

A REVIEW AND ANALYSIS OF CANADIAN INDIGENOUS MINING POLICY

by

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Abstract

In recent years, certain Indigenous governments and organizations have established their own mining codes and policies to address mineral development on their territory. Aside from the policies themselves, there is a lack of research exploring the emergence of these policies, the contents and implications of mineral resource development in Canada. The researcher was engaged by the Tłıchq Government to bridge this knowledge gap in support of the development of the Tłıchq Mineral Strategy. Through this process the Tłıchq First Nation became the case study for this research.

In addition to the Tłıchq First Nation case study, the research reviewed twelve additional Indigenous mining policies. The goal of this evaluation was to: explore the differences between adopted policy approaches and goals; understand how the policy approach taken relates to the nature of the legislation to which it connects; and determine whether there are enabling frameworks that drive or launch the creation of an Indigenous mining policy.

The research revealed that there is no clear standard of practice established for the creation of an Indigenous mining policy; however, there are three primary drivers for policy creation: specific mining events, assertion of rights and land claims agreements. These drivers, along with the relationship established between the Indigenous government or organization and the Crown, influence the structure and contents of the policy. The outcomes of this research have contributed to the development of the Tłıchq Mineral Strategy and can be used to inform other Indigenous governments and organizations looking to develop their own mining policy. Recommendations for future work include understanding the response of industry to these policies and how Indigenous mining policies integrate with provincial, territorial or federal mining policy.

Preface

The dissertation is the original, unpublished work of the author, S. Zimmerling. The research questions, along with the methodology, analysis and interpretations are the original work of the author.

The qualitative data methods used for this research were approved by the UBC Research Ethics Board (identification number: H15-01261) and the Tłchq Government (Appendix A).

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List of Abbreviations

AIP	Agreement in Principle
BAPE	Bureau d’audiences publiques sur l’environnement
CMEB	Cree Mineral Exploration Board
FPIC	Free Prior and Informed Consent
GNWT	Government of the Northwest Territories
INAC	Indigenous and Northern Affairs Canada
JBNQA	James Bay and Northern Quebec Agreement
LUPWG	Land Use Planning Working Group
NLCA	Nunavut Land Claims Agreement
NRTA	Natural Resource Transfer Acts
NStQ	Northern Secwepemc te Qelmucw
NTI	Nunavut Tunngavik Incorporated
NWT	Northwest Territories
RIA	Regional Inuit Association
TRTFN	Taku River Tlingit First Nation

Notes:

The term ‘mineral strategy’, ‘mineral policy’ and ‘mining policy’ are used interchangeably throughout this research to reflect the same type of document. Indigenous governments and organizations have used variations of these terms to name their formal policies. While different in terminology, they represent the same type of document.

The term ‘Indigenous government or organization’ is used to describe the First Nation, Inuit or Métis group, organization, government or representative body responsible for the development of the ‘mineral strategy’, ‘mineral policy’ or ‘mining policy’.

The term ‘Indigenous’, ‘Aboriginal’ and ‘First Nation’ is used throughout this research. The researcher is aware that using these terms risks portraying Canada’s Indigenous peoples as a

homogenous group, which is not the case. The researcher recognizes and acknowledges the diversity of the Métis, Inuit and First Nation groups of Canada and this term is employed only in reflection of its use in legal documents and government legislation in the Canadian context.

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Chapter 1: Introduction

1.1 Research Context

The Northwest Territories' (NWT) economy is currently driven by the mineral exploration and development industry, with diamond mining representing about 17% of total Gross Domestic Product (GDP) (Government of the Northwest Territories 2013). There are three major diamond mines in the territory: Ekati (Dominion Diamond); Diavik (40% Dominion Diamond and 60% Rio Tinto) and Gahcho Kue (51% De Beers and 49% Mountain Province Diamonds).

Additionally the prospective development of Fortune Metals' NICO mine will increase mining activity in the territory supplying gold, cobalt, bismuth and copper. These mines contribute to employment, direct and indirect business opportunities and millions of dollars of revenue to both the Government of NWT and Aboriginal groups. Many individuals in the NWT have also tailored their skills to work in the mineral development industry. It is expected that these diamond mines will continue to operate, at least in part, for the next 10-15 years. With the current commodity prices remaining low, many of the future projects in the NWT are far from obtaining full financing. The long-term future of mining in the NWT has also slowed due to a lack of investment in mineral exploration. While the prospective Fortune Metals' NICO mine offers some long term economic potential, additional exploration and subsequent mineral development will be necessary to ensure long-term economic stability.

The Government of NWT has developed Mineral Development Strategy. The intent of the document is to address weaknesses in the territories investment climate. Over the years exploration has diminished in the territory as a result of conflicting regulations and increased investment complications. The Mineral Development Strategy is intended to reduce complexities and restore an accessible positive investment climate. The territory has also committed to ensuring that resource development continues to benefit the residents of NWT, while remaining sustainable and respecting the right and traditions of NWT residents (Government of the Northwest Territories, NWT & Nunavut Chamber of Mines 2014). With this document, NWT hopes to increase exploration in the near future leading to mining activity in the 10-15 year time

frame. To meet the economic output of the current diamond mines, significant mineral activity will be required in the coming years.

The Tłıchq First Nation are a group of Dene or Northern Athapaskans who reside in an area of approximately 295,000 square kilometers between Great Slave Lake and Great Bear Lake in the Northwest Territories. The Tłıchq First Nation has had strong ties to mineral resources and mining throughout their history. While the fur trade initiated settler relationships with the Tłıchq First Nation, the possibility of mineral resources in Canada's north was a driving factor for settler movement into the Northwest Territories. The diamond rush of the 1990s resulted in the construction of four mines, changing the economic landscape in the Northwest Territories and of the Tłıchq First Nation.

The Tłıchq signed their Land Claims Agreement in 2005 with the federal government, which resulted in the withdrawal of approximately 39,000 square kilometers of land by the Government of Canada, including subsurface resource rights. With the signing of the Agreement, the *Indian Act* no longer applies to the Tłıchq First Nation, which has changed the nature of their relationship with the federal government. The new legislation grants the Tłıchq a new found autonomy in decision-making power and new responsibilities. Furthermore, it granted the Tłıchq the power to manage their affairs in a way that respects modern democratic principles, while honouring ancient traditions.

Following the signing of the Agreement, a moratorium was placed on Tłıchq lands in order to provide an opportunity to draft a Land Use Plan. During this time, there was a general moratorium placed on development on Tłıchq lands to allow for the planning process and creation of the plan. One critical difference between the Tłıchq Land Use Plan and other land use plans in the Northwest Territories is that the lands subject to the Plan have one holder – the Tłıchq Government. Authority for the approval of the Tłıchq Land Use Plan rests solely with the Tłıchq.

1.2 Purpose and Objective

The Tłıchq Government has also made commitments to the development of an independent mineral strategy for Tłıchq lands. The Tłıchq Government manages approximately 39,000 km² of land, some of which is expected to contain rich mineral deposits as described in the Tłıchq Land Use Plan (Tłıchq Government 2013). The objectives of the Tłıchq Mineral Strategy will align with the directives in the Tłıchq Land Use Plan and other Tłıchq First Nation priorities.

This project is a joint collaborative effort between the University of British Columbia's Norman B. Keevil Institute of Mining and the Kwe Beh Working Group. The role of the Kwe Beh is to implement existing Impact Benefit Agreements; manage relationships with exploration companies in the region; mitigate issues as they arise with mining companies through operations and; manage environmental assessment processes as they occur in the region (Gibson, Zezulka and Galbraith 2015). The research will focus on reviewing and evaluating elements of existing mining policy frameworks to determine commonalities and unique principles.

As will be discussed in this research, the Tłıchq Mineral Strategy will be one of many Indigenous mining policies that have emerged over the past 20 years. While these documents have materialized for various reasons, as will be explored in this research, the creation of a mining policies can help build alignment within Indigenous governments and organizations to more effectively address any proposed mining activity on their territory. The Fair Mining Collaborative, a charitable foundation providing strategic guidance to Indigenous organizations, has released *Fair Mining Practices: A New Mining Code for BC*, which includes a chapter dedicated to Indigenous resource policy (The Fair Mining Collaborative 2015). This is the only literature available that addresses the emergence of Indigenous resource policy. The gap in existing literature presents an opportunity to not only inform the creation of the Tłıchq Mineral Strategy, but more broadly explore the significance of Indigenous mining policy in Canada.

1.3 Problem Statement

In recent years, there has been an emergence of research that demonstrates various ways in which Indigenous peoples have become significant actors in Canadian and international politics.

This research attempts to explore this emergence by looking specifically at the emergence of Canadian Indigenous mining policy. As such, the research will address the following question:

- What are the range of topics, approaches and goals of Indigenous policy? To answer this question, an evaluation of existing Indigenous mining policies was undertaken to explore and describe the differences between adopted policy approaches and goals.
- How does the policy approach taken by each Indigenous government or organization relate to the nature of the legislation to which it connects?
- Lastly, are there enabling frameworks that drive or launch the creation of an Indigenous mining policy?

As discussed, this research was undertaken in support of the development of the Tłı̨chǫ Mineral Strategy. As such, there is a case study aspect to the research that will help explore these three questions in greater detail and specifically on how they relate to the Tłı̨chǫ context. This research aims to draw upon the Tłı̨chǫ's history with mineral development on their territory and current governance structures in order to understand how their approach and strategy differs from other Nations.

1.4 Research Outline

This thesis is organized into eight chapters as follows:

Chapter 1: Introduction

- This chapter provides an introduction to the context under which the research questions were structured.

Chapter 2: Literature Review and Research Methodology

- Explores the history of mineral policy in Canada and the relationship that has evolved between the Crown and Indigenous peoples. This chapter also defines the research methodology used to identify and collect data.

Chapter 3: Data Analysis

- Analyzes the emerging themes from the data.

Chapter 4: Discussion

- Relates results from the data analysis to outcomes of the literature review.

Chapter 5: Conclusions and Recommendations for Future Work

- Formulates key takeaways from the research. Makes recommendations for future research questions.

Chapter 2: Literature Review and Research Methodology

2.1 Introduction

This literature review examines the evolving relationship between Indigenous peoples of Canada and the federal government with regards to mineral resources. The literature review demonstrates some of the actions taken by Indigenous peoples to reassert power and authority of their traditional territory. In some instances, to ensure a clear approach to mining on Indigenous territory, Indigenous governments or organizations have established their own mining codes and policies. The literature review reveals that there is limited information available with regards to the emergence of Indigenous mining policy and the contents of these policies. While these policies will be the focus of this research, understanding the historical context and relationships between Aboriginal groups and the Crown provides a foundation of knowledge to support this research.

2.2 Mineral Resources Historically in Canada

To begin it is important to provide an overview of mineral resource governance in Canada. While the Canadian Government asserts governance over the territories, the provinces enjoy significantly more autonomy over their mineral resources. Through the Natural Resource Transfer Acts (NRTA), a series of Acts passed by the federal government, authority over Crown lands and natural resources were transferred from the federal government to the provincial governments. The Territories in Canada are in the process of being devolved to Territorial governments, which enables the transfer of province-like responsibilities to the Territories. The Yukon became the first territory to conclude a devolution agreement in April 2003 (Government of Canada 2015) followed by the Northwest Territories who finalized the devolution of the territory in April 2014 (Aboriginal Affairs and Northern Development 2014). Although progress has been made towards the devolution negotiations process and toward a final devolution agreement, Nunavut remains the only outstanding territory under the authority of the Federal Department of Indigenous and Northern Affairs Canada (INAC) with regards to mineral resources.

Each of the Canadian provinces, along with Yukon and the Northwest Territories, have their own acts, laws and policies which apply to the mining sector in their respective region. The Provincial Government and Territorial Governments in Yukon and Northwest Territories (or Crown), in most cases, have ownership over the majority of subsurface resources within their region. In Nunavut, the Federal Government (also known as the Crown) holds ownership over subsurface rights on Crown lands. In order to gain access to minerals, miners must engage in ‘staking’ subsurface mineral rights in accordance with the statutes set out by the Crown. The Crown can be either the provincial, territorial or federal government depending on the region in which staking is taking place.

Despite the range of provincial and territorial mineral policies, scholars identify that there is a high degree of policy convergence in Canada as mining policy across the country is based on ‘free entry’. The concept of free-entry originates from British common law. Also known as the ‘free miner’ principle, this concept appeared in mining legislation that pre-dated Confederation and creation of modern Canada in 1867 (Blue 1984). Free entry structures the way in which the Crown allocates mineral rights. With free entry, miners are allowed to enter Crown lands, without the need to request permission, with the purpose of locating and staking mineral claims as described above. Through these activities, in line with the Crown’s structure, mineral rights are transferred from the Crown to the miner or claim-holder. Priority is a key element of this approach, with the first miner to make a claim being the one who is legally entitled to the mineral located in their claim area. This approach also entitles the miner or claim holder access to Crown lands, unless access is prohibited by either government statute or regulation, such as the case with a Provincial or National Park. This is important to note as miners did not need to seek permission before entering into prospecting or exploration-related activities on public lands.

The principle of ‘free entry’ prioritizes mineral interest over Indigenous claims to the territory, by allocating mineral rights to the claims holder without consideration for Aboriginal rights. The ‘free entry’ system authorizes prospectors to go out on territory where Indigenous peoples may have claimed title or rights (or established rights), to carry-out mineral exploration activity.

Aboriginal rights and title will be described in more detail in the next section along with the implications of the duty to consult and accommodate on the notion of ‘free-entry’.

2.3 Aboriginal Rights and Title

‘Aboriginal rights are collective rights which flow from Aboriginal peoples’ continued use and occupation of certain areas. They are inherent rights which Aboriginal peoples have practiced and enjoyed since before European contact’ (UBC First Nations and Indigenous Studies 2009). There is no one overarching definition of Aboriginal rights as each Nation has historically operated as a distinct society. As a result, the interpretation of rights may vary from Nation to Nation, however, in general they include ‘rights to the land, rights to subsistence resources and activities, the right to self-determination and self-government and the right practice culture and customs including language religion’ (UBC First Nations and Indigenous Studies 2009). These rights are not granted by external sources and are empowered by Indigenous peoples’ occupation of their territory, as well as, social structure and political and legal frameworks.

In 1763, the Royal Proclamation guided the negotiation of treaties between Indigenous peoples and the Crown. The Royal Proclamation acknowledged that British settlers would need to recognize existing Aboriginal rights and title before further settlement could occur. As a result, treaty negotiations began to enable the transfer of land from Indigenous peoples to the Crown in exchange for the award of certain rights. The BC Treaty Commission defines treaties as ‘constitutionally protected government-to-government agreements creating long-term, mutually binding commitments’ (BC Treaty Commission 2009). The treaties signed between 1791 and 1923 are typically referred to as historic treaties. Indigenous peoples of British Columbia never participated in the historic treaty making process. When British Columbia joined the Confederation in 1871, the province did not recognize Aboriginal title therefore there was no need for the Crown to negotiate treaties (Government of British Columbia 2016).

In 1982, the Canadian Constitution was amended to include, among other measures, the introduction of the Canadian Charter of Rights and Freedoms - a process for all future constitutional amendments, guarantees a fiscal balance among provinces, and a provision

recognizing Aboriginal and treaty rights (*Constitutional Act* 1982, Section 35). Prior to 1982, there were also no litigation-based options for Aboriginal people to enforce their treaty agreements or protect their Aboriginal rights. As a result, Aboriginal people's rights were excluded from many areas of public policy including the mineral resources sector.

Between 1982 and 2005 the Supreme Court of Canada defined Section 35 through a series of rulings. The Court heard a number of Aboriginal and treaty rights cases, totaling 26 in all (Carlson 2014). During this period, the Supreme Court of Canada rulings included: Aboriginal rights (including Aboriginal title) existed resulting from *Sparrow* (1990) and *Delgamuukw* (1997); Aboriginal claims to self-governance via *Pamajewon* (1996), *Delgamuukw* (1997), *Marshall [No. 2]* (1999) and *Campbell* (2000); Aboriginal rights could not be infringed upon by governments unless infringement was justified by the Court through *Van der Peet* (1996) and; duty for fair and meaningful consultation in a set of cases *Haida* (2004), *Taku River* (2004), *Mikisew Cree* (2005) and *Rio Tinto* (2010). The Yukon Court of Appeal in *Ross River Dena Council v. Government of Yukon* (Ross River Dena Council v. Government of Yukon, 2012 YKCA 14 (CanLII) 2012) also confirmed that the Crown's duty to consult applied to 'free entry' mining regimes.

As dictated in *Haida* (2004):

‘consultation and accommodation before final claims resolution [...] is an essential corollary to the honourable process of reconciliation that S. 35 demands. It preserves the Aboriginal interest pending claims resolution and fosters a relationship between the parties that makes possible negotiations, the preferred process for achieving ultimate reconciliation’ (*Haida Nation v. British Columbia* 2004).

As such, consultation should be designed to achieve this objective and this cannot be realized if the Crown makes resource decisions without consideration for Aboriginal rights. To truly reconcile within Canada, the First Nation Leadership Council has indicated that the scope and

nature of consultation and accommodation must consider Indigenous law and the Indigenous values they embody (First Nation Leadership Council 2013). Indigenous law is a term used to define the legal systems utilized by Indigenous peoples. Indigenous law has existed for centuries and pre-dates contact with European settlers. Indigenous peoples have relied on these laws to navigate their relationship with the territory and with each other. Indigenous law often draws from natural law and observations from the physical world. Indigenous legal systems may draw upon environmental observations to form legal principles and guide relationships (Borrows 2012). Legal traditions are often expressed through oral tradition to maintain flexibility and relevance in a changing environment while ensuring weaving of the past and the present (Borrows 2012). Oral legal traditions are reinforced by cultural practices and complex customs including the importance of place and geographic space. The physical environment is intricately tied to Indigenous peoples' way of life and as such reflected through their legal systems. As described by Leanne Simpson (2008) these processes 'were grounded in the worldviews, language, knowledge systems, and political cultures of the nations involved, and they were governed by the common Indigenous ethics of justice, peace, respect, reciprocity, and accountability'. Through these laws, Indigenous peoples carried a responsibility to the land, their families, their clans, their nation and neighbouring nations (Simpson 2008).

In order to fulfill the essence of duty to consult and accommodate the process must be influenced as much by Indigenous law as it is by the Crown or common law (First Nation Leadership Council 2013). Common law includes the notion of private property, which is not compatible with the Indigenous traditions that are rooted in a reciprocal relationship to the land (UBC First Nations and Indigenous Studies 2009). Elements of common law have potential to be harmonized with the Indigenous processes used to ensure responsibility and reciprocal relationship to the land, the people and the environment.

While inconsistent across Canada, some jurisdictions recognize Indigenous legal systems in legislation. The Northwest Territories represents one such jurisdiction within Canada with their 'collaborating consent' process involving all governments – Indigenous and non-Indigenous – to achieve consent through collaborative approaches tailored to the issue at hand (Ishkonigan Inc.,

The Phare Law Corporation, North Raven 2015). There are at least five streams of collaborative approach: development of legislation; development of policies and plans; negotiations regarding ownership and use of lands and waters; sector specific agreements for resource management and; revenue sharing agreements. These processes offer a model for collaboration and recognition of Indigenous legal systems.

The Supreme Court of Canada continues to rule on the question of aboriginal rights and title to continuously contribute to the definition of these terms. Aboriginal title is the inherent Aboriginal rights to land or a territory. The Canadian legal system defines title as ‘*sui generis*, or collective right to the use of and jurisdiction over a group’s ancestral territories’ (UBC First Nations and Indigenous Studies 2009). Since historical treaties were never signed in British Columbia, Indigenous peoples argue that Aboriginal title was never formally extinguished, and legally they hold ownership and jurisdiction over their territory (UBC First Nations and Indigenous Studies 2009). The court case of *Calder* (1973) was the first case to acknowledge the continued existence of aboriginal title. The results of this case indicated that the determining the continued existence of title would be the responsibility of the Crown, while the burden of proof to prove title exists rests on the First Nation (UBC First Nations and Indigenous Studies 2009).

In June 2014, the Supreme Court of Canada’s judgement in the Tsilhqot’in Nation’s appeal granted declaration of Aboriginal title for the first time in Canada in *Tsilhqot’in Nation v. British Columbia* (2014). The ruling highlighted that by not obtaining consent prior to the establishment of Aboriginal title, a resource development may be cancelled, regardless of its Crown approval if title is established and the project infringes on this title. The Boreal Leadership Council suggests that ‘consent is the mechanism that will offer the most certainty for proponents who wish to develop a project on Aboriginal title lands’ (Boreal Leadership Council 2015). Where Aboriginal title has not been established, there is lack of clear regulation for ensuring adequate consultation and consent. The Tsilhqot’in ruling has provided a process for these First Nations to demonstrate Aboriginal title to their traditional territory. Any legislation or policies that unjustifiably infringe on Aboriginal title can be dismissed in Court. The rulings cannot be ignored by Government or

third parties and in the case of disagreement between government and Aboriginal peoples; there is reason for Aboriginal people to appeal to the courts.

Internationally, the United Nations Declaration of the Rights of Indigenous Peoples has formalized this notion with respect to Indigenous rights into Free and Prior Informed Consent (FPIC) (United Nations 2008). FPIC is the right for Indigenous peoples to be adequately consulted and to decide whether development can go forward on their lands and resources. Under FPIC, Indigenous peoples must be able to give consent without manipulation or coercion and prior to approval by governments. Decisions must also be informed and Indigenous peoples must receive adequate information to fully understand both the positive and negative impacts of a project. The decision making process, including consultation, should be transparent and communities must be allowed to utilize their practices and traditions (Boreal Leadership Council 2015).

The mining industry and the provincial and federal governments are hesitant to accept FPIC. The reluctance lies in the interpretation of “consent” and the ability to veto a project (Sosa 2011). Although Canada has endorsed the United Nations Declaration on the Right of Indigenous Peoples, there is no clear process for ensuring that FPIC is implemented. Without regulatory requirements, there is a tendency for governments to engage in more vague consultation and accommodation practices. Moreover, there is no means to ensure Indigenous communities have the right to deny development on their lands. There remains a gap in consistent legal provisions that recognize Indigenous rights in mining legislation. The Fraser Institute has done a comparative analysis of provincial duty-to-consult provisions. The results are displayed in the following graphic (Bains and Ishkanian 2016).

Feature	BC	AB	SK	MB	ON	QC	NB	NS	PE	NL	Canada
Aboriginal participation required		●	●		●		●	●	●	●	●
Crown takes responsibility for the duty to consult	●	●	●	●	●	●	●	●	●	●	●
Clear offloading procedures for proponents	●	●	●		●	●	●	●	●	●	●
Draft policy	●			●	●	●					
Final policy		●	●				●	●	●	●	●
Time frame for consultation process		●	●								
Coordination with other levels of government (municipal/federal/provincial)	●	●	●	●	●	●	●	●	●	●	●
Legislation around the duty to consult policy											

Figure 2.1 Discrepancies among duty-to-consult provisions

Many of the provinces guidelines still remain in ‘Draft’ phase and others (Quebec, British Columbia and Manitoba) do not explicitly state that Indigenous peoples have a responsibility to participate. Also as noted in the graphic above, none of the jurisdictions have created a legislative regime to ensure the protection of these rights.

Indigenous land use planning can be an effective way for Indigenous peoples to exercise their Aboriginal title and dictate the long-term vision for their traditional territory. The Crown’s duty to accommodate Indigenous peoples when resource decisions are made creates an opportunity to leverage and enforce Indigenous land use plans. Indigenous land use plans are often not compatible with provincial or territorial policies as many of the current legislation is still designed to enable public access to land and ‘free entry’ (Donovan & Company 2008). To ensure legislative support and respect for the land use plan, the Indigenous government or First Nation must work with their respective jurisdiction, either provincial, territorial or federal, to implement

the plan using legislative ‘tools’. Land claims agreements are one such tool that enables implementation of an Indigenous land use plan without discretion from the Crown and provide Indigenous peoples with authority over their land. Modern treaties and Land Claims Agreements will be discussed in more detail in the following section. Beyond these circumstances, many Indigenous peoples are advancing FPIC in a variety of ways including: procedural guidelines, Band Council Resolutions, Consultation Protocols, policy and law (Boreal Leadership Council 2015). These initiatives aim to provide clarity on the consultation process specific to each territory. The Boreal Leadership Council has indicated that this ‘increased certainty and transparency is fundamental in generating and supporting consent, and effective consultation, participation, and information management for developments at the community-specific level’ (Boreal Leadership Council 2015).

2.4 Modern Treaties

Comprehensive land claims, also known as modern treaties, generally deal with areas of land within Canada where Aboriginal rights were not addressed through historical treaties or through other legal means (Indigenous and Northern Affairs Canada 2015). Modern treaties are intended to further define and recognize Aboriginal rights and provide certainty about the ownership, use and management of land and resources to all signatories of the agreement. The Tłıchǫ Agreement is an example of a modern treaty or Land Claims Agreement.

Treaties were never signed in British Columbia resulting in no formal alignment between common law and Indigenous law. Additionally, in instances where no agreement has been reached with the Crown, there is no formal recognition of rights. The Nisga’a Treaty was the first modern day treaty negotiated in British Columbia. The negotiations resulted in the signing of the Nisga’a Treaty, which was implemented in 2000 (Nisga’a Lisims Government 2016). In 1993, the British Columbia government created a task force to develop a treaty-making process in the province. Treaties in British Columbia are not negotiated in-line with the six stage process of the British Columbia Treaty Commission (Indigenous and Northern Affairs Canada 2010).

2.5 Emergence of Indigenous Mining Policy

To advance a more robust engagement with the Crown, the First Nation Leadership Council suggests that First Nations must systematically develop and implement their own policies as a reflection of inherent title and rights and ground these policies in Indigenous laws, worldviews and values (First Nation Leadership Council 2013).

To ensure a clear approach to mining on Indigenous territory, various Indigenous governments and organizations have established their own mining codes and policies, rooted in Indigenous culture and values. The Fair Mining Collaborative has released *Fair Mining Practices: A New Mining Code for BC*, which includes a chapter dedicated to Indigenous resource policy. This is the only documentation available that addresses the emergence of Indigenous resource policy. The Fair Mining Collaborative describes the emergence of Indigenous resource policy as a means to ‘help assert more control over how resources are managed on their lands’ (The Fair Mining Collaborative 2015). Through this type of document, Indigenous governments or organizations are often better equipped to address any proposed mining activity on their territory. These policies can also assist in more clearly communicating to both mining proponents and government the Indigenous peoples’ expectations. This can include defining an appropriate consultation process and the terms and conditions required for exploration and permitting. In articulating the Indigenous government or organization’s goals, values and decision-making processes, it is anticipated that the mining proponent and government will have a more clear approach to operating on the territory. The Fair Mining Collaborative suggests that ‘these policies can serve to promote shared-decision making by First Nations on the management and development of land and resources within their traditional territories’ (The Fair Mining Collaborative 2015) .

2.5.1 Defining Public Policy

Public policy is a broad, multi-disciplinary and all-encompassing field that is difficult to define, often taking on many forms with varying perspectives and goals. Scholars have attempted to define policy broadly with statements such as policy is ‘whatever governments choose to do or not to do’ (Dye 1976); ‘the relationship of governmental unit to its environment’ (Eyestone

1971); or ‘the actions, objectives, and pronouncements of governments on particular matters, the steps they take (or fail to take) to implement them, and the explanations they give for what happens (or does not happen)’ (Wilson 2006). The development of public policy is also a process and a reflection of the ‘public’. More specifically, ‘public policy includes the process of making choices, the actions associated with operationalizing these choices, and the output and outcomes produced by those actions’ (Smith and Larimer 2013). What makes policy public is that the choices or actions backed by the state, who in a democratic society acts on behalf of the public.

The focus of this research is related to how policy fits within governance structures and the study of policy process - the how and why of policymaking. The study of policy process looks at why governments focus on certain issues and not others, why policy changes or remains stable over time, how groups affect policy, and what generates policy (Smith and Larimer 2013). Policy process is driven by political power and institutional frameworks, resulting in influence over policymaking. Public policy objectives are difficult to correctly identify as problems arise in determining whose objectives should form a basis for the policy. There are conflicting goals for any one initiative given that different individuals, groups or institutions are involved in the policies or, have interests in their outcomes (C. O’Faircheallaigh 2002). Some cases have shown government agencies involved in policy making exclude groups that have been directly affected by the policy initiative. This approach is used to avoid particular interest groups that may threaten the policy goals or outcomes (C. O’Faircheallaigh 2002). This raises the larger issue of power dynamics and the idea that all parties will want to share power within the decision making process.

Indigenous-designed mining policy can play role in overall reform strategy within mineral development in Canada and more broadly impact the relationship between Indigenous peoples and the Crown. This research will explore in more detail how Indigenous governments can use mining policy as an instrument to assert rights over their traditional territory.

2.6 Research Scope

The Tłıchǫ Government has made commitments to the development of an independent mineral strategy, or mining policy, for Tłıchǫ lands. The Tłıchǫ Government manages approximately 39,000 square kilometers of land, some of which is expected to contain rich mineral deposits (Tlıcho Government 2013). The following map displays the minerals showing on Tłıchǫ territory (Tlıcho Government 2013).

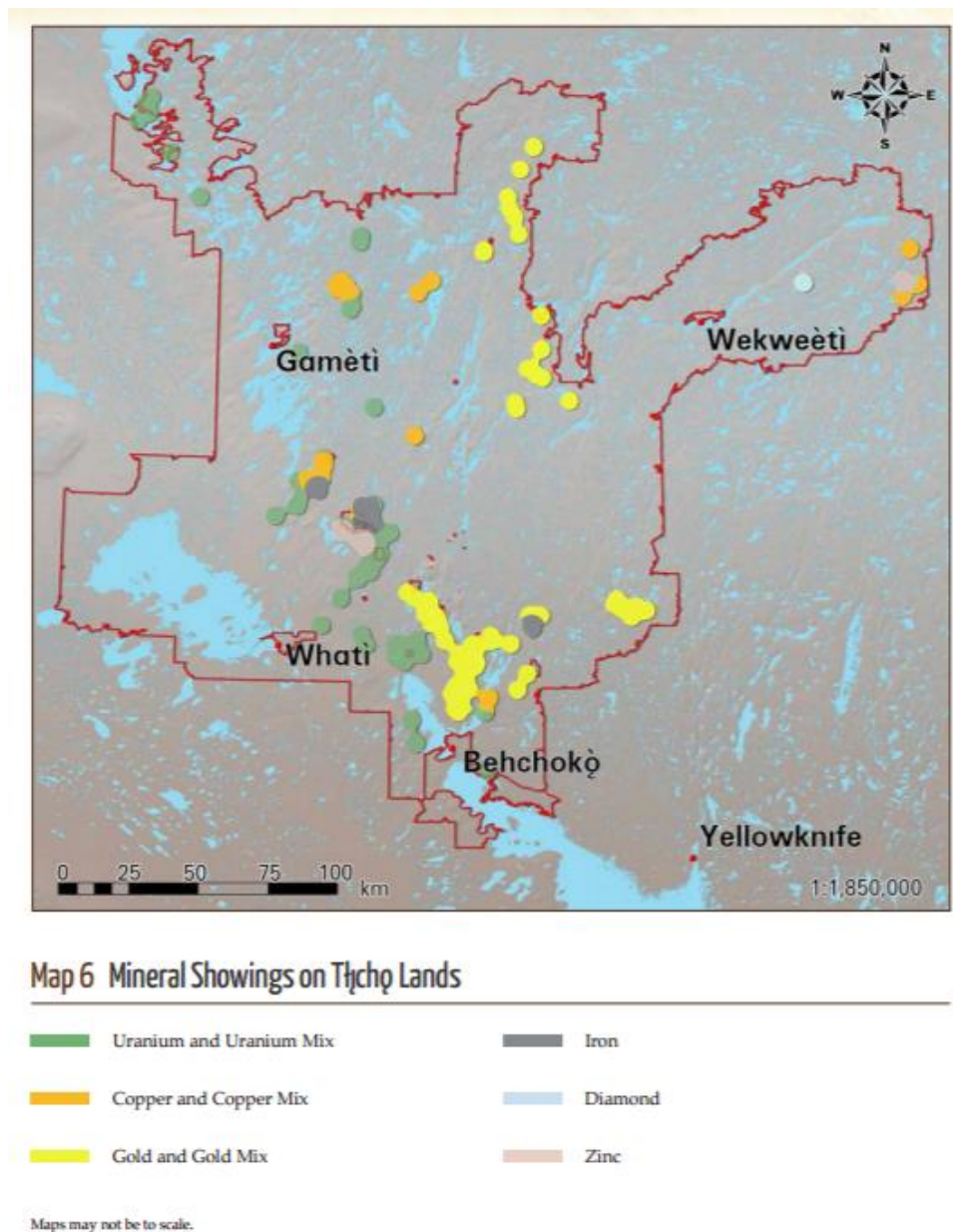


Figure 2.2 Mineral showing on Tłıchǫ lands

This section is intended to describe how the research topic emerged and lay out the approach used by the researcher to fulfill the requests of the Tł̓ch̓q Government by way of the Kwe Beh Working Group.

This research is based predominantly on secondary data as the existing Indigenous mining policies are available publically. Based on the literature review, it was determined that an analysis of this nature has not been undertaken. Although the majority of the research is based on secondary data, the analysis and outcomes of this research are unique.

2.7 Research Approach

2.7.1 Qualitative Research

Qualitative research utilizes multiple methods to collect contextually situated data and to seek an understanding of human experience or relationships within a culture (Silverman 1999). Through a qualitative approach, the researcher can identify the underlying themes that emerge from information provided through various forms of data collection. Qualitative research allows the researcher to go beyond simply the raw data and begin to identify the *how* and the *why* of situation (Patton 2002). The ‘why’ question addressed in this thesis is to understand and elaborate why Indigenous mining policy in the Canadian context has emerged and specifically what it aims to achieve. The ‘how’ question addressed in this study to offer an insight into how the Tł̓ch̓q Mineral Strategy will differ from other Indigenous mining policies. In both situations the researcher will need to draw upon both literature review and experiences with the Tł̓ch̓q Government.

While the researcher has not engaged in interviews or surveys to formally support her research, she was privileged to participate in multiple Kwe Beh Working Group meetings throughout 2015. On both occasions the researcher was invited by the Tł̓ch̓q Government to participate in the Kwe Beh Sessions. Knowledge can be shared when experiences are shared. It is through these shared experiences the researcher was able to acquire a substantial amount of knowledge specific to the Tł̓ch̓q Nation and its territory. The researcher was also an invited observer in

workshops related to mining policy development. Through these sessions, the researcher was exposed to primary data from various Canadian Aboriginal groups with existing mining policies.

2.7.2 Participant Observation

These experiences provided the opportunity to engage in participant observation. Participant observation is a research methodology that allows the researcher to understand, from the perspective of the participants, a specific process, relationships and organization among people and events, patterns and the socio-cultural context in which these elements unfold (Jorgensen 1989). The Kwe Beh Working Group sessions are not public and therefore not accessible to all. In observing the structure, process and discussion that took place during these meetings, the researcher was able to understand the systems put in place by the Tł̓chq̓ Government for managing mineral resources on their territory. In this case the observation population is relatively small, with the focus being the Kwe Beh Working Group made up of approximately 10-15 members. As described in Jorgensen's *Participant Observation*, one of the requirements for successful participant observation is that the 'phenomenon is sufficiently limited in size and location to be studied as a case' (Jorgensen 1989).

2.7.3 Case Study

A case study allows the researcher to approach and examine a particular situation from multiple dimensions. This type of research approach is a 'qualitative approach' that explores a bounded system over time, through detailed data collection (Creswell 2013). An instrumental case study (Creswell 2013, Stake 1995) is used in this research, where the researcher will focus on an issue or concern, and then will select a case study to illustrate this issue. A case study approach is also useful in time sensitive studies where the case takes a narrow look at a purposefully chosen study site (Creswell 2013).

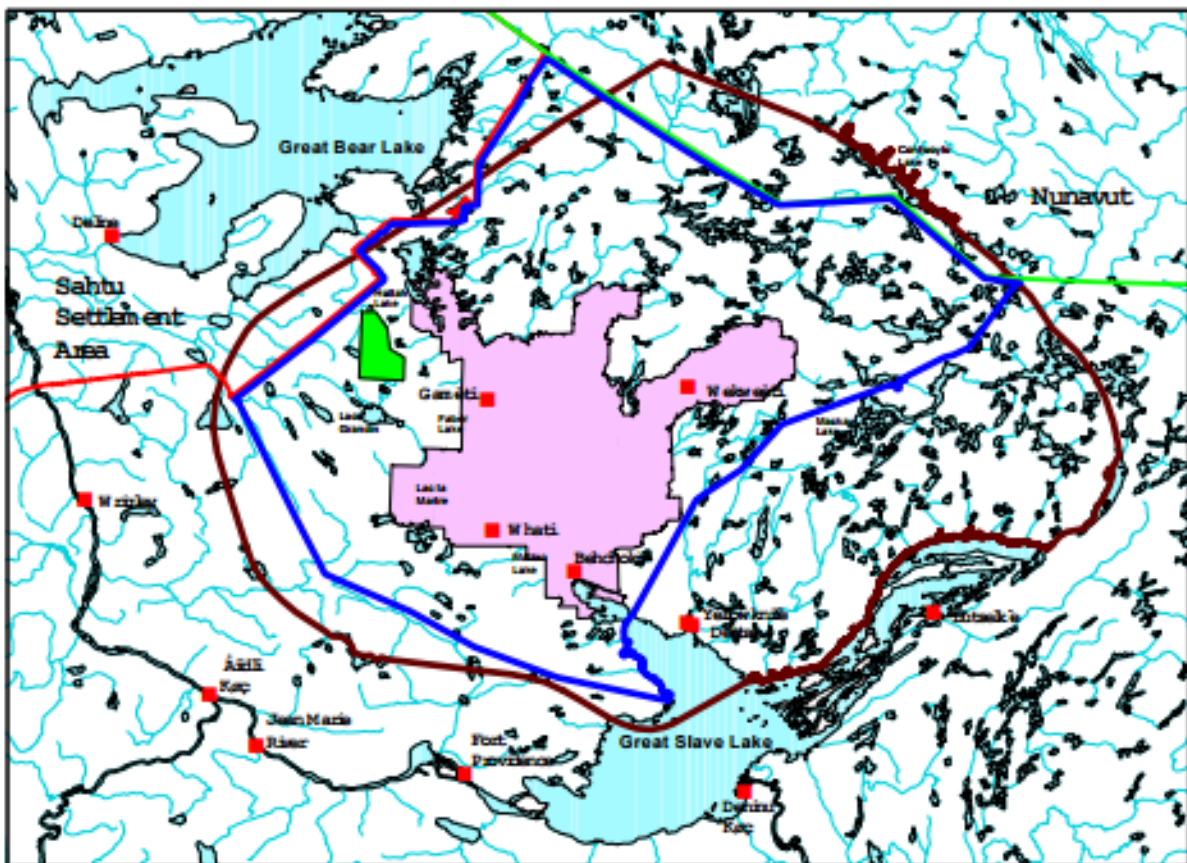
2.8 Tł̓chq̓ First Nation

The case study selection is bounded by the Tł̓chq̓ Nation and their territory. This research has focused on understanding their history and experiences with mineral resources to inform their approach in developing a mineral resource strategy. The researcher was engaged by the Tł̓chq̓

Government to assist with the development of the mineral strategy and through this process the Tłı̨chǫ First Nation became the focus of the researcher's case study.

The Tłıchǫ First Nation are a group of Dene or Northern Athapaskans who reside in an area of approximately 295,000 square kilometers between Great Slave Lake and Great Bear Lake in the Northwest Territories. The Tłıchǫ leader Chief Monfwi, appointed by the Dogrib leadership to represent the Nation at the Treaty 11 negotiations, defined this area as the Mōwhì Gogha Dè Nîftâèè as the traditional area of the Tłıchǫ (Olson and Chocolate 2012). The area is defined in the map below (Government of the Northwest Territories 2005):

**MQWHÌ GOGHA DÈ NÏTLÈÈ, WEK'ÈEZHÌ,
TLJCHQ LANDS AND EZQDZÌTÌ**



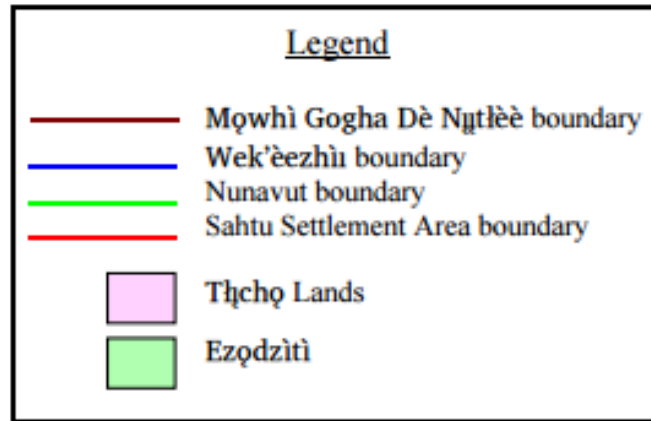


Figure 2.3 Tłıchǫ land map

The Tłıchǫ population is about 4,000, with people living primarily in the four Tłıchǫ communities: Gamètì, Behchokò, Whatì, and Wekweètì. These Tłıchǫ communities are denoted on the figure above by the pink squares on the Tłıchǫ Lands section.

Significant changes have occurred on Tłıchǫ territory in the last 200 years. Fur traders arrived on the territory in the 1800s, which eventually led to the construction of a fur trading post at Nìhshìi (Old Fort Rae) in 1852. The influx of settlers into the region had a dramatic impact on the traditional nomadic culture. The era of the fur trade saw the eventual establishment of permanent communities for the Tłıchǫ people.

In the last 30 years, the Tłıchǫ people have adapted to a changing economy with the influx of natural resource development and a wage economy to the North. The Tłıchǫ have been affected both positively and negatively by this change with many Tłıchǫ people now working at the mines, in government offices or for the service sectors. Although Tłıchǫ people have adapted, they maintain their connection with the land. It is with the land that the Tłıchǫ share a deeply rooted connection that encompasses their culture, history, language and way of life. Of particular importance are the words of Chief Monfwì, spoken during the signing of Treaty 11 in 1921 (Tlıcho Government 2013):

‘As long as the sun rises, the river flows, and the land does not move, we will not be restricted from our way of life.’

These words are captured in the Tł̓chq̓ flag, which symbolizes the strength and unity of the Tł̓chq̓ people. The rising sun and flowing river depict Chief Monfwi’s words above. The four tents represent the four Tł̓chq̓ communities, the royal blue represents the northern Tł̓chq̓ territory and the North Star signifies the future for Tł̓chq̓ citizens.

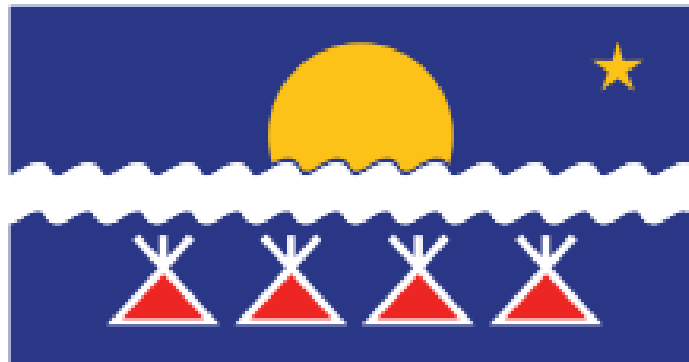


Figure 2.4 Tł̓chq̓ flag depicts famous words of Chief Monfwi

2.8.1 Tł̓chq̓ History

Tł̓chq̓ history has been described by many in the form of traditional historic accounts addressing pivotal events including the fur-trade economy (Krech 1984, Legat 2007), treaties, disease, schooling and political tensions (Fumoleau 2004, Helm 2000). The Tł̓chq̓ also have a strong history in agreement making practices with outsiders, inviting newcomers onto their territory and helping them survive beginning with early settlement for the fur trade. Tł̓chq̓ history can be described by its cosmology as a series of eras, which are defined by the negotiation and resolution of conflict with various external partnerships (G. Gibson 2008). John B. Zoe, an Chief Land Claims Negotiator for the Tł̓chq̓ and current senior advisor to the Tł̓chq̓ Government, depicts Tł̓chq̓ history as ‘separated in distinct eras, with external relationships serving as the driving force in change’ (G. Gibson 2008). Mining is one such external relationship that has contributed to change.

2.8.2 Land Claims Agreement

In the late 1890s, many settlers moved north into the unceded territory primarily with an interest in the Klondike goldfields. The increased economic potential and movement of settlers brought the decision from Ottawa to enter into a Treaty with the Indigenous peoples. Treaty 8 was signed in 1900 and involved members of the Dogrib, Yellowknife, Slavey and Chipewyan Bands. Treaty 11 was signed in 1921 and included all ‘Indians north of Great Slave Lake and the 60th parallel, all those Dene north of the Treaty No. 8 lands’ (Helm 2000). The Indigenous saw the signing of the treaties as an agreement of friendship rather than relinquishing land (Fumoleau 2004, Legat 2007). It was never understood by the Indigenous that in signing the treaty they would be required to ‘surrender their land to the Government’ (Fumoleau 2004). The Territorial Government was created in 1967 and for the Tłıchǫ people this marked an even further loss of control (G. Gibson 2008).

In response, the Tłıchǫ initiated the Dogrib Treaty 11 Council who was responsible for the negotiation of a land claims and self-government agreement with the federal government. The ratification of this agreement would give the Tłıchǫ power over lands and the ability to be self-governing. A regional claim was proposed with the inclusion of self-government as defined by Section 35 of the 1982 *Constitution Act*. In 1995, the federal government released a new policy, the ‘Inherent Right to Self-Government’, which confirmed that a self-government arrangement could be negotiated as part of a land claims agreement (Dogrib Treaty 11 Council, Government of the Northwest Territories and Government of Canada 2000). In April 1997, the federal government agreed to negotiate a joint land claims and self-government agreement with the Dogrib Treaty 11 Council (Legat 2007).

The Dogrib Treaty 11 Council was empowered to negotiate in 2000, and the decision was followed by the withdrawal of approximately 39,400 square kilometers of land by the Government of Canada, including subsurface resource rights (Dogrib Treaty 11 Council, Government of the Northwest Territories and Government of Canada 2000). The Tłıchǫ Land Claims and Self-Government agreement was signed in Behchokǫ on August 25, 2003 and took effect in 2005 and was supported by 93% of the Tłıchǫ population (Tłıcho Government 2015).

Many Tłıchq people traveled to Ottawa in 2005 to witness the Senate hearing of Bill C-14, which gave effect to the Tłıchq Agreement (G. Gibson 2008). While this was the signing of the fourth land claims agreement - Inuvialuit signed their agreement in 1984; the Gwich'in in 1992; and the Sahtu and Metis in 1994 – it was the first agreement that covered both lands and self-governance (Government of Canada 2005).

2.8.3 Legislative Overview and Enabling Environment

The signing of the Tłıchq Agreement also provided \$152 million over a 15-year period, ownership over subsurface rights and resources and the ‘management and law-making authority in the area called Wek'eezhii, which encompasses the area they traditionally occupy’ (Government of Canada 2005). The inclusion of subsurface rights over the entire negotiated territory reduced the land/cash formula to which the Tłıchq were entitled from the federal government. This was not a concern, as the Tłıchq prioritized owning the land as a government rather than just private landowners (Langton, et al. 2006). The Tłıchq government must, however, exercise its power in such a way that it is compatible with Canada’s international legal obligations (Government of Canada 2005). As described in *Tłıchq Agreement* Section 7.4 Law Making Powers, the Tłıchq Government has the power to enact laws. Specifically, with respect to non-renewable resources the Agreement states the following:

7.4.2 The Tłıchq Government has the power to enact laws in relation to the use, management, administration and protection of Tłıchq lands and the renewable and non-renewable resources found thereon, including, for greater certainty, laws respecting:

a) the grant interests in Tłıchq lands and the expropriation of such interests by the Tłıchq Government.

The Agreement and subsequent Bill C-14 established two levels of Tłıchq governments. One level of municipal government for each of the four Tłıchq communities: Behchokò, Gamètì, Wekweètì and Whatì; and a central Tłıchq government. The municipal governments are authorized, under territorial legislation, to license businesses, enact zoning by-laws and manage road and water services, among other things. The central government is responsible for culture

and language and for representing the Tłıchǫ interest with respect to matters involving mineral resources (Government of Canada 2005).

In 2005, the Tłıchǫ enacted the Tłıchǫ Procedures Law, which established a process for passing Tłıchǫ laws and regulations. Under this law, a Laws Guardian is appointed who is responsible for remaining informed about all Tłıchǫ laws and regulations. The Guardian also provides advice to the Chief's Executive Council and Tłıchǫ Assembly on the interpretation of the Tłıchǫ Agreement, Tłıchǫ Constitution, Tłıchǫ Laws and procedural matters (Tlıcho 2016).

2.8.4 Tłıchǫ Government

The Tłıchǫ Government is the governing authority within Tłıchǫ lands. The Tłıchǫ Government has the right to pass laws, enforce its own laws, delegate its power and authority and has developed structures for the Tłıchǫ Government and internal management.

2.8.4.1 Chief Executive Council and Assembly

The Tłıchǫ Assembly met for the first time in 2005, where it decided that a set of laws were needed to ensure good governance of the Tłıchǫ Government for the protection of Tłıchǫ language, culture and way of life. During this assembly, the *Tłıchǫ Assembly and Chief's Executive Council Law* was enacted (Tlıcho Government 2005). The Chief Executive Council (CEC) is made up of a Grand Chief, elected by Tłıchǫ citizens, and a Chief from each of the four Tłıchǫ Community Governments. The Tłıchǫ Assembly includes members of the CEC along with two representatives from each of the four Tłıchǫ communities. The assembly sits at least five times per year and is the law making body for the Tłıchǫ Government and is responsible for ensuring the good governance of the Tłıchǫ Government and its rights, titles and interests (Tlıcho Government 2015).

2.8.4.2 Development of Kwe Beh Working Group

The Kwe Beh Working Group was formed in 2010 with the mandate to manage the relationships between mining and exploration companies and the Tłıchǫ Nation. As a branch of the Tłıchǫ Government, the Kwe Beh Working Group is the first point of contact for mining and

exploration companies looking to initiate mineral resource activities on Tłıchq Lands. The Working Group is responsible for:

- Building strong relationships with Tłıchq workers in the mines, listening to the workers and providing support to them in their jobs;
- Building relationships with mining and exploration companies and making sure that the agreements are being implemented in accordance with the Tłıchq's terms;
- Prepare for the issues that are emerging with the potential road to Whatì by Department of Transportation;
- Manage the Tłıchq Government's involvement in the regulatory process of environmental assessment for any files;
- Liaise with Tłıchq Government Lands Department on any files or overlaps;
- Build the capacity of the Tłıchq Government to manage mining files;
- Prepare agendas for meetings with mining companies and prepare Chiefs Executive Council for meetings with mining companies;
- Work between meetings with mining companies to maintain pressure for agreement implementation;
- Ensure smooth and seamless communication with the mining companies;
- Prepare for negotiations with mining companies; and
- Ensure there is strong relationship to the communities on these mining issues and that consultation occurs with these communities.

The Kwe Beh Working Group is not the managing authority on these issues, but rather is responsible for gathering information and reports directly for the Chief Executive Council of the Tłıchq Government. The Kwe Beh Working Group gathers on a bi-monthly basis, or as needed, to discuss issues or receive status updates from all mineral exploration and mining companies operating on the Tłıchq territory.

2.9 Research Methodology

2.9.1 Review of Reference Material

The literature has highlighted the importance of duty to consult and accommodate, however, there still remains a lack of clarity on how mining proponents are to approach this process. There is a lack of explanation in existing documentation (Supreme Court rulings, existing Crown mining policy) regarding the requirements of consultation and how to achieve specific goals relating to the sustainability of environmental and social elements.

In some instances, to ensure a clear approach to mining on Indigenous territory, many Indigenous governments and organizations have established their own mining codes and policies. The Tłıchq First Nation is one example of such a First Nation. The implementation of these policies is a means for Indigenous groups to assert more control over how resources are managed and to be better equipped to address any proposed mining activity on their lands. In the case that an Indigenous government or organization is interested in developing a mining policy for their lands, it is of benefit to draw upon existing policies, their successes and challenges. Based on the literature review, no previous research has been done to cross-examine existing Canadian Indigenous mining policies. The policies themselves exist and each Indigenous group has undertaken their own approach to its development, however, none of this information is publically available. The Fair Mining Collaborative released *Fair Mining Practices: A New Mining Code for BC*, and includes a chapter dedicated to Indigenous Resource Policy. This is the only documentation available that addresses the emergence of Indigenous resource policy. Beyond this source there is no documentation analyzing existing policies. This research will analyze the contents and the structure of existing mineral policies. The motivations primarily to enable the outcomes of this research will be used to support the development of the Tłıchq Mineral Strategy by the Tłıchq Government.

2.9.2 Desktop Research

The first task in this research was to identify all existing Canadian Indigenous mining policies, mineral strategies and consultation principle documents. The primary method for identifying

these documents was through internet searches and through consultation with expert researchers with deep networks in the area.

To identify these documents via the internet, the following search terms were used individually and in combination:



Figure 2.5 Internet research terms

The term ‘Natural Resources’ indicated above returned various policies governing other resource extraction on Indigenous territory. The most dominant resources, other than mining, with existing policies are oil and gas and forestry. While these documents offer insight into Indigenous resource management and varying approaches to policy development, the scope of this research is limited to mining and mineral resources.

Based on these search terms, the following mining strategy (or development) frameworks have been identified in Canada for review:

Nation	Region	Document Title	Year
Cree First Nation	Quebec	Cree Nation Mining Policy	2010
Makivik Corporation	Nunavik (Quebec)	Nunavik Inuit Mining Policy	2015
Kasabonika Lake First Nation	Ontario	Traditional Territory Lands and Resources Planning & Development Policy	
Nunavut Tunngavik Incorporated	Nunavut	Policy Concerning Uranium Mining in Nunavut	2007
Nunavut Tunngavik Incorporated	Nunavut	Background Paper on the NTI Uranium Policy	2006
Nunavut Tunngavik Incorporated	Nunavut	Mining Policy	1997
Fort Nelson First Nation	British Columbia	Fort Nelson First Nation Consultation Protocol and Guidelines	2011
Northern Secwepemc te Qelmucw	British Columbia	Northern Secwepemc te Qelmucw Mining Policy	2014
Tahltan First Nation	British Columbia	Tahltan Tribal Council Resource Development Policy Statement	1987
Taku River Tlingit First Nation	British Columbia	Mining Policy	2007
Tsilhqot'in First Nation	British Columbia	Tsilhqot'in National Government Mining Policy	2014
Akaiicho First Nation	Northwest Territories	Mineral Exploration Guidelines in the Akaiicho Territory	2011

Table 2.1 Canadian Indigenous mining policies

All policies identified have been made public by the respective Indigenous governments and organizations. The accessibility of these documents enabled this thesis research to be effective. The researcher would also wish to acknowledge the limitations of the methodology employed for identifying such Canadian Indigenous mining policies. While this list represents the policies identified by the researcher, it is possible that other Indigenous-driven mining policy documents were not identified and as a result this list may not be exhaustive.

2.9.3 Matrix Development

Mining development policies are still relatively new as the first formal policy was only released in 1997 (the 1987 Tahltan First Nation document is a Statement rather than formal policy document). After reviewing all policies, it was noted is that there is a tremendous range taken by Indigenous government or organization in the structure of their policy and the information contained. In order to effectively compare several extended texts with multiple variables, the researcher employed a matrix. This matrix was intended to compare and display the qualitative data collected from each of the policies. Through this process, the researcher is able to more easily identify patterns, themes and trends. Miles et al (2013) describe a matrix as an intersection of two lists. The matrix is a tabular format that collects data and arranges it for easy and simplified viewing. The arrangement permits detailed analysis and enables cross-analysis with other comparable cases or sites (Miles, Huberman and Saldana 2013).

A preliminary review was undertaken to identify common elements of each of the policies. From this initial analysis, many similarities were identified among the policies. A matrix was used to demonstrate the common sections and provide a visual basis for further analysis. The resulting matrix included a row for each of the policies identified in Table 2.1 Canadian Indigenous mining policies. The columns identify specific sections included in one or many of the policies. While the full matrix can be found in Appendix B, the list below depicts the factors included in the matrix:

- | | |
|---|--|
| • Policy Formation | • Decision Process/Timing |
| • Defined Target Audience | • Levels of Government Review |
| • Resource Sector | • Consultation Process/Principles |
| • Principles | • Reference of Bilateral Agreements |
| • Purpose | • Relationships of Policy to
Aboriginal Rights |
| • Application Process | • Review of Policy |
| • Application Requirements | • Policy Notification to Resource
Industry and Province |
| • Evaluation of Proposal
Application | |

These factors were chosen after the researcher reviewed each of the policies in detail. In part, factors were selected due to their repeated presence in the Indigenous mining policies reviewed. In many of the policies, sections such as ‘Principles’ or ‘Purpose’ are defined with headers. As will be noted in the following chapter, there were distinct structural differences between the policies identified. Certain policies were lengthy and exhaustive, including details around the application process, application requirements and the process in place for the evaluation of the proposal application. Other policies were shorter and more broadly addressed goals for the future of mineral development on traditional territory. In some cases, policies focused entirely on consultation principles. The Tłıchq Government also specified key factors to be included to inform the development of the Tłıchq Mineral Strategy. These categories were selected to ensure all data from the mineral policies were accurately grouped and captured the information required by the Tłıchq Government.

While this proved effective for the first iteration of policy review, subtle differences within each of these categories were not effectively captured in this process. To understand the relationships at a more granular level, a secondary matrix was created for each of the categories. An additional and distinct set of criteria was generated and analyzed for each of the categories above. The individual matrices created for each bullet and associated factors can also be found in Appendix B.

2.10 Conclusion

In a recent ‘letter to the editor’, Chief Joe Alphonse, Tribal Chairman of the Tsilhqot’in National Government highlights the need for the mining industry to acknowledge the existence of a third government – Indigenous governments. He suggests that the current free entry system chooses to operate as a vacuum, ignoring the very issues that, if resolved in a collaborative way prior to staking claim, would save industry and taxpayers countless resources (Alphonse 2016). A collaborative effort is required to identify the social and environmental factors surrounding potential mining sites and help to define the way in which mineral exploration and development should occur. Alphonse continues: ‘[c]ompanies that embrace relationships with First Nations

will excel in the future. These relationships must be in the form of full partnerships, beyond mere funding arrangements like impact and benefit agreements’ (Alphonse 2016).

This literature review has given a brief historical overview of the Canadian mining context and the power imbalance that has emerged between the Crown and Indigenous peoples. Mining policy in Canada has historically not adequately considered the interests of Aboriginal people as the principle of free entry prioritizes mineral interest over Indigenous claims to the territory. By prioritizing free entry, the Crown is indicating that mineral development is prioritized over other land uses. This interferes with the ability to exercise Aboriginal title and rights. Since the inclusion of Section 35, the relationship between Aboriginal people and the Crown has been marked by issues relating to Aboriginal title and the Crown’s duty to consult and accommodate Aboriginal peoples. While court rulings have been drivers for improvements in the consultation process, there is still a requirement for improvements to the fundamental approach. For Indigenous peoples and the Crown to truly reconcile within Canada, the scope and nature of consultation and accommodation must consider Indigenous law and the Indigenous values they embody.

There has been an emergence of research that demonstrates various ways in which Aboriginal peoples have become significant actors in Canadian and international politics. Yet scholars in this field have focused on a select number of topics including Aboriginal rights and self-government (Grant, et al. 2014). O’Faircheallaigh also notes that while a very large literature exists on negotiation more generally (Lewicki, Saunders and Minton 2001), (Li, Plunkett Tost and Wade-Benzoni 2007), (Menkel-Meadow 2009), little has been written about negotiations involving Indigenous peoples (C. O’Faircheallaigh 2016). Significant aspects of Canadian natural resource policy and its relationship to Indigenous peoples of Canada remain unexplored. This research attempts to examine specifically the emergence of Canadian Indigenous mining policy. The majority of these policies have emerged in the past 20 years, with many of them only released in the past five years. While the existence of Indigenous ‘protocols and guidelines’ has been acknowledged by some literature (Hipwell, et al. 2002, Whiteman and Mamen 2002), there remains a gap in exploring the content of these Indigenous mining policies. As indicated above,

the only available literature addressing the emergence of Indigenous resource management, even more specifically mineral resource management, is the Fair Mining Collaborative *Fair Mining Practices: A New Mining Code for BC*. Given the gap in existing literature and the significance of policy as a governance instrument, this research attempts to understand the emergence of Indigenous mineral policies and their implications for mineral resource development in Canada.

Chapter 3: Data Analysis

3.1 Introduction

This section assesses the results of the twelve identified Canadian Indigenous mining policies. The objective of this chapter aims to determine the range of topics, goals and common themes among these policies. Additional research beyond the policies themselves has also been undertaken to provide a broader understanding of the enabling environment for these policies. The research explores each of the Indigenous government or organization's relationship to the Crown and the types of formal agreements, if any, established with the Crown. Additionally this section will explore the driving factors for each policy's creation. It is anticipated that this broader research will demonstrate linkages between these policies and legislation to which they connect. The significance of these policies and the environment in which they were created will be discussed in greater detail in Chapter 4.

The Tłıchq Mineral Strategy case study will also be developed in this section. Relevant outcomes from the participant observation methodology employed by the researcher during the Kwe Beh Working Group sessions will be detailed. This will help to demonstrate contrast the Tłıchq Mineral Strategy with other Indigenous mining policies.

3.2 Policy Formation

In Canada, Indigenous mining policies are often developed under different circumstances, some resulting from specific events or being reinforced by recent mining incidents. The federal government's "duty to consult" is based on judicial interpretation of the obligations of the Crown in relation to Aboriginal or Treaty rights. As discussed in the literature review, this duty is affirmed in Section 35 of the *Constitution Act*, 1982. In wake of recent court hearings in Canada ((Haida Nation v. British Columbia 2004), (Taku River Tlingit First Nation v. British Columbia 2004) (Mikisew Cree First Nation v. Canada 2005)), there has been light shed on what is expected of consultation and accommodation. As declared by the Supreme Court of Canada, the various levels of government have a duty to consult, and where appropriate, accommodate whenever a decision may infringe on established Aboriginal or Treaty rights. Many of the

Indigenous governments and organizations who have released mining policies have done so in contrast to the duty to consult guidelines set out by the federal government. The federal government's duty to consult does not include the notion of 'consent', leaving ambiguity and failure to provide the Indigenous governments and organizations with any real power over the decisions on their territory. The emergence of many Indigenous mining policies is a response to this ambiguity and an assertion of jurisdiction over their territory. Often Indigenous mining policies include clear guidelines as set out by the Indigenous government or organization for how mineral development should proceed on their territory.

3.2.1 Relationship to the Crown

Many Indigenous groups have developed their own protocols for engaging in consultation and rules for protecting their land, some of which have taken the form of Indigenous mining policies. However, where Land Claims Agreements do not exist, these policies are not officially recognized by provincial or federal governments (Hart and Hoogeveen 2012) Regardless, the Indigenous government or organization still implements and enforces their policy as a regulatory tool to assert jurisdiction over their territory.

There are substantial differences in the relationships built between each of these Indigenous governments or organizations and the Crown. Depending on their regional locations, some Indigenous government and organizations have had stronger engagement with either the federal, provincial or territorial governments. While the Indigenous governments or organizations themselves continue to assert jurisdiction over their territories, the Crown navigates this authority through formalized agreements such as treaties, agreements and land claims. To more clearly understand the emergence of these policies, this section will provide a brief overview of the legislative environment connecting the Crown to each of these Indigenous governments or organizations. The contrasts and similarities between the relationships built between Indigenous governments or organizations and the Crown are also indicative of the range of topics and goals included in their mining policy. These relationships will be explored in more detail throughout this section.

Indigenous Government of Organization	Region	Relationship to the Crown
Cree First Nation	Quebec	<p>Signatories with the Government of Quebec and the Government of Canada to the <i>James Bay and Northern Quebec Agreement</i> (JBNQA) in 1975. This was the first major comprehensive land claims agreement in Canada in response to the Cree and Inuit. The agreement settled the land claim, defined Aboriginal rights and established three categories of lands (Category I, II, III). Category I lands are allocated to the Cree people for exclusive use and Category II lands are where the Cree have exclusive hunting, fishing and trapping rights, but no special right of occupancy. While Cree have access to Category III lands for traditional pursuits, exclusive rights are not granted and the lands are in accordance with the ordinary laws and regulations of Quebec concerning public lands (Government of Canada 1975). The Cree communities have local governments established under federal law through the JBNQA, through the Cree/Naskapi (of Quebec) Act and under the Quebec Government's Cree Villages Act. Most recently, the Cree signed the <i>Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec</i> in 2002, which implements certain obligations of the Government of Quebec to the Cree people for economic development and community under section 28 of the JBNQA (Grand Council of the Crees 2016). The agreement provides sharing of revenue from mining, hydroelectric development and forestry carried out on the traditional territory of the Cree People. This includes all Category I, II, III lands.</p>
Makivik Corporation	Nunavik (Quebec)	<p>The Nunavik Inuit were also signatories to the <i>James Bay and Northern Quebec Agreement</i> (JBNQA) in 1975. JBNQA did not address the rights of Nunavik Inuit to the offshore region around Quebec and northern Labrador. In 2002, the Makivik Corporation and the Kativik Regional Government entered into the <i>Partnership Agreement on Economic and Community Development in Nunavik (Sanarrutik Agreement)</i> with the Government of Quebec. The signatories to the Agreement agreed to accelerate the development of mining, hydroelectric and tourism potential, to share the</p>

Indigenous Government of Organization	Region	Relationship to the Crown
		benefits of economic development and to favour economic spin-offs for Nunavik Inuit (Makivik Corporation 2015). The Nunavik Inuit signed the <i>Nunavik Land Claims Agreement</i> in 2006 and addresses the use, management and ownership of 80% of the islands in Nunavik Marine Region, totaling 5,300 square kilometers. This includes both surface and subsurface rights (Makivik Corporation 2016). Nunavik Inuit received annual royalties from the Government of Canada based on existing resource development in the Nunavik Marine Region.
Kasabonika Lake First Nation	Ontario	Kasabonika Lake First Nation is signatories to Treaty 9 (signed in 1929). The Kasabonika Lake First Nation view this treaty as shared sovereignty between the Crown and the people of Kasabonika, which includes shared ownership and control over land, water and resources. Kasabonika Lake First Nation continues to assert their sovereignty over their Traditional Territory. Kasabonika Lake First Nation affirms that Crown legislation and regulation must be viewed in conjunction with their resource policy (Kasabonika Lake First Nation 2016). Kasabonika Lake First Nation asserts their authority to the territory through their resource policy.
Nunavut Tunngavik Incorporated	Nunavut	The <i>Nunavut Land Claims Agreement (NLCA)</i> was signed in 1999. The NLCA provides certainty and clarity of rights to ownership and use of 356,000 sq. km. Of this land, there are 944 parcels where Inuit hold surface title only and the Crown retains the mineral rights. The Inuit hold both surface and mineral title to the remaining 150 parcels, which equates to 38,000 sq. km. The surface title is held in each of the three regions by the respective Regional Inuit Association (RIA). The subsurface rights are held and administered by the Nunavut Tunngavik Incorporated (NTI) (Indigenous and Northern Affairs, et al. 2015). The Government of Canada administers subsurface rights on the remaining parcels of land.
Nunavut Tunngavik Incorporated	Nunavut	
Nunavut Tunngavik Incorporated	Nunavut	
Fort Nelson First Nation	British Columbia	Fort Nelson First Nation is a signatory to Treaty 8 signed in 1899. Fort Nelson First Nation is one of 39 First Nation communities encompassed in Treaty 8. In 2008, Fort Nelson First Nation signed an <i>Economic</i>

Indigenous Government of Organization	Region	Relationship to the Crown
		<i>Benefits Agreement</i> with the Province of British Columbia and three other Treaty 8 First Nations. In addition to an initial equity payments and ongoing revenue payments from the Government of British Columbia, the agreement also provided more certainty of process to ensure development proceeds in a more fair and responsible manner (Government of British Columbia 2008).
Northern Secwepemc te Qelmucw	British Columbia	Northern Shuswap Tribal Council (Northern Secwepemc te Qelmucw) represents 4 member bands and is currently at Stage 4 of the B.C. Treaty process (Negotiation of an Agreement in Principle). During this stage, the goal is to identify and define a range of rights and obligations including existing and future interests in land, sea and resources; structure and authorities of government; relationship of laws; regulatory processes; amending processes; dispute resolution; financial component and; fiscal relations among other relevant topics (Northern Secwepemc te Qelmucw 2016).
Tahltan First Nation	British Columbia	The Tahltan Central Council is not participating in the B.C. Treaty Process. Alternatively, the Tahltan Central Council signed a <i>Shared Decision-making Agreement</i> with the Government of British Columbia in 2013. The Agreement allows the Government and the Tahltan to collaborate on the management of land and natural resources and make joint decisions about mineral exploration on Tahltan lands. The Agreement also provides consultation process certainty to ensure more effective engagement regarding future natural resource developments (Government of British Columbia 2013).
Taku River Tlingit First Nation	British Columbia	Taku River Tlingit First Nation is also currently in Stage 4 of the B.C. Treaty Process. Additionally, the Taku River Tlingit First Nation signed a <i>Land and Resource Management and Shared Decision Making Agreement</i> in 2011, the first of its kind for British Columbia. The Agreement establishes Government-to-Government decision-making structures and processes for future land and resource management. This Agreement also provides more includes the incorporation of the Land Use Plan, which resolves long-standing access, protection and mineral development issues. The Land Use Plan also provides clarity with respect to the value

Indigenous Government of Organization	Region	Relationship to the Crown
		and objectives to be considered in resource management decision-making (Government of British Columbia 2011).
Tsilhqot'in First Nation	British Columbia	In 2014, the Supreme Court of Canada declared Aboriginal title on Tsilhqot'in territory. Since the ruling the Tsilhqot'in Government has been focused on developing a government-to-government relationship with the Government of British Columbia. The Tsilhqot'in Government and the Government of British Columbia signed a Letter of Understanding in 2014 committing to strengthening their government-to-government relationship. The Tsilhqot'in and the Government of British Columbia also have a <i>Strategic Engagement Agreements for Shared Decision-Making Respecting Land and Resource Management</i> established in 2014. Both parties also signed the <i>Nenqay Deni Accord</i> in 2016 to establish longer term negotiations to reconcile rights, interests and goals of the Tsilhqot'in Nation and British Columbia in Tsilhqot'in Territory (Tsilhqot'in Nation and Government of British Columbia 2016). The Tsilhqot'in and the Government of British Columbia also have a Strategic Engagement Agreements for Shared Decision-Making Respecting Land and Resource Management.
Akaiicho First Nation	Northwest Territories	The Akaiicho Treaty 8 Tribal Corporation represents four Akaiicho First Nations. The Akaiicho were signatories to Treaty 8. The Akaiicho Dene First Nations are negotiating a Land, Resources and Self-Government Agreement with the Government of the Northwest Territories and the Government of Canada. In 2000, the parties signed a Framework Agreement that lists the subjects for negotiation and describes how parties will negotiate an Agreement-in-Principle (AIP) and Final Agreement. An Interim Measures Agreement was signed in 2001 that allows for a 'pre-screening' process for the Akaiicho Dene First Nation to review applications for certain licenses, permits and dispositions of land (Aboriginal Affairs and Intergovernmental Relations 2016).

Table 3.1 Relationships to the Crown

3.2.2 Research Undertaken in Support of Policy Development

Generally, the policies reviewed do not provide descriptive information about the process used for their development. In most cases, additional research beyond the contents of the policy was required to understand the steps taken by Indigenous governments or organizations to develop their mining policies. This external research identified that most Indigenous governments or organizations held some form of consultation process through the development of their policy, both internally with community members and externally with other governments and industry. As a result, most policies underwent various revisions to incorporate feedback from each of the consulted groups. The Tsihhot'in National Government released their draft policy for review by the public, government and industry. Over a two month period, feedback was collected and used to refine the final policy (Laplanche 2014). Similarly, the Makivik Corporation carried out consultation with all Nunavut Inuit communities prior to the development of their mining policy (Makivik Corporation 2015).

Nunavut Tunngavik Incorporated (NTI) created their policy in 1997 to promote mineral development in Nunavut. The policy was released along with several other policies covering oil and gas development, reclamation, resource revenue, seismic, uranium and water. The Nunavut Tunngavik Incorporated Mining Policy focuses on the development of mineral resources in Nunavut and is more general in its approach to NTI's position on mineral development on all lands in Nunavut. The need for a uranium policy, *Policy Concerning Uranium Mining in Nunavut*, originated after areas of Nunavut were identified to have uranium deposits. Prior to the release of the uranium policy, the Nunavut Inuit had no specific guidance on uranium mining. The Kivalliq region's land use plan does, however, state that uranium development shall not take place until the Nunavut Planning Commission, Nunavut Water Board, Nunavut Impact Review Board, and the Nunavut Wildlife Management Board each review the proposition (Nunatsiag News 2011).

Although uranium mining was never explicitly excluded by the Board, the regulatory environment suggested that NTI did not support exploration and uranium mining in Nunavut (Gillis 2004). The original intent with limiting uranium mining was concerns over the use of the

material, environmental degradation and health implications. As companies became interested in the area due to a rise in the price of uranium, there was increased pressure to consider mining uranium. In 1999, the NTI's Board of Directors passed a resolution for the development of discussion paper detailing issues pertaining to uranium mining in Nunavut (Nunavummiut Makitagunarningit 2011). Outcomes of the Discussion Paper suggested that Nunavummiut have an opportunity to benefit economically from the exploration and development of these deposits. There was, however, criticism in the review of the Discussion Paper suggesting that the review of economic potential was unsatisfactory. The Discussion Paper suggests that Nunavummiut could improve their lives through uranium mining opportunities, which imposes values on the Inuit that may not be appropriate. The Inuit lifestyle is tied to the land and uranium mining could potentially disrupt that lifestyle. The Review of the Discussion Paper identifies that 'compensation for a lost way of life has proven time and time again not to be particularly successful' (Hope-Ross 2005). The same paper also questions the assumption made surrounding advancements in the uranium industry, which the Discussion Paper uses to ensure the increased safety around uranium mining. Hope-Ross (2005) suggests that uranium mining has not advanced to a point where it has eliminated previous concerns.

The Discussion Paper ultimately led to the creation of a draft uranium policy, which gave conditional support for uranium mining in Nunavut. This draft policy was circulated and consultation occurred within all affected community, various levels of government, industry and the Nuclear Safety Commission. NTI utilized comments and additional community consultations to inform a final draft uranium policy (McCluskey 2006). There was substantial amount of public outcry over the release of the uranium policy. In response in 2011, the NTI president announced a review of the policy due to lack of adequate public consultation (CBC News 2011). However, at NTI's annual general meeting in late 2011 it was announced that no changes would be made to the policy (Rogers 2011).

None of the other identified mining policies specifically reference uranium. However, in 2013 Quebec joined Nova Scotia and British Columbia in establishing a temporary moratorium on uranium mining. The moratorium provides Quebec's environmental review board – Bureau

d'audiences publiques sur l'environnement (BAPE) – to hold public hearings on the uranium sector in Quebec (CBC News 2013). This moratorium was the result of substantial political pressure. In 2013, the Cree marched 800-kilometers from Misissini to Montreal to demand a ban on uranium mining in Quebec. Similarly, Makivik has stated their opposition to uranium development in Northern Quebec. Both the Cree and Makivik raised their concerns about the potential impacts of radiation on wildlife and the environment (Makivik 2014). While the Cree Mining Policy was released prior to the moratorium, Makivik released their policy during the public hearings. The Makivik policy does not explicitly reference uranium mining, however, it demonstrates their commitment to minimizing environmental impacts of mining.

Some external-facing policies are also complemented by internal implementation approaches. In Quebec, the Cree First Nation established the Cree Mineral Exploration Board (CMEB). The CMEB was formed as a result of an agreement signed between the province of Quebec and the Cree First Nation. The CMEB was tasked with developing and enhancing mineral exploration in the Cree Territory (Larbi, Mackinnon and Blacksmith 2014). As part of this goal, the CMEB developed and released the Cree Nation Mining Policy. This policy is composed of three parts: Guiding Principles, Guidelines to a Cree Integrated Approach to Mining and Guidelines on Financial and Other Benefits. Part one of the Cree Nation Policy is intended for public distribution, while the remaining parts are intended for only Cree internal use. Given this division, only the first part of the Cree First Nation policy has been evaluated in this thesis.

Similarly, the Tsilhqot'in National Government indicates within their policy, that the mining policy will be implemented through guidelines and template agreements. These internal documents will be used to for direct engagement with industry proponents and for the negotiations of agreements. The Northern Secwepemc te Qelmucw (NStQ) Leadership Council references an implementation plan on their website to be used in conjunction with the policy. Neither of these plans is publically available.

The Taku River Tlingit First Nation Northern Secwepemc te Qelmucw Leadership Council mining policies directly address the existing gaps in the legislation addressing mineral

development on their territory. The Taku River Tlingit First Nation indicates within the opening pages of their policy that its purpose is to provide greater certainty for parties interested in extraction of mineral resources on their territory. The Taku River Tlingit First Nation also states that they have published their mining policy because British Columbia's legislated process for disposing of surface and subsurface rights in the territory does not address Taku River Tlingit First Nation's participation in decisions regarding mining-related activity (Taku River Tlingit First Nation 2016). This statement is a direct comment on the 'free entry' system in place on Crown lands. Similarly, the Northern Secwepemc te Qelmuw Leadership Council states that their mining policy was created to address concerns about mining activities. The mining policy states that (Northern Secwepemc te Qelmuw Leadership Council 2014):

- The Laws governing Mining Activities in British Columbia are not adequate to protect the Environment and Resources for future generations;
- The Laws regarding mineral claim staking, exploration, mine development, mine closure and reclamation and major incident response in British Columbia are inconsistent with the Crown's constitutional duty to seek NStQ's consent to such activities;
- NStQ and its members are not being adequately compensated for the extraction of Resources from the Statement of Intent Area, nor the adverse impacts caused by mining activities on their Title and Rights and the Environment.

These two mining policies explicitly state that British Columbia law does not effectively engage Indigenous peoples and does not adequately protect the environment for future generations. The policies' commentary on British Columbia law, or settler law, highlights the variations in fundamental legal frameworks. Both of these First Nations are currently negotiating a Modern Treaty with the Government of British Columbia. In the interim, these First Nations do not have proven title, through the lens of settler law. As a result, their land remains Crown land where Crown law applies. However, these First Nations do not accept prior law established by the Crown; rather they derive their law making power from Indigenous law. Jacinda Mack, NStQ Tribal Council mining coordinator, has said that the policy is 'tougher than current mining regulations in B.C' (Meissner 2014). The intent of the policy is not to override provincial laws but to serve as Indigenous law for anyone engaging in mineral development on the territory

(Meissner 2014). Similarly, the Taku River Mining Policy states: ‘TRTFN Government will therefore exercise its authority as required by its Constitution’ (Taku River Tlingit First Nation 2007).

Over the past two decades, the Taku River Tlingit First Nation (TRTFN) has navigated the Environmental Assessment of the Tulsequah Chief Mine. As part of the process, the First Nation has participated in negotiations for the IBA, Modern Treaty and government-to-government Agreement. In 1993, the TRTFN rejected the government’s suggested political structure of Chief and Council, opting for their own constitution instead, *Taku River Tlingit First Nation Constitution Act*. The Constitution is clan based and Clan Directors are elected to implement decisions, develop policy and protect rights (Taku River Tlingit First Nation 1993).

In 1993, Redfern Resources Ltd. submitted a proposal to develop the Tulsequah Chief Mine. The proposal was subject to both the federal and provincial Environmental Assessments. The mine was approved without consideration of the unresolved concerns brought forward by the TRTFN. The TRTFN opposed and fought the approval through litigation, but ultimately the Supreme Court of Canada ruled in favour of the certificate (Taku River Tlingit First Nation v. British Columbia 2004). While the case was a loss in the eyes of the First Nation, it did provide TRTFN with more leverage over the land as the project moved forward.

The TRTFN developed their own policies and process in response to the challenges faced through the Tulsequah Mine approval process. A plan was needed to ensure the First Nation was prepared to address any future mineral development on the territory. One of these policies was a combined document that included a conservation plan and mining policy - *Hà t_átgi hà khustìyxh sìti: Our Land is Our Future* (Kenny 2015). The first document was a Vision and Management Direction for Land and Resources and the second outlined a Conservation Area Design. It was four years after the release of *Hà t_átgi hà khustìyxh sìti: Our Land is Our Future* that TRTFN released their mining policy. The intent of the document was to provide clear guidelines for any future mineral developers. Since the release of the policy no project has moved from exploration to mining. As a result, the policy only applies to operating mines in the

territory. While the policy was leading edge at the time of its release in 2007, the TRTFN have indicated that it requires an update (Kenny 2015). The mining policy has acted as an interim document while the TRTFN finalized their negotiations of an official government-to-government agreement.

The parties finalized the *Wóoshtin Yan Too.Aat , the Land and Resource Management and Shared Decision Making Agreement* in 2011. This agreement puts in place the structure within which the TRTFN and the government of British Columbia jointly assess proposed land activities. The agreement also improved the capacity within the First Nation to address project proposals and provided funding for the hiring of an Engagement Coordinator, who is responsible for clarifying engagement levels and timelines for various projects (Kenny 2015).

3.3 Data

The goal of this section is to review and evaluate the range of topics and goals of existing consultation policy frameworks to determine commonalities and unique principles. This section builds upon an initial high-level matrix, and the subsequent sub-level matrices, developed initially to categorize common elements found in the policies. The matrices can be found in Appendix B. While the matrix was successful in identifying the common topics, it was not able to capture more subtle variances between policies in each category. The following section serves as a more in-depth evaluation and comparison of the policies.

3.3.1 Defined Target Audience and Resource Sector

The target audience is only sometimes clearly identified in the guidelines, but can always be inferred given the language used and context provided. While policies from certain Indigenous governments or organizations are written in plain language accessible to all, others are written in more technical language targeted at mining proponents.

Only the Kasabonika Lake First Nation policy targets development more generally with its policy, addressing all lands, resource planning and development. This includes other commercial industries such as: forestry, tourism, commercial fishing etc. The Fort Nelson First Nation

Protocol & Guidelines also involves legal and policy changes, water use planning, land status and construction of infrastructure. All other policies focus on mineral resources with the target audience most often including mineral exploration and development companies. The Guidelines for Mineral Exploration Activities in the Akaitcho Territory targets only exploration-specific mineral companies.

NTI has released two policies. The first policy - NTI Mining Policy - states that 'NTI will support and promote the development of mineral resources in Nunavut if there are significant long-term social and economic benefits for the Inuit of Nunavut, and is consistent with protecting the eco-systemic integrity of the Nunavut Settlement Area' (Nunavut Tunngavik Incorporated 1997). Additional language throughout the policy suggests that the document targets the mineral exploration and development industry. The second policy – NTI Uranium Mining Policy – was released in response to increase interest in uranium mining in the region. The policy 'is intended to serve as a general statement that sets out broad principles, objectives and conditions that NTI believes should be applied with respect to any uranium exploration or mining operation' (Nunavut Tunngavik Incorporated 2007). The policy provides clarity for industry and internally about roles and responsibilities.

Nunavik Inuit Mining Policy 'states the conditions under which it will support mining development in Nunavik territory' (Makivik Corporation 2015). One objective within the policy targets establishing open dialogue and communication. Under this objective the policy supports building a relationship of trust with stakeholders including the Quebec government and mining companies.

The Cree Mining Policy is an expression of how their fundamental human rights and Cree rights are 'applicable in the context of mining development within Eeyou Istchee' (Cree First Nation 2007). The Cree are prepared to participate in resource development within the territory provided that their rights are respected, appropriate measures are taken to protect the environment, and benefits flow to Cree communities (Cree First Nation 2007). One of the policies 'Pillars' targets

Transparency and Collaboration. Under this Pillar, the Cree encourage relationship building between communities and mining proponents.

The Tsilhqot'in National Government Mining Policy indicates that the Tsilhqot'in will consider mineral resource development, 'provided the ecological and cultural values of the T̓silhqot'in are respected and there are significant long-term social and economic benefits for T̓silhqot'in communities' (Tsilhqot'in National Government 2014). The policy also emphasizes the importance of relationships between the T̓silhqot'in and mining and exploration companies. This is captured by one of the policy's objectives. The policy highlights that 'these relationships must be built on a foundation of respect for T̓silhqot'in values, rights and governance, and real partnerships built on trust and recognition that the land comes before money' (Tsilhqot'in National Government 2014).

The NStQ Mining Policy identifies gaps in the current Crown laws governing mining activity in British Columbia. As a result of this inadequacy, 'NStQ has created this Mining Policy based on legislated best practices from around the world' (Northern Secwepemc te Qlelmucw Leadership Council 2014). As a result, the majority of the text in the policy targets the Crown and mining proponents.

Taku River Tlingit Mining Policy opens by stating 'Taku River Tlingit First Nation (TRTFN) has developed this Mining Policy to provide greater certainty for parties interested in the extraction of mineral resources from TRTFN Traditional Territory in British Columbia' (Taku River Tlingit First Nation 2007). The policy also challenges the existing legislative process in British Columbia for disposing of surface and subsurface rights. Similarly to NStQ, the majority of the policy's text targets the Crown and mining proponents.

The only policies to directly address the Crown are TRTFN and NStQ mining policies. During the drafting of their policies, both of these First Nations did not have settled agreements with the Crown resulting in uncertainty regarding consultation and accommodation. As described in an earlier section, both of these First Nations drafted their mining policies partly in response to

challenges faced with particular mining projects and partly due to lacking provincial legislation. While the Akaitcho and Fort Nelson First Nations also have unsettled agreements with the Crown, their policies do not address mineral development specifically and therefore have been excluded from this comparison.

3.3.2 Policy Structure

Two general approaches to the framework structure of mining policies emerged from the analysis. Both structures will be detailed in this section. Many of the policies, regardless of their structure, typically begin by providing a definition of the policy's purpose. The section lays out the intent of the policy and discusses the role the policy will play. In some policies the purpose is explicit with a section titled 'Purpose'. In others, the purpose of the document is included in other introductory text. Additionally, there is often a section that lays out the principles that relate to the policies. This section is often titled 'Principles' and features a list of proclamations. In many of the policies, the principles are similar and were found to target the following:

- Accountability of the mining proponents;
- Protection of aboriginal rights and title;
- Benefit to the First Nation's people; and
- Engagement respecting FPIC (free, prior and informed consent).

The principles, in many cases, also refer to the Indigenous government or organization's intent to work collaboratively with proponents and commits to building a relationship with mining and exploration companies. Many of the policies also explicitly state that the document is intended to provide clarity to industry for how the Indigenous government or organization will manage resource development.

The NStQ mining policy includes an accountability section within their Guiding Principles. Under this section the policy states 'NStQ will consider the past performance of a Proponent in evaluating a proposed Mining Activity' (Northern Secwepemc te Qlelmucw Leadership Council 2014). This is the only policy to consider past performance in evaluation proposed mining activity. Given the environment in which the policy was created, this statement can be attributed

to the Imperial Metal's Mount Polley tailings dam breach, which occurred in August 2014. The breach discharged effluent that affected four First Nations under the political alliance of the NStQ - the Tsq'escen' (Canim Lake), Stswecem'c/Xgat'tem (Canoe & Dog Creek), Xat'süll (Soda & Deep Creek), and T'exelc (Williams Lake a.k.a. Sugar Cane) (Northern Shuswap Tribal Council 2016). Leading up to the breach, the NStQ felt their concerns were ignored and there were gaps in existing Crown policies for addressing these concerns. While the formation of the mining policy began in 2012, the disaster reaffirmed the decision to release the policy in a timely manner. The NStQ released their policy dated November 19, 2014, just months after the dam breach.

3.3.2.1 Goals and Pillars

The first apparent approach to policy structure focuses on categorizing commitments by pillars and associated goals or objectives. The Cree Nation Mining Policy, the Nunavut Tunngavik Incorporated Mining Policy, the Tsilhqot'in National Government Mining Policy and the Nunavik Inuit Mining Policy structure their document in this way. It is their intention that mining and exploration companies must abide by these goals and objectives in order to develop mineral resources on their lands. The focus of each policy is similar, but on occasions goals and objectives are categorized differently. The objectives of each Indigenous policy are listed below:

Cree Nation Mining Policy:

Pillar 1: Promotion and Support of Mining Activities: Mineral Rights and Cree Contributions.

Pillar 2: Mining and Sustainable Practices: Sustainable Development Policy, mining must be compatible with Sustainable Practices, decision-making and governance tools to ensure sustainability.

Pillar 3: Transparency and Collaboration.

Nunavut Tunngavik Incorporated:

Objective 1: Minimize the Negative Impacts

Objective 2: Maximize the Benefits of Mining to Inuit

Objective 3: Attract Mining Investment

Objective 4: Resolve Land Use Conflicts

Objective 5: Improve Consultation and Clarify Decision-Making

Tsilhqot'in National Government Mining Policy:

Objective 1: Minimize Negative Impacts

Objective 2: Maximize Benefits to Tsilhqot'in Communication

Objective 3: Building Relationships

Objective 4: Clarify Decision-Making

Nunavik Inuit Mining Policy:

Objective 1: Maximize short- and long-term social and economic benefit for Nunavik Inuit

Objective 2: Minimize negative social and environmental impacts

Objective 3: Establish open dialog and good communications

The Tahltan released their Resource Development Policy in 1987 where the Tahltan explicitly state that the Tahltan Tribal Council is not inherently opposed to any specific type of business or resource development without their country provided it adheres to certain basic principles. While the layout of the Tahltan Tribal Council's policy is different than those analyzed above in terms of visual presentation, length and categorization of goals and pillars, the principles address the same goal/objectives. The Tahltan's basic principles focus on protection of the environment, aboriginal rights and claims; increased opportunities for education and employment; equity participation by Tahltan in projects and development of business opportunities and; provision of financial and managerial assistance from the proponent to Tahltans to accomplish the previously stated goals. Therefore, the Tahltan express consideration for minimizing negative impacts, maximizing benefits, an emphasis on communication and relationship building and also promote openness to the mining industry.

The common objectives or pillars are displayed in the figure below. From this figure it is clear that there is significant overlap between policies.

Goal/ Objective	Cree Nation	Nunavut Tunngavik Incorporated	Tsilhqot'in National Government	Nunavik Inuit Mining Policy	Tahltan Resource Development Policy
Minimize Negative Impacts		X	X	X	X
Maximize Benefits		X	X	X	X
Communication and Relationship Building	X	X	X	X	X
Promotion of the Mining Industry	X	X			X

Table 3.2 Common objectives among similarly structured policies

Each of these goals or pillars acts as an umbrella statement to capture more specific priorities. The following figure displays the priorities identified by Indigenous government or organization that fall within each of the goals or pillars.

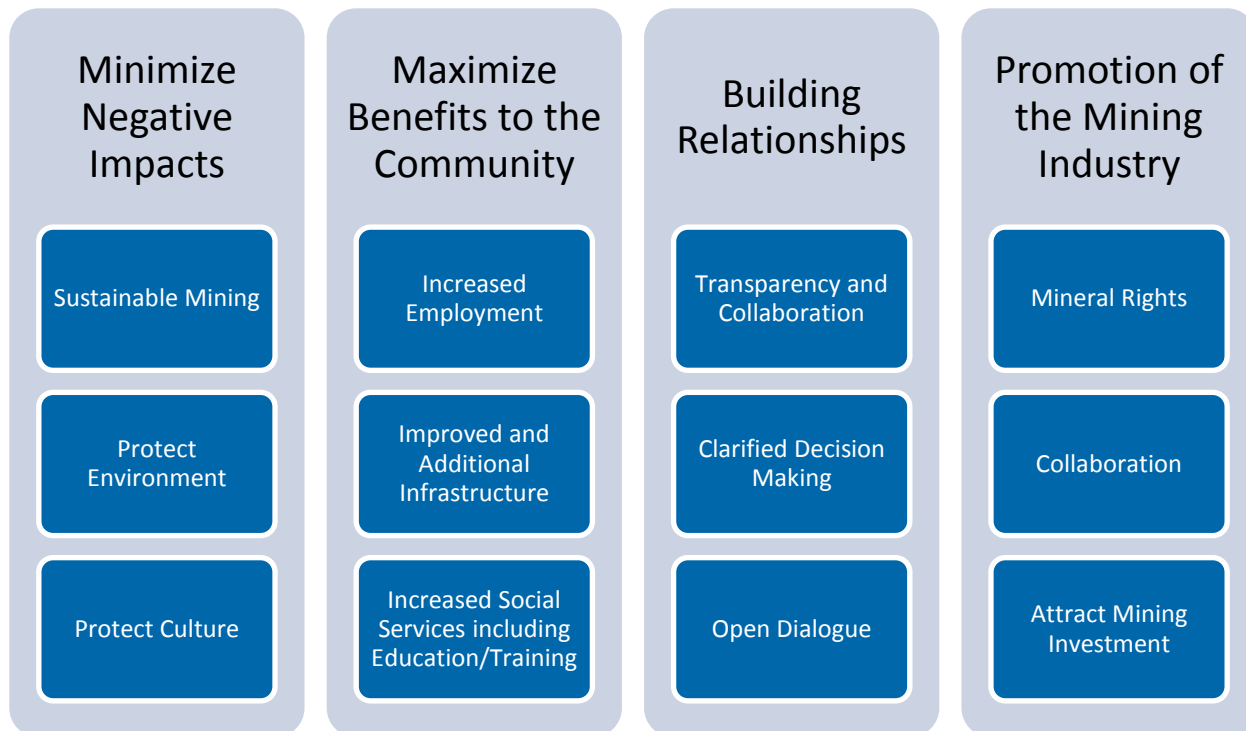


Figure 3.1 Common principles under each goal or pillar

Minimizing Negative Impacts and Maximizing Benefits to the Community are clear in their objectives. The mining policies are clear in their assertion for protecting eco-system integrity, social welfare and culture. Additionally, all policies insist on allowing development only in the case that there are long-term social and economic benefits for Indigenous peoples. Similarly, all mining policies express a commitment to working with industry to ensure a more collaborative approach to mineral development and improved relationships. The spirit of these mining policies is to provide the mining industry with clear guidelines for how to conduct mineral development on the Indigenous territory, including instruction for how to adequately engage in a meaningful consultation process.

It is important to note that all of these Indigenous groups have established a land claims agreements with the Crown except for the Tsilhqot'in. The Tsilhqot'in First Nation, however, is empowered by the recent Supreme Court of Canada ruling in favour of their claim to title. Therefore, these policies are supported by existing agreements that acknowledge Indigenous rights and title. Only the Cree and Tahltan policies include a statement specific to Aboriginal rights and title. All other policies evaluated through this research include multiple references to the protection of Aboriginal rights and title resulting from the lack of enabling framework for their policy and protection of lands.

The Cree Nation and Nunavut Tunngavik Incorporated explicitly stated their support for the mining industry in their mining policies. The Cree Mining Policy contains language that indicates the Crees will endorse mineral development as long as Cree rights are prioritized. The Cree Mining Policy also indicates that any mining proponents who adhere to the policy can expect to receive guidance from the Crees based on their traditional, technical and scientific expertise on land and mineral resources (Cree First Nation 2007).

Alternatively, the Nunavut Tunngavik Incorporated Mining Policy targets attracting mining investment. NTI recognizes the value of mining to economic development in Nunavut. To achieve this, NTI also understands the need to improve the certainty of mineral tenure.

Therefore, through their mining policy NTI aims to create a positive investment climate; improve the certainty of mineral tenure; support the streamlining of environmental regulations for mining; encourage cooperative working relationships and; encourage the development of programs to ensure the availability of services and support. The NTI mining policy is the only policy to address investment or revenue broadly. Based on the research and review of Indigenous mining policies, it is typically outside of the scope of the policies to address revenue sharing or royalty payments. Beyond the broad statement of improved relationships and clarified decision making made by other Indigenous governments and organizations, NTI is the only Indigenous organization to include action items targeted specifically at lessening the administrative burden on mining proponents and creating an environment that will attract additional mineral development activity. This is also reflected in their release of the Uranium Mining Policy. As discussed earlier in the section, the region was initially opposed to uranium mining. The discovery of large uranium deposits in the region led to increase interest from industry and an increased pressure to consider mining uranium. This ultimately resulted in the creation of the NTI Uranium Mining Policy, which permit uranium mining in the region.

While the Tsilhqot'in National Government and Nunavik Inuit do not exclusively state their support for the mining industry, there is no text to suggest they are against mining development. Rather, the Tsilhqot'in National Government Mining Policy states that the Tsilhqot'in will consider development provided that the ecological and cultural values of the Tsilhqot'in are respected. While the policy does not explicitly state the promotion of the industry, the Tsilhqot'in are committed to ensuring a more streamlined processes for engagement and decision-making, which suggests they are open to mineral development on their territory. Equally, while the Nunavik Mining Policy does not have a pillar or objective dedicated to the promotion of the mining industry, Makivik Corporation through their mining policy, reiterates their support for sustainable development in Nunavik. Makivik also states its support for encouraging the development of programs, services and infrastructure that supports mineral exploration and mining activity.

Therefore from this review it is clear that all Indigenous governments or organizations enabled by a formal agreement with the Crown, or in the case of the Tsilhqot'in a ruling by the Supreme Court of Canada, support mineral development on their territory. While NTI is openly looking for investment in mineral development, all Indigenous mineral policies have expressed their openness to development either directly or indirectly through the mining policy. Kasabonika Lake First Nation takes on a different policy structure and will be outlined in the following section. However, their policy does state support and appreciation for mineral development. Kasabonika Lake First Nation has also established a formalized agreement with the Crown through the signing of Treaty 9.

3.3.2.2 Technical Protocols

While some policies have taken on the form of overarching pillars and goals, other policies have been found to be more technical and to focus on the application process required by the Indigenous government or organization for mineral exploration and mining development, including detailed descriptions of bilateral agreements. This type of policy is significantly more comprehensive and often has explicit requirements from both the Crown and industry. Examples of this structure include: Northern Secwepemc te Qelmucw Leadership Council, Kasabonika Lake First Nation, Taku River Tlingit First Nation and Akaitcho First Nation.

The Fort Nelson First Nation Consultation Protocol & Guidelines is unique among the policies identified as it focuses on the consultation process specifically and does not include additional details regarding bilateral agreements or approaches to exploration. The purpose of this document is somewhat different than the other mining policies. Its goal is to outline consultation expectations between the Crown and with industry. As a result many of the elements described in the following sections are not included in the Fort Nelson First Nation Consultation Protocol & Guidelines. Regardless, the Fort Nelson Guidelines take on a similar structure in the sense that they describe detailed expectations from both the Crown and industry.

While all policies typically include a statement of purpose and some form of principles, the more detailed policies (Northern Secwepemc te Qelmucw Leadership Council, Kasabonika Lake First

Nation, Taku River Tlingit First Nation and Akaitcho First Nation) outline the required approach for exploration and mineral development. These policies often include a prioritized system for preliminary evaluation of development proposals, as well as, the decision process relating to exploration activity, consultation requirements, environmental assessments and bilateral agreements including impact and benefit agreements. An overview of the approaches listed by the Northern Secwepemc te Qelmucw Leadership Council, Kasabonika Lake First Nation, Taku River Tlingit First Nation and Akaitcho First Nation policies will be discussed in the following sections.

It is important to re-iterate that the Indigenous governments or organizations that utilize a more a detailed policy structure do not have a settled land claims agreements, or other formal agreement with the Crown. In the case of Taku River Tlingit their policy was release prior to the settling of the a government-to-government agreement and therefore it is evaluated as if no agreement exists. As a result, these policies are not nested in broader legislative framework supported by the Crown. In some cases, these policies are the only formal documentation addressing mineral development on the Indigenous territory. Although not enabled by Crown law, these policies are enabled by Indigenous law. These Indigenous governments or organizations utilize their policies as a means to articulate the Indigenous peoples' law with respect to mining on their territory. Consequently, the documents are lengthy and complex as they in some cases include the procedures exploration and mining companies must follow in order to receive consent from the Indigenous peoples.

The previous section detailed that that all Indigenous governments or organizations enabled by a formal agreement with the Crown, or in the case of the Tsilhqot'in a ruling by the Supreme Court of Canada, support mineral development on their territory. Conversely in the case of the Northern Secwepemc te Qelmucw Leadership Council and Taku River Tlingit First Nation, where no formal agreement exists with the Crown, the mineral policies do not explicitly state support for mineral development.

3.3.3 Mineral Exploration

Mineral Exploration is generally addressed by a large portion of the more detailed mining policies. Typically, the policy will list the required information for the exploration application to be considered for approval by the Indigenous government or organization. The following table outlines items that are commonly required in exploration applications, as well as, some of the unique requests found to have been made by each policy creator. Common elements are items that are listed in two or more policies.

Common information requests	Unique information requests
<ul style="list-style-type: none">• Description of proponent• Scope of work• Geographic location• Timing and duration• Access to site• Work force required• Predicted impacts on environment/community• Environmental management practices• Monitoring programs• Remediation for site• Economic benefit to Nation	<ul style="list-style-type: none">• Regulatory approvals required and status in regulatory process (Kasabonika Lake First Nation)• Rationale for scope of work (Fort Nelson First Nation)• Identification of all existing industrial development within 10 km (Fort Nelson First Nation)• Possible alternatives to proposed activity (Fort Nelson First Nation)

Table 3.3 Required information for exploration application

The Northern Secwepemc te Qelmucw Mining Policy includes the most detailed list of required information. Appendix B of their mining policy lists all required information for each of the general headings included above. Kasabonika Lake First Nation includes a template document for *Notification of Intent to Perform Exploration Work*

The Northern Secwepemc te Qelmucw Mining Policy, Taku River Tlingit First Nation Mining Policy and the Kasabonika First Nation Lands and Resources Planning & Development Policy specify the individual or governmental body responsible for the evaluation of an exploration

proposal. This ensures the proponent is clear on who to contact within the Indigenous government or organization with inquiries. In most cases, there is a preliminary review of the application submitted by the mineral exploration proponent. Often there is allocation of a representative within an Indigenous government, typically a Resource Manager. This person acts as the point of contact between the proponent and the Indigenous government.

The timing of the application process is only identified in two of the policies. In the Kasabonika Lake First Nation Lands and Resources Planning & Development Policy it indicates that the Kasabonika Lake First Nation has 45 days upon receipt of application to “undertake an initial assessment of the application”. The Akaitcho Territory First Nation requires that upon registering a claim with the NWT Mining Recorder, the proponent must provide specific claim documentation to the Akaitcho Territory First Nation Government within 30 days. Upon receipt, the Akaitcho Territory First Nation will make an “initial determination to see if any areas sensitive to the Akaitcho Territory First Nation are encompassed in the claim.” The Akaitcho Territory First Nation will provide this information to the proponent within 14 days. Some policies use the term “with a reasonable time” or “in a timely manner” when referring to response time for application decisions. This also occurs in the Northern Secwepemc te Qelmucw Mining Policy and the Taku River Tlingit First Nation Mining Policy

Once the exploration application is submitted, then the representative reviews the request and provides feedback. During this time, the representative may consult with potentially affected families or individuals if deemed necessary. Upon completion of the preliminary review, and if no significant impact is identified, the Indigenous government or organization will provide written consent. In the case that significant impact is identified, the proponent and the Indigenous government or organization will enter into an Exploration Agreement. Many of the policies provide details surrounding what is to be included in an Exploration Agreement and stress that the proponent will provide sufficient funding timing to participate in the Agreement negotiations. During the negotiations it is possible that the Indigenous government or organization may request further information about the proponent and project, obtain technical advice and engage in consultation with affected families and individuals. The Indigenous government or

organization may also undertake an internal traditional use study, environmental, social, economic or cultural baseline studies, or equivalent. Where necessary, the Indigenous government may request follow-up field studies to be performed by the proponent to reduce uncertainty about impacts.

Following successful negotiations, an Exploration Agreement will be drafted. It is possible that the Indigenous government decides not to support the project following the negotiations. The Indigenous government's participation in the negotiations should not prejudice its right to refuse to give consent or support for application. Taku River Tlingit First Nation and the Northern Secwepemc te Qelmucw Leadership Council include itemized requirements for their Exploration Agreements. Items include¹:

- Protocols for communication and information exchange;
- Scope of work*;
- Access routes;
- Timing and duration of project;
- Size of workforce;
- Monitoring and site inspections;
- Plans for compensation to Indigenous government or citizens for any disruption to land use;
- Environmental protection measures*;
- Commitment to protect cultural heritage;
- Reporting requirements;
- Terms for leaving the territory;
- Financial security.

¹ Items (*) appear in both policies.

3.3.4 Mineral Development

With respect to a development proposal for commercial mineral production, the Indigenous government or organization may participate in an Environmental Assessment, negotiations for an Impacts and Benefit Agreement and Accommodation Agreement. It is made clear in some of the policies that the Indigenous government or organization will seek to ensure the necessary technical, legal and financial resources and capacity to participate effectively. Details regarding specifics about these agreements and processes involved at the stage of mineral development are beyond the scope of the mineral policies. At this stage, both provincial and federal requirements for assessments must be adhered to by the proponents in addition to the requirements laid out by the Indigenous peoples in their policy.

Both the Northern Secwepemc te Qelmucw Leadership Council and the Taku River Tlingit First Nation include details about the requirements for engagement with the Environmental Assessment, negotiations for an Impacts and Benefit Agreement and/or Accommodation Agreement within their policies. Northern Secwepemc te Qelmucw Leadership Council includes Appendices with explicit information required for each Agreement.

The processes described throughout the exploration and mineral development sections are often highly detailed within the policy. As a reader, it can be challenging to follow the sequence of steps required for each stage. None of the Indigenous mining policies included process maps to help guide readers. The following process map was developed to more clearly display the exploration and mineral development methodology described above.

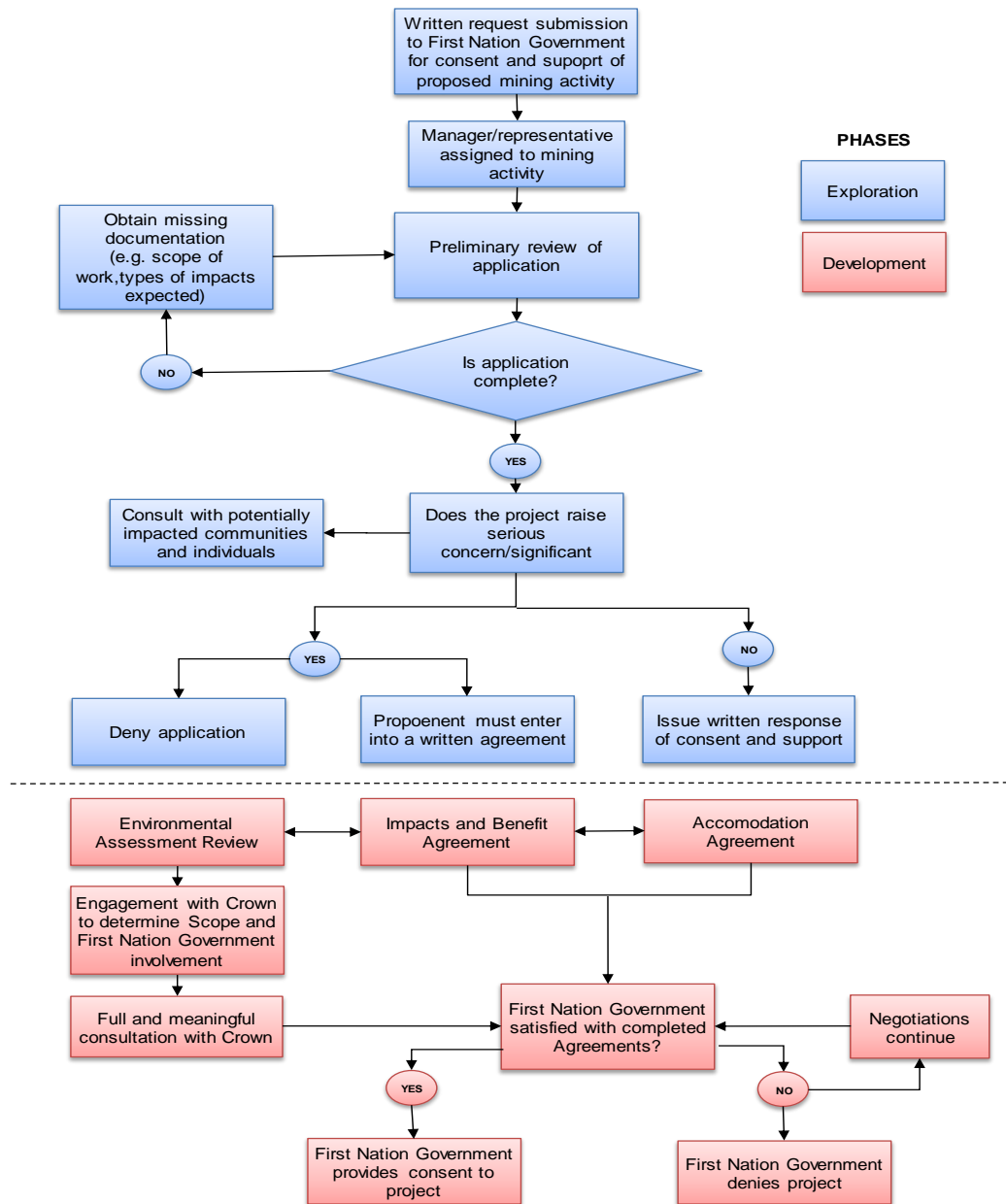


Figure 3.2 Process map for exploration and mineral development

3.3.5 Consultation Process and Principles

Consultation principles are occasionally captured within the policies 'Principles' section and are found in both policy structures described above. All policies reviewed include reference, in some part, to the required consultation process and principles. The principles target the priority values of the Indigenous peoples and identify goals or change to which the Nation aspires. It may also

encompass the threshold of change tolerated by the Indigenous peoples with regards to impacts on the socio-cultural well-being and environmental conditions. The principles typically include reference to the need for full and meaningful consultation carried out at the earliest possible stage. The mining proponent is responsible for ensuring the capacity of the Indigenous government or organization to meaningfully and fully participate in the consultation process. The principles will also highlight the involvement of the Indigenous peoples in the scoping, prioritizing and determining the level of engagement required for the project. Although the Indigenous government or organization may engage in consultation, this does not indicate agreement to the terms.

The requirements of the consultation process are typically woven through many sections of the policies, or on occasion there is a section dedicated to consultation process and principles. This type of section may include reference to the triggers for the launch of the consultation and the process to be taken by both the mining proponent and the Indigenous government or organization to ensure successful consultation is achieved. The section also relates to the consultation expectations of the Indigenous peoples and at which points during the mining lifecycle it should occur. Many of the policies differ when it comes to capturing the consultation process and as a result the data analysis is somewhat fragmented. The Fort Nelson First Nation Consultation Protocol and Guidelines is the only document that includes a section dedicated exclusively to the consultation process and guidelines. Unlike the other policies, the Fort Nelson First Nation Consultation Protocol and Guidelines focuses on the consultation process and does not detail requirements for exploration agreements, bilateral agreements, etc. While this listing is exclusive to the Fort Nelson First Nation, it is representative of potential steps that could be taken by Indigenous governments or organizations during this process. The detail listed in the following steps is often beyond the scope of some Indigenous mining policies and like the Fort Nelson First Nation, can be captured in a separate document specific to consultation. Steps include:

Notification and Information Sharing

This section defines the triggers for the launch of a consultation process. In some cases a list of triggers or events are identified that would lead to the undertaking of a consultation process by

the Crown and/or a mineral proponent. Once the consultation process is launched, the Crown and/or proponent are responsible for providing an initial submission of the proposed mining activity. This often includes the timing and a list of required information to be submitted to the Indigenous government for their decision process. The information provided should be accurate and be representative of the size, scope and magnitude of the activity. At this point the Crown and the proponent should indicate to the Indigenous government or organization if the project is subject to review by any Environmental Assessment Agencies.

Additional and more detailed information may be required by the Indigenous government depending on the nature of the mining activity. This could include:

- Known traditional use or traditional knowledge information that may be relevant;
- A preliminary environmental risk assessment of the proposed activity;
- Any relevant technical studies including ethnographic, archeological, hydrological, ecological and bio-physical report;
- Land and resource management plans, legislation, policy, guidelines and regulations available;
- Resource conservation recommendations;
- Additional terms and conditions; and
- Follow-up field studies.

In many of the policies, including the Fort Nelson First Nation Consultation Protocol and Guidelines, it is emphasized that the proponent is required to provide sufficient funding to the Indigenous government to be able to carry out any independent studies. Also, in the case that the Indigenous government or organization requires assistance in understanding technical documentation, the Crown or proponent should be prepared to support.

Review of Aboriginal Rights and Interests

Once information sharing has begun, the Indigenous government or organization must determine whether there is potential for any infringement on Aboriginal rights and Treaty rights. It is critical, that regardless of the size and magnitude of the project, that the proponent and the

Crown do not minimize the potential for impact on Aboriginal rights and interests. Any potential impact on the Indigenous peoples' rights raises obligation on the part of the Crown to consult and find a means to accommodate the proposed infringement. In the case that the Crown cannot accommodate the infringement, the Crown is obliged to not proceed with the approval of the activity. Consultation must be undertaken by both the Federal and Provincial Crown when there is potential for resource development activity to directly, indirectly or cumulatively impact Aboriginal and Treaty rights.

Meaningful consultation allows the Indigenous peoples the opportunity to independently determine the impact of the activity on their territory, rights and interests. Information-sharing, review and assessment determine the extent, scope and magnitude of the potential impact. Additionally, this process allows the Indigenous peoples to determine the type of impact whether direct, indirect or cumulative. It is up to the Indigenous government or organization to determine how this impact is evaluated and which culturally-based criteria are used. It is following this review that the Indigenous government or organization determines the level of consultation required for the proposed mining activity.

Assurance of Time and Resources

In the case of significant infringement, the Indigenous government or organization must be assured sufficient time to consider the information and the necessary human and financial resources to assess and respond the information in a timely manner. The Indigenous government or organization will work with the Crown and proponent to establish a mutually acceptable consultation plan. The plan will include timelines, engagement protocols and capacity funding. In the case that the activity is subject to review by an Environmental Assessment Agency, then the Indigenous government or organization may request a meeting with the Crown to discuss the regulatory process, available resources and the expectations of the Indigenous peoples' participation in the review process.

Analysis and Accommodation of Impacts

Effective and meaningful consultation occurs when the Indigenous government or organization and the Crown jointly determine the extent and nature of the project's potential impacts. The Indigenous government or organization may undertake environmental, socio-economic and cumulative impact assessments to determine potential impacts on Aboriginal or Treaty right. The Indigenous government or organization may also conduct its own environmental impact studies, traditional use studies and other relevant studies to understand the impacts on the territory. The Indigenous government or organization will pursue funding from the proponent or the Crown to undertake these studies.

All non-confidential information will be shared between parties. The Indigenous government or organization will consider the impact of the project and how it may affect use of the project area. All impacts identified will also include recommendations for resolution and/or mitigation. Subsequent dialogue may occur between the Indigenous government or organization, Crown and proponent regarding mitigation and accommodation recommendations. Upon agreement of the mitigation recommendations, the proponent will submit a summary of the agreed upon commitments. This document confirms the proponent's participation in meaningful and effective consultation with the Indigenous government or organization and is submitted to the Crown. The Crown uses this summary to prepare for accommodation discussions with the Indigenous government or organization. Reasonable accommodation of Aboriginal and Treaty rights is required by the Crown's legal duty to consult.

Monitoring of Impacts to Aboriginal Rights and Interests

Meaningful consultation and reasonable accommodation requires that the Crown and/or proponent monitor the long-term impact of activities on the Indigenous territory. This includes cumulative impacts of ongoing industrial activity on the territory.

Consultation also refers to internal community engagement within the community by Indigenous leaders, the Crown and proponents. The responsible party within the Indigenous government

allocated to the mining activity proposal is responsible for ensuring all affected parties are consulted prior to making a decision regarding the mining activity application.

3.3.6 Policy Notification and Review

Policy notification is intended to describe the methods used by the Indigenous government or organization to disseminate the policy to appropriate stakeholders and mining and exploration companies. None of the documents analyzed include a methodology for policy broadcasting or any reference to how changes or revisions to the policy are advertised. Some policies include reference to the frequency at which the policy is reviewed and updated. Of the reviewed documents only two include reference to policy updates:

- The Kasabonika Lake First Nation Lands and Resources Planning & Development Policy includes a disclaimer regarding ad-hoc changes to the policy.
- The Taku River Tlingit First Nation Mining Policy includes a section for ‘Review of Policy’. This section indicates that the Government will make any necessary changes to the policy no later than two years from the initial ratification. After this two year period, the policy will be revised (if necessary) every five years thereafter.
- The NTI Uranium Mining Policy is less specific with its review. The policy includes a section ‘Review and Revision’, which indicates the document is subject to periodic review and revisions.

TRTFN and NTI are also the only two policy makers that have carried out, or plan to carry out, revisions to their mining policies. While no modifications were made by NTI to their original mining policy, their views change in perspective on uranium forced clarification on the guidelines and procedures under which this type of mining could occur. As a result, NTI released a secondary mining policy tailored to uranium mining. Taku River First Nation has also expressed that their current mining policy requires an update given their new relationship with the Crown under the government-to-government agreement.

3.4 Case Study Description

3.4.1 Tłıchq History

The Tłıchq First Nation has been described in some detail in the literature review. The Tłıchq have a strong history in agreement making practices with outsiders, inviting newcomers onto their territory and helping them survive beginning with early settlement for the fur trade. Tłıchq history can be described by its cosmology as a series of eras, which are defined by the negotiation and resolution of conflict with various external partnerships (G. Gibson 2008). The first era in Tłıchq cosmology is defined as ‘pre-contact’ or ‘floating time’. In pre-contact time, where there are no contemporary settler records, the Tłıchq people are reminded that they are one in the same as animals. It is in time that there was no difference between humans and animals. The story expresses the relationships and rules of respect that were established between people and animals (G. Gibson 2008). This era is concluded by the conflict that arose between the larger animals and humans, with harmony eventually being established by Yamôôzha, the great leader. The agreement between animals and humans represents one of the external partnerships established by the Tłıchq First Nation.

Another such partnership took place between the Tłıchq and their neighbours through their leader Akaitcho during the third era of Tłıchq cosmology known as ‘time of respect’ (Gibson MacDonald, Zoe and Satterfield 2014). After many years of conflict, peace between the Nations was finally reached when Edzo, leader of the Tłıchq, decided to confront Akaitcho. This period is termed ‘time of respect’ as Tłıchq are reminded of having respect for one another and other aboriginal groups. This partnership continues to be recognized and remembered by Tłıchq today and these events solidified the law of respect for the Tłıchq (Zoe 2006).

The peace agreement between the neighbouring Akaitcho and Edzo was relied upon during the land claims discussion with the federal government. There were limited parcels of lands that were available during the negotiations as result of the Crown issues mineral rights on both territories. The constrained land and the federal government’s pressure on both Nations to agree on firm boundaries created tensions between the Tłıchq and Akaitcho First Nation, named after the historic warrior’s name. The Indigenous peoples honoured their long standing agreement

remembering that Edzo and Akaitcho had agreed to share land and resources (Gibson MacDonald, Zoe and Satterfield 2014).

In Tłıchq cosmology, the next major agreement was with the federal government through the Treaty agreement in 1921. This period is referred to by John B. Zoe as the ‘Time of Darkness’ (G. Gibson 2008). It was during this time that children were also taken away from their families and put into residential school and often never seen again. This was an attempt to extinguish aboriginal language and culture. John B. Zoe is quoted in Gibson’s work saying ‘[t]his time period is sometimes called the Time of Darkness. As people became more dependent on the government, their spirits were worn away’ (G. Gibson 2008). This era is marked by a lack of reciprocity between the Tłıchq First Nation and the federal government/settler community as they actively sought to destroy culture, language and the way of life (Laboucane, et al. 2012). The Tłıchq emerged from this ‘Time of Darkness’ through acts of self-determination embodied in the signing of the Land Claims and Self-Governing Agreement. With the signing of the Tłıchq Land Claims and Self-Government agreement, the Tłıchq Nation was granted ownership for approximately 39,000 square kilometers of territory and provided ownership over subsurface rights and resources and the management and law-making authority in the area. The signing of this Agreement represents a new relationship with the federal government/settlers. The Tłıchq continue to honour their previous relationships with both the Akaitcho, through shared territory, and the animals. The Tłıchq carry these agreements forward as they have strong commitment to protect land, participate in co-management bodies, and set the rules for the treatment of lands, water and animals in the region (Gibson MacDonald, Zoe and Satterfield 2014).

3.4.2 Relationship to Other Governments

The introduction of the Tłıchq Agreement created a unique and evolving government-to-government relationship first with the federal government and then the territorial government as devolution of the Northwest Territories occurred in 2014. With the signing of the Agreement, the Government of Canada provided the Tłıchq Government with a capital transfer payment of \$152 million over a 15-year period for the resource royalties collected from development on their territory (Government of Canada 2005). The signing of the Agreement also created Tłıchq

Community Governments in each of the Tłıchq communities through territorial legislation. These governments replaced the Indian Act Bands and NWT municipal corporations (Government of the Northwest Territories 2005). The Tłıchq Government, the Government of the Northwest Territories and the federal government also negotiated an Intergovernmental Services Agreement (ISA). A financing agreement was negotiated with the federal government to support commitments made under the ISA. These fund transfers were used to establish and operate the Tłıchq Government and its institutions. All band monies were also transferred from the federal government to the Tłıchq Government.

With the Northwest Territories Lands and Resources Devolution Agreement, the Government of the Northwest Territories took on responsibility for public land, water and resource management from the federal government. Through the signing of the Agreement, government resource revenue sharing was arranged between the Government of the Northwest Territories. The Devolution Agreement does not affect the terms of these existing Agreements. From public land within the Mackenzie Valley, the Tłıchq are entitled to receive annually from the Government of Canada: a) 10.429% of the first \$2 million of resource revenues collected, or \$208,580; and b) 2.086% of any additional resource revenues collected (Government of the Northwest Territories 2016). With the signing of the Agreement, the Government of Canada provided the Tłıchq Government with a capital transfer payment of \$152 million over a 15-year period for the resource royalties collected from development on their territory (Government of Canada 2005). In 2012, the Tłıchq Government and the Government of the Northwest Territories signed a Memorandum of Understanding titled *Working Together*. The Memorandum is a formal recognition of the government-to-government relationship. It is through the Memorandum that the governments agree to cooperate on the management of (Government of NWT & Tłıchq Government 2012):

- Housing
- Unearned income subsidy programs benefiting Tłıchq citizens
- Community infrastructure needs
- Community Government issues

- Areas of duplication, overlap, potential harmonization and compatibility within their respective areas of jurisdiction
- Status and progress of GNWT implementation obligations under the Tłıchǫ Final Agreement
- Any other areas of mutual interest identify by the Tłıchǫ Government and the GNWT.

With respect to mineral resources on Tłıchǫ territory, the GNWT is not involved in the management or administration of permits or access. The Tłıchǫ Government is the sole government responsible for mineral resource management.

A novel approach taken by the Tłıchǫ within their Land Claims Agreement was their negotiation of the ‘non-assertion’ clause with the federal government in relation to their ongoing rights, ensuring they are never forced to extinguish their Aboriginal rights. Through the Agreement, the Tłıchǫ have agreed to exercise their rights in accordance with the definition of Aboriginal rights set out in the Agreement. Additionally, the Agreement is never referred to as a final agreement. At any time the Tłıchǫ may inform the other parties that they would like to discuss negotiate or litigate a right that is not already included in the Agreement. This could occur, for example, if there are any changes or expansion to the common law right to self-government. In this case, the government and the Tłıchǫ may negotiate to exercise this right. If the Tłıchǫ’s right is refused, the parties may rely on the courts to determine the Tłıchǫ’s right and whether changes should be made to the Agreement. Their approach to the Agreement allows the Tłıchǫ to preserve their ability to benefit from any developments in related common law (Langton, et al. 2006).

3.4.3 Management of Tłıchǫ Lands

The signing of the Land Claims Agreement was an act of self-determination and the first step required to reclaim authority over the traditional territory. Following the signing of the Agreement in 2005, the Tłıchǫ Government evoked a moratorium on all Tłıchǫ territory land that prevented any development from occurring. The moratorium allowed the Tłıchǫ to critically think about their vision for mineral development on their territory and the long term implications of development. The Tłıchǫ Government used this time to organize internally and determine the

sequence of events required to effectively manage their land in line with their vision. This interim period also allowed the Tłıchq to develop a coordinated and integrated approach to mineral development that avoided any regulatory duplication.

The next step in this process was to establish the Land Use Plan. This secondary step would allow the Tłıchq to reflect their history and the Tłıchq people's vision of the future, while respecting all agreements. The Land Use Planning Working Group (LUPWG) was established to lead the drafting of the plan and was responsible for ensuring the Land Use Plan reflected Tłıchq culture. The process was designed, driven and guided by Elder to reflect their experience on the land. The Tłıchq Land Use Plan also relied on a traditional knowledge database that has been gathering data since 1993. Cultural mapping exercises were also undertaken with the guidance of the Elders. To ensure full participation by all Tłıchq, consultation and workshops were undertaken in all four Tłıchq communities. Throughout the Plan's development the Tłıchq storytelling process was used to explain and understand the land and its importance (Tłıcho Government 2013).

The Tłıchq have a history deeply-rooted in the land. To the Tłıchq, the land is a teacher with thousands of years of knowledge transferred to the next generation through oral tradition and travel. Identifiers used on the land hold historic value and provide context for the emergence of social relations with animals, neighbours and outsiders. The name may describe a historical event or the wildlife and vegetation characteristics of an area. All of this is central to defining Tłıchq culture and heritage. Tłıchq history and identity is tied to the land (Andrews 2004). In the Tłıchq Land Use Plan, Louie Zoe explains (Tłıcho Government 2013):

‘Our Elders have been passing these memories (stories) and knowledge (naawo) about our culture, our language, our traditions, our heritage and the history of Tłıchq down the line, so that we can continue to follow and practice them and so that we don't forget them.’

As part of the development of the Land Use Plan, a geological assessment was done to characterize the distinct features of the territory, which can be divided into three geological provinces: the Slave Province, the Bear Province and the Interior Platform. Each province contains distinct geological features and overall contains significant mineral potential.

The Land Use Plan also addresses cumulative effects in the context of mineral development. Cumulative effects can be defined broadly as changes to the biophysical, social, economic and cultural environment as a result of combined past, present and future natural and anthropogenic effects (Tlicho Government 2013). The Tłıchǫ intend to manage these effects by taking a long-term holistic view of the impacts of development over time and space. As part of this commitment the Tłıchǫ Protection Directive 6.2.D indicates that ‘the Tłıchǫ Government shall limit the number of resource projects occurring at one time [...] Decisions about the said limit will consider the cumulative effects monitoring, assessment and managing framework for value ecosystem components’ (Tlicho Government 2013).

One critical difference between the Tłıchǫ Land Use Plan and other land use plans in the Northwest Territories is that the lands subject to the Plan have one holder – the Tłıchǫ Government. As a result, the Tłıchǫ Land Use Plan defines (Tlicho Government 2013):

- There is no Land Use Planning Board in the Tłıchǫ region of the Northwest Territories;
- The Tłıchǫ Government has developed the Tłıchǫ Land Use Plan;
- Authority for the approval of the Tłıchǫ Land Use Plan rests solely with the Tłıchǫ Government; and
- Decision-making authority regarding the use, and subsequent access to Tłıchǫ lands for those uses, rests solely with the Tłıchǫ Government.

While the Tłıchǫ Government is the landowner and decides on the use and access to the land, the Wek’èezhìi Land and Water Board is responsible for the review and permitting of specific activities on Tłıchǫ Land.

The Tłıchq Land Use Plan has developed a zoning regime that is unique and a variation to the typical ‘permitted’ vs. ‘non-permitted’ land uses. Protection of lands is the fundamental driver of the land use plan. In the Tłıchq Land Use Plan, various zones are denoted by the level of protection required as well as setting out the values which provide the basis for the level of protection. Zones also acknowledge where sustainable development can provide benefit to the Tłıchq people. The Tłıchq approach to zoning is generally to ‘encourage’ or ‘discourage’ development proposals (Tłıchq Government 2013).

3.4.4 Tłıchq Mineral Strategy

Through the Land Claims Agreements the Tłıchq have recovered the authority to control land use in the fee simple region. Through the Land Use Plan, the Tłıchq have set broad principles and zones. Finally, through the Tłıchq Mineral Strategy, the Tłıchq will set clear rules for mineral development. This systematic procedure ensures consistency in governance and priorities, while ensuring clarity to industry.

The Tłıchq First Nation identified the need for mineral development in addition to their Land Use Plan. The Tłıchq Land Use Plan provides a foundation for the Mineral Strategy and the two documents remain consistent in their priorities and objectives with the outcomes of the Land Use Plan informing the contents of the Mineral Strategy. The Mineral Strategy represents the second step in the sequencing established by the Tłıchq Government.

To inform the development of the Tłıchq Mineral Strategy, the Tłıchq Government performed a literature review of existing Indigenous mining policies. The outcomes of this research are contained within this chapter. Additionally, the Tłıchq Government developed an internal technical working group to drive the creation of the Mineral Strategy. The working group is responsible for developing a ‘Scoping Document’. The Scoping Document will be used to provide a high level summary of the contents of the Tłıchq Mineral Strategy that will undergo various reviews. These include:

- Review with the regulatory agencies, the Government of the Northwest Territories and industry. The intent of this review process is to identify any gaps or inconsistencies with

other territorial plans and ensure the Strategy will fit appropriately within legislation. This review will also be used to ensure the tentative permitting process is clear and consistent with other groups and boards in the region, including the Land and Water Boards.

- Engagement carried out with communities, Tłıchq citizens and the Tłıchq as directed by the Chief Executive Council.
- Review by the Kwe Beh Working Group and legal counsel.

All input received will be incorporated into a revised version of the Scoping Document and finally reviewed with the Chief Executive Council. Upon approval, the Draft Mineral Strategy will be prepared based on results from the Scoping Document exercise described above. A secondary engagement process will be done with communities, industry and government as per the direction of the Chief Executive Council. Feedback from the engagement process will be incorporated into a final draft for Chief Executive Council review and approval. The Tłıchq Mineral Strategy will be released with an accompanying Implementation Plan.

3.4.5 Access to Mineral Tenure

The Tłıchq Government Lands Department will be responsible for administering rights to accessing either surface or subsurface lands on Tłıchq Territory. Access to the lands will be granted in accordance with the Tłıchq Land Use Plan. There are three approaches under consideration by the Tłıchq for granting access to mineral tenure: negotiated concessions, joint ventures or the use of the free-entry system applied throughout most of Canada and described in Chapter 2. The scenarios described below are only tentative as no formal decision has been made by the Tłıchq Government regarding access to mineral tenure on Tłıchq territory.

The bid system allows the Tłıchq Government to release a parcel of land on the market for bids. The Government is responsible for determining selection criteria and ultimately selecting a successful bid, if any. The Tłıchq Government would have control over the location of land released for development and the timing of its release. This control would allow the Tłıchq Government to effectively manage cumulative effects when selecting land parcels for release.

Through this process, the Tłıchq would also be able to establish agreements specific to each parcel. While geological data and previous exploration results are available publically, this method presents risk for industry. Without sufficient information, companies may not be unwilling to bid on the property. To address this issue, the Tłıchq Government may need to invest in exploration work on the parcel prior to its release for bid; however, this would require increased investment by the Tłıchq into the land parcel that may not be recouped if no bids are received, or if all bids are rejected by the Tłıchq Government.

A corporate joint venture scenario enables the Tłıchq Investment Corporation to be the only company allowed to do exploration. The Tłıchq Investment Corporation would partner with external exploration companies in a joint venture to complete the work. While this involves Tłıchq participation, mining companies may not be accepting of the partnership scenario. As a result, this may become a non-competitive bid that is complex and difficult to administer.

The free-entry system allows companies to register mineral tenure with the Tłıchq Government as long as they meet a set of criteria. While the Crown determines the criteria within most of Canada, this situation would allow for the Tłıchq Government to determine the required criteria. One challenge with this scenario is the loss of Tłıchq control over location, timing and overall management of mineral development activity. Unlike the previous two scenarios, free-entry does not allow for competitive bidding to ensure benefit to the Tłıchq. Rather, it prioritizes the economic interests of industry.

3.4.6 Long-Term Mine Sequencing

A focus for the Tłıchq Government in their long term vision for mineral development on their territory is to minimize cumulative effects by sequencing mineral development, which would allow for only one mining operation at a time. Sequenced mining activity would also ensure longevity for mineral development-related prosperity such as jobs, royalty payments, social infrastructure support within communities, etc. To ensure this process, the Tłıchq would require control over the timing and location of mineral tenure eliminating the possibility of free-entry as

a vehicle to access mineral tenure. Therefore, a competitive bidding process would be required for access to mineral tenure on Tłıchq territory.

While the logic behind mine sequencing is simple – develop one mine after the other – the logistics to support such an effort are complicated when you consider the variability in timeframes associated with various phases of the mine lifecycle such as exploration, planning, permitting, construction, etc. The following graphic provides an estimate of the timeframes associated with each of the phases of the mining lifecycle (KPMG 2016)

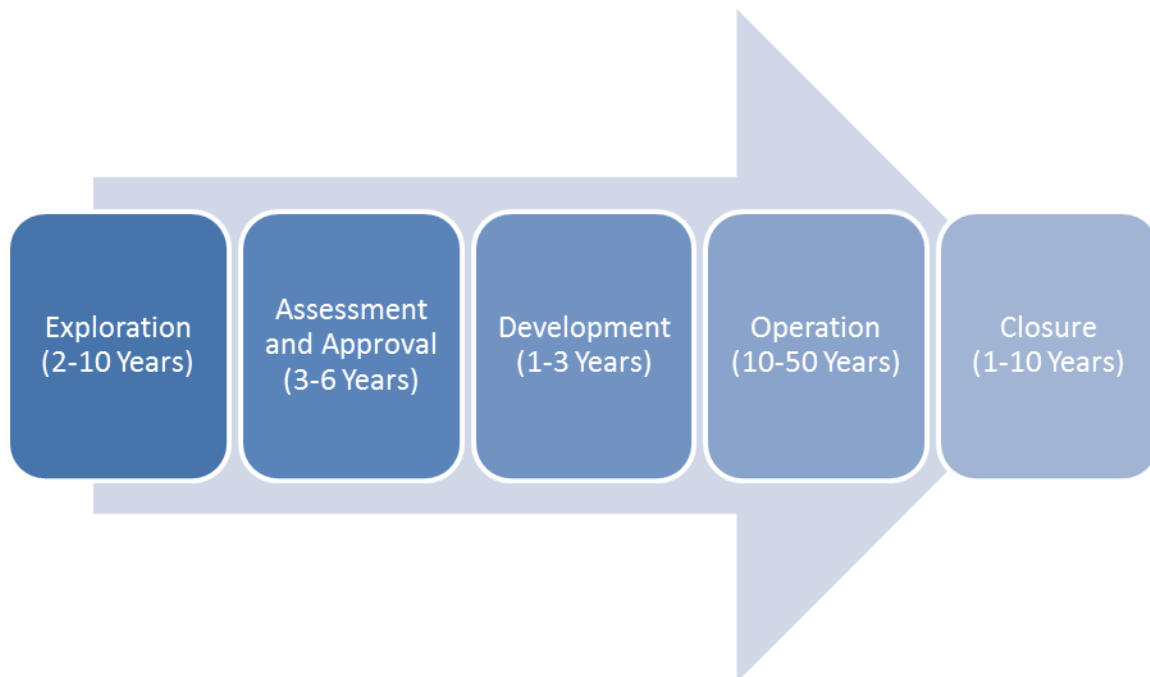


Figure 3.3 Mine life cycle

Successful sequencing would limit overlap between the operations of the mine with any new exploration. There must also be consideration for the timeframe required to release a parcel of land for competitive bidding, whether concession or joint venture partnership. Based on the estimates provided above, the Tłıchq Government should consider using the mine's transition to closure as a trigger to launch the bidding process for the subsequent parcel of land. If the Tłıchq Government moves forward with either competitive bidding process, they have the liberty to define the terms of operation on their territory. Part of these terms should involve integrating best practices in mine closure and mine closure planning. An accurate and well planned closure

strategy would allow both the company and the Tł̥chq Government to define closure objectives and more accurately predict closure timing. By working with companies to define closure plans well in advance of closure, there is more likely to be adequate funding for closure and potential liabilities will be progressively reduced.

The Northwest Territories is familiar with poor planning for mine closure demonstrated through the current state of Giant Mine. Giant mine opened in 1948, producing 23,000 kg of gold prior to its closure in 2004. The mining activity resulted in the site's underground chambers and stopes containing over 237,000 tonnes of water soluble arsenic trioxide and 13.5 million tonnes of contaminated tailings spread over 95 hectares (Mackenzie Valley Review Board 2013). As a result, the site will require perpetual care for an undetermined amount of time. A well-defined closure plan will help avoid situations like Giant Mine and more effectively inform the funding required for closure.

Effective closure planning should commence during the exploration phase. While conceptual initially, the plan should become progressively more detailed. At the initial stage, the plan should communicate outcomes and goals, whereas the detailed plan should include objectives, detailed procedure for achieving these, monitoring and verification. This process should be integrated within the systems and decision-making methodology throughout all phases of the mine life (International Council on Mining & Metals 2008). The plan should continually evolve over the course of the mine life in line with the expectations of the communities. It is possible that there are changes to the mine plan, which could affect operations, mine life and ultimately the closure plan. As shown in the figure below, the detailed closure plan is a result of the conceptual closure plan continually changing and adapting to changing operational information.

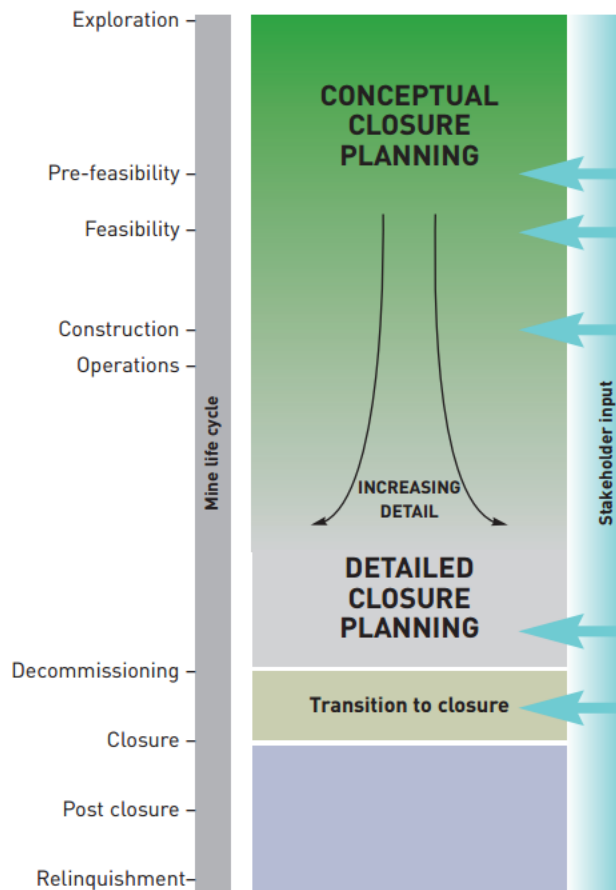


Figure 3.4 Closure planning

The ongoing process of developing a detailed closure plan will ensure there is ongoing open communication between the mining proponent and the Tłıchǵ government regarding the tentative closure date. The Tłıchǵ Government will need to be flexible with the timing of the subsequent land parcel release as there are many external factors that may impact the mining sector such as commodity prices, innovation, financing and regulations.

While effective and comprehensive closure planning will support the effort of mine sequencing, there are many other factors to consider that could impact transition from closure to exploration. For example, AMEBC suggests that exploration projects rarely result in mines (AMEBC 2016). Therefore, to ensure transition to a subsequent mine, multiple exploration projects will need to be ongoing during the design and operation of the first mine and continue in parallel while

subsequent mines come online. Additionally, the mineral development sector is subject to variability in commodity prices. A drop in commodity price may result in operations no longer achieving profitability, forcing mining operations to cease. Without variability in mining operations, this could result in an extended period of no mining operations on the territory.

There is also a need to consider the infrastructure associated with mine development. Often mining operations are dependent on the construction of infrastructure networks to deliver the mineral product. Recently, the GNWT confirmed that it planned to submit an application for permits and licenses to the Wek'èezhì Land and Water Board for the construction of an all-weather road from Behchokò to Whatì and that this was identified as a priority project in the GNWT's *Northwest Territories Transportation Strategy* (Quenneville, N.W.T. gov't to move forward this spring on Whatì highway 2016).

The road is required for the construction of the NICO mine, which is located 49 kilometers north of Whatì. Robin Goad, president of Fortune Minerals, has indicated that: 'A road [to Whatì] is...essential to supply the NICO mine and allow metal concentrates to be trucked south' (Quenneville, N.W.T. gov't to move forward this spring on Whatì highway 2016). In this case, although the mining activity is under the management of the Tłıchǫ Government, the project is reliant on infrastructure funding and collaboration from the Government of the Northwest Territories. The proposed road will cost approximately \$150 million. The territory is hoping to receive as much as 25 per cent of this cost from the federal government's P3 Canada Fund (Quenneville, N.W.T. continues down \$150M road to Whatì 2016).

The proposed road falls predominantly on territorial land except for 17 kilometers, which rest on Tłıchǫ lands. The Tłıchǫ Government has decided to swap the 17 kilometer land parcel with the GNWT to allow the full length of the all-season road to be on territorial land. This ensures the full liability of the road is the responsibility of the GNWT (Tłıchǫ Government 2016). The following figure shows the proposed road in green to Whatì (CKLB 2016).

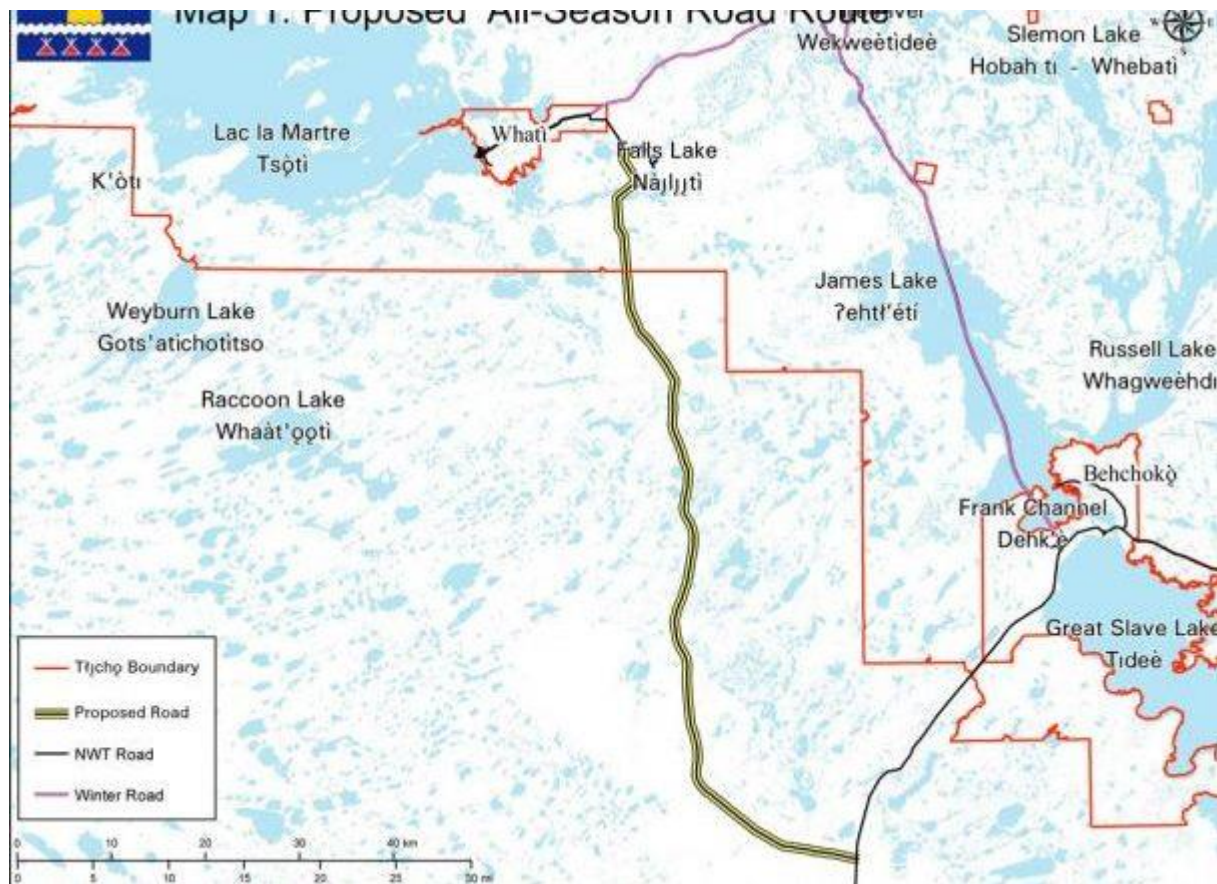


Figure 3.5 Planned all-weather road to Whatì

The Whatì Community Government had been working towards an all-season road since the 1980s. The GNWT and the Tłıchǫ Government have been working jointly since 2011 to realize this project. The NICO project was discovered in 1996 and Fortune Minerals Ltd and its transition to development and operation have been reliant on the construction of an all-weather road.

While this is not an exhaustive list of factors affecting the success of mine sequencing, these examples highlight some of the challenges that must be considered.

3.5 Conclusion

The contrast that has emerged in policy forms is representative of the Indigenous peoples' relationship to the Crown and authority over subsurface rights. The Indigenous governments or

organizations who have released policies structured under umbrella goals or pillars have established either a modern Land Claims Agreement, have established a Shared Decision-making Agreement with the Crown, or are in the process of doing so. These Indigenous governments or organizations have established working relationships with the Crown through formalized agreements and legislation.

Through their Land Claims Agreements, Nunavut Tunngavik Incorporated and Makivik were awarded ownership over subsurface rights over at least partial territory. The Tahltan First Nation negotiated a Shared Decision Making Agreement with the British Columbia Provincial Government in March 2013. The intent of the agreement is to foster government-to-government relationship to allow parties to collaborate on land and resource issues (Tahltan National Government of British Columbia 2013). The Agreement allows for Shared Decision Making and an increased governance capacity for the Tahltan First Nation to participate in the land and resource management. Similarly, the Supreme Court of Canada declared Aboriginal title on Tsilhqot'in territory. Since the ruling the Tsilhqot'in Government has been focused on developing a government-to-government relationship with the Government of British Columbia. In this case the Cree Nation, while they have exclusive use of Category I lands, the signing of the *Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec* provides sharing of revenue from mining, hydroelectric development and forestry carried out on all Category I, II, III lands.

In contrast, Northern Secwepemc te Qelmuw, Kasabonika Lake First Nation, Taku River Tlingit First Nation, Fort Nelson First Nation and Akaitcho First Nation are either bound by Treaty or are participating in the modernized B.C. Treaty Process. Both Northern Secwepemc te Qelmuw Leadership Council and Taku River Tlingit First Nation are in Stage 4 of the B.C. Treaty Process. During this stage, the goal is to identify and define a range of rights and obligations including existing and future interests in land, sea and resources; structure and authorities of government; relationship of laws; regulatory processes; amending processes; dispute resolution; financial component and; fiscal relations among other relevant topics

(Northern Secwepemc te Qelmucw 2016). Therefore, while the negotiations are underway to transfer legislative authority to these two Nations, they have not been finalized.

Therefore where Indigenous peoples have established authority over their territory with the Crown, their policies seem to take the form of a more broad overarching goals and pillars. Whereas in the case where rights and lands are not settled, the mining policies take on a much more detailed form providing specific guidelines to mineral resource proponents through prioritization systems, agreement templates and forms.

The Tłıchǫ First Nation, however, will release a policy that does not conform to either of these templates. With the signing of the Tłıchǫ Land Claims and Self-Government agreement, the Tłıchǫ Nation was granted ownership for approximately 39,000 square kilometers of territory and provided ownership over subsurface rights and resources and the management and law-making authority in the area. This type of authority is only comparable to that of Nunavut Tunngavik Inc. as a result of the Nunavut Land Claims Agreement. While the Tłıchǫ Mineral Strategy has yet to be released, the Strategy will be directly connected to and driven by the Tłıchǫ Land Use Plan. The two documents will work in harmony to govern the management of Tłıchǫ territory. Additionally, the Tłıchǫ Mineral Strategy will include procedures for land access and a framework for mine sequencing. This type of information is not contained within any of the other Indigenous mining policies studied.

The contrast of policy forms and the enabling environment driving their creation will be discussed in more detail in Chapter 4.

Chapter 4: Discussion

4.1 Introduction

Formalized Indigenous mining policies are a relatively new type of document with the first formal mineral resource policy only emerging in 1997. After an initial review of the identified Indigenous mining policies there appeared to be differences in their visual presentation, content and structure. From a high level perspective, there are significant variations in length and detail with policies ranging in length from ten to fifty or more pages. Based on the data presented in Chapter 3, there is no clear standard of practice established for the creation of an Indigenous mining policy. This is reasonable given that each of the Indigenous governments or organizations studied have had differing experiences with mineral development historically, have varying mineral potential on their territory and operate in different environments depending on rights established with the Crown.

The only documentation available that addresses the emergence of Indigenous resource policies is the Fair Mining Collaborative *Fair Mining Practices: A New Mining Code for BC*, which includes a chapter dedicated to Indigenous Resource Policy. As discussed in the literature review, the Fair Mining Collaborative describes the emergence of Indigenous resource policy as a means to ‘help assert more control over how resources are managed on their lands’ (The Fair Mining Collaborative 2015). These policies can also assist in more clearly communicating to both mining proponents and government the Indigenous peoples’ expectations. In articulating the Indigenous peoples’ goals, values and decision-making processes, it is anticipated that the mining proponent and government will have a more clear approach to operating on Indigenous territory. The Fair Mining Collaborative suggests that ‘these policies can serve to promote shared decision making by First Nations on the management and development of land and resources within their traditional territories’ (The Fair Mining Collaborative 2015).

The findings of this thesis tend to support this notion of shared decision making. All mining policies appear to have been released with the intent of asserting jurisdiction over territory. This research suggests that Indigenous mining policies are a reflection of the Indigenous peoples’

philosophy and priority objectives for the future of their territory and the structure of the document tends to be tailored to the needs of the Indigenous government or organization. The document is intended to provide clarity to government, communities and business about expectations for development on the territory.

4.2 Drivers for Policy Creation

Based on the data collected in Chapter 5, there appear to be three primary drivers for the creation of Indigenous mining policy. The research has identified various key findings to support this conclusion. In some instances, these policies have emerged as a result of a specific mining event or incident. Others emerged in response to a settled Land Claims Agreement in which the Indigenous government or organization was awarded subsurface or surface rights and clear management practices for these rights were required. Lastly, certain policies were created as a tool to enable the assertion of rights to both the surface and subsurface territory, where there is a lack of formal agreement with the Crown.

4.2.1 Specific Mining-Related Events

Prospective mining projects or damaging mining incidents have driven the release of at least three of the policies studied. In all cases, the creation of a mining policy was already underway in some capacity and the mining project or mining incident acted as a trigger for an accelerated release of the policy.

Northern Secwepemc te Qelmuw released their policy following Imperial Metal's Mount Polley tailings dam breach, which occurred in August 2014. As discussed in the previous section, the NStQ Mining Policy states 'NStQ will consider the part performance of a Proponent in evaluating a proposed Mining Activity' (Northern Secwepemc te Qelmuw Leadership Council 2014), which is potentially a reflection on the dam breach. The breach discharged effluent that affected four First Nations under the political alliance of the NStQ (Northern Shuswap Tribal Council 2016). The NStQ had concerns about the mining and felt they were being ignored by the Crown. While the formation of the mining policy was already underway, the disaster

accelerated the release. The NStQ released their policy dated November 19, 2014, just months after the dam breach. Chief Ann Louie of the T'exelc (Williams Lake Indian Band) stated:

“The Mount Polley tailings pond disaster that has affected our communities has reinforced our decision to proceed with this very carefully developed policy [...] for years we warned that the Mount Polley dam was a disaster waiting to happen and we were ignored. This NStQ Mining Policy is designed to make sure that this does not happen again, and provide us with the tools to monitor and ensure compliance with safety and all other regulation and conditions imposed on any mines that are allowed” (Northern Secwepemc te Qelmucw Leadership Council 2014).

Similarly, the Tsilhqot'in Mining Policy was released in 2014 shortly after the Supreme Court ruling against the development of Taseko's New Prosperity mine. The decision recognized the Tsilhqot'in's right to aboriginal title over 1,750 square kilometers of territory, only a small portion of what the Tsilhqot'in considers their traditional territory. The Tsilhqot'in Mining Policy applies to their full traditional territory in northern and central British Columbia and is in addition to the existing Stewardship Agreement with the provincial government. The Tsilhqot'in Tribal Council anticipates their mining policy will ensure future projects are handled more appropriately than Taseko's New Prosperity project. Chief Joe Alphonse of Tl'etinqox and Tsilhqot'in tribal chair said: 'There are dozens of mineral exploration projects in our territory and this policy will clarify for those proponents, government officials and anyone else thinking of staking claims that Tsilhqot'in laws remain in force in our territory, as they have since time immemorial' (Keller 2014).

The Mount Polley dam breach was one of the biggest environmental disasters of modern Canadian mining history. Similarly, the Supreme Court ruling to recognize the Tsilhqot'in's right to aboriginal title was considered ground-breaking with respect to Indigenous rights. The significance of both events drew attention to both these First Nations., who accelerated the release of their policies to ensure action was taken in response to these events.

As discussed in the literature review, the Tsilhqot'in ruling has reinforced significant power to Indigenous communities, especially in non-Treaty areas. It has provided a process for these Nations to demonstrate Aboriginal title, inherent Aboriginal right to their traditional territory. There is, however, still some lack of clarity among the recent ruling of the Supreme Court with regards to duty to consult. The Tsilhqot'in case has provided some guidance with regards to Aboriginal peoples' involvement in decision-making affecting land on which they hold Aboriginal Title. Nevertheless, this ruling is new and there remain areas of uncertainty as it has not since been applied by the Supreme Court of Canada. This leaves some ambiguity about the ruling's power and still does not clarify the content of duty to consult. The creation of a mining policy challenges this ambiguity as it provides clear guidelines for mineral development companies as to how the Indigenous peoples would like them to proceed.

Similarly, the Taku River Tlingit First Nation Mining Policy emerged to provide clear guidelines for any future mineral developers after their struggle with the Environmental Assessment of the Tulsequah Chief Mine. In response to these challenges, TRTFN needed to ensure the First Nation was prepared to address any future mineral development on the territory. No development has occurred on the territory since the approval of Tulsequah. While the policy has not been utilized to its full intention, it has acted as an interim document while the Taku River Tlingit negotiated the Wóoshtin Yan Too.Aat , the Land and Resource Management and Shared Decision Making Agreement. This agreement puts in place the structure within which the TRTFN and the government of British Columbia jointly assess proposed land activities.

In all cases studied, Indigenous governments or organizations are explicitly not 'anti-mining' and often express their openness to mineral development. Evidence confirms that Indigenous governments or organizations do use their mining policy as a means to articulate their requirements to achieve consent for a mineral development project.

4.2.2 Land Claims Agreements

In some cases, mining policies have been released following the signing of a Land Claims Agreement. Such was the case with the Makivik Corporation in Nunavik, the Nunavut Tunngavik Incorporated in Nunavut and the Tłıchǵ Government in the Northwest Territories. In all cases, the signing of the Land Claims Agreement provided, at least in part, the transfer of subsurface rights to the Indigenous government or organization. Nunavut Tunngavik Incorporated and the Tłıchǵ Government are the governing bodies responsible for managing the subsurface rights on their territory. In Nunavik, the Inuit were awarded subsurface rights for the Nunavik Marine Region. The Makivik Corporation acts as the point of entry for all mining activity in the region. Mining policies were released by each of these Indigenous governments or organizations as means to provide clarity on the management approach taken and procedures in place for accessing subsurface minerals rights. In addition to the mining policy, the Nunavut Tunngavik Incorporated have additional procedures in place for clarifying access to subsurface minerals. As the governing body managing the subsurface rights, ‘free-entry’ does not apply. This is also the case on Tłıchǵ territory, but additional guidelines have yet to be released.

The Nunavut Land Claims Agreement provides certainty and clarity of rights to the ownership and use of lands in Nunavut. The signing of the Agreement awarded 356,000 square kilometers of land with fee simple title, where the Inuit hold surface rights only and the Crown retains mineral rights. There is an additional 38,000 square kilometers of land where the Inuit hold fee simple title and subsurface rights. Nunavut Tunngavik, in cooperation with the three regional Inuit associations, is responsible for the management of minerals, oil and gas. While not included in the mining policy, NTI has a formal process for accessing mineral rights and proceeding with mineral development. For these minerals, NTI uses a map selection system for mineral acquisition. Interested parties must complete an Expression of Interest in Inuit Owned Lands for Mineral Rights and include a map of the proposed exploration area. NTI then issues mineral rights through a negotiated exploration agreement. If the proponent meets the terms of the agreement, then they can be awarded a mineral production lease (Indigenous and Northern Affairs, et al. 2015). NTI retains the right to have complete discretion over whether to issue an Exploration Agreement and the terms under which the Agreement is negotiated.

Since the signing of the Tłıchq Agreement in 2005, there has been a moratorium on land access on Tłıchq territory. The pause on land access provided the Tłıchq Government with the opportunity to develop their Land Use Plan and subsequent mineral strategy. During this period, no mineral development activity took place on the territory other than pre-Agreement operations that were not affected. The Land Use Plan was released in 2013 and provides a clear vision for the long-term goals of the territory and identified areas of high mineral potential. The moratorium was lifted following the release of the Land Use Plan. The Tłıchq Mineral Strategy is intended to act in coordination with the Land Use Plan and provide specific guidance for mineral development activity. The Tłıchq Mineral Strategy will also define a process for accessing mineral rights on the territory. ‘Free-entry’ does not apply on Tłıchq territory and mineral development proponents will need to follow the guidelines included in the Tłıchq Mineral Strategy.

4.2.3 Assertion of Rights

In contrast, where there are unsettled Land Claims Agreements or, ambiguity with the Crown regarding rights to the territory and subsurface rights, then mining policies act as a means for Indigenous peoples to assert their rights to their territory. As discussed in the literature review, Indigenous-driven mining policy can play a role in overall reform strategy within mineral development in Canada and more broadly impact the relationship between Indigenous peoples and the Crown. The data analysis has shown clear patterns distinguishing the Taku River Tlingit Mining Policy and Northern Secwepemc te Qelmuw Mining Policy from the others given the lack of agreement formalizing their relationship with the Government of British Columbia.

The Taku River Tlingit First Nation specifically states in their policy: “TRTFN is publishing its policy because British Columbia’s legislated process for disposing of surface and subsurface rights in the Territory does not address TRTFN’s participation in decisions regarding mining-related activity”. Similarly, the NStQ Leadership Council Coordinator, Jacinda Mack, stated: “One thing I want to make perfect clear is this policy isn’t a wish-list This is prescriptive This is indigenous law [...] This goes above and beyond anything the B.C. government currently

requires from a mining company” (Turner 2015). The NStQ policy also reads: “The Secwepemc Nation has un-surrendered and un-extinguished Title and Rights throughout the Secwepemc traditional territory known as Secwepemculecw. The Secwepemc Nation has the inherent jurisdiction to provide stewardship of Secwepemculecw and to ensure its sustainability and viability for future generations.”

A review of the literature demonstrates that changes in Aboriginal policy in Canada are fundamental for Indigenous groups and governments to achieve greater control over their territory and their livelihood. An additional context also emerged that highlighted recent changes in the federal – Indigenous relationship that have empowered Indigenous peoples; however, these changes are driven exclusively by the Supreme Court responding to challenges brought forward by Indigenous peoples. The literature review also has communicated the lack of clarity provided that can be provided by the Crown for engagement with Indigenous governments or organizations. Confirmed in the policies of the Taku River Tlingit First Nation and NStQ, the Crown’s current legislation does not adequately account for Indigenous involvement in decision making regarding mineral development.

Previously, formal guidance on mineral development has been solely delivered by the Crown. The literature review highlighted the First Nation Leadership Council suggestion that Indigenous governments or organizations must systematically develop and implement their own policies as a reflection of inherent title and rights and ground these policies in Indigenous laws, worldviews and values (First Nation Leadership Council 2013). The Indigenous mining policies reviewed have fulfilled this suggestion and in some cases included specific reference to the law making power derived from Indigenous law.

Using a policy to assert right to territory is most clearly articulated through Taku River Tlingit First Nation’s recent history. The TRTFN developed their own policies and process in response to the challenges faced through the Tulsequah Mine approval process. The intent of the original mining policy was to provide clear guidelines for any future mineral developers. At the time of the policy’s release, the TRTFN did not have a formal agreement with the Crown. In addition to

mining proponents, the policy also demands specific expectations of the Crown. The TRTFN, however, have indicated that the mining policy has acted as an interim document while the TRTFN finalized their negotiations of an official government-to-government agreement. While the revised policy has yet to be released, it will be interesting to see if the structure of the policy changes given the newly established agreement.

4.3 Enabling Frameworks and Integration into Larger Policy Framework

The nature of this research has not previously been undertaken and as a result there is no literature to compare these results. More broadly, this research does explore variations in each of the Indigenous government or organization's relationship with the Crown, applicable legislation and enabling frameworks. The next section investigates this relationship further to understand what type of enabling framework exists, if any, for the creation of these Indigenous Mineral Policies.

Chapter 3 in summary established that there are two defined structures used by Indigenous governments or organizations in the development of a mining policy. There was also a correlation identified between the structure of policies and the relationship the Indigenous government or organization has established with the Crown. In the case where there is no formal agreement with the Crown, Taku River Tlingit First Nation and NStQ, the mineral policies are extensive and detailed. In contrast, where policies that target overarching goals or pillars, the Indigenous government or organization has established a formalized agreement with the Crown.

Taku River Tlingit First Nation and NStQ are both located in British Columbia and as a result have not signed a formal agreement with the Crown at the time of their policy release. Other BC First Nations studied in this research including the Tahltan First Nation and Tsilhqot'in First Nation has established formal relationships with the Crown through either a government-to-government agreements or Supreme Court ruling. NStQ and Taku River Tlingit mining policies are the only British Columbia-based policies created in an environment with no formal agreement with the Crown. Therefore, the As a result, their mining policies, although empowered by Indigenous law, are not acknowledged by Crown (or common) law. The

implications of this are reflected in the structure of these two policies. The specificity of the policy's content is intentional to ensure guidance is provided to the Crown and mineral proponents seeking to operate on their territory.

Since the release of their mining policy, Taku River Tlingit First Nation has also established a government-to-government agreement with the Crown. Since signing the agreement, Taku River Tlingit First Nation has indicated that they will revise their policy. The release of this revised policy will provide further information about the relationship discussed relating to the Indigenous government or organization's relation to the Crown. In the case that the revised policy changes structure to target broad goals and pillars, it will further support the relationship described in this research.

The review of existing relationships between Indigenous peoples and the Crown has also revealed that signing of Land Claims Agreement also create an enabling environments for the creation of a mining policy. In the case of NTI, their policy states it has been released to harness economic opportunities in mineral development. As discussed in the previous section, some mining policies have emerged in response to guidance needed for accessing surface and subsurface section where rights lie with the Indigenous government or organization. The NTI policy continues by stating 'with proper planning of mining activities, these benefits will remain long after each particular mine has shut down' (Nunavut Tunngavik Incorporated 1997). In many of these instances, 'free-entry' no longer applies and specific guidance is required by Indigenous peoples. The need for a mining policy is therefore driven by the signing of a Land Claims Agreement where authority over subsurface rights is transferred from the Crown to Indigenous peoples.

While this enabling framework drives the creation of the mining policy, it is not often obvious how the mining policy fits within larger policy framework of the Indigenous government or organization. There is generally no reference to other policy documents with the mining policy itself. In certain cases there is reference to an Agreement, for example the NStQ references their Statement of Intent Area and the Cree First Nation references Agreements signed with Canada

and Quebec. As discussed in previous sections, many Nations have additional documentation and procedures that are held internally and not available publically. Based on the research it also not clear how these Indigenous mining policies fit within the broader legislative environment within Canada. There is need to further investigate how these policies related to federal, provincial an territorial mining regulation.

The Cree First Nation established the Cree Mineral Exploration Board (CMEB). The CMEB was formed as a result of an Agreement signed between the province of Quebec and the Cree First Nation. The CMEB is functioned with developing and enhancing mineral exploration in the Cree. As part of this goal, the CMEB developed and released the Cree Nation Mining Policy. This policy is composed of three parts: Guiding Principles, Guidelines to a Cree Integrated Approach to Mining and Guidelines on Financial and Other Benefits. Part one of the Cree Nation Policy is intended for public distribution, while the remaining parts are intended for only Cree consumption. Part II - Guidelines to a Cree Integrated Approach to Mining and Guidelines sets out the role and responsibilities of Cree entities with respect to mining and how these entities interact with each other. Part III – Guidelines on Financial and other Benefits includes details about the various agreements which can be derived from agreements with mining companies and the distribution of financial benefits amongst the impacted and non-impact communities (Bosum 2011). Given this division, only the first part of the Cree First Nation policy has been reviewed as part of the analysis.

Similarly, the NStQ references an implementation plan on their website to be used in conjunction with the policy. The Tsilhqot'in policy also includes a section dedicated to 'implementation' where it described the implementation process 'through guidelines and template agreements that will directly engage industry proponents'. These additional guidelines and templates are not publically available.

As discussed in the previous chapter, Nunavut Tunngavik Inc. was created as the successor of the organization that created the Land Claims Agreement on behalf of the Inuit of Nunavut. NTI's primary role was to ensure the Lands Claim Agreement was implemented and rights of the

Inuit were ensured. To properly implement the Lands Claim Agreement, NTI recognized it was important to have a clear position on mining activity (Eetoolook 2000). Therefore, NTI has released two mining policies, one more general policy and another focused on uranium mining, Policy Concerning Uranium Mining in Nunavut. NTI has a management structure and formal process for accessing mineral rights and proceeding with mineral development. For these minerals, NTI uses a map selection system for mineral acquisition. Interested parties must complete an Expression of Interest Inuit Owned Lands for Mineral Rights from including a map of the proposed exploration area.

In 2011, the NTI released their Resource Revenue Policy. As stated in the official document “the objective of the policy is to establish a clear, efficient and consensus-based policy to govern the use of a portion of the economic benefits derived from mineral resource development in Nunavut” (Nunavut Tunngavik Inc 2011). The release of this policy is intended to supplement the existing mining policies and does not change the existing process that was put in place. This supplemental policy is similar to the framework set out by Part III of the Cree Mineral Policy. The presence of a broader policy framework is potentially a reflection of the Indigenous government or organization’s internal capacity. Sufficient capacity is required to undertake the production of an Indigenous mining policy and to effectively situate the policy to complement existing policies and governance structures.

The Tłıchǵ Mineral Strategy is tied directly to the contents of the Tłıchǵ Land Use Plan, which became law through the enactment of the Tłıchǵ Land Use Plan Law. Similarly once released, the Tłıchǵ Mineral Strategy will also become law. This law-making power is an enabling framework created through the signing of the Tłıchǵ Lands Claim Agreement and allows for the creation of laws related to the use, management, administration and protection of Tłıchǵ lands. Authority for the approval of the Land Use Plan, future approval of the mineral strategy and future approval of land use rests solely with the Tłıchǵ Government.

While connection to implementation is established for many of the policies, there is no clear reference to other policies in a way that suggests an integrated or whole of government approach

to managing the impacts of mining. It is not clear if the impacts of mineral development on a particular region are being tracked and evaluated to understand the bearing of the mineral policy. An integrated approach would more effectively track if the policy is creating positive (or negative) change in the region. In some cases, regions have socio-economic reporting requirements of mining companies through Impact and Benefits Agreements. Indicator sets are developed and analyzed to quantitatively capture the positive and negative socio-economic impacts on the community. However, there does not seem to be a process in place to connect these outcomes to the policy framework. It is not evident that there are procedures in place to adapt mining policies to the changing socio-economic landscape.

4.4 Building Alignment

Although mining policies have emerged for different reasons, it is expected that in all cases the act of developing a policy enables alignment and collaboration within the Indigenous governance structure. The act of creating of creating a policy requires various individuals or departments to come together and develop and set of common principles to achieve a universal goal. The process is helpful as an exercise to build alignment and integration across government departments and functions to achieve a more unified approach to mineral development. The process of policy development can help provide clarity and certainty on the government's vision for development on the territory. The creation of a mining policy can also help clarify internal-decision making and information sharing processes within communities. Once these processes are established internally, mining policies provide a means by which Indigenous government or organizations can articulate and communicate their goals, values and decision-making processes to proponents and to other government agencies.

Political power and institutional frameworks appear to drive the policy building process. As discussed in the literature review, power is evident in determining the list of problems and proposed solutions (Smith and Larimer 2013). By driving policy from within Indigenous governance structures, the problems brought to light are issues directly affecting Indigenous communities. The literature review also highlighted challenges in defining policy objectives. Public policy objectives are difficult to correctly identify as problems arise in determining whose

objectives should form a basis for the policy. There is conflicting goals for any one initiative given that different individuals, groups or institutions involved in the policies or, who have interests in their outcomes (C. O'Faircheallaigh 2002). Objectives driven by the Indigenous government or organization with input from communities more appropriately reflect the needs of the region.

Following the signing of the Agreement in 2005, the Tłıchq Government introduced a moratorium on all Tłıchq territory land that prevented any development from occurring. The moratorium allowed the Tłıchq to critically think about their vision for mineral development on their territory and develop long-term goals. The Tłıchq Government used this time to organize internally and determine the sequence of events required to effectively manage their land in line with their vision. Part of this process involved the development of the Tłıchq Land Use Plan. The Tłıchq Mineral Strategy aligns with the Land Use Plan and the two documents share parallel values and objectives.

None of the Indigenous mining policies studied reference a connection between their policy and a land use plan. The additional contextual research undertaken also does not reveal any existing relationships between Indigenous mining policies and land use plans. While this finding is limited by the lack of contact with any Indigenous governments or organizations beyond the Tłıchq Government, it suggests a lack of alignment. The development of the Tłıchq Land Use Plan provided a foundation for the creation of the Mineral Strategy by identifying areas of territory that are off limits to development. The Tłıchq Land Use Plan identified where mineral development can take place on the territory, while the Tłıchq Mineral Strategy will determine how mineral development will take place on the territory. Where an Indigenous government or organization does not have a land use plan, culturally sensitive regions may not be well identified and proponents may not clearly understand where development is permitted. Additionally, the Tłıchq government has already engaged its communities to understand concerns and establish the regions in which mineral development will be permitted. Significant time and resources were dedicated to this process. The Tłıchq Land Use Plan ensures the Tłıchq government is

accountable to the commitments made to the territory and the people. Where a land use plan has not been established, this process may be undertaken on an ad-hoc basis and lack consistency.

4.5 Policy Revision and Changing Attitudes

This research has identified two cases where the policy was revised, or the Indigenous government or organization intends to review the policy. As explored in the data analysis, Nunavut Tunngavik Incorporated revised their policy in wake of increase interest in uranium deposits from mineral development companies. In 2011, the president of NTI put the uranium policy hold to ensure the Inuit of the region had been fully informed of the issues. The president claimed there had not been sufficient engagement with the community prior to the policy's release in 2007 (CBC News 2011). However, at NTI's annual general meeting in late 2011 it was announced that no changes would be made to the policy (Rogers 2011). Similarly, since finalizing a government-to-government agreement, the Taku River Tlingit First Nation is planning to revise their mining policy. They have stated that their current policy is outdated and acted as an interim document while the government-to-government agreement was finalized.

These revisions open up a broader dialogue around what might trigger policy review and how Indigenous governments or organizations address these revisions. The data analysis showed that very few of the mining policies include any information about the triggers for policy revision. Both NTI and Taku River Tlingit include reference in their policy to revisions. Taku River Tlingit First Nation Mining Policy includes a section for 'Review of Policy'. This section indicates that the Government will make any necessary changes to the policy no later than two years from the initial ratification. After this two year period, the policy will be revised (if necessary) every five years thereafter. NTI Uranium Mining Policy is less specific with its review. The policy includes a section 'Review and Revision', which indicates the document is subject to periodic review and revisions. Both these sections are fairly limited in detail and do not provide detail about the triggers for policy review.

Indigenous mining policy is subject to the same concern as policy making more broadly. It is imperative that individuals affected by the policy are consulted prior to policy creation or policy

revision. While there is limited information available about the process used to create many of the Indigenous mining policies studied, there is often reference to community consultation. The literature review highlights that what makes policy public is that the choices or actions backed by the state, who in a democratic society acts on behalf of the public. In some cases policy making excludes groups that are directly affected by the policy initiative. This approach is used to avoid particular interest groups that may threaten the policy goals or outcomes (C. O'Faircheallaigh 2002). While the literature review was intended to demonstrate the lack of concern for Indigenous groups by the Crown, this argument can reflect gaps in consultation undertaken by Indigenous leadership.

4.6 Conclusion

There is limited research that examines specifically the emergence of Indigenous mining policies, their content and their significance. To relate this research to the broader research framework, this thesis has explored various external elements that drive the creation of Indigenous mining policy and the various factors that affect the forms these policies have taken in Canada. Specifically this research has attempted to answer the following key questions:

- What are the range of topics, approaches and goals of indigenous policy?
- How does the policy approach taken by each Indigenous government link to the nature of the legislation to which it connects?
- Are there enabling frameworks that drive or launch the creation of an Indigenous mining policy?

In order to answer the first question, an evaluation of existing Indigenous mining policies was undertaken to explore and describe the differences between policy approaches and goals. The data analysis portion of this research provides answers to this question. This research also provides a foundation of knowledge for any Indigenous government or Indigenous organization looking to develop an Indigenous mining policy. In many instances, Indigenous governments or organizations identified the review of existing Indigenous mineral policies as a first step in the development of their own policy evolution. This research has provided a comparison of existing

policy frameworks, which fills a research gap and contributes to the foundation for the evolution of new Indigenous mineral policies

The data analysis and discussion have attempted to explore Indigenous mining policies and how they relate to the political environment in which they were created. It has been demonstrated that there is indeed a strong correlation between the structure of mining policies and the relationship built between the Indigenous government or organization and the Crown. As the data analysis and discussion suggests, the length and complexity of the Indigenous mining policy is dependent on the rights established by the Indigenous government or organization with the Crown. NStQ and Taku River Tlingit Mining Policies stand out as examples of an Indigenous government or organization utilizing their mining policy as a means to assert rights to their territory while in the process of establishing a formal agreement with the British Columbia Crown. As a result, their mining policies include extensive content describing specific processes and timelines for exploration, mineral development, engagement and consultation among other areas. This notion is reinforced by Taku River Tlingit First Nation's decision to revise their mining policy after finalizing their government-to-government agreement with the Crown. Their revised policy has not been released, but will be telling of the relationship described herein. Unlike the NStQ and Taku River Tlingit Mining Policies, Indigenous governments or organizations who have clear and defined Land Claims Agreements, or other formal agreements with the Crown, have released policies that more broadly define expectations for mineral exploration and development on their territory. This structure is the result of the mining policy often representing only a small portion of the governance framework for land and mineral rights in their situation.

Finally, the thesis has explored the driving factors for the creation of mining policy. As discussed, there are three factors that have been found to have enabled the creation of Indigenous mining policy: specific mining-related events, Land Claims agreements, or other formal agreements with the Crown, and the assertion of rights. While specific mining-related events have been seen to have led to an accelerated release of a mining policy, in the three circumstances (NStQ, Tsilhqot'in, Taku River Tlingit), policy development was already underway prior to the event. This suggests that there was another driving force for the creation of the policy. In the case of the NStQ and Taku River Tlingit First Nation, assertion of rights to

their territory was also a driving force, whereas for the Tsilhqot'in the release was in response to their right to aboriginal title.

Chapter 5: Conclusions and Recommendations for Future Work

The intent of this work was not to provide recommendations for the development of Indigenous mining policies, but rather, to understand their emergence and to characterize their drivers. This thesis research leads to a number of conclusions and recommendations for potential future work.

5.1 Conclusions

There is limited prior research that has examined specifically the emergence of Indigenous mining policies, their content and their significance. This research was not intended to form recommendations, but rather to provide a framework for Indigenous governments or organizations looking to develop their own mining policy. In many instances, Indigenous governments or organizations identified reviewing existing Indigenous mineral policies as a first step in the development of their own policy. This research has aimed to provide a comparison of existing policy frameworks, which fills an important research gap in contributing to a foundation for the continuing evolution of new Indigenous mining policies. The analysis and discussion aimed to expand on the driving forces and enabling environments for Indigenous policy creation. This research does not attempt to propose one path for policy creation, but rather suggests that Indigenous governments or organizations utilize all vehicles available, including mining policy, for asserting rights over their territory.

As described throughout this thesis, the Tł̓chq Mineral Strategy will be unlike the other mining policies studied. The structure of the policy will be similar to that of the NStQ and Taku River Tlingit mining policies in the sense that it will include extensive detail on accessing Tł̓chq territory and the processes in place for exploration and mineral development. The Tł̓chq Government, unlike the NStQ and Taku River Tlingit First Nations, has been granted authority over the territory and subsurface rights. In the case of the NStQ and Taku River, their relationship to the Crown and the lack of legislation ensuring rights to their territory drives the structure of their policy.

The Tłıchq Mineral Strategy is enabled by the Tłıchq Land Claims Agreement. The legislative framework in place as a result of the Agreement provides the Tłıchq Government with subsurface rights and law-making authority over lands. Other Indigenous governments or organizations enabled by similar framework utilize mechanisms beyond their mining policy to guide access to their territory and provide a system for mineral exploration and development review. The Tłıchq Mineral Strategy will capture many of these systems in one formal document. The intent of this research is not to suggest that one approach is superior, but to demonstrate the various approaches taken by Indigenous governments or organizations in Canada to develop mining policies. Given that the Tłıchq Mineral Strategy has yet to be formally released, it is premature to compare it in the same manner to the existing Indigenous mining policies studied.

More broadly, it is hoped that the results of this research can be used to inform various stakeholders, government, industry and academia about the contents and intent of Indigenous mining policy. Regardless of the relationship established between the Indigenous government or organization and the Crown or enabling legislation, these policies should be given the same respect as any other federal, provincial or territorial policy. While potentially not formally supported by Crown law, these policies serve as Indigenous law for anyone engaging in mineral development on Indigenous territory. Indigenous peoples derive their law-making authority from Indigenous law. Indigenous peoples have relied on these laws to navigate their relationship with the territory and with each other. To truly fulfill the essence of duty to consult and accommodate the process must be influenced as much by Indigenous law as it is by the Crown or common law (First Nation Leadership Council 2013). As such, both mineral development proponents and the Crown must re-envision their approach to exploration and mining on Indigenous territory.

5.2 Research Limitations

The research is limited by the lack of contact with each of the Indigenous governments or organizations studied. Beyond the Tłıchq First Nation, no contact was made with First Nations or Inuit organizations responsible for developing the mineral policies. While conclusions can be drawn about policy formation being driven by the Indigenous government or organization's relationship to the Crown, it is based solely on the correlation determined in the data analysis and

publically available information. Given the limited number of Indigenous mining policies in Canada, the reader is cautioned that there are potentially not a large enough number of policies to draw strict conclusions.

The research does not suggest that it has identified all Indigenous mining policy in Canada. As stated in Chapter 3, the primary method for identifying these documents was through internet searches and a reliance on expert researchers with deep networks in the area. As such, there may be mineral resources development policies that were not identified during this research.

Finally, any mention of the Tłı̨chų Mineral Strategy is still speculative at the time of submission of this thesis since the Tłı̨chų Mineral Strategy has not been released publically. Therefore, there is no guarantee that claims made in this research will be an accurate representation of the final Tłı̨chų Mineral Strategy. This research, however, has been undertaken in close association with the Tłı̨chų First Nation.

5.3 Recommendations for Future Work

The experience of this research leads to the suggestion that future studies should look at how industry, governments and other organizations interact with Indigenous mining policy. In the thesis, this research has been limited to understanding the internal elements that drive policy creation. The intent of the policy, however, is to inflict change on the standard processes used by mining proponents and it is critical to understand how mining proponents and external stakeholders interact with these policies. Additionally, this work was bound geographically within Canada. There is the potential to explore how Indigenous groups internationally are developing their mining development policy.

Some new research questions of significance that have emerged for possible research studies include:

1. Are mining companies aware of Indigenous mining policies? Do these policies provide clarity to exploration and mining proponents about how to approach development on the Indigenous territory?

2. What affect do Indigenous mining policies have on the way exploration and mining proponents approach engagement and consultation as compared to an Indigenous government or organization without a policy?
3. Are Indigenous governments or organizations seeing changes in the way mineral development is undertaken in their territory as a result of the mineral policy?
4. Do Indigenous governments or organizations use indicators to track changes in their territory? If so, are the results used to update and inform future revisions of their mining policy?
5. How does Indigenous mining policy integrate with provincial, territorial or federal mining policy? How do the Indigenous government and provincial, territorial or federal government manage conflicting policy directives?
6. How does Indigenous leadership ensure that adequate consultation has occurred with affected communities and that the policy reflects the needs of the public?

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Appendices

Appendix A Memorandum of Understanding with Tłıchǵ Government

[Insert Tłıchǵ Government Header]



a place of mind
THE UNIVERSITY OF BRITISH COLUMBIA

A Collaborative Research Agreement

Project Title: **Identifying common frameworks in Canadian Indigenous Mineral Policies for the development of the Tłıchǵ Mineral Strategy**

This Collaborative Research Agreement is made the ____ day of the month of _____, in the year of _____.

Between:

Principal researcher(s): Stephanie Zimmerling

Supporting Agency: University of British Columbia

Address:

Telephone: (613) 868-7911

Email: stephanie.zimmerling@gmail.com

Signature:



And:

Từ chq Government

Contact Person:

Address:

Telephone:

Email:

Signature:

The principal researchers and the Từ chq Government agree to conduct the named collaborative research project in accordance with the guidelines and conditions described in this document.

1. Purpose of the Research Project

The purpose of this research project, as discussed with and understood by the Tłıchq Government is to investigate other Indigenous Mineral Policies developed by Canadian First Nations to inform the development of the Tłıchq Mineral Strategy.

The results of this research may be used by other First Nations to inform the development of their own Mineral Policy.

2. Scope of the Project

The research will focus on reviewing and evaluating elements of existing consultation policy frameworks to determine commonalties and unique principles. Outcomes of this research will inform the development of the Tłıchq Mineral Strategy. In order to meet this objective, the following types of information will be gathered:

- Desktop research will be used exclusively to gather information on existing Indigenous Mineral Policies.
- Periodic meetings will be held with the Tłıchq Government to gather feedback with regards to the development of the Tłıchq Mineral Strategy.

3. Methods and Procedures

Desktop research data will be collected first by identifying existing Indigenous Mineral Policies.

These will be identified with the assistance of the researcher's supervisor Dr. Ginger Gibson.

Additionally the research will use the internet to gather any additional Indigenous Mineral Policies.

Regular meetings will be held between the researcher and the Tłıchq Government. Individual consent to participate in the project will be obtained through the signing of this letter.

Participants have the right to withdraw from the project at any time for any reason. In this case, the participant's data will be destroyed. Research data obtained during the meetings will be

obtained by the researcher in written form. This data will be transcribed into electronic form. The following people will have access to the research data:

- Stephanie Zimmerling
- Dr. Ginger Gibson
- Dr. Malcolm Scoble

Transcribed notes will be stored on a flash drive and locked in a cabinet in Dr. Malcolm Scoble's office in the Norman B. Keevil Institute of Mining at the University of British Columbia. Any hand written notes will also be stored in a locked cabinet in Dr. Malcolm Scoble's office.

Room 508C - Frank Forward Building

6350 Stores Road

University of British Columbia

Vancouver, BC V6T 1Z4

An unedited transcript will be made available to the participant at their request. They will be notified of this at the end of each meeting.

Confidentiality of the research data (if desired by the Tłchq Government) will be ensure in the following way. All data will be coded using number identifiers to ensure the confidentiality of participants. That number will be used during the meetings while information is being transcribed. Only researcher Stephanie Zimmerling, supervisor Dr. Malcolm Scoble and co-investigator Dr. Virginia Gibson will have access to the key for the coded names. A participant can request their name be released for acknowledgement. The participants will be asked whether would like to be acknowledged publicly at the beginning of each meeting.

Data will be used to inform changes to the Mineral Strategy and inform the process used to evaluate the Mineral Strategy. This information will be captured in the researcher's thesis. The

final these will be submitted to the Tłıchq Government for review and approval. Research findings will be presented to the Tłıchq Government that in a language and format that is clear and understandable by all members. All research will be presented to the Tłıchq Government in the following formats:

- PowerPoint presentation
- Memo style reports
- Final Acrobat PDF thesis report

4. Expected Outcomes, Benefits and Risks

The expected outcomes of this project are an overview of existing Indigenous Mining Policies in Canada. This report will highlight common frameworks and unique elements to inform the development of the Tłıchq Mineral Strategy – the primary outcome of this research. This project will benefit the Tłıchq Government, as the Tłıchq Mineral Strategy will provide guidance to mineral exploration and development proponents on how to do business on Tłıchq Lands.

A risk of the proposed research is the Government participants in the study could feel uncomfortable or not willing to disclose details about their feedback. There may also be details that the participant may not want to disclose.

To mitigate this risk the interviewer will state clearly at the start of each interview that the Government may decline to answer any question and/or ask the researcher to leave the room during the meeting.

The nature of this research is to develop a set of publicly available best practices for Indigenous Mineral Resource Policy Development and to inform the Tłıchq Mineral Strategy. The Government participants have requested the researcher's assistance. The researcher will re-iterate the purpose of their presence at the beginning of each meeting.

5. Funding

No funding has been acquired by the principal researcher. There are no additional criteria, disclosures, limitations and reporting responsibility on the principal researcher or the Tłchq Government. Tłchq Government is providing in-kind support and occasional travel funding through Kwe Beh.

6. Dissemination of Results

Research results will be included in the principal researcher's thesis. This document will be disseminated to the public through the University of British Columbia's eCircle, the university's digital repository for research and teaching materials created by the UBC community. Any future publications or dissemination of the research results captured in meetings with the Tłchq Government, beyond what is described in this agreement, shall not be undertaken without consultation with the Tłchq Government. The researcher will provide a publication for the Tłchq Research and Training Institute

7. Data Ownership and Intellectual Property Rights

The Tłchq Government retains all intellectual property rights (including copyright), as applicable, to any data offered under this agreement.

Access to the collective data are determined by the Tłchq Government.

8. Communication

Internal communication on all aspects of this research project will be communicated between the principal researcher and the Tłchq Government by Dr. Ginger Gibson. The Tłchq Government will be the first to receive the research results and the first to provide input and feedback on the results. The results will be provided in a language and format that is appropriate and accessible

to the community. Results of the information obtained through the meetings will not be released without the approval of the Třchq Government.

9. Dispute Resolution

In the event that a dispute arises between the principal researcher and the Třchq Government, both parties agree to first try to settle the dispute through internal communication and good faith. In the case the dispute progresses, the issue will be escalated to the senior management level for resolution. If discussion at the senior management level cannot resolve the dispute to the satisfaction of both parties, the research project may be terminated according to the terms described below.

10. Term and Termination

This agreement shall have an effective date of October 1, 2015 and shall terminate on December 1, 2016.

This agreement may be terminated by the written notification of either party.

Appendix B Data Analysis Matrices

Development of the Tłı̨chǫ Mineral Strategy

Policies	Policy Formation	Defined Target Audience	Resource Sector	Principles	Purpose	Application Process	Evaluation of Proposal/Application	Decision Process/Timing	Consultation Process/Principles	Reference of Bilateral Agreements	Relationship of Policy to Aboriginal Rights	Review of Policy	Policy Notification to Resource Industry & Province
Northern Secwepemc to Delmine Mining Policy	x	x All mining activity	Exploration and Mining	x FPIC Accountability Environment Socio-cultural Economic benefit Monitoring	x	x Appended Templates	x		x FPIC Included in Guiding Principles Environmental Assessment	x Exploration Agreement Assessment Agreement ISA	x Principles Environmental Assessment		
Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	x	x All activities defined - include more than mining	All development	x Aboriginal, Treaty and Consultation Rights Culture Environment Benefit of K/N people	x	x Appended Templates	x	x	x Principles Consultation required through Application process		x Principles	x Disclaimer regarding ad-hoc changes	
Tsilhqot'in National Government Mining Policy		x Mining and Exploration companies	Exploration and Mining	x Culture Environment Benefit of Tsilhqot'in People Aboriginal Rights and Title	x					x Exploration Agreement ISA	x Principles		x Guidelines and Template Agreements to be reviewed that "will direct engagement"
Taku River Tlingit First Nation Mining Policy	x	x Parties Interested in extraction of mineral resources	Exploration and Mining	x Aboriginal Rights, Title and Interest Socio, Economic, Environment Benefit	x	x	x Decision Process differs for Exploration/Development		x Through Evaluation	x Exploration Agreement Environmental Assessment Agreement ISA Accommodation Agreement	x Principles Stand alone section	x Every 5 years	
Cree Nation Mining Policy	x	x Mining Activity	Exploration and Mining	x Mineral Rights Benefit Sustainable Development Policy Transparency and Collaboration									
Tahltan Nation Resource Development Policy Statement		x Resource developer	Exploration and Mining	x Environment Aboriginal Rights Benefit (education, employment, economic)							x Principles		
Exploration Activities in the Alaktoho Territory		x Exploration	Exploration			x	x	x	x	x Exploration Agreement			
Fort Nelson First Nation Consultation Protocol and Guidelines	x	x Targeted at Mining, other infrastructure activities, policy changes	Exploration and Mining			x	x	x	x		x		
Nunavut Tunngavik Mining Policy	x	x	Exploration and Mining	x Minimize negative impacts Maximize benefits Attract mining investment Resolve land use conflict Improve consultation	x				x				
NTI Uranium Policy		x	Uranium Exploration and Mining	x Responsible peaceful nuclear energy Benefits Protection of human health Minimize impacts Promote Inuit participation	x				x	x		x	
Nunavut Inuit Mining Policy		x	Exploration and Mining	x Minimize negative impacts Maximize benefits Good communication	x				x				

Policy Formation

Criteria	Northern Secwepemc to Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Alaktoho Territory	FNFN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavut Inuit Mining Policy
Consultation/Review of draft			x 2 months - public, industry, government		x? Cree Working Group Plan Nord					x	x
Developed in collaboration	x Fair Mining Collaborative										
Researched other policies	x										
Best of Provincial Regs	x										
As a result of specific incident	x Mt Polley		x New Prosperity		x James Bay and Northern Quebec Agreement Paix des Braves						
Previous agreement expired								x			
Discussion paper										x	
mining sector post-release of policy											x

Purpose

	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aikaitcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Criteria											
Text included regarding policy formation/purpose	x	x		x	x	x		x	x	x	
Clarity - clearly define how Nation will deals with Mining activity	x	x	x	x	x					x	
In response to Provincial Mineral Strategy					x						
In support of Duty to consult							x	x			
To ensure recognition and Acknowledgement of rights	x				x						
To state openness to development		x			x	x			x		
Protection of Land	x			x	x				x		x
Nation not being adequately compensated	x										
Legislation does not address Nation's participation in Decision				x							
Not covered by Other mining policy										x	

Target Audience

	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aikaitcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Criteria											
Specifically states target audience		x		x	x	x	x		x	x	
People of the First Nation	x	x	x		x	x			x		x
Mineral Exploration Companies	x	x	x	x	x	x	x		x	x	x
Mineral Development Companies	x	x	x	x	x	x			x	x	x
Crown		x								x	
Aboriginal Organizations		x									

Resource Sector

	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aikaitcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Criteria											
Mineral Exploration	x	x	x	x	x	x	x	x	x	x	x
Mineral Development	x	x	x	x	x	x		x	x	x	x
Forestry		x									
Tourism		x									
Commercial Fishing		x									
Agriculture		x									
Traditional Pursuits		x									
Energy		x									
Transportation		x									
Legal/Policy changes								x			
Water Use Planning								x			
Land Status								x			
Construction of infrastructure								x			

Principles

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Akwitcho Territory	FNFN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Accountability	x										
Environment	x	x	x	x	x	x		x		x	x
Socio-Cultural	x	x	x	x	x	x			x	x	x
Health and Safety	x									x	
Build Relationships with mining and exploration companies			x	x	x	x		x	x		
Work Cooperatively with Government				x				x			
Traditional Knowledge	x		x								
Economic Benefit	x		x	x	x	x		x	x		x
Monitoring	x										
Aboriginal Rights and Title	x	x		x	x	x		x			
Treaty Rights		x						x			
Consultation	x										
FPIC	x		x					x			
Clarify decision making process			x								
Benefit to the Nation's People	x	x	x		x	x			x		
Sustainable Development				x	x				x	x	x
Transparency					x						
Future Generations	x				x			x			
Promote participation of FN people										x	
In conformity with all existing federal and provincial laws											x
Open dialogue											x

Application Process

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Akwitcho Territory	FNFN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
List of required info (list included on next tab)	x	x		x	x Not available as part of policy but Schedule A, B indicate requirements		x	x			
Templates Included	x Appendix B	x Notification of Intent to Perform Exploration Work									
Timing		x 45 days to review					x				
Cost											
Allocation of Responsibility within Nation (Resource Manager or equivalent)*	x Natural Resource Manager	x		x TATFN Land & Resources Manager							

*also included on Decision
Process tab

Application Requirements

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tungavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Description of proponent	x	x			Not available as part of policy but Schedule A, B indicate requirements		x				
Scope of work	x	x						x			
Rationale for scope of work				x				x			
Geographic location	x	x					x	x			
Identification of all existing industrial development within 10 km								x			
Timing and duration	x	x		x			x	x			
Possible alternatives to proposed activities								x			
Access to site	x			x							
Type and amount of materials to be used							x				
Work force required	x	x		x			x				
Predicted impacts on environment/community	x			x			x				
Environmental Management Practices	x						x				
Monitoring Program	x										
Remediation for site	x										
Regulatory approvals required				x							
Status of proposal in regulatory process				x							
Economic benefit to Nation		x		x			x				

Decision Process

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tungavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
<i>Exploration</i>											
Process Included	x	x		x			x	x			
Allocation Natural Resource Manager (or equivalent)	x	x		x							
Range of options based on "significance of impact"	x			x			x	x			
Exploration Agreement Defined Timing	x Exploration Agreement needed if 'significant potential impact' identified			x Exploration Agreement if work "raises serious concern"			x			x	
Outcomes Defined							x	x			
<i>Mine Development</i>											
Process Included	x	x		x				x			
Environmental Assessment Process	x			x						x	
Permitting Discussed	x									x	
Crisis Management Plan	x										
Monitoring								x		x	
Defined Timing								x			
Outcomes Defined	x			x Identification of required elements for consent							
Reclamation Bonds	x									x	

Exploration Agreement

	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Criteria											
Protocols for communication, information exchange	x										
Scope of work	x			x							
Commitment to protect cultural heritage	x										
Financial security	x										
Access routes				x							
Timing and duration				x							
Size of workforce				x							
Monitoring and site inspection				x						x	
A socio-economic benefits plan	x										
Plans for compensation for any disruption to land use				x							
Environmental protection measures	x			x							
Reporting requirements				x							
Terms for leaving territory				x							
Mechanism for negotiating next phase of relationship				x							
Economic benefits to community				x							
Other ¹				x							
Expected impacts										x	

Levels of Gov. Review

	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Criteria											
Description of Levels of Government				x Org chart Decision making flow chart	x						
Screening Committee		x Planning board advises Chief and Council		x			x				
Joint Clan/Chief and Council Meeting (or equivalent)		x		x							

Consultation

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Alk'itcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Consultation with Crown	x			x				x	x		x
Consultation with Proponent	x	x		x			x	x	x		x
Emphasis on 'meaningful'									x	x	x
Reference to FPIC	x							x			
Transfer of information	x	x		x			x	x		x	
Community Involvement Identified		x						x			
Community Engagement Guidelines								x			
Consultation Process		x					x	x			x
Funding provided by proponent	x			x if necessary				x			
Field Participation Guidelines (cultural, environmental info collection)								x Super details, cost, timing, templates			
Environmental Management Plan	x										
Monitoring Plan								x			
Closure Plan	x										
Cultural sensitivity									x		x
Use of best available information in decision making	x			x					x	x	
Establishment of local or regional technical committee to engage in consultation										x	
Consider Traditional Knowledge											x

Bilateral Agreements

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Alk'itcho Territory	FNPN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Exploration Agreement	x funding provided by proponent to conduct independent environmental, social, economic and cultural baseline study		x	x			x			x	
Accommodation Agreement	x			x							
Environmental Assessment Agreement	x			x			x			x	
Impact Benefit Agreement	x		x	x						x	x
Templates (info requirements)	x										
Funding Provided by Proponent	x			x							
Cost											
Timing											

Policy Review

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNFN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Occurrence		X Ad-hoc		X every 5 years					X periodic review		

Policy Notification

Criteria	Northern Secwepemc te Qelmuw Mining Policy	Kasabonika Lake First Nation Lands and Resources Planning & Development Policy	Tsilhqot'in National Government Mining Policy	Taku River Tlingit First Nation Mining Policy	Cree Nation Mining Policy	Tahltan Nation Resource Development Policy Statement	Guidelines for Mineral Exploration Activities in the Aklaitcho Territory	FNFN Consultation Protocol & Guidelines	Nunavut Tunngavik Mining Policy	NTI Uranium Policy	Nunavik Inuit Mining Policy
Resource Industry			X Guidelines and Template Agreements to be released that "will direct engagement"								
Government											
Other											