



Ministry of Northern Development and Mines
99 Wellesley Street West
Room 5630
Toronto, Ontario
M7A 1W3

Dear Sir/Madame

Thank you for the opportunity to comment on the discussion paper Modernizing Ontario's Mining Act/Finding a Balance, August 2008.

Bedford Mining Alert (BMA) is a group of concerned citizens in Bedford District, South Frontenac Township, who have been working for 9 years to bring about constructive changes to the Ontario Mining Act. Many of our members are Surface Rights Only (SRO) land owners.

However, our reach goes far beyond our individual members. The organizations listed below have confirmed their support for our goal to reform the Mining Act so that:

1. mineral exploration and mining activity be consistent with water source protection plans.
2. protected lands and waterways designated as environmentally significant be exempt from mining, just as they are from any other industrial development.
3. no industry, including mining, be exempt from the regulations and by-laws emanating from municipal official plans.
4. financial provisions are made and clear legal obligations created before any claim staking and mining activities take place to ensure that all claim-staking, exploration and abandoned mine sites are restored and left in a clean and safe condition.
5. surface rights and mineral rights be reunited on Surface Rights Only land.

Supporting organizations:

The Township of South Frontenac
Rideau Valley Conservation Authority
LandO'Lakes Tourist Association
Buck Lake Association
Greater Bobs and Crow Lakes Association
Friends of the Tay Watershed
Sunset Shores Peninsula Association
Garter Lake Association
Desert Lake Property Owners Association
Knowlton Lake Cottagers Association
Fourteen Island and Mink Lake Association
Wolfe Lake Association
Frontenac Environmental Partnership
Kennebec Lake Association
Kashawakamak Lake Cottage Association
Sharbot Lake Property Owners Association

We commend the Ministry for initiating this review of the Mining Act and for engaging in a consultative process with stakeholders and the public.

During the consultation session in Kingston attendees were advised to discuss and comment on issues raised in the discussion paper and on other significant issues that attendees deemed to be of importance. BMA has chosen to do that in our comments.

BMA's objectives focus on three key issues:

- A. Issues faced by property owners who own the surface rights but not the mineral rights,
- B. Issues around the environmental impact of prospecting, mine development and mineral extraction,
- C. Issues around regional land-use decision making and the need for communities and municipalities to be able to determine the type of economic development they want to encourage.

A.Private Landowners Issues

On the issues faced by property owners who own the surface rights but not the mineral rights, BMA recommends rejoining surface and mineral rights on Surface Rights Only (SRO) properties in Southern Ontario. This option will reduce conflict between private landowners and the mining industry while increasing security of investment for the mining industry and private landowners and achieve Premier McGuinty's stated goal of July, 14, 2008 "...to be more respectful of private land owners....."

Based on the Ministries statement that communities in Northern Ontario are supportive of maintaining the separation of mining and surface rights, rejoining could be limited to Southern Ontario where municipalities strongly support reunification.

An example of strong support is a resolution supported unanimously by Association of Municipalities of Ontario (AMO) on June 22, 2007 which states, " ... BE IT RESOLVED THAT AMO petition the Premier and the Minister of Northern Development and Mines to reunite surface and mining rights on SRO properties when requested by the SRO property owner or the municipality in order to effectively resolve this issue."

Security of investment

BMA understands the importance of investment security for the mining industry. We also believe that investment security cuts both ways and the mining industry and MNDM must recognize the importance of investment security to property owners and communities. In the current situation with its inherent conflict between the Crown and prospectors and potential claim holders and SRO landowners there is little investment security for the mining industry and for landowners. This is particularly true in Southern Ontario where only 1.4% of the land is SRO and the land is used for agriculture, residential, recreation and tourism and where, unlike the Far North and Near North, these uses are the key drivers of the local economy.

Security is greatly reduced when there is a dispute or conflict with surface rights only landowners.

When privately owned land is open to staking and a claim has been staked, security of investment is challenged.

- Disputes can be filed against mining claims (for example, 16 disputes in Bedford were filed in 2002)
- Disputes can be appealed
- Appeals can lead to legal proceedings

These processes adversely affect investment security and lead to financial costs for industry and landowners.

Security is reduced when a proposed use of land for mining activity conflicts with the key drivers of the local economy.

Security is reduced due to the ever increasing public awareness, perception and understanding that access to lands without notification and consent from the landowner is fundamentally unjust and unacceptable. This will continue to increase as media attention continues to grow.

Security of investment is inherently low for claim holders in Southern Ontario where lands, including SRO lands, have been accessible and explored by prospectors for over 100 years.

The concept of investment security must take into account the level of investment of the mining industry and of landowners.

For example, hundreds of millions of dollars invested by permanent and seasonal residents in Bedford* district alone and the millions of dollars in job creation, revenue

and taxes that these investments generate in the district each year compared to less than seven million dollars invested by prospectors and exploration companies each year in all of southern Ontario.

It is quite possible that claim staking and exploration can affect property values not only on SRO lands but on adjacent lands as well.

(*According to Township of South Frontenac Treasury Department: “Current Value Tax Assessment in Bedford District for Residential/Farm, which includes cottages, is \$402,000,000.”)

Affected Landowners

Rejoining mining and surface rights will marginally reduce the area of land open to staking (1.4% of the land mass) in Southern Ontario. However it will have a beneficial effect for thousands of landowners.

One example is the area of Bobs Lake, Bedford District, South Frontenac Township, where over 600 landowners are affected by the SRO designation. Most of these properties are designated as residential waterfront and represent millions of dollars of investment by landowners. (Exhibit A)

Process for rejoining mining and surface rights.

We recognize that MNDM will have access to proven options for processes and procedures to rejoin mineral and surface rights. However, we would like to mention two processes that could be considered.

Process 1.

- A. Under section 35 MA, immediately withdraw lands that are identified as SRO and where there are no active mining claims or leases. This will reduce the number of claims staked as well as the number of disputes and appeals during the process of rejoining.
- B. Pass legislation rejoining mining and surface rights that are privately owned in Southern Ontario.
- C. Where there are active mining claims in southern Ontario, define the terms of notification and consent (as outlined below) that includes exploration, environmental impact and restoration plans and compensation to the landowner.

Legislation should limit the duration that existing claims can be held to five years.

Adopt legislation requiring a signed agreement between the landowner and the claimholder prior to any exploration work beginning or continuing on all SRO lands with active mining claims.

The benefits include:

reducing the conflict between SRO landowners and claim holders until the claims lapse and the rejoining process can be completed;

accelerating the rejoining process; and encouraging claimholders to complete the exploration process within a reasonable time frame.

The process of withdrawing land from staking under Section 35 MA could be temporary; situations may arise that require processes for consent and notification, as well as a dispute mechanism. In order to reduce disputes and conflicts during these processes, BMA offers the following:

The discussion paper for comment to EBR 010–1018 suggests creating and defining the types of land where consent would be required prior to exploration on SRO lands. BMA's position is that all lands that are privately owned must require consent of the SRO land owner prior to the commencement of each activity: prospecting, staking out, exploration, development and mining. This simplifies legislation, would protect some of the interests of the landowners and reduce conflict during the reunification process.

The dispute and appeal mechanism between SRO and claimholders should be changed to include an independent arbitrator. This process must not only be fair but look fair. The dispute and appeal process should be an arms-length process that does not involve MNDM, or MNR (as is the case with appointment of the Mining and Lands Commissioner). The appeal should be heard by a neutral body. Any costs associated with the appeal should be borne by the mining claim holder or the person wanting to have a claim recorded or to explore on the lands.

Although the process of withdrawing land from staking (prior to reunification of mining and surface rights) is temporary, notifying the landowner that a claim has been staked should be included as part of the filing process and completed at the same time as required documents are filed with MNDM. These filings should be completed not more than 30 days after mineral staking has occurred. MNDM should refuse to record claims and they should be listed as filed only.

Current legislation requiring “notice of intent” to perform ground exploration work should be replaced with a “proposal to explore”. Agreement between the claim holder and SRO landowner should be reached prior to exploration. A proposal to perform ground exploration work and an exploration plan should be delivered to the SRO owner's address not less than 60 days in advance of the planned commencement of the proposed exploration work. People who have limited knowledge of the Mining Act will require sufficient time to research the subject matter and obtain legal advice on any actions that they might consider.

Exploration and restoration plans should be reviewed by the Municipality, Conservation Authority and the Ministry of Natural Resources for comment and recommendation. Exploration should not proceed until MNDM has given its approval.

A deposit sufficient to cover the cost of restoration should be delivered to MNDM by the exploration company prior to commencement of exploration.

Municipalities should have adequate time, at least 90 days, and that the time may be extended, to review an exploration plan and to have an independent review of the plan to

determine if it meets the goals, current land use designation and prohibition, of its Official Plans and comprehensive By-laws with the claimholder paying costs. Restrictions for site alteration under Municipal Official Plans should apply to exploration and require appropriate permits and consultation with Municipalities and Conservation Authorities.

Any changes to the exploration plan such as time extensions, changes in equipment, location and amount of exploration, estimated cost of restoration must require review and approval of MNDM, the landowner, and Municipalities prior to commencing or continuing exploration. A realistic timeline for the review process, similar to the timelines suggested above should apply.

Legislation should give the Minister the authority to cancel a claim.

Legislation giving the Director authority to issue an order to restore land should be enhanced so that an order may be given, whether or not a hazard is identified.

Process 2.

Background and process:

In the 1800's in an effort to increase settlement, the government sold large quantities of land across Southern Ontario to The Canada Company (TCC). However, while it sold the surface rights to settlers, TCC retained the sub-surface mineral rights. In the early 1900's the mineral rights reverted to the Crown by way of a "quit claim" on the part of TCC. Via the Canada Company Lands Acts of 1922, 1923 and 1953, the Province, via MNDM, divested the mineral rights in favour of the surface rights owners through an application to reunite process. Over the years many Surface Rights Only (SRO) landowners made application, and proceeded to reunite their rights. However, in an attempt to reduce the red tape costs (for both sides) associated with the application process, in 1997 the government passed Bill 68 (the Government Process Simplification Act). Hence, in the case of all the former lands of TCC, where the rights had not already been reunited (approximately 571,000 acres) the SRO owner "may choose to apply under section 75 of the Registry Act, stating the mineral rights vest with the SRO owner by virtue of Bill 68."

A similar approach in the legislature regarding the current SRO lands in Southern Ontario, where the mineral rights were separated and reverted to the Crown over 50 years ago, would facilitate a simple solution. The precedent exists. The mechanism could be as simple as an Order-in-Council.

Rejoining Fee

1. Under both processes each SRO landowner could be charged a rejoining fee equal to a percentage of the municipal tax on the property but not to exceed \$1,000. The revenue could be directed to a mine and exploration sites rehabilitation program for Southern Ontario. This would allow private citizens to see their money going to a related and valuable purpose.

For the example, in Bob's Lake are alone, this could raise up to \$600,000 to restore the many abandoned mine and exploration sites (around 50 sites in Bedford are identified in Abandoned Mine Inventory System www.mndm.gov.on.ca/mines/mg/abanmin/abandata_e.asp) in the area - far more than the mining industry has contributed to the province's mining cleanup fund.

The owner may choose to apply under Section 75 of the Land Titles Act, or register a deposit under Section 105 of the Registry Act, stating that the mineral rights are vested with the land owner by virtue of an Order-in-Council or Bill. This is similar to the process for reunification of SRO and mining rights under Bill 68.

2. At the request of a municipality, the mineral rights are vested with the owner.

B. Environmental Impact

On issues around the environmental impact of prospecting, mine development and mineral extraction BMA recommends the promotion of environmentally sound exploration and mining practices which includes:

- Protecting ground and source water, and having mineral exploration and mining activity consistent with legislation, including water source protection plans,
- Protecting natural areas, wildlife and wildlife habitat,
- Having noise and air pollution held to levels consistent with the requirements of a recreational and tourist environment,
- Requiring the restoration of exploration and mining sites,
- Community participation in decision making regarding exploration and mining proposals and projects,
- Full planning, permitting and bonding for mechanical disturbances of land to be affected by exploration,
- Having mining industry companies fully responsible for remediation and restoration of exploration and mine sites,
- Financial guarantees so that the tax payer will not be left with the cost of clean-up, reclamation, long-term monitoring and maintenance,
- Clear restrictions on site alterations abutting bodies of water, including wetlands and streams,
- Having a definition of a body of water in the Mining Act,
- Withdrawal from staking and prospecting:
 - UNESCO Frontenac Arch Biosphere Reserve
 - UNESCO World Heritage Site, Rideau Canal/Heritage corridor
 - Areas identified by Official Plans as environmentally sensitive and protected and a natural heritage
 - Conservation Areas and other Environmentally Sensitive or Significant Areas.

C. Land Use

On issues of land use decisions and economic development, BMA's position is:
that no industry, including mining, be exempt from the regulations and by-laws emanating from Municipal Official Plans;

that we agree with the Environmental Commissioner of Ontario that questions of whether or not mineral development may be appropriate must be answered up front. Changing current government policies that put mining over other land use in terms of economic value and regulated protection of land and water is necessary. An impact and cost benefit analysis must be completed and reviewed by stakeholders prior to giving rights or permits to explore and to mine. that we agree with the Environmental Commissioner of Ontario that Ontario's "century-old system continues to rely on principles that are no longer reflective of modern planning or resource management"^{vi} and these points from the 2006-2007 annual report:

"... the *Mining Act* be reformed to reflect land use priorities of Ontarians today, including ecological values."ⁱⁱ

There are strong arguments that reforms to the *Mining Act* and its associated legal mechanisms are needed. The existing regulatory structure treats public land as freely open to mineral exploration. The consideration of other interests, such as the protection of ecological values, is reactionary, and the question of whether mineral development may be inappropriate is not answered upfront. Instead, it is assumed that mineral development is appropriate almost everywhere and that it is the "best" use of Crown land in almost all circumstances.

Ontario's *Mining Act*, and its presumption of free entry for mineral development, impedes land use planning. Ecological values should not only be identified, but they should also form the foundation of a comprehensive land use planning regime that possesses legal authority. Without legal authority and designation, the identification of ecological values is virtually meaningless.

The ECO also believes that the existing regulatory structure for mining does not adequately assess the cumulative impacts of development. It is evident that the various existing approvals processes are highly compartmentalized.ⁱⁱⁱ

Note: BMA position is that there should be a requirement that every prospector undergo training, examination and certification by MNDM before a Prospectors' license is issued or renewed. Every prospector should also be required to maintain minimum (\$2,000,000) of public liability insurance and meet bonding requirements.

Thank you again for providing this opportunity to comment on Modernizing Ontario's Mining Act. If you require clarification of any aspect of BMA's submission please contact me.

Yours truly,

Alexander Cameron
Chair, Bedford Mining Alert

ⁱ Gord Miller, Reconciling our Priorities: Environmental Commissioner of Ontario Annual Report for 2006-2007 at page 67. Online at Environmental Commissioner of Ontario:

http://www.eco.on.ca/english/newsrel/2007/Annual_report-0607-FINAL-EN.pdf

ⁱⁱ ibid page 71.

ⁱⁱⁱ ibid pages 65-67.

Exhibit "A"

Bedford District of South Frontenac

Conc	Lot	Location	Number of Properties with SRO (approximate)
II	16	West side of Buck Bay	22
IV	29 & 30	East side of Crow Lake	13 7
IV	26	East side of Crow Lake	8
IV	27		123
IV	17	East side Green Bay. South end	33
V	27	West side of north arm of western basin of Bobs	7
VI	30 -33		70
VII	31		12
VII	32	entrance to Mud Bay, middle peninsula on north shore is NB	81
VII	33		65
VII	34	East side of eastern basin Bobs Lake Mill Bay	61
VII	35		94
IX	34		1
IX	35	East side of eastern basin entrance to Mill Bay	32

Total 629 (approximate)