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Department of Industry, Tourism and Investment
Submitted by E-mail:
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Re: **Alternatives North response to *Unlocking Our Potential Together* Discussion Paper on a Mineral Resources Act for the Northwest Territories (GNWT August 2017)**

The following comments are submitted by Alternatives North regarding input the development of the new NWT Mineral Resources Act (Act).

Alternatives North is a coalition of groups and individuals united in an active, grassroots commitment to build, strengthen and defend social, environmental and economic justice in the Northwest Territories. Within our group are representatives of faith groups, labour unions, environmental organizations, women and family advocates and anti-poverty groups. Individual citizens are important participants in our work.

This submission starts with a summary of overall points and then follows the key topics for discussion listed in *Unlocking Our Potential Together* Discussion Paper.

- The Mineral Development Strategy, and the information in the Paper, appears mostly driven by ITI and the mining industry, rather than a collaborative effort by all departments in the public interest. More emphasis on the legal, environmental and social aspects of mining, including exploration, are needed to develop an appropriate Act. Deeper collaboration with the other GNWT departments with appropriate knowledge and expertise in these areas is needed to develop a suitable Act for the NWT and to meet the promises of devolution. Our comments include points related to the overall mineral development cycle, and are not limited to what may be in the Act. This approach was promoted by the Premier and the GNWT's vision outlined in the Land Use and Sustainability Framework. This framework should be a guide for decision making in regards to the future Minerals Resources Act (the Act).

- Many of the points made below expressing the need for alternative ways of regulation suffer from a lack of research on best practices and lessons learned to consider. There is an opportunity for GNWT to do this research,

present results to the public, and seek input on better ways forward than we have experienced in the past. The Discussion Paper is an introductory effort to this, but much more is needed. Further information and opportunities are need to ensure informed input into the development of the Act.

- To enable a more comprehensive approach to the mining industry, rather than just a business approach, the responsibility for managing subsurface rights should be moved to Lands, rather than ITI. The statement "Strengthening the competitive advantage of the mineral and mining industry in the NWT [as] the first component of the *NWT Mineral Development Strategy*", strongly suggests ITI's current a dual and incompatible role as both a regulator and promoter of mining. To ensure that there is reduced bias and perception of conflict of interest, the subsurface mineral disposition management system should be moved to a neutral third-party that already has expertise with dispositions—the Department of Lands.

- The focus of the Discussion Paper seems to be to promote mining, but should first address how to mitigate, manage and make informed decisions regarding all the trade-offs regarding risks and benefits that have happened to date (and are still happening), then think of ensuring benefits for all northerners.

- The NWT has a made-in-the north, different-by-design integrated environmental management regime that is the result of constitutionally entrenched Indigenous land rights agreements. The *Mackenzie Valley Resource Management Act* (*MVRMA*) integrates land use planning, environmental assessment, land and water management, state of the environment reporting and an audit function. While Devolution of authorities in 2014 modified roles and responsibilities, the integrity of this integrated system must be protected and strengthened, and the Act should explicitly support the system. There should be no attempt to undermine or weaken the *MVRMA*.

- The free entry system is incompatible with the constitutional duty to consult and accommodate Indigenous rights and best practices regarding sustainability. The free entry system is antiquated and inadequate for our needs. The *Ross River Dena Council v. Government of Yukon*, (2012) YKCA case provides adequate warning for mineral rights systems that do not recognize the right to free, prior and informed consent.

- Given that the NWT has some of the lowest 'government take' (economic rent or royalties and taxes) in the world in exchange for the extraction and export of its one-time natural capital, we need to overhaul the royalty system to retain a greater proportion of the financial benefits of mining for today and future generations in the NWT.

- Ecologically and culturally representative protected areas that meet International Union for Conservation of Nature (IUCN) standards need to be in place as a priority. This puts an appropriate priority on the health of our environment and cultures, while providing greater clarity to industry on what areas are not suitable for exploration and development.

- Coal should be included in this Act. There have been no updates to legislation on coal for decades.

- Mineral exploration is considered a risky venture and its environmental impacts have often been underestimated or minimized but can contribute towards significant cumulative effects. Mineral exploration should not be treated any differently than other forms of environmental disturbance and needs to be carefully managed.

- The precautionary principle should be part of the overall mineral development cycle. The historical and on-going costly environmental record of mining combined with the burgeoning impacts of a changing climate have led to an accumulation of environmental stresses that must be considered in responsible management of mineral development. We know there are often unintended consequences to various chemicals we use and activities we undertake, so the time is right to exercise caution.

- Protocols for collecting scientific data should be done in a 'cradle to grave' manner for the industry, so that information can be built upon throughout the life of the mine right up until closure. Furthermore, the protocols should be standardized and based on parameters that allow for comparability and compatibility of similar field data so that good cumulative effects information can be determined.

- Mining is being over-emphasized by the GNWT as an economic development tool. The mining sector only accounts for about 7% of the NWT workforce[1], and the Heritage Fund barely taps into mining revenues.

- Consideration to understanding and favouring smaller scale mining (micro-mining) options is needed. Large-scale mining focuses on corporate benefits, rather than community needs. Furthermore, large-scale mining requires highly specialized techniques, which can exclude community participation. Micro-mining can be a slow, steady process, using simple techniques and easily repaired machinery. It can extract wealth from small deposits that might not be worthwhile in large-scale mining.

- Finally, many of the points raised also require an effective monitoring and evaluation program by government, combined with consequences when

[1] http://www.statsnwt.ca/labour-income/labour-force-activity/2016%20Annual%20LFA.pdf, and http://www.statsnwt.ca/index.html

justified. Currently, government relies upon industry self-reporting, partly because revenue collection and enforcement has been so ineffective. A whole system response is required.

METHODOLOGY

Alternatives North, without benefit of intervenor funding, held a workshop with seven other interested parties and several individuals, hosted a lunch-hour public meeting, and had background papers done on the Ross River Dena Council court case and Ontario and BC Acts to help us produce this submission. We have begun, with other groups, at website to to promote informed input into new Act (www.responsibleminingnwt.ca).

LAND ACCESS IN PROSPECTING AND EXPLORATION

QUESTION 1: How should land access for mineral exploration be dealt with in the proposed MRA?

Early consultations in the exploration process are needed. For instance, include in the Act a provision requiring that the affected Indigenous governments and communities must be consulted and accommodated before the mining claim is recorded.

Regional land use plans must be finished to help clarify land access. To help speed up the process, we suggest that no mineral rights be issued in a region until a legally binding land use plan is in place. This approach offers the certainty investors seek. The frontier mentality associated with free entry is no longer appropriate given the environmental impacts from exploration and lack of free, prior and informed consent (or social licence). A well-planned approach towards mineral exploration and development is the basis for minimizing environmental impacts and maximizing social gains, while respecting our duty to consult the people directly impacted.

Regional land use plans are not applicable within municipal boundaries and GNWT continues to exercise management of subsurface rights within these areas. This situation has led to land use conflicts and incompatible activities. Municipal governments need to be given authority under the Act to prohibit claim staking and manage subsurface rights within their boundaries.

Before exploration can take place, companies should be required to submit Exploration Plans for consultation and approval; and only once the exploration plans are in place can land use permits and water licences be considered for regulated

exploration activities. To use Ontario's example, Exploration Plans are required in advance of commencing the following activities:

- Geophysical surveys requiring a power generator, including induced polarization surveys; and electro-magnetic surveys
- Line cutting under a width of 1.5 metres
- Drilling with drills weighing less than 150 kg
- Mechanized stripping when the total surface area stripped is < 100 m2, within a 200 m radius
- Pitting and trenching if the volume is between 1 and 3m3 in volume, within a 200 m radius

We need to have good research and discussions as to what would be appropriate triggers for Exploration Plans in the NWT. For example, flights over an area for exploration may initially appear to have no concerns, but there could be serious impacts on animals and cultural practices. Simply undertaking such activities at a more appropriate time could alleviate adverse impacts. A higher standard needs to be set for getting a prospecting licence. For example, cultural and environmental awareness, knowledge of Indigenous rights and familiarity with environmental regulations should be requirements for getting a prospecting licence.

Before prospecting permits are issued, consultations must be completed according to legislated requirements. Then a competitive system such as cash auction should be used to issue a prospecting permit as is the case for the oil and gas where a work bid system is currently in place. Also, recipients of prospecting permits should have a higher level of training required than is required for a prospecting licence. Cross-cultural awareness and sensitivity training should be required, and more specific environmental awareness for the particular area that the prospecting permit is issued.

Exploration should not be allowed in community drinking water source watersheds (currently identified through the Water Stewardship Strategy http://www.geomatics.gov.nt.ca/maps.aspx?i=8) unless specifically endorsed through consultations (e.g., with the consent of municipality of concern) and approved by Cabinet.

The current regime can tie up access to land for too long. Companies can retain large areas for a relatively low investment, over several years without adding to the local economy or geoscience knowledge base. The Work Credit Program allows mining companies to do half the work normally required to keep their mineral claims in good standing and diminishes economic benefits even further. This allows mining companies to unnecessarily tie up lands and to perform less work which means fewer economic spin-offs. The benefits of the program are not known and there was no public debate or discussion around its recent extension.

In general, land access needs to be governed by the imperative of maintaining biological diversity and ecological integrity and cultural values, and only then for

economic development. Without this overarching framework, mineral exploration and mining development ultimately will hurt, rather than help, the NWT people and economy.

There were serious conflicts with land use and community wishes associated with Drybones Bay and Whitebeach Point. A "lessons learned" report should be done as part of responding to Indigenous rights and developing good Exploration Plans with appropriate consultation, including free, prior and informed consent. The results could also be source of information for the future Act.

QUESTION 2: Should incentives be offered to encourage exploration? If so, what kinds of incentives could encourage exploration?

Based on the research we are familiar with, including ITI's background research paper (Bauer report), we believe funding is generally better spent on other types of jobs: money invested in minerals (and oil and gas) generates relatively fewer jobs compared to any other industry or activity. This is especially so if employment of NWT residents is considered where there is often inadequate professional qualifications and education to carry out many mining related jobs.

Exploration and the development of mines is tied to the market and commodity prices. Given the GNWT has little control over these global forces, incentives can be easily wasted.

At the current level of mining activities, the diamond mining companies cannot reach their northern or Aboriginal employment targets, so further incentives without already reaching existing targets in essence uses NWT one-time, natural capital to create jobs for southern workers, rather than enable a scale and pace of development that prolongs benefits and workforce development. Also, given our modest population, there is a finite number of residents interested in mining work at any one point in time, which speaks to the value of pacing the rate of mineral development to maximize northern involvement and benefit.

Research into micro-mining/small mining, the types of exploration needed, the types of support, could help determine if incentives might work at a more local scale. Use of techniques that require simple, easily repaired machinery, that minimize bringing material to the surface, that minimize transportation to only the finished products as much as possible, and the give a slow, steady form of income are some areas of research.

QUESTION 3: The *Mining Regulations* list prohibited lands. Should the process and list be reviewed for the MRA?

Yes, a review of prohibited lands is needed. The ability of regional land use plans to restrict mineral exploration and development should be strengthened and clarified. It is absolutely clear that land use plans are able to prohibit prospecting, mining, and other forms of land and water rights dispositions or use, and this needs to recognized and reinforced in any new mining legislation. However, communities and regional governments have also asked for the authority to prohibit uranium exploration and development through land use plans. This request has been turned down in some NWT regions. Because that was pre-devolution, it is not clear if that position was solely a federal position, or one shared by the GNWT. Post-devolution, the GNWT should be prepared to accept such a request, since it does not prohibit mining, but only mining of certain minerals that are particularly disruptive or incompatible with community values. Further research on this topic would be helpful.

As noted, the authority to prohibit exploration in community water supply basins and municipal lands is needed and should be be provided to local governments.

A better system is required to manage direct and indirect (e.g., through hunting along unregulated new roads) impacts of exploration and development on caribou. This is particularly critical given the catastrophic decline of many NWT caribou populations.

QUESTION 4: Should lands with high potential for mineral presence or transportation be regulated differently than other areas?

Lands with high mineral potential often undergo greater exploration and development pressures. Hence such areas should include higher frequency of monitoring, inspection, and enforcement. As previously stated, mining activities should be treated the same as any other environmental disturbance and should not receive any special treatment or have lower standards. This helps support and recognizes the paramountcy of the integrated resource management system as negotiated through the constitutionally entrenched Indigenous land rights agreements.

Research should be done concerning whether the Act should enable the territory to be divided into different mining zones. This would allow regions that have regional land use plans in place to allow exploration to take place, whereas this opportunity should be restricted elsewhere. This could also allow greater cumulative effects monitoring to take place in areas of high activity. This could help strengthen the fact that exploration and mine development should be treated as any other environmental disturbance and where disturbances get close to thresholds, additional management responses may be required, including restrictions of further rights dispositions and exploration activities.
The long-term costs and benefits of mining transportation corridors need to be more fully evaluated in terms of cumulative impacts, long-term maintenance, ability to close roads, and so forth. We need to get past 'more all-weather roads are better' and evaluate other forms of transportation could might serve all our

interests (including that of the environment) such as Heavier Than Air Vehicle systems.

The GNWT's Land and Sustainability Framework would be an excellent guide to follow in this decision making as it looks at all possible impacts of land development, on health, economics, culture, ecosystems, etc.

ONLINE MAP STAKING

QUESTION 1: What are the potential effects of an online map staking system to people and companies that rely on ground staking for income?

The question fails to recognize that there are environmental impacts to ground staking including clearing of lines between posts, transportation of materials and personnel to sites (including GHG emissions), increased risks of spills and fires, Green House Gases and more. Map staking in principle could avoid the environmental damage associated with ground claim staking.

Map staking has the potential for increased land use conflicts if consultation requirements are not met and land use plans have not been completed in a given area.

Map staking could negatively impact certain businesses that rely on ground staking, such as expeditors. This could further damage other businesses (loss of local spending). Any form of map staking should therefore ensure that government fees and reinvestment capture the expenditures that would have gone into staking the claims as revenues. The on-line system does present the opportunity to become more efficient in collecting resource rents, reporting and potentially enforcement. Administrative costs must be covered in any move to map staking. There needs to be a delicate balance of interests to ensure that mining potential is not tied up by allowing large holdings over many years through low fees through map staking that may also put current suppliers of map staking materials and services out of business.

The new Act should allow for a period of information and consultation of the affected Indigenous and non-Indigenous communities, *in-between the moment the proponent applies for an online claim and the moment the Ministry formally registers the claim*. The point it to allow for Minister to reject the claim application, or to formally register it with specific conditions in response to the comments received during the consultation period, or for any other public interest reasons. A provision should also be included to allow the Minister to prolong the consultation period if needed. If a mining claim

application is rejected by the Minister, the land where it is located should be integrated as part of a 'no go zone.'

QUESTION 2: Would online map staking encourage greater exploration activity?

In BC, map staking led to an explosion of claim staking (400% increase), so there is certainly the potential for greater speculation. However, whether that speculation leads to actual increased exploration activities and spin-offs is unclear.

Map staking, unless integrated with additional regulatory policy, also has the potential, depending on how it is set up, to make it easier to tie up large areas. This could have the consequence of decreasing exploration.

QUESTION 3: How could the online map staking system encourage active exploration of lands, instead of just holding lands without exploration activity?

The development of new legislation provides an opportunity to review time limit for keeping mineral rights in good standing, such as unlimited lease renewals. Since there are many potential benefits as well as pitfalls to map staking, any online system needs to be evaluated after a period of time, such as five years, to ensure it is providing more public benefits than current system. A good framework for evaluating its effectiveness from environmental, social and economic perspectives needs to be in place before it is established. Such a framework needs to consider the huge impact that the vagaries in global markets has on a small jurisdiction such as the NWT.

QUESTION 4: What are the considerations for a made-in-the-North custom online map staking system?

No map staking system should be put in place unless these conditions are met in a particular mining zone (see reference in question 3 above) in the NWT:

- Indigenous land rights agreement completed;
- Legally-binding land use plan in place;
- requirement for approved Exploration Plans and permits are in place, that include provisions for free, prior and informed consent;
- higher standards are in place for prospecting licences;
- limits are set to number of claims/size of area held (i.e., to avoid the BC spike following map staking implementation);
- a system is in place to cover the administrative costs of establishment and operations;
- operating, evaluating, and re-designing the system, and then additional fees to capture the money spent on ground staking

- a framework for evaluation is established, with a set time-period for the evaluation in place, and public reporting.

In other words, online map staking could be beneficial in zones in the NWT where there is a fully integrated and implemented environmental management regime is in place, but not in others with such a system completed.

QUESTION 5: Currently, proponents must obtain a Canada Land Survey to apply for a mineral lease. Should this process still be required if the NWT adopted online map staking.

Yes. We believe this requirement will reduce dispute resolution costs, and give more proof that a company is actually committed to doing work (rather than speculating).

MINERAL TENURE

QUESTION 1: Should geological data and results be required submissions in order to obtain mining leases?

Yes. Geoscience information, along with environmental data, that is collected by mining companies during exploration should be saved and reported to government and made public. This will help:

- Improve geoscience knowledge and make for more efficient and effective use of resources during mineral exploration;
- Make it less likely that companies will damage the environment while searching for the same information;
- Enable the GNWT to 'stitch together' geological and environmental data from point sources into an overall, more comprehensive picture (see below for additional comments);
- Encourage mineral development

QUESTION 2: How can we encourage proponents to disclose geological information?

Primarily, promote an open source approach. Research cases where mineral resources have been discovered using open source approach, and apply appropriate education and procedures from there.

Have full disclosure and reporting of scientific information (though not necessarily Traditional Knowledge) a requirement at each step in the exploration and development process. It may be necessary to allow a proprietary period, such as one to two years (such as in Ontario and Quebec). In general additional information through full and prompt disclosure will tend to favour increased exploration. Archaeological information would be subject to additional restrictions on public access to protect heritage resources. There may also be instances when

the withholding of biological information is critical (e.g., rare species or particularly sensitive features such as hot springs). However, in these cases, the information must be given by the claim holder/developer to the government, and it is up to the government to place appropriate restrictions on release of the information. GNWT should also develop binding guidance or standards for the geoscience and other data collected during exploration to ensure Quality Assurance/Quality Control. This will also facilitate comparability of data over time and across geographic locations, and allow for regional assessments or evaluations. GNWT must also have the capacity to evaluate data submitted in terms of compliance with standards, and to adequately store and make available this information to the public, including the mining industry.

QUESTION 3: What other information should ongoing reporting contain?

The information gathering and analysis should be as seamless as possible, from exploration through to the development of socio-economic agreements for properties that go into commercial production, to closure and reclamation. Hence a full suite of abiotic, biotic and cultural information is needed in scientific and traditional knowledge format.

The research protocols/data standards need to be set, similar to the way geological information is now set in the current legislation. It should not be up to individual companies to decide what particular research protocols to use, since this misses a huge opportunity for the GNWT and public to gain a better understanding of our environment, including geology. The information must then be available to other researchers and the public in an organized and comprehensive way. The Cumulative Impact Monitoring Program (CIMP) has developed data standards to assist with cumulative effects assessment and these should be adopted if environmental work is accepted as a means to keep mining rights in good standing. CIMP's NWT Discovery Portal would be a good place to store environmental data captured and reported during mineral exploration.

It is vital that the information from early phases of exploration be used as building blocks for later phases of development, to provide time series or before and after analysis. Since exploration work is often geographically broad, this is an area where Traditional Knowledge may be most applicable, and can then be used as appropriate context for the more detailed studies needed for advanced exploration or commercial production. The scientific information at the broader scale can help produce a regional 'picture' within which a mine is being developed and allow for improved cumulative effects assessment and management.

An integrated approach to collection and analysis of data is needed with other legislation and regulations. For example, Environment and Natural Resources should set standard research protocols with regard to its legislation (such as the *Waters Act*). Research results will need some oversight and verification by professionals in that particular field (biologist to biologist, archaeologist to

archaeologist, not just through geologists) and these administrative capacity costs need to be recovered through appropriate fees under the new MRA.
Even if mineral exploration does not result in commercial production (as is so often the case), there is public good generating environmental and geological knowledge that can be used and applied for public purposes and decision-making

QUESTION 4: Does the process of transferring mineral tenure (including prospecting permits, claims, and leases) to other qualified parties require review? If so, what should the review process entail?

Yes, there is a need for discretionary authority in approving any assignment or continuation of mineral tenure. This authority should be defined and exercised in the public interest. For example, such authority should be used to ensure stronger coordination with the environmental management regime where a rights holder that is not in compliance with permits or licences is not entitled to continue to hold the mineral rights but it still liable for remediation of a site. Such discretion is needed to avoid continual creation of new public liabilities, especially as mines near the end of commercial production. Discretionary authority needs to ensure that financial securities are realistic to start with, and transferred when appropriate; the capacity of company considered; and the history of company considered (e.g., are they in compliance elsewhere? Have they been non-compliant in the NWT before?). Even if a company was in compliance with regulations when they did their work, they should not automatically be assumed to be competent or willing to be in compliance with new legislation and regulations: they must be up to current standards, or not be considered qualified. The form of the security must be carefully considered to ensure their function.

Industry has started to set their own standards, which could be used as a starting point. For example, the Prospectors and Developers Association (PDAC) has a set of principles for responsible exploration (e-3), namely:

- Adopt Responsible Governance and Management
- Apply Ethical Business Practices
- Respect Human Rights
- Commit to Project Due Diligence and Risk Assessment
- Engage Host Communities and Other Affected and Interested Parties
- Contribute to Community Development and Social Wellbeing
- Protect the Environment
- Safeguard the Health and Safety of Workers and the Local Population

(http://www.pdac.ca/priorities/responsible-exploration/e3-plus/principles). Such principles could be used in evaluating qualified parties, but self-reporting by industry should not be considered an acceptable basis for evaluation, unless it is subject to public reporting and independent verification.

QUESTION 5: Should prospectors be required to report on all their planned work yearly?

Yes, but beyond this, there should be a requirement for an approved Exploration Plan with meaningful public engagement, prior to exploration. Such plans should minimize impacts on the environment and develop better community relationships.

For instance, it is in the mining industry's interest to provide notice and community consultations for their geomagnetic surveys (to avoid things like caribou calving and community on-the-land activities, that may not otherwise meet current regulatory thresholds).

QUESTION 6: Should mineral tenures be revocable if the holder is not investing or advancing them? What would be an acceptable requirement for maintaining tenure?

The GNWT needs the ability to cancel a claim or lease for breaches in any agreements or non-compliance with environmental legislation or regulation. A reasonable and step-wise process for remedial responses to non-compliance should be part of this process. However, mineral tenure must be revocable for failing to live up to Exploration Plans; for non-compliance with environmental legislation, regulations, permits and licences; and similar non-compliance with other regulatory requirements. This is an important deterrence and enforcement tool.

Standards need to be set for when to take non-compliant rights-holders to court. Clear and publicly available inspection and enforcement policy is required.

TRANSPARENCY, PUBLIC ACCOUNTABILITY & MINISTERIAL AUTHORITY

QUESTION 1: What information needs to be made public to enhance transparency?

We should be looking at developing the NWT as a world leader for responsible mining. This is very possible with our integrated resource management system, and some very good work is being done by companies on building social licence. Public accountability is part of being such a world leader. It allows us to take into account lessons learned and continually improve best practices.

Research that the GNWT does itself, or commissions, needs to be public. The Bauer research paper is an example of information that should be available at the beginning of any public process to promote fact-based decision making. ITI must ensure the timely public release of any other research it is conducting as part of the MRA development.

The GNWT's default position must be one of openness, unless there are compelling reasons to withhold information (such as personnel matters). A good public registry of information for the process would enhance transparency. The principles listed on page 27/28 of the Discussion Paper are a good start.

Possibly reinstate the position of the Engineer of Mines, or create a Mining Ombudsman, to have an oversight function for QA/QC of data collected and transparency. This position (or other means) would ensure that variances from Exploration Plans, other agreements, legislation or regulations are made public, as would any failures by companies to take corrective action be disclosed. The historical Bill C-300 should be reviewed for possible concepts and sanctions for poor or illegal behaviour by mining companies. The bill was to promote environmental best practices and to ensure the protection and promotion of human rights in developing countries by withholding or preventing the use of government support for non-compliance. Protection for people who bring forward evidence of wrongdoing (whistleblower protection) is also needed; this is an example of how integration with other legislation is vital.

System-wide annual public reporting of land and water inspections would help to improve public confidence in our ability to manage mineral resources and exploration activities and should include:

- what percentage of properties are inspected;
- number of inspections;
- number of non-compliance incidents or inspections;
- non-filing of inspection reports where legal action is being considered;
- numbers of variances allowed, and links to Land and Water Board registries or other public places where reasons are given;
- the number and status of any legal actions by government; and
- fines or action of consequence related to documented variances.

Governments should fully disclose the payments and revenues received for the use and extraction of mineral resources, including all fees, royalties and taxes. The federal government now has an *Extractive Sector Transparency Measures* Act which has provided critical insights to Canada's performance (or lack of) in collecting fair economic rent, and GNWT should incorporate public reporting of mining revenues into our new Act.

The 2015 Environmental Audit recommends increased funding for organizations to participate in the system, including an adequately resourced participant funding program. We agree with this; amongst other benefits, it will promote transparency and accountability that builds public confidence in our ability to manage resources and in decision-making around mining.

QUESTION 2: Should there be processes for resolving disputes or appealing decisions? If so, what should be considered in developing the processes?

This question is difficult to interpret, but generally yes, there should be dispute resolution processes, and reasons for decisions should be provided. The full administrative costs of dispute resolution should be recovered through appropriate fees. The GNWT should look at best practices in other jurisdictions.

QUESTION 3: Should the Minister be allowed to grant relief from active exploration requirements? If so, under what conditions or circumstances? What should the process include?

Discretionary authority based on a set of clear criteria would need to be developed regarding extensions. Included in such criteria should be environmental considerations, e.g. caribou migration or cultural purposes (as requested by Indigenous governments or communities under certain conditions). The criteria should ensure consistency, provide certainty, and limit reasons for exemptions. Public notice, a reasonable period for public comment, and reasons for decision should all be part of any extensions of relief system.

It may be preferable to have a relief process managed through an advisory or adjudication panel with public interest, environmental and industry representation for determining if relief is granted, rather than by a Minister. If a panel is not established, then decisions might be best made by Cabinet, rather than a Minister, to ensure that a variety of perspectives and interests are brought to bear.

No relief from environmental regulatory requirements should be allowed as the proper place to deal with such matters is through the MVRMA co-management bodies and their processes.

QUESTION 4: Should the Minister have the power to withdraw lands from staking and re-open lands to staking, and under what circumstances?

The authority for land withdrawals should remain with the Minister of Lands. A formal, public process with timelines for withdrawal requests, including the removal of withdrawals, would be helpful. There should also be public notice of requests received, a reasonable period for public comment, and reasons for decision.

However, land withdrawals should be considered temporary for the most part, since withdrawals should preferably be done within the processes of developing or amending a land use plan.

Again, a land use plan should include the ability to restrict or prohibit certain types of mineral exploration or development, for instance, uranium exploration. Until land use plans are in place, GNWT could accomplish this by reserving radioactive minerals to the Crown in certain regions/areas; or by informing company when a claim is registered with the Mining Recorder that there are certain restrictions on the claim, such as no development of uranium mining. Such restrictions should be made possible in the new Act.

If mining rights have been revoked for non-compliance with environmental regulations, consideration should be given to providing the Minister with the authority to block the ability of that company or individual to apply for further mining tenure (and open that area to others for staking and exploration).

QUESTION 5: Reports are confidential in the NWT for three years in order to protect intellectual knowledge for exploration; whereas, property visits are considered confidential for the life of the mineral tenure, unless released by the owner of the mineral claim. Is this the optimal process?

We are unsure what a property visit is, but presumably this is an inspection.

In principle, capturing geoscience and other information and making it public is extremely important and should an important part of new Act. Maintaining the geoscience library, core storage facility and NWT Geological Survey publicly available geoscience databases, reduces the need for repeat exploration and associated environmental disturbances. We understand the desire for limited protection of information, but see no reason for life-time confidentiality, and many reasons why information should be publicly available.

INSPECTIONS, MONITORING & AUDITING

QUESTION 1: What could the MRA do to enhance the collection of data to promote accuracy in the geosciences database?

As noted above, it is important to accurately capture all baseline data, not just geoscience data.

The new Act should expand the topics that can be considered for representation work to keep claims in good standing, and set appropriate, standardized protocols for collection of the data to enable a better understanding of cumulative effects. Protocols must be established by qualified professionals and data submitted must be verified, subject to QA/QC and made publicly available. Administrative costs associated with these functions should be recovered through appropriate fees.

A discussion of additional subject areas for data collection that should considered in maintaining tenure requirements appears below: archaeological studies are now included, but this should be increased to include cultural and health studies.

Community consultation work should also be included. Protocols for how this is done could use the Land and Water Boards' "Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits" https://mvlwb.com/sites/default/files/documents/wg/MVLWB%20Engagement%20Guidelines%20for%20Holders%20of%20LUPs%20and%20WLs%20-%20Oct%202014.pdf.

Have a system in place such that the data at the exploration phase leads to better reclamation.

Inspectors now administer mineral rights only under the *Mining Regulations*. Other inspections are done through environmental and resource management legislation. However, more inspection and monitoring should help improve collection and accuracy of data, and overall general compliance. Regular as well as unscheduled

inspections are needed. This includes inspections of exploration work. These will prove effective only if combined with enforcement and consequences. While environmental inspections are outside of the Act and the Discussion Paper, coordination of inspections and enforcement action should be carried out.

QUESTION 2: Should the MRA require disclosure of geological data by lease-holders?

Yes, see above Transparency response to question 1 and others.

QUESTION 3: How should the MRA ensure the accuracy of compliance and taxation data?

It would be helpful to have best practices and lessons learned from other jurisdictions to better inform public input on this issue. Mechanisms should be considered to ensure compliance such as spot audits, third-party certification or independent verification. GNWT should not rely on self-reporting by industry as the basis for what activities took place and are taxable or not. Capacity must be developed for GNWT to do this monitoring work itself, and administrative costs should be fully recovered through appropriate fees.

Although the federal *Extractive Sector Transparency Measures Act* for requires public reporting of payments to governments by resource developers, problems with self-reporting are evident. Self-reporting has led to inconsistencies in reporting formats and data, unavailability of reports (as they are not hosted on the Natural Resources Canada (NRCan) website but the corporate websites of those entities required to file), inconsistent interpretation and reporting of the various categories of payments to governments (e.g., royalties reported as fees), and other issues. Although these issues may be characterized as growing pains, NRCan does not appear to be playing any kind of QA/QC role or providing sufficient guidance or oversight.

QUESTION 4: Who should bear the cost of collecting and verifying reported data?

The exploration and mining industry should bear the full costs, through appropriate fees as discussed above.

QUESTION 5: What improvements could be made to the ways the GNWT inspects, monitors and audits resource activities and regulatory compliance?

Covered above.

REHABILITATION & CLOSURE

QUESTION 1: Are there gaps in the transfer of rehabilitation liability as a result of transfers of mining rights from one owner to another?

It is not clear why ITI has chosen the "rehabilitation and closure" as this is not the accepted and defined terminology used in the MVRMA co-management system, namely "closure and reclamation". The introduction of this new terminology is less than helpful and likely to result in confusion and ill-informed comments.

This is a difficult question to answer and has more to do with how financial securities are administered under environmental legislation and regulations. If ITI has conducted any gap analysis, this should be made publicly available to ensure more meaningful and informed public comment. However, Alternatives North is aware of a comparative analysis on mining reclamation regimes conducted in 2005 (The Mining Reclamation Regime in the Northwest Territories: A Comparison with Selected Canadian and U.S. Jurisdictions http://miningnorth.com/docs/mining49.NWTMiningReclam%2520final%2520-21Jan05.pdf) that does identify gaps but little progress appears to have been made in improving the NWT regime.

GNWT should publicly and transparently evaluate how the many cases of public liability due to mining operations have taken place, and apply these lessons to close such gaps. The current system of assessing transfers and assignments is unclear to the public, and should be made more transparent and accountable.

The new Act should include provisions (or reference other connected legislation) that state that the owner is responsible for all costs associated with the environmental aspects of the operation and its clean-up. This may include provisions for joint and several liability for contaminated sites. This should also include the ability to ensure company directors are liable, even after bankruptcy is declared, to protect the public from costly remediation. This provision must include clauses that these costs are carried over with transfers of ownership. Thus, just selling the company does not remove or diminish the responsibility of the directors of the original company. This includes the liability associated with workers rights as well.

QUESTION 2: Are there other gaps in closure and rehabilitation legislation that could be addressed by the MRA?

We appreciate this question being asked, because as a relatively small-budget newly responsible jurisdiction, GNWT is extremely vulnerable to the extremely high costs of clean-up and closure in the event of a mine abandonment and insufficient or ineffective financial security.

However, this question has more to do with resource management legislation than the MRA. The new Act should be coordinated with and support the *MVRMA* and related environmental legislation but not be paramount.

QUESTION 3: Are there any gaps in the regulation of temporary closures or suspensions in mine operations?

In the absence of ITI providing a gap analysis, best practices or lessons learned from other jurisdictions, this is a difficult question to answer. There should be some clarity around when a temporary closure turns into full closure and requirements for remediation, but this is best handled through the MVRMA integrated resource management system.

QUESTION 4: How should the MRA address abandoned mines?

Some consideration should be given to the establishment of a levy system for environmental research related to mining disturbances as is the case with oil and gas development through the Environmental Studies Research Fund. A levy system could also be established to fund a Superfund-like collective approach for the remediation of abandoned mineral exploration and production sites. A levy system might also be used to fund a trust entity that would be responsible for any ongoing care and maintenance requirements of closed sites and unforeseen circumstances as is the case with the Saskatchewan Institutional Control Program. Such trust funds would ensure there is the financial capacity for long-term care and intervention while providing certainty for relinquishment of mining rights and release of operators.

INDIGENOUS ENGAGEMENT AND CONSULTATION

This section is better left to Indigenous groups to answer. However, we hope that the industry moves beyond consultation and towards true partnerships. Also, we note that not taking Indigenous rights into consideration in the new Act opens the GNWT to law suits and liabilities (Ross River Dena Council case)

SOCIO-ECONOMIC BENEFITS

QUESTION 1: Should the MRA address benefit agreements (such as SEAs, IBAs) in some way? If so, how?

Though the Bauer report gives some information on SEAs**,** more information on options, alternatives, best practices or lessons learned from other jurisdictions would encourage an informed discussion of this issue which requires careful consideration of a number of competing interests including transparency, Indigenous rights, proprietary interests of operators and the public interest in maximizing benefit retention.

IBAs or general benefits may be covered in Indigenous land rights agreements as a pre-requisite before some resource development projects and as such, the MRA should not be interfering with such arrangements.

SEAs are not mandatory, but should be required through the *MVRMA* processes, as part of the mitigation measures. GNWT's efforts at SEAs to date have been poor with no sanctions or enforceability. The diamond mines have not been able to reach the best-efforts targets for employment and other benefits set out in the current SEAs. Spelling out SEA topics and timing requirements in the MRA could improve benefit retention.

Consideration needs to be given to the trend away from northern employment, with our labour force in mining already at a maximum, and the global trend to mechanization/automation, which will further substantially reduce local benefits. This trend to mechanization/automation needs to be specifically addressed in SEAs and IBAs (and for that matter in taxation and royalty policy), so that actual employment levels can be maintained (not just percentages). Better control over the scale and pace of resource development through good land use plans and sound decision-making by political leaders would also increase benefit retention. Another method to improve intergenerational benefit retention would be to significantly strengthen the NWT Heritage Fund through a defined revenue stream and public governance.

QUESTION 2: Should GNWT be involved in the IBA process? Are there ways that government could help Indigenous communities and mining companies [word missing in Discussion Paper] those agreements?

GNWT should make known all costs and benefits, including net benefits to NWT (full cost accounting). Public reporting of all payments to governments by resource developers should also be required under the Act. GNWT could provide stronger support to Indigenous governments to negotiate IBAs but it is difficult to see how this is directly related to the Act. However, as mentioned above, the MRA could make it a condition of commercial mineral production, that signed IBAs be completed, especially in areas where land rights are still under negotiation. GNWT should also be making greater progress on the completion of land rights agreements with all Indigenous governments without such arrangements in place.

QUESTION 3: What are the advantages and disadvantages of making benefit agreements available to the public or otherwise enhancing transparency of those agreements? Is there a role for the MRA to play in regulating agreement confidentiality?

We acknowledge there are real issues with making IBAs public, because with small communities it is very easy to pick out individuals and individual activities. However, an early role for the public in reviewing draft/AIP on socio-economic benefits would be useful. There is also the need to identify a mechanism for ensuring coordination between IBAs and SEAs. There would also be some merit in

including a prohibition against mining companies restricting the ability of Indigenous governments and their citizens from participating in regulatory process related to project regulatory proceedings and publicly criticizing the project or its operators. This will help ensure a more balanced playing field and the integrity of public decision-making and our co-management system.

QUESTION 4: Is there anything that should be required in all benefit agreements? Should the government focus on creating an optional 'model agreement'?

See above responses. However, the SEAs negotiated to date by GNWT have failed to ensure significant benefit retention (including the loss of corporate headquarters for at least two diamond mines that were located in the NWT).

QUESTION 5: Should compliance with benefit agreements be a condition to maintaining mineral tenure?

Generally yes, similar to the position articulated above with regard to coordination of the Act with environmental compliance.

REVENUES

QUESTION 1: How should the GNWT best balance public and company fiscal benefits from mining and exploration? In what ways could the MRA address this need?

GNWT's primary focus should be on diversifying the NWT economy. Therefore, revenues from mineral exploration and development should first pay for all parts of the public life-cycle costs and administration; and direct a fair share of economic rent or revenues from this one-time natural capital into the Heritage Fund in an effort to address intergenerational equity. Some of the revenues should also be used to build a more diversified and sustainable economy. We note that at the current rate, the Heritage Fund will never be able to compensate future generations for the depletion of non-renewable resources, let alone pay the interests on NWT's various debts. That needs to be addressed. Revenues do not need to go back into more promotion of the mining sector.

In terms of revenue amounts, the Bauer report states that "*the NWT has one of the world's most charitable fiscal regimes for the mining sector, one that captures between 20-30% of economic rents from mining projects, net of costs. This is compared to between 30-35% in South Africa, 45-60% in Peru, and 50-80% in Western Australia...*" We clearly need a fairer return for the extraction of natural capital/public resources.

The GNWT should not be concerned with company fiscal benefits (that is the role of the industry), but should be focused on ensuring benefits to the people of the NWT.

Consideration needs to be given to promoting a steady revenue stream (an even pattern of revenues) versus lump sums (uneven pattern of revenue collection difficult to administer efficiently) after all mining costs are subtracted for several years. Government needs to have the capacity to monitor and evaluate mining activity as the basis for levying tax and royalty collection on activities, rather than relying upon industry's assessment of these parameters through self-reporting.

QUESTION 2: Should the GNWT consider providing incentives to industry? For example, some jurisdictions have given tax deductions from companies that have conducted progressive rehabilitation, developed "newly discovered" deposits, or exceeded socio-economic requirements. What activities could be encouraged or discouraged?

This is the 'carrot' side of the 'carrot and stick' behaviour modification. First we need to make sure there's an actual stick (inspection, monitoring and enforcement). Then some efforts can go into rewarding extra-ordinary behaviours and best practices. We have stated we would like the NWT to become the world leader for responsible mining. A step on the way to this is awarding companies that fit this profile. They should consider and respect the environment in all stages of their work; respect and include Indigenous knowledge, expertise, and rights; leave a positive legacy for the NWT; continually improve on industry best practices; minimize use of fossil fuels and maximize use of renewable energy and energy saving technologies; excellence in community consultations and relations; and similar responsible actions. Such recognition awards need to be judged though by an independent group, not an industry group (should not be seen as a self-congratulatory award).

The effectiveness of the Mining Incentive Program and Work Credit Program are questionable at best. GNWT's own Bureau of Statistics economic multipliers show that mining creates fewer jobs per dollar invested compared to almost any other activity (see http://www.statsnwt.ca/economy/multipliers/Multiplier%20Report-2012.pdf). The Bauer study also questions the use of subsidies and incentives for resource extraction and recommends stronger retention of benefits through a much improved NWT mining royalty regime.

QUESTION 3: What is your opinion of the current level of fees and rentals for services charged under the *Mining Regulations.*

While the Discussion Paper does not provide any information on what the revenues or administrative costs are, from our experience the fees are extremely out of date (i.e., too low), and a serious independent review is needed. ITI's background research report by Andrew Bauer highlighted several opportunities for bringing fees into the modern era.