

Taku River Tlingit First Nation

Mining Policy

March 2007

Our Land is Our Future

Mining Policy

PURPOSE OF MINING POLICY

1. Taku River Tlingit First Nation (TRTFN) has developed this Mining Policy to provide greater certainty for parties interested in the extraction of mineral resources from TRTFN Traditional Territory in British Columbia (see *Schedule A* for map of the Territory).
2. TRTFN is publishing its policy because British Columbia's legislated process for disposing of surface and subsurface rights in the Territory does not address TRTFN's participation in decisions regarding mining-related activity in our territory.
3. This Mining Policy explains how TRTFN intends to deal with proposals for mining-related activity in our territory. The Policy is intended to achieve the following specific purposes:
 - a. to explain the principles on which the TRTFN Government bases its own decisions respecting proposals for mining-related activities in the Territory;
 - b. to describe TRTFN Government procedures for dealing with proposals for mining-related activities in the Territory;
 - c. to describe TRTFN's standards and expectations for mining-related activities and proponents in the Territory; and
 - d. to describe procedures that proponents may use to seek the consent and support of TRTFN Government for mining-related activities.

PRINCIPLES FOR TRTFN GOVERNMENT'S MINING-RELATED DECISIONS

4. It is the responsibility of TRTFN Government to protect TRTFN Aboriginal rights, title and interests throughout the traditional territory. TRTFN Government will therefore exercise its authority as required by its Constitution, in order to ensure that all mining activities and developments in the territory will promote the following TRTFN objectives:
 - a. protect and accommodate TRTFN's Aboriginal rights, title and interests,
 - b. satisfy TRTFN principles for environmental, economic, social and cultural sustainability, as described in Schedule C; and
 - c. provide social and economic benefits for the TRTFN community.

5. TRTFN Government seeks to work cooperatively and engage in shared decision-making with the British Columbia and/or Federal Governments, in order to achieve those objectives in the context of specific proposals. TRTFN will seek to work with those governments in ways that are consistent with BC's New Relationship with First Nations, which is designed, among other things:
 - a. "to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing", recognizing that "these inherent rights flow from the First Nations' historical and sacred relationship with their territories";
 - b. "to achieve First Nations' self-determination through the exercise of their aboriginal title including realizing the economic component of aboriginal title, and exercising their jurisdiction over the use of the land and resources through their own structures"; and
 - c. "to ensure that lands and resources are managed in accordance with First Nations laws, knowledge and values and that resource development is carried out in a sustainable manner including the primary responsibility of preserving healthy lands, resources and ecosystems for present and future generations."
6. TRTFN Government will also consider working cooperatively with proponents who wish to enter into a relationship with TRTFN based on:
 - a. recognition and respect for TRTFN Aboriginal rights, title and interests, and the responsibility of TRTFN Government to protect those; and
 - b. a commitment to promote the TRTFN objectives in Section 4: to protect and accommodate TRTFN rights, title and interests, ensure environmental, economic, social and cultural sustainability, and provide social and economic benefits for the TRTFN community.
7. Such cooperative working arrangements will normally be based on one or more written agreements between TRTFN Government and a proponent, in order to promote the achievement of those objectives during the various stages of mining projects, including exploration, development, production, decommissioning, reclamation and post-closure monitoring and maintenance.
8. Agreements with proponents will normally establish working arrangements and provide for TRTFN's participation in the applicable phases of the regulatory process, including feasibility studies, project design, environmental impact assessment, accommodation negotiations, impacts and benefits agreement negotiations and final regulatory approvals.
9. After concluding the steps agreed to in cooperative working agreements, TRTFN Government will consider giving consent and support for mining-related projects in the Territory. Such consent and support will be based on TRTFN Government's decision whether the proposal, as modified by measures agreed to in the

Environmental Assessment, the Accommodation Agreement and the Impacts and Benefits Agreement would be likely to achieve the TRTFN objectives in Section 4.

PROCEDURES FOR TRTFN GOVERNMENT'S MINING-RELATED DECISIONS

Application of Policy

10. This policy is triggered when a proponent submits a written request for TRTFN's consent and support for proposed mineral exploration or development activity in the Territory, or when a Crown agency refers such a proposal to TRTFN for consultation purposes.
11. The TRTFN Government authorized representative for responding to a request or referral is the TRTFN Land & Resources Manager (see Schedule B).
12. The Land & Resources Manager shall respond in writing within a reasonable time to any request or referral, to confirm receipt and outline next steps, and shall also:
 - a. make available TRTFN Government documents relating to TRTFN's goals and objectives for land and resource use generally, and mining activity specifically, in the Territory (Schedule D identifies such currently available documents); and
 - b. advise parties submitting requests or referrals that TRTFN's consent and support needs to be formally obtained from TRTFN Government, and that communications for such purposes should be through the Land and Resources Manager or through other contacts which he/she may advise.

Preliminary Evaluation of Proposal

13. After receiving a request or referral, the Land & Resources Manager shall obtain the following information:
 - a. details about the type of mining activity proposed;
 - b. proposed date of entry and duration of occupation;
 - c. general location of proposed activity demarcated on an appropriately scaled topographic map;
 - d. proposed mode of access to the Territory;
 - e. proposed number of people who will be on the Territory;
 - f. types of impacts anticipated;
 - g. regulatory approvals required;
 - h. status of proposal in regulatory process;

- i. any proposal for hiring or contracting of TRTFN and local people;
 - j. plans for terminating activity, site restoration, and exiting the Territory;
 - k. identification of company contact person; and
 - l. other project-related information that would be relevant to a TRTFN decision whether to support the project.
14. Before making a recommendation to TRTFN Government respecting a proposal for mining-related activity in the Territory, the Land & Resources Manager shall prepare a Preliminary Evaluation, to include the following:
- a. sufficient information from the proponent to properly understand the project and its potential impacts on lands and resources;
 - b. location of the project site or activity area on TRTFN Government maps;
 - c. a preliminary determination whether it is reasonably likely that the project would, by itself or cumulatively, have impacts on:
 - i. TRTFN environmental, economic, social or cultural interests or values;
or
 - ii. individual Tlingit family interests or values; and
 - d. a preliminary determination whether the proposal raises serious concerns, because of potential impacts described in Section 14(c) or because the proposal appears to be inconsistent with:
 - i. management directions in Our Land is Our Future: Hà tlátgi hà khustiyxh sítì - Taku River Tlingit First Nation Vision & Management Direction for Land and Resources;
 - ii. the sustainability principles in Schedule C; or
 - iii. any other relevant policy, guidelines or land use plan issued or approved by TRTFN Government.
15. In evaluating the proposal under Section 14(c)(ii), the Land & Resources Manager shall make all reasonable effort to consult with any potentially affected TRTFN families or individuals, in order to determine whether there would be any outstanding issues if the project were to proceed, in which case the Manager should refer the proposal to TRTFN Government for a decision.
16. Where the Land and Resources Manager considers it necessary, technical advice may be obtained before completing the Preliminary Evaluation under Section 14.
17. Upon completing the Preliminary Evaluation, the Land & Resources Manager shall:
- a. issue a written response to the proponent in accordance with Section 18; or,
 - b. refer the proposal to TRTFN Government for a decision.

Decisions Respecting Proposed Exploration Activity

18. Where a proposal for mineral exploration work involves the use of existing access roads, helicopter, fixed wing or walking surveys, and does not include any of the following:
- a. creation of new road access;
 - b. use of heavy equipment on the ground;
 - c. advanced exploration and development programs (e.g., diamond drilling, bulk sampling);
 - d. significant site disturbance; or
 - e. development work on established mineral claims or tenures, including Crown grants;

and if the proposed activity does not raise serious concerns under Section 14(d), the Land & Resources Manager may issue a written Support Document to the proponent, after consulting TRTFN Government.

19. A Support Document issued under Section 18 shall:
- a. offer TRTFN support for the proposed activity or project;
 - b. describe terms and conditions necessary to protect Tlingit interests; and
 - c. request the proponent to sign the Support Document indicating agreement to those terms and conditions, and return a copy of the signed document to the Land & Resources Manager prior to initiating the proposed work and implementing any conditions stipulated in the document.
20. A Support Document issued by the Land and Resources Manager will constitute TRTFN consent only for the proposed exploration activity, and only if the proponent signs and returns the document.
21. Where a proposal for mineral exploration work involves one or more of the elements in Section 18(a)-(e), or raises serious concerns under Section 14(d), the Land and Resources Manager shall refer the matter to TRTFN Government.
22. TRTFN Government may support a proposal referred under Section 21 if an Exploration Agreement can be negotiated with the proponent to achieve the TRTFN objectives in Section 4.
23. In consultation with TRTFN Government, the Land and Resources Manager will attempt to negotiate an Exploration Agreement with the proponent. Where further information is required to develop terms and conditions that would promote the TRTFN Objectives in Section 4, the Land & Resources Manager may:
- a. request further information from the proponent;
 - b. obtain technical advice;
 - c. meet with the proponent to obtain further information or discuss terms and conditions;

- d. where necessary, request follow-up studies or field investigations by the proponent, to reduce specific areas of uncertainty about the potential effects of the activity or necessary terms and conditions.
24. An Exploration Agreement shall be designed to achieve the TRTFN Objectives in Section 4, and shall normally include the following elements:
- a. the common provisions in Schedule E;
 - b. terms of entry to the Territory, including the following:
 - i. description of work to be undertaken;
 - ii. access routes and modes for the program;
 - iii. timing and duration of entry and exploration activity; and
 - iv. size and location of workforce.
 - c. monitoring and site inspections, including role of TRTFN in same;
 - d. plans for compensation to TRTFN Government or TRTFN citizens for any disturbance or interference with Tlingit land use activities or interests that may be affected by the exploration work;
 - e. environmental protection measures, including waste management;
 - f. reporting requirements to TRTFN Government;
 - g. terms for leaving the Territory, including closure and reclamation measures and performance security;
 - h. mechanisms for negotiating the next stage of the relationship between the parties if the subsequent exploration and development work is to be undertaken by the proponent in future years;
 - i. economic benefits to TRTFN community, including business and employment opportunities; and
 - j. other such measures agreed by the Parties.
25. Following efforts to conclude an Exploration Agreement, TRTFN Government may decide to:
- a. not support the proposed project;
 - b. support the proposed project on the basis of the terms and conditions included in the negotiated Exploration Agreement; or
 - c. refer the matter to a Joint Clan Meeting for a decision.

Decisions Respecting Proposed Development Activity

26. With respect to a proposal to develop commercial mineral production in the Territory, TRTFN Government may participate in an Environmental Assessment process and negotiations for an Impacts and Benefits Agreement and Accommodation Agreement, if that participation receives support through a Joint Clan Meeting (see *Schedule B*).

27. Before agreeing to participate in an Environmental Assessment process or negotiations for an Impacts and Benefits Agreement or an Accommodation Agreement, TRTFN Government will seek to ensure that it has the necessary technical, legal and financial resources and capacity to participate effectively in the process. TRTFN Government may enter into an interim arrangement with the proponent and/or a government entity, on a without prejudice basis, for the purpose of acquiring the necessary resources and capacity.
28. TRTFN participation in an Environmental Assessment process or in negotiations for an Impacts and Benefits Agreement or an Accommodation Agreement will be without prejudice to TRTFN Government's right to refuse to give consent or support for the project if it decides that the proposal, as modified by measures agreed to in the Environmental Assessment, the Accommodation Agreement and the Impacts and Benefits Agreement, would not achieve TRTFN objectives in Section 4.
29. TRTFN Government may give its consent and support for a proposal to develop commercial mineral production in the Territory, if it decides that the proposal, as modified by measures agreed to in the Environmental Assessment process, an Accommodation Agreement and an Impacts and Benefits Agreement, would achieve the TRTFN objectives in Section 4.
30. A decision under Section 29 shall be made after:
 - a. the completion of an Environmental Assessment;
 - b. the negotiation of an Impacts and Benefits Agreement with the proponent; and
 - c. the negotiation of an Accommodation Agreement with British Columbia and/or Canada.
31. A decision to ratify a proposed Impacts and Benefits Agreement or Accommodation Agreement shall be decided by a Joint Clan Meeting. A decision under Section 29, for TRTFN Government to give consent and support for a proposal to develop mineral production in the Territory, shall be decided by a Joint Clan Meeting.

Environmental Assessment

32. The TRTFN objectives in Section 4 will serve as the terms of reference for TRTFN's team which is participating in an Environmental Assessment process.
33. Before agreeing to participate in an Environmental Assessment under the *BC Environmental Assessment Act* and/or the *Canadian Environmental Assessment Act*, of a proposal to develop mineral production in the Territory, TRTFN Government will seek to ensure that the following conditions are met:
 - a. the process for the conduct of the Environmental Assessment and TRTFN's participation in the process will be negotiated with the Crown before the process begins;
 - b. a process will be negotiated to harmonize the Environmental Assessment process with the Crown's duty to consult and accommodate the interests of TRTFN in respect of the project; and

- c. TRTFN Government will be adequately resourced to participate in the Environmental Assessment and harmonized process.

Impacts & Benefits Agreement

34. An Impacts & Benefits Agreement concluded by TRTFN Government and the proponent shall provide for measures within the authority of those parties, and will normally include the following:
 - a. the common provisions in Schedule E;
 - b. environmental protection measures, including monitoring and management programs and follow-up studies;
 - c. measures to protect TRTFN land use practices and rights from project impacts;
 - d. measures to support TRTFN land use practices and rights;
 - e. compensation to TRTFN citizens or TRTFN Government for any disturbance or interference with Tlingit land use activities or interests that may be affected by the project;
 - f. provisions for monitoring performance of the operation, conducting inspections and environmental audits as may be required;
 - g. reporting requirements of the proponent to TRTFN Government;
 - h. economic benefits to TRTFN community, including business and employment opportunities, community development program contributions, training and education programs, financial contributions, and any other benefits negotiated for TRTFN and its citizens;
 - i. other such measures agreed by the Parties.
35. TRTFN Government may not conclude an Impacts & Benefits Agreement until the following events have occurred:
 - a. the Environmental Assessment of the proposed project has been completed;
 - b. TRTFN Government is engaged in negotiating an Accommodation Agreement with BC and/or Canada; and
 - c. There has been ratification of the Impacts and Benefits Agreement by a Joint Clan Meeting.

Accommodation Agreement

36. An Accommodation Agreement concluded by TRTFN Government and the BC and/or Federal Governments shall provide for measures within the authority of those parties, and will normally include the following:
 - a. the common provisions in Schedule E;
 - b. environmental protection measures, including monitoring and management programs and follow-up studies;

- c. measures to protect Tlingit land use practices and rights from project impacts;
 - d. measures to support TRTFN land use practices and rights;
 - e. provisions for monitoring performance of the operation, conducting inspections and environmental audits as may be required;
 - f. economic benefits to TRTFN community, including business and employment opportunities, community development program contributions, training and education programs, financial contributions, and any other socio-economic benefits negotiated for TRTFN and its citizens;
 - g. mechanisms for sharing revenues from resource development;
 - h. other such measures agreed by the Parties.
37. TRTFN Government may not conclude an Accommodation Agreement until the following events have occurred:
- a. the Environmental Assessment of the proposed project has been completed;
 - b. TRTFN Government is engaged in negotiating an Impacts and Benefits Agreement with the proponent; and
 - c. There has been ratification of the Accommodation Agreement by a Joint Clan Meeting.

OPERATIONAL PRINCIPLES FOR TRTFN MINING-RELATED DECISIONS

38. TRTFN actions, participation and decisions under this policy will be based on the best available Tlingit Knowledge, other scientific information and expert opinion.
39. Proponents will normally be required to fully support TRTFN's costs for reviewing proposals and participating in the various phases of the regulatory process. TRTFN Government should not engage in processes related to a proposed project where such engagement would impose a substantial unrecoverable debt on TRTFN Government.
40. Draft agreements concluded under this policy will be legally reviewed before they are finalized or considered for ratification.
41. In making any Tlingit Knowledge or land use information available to a mining proponent and/or the Crown for their use, TRTFN Government shall seek to conclude a written agreement between the parties for the use and security of the information which provides for the following:
- a. the information is acknowledged as the intellectual property of the TRTFN;
 - b. the method of accessing the information by the proponent is described;
 - c. the information will be used only for the stipulated purposes and for no other purpose, unless otherwise agreed to by TRTFN Government;
 - d. the information will not be distributed beyond those persons in the company who have permission to see and use the information for the specified purposes; and all electronic and hard copies will be disposed of in the manner set out in the agreement;

- e. the information will not be published in any reports or maps issued by the company in a form that is not described in the agreement or otherwise not formally approved by the TRTFN Government; and
- f. any costs to TRTFN Government incurred in the production or transfer of the information are recovered from the proponent.

RELATIONSHIP OF MINING POLICY TO ABORIGINAL RIGHTS

42. Except as specifically consented to in writing by TRTFN, this Policy and the procedures it defines are without prejudice, and nothing in this Policy or the procedures it provides for shall be construed so as to:
- a. abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the TRTFN by the recognition and affirmation of those rights in Section 35 of the Constitution Act, 1982;
 - b. abrogate or derogate from any fiduciary or other legal duty or obligation of the Crown to the TRTFN that may be derived from treaties, constitutional provisions, legislation, common law or express undertakings; or
 - c. preclude or limit the right of the TRTFN to advocate before the courts any position on the existence, nature or scope of any aboriginal or treaty right of the TRTFN, or of any fiduciary or other legal duty or obligation owed by the Crown to the TRTFN.

REVIEW OF POLICY

43. TRTFN Government shall review and make any necessary changes to this Mining Policy:
- a. no later than two years from the initial ratification of the Policy; and
 - b. every five years thereafter.

DEFINITIONS

44. In this Policy:

“**Accommodation Agreement**” means a government-to-government agreement between the Crown and the TRTFN which describes how the latter’s interests will be accommodated in respect of any Crown land-use decision.

“**Advanced Exploration**” means any exploration or sampling work conducted on a mineral tenure (claims or leases) to discover or prove potential economic reserves.

“**Exploration Agreement**” means an agreement between a mining proponent and TRTFN as to how the proponent’s mineral exploration activities may occur on the Territory with the support of the TRTFN Government.

“**Impacts & Benefits Agreement**” means a comprehensive agreement between a mining proponent and TRTFN as to how a mineral property will be put into commercial production and managed through to mine closure and reclamation.

“**Proponent**” means an individual or company who proposes to conduct physical work in relation to exploring for or developing surface and subsurface mineral resources.

“**Regional Exploration**” means mineral exploration surveys conducted in portions of the Territory, not including advanced exploration, on a mineral claim or lease.

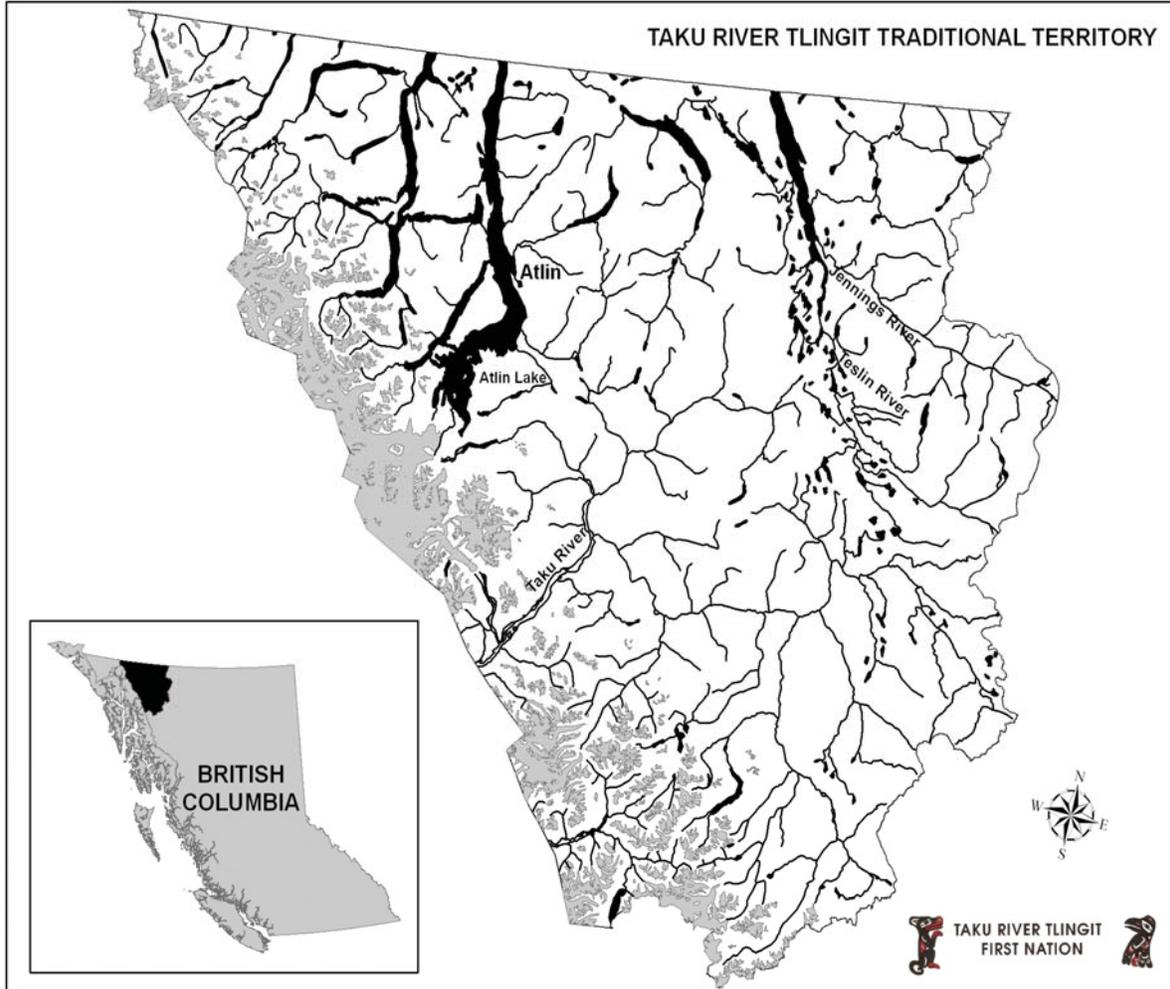
“**Tlingit Knowledge**” means knowledge held by Tlingit people about Tlingit land use and local ecosystems and environmental processes, including knowledge about plants, fish, wildlife, birds, water and other environmental values.

“**TRTFN Government**” means the TRTFN governing body, as defined by the TRTFN Constitution, which includes TRTFN political representatives (Spokesperson and Directors) responsible for achieving mandates according to Joint Clan Meetings.

“**Territory**” means the geographic area to which the Taku River Tlingit First Nation have Aboriginal Title, as shown on *Schedule A* attached.

Schedule A

MAP OF TAKU RIVER TLINGIT TRADITIONAL TERRITORY



Schedule B

ORGANIZATIONAL CHART AND DECISION MAKING FOR TRTFN

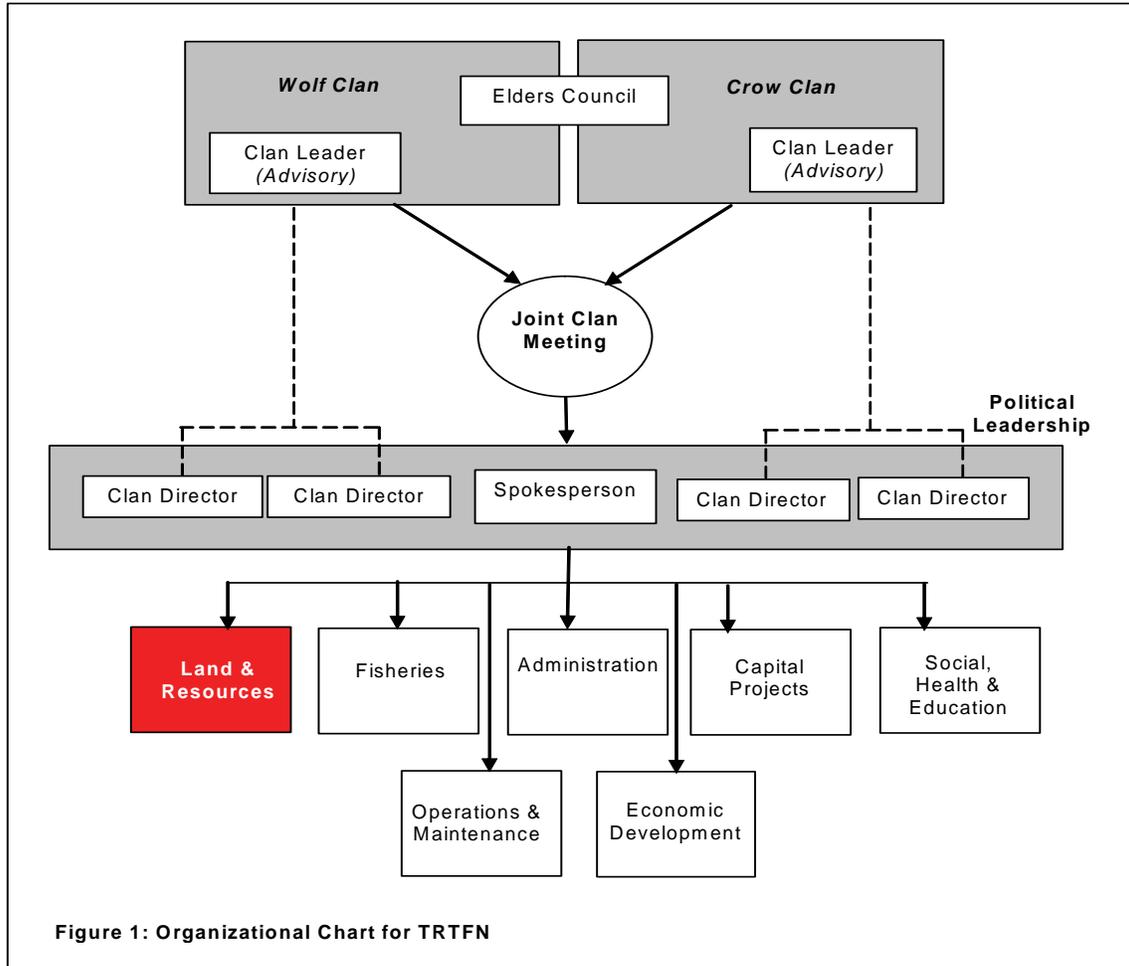


Figure 1: Organizational Chart for TRTFN

Schedule C

TLINGIT SUSTAINABILITY PRINCIPLES

Environmental Sustainability means that:

1. There is a reasonable degree of certainty that the impacts to the potentially affected ecosystem (including air, water, plants and animals) are adequately understood, and can be effectively minimized through careful design, management plans and mitigation (including closure) to a degree acceptable to the TRTFN Government. This will normally mean that there have been satisfactory Environmental Assessment and accommodation processes conducted as provided for in the *TRTFN Mining Policy*.
2. The project is consistent with any TRTFN Government land use plan, or other written land use and development policies or objectives of TRTFN Government for the affected portion of the Territory.
3. There is a management regime for the project in which TRTFN Government has an effective role with respect to the environmental protection measures that need to be implemented in order to maintain environmental quality.
4. There are written agreements as necessary to provide for the measures required for protection of Tlingit land and resources that include a role for TRTFN Government in the conduct of the environmental protection programs throughout the life of the project.
5. The pace of development in Taku River Tlingit Territory is itself sustainable, taking into account potential cumulative impacts from concurrent or consecutive developments, and providing an effective TRTFN Government role in managing the pace of development and avoiding significant cumulative impacts.

Economic Sustainability means that:

6. The project is consistent with any long-term economic development goals and strategy of TRTFN Government.
7. The project offers reasonable economic benefits and on-the-job training to TRTFN Government and community, and will produce an economic benefits legacy for the local area and community, into the future.
8. The project contributes to local economic diversity, and does not compete unfairly or undermine other TRTFN economic activity including, particularly, the Tlingit land-based economy.

9. The project will not impose any uncompensated economic losses on the TRTFN Government or the local community.
10. The scale and pacing of the project or projects is appropriate to the TRTFN population, the size and infrastructure of the community of Atlin, and the employment and other economic needs of Tlingit and other local people.

Social Sustainability means that:

11. The project provides a reasonable degree of certainty for TRTFN Government with respect to social impacts. This may require a community impact assessment process that has properly identified the adverse effects from the project on the community, and a defensible plan committed to and financed by the Crown and/or the proponent which can detect and minimize social impacts to acceptable levels.
12. The project will enhance the human capital (skills, abilities, health, and education) of the community.
13. The project will enhance the social capital (relationships between individuals, families, groups and organizations and their ability to interact positively) of the community.

Cultural Sustainability means that:

14. The project will not interfere with individual or collective rights and practices involving land-based cultural pursuits, or with the health and well being of the natural resources upon which Tlingit land-based cultural practices depend.
15. The project will not infringe or adversely impact the Aboriginal rights that support the culture of the TRTFN.
16. The project will not interfere with or create obstacles to the transmission of TRTFN land-based culture and practices from one generation to the next.

Schedule D

TRTFN DOCUMENTS RELEVANT TO LAND USE DECISIONS

1. *Our Land is Our Future: Hà tlátgi hà khustìyxh sìti - Taku River Tlingit First Nation Vision & Management Direction for Land and Resources*
2. *A Conservation Area Design for the Territory of the Taku River Tlingit First Nation*
3. *TRTFN Mining Policy*

Schedule E

COMMON PROVISIONS IN MINING-RELATED AGREEMENTS

All mining-related Agreements under this Policy will normally include provisions to address the following:

1. Preamble – describing background of the Agreement;
2. Purposes of the Agreement;
3. Description of the project and the proponent;
4. Definitions of particular terms in the Agreement;
5. Protocols for communication, information exchange, and on-going liaison between the parties;
6. Mechanisms for reviewing and/or amending the Agreement;
7. Mechanisms and funding for the implementation of the Agreement;
8. Dispute resolution process;
9. Principles to guide interpretation – including a principle that the Agreement will not be construed to affect or interpret TRTFN legal rights or Crown obligations, and will be without prejudice to future legal and negotiation positions of the parties, except as expressly agreed;
10. Term of the Agreement;
11. Termination rights and mechanisms;
12. Agreement enures to the benefit of, and is binding upon, the parties' respective heirs, executors, administrators, successors and assigns; and
13. Other such matters agreed by the Parties.