capacity constraints, Grassy Narrows has not completed comprehensive studies required to fully determine its area of interest including, but not limited to, land use and occupancy, ethnohistory, archaeology, biology, and hydrology. For example, rights and interests

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<sup>2</sup> Grassy Narrows First Nation v. Director of Exploration, Ministry of Northern Development, Mines, Natural Resources and Forestry, Ontario Divisional Court File No. 881/21.

associated with air quality, migratory birds, travel routes, marten, lake sturgeon, wolves, eastern cougar, landscape intactness, climate resilience, biodiversity, genetic diversity, and many other factors are not reflected in these maps.

- In addition, linear boundaries are an imposed non-Indigenous concept that do not accord with the nature of Grassy Narrows' relationship with the land which includes extensive interconnectedness, reciprocity, travel, sharing, and trade.
- These maps do not limit any claims by Grassy Narrows people to assert their rights and interests throughout their territory and to protect themselves from harm to their health, rights, way of life, livelihood, society, and environment. Grassy Narrows people have Treaty rights, and practice them, throughout the Treaty 3 area. Grassy Narrows people also have inalienable inherent rights given by the Creator, some of which are affirmed in international law and instruments. The Grassy Narrows people are the true experts about their land, rights, and interests.

The Great Bear project area falls within the core area of Grassy Narrows' Interim Area of Interest for Mining map.

Despite Grassy Narrows' efforts to further these negotiations, there is no agreed upon area for consultation on mining activities.

Sharing of information about our Homeland is a sensitive topic that requires deep trust. After so many decades of having our trust, our vulnerability, and our lands abused by Ontario, many of our knowledge holders do not consent to sharing sensitive lands information with Ontario. Trust must be rebuilt to meaningfully engage on this topic.

### ***Grassy Narrows Laws Have Not Been Respected.***

Neither the Crown nor the companies have formally acknowledged and respected Grassy Narrows' moratorium and Land Declaration. The Crown has not joined us to harmonize Crown law with Grassy Narrows law and to find a path forward towards reconciliation that provides space for Grassy Narrows' inherent Indigenous rights and constitutionally protected Aboriginal and treaty rights to be meaningfully realized and protected.

We have written many times to request that the Crown come to a senior negotiation table with Grassy Narrows to address the wrongs committed against our people, the effects of which continue to this day, and to prevent further damage. We call on Ontario to return to the mediation process first established in 1978 in response to the mercury disaster to finally reach an honourable agreement regarding the control and protection of our Territory and fair compensation for Grassy Narrows people.

Instead of coming to the table to honourably resolve outstanding issues and obligations, Ontario has unilaterally granted mining claims and permits and now is supporting the development of a gold mine in our headwaters.

### III. The Crown Must Address Capacity Barriers

Grassy Narrows has repeatedly advised both the Crown and the Companies that it cannot meaningfully engage in negotiations while it faces significant and unique barriers.

**1) Insufficient information:** Upon learning of the Great Bear Gold project, Grassy Narrows immediately requested additional information about the project and the extent to which our Laws had been taken into account and its adverse impacts considered. This information is essential for us to understand and respond to any efforts at engagement. After a lengthy delay, the Ministry recently provided responses that can only be characterized as preliminary and partial.

**2) Capacity funding:** The process of evaluating proposed mining activities and engaging with MINES, the IAAC, and mining companies comes at an expense to ANA. We must hire staff, engage our community, carry out our governance process, and obtain professional support from experts, lawyers, and advisors to engage in a meaningful way.

Grassy Narrows is even more impoverished than our First Nation peers due to the ongoing impacts of mercury poisoning. We lack the funds required to engage in an informed and fair way.

During the summer of 2023, MINES staff indicated that, after many years of requests, MINES will fund some ANA capacity needs. We provided MINES with a document summarizing the kinds of capacity supports that we would need in order to meaningfully engage on mining, including compensation for staff and to hire experts. After many months of awaiting an update, on November 27, 2023 MINES clarified that its promises of capacity supports amount only to funding in an unspecified amount for a “Mineral Development Advisor”, a position that Grassy Narrows has never requested funding for.

No funding is currently in place. MINES must come to the table on our issues and commit to funding ANA’s reasonable costs of engaging in an informed and fair way.

While IAAC offered \$5,000 in capacity funding to ANA, this funding was offered after the deadline for submissions on the List of Issues. The amount offered is insufficient to meaningfully review lengthy technical documents that engage many areas of expertise, to engage with our people, to carry out our governance process, and to prepare a response. This is the same on-size-fits-all funding offered to other First Nations, NGOs, and other ‘stakeholders’. It does not consider our unique circumstances nor our position as an Indigenous nation.

**3) Pandemic Considerations:** COVID-19 infection rates, as well as other respiratory illnesses in this region of Ontario are high again. Our people are especially vulnerable to disease because of our high pre-existing rates of co-morbidity, crowded and inadequate housing, inadequate nutrition due to food insecurity, and the immune impacts of mercury. The health of our people is our priority. We are informing you that, in addition to our other concerns, mining exploration proposals are unwelcome during outbreaks

and other public health emergencies.

**4) Mercury Crisis and Industrial Impacts:** Our territory has already experienced a great deal of harm from industrial activities including mercury, damming, industrial logging, and mining. The cumulative effects of these industrial impacts have already passed the point of an unreasonable, unjustifiable impact on the exercise of our Treaty rights, and on our health and wellbeing. As a result, our community suffers from unusually high rates of conditions including poverty, food insecurity, disease, neurological conditions, conditions affecting learning, premature death, and child and youth suicide. The social conditions created by mercury poisoning and the cumulative impacts of industry place us in an ongoing extreme crisis. As a result, we are unable to meaningfully engage on mining exploration in the absence of the necessary supports to resolve and recover from the ongoing mercury crisis.

**5) Fundamental outstanding issues must be addressed before meaningful engagement can occur:** As described above, many fundamental issues remain unresolved between Grassy Narrows and the Crown including unmet obligations, broken promises, conflicting laws, cumulative impacts, violated trust, justice owed, and outstanding reconciliation. These are upstream strategic issues to which individual mining projects are subsidiary. We cannot address one mining project meaningfully, when the fundamental questions are not addressed. These questions include:

- How will the Crown respect Grassy Narrows' inherent rights and rights recognized under international law and related instruments?
- How can the Treaty relationship between the Crown and Grassy Narrows be respected and restored?
- How can the written text of the Treaty be reconciled with the oral and written histories, and Ontario Superior Court findings, that the taking up clause and the cede and surrender clause were never discussed nor agreed to?
- Who has decision making authority over lands and resources in our area?
- How can Grassy Narrows law and Crown law be harmonized with respect to the land?
- What lands should be open to mining and what lands should be protected?
- How will the Crown's unmet obligations arising from the Treaty, the 1978 MOU, and other sources be fulfilled?
- How will Grassy Narrows' ownership, control, and use of our lands be increased as promised?
- How can the damage already done to our land and our water be restored?
- How can the harm to our sacred landscape, our spirituality, and our relations be repaired?
- How can we assess and prevent the cumulative impacts of industrial activity from further harming us?
- How can the collective damage to our society, our community, and our families be reversed?
- How can our health, our wellness and our way of life be returned to its former status?

- How can our self-determination, our independence, and our self-sufficiency be rebuilt?
- Is it possible to reconcile while the harm continues, while we bury our youth?

For many years we have been seeking to resolve important issues with the Crown that relate to mining. A summary list of some of these issues can be found at **APPENDIX A**.

The Crown apparently has little interest in these questions and little willingness to address them with us, to act honourably, nor even to come to the table with us about them. When we meet with senior officials from MINES and MNRF, they tell us that they have no mandate to discuss these issues, but they will bring them to the Minister.

After years of seeking a meeting with the Minister our then Chief and Council finally met with then MNDMNR Minister Rickford in Toronto on November 18, 2021. At the long-awaited meeting Minister Rickford refused to discuss our mining concerns but promised to come to Grassy Narrows soon to discuss mining at an open forum in our community. Neither Minister Rickford nor his successors have honoured this promise.

In a largely analogous situation where Grassy Narrows and the Crown had a conflict over a different form or resource extraction, the 2004-2009 Whiskey Jack Independent Forest Audit found that:

There are fundamental differences in the viewpoints between GNFN and MNR regarding forest management principles and practices. It is the audit team's opinion that these differences cannot be resolved without the Province setting aside many of the requirements to manage the Whiskey Jack Forest under the CFSA and the FMPM, and relinquishing significant authority to the First Nation to manage portions of the Whiskey Jack Forest according to the desires of the GNFN community. The audit team further believes that the forest management planning process did not anticipate, nor was it designed to resolve the type of dispute currently being experienced on the Whiskey Jack Forest.

Similarly, the *Mining Act* and its regulations and the IAAC regulations did not anticipate, nor were they designed to resolve the serious grievances, outstanding obligations, and the type of dispute currently being experienced over mining around Grassy Narrows. Resolving this dispute will require sincere, honourable, government-to-government engagement on the fundamental issues that have brought us to this point. Only once that occurs, can we meaningfully engage about specific permits and projects without repeating and exacerbating the legacy of past and ongoing harms.

#### **IV. The Great Bear Gold Project: The Crown's failure to inform, meaningfully consult, and gain our consent for project activities.**

##### ***The Great Bear Gold Project falls within Grassy Narrows' Interim Area of Interest for Mining***

We have enclosed a copy of Grassy Narrows' map of our Interim Area of Interest for Mining, which is described above.

The limited preliminary research that we have been able to conduct confirms that the Great Bear Gold Project is within the area where Grassy Narrows people have historically, and continue to, practice our way of life and our Treaty rights.

There is strong ethno-historical evidence that Grassy Narrows has a longstanding connection to this area dating back to the time of the Treaty and before. This includes historical reports, fur trade records, ethnological work, and other records. Grassy Narrows First Nation historically hunted, fished, trapped, collected plants, gardened and conducted spiritual practices in and around the Red Lake fur trading routes, and traded products obtained in the area.

There are Grassy Narrows families with continuing family ties to this area and the surrounding areas. Grassy Narrows people, including the Chief, continue to practice our inherent and Treaty rights in this area, including the moose hunt. The moose hunt is extremely important to our way of life and sustenance. Due to the precipitous decline in moose elsewhere in our area, the area south of Red Lake is one of the only remaining productive moose hunting grounds that our people use.

The Great Bear Gold Project falls within moose, wolverine and caribou habitat that ranges within our IPCA. In addition, walleye within the project area migrate to the waterways on which Grassy Narrows exercises its treaty rights to fish and on which the community relies for food. The project area is also within nearby quaternary watersheds that flow into the IPCA.

Grassy Narrows people fish extensively on the English River around Grassy Narrows. Grassy Narrows people also fish on the English River and its tributaries near the inflow of the Chukuni River. We are aware that the fish that we eat swim a distance of 30 km, or more, up and downstream in the course of their lifecycle and are exposed to, and bioaccumulate, toxins throughout their travels. In particular, our walleye travel long distances upstream in order to spawn.

Caribou are an important clan animal to Grassy Narrows and used to be seen throughout our Territory. The Great Bear Gold Project area is within the range of the Sydney Caribou herd, the last remaining herd in our Territory. This range is already degraded beyond the threshold at which it is able to sustain Caribou in the long term, unless its intactness is restored. All of the habitat within the range is considered critical.

As noted above and confirmed by the Supreme Court, the Treaty 3 Commissioner promised the Anishinaabe that the Treaty promises would protect our harvesting practices forever which would allow our people to hunt, fish, trap, gather, and harvest throughout the Territory as they had before “as long as the sun shone and the waters flowed”. The Anishinaabe did not agree to an increasing erosion of our harvesting rights that would significantly interfere with the exercise of our rights.<sup>3</sup>

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<sup>3</sup> *Keewatin v Minister of Natural Resources*, 2011 ONSC 4801 [*Keewatin* ONSC], rev'd 2013 ONCA 1158, aff'd 2014 SCC 48 [*Keewatin* litigation].

Grassy Narrows has a communal connection, right, and interest in this area. It is possible that other First Nations do too, but that does not in any way diminish our own connection, rights and interests nor the Crown's obligations to us.

In addition, Grassy Narrows must be consulted on activities that may have off-site impacts on our territory, such as downstream, downwind, or migratory species impacts. Grassy Narrows continues to document the full extent of its Territory and the "ANA Preliminary Area of Interest With Respect to Mining" is without prejudice to the determination of the full geographical extent of Grassy Narrows' Territory.

***The Crown requires Grassy Narrows' consent for the Great Bear Gold Project***

The standard that correctly applies to this project is the right to say 'no', also known as the right to give or withhold "free prior and informed consent."

Under Grassy Narrows law, we are the first people of this land. The Creator gave us this land and only the Creator can take it away. We live in relationship with the land; we care for it and the land provides for us. We must take care of the land and not disrupt this balance. Nothing that threatens this balance may take place on the land without our permission. We say no to mining.

The United Nations has recognized this right in the *UN Declaration on the Rights of Indigenous Peoples* and in other international laws and instruments to which Canada is a signatory.

The *Declaration on the Rights of Indigenous Peoples* requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19). This includes:

- The adoption of legislation or administrative policies that affect indigenous peoples (article 19)
- The undertaking of projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources (article 32).

The principle of free, prior and informed consent is linked to treaty norms, including the right to self-determination affirmed in common Article 1 of the International Human Rights Covenants. When affirming that the requirement flows from other rights, including the right to develop and maintain cultures, under article 27 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the International Covenant on Economic Social and Cultural Rights (ICECSR), the treaty bodies have framed the requirement also in light of the right to self-determination.

Canada is bound by international law to these abide by these standards.

While Crown law has often failed to adequately implement international human rights standards, and often seeks to take a reductionist view of its international obligations to us, even under Crown law our consent is required for this project for reasons including, but not limited to:

- a) The cumulative impacts of Crown policy and industry on our people already exceed any reasonable threshold of impact on our rights, our way of life, our people, and our environment. No further impacts can be made without consent.
- b) The Companies' goal is to open a gold mine. A recent study demonstrated the extensive impacts of metal mining contamination on rivers and floodplains across the world, with an estimated 23 million people believed to be affected by potentially dangerous concentrations of toxic waste.<sup>4</sup> Gold mines have high risk of impact to our well established and strong rights, including our rights under Treaty #3. Our waters are already contaminated with mercury. Therefore, we are at the high end of the consultation spectrum where consent is required.
- c) The "taking up" clause and the "cede and surrender" clause which the Crown relies on for its asserted legal authority were never explained, translated, discussed, nor agreed to, during the negotiation of Treaty #3. This is reflected consistently in the multiple, independent, written records of the Treaty negotiations. To the contrary, Treaty Commissioner Simon Dawson informed the legislature that "As an inducement to the Indians to sign the Treaty, the commissioners pointed out to them that, along with the land reserves and money payments, they would forever have the use of their fisheries. The point was strongly insisted upon and it had great weight with the Indians, who for some years previously had persistently refused to enter into any Treaty" (NA RG 10 vol 3800 file 48542, 28 May 1888). The Ontario Court of Justice found that the Indigenous signatories to Treaty 3 were not advised and did not understand that the Crown could authorize land uses inconsistent with Harvesting Rights and pass legislation to extinguish or limit Harvesting rights. They expected that Canada would protect their harvesting rights away from the Dawson Route or CPR right of way, not limit, extinguish or ignore them.<sup>5</sup> No court of appeal, including the Supreme Court of Canada has overturned this finding of fact.

Beyond the requirements under Grassy Narrows Law, International Law, and Crown Law to obtain consent in these circumstances, there is the simple practical requirement for consent in today's business, investment, and political environment.

The business case for obtaining consent is reflected in the mining industry's own trade association policies through the International Council on Mining & Metals (ICMM) position statement on Indigenous Peoples and Mining, which states that "[t]he outcome

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<sup>4</sup> Phys.Org (September 21, 2023), "[Global study reveals extensive impact of mining contamination on rivers and floodplains.](#)"

<sup>5</sup> Keewatin v. Minister of Natural Resources, 2011 ONSC 4801 (CanLII), at para 865, <<https://canlii.ca/t/fmzc4#par865>>, retrieved on 2023-09-23

is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognised human rights and is based on good faith negotiation."<sup>6</sup>

Even Barrick Gold, infamous for their violations of human rights internationally, stated in their \$100M statement of claim against Red Lake Gold when addressing the need to for Grassy Narrows' consent that:

Virtually all successful mining ventures in Canada require a strong and genuine working relationship with local communities, including First Nations. Without such a relationship, it can be extraordinarily difficult, if not impossible, to proceed with a mining venture beyond early stage exploration work and into development work (e.g., by constructing a working mine).

Strong, genuine and reliable relationships with First Nations are built on mutual trust and respect. Any perceived or actual breach of that trust or respect can have devastating consequences for a mining venture or company, and these commercial and reputational consequences can extend well beyond any particular project or First Nation group.<sup>7</sup>

No large mine has opened in Canada for decades without Indigenous consent. It is simply too difficult and risky to carry out such an expensive and intensive project without all relevant First Nations on board.

As a First Nation living immediately downstream from this project, we will live with the consequences for many generations to come. It is our children who will drink the water, eat the fish, pick the wild rice, swim, and learn what it means to be *Asubpeeschoseewagong Anishinabek* on this river whose waters will carry the effluent from this gold mine if it is built. It is our people who will search in vain for moose and caribou to hunt on the landscape that has had its forests fragmented and degraded by access roads, clearcuts, seismic lines, pits, trenches, clearings, and mines. It is our people who will be impacted if the tailings dam fails. It is our people who will be poisoned if toxics leach into the water. It is our people whose fear and anxiety, already far too high and fatal due to the mercury crisis, will be heightened by the threat this mining project poses to our wellbeing.

We know, and everyone in Canada who has cared to learn our story knows, that decisions made and activities carried out upstream can have a devastating impact on us. The chlor-alkali plant in Dryden that discharged mercury into the Wabigoon River was 150 km upstream of our village. But the flow of the river does not obey any human boundaries. The distance did not stop the mercury from being carried downstream,

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<sup>6</sup> International Council on Mining & Metals (May 16, 2013), "[Indigenous Peoples and Mining: Position Statement](#)".

<sup>7</sup> Barrick Statement of Claim against Red Lake Gold, 2022/23, p. 20, 21.

bioaccumulating in the fish that we eat, destroying our livelihood, poisoning our people, and dramatically disrupting our way of life. More than 50 years after the discharge of mercury was ordered halted, our mercury crisis rages on. There is no end in sight to the contamination of our river and to the intergenerational impacts of mercury.

The correct standard for this project, which threatens to impact Grassy Narrows' future for many generations, is consent. Grassy Narrows has not given its consent. Grassy Narrows says 'no'.

***Far from seeking consent, Ontario has approved numerous permits for the Great Bear Gold Project with no notice to Grassy Narrows***

With respect to the Great Bear Gold Project, there has been a failure to inform, to consult meaningfully with ANA and to gain our consent, even though the ANA village site is the first community downstream from the project site. In spite of the infamous pre-existing impacts on the English River and Grassy Narrows from hydro damming, mercury pollution, and clearcut logging, and Grassy Narrows' well known concerns about mining exploration. The fact that Grassy Narrows is downstream of this project, potentially impacted, and likely concerned should be evident to any diligent person with access to Google.

Exploration permits for this project date back to January 2017, including permits for extensive exploration work, drilling, stripping of the land, and taking of water. The following permits were authorized without notice to Grassy Narrows and, for the most part, prior to any communications from either the Crown or the companies with our First Nation:

- January 6, 2017: PR-16-10995 – permit for mineral exploration
- April 11, 2019: PR-18-000295 – permit for mineral exploration
- November 22, 2019: PR-19-000264 – permit for mineral exploration
- November 27, 2019: PR-19-000227 – permit for mineral exploration
- July 16, 2020: PR20-000178 – permit for mineral exploration
- October 13, 2020: PR20-000276 – permit for mineral exploration
- July 13, 2021: PR-21-000190 – permit for mineral exploration
- October 4, 2021: PR-21-000258 – permit for mineral exploration
- August 15, 2022: 5115-CJ9QRR – permit to take water
- September 15, 2022: Permit 5115-CJ9QRR to take water

The failure to take the minimal step of giving notice to Grassy Narrows about any of the above permits is all the more shocking because while this extensive work was being done on the Great Bear Gold Project, Grassy Narrows was writing to Ontario and to the companies seeking to share information and initiate negotiations about protection for Grassy Narrows' lands, waters, and people. Grassy Narrows has written to Ontario repeatedly about land protection concerns for decades, and most recently in a long series of official letters dating back to 2018 requesting a government-to-government table to resolve Lands issues including mining.

The history of communications between Grassy Narrows, Great Bear Resources, Kinross and Ontario's Ministry of Mines demonstrates that none of these parties have demonstrated a genuine intention to meaningfully engage with Grassy Narrows. This summary is current to December 15, 2023:

- **February 25, 2020:** Having learned about Great Bear Resource's presence in the area, but unaware of the permit applications and authorizations, Grassy Narrows Chief and Council wrote to Great Bear Resources to notify the Company about ANA's mining concerns and to ask if Great Bear Resources had any proposed work that would put Grassy Narrows at risk and conflict with our laws. There was no response. Indeed, Great Bear Resources has never responded to Grassy Narrows' communications.
- **October 1, 2020:** Upon learning of Kinross's presence in the area, Grassy Narrows Chief and Council wrote to Kinross Gold Corp. with a request to meet and a list of questions about their work.
- **October 6, 2020:** Chief and Council wrote to Great Bear Resources.
- **October 7, 2020:** Chief and Council wrote to follow up with Kinross.
- **November 2, 2020:** Kinross responded to acknowledge our letter but did not provide any substantive response to our questions, make any mention of the Great Bear Project, nor accept our request to meet. We did not hear from Kinross again for almost two years.
- **December, 2021:** Kinross reached an agreement with Great Bear Resources.
- **August 29, 2022:** Kinross sent a letter of introduction to our Chief.
- **September 15, 2022:** Less than three weeks later, Kinross submitted an exploration permit to Ontario claiming to have consulted with Aboriginal communities.
- **October 4, 2022:** Grassy Narrows wrote again to Great Bear Resources.
- **October 6, 2022:** Grassy Narrows received its first notice of an application for an exploration permit related to this project from Ontario (PR-22-000284). Ontario gave Grassy Narrows only one month to provide comment on the application.
- **November 18, 2022:** With no capacity, and in the midst of the COVID-19 pandemic, Grassy Narrows wrote back to advise Ontario that we intended to respond but could not do so substantively within the time provided.
- **November 24, 2022:** MINES notified Grassy Narrows that Kinross's application (PR-22-000284) had been approved with the exception of 44 claims that were

being held pending further comment from Grassy Narrows but offering no capacity supports.

- **December 28, 2022:** MINES notified Grassy Narrows of seven mining lease applications and advised that MINES would proceed if it did not receive comments by February 26, 2023.
- **January 19, 2023:** MINES notified Grassy Narrows that it was considering granting the mining permit for the 44 claims that had been held, pending comments from Grassy Narrows by February 3, 2023. Again, no capacity supports were offered.
- **February 6, 2023:** Grassy Narrows wrote to MINES to reiterate the barriers to participation that had been communicated over many years; in the absence of addressing those barriers Grassy Narrows cannot engage or comment substantively to the permit applications.
- **February 14, 2023:** MINES gives Grassy Narrows until February 28, 2023 to respond with comments.
- **February 27, 2023:** Grassy Narrows official writes to MINES indicating that Grassy Narrows does want to comment but that further time is required to review the information, and that the company has yet to respond to the questions that ANA has sent them.
- **March 3, 2023:** Grassy Narrows sent a follow up letter to MINES regarding the seven proposed mining leases and Grassy Narrows' requests for a government-to-government negotiation table.
- **March 10, 2023:** MINES wrote to Grassy Narrows to ask for a copy of the questions posed to the companies in 2020.
- **March 20, 2023:** Grassy Narrows wrote to Great Bear and Kinross to request a meeting about the Great Bear Gold Project in early April and for an answer to the questions posed to the company in 2020.
- **March 21, 2023:** MINES followed up on its request for a copy of the questions posed to the companies in 2020.
- **March 31, 2023:** Grassy Narrows followed up with Great Bear Resources and Kinross to request a meeting in early April and to obtain answers to the questions posed in 2020.
- **April 12, 2023:** Grassy Narrows repeated its request for a meeting with MINES and answer to questions concerning Great Bear Resources and Kinross.

- **April 24, 2023:** Kinross finally responds to the request to meet.
- **June 22, 2023:** Kinross attended an introductory meeting with Grassy Narrows. The meeting was not a consultation on the project. Kinross representatives stated that MINES would be providing answers to the questions posed in 2020. Grassy Narrows raised serious concerns about the project, including capacity constraints and concerns about impacts.
- **June 27, 2023:** Kinross wrote to confirm that MINES would be providing answers to the questions posed in 2020. MINES did in fact provide a partial and incomplete response to the questions posed in 2020. MINES gives Grassy Narrows two weeks to provide comment on the 44 outstanding claims.
- **July 12, 2023:** MINES gives Grassy Narrows a further extension to July 27, 2023.
- **July 24, 2023:** Kinross wrote to invite Grassy Narrows to a meeting to learn about the project and to advise that it was setting up a Sharepoint site to share information about the project. The Sharepoint link was not provided. Kinross further advised that the federal impact assessment process had been initiated.
- **July 28, 2023:** MINES wrote to advise Grassy Narrows that Ontario will not provide capacity support for consultation and asked for comments on the 44 claims by August 10, 2023.
- **August 11, 2023:** MINES approves the mining exploration permit for the 44 claims.
- **August 12, 2023:** Kinross provided a copy of Great Bear industrial Sewage Works documentation. Grassy Narrows does not have capacity to analyze or respond to this technical document.
- **September 7, 2023:** Kinross provided a copy of the Great Bear Advanced Exploration Reclamation Strategy for comment. Grassy Narrows does not have capacity to analyze or respond to this technical document.
- **September 13, 2023:** Chief Turtle writes to the IAAC to advise that Grassy Narrows has learned that Kinross and Great Bear have initiated the interim assessment process. Grassy Narrows was not provided notice in accordance with its protocols and demanded that the process recommence in accordance with procedural requirements.
- **September 14, 2023:** Grassy Narrows sent a follow up inquiry to the IAAC.
- **September 15, 2023:** IAAC provided a two-week extension to respond to Kinross's Initial Project Description.

- **September 20, 2023:** Grassy Narrows responded to IAAC by reiterating that the IAAC had not complied with procedural requirements for the pre-planning stage and repeating its demand to recommence the process.
- **September 26, 2023:** Kinross wrote to Grassy Narrows to request a meeting to discuss capacity funding.
- **September 28, 2023:** Kinross wrote to Grassy Narrows to provide two technical documents for comment (AEX Industrial Sewage Application and Aquatics Monitoring Plan; AEX ECA Air and Noise, Emissions Modelling and Dust Management). Kinross offered to meet and provide capacity support.
- **October 4, 2023:** Kinross wrote to Grassy Narrows about a draft permit to take water application.
- **October 6, 2023:** Grassy Narrows Lands Protection Team was given access to the Great Bear Sharepoint site, with extensive technical documents that were not shared previously. IAAC also provided its Summary of Issues for comment and offered to meet.
- **October 20, 2023:** Kinross provided its groundwater monitoring plan for the project and its preliminary mine rock management and monitoring plan.
- **November 3, 2023:** Kinross provided its draft closure plan for comment.
- **November 10, 2023:** Kinross provided its Detailed Project Description for comment. Grassy Narrows met with Kinross and IAAC. Grassy Narrows asked Kinross to pause the impact assessment process until an engagement protocol could be put in place along with capacity supports.
- **November 14, 2023:** Ontario wrote to Grassy Narrows with belated notice that in or around April 2023 it had delegated the “procedural” aspects of consultation on certain matters relating to the Great Bear Gold Project to Great Bear Resources. Ontario’s letter to this effect dated April 6, 2023 was sent to the Chief and not pursuant to Grassy Narrows consultation protocols. Ontario takes the position that the duty to consult is at the “low end” of the spectrum.”
- **November 20, 2023:** Kinross wrote to Grassy Narrows concerning participation in a Stage 3 Archaeological Assessment.
- **December 15, 2023:** Kinross meets with Grassy Narrows and refuses to pause its activities for any length of time to accommodate Grassy Narrows’ unique circumstances.

As the foregoing chronology demonstrates, the companies and Crown left Grassy Narrows in the dark for years about the Great Bear Gold Project. Since September 2023, Grassy Narrows has been flooded with technical documents, belated offers of capacity support, none of which has flowed, and impossible deadlines for engagement.

Kinross spent billions to buy the project and has clearly already decided to build a gold mine regardless of Grassy Narrows' wishes. Failing to engage with Grassy Narrows on this project for more than four and half years was not an error of omission, but rather a deliberate decision not to engage, and to withhold, information about this project from Grassy Narrows. The fact that other First Nations, who are located far upstream of the project, but who have a reputation for welcoming mining activity, were engaged far earlier (as early as 2017), raises the question of whether a decision was made not to engage Grassy Narrows because of Grassy Narrows' well-known concerns about mining exploration.

It took Ontario and the companies nearly three and half years to provide initial responses to questions posed by Grassy Narrows to Great Bear Resources in February of 2020. And yet, within 60 days of providing those initial responses, without providing any capacity support to review them, and without addressing Grassy Narrows' many other barriers and fundamental issues, the Ministry approved further work on the project in spite of Grassy Narrows' request for capacity support and time.

Even Indigenous Services Canada flagged concern about Kinross's level of engagement to date with Grassy Narrows in its comment to the IAAC:

The perception of contamination to the land, water, traditional food sources and Indigenous Peoples by industrial development may be a serious concern for the identified Indigenous Nations, especially for Grassy Narrows ... During the late 1990s and early 1970s, the English-Wabigoon River system was contaminated with inorganic mercury from a pulp mill located upstream in Dryden, Ontario. This discharge of inorganic mercury contaminated their water and traditional food sources (i.e. fish) and lead to cases of mercury poisoning and intergenerational challenges. The proponent, Kinross Gold Corporation, started engaging with Grassy Narrows First Nation in 2022, whereas their engagements with Wabuskang First Nation and Lac Seul First Nation began in 2017. Due to Grassy Narrows First Nation's negative and detrimental experience with industrial development, it is recommended that more engagement take place. The Indigenous Nations need to gain a greater understanding of the contaminants that may be released into the environment. They should be provided an opportunity to express concerns or uncertainties about potential exposure to chemicals used in the gold mining process, such as cyanide and heavy metals.<sup>8</sup>

Given this history, including the Crown's outstanding obligations to Grassy Narrows, it is highly inappropriate for Ontario to delegate any aspect of consultation to Great Bear

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<sup>8</sup> Indigenous Services Canada, Federal Authority Advice Record – Great Bear Gold Project, p. 5.

Resources. Grassy Narrows does not agree that the Crown can delegate its duty to consult with a treaty nation to a third party. Nor does Grassy Narrows agree, given Grassy Narrows' strong rights, existing cumulative impacts, and the companies' intention to open large gold mines upstream from the community, that the duty is at the low end of the spectrum.

### **The IAAC has failed to consult as required with Grassy Narrows**

According to the attached IAAC document summarizing the impact assessment process, the process begins with Phase 0 (Pre-Planning), a phase that requires engagement by both the Proponent and the Agency with Indigenous groups. None of the required pre-planning steps with respect to Grassy Narrows have been complied with.

The Proponent was required to engage Grassy Narrows to present the project, learn Grassy Narrows' views, including potential effects and how we wish to be engaged and to incorporate this information into the Initial Project Description. Grassy Narrows has expressed, both in writing and in meetings on June 22, 2023, and November 10, 2023 with representatives from Kinross, our significant concerns about potential impacts upon our community, which are not reflected in the Initial Project Description. Grassy Narrows also provided Kinross with our communications protocol, which includes communication with the Lands Protection Team. That protocol was not included in the Initial Project Description.

The Agency was aware, based on the Initial Project Description, that Grassy Narrows may be affected by the project. In the pre-planning phase, the Agency was required to inform Grassy Narrows about the impact assessment process to support us in understanding how we can participate. The Agency was obligated to learn Grassy Narrows' views and context, including potential effects and how we wish to be engaged. The Agency did not comply with these requirements of the pre-planning stage.

### ***Crown and Company efforts to engage Grassy Narrows since 2022 have been performative and do not meet the standards required for engagement***

The decisions to open our land to mineral staking and exploration, to carry out extensive exploration, and to build a gold mine, have already been made, and billions of dollars spent towards that end, all behind Grassy Narrows' back. In this context, it is hard to believe that requests for belated input at this late stage are sincere. Clearly, the companies and Ontario have already decided to build a gold mine if investors will support it and we are an afterthought.

Kinross is now flooding us with technical documents created by highly paid experts, while knowing that we have no capacity support to engage experts to review the technical documents, nor to engage our community about them. When we sought a pause in the process to gain capacity support, retain experts, complete a process agreement, and engage in our governance process, we are refused. In this context it is hard to believe that anything Grassy Narrows says will be taken seriously and will have

the potential to meaningfully influence the major decisions that have been made.

We live downstream, our established rights and our health are at stake, and we are concerned. Under Crown law the Crown clearly had a duty to meaningfully consult and meaningfully accommodate us at every stage of this project, including during the strategic level upstream decisions (such as land use planning, land use designation, tenure, etc.) as well as the more minor decisions which flow from them (such as specific exploration permits, water takings, leases, etc.). As a First Nation whose Treaty rights and health have already been severely impacted by the cumulative impacts of industry and government decisions our consent is required. Under our inherent rights, Anishnaabe law, and International law our consent is also required.

Ontario has failed for many years in their duty to consult on this project and we call for an immediate freeze on all project activities until sufficient capacity support has been provided to allow Grassy Narrows to complete an ethno-historical report, land use and occupancy study, archaeological assessment of the area and study into cumulative impacts, and until we have been meaningfully engaged and our free, prior and informed consent obtained.

#### **V. Adverse Impacts: ANA Preliminary Specific Concerns**

As Asubpeeschoseewagong Anishinabek we have a holistic, interconnected, and spiritual relationship to our sacred landscape. We are the land and the land is us. What happens to the land happens to us and to our children for many generations.

This is an area where our ancestors have practiced, and we currently practice our Anishinaabe way of life; a way of life that relies on a healthy environment and is central to our identity, health, wellness, and livelihood. This area is part of the whole that forms the sacred landscape which gives us life and which we are in relationship within every aspect of our lives, hearts, spirits, and dreams.

While some areas may appear to an outside observer to be on the periphery of our Territory, this is a grave misperception. All our territory is core to our way of life and connection to the land. For example, we have always traveled to hunt. A moose that is harvested a few days' travel from our village site will still feed a family for many weeks and be shared with Elders, relatives, and friends. The dramatic decline in the moose population near our village means that the area around Red Lake is even more critical to our moose hunt. These areas are deeply embedded in our memories, our lives, and our hearts. We are strongly tied to this land.

We know that MINES, IAAC and the companies do not respect this relationship and seek to reduce it to a series of finite, bounded sites of 'values'. Our concerns are disregarded unless they are expressed in extremely specific and reductionist terms that ties adverse impacts to particular pieces of the land that are viewed in isolation from the whole. MINES and IAAC want us to engage in an exercise of, for example, identifying a specific hole that is a specific distance from a specific cabin and thus should be moved a bit to the west. Or, this type of machinery produces noise that will make hunting

difficult in this specific blind during this month, so please do not use it in October. Or, this wastewater discharge site is next to that fishing hole, so please put it a bit further downstream.

This approach fails to see the forest for the trees. What use is a remote cabin retreat without the serenity of the surrounding area from which we draw our physical and spiritual sustenance? How can we use it for healing and to teach our children their way of life while over the ridge heavy machinery encroaches ever closer and non-native users buzz around us in ATVs and motorboats? What use is a hunting site if the ancestral moose trails have been destroyed, there is no winter refuge, and unmanaged access routes have allowed non-native hunters to deplete the population precipitously? What use is a fishing spot if the fish has absorbed a dangerous burden of toxins from its food sources everywhere it swims throughout its life, including those carried from upstream? How can we carry out our ceremonies when the spirits who live in the rocks have been disturbed by drilling and blasting. What point is there in commenting on a small drill program in isolation, when everyone knows that your plan is to open a huge open pit and underground gold mine?

In spite of this fundamental difference in world view, the barriers, unresolved fundamental issues, and concerns noted above, we know that MINES, the Companies and IAAC will try to proceed with this project unless we raise specific concerns. In the absence of the necessary supports, Grassy Narrows cannot substantively respond to the technical information provided to date about the Great Bear Gold Project. We provide these preliminary concerns under protest and based upon the limited research we can undertake, which should not be taken as a complete overview of our concerns.

***Industrial disturbances will release even more mercury into our ecosystem and further impair our Treaty rights.***

The Great Bear Gold Project will require industrial mining exploration, access roads, clearing of trees, modification to water levels and other activity within the English River watershed. The waters from those areas flow into the English River in short order via the Chukuni River. They flow into the areas where we fish, boat, camp, and practice our way of life, and directly past our community.

The scientific literature establishes that industrial activity in the boreal forest releases mercury into local lakes and rivers.

Building machine tracks, trails, and roads is a common part of mining exploration and mine development work. However, simply driving heavy machinery through the boreal forest can contribute to the release of mercury. In one documented instance, a temporary machine track was inadvertently placed across a small, long-term reference catchment. This disturbance increased outputs of MeHg by a factor of over five for more than a decade.<sup>9</sup>

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<sup>9</sup> J. Munthe and H. Hultberg (2004), "Mercury and Methylmercury in Runoff from a Forested Catchment -

Clearing the forest has also been found to release mercury into local water bodies where it bioaccumulates in fish to dangerous levels. The foremost study on this subject was completed in Quebec by Dr. Carignan. The study found that 100% of lakes with clearcut watersheds had walleye and pike with mercury levels that exceeded the World Health Organization advisory limit for human consumption. Meanwhile, only 18% of unlogged lakes, and only one burned lake exceeded the limit.<sup>10</sup>

In the only field study on the topic done by Ontario of which we are aware, there was roughly a doubling of mercury exported from a watershed near Thunder Bay via a stream after logging activity. This release of mercury occurred even though all the required regulatory measures, including those with respect to riparian buffers, were followed.

Despite these findings, Ontario does no downstream monitoring of actual industrial operations to monitor or assess mercury impacts.<sup>11</sup>

Both the Carignan and Ontario studies concluded that that the increase in mercury export is largely due to changes in local watershed level hydrology from the loss of tree cover. Mining exploration and mining activity also involve the clearing of trees from the land and risk similar impacts to local hydrology (e.g., Lower evapotranspiration rates, changes to snow and rain interception, etc.) and therefore leads to similar increases in mercury export to local logging.

Mining exploration and mining activities often have the effect of artificially changing water levels. This can happen through water takings, water discharges, dewatering of areas, and other industrial processes. Studies have found that the artificial lowering and raising of water levels in boreal water bodies often causes the release of mercury. Monitoring studies of the De Beers Victor Diamond Mine have found increased levels of mercury in fish in water bodies downstream.

For a more detailed discussion of the science on mercury and boreal forest clearing please refer to our enclosed evidentiary record filed with the Divisional Court in our 2015 Judicial Review Application, and the associated expert reports by Dr. Carignan, Dr. Podur, Dr. Mergler, and Dr. Willow.

Mining exploration and mining activities also risk altering water quality in ways that increase the methylation of existing mercury in downstream watersheds. This can be through the addition of sulfate, change in acidity, water colour, temperature, and other parameters. In Grassy Narrows, where mercury levels are already elevated by emissions from Dryden, any increase in net methylation is intolerable.

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Concentrations, Fluxes, and Their Response to Manipulations”, Vol. 4 at 607-618.

<sup>10</sup> Globe and Mail (March 12, 2001), “[Mercury levels tied to logging practices.](#)”

<sup>11</sup> Toronto Star (September 14, 2016), “[Ontario environment officials concerned that clear-cut logging releases mercury.](#)”

The Crown still has no remediation plan for the mercury that remains in the English-Wabigoon River system from discharges in the 1960s and 1970s. Mercury released into the watershed or methylated as a result of mining activity, especially dissolved mercury, will eventually find its way into the English River and further raise the mercury levels in fish and poison our people, exacerbating and prolonging our mercury crisis.

This is not acceptable. We cannot tolerate any additional mercury.

New releases of mercury or increased methylation will unjustifiably impair Grassy Narrows' treaty rights, health and wellbeing, and are discriminatory. This is an intolerable outcome for our treaty partner to impose on us against our will in the absence of consent.

### ***Adverse impacts on Grassy Narrows' Treaty Land Entitlement Claim.***

Grassy Narrows has an active Treaty Land Entitlement Claim (TLE) that has been accepted by the Crown and is under negotiation for resolution. Part of the resolution of the claim will include an addition to Grassy Narrows' reserve lands, and compensation for lost use. Grassy Narrows is currently engaged in a process to select its additional reserve lands. All the area around Grassy Narrows is currently potential reserve lands additions under consideration.

The Crown has asserted that lands which have encumbrances, such as mining claims and leases, will be more challenging to designate as additional reserve lands. This means that your mining claims and leases adversely impact our ability to select reserve land additions and are an impediment to the successful resolution of our TLE.

Further, lands which have been impacted by mining exploration such as cutting lines, pitting, trenching, stripping, and drilling, decline in ecological health, experience a degradation of their intactness, and therefore become less suitable as additional reserve lands.

Lands which are downstream of industrial projects also have their value, and suitability as additional reserve lands degraded. Lands along the shores of the English River and its tributaries have been core to our people for countless generations and are prime candidates for our reserve lands additions. If you were selecting lands for your home, your cottage, or your reserve, would you want a huge industrial gold mine to be opened up stream of them? No one would.

Over the last few decades vast parts of our Territory have been encumbered and degraded through industrial actions imposed on Grassy Narrows and upstream of Grassy Narrows. This has severely restricted the available suitable additional reserve lands.

Grassy Narrows has been clear that there should be no new encumbrances on our area, and no new degradation to our area (including from upstream), as this would unfairly further reduce the available suitable additional reserve lands (in addition to other impacts outlined elsewhere). This would impair the ability to correct the injustice

that was done to us by having been denied a fairly sized reserve for over a century.

### ***On-site Impacts***

According to the Ontario Auditor General “Mining activities can have a significant impact on the surrounding environment. They can affect groundwater and surface water, aquatic life, soil, vegetation, wildlife and air quality. The changes mining makes to the environment can have serious implications for public safety and health.”<sup>12</sup>

While we are unable to meaningfully review the thousands of pages of technical documents that have been sent to us, it appears that the on-site impacts of the project will be extreme.

Large parts of the site will be deforested for decades at least. Three open pit mines will be created along with three underground mines, large tailings holding areas will be created, and a large ore processing facility will be built.

The project area will effectively be completely removed for the foreseeable future from the land base that is accessible to us to live our way of life and to practice our rights.

It also appears that water bodies including lakes and creeks on the site will be at extremely risk because they will be located immediately adjacent to and downstream / downgradient of heavy industrial operations including mining, ore processing, and tailings storage. We are concerned that the on-site water bodies will be damaged and we know that once they are damaged it can be hundreds, if not thousands of years before they are safe again.

### ***Downstream / wind / migration impacts***

We know far too well that industry can have impacts far beyond the industrial site itself. The chlor-alkali plant in Dryden that discharged mercury into the Wabigoon River was 150 km upstream of our village. The distance did not stop the mercury from being carried downstream, bioaccumulating in the fish that we eat, destroying our livelihood, poisoning our people, and dramatically disrupting our way of life. More than 50 years after the discharge of mercury was ordered halted, our mercury crisis rages on.

We fear that the impacts from the Great Bear Gold Project site will extend far beyond the mine site itself, further disrupting the balance of the environment that the Creator has established for us and which gives us what we need for a good life.

Impacts from industrial sites can propagate off site in many far-reaching ways and we cannot list them all here. Pollutants can be carried hundreds of kilometers downstream. Water quality changes that may appear innocuous in themselves, and which are not regulated, can alter the cycling of pollutants, nutrients, and other aquatic processes in damaging ways. For example, dissolved organic carbon (DOC), sulphate, and other

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<sup>12</sup> Auditor General of Ontario (2015), [“2015 Annual Report: chapter 3.11: Mines and Minerals Program.”](#)

substances are a naturally occurring part of aquatic ecosystems and are not considered toxic. However, they known to play a strong role in mercury cycling affecting mercury speciation, solubility, mobility, and toxicity in the aquatic environment. Alteration of water chemistry can have serious consequences.

The wind can carry pollutants and other chemicals long distances before they are breathed by our people and deposited on the ground and in the water. For example, PCBs generated in the industrial centers can be deposited in the arctic and bioaccumulate to levels that are dangerous for subsistence consumers. Acid rain created by the Sudbury mines killed hundreds of lakes for scores of kilometers downstream and the area has yet to fully recover many decades later. We fear that the operation of the mine, including heavy machinery, blasting, and ore processing, will create airborne pollution and changes that can be carried long distances throughout our Territory and beyond, and will compound the existing impacts of other sources of airborne pollution including the Dryden and Kenora mills, other mines, and municipalities.

Off-site impacts can also happen through animals, fish, and birds and other forms of life that travel. If moose can no long find winter refuge on the project site, or if roads, trails and clearings created associated with the project increase access and success for non-native hunters and predators, then fewer moose will be available to hunt. That impact will not be restricted to the boundary of the project site but will extend as far as a moose would range from the project site, or conversely the area from which moose would range into the project site and face predation, hunting, and lack of suitable habitat.

Other animals like wolverine, wolf, bear and cougar travel even further distances. Impacts to their populations, their travel routes, and their hunting success in turn influence the populations of the moose, caribou, rabbits, and other animals that are important to us.

We know that walleye travel large distances throughout their lifespan, especially when they are spawning. Throughout their travels they breath the water, eat the local food sources, and are exposed to local toxins. Many of these toxins stay in the walleye for a very long time and accumulate throughout their lifespan, which can be decades long. As a result, walleye that are not at the project site, nor even within a downstream area impacted by the project site, may migrate into impacted areas and accumulate toxins which we are exposed to when we eat them. In turn, otters, eagles, pelicans and other beings eat the fish and then travel further distances, carrying the toxins with them.

### ***Landscape impacts (e.g. intact forests)***

Beyond the on-site and off-site impacts, the project will have landscape-level impacts. Looking at each site in isolation fails to see that the landscape as a whole and its many processes and functions that sustain life. The many parts of the landscape work together, each playing their part. If one is disturbed, then all are disturbed. If too many are disturbed, then the landscape's ability to sustain our good Anishinaabe way of life can be severely undermined.

For example, intact forest landscapes “are critical for stabilizing terrestrial carbon storage, harboring biodiversity, regulating hydrological regimes, and providing other ecosystem functions.”<sup>13</sup> Many species rely on intact forests. For example, the Government of Canada believes that once a landscape exceeds 35% disturbance it crosses a threshold beyond which the landscape becomes unable to reliably sustain a population of woodland caribou and extirpation becomes likely.

Indeed, this is what we experienced in the southern part our Territory where no single project alone caused the local extinction of caribou, but rather it was a death of a thousand cuts as more and more impacts over time made the landscape unable to sustain caribou. We know that the landscape in the range of the Sydney Caribou herd already exceeds this disturbance threshold and is need of recovery. The Gold Bear Gold project will add further disturbance, making the local extinction of caribou even more likely.

Caribou are a sentinel species whose fate is an indicator of the health of the landscape and a range of species and values that rely on intact forests.

Although they behave very differently, moose also rely on a healthy landscape. When there is too much industry, the dense mature conifer forests that moose require for winter shelter become too small, fragmented, and scattered to support moose. When too may roads are put in, outside hunters gain easier access, and when clearings are made those hunters have higher kill rates. When the forest becomes too disturbed, the deer move in, and with them comes sicknesses that hurt the moose.

Again, no one project alone can be blamed for the loss of our moose. But taken together the many industrial changes to our landscape have led to the near elimination of our once healthy moose population.

In spite of our many requests, Ontario refuses to work with us to plan at a landscape level to ensure that our health and way of life can be maintained and recovered. Instead, Ontario allows more and more disturbances to compound each other, further and further degrading the landscape that we rely on. The Great Bear Gold project will further undermine the forest landscape.

### ***Spiritual Impacts***

Spiritual impacts are a sensitive topic because it involves some of our deepest and most personal aspects of our selves. It is also sensitive and difficult to share because, not long ago, our spiritual practices were outlawed and we suffered persecution for them. To this day our spirituality is mis-represented, misunderstood, and disrespected by government and industry. For these reasons, this information is only the tip of the iceberg pointing to the presence of a deep and far larger concern.

Our people believe that may aspects of a human being are important to health,

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<sup>13</sup> Intact Forests, “[Intact Forest Landscapes](#)”.

wellness, and the good way of life. A critical aspect is spirituality. The landscape and our way of life are connected and sacred. We have a spiritual relationship of reciprocity with the landscape that requires us to take care of the land so that the land can continue to provide for us. This is a sacred responsibility given to us by the Creator.

Our sacred relationship and responsibility is with the landscape as a whole, and with all of its parts. It is not restricted to a finite set of point values such as ceremony sites, burial sites, and medicine patches. Although those are important, they are focal points in a far broader and all-encompassing spiritual fabric. Our spirituality emanates from, and is infused by the entire landscape. It is practiced throughout the landscape and supported by the entire landscape.

Without the spiritual landscape intact, the spiritual sites are desecrated and cannot function. The medicines do not work if they grow in a clearcut, or if herbicides and pollution have drifted on the wind towards them. How can the ceremony summon a spirit who has fled from the noise of machinery and blasting? How can an offering be made to a spirit-being whose trails and territory have been destroyed? How can the prayer for the success of our hunters be answered when our industrially transformed landscape is nearly empty of moose? How can we fulfill our responsibilities to our clan animals Atik (woodland caribou) and Numeh (sturgeon) when they are extirpated or at risk in much of our Territory? How can we fulfill our duties and ceremonies to the water when it has been polluted, dammed, and an invisible remains within it? How can we identify our grave sites when our people have been laid to rest throughout this land for countless generations?

In addition to our broader sacred relationship with the landscape, there are spirit beings who inhabit the landscape and who have relationships with the Anishinaabe and important roles in the landscape. We have duties to carry out in our relationships with these beings and if we do not fulfill our duties there can be negative repercussions. Some of these important spirit beings live in the rocks. When they are disturbed, hammered, drilled, bulldozed, blasted, or extracted, these spirit beings are impacted, and the spiritual realm is disrupted.

Past government policies and industrial activities have already deeply disrupted our spirituality and the spiritual dimensions of our way of life and wellness. If the Great Bear gold mine, and associated work, goes ahead, then it will have a further intense spiritual impact.

Spiritual impacts lead to bad things for our people. When we cannot fulfill our sacred duties it causes feelings of sadness, anxiety, loss of identity, loss of meaning, depression, and helplessness. When the spiritual realm and relationships are disrupted, it can cause fear, accidents, discord, conflict, bad harvest, unsuccessful hunts, drought, floods, hunger, ill health, and other terrible things.

We understand that the government and industry have a different way of seeing things, and that you see the natural world as separate from you, inanimate, spiritless, and there for the taking. We know that you always tell us that you know best and that the industrial

activities you plan will only cause minor, contained, short term impacts and that we need not worry. And yet, we are suffering from all the terrible consequences that our ancestors warned us would come from your industry and your violation of our spiritual landscape including illness, poverty, hunger, depression, suicide, and conflict.

Our way of understanding the world deserves respect. It is not right for you to force your worldview and all its impacts on us while we suffer the consequences.

### ***Long-term risks – Tailings***

We are particularly and deeply concerned by the long-term nature of the changes that you are making to the landscape and the risks that you are creating.

On August 13, 1970, a few months after closing the fisheries due to mercury pollution, the Ontario Minister of the Environment, George Kerr, declared that the Wabigoon River would recover on its own, without a cleanup or intervention. He said it would happen naturally in 12 weeks.<sup>14</sup> More than five decades later, our walleye in the Wabigoon River remain the most mercury contaminated in all of Ontario and it is unsafe to eat even one meal. Recent studies indicate that it will take many hundreds, if not thousands, of years for river sediment to recover on its own. Many sites are not recovering at all, and some are getting worse.

Some of the long-term risks that you are proposing to create include the creation of huge piles of waste rock that contains acid, heavy metals, the creation of new lakes in former open pit mines and tunnelling deep underground. These activities create long-term risks of leaching, groundwater contamination, dam failure, cave ins and falls, among many other things. We know that the impacts of industry can last many generations and for thousands of years.

And yet, our Treaty is only 150 years old. In that time the Crown has shown little ability to plan for the long term in a way that is not disastrous for us. How can we believe that the risks that you are creating will be safely taken care of for longer than Canada has existed as country, for longer than the time that Europeans have been in contact with us? How can we know that Canada, Ontario, Kinross, or Great Bear Resources will even exist in the timeframe that these risks will exist, let alone fulfil your responsibilities to take care of these risks in a way that you never have before?

You say that you will contain, monitor, and prevent these risks from impacting us, our water, and our landscape. But Ontario's own Auditor General has repeatedly found a failure to effectively remediate and monitor mining risks (see the section on failure to regulate below). Senior officials in the provincial government have noted the urgent and dangerous gaps in Ontario's regulatory ability to ensure the safety of tailings dams. You cannot safely carry out these duties now. Who will maintain the tailings dams in 100

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<sup>14</sup> The Guardian (October 16, 2018), "[The Warrior Society rises: how a mercury spill in Canada inspired a movement.](#)"

years? Who will monitor in 200 years?

We, the people living downstream, do not accept these risks.

### ***Impacts to relationship with the Crown***

The Great Bear Gold project is a massive one, with great risks to Grassy Narrows and that can have a major impact on many aspects of Grassy Narrows' relationship with the Crown including our Treaty, the honour of the Crown, fiduciary duties, outstanding obligations, unmet duties, and reconciliation.

Yet, the Crown refuses to come to the table with us about the major issues from which all these problems flows. At the same time, Ontario is attempting to delegate nearly all aspects of our relationship with the Crown to a gold mining company that is not party to our Treaty and that is primarily accountable to creating profits for its shareholders. A gold mining company has no ability to address our important issues with the Crown. We do not accept a gold mining company stepping into the shoes of our Treaty partner.

Adding insult to injury, Ontario has informed the company that the duty to consult on this project is at the low end of the spectrum. This is incorrect. For many reasons, even under Crown law, we are at the high end of the spectrum where consent is required. The reasons include but are not limited to the significant potential adverse impacts of the proposed project on our rights and health, the strength of our rights, the cumulative impacts of past industry, the outstanding Crown obligations and unmet duties towards us, the honour of the Crown, and fiduciary duties.

The failures of the Crown have led to a situation where we have been notified of this project only after the land was designated as "general use" and open to mineral exploration, after cumulative impacts of industry had been allowed to severely impact our rights and our health, after mining claims to the land were registered, after five years of exploration work had taken place, after over a billion dollars had been spent to purchase the property, and after the company had decided to open up a huge gold mine here.

The Great Bear Gold project is a runaway train, and we have no meaningful opportunity to shape decisions that will forever impact our people and our land. These decisions include: determining what parts of the landscape should be protected and what should be exploited; the threshold for industrial impacts that can occur before our rights are infringed and our health is harmed; the process for making decisions among Treaty partners; the role of third parties seeking to profit in the Treaty relationship; how to repair harms created in the past but impacting the present; how to prevent future harms; how to reconcile the relationship between the Crown and Grassy Narrows.

The Crown acts as though Grassy Narrows has no say in these decisions. The Crown seems to think that we should accept that a massive gold mine is a foregone conclusion and we should only have a say in things like where the effluent pipe discharges, where the tailings piles are located, and where the processing plant should be sited. We disagree.

This project, the failure of the relationship with the Crown which has allowed the project to become so advanced without our involvement and consent, is having, and threatens to have further major impacts to our relationship with the Crown. Rather than taking a minimal and reductionist view of the minimum that the Crown can do in this situation, a robust understanding of the duties is required, as well as an appreciation for the unique circumstances and history of Grassy Narrows. Only involvement of senior representatives of the Crown can resolve this problem.

### ***Federally Regulated Impacts***

Federal involvement is required because of the numerous areas of claimed federal jurisdiction that will be affected by the Great Bear Gold project, including the completion of a Federal Impact Assessment.

Some, but not all, of these areas of claimed federal authority are listed here:

Species at Risk: The Federal Crown claims authority within the Constitutional division of powers over Species at Risk. Although we have not been able to carry out a thorough assessment due to the lack of capacity supports, the project site has a strong potential to impact the following species at risk:

- Woodland Caribou – the project site is within the range of the Sydney Caribou Herd. The range of the Sydney Caribou Herd is currently approximately 64% disturbed (likely higher due to recent fires in Woodland Caribou Provincial Park). This amount of disturbance exceeds the threshold above which the range becomes unlikely to be able to support a viable caribou population. The range is in need of recovery to lower the level of disturbance and therefore the entire range is considered critical habitat. The project will add disturbance, further degrading the ability of the range to sustain caribou and increasing the likelihood that Woodland Caribou, a threatened species, will be extirpated from this area. Caribou is an important clan animal for Grassy Narrows.

It should be noted that while Ontario does have a *Species at Risk Act*, it has exempted mining and logging from the applicability of that Act. The provincial government cannot be counted on to ensure that the Great Bear Gold project proceeds in a manner that protects species at risk.

- Wolverine – Wolverine play an important and unique role in our ecosystem and in the balance of life. The company has indicated that wolverine have been observed on the project site using trail cameras. Direct observation of wolverines is a rare. Wolverine avoid humans and human impacted areas. The project is almost certain to permanently displace the wolverine that have been observed at the site and to destroy any wolverine dens, trails, habitat, and food sources that are on the site.

The Committee on the Status of Endangered Wildlife in Canada (“COSEWIC”) reports that wolverines prefer ecologically intact areas and avoid disturbance.

According to COSEWIC “[a] study of the cumulative effects of developments on Arctic wildlife (Johnson et al. 2005) found that mines and other major developments had the largest negative effect on species occurrence, followed by exploration activities, and outfitter camps.”<sup>15</sup>

Due to past degradation of southern habitats, wolverine left Grassy Narrows’ area. However, our success in stopping logging has resulted in the beginning of a return of wolverine. Grassy Narrows is now near the southern edge of the currently occupied range of wolverine. If the project goes ahead, wolverine will leave our area and may not come back, further disrupting the balance of the landscape.

- Sturgeon – Sturgeon are an important clan animal in Grassy Narrows an important food source for the Anishinaabe of the Treaty 3 area. The damming of the English River has had a big impact on sturgeon. A small and delicate population remains in the river, which we are trying to protect and recover. Sturgeon live for many years, are sensitive to industrial disturbances, and can accumulate large amounts of toxins in their bodies.

There are many other species at risk that may be affected by the Great Bear Gold project, including bats, birds, turtles, Eastern Cougar, American Badger, and others. Each have a role to play in the web of life.

Fisheries: The Federal Government claims jurisdiction over inland fisheries, the prevention of harm to fish from pollution, and the protection of their habitat.

While the Federal Government has cooperative agreements with Ontario for licensing of fisheries the Federal Government maintains jurisdiction and responsibility for prevention of harm and protection of fish habitat.

Under Crown law, even the construction of a small water crossing can trigger the need to apply to the Department of Fisheries and Oceans for permits. In contrast, Ontario does not require a provincial impact assessment before a mine is opened.

We are a river people and fish have always played an extremely important role in our way of life, our sustenance, and our livelihood.

The companies propose to take water from our river system, use it in the industrial gold extraction process, and then return it to our river. The companies propose to create three open pit mines, three underground mines, store large amounts of waste rock and operate an industrial ore processing facility, all in close proximity to water bodies and streams that flow into our river system. Finally, the companies propose to create three new lakes in the empty open pits created by gold mine, and to allow water to flow out of those pits and into other local water bodies. All these activities, and others, put our fish

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<sup>15</sup> Government of Canada, [“Wolverine \(Gulo gulo\): COSEWIC assessment and status report 2014”](#) (date modified: January 6, 2015).

at risk.

The Crown has failed to protect our fish for many decades from the impacts of mercury and this has had grave consequences for the rights, health and wellbeing of our people. Given the Crown's failure, and its ongoing impacts, all levels of the Crown should be diligent and alert in carrying out their duty to protect our fish from further harm.

Indigenous Peoples: The Federal Government claims jurisdiction over Indigenous Peoples and the lands reserved for them. This jurisdiction includes claimed authority over our health, culture, and wellbeing, responsibility for environmental contaminants and their impacts on Indigenous traditional foods and on the health of Indigenous Peoples.

The Great Bear Gold project has potential to impact Grassy Narrows' relationship with the Crown, the safety of our traditional foods, and our health, culture, and wellbeing. The project also has the potential to impact waters that flow into and through our reserve and which can impact our reserve.

Due to the Crown's longstanding and ongoing failures to meet its duties to Grassy Narrows, all levels of the Crown should be diligent and alert in carrying out their duty to protect us, our health, our traditional foods, and our further harm.

There are further areas of Federal claimed authority that likely apply here as well and that are at risk in this project, including but not limited to migratory birds, transboundary waters, transboundary air pollutants, international laws and instruments.

Due to the many important areas of claimed Federal authority that are at serious risk in this project, it is essential that a robust and comprehensive Federal Impact Assessment is carried out.

Grassy Narrows seeks to engage with the Federal Government and our consent is required to the form that the Impact Assessment will take.

### ***Site-specific parameters and guidance levels needed***

In its Initial Project Description, Kinross states that water, effluent, tailings leachate, and other substances will be tested and will be released back into the environment after they meet guideline levels. However, the Initial Project Description does not identify the guideline levels that will be used. Guideline levels are a very important and complex topic that must be explored in far more detail. Our discussion here is intended to illuminate that there is a serious problem.

Although there are many substances of concern here, we are most familiar with mercury and so we will use it as an example.

There are many guidelines that we have seen applied upstream of our community for allowable mercury levels. Some of these guidelines are wildly inappropriate, but all of them are insufficient.

According to the Government of Canada “(m)ercury is a toxic element and serves no beneficial physiological function in man; a maximum acceptable concentration of 0.001 mg/L (1 µ g/L) in drinking water has therefore been established.”<sup>16</sup>

A concentration of 0.001 mg/L corresponds to **1000 ng/L** (nanograms per liter), which is the unit we will use here.

One might think that if the mercury level is good for drinking, then it would be fine to put in our river, but that is not the case. Provincial Water Quality Objectives (“PWQO”) are numerical and narrative criteria that serve as chemical and physical indicators representing a satisfactory level for surface waters (i.e. lakes and rivers) and, where it discharges to the surface, the ground water of the Province.

The PWQO guideline level for mercury in surface water is **200 ng/L**.

The PWQO guideline has historically been applied to mercury contaminated groundwater seeping out of the banks of the Wabigoon River next to the Dryden mill to claim that it is safe. However, this too, is irresponsible.

The Canadian Council for Ministers of the Environment (CCME) provides guidelines for mercury levels in freshwater bodies that attempt to account for the risk to fish and wildlife through exposure to mercury.

The CCME guideline level for mercury in surface water is **26 ng/L**.

One might think that if this level of mercury in water is safe for the fish and wildlife, it must be safe to put water with that level of mercury into Grassy Narrows’ river. However, the CCME guideline does not consider bioconcentration of mercury as it moves up through the food chain.

As the Government of Canada explains “[t]he presence of mercury in water has become a source of concern because of the finding that organic mercury is bioconcentrated by fish. Elevated mercury levels have been found in all freshwater fish taken from areas with suspected mercury contamination and frequently render the fish unacceptable for human consumption.”<sup>17</sup>

The mercury levels that are found in predatory fish like the walleye, can commonly be a million times the level that is found in the water that they swim in.

Recent monitoring studies of the Wabigoon River upstream from the Dryden mill show that **baseline level of mercury in the Wabigoon River is around 1 ng/L**. Even at those baseline levels of mercury in water, large adult walleye in Wabigoon Lake often exceed 0.5 ppm mercury, the level above which the commercial sale of fish for human

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<sup>16</sup> Health Canada (1986), “[Healthy Living: Water and Mercury](#).”

<sup>17</sup> Health Canada (1986), “[Healthy Living: Water and Mercury](#).”

consumption is banned.

If the level of mercury in the River is raised to **2 ng/L**, then mercury levels in adult walleye will approximately double, making them far more dangerous to eat. If other chemicals that stimulate net methylation in the environment are added as well, then the effect will be even more grave.

That means that river water with 2 ng/L of mercury will have serious impacts on the health of Grassy Narrows people's ability to safely practice their right to fish, even though this level is less than 10% of the level allowed by the CCME guideline, the most restrictive of the guidelines we are aware of.

A similarly broad range of guidelines exist and are applied for mercury levels in fish safe for human consumption.

The Ontario Ministry of the Environment "Guide to Sportfish Consumption" allows for some consumption of fish by the non-sensitive population (adult men and women who are not of child bearing age) if the fish have mercury levels below **1.8 ppm**.

On the other hand, the sale of fish for human consumption in Canada is banned if the fish have mercury levels over **0.5 ppm**. Grassy Narrows fishermen have been charged for selling their catch based on this rule.

In the 1980s, Canada established **0.2 ppm** as the guideline limit for safe consumption of fish by Grassy Narrows and other Indigenous subsistence eaters of fish.

The US Environmental Protection Agency ("EPA") lists **0.1 ppm** as their guideline level for Indigenous subsistence eaters of fish.

Renowned mercury expert Dr. Mergler has written in expert reports (some of which are enclosed), all of which have been provided to Ontario, that among these guidelines the US EPA level is most relevant to Grassy Narrows. However, she notes that all these guidelines are based on safe levels for a lifetime of exposure in a regular population. Mercury impacts are cumulative throughout the lifespan. None of these guidelines take into account the high, and far above guideline, levels of exposure that many Grassy Narrows people have already been exposed to. She writes that Grassy Narrows people have generally already been exposed to too much mercury and cannot safely be exposed to any additional mercury.

Clearly, off-the-shelf guidelines are not sufficient. It is necessary to develop and apply in close collaboration with Grassy Narrows locally specific guidelines that take into account the local background levels, ecology, food chain, cultural practices, and cumulative impacts from other industry, and history of exposure.

### ***Other specific concerns***

Given the constraints that we have noted, it is not possible to provide a comprehensive list of concerns here. However, some further concerns that we have identified to date,

which will require future elaboration, include:

- The contamination of the water within our Territory and water that flows into our Territory from effluents, discharges, by-products, leaching (including of metals), and changes in mercury cycling
- The creation of acid rock drainage and other forms of toxic drainage
- Changes to the flow, level, and quality of our water from water takings and discharges.
- The contamination of our air and air that flows into our Territory
- The loss of our caribou and moose, and of those who travel into and out of our Territory through impacts including habitat degradation and outside hunting pressure
- Disrupting the delicate balance of animals, predators, prey, and the web of life that supports us.
- The contamination and loss of our fish for food, commercial fishing, sport fishing, and way of life, including fish that migrate in and out of our Territory
- The loss and contamination of our birds and insects including migratory birds
- The loss of our valuable fur bearing animals including marten and otter
- The fragmentation and degradation of our forests and the loss of intact forest landscapes and old growth forest areas
- The changing of mercury exports and mercury cycling, including methylation
- The creation of additional anxiety, fear, depression, disempowerment, and despair among our people
- The further disruption of our society, our culture, and our way of life.
- The exacerbation of our suicide crisis
- The desecration of our sacred landscape
- The disturbing of spirits and beings that live in the rocks
- The tainting of our medicines
- The disruption of our people who are out on the land living their way of life
- The loss of peace and quiet for our people who are out on the land

- The loss of the ability to use the land as a healing place for our people
- The loss of our ability to teach our kids our way of life, identity, knowledge, and ways of wellness
- Impacts to our individual and collective health and wellbeing
- The loss of our ability to make a living in a way that is harmonious with our culture
- The violation of our Indigenous laws and jurisdiction
- The violation of our Treaty rights, our Treaty relationship
- The violation of the honour of the Crown and Fiduciary duties.

Other harmful impacts of industry on ANA people and Territory include, but are not limited to, the following:

- Impacts to game animal populations and their habitat including moose, and caribou which are central to our hunt and an important part of our way of life, our sustenance, our livelihood, and the exercise of our Treaty rights;
- Impacts to fur bearing animal populations and their habitat including pine marten which are central to our trapping and an important part of our way of life, our sustenance, our livelihood, and the exercise of our Treaty rights;
- Changes in forest composition including a shift from extensive coniferous dominated stands to fragmented deciduous dominated stands;
- Failure to regenerate forests or failure to regenerate to their previous composition;
- Loss of productive land base through tertiary roads, machine trails, landings, mines, tailings, buildings, erosion, etc.;
- Loss of species and genetic diversity;
- Loss of shrubs, including berries and medicines including through the use of herbicides;
- Tainting of our medicines and rendering areas unfit for sacred medicine harvesting and ceremony;
- degradation of forest soils, including compaction, rutting, scarification, and erosion;

- Disruption of nutrient cycles including the depletion of calcium in our watersheds, leading to calcium deficiency in aquatic biota;
- Increased competition with non-Indigenous hunters and fishers using forest access roads and associated depletion of animal and fish populations;
- Increased road traffic and danger of collision of people and wildlife with forest industry vehicles;
- Loss of traditional travel routes, sacred places, heritage, and archaeological sites;
- Negative impacts on water quality, fish habitat, fish populations, and fish contaminants;
- Risk of increased violence against ANA people, including gender-based violence, from an influx in workers coming into the Territory to log, and the potential establishment of man camps;
- Lack of recognition of cultural Anishinaabe way of being;
- Violation of our inherent, Treaty, and Aboriginal rights; and
- Violation of ANA Law and the will of our people.

### ***Failure to Effectively Regulate and Remediate***

According to the Government of Ontario, there “are over 5,700 abandoned mine sites in Ontario that have over 17,000 mine features, known as hazards... Deaths due to mine hazards in Ontario are rare, but deaths happen in North America every year.”<sup>18</sup>

As of 2015, only four mines were listed as fully closed out. Only three are identified as undergoing remediation. On the other hand, there were 56 abandoned mines with 629 contaminated sites meeting provincial criteria for liability recognition. A further 306 abandoned mines had over 3,000 contaminated sites that do not meet the criteria for liability recognition.<sup>19</sup>

There are already many abandoned mine sites in our Interim Area of Interest for Mining, mostly in the Red Lake Area, many of which have been left in an unremediated state for decades. A number are classified as dangerous by the Ministry.

According to the Ontario Auditor 2015 report, the Ministry of Mines has not estimated

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<sup>18</sup> Ontario, “[Abandoned mines hazards](#)” (last updated February 17, 2023).

<sup>19</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program.](#)”

the total cost of rehabilitating the 4,400 abandoned mine sites in Ontario since 1993 and therefore does not know the current cost for doing so. It also does not have a long-term plan for rehabilitating these sites. These sites may pose risks to public health and safety and the environment.<sup>20</sup>

The Auditor General found that the “Ministry conducts minimal inspection and follow-ups on abandoned mines.”<sup>21</sup> In the five years before the audit “the Ministry has inspected only about 6% (248) of abandoned mines to ensure that they do not pose a risk to public health and the environment.”<sup>22</sup>

The Crown often assures us that despite the legacy of past bad practices, mining regulation is done safely now. To the contrary, the Auditor General found many glaring flaws in Ontario’s regulatory regime for current mining, including that “Ontario is the only province in Canada that does not require a provincial environmental assessment to be performed for mining projects.”<sup>23</sup> The Auditor General’s report further explained that “in Ontario, the *Mining Act* only requires mining companies to submit closure plans prior to the development of the mine... In other provinces in Canada, larger mining projects automatically trigger a provincial environmental assessment.”<sup>24</sup>

The Auditor General found that the closure plan process lacks sufficient funding, is subject to pro-industry bias, plans are not updated, and inspections are insufficient to ensure safety.

As of 2022, the government had not inspected nearly half of Ontario’s operational mines since 2011.<sup>25</sup> The news media has also reported that Ontario senior officials are highly concerned that following several recent tailings dam failures “there is little to no legislative authority to prevent similar situations from occurring in Ontario.”<sup>26</sup> According to the media the regulatory gap is outlined in a section of a briefing binder for Minister Pirie dedicated to “critical decisions. Senior bureaucrats, who told Minister Pirie that the gap in offline tailings dam rules was a “high-risk gap in the regulatory framework that requires urgent attention.”

Far from improving the overall mining regulatory situation, the Government of Ontario has recently watered down its regulations with respect to requirements for closure planning and closure funding through the *Build More Mines Act*. The Act gives the Minister extremely broad discretion over nearly all aspects of mining including closure planning and funding. Under the new rules the position of Director of Mine Rehabilitation

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<sup>20</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program](#)” at p. 444.

<sup>21</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program](#).”

<sup>22</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program](#).”

<sup>23</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program](#).”

<sup>24</sup> Auditor General of Ontario (2015), “[2015 Annual Report: chapter 3.11: Mines and Minerals Program](#).”

<sup>25</sup> The Narwhal (June 24, 2023), “[Ontario minister was privately urged to fix ‘high-risk gap’ to avoid mining disaster](#).”

<sup>26</sup> The Narwhal (June 24, 2023), “[Ontario minister was privately urged to fix ‘high-risk gap’ to avoid mining disaster](#).”

was removed, Ministry staff no longer review closure plans and instead industry staff may carry out the review, contrary to the Auditor's 2015 recommendations.

Given this context, Grassy Narrows does not trust that the appropriate regulations are in place to ensure mining sites will be kept safe for many generations to come. You have not earned our trust.

### ***Lack of Protected Areas, Need for Regional Balance.***

There is an imbalance in the region because nearly all forests south of Red Lake are open to industrial mining. For example, much of our Territory is in ecodistrict 4S-2 where only 4.1% of the ecodistrict is protected. Part of our Territory is in ecodistrict 4S-3 where only 3.3% of the ecodistrict is protected. The lack of protection for our landscape is the clear outcome of an unbalanced landuse designation process that did not involve us meaningfully and ignored our rights and interests.

In contrast, conservation biology generally dictates that at least half of an ecosystem must be protected to avoid loss of biodiversity and ecosystem functions. Ontario has committed to community-based land use planning in the Far North based on a joint planning process between the First Nations and the province.<sup>27</sup> It committed to protecting 50% of the landbase in partnership with First Nations following First Nations-led landuse planning.

Canada has committed to protecting 30% of the land in Canada by 2030 in partnership with First Nations. Respecting ANA's efforts to protect our environment will contribute to the maintenance and recovery of biodiversity and ecosystem functions and will support a balance in this region, where the vast majority of forests have been open to industrial logging and mining.

### ***Nature Based Climate Change Solutions***

Climate change and biodiversity loss are major threats to Grassy Narrows and to the world. Nature based solutions have been identified as an important part of preventing and mitigating both problems. The boreal forest is one of the world's largest storehouses of carbon. After logging or clearing of the land for mining, much of this carbon is released from the forest, plants and soils, contributing to climate change. On the other hand, protecting forests helps to keep the carbon safely stored and safeguards biodiversity. These are important ecosystem-based services that contribute to mitigating climate change and that have a significant value.

Fighting climate change and biodiversity loss are important priorities for Grassy Narrows and for Canada and respecting Grassy Narrows' land protection will contribute to progress on these priorities.

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<sup>27</sup> *Far North Act, 2010*, SO 2010, c 18.

## VI. Mining activity without Grassy Narrows' consent risks conflict

Barrick writes that “[a]ny perceived or actual breach of ... trust or respect can have devastating consequences for a mining venture or company, and these commercial and reputational consequences can extend well beyond any particular project or First Nation group.” In so writing, Barrick raises the spectre of conflict minerals, also commonly known as blood minerals.

Global concerns about unethical practices by mining companies, including Canadian gold mining companies, have led to increased scrutiny of the social, environmental, and ethical practices of mining companies. For the mining industry, the problem with conflict minerals is that no one wants them. Conflict minerals are hard to market, and they increase corporate risks and uncertainties associated with investment, timelines, regulatory approvals, litigation, social conflict, and brand damage.

As a consequence, Ontario and Canada have sought to market themselves as stable, safe, ethical, jurisdictions from which to source conflict-free, or ethical minerals. While there are cheaper jurisdictions in which to operate, the conflict-free reputation of Ontario and Canadian minerals is a significant competitive advantage relative to many of other global mining jurisdictions.

However, as Barrick noted, for the mining industry and a mining jurisdiction, trust is hard to gain and easy to lose. It only takes one high profile conflict to taint an entire company, a sector and an entire jurisdiction and to undermine decades of marketing.

Ontario learned this lesson in the analogous conflict with Grassy Narrows over unwanted logging. After decades of unilaterally forcing clearcuts on Grassy Narrows against their will, the First Nation turned to protests, boycotts, media campaigns, public education, litigation, and grassroots blockades. Within six years, major sourcing contracts were being threatened and shortly afterwards Abitibi, the world's largest newsprint producer, withdrew from Grassy Narrows Territory.

The City of Kenora, in their 2009 report to the Ontario Good Roads Association / Rural Ontario Municipalities Association, wrote that “[t]he issue with Grassy Narrows on the Whiskey Jack Forest must be resolved... Without resolution of these issues, **the wood coming off the Whiskey Jack Forest cannot be sold. There is no current customer willing to accept wood products from a forest unit which is involved in a perceived controversy.**” (emphasis added)

This dynamic is beginning now with respect to mining. A long and growing list of mining companies, including Barrick, Trillium, Bounty, and Kenorland have voluntarily committed not to explore without consent or have left the area. Their withdrawal reflects an enduring reality in the mining industry where compliance with international law, third party certification standards, customer, investor, and shareholder expectations, and social license preclude the use of conflict minerals.

The Crown would be wise to avoid instigating conflict with Grassy Narrows again by approving unwanted mining. Controversy with Grassy Narrows about one mine could

taint the reputation of Ontario as a conflict-free place to mine. It could give the entire regional industry a stain that heightens risk and uncertainty and discourages investment throughout the supply and production chain.

The entire region and industry benefit from an environment free of conflict. It is in the interest of Ontario and industry to resolve, not inflame, the conflict with Grassy Narrows.

## **VII. Gold does not justify the impact to Grassy Narrows**

Gold does not serve an essential and irreplaceable function in society. The largest use of gold by far is for jewelry, followed by investment and central banks demand. Technology, a distance fourth, used only six percent of gold production in 2022 (309t out of 4,721t produced globally). Much of that technology is electronics with short life spans and abysmal recycling rates.

Because gold is not essential, but is valuable, the rationale for mining gold by Great Bear and Kinross is purely financial. Shareholders demand a return on their investment, but Ontario need not repeat the mistake of sacrificing Grassy Narrows' rights and wellbeing for the interests of corporate shareholders.

The flow of resource wealth has been used to justify the damming of our river, dumping of mercury, logging of our trees, and now proposed gold mining. The impacts we have suffered from this approach are extreme and ongoing. The mine is projected to operate for a mere 25 years, but we will be here for many generations. No longer can the Crown and third-party companies seek to sacrifice our health, way of life, livelihood, rights, and environment for short term shareholder gains. Enough is enough.

It is important to remember that it is tourism, recreation and services – not resource extraction – that now forms the backbone of Kenora's employment. This shift is not due to a lack of available wood or minerals, but rather reflects increasing mechanization and marginal profitability in the extractive sector in contrast to the growing demand and labour intensiveness of the non-extractive sector. Grassy Narrows' work to protect our landscape and our environment have helped to foster Kenora's greatest economic strength.

The Kenora and Red Lake area enjoy substantial benefits for tourism, wildlife, hunters, fishers, trappers, recreational users, and non-extractive industries. According to the municipal website "[t]he City of Kenora has transitioned from a pulp and paper mill town to a destination and lifestyle community."<sup>28</sup>

The tourism and services industries are Kenora's largest employers by far. The visitor and cottager sectors contribute \$300 million annually to the Kenora economy. In contrast, it is estimated that the Weyerhaeuser mill contributes \$60 million to the local economy, even when counting indirect economic benefits throughout the region.

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<sup>28</sup> City of Kenora, "[Key Industries](#)" (accessed January 23, 2021)

Kenora's tourism labour force makes up 38% (3,314 jobs) of Kenora's total employment, while Tourism related occupations account for 51.5% (4,405 jobs) of Kenora's total employment.<sup>29</sup> The growth of this industry is key to Kenora's economic plans.

According to the current Whiskey Jack Forest Management Plan (“FMP”), “[t]here are numerous tourist operators in the Whiskey Jack Forest. The recreational activities provided by these outfitters include options for fishing, hunting, camping and other eco-tourism opportunities. The number of individuals, residents and non-residents, procuring services from these tourist establishments are numerous, and they contribute a significant amount of economic resources to local communities ... The Sunset Country Economic Study reports that in 2001, 443 operators provided employment to 3,785 persons of which 1,221 were located in the Whiskey Jack Forest”.<sup>30</sup>

In contrast, the Evolution gold mine in Red Lake employs 740 people, only a sixth of the number employed in tourism related jobs in Kenora and is chronically at risk of shutting down if profitability cannot be increased for its Australian owner.<sup>31</sup>

As set out in the Lake of the Woods Tourism Sector Report, “[o]ngoing investments in tourist services and resources only compliment the pristine natural environment that has attracted visitors to Lake of the Woods for over a century.”<sup>32</sup>

The current FMP notes that “public and municipal officials should be aware that provincial parks help to make their communities attractive for business as well as for tourists and retirees. The retirement community brings in pension income, which is often indexed to inflation and is “recession proof”.<sup>33</sup>

Respecting and supporting Grassy Narrows’ efforts to protect the landscape would contribute to the region's tourism economy and maintain opportunities to grow that economy as well as to become a leader in the conservation economy through future protected areas and associated eco-tourism attractions. A conservation economy creates long-term sustainable employment potential for local and regional residents by maximizing existing skills and knowledge.

## **VIII. A Choice, an Opportunity**

Our youth are crying out. They want to see the land protected so that we can use it to heal our people and our spirits. This is reconciliation for us. They deserve to see the light at the end of the tunnel. We do not want to have to fight, again and again, to protect our land.

However, the community of Grassy Narrows is strong. We know our history, our rights,

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<sup>29</sup> LOTW Tourism Sector Report (2017), pp. 37, 38.

<sup>30</sup> Whiskey Jack Forest FMP 2012-2022, p 95.

<sup>31</sup> CKDR 927 FM Dryden (June 19, 2020), “[114 Layoffs at Red Lake Evolution Mine.](#)”

<sup>32</sup> LOTW Tourism Sector Report, 2017.

<sup>33</sup> Whiskey Jack Forest FMP 2012-2022, p 98.

our language, our teachings, and our way of life. We have allies across the country and across the world. The days of forcing harm on us against our will are over.

Respecting Grassy Narrows' land protection is the best available way to minimize conflict and move towards a path of reconciliation and respect for our inherent, Aboriginal and Treaty rights in compliance with international Indigenous rights standards.

Grassy Narrows has borne the brunt of the impacts of industry in the region, while our voice has long been ignored by Crown and industry decision makers. Part of the outcome of this mistreatment has been conflict over logging and one of Canada's most infamous environmental poisoning sagas. As a consequence, the region, and the country, has a stain on its honour, its reputation and credibility.

Times have changed. It is no longer acceptable, nor viable for the Crown to approve extractive industrial activities without Indigenous parties' consent. Across Canada there is a commitment and an expectation for reconciliation. We have an opportunity now to learn from the mistakes of the past and to heed the voice of Grassy Narrows. In the process, we can move from conflict to cooperation, from destruction to restoration, from harm to hope. Grassy Narrows invites the Crown to join us in righting this historical wrong. Respecting Grassy Narrows' land protection would be an important show of good faith that would be a positive step on the path towards reconciliation.

The Crown is at a crossroads.

On the one hand, the companies are proposing to open a large and toxic gold mine upstream from us against our will. If implemented, the mine risks irreparable harm to Grassy Narrows' rights and interests including, but not limited to, harms caused by cumulative effects, neglected obligations, Treaty infringement, harm to our health, release of mercury, and loss of way of life and livelihood. This harm would be immoral, unjustified, unreasonable, dishonourable, and a breach of Ontario's fiduciary duties to Grassy Narrows.

On the other hand, respecting Grassy Narrows land protection would have a beneficial impact on the exercise of Treaty rights and on the environment, cause no harm to anyone's health, and be beneficial for the growing non-extractive economy. There is an opportunity for calm that will allow ANA and the Crown to focus on long-term resolution of our issues and that will help ANA return to the health, self-determination, and prosperity that we once enjoyed.

We are inviting you to walk with us on the path of protection, healing and reconciliation. Will you work with us, or against us?

## **APPENDIX A**

### **INTERIM Issues for Negotiation/Engagement/Consultation with MINES**

**August 18, 2023**

1. Recognition and respect for ANA inherent, aboriginal and Treaty rights
2. Recognition and respect for the ANA Land Declaration
3. Recognition and respect for the ANA IPCA
4. Harmonization of Crown Law and ANA Law with respect to mining related activities
5. Repairing the Crown – ANA relationship with respect to mining related activities
6. Outstanding Ontario obligations to ANA including those arising out of the 1978 MOU and subsequent commitments such as increased ANA control and ownership over its land base
7. Land-use redesignation of the ANA IPCA
8. Interim measures including the withdrawal of the ANA IPCA from staking
9. Suspension of all mining exploration activities on the ANA IPCA and vicinity
10. Resolution of existing third-party mining interests on the ANA IPCA created by the Crown
11. Issuing a Notice of Caution for mining related activities on lands where ANA rights and interests could be impacted
12. MINES Minister's unfulfilled commitment of November 2021 to visit Grassy Narrows to discuss mining issues in an open forum.
13. Cumulative impacts of past mining related activities on ANA
14. Cumulative impacts of mining activities and other industrial and crown policy impacts on ANA including mercury
15. Resolution of issues arising from past mining related activities which have occurred without ANA consent (restoration, compensation, apology, etc.)
16. Ending Free Entry mining exploration and resolving the issues it has created
17. ANA concerns re off-site impacts and risks of existing mining activity (e.g. at Red Lake and Goliath mines, Red Lake and Separation Rapids exploration) on ANA
18. ANA concerns and MINES failure to take into account risk of off-site impacts of proposed mining exploration and other mining related activity on ANA (including downstream, migratory, downwind, landscape level, and other impacts)
19. Addressing ANA concerns re: Changes to the Mining Act
20. Addressing ANA concerns re: Regulation and enforcement of tailings management
21. Impacts of mining related activity on mercury mobilization and cycling
22. Impacts of mining related activity on Intact Forest Landscapes and associated values and ecosystem functions
23. Impacts of mining related activity on source water protection and source water planning and management
24. Impacts of mining related activity on moose, caribou, marten, fish, and other wildlife
25. Impacts of mining related activity on ANA sacred landscape, spirituality, ceremonies, medicines

26. Impacts of mining related activity on ANA land based healing
27. Impacts of mining related activity on ANA travel routes, camp sites, occupancy sites, burials, etc.
28. Impacts of mining related activity on ANA archaeological and historical values
29. Impacts of mining related activity on ANA safety, and risk of racial and gender based violence including man camps.
30. Unanswered correspondence from ANA to MINES and Ontario
31. Barriers to meaningful ANA engagement including the ongoing Mercury Crisis, housing crisis, water crisis suicide crisis
32. Reimbursement of past ANA expenses for unfunded engagement with the Crown and mining companies.
33. Capacity support required by ANA to begin meaningful engagement
34. ANA Consultation Area with respect to mining
35. Proposed and existing mining exploration and other mining related permits