



August 3, 2020

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

Dear Members of the Yukon Mineral Development Strategy Panel:

Re: Yukon Mineral Development Strategy North Yukon First Nation Submissions

The political and legal landscape in Yukon has changed dramatically in the last forty years, with the entrenchment of Aboriginal and treaty rights in the *Constitution Act, 1982*,¹ the signing of the Umbrella Final Agreement in 1993,² and Canada's unqualified endorsement of the *United Nations Declaration on the Rights of Indigenous Peoples* in 2016.³ Yet, Yukon's mineral regime remains mired in a different era, standing largely unchanged for more than a century. The modernization of the Yukon's mineral resources regime is urgently needed and long overdue.

Our Nations of Tr'ondëk Hwëch'in and Na-Cho Nyäk Dun have experienced first-hand the impact of the current outdated mining regime on our citizens, our land and our culture, given that the largest number of active mining claims are within our traditional territories.

As leaders of our Northern Nations, we want to ensure future generations of North Yukon people enjoy the same opportunity to live off the land that past and present generations have enjoyed. The protection of the resources and traditional values of Yukon First Nations people is an integral objective of Sustainable Development.

We have prepared submissions for the Yukon Mineral Development Strategy Panel to identify key issues and gaps in the existing mineral resources regime, to outline at a high level the range of changes needed, and to articulate from the perspective of our Nations the nature of the process required to modernize the mineral resources regime. As explained in greater detail in our individual submissions, our Northern Nations firmly believe a new mineral resource development regime—including new quartz and placer mining legislation—is desperately required. The existing regime is woefully antiquated and can no longer be tolerated.

¹ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

² Umbrella Final Agreement between The Government of Canada, The Council for Yukon Indians, and the Government of the Yukon, 29 May 1993.

³ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295 (Annex), UN GAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2008).

The development of new legislation must be a key priority, and the Yukon government and Yukon First Nations must work collaboratively and expeditiously toward new, co-drafted, “made-in-the-North” legislation that is rooted in co-management, sustainability, and respect for the treaties.

The modernization of the Yukon’s mineral resources regime and legislation, however, must be understood within the broader rubric of activities required to ensure that the management of lands and resources is consistent with the spirit and letter of the Yukon Final Agreements. The development of a new mineral resource development regime must be pursued in conjunction with discussions about what steps need to be taken to ensure that the promises of our treaties—including promises around land use planning and the protection of special management areas—are being implemented fully. It must also be pursued in conjunction with discussions about what immediate or interim steps can be taken to protect Yukon First Nations’ rights while the work of updating legislation and implementing treaty promises unfolds.

In unity,



Deputy Chief Simon Nagano
Tr’ondëk Hwëch’in



Chief Simon Mervyn
Na-Cho Nyäk Dun



Chief, Dana Tizya-Tramm
Vuntut Gwitchin

cc Self-Governing Yukon First Nation Chiefs
Peter Johnston, Grand Chief
Sandy Silver, Premier of Yukon
Honourable Larry Bagnell, Member of Parliament for Yukon
Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations
Honourable Dan Vandal, Minister of Northern Affairs
Honourable Marc Miller, Minister of Indigenous Services

MINERAL EXPLORATION AND
DEVELOPMENT IN VUNTUT
GWITCHIN FIRST NATION'S
TERRITORY
RECOMMENDATIONS FOR THE
YUKON MINERAL DEVELOPMENT
STRATEGY

September 24, 2020

Prepared by:

Firelight Research Inc. with Vuntut Gwitchin Government



Mineral Exploration and Development in Vuntut Gwitchin First Nation's Territory:
Recommendations for the Yukon Mineral Development Strategy

FINAL REPORT

Date:

September 24, 2020

Prepared and authored by:

Firelight Research Inc. with Vuntut Gwitchin Government

Submitted to:

Rosa Brown and Erika Tizya, Vuntut Gwitchin Government

Disclaimer:

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ACRONYMS AND ABBREVIATIONS

BSA	Benefits and Stewardship Agreement
FPIC	Free, Prior, and Informed Consent
NYRLUP	North Yukon Regional Land Use Plan
TK	Traditional Knowledge
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VGFN	Vuntut Gwitchin First Nation
VGG	Vuntut Gwitchin Government
YESAB	Yukon Socio-Economic Assessment Board
YMDS	Yukon Mineral Development Strategy

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1. INTRODUCTION

The Government of Yukon and Yukon First Nations with Final Agreements (“Yukon self-governing First Nations”) are developing the Yukon Mineral Development Strategy (YMDS) to guide legislation and policy for mineral exploration and development in Yukon. The YMDS derives from a January 2, 2017 Mining Memorandum of Understanding (MMOU) between Yukon self-governing First Nations and the Government of Yukon. The purpose of the YMDS is to align Yukon’s placer and quartz mining regulation and policy with Yukon First Nation Final Agreements.

Yukon Self-Governing First Nations and the Government of Yukon have established an independent Mineral Development Strategy Panel (the “Panel”) to make recommendations on the YMDS. The Panel has established a process to develop YMDS recommendations, consisting of a public engagement stage, draft recommendations stage, public comment stage, and final recommendations stage.

The Vuntut Gwitchin Government (VGG) has prepared this report for submission to the Panel during the public engagement stage of the YMDS process. The purpose of the report is to draw out key lessons and recommendations for Yukon mineral development based on Vuntut Gwitchin First Nation’s (VGFN) experience with industrial development (particularly oil and gas) in VGFN’s territory⁴.

Mineral exploration and mining are not currently a major contributor to the economic landscape of VGFN. However, active claims and unexploited mineral resources are located in VGFN territory, leaving the territory open to future mineral development. VGFN has experienced considerable resource development in its traditional territory and VGG has developed approaches to such development that are applicable to the YMDS. This report draws on VGG’s experience developing and implementing its Oil and Gas Engagement Policy.

This report identifies key areas for further dialogue for the Yukon mineral regime as well as recommendations for the YMDS Panel. Table 1 summarizes the main findings of the report, including lessons drawn from VGG’s Oil and Gas Engagement Policy for Yukon mineral development and associated recommendations for the YMDS.

⁴ This report uses VGFN to refer to the community of Vuntut Gwitchin First Nation and VGG to refer to the Vuntut Gwitchin Government.

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Table 1 Lessons and Recommendations for the Yukon Mineral Development Strategy

Lessons from VGG's Oil and Gas Engagement Policy	Recommendations for the YMDS
<i>VGG must co-govern mineral exploration and development within its territory</i>	<ul style="list-style-type: none">• Co-draft mineral legislation with Yukon First Nations.• Enhance the mineral claim notification process to include direct engagement, notification and review with VGG.• Create clear expectations of the detailed work required to maintain a claim, in order to ensure that proponents are able to maintain mineral claims without suspending claims where there is only a speculative play involved. Such work must include engagement with First Nations and must be approved by First Nations.• Include First Nations in the review and approvals process for mineral dispositions and development plans.• Co-develop compliance plans, monitoring, and dispute resolution mechanisms with First Nations. Ensure that First Nations have enforcement authority on Category A Settlement Land, including authority to enforce financial penalties or suspend or cancel an authorization when a proponent fails to follow conditions of approval.
<i>Mineral exploration and development in VGFN territory requires VGFN's Free, Prior and Informed Consent</i>	<ul style="list-style-type: none">• Require clear and transparent information to be provided to First Nations about proposed mineral claims and mining activities that are subject to regulatory approval, allowing sufficient time to allow First Nations' review.• Enable First Nations to review and approve mining exploration and operating plans, ensuring that such plans conform to all required conditions of approval, including First Nations' consent conditions.• Include a requirement for proponents to enter into agreements with First Nations, including agreements

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related to First Nations' consent-based decision-making processes.

- Allow for capacity development at the Nation-level. First Nations are unable to stay on top of all the reviews and aspects of resource development.

The principle of sustainable development must inform Yukon mineral legislation

- Enshrine the principle of sustainable development in mineral legislation based on definitions set forth by First Nations.
- Integrate mineral development plans into regional land use plans.
- Include a process whereby First Nations can identify sensitive areas or zones that require heightened protections. In the North Yukon, VGFN considers the wintering grounds and migratory routes of the Porcupine Caribou Herd as areas requiring heightened protections.
- Incorporate environmental stewardship principles and best practices into legislation, including a requirement to consider the interests of future generations.

Traditional Knowledge must be integrated into the mineral development approvals process

- Incorporate traditional knowledge (TK) into decision-making. The revised legislation must account for TK in the approvals process and do so based on the direction of First Nations peoples.
- Enable First Nations to incorporate TK into the process of co-drafting legislation, including with respect to identification of "no-go" zones, information requirements, and processes for identifying conditions of approval.
- Require proponents' operations plans to demonstrate inclusion and consideration of TK.

Mineral legislation must ensure adequate engagement with VGFN citizens

- Legislate early and ongoing engagement with First Nations citizens.
- Require proponents to enter into engagement or cooperation agreements with First Nations. Such agreements help pave the way for how engagement will take place throughout project planning.

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- Ensure that adequate capacity is provided to support First Nations' engagement in mineral exploration and development approvals processes.

Yukon mineral legislation must secure benefits to VGFN and minimize adverse impacts

- Require impact and benefit agreements with affected First Nations.
- For mining operations, provide for fair and reasonable royalties based on the current market price of the resource and the profits made by the miner.
- Require inclusion of environmental and cumulative impact assessment recommendations and First Nations' consent-based recommendations into the proponent's operating plan to ensure that impacts on First Nations' rights and interests are minimized. This will include First Nations' review and approval of all management plans.

The remainder of this report is organized as follows:

- Section 2 describes the methods used to prepare this report.
- Section 3 summarizes VGFN's experience with mineral exploration and development in its territory and its interests in the YMDS.
- Section 4 outlines VGFN's expectations for industrial development in Vuntut Gwitchin Traditional Territory based on a case study of Vuntut Gwitchin Government's Oil and Gas Engagement Policy.
- Section 5 presents lessons and recommendations for the YMDS.
- Section 6 presents the conclusions of the report.

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2. METHODS

This report is based on primary research undertaken with VGG staff and review of key documents.

A semi-structured interview guide was developed to cover the following topics (Appendix A):

- VGFN's experience with mineral development in VGFN territory.
- Design of the VGG Oil and Gas Engagement Policy, including key issues prompting its development.
- Implementation of the VGG Oil and Gas Engagement Policy, including successes, challenges and reception of industry and government of the Policy.
- Recommendations for the YMDS Panel, including how Yukon mineral legislation and policy could be improved to address Vuntut Gwitchin's values and interests.

The interview guide was piloted with a VGG Natural Resources Department staff member. Five additional interviews were subsequently undertaken, including interviews with Chief Dana Tizya-Tramm, VGG's legal counsel, a Natural Resources Department staff member, VGG's Heritage Manager, and a member of VGG's Natural Resources Committee. Interviews were held remotely via telephone or video conferencing to ensure participant safety during the COVID-19 pandemic. Interviews were audio-recorded and notes were taken. The completed interviews were reviewed for key themes and quotations were selected to highlight the themes. Interviewees provided their informed consent to participate in the research study (Appendix B).

Document review included:

- VGG's Oil and Gas Engagement Policy - <https://www.vgfn.ca/pdf/FINAL%20Vuntut%20Gwitchin%20Government%20Oil%20and%20Gas%20Engagement%20Policy%20May%202018.pdf>
- VGFN's Final Agreement - <https://yukon.ca/en/vuntut-gwitchin-first-nation-final-agreement>
- The North Yukon Regional Land Use Plan - <https://yukon.ca/en/north-yukon-regional-land-use-plan>
- Tr'ondëk Hwëch'in and First Nation of Na Cho-Nyak Dun submissions to the YMDS Panel - <http://yukonmids.com/what-were-hearing/>
- Confidential Cooperation Agreements between VGG and project proponents.

2.1 LIMITATIONS

The interviews provided a rich understanding of the issues prompting the Oil and Gas Engagement Policy from individuals that have been directly involved in its development and implementation, as well as key lessons for the YMDS. Had time allowed, additional

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interviews may have provided additional information. Additionally, the Oil and Gas Engagement Policy has yet to be fully implemented with a project proponent, and additional insights with respect to the Policy's successes and challenges have yet to be determined. This report provides VGG's views and recommendations only, and does not claim to speak for other First Nations.



3. MINERAL EXPLORATION AND DEVELOPMENT IN VUNTUT GWITCHIN FIRST NATION TERRITORY

Past and current mineral activity in VGFN territory is limited. Based on a review of the GeoYukon database, a small number of historical quartz claims are located along the Porcupine River near to Old Crow, southeast of Mt. Rover, along the Dempster Highway and southeast of Eagle Plains. A small number of current quartz claims are located southeast of Mt. Rover and along the Dempster Highway.

Despite limited past and current mineral activity in VGFN territory, interviewees identified concerns with the regulatory regime for mineral exploration and development, noting that the current regime puts VGFN at risk in relation to any future mineral activity in its territory.

A lot of initial mining flies under the radar until it triggers a process. So, I don't even know [what] the initial activities are before the process is triggered. Mining requires a lot of land and resources to get to a point that is productive. (VGG-01, Aug 19, 2020)

The current regime is considered to be antiquated and misaligned with the rights and interests of VGFN. As a result, the approvals process for any future mineral exploration and development is likely to lead to conflict, delay and uncertainty.

There are some acts in the Yukon that are over a century old. [This] does not bode well if there's a lack of certainty and clarity in these keystone documents. It creates an adversarial arena. We are operating in an ad hoc way, guided by antiquated policy and legislation. There is a serious lack of coordination in the Yukon when it comes to minerals and development of lands in general. There is a lot of work to be done to implement and develop some of the finer appendages of the agreements for the traditional principles and our principles as people. (Chief Dana Tizya-Tramm, August 24, 2020)

VGFN has a strong interest in aligning Yukon mineral exploration and development legislation with VGFN rights and values. VGFN's Final Agreement enshrines the principle of sustainable development and recognizes VGFN's rights and responsibilities over its territory, including stewardship and governance rights. Accordingly, VGFN is willing to work directly with mining proponents to ensure that mineral exploration and development is undertaken in a manner that accords with VGFN's interests and requirements. Such an approach, facilitated by renewed mineral legislation, will be beneficial to both VGFN and mining proponents.

[I]f we are looking at things from a relationship perspective, it's not just about how big the project is, it is also about starting the relationship early and establishing clarity.

We need to provide clarity to industry and [VGFN] citizens. Proponents are looking for certainty. This is a mutual issue we want from all sides. (VGG-01, Aug 19, 2020)

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Clarity and certainty in the mineral regulatory regime will not be achieved through incremental revisions to the existing legislation, according to interviewees, but requires wholesale change. Yukon's mining legislation is rife with issues, ranging from the free entry regime, to the royalty system, to misalignment with broader land use planning processes.

There needs to be a complete modernization process that brings in more consideration of society's expectations in the early stages. There exists a lack of real royalties, which is a problem. Free entry is also a huge a problem; it goes along with other processes like the lack of land use planning. All of these need to be addressed for this sector to be brought into alignment with the final agreement. (VGG-03, August 24, 2020)

Given VGFN's limited direct experience with mineral activity in its territory, this report now turns to VGFN's engagement with the oil and gas industry. This case study has clear parallels with First Nations' engagement with the Yukon mining regime – particularly with respect to gaps in guiding legislation related to First Nations' rights and interests (notwithstanding the fact that Yukon's *Oil and Gas Act* is “modern” legislation that was co-drafted with Yukon First Nations). Oil and gas exploration and development is extensive in VGFN's territory and VGFN has developed an approach to fill legislative gaps regarding its jurisdiction and to protect its interests. This case study is explored to draw out lessons that can be applied to the YMDS.

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4. ADDRESSING LEGISLATIVE GAPS: VUNTUT GWITCHIN GOVERNMENT'S OIL AND GAS ENGAGEMENT POLICY

4.1 BACKGROUND TO THE OIL AND GAS ENGAGEMENT POLICY

The purpose of this policy is to establish a respectful, transparent and meaningful framework to guide the engagements of the Vuntut Gwitchin Government in relation to Oil and Gas Activities and Oil and Gas Dispositions in a manner that supports and upholds the objective of Sustainable Development. (VGG 2019)

VGFN has a long history of oil and gas development in its territory. For decades, VGFN struggled to keep up with oil and gas application processes in the absence of a framework outlining appropriate engagement with VGFN. The lack of a guiding framework resulted in persistent issues, including a lack of proponent transparency, VGFN citizens feeling that they were being treated as an afterthought, and inadequate recognition of VGG's legitimate interests and jurisdiction. This led to conflict, disagreement, and unaddressed concerns about the lack of a transparent process with inclusive dialogue. As noted by Chief Dana Tizya-Tramm, proponents adopted a unilateral approach, ignoring VGG's interests in co-developing project plans:

We have in the past suggested to have Caribou co-management plans be co-developed, and we've felt that it has been a unilateral partnership when it comes to difficult and complex subjects. If they would have co-developed things with us from the very onset, we would not be where we are right now. (Chief Dana Tizya-Tramm, August 24, 2020)

The issues experienced by VGFN were the result of key gaps in the oil and gas regulatory framework. For example, the regulatory framework does not address access management, an important issue for VGFN as unregulated access results in adverse impacts on resources relied upon by VGFN members to practice their rights and culture. The notification process was also insufficient and failed to recognize VGFN as key party in the process. Furthermore, the approvals process failed to adequately consider Traditional Knowledge (TK). Finally, VGG did not have enough capacity to manage the regulatory process, nor were they seeing the benefits of oil and gas developments flow to the community. As noted by one participant:

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Before the [Oil and Gas Engagement] policy it was difficult for the parties to communicate on what was expected and the important points of engagement. These things happened ad hoc, and the parties weren't being held to anything. For example, with the Porcupine Caribou Herd, we wanted to be involved in planning around the herd. It was so obvious to us that as stewards of the land, we should be involved in the mitigation plans. But we were left out. So VGG wanted to take over the engagement process. We wanted early engagement and we wanted to have major engagement and regulatory milestones completed before they [the proponent] entered the assessment process. And in doing that they could have our support. (VGG-01, August 19, 2020)

This lack of proper engagement, inclusion, and transparency prompted VGG to develop an engagement framework for oil and gas development in VGFN territory. A resolution from the general assembly of Vuntut Gwitchin, spurred on by engagement issues under the *Yukon Oil and Gas Act* that had come to light during a Yukon Socio-Economic Assessment Board (YESAB) review, identified that an engagement framework was required in order to address these issues:

VG wanted to come back from this experience in a positive way and engage in a more collaborative and cooperative way, having learned from past experiences. (VGG-02, August 21, 2020)

This resolution led to the development of the Oil and Gas Engagement Policy.

4.2 DEVELOPING AND IMPLEMENTING OF OIL AND GAS ENGAGEMENT POLICY

The Oil and Gas Engagement Policy was developed by, and for, the community between October 2016 and May 2018.

In-person community meetings were held with VGFN citizens in Old Crow prior to finalizing the draft Policy. VGFN members wanted to make sure they were steering development in their territory and were excited by the prospect of proper and full engagement with oil and gas proponents. VGG also solicited input on early drafts from the Yukon Government and an oil and gas proponent.

VGG considered the existing oil and gas regulatory framework when developing the Oil and Gas Engagement Policy and incorporated key VGFN values, including:

- VGFN's laws and principles.
- The principle of Free, Prior and Informed Consent.
- The North Yukon Regional Land Use Plan (NYRLUP).
- Sustainable Development.
- Early and Ongoing Engagement.
- VGG-proponent partnership.

These principles and values guiding industrial development in VGFN's territory are discussed below.

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VGFN Laws, Principles and Values

When developing the Policy, the technical team reviewed existing legislation as well as VGFN laws and principles. They did this by consulting legal documents as well as Elders (living and words from Elders long passed) and knowledge holders.

We used our constitution and we spoke with knowledge holders and Elders. We have informed the process both by traditional knowledge through meetings as well as through quotes of Elders who have long passed. I call them the 'pre-government Elders'. They are the ones who guide us since before colonization. These Elders are mostly against resource development in their territory. But they were also the ones that chose which areas were ok for development. They didn't want to handcuff the future generations too much to the past. So, they chose some areas to be developed and how they can be developed and what we need to protect...

Crow Flats is our bank. It is our greatest wealth. Our laws and culture is informed by that. With respect as the core foundation. Respect for land, for the animals, for the Creator. These laws were known and strictly followed by our people for thousands of years. We brought that into the Policy. (VGG-05, August 25, 2020)

The Policy was grounded in key VGFN values, including the value of respect for all things, including engagements and relationships:

Respect as the core foundation. Respect for land, for the animals, for the creator. These laws were known and strictly followed by our people for thousands of years.

Business has to let go what they learned through life. You can't come into our communities with these business principles. The way business is conducted is not aligned with how we [as Vuntut Gwitchin] work. This works in the city. You [industry] don't take no for an answer, you manipulate and push.

Respect should inform everything we do.

The Elders are in tune to a different perspective. It is so important to get that perspective and listen to them. These people were plugged in to Nature. We will never be able to understand impacts without the Elders. Talk to them. Listen to them. Be out there requiring VGFN staff. Learn from them. Show them that you will be someone that's good to work for and work with.

This is how we break down the barriers of colonialism and barriers to our relationships. (VGG-05, Aug 25, 2020)

Free, Prior, and Informed Consent and the United Nations Declaration on the rights of Indigenous People

VGG recognized the lack of a proper Free, Prior, and Informed Consent (FPIC) process and alignment with the Universal Declaration of the Rights of Indigenous Peoples (UNDRIP) as a major gap in the oil and gas legislation. FPIC supports the right of Indigenous Peoples to give, withhold, and retract consent for all developments and activities in their territories.

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While FPIC and other articles in UNDRIP are recognized as important principles by government, to date there are no legislated consent requirements in Canada nor in Yukon. As a result, companies and First Nations are left without clear guidance on this critical issue and First Nations are often expected to accept a minimum consultation standard.

North Yukon is a pretty unique context, there is relatively little development, there's an understanding that it is the wintering grounds of the Caribou. There's a good intergovernmental relationship around oil and gas recently... There is a de facto consent type reality, but of course that is not certain and its dependent ultimately on other parties to agree with them, so it's not perfect. (VGG-02, August 21, 2020)

VGFN determined that FPIC needed to be mandated in formal agreements with oil and gas proponents to protect their interest and values with respect to project plans and development. The Oil and Gas Engagement Policy was crafted to ensure that VGFN is included in decision-making and provide all of their citizens with a say. This included having adequate resources and capacity to ensure independent involvement in decision-making.

The Policy facilitates FPIC through a requirement for a Benefits and Stewardship Agreement (BSA), which is required for proposed oil and gas activities that requires an environmental and socio-economic assessment under the *Yukon Environmental and Socio-economic Assessment Act*. A BSA is ratified at the community level (the specific process for ratification is currently under discussion by the Natural Resources Committee). Once a proponent and VGG have developed a draft agreement, they take it to the community and receive their input. If the community agrees that the BSA is ready to be voted upon, they take it to the vote. It is understood that consent is demonstrated through the BSA ratification process.

North Yukon Regional Land Use Plan

The North Yukon Regulation Land Use Plan (NYRLUP) was designed by VGFN and the Yukon Government to protect the natural and cultural resources of the North Yukon, while also encouraging economic development. It was created under the provisions of the Vuntut Gwitchin First Nation Final Agreement and is a part of a series of regional land use plans connected the Yukon First Nation land claim agreements. The NYRLUP is based on VGFN's desired future conditions of the region and provides management considerations for different areas within the region (Vuntut Gwitchin Government & Yukon Government 2009, p. 3-1).

The plan focuses on two key issues. The first is oil and gas development in the annual range of the Porcupine Caribou herd. The second is the management of development impacts in wetlands outside of Protected Areas. The NYRLUP identifies and designates 13 landscape management units. This designation includes use of each unit.

The Plan also provides recommendation and best practice guidance surrounding: Conservation measures for the Whitefish and Bluefish-Cadzow wetland complexes, and the Richardson Mountains; managing the effects of multiple land use activities (cumulative impacts) through the consideration of cumulative effects indicator levels; and recommendations related to achieving social, economic and ecological objectives.

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The NYRLUP has six key principles

1. Sustainable Development: “Beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent.” (Vuntut Gwitchin Government & Yukon Government 2009, p. 1-3).
2. The Precautionary Principle: “Regional planning should consider potential impacts before making resource decisions. Our limited understanding of land use impacts on other resources in the North makes this especially important: (Vuntut Gwitchin Government & Yukon Government 2009, p. 1-3).
3. Conservation: “The management of Fish and Wildlife populations and habitats and the regulation of users to ensure the quality, diversity and Long Term Optimum Productivity of Fish and Wildlife populations, with the primary goal of ensuring a sustainable harvest and its proper utilization” (Vuntut Gwitchin Government & Yukon Government 2009, p. 1-4).
4. Adaptive Management: “Adaptive Management means responding to changing land use and/or environmental conditions as new or better information becomes available. It is a management philosophy that applies a structured, iterative process to decision-making” (Vuntut Gwitchin Government & Yukon Government 2009, p. 1-4).

With respect to oil and gas development, the Oil and Gas Engagement Policy aims to bring the NYRLUP directly into project plans and BSAs. There were gaps in the regulatory process that left key aspect of the NYRLUP open to interpretation.

The NYRLUP includes Caribou guidelines, such as safe operating distance, data collection, best management practices, prediction of effects, and more. These things are still under development, and because they hadn't been completed, they were one of the main issued in the past YESAB process that created gaps that the proponent didn't have information about how those gaps would be addressed. (VGG-01, August 21, 2020)

VGG worked the principles of the NYRLUP into the Policy through mechanisms on management and planning as well as mandating these mechanisms through the BSA. They also sought to ensure that the goals of the NYRLUP stay current and adapt to the needs of the time. For example, climate change is increasingly concerning for VGFN, so they hope to use BSA and early engagement as a way to ensure that the gaps regarding climate change in the NYRLUP are accounted for in future project plans.

Sustainable Development

The Oil and Gas Engagement Policy was guided by the principle of sustainable development as defined by VGFN values. Sustainable development is a balancing act that weighs decisions surrounding development and planning based on economic, cultural, social, and ecological considerations. In developing the Policy, VGFN reflected on its collective goals and turned to the Final Agreement to define sustainable development:

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“Sustainable Development” means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent. (VGFN Final Agreement, Chapter 1)

VGFN want to ensure that their approach to sustainable development is reflected in project plans and decision-making regarding whether and how the project should proceed. This means involving VGFN in developing and implementing management plans.

Early and Ongoing Engagement

An underlining principle of the Policy is to ensure that VGFN is engaged as early and as frequently as possible. This was formed by past experience of engagement activities with proponents and in participating in the regulatory review processes and a “need for governmental policy that establishes a framework for respectful, meaningful and transparent engagement” (VGG 2019). The goal is to ensure that VGFN citizens were guiding industry on acceptable development in their territory.

This was about having real informed engagement and creating consistency. We want to take full part in any development in our territory. We aren’t against industry, we are against bad industry. (VGG-05, Aug 25, 2020)

This would benefit the community as well as the Proponent by ensuring consistency and a healthy relationship.

“[THEREFORE BE IT RESOLVED] That VGG proceed with efforts that lead to constructive engagement with oil and gas industry proponents and government agencies including partnerships in the areas of employment and training, environmental stewardship and business development” (VGFN GA Resolution No. 2017-02)

VGFN-proponent partnerships

The above listed principles need to be supported by strong relationships with the proponent, built through a cooperation agreement and solidified through a BSA. The Oil and Gas Policy engagement follows a three-stage process (none of which, on their own, can be construed as providing consent to a proposed project):

- Stage 1, Notice Period (Oil and Gas Engagement Policy, Section 24): The proponent provides sufficient notice of the proposed project to the Director of Natural Resources at the earliest opportunity. The Director of Natural Resources will then refer the notice to the Committee who will review it for sufficiency. The Committee will notify the Proponent in writing of its determination. If notice is not sufficient then more information will be requested. If notice is sufficient then engagement on the Oil and Gas Activity can proceed to Stage 2 (Oil and Gas Engagement Policy, Section 25).
- Stage 2, Cooperation Agreement (Oil and Gas Engagement Policy, Section 26 and 27): The Committee will determine if the Cooperation Agreement adequately

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addresses items related to compliance with the policy, communications, information sharing, capacity funding and commitment to negotiate a BSA.

- Stage 3 - Benefits and Stewardship Agreement (BSA) (Oil and Gas Engagement Policy, Section 28 and 29): The BSA facilitates a process for obtaining VGFN's free, prior and informed consent. The BSA must be approved and ratified by both the Committee and the community. It is signed if the Committee determines that it adequately addresses specific items related to economic benefits and environmental stewardship.

The graphic below outlines this process.

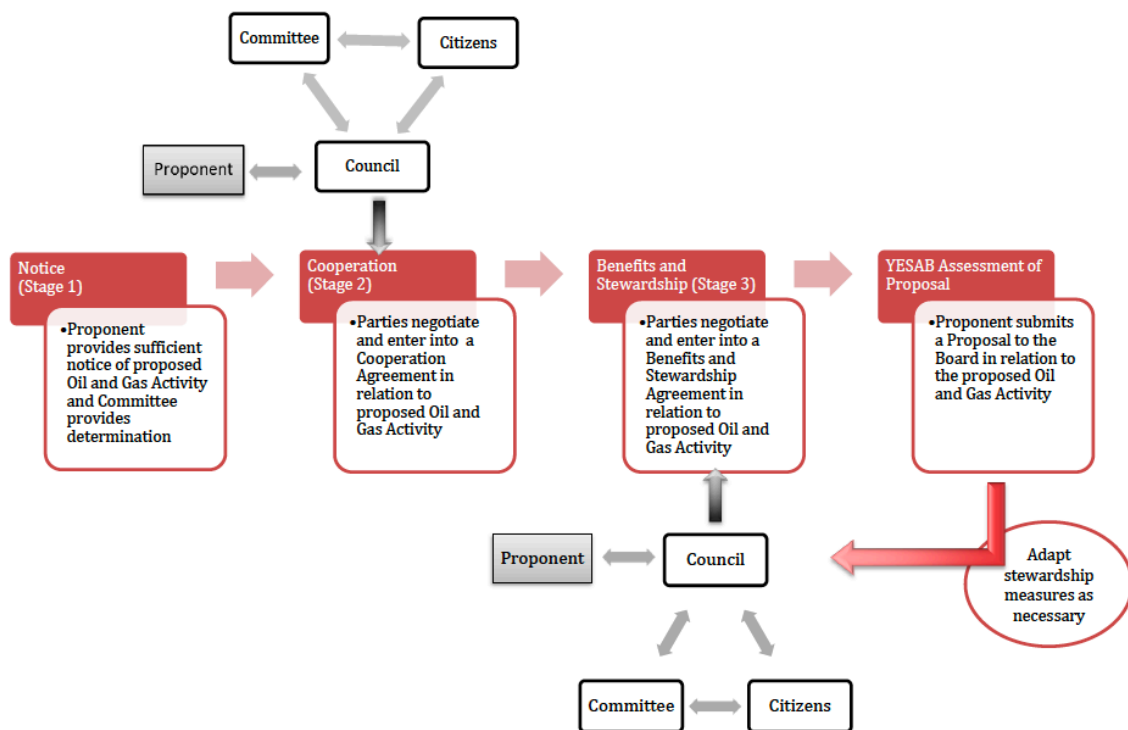


Figure 1 Engagement Process as per the Oil and Gas Engagement Policy

Source: Vuntut Gwitchin Government

4.3 SUCCESSES AND CHALLENGES WITH THE OIL AND GAS ENGAGEMENT POLICY

VGFN has experienced some important successes with the Policy. In particular, the Policy has enabled VGFN to improve communication and establish relationships with proponents based on VGFN's requirements.

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It [the Policy] is opening the door to having important discussions [with industry]. And we do see our relationship [with industry] improving. They [oil and gas companies] didn't always have to have the relationship: the only requirement was for what YG [Yukon Government] expected. It [the Policy] really streamlines the communication channel. In the past, [the proponent] had easy access to our Leadership, [but] they really should be contacting the Committee. Leadership can override that, but that's not our practice. It takes a lot off their [Leadership's] plate as well. There is one point of contact now receiving requests from [the company]. Before they [the company] were free to reach out to whomever they want. (VGG-01, August 19, 2020)

In contrast to the inadequate and patchy engagement processes under the oil and gas regulatory regime, the Policy has enabled VGFN to articulate its values and interests to industry in a unified, coherent manner, with one voice and with the backing of membership.

This has given us a sense of solidarity. Unity between our people. Most VGFN people don't want any industry on the land. But some do. If we could find a way to work with industry beneficially, and to do development properly, then maybe we can create a sense of solidarity on the issue. But I think all in all, it really is about ensuring our animals and land, habitat, water, and culture are as least disturbed as possible. We want to make sure everything is done in a clean and efficient way. (VGG-05, Aug 25, 2020)

The Policy's structured approach to addressing community values and concerns creates consistency through the regulatory approvals process and provides industry with a clear standard of community expectation and engagement. With the Policy in place, VGFN members feel like they have more of a seat at the table and are able to have more control over the process. VGG feels like this is a common-sense approach.

One of the most important outcomes of the Policy has been the establishment of the Natural Resources Committee⁵. The mandate of the Committee is to support

... the work of VGG by guiding and advising the respectful, transparent and meaningful process of the Natural Resources Department – to promote respect for the ancestral homeland of the Vuntut Gwich'in, and its natural resources to educate and empower VGFN citizens to protect and maintain the integrity of the land, water and wildlife, and the Vuntut Gwich'in culture for future generations. (Vuntut Gwitchin Government 2020).

With the Committee in place, community members have a voice in the process. The Committee has successfully taken ownership of their mandate and role and its importance. Elders and community members are able to more effectively shape the process and ensure they are deciding on the future of their territory.

⁵ The Natural Resources Committee is comprised of a Standing Committee Chair on Natural Resources, Director of Natural Resources, an Elder representative, a youth representative and citizen representative. The Committee is guided by a Terms of Reference that outlines the Committee's mandate, objectives, composition, meeting schedule, confidentiality, and more.

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For the most part, government and industry have been supportive of the Policy. The Yukon Government directs proponents to follow the Policy.

They [the Yukon Government] want to see it [engagement with VGFN] happen just as much as we do. They give us direction to take the lead. We are not the political body. We are just trying to engage our people. The Yukon Government is affected by so many sources. They are juggling with so many issues. They give us the space, listen to us. They back us in some cases. (VGG-05, Aug 25, 2020)

Proponents have followed important aspects of the Policy, such as early engagement and sharing project plans. This helps the proponent, as they learn early on which aspect of the project or regulatory application require revision in order to receive community support.

However, implementation of the Policy is not without its challenges. Some challenges have persisted even after the Policy was implemented. For example, VGG has experienced push back on the Policy from industry regarding VGFN's ratification process. Industry has also indicated some concern regarding what FPIC will look like in practice. In addition, VGG has encountered instances in which proponents bypass VGG to go directly to certain citizens, which violates VGFN's engagement principles and expectations of consent.

Managing relationships with industry can be tough. We have to try to be fair to our members – so that means taking all perspectives in our nation and accommodate everyone – while being as inclusive as possible. This way, everything is truly informed engagement. Industry has been hesitant to adopt those procedures. They think YESAB is already cumbersome enough. So, they think our attempt to make things inclusive is making things too difficult for them. We have very different approaches to looking at development. We want industry to operate positively with us and adopt our approach. (VGG-05, Aug 25, 2020)

There are also existing gaps in the regulatory framework that can't be addressed through the Policy alone. These gaps include a lack of regulatory support for access management, involvement of First Nations in mitigation plans, issues with the manner in which oil and gas dispositions are initially granted, regulatory requirements for BSAs and FPIC, and official requirement for TK integration.

We want to work together with the Yukon Government to come up with some regulatory tools to address these gaps. We have highlighted these gaps and are working with the [Yukon] Government on this. We have a high-level forum on oil and gas issues. We have established a working group to support that forum and a work plan. For example, we are working on the oil and gas disposition process, including jointly recommended amendments to the regulations. We are trying to address some of these gaps through changes and things that are lacking in the policy. (VGG-02, Aug 21, 2020)



5. LESSONS AND RECOMMENDATIONS

VGFN's experience with Yukon oil and gas legislation, including the need to address legislative gaps with the Oil and Gas Engagement Policy, suggests that Yukon mineral legislation cannot be reformed through minor changes but requires a fundamental overhaul. Yukon mineral legislation needs to be co-drafted with Yukon First Nations to ensure that their rights and interests are adequately addressed and protected. As described by one interviewee:

It shouldn't be a process of fixing the old legislation. It should be about creating new legislation – and the new legislation should be changed drastically to meet the current world and economy. [...] They need to restart from the beginning and ask the same questions as with the oil and gas regime. Working under the old legislation hasn't created these opportunities for discussion. (VGG-03, August 24, 2020)

This section draws out lessons from the Oil and Gas Engagement Policy that can be applied to the YMDS.

VGFN must co-govern mineral development within its territory

VGFN feels marginalized from the current mineral regulatory regime and isn't entirely clear about what its role is in the approvals process. The notification process, for example, is so flawed that VGFN is often unaware of mineral claims in its territory. To be meaningful, Yukon mineral legislation needs to be co-developed by Yukon First Nations to ensure that their values are adequately incorporated.

Legislation can ensure protections through co-development and having our principles informed in these mineral development strategies. Our values have not changed. They were forged with our interactions with the land. It was the land that taught us how to take care of the land. If we can be at the forefront of developing these documents, it's going to filter out a lot of the misunderstandings that metabolize in the details, in the nuances and in the implementation of projects. (Chief Dana Tizya-Tramm, August 24, 2020)

VGG was forced to address a similar issue with oil and gas development by requiring proponents to abide by the Oil and Gas Engagement Policy. By asserting its legitimate jurisdiction and governance requirements, VGG ensures that its stewardship obligations are addressed and that benefits flow to the community. Such an approach need not concern industry; indeed, it should result in stronger relationships, appropriate consultation and mutual collaboration.

Proponents need to get to the point that they aren't afraid of First Nation involvement and being guided by First Nation policies. They can't be afraid of a bit more work, because in the long run they will be in a stronger position. (VGG-03, August 24, 2020)

Recommendations for the YMDS

- Co-draft mineral legislation with Yukon First Nations.

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- Enhance the mineral claim notification process to include direct engagement, notification and review with VGFN.
- Create clear expectations of the detailed work required to maintain a claim, in order to ensure that proponents are able to maintain mineral claims without suspending claims where there is only a speculative play involved. Such work must include engagement with First Nations and must be approved by First Nations.
- Include First Nations in the review and approvals process for mineral dispositions and development plans.
- Co-develop compliance plans, monitoring, and dispute resolution mechanisms with First Nations. Ensure that First Nations have enforcement authority for projects on Category A Settlement Lands, including authority to enforce financial penalties or suspend or cancel an authorization when a proponent fails to follow conditions of approval.

Mineral development in VGFN territory requires VGFN's Free, Prior and Informed Consent

The mineral project approvals process is not transparent and provides no mechanisms for VGFN to make consent-based decisions about exploration and development in its territory. With its Oil and Gas Engagement Policy, VGG developed a process for determining whether to give its consent to oil and gas activities, and any conditions on such consent. Yukon mineral legislation would be enhanced by including provisions to enable VGFN's consent-based decision-making processes.

Projects that gain the consent of First Nations communities can bring mineral tax, jobs, and business opportunities to Yukon communities. Gaining First Nations support for industrial projects is a win-win-win for the Yukon Government, industry, and First Nations.

Generally, relying on FPIC and increasing the participation of impacted First Nations – beginning at the earliest possible opportunity – is a very important lesson [from the Oil and Gas Engagement Policy]. The improved outcomes and relationships that can come from that, if designed to be coordinated with the overall legislated framework, is a big lesson. (VGG-02, Aug 21, 2020)

FPIC is an ongoing process that evolves throughout the life of a project, from exploration to post-closure. It involves project changes to address impacts that are not acceptable and following Indigenous laws and concerns, such as which locations and periods are culturally and ecologically off-limits (such as the wintering grounds of the Porcupine Caribou Herd or cultural heritage sites). The best way to do this is by including FPIC in agreements and enforcing these agreements in legislation.

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Recommendations for the YMDS

- Require clear and transparent information to be provided to First Nations about proposed mineral claims and mining activities that are subject to regulatory approval, allowing sufficient time to allow First Nations' review.
- Enable First Nations to review and approve mining exploration and operating plans, ensuring that such plans conform to all required conditions of approval, including First Nations' consent conditions.
- Include a requirement for proponents to enter into agreements with First Nations, including agreements related to First Nations' consent-based decision-making processes.
- Allow for capacity development at the Nation-level. First Nations are unable to stay on top of all the reviews and aspects of resource development.

The principle of sustainable development must inform Yukon mineral legislation

One of the objectives of VGFN's Final Agreement is "to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development." According to one interviewee,

Sustainable development should come into play at all levels and should always be the background and persistent theme. It's a goal of the North Yukon land use plan and land use planning in general. A fundamental part of that is to recognize areas that are no-go areas. And another factor is to ensure there are opportunities for meaningful input along the way. (VGG-02, Aug 21, 2020)

VGFN's territory includes caribou wintering grounds and migratory routes, as well as important water resources. To ensure that VGFN's values are not undermined, the mineral development approvals process needs to be informed by appropriate land use planning. This does not entail that no resource development can occur in VGFN territory, just that it must be undertaken with due regard to VGFN's self-governance rights and the interests of the next seven generations. According to Chief Dana Tizya-Tramm, sustainable development is about ensuring that "we are balancing development, socio-economics, integrity of land, and most importantly achieving self-sustainability while respecting self-determination" (August 24, 2020).

The Oil and Gas Engagement Policy process has highlighted that a key mechanism to ensure sustainable development is through a specific agreement. Mineral legislation should enshrine the principle of sustainable development and enable and enforce agreements between First Nations and proponents in which sustainable development measures may be specified, such as baseline data collection, joint monitoring, information sharing measures and joint environmental management plans.

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Recommendations for the YMDS

- Enshrine the principle of sustainable development in mineral legislation based on definitions set forth by First Nations.
- Integrate mineral development plans into regional land use plans.
- Include a process whereby First Nations can identify sensitive areas or zones that require heightened protections. In the North Yukon, VGFN considers the wintering grounds and migratory routes of the Porcupine Caribou Herd as areas requiring heightened protections.
- Incorporate environmental stewardship principles and best practices into legislation, including a requirement to consider the interests of future generations.

Traditional Knowledge must be integrated into the mineral development approvals process

VGFN citizens often feel like they are checkbox to tick off on along the way in the resource development approvals process. When asked how proponents and the Yukon Government can ensure that TK is taken seriously, Chief Dana Tizya-Tramm noted:

Make room. The difference between traditional knowledge (TK) and science is that observations were written down in science. For Indigenous peoples, it is was relayed through oral history. In 1898, there are recordings of a Gwitchin woman who had spoken to the mining industry about what mining and the gold rush was going to do to the permafrost. We have to remember, this “uneducated” Indigenous woman who had never been to a University was speaking about environmental concepts that did not even have words associated to them yet. What she was speaking to was that when you make holes in the land, you are going to break it and warmth is going to come in and melt the land and it will sink.

What we are asking is for colonial, modern, scientific processes to make room for Indigenous ways of knowing – and how this can be married is through knowledge holders, elders and people who are out on the land, for their considerations to be realized in this process one way or another - through position papers, input, informing studies, ascertaining baseline data. (Chief Dana Tizya-Tramm, August 24, 2020)

TK is an accumulated body of knowledge, a worldview and a decision-making lens. VGFN must be provided with the opportunity to apply TK to the mineral development approvals process. TK could identify sensitive areas to inform the approval processes, inform conditions of approval and specify required elements in operations plans. As noted by one interviewee, TK must be incorporated into the co-management of mineral exploration and development:

There needs to be earlier engagement on granting interest, a more significant role for impacted First Nations to participate in the decision process, such as by granting a disposition. So not strictly a purely consultation model, instead there should be more of a co-management approach. (VGG-02, Aug 21, 2020)

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TK should also inform no-go zones. VGFN requires the authority to identify where there are resource values in an area and to dictate whether activities can go ahead in those respective areas.

Recommendations for the YMDS

- Incorporate traditional knowledge (TK) into decision-making. The revised legislation must account for TK in the approvals process and do so based on the direction of First Nations peoples.
- Enable First Nations to incorporate TK into the process of co-drafting legislation, including with respect to identification of “no-go” zones, information requirements, and processes for identifying conditions of approval.
- Require proponents’ operations plans to demonstrate inclusion and consideration of TK.

Mineral legislation must ensure adequate engagement with VGFN citizens

Adequate engagement with VGFN citizens is required for project success. This applies equally to oil and gas projects and mineral exploration and development projects. VGFN’s Oil and Gas Engagement Policy sets out a structured process for engaging with VGFN citizens, filling a gap in the legislative framework.

The practical reality is that they [project proponents] won’t get the support that they need [from VGFN] politically and even through the regulatory process, if they don’t follow the [Oil and Gas Engagement] process. In VG territory, this is especially the case since we are home to the wintering grounds of the Caribou, and we have important water resources. All of these uncertainties and unknowns, the practical reality is that they [the proponent] need to follow and accept the outcomes of the process. (VGG-02, Aug 21, 2020)

The best way to get this support is by involving both VGG and VGFN citizens as early as possible. This entails early notification of project plans as well as co-developing engagement plans with VGG, including who needs to be consulted, how they should be consulted, where, under what circumstances and with what kind of outcomes.

Ideally a proponent as early as they want to do something in the territory, they provide notice as early as possible, they come meet, with clear respectful communication, and no attempts to create disunity or disfunction, no unprofessional tactics, open and honest good faith engagement that is respectful, collaborative, and respect the decision of the community. (VGG-02, Aug 21, 2020)

VGFN citizen engagement is a required component of FPIC and can be mandated through legislative means.

Recommendations for the YMDS

- Legislate early and ongoing engagement with First Nations citizens.

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- Require proponents to enter into engagement or cooperation agreements with First Nations. Such agreements help pave the way for how engagement will take place throughout project planning.
- Ensure that adequate capacity is provided to support First Nations' engagement in mineral exploration and development approvals processes.

Yukon mineral legislation must secure benefits to VGFN and minimize adverse impacts

As noted, VGFN has little direct experience with mineral exploration and development in its territory. However, VGFN's experience with the oil and gas industry informs a desire to capture maximum benefits from mineral exploration and development while minimizing adverse impacts on its rights and interests. As noted by one interviewee:

I think the [Yukon Mineral Development] Strategy really needs to address big issues like resources revenue sharing, early engagement, providing industry certainty when they enter our territories. It would be great if we could look at the plans and ask them important issues – like how they are looking into climate change targets. (VGG-01, Aug 19, 2020)

Oil and gas legislation is deficient regarding the specification of project benefits and impacts, forcing VGG to specify such requirements in the Oil and Gas Engagement Policy. In particular, the BSA section of the Policy specifies the following requirements:

- adequate education and training opportunities;
- adequate employment and procurement opportunities; and
- adequate revenue sharing or equity arrangements.

Additionally, the Policy requires adequate consideration of potential impacts on VGG's rights and interests, including:

- potential socio-economic effects which includes effects on economies, health, culture, traditions, lifestyles and heritage resources;
- potential cumulative effects which includes effects to the environment that are caused by an action in combination with other past, present and future human actions; and
- potential effects on any Vuntut Gwitchin First Nation rights, responsibilities and interests under the *Vuntut Gwitchin First Nation Final Agreement* and *Vuntut Gwitchin First Nation Self-Government Agreement*.

Yukon mineral legislation can support these considerations by requiring impact benefit agreements, royalty sharing and incorporation of the results and recommendations of environmental assessment processes (under the *Yukon Environmental and Socio-economic Assessment Act* or other process) as well as First Nation's consent-based conditions.

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Recommendations for the YMDS

- Require impact benefit agreements with affected First Nations. Impact benefit agreements must consider topics such as employment opportunities, contracting opportunities, scholarships, education and training opportunities, economic benefits, community infrastructure development and equity participation.
- Provide for fair and reasonable royalties based on the current market price of the resource and the profits made by the miner.
- Require inclusion of environmental and cumulative impact assessment recommendations and First Nations' consent-based recommendations into the proponent's operations plan to ensure that impacts on First Nations' rights and interests are minimized. This will include First Nations review and approval of all management plans.
- Require securities to ensure that costs for any damages do not fall to the shoulders of Indigenous governments or the Yukon Government.

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6. CONCLUSION

They [Yukon Mineral Development Strategy Panel] should think about the paths in front of them. Sometimes in life we are presented with various paths to take to accomplish something important. A lot of times we look at a difficult path and avoid it. But those paths are often the most rewarding. Our difficult, uphill paths give us so much. It's like when we are going hunting and we decide to climb the hill. When you get to the top, you end up with the best hunting spots, with the most wildlife, the best views, and you get the most exercise. When it's all said and done, you're in a much better place. People need to put the work in if they actually want to get something done and if they want to get it done right. (VGG-05, August 25, 2020)

VGG welcomes the YMDS process to revise the Yukon mineral regulatory regime to align with Yukon First Nation Final Agreements. Yukon's mineral legislation is out of date and needs to be redesigned to recognize Yukon First Nations' rights, interests and legitimate authority over their lands. While VGFN has not experienced much mineral activity in its territory to date, it wishes to ensure that any future activity recognizes and accommodates its values.

VGG's Oil and Gas Engagement Policy has important lessons for the YMDS. VGG needed to develop this policy because of gaps in the oil and gas regulatory framework. The Policy fills these gaps by outlining early information and notification requirements, establishing a framework for communication and requiring a Benefits and Stewardship Agreement that aims to secure maximum benefits and minimal risks to the VGFN community. The lessons and recommendations contained in this report are designed to support the YMDS Panel's work to revise Yukon's mineral legislation so that Yukon First Nations are not forced to fill its gaps, while at the same time accommodating their legitimate jurisdiction and ability to develop meaningful agreements with mineral proponents.

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CITATIONS

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- VGG-01 –August 19, 2020
- VGG-02 – August 21, 2020
- VGG-03 –August 24, 2020
- VGG-04 –August 24, 2020
- VGG-05 – August 25, 2020
- Chief Dana Tizya-Tramm - August 24, 2020

VUNTUT GWITCHIN GOVERNMENT

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NATURAL RESOURCES DEPARTMENT

APPENDIX 1: INTERVIEW GUIDE

Interview Guide for the Vuntut Gwitchin Government's Submission to the Yukon Mineral Development Strategy

Objective of the interviews

To identify Vuntut Gwitchin's expectations for mineral development in Vuntut Gwitchin territory, based on Vuntut Gwitchin's experience with oil and gas development and its Oil and Gas Engagement Policy.

Background: Preamble to Interviews

The Yukon Government and Yukon First Nations with Final Agreements are developing the Yukon Mineral Development Strategy (YMDS, "the Strategy") to guide legislation and policy for mineral exploration and development in Yukon. The purpose of the YMDS is to align Yukon's placer and quartz mining regulation and policy with Yukon First Nation Final Agreements.

We're conducting interviews and a focus group with Vuntut Gwitchin Government (VGG) staff to help VGG prepare their submission to the YMDS Panel. The submission will focus on Vuntut Gwitchin's values and expectations for mineral exploration and development in Vuntut Gwitchin territory. The approach for the submission is to tell the story of VGG's development of the Vuntut Gwitchin Oil and Gas Engagement Policy in order to draw out lessons for the YMDS.

Interview outline

Introduction

The interview will start with a couple of general questions about mineral development and the YMDS process, then will focus on the Oil and Gas Engagement Policy. I'll then ask some more specific questions about mineral activities in Vuntut Gwitchin territory and we'll close with a discussion of your recommendations for the YMDS Panel.

1. Do you have any questions for me before we start?

Mineral Legislation

2. What are your thoughts about how to prepare strong guidance for the changing mineral legislation?

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3. What ways have placer miners and exploration companies worked well in Vuntut Gwitchin territory?
4. What have been the main conflicts?

Oil and Gas Engagement Policy

Now I will ask you some questions about the Oil and Gas Engagement Policy. You may have little experience with the development of the Policy, in which case we can go to the next section.

5. What was your role in the development and/or implementation of the Oil and Gas Engagement Policy?

Design of the Policy

6. What prompted VGG to develop the Policy?
7. Did the Policy build on other Yukon Legislation and Policy (such as the North Yukon Regional Land Use Plan)? Was it designed to address specific gaps in the legislation? If so, which ones?
8. Tell me about the process for developing the Policy
9. How was the Policy communicated to industry and government?
10. What has the response of industry been to the Policy?
11. What has the response of government been to the Policy?

Implementing the Policy

12. Drawing on specific examples, what successes has Vuntut Gwitchin had with the Policy?
13. Drawing on specific examples, what have been the challenges in implementing the Policy?
14. How could the Policy be improved?

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Experiences with Mineral Exploration

Now I'll ask some specific questions about mineral activities in Vuntut Gwitchin territory.

Based on a review of the GeoYukon database, there are a small number of historical quartz claims located along the Porcupine River near to Old Crow, southeast of Mt. Rover, along the Dempster Highway and southeast of Eagle Plains. There are a small number of current quartz claims southeast of Mt. Rover and along the Dempster Highway.

15. What has been Vuntut Gwitchin experience with mineral exploration and development in its territory?
16. What are your expectations for mineral development activity in Vuntut Gwitchin territory in the future?
17. What are your concerns about mineral development activity in Vuntut Gwitchin territory?
18. What benefits do you want to flow to Vuntut Gwitchin from mineral activity in its territory?
19. What lessons can be drawn from Vuntut Gwitchin's Oil and Gas Engagement Policy for the Mineral Development Strategy?

Recommendations for the YMDS Panel

Now we'll finish with a final question:

20. How you think Yukon mineral legislation and policy could be improved to address Vuntut Gwitchin's values and interests?

Closing

Thanks for your time and insights. We'll draw on the answers you provided to prepare VGG's submission to the YMDS Panel. The submission will also be informed by a review of the following documents:

- VGG's Oil and Gas Engagement Policy
- North Yukon Regional Land Use Plan
- YMDS Discussion Paper
- Tr'ondëk Hwëch'in (TH) Submission to the YMDS Panel

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- Nacho Nyak Dun (NND) Submission to the YMDS Panel

21. Is there anything we missed or that you would like to add?

22. Is there anyone else you think we should talk to?

APPENDIX 2: CONSENT FORM

Vuntut Gwitchin Government's Submission to the Yukon Mineral Development Strategy
Declaration of Informed Consent and Permission to Use Information

I (name) _____, on this day (complete date)

_____, give permission for Firelight Research Inc. to interview me for Vuntut Gwitchin Government's Submission to the Yukon Mineral Development Strategy (YMDS).

I understand that the Vuntut Gwitchin Government (VGG) is conducting interviews and a focus group to help prepare a submission to the Yukon Mineral Development Strategy Panel on behalf of Vuntut Gwitchin First Nation. The Yukon Mineral Development Strategy (YMDS) is being developed by the Government of the Yukon and Yukon First Nations with Final Agreements to guide legislation and policy for mineral exploration and development in Yukon. The purpose of the YMDS is to align Yukon's placer and quartz mining regulation and policy with Yukon First Nation Final Agreements. I understand that VGG's submission will focus on Vuntut Gwitchin's values and expectations regarding the conduct of mineral exploration and development activity in Vuntut Gwitchin First Nation territory.

I also understand that the interviews and focus group will be audio-recorded to provide a record for report writing.

By signing below, I indicate my understanding that:

- (a) I consent to have my words and responses recorded in notes and using audio recording equipment.
- (b) I am free to not respond to questions that may be asked and I am free to end the interview at any time I wish.
- (c) Vuntut Gwitchin Government will maintain intellectual property rights over information and recordings collected through my participation and may use the information and recordings to inform Vuntut Gwitchin First Nation's submission to the the Yukon Mineral Development Strategy Panel.
- (d) Vuntut Gwitchin Government will ask permission from me or my descendents before using my information for purposes not indicated above.

For more information, please contact Erika Tizya-Tramm Director of Natural Resources for the Vuntut Gwitchin Government at (867) 966-3261 ext 255 or nrd@vgfn.net.

Signature of participant

Witness

PIN #: