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**Commentary on the Draft Final –  
Peel Watershed Land Use Plan**

**(As prepared by the Peel Watershed  
Land Use Planning Commission)**

**Submitted by:**

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## Summary

The Yukon Chamber of Mines (“Chamber”) represents the interests of the exploration and mining sector in Yukon. The Chamber has approximately 420 business and individual members and has been active in Yukon since 1961. The purpose of this submission is to provide the perspective of our industry with respect to the draft Plan prepared by the Peel Watershed Planning Commission (“Commission”).

To prepare this submission, the Chamber has held numerous meetings with its members, attended information sessions with other stakeholders, met with the Commission on several occasions (including the Technical Liaison Committee), and gauged public commentary.

We recognize that any Land Use Planning Commission in Yukon faces a daunting challenge in developing a plan that attempts to integrate the perspectives of numerous stakeholders, huge amounts of technical data relating to the land and its characteristics, and fulfill the mandate established by Chapter 11 of the Yukon First Nations Umbrella Final Agreement (‘UFA’). Without exception, the Peel Watershed Planning Commission has been challenged by a variety of different interests and the factors associated with a very broad landscape in a very remote and beautiful part of our territory. Therefore the Chamber would like to acknowledge the efforts of the Commissioners in presenting a draft plan for the Peel Region.

Our review and criticisms of the Plan are provided in an effort to ensure that the Commission fully understands the perspectives of our modern mining industry. Our industry and how we view and deal with our environment has significantly changed over the past 50 years. Pressures to develop mines in a more responsible and environmentally friendly manner, our own moral and ethical responsibility as professional individuals working within the sector, and the ever-increasing stringent regulations imposed on our operations have stimulated the exploration and mining sector to adopt new technologies and “best industry” practices that serve to support elements of sustainable development, ecological integrity, and fully consider the interests of a broad range of stakeholders. Our review also provides insights into our interpretation of how Chapter 11 of the Umbrella Final Agreement should be implemented in Yukon land use planning processes and indicates that the Peel Land Use Plan should be subjected to a comprehensive review in this regard.

More specifically, the Chamber has a number of concerns with the current land use plan that in our opinion if they are not amended they will significantly impact the mining sector in Yukon, the development potential within the Peel Region, and negatively impact the positive image of the Yukon as a “place to do business” by the global mining sector. Therefore it is our perspective that the current Plan has:

- Failed to fulfill the mandate of land use planning commissions as envisioned in the Yukon Umbrella Final Agreement (“UFA”) and in particular fulfilling the requirements set out specific sections of the UFA in an impartial, objective, and consultative manner with the mining and exploration sectors;
- Originated from a Statement of Intent for the Plan that was biased towards protectionism versus conservationism. In trying to achieve this goal, unfortunately the Plan has relied solely on a series of recommendations and prohibitive measures that significantly impact the non-renewable resource sectors. In so doing the mining sector has been particularly singled out from large regions of the Peel and inappropriate strategies have been recommended that significantly limit the development potential of the region and possibly eliminate development in certain regions. Yet the Plan does allow for the continuation of a broad range of activities by other sectors and interest groups. We continue to suggest that the more preferable approach that should be adopted in land use planning processes in the Yukon are to recommend effective mitigations that could be adopted by the mining sector to deal with the unique sensitivities of particular land zones rather than to adopt protectionist strategies that were not envisioned within the intent or direction of the UFA. This approach would serve to provide for future effective management of resource use throughout the Peel area and in subsequent land use planning areas.
- Failed to address key land use management issues relating to ensuring certainty of access for the resource sector and yet in a contradictory fashion the Plan acknowledges the need to ensure access and sustainable development for resource exploration and development in a working landscape;
- Failed to achieve its own goals. In particular goals 1, 6 , and 7 as set out in section 1.7;
- Failed to provide full consideration of economic policies and fully utilize the screen criteria in its determination of “sustainable development” for the Peel region.

The following discussion will clearly outline that the Plan has failed to consider all aspects of Chapter 11 of the UFA, and the original objectives and goals established by the Commission at the outset of the planning process. We feel that the Commission in the development of Plan strived to demonstrate the conservation principle, precautionary principle and adaptive management in its planning efforts, but by its failure to take into account the needs of all Yukoners and also have regard to the interest of other Canadians, the resultant plan has only served to accentuate land-use conflicts between active sectors in our territory and potentially set a dangerous precedent for subsequent land use planning processes.

It is therefore our recommendation that the Commission initiate a major revision of the plan to address these significant shortcomings and that a regional land use plan for the Peel not be issued until the mandate set out for the Commission through the UFA, and its

own principles and goals for the Peel planning process are fully met. It is our hope that the Commission will take our perspectives into full consideration during their review process and in the development of the Final Plan.

## Section 1: Obligations of the UFA

As the activities of the Commission and the Land Use Planning process are subject to Chapter 11 of the Umbrella Final Agreement, the Chamber engaged legal advice on these matters and provides the following comments on several key issues:

- Evaluating the needs of all stakeholders;
- Consistent use of the definition of sustainable development;
- Enacting change in legislation;
- The “right to free entry” is a legislative authority;
- Minimizing land use conflicts;
- Plan linkages and acknowledgements;
- Planning issues;
- Project reviews;
- Planning for variances; and,
- Economic consideration.

The following section will provide detailed perspectives and legal commentary on these issues.

The Chamber questioned whether the Peel Watershed Planning Commission (the "Commission") has overextended its mandate or improperly applied the terms of the Umbrella Final Agreement. Overall, the Chamber views that the Peel Plan in many respects as being too prescriptive. Examples of this include: (1) the most significant element arising from the recommendation to remove land from staking by withdrawal; (2) to recommend firm conservation zones on a large scale basis; and (3) the clear lack of flexibility in allowable activities. There are others.

Aside from the broad question asked by the Chamber, there is a more direct question of whether or not there are specifically identifiable deficiencies. The Chamber has identified some deficiencies in the Plan that relates to the mining sector and may have implications on other sectors or planning elements as follows:

### **Evaluating the Needs of All Stakeholders**

By virtue of UFA section 11.2.1.8 the Peel Plan “*shall provide for public participation in the development of land use plans.*” Furthermore, in developing the Peel Plan, the Commission must, by virtue of UFA section 11.4.5.3 “*...ensure adequate opportunity for public participation.*”

Stakeholders with legal tenure to the land either with surface and/or subsurface rights such as quartz claim holders in the Peel region were not contacted despite the fact that knowledge of the claims, the individual claim holders and all of their contact information is readily accessible from a variety of information sources.

Claim holders and other holders of forms of tenure are members of the public and as such were entitled to participate. Legal obligations to claimholders then depend on "adequate opportunity".

While there is no legal obligation to directly contact claims holders and other holders of legal tenure, from a procedural perspective, on a "best practices" basis they should have been notified. There are two main reasons for this. First, this is the first time a plan is being considered of this nature, and many parties are likely unaware of the planning process underway. This is not a community based plan like an Official Community Plan for which there is a general expectation across the country — it is a unique planning effort within Canada itself, and so unfamiliar to virtually all affected parties. Second, given many of the interested parties in the Planning area are non resident, absent direct notification, there is no way for them to have had notice.

Members of the local business community in Yukon also have asserted this responsibility:

*“The ‘not in my back yard’ attitude is a paradigm for the privileged few, but is not always in the best interest of Canadians as a whole. In my opinion, it should not necessarily have such a large weighting as perceived in the Plan...since the potential environmental or economic benefits are farther-reaching than Yukon borders, we are talking about national-level public interest. I don’t think the Committee has adequately embodied public input to the recommendations set forth. Instead it has heavily weighted local stakeholder interests and undervalued the opinions of those directly or presently impacted.”*

Dan Russell, May 4, 2009.

Even representatives of the tourism sector have indicated the Commission’s failure to ‘consult’ and consider the interest of Yukoners as a whole and/or Canadians:

*“The Peel Watershed Planning Commission had a duty to consult all parties, but it failed to evaluate all the facts and figures on the Peel’s ore deposits, wilderness treasures and cultural values impartially.”*

Rod Taylor, TIA, May 22, 2009

The end question is this: Has the Commission provided adequate opportunity for public participation if they have not provided notice to those most directly affected, those

holding some form of tenure? Procedurally the Commission has not on a best practices basis. Legally, it is not clear that the requirement for "adequate opportunity" is met if legal tenure holders have not been directly notified.

From a procedural perspective, this is precisely why best practices dictate that direct notification be provided — to minimize any legal challenge.

There is no evidence in the Peel Plan or related documents that would indicate how interests of other Canadians have been taken into account, or indeed consultation with other Canadians has taken place.

### **Consistent Use of the Definition of Sustainable Development**

Sustainable Development principles have not been applied consistently throughout, and in particular the terms of UFA section 11.1.1.6 have been applied in a prioritized as opposed to an overlapping manner. This section clearly does not accord weight to any one of the social, cultural, economic and environmental policies.

The definition of sustainable development is denoted within the UFA. However the plan refers to other definitions of sustainable development which are not applicable and should therefore be omitted from reference within the Plan.

### **Limited Focus on Mineral Claims**

Within the consideration of ‘sustainable development’ the Chamber duly notes that the Peel Plan for mineral resource assessment, including background documents, focuses almost exclusively on existing mineral claims, as opposed to known geology and reported occurrences. Hence its consideration of key considerations on the resource potential of the region was deficient.

### **Enacting Change In Legislation**

Article 11.7.3 of the UFA states that “*Nothing in 11.7.1 shall be construed to require Government to enact or amend Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.*” This article also subjects through Article 11.7.1, other Articles including 12.17.0, 11.6.2, 11.6.3 and applicable subsections.

It is therefore our position that the mandate of the PWPC under the UFA does not empower the Commission:

- To make recommendations on sweeping land withdrawals without the consent of the Government of Yukon that requires an Order-In-Council and hence would not be compliant with Article 11.7.3.
- Land use planning does not mean park creation as these are enacted by federal and Yukon Acts.
- Land use planning does not provide the ability to make recommendations that prevent or prohibit the right of free entry (claim staking), exploration or development within various areas of the Peel as these rights are provided through the Yukon Quartz Mining Act, Quartz Mining Land Use Regulations and the Waters Act and further subjected by the Yukon Socio-economic and Environmental Assessment Act.
- To make recommendations for the establishment of Memorandums of Understanding between various stakeholders. This is an enforcement of legal relations and hence does not comply with UFA 11.7.3

The Commission must recognize all grants provided for by legislation and all such Authority. This goes beyond legal issues affecting the mining sector in the plan and it has implications on other recommendation affecting such issues as air access etc., All legal rights provided for by any legislation or covered by any legislation must therefore be considered within the stated filter criteria.

### **Limitations to Air Space**

The Peel Plan makes numerous references to limitation on air traffic. However, there is no reference to aeronautics legislation. More importantly, there is nothing in UFA Chapter 11 that references air space. It is not clear what authority the Commission has regarding air space.

### **Recognizing Legislative Authority**

The Commission has clearly failed to identify legislative authority. It is clear that the Commission must recognize existing legal rights, as granted under Legislation. This should be obvious, but if not, it is clearly mandated by section 11.7.0.

### ***The “Right to Free Entry”***

The Chamber has specifically identified the Message from the Commission, dated April 7, 2009 in the forward to the Peel Plan (p. iii) as an issue. The concern of the Chamber is that it appears to challenge rights granted under the Quartz Mining Act. The paragraph that commences "Some people tell us that open staking and open access to minerals is a right....this right undermines what is valued by others..."

As a preliminary comment, the issue for the Commission is not what "undermines" another right, but to identify the conflict, and seek to minimize it. What is implicit in the statement by the Commission is that it presupposes superior rights of other user groups. The assumption is that because mining causes environmental damage, it should be allowed less access than other user groups. This does not consider the purpose, nor does it respect the YESAA process. The Commission comments fail to consider the fact that all user groups have "open" access – mining rights are no more open than outfitting or eco-tourism rights – they are granted by, and subject to, applicable legislation.

Industry views on this topic are very strong. Some recent comments by industry representatives on this topic clearly indicate the seriousness of this issue and its huge potential negative implications on Yukon's mining sector. This sample of comments are representative of the industry view:

*"Ending free staking will destroy the idea of personal property in the name of 'values' ... we have to govern our country by this rule of law, we can't govern by values because it could be anybody's values, or any one group of persons' values, or any one single ethnic group, or single interest group..."*

Carl Schulze, April 22, 2009

*"Make no mistake in assessing the negative impact that this land use plan recommendation will have on the mineral exploration industry in the Yukon; the Yukon whose very essence and character are wrapped up completely within the 'lure of Yukon gold.'"*

John Witham, April 27, 2009

On balance, it is fair comment to say that this message discloses a bias against mining, and a failure to understand the difference between simple entitlements and rights that have a basis in legislation. There are numerous examples. First, to say "some people tell us" is a highly unusual statement. Legal rights are something the Commission should have resolved and should be well aware of so that "some people" don't need to explain them.

Second, open staking is not a "right" derived from some vague liberal democratic principles. Rather, it is a legal right granted by legislation, by a duly elected government.

In essence, this section challenges legislation and legal rights derived from such legislation. By doing so, it challenges the legislative authority and political system behind such legislation. The Commission has engaged in matters that are within the political sphere and clearly require political debate.

These are secondary issues to the relatively clear bias displayed in the Message. At the end of the last paragraph of p. iii of the Message, it says that Yukon people have "long traditions here too". Given that the preceding paragraph emphasizes access rights for miners, the logical conclusion is that the Commission is suggesting that miners are somehow not "Yukoners".

The first paragraph of p. iv of the Message compounds the bias still further to say that "one part of society wants free access to activities that are likely to harm another part of society". It is hard to imagine a more inflammatory statement from a purportedly nonbiased commission. What harm, to that part of society? And what of the vast array of regulatory processes in place to minimize such harm? But aside from the obvious bias, is there anything in the Message that borders requires legal comment? In my opinion, there is. The fourth paragraph on p. iv provides that the Commission applied "Sustainable Development" as a frame of reference. It then defined priorities. These priorities do not accord with the Commission's own Term of Reference in section 1.2 of the Peel Plan, nor the objectives specified in the UFA. Specifically, there is nothing in the UFA that provides for the establishment of such priorities, and certainly nothing to suggest the order of priorities. The ultimate frame of reference is UFA section 11.1.1.6, which provides that "social, cultural, economic and environmental policies are applied..." All these matters are to be considered, and there is no suggestion in the UFA that these should not be given equal weight. They are overlapping requirements, and not prioritized requirements.

### ***Minimizing Conflict and According YESAA***

It is the role of the Commission under UFA section 11.1.1.2 to minimize actual or potential conflict. Under the Message, the Commission has effectively identified its means to minimize the conflict, but those means are to simply extinguish any potential for conflict. In this regard it has not met the objectives of UFA section 11.1.1.2. The Commission's approach is shown on page v of the Message, where it provides that the conservation zone should be withdrawn from further staking, as mining undermines conservation values.

There is no doubt that mining conflicts with conservation values, and disrupts the wilderness, although modern practices serve to minimize impacts. But the Commission has accorded no weight to the great body of legislation established to deal with such disruption, including that legislation to which it must defer, the YESSA. It is remarkable that there is not a single reference in the forward nor the introduction to the Peel Plan to the YESAA process. The implication of comments in these sections, and the general failure to reference YESAA is that YESAA is insufficient to deal with the protection of the values the Commission has identified. YESAA is critical to an understanding of the allowable scope of the Peel Plan. Arguably, the Commission has neglected the scope of YESAA's role, and has specifically neglected UFA section 12.4.2. This issue requires further review for its legal implications.

Furthermore, in several meetings with the Commission and planning staff, the Chamber has advocated a position that recognition of the range of sensitivities of a particular portion of the Peel region can be recognized and fully considered by identifying appropriate mitigative strategies. The Chamber continues to advocate this position of “increased sensitivity should lead to increased mitigation” versus favoring the strategy of protectionism and prohibition. We also contend that the mitigation approach is far more consistent with Article 11.1.1.2 which notes that a key objective of Chapter 11 of the UFA is “*to minimize actual or potential land use conflicts...*” and Article 11.1.1.6 “*to ensure that social, cultural, economic and environmental policies are applied to the management, protection, and use of land, water and resources in an integrated and coordinated manner as to ensure Sustainable Development.*”

The Chamber advocates that the mitigation approach supports an “integrated” and “coordinated” approach. Our industry has clearly demonstrated that in over 50 years we have shared the land. Other interests are trying to imply “we want it all” and that is clearly not the case. We contend that coexistence is possible and the mitigation approach can serve to provide for coexistence. Without it the Plan exasperates land use conflicts instead of trying to minimize them.

For example, the Plan currently has eliminated the rights associated with potential land use of 197 claims. It has also in certain instances eliminated potential staking and access to areas of known high mineral potential. Integrated landscape management processes do not work in this manner and potential land use conflicts are appropriately identified, discussed with key stakeholders, and strategies are identified to facilitate coexistence of current and possible future sharing of the landscape as a “working landscape.”

Therefore the Plan has created a land use conflict with many mining claim holders and with the sector as whole with other sectors where prior to this plan a high degree of cooperation and working together existed evidenced by the existence of a Memorandum of Understanding between the Chamber and the Tourism Industry Association.

In the end, the purpose of a regional land use plan is identify and minimize land use conflict through recommendations. It is not to completely remove conflict. Nor it is to provide protection, as it has done – protective measures are the purview of YESAA.

### ***Actions Cannot Lead to Amendments of Legislation***

In addition to the previous section denoting the obligation of Article 11.7.3 of the UFA the Commission is not to enact any actions that could lead to amendments to legislation. In addition, the Commission noted that in its own screen criteria of the Plan all legal rights had to be considered. The right to free entry with claim staking is not a “special right” it is a legislated authority under the Yukon Quartz Mining Act. In this regard the rights currently associated to claim holders and the continued right to free entry throughout the entire Peel region must continue to be recognized by the Plan in this regard.

### ***Land Withdrawal***

There is no authority for the Commission to request a land withdrawal prior to commencing or during the planning process. Requesting it prior to the commencement of the planning process, or even during betrays a fundamental misunderstanding of the Commission's role. It is a recommendation body, and its recommendations are to be embodied in the Peel Plan.

A related question is whether or not the Peel Plan can recommend land withdrawal. The Peel Plan does not specifically authorize any recommendations. UFA section 11.5.1 provides as follows: “*Regional land use plans shall include recommendations for the use of land, water, and other renewable and non-renewable resources in the planning region in a manner determined by the Regional Land Use Planning Commission.*”

This section is fairly broad, and effectively opens the way for the Commission to make any recommendation that is consistent with the UFA and final agreements.

Throughout the Peel Plan, the Commission has recommended land withdrawals. There are numerous examples, but they are most noticeable in section 6, which

has "check-box" for each land management unit providing for withdrawal or not. Withdrawal is recommended a policy in the Plan at section 5.8.4.

It is critical to note that land withdrawals are effected by orders-in-council, as noted in the Peel Plan itself. Orders-in-council are "Legislation" as defined in the UFA.

UFA section 11.7.0 provides that the Government shall exercise any discretion it has in granting an interest, or authorizing the use of, land, water or other resources. However, section 11.7.3 provides as follows: "*Nothing in 11.7.1 shall be construed to require Government to enact or amend Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.*"

As land or mineral claim withdrawals require Legislation to be enacted or amended, the recommendations for land or mineral claim withdrawals are directly contrary to the implementation provisions of section 11.7.0. Accordingly, such recommendations are not appropriate. In fact, anything in the Peel Plan that limits rights under the Quartz Mining Act and the Placer Mining Act or any other legislation should be rejected. Failure to exclude such items from the Peel Plan will at the very least create uncertainty and increase the potential for legal challenges to the Peel Plan. In the end, the Commission should have given much greater consideration to UFA section 11.7.0.

## **Plan Linkages and Acknowledgments**

In compliance with the UFA, the Plan must reference all applicable legislation and regulations to this plan and any potential linkages of this plan to other land use plans. Section 1.8 of the Plan insufficiently documents all of the plan linkages in this regard.

## **Planning Issues**

As the Plan is binding on YESAB through UFA Articles 11.7.1 and 12.7.1 it should take a broader perspective on issues versus the current prescriptive and definitive approach. Even though it is acknowledged that Article 11.5.1 provides considerable latitude for the Plan to provide recommendations on the use of land, water, and other renewable and non-renewable resources in the planning region, we remind the Commission that this article continues to be subject to other Articles such as 11.4.5.7, 11.4.5.4 and most particularly 11.1.1.6 for consideration of economic policies on an equitable basis with other policies. Many of the current recommendations and related strategies are highly prescriptive in

nature. Due to the relationship of the plan to other governmental processes such as environmental assessment and existing legislation, it is likely more appropriate for the Plan to adopt a broader perspective on issues rather than emphasizing a highly prescriptive approach.

### **Project Reviews**

In our opinion, the mandate of the Commission beyond the plan do not provide for the authority to review projects. It is not appropriate for the Commission to maintain any rights whatsoever to review future projects. This is clearly not within the Commission's authority, as project review is a matter designated under UFA section 12.1.0 to YESAA. The mandate beyond the development of the Final Plan from our review may be as limited as to only provide for disclosure of the content of the plan to others. The Plan should clearly identify the role of the Commission beyond the development of the plan in this regard.

### **Providing for Variances**

Article 11.2.1.6. indicates that the Plan should “*provide for non-conforming uses and variance from approved regional land use plans...*”. From our perspective the Plan has not detailed the process of variance and this needs to be addressed.

### **Economic Consideration**

One of the key objectives of any land use plan is denoted in Article 11.1.1.6 that ensures that economic policies are applied. Contrary to this goal, the Commission instead of treating economic policies on an equitable basis with social, cultural, and environmental policies, relegated economic factors to have a lower level of consideration in the planning process. We assert this has not met the objective stated in Article 11.1.1.6. and that economic policies therefore deserve more due diligence and consideration on an equitable basis with other factors and policies. This is especially important to the mining sector and the potential economic importance of the Peel Region.

Yukon’s mining sector generates tremendous economic benefits to the territory in employment, taxes, payroll, services and contracts.

*“There are many hundreds of families in the Yukon that depend upon mineral exploration in order to make their mortgage payments, feed themselves, and ensure a proper education and a bright future for their children. The notion that*

*an appointed committee can simply dash the hopes and aspirations of these families is, in any context, perverse and immoral.”*

John Witham, April 27, 2009.

The Plan has not fully considered the economic importance of the mining sector. This has arisen from a lack of due diligence and attention in research and planning processes in determining the overall importance of this sector to the continued health of the Yukon economy, our people, and the contribution of our territory to Canada. This was evidenced in a comment by a representative of the planning team that noted prior to public consultation meetings this spring that:

*“We know from the various wilderness tourism industry sectors (commercial recreation, guiding/outfitting, sports hunting) that the sector is likely a significant income generator for Yukon people, business and government. With our current information, we can’t draw similar conclusions about the other sectors such as mineral exploration, or potential gas development.”*

Contrary to this position, there was a lot of data readily available to the Commission and further emphasizes that the research and consultation process should have ensured consultation with claim holders in the region, geologists, and mining industry experts in a more diligent manner in order to properly ascertain the economic importance of the region from the perspective of fully identifying the high geological potential of the region to host a variety of mineral deposit types, and the known mineral potential of the region.

The Commission has since partially acknowledged the importance of mining to the Yukon economy. Data indicates that in the Peel region alone during the period 2000-2008, the industry spent an average of \$6.0 million per annum on exploration expenditures. In addition there was a seven fold increase in quartz claims in the area going to a total of 11,275 active quartz claims and 525 active iron-mica claims. The claim staking activity in itself provided significant revenues to Yukon businesses, to claim stakers, helicopter companies, lumber suppliers, geologists, surveyors, etc.. The region may not currently demonstrate industrial viability based on existing technologies, current economic conditions, and Yukon’s infrastructure availability. However, history has shown that these premises change for future generations. For this very reason reasons such as the Peel with significant resources and mineral potential need to remain available to ensure the well-being of future generations in Yukon and Canada as a whole. To that end, the Commission should be more considerate of the need of industrial development and future obligations to sustaining our overall society while balancing with minimizing environmental impacts.

The Commission has also now acknowledged that “Mining has been a cornerstone of the Yukon economy since the Gold Rush era.” The Chamber is pleased that the Commission recognizes the importance of mining to Yukon’s economy but continues to assert that the

level of research and knowledge acquired during the planning and research process for the Plan was highly deficient.

## Section 2: Other Issues

The following section is a summary of a broad range of topics which build on issues raised in Section 1 of this paper, denote perspectives from industry and the general public on matters pertaining to the Plan, to impacts on the mining sector, and identify perspectives on what land use planning processes such as the Peel should consider. Some of this material is presented in an effort to provide further insight and understanding of the mining sector.

These issues are not provided in any order of importance and include the following:

- Paramouncy and legality
- Our Footprint is small
- Values
- A dangerous precedent
- Coexistence and sustainable development
- “De facto” expropriation
- Appropriate Access
- Responsible Development
- Certainty
- Water Availability
- Metals are needed for sustainable development
- Obligations of Equity
- Park Creation

The Chamber has also provided a short discussion on the “zones”. We have not provided a comprehensive “line-by-line” review of the Plan as we feel that is the role of governments’ to address. We have however provided a broader perspective of key issues relating to some of the proposed Integrated Management Zones and remain open to further discussion on specific sub-zone issues should the opportunity arise in the future.

### **“Paramouncy” and Legality**

The Plan has stated that it is not a legal document. To appropriately address potential issues of “paramouncy” and to denote the “legal” status of the Plan the paragraph in the Plan should be replaced with the following:

*“Any First Nation legislation, Yukon legislation, or Canadian legislation in the event of a conflict prevails over the land use plan.”*

The Chamber also suggests that this statement of legality be placed in all land use plans developed.

## **Our Footprint is Small**

Many public statements have inferred that the Peel would be significantly impacted by mining operations. Our footprint is very small in relative terms to the significant area of the Peel Watershed. The Watershed is comparable in size to the Netherlands, the province of New Brunswick or Ireland, and is slightly bigger than the Netherlands.

*“The Peel Watershed is not a conservation plan...it’s a preservation plan bent on excluding mining from an area the size of Netherlands in Yukon.” Carl Schulze*

There is a total lack of comprehension in many circles of the size of the Peel Watershed and a very poor understanding of the very small footprint that would be created by a mining operation using modern day mining practices. Furthermore stringent land use regulations require exploration companies to actively reclaim exploration sites which serve to maintain the pristine nature of the Peel Watershed.

## **Values**

Members of the Commission have publicly stated the plan is pro-preservation, and that non-renewable economic interests will be given lowest priority during land use assessment. A great deal of mining investment, both financial and human, has been made in the region in recent years. These investments are threatened by the current Land Use Plan.

One is the concept of “values,” a term commonly used as an argument for political action these days. It’s an unsatisfactory basis for decision-making; inevitably, a certain set of values are chosen representing those of a particular interest group over those of another group.

Values are subjective and abstract. The Commission’s emphasis on a particular set of subjective values provides for vague outcomes that cannot easily be pinned down. We are particularly concerned with statements made by the Commission pertaining to “values”.

This has led us to the concern that this philosophy may have been as far-reaching as to affect the overall context and direction of the Plan and its recommendations/strategies. This perspective of “values” and the impression of our sector is not based on any facts or demonstrative of an informed audience.

It is our perspective, that resource assessments and land use plans be made on a factual, informed basis, and supported by verifiable data.

Furthermore, selecting values of a particular individual, ethnic or special interest group is discriminatory and goes against the highly structured “rule of law” in Canada, regarded as one of the fairest in the world.

## **A Dangerous Precedent**

From the outset of the planning process, the Commission presumed a level of uniqueness on the Peel Region as compared to the rest of Yukon. Each region of the Yukon has its own uniqueness arising from cultural, heritage, resource, economic and environmental factors. This argument could be used in each region of Yukon to justify large areas of land for protection.

It is obvious that the Peel has its own uniqueness but to elevate this characterization of the Region to justify an extreme level of protectionism not only has significant impacts on the resource sector active in the Region but also sets a dangerous precedent for future land use planning processes. The Commission has stated this plan will not be a template for other land use planning processes. However it has no way to ensure that this statement would stand in future land use planning exercises. Also, by its own design and failure to provide adequate explanation it is highly unlikely that the Peel Plan somehow would not either directly or indirectly influence future land use planning processes.

The Chamber is convinced that this Plan would set a dangerous precedent for the establishment of significant protected areas in Yukon. The Chamber also remains convinced that the Peel Plan can set a crippling precedent for Yukon's mining sector, as the territory begins to work through the remaining land use planning exercises.

Yukon already has 13.4% of the landscape designated as protected areas which is the fourth highest level of protected areas in Canada. In the past 30 years, the Yukon land base has seen the creation of three national parks, four territorial parks, and 13 Special Management Areas. Further areas withdrawn from disposition include the large "North Yukon" interim protected order in Privy Council.

*"Odds are that not all Yukoners favour turning the entire Peel Watershed into a national park."*

Lewis Rilfkind, Environmentalist, April 24, 2009

## **Coexistence and Sustainable Development**

The Peel has been described as one of the last pristine tracts of wilderness in the Yukon. The Chamber advocates that this is a great testimony of the ability of different sectors to coexist and conduct responsible business practices. Exploration has been conducted in the Peel area for more than 50 years. Many of the airstrips, camp areas, and other infrastructure used by outfitters and wilderness adventure tour operators was initially constructed and financed by our sector.

To further advance our desire to responsibly coexist with other sectors, on behalf of our sector the Chamber signed a Memorandum of Understanding with the Yukon Tourism Industry Association. This is designed to provide regular dialogue and share information on activities in an effort to minimize impacts on each others operations, support sustainable development, and recognize critical issues affecting our sectors.

Furthermore, the Yukon Department of Environment has acknowledged the current and historical positive working relationship and ability for sectors to coexist in the Peel in their submission to the Commission stating:

*“Mineral exploration and motorized recreation and wilderness tourism, can have, and will continue to coexist in the back country as compatible land uses.”*

As previously noted in our review of obligations under the UFA, these additional points and arguments further emphasize that the Plan should serve to identify ways that all parties can coexist within the region rather than approach which has focussed on a plan to eliminate the mining sector from the Peel.

### **“De-Facto” Expropriation**

The Government of Yukon has clearly indicated to the Commission that it does not desire the plan to result in “expropriation or compensation” issues. However in Section 5-63 of the Plan the Commission has made a policy recommendation noting:

*“In light of the impossibility of balancing other land uses and ecological values with the massive transportation, processing, and extraction infrastructures associated with coal mining, coal mining should not be considered within the region.”*

The Plan has also included recommendations limiting other forms of exploration and development. In addition, the 197 claims that exist within the CLZ are now isolated in terms of access and subjected to prohibitive measures making development of potential deposits in this portion of the Peel nearly impossible.

By its own nature, these policy recommendations are a form of “de-facto” expropriation. The Commission provides no explanation or research on how it reached these conclusions. Such an irresponsible policy statement would make it almost impossible for the owner of the property to attract any investment for exploration, much less securing the enormous investment required for actual project development.

Furthermore, this policy recommendation precludes the established process of appropriate determination of project approval through comprehensive environmental

assessment processes established by the Federal Yukon Environmental and Socio-Economic Assessment Act.

We therefore suggest that all policy recommendations within the Plan that limit exploration of existing claims in the Peel Watershed and do not ensure certainty of future access be removed from the Plan in light of the fact that proposed development will be subjected to YESAB review. YESAB is mandated by law to conduct these responsibilities in Yukon.

### **Appropriate Access to Exploration and Development**

The Commission acknowledged that much of the planning region remains inadequately explored, raising the possibility for the discovery of other significant mineral deposits. It also acknowledged that significant transportation infrastructure would be required to support development of known key mineral deposits such as Bonnet Plume and Crest Iron.

The potential for discovery of further deposits is known to be high throughout much of the region. To fully assess this will require adequate access.

Objectives 6.2 and 7.2.1 set out strategies designed to provide opportunities for appropriate access to exploration and development. The Chamber asserts that strategies 6.2.10, 6.2.11, 6.2.13, 6.2.17, 6.3.2, 6.4.1, 6.5.1, 6.5.4, 6.6.2, 6.7.1, 6.7.4, 6.7.8, 6.7.10 and 7.21.3 will not allow for appropriate access as they are far too restrictive on potential required access. These strategies are poorly conceived, impractical, in some instances not environmentally friendly as they significantly increase transportation distances, and could have severe cost implications that could eliminate the economic potential of many projects. For example, by their very nature, River Corridor Zones (RCZ) are “generally flat terrain lying between toes of mountains or escarpments adjacent to major streams and rivers” and therefore provide the most logical, practical and economic locations for access roads. By eliminating any access in RCZ’s eliminates the most logical, practical and likely the most cost effective locations for ground access routes into exploration and/or mine development sites in the Peel.

Even the Government of Yukon has expressed concerns over the Commission’s plan to limit access into the region. The Department of Energy Mines and resources noted in their submission to the Commission:

*“There has to be all-season access identified in the plan to enable certainty for exploration and development in the future.”*

In addition, the Commission failed to examine critical technical, engineering, or economic considerations related to all of the known potential access corridors. It also made a biased recommendation to allow continued float plane access in remote access

lakes to recreational users but explorationists. As a result, the aforementioned strategies set out in the Plan are flawed as they do not enable the strategies. Without significant study and research into access corridors and all of their cultural, social, environmental and economic implications, such strategies are premature.

The Commission should recommend mitigative actions that could serve to minimize and/or eliminate permanent impacts arising from the establishment of all season access routes.

The Commission should delete all aforementioned strategies until further study on access corridors is completed and they should also ensure they do not preclude YESAB processes.

The Commission should not eliminate any potential access corridors, identified by previous studies, or any other possible routes that may be technically, cost-effective, and environmentally responsible by eliminating access routes from logical and practical areas such as river corridors, mountain passes etc.,.

The Commission should also recommend that a more detailed study be completed on potential infrastructure routes in the Peel Region to support responsible development of the region and enhance/maintain the potential for significant economic growth for Yukon.

## **Responsible Development**

The Chamber supports the notion of responsible development.

*“The Chamber and the mining industry are all for responsible development that takes into account wildlife and wilderness values, and the presence of ecotourism ventures.”*

Carl Schulze, March 17, 2009.

*“I believe that responsible industrial development is achievable while sustaining and conserving the integrity of the broader ecology of the area under the umbrella of current government authorities, without the need to blanket or impose further restrictions with a land-use plan.”* Dan Russell, May 5, 2009.

Existing federal and territorial laws, regulations and standards are already designed to support the protection of eco-sensitive areas. Modern day regulation on mining in Canada is far more robust than in the past regarding governance of resource development.

The mining industry is further subjected to responsible development under the recent Yukon Mine Reclamation and Closure Policy which requires that companies provide a closure plan for the mine prior to a development permit being issued and that bonds or

other forms of financial security are kept in line with progressive estimations of both reclamation and closure costs. This ensures that mining operations set aside appropriate levels of funding for any site clean-up and reclamation activities.

The mining industry has undergone a reformation: over the years, it has continually adapted to the increasingly stringent regulatory and permitting regimes, the need for a “social licence” with local communities, and its own high internal standards of conduct. In short, it’s not yesterday’s mine.

On a final note, The Declaration of the United Nations Conference on the Human Environment (1972) contains several principles that call for environmental protection in concert with responsible resource extraction.

In particular, the following principles are applicable and should be considered by the Plan when considering sustainable and responsible development of the Peel Watershed:

- Principle 5 - The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.
- Principle 8 - Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Further, the UN Rio Declaration on Environment and Development (1992) states that:

- Principle 3 - The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

## **Certainty**

The Commission noted on page 5-60 that “The Plan is intended to assist in establishing land-use certainty for mineral exploration and development activities.” Unfortunately the plan as it stands provides a very high level of land-use uncertainty for several reasons:

- Overly restrictive limitations on all forms of access to the region;
- Future restrictions on claim staking in a majority of the Peel Region;
- No access and severe limitations to allowable activities in a majority of the Peel Region; and,
- Violation of the “right to free entry”.

All of these factors have already contributed to a huge uncertainty both in terms of land status current and future and in the probability of development of any deposit in the region. The final plan needs to ensure that certainty is reassured.

## **Water Availability**

To our knowledge there has been no detailed hydrological studies completed on water availability within the Peel Watershed. The availability of water in the region is unknown and hence any references to water availability have no scientific basis.

## **Metals Are Needed For Sustainable Development**

Metal extraction is and will increasingly be necessary for alternative energy generation and transmission, as the effects of climate change become more pronounced.

## **Obligations of Equity**

The Chamber is concerned that the mining sector appears to have been singled out in the planning process as many of the recommendations and proposed thresholds severely limit or make it highly unlikely that responsible non-renewable resource development can proceed on an economic or practical basis.

Canadians are reliant on development of the north for future access to critical resources. The Peel is an area with abundant mineral resources that over time will become increasingly attractive targets for eventual development. The Chamber is concerned that the Plan has eliminated a lot of that potential through its strategies and recommendations that only serve to hinder potential development and appropriate examination of the high mineral potential of the region.

One view stated:

*“The Committee is not mandated, or even allowed to, pass judgement publicly on the merits of one industry or the negativities of another. Their actions in this case amount to the denial of the fact that Canada has a resource-based economy...”* John Witham, April 27, 2009.

The Plan should comprehensively consider the needs of all Yukoners and national interests.

## **Park Creation**

The Plan has essentially laid out a conservation strategy for 63% of the Peel Watershed. The Chamber is convinced that as the Plan stands this would inevitably lead to the development of a park in the Peel area. This is not only our conclusion but has been raised by the general public:

*“We have public park creation mechanism already in place in the Yukon...namely they are National and Territorial Parks Acts with lengthy review processes and public consultation which have to include all stakeholders and Canadians in general rather than a small board of folks contrived out of an interpretation of the land claims process.”* Jo Van Randen, June 9, 2009.

Article 11.2.1.12 further emphasizes this as a possibility. As already noted, Yukon already has a large area of protected lands that is well above the Canadian average.

### **Section 3: Discussion on Zones**

The Chamber has not completed a detailed review of the zones or sub-zones as presented in the Plan. However we do have some broad comments on some of the zones.

#### **Critical Landscape Zones (CLZ's)**

The Commission has failed to address what it plans to do with existing claims in restricted areas such as the CLZ:

*“Whether the Yukon Government would buy out the claims and leases in the critical zones, or find another way to deal with them, was not up to the Commission to determine. But what we are saying as a planning commission is that these areas are so important that there ought not to be development in those zones.”*

D. Loeks, April 24, 2009.

In our view, the Plan is obliged to properly address this issue.

#### **Access in Remote Area Lakes (RAL's)**

The plan indicates that the management intent of these zones is to provide access by float plane to “cabins, camps, and buildings for cultural purposes”. The definition of CLZ's on page 4-3 does not tie the grandfathering of surface ties to “cultural purposes” and implies continued access by outfitters and wilderness operators who have infrastructure on remote area lakes. But what is clear that usage of remote area lakes as a potential mechanism for mineral explorationists to transport materials, goods, and personnel would be eliminated in RAL's. It is our contention that the temporary usage of remote area lakes by explorationists has no potential permanent or long term impacts on the region and therefore the management intent is negatively biased towards the mining sector. Mineral explorationists have used remote lakes as cost effective methods to supply operations for decades and this practice should be allowed to continue indefinitely.

In section 1 of this submission the Chamber has noted concerns over the frequent references to air traffic and related legislative issues. In this regard, the Chamber advocates the plan should provide for float plane access by all sectors. Yukoners and Canadians should be allowed on all remote area lakes as this form of access has no potential for permanent or long term impact on the ecosystem or wilderness values of these regions in the Peel.

## Section 4: Our Position Statement

The Yukon Chamber of Mines has developed the following position statement in consideration of the Yukon Land Use Planning Process, including the Peel Planning Process:

- 1. The Land Use Planning process is mandated to create Land Use Plans, not Protected Areas.** Other processes exist both in and out of Land Claim Agreements that have been or are being used for creating Protected Areas and Special Management Areas (SMA).
- 2. The Territorial, Federal and First Nation governments must ensure that the Land Use Planning Commissions are given proper direction and scope in preparing Land Use Plans.** The Commissions should have a clear understanding as to what is within their mandate - what is included and what is excluded.
- 3. The Chamber is in agreement with Land Use Zoning, providing there are reasonable conditions that will allow for responsible development and restrictive zoning levels will not be imposed without prior assessment of economic potential of an area.** Recommendations within the Peel Plan would preclude any further disturbance and, in essence, create a de-facto protected area, which is not acceptable.
- 4. Subjective “Critical Thresholds” should not be used in Land Use Planning.** It is not in the mandate of land use planning commissions to make impact assessments including determining appropriateness of and levels of permissible impacts. Yukon Environmental and Socio-Economic Assessment Board (YESAB) is the Yukon authority for reviewing impact assessments and recommending appropriate mitigative measures.
- 5. The Chamber considers that Land Use Plans that will allow for no development within any Zones should not be approved.** Blanket restrictions on development within areas without thorough assessment of the economic potential of an area should not be contemplated.
- 6. Land Use Plans must not alienate access corridors.** Land may be zoned to permit economic activity, but if surrounded by land with highly restrictive zoning this will block all reasonable access routes and would effectively alienate the land, which is not acceptable.
- 7. Land Use Plans must recognize that mineral exploration is a progressive, step-by-step process.** Exploration starts with very low impact activity and may

progress all the way to mine development, but on very rare occasions. Land Use Plans must make allowance for projects to reach the mining stage in all Zones, including rezoning, if required.

8. **Economic factors and thorough economic evaluations must be given adequate consideration for both renewable and non-renewable activities.** Mineral exploration and mine development are the greatest creators of wealth in the Territory and their continued viability are a necessity for Yukon to develop a sustainable economy.
9. **Land Use Planning Commissions must be made aware that modern Land Claim Agreements, new strict environmental regulations, Best Practices Guidelines, the Yukon Mine Reclamation and Closure Policy and bonding requirements are designed to prevent ecological damage, mitigate effects of exploration and mining activities and ensure that the land is returned to a natural state upon completion of a project.**
10. **The effects of the recommendations of the Land Use Plan should be consistent with the stated purpose.**
11. **The total area withdrawn from mineral exploration and mining in the Territory should not be increased beyond current levels.** Any future Protected Areas or SMAs should be balanced with the release of other areas that are now withdrawn from claim staking but no longer deemed critical. Presently over 25% of the Yukon is closed to claim staking. There are more SMAs being created as mandated in settled Land Claim Agreements and others planned in agreements not yet finalized. Mining may be prohibited in future SMAs, such as was done in the Fishing Branch land withdrawal. This relentless and ever increasing alienation of land from economic activity will hurt the Yukon's mining industry, the Yukon economy and the Yukon labour force, to the detriment of all Yukoners.

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