



# Native Council of Nova Scotia

The Self-Governing Authority for Mi'kmaq/Aboriginal Peoples residing Off-Reserve in Nova Scotia throughout traditional Mi'kmaq Territory

*"Going Forward to a Better Future"*

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Aboriginal Peoples  
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Netukulimkewe'l  
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Program

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Mi'Kma'ki Environments  
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Aboriginal Connections  
in Trades & Apprenticeship  
(ACITA)

August 16, 2021

Mr. Andrew Taylor  
General Manager Atlantic Operations  
Atlantic Mining NS Inc  
409 Billybell Way  
RR# 2 Middle Musquodoboit, Nova Scotia  
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## **RE: Environmental Assessment Registration Document, Touquoy Gold Project, Moose River, Nova Scotia**

Dear Mr. Taylor,

The Native Council of Nova Scotia was organized in 1974 and represents the interests, needs, and rights of Off-Reserve Status and Non-Status Section 91(24) Indians/Mi'kmaq/Aboriginal Peoples continuing on our Traditional Ancestral Homelands throughout Nova Scotia as Heirs to Treaty Rights, Beneficiaries of Aboriginal Rights, with Interests to Other Rights, including Land Claim Rights.

The Native Council of Nova Scotia Community of Off-Reserve Status and Non-Status Indians/Mi'kmaq/Aboriginal Peoples supports projects, works, activities and undertakings which do not significantly alter, destroy, impact, or affect the sustainable natural life ecosystems or natural eco-scapes formed as hills, mountains, wetlands, meadows, woodlands, shores, beaches, coasts, brooks, streams, rivers, lakes, bays, inland waters, and the near-shore, mid-shore and off-shore waters, to list a few, with their multitude of in-situ biodiversity.

Our NCNS Community has continued to access and use natural life within those ecosystems and eco-scapes where the equitable sharing of benefits arising from projects and undertakings serve a beneficial purpose towards progress in general and demonstrate the sustainable use of the natural wealth of Mother Earth, with respect for: the Constitutional Treaty Rights, Aboriginal Rights, and Other Rights of the Native Council of Nova Scotia Community continuing throughout our Traditional Ancestral Homeland in the part of the Mi'kma'ki now known as Nova Scotia.

After careful review of the Touquoy Gold Project Site (TGP) Modifications Registration Document and Appendices, it appears that it is a well composed and thought-out document. However, the NCNS has major concerns regarding: the cumulative effects that are not being considered within this and related Atlantic Mining Nova Scotia Inc (AMNS) projects in the area, the expansion of the Waste Rock Storage Area (WRSA), and the lack of meaningful Indigenous consultation on the part of the Provincial Government.

### **Cumulative Effects**

At the time of this document's preparation, in addition to the TGP, AMNS holds three other gold development projects within Nova Scotia. These projects, all in various stages of planning and regulatory review, are: Fifteen Mile Stream Gold Project (FMS), Beaver Dam Mine Project (BDM), and Cochrane Hill Gold Project (CH). FMS and BDM are both currently undergoing joint Federal and Provincial environmental assessment review. Both FMS, BDM, and expectedly CH, mirror the mandate held within the TGP Registration document; these satellite mines intend to "use the Touquoy Mine Site infrastructure for processing ore from Beaver Dam and Fifteen Mile Stream Gold Projects and disposal of associated tailings".<sup>7</sup> Paradoxically, AMNS states that,

The use of the Touquoy Mine Site for processing and in-pit tailings disposal for those projects is not assessed in this EARD (Environmental Assessment Registration Document). Should those undertakings be approved and AMNS decides to proceed with their development, required permit amendments for the Touquoy Gold Project site will be sought at that time.<sup>7</sup>

While these EARDs are generally well-prepared documents, the capability to competently comprehend the cumulative effects across all of the current and proposed EARDs is rapidly becoming inaccessible. It is our understanding that these projects in their current state will ultimately result in a four-part cumulation of impacts, though they are still being submitted as separate projects. AMNS's choice to assess the environmental effects of all of the listed projects over an undetermined amount of time, and through a superfluous number of EARDs and amendments, is ultimately obscuring the cumulative effects, and periphrastically achieving a "foot in the door" disposition, favouring review of the AMNS projects.

The obscurity of the cumulative effects is only emphasised by the lack of mention of the close proximity of the gold development projects. The only mention of their proximity is to explicitly acknowledge the roadways that will be used to transport ore material. Due to their proximity and the nature of the unavoidable environmental effects, the sum of these environmental effects will be much larger when considered collectively, rather than separately. Of particular concern is the level of water draw down for each of the gold development project. The nature of open face gold mines requires that there be temporary, though significant, draw down of the water table for the duration of the mine's lifetime. It is worthy of note that within the previous FMS EARD, NCNS voiced a concern regarding oversights within the hydrogeological model. These oversights could significantly harm or destroy a greater than anticipated number of wetlands, and other sensitive habitats, that were originally deemed safe from impact. Separately these unintentional impacts may appear negligible, though in conjunction and in such close proximity to each other, the

quantity of these cumulative effects may become more consequential. This is only one example of the cumulative impacts that could occur due to these projects.

Having attended AMNS's meeting regarding the TPG, held on May 31<sup>st</sup>, it became promptly apparent that the AMNS representatives were unwilling to discuss the cumulative effects of the satellite mines on the TGP, or in a holistic sense. To our knowledge, there has been no follow up meeting to address said issues, even in a preliminary format. We believe it a misstep on the part of AMNS to not submit the EARD's in a more consolidated, accessible, and interpretive format so that the potential cumulative effects can be adequately assessed by the public, Indigenous Peoples, the Province, and the IAAC.

It is an undeniable fact that that it is AMNS's intention to inherently link TPG, FMS, BDM, and most likely CH as projects. Within the *Operational Guide: Designating a Project under the Impact Assessment Act*<sup>3</sup>, listed under "Process for Designation Requests",<sup>3</sup> there is a number of considerations by which the Impact Assessment Agency of Canada (IAAC) may develop a recommendation for the Minister to induct a project into a Federal Impact Assessment. The consideration we would like to draw your attention to is in the event "there are proposals for multiple activities within the same region that may be a source of cumulative effects"<sup>3</sup>. It is our concern that a provincial impact assessment alone is insufficient to recognize the potential, and already occurring environmental ramifications of this project. Further more, by assessing one of the four projects solely through a provincial assessment, the IAAC will be unable to consider the full sum of cumulative effects linked with the remaining three projects.

### **Expansion of the Waste Rock Storage Area**

In order to extend the lifetime of the TGP, AMNS has applied for the expansion of the WRSA to accommodate the additional waste rock and low/medium grade ore the mine will be generating. While the expansion is necessary to the project, we feel that the: environmental effects have not been properly considered, alternative locations for the expansion have not been adequately explored, and the potential for offsetting has not been addressed. Of particular concern is the expansion's direct intersection with what is referred to by AMNS as "Wetland 15".<sup>7</sup>

The proposed expansion is "approximately 7.1 ha, increasing the total footprint of the WRSA to 42.1 ha".<sup>7</sup> While AMNS notes that "the effects of this proposed wetland alteration would be consistent with those assessed previously for the Touquoy Gold Project",<sup>7</sup> we find this downplays the reality of what is occurring. It is a slippery slope to justify the destruction of valuable wetlands by claiming that there is similar habitat and priority plants in the region, or by asserting that the expected disturbance is "consistent" with previously allowed disturbance. This is how habitat loss is allowed to happen, it chips away at a few hectares at a time, until one day there is no longer similar habitat in the region. It is a tale of the Tragedy of the Commons, similar to the passenger pigeon's extinction in North America, it is picked away by everyone until it is gone.

Detected within Wetland 15 is Blue Felt Lichen (*Degelia plumbea*), a species that has been given the status of Special Concern under COSEWIC. AMNS notes that while Wetland 15 does possess blue felt lichen, its "occurrence is over 125 m from the PDA... (and) is therefore not

expected to be indirectly impacted by the edge effects”.<sup>7</sup> We find this statement is contradicted later within the EARD, when it is noted that “one occurrence of blue felt lichen, in Wetland 15, is within the current WRSA expansion LAA (Local Assessment Area)”.<sup>7</sup> How is it that the Blue Felt Lichen will not be impacted by the edge effects, when it occurs within the LAA?

In addition to the occurrence of Blue Felt Lichen within the affected area, we were unsatisfied with the largely missing proposed alternatives for the WRSA expansion within the EARD. We understand that the WRSA already exists, and an expansion will be less likely to cause greater environmental damage than the construction of an entirely new WRSA. Currently though, the WRSA does not directly intersect Wetland 15. With the presence of Blue Felt Lichen, we feel it is necessary to explore additional options in the chance there is a more ecologically friendly solution that is less likely to affect potential habitat for this species of Special Concern.

### **Indigenous Engagement**

It is important for everyone to understand that the Off-Reserve Aboriginal Community represented by the NCNS is included within the definition of the word “Indian” of Section 91(24) of the *Constitution Act*, 1867. The Supreme Court of Canada in a landmark decision on April 14th, *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, declared that “the exclusive Legislative Authority of the Parliament of Canada extends to all Indians, and Lands reserved for the Indians”, and that the “word ‘Indians’ in s. 91(24) includes Métis and non-Status Indians”.<sup>1</sup> Since 2004, in multiple decisions passed by the Supreme Court of Canada regarding: *Haida Nation*<sup>2</sup>, *Taku River Tlingit First Nation*<sup>8</sup>, and *Mikisew Cree First Nation*<sup>5</sup>, has established that,

Where accommodation is required in making decisions that may adversely affect as yet unproven Aboriginal rights and title claims, the Crown must balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests.<sup>2</sup>

We would like to assert that the Off-Reserve Aboriginal Communities are undeniably heirs to treaty rights and beneficiaries of Aboriginal rights as substantiated by Canada’s own Supreme Court jurisprudence. As such, there is absolutely an obligation to consult with the NCNS and the community we represent, just as there is an obligation to consult with the Indian Act Bands in regards to the “Crown’s duty to consult with and accommodate **Aboriginal communities**”,<sup>6</sup> known in Nova Scotia as **the Mi’kmaq**. While the Office of L’nu Affairs (previously known as the Office of Aboriginal Affairs) continues not to honor its constitutional obligations to consult with the NCNS as an Aboriginal Community, we would like to draw your attention to the *Proponents’ Guide: The Role of Proponents in Crown Consultation with the Mi’kmaq of Nova Scotia*, produced by the Office of Aboriginal Affairs (2012).<sup>6</sup> Within this guidance document, it is clearly outlined that an essential first step in a proponent’s engagement process with the Mi’kmaq of Nova Scotia should be to “contact the Native Council of Nova Scotia”.<sup>6</sup> Though this is written in the Proponents Guide, the Office of L’nu Affairs has repeatedly ignored their own advice, and has excluded the NCNS from the honorable process of Crown consultation.

In future dealings with Atlantic Mining NS Inc, we trust that your organizations will continue to go above and beyond the superficial recommendations of the Office of L'nu Affairs, and include the NCNS where these sorts of consultations are necessary.

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A Better Future

<Original signed by>

Jesse MacDonald, BS, AdvDip  
Habitat and Impact Assessment Manager  
Maritime Aboriginal Peoples Council

Cc: Lorraine Augustine, Chief and President, NCNS  
Tim Martin, Commissioner, Netukulimkewe'l Commission  
Roger Hunka, Director of Intergovernmental Affairs, MAPC  
Elmer St. Pierre, Chief and President of the Congress of Aboriginal Peoples

<sup>1</sup>*Daniels v. Canada* (Indian Affairs and Northern Development), 2016 SCC 12, [2016] 1 S.C.R. 99

<sup>2</sup>*Haida Nation v. British Columbia* (Minister of Forests), (2004), 3 S.C.R. 511.

<sup>3</sup>Impact Assessment Agency of Canada. (2020). *Operational Guide: Designating a Project under the Impact Assessment Act*. Published. <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>

<sup>4</sup>Huber, B. (2010, March). *The Duty to Consult with non-Status Indians: Mi'kmaq Politics and Crown Responsibilities in Nova Scotia*. McGill University.

<sup>5</sup>*Mikisew Cree First Nations v. Canada* (Minister of Canadian Heritage), (2005), 3 S.C.R. 388.

<sup>6</sup>Office of Aboriginal Affairs. (2012, November). *Proponents' Guide: The Role of Proponents in Crown Consultation with the Mi'kmaq of Nova Scotia Office of Aboriginal Affairs*. <https://novascotia.ca/nse/ea/docs/ea-proponents-guide-to-mikmaq-consultation.pdf>

<sup>7</sup>Stantec Consulting Ltd. (2021, July). *Touquoy Gold Project Modifications – Environmental Assessment Registration Document*. [https://www.novascotia.ca/nse/ea/Touquoy-Gold-Project-Site-Modifications/Touquoy-Gold-Project\\_EARD\\_main\\_report.pdf](https://www.novascotia.ca/nse/ea/Touquoy-Gold-Project-Site-Modifications/Touquoy-Gold-Project_EARD_main_report.pdf)

<sup>8</sup>*Taku River Tlingit First Nation v. British Columbia* (Project Assessment Director), (2004), 3 S.C.R. 550.