



STRIKING THE BALANCE:
PERMITTING REFORMS FOR MINING
AND THE ENERGY TRANSITION



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INTRODUCTION

Foundational to the energy transition is the underlying commitment to the goals set forth in the Paris Agreement to hold “the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”¹ Those temperature targets attract a great deal of attention, and are tied to a related goal in the Paris Agreement to reduce greenhouse gas emissions.² Because the generation and use of carbon-based fuel is a significant source of greenhouse gas emissions, government and industry are looking for ways to reduce those energy-related emissions.

The “The Energy Transition” includes the transition of power generation to renewable resources (such as wind and solar) and the transition of transportation to electric vehicles. These elements of the Energy Transition will require the incorporation of charging stations and utility scale storage in transmission infrastructure. The International Energy Agency estimates that demand for metals used in renewable technologies is on pace to double by 2040 from its 2020 benchmark (with electric vehicles and battery storage technologies accounting for much of the increase), with the possibility of growing even more quickly during that period if global climate-focused policies are implemented.³ As compared to 2020 benchmarks, demand for lithium could increase 13-fold by 2040; graphite, 8-fold; nickel, 7-fold; cobalt, 6-fold; manganese and rare earth elements, 3-fold; and copper, 2-fold.⁴

All these metals needed to accomplish the Energy Transition will come from mines, and there is not enough mining at present to meet this demand. It takes a long time to bring a mine into production. Many factors affect the pace of mine development, but the permitting process stands out as a key bottleneck.

¹ Paris Agreement (2015) – United Nations Framework Convention on Climate Change, Art. 2(1) (a) (Paris, France, Dec. 12, 2015).

² Id. Art. 2(1)(b),(c)

³ IEA, *The Role of Critical Minerals in Clean Energy Transitions*, at 46 (rev. 2022).

⁴ Id. at 47.

The technical advisory firm ERM states the issue succinctly: “[N]ew critical minerals mining projects can take up to 20 years to be developed as project timelines are routinely beset by delays. If the average time to production does not reduce to between 5 and 10 years, there is a risk that a critical minerals shortage before 2030 could cause the global 2050 net zero emissions target to be missed.” Permitting-related issues cause nearly 40 percent of mining delays, making it the primary obstacle to obtaining adequate critical minerals, and, by extension, to achieving stated greenhouse gas emissions goals in the coming years.

Permitting delays are particularly acute in the United States. As Daniel Yergin notes, “Our country is suffering from a permitting pandemic – it leads to paralysis, lack of economic resolve, and a great deal of pain” The impact is wide-ranging. Ford Motor Company, for example, sent a letter to the Department of the Interior noting that the current “lengthy, costly and inefficient permitting process” makes it difficult for American businesses to invest in the extraction and processing of critical minerals in the United States.

The Department of the Interior recently led an Interagency Working Group on mining law reform. According to the Interagency Working Group, the length of time from initial exploration to the start of commercial production in the United States is about 16 years.⁵ The Interagency Working Group claims that this “gestation period” is fairly consistent with the worldwide average, but also admits that this number does not account for delays from litigation brought under the National Environmental Policy Act (NEPA). Delays from NEPA challenges are a significant impediment to mine development.⁶

Much of that 16-year period is devoted to permitting. A study by SNL Metal and Mining in 2015 found that the permitting process in the United States averages 10 years. SNL also found that the delays significantly diminished the value of mining investments. Logically, more complex or controversial projects will take longer to be permitted.

These issues are not exclusive to the United States. For example, in Sweden it took nine years for the Kallak iron ore mine to secure its exploitation permit.⁷ Western Australia is often cited as a jurisdiction with efficient permitting, yet their Environmental Protection Authority has recently considered taking on a new role to review five-year mine plans. Australian miners have expressed concerns about delays created by this additional step in the permitting process. In Peru, Buenaventura suspended operations at the Colquijirca Tajo Norte lead-silver mine due to permitting delays.

While there seems to be a general consensus in the United States that there are some permitting efficiencies to be gained, there is also opposition to broad reforms to the NEPA process. Opponents argue that (i) dramatic reform to the permitting process is not required because delays arise for multiple reasons, not just from delays in permitting and (ii) substantial diminishment of the permitting process could create less environmental protection and promote approval of mining projects without complete consideration of environmental justice and with inadequate stakeholder consultation.

We find ourselves in paradoxical situation. The critical minerals required by the principal technologies that support a transition to greener energy can only be obtained by mining. Permitting regulations aim to assure that mines are developed in a responsible manner, but inefficient permitting or challenges to permits designed to slow or stop mine development are an obstacle to obtaining the materials needed to run the technologies that will enable us to protect the environment. The ideal balance will be to develop a process that enables efficient approval of mining activity while assuring that this activity occurs in a responsible manner.

⁵ Interagency Working Group, *Recommendations to Improve Mining on Public Lands at 54* (2023).

⁶ *Id.*

⁷ Eva Liedholm Johnson, Magnus Ericsson, Anton Löf, *The mining permitting process in selected developed economies*, *Land Use Policy* (August 2023)

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Delays in mine permitting inhibit the transition to cleaner energy. The irony is that well-intentioned but inefficient rules designed to mitigate the environmental impact of mining may pose a different threat to our environment in the long term.

CAN PERMITTING IN THE UNITED STATES BE MORE EFFICIENT?

The Department of the Interior Interagency Working Group (IWG) on mining reform [argues that the time to process a permit in the United States is consistent with the worldwide average](#). The IWG also [expresses skepticism](#) about the common view, based on work by SNL Metals and Mining, that it takes ten years to permit a mine in the United States, a time period that is [well in excess of permitting times](#) in other mining jurisdictions like Canada and Australia. Still, the current administration recognizes there is a need to improve the permitting process. In 2022, the Biden Administration released the Biden-Harris Administration Fundamental Principles for Domestic Mining Reform. One of these fundamental principles is “Provide Permitting Certainty.” The Fundamental Principles suggest adopting clear permitting standards and transparency to, among other things, “improve permitting times.”

MINING IN THE UNITED STATES

The U.S. has a complicated system for securing the right to mine. Minerals owned by private parties can be sold or leased for development. Some minerals are owned by state governments or Native American tribes. About [one-third of the nation’s land is owned by the federal government](#), and the grant of the right to mine those federal lands can take a variety of forms. Some minerals may be leased to miners under the [Mineral Leasing Act of 1920](#), or under statutes governing the actions of the federal agency with control over the minerals. In addition, large areas of federal lands are open for mineral location under the [General Mining Law of 1872](#). A U.S. citizen has the right to enter most federal lands to prospect for and locate valuable minerals. If the prospector finds valuable mineralization, that miner can stake a claim and secure the [right to exclusively develop those minerals](#).

THE PERMITTING PROCESS

Jurisdiction, stakeholder interests, and complexity contribute to an often duplicative, onerous, and lengthy process for a mine to be permitted. Permitting is just the very first step in what could be a decades long process before minerals may be extracted and brought to the market.

For mineral development on federal lands, a federal mining permit is required. The core of the [permit application](#), when mining on Bureau of Land Management (BLM) or U.S. Forest Service controlled land, is the mining Plan of Operation (PoO). The PoO [details the applicant's plan](#) for mining. It describes the location and size of the infrastructure required for mining. It specifies the type of mining to be conducted (e.g., open pit or underground) as well as the details of mining (e.g., tons of ore processed through a mill). The PoO specifies the size and types of equipment to be used in the mining process. Further, the PoO informs what mitigation measures may be necessary to address the impacts of mining on the physical and social environment.

Where mining will occur on private lands or state-owned lands, a state mining permit will be required. The permitting process varies from state to state, but the broad concepts and key elements of the permit are similar in all states.

A mining project under state jurisdiction or a mining project on federal lands will also require a variety of state environmental permits for air emissions and water discharge and use. Some local counties or municipalities may require industrial siting or other land use permits. The project may require as many as 30 permits, which often leads to [duplicative permitting requirements](#).

The [National Environmental Policy Act](#) (NEPA) was enacted “to ensure that federal agencies evaluate the potential environmental impacts of their actions and consider the consequences when [determining whether or not to proceed with the action](#).” NEPA will always apply when reviewing applications for mining on federal land. NEPA may also apply when a mine subject to state jurisdiction requires a federal permit, such as a permit to fill wetlands regulated under Section 404 of the Clean Water Act. The requirements specified under NEPA must be followed by the government and the applicant before a final Record of Decision regarding the mining application is issued.

The process for obtaining a mining permit on federal, tribal, or private land has multiple integrated steps. The applicant may be required, or may choose, to conduct baseline studies to quantify and qualify, for example, the population of animal, fish, and flora in the mining area, the types of local cultural sites, and the water resources potentially utilized and impacted by mining operations. Ancillary permits, such as an eagle incidental take permit through the U.S. Fish & Wildlife Service, may be required. The permitting process will include consultation with stakeholders, including state and local governing bodies, elected officials, Native American leaders, and non-governmental organizations (NGOs). Applicants will also be required to calculate reclamation costs and post a bond with the state for a specified amount.

Permitting delays have long been recognized as an impediment to the development of infrastructure generally. In 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act. Title 41 of the Fast Act (“FAST-41”) created a Permitting Council charged with improving the permitting of energy projects.¹ The Permitting Council has proposed limiting the facilitation of permitting for mining project to those producing critical minerals.² To date, [the only mining project to receive coverage](#) under FAST-41 is South32's Hermosa Mine, which produces zinc and manganese, both of which are used in the manufacture of batteries.

DELAYS AND PROPOSED REMEDIES

Because there are multiple sources of permitting delays, there are multiple opportunities to improve efficiency.

NEPA is oft-cited as a primary source of permitting delay. NEPA review adds an additional layer of permitting analysis, and NEPA can be used by project opponents to delay project approval. Delays make a project more expensive and [may be fatal to the project](#).

Consultation with tribal interests and engagement with stakeholders is a fundamental aspect of mine approval. Every step creates another opportunity for delay.

¹ 42 U.S.C. § 4370m-1

² Federal Permitting Improvement Steering Council, Proposed Rule: Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act, 88 Fed. Reg. 65350 (Sept. 22, 2023).

Several impediments to the efficient permitting of mining projects can be addressed entirely within the context of the existing permitting process.

- **Improved Jurisdictional Coordination:** The legal framework of mine permitting is complex. Some of this complexity arises from the stacking of federal, state, local and tribal laws onto a mining project. A mining project thus requires a suite of permits from a variety of agencies. The agencies involved in mine permitting would benefit from coordinating the permitting process. Coordination among federal, state, and local agencies, in the spirit of cooperative federalism, would certainly help.
- **Uniform Interagency Approach:** The federal government could adopt a [uniform approach to mine approval](#) among the federal agencies that would at least mitigate this complexity, as had been done in Canada and Australia. The Government Accountability Office (GAO) found that, even at the federal level, [ineffective interagency coordination and collaboration could delay a permit by up to three years](#). Designing a coordinated permitting process to avoid duplicative permitting, even if limited to the federal level, would go a long way toward efficient permitting.
- **Adequate Staffing and Specialized Talent:** Finally, the agencies managing the permitting process are often understaffed. The GAO, for example, found that the [Forest Service and BLM do not have enough staff in critical positions](#), such as archeologists and biologists, to process mine plans. Providing adequate staffing, as well as recruiting more specialists to handle the particular analyses required by mine permitting, is a critical step toward securing the metals necessary for the energy transition.

The Biden Administration has [policy goals to improve mine permitting timing](#) and “expand[ing] domestic critical minerals supply chain, breaking dependence on China and boosting sustainable practices.” Implementing [meaningful permitting reform](#) is a key to achieving those policy goals.

THE IMPACT OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)



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The United States Department of the Interior Interagency Working Group (IWG) on mining reform recently concluded that the time between initiation of exploration and the start of commercial production for a mine in the United States is fairly consistent with the worldwide average of 16 years. Regardless of worldwide consistency, the natural question remains – is that average reasonable? And is that timeline expeditious enough to bring critical minerals to market to attain energy targets? We would argue it is not. One significant cause of delay is NEPA. Indeed, delays caused by the NEPA process have been called the most significant risk to mining projects in the United States.

But what is NEPA and why is it so consequential? NEPA was signed into law by President Richard Nixon on January 1, 1970, setting forth a congressional declaration of policy that the United States “use all practicable means and measures... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” It called for balance. In theory, NEPA is no more than a process statute, requiring federal agencies to fully examine the environmental effects, and possible alternatives, of a major federal action and engage with the public in the course of that process. To serve that purpose, there are three main levels of NEPA review depending on the anticipated potential impacts of any given proposed federal project. In increasing order of comprehensiveness, these levels of review are: (1) the categorical exclusion, (2) the environmental assessment, and (3) the environmental impact statement. Regardless of the level of review, the statute does not dictate a specific outcome; meaning, as long as the agency has taken a requisite hard look at environmental consequences and alternatives, “the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” In practice, however, the NEPA process, including subsequent litigation regularly dictates the outcome of many projects—mining among them.

Mining projects are so often impacted by the NEPA process because very few mining projects do not have at least some semblance of a federal component that in turn requires an approval or decision by a federal agency. This is because the United States is rich in mineral resources. Indeed, [federal agencies manage approximately 640 million surface acres, and 714 million acres of onshore mineral estate](#). And, the U.S. Bureau of Indian Affairs manages [56 million surface acres and 59 million acres of mineral estate in trust on behalf of Tribes](#). Development on any of these federally managed lands requires a federal permit. In addition, any mining projects that receive federal funding, for example from the U.S. Department of Energy, can also trigger NEPA. And even mining projects on private lands may require a federal permit for other reasons, for example a permit under Section 404 of the Clean Water Act requires a federal approval. The bottom line is that [“\[t\]he range of federal agencies and actions subject to NEPA is broad and commonly includes activities such as issuing permits and funding infrastructure.”](#) The fact that so many mining projects require a NEPA process in some form is not inherently problematic. However, delays in the NEPA process must be addressed, especially given NEPA’s far reach.

NEPA delays are self-evident in major mining projects across the United States. For an anecdotal example, the proposed Resolution Copper mine in Arizona that would supply up to a quarter of the United States’ copper demand has been [undergoing federal permitting since 2013](#). Looking more holistically, the average time to complete the NEPA process with an environmental impact statement has been as high as [5.2 years during the last decade](#). And the delays are not just in the NEPA process itself, but really culminate post-NEPA, during litigation. Given the size of mining projects, most require the most exhaustive level of review through an environmental impact statement, and [“a higher percentage of \[environmental impact statements\]s get challenged in court compared to other environmental review documents.”](#) As of 2013, an overwhelming [65 percent of NEPA litigation was brought by public interest groups as a tool to stop projects](#). Even if defending a NEPA review is successful in court, the litigation process can take several years to resolve, depending on if an appeal is filed.¹ And delays are more consequential than just an extended timeline. Mining is highly-capital intensive, and if the revenues from production come too late in time, a project cannot pencil out financially.

This is a well-known problem, and one that most Administrations have tried to address. In 2023 the Biden Administration proposed what it referred to as a [“Bipartisan Permitting Reform Implementation Rule”](#) to “modernize and accelerate environmental reviews under [NEPA]” to, in part, “accelerate America’s clean energy future...” The proposed rules would aim to coordinate reviews among multiple federal agencies, encourage the development and use of categorical exclusions, and recommend that a project’s long-term beneficial environmental impacts be weighed against short-term impacts. While these are certainly steps in the right direction, it is too soon to know how impactful the final rules will be once promulgated. Moreover, executive action amending the NEPA implementing regulations cannot put an end to NEPA litigation’s protracted timeframes. At this point, prolonging the approval process through dilatory litigation is a tried-and-true tactic that likely cannot be abated without congressional action.

¹ See Adelman & Glicksman, *Presidential and Judicial Politics in Environmental Litigation*, at 38 (2018) (median duration of a NEPA case is approximately two years, with 25% of cases taking more than 3.2 years).

It is an interesting place we find ourselves. NEPA was originally adopted to promote balanced conservationism and environmental protection as a government priority. Now it is preventing the United States from achieving carbon-neutral goals and implementing low-carbon infrastructure. While the Fiscal Responsibility Act of 2023 [amended the NEPA statute](#) with a view toward streamlining and reducing timelines for approvals, there is still more opportunity to implement actionable policy options to balance meaningful and intensive environmental reviews in support of sustainable project development. Those reforms [could include expansion of federal programmatic planning and general permitting](#), increasing agency funding to more expeditiously draft and review NEPA analyses, and netting out positive downstream environmental effects from adverse effects when considering the level of NEPA analysis to prepare.² Those reforms can take a variety of forms. One option that can be done through administrative action (and would therefore not require an act of Congress) is [expansion of federal programmatic planning and general permitting](#). Another potential for administrative action would be to [net out positive downstream environmental effects from adverse effects when considering the level of NEPA analysis to prepare](#). On the congressional side, a relatively lighter lift would be to increase agency funding to more expeditiously draft and review NEPA analyses. To expedite the NEPA litigation process, Congress could also direct that NEPA judicial appeals should be prioritized.

If, on the other hand, we continue to allow the NEPA process to consume itself, we will surely fall behind target objectives in U.S. Energy Transition efforts.

The need for NEPA reform is here, and some limited progress has been made. But more can be done, including more holistic permitting reform in Congress, without which, the most effective change is unlikely. And, inaction, or as NEPA would say—selecting the no-action alternative—is a decision in and of itself, and it is a consequential decision at that.

² See, e.g., NEPA Implementing Regulations Phase 2, 88 Fed. Reg. 49,924, (Proposed July 31, 2023) (proposing that “an agency should consider short-term construction-related GHG emissions from a renewable energy project in light of long-term reductions in GHG emissions when determining the overall intensity of effects”).

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Mined materials are in the products we use every day—our cars, jewelry, phones, laptops, and buildings—and technology for the energy transition means that more of these materials are needed for wind, solar, and electric vehicles. Yet mining is one of the few industries that predictably leaves centuries of impacts. It can also bring prosperity, locally and globally, but we need to ensure that harm is minimized, and benefits are assured. Many of the technologies needed to do this right are available now. We also need laws, market value, and ethical drivers to make responsible mining a consistent expectation.

The [Initiative for Responsible Mining Assurance](#) (“IRMA”) is a multi-stakeholder organization formed in 2006 in response to global demand for greater social and environmental responsibility in the mining sector. The IRMA Standard for Responsible Mining, first published in 2018, is used for independent audits of environmental and social performance at the mine-site level. The IRMA audit process engages affected communities, Indigenous rights holders, workers, and other stakeholders and rights holders at the site level. It results in detailed public audit reports covering a holistic set of topics for industrial scale mines.

IRMA is credible across sectors due to its robust Standard, its transparent audit reports that measure mining operations against that Standard, and its unique governance model that gives equal voting authority to each of six sectors: mining companies, companies that purchase mined materials, non-governmental organizations, affected communities, organized labor, and investment and finance.

The IRMA Standard reflects four key elements of responsible mining: business integrity, planning for positive legacies, social responsibility, and environmental responsibility. IRMA audits result in one of four achievement levels based on a site’s level of meeting IRMA Standard requirements: IRMA Transparency, IRMA 50, IRMA 75, or IRMA 100.

[Kristi Disney Bruckner](#) is the Law and Policy Director for IRMA. She also serves as an adjunct professor at the University of Denver Sturm College of Law and University of Arizona Law, teaching courses on climate change law, sustainable development and international trade, and community engagement. Ms. Bruckner provided answers to some questions posed by Womble Bond Dickinson concerning the relationship between permitting reform and responsible mining.

1. When IRMA considers responsible mining, what is required to have mining occur in a responsible manner? Are there some elements of responsible mining that are fundamental?

IRMA was formed as a product of over 10 years of multi-stakeholder discussions and broad engagement to answer the question, “What is responsible mining?” The answer is the [IRMA Standard for Responsible Mining](#). Comprised of 26 chapters and over 400 requirements, the IRMA Standard provides holistic coverage of the wide range of criteria necessary for responsible management of the mining sector.

IRMA’s multi-stakeholder board has identified 40 requirements from the IRMA Standard as “[critical requirements](#)” that any site claiming to follow good practices in mining should meet. These cover topics including:

- Compliance with host country laws,
- Meaningful engagement with stakeholders and rights holders,
- Respect for internationally recognized human rights,
- Stakeholder access to an operational-level grievance mechanism,
- Anti-bribery and anti-corruption measures,
- Environmental and social impact assessment and management,
- Obtaining the Free Prior and Informed Consent (FPIC) of Indigenous Peoples,
- Emergency response planning,
- Mine closure requirements,
- Respect of workers’ rights, including freedom of association,

and more.

2. The IRMA Standard takes as a premise that a mining operation will comply with local government permitting requirements. But that mining operation must also meet a wide range of other requirements in the IRMA Standard. In your experience, how often are existing permitting requirements and related legal frameworks insufficient to assure responsible mining? Is that an issue in the United States?

We haven’t yet seen a legal framework in the U.S. or elsewhere in the world that aligns with all requirements in the IRMA Standard. Even where there are strong legal frameworks in place, there are challenges with implementation, including in remote mining regions of both developed and developing countries. As a voluntary standard IRMA isn’t a replacement for the important role of governments in establishing and implementing legal frameworks. The IRMA Standard serves as a useful benchmark for assessing and improving legal frameworks and complements the role of government by bringing market recognition to mines demonstrating commitment to improving practices.

While we haven’t undertaken a comprehensive review of the U.S. legal framework governing the mining sector, we have completed a [high-level overview](#) to inform the U.S. Department of the Interior Interagency Working Group on mining reform. We identified gaps around community engagement requirements, environmental and social impact assessment and management, grievance mechanisms and access to remedy, FPIC, community support and benefit sharing, emergency preparedness, planning and financing reclamation and mine closure, waste management, water management, and others. A detailed assessment of the U.S. legal framework against the IRMA Standard prepared by an independent, external party would be

a helpful tool for the U.S. Government in this mining law reform process and should be based on experience across all stakeholders and rights holders affected by mining.

When it comes to permit requirements specifically, we haven't done a detailed assessment of U.S. requirements. However, there is relevant guidance informed by IRMA, such as the Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF) [Guidance for Governments on Improving Legal Frameworks for Environmental and Social Impact Assessment and Management](#) and the IGF [Mining Policy Framework](#) and related [Guidance](#). The [U.S. has been an IGF member since 2021](#) and has taken on increasingly active roles in this 84 Member body in recent years.

It will be valuable to see results of IRMA audit reports against mine sites in the U.S. Sibanye-Stillwater has stepped up to engage its U.S. Platinum-Group Metal (PGM) site in an IRMA audit. We look forward to other U.S. mine sites following this lead and engaging in IRMA audits and reporting. The U.S. legal framework places many demands on mine operators, and they can transparently share this work they are already doing and how they are improving through IRMA audits.

3. One of the key concerns voiced about permitting reform is that a streamlined permitting process will lead to inadequate review or control of mine operations. Is it possible to improve the efficiency of mine permitting without creating a risk of irresponsible mining operations? What are the key factors to consider when creating an efficient permitting system that preserves and promotes responsible mining?

One of the topics addressed in the IGF Guidance for Governments I mentioned is the need for efficient and effective interagency coordination and review of permits. While we see efforts underway to create greater efficiencies and collaboration within the U.S. Government and between the Government and relevant stakeholders and rights holders, there is much more work to be done that could prevent timelines from approaching multiple decades for final approval.

What is also clear is that the timelines for engaging with communities and Indigenous rights holders in the NEPA process and beyond must be adequate; attempts to fast track or expedite any processes related to meaningful stakeholder engagement and consultation may only be detrimental to the future of a mine project due to lack of social support for the project to go forward. In short, expediting these social processes can become a source of conflict and deepen distrust. Furthermore, the IGF Guidance provides multiple examples of how lack of social support and lack of Indigenous consent can lead to costly arbitration and litigation when a permit has been approved without consent and social support. It is therefore important for many reasons to carefully balance timelines, related requirements, and coordination across government actors, stakeholders, and rights holders to prioritize getting this right.

4. In the United States, the National Environmental Policy Act (NEPA) is often used as a weapon to delay and perhaps defeat a proposed mining project. Could NEPA litigation be curtailed without creating a risk of less responsible mining?

One of the aspects of IRMA that makes it attractive to governments, companies, and investors is the possibility that implementing responsible mining practices across the holistic set of topics applicable to industrial-scale mining can be a valuable tool to reduce risk. It is all too easy to focus on one set of issues only to overlook others or to otherwise fail to have an objective assessment when deep into the day-to-day operations. IRMA is helpful both for establishing a comprehensive framework and for the opportunity to have an independent third-party assess site performance.

When it comes to environmental impact assessment processes, NEPA and others, this is one of many aspects of responsible mine management. NEPA is one tool for people concerned about the impacts of mining to be heard and it is a tool to inform decisions. NEPA, like many other legal frameworks, can be improved both on the books and in practice. What is needed to reduce litigation is to rebuild broken trust through greater transparency and meaningful, proactive engagement with communities and Indigenous rights holders. If there is fierce opposition to a project and NEPA no longer serves as a useful tool for community engagement, project opponents will find other avenues to express their opposition. This is one reason that the IRMA Standard includes requirements that go beyond permit requirements to ensure that engagement of

stakeholders and rights holders continues throughout the life of a mining project and is not a one and done exercise that is confined to the permitting process.

5. Part of the focus of permitting reform arises because the energy transition requires a lot of new mining, and permitting delays create a risk that we will miss the Paris Agreement targets because we lack the materials necessary to implement the energy transition. What needs to be done to assure that we have sufficient metals to accomplish the energy transition in a responsible manner?

Action on climate may be the greatest opportunity the international community has ever had to get management of the mining sector right. Having worked on natural resource and sustainable development issues for almost 25 years now with a focus primarily on mining and sustainable development, I have never seen the level of political will across governments that exists today both to improve mining practices and to highlight the importance of the mining sector.

Last December [IRMA was an Official Observer at the United Nations Framework Convention on Climate Change \(UNFCCC\) Conference of the Parties](#) in Dubai (COP 28), where the UN Secretary-General António Guterres announced a new [Panel on Critical Energy Transition Minerals](#) that will develop principles to guide extractive industries. We now have the leader of the United Nations connecting the dots between the importance of mining sector management and action on climate at the biggest gathering on climate in the world. IRMA has agreed to participate in the Secretary-General's panel alongside civil society, Indigenous, and developing country leaders because we believe that robust standards are necessary and should be informed by all sectors we're accountable to at IRMA.

When focusing on extraction of a non-renewable resource it is especially important to optimize sustainable development outcomes. This requires consideration of both current and future generations, respect for the rights of Indigenous Peoples, workers, affected communities and the environments on which they depend, and addressing inequalities between and within developing and developed countries.

In the U.S., for mine permitting reform to address delays we need three things: First, we need to fully fund and staff government agencies so that they can provide efficient and prompt service to mining applicants and concerned communities and rights holders through all stages of mining including economic, social, and environmental aspects of the post-mining transition. Second, we need transparency in the permitting process so that there is greater awareness of where permits are in the process and who is influencing the process. Third, permit applications must be complete and comprehensive; some permit delays and litigation are because applications are incomplete in one or more essential aspects and this may cause concern, especially if there are weaknesses in the face of regulations like the Clean Water Act, National Historic Preservation Act, Endangered Species Act, or other key U.S. regulations.

In the U.S. and internationally, IRMA is widely recognized as the most comprehensive standard for the mining sector and while we set a high bar, we have seen through IRMA audits that our requirements are practical for industrial-scale mine sites of all sizes to meet. While we haven't seen one site achieve all IRMA requirements, we have seen that all requirements have been met by at least one site. This gives me confidence that responsible mining is possible.

I'm also encouraged that there is greater global focus on responsible mineral processing that incorporates responsibly sourced scrap and recycled material, strategies to reduce emissions, and enhanced transparency that is so important to tracking and tracing supply chains. A wide range of strategies are needed to move toward a [circular economy](#); reducing waste and recycling are only part of the equation. We will need new mineral development for the foreseeable future to achieve climate targets and to have a chance at making supply chains circular. Where mining does take place, IRMA is a tool for maintaining a shared definition for responsible mining, enhancing transparency on site level practices, and the deep cross-sector engagement needed to get mining sector management right.

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To achieve net zero emissions by 2050, mining development is essential for providing the critical minerals for components used in solar panels, wind power, and electric vehicles. In the UK, the Government published the *UK's Critical Minerals Strategy, Resilience for the Future*¹ in July 2022, and a further “refresh” in March 2023: *Critical Minerals Refresh: Delivering Resilience in a Changing Global Environment*².

The strategy is for the UK to be a leading player in critical minerals by:

- Accelerating the UK's domestic capabilities
- Collaborating with international partners
- Enhancing international markets

A secure and resilient supply of critical minerals is vital to the UK's industrial strategy, both to capitalize on the opportunities that the transition to Net Zero brings and to attract further investment. For example, WBD recently advised Gravity on securing permission for its smart campus in the Southwest. It will be home to Tata's Agratas gigafactory – the largest battery factory in the country - which is expected to contribute almost half of the projected battery manufacturing capacity required for the UK automotive sector by 2030.

The UK strategy sets out the Government's intention to reduce barriers to domestic exploration and extraction of critical minerals. Minerals available for domestic production in the UK include lithium, tungsten, and tin. Some years ago, Baseresult Holdings secured its Review of Mineral Permissions for the South Crofty tin mine in Cornwall, which was eventually granted permission in 2006. More recently, The Crown Estate granted rights to Cornish Lithium to explore within the geothermal waters off the coast of Cornwall.

Minerals are a protected resource in the UK. Mineral Planning Authorities are responsible for designating Mineral Safeguarding Areas where vital mineral resources are present and for implementing policies that assure development will not sterilize the mineral resource. Because of this protected status, there is a tension between the need to safeguard minerals and the difficulty in securing permission to extract them. This is often compounded by legal challenges that delay the planning process. It can take many years to secure a permission and commence mining operations. The importance of mining for critical minerals raises the question of whether the UK's planning and permitting regime is fit for purpose.

¹ [Resilience for the Future: The UK's Critical Minerals Strategy - GOV.UK \(www.gov.uk\)](#)

² [Critical Minerals Refresh: Delivering Resilience in a Changing Global Environment \(published 13 March 2023\) - GOV.UK \(www.gov.uk\)](#)

Lack of clear policy has led to an increase in challenges to major development in the UK over recent years. In the mining sector, there has been a highly publicized legal challenge to a new mining permission for the Cumbrian coal mine at Whitehaven. The development has been subject to opposition from environmental activists and local communities since the Secretary of State granted planning permission in December 2022. The challenge includes an argument that the environmental impact assessment must assess the greenhouse gas emissions that would inevitably be generated from downstream (scope 3) emissions. The challenge has been stayed pending judgment on the same point in *R (on the application of Finch on behalf of Weald Action Group) v Surrey County Council and others* [2022] which was heard by the Supreme Court in June 2023.

Under the UK's critical minerals strategy, for a domestic supply to be realized, it must not only be viable for businesses but also developed in a way that works for communities and the environment". It is imperative that the UK planning system effectively regulates and limits harm to the environment and local communities, but development for critical minerals will inevitably have environmental and local impacts. Lack of clarity on when such development will be acceptable risks the investment needed in critical minerals. The Strategy expects the current program of planning reforms to be sufficient to enable extraction of critical minerals, but this will not address the policy vacuum. If critical minerals development is going to come forward at the pace required in the UK, planning policy needs to be made clear at the national level. Supply of critical minerals can be secured by alternative means to mining, including recovery and recycling from end-of-life components. This, however, requires the development of commercial-scale capabilities in the UK as well as the supply chains to support it. Ultimately, the UK's Critical Minerals Strategy notes that 'it is not possible (or even desirable) to onshore all aspects of critical mineral supply chains'. For this reason, the Strategy also outlines the opportunity for the UK to play a role in supporting domestic entities as they participate overseas in diversified responsible and transparent supply chains "as well as 'champion London as the world's capital of responsible finance for critical minerals'. As we note in our recent publication, '[What Role Will ESG Play on the Energy Transition Stage](#)', ESG is a driving influence in the energy transition. UK financial institutions are prioritizing ESG as a key investment metric. This will be a key feature for mining finance and metals trading in the years to come.

The scope of the UK strategy for critical minerals is broad, focusing on the three pillars of extraction, supply, and investment. We are hopeful that forthcoming policy interventions are sufficiently focused to drive change and break down barriers to optimize the role that the UK can play in this rapidly emerging global market.

ACCELERATING EU MINERAL PERMITTING: THE CRITICAL RAW MATERIALS ACT



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The Russian invasion of Ukraine hastened efforts globally to transition to a more secure, diversified, and affordable supply of energy. In the EU, the [REPower EU policy](#) added new measures to the Green Deal to reduce dependency on Russian gas and promote investment in renewables through the Green Industrial Action Plan. The Plan, seen as the EU equivalent to the United States' Inflation Reduction Act, will support the EU's own clean tech industry and supply chains.

A key element of the Plan is the regulation establishing a framework for ensuring a secure and sustainable supply of critical raw materials, widely known as the [Critical Raw Materials Act \(CRMA\)](#). Signed on the 11th of April by the European Parliament and the Council, the CRMA will create a secure, diverse, and sustainable supply of the critical raw materials that are important for renewables technologies. The CRMA identifies a regularly reviewed list of 34 critical raw materials, 17 of which are considered strategic. The act stipulates that no more than 65% of EU's annual consumption of the 17 strategic metals should originate solely from a third country. This is the first of the four benchmarks the CRMA sets to build a resilient and autonomous supply chain for the EU. The three additional benchmarks are: Forty percent of these critical minerals must be processed in the EU, 25% must be sourced from recycling, and 10% must be derived from local extraction either as a main product or as by-product.

ACCELERATED PERMITTING

To achieve the 10% local extraction target, the CRMA introduces a streamlined and predictable permit-granting process to help project developers - or "project promoters"- navigate the national mining permit maze. The process is designed to fast-track permits through a single permitting authority and expedited administrative and, where available, dispute resolution system. This priority status applies only to strategic projects (i.e., projects that extract strategic raw materials). As a counterbalance to expedited permitting, the CRMA includes provisions to safeguard proper, effective, and meaningful engagement with the public, local communities and, where relevant, indigenous people. The Act also seeks to promote social value, inclusiveness, and sustainability throughout the lifecycle of the project.

The key elements of this balanced approach are (i) a clear definition of "strategic projects," (ii) giving those project priority status, (iii) providing a single point of contact for approval of the strategic project, (iv) embedding environmental review, public participation, and sustainability in the approval process, and (v) creating spatial plans and zoning frameworks to facilitate review of strategic projects.

STRATEGIC PROJECTS

The CRMA details several criteria that will be used to determine the strategic nature of a mining project including a determination of meaningful contribution to the security of supply of strategic raw materials, technical feasibility within a reasonable timeframe and with sufficient volumes of production, sustainable implementation with plans to engage local communities and indigenous people, prevention and minimization of adverse impacts to human rights and indigenous people, job creation, and the employment of best business practices to inhibit corruption and bribery.

For a project to get the strategic status, the project promoter must file an application with the European Commission that includes relevant evidence the project meets the criteria outlined above. Following an opinion of the European Critical Raw Materials Board—a new advisory body established by the CRMA—the Commission will decide to grant special project status if the Member State (or the third country or overseas territory) where the project is located does not object to development. The Commission has the power to repeal the status if any of the conditions are no longer fulfilled or in case of falsely submitted information or evidence.

PRIORITY STATUS

Strategic projects benefit from a priority status, or a status of “highest national significance possible” in the national permitting procedure. They will receive rapid treatment by national authorities through the avoidance of duplication of studies or permits unless otherwise required by EU or national law. Strategic projects will also be considered as projects of overriding public interest. Although they may have negative impacts on the environment especially due to the lack of alternative locations, they will still be allowed provided the conditions set in the Habitats (92/43/EC), Water (2000/60/EC) and Birds (2009/147/EC) Directives or in the upcoming Nature Restoration Regulation are met.

The overall time to build and operate the project shall take no longer than 27 months which can be further extended by 6 months for more complex cases. This timeframe does not include the time to conduct the relevant environmental impact assessments which are the responsibility of the project promoter. Other obligations under Union or International law may further delay the 27-month deadline. Finally, the streamlined process will be fully online and easily accessible online via the Single Digital Gateway Regulation.

SINGLE POINT OF CONTACT

The commitment to streamline permit-granting for any critical raw mineral project falls on the authority designated by the EU Member States Regulation. This “one stop shop” entity will assist the project promoter and will coordinate and facilitate the process and provide relevant information on key elements of the permitting process.

Member States may have more than one of these single points of contact, and those permitting authorities can be a new entity or an existing authority at local, regional, or national level. Member States must ensure that these points of contact have sufficient human, financial, technical, and technological resources to effectively exercise their duties, and that project promoters work with a single entity whose details and relevant information must be easily accessible online.

ENVIRONMENTAL ASSESSMENTS, PUBLIC PARTICIPATION, AND SUSTAINABILITY

In addition to the status of overriding public interest mentioned above, the time to complete environmental assessments should be minimized for strategic projects. For example, a decision on “screening” under the Environmental Impact Assessment (EIA) Directive (2011/92/EU) should be made in 30 days v. a previous timeframe of 90 days. Equally, the maximum time for public participation in the EIA process should not exceed 85 days. These deadlines may be further extended depending on the complexity of the project. In the effort to simplify authorizations, the various assessments under the EIA, Water, Birds, Habitats, Industrial Emissions (2010/75/EU), Waste Framework (2008/98/EC) and Seveso III (2012/18/EU) Directives should be bundled whenever possible.

All these exceptions operate under the caveat of the Union's international obligations. The requirement to explore the transboundary significant adverse impacts of a project under the Espoo Convention and the Kyiv Protocol (UNECE Convention on environmental impact assessment in a transboundary context and its Protocol on Strategic Environmental Assessment) still applies. Equally, the Aarhus Convention requirements (Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters) should be respected.

Finally, the CRMA requires project promoters to provide meaningful and effective access to information and public participation of affected communities (e.g., websites) on the project, dedicated campaigns, and mitigation and compensation measures. Plans with these details and even more specific plans for indigenous communities - if affected - must be filed to obtain strategic status. Actions and plans to improve/restore the environmental state of affected sites for projects in overseas community territories or third countries and work plans to employ, reskill, or upskill workforce will enable promoters to meet their ESG objectives.

SPATIAL PLANS AND ZONING

The CRMA encourages Member States to include provisions for the exploitation of critical raw minerals in spatial plans or zoning projects. As these plans are subject to strategic environmental and other assessments, this is likely to help in further streamlining the permit-granting process.

WILL THE CRMA INDEED ACCELERATE EXTRACTION PERMITTING?

The CRMA permit-granting process attempts to tackle two major bottlenecks for critical raw mineral mining projects: fragmented and complex administrative procedures and the participation of the public and affected communities.

EU Member States have adopted fast-tracking procedures and one-stop-shops in the past. The success of these changes depends heavily on the adequacy - as is indeed pointed out in the CRMA - of the single point of contact authorities and entities. Fast-tracked projects are complex. A requirement under law to deal with them quickly within a specific timeframe and by squeezing environmental or other assessments may not practically accelerate the permitting process absent the necessary resources.

Despite requirements for plans to address community, human, and indigenous rights impact, and to comply with the Aarhus and the Espoo Conventions, civil society groups have criticized the CRMA for compromising their rights and environmental protection. Minimizing public opposition is key to the success of these projects. The transition to net zero must be just. Transparency and purposeful and meaningful engagement with the public and affected communities are paramount for project promoter success.

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Mine permitting in the United States is a complicated process. The permitting authorities are a mix of state and federal agencies, and that mix varies depending on where the mine is located. In many cases, the legal framework for permitting includes a requirement to survey the mine area for cultural and historic resources as well as a consultation with those Native Americans who have historic connections to the mine area.

Whenever a mining project requires a federal permit, the project conducts a review of historic and cultural resources under Section 106 of the National Historic Preservation Act (“NHPA”), typically in coordination with historic preservation officers from tribes and states. The NHPA process includes consultation with tribes and other affected Native American interests. Similarly, if the mining project is subject to NEPA (discussed in our earlier installment: [The Impact of the National Environmental Policy Act](#)), the NEPA process includes tribal consultation. Most state mine permitting processes also include a similar consultation requirement. Finally, President Clinton issued an Executive Order in November 2000 setting out a framework for all federal agencies to consult with Indian tribal governments on any federal policies that have tribal implications. That [Executive Order](#) has proved durable across presidential administrations, and in November of 2002, the Biden administration issued [uniform standards for Tribal consultation](#) (the “Uniform Standards”), drawing on President Clinton’s Executive Order.

Tribal consultation is different in kind from other interactions with stakeholders affected by a proposed mining project. As noted in the Uniform Standards:

Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribal Nations and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations.

Federally recognized Indian Tribes are sovereigns, and the consultation between a permitting authority and a Tribe is a government-to-government consultation.¹ Given that the consultation process rests on Tribal sovereignty, that consultation process cannot be diminished in pursuit of efficiency. And the consultation process can slow the permitting process.²

¹ Vanessa L. Ray-Hodge & Sarah M. Stevenson, “Examining the Legal Implications of Government-to-Government Tribal Consultation and Off-Reservation Development,” *Indian Law and Natural Resources: The Basics and Beyond 11-1* (Rocky Mt. Min. L. Fdn. 2017)

² Kevin K. Washburn, “The March of Co-Management--The Expanding Role of Tribes,” 69 *Nat. Resources & Energy L. Inst.* 32-1, 32-11 (2023).

More specifically, the Uniform Standards require development of a notice of consultation with sufficient information to “facilitate meaningful consultation,” a series of meetings within 30 days’ notice of the meeting, and an opportunity for written comment (with another 30 day period).³ The agency must also prepare a written record of the consultation process.⁴ That process will take time.

Through this process, a federal agency must give “meaningful consideration” to information provided by a Tribe and will seek consensus or a mutually desired outcome with the Tribe.⁵

It is unlikely that a mining project would be permitting on lands held in trust for a tribe where the tribe objected to that project. But the consultation process is not limited to lands within a tribe’s reservation. The lands dedicated to tribal reservations are typically a small portion of the lands historically used by a tribe and its people. As a result, lands outside the reservation may include both historic cultural resources and areas still under active use by the tribe. The consultation process is designed to assure that a permitting authority is fully aware of the impacts of a project to areas of interest to a tribe, and to address and mitigate those issues through the permitting process.

The most effective way to assure timely and effective tribal consultation is to start the process as early as possible, perhaps even before exploration. The permitting agency is responsible for meeting legal requirements for consultation, and a project proponent may need to provide support and resources to governmental agencies to assure that the agency has the capacity to manage the consultation process. But in addition to the agency process, a project proponent should proactively develop lines of communication and effective strategies to address concerns raised through those lines of communication.

One potential cause of delay is lack of information about the sites and features that are to be considered and discussed. Absent early detailed conversations with the tribe, it will be difficult for the project proponent or the permitting agency to know what matters to the tribe. Also, tribes are concerned about publicizing the location of historic cultural site because artifact hunters may despoil those sites. Engagement is important. Regulation or guidance documents may specify a certain number of meetings or a set time frame for consultation. But a successful and timely consultation process will almost certainly engender a deeper level of engagement.

³ Id. at § 6.

⁴ Id. at § 7.

⁵ Id.

FREE, PRIOR AND INFORMED CONSENT AND THE PERMITTING PROCESS



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International mineral development permitting in or near areas of indigenous cultural and historical significance is uniquely complex. International indigenous consultation centers around the concept of free, prior, and informed consent (“FPIC”).

FPIC aims to enable self-determination in indigenous communities and provide voice and authority during decision making processes. Its strength and effectiveness depend on ratification and enforcement by national governments, and government critique of FPIC remains a common roadblock. Nonetheless, whether binding or not, FPIC and other parallel doctrines will drive global policy during the energy transition and will continue to gain importance to public and private entities as they develop mineral assets across borders.

Understanding FPIC starts with a breakdown of its parts. As described by the United Nations, *free* means without coercion, intimidation, or manipulation. *Prior* indicates consent is sufficiently in advance of an authorization or commencement of activity with due respect to indigenous consultation and consensus processes. *Informed* implies information is provided in a language and form understandable by the affected indigenous community including the nature, scope, duration, and motive of a proposed project; localities to be affected; economic, social, cultural, and environmental impacts; all involved actors; and procedures a project may entail.¹

“Consent” is a nuanced concept in the context of FPIC. Engagement with indigenous peoples as decision makers and recognizing their right to self-determination is fundamental to the implementation of FPIC. That said, FPIC does not create a veto over a project. [The Institute for Human Rights and Business](#) describes the element of “consent” as “the collective decision made by the rights-holders and reached through the customary decision-making processes of the communities.” The process of working toward consent must engage the indigenous community on an equal footing and with autonomous decision making.

The first major step forward for FPIC came in 1989, when the International Labor Organization (“ILO”) adopted Convention 169 (“ILO 169”). Article 6 of the Convention requires governments consult with affected indigenous communities “in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”²

¹ United Nations, Economic and Social Council, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, Permanent Forum on Indigenous Issues: Fourth Session, New York (February 17, 2005)

² ILO 169, Art. 6.

Notably, [ILO 169](#) neither coins “FPIC” explicitly nor requires gaining consent – only consultation with a goal of consent.³ The omission of a consent requirement may be viewed as an opportunity for exploitation by mineral companies but in reality it creates a pitfall. Acting without consent can and often does cause delay, litigation, or other roadblocks to a company’s ability to develop a mineral site. While consultation is any important step towards indigenous protection, consent adds a layer of certainty missing in ILO 169. ILO 169 also lacks significant international adoption. Currently, [twenty four countries have ratified ILO 169](#), most recently Germany in 2021. Many countries in South America have ratified ILO 169, suggesting mineral development on the continent requires compliance with the Convention’s tenets. Yet major global players, including the US, the UK, and China, have not ratified the Convention.⁴

In 2007, the [UN Declaration on the Rights of Indigenous Peoples](#) (“UNDRIP”) explicitly memorialized FPIC.⁵ Under UNDRIP, countries must consult with indigenous peoples when legislation or proposed projects may affect them, provide indigenous peoples a right to set resource development strategies, and enact legislation or other measures to implement UNDRIP.⁶ Consultation and consent mechanisms in UNDRIP champion indigenous peoples’ right to self-determination. Beyond bolstering consent requirements, UNDRIP also requires restitution for resources and land previously taken from indigenous communities without obtaining FPIC.⁷

International support for UNDRIP far exceeds direct adoption of ILO 169; 143 UN members voted for adoption of UNDRIP. The United States, Canada, Australia, and New Zealand, all mineral rich countries with large indigenous population, originally voted to reject UNDRIP. Criticisms include practical concerns over the declaration’s compatibility with national constitutions and other laws and the heightened deference to indigenous development strategies. Each of the four countries has since endorsed UNDRIP to varying degrees.

One issue common to both ILO 169 and UNDRIP is the onus placed on governments to gain consent. Nonetheless, project proponents often play a critical role in advancing the FPIC process. Failure to have proactive engagement in the FPIC process [can lead to challenges to mining projects](#). Thus, failure to garner support from affected indigenous communities often leads to unnecessary delays and expenses or ultimately blocks a project from progressing.

The permitting process for a mining project rests primarily on the law of the host country and the process adopted by its ministries, agencies, and regulators. As noted above, many countries have adopted a process for consultation and engagement with indigenous communities. Also, investors and lenders often require some documented engagement with indigenous peoples as part of approval of financing for mining projects. Proactive consultation and engagement with indigenous communities ultimately leads to efficiency, cost saving, and a defensible development.

CONCLUSION

In *De Re Metallica*, Agricola argues that the metallic arts are nearly as ancient as agriculture “for no mortal man ever tilled a field without implements.”⁸ Minerals extracted from the earth and put to use allow humankind to survive and thrive. And the push toward an energy transition requires a new focus on increased extraction of critical and strategic minerals.

3 ILO 169 Art. 16. (Removal from indigenous land requires consent under ILO 169, but removal may still take place absent consent if national laws and regulations are followed and provide an opportunity for indigenous communities to represent themselves.)

4 Ratifications of C169 – Indigenous and Tribal Peoples Convention, 169.

5 UNDRIP Arts. 10, 11, 19, 28, 29, 32.

6 UNDRIP Arts. 17, 19, 30, 32, 36, 38.

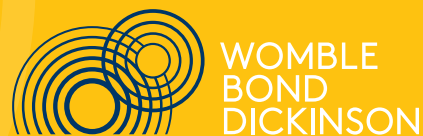
7 UNDRIP Arts. 11 and 28.

8 Georgius Agricola, *De Re Metallica* (1556), translated by Herbert Hoover and Lou Henry Hoover (1950)

The permitting process provides assurances that mining will be conducted in a responsible manner. First, the permitting process itself assures on the front end that a mining project is carefully considered and properly designed. Careful consideration includes engagement with local communities, affected indigenous peoples, and other interested parties. The permitting process includes an assessment of mine design and engineering, project economics, impacts to the environment, and social impacts. Second, the permit provides a framework for how the project will be implemented through construction, extraction, production, and reclamation. A well-designed permit provides the certainty and stability required for a successful mining investment.

An efficient permitting process is entirely consistent with responsible mining. The concept of “permitting reform” reflects the concern that the permitting process is skewed by purposes and goals other than assuring responsible mining. When the permitting process is slowed by lack of personnel, or multiple overlapping decisionmakers, or failure to coordinate review procedures, or challenges to permits designed not to improve but to kill a project, society is ill-served. And given the crushing need for critical minerals for the energy transition, the consequences of inefficient permitting may indeed be dire.

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