



February 22, 2021

Yukon Mineral Development Strategy
PO Box 372
108 Elliott Street
Whitehorse YT, Y1A 6C4

To: Math'ieya Alatini, Doug Eaton, Angus Robertson (YMDS Panel)
Re: CPAWS Yukon Comments, Yukon Mineral Development Strategy

Dear Yukon Mineral Development Strategy Panel,

The Yukon Chapter of the Canadian Parks and Wilderness Society (CPAWS Yukon) advocates for the territory's most valuable and priceless resource: our abundant wilderness. Our mission is to conserve the land, water and wildlife of the Yukon for current and future generations.

We would like to commend the Panel and supporting staff for the wide engagement that was conducted last year and for the draft strategy that came out of it. We understand that the Panel listened to and grappled with diverse perspectives, and in general we think you have delivered a forward thinking and bold draft strategy. Many of the recommendations hold just as strongly for other sectors as they do for mining.

In some cases, we don't feel that all of the recommendations in the draft align with the strategy's vision. This response outlines the recommendations we believe should be changed or removed, although we have also tried to note the recommendations that we strongly support. We thank the Panel for this engagement opportunity and believe that the collective input could lead to a strategy that is a powerful blueprint for change, where the benefits and opportunities that can come from mining are also accompanied by the wellbeing of the territory's land, people, and communities. We look forward to reviewing the final strategy.

Vision

The vision is holistic and maps out a mining sector that operates in a less impactful way, contributes to the wellbeing of Yukon communities, and respects the Final Agreements, transboundary First Nations, and the United Nations Declaration on the Rights of Indigenous Peoples. We think the vision sets an encouraging tone and a high bar for the rest of the strategy.

While CPAWS Yukon in theory supports a vision where “the mining industry operates in Yukon without leaving adverse environmental legacies behind,” the extractive nature of mining makes this impossible to achieve. We suggest changing this language so the aim is minimal or acceptable adverse environmental legacies. We believe the territory will make better decisions around mining by acknowledging the tradeoffs and negative legacies that accompany the positives.

Guiding Principles

The emphasis on the wellbeing and importance of people, communities, sustainability, relationships and responsibilities is welcomed, as these are the building blocks of a strong and equitable Yukon. We feel that one major omission in the guiding principles is explicitly mentioning climate change, especially given the mineral industry’s heavy energy footprint. We suggest that ensuring mining activities align with the Yukon’s responsibilities to help avert 2°C of warming should be its own guiding principle, or included as part of *Guiding Principle 3: Sustainability*.

Strategic Priority 1

Successor legislation

CPAWS Yukon welcomes the Panel’s recommendation for the Yukon to develop new mineral resource legislation, aligned with the Final Agreements, transboundary treaties, the United Nations Declaration on the Rights of Indigenous Peoples and the recommendations of Canada’s Truth and Reconciliation Commission. While successor legislation is called for under the Devolution Transfer Agreement, this recommendation rightly acknowledges that a legislative overhaul, instead of tweaking, is required for the territory’s management of mining to catch up to the pace and scale of modern mining, and to align with the Yukon’s social, political, and legal landscapes.

The 2023 timeline to have modern mining laws in place is ambitious but sends a clear message that this recommendation is an implementation priority.

In general, we believe that the Yukon should adopt and work to align all territorial legislation with the United Nations Declaration on the Rights of Indigenous Peoples.

Final Agreements, UNDRIP, and free entry staking

While it’s encouraging that the draft strategy calls for legislation in line with the Final Agreements and the principle of free, prior and informed consent, we feel that not all of the strategy’s recommendations are consistent with this. For example, in their submissions to the Mineral Development Strategy Panel, many First Nations governments and members of the public shared serious concerns with free-entry staking. The very nature of free entry mining runs counter to the strategy’s vision that “All mineral development activities will honour modern treaties with Yukon and transboundary First Nations and will respect First Nation values.” In the

absence of land use plans, the free entry system also displaces other values, including ecological and cultural values.

For this reason, we feel the strategy should recommend a comprehensive review and overhaul of the Yukon's free entry system so that it is replaced with a constrained staking process, fully consistent with the Yukon's modern treaties, case law, and the principle of free, prior and informed consent. We appreciate that the Panel has proposed modifications, and has obviously grappled with diverse perspectives on this issue, but stronger language will provide the transformative blueprint the territory needs to meet the strategy's vision.

To be clear, we don't expect the Panel to propose all of the specifics of *how* to bring mineral resource legislation in line with the Final Agreements, case law, and free, prior and informed consent, but rather to signal that transformation, not modifications, are needed. Ultimately, this is a discussion that First Nations must lead.

Amending the *Yukon Waters Act*

We are unclear why the *Yukon Waters Act* has been singled out for amendment. We imagine that numerous pieces of legislation will need to be amended to align with new mineral resource legislation, the Final Agreements, case law, and the principle of free, prior, and informed consent. This likely includes the *Yukon Environmental and Socio-economic Assessment Act*, *Yukon Lands Act*, *Parks and Land Certainty Act*, and *Historic Resources Act* (as identified in the Panel's following recommendation).

Interim Measures

We generally support the suggested interim measures on page 15.

Strategic Priority 2

Quartz and placer royalty reviews

It's promising that the Mineral Development Strategy calls for a comprehensive review of resource sector policies, particularly the placer and quartz royalty systems. We agree that the territory's royalty system must be overhauled so that more of the profits that are extracted from the land flow back to people and communities in an equitable way.

Royalties are part of a social contract between industries and the First Nations and Yukon public, who own the minerals and steward the surrounding landscape. If companies want to profit from commonly owned resources they must compensate First Nations and the public, as well as future generations that will no longer have access to these resources.

For these reasons, we recommend that quartz and placer royalties are based on net-smelter return, rather than profit margins. Profit-based royalties are complex to administer, can be exploited through write-offs and other loopholes, and don't properly compensate the territory for the value of resources extracted.

Baseline socio-economic studies

We believe this recommendation could be beneficial, provided these assessments include cultural resilience and social well-being, and are co-created with communities so they measure what's important to communities. Properly designed, these assessment would support YESAB in project assessment and designing recommendations (e.g. ensuring itinerant workers will not stretch existing health care services).

Water Tax

CPAWS Yukon supports a water fee, for all industrial uses, properly designed to encourage water conservation and the maintenance of water quality.

Benefit Agreements

While the thoughts of First Nations on this recommendation are obviously more relevant than CPAWS's, the recommendation for a "legislated and independent dispute resolution body" strikes us as potentially problematic. We flagged this recommendation as there need to be clear 'escape clauses' so that First Nations do not become locked into unfair impact and benefit agreements by an independent body.

Payroll tax on fly-in workers

CPAWS Yukon supports a payroll tax to ensure that the services and infrastructure fly-in workers use in the territory are funded, in service of the broader goal of equitably spreading out the costs and benefits of mineral development.

Heritage Fund

We whole heartedly welcome this recommendation. A Heritage Fund could provide opportunities for future generations, provide a base for diversifying Yukon's economy to sustainable ventures, and smooth out the bumps that come with boom-bust resource activities. This is a key action for realizing the strategy's fourth Guiding Principle, *Future Generations*.

Strategic Priority 3

General Thoughts and Additional Recommendations

While there are strong recommendations under this strategic priority, in some places the recommendations place industry-centred concerns about regulatory speed and efficiency above other key principles of effective regulation: accountability, transparency, public involvement, and First Nations co-management and rights. It's our understanding that the *Gowlings Report and Pricewaterhouse Coopers Report* were industry-driven exercises, not universally supported, and recommendations that flow from these reports should be removed or changed to reflect the principles we've mentioned above.

This section of the strategy could be strengthened with the addition of recommendations from Transparency International Canada's [Accountable Mining Report](#), which focuses on improving the accountability of the Yukon's mining regulations.

The strategy should also call on the Yukon government to provide detailed rationale when overruling a YESAB recommendation. For example, the Yukon government has consistently overturned YESAB's recommendations to prevent placer mining in undisturbed wetlands, justified with only the vague explanation of having given "fair and full consideration." Yukoners and First Nations deserve more accountability than the current black box of Yukon Government's Decision Documents.

Yukon Water Board

CPAWS Yukon does not support this recommendation and we are not sure it is legally achievable under the *Umbrella Final Agreement*. While we do not have an issue in principle with regulatory streamlining where there is undue overlap, the Water Board has a distinct mandate

from YESAB and is currently the only territory's only means for an independent review of mine licencing and mine security calculations.

Communication opportunities and Major Project Manager Role

CPAWS Yukon strongly disagrees with the recommendations to remove restrictions on Water Board members and staff communicating directly with project proponents and to establish a major project manager role in Yukon Government to guide proponents through the regulatory process. Both recommendations carry a high risk of increasing regulatory capture, where regulators serve the interests of proponents above the interests of the public, First Nations, and the environment.

Mining District

CPAWS Yukon believes that Yukon Government and Yukon First Nations should review the current regulatory scope for project amendments and, in our opinion, this scope should be narrowed when modern mineral legislation is developed. As an example, exploration company ATAC Resources Ltd recently applied to have a 65 km road added to their Class III Quartz permit as an amendment. This application was denied but such a potentially transformative development should never have fit the criteria for an amendment application.

CPAWS Yukon predicts there will sometimes be the need for future fine-scale planning following regional land use planning in regions with development hotspots; however, rather than establishing mining districts we suggest it would be more appropriate to use subregional planning processes under the Final Agreements (or similar agreed-to planning process with First Nations without Final Agreements).

Positive socio-economic impacts

In general, CPAWS Yukon supports improved assessment of cumulative effects and heritage impacts, although neither is a substitute for land use planning. CPAWS Yukon is concerned about the recommendation for YESAB or Decision Bodies to address positive socio-economic effects from projects, as these effects are hypothetical and subjective, and shouldn't be 'stacked' against tangible and expected negative impacts to tip the balance in favour of a project going forward. For example, many of the socio-economic benefits of the Wolverine Mine did not materialize. Although sold as such, this mine was never profitable, never paid royalties, left many Yukon contractors unpaid, and tried to walk away from tens of millions owed in security.

Online mining inspection reports

CPAWS supports this recommendation as a way to increase the transparency and accountability of the territory's regulatory system.

Monitoring and inspections

CPAWs supports the Panel's recommendations regarding inspections and monitoring, including performance standards, minimum qualification standards, a wider range of enforcement tools, co-inspection of permits, and the delegation of regulatory enforcement tools to Yukon First Nation inspectors. We note that delegation must be accompanied by training, funding, and clarified liabilities.

Mine promotion in EMR

CPAWS Yukon supports the recommendation to remove any residual responsibilities for the promotion of mineral development from the Department of Energy, Mines, and Resources to remove this conflict of interest and reduce the risk of regulator capture.

Strategic Priority 4

Attractive investment climate

Similar to Yukon Conservation Society, we suggest replacing the phrase “attractive investment climate” with “smart and stable” in the description of Strategic Priority 4 (pg. 27). We feel this language represents the spirit of the strategy’s vision and the policies we should put in place.

Regional land use planning

The draft strategy rightfully acknowledges the importance of completing land use plans in the Yukon, and CPAWS Yukon agrees that the government should put more resources and capacity towards land use planning (both within and outside of the Final Agreements). However, the strategy’s call to complete land use plans across the Yukon within five years is exceedingly ambitious—given that land use plans can take years to complete, and there are four regions where planning has not even begun, not to mention regions outside the UFA. The territory needs strong interim measures so that mining and other industrial developments don’t reach unsustainable levels in regions without plans. One way to do so would be to enact the reforms on free entry staking that many First Nations and members of the public have called for.

Staking moratoriums

CPAWS Yukon is pleased that the Panel has recommended partial staking withdrawals but we believe this recommendation does not go far enough to align with the intent of Chapter 11 in the Final Agreements, or the principle of free, prior and informed consent. Instead, the strategy should call for a given region to be temporarily withdrawn from mineral staking at the outset of land use planning, and for environmental assessment of new projects to be paused (e.g. Coal Creek exploration project in the Dawson Region), unless otherwise agreed to by all Parties.

The issue with applying withdrawals only in areas with “specific high-value environmental, social and cultural attributes” is that this information isn’t fully available before land use planning starts. First Nations and Yukoners identify ecologically and culturally important areas during planning, and this is one reason why land use planning is more powerful than individual project assessment. Land use planning Parties could consider lifting withdrawals in areas identified for industrial uses once a draft land use plan is released. This staged approach would encourage collaboration, and allow for moratoriums in areas with high mineral potential but low cultural or conservation values to be removed after a relatively short amount of time.

Legislative adjustments

CPAWS Yukon generally supports these recommendations but, as noted elsewhere, believe the free entry system must be overhauled to address the conflict inherent between it, the Final Agreements, and the principle of free, prior and informed consent. We support the emphasis on reconciliation but note that Yukon Government having the final say on when to apply it as a reason to prohibit prospecting, staking, or mining does not seem compatible with the concept; this must be led by First Nations.

Online staking

CPAWS Yukon does not readily support online staking, given the ease at which it can be done, although we could support a recommendation for Yukon Government and Yukon First Nations to further explore online staking. On-the-ground staking provides local economic benefits and is more in line with the “place-based” development the strategy envisions. We do support measures to reduce the environmental impacts of staking, such as wildlife disturbance from helicopter flights.

Strategic Priority 5

Reclamation

CPAWS Yukon supports excellence in mine reclamation. However, reclamation will never equal restoration, and for this reason we believe it is imperative that the goals and outcomes of reclamation are set by those most impacted: First Nations, communities, and others who value the landscape. Perhaps this is captured by the term “best practices” but we wished to make this point explicit.

Security and Bonding Plans

We support the strategy’s recommendations to hold mining companies accountable for mine closure and reclamation, and the recommendations regarding financial security provisions for the exploration industry.

Security under the *Waters Act*

CPAWS Yukon does not support removing the ability to determine financial security from the Yukon Water Board, given this calculation is conducted by an independent, quasi-judicial body and that this transparent process allows for public input.

Resource Roads

Resource roads can transform landscapes and usher in waves of industrial development, especially when they are cut into roadless areas. The strategy’s recommendation of restricting hunting along new resource roads is a start, but it should go further to address the transformative impacts of roads. For example, the strategy should call for land use plans or regional cumulative effects thresholds to be in place before major new resource roads go ahead.

Wetland Policy

CPAWS Yukon supports the strategy’s calls for Yukon government to complete the territorial Wetland Policy, and are pleased to see the strategy acknowledge that the policy must be founded on the reality that wetlands cannot be restored to their pre-disturbance condition within seven generations.

Minerals not extracted

CPAWS Yukon supports public consultations on whether the mining of certain minerals such as uranium and coal should be banned in the Yukon. This will help our mineral sector stay in step with the values of Yukoners.

Climate change and energy use

CPAWS Yukon believes that the strategy could include stronger recommendations regarding climate change and energy use, given the energy intensiveness of both placer and quartz mining. This could include recommendations for renewable energy use at mine sites, and measures to lessen the energy demands from mines during times of peak energy demand. The strategy should also call for the Yukon’s mining sector to reduce its greenhouse gas emissions in line with the reductions needed to meet the Paris Agreement.

Strategic Priority 6

General

The strategy makes several recommendations around pro-mining publicity and curriculum. As they stand, these recommendations overlook the historic and ongoing impacts of colonialism and many of the ecological, social and cultural impacts that come with mineral development

(among other sectors). Publicity and education initiatives around mining need promote a healthy public dialogue about the benefits and drawbacks of mining, and bring more awareness to land stewardship and planning, Yukon First Nation history, the Final Agreements, Aboriginal Rights and the United Nations Declaration on the Rights of Indigenous Peoples.

Implementation of the recommendations of the Yukon Advisory Committee on Missing and Murdered Indigenous Women, Girls and Two-spirit+

CPAWS Yukon supports the recommendation for Yukon Government to outline how it will act on the recommendations of the Yukon Advisory Committee on Missing and Murdered Indigenous Women, Girls and Two-spirit +. This recommendation strikes us as a better fit under Strategic Priority 2, which speaks to the wellbeing of communities and people.

Training

The strategy recommends enhanced training for local people, so that well-paying jobs can stay in the Yukon. The impacts of Covid-19 have shown the importance of a locally-trained workforce. At the same time, the strategy should also promote economic diversification initiatives to reduce the Yukon's reliance on the mining industry, and its cycles of booms and busts.

Looking Forward

CPAWS Yukon partly agrees with the draft strategy's final recommendation to establish an implementation agency. While we are not sure an "agency" is the right body to undertake this work, we believe that an implementation working group with representation from Yukon Government and First Nations is critical for moving implementation forward and reporting on progress. This will help ensure the Yukon Government is held accountable for taking real action to reshape mining in the territory, and honour the hours Yukoners and First Nations have spent contributing to the Mineral Development Strategy.

Thank you for the opportunity to provide comments on the draft Yukon Mineral Development Strategy.

Sincerely,



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