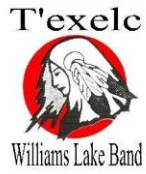


Northern Secwepemc te Qelmucw Leadership Council



Northern Secwepemc te Qelmucw Mining Policy

November 19, 2014

Northern Secwepemc te Qelmucw Mining Policy

Contents

Part 1- Definitions	3
Part 2- Application	6
Part 3- Purposes	7
Part 4- Guiding Principles	7
Part 5- Decision-Making Process	9
Part 6- Agreements With Proponents	9
Part 7- Environmental Assessment	12
Part 8- Mine Development Activity Permitting & Approval	14
Part 9- Mine Construction, Operation & Closure	16
Part 10- Post-Closure Monitoring & Enforcement	17
Part 11- Security	17
Part 12- Crisis Management Planning	19
Part 13- Dispute Resolution	19
Appendix "A"	20
Map 1: Secwepemculecw	20
Map 2: Northern Secwepemc te Qelmucw (NStQ) Statement of Intent Area	21
Appendix "B"	22
Appendix "C"	25
Appendix "D"	28
Appendix "E"	32
Appendix "F"	35
Appendix "G"	41
Appendix "H"	45
Appendix "I"	47
Appendix "J"	49
Appendix "K"	52

WHEREAS:

- A. Northern Secwepemc te Qelmucw (“NStQ”) is a political alliance of four First Nations communities, Canim Lake Indian Band (Tsq’escen’), Stswecem’c/Xgat’tem First Nation, Soda Creek Indian Band (Xat’sūll), and Williams Lake Indian Band (T’exelc), all part of the Secwepemc Nation;
- B. The Secwepemc Nation has unsundered and unextinguished Title and Rights throughout the Secwepemc traditional territory known as Secwepemculecw (see Appendix “A”, Map 1);
- C. The Secwepemc Nation has the inherent jurisdiction to provide stewardship of Secwepemculecw and to ensure its sustainability and viability for future generations;
- D. The United Nations Declaration on the Rights of Indigenous Peoples states:
 - a. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (Article 29(1)); and
 - b. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources (Article 32(1));
- E. As part of the Secwepemc Nation, NStQ has a responsibility for stewardship and a right to use and benefit from the Resources of the portion of Secwepemculecw known as the NStQ Statement of Intent Area (see Appendix “A”, Map 2);
- F. NStQ has Title and Rights throughout the Statement of Intent Area, including the right to conserve and manage the Environment and Resources;
- G. Mining Activities have the potential to harm NStQ Title and Rights, Environment and Resources;
- H. Members of NStQ continue to use and rely on the Environment and Resources for food, medicine, and their physical, cultural and spiritual well-being, and require that decisions are made with a long-term view, in consideration of the needs and well-being of future generations;
- I. The Laws governing Mining Activities in British Columbia are not adequate to protect the Environment and Resources for future generations;
- J. The Laws regarding mineral claim staking, exploration, mine development, mine closure and reclamation and Major Incident response in British Columbia are inconsistent with the Crown’s constitutional duty to seek NStQ’s consent to such activities;
- K. NStQ and its members are not being adequately compensated for the extraction of Resources from the Statement of Intent Area, nor the adverse impacts caused by Mining Activities to their Title and Rights and Environment; and
- L. Therefore, to address its concerns about Mining Activities, NStQ has created this Mining Policy based on legislated best practices from around the world.

Part 1- Definitions

1.0 In this Mining Policy,

“Accommodation Agreement” means an agreement described in Part 8 of the Mining Policy.

“Alternatives Analysis” means a decision-making process that considers all social, cultural and environmental effects of different means of designing, constructing, operating and closing a Mining Activity, and includes the option not proceeding with the Mining Activity.

“Carrying Capacity” means (1) the maximum population of a particular organism that a given environment can support without detrimental effects, (2) the maximum number of species an area can support during the harshest part of the year, or the maximum biomass it can support indefinitely, or (3) the maximum number of grazing animals an area can support without deterioration.

“Committee” means two representatives appointed by the NStQ Leadership Council and two senior executives from the Proponent.

“Crown” means the Government of Canada, the Province of British Columbia, all representatives of ministries and agencies of each, and all statutory, regulatory, governmental, administrative or public authority that has jurisdiction with respect to any matter referred to in this Mining Policy or any of them as the context may require.

“Cumulative Impact” means the impact of an activity that may not be significant alone, but may become significant when added to the past, present and anticipated potential impacts of Disturbances at the local, regional or population level.

“Disturbances” means either natural or human caused changes to the Environment or Resources and includes activities related to mining, forestry, energy, power generation and transportation.

“EA” means an environmental assessment, which is a process used to assess and predict the environmental effects of a proposed project or activity before the proposed activity is carried out and to incorporate environmental, socio-economic and cultural factors into decision-making.

“EA Review” means an environmental assessment review pursuant to the *British Columbia Environmental Assessment Act*, the *Canadian Environmental Assessment Act* and/or the joint review processes that occur when an environmental assessment is required by more than one regulatory authority.

“Environment” means all biotic and abiotic components of healthy self-sustaining ecosystems encompassing and interdependent on the Statement of Intent Area and includes Water, land (including soil, sediment deposited on land, fill, lands submerged under Water), air (including all layers of the atmosphere), wildlife (including trees, plants, mammals, birds, fish and other living

organisms) and all other conditions and influences under which humans, animals, and plants live or are developed.

“Exploration Activity” means the full range of activities to locate and define an ore body on the Statement of Intent Area from prospecting, such as collection of aerial data and rock samples, to advanced exploration, such as road construction, use of heavy equipment, drill rigs, bulk sampling of ore, and pilot plants for milling or processing ore.

“Exploration Agreement” means an agreement described in Part V.C of this Mining Policy.

“Full Cost Accounting” means the method of accounting that recognizes the direct and indirect economic, environmental, health and social costs of a project or action.

“Impact Benefit Agreement” means an agreement described in Part VII.A of this Mining Policy.

“Intergenerational Equity” means the fair distribution of resources and assets (such as quality and diversity of environment) among current and future generations.

“Irreparable Harm” means a type of harm that cannot be corrected and which cannot be resolved by monetary compensation, including the destruction of the environment so that ecological functions are lost or indefinitely impaired; the deterioration of Water quality where indefinite treatment is required; and the alteration or destruction of habitat which prevents the return and re-colonization of native species to a functioning self-sustaining ecosystem.

“Laws” means all statutes, laws, regulations, policies, orders, bylaws, and other lawful requirements, including the terms and conditions of any permits or authorizations, of any Crown, regional, municipal, or other governmental authority having jurisdiction over and applicable to the Mining Activities now or hereafter in force.

“Major Incident” means an unplanned incident such as a tailings dam break, fire, explosion or mine accident that could result in harm to people or the environment.

“Meaningful Consultation” means providing NStQ, in good faith, with:

- a. advance, detailed notice of applications or decisions on or affecting the Statement of Intent Area;
- b. full disclosure of all information relating to potential social, economic, cultural and environmental impacts and benefits of the Mining Activities, including all financial and technical information that would otherwise be confidential;
- c. adequate time and financial resources to allow NStQ to retain its own expertise, to review the disclosed information, and to prepare its views on all matters relating to Mining Activities on or affecting the Statement of Intent Area;
- d. the opportunity to present its views to other parties;
- e. full and fair consideration of its views;
- f. demonstrable integration of NStQ’s views into all decisions relating to Mining Activities on or affecting the Statement of Intent Area; and
- g. desisting from any Mining Activity to which NStQ does not consent.

“Mine Closure Activity” means the reclamation, restoration and decommissioning of mine infrastructure following temporary or permanent cessation of Mine Development Activities.

“Mine Development Activity” means any construction or operation of mine facilities or infrastructure on, or affecting, the Statement of Intent Area.

“Mining Activity” means all current and proposed activities on, or affecting, the Statement of Intent Area that involve and relate to the full life cycle of a mineral mine from staking a claim, through and including post closure monitoring and maintenance, including Exploration Activity, Mine Development Activity, Mine Closure Activity and Post-Closure Activity.

“NStQ” means the political alliance of four First Nations communities, Tsq’escen’ (Canim Lake), Stswecem’c/Xgat’tem (Canoe & Dog Creek), Xat’süll (Soda & Deep Creek), and T’exelc (Williams Lake a.k.a. Sugar Cane) and where the context permits, the individual member communities.

“NRM” means the Natural Resource Manager designated from time-to-time by NStQ.

“Permit” means any Crown issued permit, licence or authorization in relation to a Mining Activity, including but not limited to *Mines Act* permits.

“Polluter Pays Principle” means the principle requiring the party responsible for producing pollution or permitting it to occur responsible for paying for the damage caused by it.

“Post-Closure Activity” means the monitoring and maintenance of the mine site and remaining infrastructure, such as dams and waste disposal and treatment facilities.

“Precautionary Principle” means that where there are threats of serious or irreversible Environmental, social, economic or cultural impacts, lack of full scientific certainty should not be used as a reason to justify permitting a Mining Activity.

“Preliminary Exploration Agreement” means an agreement described in Part V.A of this Mining Policy.

“Proponent” means an individual or company who holds a mineral claim in British Columbia, or proposes or conducts physical work to explore for or develop surface or subsurface mineral resources.

“Reclamation” means activities associated with the reclamation of a mine site to as close to baseline conditions as possible, including but limited to:

- a. interim and closure operations, including indirect and overhead costs and removal of all buildings, drill sites, closing roads, air strips, power line corridors, etc.;
- b. disposal of cyanide and other hazardous materials;
- c. reclamation of tailings impoundments;
- d. treatment of mine site Water in perpetuity, where applicable;
- e. creating alternate Water supplies;

- f. lost ecological goods and services;
- g. responding to unexpected spills, landslides, etc.;
- h. maintenance of all mine infrastructure in perpetuity (dams, Water collection and treatment facilities);
- i. paying for reclamation work to be done at Provincial or independent contractor rates;
- j. accounting for inflation;
- k. contributing to an orphaned mine clean-up fund created by the Crown; and
- l. other reclamation activities described in Appendix J.

“Reclamation Costs” means all costs associated with Reclamation of Mining Activities

“Renewal Application” means an application made by a Proponent to the Crown pursuant to the *Mines Act*, RSBC 1996, c 293, s. 10(6) for a revision of the conditions or an extension of the term of a mine permit.

“Resources” means all renewable and non-renewable resources on the Statement of Intent Area, including: wood products; non-timber forest products; wildlife used for food or trade; metals; precious stones; and fuels, such as coal, shale, oil and gas.

“Reviewable Activity” means an activity that requires an Environmental Assessment under provincial or federal legislation.

“Statement of Intent Area” means the area illustrated in Appendix “A”, Map 2.

“Title and Rights” means the form of aboriginal title and aboriginal rights held by NStQ that are defined by the common law, the exercise of NStQ’s cultural practices, traditions, customs and beliefs, and the right to manage the Environment and Resources.

“Traditional Knowledge” means knowledge held by NStQ about the Statement of Intent Area, land use practices, and the Environment.

“Walk Through” means entering the proposed exploration area to identify the location and nature of the Exploration Activity and giving NStQ the opportunity to provide input on the Exploration Activity.

“Water” including surface water (such as lakes, rivers, streams, whether ephemeral or perpetually flowing), groundwater, aquifers, watersheds, well-water, wetlands, drinking water and ice.¹

Part 2- Application

2.1.1 This Mining Policy applies to all Mining Activities.

¹ Often there is a distinction between what NStQ refers to as a “Lake” or “watershed”, etc., and what the Crown considers these to be. Each of these terms need to be defined because there are different levels of protection for each. Definitions will be informed by Treaty negotiations.

Part 3- Purposes

- 3.1.1 This Mining Policy has the following purposes:
- a. to ensure that all Mining Activities are carried out in accordance with the guiding principles of shared decision-making; environmental stewardship; socio-cultural considerations; economic benefits, intergenerational equity and accountability, as set out in this Mining Policy;
 - b. to assist NStQ to evaluate and respond to proposals for Mining Activities; and
 - c. to establish the terms and conditions upon which NStQ will consent to Mining Activities.

Part 4- Guiding Principles

4.1 Consent and Meaningful Consultation

- 4.1.1 No Mining Activity shall take place without NStQ's free, prior and informed consent.
- 4.1.2 Where NStQ does not initially consent to a Mining Activity, a Proponent or the Crown shall Meaningfully Consult NStQ in an attempt to obtain that consent.

4.2 Accountability

- 4.2.1 Mining Activities shall be conducted in accordance with the Polluter Pays Principle based on Full Cost Accounting.
- 4.2.2 Where the Crown is unable to enforce the Polluter Pays Principle with a Proponent, the Crown shall be responsible to compensate NStQ, based on Full Cost Accounting for any harm or loss to NStQ arising out of a Mining Activity.
- 4.2.3 NStQ will consider the past performance of a Proponent in evaluating a proposed Mining Activity.

4.3 Environmental Stewardship

- 4.3.1 NStQ will evaluate all Mining Activities in accordance with the Precautionary Principle and the principle of Intergenerational Equity.
- 4.3.2 NStQ will evaluate Mining Activities in a holistic context, which includes consideration of Cumulative Impacts and the Statement of Intent Area's Carrying Capacity.

- 4.3.2 NStQ may withhold its consent to any Mining Activity which:
- a. would occur on lands which NStQ deems to be of significant ecological importance, such as critical habitat for fish or wildlife;
 - b. would likely cause Irreparable Harm to the Environment, such as acid mine drainage or metal leaching that could be either financially or physically unfeasible to contain or treat;
 - c. could adversely impact Water quality, quantity, function or flow on or affecting the Statement of Intent Area; or
 - d. could have some other significant adverse environmental impact.

4.4 Socio-cultural Considerations

- 4.4.1 In determining whether to consent to a Mining Activity, NStQ may consider potential impacts on:
- a. the need for social and municipal services;
 - b. public health and safety;
 - c. cultural and spiritual practices;
 - d. community and family cohesion;
 - e. income disparity and wealth management
 - f. composition of local populations; and
 - g. other significant social and cultural interests of NStQ.
- 4.4.2 NStQ will base its decisions on Traditional Knowledge and scientific information.
- 4.4.3 NStQ may withhold its consent to any Mining Activities which:
- a. could adversely impact Title and Rights;
 - b. would occur on lands which NStQ deems to have significant social or cultural value;
 - c. could have adverse social, cultural or economic impacts that are not outweighed by probable benefits.
- 4.4.4 NStQ may refuse to disclose information, including Traditional Knowledge if an information sharing agreement is not in place that, in the opinion of NStQ, adequately protects that information.

4.5 Economic Benefits & Intergenerational Equity

- 4.5.1 The Crown and any Proponent shall:
- a. compensate NStQ for the extraction of Resources from the Statement of Intent Area;
 - b. share any revenue from the Mining Activity;
 - c. bear full responsibility for adverse impacts of Mining Activities; and
 - d. compensate NStQ for any harm to NStQ's interests.
- 4.5.2 NStQ may withhold its consent to any Mining Activity which:
- a. does not provide adequate employment or business opportunities for NStQ members;

- b. does not provide overall benefits that outweigh costs;
- c. could undermine NStQ's economic benefits' legacy by depleting mineral reserves on the Statement of Intent Area at a rate that will not support future generations; or
- d. could have other adverse impacts on NStQ's short- or long-term economic well-being.

4.6 Monitoring

- 4.6.1 Subject to reasonable safety concerns, the Crown and any Proponent shall allow NStQ to monitor any Mining Activity.

Part 5- Decision-Making Process

- 5.1.1 For each Mining Activity, NStQ will designate a Natural Resources Manager ("NRM").
- 5.1.2 The NRM is the authorized representative of the NStQ for responding to:
- a. a Proponent's request for NStQ's consent to or support for a Mining Activity; or
 - b. the Crown's referral of a Mining Activity to NStQ for consultation purposes.
- 5.1.3 The Crown and any Proponent shall provide NStQ at the earliest practicable opportunity, with:
- a. notice of any proposed Mining Activity;
 - b. details about the proposed Mining Activity as set out in Appendix B in a form approved of by NStQ ; and
 - c. a list of the Proponent's other Mining Activities in British Columbia,
- 5.1.4 NStQ will use best efforts to provide, in a timely manner, its response to a proposed Mining Activity including any conditions which must be met before NStQ can consent to the Mining Activity.
- 5.1.5 NStQ consent to a Mining Activity shall be in writing. In the absence of written consent, NStQ does not consent to the Mining Activity.
- 5.1.6 Where NStQ deems that a Mining Activity is of significant potential impact to the environment or NStQ interests, it may require the Crown or a Proponent to enter into a written Agreement in accordance with this Policy.
- 5.1.7 Without limiting the generality of the preceding paragraph, a Mining Activity which involves significant physical Disturbance has a significant potential impact to the environment or NStQ interests.

Part 6- Agreements With Proponents

6.1 General

- 6.1.1 All Agreements with a Proponent shall:
 - a. be binding on the Proponent, the Proponent's successors, partners, subsidiaries, sub-contractors, affiliates, and assigns for the duration of the Mining Activity and post-closure; and
 - b. not limit NStQ's ability to participate in any Crown regulatory processes.
- 6.1.2 If negotiations with a Proponent fail, NStQ will:
 - a. retain all rights in equity and common law;
 - b. withdraw any support for the Mining Activity; and
 - c. notify the Crown of the failed negotiation and NStQ's withdrawal of support.
- 6.1.3 NStQ's negotiation of an Agreement with a Proponent does not alleviate the Crown's obligation to seek the consent of NStQ or to consult and accommodate NStQ with respect to a Mining Activity.
- 6.1.4 NStQ's participation in negotiations with a Proponent or the Crown shall not prejudice NStQ's right to refuse to consent to a proposed Mining Activity if NStQ decides that the Mining Activity would be inconsistent with the Guiding Principles in Part 4 of this Mining Policy.

6.2 Exploration Agreements

- 6.2.1 Where NStQ deems that a planned Exploration Activity is of significant potential impact to the environment or NStQ interests, it may request a Proponent to enter into a written Exploration Agreement in accordance with this Policy and upon such request the Proponent shall negotiate and enter into an Exploration Agreement with NStQ.
- 6.2.2 Upon the commencement of Exploration Agreement negotiations, the Proponent shall:
 - a. provide NStQ with all information listed in Appendix "B";
 - b. provide NStQ with sufficient funding to meaningfully participate in Exploration Agreement negotiations, including reasonable funding to conduct its own independent environmental, social, economic and cultural baseline studies of affected areas;
 - c. provide NStQ with adequate time to negotiate an Exploration Agreement before commencing the Exploration Activity; and
 - d. provide information as set out in Appendix B to the NRM or designate and facilitate such information sessions and site visits for Council and community members as the NRM may request.
- 6.2.3 NStQ's consent to a Proponent's entry on the Statement of Intent Area for the purpose of performing any Exploration Activity shall be evidenced by a signed Exploration Agreement with the Proponent.
- 6.2.4 An Exploration Agreement shall contain provisions relating to the topics listed in Appendix "C" and such other provisions as may be agreed to by the Parties.

- 6.2.5 Despite the signing of an Exploration Agreement with a Proponent, NStQ retains the right to refuse to support any Mine Development Activity subsequently proposed by the Proponent.

6.3 Environmental Assessment Agreements

- 6.3.1 Prior to the Proponent submitting a project description of a Reviewable Activity, NStQ may request a Proponent to enter into a written Environmental Assessment Agreement in accordance with this Policy and upon such request the Proponent shall negotiate and enter into an Environmental Assessment Agreement with NStQ.
- 6.3.2 Upon the commencement of Environmental Assessment Agreement negotiations, the Proponent shall:
- a. provide NStQ with all information listed in Appendix “D”;
 - b. provide NStQ with sufficient funding to meaningfully participate in Environmental Assessment Agreement negotiations and
 - c. provide NStQ with adequate time to negotiate an Environmental Assessment Agreement before the commencement of the Environmental Assessment.
- 6.3.3 NStQ’s consent to the conduct of an Environmental Assessment shall be evidenced by a signed Environmental Assessment Agreement with the Proponent, and an EA Funding Agreement with the Crown.
- 6.3.4 An Environmental Assessment Agreement shall contain provisions relating to the topics listed in Appendix “C” and such other provisions as may be agreed to by the Parties.
- 6.3.5 Despite the signing of an Environmental Assessment Agreement with a Proponent, NStQ retains the right to refuse to support any Mine Development Activity subsequently proposed by the Proponent.

6.4 Impact Benefit Agreements

- 6.4.1 If any Proponent wishes to pursue commercial production or development of a mine, NStQ may request a Proponent to enter into a written Impact Benefit Agreement in accordance with this Policy and upon such request the Proponent shall negotiate and enter into an Impact Benefit Agreement with NStQ.
- 6.4.2 Upon the commencement of Impact Benefit Agreement negotiations, the Proponent shall:
- a. provide NStQ with all information listed in Appendix “D”;
 - b. provide NStQ with sufficient funding to meaningfully participate in Impact Benefit Agreement negotiations, and
 - c. provide NStQ with adequate time to negotiate an Impact Benefit Agreement before the commencement of the Environmental Assessment.

- 6.4.2 NStQ's consent to the conduct of Mine Development Activities shall be evidenced by a signed Impact Benefit Agreement with the Proponent, and a Mineral Tax Revenue-Sharing Agreement with the Crown.
- 6.4.3 An Impact Benefit Agreement shall contain provisions relating to the topics listed in Appendix "F" and such other provisions as may be agreed to by the Parties.

Part 7- Environmental Assessment

7.1 Reviewable Projects

- 7.1.1 The Crown shall engage in Meaningful Consultation with NStQ in all decisions regarding whether or not a proposed Mining Activity shall be subject to an environmental assessment.
- 7.1.2 Upon the reasonable request of NStQ, the Crown shall conduct an EA Review irrespective of whether the Mining Activity exceeds the legislative threshold for a Reviewable Activity.

7.2 Meaningful Consultation throughout EA Review

- 7.2.1 The Crown shall seek the consent of NStQ throughout the EA Review with respect to:
 - a. determining the scope, structure and means of consultation with NStQ during the EA Review;
 - b. deciding the scope of the EA Review;
 - c. determining the significance of Project's impacts;
 - d. drafting the assessment report that is provided to the relevant Crown ministries, pursuant to the *Environmental Assessment Act*, SBC 2002, c. 43, s. 17(2);
 - e. designing and interpreting an Alternatives Analysis for the Project;
 - f. selecting the most appropriate alternative identified under clause e; and
 - g. deciding whether or not, and under what conditions, the Project, or proposed alternative, is approved, modified or denied.
- 7.2.2 The EA Review shall include provisions regarding:
 - a. the disclosure of information from each of the Proponent and the Crown to NStQ and the timing and format of such disclosure; and
 - b. the ability of NStQ to question any experts retained by the Proponent or the Crown, or both.
- 7.2.3 The scope of an EA review shall be developed in accordance with a holistic approach, which includes consideration of:
 - a. on and off-site infrastructure associated with the Project, including roads, power supply, and smelters;

- b. on and off-site activities associated with the Project, including milling, waste disposal, transporting ore from off-site; and transportation;
- c. all future developments that may be necessary to extract, process or transport mined materials; and
- d. all potential post-mining uses of the mine site and facilities.

7.2.4 NStQ will only consent to a Project or proposed alternative that:

- a. accords with the Guiding Principles in Part 3 of this Mining Policy;
- b. results in a net benefit to NStQ, as determined by NStQ; and
- c. is not solely based on economic considerations.

7.2.5 The Crown shall not to issue an EA certificate under the BC *Environmental Assessment Act* or the *Canadian Environmental Assessment Act* unless and until:

- a. there is proof that the Project would not conflict with the guiding principles set out in Part III of this Mining Policy;
- b. an Impact Benefit Agreement between NStQ and the Proponent has been finalized in accordance with this Policy; and
- c. an Accommodation Agreement between NStQ and the Crown has been finalized in accordance with this Policy.

7.2.6 The Crown shall incorporate the following criteria into every EA certificate:

- a. measures to mitigate against adverse environmental, social, cultural and economic impacts;
- b. clearly written, measurable and enforceable commitments;
- c. post-certification monitoring responsibilities and compliance mechanisms for each commitment;
- d. monitoring to be conducted by qualified practitioners who are independent of the Proponent;
- e. wildlife and fisheries monitoring programs to address project impacts to individual species, and local and regional populations;
- f. the requirement to provide NStQ with all monitoring data and inspection reports as soon as practicable; and
- g. mandatory notice and a response plan for emergencies and non-compliance with EA certificate provisions.

7.2.7 Where the Crown has issued an EA certificate, it shall:

- a. conduct post-certificate evaluations to determine whether the Proponent is avoiding or mitigating potentially adverse impacts of the certified Mining Activity;
- b. provide appropriate accountability information for any certified Mining Activity;
- c. enter all monitoring information into a central database to assess compliance and cumulative impacts; and
- d. provide NStQ with all monitoring information, including both raw and statistically manipulated data.

- 7.2.8 NStQ does not consider the Crown's consultation with NStQ during the EA Review to:
- a. in itself, fulfill the Crown's constitutional duty to consult and accommodate NStQ on matters concerning Title and Rights; or
 - b. enable the EAO to assess the Project's potential impacts to Title and Rights.
- 7.2.9 NStQ's participation in the EA Review process shall not prejudice its right to refuse to give consent or support for any Mine Development Activity.

Part 8-Mine Development Activity Permitting & Approval

8.1 Accommodation Agreements

- 8.1.1 The Crown shall obtain NStQ's consent prior to approving any Mine Development Activity on, or affecting, the Statement of Intent Area.
- 8.1.2 NStQ's consent to a Mine Development Activity shall be evidenced by a finalized Accommodation Agreement between NStQ and the Crown.
- 8.1.3 Where a proposed Mining Activity has been exempt from the EA process, the Crown shall not issue a Permit until NStQ and the Crown have finalized an Accommodation Agreement containing provisions relating to the topics listed in Appendix "G".

8.2 Permit Applications

- 8.2.1 The Crown shall require a Proponent proposing any Mine Development Activity to apply for and obtain all relevant Permits before the mine may be developed.
- 8.2.2 immediately upon receiving any Permit application, the Crown shall:
- a. notify NStQ of the Permit application; and
 - b. supply NStQ with a complete copy of the Permit application.
- 8.2.3 For any Permit application, the Crown shall Meaningfully Consult with NStQ in:
- a. evaluating the Permit application; and
 - b. deciding whether or not, and under what conditions, the Permit will be issued.
- 8.2.4 As part of its Meaningful Consultation under this Part, the Crown shall:
- a. provide NStQ with an advance draft copy of all Permits not less than 90 days before the government review process starts; and
 - b. ensure NStQ is represented on any Permit review committee.

- 8.2.5 The Crown shall not issue a Permit under this Part where the Proponent:
- a. has a history of non-compliance with any Laws or Permits associated with any Mining Activity;
 - b. lacks the technical or financial resources to conduct the Mining Activity as proposed; or
 - c. has not finalized an emergency notice and response plan, an environmental management plan or closure plan.

- 8.2.6 A Permit issued under this Part shall include the conditions listed in Appendix “H” plus such other conditions as specified by NStQ.

8.3 Mines Act Permit Renewal Applications

- 8.3.1 The Crown shall require a Proponent holding a *Mines Act* permit to submit a Renewal Application at the earliest of:
- a. very five years from the date of issuance of the original *Mines Act* permit;
 - b. upon a proposal to expand or substantially alter the scope or scale of the Mining Activity; or
 - c. upon the merger or change of ownership of the Proponent.
- 8.3.2 Immediately upon receiving any Renewal Application, the Crown shall:
- a. notify NStQ of the Renewal Application; and
 - b. supply NStQ with a complete copy of the Renewal Application.
- 8.3.3 For every Renewal Application, the Crown shall engage in Meaningful Consultation with NStQ in:
- a. evaluating the Renewal Application; and
 - b. deciding whether or not, and under what conditions, the *Mines Act* permit is renewed, modified or denied.
- 8.3.4 In evaluating a Renewal Application, the Crown shall consider:
- a. the Proponent’s compliance with the conditions under the original *Mines Act* permit;
 - b. the effectiveness of the Proponent’s mitigation of adverse environmental, socio-cultural and economic impacts;
 - c. the effectiveness of the Proponent’s monitoring of potential adverse environmental, socio-cultural and economic impacts; and
 - d. the effectiveness the Proponent’s contingency plans, where applicable.
- 8.3.5 If the Crown renews a *Mines Act* permit, it shall:

- a. maintain the conditions listed in Appendix “H” as attachments to the renewed *Mines Act* permit; and
- b. attach any additional conditions NStQ recommends as being necessary to satisfy the Guiding Principles of this Mining Policy.

8.4 Mine Re-opening Applications

- 8.4.1 The Crown shall require a Proponent seeking to re-open a closed mine on, or affecting, the Statement of Intent Area to:
 - a. submit a new *Mines Act* permit application; and
 - b. submit a revised feasibility study report and reclamation plan.
- 8.4.2 Prior to approving the re-opening of a closed mine on, or affecting, the Statement of Intent Area, the Crown shall:
 - a. require the Proponent to re-apply for all Permits; and
 - b. perform a new EA Review.

Part 9- Mine Construction, Operation & Closure

- 9.1.1 Before a Proponent commences any Mine Development Activity, NStQ the Proponent shall engage in Meaningful Consultation with NStQ to develop:
 - a. an environmental management plan, which shall include, at a minimum, the factors listed in Appendix “I”; and
 - b. a closure plan, which shall include, at a minimum, the factors listed in Appendix “J”.
- 9.1.2 Each environmental management plan and closure plan shall:
 - a. articulate the plan’s objectives;
 - b. identify the person responsible for implementing the plan; and
 - c. establish thresholds which trigger a management response by the Proponent.
- 9.1.3 If NStQ is not satisfied with an environmental management plan or closure plan, NStQ may:
 - a. require the Proponent amend the plan to NStQ’s satisfaction; or
 - b. refuse to consent to the Mine Development Activity.
- 9.1.4 The Proponent shall revise and update environmental plans and closure plans at the earliest of:
 - a. every five years; or
 - b. where necessary to ensure consistency with the Guiding Principles of this Mining Policy.
- 9.1.5 Prior to seeking to change the contents of any If any environmental management plan or closure plan, the Proponent shall:
 - a. notify NStQ of the proposed changes;
 - b. obtain NStQ’s written approval of the changes before amending the plan; and
 - c. provide NStQ with a revised version of the plan immediately following the plan’s amendment.

Part 10- Post-Closure Monitoring & Enforcement

- 10.1.1 Prior to mine closure, the Proponent shall engage in Meaningful Consultation with NStQ to develop a post-closure monitoring plan, which shall include, at a minimum, the factors listed in Appendix "K".
- 10.1.2 The Proponent shall provide NStQ with electronic copies of:
 - a. post-closure monitoring data, on a monthly basis; and
 - b. the annual reclamation report, within three month of each calendaryear's end.
- 10.1.3 If the Proponent fails to provide the data referred to in clause 10.1.2, NStQ may retain its own experts to do monitoring work at the expense of the Proponent.
- 10.1.4 The Crown shall either:
 - a. perform routine site inspections and independent review of the monitoring reports to ensure compliance with all Laws; or
 - b. train and fund NStQ members to perform routine site inspections and independent reviews of the monitoring reports to ensure compliance with all Laws.

Part 11- Security

11.1 Calculations of Reclamation Costs

- 11.1.1 The Crown shall require Proponents of every Exploration Activity and Mine Development Activity to post sufficient security to cover all Reclamation Costs, including those which may occur because of a Major Incident.

11.2 Disclosure of Reclamation Cost Estimate

- 11.2.1 The Crown shall provide NStQ with a complete copy of the Proponent's reclamation cost estimate which shall:
 - a. be based only on verifiable sources of information;
 - b. include all security calculations; and
 - c. be certified as reliable and accurate by a qualified professional.
- 11.2.2 NStQ may seek a professional certification of the Proponent's reclamation cost estimate.
- 11.2.3 Where NStQ obtains a professional certification, and where the professional reaches a different reclamation cost estimate than that provided by the Proponent:
 - a. the Proponent shall fully reimburse NStQ for the expense involved in obtaining the professional certification; and

- b. the Crown shall consider NStQ's professional certification in assessing the reclamation costs and determining the appropriate quantity of security required.

11.3 Type of Security

- 11.3.1 All security held by the Crown shall be in a readily available financial form, including cash, surety bonds, letters of credit, and limited other forms of financial assurance mechanisms that are readily liquid and transferable to cash.
- 11.3.2 The Crown shall not accept any type of corporate guarantee or self-bonding as security.
- 11.3.3 The Crown shall authorize NStQ access to the security in cases of emergency.

11.4 Adequacy of Security

- 11.4.1 Prior to setting the security amount, the Crown shall:
 - a. perform a pre-disturbance inspection of the proposed mine site;
 - b. independently verify the Proponent's reclamation cost estimate;
 - c. independently verify the Proponent's financial stability; and
 - d. consider the Proponent's environmental track-record.
- 11.4.2 The Crown shall engage in Meaningful Consultation with NStQ in determining whether or not the type and amount of the security is adequate.
- 11.4.3 If a Proponent is unable to post adequate security:
 - a. NStQ will withhold its consent to the proposed Mining Activity and
 - b. the Crown shall refuse to issue a Permit to the Proponent.

11.5 Review, Reduction & Release of Security

- 11.5.1 The Crown shall review the adequacy of the amount and type of security on an annual basis, or upon request by NStQ, to adjust the bond amounts or provisions to reflect current conditions, costs and reclamation and closure requirements.
- 11.5.2 If the Proponent applies to reduce the amount of security, the Crown shall:
 - a. notify NStQ immediately of such request; and
 - b. engage in Meaningful Consultation with NStQ to determine if the requested reduced amount is still adequate.
- 11.5.3 If the Proponent requests the release of the security, the Crown shall:
 - a. notify NStQ immediately of such request;

- b. conduct a thorough site inspection to assess the success of the Proponent's rehabilitation efforts;
- c. engage in Meaningful Consultation with NStQ to determine if the remediation has been fully and successfully carried out; and
- d. not release the security without NStQ consent.

Part 12- Crisis Management Planning

12.1.1 All Proponents operating a Mine or engaged in an Environmental Assessment Review shall develop, maintain and, where necessary, implement a Crisis Management Plan to address potential or actual Major Incidents.

12.1.2 The Crisis Management Plan shall include:

- a. a description of steps to be taken by the Proponent to prevent a Major Incident;
- b. a list of persons to contact and procedures to be followed in case of a Major Incident;
- c. commitments by the Proponent to:
 - i. determine the cause of the Major Incident;
 - ii. determine the extent of adverse impacts caused by the Major incident, including impacts on the environment and NStQ Interests;
 - iii. remediate the adverse impacts of a Major Incident, including impacts on the environment and NStQ Interests, including any economic interests adversely impacted by the Major Incident;
 - iv. keep NStQ fully informed and engaged in the execution of the Crisis Management Plan; and
 - v. compensate NStQ for its engagement, and the engagement of consultants and experts selected by NStQ in the execution of the Crisis Management Plan.

12.1.3 Crisis Management Plans are subject to approval by NStQ.

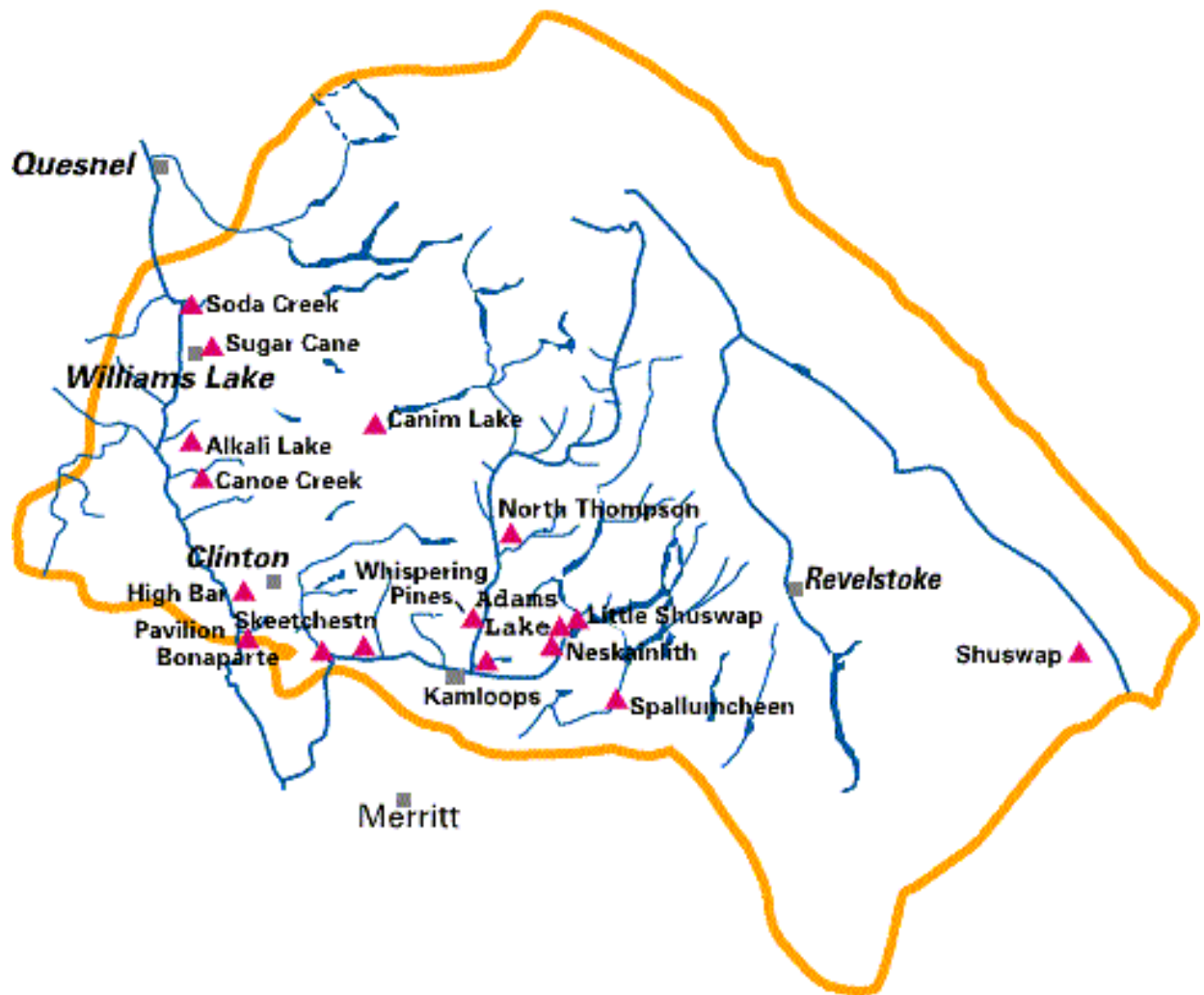
Part 13- Dispute Resolution

13.1.1 The Crown and all Proponents shall work cooperatively to resolve any dispute, disagreement or difference of opinion with NStQ concerning this Mining Policy or the performance or interpretation thereof, in accordance with the following procedures.

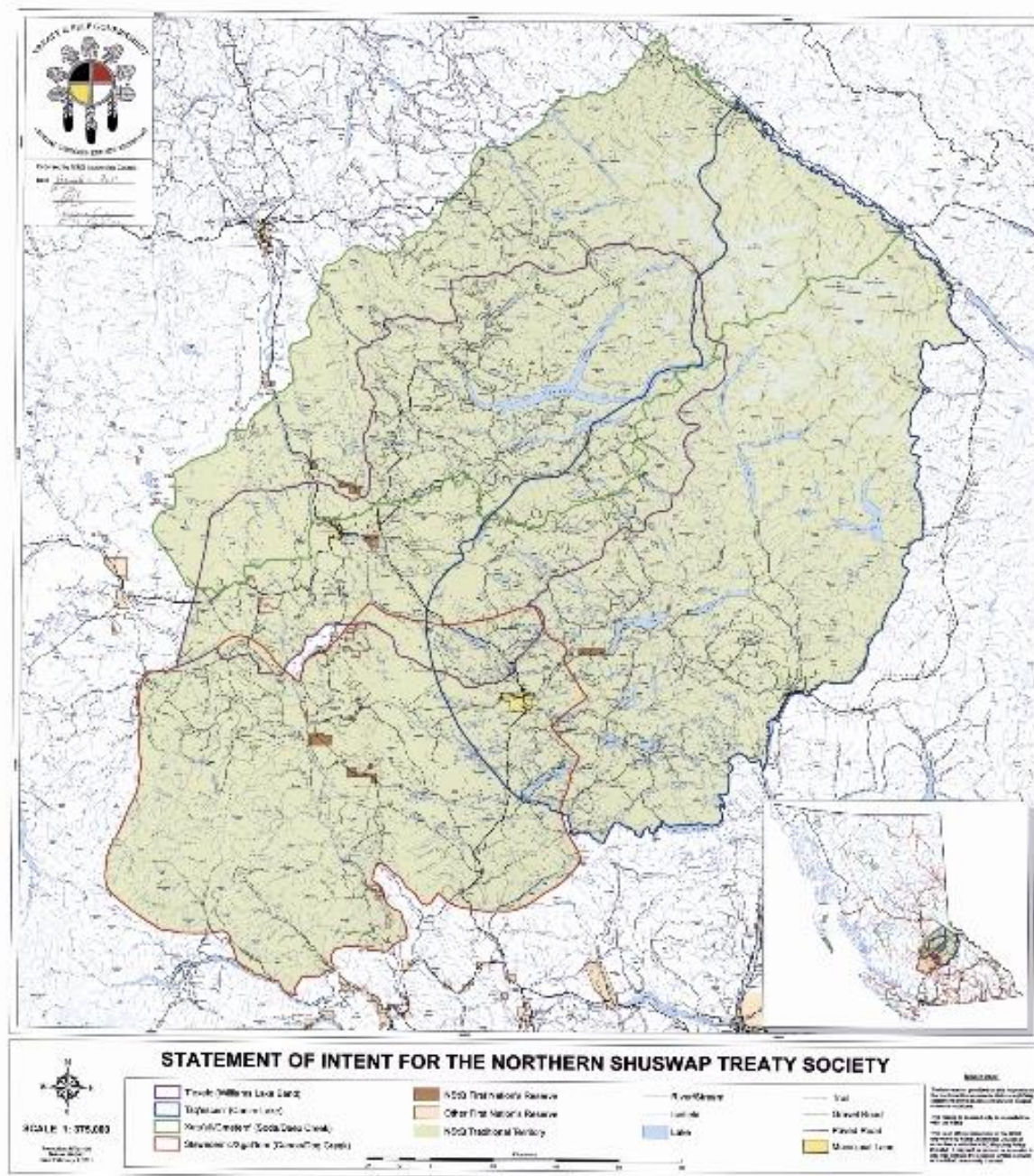
13.1.2 The Crown and all Proponents shall seek NStQ's consent to any Mining Activity. Where NStQ does not consent to the Mining Activity, the Crown or a Proponent may seek to obtain that consent through Meaningful Consultation in accordance with this Mining Policy.

Appendix "A"

Map 1: Secwepemculecw



Map 2: Northern Secwepemc te Qelmucw (NStQ) Statement of Intent Area



Appendix “B”

Information to Obtain at Exploration Phase

Exploration activity can be spread over a vast area when a number of possible mineralized areas are identified. Preliminary exploration can be compared to many small scratches, where advanced exploration is a deeper cut. A small portion of preliminary exploration areas shall be selected for drilling, and only 1 in 10,000 shall be developed into a mine. The cumulative impact on the land of thinly spread exploration activities can be enormous; resulting in thousands of kilometers of access roads and power line cuts that disturb vegetation and surface soils and cause erosion, sedimentation, wildlife disturbance and disrupt traditional activities.

Proponent Profile: Who will be doing the work?

- Company name and address
- BC registration number
- Directors of company
- Parent company and/or affiliates
- Details about the company’s technical and financial resources
- References where company has engaged with other First Nations
- Details on other Mining Activities/projects the Company is or has been involved with
- Details on any previous convictions or outstanding charges under Relevant Statutes
- Names of those responsible for overall management of the project, on-site management of the project, and environmental management on site, including sub-contractors
- Map at appropriate scale showing location and extent of the Proponent’s entire tenured interests in the Territory

Scope of Work: What type of work is being proposed?

- Purpose of proposed activity
- Type of activities being undertaken (roads, grid lines for power access, trenching)
- Description of any infrastructure to be constructed or located in the territory
- Budget for the proposed work (how much money is being spent?)
- Description of any BC land tenure or regulatory permit being used or applied for (copy of BC application should be supplied if available)

Geographic Location: Where will the work be carried out?

- General location description with 1:50,000 or larger scale map, showing all mineral claims staked in the area of work by the company
- Detailed site drawing at appropriate scale showing proposed activity and associated infrastructure in relation to topography and drainage
- Description of current land use and productivity that would be disrupted or displaced by the proposed exploration activities (including average yield of food, fiber, forage or wood products from the lands)
- Clear definition of boundary for area of disturbance
- Show proximity to all surface waters and specify if they are fish bearing waters

Duration: How long will the activity last?

- Specify period required for occupation
- Provide plans for terminating the work and departing the territory
- Provide plans, if any, to return to the territory and continue the work beyond current period

Access: What method of access is being proposed?

- Description of how site is to be accessed
- Route map at appropriate scale
- Description of construction plans required for access
- Description (or copy) of any Crown permits required for access
- Infrastructure and Supplies: What materials & supplies will be required to conduct the work?
- Description of all materials and supplies expected to be brought to site; particularly fuel, chemicals and other hazardous materials
- Description of transport method for the above, including frequency of trips
- Description of any stream crossings and mitigation measures to reduce impacts

Work Force: What kind of work force is required?

- Numbers of workers, transportation methods, staging of workforce, accommodation plans
- Details of the range of skills required for the program, and the services required to construct and support the program
- List of company policies with respect to recreational pursuits, hunting, fishing, etc.
- Identified opportunities for hiring and training NSTQ field crew members; including any commitments to pursue these opportunities.

Predicted Impacts: What are the environmental and/or community impacts predicted by the Proponent, if any?

- Detailed information on the results of any environmental review or assessment completed by the Proponent
- Provide all environmental, economic, social and cultural baseline data collected including sampling methods and statistical analysis
- Detailed information which describes any potential community impact issues identified by the Proponent

Management Practices: What environmental management practices will be in place?

- A complete description of how the Proponent proposes to manage the project to eliminate or mitigate predicted impacts
- It is expected that an environmental management plan, detailing the environmental protection measures the Proponent will implement during the program, shall be submitted as part of the application documents. Environmental management plans shall contain the following components:
 - objectives of the plan (what environmental issues are being addressed?)
 - description of specific methods used for sampling, including how samples will be collected, how many samples, timing, analytical method used and frequency of sampling
 - identity of person or position responsible for implementing the plan
 - monitoring programs required to initiate management response (see next question for details of monitoring programs)
 - thresholds or triggers for initiating a management response
 - description of what reporting will be done throughout operation and decommissioning; including reporting to NSTQ.
- Contingency plans for upset or emergency conditions (e.g., fire, toxic spills, etc.)
- Closure plan for shutting down activities, site reclamation, and safe exit from the territory.

Monitoring: What environmental monitoring programs will be in place?

It is expected that the application documents shall include a description of any required impact or compliance monitoring programs that will implemented during the work, or as a follow-up program.

Monitoring plans should include the following information:

- objectives of the monitoring program (hypotheses about what changes will occur that need to be monitored)
- identification of what environmental indicators will be used
- description of baseline data required; an evaluation of adequacy of existing baseline data and whether more are needed; plan to complete baseline data collection where necessary
- description of methods by which sampling or monitoring will be done; including maps at appropriate scale showing sample locations and monitoring stations
- description of analytic or statistical methods to be used in processing the data
- identification of any thresholds/triggers to initiate a management response
- identity of person or position responsible for implementing the monitoring program, evaluating monitoring data, and communicating to managers when response is necessary
- description of what actions will be taken by managers if thresholds exceeded.

Bonding to ensure exploration impacts are cleaned up and remediated

Exploration activities are usually carried out by junior mining companies who often do not have a lot of capital reserves or an operating mine to draw financial resources from. Large financial institutions are not as likely to finance Exploration Activities as they are mine development. Since exploration companies usually do not have “deep pockets”, it is important to make sure they have the financial resources to complete all the reclamation and clean-up work required in a timely and thorough manner.

- require a financial guarantee or bond from all exploration companies
- require a separate bond for each exploration site, even from the same company
- refer to Part X of this Mining Policy

Appendix “C”

Items to Include in Exploration Agreement

1. Protocols for communication, information exchange, reporting requirements, and on-going liaison throughout the duration of the Exploration Activity, including:
 - a. Proponent to provide quarterly updates to NSTQ about Exploration Activity;
 - b. Proponent to notify NSTQ of any new authorizations or permits when they are applied for and if they are approved;
 - c. Proponent to develop and implement an environmental assessment monitoring plan, which includes the factors listed in Appendix “E”;
 - d. Proponent to provide NSTQ with all monitoring data in electronic format, with photographs where applicable; and
 - e. Proponent to allow NSTQ free access to exploration area to perform site visits.
2. Details about the Exploration Activity, including the method, types of machinery, drilling sites and duration.
3. A commitment by the Proponent to respect NSTQ’s cultural heritage, including commitments:
 - a. Not to conduct any Exploration Activity within 100 meters unless otherwise agreed of known cultural heritage sites;
 - b. To immediately cease work if a cultural heritage site or object is discovered during prospecting or Exploration Activity;
 - c. To immediately notify the NSTQ of the discovery of all cultural heritage sites and objects, and
 - d. provide NSTQ with the option to inspect the site of the discovery; and
 - e. Not return to work within 100 meters of a discovered cultural heritage site or object until NSTQ has given written consent to do so.
4. Details about the posting of financial security, including requirements that:
 - a. The Proponent shall post security with NSTQ to cover any potential damage the Exploration Activity may cause to NSTQ interests, including damage to cultural heritage sites and objects, damage to harvesting areas, interference with fishing or hunting rights, reduction in water quality or quantity, alterations of watercourses, impacts to wildlife, remediation of wastes, and any costs associated with clean-up;
 - b. The amount and type of security that the Proponent must post shall be determined in accordance with the applicable criteria listed in Part 11.
 - c. Any damage or encroachment upon NSTQ interests resulting from the Exploration Activity shall be paid:
 - i. First, from the posted security; and
 - ii. Second, directly by the Proponent and/or the Crown, if the posted security is inadequate.
5. A **socio-economic benefits plan**, including commitments to:
 - a. Preferentially hire NSTQ members and retain local businesses for activities related to the Exploration Activity;
 - b. Contribute to community development programs; and

- c. Provide training and education programs.
6. An **environmental protection plan** for Exploration Activity, including commitments:
- a. Not to cause Irreparable Harm to the Environment of the Statement of Intent Area;
 - b. To comply with all Laws;
 - c. To notify NSTQ immediately of any and all environmental spills or hazards; and
 - d. To adhere to the following requirements:

Water

- Adequate riparian setbacks of at least 30 meters for minimal Exploration Activities and at least 70 meters for disruptive mineral exploration
- Identify the water source for drilling
- Describe any impact of water withdrawals on fish bearing streams
- Require use of sediment screens to reduce erosion and sedimentation of stream beds
- Proponent to prepare contingency plan to restore potable water and provide emergency water supply in the event that Exploration Activities adversely impact potable water quality and quantity
- Contingency plans to address years of atypical precipitation

Roads

- Monitoring plan for roads (culvert maintenance, sedimentation control, road bed maintenance)
- Suspend or relocate vehicle use in the event of road degradation
- Road closure and de-commissioning plan

Camps & Workers

- On-going refuse management and site maintenance at exploration camps
- Require all wastes (human and garbage) be appropriately disposed of
- Hunting or fishing on the Statement of Intent Area only in accordance with regulation and NStQ consent

Machinery & Drilling

- Only biodegradable and non-toxic drilling fluids may be used
- Proponent must identify all additives that are used in drilling
- All fuel and lubricants must be kept in secondary containment storage to prevent accidental spills
- Description of equipment used; backhoes generally cause less disturbance than bulldozers
- Contaminated drilling water and mud must be removed and disposed of appropriately
- All drill cores must be preserved and, after use, geologic information given to the NSTQ

Remediation of Drill Sites

- Overburden shall be stored in a manner that preserves it's use and biological viability for reclamation
- Require the use of native seed blends important to stop introduction of invasive species
- Drill holes must be sealed immediately after drilling and must be done to prevent the contamination of surface or groundwater.

- Areas of ground subsidence caused by drilling must be filled with clean fill that is free from noxious or invasive plant species and/or contaminants;
- Trenches must be backfilled by using removed overburden and bedrock, followed by replacement of the vegetative mat
- All plant species used in re-vegetation must be approved by the NSTQ

Timing

- Airborne surveys must consider sensitive wildlife calving and roosting times. NSTQ can impose timing limits on flights in the Statement of Intent Area

Appendix “D”

Information to Obtain for Environmental Assessment Review

Mine proposal

Mine Proponent:

- Identify management team who is ultimately responsible for the accuracy of the EIS statements. Have them certify the accuracy.
- Request a summary of other exploration and mine development projects they own or manage, currently and in the past including compliance with all permits and authorizations and a summary of environmental, social, cultural and economic impacts and benefits.
- Request a history of relationship with affected First Nations. Ask for references of First Nations and affected communities to contact to check their integrity of conduct

Mine project description:

- A summary of the project description in plain language
- Describe all ore bodies that may be developed, including ore bodies not fully identified, tonnage extracted and the estimated TOTAL life of the mine
- Identify and describe all onsite and offsite facilities associated with the project: roads, power lines, power substations, ports, rail lines, air transport, oil and hazardous substances facilities
- Identify all mine infrastructure: tailings storage facilities, open pits, ore stock piles (sorted for acid generation and neutral metal leaching potential), overburden stockpiles, overburden and aggregate borrow pits, surface water management structures, waste treatment facilities, waste rock piles, adits (old and new), camps, waste disposal facilities, explosive storage areas, mills and processing facilities, hazardous storage areas, ore and waste transport facilities (pipelines, conveyors), concentrate storage and loading facilities, administrative and support facilities, and any other associated mine infrastructure
- Identify ore processing procedures and reagents (cyanide, xanthates, etc.)
- Identify all discharges from the mine to air (dust, exhaust) and land (dust, soil, vegetation)
- Request a reclamation and closure plan, length of time for the open pit to fill with water, and ultimate pit water quality
- Impacts to all surface and groundwater from mine discharges, seepages including an analysis of probable unplanned releases
- How will liability for environmental, social and cultural impacts in perpetuity be handled?

Need for the project:

- Rationale for proceeding with the development at this time within the context of regional, provincial and federal economies
- Global implications of supply and demand on metal prices and markets
- Economic trade off: what activities and economic development will no longer be possible due to mine development and impacts
- Feasibility Study showing full economic risks and benefits of the projects

Land Use Plans detailing:

- Existing Protected areas
- NSTQ Land Use Plan
- Provincial Land Use Plans

Project Alternatives:

- Full disclosure of alternative ways of carrying out the project
- Alternative mine waste disposal options
- Include a no action alternative

Assessment of Effects

The EA review must identify, describe and appropriately assess the direct and indirect effects of the proposed mining activity on NSTQ's Traditional Territories, including:

- Terrain, soil, water, air, climate and vegetation
- acoustic environment
- the interaction between the aforementioned factors
- effects on fauna and flora, species-at-risk, biodiversity
- climate change
- temporal and spacial cumulative impacts

The EA review must identify, describe and appropriately assess the direct and indirect effects of the proposed mining activity on NSTQ's economies, health, culture, traditions, lifestyles and heritage resources, including:

- effects on wildlife harvesting or NSTQ's traditional land use
- effects on species important to NSTQ
- lost economic opportunities resulting from the proposed mining activity Examples of economic activities considered include forestry, fishing, hunting, trapping, tourism and traditional use.
- Fish & wildlife habitat loss mitigation and compensation plans
- Cumulative Impacts
- Environmental impacts of spills, accidents and accumulation of contaminants in the air, land, water, workers, traditional foods, and NSTQ members
- Social, cultural, spiritual, health and heritage impacts of the project.
- Will there be environmental impacts after the project is done? How will they be minimized, treated and compensated for?

Environmental Baseline Studies:

- EA must be completed by appropriately qualified professionals who certify that their baseline studies are accurate, adequate to fully assess impacts and representative
- EA must be based on environmental baseline studies:
 - Overseen by local authority (approved by NSTQ);
 - Conducted over a long enough timeframe to adequately and accurately characterize all aspects of the environment, culture, economy and climate variations
 - Incorporation of both scientific and Traditional Ecological Knowledge
 - Baseline environmental data collection & analysis completed by qualified independent third-party expert
 - Studies must include (as appropriate):

- terrestrial (land) ecosystem-geologic stability, climate change, long-term restoration, ultimate land use capability, erosion
- marine (ocean) ecosystem-species impacted, contaminant loading, physical characteristics
- freshwater aquatic ecosystem (lakes, streams, wetlands, groundwater, sediments) hydrology, quantity, quality, physical and contaminant levels
- air quality (dust, worker exposure, contaminant release)
- aquatic and terrestrial animals (numbers, distribution, movements, behaviour, habitats, local population viability, existing hunting pressures, cumulative impacts)
- existing habitat quality (soil, landforms, water quality and quantity, vegetation quality and quantity, current logging/roading impacts, cumulative impacts)
- EA must be based on adequate cultural baseline studies:
 - The EA review process must identify, describe and appropriately assess the direct and indirect effects of the proposed mining activity on NSTQ's cultural heritage and traditional practices.
 - impacts to traditional land use practices
 - impacts to spiritual practices
- EA must be based on adequate socio-economic baseline studies which focus on NSTQ's economies, health, lifestyles and heritage resources, including:
 - population change
 - quality of life indicators
 - community social structure and stability
 - impacts to lifestyles, language, and customs
 - individual and community health risk
 - infrastructure requirements (i.e. need for more health care providers)
 - employment and business opportunities
 - social adjustment programs
- All EA Baseline studies shall be provided to NSTQ in an appropriate electronic format so that the baseline studies can be uploaded into the NSTQ's database.

Quantifying Uncertainty:

Baseline studies must acknowledge and describe all uncertainties in the datasets, including any indication of difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information, and a description of any assumptions, uncertainties and gaps in knowledge.

- Mandatory assessment of reasonably foreseeable catastrophic events
- identify assumptions relied upon in the decision-making, and acknowledge limitations, uncertainties, and difficulties in reaching conclusions.

Evaluate the sustainability of the project:

Use the sustainability criteria established by the Kemess North Mine Review Panel² that include spiritual, cultural and a full range of economic values. A full analysis of the pros and cons of Project development, evaluated individually for each of these five sustainability perspectives, and then in combination, should be conducted with the direct assistance of NSTQ. A determination should be made, based on the NSTQ's interests, whether the benefits of Project development outweigh the costs.

1. Environmental Stewardship

- Creation of a long-term site management legacy is a significant environmental concern
- Proposed mitigation and compensation measures undertaken by the Proponent that would eliminate significant adverse environmental effects providing these commitments and measures are effectively implemented throughout all phases of the Project, including the post-closure phase.
- Information on Proponent's compliance on other EA Certificates and permits they hold

2. Economic Benefits and Costs

- Accounting for all externalized project costs (such as the long-term site management legacy and the loss of traditional uses and their spiritual value) in dollar terms.
- Stating whether, in dollar terms, total benefits would exceed total costs.
- Weighing potential benefits for mine workers and suppliers, the Crown and company shareholders vs. costs to NSTQ Title and Rights and Title, loss of economic and cultural uses, etc.
- Evaluating whether economic benefits during the limited life span of a mine outweigh the in perpetuity costs

3. Social and Cultural Benefits and Costs

- Consider the true socio-cultural impacts from the project vs. the true economic benefits to NSTQ members working at the mine and related service businesses
- What impacts will the incoming workforce have on social services demands

4. Fairness in the Distribution of Benefits and Costs

- How much of the mine related labour force will be filled by NSTQ members vs. outsiders
- How will the mine work schedule effect traditional practices

5. Present versus Future Generations

- Is there a possibility of a long-term legacy of substantial mine site management and maintenance obligations? How will that impact future generations?
- Identify the uncertainties in the long-term mine site management plan. What are the probable off site water quality impacts?
 - If the financial bond posted by the Proponent to cover site management liabilities proves to be insufficient, and the Proponent is not available to carry out necessary site management activities, will the Province bear the liability?

² Kemess North Copper-Gold Mine Project-Joint Review Panel Report Summary September 17, 2007

Appendix “E”

Pre-EA/EA Monitoring Plan Conditions

Any possible resource development (mineral, oil and gas, coal, coal bed methane) should be carried out in a way that presents minimal risk to the environment and land-based economy of the NSTQ and offers long-term sustainable benefits to residents. It is the responsibility of the Proponent to ensure that all reasonable measures are taken to protect the social, economic, cultural and environment health of our community and the Statement of Intent Area, and promote local sustainability.

Principles expected of Proponents when developing baseline studies, the Environmental Impact Assessment, and permit applications;

1. Proponents to use the precautionary principle to proactively protect the environment and social/cultural interests in the Statement of Intent Area.

Rationale: We know that mines do not operate as planned – there is a long history of mining companies causing pollution and contamination they did not predict and leaving it behind when they close or abandon a project. We request specific information about your baseline studies, assumptions and impact assessments to ensure you are using methods acceptable to NSTQ and basing your projections and analysis on adequate and accurate data.

2. NSTQ requires all Proponents to gather data that is truly representative of environmental variability and always use conservative assumptions (by our definition) in impact modeling.

Rationale: NSTQ does not agree that CEAA guidelines, or what has typically been done by the BC EAO to scope a project, has been adequate. We know that there is a great deal of variability in ecosystems from year to year. For baseline studies to truly characterize natural variation and reflect existing conditions they need to be conducted over a number of years. The foundation of accurate impact assessment is an adequate, accurate understanding of current conditions, and the range of variation in the Statement of Intent Area. The impacts of climate change make it even more critical to provide baseline data that fully encompass natural variability.

3. NStQ will require all Proponents to use every means to eliminate and reduce impacts to the Statement of Intent Area, including no impacts in specific areas, complete treatment of wastes, and limitations on mine operations.

Rationale: NSTQ will live here long after the mine Proponent is gone. We know many mine sites require water treatment in perpetuity, and we do not want liability for this problem. We know, despite reclamation, our members will hesitate to conduct traditional activities in areas they perceive as contaminated.

4. NStQ will require all Proponents to provide contingency strategies for all aspects of mine operations. If there is a projected impact from any mine development, we expect the Proponent to use every

means to eliminate it. If that is not possible, then we expect the Proponent to minimize and mitigate for every impact to our lands and people.

Rationale: The continuation of the NSTQ depends on our tie to the land. We intend to protect the lands, waters and resources within our territory for our future generations. We are concerned that proposed mines will impact our use of the lands, waters and resources around the proposed mine site.

5. NSTQ must be fairly compensated for every negative impact to our lands and way of life.

Rationale: NSTQ must receive accommodation and compensation for any pollution-either temporary or permanent- that occurs in the Statement of Intent Area or affects the Statement of Intent Area or our way of life. We must receive accommodation and compensation for every impact to our culture and use of our lands.

6. Proponents must provide adequate funding to enable NSTQ to participate in baseline and ongoing monitoring programs, including initial design, implementation, and analysis of results to quantify the actual versus predicted impacts of a project.

Rationale: NSTQ intends to fully participate in all aspects of an evaluation of proposed Mining Activities in the Statement of Intent Area.

7. The company should provide all information generated on the proposed project. All ownership history, geologic assessments, baseline studies, feasibility studies, economic assessments, and consultation information should be made available to NSTQ.

Rationale: NSTQ should have access to all information related to any project proposed on the Statement of Intent Area so we can be fully informed.

8. The Proponent should provide a full alternative analysis of options for all mine facilities.

Rationale: This analysis needs to include full disclosure of how the Proponent has proactively designed all aspects the mine operation to minimize impacts to traditional uses and the environment.

9. All baseline and monitoring information will be supplied to NSTQ in an electronic format that is compatible with existing NSTQ programs.

All baseline and operational monitoring programs proposed by Proponents shall have the ability to:

- monitor whether expected impacts materialize;
- respond to unanticipated impacts;
- take advantage of unexpected opportunities to enhance environmental outcomes;
- learn from experience;

- adapt to post-EA changes in project design, project operating characteristics and environmental knowledge; and
- manage the risk and uncertainty involved in predicting the future impacts of human activity on complex and dynamic environmental and social systems.

NStQ will require an annual report of all baseline and operating monitoring programs to our membership, including:

1. A presentation in our community on a mutually acceptable date
2. Copies of all raw data from all baseline studies, including geochemical in an electronic format acceptable to NStQ
3. Copies of maps showing all sampling locations
4. A complete description of sampling methods, completion rates, analytical methods, statistical analysis and itemization of any data omitted and the reason
5. A complete description of any variances from the sampling plan and the reasons
6. A complete description of any further sampling plans

Appendix “F”

Impact Benefit Agreement Conditions

Source: Ginger Gibson and Ciaran O’Faircheallaigh, “IBA Community Toolkit” (March 2010),
online at: <http://www.ibacommunitytoolkit.ca>

A. Communication among parties

- Principles for communication and reasonable expectations for responses;
- A formal process for communication (e.g., the parties will meet four times a year in the communities)
- Identify the information to be exchanged, how often, and how gaps in knowledge will be addressed
- Establish a process for sharing confidential or sensitive information
- Establish a process for record keeping and reporting during communication events
- Define expectations for community consultation, locations, and timelines of consultation by company with community
- Establish liaison positions or formation of committees that meet at certain intervals to manage communications
- Negotiate financing for and management of committee or liaison position, and
- Define the duties of a liaison officer (if appointed)

B. Aboriginal and public access to mining tenures

- How to provide notice of visits
- Identify restricted access areas
- Establish purposes for access, including the use of roads
- Use of mine facilities and infrastructure
- Indemnification, insurance coverage, and public liability; and/or
- Safety issues as a basis for refusing access (limits to access by non-Aboriginal parties, and the effects on any existing permit systems for access by tourists may be addressed)

C. Mining payments

- Fixed Payments
- Royalties based on volume of outputs
- Royalties based on volume of production
- Royalties based on profits; and/or
- Equity

D. Mining payment utilization & management

- Payments to Individuals
- Services and Infrastructure

- Business Enterprise
- Portfolio Investment
- Structures for managing mine payments

E. Construction

- Employment targets for construction period (labour force development plan)
- Employment
- Matching labour supply and employment opportunities
- Recruitment
- Employment targets
- Hiring preferences
- Penalties for non-achievement
- Measures for employment of women

F. Education and training

- Retention
- Employment policy, resource and implementation supports
- Career advancement
- Workplace environment
- Family and community supports
- Provision of appropriate accommodation
- Other employment measures (minimum hiring standards; criminal records pardoning; summer jobs and internships; transportation to mine site, etc.)

G. Union relationships

- Requirement that the IBA take precedence over the collective agreement
- Promotion of NSTQ employment and training in company and union programs, particularly for Aboriginal workers who are IBA beneficiaries (members of the communities that are signatories to the IBA)
- Requirement that membership drives be done in the places where NSTQ members live
- Acceptance of training in lieu of some educational requirements for NSTQ workers
- Negotiation of a first call for jobs to qualified internal and external NSTQ beneficiaries
- Thorough orientation and training for NSTQ workers on the collective agreement, their rights and responsibilities as union members, and the role of unions – preferably by Aboriginal shop stewards and experienced union members
- Provisions to mentor, train and promote the election of NSTQ workers as shop stewards, and in other union roles including the executive, in particular to increase capacity of NSTQ workers who understand both the collective agreement and the IBA
- Flexibility around issues such as seniority to deal with job sharing or other non-traditional arrangements
- Provision that NSTQ workers are the last to be laid off in the event of slow-downs or closures

H. Business development

To avoid high transaction costs, consider including the following provisions:

- Right of first refusal of contracts can be offered to companies controlled by the community. Sometimes companies are required to pre-qualify for this condition.
- Contracts below a certain size can be offered first to Aboriginal businesses, and if they meet the criteria, contracts can go to these businesses without going to tender.
- Contracts can be broken up (unbundled) so that they are accessible to smaller businesses.
- Evergreen contracts (which automatically renew unless either party provides advance written notice) are negotiated.

To deal with scarcity of capital, consider the following:

- Provision of assistance to Aboriginal businesses to raise finance, for example by providing documentation regarding the contract award or purchase order to financial institutions.
- Establishing a loan fund to meet start-up costs.
- Establishing joint ventures between project operators and Aboriginal businesses during the start-up phases.

To address any lack of relevant skills and experience, consider the following:

- Proponents can hold workshops on bidding procedures and safety management, and host annual business opportunity seminars.
- Access to technical and financial expertise can be provided by company staff and through management training programs, or other “in kind” support can be provided, such as reduced rate equipment leases and technical support.
- Joint ventures between project operators and Aboriginal businesses can be established.
- Parties can appoint an Aboriginal business development coordinator or establish a business opportunity implementation committee to forecast contract needs of the project and the capacities of local businesses. This individual or group can assist communities in identifying business opportunities, help to improve methods of bidding, support efforts of mining companies to obtain government funds for management training, and make recommendations to the company regarding specific contracts.

To address any competitive disadvantage, consider the following:

- Evaluation of contract proposals can include a defined weighting for Aboriginal content (as in the Voisey’s Bay IBAs), as well as other standard criteria such as quality, cost competitiveness, ability to supply and deliver the goods and services, timely delivery, and safety and environmental record.
- Preference clauses can be agreed on for competitive Aboriginal businesses. The definition of “Aboriginal business” and “content” needs to be clear. DIAND has defined Aboriginal business as having greater than 51 per cent Aboriginal ownership and control, and if there are more than six employees, at least 33 per cent Aboriginal employment.

- A registry of Aboriginal businesses can be established so that companies unfamiliar with a region can work with local businesses. Often this registry is paid for and is the responsibility of a business promotion branch of government.
- Failing the identification of an appropriate Aboriginal business, an IBA can require the successful contractor to comply with employment commitments made by the project operator and require contractors and sub-contractors to include an Aboriginal content plan as part of their proposal;
- A margin in favour of Aboriginal businesses can be assigned when assessing tenders (e.g., price tolerance of 10 per cent in favour of Aboriginal tenderers).
- When Aboriginal tenders are not successful, the project operator is required to inform the Aboriginal business in writing about reasons for failure and what can be done to improve their bids.
- Information on upcoming contracts is provided to the community well in advance, so that potential bidders have time to put tender packages together.
- Performance bonds and tender deposits can be waived.

I. Environmental management

- Use the precautionary principle, which states that absence of complete scientific understanding of an environmental problem is not grounds for failing to act to deal with it (often used when there is potential for serious, irreversible, or cumulative environmental and/or social damage)
- Employ an adaptive approach to environmental management, which involves ongoing refinement of management procedures and policies to reflect lessons learned
- Involve NSTQ members in defining and managing environmental issues and impacts
- Comply with environmental laws and industry codes of practice
- Ensure NSTQ members are able to practice traditional laws and customs and exercise the full range of connection to their territory
- Provide financial guarantees to meet the cost of environmental remediation including closure costs, in the immediate and long term
- Integrate indigenous knowledge and land management practices into rehabilitation plans and works

Monitoring and management systems

- Provision of NSTQ member access to company monitoring locations on project lands
- Guidelines and mechanisms to ensure NSTQ participation in environmental review, monitoring, and assessment
- Processes for discussing concerns arising from environmental monitoring information, through an advisory, liaison or management committee
- Provision for NSTQ environmental monitors
- Mechanisms for ongoing review of environmental management, such as independent monitoring studies
- Independent environmental audits at regular intervals
- Funding for NSTQ to gain access to independent technical advice

- Inclusion of traditional knowledge in monitoring and follow-up studies, perhaps with specific mechanisms or procedures to plan for integration of knowledge
- Funding arrangement between the Crown and the Proponent to cover monitoring costs

Mitigation measures

- Measures to deal with environmental damage, pollution during construction, or post-closure impacts (e.g., performance bonds, insurance policies)
- NSTQ has the right to require project activity to cease where the company is in default of an environmental regulation or protection measure established in the agreement, until such a time as the default is cleared up to the satisfaction of the indigenous party
- Habitat compensation and enhancement initiatives

Toxic materials and substances

- An inventory of toxic materials and products, as well as risk management plans (sometimes with prohibitions on certain substances, e.g., pesticides or PCBs), plans for use, storage and handling of these materials and products, and emergency plans for spills, leaks or discharges
- Notification of NSTQ if particular materials, chemicals, or products that are restricted, or under consideration for restriction, are to be used
- Commitments to not use particular products or materials, such as pesticides

Exploration, Operation and Closure

- Abandonment and rehabilitation plans
- Involvement of NSTQ members in closure plan development and implementation
- Reclamation throughout the life of the project
- Compliance with all requirements in regulatory approvals
- Monitoring following closure and permit inspection by NSTQ members.

J. Culture and cultural heritage

- A principle of avoiding damage as a first objective, followed by the minimizing any damage and, if damage or destruction of sites or artifacts cannot be avoided, a process for mitigation and compensation
- Measures and protocols to avoid damage to cultural sites, including protocols for site or object management and site clearances, timeframes and, if sites are to be identified in reports, who will have access to this information
- Options for re-designing a project to avoid removing cultural sites from the location, where necessary
- Provision of resources and funds for NSTQ to undertake or commission heritage assessments and develop management plans on the basis of agreed standards, including funding traditional knowledge studies
- Employment of a cultural heritage consultant, and terms of reference for choosing one
- Creation of monitoring guidelines that are defined by NSTQ
- Confidentiality of culturally sensitive information
- NSTQ ongoing access to areas of importance for social, religious, cultural or economic purposes and prohibition on access of non-Aboriginal project personnel to the sites

- Employment of local cultural heritage protection monitors, e.g., involvement of elders or land users in heritage resource impact assessments before, during, and after exploration or mining
- Processes for consultation with the NSTQ

Cultural Practices & Language

- Management strategies and mitigation measures to prevent impacts on traditional land uses and culture
- Community involvement in defining, monitoring and analyzing cultural impact
- Support for cultural practices or celebrations, such as festivals, events, assemblies, cultural media and archive activities (e.g., radio stations, magazines, photography, audio or video projects, archaeological or oral history projects), and support for cultural activities (e.g., traditional food activities, ecotourism, and cultural practices)
- Support for cultural literacy or education programs
- Training and operation of facilities with allowances for indigenous languages

K. Harvester compensation and traditional use

- Compensation for lost revenues from trapping and fishing caused by damage to equipment, loss of animals, including direct loss if animals are no longer present in the project area, or for increased cost associated with additional travel
- Fund for harvesting and traditional activities to help finance trapper cabins, including new ones, and renovations; communications (e.g., satellite radio hookup); trap line management, wildlife monitoring, harvesting monitoring, and relocation of animals
- Transportation, including bush planes, roads, and skidoo trails
- Traditional activity enhancement, such as habitat improvement or equipment repair
- Other works and programs or replacement of loss of traditional activities
- Any other use of the fund deemed appropriate by the NSTQ related to socio-economic measures or development

L. Social measures to mitigate impacts

- Measures to control interactions of “outside” workers housed in large camps with NSTQ members
- Broad support for cultural and social activities
- Obligations to develop social programs, such as counselling for workers and families, addictions programs, money management training, healing work- shops, and stress and anger management, held both in the community and at the project site
- Establishing financial, technical or human resource assistance to improve community infrastructure, implement community programs, or establish a community development fund

M. Follow up measures to ensure that commitments are adhered to

- Specify damages for breach of contract

Appendix “G”

Accommodation Agreement Conditions

Source: Robertson, Krista, 2007. “Accommodation Agreements”. Vancouver: Ecotrust Canada & Aboriginal Mapping Network. November 7, 2007. Available online at the Aboriginal Mapping Network web site: <http://www.nativemaps.org/?q=node/2905>

I. Benefits

The range of possible benefits that could be negotiated into an accommodation agreement is limitless. What follows are the more common examples, with some commentary on strategies to ensure the benefits will be realized on a practical level.

a) Royalties, Revenue Sharing or Equitable Interests in the Project: There are many examples of cash benefits. Where the government is collecting royalties from the private party, such as stumpage fees in the forestry sector, the government is in a better position to provide revenue sharing. Where the company is not paying large royalties to government, the company is in a better position to share profit. Royalties may only be relevant in cases where the First Nation has legally established a proprietary right to the lands at issue. There are many different formulas to arrive at a fair sharing of revenues and so far the Courts have given very little guidance on the matter. A First Nation’s research into the profit expectations of a project and the expected impacts is very important to assess whether the financial components of an agreement are fair.

b) Employment: Terms about employment and business opportunities for a First Nation are common in accommodation agreements. If members of a First Nation do not have appropriate training to be employed in a development, training and apprenticeship provisions are important. A hiring policy that gives preference to First Nation candidates and sets targets in numbers or percentages for First Nations employment in a project, or in the broader business of a company, is one means to secure employment opportunities. In the case of lay-offs, special provisions should be made for First Nations employees who may not have seniority. Where the company anticipates using a number of sub-contractors, specific provisions should be made to ensure employment of First Nations is a criterion of all sub-contracts. In addition, policies that address cultural barriers to successful First Nations employment, such as flexible work hours to accommodate traditional seasonal hunting, fishing and gathering activities, should be considered. Cultural sensitivity training for existing company employees can create a more supportive work atmosphere for First Nations, as can access to personal and career counselling. Specific positions may be created for a project for First Nations members to act as liaisons or cultural advisors to the company.

c) Business Opportunities: Business opportunities, such as construction and service contracts, may be a benefit for First Nations as they can provide both revenue and capacity building. Agreements may include terms providing that First Nation businesses shall have a right of first refusal on service contracts, or at least advance notice of a tender and priority contract awards. Capacity funding and other support from the government or company may be required to ensure a First Nation has the ability to secure and, more importantly, to deliver contracts.

d) Fee Simple Land Grants and Resource Tenures: Although a company may have private land holdings and may be in a position to transfer a parcel of land to a First Nation, land grants and

resource access tenures are generally benefits that can only be provided by governments. While First Nations have rights to harvest resources for food, social and ceremonial purposes, commercial harvest licences are harder to secure and can provide First Nations with long-term economic opportunities. Grants of land are more rare, and if the government is unwilling to provide land, it may be possible to negotiate designations of Crown land to 'reserve' the certain parcels for future negotiations.

e) Community Infrastructure and Social Programs: Employment and other benefits may provide opportunities for some members of a First Nation, but not to all members. To balance impacts and benefits in the wider community, accommodation agreements may have provisions for funding for community resources such as parks, recreation centres, daycares, transition houses and social programs.

II. Impacts

The types of accommodation under this heading address impacts to Aboriginal rights. As with the benefits section, the examples below are only some of many considerations that may be addressed in an accommodation agreement.

a) Completion of Studies: If a use and occupancy study, an environmental impact assessment, socio-economic impact assessment, or a baseline study is required or incomplete, the agreement may expressly provide for its completion, including how the study is to be managed and who pays the cost. If further information is required with respect to the development, it is important to have a section in the agreement to address what will be done with the information, especially if unforeseen impacts come to light.

b) Joint Management Committees: An environmental assessment for a project may indicate measures that should be taken to minimize anticipated environmental impacts. A First Nation may require even more stringent environmental protection measures for a development than those recommended in an assessment, or as required by government regulations, because of a unique reliance on natural food sources and spiritual values related to a pristine environment. For example, a pesticide management plan that meets government requirements may still endanger First Nations who gather food in affected areas, or the use of a lake to dispose of mine waste may destroy the spiritual practices of the First Nation.

A joint management committee or an environmental stewardship committee involving representatives of the First Nation, the company and the government can play a key role in developing and implementing environmental protections that are appropriate to the importance of the resources at risk. A joint committee can also oversee the completion and integration of impact studies into management plans, direct further studies where required, and ensure that management is responsive to ongoing environmental and cultural site monitoring. When unforeseen impacts or new circumstances arise, a joint committee can play an invaluable role in ongoing consultations and provide the First Nation with input into decision-making. Where a management committee is established in an agreement, the agreement should set out the details of composition and rules governing their powers and meetings.

c) Ongoing Site Monitoring: An important aspect of environmental protection, especially where government regulations and compliance mechanisms are weak, is ongoing site monitoring. Various arrangements can provide a First Nation, or an independent monitoring agency, with access to a site, data and other information so that the First Nation can ensure that environmental standards are being maintained. Ideally, such provisions shall provide funding for First Nations participation in monitoring, including technical expertise, as well as mechanisms that make it clear what steps are to be taken if concerns arise.

d) Site Protection and Access Arrangements: An accommodation agreement may include provisions for the protection of important cultural or harvesting sites. For example, an agreement may specify that logging cannot take place in key hunting areas, or that certain tree stands used for bark harvesting remain untouched. Where a development may cut off access to a site of importance to a First Nation, an agreement can set out right of way or access arrangements to ensure ongoing accessibility.

e) Terms and Conditions on Permits: A good strategy to create legal security that a development shall not go forward without adequate protection for Aboriginal rights, is for appropriate terms and conditions to be directly inserted into the licences and other permits issued by the government. For example, a licence to farm salmon in open net cages may require the farmed fish to be removed from the cages in the event of a disease outbreak to reduce the risk of transmission to wild stocks. As another example, a logging licence may grant less than the proposed volume of allowable cut in order to maintain sufficient ecosystem biodiversity. In some cases, if restrictions are put directly into a permit, they need not be addressed in an accommodation agreement, as they will be enforceable through the permit. However, such conditions may form an important part of accommodation negotiations, and they may be reinforced through provisions in an accommodation agreement, such as an ongoing monitoring arrangement.

III. Without Prejudice Clause

In order to protect underlying legal claims to Aboriginal rights, including title, it is very important that all accommodation agreements have strong “without prejudice” clauses. There are a variety of possible terms; therefore, it is advisable to seek legal advice to ensure there is sufficient protection in the agreement.

8. Dispute Resolution

Given that one of the purposes of an accommodation agreement is to avoid litigation, it makes sense for an agreement to contain dispute resolution provisions in the event of a disagreement with respect to the interpretation of the agreement. There are a number of options in this regard. The provisions can oblige both parties to appoint representatives to meet as soon as practical and to exercise all reasonable efforts to resolve the dispute; if these efforts fail, the parties can agree to mediate the dispute with the assistance of an independent mediator. Generally, there are associated provisions that the mediator must be acceptable to both parties, that the parties shall share the cost equally, and that the mediation is non-binding. If mediation fails, either party could proceed to court.

Dispute resolution provisions can go another step beyond non-binding mediation and include a right by either party to submit the matter to an arbitrator, whose decision shall be binding on both

parties. While arbitration is less costly than litigation, First Nations should approach this option with caution because an arbitrator with a general orientation in commercial arbitration may not be equipped to consider the unique Aboriginal rights aspects of an accommodation agreement.

9. Amendments and Termination

An accommodation agreement may be in force for a long period of time, during which the positions of the parties and the circumstances underlying the agreement may change. Although it goes without saying that any agreement can be amended at any time by mutual agreement of the parties, ideally an accommodation agreement shall contain provisions that establish a process for the parties to periodically evaluate whether the agreement is working. All agreements should have provisions whereby either party can terminate the agreement, typically with notice in writing and a specified notice period, such as ninety days.

10. Confidentiality

In some cases, a company may require that confidentiality provisions form part of an accommodation agreement. This may apply to the whole agreement (except in the course of legal proceedings about the agreement itself), or only to confidential business information received in connection with the agreement, such as financial and technical data. Although trade secrets may not be negotiable, depending on the circumstances, a First Nation may or may not agree with more general confidentiality provisions. In an agreement between a First Nation and a private company, it may be advantageous to the First Nation that the agreement be kept confidential so that the First Nation can continue to press the government for accommodations and the agreement cannot be put 'on the record' in the event that the First Nations needs to go to court to seek a remedy for the government's failure to consult. Further, a First Nation may not want a company to publicize the agreement and promote a public impression that the particular industry is generally acceptable to First Nations, or risk misinterpretation or misinformation that may cause political damage to a First Nation government. In some cases, accommodation agreements are entered into by First Nations, not because they support the project, but because the development is likely to go ahead in any event, and an accommodation agreement functions to at least mitigate or minimize the impact.

For First Nations as a collective, the downside of confidentiality provisions are that the First Nations are not at liberty to share information and work together to strengthen their bargaining position with a particular company or a particular industry. Further, if a First Nations signatory agrees to keep the agreement confidential, it may face challenges in balancing transparency to its membership with its obligations under the agreement.

11. Ratification

The process for ratifying an accommodation agreement is generally a matter of internal governance. At the outset of the consultation and accommodation negotiation processes, First Nation negotiators may be given a broad mandate to reach an agreement. Alternatively, they may have a narrower mandate that requires going back to the First Nation's government and/or the membership to ratify an agreement in principle before the agreement can be legally binding. Either way, a First Nation's negotiators should make it clear to the other parties what the scope of their authority is and nature of the anticipated ratification process.

Appendix “H”

Permit Conditions & Monitoring Requirements

The conditions attached to a Permit shall, at a minimum:

- ☐ Be consistent with the Environmental Assessment Certification commitments
- ☐ Recognize NSTQ’s constitutional rights to the use and occupy the Statement of Intent Area
- ☐ Adopt NSTQ’s recommendations regarding:
 - Rehabilitation of the Statement of Intent Area
 - Protection of the Environment
 - Protection of NSTQ social, cultural and economic interests
- ☐ Provide for mandatory public hearings or sessions during Permit application review stage
- ☐ Direct funding for NSTQ from the Crown for the Permit application review
- ☐ Develop contingency plans for upset or emergency conditions (e.g., fire, toxic spills, accidents etc.)
- ☐ Require that NSTQ be notified of every spill, leak, abnormal discharge, or fire not more than 4 hours after the event
- ☐ NSTQ is notified of all spills and any transport of hazardous substances in community
- ☐ Mine facilities and infrastructure shall not be located within 20 meters of any water body (stream, river, lake, wetland)
- ☐ Prohibit the use of natural water bodies for disposal of mine waste
- ☐ Mine infrastructure design and construction completed so as to minimize adverse environmental, social, or cultural impacts
- ☐ Implement measures to mitigate against adverse socio-economic impacts from outside workers on NSTQ members
- ☐ Require monitoring programs for all potential adverse environmental, socio-economic, cultural, heritage and human-health effects
- ☐ Mandatory requirement to have a local office before being granted a Permit
- ☐ Mandatory written agreement between the Crown and NSTQ on Permit conditions and environmental monitoring program, indicating consent for mine development to proceed
- ☐ Members of NSTQ granted opportunity to appeal Permit application or approval Bind the Proponent and the Proponent’s successors, partners, subsidiaries, sub-contractors, affiliates, and assigns to permit agreements for the duration of the Mining Activity and post-closure
- ☐ Require that new and/or subsequent Proponents provide NSTQ with the following information:
 - Company name and address
 - BC registration number
 - Directors of company
 - Parent company and/or affiliates
 - Details about the company’s technical and financial resources
 - References where company has engaged with other First Nations
 - Details on other mining activities/projects the Company is or has been involved with
 - Details on any previous convictions or outstanding charges under Laws

- Names of those responsible for overall management of the project, on-site management of the project, and environmental management on site
- Map showing location and extent of the Proponent's entire tenured interests in the Territory

FINAL DRAFT

Appendix "I"

Environmental Management Plan Content & Conditions

Each environmental management plan shall contain at a minimum:

1. Hazardous Materials:

- ☐ Details about all hazardous substances, reagents and regulated materials that will be used in or stored at the mine operation with a description of their transport route and schedule, containment storage, quantities used and disposal methods
- ☐ Provide proof that the least toxic chemicals or products have been used in all phases of the mine project. Every effort shall be made to use non-toxic and biodegradable materials during mine development and production
- ☐ A hazardous materials handling and spill response plan detailing the responsibilities of the project personnel, the location and amounts of response equipment, proof for adequate training, a schedule for drills, and an evacuation plan
- ☐ Agreement that NSTQ members should be trained as first responders and supplied with adequate emergency response equipment and training
- ☐ A ban on the use of all herbicides and pesticides at the mine site

2. Environmental Monitoring during mine operation

- ☐ Objectives of the monitoring program (hypotheses about what changes will occur that need to be monitored)
- ☐ Identification of what environmental indicators will be used
- ☐ Description of baseline data required; an evaluation of adequacy of existing baseline data and whether more are needed; plan to complete baseline data collection where necessary
- ☐ Description of methods by which sampling or monitoring will be done; including map at appropriate scale showing sample locations or monitoring station
- ☐ Description of specific methods used for sampling, including how samples will be collected, how many samples, timing, analytical method used and frequency of sampling
- ☐ Description of analytic or statistical methods to be used in processing the data
- ☐ Identity of person or position responsible for implementing the monitoring program, evaluating monitoring data, and communicating to managers when response is necessary
- ☐ Tiered triggering
- ☐ Established triggers for all parameters in monitoring plan that, if exceeded, shall result in action including further monitoring and work stoppage
- ☐ Description of what actions will be taken by managers if thresholds are exceeded
- ☐ Report percent completion of the monitoring program and describe variances from approved methods

3. Reporting of Monitoring Results

- ☐ Records of all monitoring conducted in association with the mine operation shall be kept, together with permit documentation, on site at the mine operation
- ☐ Records of all monitoring conducted in association with the mine operation, including monitoring not required by a permit or authorization, shall be provided to the NSTQ on a quarterly basis
- ☐ All spill and accident reports, including remediation and clean up actions, shall be provided to the NSTQ on a quarterly basis
- ☐ Progress on all reclamation efforts
- ☐ Notify NSTQ of substantive changes to milling process or quantities, reagents or other substantive changes in mine operations
- ☐ All Proponents shall provide NSTQ with an annual report on environmental, biophysical, socio-economic and cultural monitoring, including both raw and statistically manipulated data
- ☐ All information shall be provided in a format acceptable to NSTQ (electric or hardcopy, or both)
- ☐ The Proponent agrees to conduct an annual meeting with the NSTQ to report on mine activities
- ☐ The meeting shall be coordinated with the NSTQ and a time and location shall be agreed upon

4. NSTQ role in monitoring mine operations

- ☐ Proponents shall provide NSTQ with adequate resources to evaluate the annual report, including independent technical expertise

Appendix “J”

Closure Plan Content & Conditions

1. Temporary mine closures (less than six months), must contain at a minimum:

- ☐ NSTQ will be notified as soon as the Proponent suspects a temporary closure is possible
- ☐ Interim management plan to maintain all mine infrastructure, continue all monitoring, and
- ☐ Take all necessary protective measures to prevent personal injury, property damage and damage to the environment while the operation is suspended

2. Permanent mine closures (more than six months), must contain at a minimum:

- ☐ The Proponent shall notify NSTQ’s Authorized Representative of its intention to close the mine as far in advance as possible, and at least six months before the mine is closed.
- ☐ Clearly defined schedule and time-limits for completion of reclamation activities.
- ☐ Proof of the economic feasibility of the Proponent’s closure plan;
- ☐ Adequate labour, equipment and funding
- ☐ All Proponents shall provide NSTQ with a mine closure plan at the time of application that:
 - Conforms to NSTQ’s land use plan
 - Includes detailed ecosystem restoration goals including end land use goals
 - Includes measurable criteria to determine if ecosystem restoration goals are attained
 - Provides a schedule for progressive reclamation for each segment of the mine.
 - Requires Proponent to take all reasonable steps to:
 - reclaim, as early as possible, segments of land as disturbance ends; and
 - progressively rehabilitate a mine site during the life of a the mine whether or not the operations of the project are discontinued or closed. The activities set out in the progressive reclamation schedules should be carried out at the earliest possible opportunity.
 - Protects native vegetation by (applies to entire mine footprint, including all access roads, haul roads, and other traffic routes that are to be reclaimed):
 - Conducting trial plot tests during mining operations and before re-vegetation activities carried out.
 - Conducting re-vegetation during first growing season after dump slopes restored (to reduce the length of time that land is barren).
 - Re-vegetating disturbed areas with only native non-invasive plant species (consider developing a native seed collection program).
 - Re-vegetating disturbed area to match the natural vegetation cover of surrounding areas.
 - Re-foresting disturbed area in accordance with forestry laws.
 - Plan for adequate access routes for re-vegetation activities and inspections.
 - Salvaging topsoil before mining activities commence
 - Conserving topsoil’s seed and root stock
 - Protecting topsoil from erosion and contamination (i.e. weeds) by:

- storing it separately from other soils; and
 - covering it with suitable vegetation or other means.
- Prepare ground surface before re-vegetation:
 - Scarify ground (to promote seedling establishment and moisture retention)
 - Use moisture retaining, non-contaminated growth media; and
 - Apply growth media in sufficient thickness to support long-term re-vegetation and ecosystem restoration.
- Perform hydro-geological analysis of reclamation plans.
- Amend reclamation plans, as necessary, in accordance with hydro-geological analysis.
- Restore surface flow-patterns
- Rehabilitate stream-banks to minimize erosion and sedimentation.
- Identify and implement other erosion control measures.
- Includes detailed plans for long term maintenance and decommissioning of infrastructure including structures and/or equipment to remain in place following mine decommissioning plans for long term post-closure maintenance of facilities, including:
 - Waste dump & tailings reclamation
 - Pit and Underground Reclamation
 - Sealing of Underground Workings
 - Watercourse Reclamation
 - Road reclamation
 - Disposal of Toxic Chemicals
 - Effect of mine workings on stability of ground surface
- Include detailed plans for management of waste and contaminated areas, including:
 - Stockpile slop angles must be calculated for each type of material to be stockpiled
 - Stockpile slop angles must be less than the critical gradient for the particular material
 - Stockpiles to be designed and used to facilitate phased reclamation
 - Stockpiles to be designed for maximum credible seismic potential
- Top soil salvage and replacement
 - Re-contouring, slope stability, and visual aesthetics
 - Re-vegetation using native seeds and plants, and
 - Long-term stability, both physical and chemical, for all structures and discharges from the mine
 - Detailed prediction of post-mining chemical composition
 - Details of long-term maintenance of tailings impoundments including treatment of discharge water, if needed
 - Design of tailings impoundments for maximum credible seismic potential
- Proof that long-term water treatment shall not be relied upon for final reclamation
- Proposed program to assess trace element uptake in soils and vegetation at mine closure
- Provide adequate Wildlife habitat restoration
- Provide for Public health and safety by:
 - Fencing and posting warning signs around mine openings
 - Establishing a continual security presence on site, if needed

- ☐ The Proponent shall provide adequate funding to NSTQ for an independent professional review of the closure plan

FINAL DRAFT

Appendix “K”

Post-Closure Monitoring Plan Content & Conditions

1. General

- 1.1 Prior to Mine Closure, the Proponent shall develop a Post-Closure Monitoring Plan (the “PCM Plan”) in consultation with NStQ.
- 1.2 The PCM Plan shall set out:
 - (a) variables to be monitored;
 - (b) a schedule for the monitoring of all variables, including the geographic area, extent, frequency and duration of such monitoring;
 - (c) allowable levels of for potentially harmful variables;
 - (d) steps to be taken in case of exceedances of allowable levels;
 - (e) steps to be taken in case of a Major Incident; and
 - (f) a thorough, fully transparent, informative, timely and effective reporting process.
- 1.3 A PCM Plan and any amendments to it are subject to approval by NStQ. For greater certainty, this requirement applies to PCM Plans in place prior to the adoption by NStQ of this Policy.

2. Definitions

- 2.1 In this Appendix:

“Mine Facility” means a storage mass or equipment or developments under hydraulic or gravitational pressure, including, but no limited to remaining tanks, cylinders, pools, pits, stockpiles and impoundments.

“Water” means any watercourse, subsurface waterway or aquifer in and around the mine site, leading to and from the mine site, or with any other hydraulic connection to the mine site regardless of whether or not the water tested is or has ever passed through, or wholly or partially ever existed within the mine property.

3. Water

- 3.1 The PCM Plan shall provide for testing in perpetuity, using full acid-base accounting and sulphide speciation analysis, for the following toxins and contaminants in Water:
 - (a) acid mine drainage (including all trace metal and semi-metal contamination due to oxidation);
 - (b) neutral metal leaching;
 - (c) organic elements and compounds outside the original baseline data or resulting from terrestrial or riparian disturbances; and
 - (d) any other toxins, contaminants, or foreign or deleterious substances identified by NStQ.

4. Species

- 4.1 The PCM Plan shall provide for testing for metal and contaminant uptake of all vegetation, mammals, reptiles, birds, amphibians and any other species identified by NStQ.

5. Mine Facilities

- 5.1 The PCM Plan shall provide for continuous monitoring of all Mine Facilities, using 360 degree omnidirectional monitoring, to account for all subsurface, terrestrial, and airborne leaching, off-gassing, sublimation, and degradation of any kind of toxins into any part of the environment.
- 5.2 The Proponent shall utilize state-of-the-art techniques and equipment to monitor Mine Facilities. As of the implementation of this Mining Policy, the equipment shall include inclinometers and piezometers for the monitoring of the structural integrity and stability of all impoundment dams.

6. Social, Cultural and Human Health Factors

- 6.1 The PCM Plan shall provide for monitoring of social, cultural and human health factors identified by NStQ.

7. Changes to Baseline Levels

- 7.1 The Proponent shall report changes in Baseline Levels of monitored variables to NStQ and the Crown. Without limiting the foregoing, the Proponent shall report:
- (a) increase in the acidity and release toxic metals;
 - (b) release of previously stable organic elements from ongoing decomposition;
 - (c) depletion or reduction of nutrients including but not limited to those required for re-growth, reintroduction of species, and the restoration of waterways;
 - (d) significant change in environmental or weather conditions that have affected site stability;
 - (e) groundwater testing that reveals subsurface contamination of Water;
 - (f) any appearance of other leachates and toxic wastes over time;
 - (g) unanticipated or unplanned filling of pits or underground mines that may lead to the release of contaminated mine water through adits, tunnels, and other fractures;
 - (h) changes in slope stability, angle, compaction, composition, erosion or permeability, of any impoundment wall, stockpile, or other material stored in such a manner
 - (i) unforeseen circumstances or conditions due to unexpected environmental or man-made changes or catastrophes; and
 - (j) changes to such other Baseline Levels in variables identified by NStQ from time-to-time.
- 7.2 In consultation with NStQ, the Proponent and the Crown shall take immediate steps to prevent or remedy any adverse impacts to the environment or NStQ Interests which may result from changes to Baseline Levels.

8. Amendments to PCM Plan

- 8.1 The Proponent shall amend the PCM Plan from time-to-time when:
- (a) there are new remediation, restoration, or monitoring technologies that would improve those currently in use;

- (b) there are unexpected changes to Baseline Levels;
- (c) there are exceedances of allowable levels of potentially harmful variables; or
- (d) it is requested to do so by NStQ.

8.2 Amendments to the PCM Plan may include, but shall not be limited to:

- (a) more specific monitoring to identify the source;
- (b) alterations or increases in monitoring;
- (c) alterations or cessation of a Mining Activity; or
- (d) any other measures deemed necessary by NStQ.

9. Reporting and Information-Sharing

- 9.1 The Proponent shall, as soon as practicable after their collection, make available to NStQ any monitoring data it collects.
- 9.2 The Proponent shall, as soon as practicable after their completion but before their public release, make available to NStQ all reclamation, restoration, and monitoring reports.
- 9.3 The Proponent shall make all reclamation, restoration, and monitoring reports publicly accessible in print, electronic copy, and on the Proponent's website in a timely manner.

10. NStQ Capacity

- 10.1 NStQ reserves the right to have PCM Plans, reports and data reviewed by qualified third-party experts at cost to the Crown or Proponents.
- 10.2 NStQ may require the Crown or the Proponent to commission an independent audit of Post-Closure Monitoring reports or data.

11. Responsibility and Costs

- 11.1 The Crown and the Proponent shall bear all costs related to the prevention, cessation or mitigation of adverse impacts required in this Appendix.

12. Release of Security

- 12.1 Any release of the Proponent by the Crown with respect to performance of the PCM Plan shall be subject to approval by NStQ.