



# New minerals legislation Discussion paper

February 2023



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## Share your thoughts

After reading this discussion paper, please complete an online survey so that your views are taken into account as we continue work on developing new minerals legislation.

You can find the survey at [Yukon.ca/new-minerals-legislation](http://Yukon.ca/new-minerals-legislation). You can also send us comments by email at [newmineralslegislation@yukon.ca](mailto:newmineralslegislation@yukon.ca).

### Executive summary

We are developing new legislation that will replace Yukon's *Quartz Mining Act* and *Placer Mining Act*. Mining has deep roots in the Yukon, going back to the Klondike Gold Rush, and some aspects of the current legislation have not changed in over a century. With this work, we're hoping to develop forward-looking legislation that supports a future of responsible mining in the Yukon and reflects the values of all Yukoners.

Yukon's mining sector has helped drive the territory's economy, led to the development of critical infrastructure and created well-paying jobs for many Yukoners over several generations. Mining has also had an impact on our environment, and on people and communities. Our aim with new legislation is to ensure a new mining regime respects Indigenous rights, supports a competitive and responsible mining industry, protects the environment, and supports the modern-day and future needs of Yukoners. We are also developing new legislation in the context of an emerging green economy, and we know that certain minerals will play a critical role in supporting this transition.

The work to renew Yukon's minerals legislation is being undertaken in collaboration with Indigenous governments and has been informed by input from representatives of Yukon's mineral exploration and mining industry, as well as environmental organizations. We are now at the stage where we want to hear your views on the ideas and potential approaches that we've identified. Your input and feedback will be used by the governments in the next phases of their work.

This engagement is different from a typical Yukon government engagement. Many of the concepts and ideas being presented aren't consensus views at this stage, and it is important to recognize that participating governments may not endorse or support all of the potential approaches. We are being purposeful about engaging in this way because we see value in presenting a wide range of ideas and alternatives for public input and feedback.

We've broken down the mining regime into its key components and developed a suite of potential approaches and considerations for each. Components include how and where mineral tenure can be acquired and how it is maintained, how mining projects are licensed, financial security, reclamation, closure and abandonment of sites, royalties, and compliance and enforcement.



Some of the potential approaches are modifications or improvements to the current approach while others are a break from the status quo towards something novel for the Yukon. A switch to novel approaches can involve more risk, less near-term certainty and, if not properly understood, unintended consequences. Such changes, should they be pursued, would also require well thought-out transition plans. We know that more detailed analysis is required before pursuing such approaches and this is work that we plan on doing.

We understand there is likely to be a wide range of perspectives on many of the approaches presented. Your input will help us decide on the best approaches to include in new minerals legislation.



## Primer

### Introduction

Mining has deep roots in the Yukon, going back 125 years to the Klondike Gold Rush. The industry has helped drive the territory's economy, led to the development of critical infrastructure and created well-paying jobs for many Yukoners over several generations. For instance, the Mayo and Aishihik hydro plants were built in part to provide power to mining projects and now, decades later, these facilities continue to provide clean renewable power to Yukoners. The mining sector accounted for 14% of Yukon's economy in 2020 and was the largest sector outside of public administration.

The early quest for gold, and what came after, fundamentally changed life for the territory's Indigenous peoples, with impacts on families, language, culture, and traditional economies. Mining has also had an impact on our environment, and in some cases this has resulted in sites that require significant government investment to clean up.

We are now undertaking a process to develop new minerals legislation that will replace the *Quartz Mining Act* and the *Placer Mining Act*. Core components of these current laws are more than a century old and through this work, we're hoping to develop forward-looking legislation that will support responsible mining in the Yukon for many years to come.

Our aim with the new legislation is to improve the management of the Yukon's mineral resources in a way that respects Indigenous rights, strengthens the Yukon's economy, supports a competitive and responsible mining industry, protects the environment, allows for the integration of other land uses and values, and supports the modern-day needs of Yukoners.

We also know that some minerals will play a critical role in supporting the transition to an emerging green economy. Temperatures in Yukon have risen nearly three times faster than the global average and Yukoners have already experienced changes in climate including permafrost thaw and changes to weather and conditions on the land. A transition to a green economy will rely on critical minerals, some of which like copper, zinc, and tungsten are found in the Yukon. As we think about the future of mining in Yukon, it will be important to consider how Yukon's mineral endowment might contribute to a solution to this global issue.

The work to renew Yukon's minerals legislation is being undertaken by the Yukon government in close collaboration with Yukon First Nations, transboundary Indigenous governments, and



the Council of Yukon First Nations. We've been working together through a steering committee struck in the autumn of 2021. Since then, we've worked to break down the current mining regime into its components, identified key policy issues behind each component, and developed a suite of potential approaches and considerations for each key policy issue. This collaborative work has been supported and informed by representatives of Yukon's mineral exploration and mining industry as well as environmental organizations. We have also engaged an independent researcher to understand and get advice on the socio-economic issues and implications of mining.

It has been a long road to get here. In 2003, the Yukon government and Canada signed the Devolution Transfer Agreement, which committed Yukon government to jointly develop any new resource legislation with First Nations, including for mining. Our work also builds on the findings of the independent panel that produced the Mineral Development Strategy in 2021. Many of the strategy's recommendations referred to and were premised on the need for new minerals legislation.

We are now at the stage where we want to hear the public's views on the ideas and potential approaches we've developed for new minerals legislation.

This engagement on new minerals legislation is a bit different from other engagements that are typically designed to seek feedback on a single, recommended approach. One way that it differs is that what is presented here is the output of a truly collaborative process between Yukon government, Yukon First Nations, transboundary Indigenous governments, and the Council of Yukon First Nations. A second way that it differs is that many of the concepts and ideas being presented aren't consensus views at this stage. Just because an approach or option is being presented doesn't mean that the participating governments endorse or support it. We have been purposeful about this approach to engagement because we see value in presenting a wide range of ideas and alternatives for public input and feedback.

This engagement has been purposefully designed to avoid any kind of referendum on mining. We understand there is likely to be a wide range of perspectives on many of the issues presented. We are seeking this broad input and consideration, and your input will help us decide on the best approach as we move forward in our process to develop new legislation.

Some of the potential approaches might be characterized as modifications or improvements to the current approach. With these, it is more straightforward to understand the implications and consequences. Other potential approaches can involve a break from the status quo towards



something novel for the Yukon. We recognize that a switch to novel approaches can involve more risk, less near-term certainty and, if not properly understood, unintended consequences. Such changes, should they be pursued, would also require well thought-out transition plans. We know that more detailed analysis is required before pursuing such approaches and this is work that we plan on doing.

You may be interested in commenting on some parts of the new legislation and not others. Engagement documents have been prepared for specific topics, and our online survey will allow you to select which topics you're interested in commenting on. We're seeking your thoughts on which proposed approaches may strike the right balance between supporting a strong and viable industry in the future, protecting the environment, upholding Indigenous rights, and contributing to healthy and sustainable Yukon communities.

Through our work, we have fully recognized the distinct scales, geographies, histories, economics, and operating environments of the quartz and placer sectors in the Yukon. In some cases, we have explicitly identified different potential approaches for these sectors, and in other cases we haven't. We know that careful consideration of these distinctions will be extremely important as we further our work, and we fully anticipate that different, unique approaches are likely to be required for all or part of each sector. For those who are familiar with these distinctions, we encourage you to identify the sector you are thinking about in your responses and feedback.

Input and feedback during this stage will be used by the governments as they work through the rest of the process. A *What We Heard* document will be produced and publicly released following the end of the engagement period.

### Key policy issues

We've organized our work on new minerals legislation around the following key policy issues. You can find more information on each key policy issue in the form of a short information sheet or a longer summary of the different approaches we're considering.

**Disposition** refers to how mineral tenure is made available and granted through a claim or lease. **Acquisition** refers to the rules that must be followed to get tenure, including how tenure is acquired (e.g., physical staking or online map-staking) and who can hold tenure.

**Maintenance** refers to the rules that govern how mineral tenure is kept once it is acquired.



**Licensing** is a feature of many stages of the mineral development cycle. Licensing rules deal with how plans for exploration and development projects are submitted and with what information, how they are reviewed and approved, and what happens after a licence is issued.

**Financial security** is paid to the government by operators to ensure that operators meet their legal obligations and to cover the cost of reclaiming an exploration or mine site if an operator fails to do so.

**Reclamation** refers to the work required to clean up after exploration or mining activities are complete, in order to meet closure objectives. Progressive reclamation involves cleaning up as you work.

The **closure** of a mine aims to return a site to a stable, non-polluting state. Closure can also refer to when an operator is no longer responsible for a site. **Abandonment** is when an operator leaves a site while failing to meet its closure obligations.

**Compliance, monitoring and enforcement** addresses the tools available to the inspectors and enforcement officers who monitor and inspect mine sites and enforce Yukon's laws and regulations.

**Royalties** are payments made by those profiting from the extraction of mineral resources to the owners of the mineral resources.

### Cross-cutting themes

We're also considering several cross-cutting themes that relate to many of these key policy issues.

We've set out some principles that are designed to communicate a **vision** for new minerals legislation.

We're looking at how and by whom **decisions** are made, including the involvement of Indigenous governments, how disagreements are resolved, and the role of the public.

We're considering the creation of a **resource revenue fund** to help reduce the impacts or increase the benefits of mining, as is found in some other jurisdictions.

We're similarly looking at how various types of **mining agreements** can be used to ensure mining's impacts are mitigated and benefits are shared.





And we're looking at how to best manage the **socio-economic considerations** of mining.

### Helpful definitions

Here are a few other helpful definitions of words that are commonly used throughout these materials:

When we use the word **mining**, we are often using it as shorthand to refer to the whole mineral exploration and production life cycle, and not just the part when minerals are being produced. The life cycle includes prospecting, exploration, development, production, reclamation, closure and monitoring.

We often distinguish between two types of mining common in the Yukon:

**Placer mining** deals with minerals found above bedrock. In the Yukon, this is typically gold mixed with gravel in ancient river bottoms. The gold is extracted using water and gravity.

**Quartz mining** deals with a wider variety of minerals in bedrock (i.e., hardrock). Extraction of these minerals often involves blasting and crushing rock, and using chemicals to extract the desired minerals. A quartz mine is sometimes referred to as a hardrock mine or, because of the scale of these operations, as a major mine. Quartz mining in the Yukon often produces gold, silver, lead, zinc and copper.

We distinguish the **assessment** process that is governed by the *Yukon Environmental and Socio-economic Assessment Act* from the **regulatory** process that is governed by the *Quartz Mining Act* and the *Placer Mining Act* and their regulations. Keep in mind that other territorial or federal regulatory requirements and processes (e.g., *Waters Act* and *Fisheries Act*) may also apply to a mining project.



### Vision for new minerals legislation

New minerals legislation seeks to do many things. Over the course of the last year and half, the government-to-government steering committee has begun to set out a long-term vision for a new regime.

New legislation will provide a framework for mineral prospecting, exploration, development, production, reclamation and closure, while recognizing key differences between the quartz and placer sectors. New legislation should improve the management of the Yukon's mineral resources in a way that respects Indigenous rights, strengthens the Yukon's economy, supports a competitive and responsible mining industry, protects the environment, allows for the integration of other land uses and values, and supports the modern-day needs of Yukoners.

Below we detail draft principles that are intended to support this future vision.

#### New legislation seeks to:

- respect Aboriginal and treaty rights and to promote reconciliation;
- create conditions for a mining industry that is viable, competitive and responsible;
- realize economic benefits for both present and future generations;
- contribute to individual and social well-being and healthy communities;
- ensure environmental protection and ecosystem health;
- set out how industry is responsible and liable for its activities and impacts;
- ensure collaboration with and involvement of Indigenous governments; and
- regulate mineral development in a manner that is efficient, effective and transparent.

### Questions

1.1 Do you have any thoughts or concerns about the set of draft principles we're considering or additional things that you think we should consider?



### Mineral tenure – disposition and acquisition

Disposition of mineral tenure refers to the rules for how mineral rights are made available and granted. Acquisition, meanwhile, refers to the rules that a person or company must follow to get tenure and to determine who is eligible to acquire tenure (e.g., physical staking or online map-staking).

The current rules for disposition and acquisition of mineral tenure have not been reviewed or modified for over a century. We're looking at ways to modernize the tenure disposition and acquisition regime to make it clear, straightforward and consistent with Aboriginal and treaty rights across the Yukon. The new regime should meet the interests and needs of current and future Yukon residents, reflect a balanced approach to other land uses and support a viable and responsible mineral exploration and mining sector.

We're considering several alternative approaches to disposition and acquisition of mineral tenure. Some of the approaches we're considering may be characterized as modifications or improvements to the current regime, while other approaches we're considering would constitute more significant changes. The latter would require more detailed analysis to understand the implications and consequences, as well as carefully thought-out transition plans. Some of these approaches are used in other jurisdictions while others are less common to the mineral resource sector. All of the approaches however, were designed to meet the following identified interests.

### Interests

#### **Balancing mining and other land uses**

The disposition regime should allow decision-makers to consider other land uses and values, and to balance those interests and values with mining activities.

#### **Clarity, certainty, and fairness**

New legislation should provide a clear, certain and consistent regime that is efficient, easily understood, and consistent with Aboriginal and treaty rights across the Yukon. The rules should be fair to all participants.



### Potential approaches

Under current legislation, anyone over 18 has the right to enter an area to prospect for minerals and stake a claim. Once a claim is staked, they have the exclusive right to explore for and mine the minerals located within the claim. If a claim is staked correctly, these rights are automatically granted, though exploration and mining activities are still subject to assessment and permitting requirements.

We're considering whether to retain this system, modify this system, or pursue an alternative.

If we were to modify the current system, the right to enter an area to prospect and stake a claim could be maintained as is, but legislation could require the approval of claims. That would mean that the right to explore and mine would no longer be automatic. If a claim was approved, these rights would be granted at that time. This would provide an opportunity to refuse a claim. Decision-makers would need clear criteria for approving or refusing claims for the system to be transparent and fair.

Alternatively, we could maintain the right for individuals to enter an area to prospect, stake claims and explore, but grant the right to mine the minerals on the claim through a later decision, after some exploration work has occurred or other requirements have been met.

Mining proponents consider certainty as essential to their businesses, and a lack of certainty will reduce the likelihood that they will invest in mineral properties. Both options above provide certainty, but at different stages. With the first option, certainty is provided to a proponent after a claim is approved. With the second option, the proponent gets certainty about the right to explore for minerals, but certainty about the right to mine would come later.

Another approach would be to no longer provide the rights to enter an area to prospect, stake claims, explore or mine. Instead, proponents would have to seek permission to do so, which would be granted through a licence or similar mechanism. This type of system is used in other resource regimes like oil and gas and forestry, but it is not typical of mining.

One of the drivers for modifying the current approach, or pursuing an alternative, is a recognition that mining is not always the best use of the land. Alternative approaches would create room to consider other land uses and values that could be affected by exploration and mining activities.



### **Where mineral activity can occur**

We're considering different approaches to determine where mineral activity could occur and where it should not. Current legislation lists several places where claims cannot be staked, like Category A settlement land, airports, cemeteries and burial grounds. It also allows government to withdraw areas from staking and prospecting for a public purpose, such as the implementation of land use plans. Unless lands are withdrawn, mining activity can occur.

We could keep this approach but identify additional areas where mineral tenure cannot be acquired (e.g., private property, agricultural areas or Category B Settlement Land). We could also add more tools to withdraw areas, or expand the list of reasons that can justify withdrawal.

Another approach would be to specify where mineral tenure can be acquired through the designation of zones. Under this option, mineral tenure could not be acquired anywhere outside designated zones.

Should new legislation adopt an alternative approach to disposition of mineral rights, as described above, a proponent would identify the area where they are seeking to obtain mineral tenure in an application, or Yukon government could identify areas where applications could be made.

### **How tenure is acquired**

We're considering revisions to some of the current rules for how mineral tenure is acquired. Currently, physical ground staking is required for both placer and quartz claims. Physical ground staking involves the placement of posts in the ground to mark the boundaries of a claim. We could keep physical ground staking and just update the rules and requirements. Alternatively, legislation could allow for online staking. Many other jurisdictions have moved to online staking for efficiency and to limit on-the-ground impacts.

We may want to have different approaches for placer and quartz mineral tenure. For example, we could have online staking for both quartz and placer, or only for quartz.

We're also considering changes to who is allowed to acquire mineral tenure. In the current system, anyone over 18 can stake a claim. We are considering keeping this the same, but we are also contemplating new requirements a person must meet before staking a claim or holding mineral tenure. For example, we could require training on Yukon's mineral management system,



the assessment and regulatory regime applicable to mining activity, and the role and significance of land claim agreements and Aboriginal rights within the Yukon.

### **Addressing overlapping quartz and placer mineral claims**

Currently, placer and quartz claims can overlap. Overlapping placer and quartz mineral claims can create problems related to the timing and use of the surface of the land for mining activity, conflicts related to the priority of mineral interests, and reclamation challenges due to different claimholders, schedules and mining strategies. To address these issues, we're considering several potential approaches.

We could keep the current system but create a mechanism to help resolve disputes.

Another approach would be to prohibit the overlap of quartz and placer mineral claims. Under this option, if a placer mineral claim was staked and recorded first, a quartz mineral claim could not be located on the same ground unless and until the placer mineral claim was abandoned or surrendered, and vice versa.

A third approach is to have a single form of tenure that combines both placer and quartz mining, rather than current method that differentiates these types of claims.

## **Questions**

2.1 Do you have any thoughts or concerns about the approaches we're considering for disposition and acquisition, or additional things that you think we should consider?

2.2 How important is it to have mineral tenure granted as a legal right, in which claimholders have a legal right to explore and extract minerals? Please explain.

2.3 How important is it for the regulator to be able to decide whether or not to grant mineral tenure? Please explain.

2.4 How important are the following to you:

- establishing in advance where mineral activity can occur;
- reducing the impacts of staking; and
- allowing online map staking.

Please explain.



### Mineral tenure – maintenance

Mineral tenure maintenance refers to the rules for keeping or losing mineral tenure once it has been acquired. These rules include the work requirements for maintaining claims and how tenure may be transferred, lost or relinquished. The current system could be improved to create a more efficient, effective, and transparent regime that reflects the realities of the exploration and mining sectors, while reducing their impacts on other land uses.

Because mineral tenure underpins the mineral exploration and mining sectors, we want the tenure maintenance regime to be clear and consistent, and strike an appropriate balance between the needs of these sectors and competing land uses.

### Interests

#### Keeping tenure in good standing

The rules and requirements to keep mineral tenure in good standing, like acceptable types of work, should reflect current practices and technologies.

#### Renewals and length of tenure

Clarify the rules for how long mineral tenure can be held, and the process for renewals.

#### Reporting requirements

Align reporting requirements with those in other parts of the regime.

#### Transfer, relinquishment and lapsing of tenure

Clarify the rules around transfer, relinquishment and lapsing of mineral tenure to ensure that outstanding liabilities and obligations are addressed.

#### Compliance

Establish appropriate tools and authorities for the regulator to address non-compliance issues related to tenure maintenance (e.g., work done without the proper permits cannot be used to maintain claims).

#### Expropriation and compensation

Establish rules relating to expropriation, regulatory-taking and compensation.



### Potential approaches

Many of the approaches we're considering seek to address some fundamental considerations related to mineral tenure. We anticipate that the rules around mineral tenure in the new regime will seek to strike a balance between providing industry with the tenure required to advance projects while also:

- recognizing and protecting other land uses and values, some of which may be incompatible with mining;
- enabling fair competition among industry participants for access to finite mineral resources; and
- considering the public benefits of mineral development.

Many of the approaches we're considering may be characterized as modifications or improvements to the current regime, while other approaches we're considering would be a more significant change from the current regime. More significant changes would require more detailed analysis to understand the implications and consequences before pursuing such approaches, as well as carefully thought-out transition plans.

### Keeping tenure in good standing

We're considering updating the rules for maintaining mineral tenure. Generally speaking, the rules should be as straightforward and consistent as possible, while also allowing for some flexibility to adapt to changing circumstances and to encourage the use of more efficient and lower-impact technologies. We also may need to distinguish approaches to mineral tenure between the placer and quartz industries.

We could continue to have work requirements stay the same every year or we could have work requirements that escalate the longer a claim is held.

There are also a number of rules and approaches that relate to keeping tenure in good standing like the type and value of work that can be applied to keep a claim in good standing, the ability to group claims, "bank" work credits, making payments instead of working, and applying for relief from working or making payments. We're interested in your input on maintaining or modifying these approaches.

### Renewals and length of tenure

Currently, mineral tenure can be renewed indefinitely, with no limits on the maximum length of time that the tenure can be held. We're considering keeping the same approach or if tenure





should have a maximum length. We're also considering whether we should continue to require an annual renewal of tenure or move to a different length of renewal (e.g., multiple years).

### **Reporting requirements**

We're considering aligning and standardizing the reporting requirements for maintaining tenure with those reporting requirements related to licences. The goal is to reduce red tape and increase efficiency for all involved.

### **Transfer, relinquishment and lapsing of tenure**

The current legislation doesn't always ensure that the responsibility for unfinished reclamation is properly assigned when mineral tenure lapses or is transferred or relinquished. We're considering changes to ensure that outstanding liabilities and obligations are addressed in the event of transfer, relinquishment or lapsing.

### **Compliance**

Under the current regime, regulators have limited tools to address non-compliance issues related to mineral tenure maintenance. To address this, we're considering a number of approaches to strengthen the tools and authorities available to address non-compliance, including:

- Specifying that only work done with the proper permits can be used to keep claims in good standing;
- Enabling the regulator to request additional information to verify the work done;
- Allowing the regulator to consider a claimholder's compliance history as a grounds to refuse work or take other actions; and
- Ensuring that mineral tenure is being used for purposes directly related to exploration or mining.

### **Expropriation and compensation**

The current legislation doesn't address expropriation (e.g., taking a mineral claim for public use) or regulatory taking (e.g., government regulation that deprives a claimholder of the economic benefits of the claim without taking away the claim, such as restrictive land use designations that prevent a claimholder from working their claims). Existing law doesn't address whether compensation is owed in these circumstances. We're considering whether to establish rules for this issue in new legislation, or alternatively, whether to continue to rely on other legislation and the courts to settle these issues when they arise.



### Questions

3.1 Do you have any thoughts or concerns about the approaches we're considering for mineral tenure maintenance, or additional things that you think we should consider?

3.2 How important is it to establish clear rules for expropriation and compensation of mineral tenure?



### Licensing

Licences are required at many stages of the mineral development cycle, and the review and approval of project applications (i.e., licensing) is a key function of the regulatory regime. For instance, a proponent must obtain a licence prior to conducting activities like drilling and trenching that are required to prove up a mineral deposit. We want to strengthen and improve the effectiveness, efficiency and transparency of this aspect of the regime.

To do this, we also need to consider how a new regime works with other legislation and make sure requirements and processes are coordinated and streamlined.

We recognize the distinctions between the quartz and placer sectors in the Yukon. And although we don't always identify different potential approaches for each sector below, we know that a consideration of the differences between the quartz and placer sectors for licensing will be important as we determine which approaches to pursue.

### Interests

#### **Alignment of permitting with level of impacts**

Licensing requirements should reflect the scope and scale of a project and help to identify and address potential impacts.

#### **Improved efficiency and coordination**

New legislation should enable coordination of the requirements and processes with other related assessment and regulatory processes like those involving Yukon Environmental and Socio-economic Assessment Board and Yukon Water Board.

#### **Expanded tools, authorities and ability to monitor projects**

New legislation should improve our ability to monitor projects and the effectiveness of mitigations, and enable regulators to respond to issues throughout the term of the licence.

#### **Improved transparency of the regulatory process**

Information about regulatory outcomes should be transparent.



### Proposed approaches

#### Types of licences – current approach

The *Placer Mining Act* and the *Placer Mining Land Use Regulations* set out licensing requirements and the processes for review and approval of placer operations, while the *Quartz Mining Act* and *Quartz Mining Land Use Regulations* speak to quartz exploration programs. The *Quartz Mining Act* also specifies that a licence is required prior to development and production activities.

Both laws establish class criteria. The criteria categorize exploration programs and placer land-use operations into four classes. Classes 1 through 4 identify a range of activities, with increasing potential to cause adverse environmental impacts proceeding from Class 1 to Class 4. The classes are strictly activity-based and make no reference to socioeconomic, cultural or heritage factors. Some of the activities that are currently used to distinguish classes include number of person-days per camp, volume of fuel stored, volume of trenching, and the establishment of new roads.

Based on the class of activities, the legislation prescribes the application requirements as well as the process the Yukon government must undertake in reviewing applications, including timelines, parties to be consulted and potential outcomes of the review of applications for the proposed mining activity. These requirements and processes are further supported by policy (i.e., more information is required from proponents than what is specified in legislation).

#### Types of licences – potential new approaches

We're considering continuing the use of the class system, but revising the thresholds so that each one is clear and measurable. We're also considering ways to consider the nature and location of a project.

Current legislation does not recognize the considerable distinctions between small- and large-scale placer operations. A new regime could maintain a single type of placer mining licence, or establish licences that distinguish between small and large operations. Regardless of their scale, most placer mines will still require a water licence, based on thresholds established by the *Waters Act* and its regulations.

For advanced exploration programs, we could introduce specific information and process requirements for advanced exploration activities, like bulk sampling.



For quartz mines, we want to make it clear when a quartz mine licence for production is required, and expect that licence applications would be subject to their own specific information and process requirements.

The structure of this part of the new regime will help with identifying the different requirements and processes for each type of licence. Generally, we want to align these requirements and processes with the scope, scale and impact of proposed projects.

### **Duration of licences**

We are also looking at the duration, or term, of licences. Right now, Class 1 and 2 licences can be issued for up to one year, while Class 3 and 4 licences can be issued for up to 10 years. There is no term limit for quartz mine production licences, but most mining projects require a water licence, and these are valid for a maximum of 25 years.

One option is to continue to have some type of defined term for a licence. Alternatively, the duration of a licence could be determined by the project proposal instead of a maximum length in legislation (i.e., a case-by-case determination).

If licences are issued for longer periods of time, there might be a greater need for periodic reviews of projects, in addition to inspections. One option is to establish a periodic review of projects and provide some details as to what this review involves.

### **Application requirements**

As discussed above, one of the interests for the new legislation is to improve the efficiency and coordination of the assessment and regulatory phases. New legislation should enable coordination of the requirements and processes with other related or overlapping assessment and regulatory processes like those involving Yukon Environmental and Socio-economic Assessment Board and Yukon Water Board.

When a proponent applies to carry out a project, we need the right information and the right level of detail to understand and evaluate the project. The information needed to support the licensing process under the minerals legislation can also be used to support the assessment and water licensing processes – processes carried out under the *Yukon Environmental and Socio-economic Assessment Act* and the *Waters Act*, respectively.

One option is to prescribe information requirements and include the ability to establish additional information requirements as needed. This would include the ability to establish



baseline information requirements. Another option is to have a mechanism that allows us to set out different information requirements for specific activities or projects in certain areas.

We could also require proponents to engage with affected Indigenous governments, communities and stakeholders prior to submitting their application to Yukon government. The Yukon Environmental and Socio-economic Assessment Board already requires this for quartz mining project assessments. For other projects, some proponents choose to do this but it is not currently a requirement.

### **Review process and outcomes**

New legislation needs to describe both how applications are reviewed and the responsibilities of the regulator during the review period. These might look different depending on the application and the type of licence required.

Right now, the regulator must consider any potential adverse effects on Indigenous rights. We are considering expanding this to include consideration of Indigenous interests as well. The regulator must also currently consider the adverse environmental and socio-economic effects of a project. We're considering an approach that would provide more specificity on what types of environmental or socio-economic effects should be considered. The regulator could also consider positive effects or benefits.

We are also considering updating review and decision timelines, and providing authority to extend timelines in certain circumstances. There is an interest in revising timelines to provide greater clarity on how long processes will take. Current timelines often do not align with those needed to fulfill Yukon government's obligations to consult with affected Indigenous governments.

With respect to the outcomes of a review, we are considering keeping the ability to approve a project, subject to conditions, or refuse a project. However, we are considering a new requirement that the regulator provide reasons for its decisions on some or all types of projects.

### **Regulatory reporting and oversight**

Current legislation does not require reporting associated with licences, however reporting for some licences is required through policy. We are considering changing this to require annual reporting for some or all projects. There could also be a requirement to make reports publicly accessible.



Another option to improve accountability and transparency is to require the regulator to report on both active and expired licences. This might be more important for sites that are of public interest, or in relation to specific activities like reclamation and closure.

We are also thinking about adding tools to address either inadequate reporting or issues observed through reporting like reclamation failures. This would provide the regulator with the ability to direct a proponent to address these types of matters.

We are also considering the ability to cancel a licence if it has remained inactive for a certain period, or if it is in the public interest (similar to provisions in the Waters Act).

### **Amendments**

Often, approved project activities need to change throughout the term of the licence due to unforeseen project requirements. When this happens, a proponent needs to apply and receive approval for a licence amendment before changing their activities. Sometimes such changes also require a new assessment under the *Yukon Environmental and Socio-economic Assessment Act*.

We are considering setting out a process for amendments. We are also considering establishing criteria for minor amendments that do not trigger an assessment to provide a more effective tool in legislation for minor project changes.

### **Costs associated with the licence applications and reviews**

Right now, there are fees associated with applications for Class 3 and 4 licences, but there are no fees for Class 1 and 2 licences or quartz mine licence applications. We could make fees consistent for all licence applications. In addition, we could enable cost recovery for project reviews that require significant resources or that involve the use of third-party experts to reduce costs to government.

### **Other tools**

We are also considering revising the tools we have to support the licensing process.

Legislation could provide a tool to help address specific concerns in specific geographic areas. For example, if an area is particularly sensitive for environmental or cultural reasons, project activities in that area could be controlled or limited to minimize adverse impacts. This could improve clarity for proponents by providing information in advance about the conditions they will have to follow. Criteria could be developed to guide how these areas are identified. This type of tool could also support the implementation of land use plans.



Another option is to provide the ability to combine licences. Currently, different licences are required when the operations are not right beside each other. In some circumstances, like a placer proponent working several claim blocks close together in a single watershed, having a single licence for all these operations might provide some efficiencies for both the proponent and the regulator.

## Background

### Links between the assessment and regulatory processes

The process for licensing Class 3 and 4 projects and quartz mines occurs after assessment and concurrently with other regulatory processes like water licensing. The *Yukon Environmental and Socio-economic Assessment Act* and regulations set out the assessment process while the *Waters Act* and regulations set out the water licensing process.

Class 1 projects are low level exploration projects and do not trigger the requirement for assessment under the *Yukon Environmental and Socio-economic Assessment Act*. Class 2 projects do require an assessment but are rarely used due to their short length of licence.

### Assessment phase

The assessment phase is initiated when a proponent submits a project proposal to the Yukon Environmental and Socio-economic Assessment Board for assessment under YESAA. The Yukon government, Indigenous governments and the public can all participate in the assessment. The Yukon government initiates consultation with affected Indigenous governments during this phase.

A project assessment concludes with a report and recommendation to the decision body or bodies, which are those governments or agencies with the power to issue a licence in relation to a project. The decision body responds to the recommendation with a decision document. The Yukon government consults affected Indigenous governments on recommendations before issuing a decision document. If there are multiple decision bodies (i.e., Yukon government and a federal department or an Indigenous government), the decision bodies meet to discuss and either agree to issue one consolidated decision document, or each decision body issues its own decision document.

### Regulatory phase

The regulatory phase includes the Yukon government's review of a project application and determination of how a project may proceed. The Yukon government consults affected





Indigenous governments and engages the operator prior to issuing a licence. In the case of Class 4 placer operations, the Yukon Water Board drafts and issues the licence through a delegation from the Yukon government.

If an exploration or mining project requires a water licence, a proponent must also submit an application for a licence to the Yukon Water Board. This process provides for participation of the Yukon government, Indigenous governments and the public. The Yukon Water Board considers the application and information received through the public process, and is responsible for issuing the water licence.

### Questions

4.1 Do you think the approaches we're considering will:

- create opportunities to streamline processes;
  - lead to better licensing outcomes; and
  - help to identify and mitigate project impacts?
- Please explain.

4.2 Do you have any thoughts or concerns about the approaches we're considering for licensing and regulatory alignment, or additional things that you think we should consider?

4.3 How important are the following to you:

- establishing different licensing requirements for small-scale and larger-scale placer operations;
  - allowing longer term authorizations; and
  - an ability to manage project activities differently in some areas?
- Please explain.



### Compliance, monitoring and enforcement

Natural resource officers help ensure that mining is done responsibly and the environment is protected. They monitor and inspect mine sites and enforce Yukon's laws and regulations.

We're considering a suite of new enforcement tools and penalties. Our goal is to ensure proponents follow all the requirements that are part of their licence. We are also considering ways to enable the greater involvement of Indigenous governments in compliance, monitoring and enforcement.

### Interests

#### Compliance, monitoring and enforcement tools

Officers should have the appropriate tools at their disposal to ensure proponents comply with the requirements of their licence or legislation.

#### Penalties and deterrence

Penalties should be effective at deterring offences.

#### Public accountability and transparency

Information should be easily accessible by Indigenous governments and the public.

#### Collaborations between Yukon government and Indigenous governments

Tools should exist to allow for greater collaboration with Indigenous governments on compliance, monitoring and enforcement activities.

### Potential approaches

#### Enforcement and investigative tools

Natural resource officers currently have limited tools to respond to offences. Expanded enforcement abilities will enable officers to do their work with the industry in an efficient and expeditious manner. Improvements – some of which are currently available but would be formalized in legislation – could include:

- search, seizure or forfeiture provisions;
- summary conviction tickets to deal with minor infractions;
- adding additional court orders upon conviction;



- escalating responses to infractions, such as ceasing activities until orders are complied with;
- serving summons;
- use of accredited labs or certified analysts; and
- allowing an inspector to be accompanied by a person needed to help perform functions.

Many of these tools exist in other, more modern, pieces of Yukon legislation.

### **Penalties and deterrence**

The current penalties are not always adequate to deter offences. For example, the maximum fine for failure to follow an officer's direction is \$5,000. Further, the current legislation has limited options for officers to compel payment or to compel action (e.g., reclamation of a site).

Changes to penalties and deterrence could include:

- Consequences for unpaid fines including the ability to seize items until a fine is paid and suspending licences if a fine is not paid;
- Allowing for the sale of abandoned or forfeited property;
- Allowing for escalating penalties for repeat offenders; and
- Updating of fine amounts to provide effective deterrents.

### **Public accountability and transparency**

Information on inspections is currently not easy to access. To address this, we are considering the creation of a public registry for permits, inspections, monitoring data, proponent reports and prosecution results. The goal would be to improve the public's understanding of how the industry is regulated and monitored and to make it easier to access information.

### **Collaborations between Yukon government and Indigenous governments**

Yukon government currently carries out many of the duties related to compliance and inspection on its own. We could formalize tools in legislation to allow for greater involvement of Indigenous governments in compliance, monitoring, and enforcement. This would include enabling designations for inspecting, enforcement and monitoring.



### Questions

5.1 Do you think the tools we're considering will encourage and improve compliance? Please explain.

5.2 Do you have any thoughts or concerns about the approaches we're considering for compliance, monitoring and enforcement, or additional things that you think we should consider?



### Financial security

Proponents pay financial security to the government to cover the cost of reclaiming an exploration or mine site if the proponent fails to do so.

We want to ensure that the amount of security held for a project is sufficient, adequately addresses risks and reduces the likelihood that public funds will need to be used if a proponent doesn't reclaim a site.

We also want the processes to determine and review security to be clear, efficient and transparent.

We're also looking at what forms of security should be allowed, when government can access security funds and how to strengthen enforcement tools with respect to security.

Given the differences between exploration, placer mine and quartz mines sites, the implementation of security processes and requirements should address and reflect these differences.

### Interests

#### **Purpose and parameters**

The purpose of security should be clear. The amount of security held for a project needs to be suitable and sufficient and should consider contingencies to help address risks.

#### **Requirement for security**

The requirement for security should be applied consistently using a transparent and well understood framework.

#### **Valuation of security**

The processes to determine and review security should be clear, efficient and transparent.

#### **Public reporting**

Governments should be open and transparent about what security is held and owed.

#### **Forms and seizure of security**

Security should be held in a way that can be easily accessed and used, as needed.

#### **Collection of security and failure to pay**



Enforcement tools should allow government to take action in response to security underpayments.

### **Licence renewals, amendments and transfers**

Security requirements should be met in full before a licence is renewed, amended or transferred.

## **Potential approaches**

### **Purpose and parameters**

We could continue to base our security amounts on the specific cost of reclaiming a site, or we could develop tools that also allow us to consider the risks and likelihood of the long term success of reclamation.

### **Requirements for security**

We could continue with an approach where security is only required for some projects and the choice of which projects would be up to the regulator. Or we could establish criteria for which projects require security. Or we could make security a requirement for all projects.

### **Valuation of security**

We could strengthen the existing system by creating security valuation requirements for placer mining and exploration. We could also improve transparency by publishing the reasons for a security determination.

### **Security reviews and amendments**

We could continue to review security on a discretionary basis directed through policies, or we could establish a mandatory periodic review of security.

### **Reporting**

We could require proponents to provide financial records to determine what form of security may be appropriate. We could also require public reporting of security amounts held and owing, such as through an annual report tabled in the legislature.

### **Forms of security**

We could revise the acceptable forms of security to forms that are more easily accessible when needed, such as cash or cash equivalents. Or criteria could be set in legislation that any proposed form of security would have to meet. Another option is to require a share, or portion, of security to be provided as cash or cash equivalent.



### **Collection of security and failure to pay**

Legislation could require that security must be provided before a proponent begins an activity. We could make sure that if a proponent fails to provide security, the amount immediately becomes a debt owed to the government. Finally, we could ensure that failure to pay results in suspension or cancellation of authorized activities.

### **Seizure and use of security**

We could establish that security can be seized from a proponent in certain circumstances, such as failure to comply with a direction, failure to carry out reclamation, ceasing production without notice, abandonment and any act of bankruptcy.

### **Licence renewals, amendments and transfers**

We're considering using a lack of up to date security payments to restrict licence renewals, amendments or transfers.

## **Questions**

6.1 Do you think the approaches we're considering for security will reduce risks for taxpayers? Please explain.

6.2 Do you have any thoughts or concerns about the approaches we're considering for security, or additional things that you think we should consider?

6.3 How important are the following to you:

- requiring financial security for all or some exploration and mining projects;
- re-assessing financial security every two years; and
- taking stronger measures if a company fails to pay the required security?

Please explain.



### Royalties

Royalties are payments to the owner of mineral resources. While these payments are not the only way that the mining industry provides economic benefits to the Yukon, they are an important part of ensuring that the public – as the owner of Yukon’s mineral resources – sees meaningful financial benefits from mineral production in the territory. As such, we are looking at different approaches for determining royalties and considering which would be the best fit for the Yukon.

The basic approaches we are considering are focused on the way royalties are determined:

- based on a mine’s profits;
- based on the value of a mine’s production; or
- based on considering both the value of a mine’s production and a mine’s profits.

Under a typical profit-based approach, when a mine is not profitable, a royalty would not be paid, but when a mine is very profitable, more of that profit is paid back to the mineral owners as a royalty. A value of production approach ensures that the mineral owners are paid for all minerals removed from the ground, but because royalty rates are typically set lower than in profit-based approaches, the royalties may be lower when a mine is very profitable. A system that considers both the value of a mine’s production and a mine’s profits would be administratively burdensome to implement, but may achieve the benefits of both systems.

We are also considering changes to the royalty rates.

### Interests

Royalty systems in the Yukon should:

- create meaningful financial benefits for the Yukon;
- be transparent, easy to administer and enforceable; and
- ensure the Yukon remains a competitive mining jurisdiction.

### Potential approaches

#### Royalties for quartz mines

We’re considering different approaches for how to best determine royalties for quartz mining.





One approach is to continue to determine royalties based on the profits of a mine. That means royalties would only be paid if the mine was profitable that year. Profitability is determined by the value of production offset by eligible costs and deductions. Common costs and deductions include transportation, operating and maintenance costs, depreciation of infrastructure and equipment, costs for exploration and development and costs associated with community and economic development initiatives.

The current profits-based royalty could be modified to reconsider the allowable deductions. For example, the new regime could eliminate the deduction of costs associated with community development, or it could allow for that deduction but only if the community and affected Indigenous governments supported the community development in question.

Another approach is to have royalties determined by the value of a mine's production, defined as the proceeds from the sale of minerals from the mine. With this approach, royalties are paid whenever minerals are produced, regardless of whether or not the mine is profitable that year. Should a mine stockpile minerals, these would also be accounted for. A mine operator would not be able to request deductions under this option.

A third approach is to have a royalty regime that considers both profits and production. One way this could be done is by establishing a minimum royalty that would ensure royalties are paid whenever a mine is in production.

### **Royalties for placer mines**

We're also considering how to best determine royalties for placer mining. The current approach is to charge a royalty tax on gold that is exported from the territory. The current tax rates are very low (see background section below).

One approach we are considering is to determine royalties based on the value of a mine's production, defined as the proceeds from the sale of gold from the mine. Should a mine stockpile gold, this would also be accounted for.

Another approach is to determine royalties based also on the value of a mine's production, but with a reduced rate for some production. The reduced rate could apply to a set number of ounces of gold, or a certain value of production.

A third approach is to determine royalties based on the profits of a mine. This means that a mine would only pay royalties if it was profitable, determined by the value of production offset by a suite of eligible costs and deductions.



Alternatively, a royalty regime could consider both profits and production. One way this could be done is by establishing a minimum royalty that would ensure royalties are paid whenever there is production at a mine.

## Background

### Quartz mining royalties

The current approach for quartz royalties in Yukon is based on profit. Under this system, royalty rates increase with profits up to a maximum of 12% for profits over \$35 million, and there is no royalty paid on the first \$10,000 of annual profit. Profits are determined by the value of a mine's production, based on receipts from the sale of minerals, minus allowable costs and deductions.

Allowable deductions include expenses for off-site and post-production expenses (transportation, storage and handling), operating and maintenance costs, exploration and development costs, community infrastructure and economic development, and an allowance for maintaining assets.

This system is built to account for the large expense of developing a mine, and a royalty may not be owing within the first few years that a mine is producing.

### Progressive royalty rates

Like income taxes, quartz royalty rates are progressive, so the rate increases as profits increase:

- \$10,000 or less: 0%
- More than \$10,000 but not exceeding \$1 million: 3%
- More than \$1 million but not exceeding \$5 million: 5%
- More than \$5 million but not exceeding \$10 million: 6%
- More than \$10 million but not exceeding \$15 million: 7%
- More than \$15 million but not exceeding \$20 million: 8%
- More than \$20 million but not exceeding \$25 million: 9%
- More than \$25 million but not exceeding \$30 million: 10%
- More than \$30 million but not exceeding \$35 million: 11%
- More than \$35 million: 12%



### Placer mining royalties

For placer mining, the current royalty is actually an export tax. Royalties are paid only on the amount of gold that leaves the territory. The rate applied to gold exported from the territory is 2.5% of a fixed price of \$15/ounce, amounting to \$0.375/ounce of gold. This price was set a long time ago and is not reflective of today's price of gold, which is around \$2,300 CDN/oz. Approximately \$25,000/year in royalties is collected from Yukon placer operations.

### Questions

7.1 Do you have any thoughts or concerns about the approaches we're considering for royalties for **quartz** mining, or additional things that you think we should consider?

7.2 Do you have any thoughts or concerns about the approaches we're considering for royalties for **placer** mining, or additional things that you think we should consider?



### Reclamation

Reclamation is a key part of the mining process for both placer and quartz operations. In new legislation, we want clear reclamation requirements for proponents. We also want to ensure reclamation efforts are successful. While reclamation is a requirement for all operations, we recognize that there may be a need to implement requirements differently for exploration, placer mining and quartz mining operations.

We want to make sure that Indigenous governments are part of reclamation planning. This will help provide benefits for communities and respect and uphold Indigenous values and future use of the land.

There are also sites that were not reclaimed. We want to prevent this from happening again in the future.

### Interests

#### Reclamation requirements

Proponent requirements must be clear and there should be consequences if requirements are not met.

#### Reclamation planning and plan review and approval

Planning should consider many factors and involve First Nations governments and affected communities.

#### Reclamation monitoring and reporting

Reclamation activities should be regularly monitored and reported on.

#### Reclamation of abandoned sites

Tools are also needed for those sites that were not reclaimed by their owners in the past.

### Potential approaches

#### Reclamation requirements

We want to have clear reclamation requirements that reinforce the importance of progressive reclamation (clean up as you mine).



We could require progressive reclamation for all licences. Flexibility during certain project phases, such as mine construction, may be necessary.

Encouraging, rather than requiring progressive reclamation is another possible approach. This would allow for flexibility in project planning. With this approach, there is a risk that proponents will wait until the end of their operation before completing any reclamation. If they abandon sites, there may be more things left behind for government to address.

We're also considering penalties for proponents who fail to reclaim a site. We could develop tools that mean proponents who do not reclaim their sites are banned from participating in the mining sector in the Yukon in the future. We could also make it that they lose their mineral tenure (i.e., claims or leases) if reclamation work is not completed within a certain amount of time.

These changes could provide stronger enforcement options and discourage non-compliance of reclamation responsibilities.

### **Reclamation planning requirements and plan review and approval**

We're trying to determine the best way to set requirements for reclamation planning.

One way is to require a reclamation plan from every proponent when they apply for a licence.

Another way would be to require reclamation planning only for projects over a certain threshold. For projects under the threshold, pre-established reclamation standards would apply, but a full reclamation plan would not be needed. This would be less resource intensive for proponents, enforcement agencies and Indigenous governments. One challenge with setting thresholds is that involvement may be limited.

Reclamation plans could include: baseline data, environmental, socio-economic and cultural impacts, impacts to Indigenous rights and how these impacts will be reduced through reclamation, reclamation objectives, timelines and schedules for reclamation, and other information as required.

These plans would improve reclamation results. The information in the plan would support consultation with Indigenous governments and engagement with affected communities. But this approach could be resource intensive for smaller projects.



### **Reclamation monitoring, reporting and response and completion**

We're considering ways to improve reclamation monitoring and reporting. Given the differences between placer mines, quartz exploration projects, and quartz mines, there may be a need to implement monitoring and reporting differently for each sector.

We could require proponents to track and report on reclamation efforts annually or on specific events or milestones. This second approach would be less resource-intensive and allow for greater flexibility. But it might offer less oversight, limit the ability to track progress, and be less effective in meeting land use plan reporting needs.

We're also looking at the best way to remove the liabilities on a mining company once reclamation is complete. This is linked to the closure of a site and the return of security.

One approach is to allow proponents to complete reclamation work after their licences expires. Production and development activities would have to stop. Once proponents meet the reclamation objectives, they would no longer be responsible for their sites.

Alternatively, proponents could be responsible for their sites for a set period following the expiry of their licences. If we see that a proponent is not on track to meet the reclamation objectives, we could determine how much longer reclamation efforts and monitoring are needed.

There are trade-offs to either approach. The first approach creates a risk that reclamation objectives will never be met. The alternative approach could provide a clearer timeline for when reclamation would be complete, but if objectives are not clear, it could be hard to measure progress. As well, more capacity would be needed both to develop and to review reclamation plans.

When transferring sites to new proponents before reclamation is complete, we're considering the need for a step to ensure that the new proponent take on the reclamation obligations of the previous proponent and that the new proponent is able to carry out this work.

### **Reclamation of abandoned sites**

We're considering potential approaches to address abandoned sites.

We could enable or encourage the reclamation of abandoned sites in legislation. For example, legislation could include "good Samaritan" clauses. This would allow a third party to reclaim the site without taking on the liability. In exchange, we could offer some sort of benefit like credit to renew their mineral tenure.



When Government steps in to reclaim an abandoned site, there may be instances where it is appropriate for Government to develop a long term reclamation strategy prior to beginning work. In other instances, risks to people, infrastructure or the environment may mean that work needs to begin right away. We could also require that Government report on its reclamation efforts and spending of security or other funds. This would increase transparency in relation to the management of abandoned sites.

We are also considering improving the tools we have that allow us to transfer abandoned sites to a third party. In some circumstances, this could be the most effective way of addressing these sites.

### Questions

8.1 Do you think the approaches we're considering will improve reclamation and closure outcomes? Please explain.

8.2 Do you have any thoughts or concerns about the approaches we're considering for reclamation and closure, or additional things that you think we should consider?

8.3 How important are the following to you:

- progressive reclamation;
- reclamation and closure reporting; and
- public access to reporting about reclamation and closure?

Please explain.



### Closure and abandonment

Final reclamation and closure follows mine development and production, and generally involves returning a site to a stable, non-polluting state. In many cases, end land use objectives developed early in a project will inform reclamation and closure plans. “Closure” also refers to a regulator decision to consider a site “closed,” which means the proponent is no longer responsible for the site.

Generally, the abandonment of a site occurs when a proponent leaves a site with no intention of returning, after failing to satisfy all the requirements of a licence. If this happens, the Yukon government steps in and takes responsibility for the site.

We want to see improved closure planning, long-term monitoring and maintenance, and reporting. We also want to consider how closure decisions are made. In the event a site is abandoned, we want the government to be able to respond quickly and effectively.

We recognize the distinctions between the quartz and placer sectors in the Yukon. And although we don’t always identify different potential approaches for each sector below, we know that a consideration of the differences between the quartz and placer sectors for closure and abandonment will be important as we determine which approaches to pursue.

### Interests

#### Improved closure planning

Legislation should address closure planning requirements for all projects, as well as processes for the review and approval of closure plans.

#### Closure and post-closure responsibilities

Legislation should make it clear when proponents remain responsible for closure and post-closure activities.

Closure and post-closure activities should be effectively monitored and regulated.

Legislation should set out when closure is complete and when a proponent is no longer responsible for a site.





### **Response and management of abandoned sites**

Legislation should enable government to identify and respond to abandoned sites in an efficient and cost-effective way.

## **Potential approaches**

### **Authorizing closure activities**

We are considering the ability to issue licences that address only closure and post-closure activities, including long-term monitoring and maintenance. Currently, these activities are licenced as part of production licences. Alternatively, legislation could allow existing production licences to be extended to carry out these activities.

### **Monitoring and reporting, including long-term monitoring**

We are considering that new legislation enable the regulator to impose long-term monitoring and reporting requirements on a project-specific basis. Legislation could also set out the types of infrastructure or other permanent features that would require long-term monitoring and reporting. Long-term monitoring and reporting could also be required in specific areas like those with higher environmental sensitivity or cultural significance.

We also need the ability to address issues or matters that might be observed through monitoring and reporting. Closure activities might need to change in response to changing environmental conditions, monitoring results or to better meet end land-use objectives.

### **Sites under the care and control of government**

If a proponent abandons a site, the Yukon government assumes responsibility for the interim care and maintenance, and for final reclamation and closure of the site. There is typically a period of interim care and maintenance before regulators decide to advance reclamation of the site, or attempts to sell/transfer the site to a new proponent.

It is important that the government is able to use the equipment, facilities and infrastructure already on site to maintain and close the site in an efficient and cost-effective way. We are considering approaches that will ensure government can use site equipment, facilities and infrastructure to care, maintain and close the site.

### **Closure planning**

If a proponent abandons a site, Yukon government might need to develop a new closure plan with new closure objectives. One approach could be to make the decision about whether new



closure objectives are needed with affected Indigenous governments and develop new objectives and a new plan with Indigenous governments, if needed. This could help to identify ways that Indigenous governments and communities can benefit from closure projects.

### **Determination that closure is complete**

We are thinking about different ways to determine when site closure has been achieved, and how that determination is formalized. One way could be to continue to have the ability to issue a closure certificate.

We could also look at having a fee associated with obtaining closure certification to cover any foreseen monitoring and maintenance costs, any unforeseen costs associated with the site, or a failure of closure measures.

Once closure is achieved, a proponent may no longer be responsible for the site, but there could be circumstances where complete closure is not always an option, such as when a site has infrastructure or permanent features that require significant management, monitoring or maintenance in perpetuity.

There maybe circumstances where we want a site, or components of a site, to remain closed. Consequently, we are considering approaches that could withdraw the land from future mineral exploration or development activities.

### **Ensuring liabilities and closure requirements are transferred**

If a site is sold or transferred to another proponent, the government needs assurance that liabilities and closure obligations are transferred as well. The new proponent would be responsible for maintaining the site under previous requirements and returning the site to the agreed upon end land-use objectives.

## **Questions**

9.1 Do you think the approaches we're considering will improve the management of abandoned sites? Please explain.

9.2 Do you have any thoughts or concerns about the approaches we're considering for abandonment, or additional things that you think we should consider?

9.3 How important is reporting on reclamation and closure efforts and spending of security?



### Resource revenue fund

Resource revenue funds can be used to reduce the impacts or increase the benefits of mining. Other jurisdictions have similar funds that go by different names, including permanent dividend funds, heritage funds and sovereign wealth funds. We're considering establishing a resource revenue fund in the Yukon and would like to hear your thoughts on what a fund might be used for and how it might be grown.

Some of the potential advantages of a fund include: sharing benefits between present and future generations, averaging out the public benefits of mining that are typically subject to fluctuations, reducing public liabilities by mitigating and addressing any legacy or unforeseen impacts from mining, connecting the public more directly with the benefits of mining and ensuring that local communities impacted by mining see their share of the benefits.

### Potential approaches

#### Source of funds

Some of the potential sources of revenue for the fund could include:

- Fines
- Fees (e.g., cost to record a claim)
- Royalties

#### Use of funds

Some of the potential uses of funds could include:

- Reclamation of abandoned sites
- Direct payments to Yukoners
- Funding future Yukon economic development and diversification
- Covering the costs of administering the mining regime
- Paying for increased community infrastructure and services needed due to nearby mining



### Questions

10.1 Do you think it's more important for a resource revenue potential fund to mitigate impacts or provide benefits?

10.2 If to mitigate impacts, which ones?

10.3 If to provide benefits, what types of benefits?

10.4 Do you have any other comments?



### Decisions, disagreements, public involvement, and transparency

There are numerous decisions made across the current mining regime, from the approval of licences for exploration and the licensing of placer and quartz mines to the amount of security that should be held for different activities. Decision-making mechanisms and processes seek to support many factors, including transparency and public input, accountability, certainty, impartiality and efficiency.

We're considering different approaches to decision-making in the new regime, including how the public might be involved and how disagreements might be dealt with.

### Interests

#### Decision makers

Determining who makes decisions should consider transparency, accountability, impartiality, and efficiency.

#### Factors and information to be considered when making decisions

The suite of factors to be considered by decision-makers should support transparency, certainty, impartiality, and efficiency.

#### Involvement of Indigenous governments in decision making

Indigenous governments' role in decision-making should respect Aboriginal and treaty rights and reconciliation, while promoting certainty and efficiency.

#### Public involvement in decision-making

The public's role in decision-making should be clear and enhance transparency, public input, and efficiency.

#### Transparency and public access to information and decisions

Public access to information should be certain and, where possible, coordinated and centralized.

#### Dispute resolution

An efficient dispute resolution process should be available in appropriate circumstances.



### **Appeals**

An efficient appeals process should be available in appropriate circumstances.

### **Potential approaches**

Many of the approaches we're considering may be characterized as modifications or improvements to the current regime, while other approaches we're considering would be a more significant change from the current regime. More significant changes would require more detailed analysis to understand the implications and consequences before pursuing such approaches, as well as carefully thought-out transition plans.

### **Decision makers**

Currently, most decisions in the mining regime are made either by government officials or by the responsible minister. We're contemplating whether there is a role for a third-party entity in the new regime for informing or making certain decisions. This entity could have a recommendation function or a decision-making function.

### **Factors and information to be considered when making decisions**

Some legislation sets out factors that should be considered when making a decision. These are often social, economic and environmental in nature. We could use this approach in new minerals legislation. We could also require decision-makers to consider input from independent experts or a technical advisory committee when making certain decisions.

### **Involvement of Indigenous governments in decision making**

Indigenous governments have an interest in developing a new regime that advances reconciliation, respects Aboriginal and treaty rights, furthers implementation of Final Agreements and transboundary land claim agreements, and that is efficient and reduces uncertainty for governments and stakeholders. It is important that a new regime's approach to decision-making reflects the unique, overlapping and shared responsibilities of Indigenous governments and the Yukon government.

Currently, Yukon government makes decisions following consultation with affected Indigenous governments. The scope and content of consultation varies depending upon the decision to be made. These decision points are throughout the mining life cycle, from issuing licences for exploration and production to determining security requirements.

The new regime may have a different set of decision points and these have yet to be determined. In our work, we're considering different ways to involve Indigenous governments



in future decisions, ranging from the existing consultation approach, to legislated joint decision-making, to a requirement for consent in some instances.

### **Public involvement in decision making**

Opportunities for public involvement in the current regime are not frequently utilized, unlike companion processes under the Yukon Environmental and Socio-economic Assessment Act and the Waters Act where public involvement is built in by law. One approach we're considering is to stick with the status quo with minimal public involvement during the regulatory phase, and continuing to rely on the assessment process as the main opportunity for public involvement. Another approach could be to include a public involvement step for certain decisions during the regulatory phase, such as licensing a major mine or approving a closure plan. We could also require public reporting of the reasons for certain decisions, such as the determination of security amounts.

### **Transparency and public access to information and decisions**

Public access to information about mining is also important. We know that sometimes the public and Indigenous governments don't always have easy access to information about who is licensed to be doing what on the land. Currently, information about some licences is available, but it isn't centralized and some information is not available. We're considering different approaches to expanding the scope of information available to the public. One approach is to create a public registry to house information on licences and other matters. Another approach is to require public reporting of certain types of information. It's important to note that other related processes like YESAA assessment and water licencing have their own public information systems and practices.

### **Dispute resolution**

When parties cannot come to agreement to resolve a dispute, a dispute resolution mechanism can provide solutions outside of the court. Currently, disputes between proponents are addressed largely by the mining recorder through processes set out in policy. One example of disputes that could be resolved through a legislated dispute resolution process is disagreements about claim boundaries. A new regime could establish a formal dispute resolution mechanism for certain types of disputes. The mechanism could be internal to Yukon government, as it is now, or external.

### **Appeals**

When a party is dissatisfied with a decision, an appeals process can provide a solution outside of the court system. Under the current regime, some enforcement decisions (e.g., an inspector's



order to complete reclamation) can be appealed. Proponents can also appeal a decision to not renew their claim or a decision that the proponent should not be able to stake new claims due to an alleged offence (e.g., misrepresentation or disturbance of claim posts). Some appeals go to the minister but others are heard by other government officials, and can take a long time to resolve. For proponents, an appeals process is an important tool for challenging decisions that might have significant consequences for them or their operations. On the flip side, a lengthy appeals process could still fail to resolve the issues in a timely way, and long delays could even result in environmental harm.

The new regime may or may not include an appeals process. If it does, it could specify which decisions are appealable, keeping in mind that proponents could still bring issues to the court system regardless of whether there is an appeals process or not. Should there be an appeals process, it could be internal to Yukon government (e.g., a minister or an official) or decisions could be appealable to a third party.

## Background

Here is an overview of the types and number of decisions made across the Yukon each year in the current regime. It's important to note that the number and type of decisions may be different in a new regime.

### **Mineral tenure – new claims**

There are no decision points currently associated with staking a claim. There are about 4,000 claims staked in a given year, though this is highly variable.

### **Mineral tenure – renewing claims**

There are no decision points currently associated with renewing a claim. There are about 100,000 claims renewed each year.

### **Quartz and placer exploration – early/low level**

There are about 400 Class 1 or 2 approvals issued each year

### **Quartz exploration – intermediate**

There are about 15 Class 3 approvals issued each year

### **Quartz exploration – advanced**

There are about 5 Class 4 approvals issued each year





### **Placer mining**

There are about 70 Class 3 or 4 approvals issued each year

### **Quartz (major) mining**

There are very few quartz mine licences issued each year (less than one on average)

### **Plans that are part of other authorizations**

Licences for placer mining, quartz exploration, or quartz mines can include a requirement for reclamation, wildlife management, water management, and access control. There may be up to 15 to 20 plans for a single quartz mine and about 100 plans of all types issued each year.

### **Security – how much and what form**

Security may be required for any mining or exploration project. When security is required, it is reassessed throughout the life of the project. Currently, security is held for 6 quartz mine sites and about 20 placer mining and quartz exploration projects.

### **Compliance, monitoring and enforcement**

There are over 300 inspections of placer operations each year, and about 70 inspections of quartz operations each year.

### **Royalties**

Currently, the rules associated with royalties are set out such that the amount of royalties to be paid are pre-determined.



### Questions

11.1 Do you think the approaches we're considering will help to:

- help resolve disagreements;
- provide adequate opportunities for public involvement; and
- improve transparency ?

Please explain.

11.2 Do you have any thoughts or concerns about the approaches we're considering, or additional things that you think we should consider?

11.3 How important are the following to you:

- having a third party make certain decisions;
- additional public input in the new regime;
- making information on decisions available to the public; and
- a dispute resolution or an appeal process?

Please explain.



### Mining agreements

Mining agreements help ensure that project benefits are shared and risks are mitigated. They can be struck either between proponents and public or Indigenous governments, or between different governments. In jurisdictions like the Northwest Territories, mining agreements are required by law in certain situations.

Yukoners are probably most familiar with one type of mining agreement: impact benefit agreements (IBAs), which are often struck between a mining company and an Indigenous government to provide benefits like resource revenue sharing, Indigenous employment targets and business development opportunities. Currently, IBAs are not required by legislation and their terms are typically confidential.

Other types of agreements, such as agreements between mining companies and governments, ensure community preparedness by helping to provide social services and infrastructure to communities near mines.

We are considering some approaches that would leave agreements up to the parties to a project, and others that would put requirements for certain types of agreements into legislation. We also recognize that different approaches may be required for the quartz and placer sectors.

### Potential approaches

#### Requirements

Agreements could be required for certain types of projects (e.g., over a certain impact or value threshold) and could be linked to specific regulatory requirements (e.g., obtaining a licence). The decision to enter into agreements could also be left to the discretion of the parties, without any legal requirement.

#### Components of mining agreements

Agreements could address the following matters:

- Capacity funding for Indigenous governments;
- Consultation, engagement and communication protocols;
- Economic measures like training, employment and business development;



- Socio-economic measures like programs, services and infrastructure that support community well-being and preparedness; and
- Financial benefits like resource revenue sharing or equity participation.

### Questions

12.1 Do you think the approaches we're considering will help provide additional avenues to address impacts and provide benefits related to projects? Please explain.

12.2 Do you have any thoughts or concerns about the approaches we're considering, or additional things that you think we should consider?

12.3 How important are the following to you:

- making agreements mandatory in some situations;
- publicly disclosing the contents of agreements in some situations; and
- community preparedness for mining projects?

Please explain.

12.4 What components do you think are important to include in mining agreements?



### Socio-economic considerations

Mining and its related activities can have broad social and economic impacts, both positive and negative. It can lead to improved roads and infrastructure and create many well-paying jobs. It can also put pressure on social services and can increase the cost of living by creating additional demands for materials, services and labour. As well, workplace violence and harassment can disproportionately impact Indigenous people, women and gender and sexual minorities. Workers from Yukon communities can find the pressures of working in the mining sector contributes to substance use and increased stress within families.

In recent years, several Yukon-specific initiatives have examined the socio-economic effects of mining. A few of these initiatives include:

- “Never Until Now: Indigenous and racialized women’s experiences working in Yukon and northern British Columbia mine camps” published by the Liard Aboriginal Women’s Society;
- “Changing the Story to Upholding Dignity and Justice: Yukon’s Missing and Murdered Indigenous Women, Girls and Two-spirit+ people Strategy” published by the Yukon Advisory Committee on MMIWG2S+; and
- Yukon Mineral Development Strategy and Recommendations produced by an independent panel.

Through these initiatives and the ongoing work to develop new minerals legislation, we have heard how mining has fundamentally changed the lives of both Indigenous and non-Indigenous people, communities and cultures. Communities and individuals continue to experience mining’s lasting effects today.

We know that the mineral exploration, placer mining and quartz mining sectors are significant positive contributors to the Yukon’s economy, and that these sectors currently represent approximately 14% of Yukon’s economy. In the past, boom and bust cycles associated with quartz mines and exploration have created periods of economic growth and prosperity for segments of Yukon society, followed by periods of economic downturn and slower growth. The periods of economic contraction (the “bust” part of the boom and bust cycle) have historically resulted in closing or abandonment of Yukon mine sites, which has resulted in abrupt downturns in local and regional economies, and significant environmental liabilities falling to government, some which remain today. Compared to quartz mines and exploration, the economic contributions from the placer mining sector are typically more stable over time.



Community-level socio-economic impacts are complex: some are clearly negative or positive, while others result in both positive benefits and negative impacts. For instance, new road infrastructure from mining activity can improve access for land-based activities, but increased access can also negatively affect Indigenous traditional activities and harvesting areas. In addition, socio-economic effects may be experienced differently by different segments of Yukon society. Mining projects often provide benefits to communities through employment, business opportunities and infrastructure improvements (e.g., roads and energy), and the economies of some communities in the Yukon are very strongly linked to mining. At the same time, mining projects can also put pressure on social infrastructure such as health services, emergency response and childcare. The additional demand for materials, services, labour and energy from mining projects can increase the overall cost of living across the Yukon, and may also reduce the availability of key services.

At an individual and family level, we know how impacts experienced in the workplace, such as violence, harassment and abuse, can disproportionately affect Indigenous people, women and gender and sexual minorities. Further, the individual and family-level effects of working in the mining sector (e.g., life at mining camps, fly-in/fly-out schedules and financial stressors) can contribute to substance use and increase stress within families.

Project assessments by the Yukon Environmental and Socio-economic Assessment Board have resulted in a number of recommendations intended to address negative socio-economic impacts like those described above. While this list is not exhaustive, socio-economic considerations raised in project assessments have included: economic dependency on mining; employment, education and training; personal and community health, safety and well being; infrastructure and services; heritage and culture; and traditional land uses and economies.

### **Interests**

We want to create avenues to both understand and address the socio-economic impacts of mining. Our ultimate goal is to ensure that a new regime minimizes negative socio-economic impacts and maximizes socio-economic benefits.



### Potential approaches

The potential approaches below were developed in the context of discussions about new minerals legislation. However, we recognize socio-economic effects can be broad and connected to many interrelated issues, systems and structures. Fully addressing these effects will likely take a coordinated approach and sustained effort by various parties and we know that some of tools and solutions to address them are likely outside the scope of new minerals legislation.

#### Agreements

Agreements involving mining companies and governments (Indigenous and public) could be one way to address socio-economic impacts and increase benefits. These types of agreements could address topics such as employment, training, and education, and could be structured in different ways. For instance, some agreements may involve project proponents, while agreements that address community infrastructure and service needs may be more appropriately made between Indigenous and public governments.

#### Engagement

Projects of a certain scale could be required to engage affected Indigenous groups, communities and stakeholders. This could help identify socio-economic impacts and potential mitigations. Public engagement by government could also be required for some projects.

#### Information requirements

New legislation could require that proponents submit socio-economic information when applying for a permit or license. This could include a record of community and stakeholder engagement conducted by the proponent, and any modifications to projects made to address impacts or interests.

#### Monitoring and reporting

New legislation could require monitoring and reporting of socio-economic effects by proponents, using indicators such as community health, housing availability/affordability, income and employment, education and training, and safety and crime.

#### Consideration during regulatory reviews

New legislation could require regulators to consider the socio-economic effects of a project during regulatory reviews. Although consideration of socio-economic effects is currently required, more specific direction could be provided in a new regime. For example, the regulator



could be required to consider both positive and negative socio-economic effects, or even specific socio-economic matters.

### Background

Currently, the *Placer Mining Act* and *Quartz Mining Act* refer to socio-economic values in the purpose of the legislation as follows:

“to ensure the development and viability of a sustainable, competitive and healthy [placer/quartz] mining industry that operates in a manner that upholds the essential socio-economic and environmental values of the Yukon and respects the aboriginal and treaty rights referred to in section 35 of the *Constitution Act, 1982*.”

The legislation also directs government to review proposed projects to determine if a project will result in any adverse environmental or socio-economic effects, and if so, whether the project as described will appropriately mitigate any adverse effects. If further mitigations are required, the regulator can impose conditions when issuing an authorization.

In addition to the current legislation, the assessment of projects under the *Yukon Environmental and Socio-economic Assessment Act* is important to consider in the context of socio-economic effects. YESAA defines socio-economic effects as “effects on economies, health, culture, traditions, lifestyles and heritage resources.” The assessment process identifies the socio-economic effects of a proposed project, and when adverse socio-economic effects are determined to be significant, YESAB makes recommendations for mitigating and monitoring those effects. Decision bodies must respond to recommendations from the assessment process, although it can be challenging to address or implement some types of socio-economic recommendations under the authority provided by the current minerals legislation.





### Questions

13.1 Do you think the approaches we're considering will help provide additional avenues to address impacts and provide benefits related to projects? Please explain.

13.2 Do you have any thoughts or concerns about the approaches we're considering, or additional things that you think we should consider?

13.3 How important are the following to you:

- addressing socio-economic impacts in new minerals legislation; and
- monitoring socio-economic impacts over the life of a project?

Please explain.

13.4 What socio-economic impacts do you think the legislation should speak to or that government should be required to consider when reviewing a project?

