



Thursday April 14th, 2011

Provincial Minerals Strategy
Department of Natural Resources
P.O. Box 8700
St. John's, NL
A1B 4J6

Dear Minerals Strategy Team:

RE: Submission in response to *A Minerals Strategy for Newfoundland and Labrador – Discussion Paper*

The Canadian Boreal Initiative (CBI) commends the Government of Newfoundland and Labrador for undertaking a new *Minerals Strategy* and its vision of harmonious economic development promoting social progress and environmental protection. We also believe that new mining policy is required to better integrate a healthy mining sector within the context of sustainable development, effective land use planning, conservation of natural and cultural heritage, and respect for both Aboriginal and local communities' rights and interests. These facets of a mining strategy are key cornerstones in keeping with the spirit and intention of preexisting legislation, policy and policy commitments such as the *Sustainable Development Act*, *Northern Strategic Plan for Labrador*, and the *Strategic Environmental Management Plan*.

BACKGROUND

Canadian Boreal Initiative and the significance of the Boreal region

The Canadian Boreal Initiative (CBI) is guided by the *Boreal Forest Conservation Framework*—a vision supported by leading resource companies, First Nations and conservation groups. Collectively, we support finding a balance between conservation and sustainable development of the boreal, in a manner that respects Aboriginal rights. A core goal of the Framework is to work with governments and other interests to protect at least 50% of the Boreal region and to realize world leading sustainable development of the remaining landscape.

In 2006, CBI and the Department of Environment and Conservation signed an MOU to engage in collaborate initiatives, and CBI is pleased to continue offering our support and expertise here to the government of Newfoundland and Labrador towards development of a new *Minerals Strategy*.

The boreal region is an economic engine for our economy and for many individuals and communities. Many of these communities also want to balance development with protecting the land. We believe that planning for sustainability is the key to creating economic prosperity while maintaining the cultural vitality and ecological integrity of the Boreal region.

RECOMMENDATIONS

In the context of a complex modern resource economy and competing land use demands, mineral development rights should only be issued where projects satisfy economic, environmental and social objectives, and do not conflict with the rights of Aboriginal people, private landowners and local communities.

At the outset, these criteria can best be met through a comprehensive land use planning process. The objective is to define land use and protection priorities through planning prior to authorizing new development. For example, within a land use plan, ecologically sensitive areas can be set aside for conservation, and other areas identified for social and cultural purposes, prior to opening up lands to development. In this way, appropriate resource development may be facilitated and enabled in areas where there are not conflicts with other values on the landscape.

ADDRESSING COMMUNITY PARTICIPATION, ABORIGINAL RIGHTS AND INTERESTS IN MINERAL EXPLORATION AND DEVELOPMENT

We are pleased to see the consideration given to Social License in the *Mineral Strategy - Discussion Paper*, and the question “**what can the minerals sector do to ensure it has the support of communities in its operations?**”

In our view, addressing issues of consultation and consent is critical to reducing conflict and promoting support for the mineral exploration and mining sectors among affected communities. This topic, and more broadly the concept of Free, Prior and Informed Consent (FPIC), has garnered much attention recently here in Canada and abroad, as it is a key part of the United Nations Declaration on the Rights of Indigenous Peoples, which Canada endorsed in November 2010.

In terms of mineral exploration and development in Newfoundland and Labrador, the requirements under the *Mining Act* for an environmental assessment to precede mineral development occurring is an important step. However, more can be done to ensure consultation and secure consent at the exploration stage, which is critical to reducing conflict and promoting support for the mineral exploration and mining development among affected communities.

First, at the exploration stage, the *Mineral Act* provides no requirements for notice or prior consultation with communities, or for consulting or obtaining the consent of Aboriginal peoples on any land outside of Labrador Inuit Lands. As this is where conflicts often arise, it would seem advisable to ensure that there is not only guidance, but clear requirements in legislation to ensure prior notice and effective consultation to avoid such conflicts.

Exploration in the absence of consent from Aboriginal communities is an ongoing source of conflict in Newfoundland and Labrador.

This is illustrated the case of Voisey’s Bay, where the Innu and Inuit opposed mineral exploration without their consent at the early stages of that development. Those conflicts led, in the case of both groups, to tensions which led to a number of confrontations, including blockades in 1995 and 1997, as well as litigation barring the permitting of infrastructure prior to the conclusion of a full environmental assessment. Ultimately, the Innu and Inuit, the Voisey’s Bay Nickel Company and the Governments of Canada of Newfoundland and Labrador reached agreements enabling the mine to proceed, only once the Innu and Inuit people gave their consent.

Other jurisdictions, most notably Ontario, have amended their legislation to require consultation on exploration permits, and to proactively provide bodies to adjudicate disputes relating to consultation with Aboriginal communities. Currently the NL *Mineral Act* does not mandate consultation at the exploration phase, and provides no effective means for dispute resolution

between Aboriginal peoples and exploration companies, outside of the special provisions for Labrador Inuit Lands.

Recommendation: Newfoundland and Labrador should consider updating its mechanisms under its *Mineral Act* to specifically address Aboriginal consultation issues, and to provide mechanisms for dispute resolution.

We also believe that many of the provisions of the regulations that apply specifically to Labrador Inuit Lands, including provisions requiring prior review of work plans before exploration approvals are granted, have considerable merit for regulation of mineral exploration activities more broadly throughout the Province.

Recommendation: Key provisions of the *Mineral Exploration Standards Regulations* for Labrador Inuit Lands should be generalized so that they may be applicable elsewhere within the Province. Specifically, advance permit and work planning requirements would allow issues of concern to be raised by affected communities, and comments to be provided to the proponent, who may then choose to modify the proposed scope or schedule of work and resubmit the application for reconsideration while also seeking support and consent from the concerned community. Where fundamental objections are raised and consent has not been reached, there should be options for the regulators not to allow the project to proceed until those issues are addressed.

The design of such a system could make the level of required work planning, impact analysis and consultation activity proportionate to the level of proposed activity or the nature of the impacts. As well, in order to reduce the possibility of an onerous or cumbersome permitting process, advance consultation should occur around how to determine what constitutes minor and major exploration activity. This input would help define threshold issues, including the timing of consultations with affected communities, and reflect community views of how such consultations should proceed. Having this discussed well in advance, and having the approach endorsed by communities themselves, would go a long way in reducing future conflict and providing clarity and certainty for exploration and development.

As the project proceeds through the mining cycle from early exploration to full mine development, further and more intensive iterations of the process (more intensive review of applications and more detailed Aboriginal and community consultations) can occur.

There are currently few effective mechanisms to address public interests or proactively resolve disputes between mineral claim holders and other parties. We note in this regard that one of the major motivations for reform in the Ontario context is to ensure that government has the necessary tools to resolve such conflicts, and to avoid outcomes like those in the 2007 *Platinex* case where an entire Band Council in Northern Ontario served jail sentences rather than allow exploration to occur near their community.

Designing a process that reviews exploration concerns up front is far more likely than the present system to build confidence and reduce conflict and uncertainty for communities, the industry and for investors.

Industry and investors policies supporting Free, Prior and Informed Consent

It is important to note that our recommendations are consistent with best practices as identified by industry itself. For example, the value and necessity of proactive community consultation as

a core element of due diligence for responsible exploration companies has been clearly outlined by industry as seen in the Prospectors and Developers Association of Canada (PDAC) *Environmental Excellence in Exploration - e3 Plus: A Framework for Responsible Exploration—Principles and Guidance*.

The stated purpose of this Framework is to assist PDAC members to identify and apply practices that support responsible mineral exploration activity. The intention is ‘to encourage implementation of good practices and innovation that will improve social, environmental and economic performance while maintaining or enhancing shareholder value.’

The PDAC *Framework* identifies eight ‘*Principles for Responsible Exploration*’, and then provides ‘*Guidance to Accompany the Principles*’ so that explorers can understand what to do in order to convert the *Principles* into practice. Among the eight principles of the guide are included the following,

- 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

In addition to these guiding principles, PDAC has published the *Environmental Stewardship Toolkit (EST)* and the *Community Engagement Toolkit (CET)*. It is designed to achieve this by presenting a compilation of current professional practices in the exploration industry, derived from measures that are ‘known to work and to be cost-effective.’ The *CET* further details key principles and practices consistent with CBI’s recommended approach to establishing meaningful relationships with the communities. For example,

“In community engagement, the minimum that you or your company **must** commit to will include: providing information in a complete and timely manner and, to reduce misunderstanding, in a language

- understood by the majority in the community;
- listening to the community;
- being transparent and accountable;
- respecting the local culture and values;
- protecting the environment and especially any impact on the community;
- hiring and training local people;
- using local services and suppliers wherever possible; and
- supporting and, if possible, strengthening community structures and institutions (social capital), through training and education in leadership, management and technical matters.”¹

(e3 Plus: FRAMEWORK FOR RESPONSIBLE EXPLORATION -EXCELLENCE in SOCIAL RESPONSIBILITY, COMMUNITY ENGAGEMENT Sec 3.7.2)

In addition to the detailed recommendations from industry best practice guides, community

¹ See, <http://www.pdac.ca/e3plus/English/toolkits/sr/pdf/e3plus-sr-03-community-engagement.pdf>

consultation and consent has increasingly been underscored as a priority for various major investors including TD Bank Financial Group who's *Environmental Management Framework* states that,

“We agree that Aboriginal people should be able to provide free and prior informed consent on projects and activities affecting their community. As part of our commitment to this principle, we will engage our clients regarding their review of land claims and/or treaty obligations and the related risks these may pose, and management’s strategies to address these issues.”²

In December 2010, TD was joined by the Royal Bank of Canada in this call for more active engagement on the part of industry through their *Enterprise-wide Environmental and Social Risk Management Policy* which requires that “RBC gather information on ten key areas, including, approach to community engagement and approach to consultation with aboriginal communities, and the degree to which the principles of free, prior and informed consultation are applied.”

In their policy RBC notes that “Free Prior and Informed Consultation is defined by the World Bank/International Finance Corporation as: “Consultation that occurs freely and voluntarily, without any external manipulation, interference or coercion, and without intimidation. In addition, the affected communities of Indigenous Peoples should have access to relevant project information prior to any decision making that will affect them, including information on potential adverse impact on them at each stage of project planning, implementation and operation and decommissioning.”³

PROMOTING INTEGRATED LAND USE PLANNING

To allow for effective land use planning, mining rights cannot take precedence over land law and other possible uses. Mining development, like forestry development, land protection and conservation and other land uses, must be subjected to planning that engages Aboriginal governments, local communities and all stakeholders.

This principle of upstream planning allows for the direct involvement of populations in the description and negotiation of land uses. The *Urban and Rural Planning Act* incorporates these principles and would serve as a strong legislative foundation for promoting integrated land use planning across many areas on the Island of Newfoundland and parts of Labrador through a new *Minerals Strategy*. A current exercise in land use planning such as the Corner Brook Humber Valley Regional Plan is one model demonstrating land use planning based on the legislative framework of the *Urban and Rural Planning Act*. In Labrador, the Regional Land Use Plan for the Labrador Inuit Settlement Area (LISA) and the Innu Nation and the Department of Natural Resources’ world-leading forest management plan for District 19 are good examples of comprehensive land use planning preceding development on much broader scales.

² see, http://www.td.com/corporateresponsibility/crr2009/pdf/environment/Env_Mgmt_Framework.pdf

³ see, <http://www.rbc.com/environment/lending-equator-principles.html>

The District 19 process set aside environmentally and culturally significant lands from forestry activity, prioritized other areas for forestry development to occur, and was wholly based on ecological and cultural values and detailed public consultation. With this groundwork already laid in District 19, more detailed land use planning for mineral development and other activities in this district is a reasonable next step.

Since there are relatively few past and present land-use planning exercises that have been or are currently being conducted, we feel integrated land use planning should be promoted with a coordinated approach across the Province. A coordinated approach, including through the forthcoming *Strategic Environmental Management Plan*, will also allow other departmental policies and initiatives opportunity to provide input to delineating areas for mineral development and areas for conservation or other uses or values.

REQUIRE PERMITTED ACTIVITIES TO CONFORM TO LAND USE PLANS

It is in everyone's best interest to have mineral exploration situated within a broader policy framework for land use that balances conservation with development and ensures that environmental protection, Aboriginal cultural values, and other public policy objectives are achieved.

To accomplish this goal, the government should require comprehensive land use planning before new mineral tenures are granted. This would prevent avoidable conflicts between the mineral sector and other land uses, optimize infrastructure needs, and assist the Government in fulfilling obligations to Aboriginal peoples.

Furthermore, comprehensive land use planning is truly a process not a one-off exercise drawing lines on a map. A comprehensive process will include the structures and institutions needed to implement and review the plan, which means that communities can and should continue to be involved in the whole process on an ongoing basis. If done right, communities can feel ownership over the process creating a truly sustainable effort.

Several jurisdictions in Canada have regulatory systems in which conformity to land use plans are required for as a pre-condition for authorizations required for exploration. Other jurisdictions, including the Yukon and BC, are increasingly recognizing the need for a better approach to land use to avoid the gridlock which results from competing demands.

Such an approach is common in other sectors. The need for planning as a precursor to industrial development was recognized by the national forest sector at the most recent National Forest Congress, in a joint position statement from the Forest Products Association of Canada and the Canadian Boreal Initiative that "planning for conservation of ecological and cultural values should occur prior to new forest tenures in the unallocated parts of Canada's boreal, in a manner that respects the constitutional rights of Aboriginal peoples."

To improve land use outcomes for all sectors, mineral legislation must be updated to require that planning is undertaken with all interests at the table, instead of allocating development rights in an incremental or opportunistic way that have priority over other uses or otherwise prejudice balanced outcomes.

RECOGNIZE EXPLORATION COMPANY COSTS FOR CONSULTATION AND CONSERVATION ACTIVITIES AS ASSESSMENT WORK

As part of the process of updating Newfoundland and Labrador's mining law and policy, we feel that it is both fair and helpful to recognize the costs incurred by companies associated with

consultation and conservation as legitimate assessment work for which a company would receive credit.

This move would be broadly consistent with approaches in other jurisdictions, such as Canada's approach to exploration tax credits and British Columbia's allowances for crediting certain of these expenses against assessment costs. Providing similar allowances in the new *Mineral Strategy* would a) provide companies with a tangible incentive to invest in these important parts of the modern exploration process, and b) demonstrate policy consistency between the demands and rewards of progressive, sustainable development practices.

CONCLUSIONS

A new *Mineral Strategy* is a vitally important step for Newfoundland and Labrador. We see the potential for this strategy to complement the Province's vision for implementing the goals of the *Sustainable Development Act*, and the forthcoming *Sustainable Environmental Management Plan*. Also, our recommendations address key concerns noted in discussion paper specifically ***Access to Land, Promotion and Investment Attraction, Regulation and Legislation, Social License, and Environmental Protection***.

We believe that our recommendations would, if enacted:

1. enable government to be better informed and exercise discretion in granting mineral rights
2. ensure effective consultation with and accommodation of Aboriginal peoples and local communities before mineral rights are vested in third parties;
3. foster mineral exploration within a broader policy framework for land use that balances conservation with development while ensuring that environmental protection and other public policy objectives are achieved;
4. complement existing program and policy objectives;
5. maintain a viable climate for investment and improving opportunities for all communities to benefit from responsible mineral exploration and development; and
6. reduce the risk of conflict and provide certainty for future policy and resource development

By implementing these recommendations, Newfoundland and Labrador will take a leadership position as a safe and secure place to do business as investors and consumers increasingly seek jurisdictions with socially and environmentally responsible policies for regulating mineral exploration and development.

We offer this respectfully and would welcome an opportunity to meet and discuss any of the matters addressed above.



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Canadian Boreal Initiative

CC: Larry Innes, Executive Director CBI
Valérie Courtois, Sr. Advisor, Aboriginal Relations CBI

Addendum: Climate change, soil organic carbon and peat mining

“Industrial emissions of greenhouse gases are moving the world into an uncertain future where climate change will dominate environmental, political, and economic issues. Solutions to slow negative impacts of rapid and large changes are still possible, if we act swiftly and strategically on a global scale. First and foremost is, of course, a drastic reduction in industrial emissions of carbon from the burning of fossil fuels. Without real and substantial cuts in the amount of carbon we are putting into the atmosphere, the ecological foundations upon which humans and all life depends will be degraded and changed in more ways than scientists or the public have been able to predict or imagine. The northern parts of the planet, especially including the Boreal and Arctic regions, are already experiencing some of the most dramatic impacts and will continue to be among the hardest hit on the globe as temperature increases and other climatic changes will be greater there than virtually anywhere else on earth.

A second major set of solutions has received limited attention by the global community—that of reducing the loss of carbon from industrial land-use. In particular, the accelerating conversion of natural habitats for agriculture, forestry, mining, oil and gas extraction, hydropower and other industrial purposes must be slowed. Globally, land-use change has accounted for nearly 20% of annual greenhouse gas emissions. Because of these emissions, there has been a recent push to find financial incentives and policy instruments that will encourage developing tropical nations to slow deforestation and retain natural forests through environmental service payment schemes and increased protection efforts. This initiative is critical to helping to slow climate change impacts and to protect the incredible species richness and indigenous cultures of these tropical regions.

But another part of the land-use change solution has been largely overlooked in the climate change policy debate. That missing piece—the massive carbon stores of the Boreal Forest—is addressed in the attached report “The Carbon the World Forgot”, The Boreal Forest globally stores more carbon than any other region of the globe, perhaps two or three times as much carbon as is stored in the tropics. The Boreal Forest region is also home to some of the world’s last intact terrestrial and aquatic ecosystems, abundant populations of large mammals and birds and to hundreds of indigenous communities. These facts make it imperative that the world’s policy makers and public now make a concerted effort to ensure that both the Boreal Forest and its vast stores of carbon remain intact. To achieve this will require both drastic cuts in industrial emissions and importantly, a vast increase in the area designated off limits to the kinds of industrial disturbances that increase the likelihood that more carbon will be released into the atmosphere.”

Adapted from the foreword of *The Carbon the World Forgot: Conserving the Capacity of Canada’s Boreal Forest Region to Mitigate and Adapt to Climate Change*.

Kurz and Apps (1999) estimate that Canada’s forests store 85.8 billion tonnes of carbon (trees and soil). Of this, the forest regions with the greatest carbon storage (71.4 billion tonnes) are - located in Canada’s boreal region. Tarnocai (2006) estimates that Canada’s peatland ecosystems store 147 billion tonnes of carbon of which approximately 93% is located in the boreal region. On average, 85% of total forest carbon in the boreal is stored in soil, with trees and other vegetation accounting for only 15%. In peatlands, 98.5% of the carbon is stored in soil, and only 1.5% in vegetation, so using SOC (organic soil content) values in the absence of detailed tree cover data provides a conservative estimate of total stored carbon values in a region.

In 2006, global CO₂ emissions from consumption of fossil fuels were 29 billion tonnes (Energy Information Administration 2009), which is equivalent to 7.9 billion tonnes of carbon. Therefore, approximate Canadian boreal carbon storage (208.1 billion tonnes of carbon) is equal to 26 years of the world's CO₂ emissions from the consumption of fossil fuels. Canada's carbon emissions in 2006 equalled 200 million tonnes of carbon. Accordingly, the carbon storage in the soils of the Newfoundland and Labrador is equal to 118 years of all of Canada's emissions in 2006!

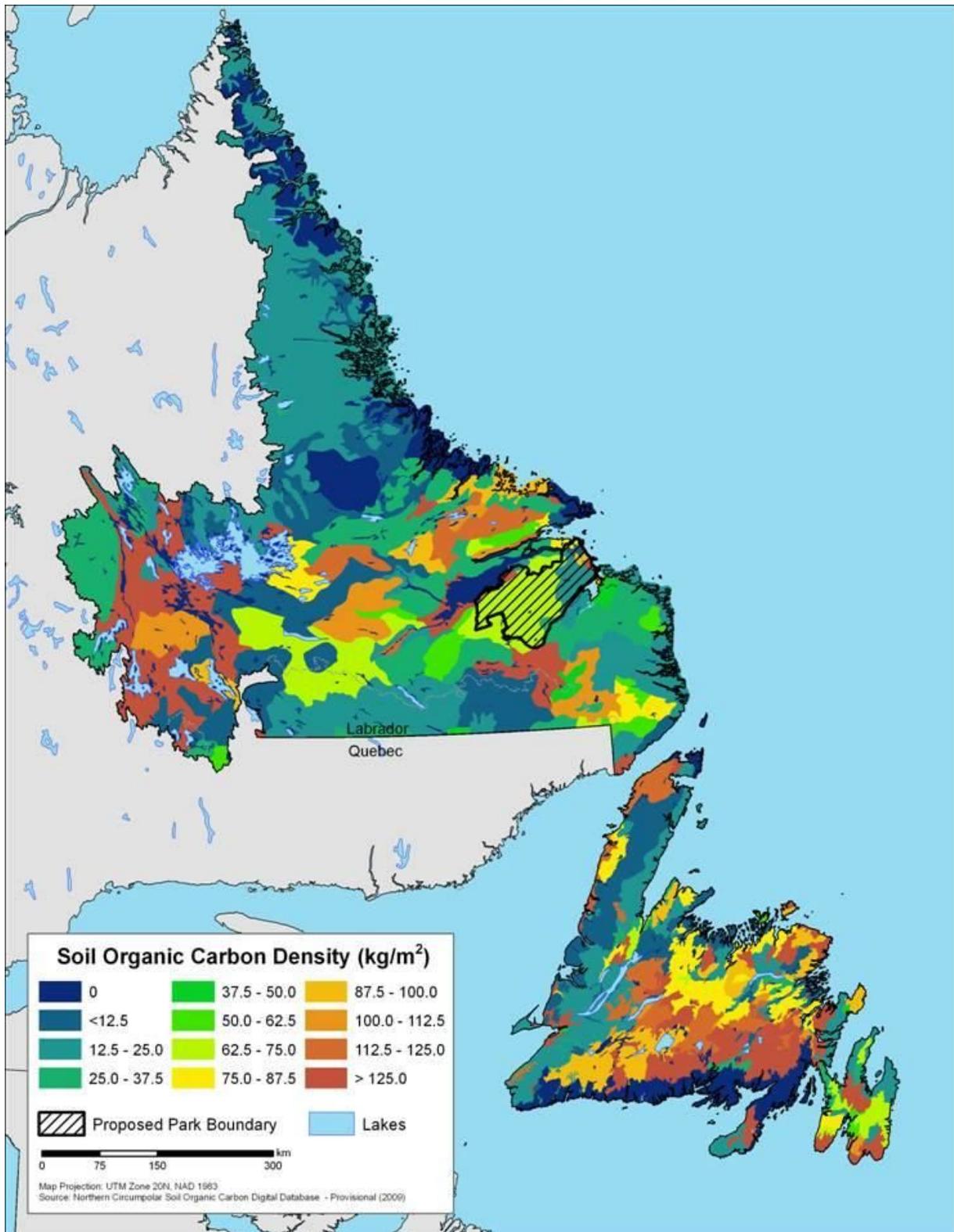
Newfoundland and Labrador has a broad distribution of peatlands, with certain regions in the province seeing very high concentrations. Significant concentrations can be found in the Eagle Plateau ecoregion in Southern Labrador, in the Lac Joseph area of Western Labrador, as well as in the central interior of the Island of Newfoundland. There are 712 Million tonnes alone in the area of the recently announced Mealy Mountains National Park, equal to roughly 3.5 years of emissions at Canada's 2006 levels.

Accounting for terrestrial carbon has become an important tool used by other Boreal regions across Canada to bring a balanced approach to conservation and development. Both the governments of Ontario and Quebec have identified this as part of the basis for commitments to protect half of their northern boreal regions. In Manitoba, the provincial government hopes to become a leader in the preservation of boreal peatlands, and has launched the development of a *Peatlands Stewardship Strategy* in co-operation with stakeholders and leading climate-change NGOs.

In light of the startling carbon numbers in Newfoundland and Labrador, CBI recommends that:

- the *Mineral Strategy* makes an obligation to account for carbon emissions caused by disturbances such as mineral exploration and development, and specifically with respect to peat mining; and
- the strategy should look to mitigating the impacts on soil carbon from mining through a protected areas lens.

Please refer to "the Carbon the World Forgot" available at <http://www.borealbirds.org/carbonreport.shtml> as the source of this data. There is an extensive discussion in the report of the value of protecting intact carbon reservoirs (boreal forests and peatlands) in climate mitigation and adaptation strategies.



"The Carbon the World Forgot" at <http://www.borealbirds.org/carbonreport.shtml>

Summary of recommendations

	Provide clarity to proponent	Provide investment security	Provide clarity to communities	Recognize community concern
Recommendation for a new <i>Minerals Strategy</i>				
Embrace principles of Free, Prior and Informed Consent	✓	✓	✓	✓
Establish w/Aboriginal communities, threshold levels of exploration activity that would trigger consultation/require consent	✓	✓	✓	✓
Establish advisory body to assess likely impacts of activities and guide consultation with Aboriginal communities	✓	✓	✓	✓
Recognize community consultation costs of companies as assessment work; explore tax benefits	✓	✓		
Promote comprehensive land use planning to precede allocating new mineral tenures	✓	✓	✓	✓
Prioritize areas for land use planning regions based on gaps in the Natural Areas Systems Plan	✓	✓	✓	✓
Prioritize areas for land use planning regions based on areas with high mineral occurrence and development pressure	✓	✓	✓	✓
Require permitted activities to conform to land use plans	✓	✓	✓	✓
Coordinate approach in line with existing policies and commitments such as Sustainable Development Act and Strategic Environmental Management Plan	✓		✓	