June 30, 2009

Leigh Boynton
Policy Advisor, Corporate Policy Secretariat
Ministry of Northern Development and Mines
Whitney Block, Suite 5630
99 Wellesley Street West
Toronto Ontario M7A 1W3

RE: Proposed legislative amendments to the Mining Act (EBR #010-6559)

Dear Mr. Boynton,

Thank you for the opportunity to comment on the Ministry of Northern Development and Mine's (MNDM's) proposed legislative amendments to the *Mining Act*, which were introduced through Bill 173, the Mining Amendment Act, 2009, and posted for public comment on the Environmental Registry (EBR #010-6559). Conservation Ontario represents Ontario's 36 Conservation Authorities. Working in conjunction with Ontario municipalities, Conservation Authorities (CAs) deliver programs and services that protect the province's land and water resources on a watershed basis.

The following comments are submitted for your consideration based upon a review of the proposed amendments by staff from Mississippi Valley Conservation and Conservation Ontario.

The Province is commended for seeking to modernize the *Mining Act* in order to provide clarity and certainty for the mining industry and recognition of Aboriginal treaty rights, and for prohibiting new mine openings in the Far North until there is a community-based land use plan in place. It is recognized that the revisions made to the proposed amendments since the posting of the 'Modernizing Ontario's Mining Act – Finding a Balance' discussion paper in Fall 2008 reflect many of the comments Conservation Ontario made at that time, such as unifying surface and mining rights in Southern Ontario (Section 35.1 of the Bill) and requiring explorations plans (Section 40 of the Bill).

Environmental Assessments

The concerns Conservation Ontario submitted in response to the Fall 2008 discussion paper regarding the cumulative impacts that can result from mineral exploration are reiterated here. The cumulative environmental impact of assessment work at a large scale, particularly in areas of vulnerable habitat, could significantly surpass that from other forms of land use if there is not an adequate and formal planning, assessment and notification process in place. Declaration Order MNDM-3/3 exempts the granting or renewal of mining claims and licences on Crown land from the environmental assessment (EA) process under the *Environmental Assessment Act*. It is recommended that the Declaration Order be repealed and all mining exploration and renewals be subject to EAs, particularly considering the cumulative impacts mining exploration can cause. Subjecting mining claims and licenses on Crown land

to EAs would better enable the amended Act to meet its objective of promoting balanced, sustainable development, as EAs would address and mitigate the environmental and social impacts of mining at all stages. All mining projects should adhere to the Ministry of Environment's principles of environmental assessments, such as consulting with affected parties early in the planning process, considering all aspects of the environment, providing clear and complete documentation and carrying out monitoring, follow-up and compliance. The achievement of the principles would be facilitated by subjecting the granting or renewal of mining claims and licences on Crown land to the environmental assessment process.

Exploration Plans and Permits

Bill 173 includes a "graduated regulatory approach" for exploration that would require consultation and notification reflecting the impact of the activity. Exploration would require filing exploration plans for lower impact activities and exploration permits would be required for (prescribed) activities with higher impacts. Regulations would provide the details for exploration plans and permits, including: timeline requirements for environmental rehabilitation; Aboriginal consultation; withdrawal for sites of Aboriginal cultural significance; and, working on private surface rights.

While the provisions for filing exploration plans are a positive step, exploration plans should reflect local land use objectives and be reviewed for conformity. This would provide for similar provisions to respect local land use objectives in southern Ontario as has been provided for in the Far North. This can be accomplished through mandatory notification, consultation and circulation with supporting documentation to municipalities, CAs and other provincial agencies. Approval of the plan by MNDM should also be subject to an appeal mechanism where outstanding concerns have not been resolved. This will serve to reduce the potential for regulatory conflict with other legislation and associated regulations such as the *Fisheries Act*, *Conservation Authorities Act* and *Clean Water Act*.

It is therefore recommended that the proposed amendments to Sections 78(1) and (2) of the *Mining Act* (Section 33 of the Bill) be revised to include mandatory notification and circulation, including supporting documentation, and appeal provisions for exploration plans. It is further recommended that costs associated with the preparation of exploration plans be considered eligible for credit towards the prescribed units of assessment work.

We look forward to opportunities to participate in consultations to provide input into the development of the graduated regulatory approach for exploration if the Bill is passed, which will provide the details for exploration plans and permits, including timelines and requirements for environmental rehabilitation.

Restricted Lands

Section 12 of Bill 173 would amend Section 29 of the *Mining Act* by providing conditions under which lands are not open for prospecting, including residential lots less than one hectare in size, and lots that are one hectares or greater if within 100 metres of a residential dwelling and within the property boundary line.

Municipal Official Plans typically identify an *area of influence* of 1000 metres around active or closed mine sites to limit the potential for development occurring that may be impacted by or be incompatible with mining operations. Similarly, an *area of influence* of 150 to 500 metres is typically established around Aggregate Resource Areas.

To maintain consistency with land use planning objectives, it is recommended that the proposed amendments to Section 29 of the *Mining Act* be revised to provide for a minimum separation distance of 500 metres for all residential lots.

Thank you again for the opportunity to provide comments regarding the proposed legislative amendments to the *Mining Act*. If you have any questions regarding these comments please contact myself at (905) 895-0716 ext. 223, or Natasha Leahy at ext. 228.

Sincerely,

Bonnie Fox
Manager, Policy and Planning

c.c. All Conservation Authorities, CAOs/GMs