

Modernizing Ontario's Mining Act



Finding A Balance
Consultations

How to Respond

- Comments can be forwarded to MNDM by October 15th:
 - E-Mailed to: miningact@ontario.ca
 - Mailed to: Mining Act Modernization Consultations
Ministry of Northern Development and Mines
99 Wellesley Street West, Room 5630,
Toronto Ontario
M7A 1W3
- Discussion Paper available from:
 - EBR web site:
 - <http://www.ebr.gov.on.ca>
 - MNDM website:
 - <http://www.mndm.gov.on.ca>
 - MNDM Offices:
 - Hard copies of the Discussion Paper

Overview of the Mineral Sector

- Ontario is Canada's largest producer of minerals, accounting for 28 per cent of the national total in 2007, at an approximate value of \$10.7 billion.
- Exploration spending in Ontario has risen fourfold from \$120 million in 2002 to \$500 million in 2007. In 2008 that figure is expected to exceed \$625 million. There are currently about 800 active exploration projects in Ontario.
- Ontario ranks among the top 10 global producers of platinum, nickel, and cobalt and among the top 20 producers of gold, silver, copper and zinc.
- There are 43 producing mines across Ontario: 28 metal mines; 14 major industrial mineral operations and one diamond mine.
- The mining sector employs 100,000 Ontarians directly and indirectly. The average weekly earnings of the mining sector are 50 per cent higher than any of Ontario's other industrial sectors. The mineral sector is the largest private sector employer of Aboriginal workers in Canada.
- Mining companies inject approximately \$1 billion annually into the Ontario economy and support over 1,000 local businesses.
- Toronto is the international financial centre for the mining industry. This year, the Toronto Stock Exchange (TSX) is listing more than 1,400 mining issuers at a market value of almost \$380 billion. That's more than half of the world's public mining issuers and more than any other exchange in the world.
- Toronto is home to around 400 mining and exploration companies and over 260 other mining-related companies.

Mining Statistics In Ontario

Investment in Ontario's mineral sector: exploration, mine production and mining supplies and services.

Value of Mine Production:

- \$10.7 Billion in Ontario (2007)
- \$ 8.2 Billion in northern Ontario
- \$ 150 Million in the Far North (Musselwhite)
- * the Far North value will rise over 150% with the production at the Victor Mine in 2008

Direct Employment:

- Over 15,000 people directly employed in the mineral sector in 2006.
- Over 13,000 in northern Ontario
- Far North: 320 (and 100 contractors) jobs at the Musselwhite gold mine and 400 full time jobs at the Victor Mine.

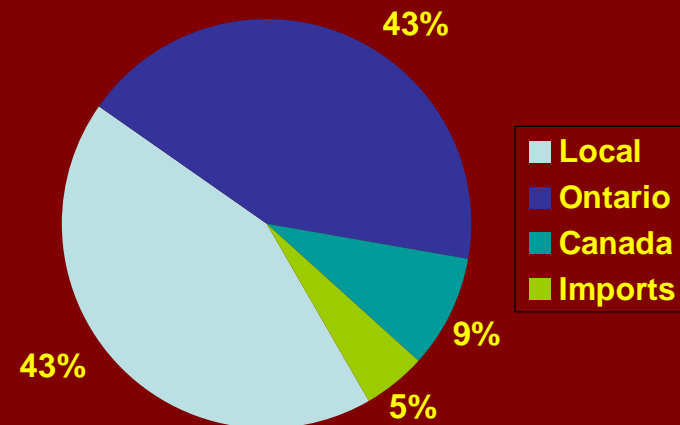
Exploration Expenditures (2007):

- \$502 Million spent in Ontario (\$495 Million in the north)
- \$ 38 Million spent in the Far North (7.5% of total) by 64 companies in 96 projects.

Mining Services Sector:

- In 2007, there were **over 1000 companies** based in Ontario servicing the mineral sector (over 170 in northern Ontario).
- Wages and salaries over \$1 Billion

Where Ontario Mines Buy Their Supplies

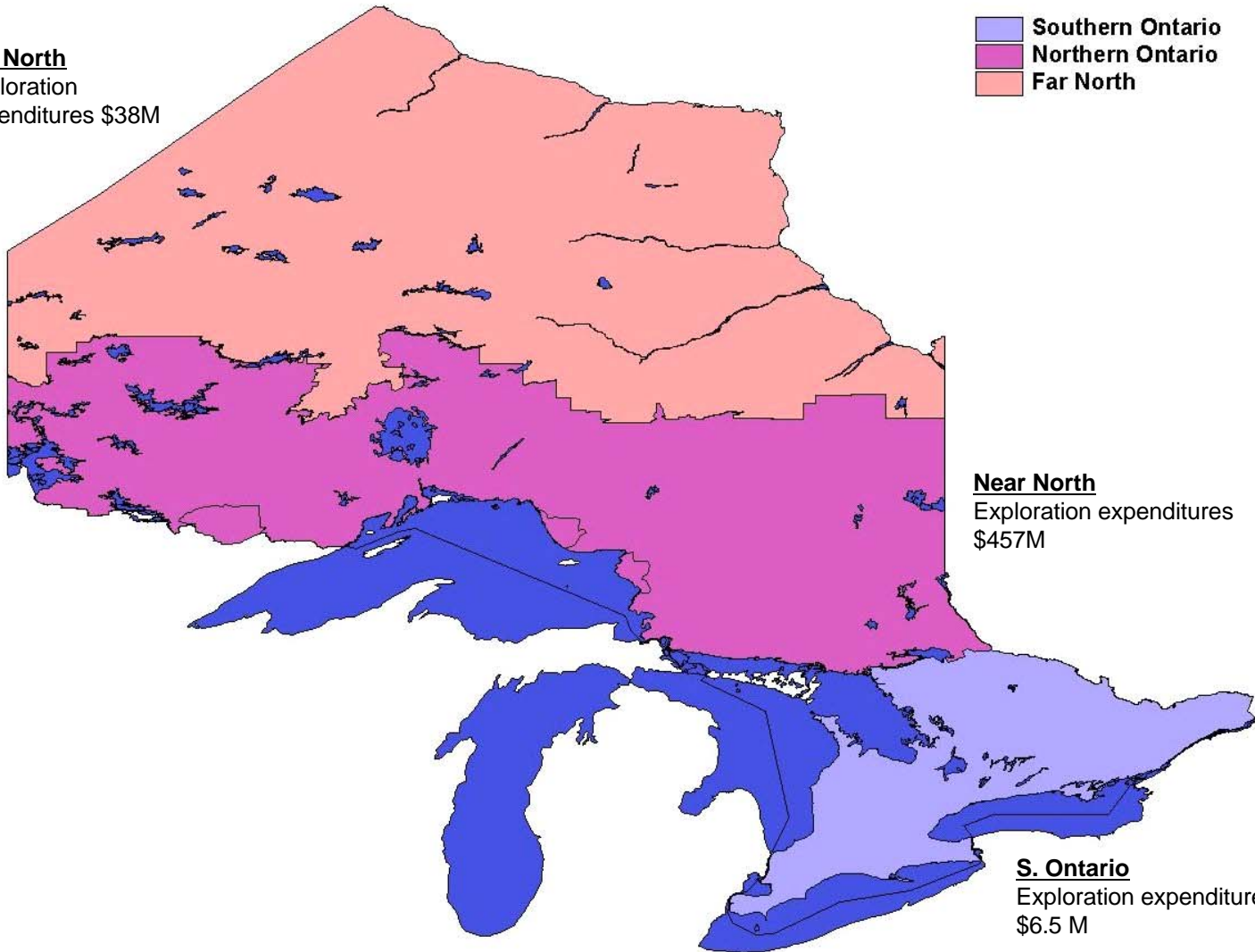


Exploration Activity 2007

Far North

Exploration expenditures \$38M

-  Southern Ontario
-  Northern Ontario
-  Far North



Near North

Exploration expenditures \$457M

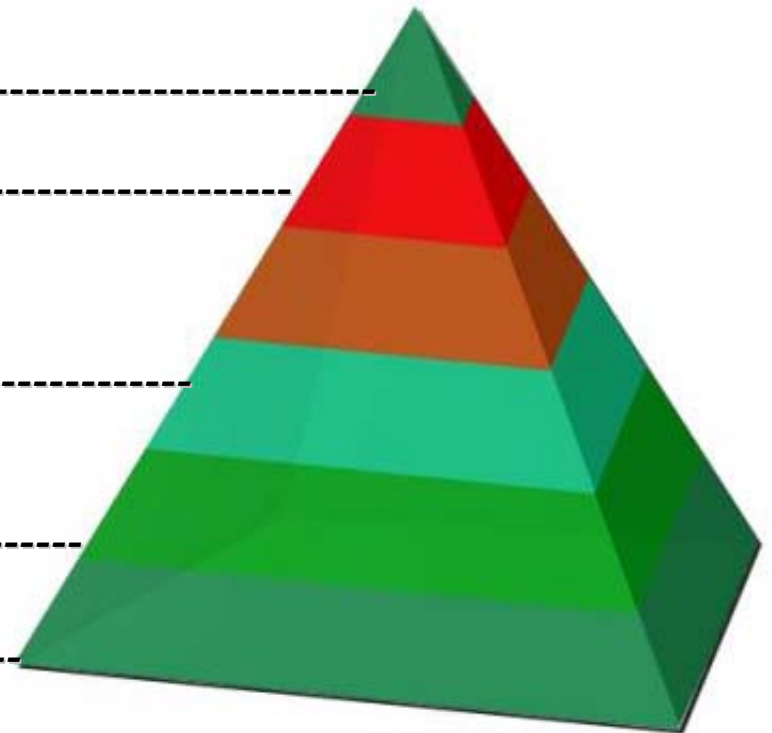
S. Ontario

Exploration expenditures \$6.5 M

Exploration and Mining Sequence and Land Access Requirements

- Although mines occupy a small area, they are rare and very difficult and costly to find.
- The exploration part of the mining cycle requires access to a large land base to discover new mines- “like finding a needle in a haystack”.

- Mining/ Mine Closure (*5 sq kms*) -----
- Advanced Exploration (*+5 sq kms*) -----
- Preliminary Exploration (*X10's sq kms*) -----
- Land Acquisition (*X00's sq kms*) -----
- Area Selection (*X000's sq kms*) -----



CONTEXT

Current Mining Act:

- The purpose of the *Mining Act* is, “to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario”.
- Despite its name, the Mining Act has limited application in the day-to-day activities of operating mines. Generally, it focuses on activities that occur before and after mineral production. These activities include the acquisition and maintenance of mineral rights -- claim staking, prospecting, mineral exploration and mine development related to mining land tenure -- and the safe, environmentally sustainable closure of mining operations.
- The Mining Act applies to all of Ontario, not just the north.
- The Mining Act does not regulate matters which are covered under other legislation such as environmental standards for air, water or land, health and safety standards or lands in parks and protected areas.

Chronology of the Mining Act:

- Regulation of mining in Ontario began in 1845 through a collection of statutes. The first *Mining Act* was passed in 1869. A major revision of the *Mining Act* came in 1906 and the *Act* was periodically amended throughout the 20th century. It is a complex and wide-ranging piece of legislation.
- Mine closure and reclamation provisions were a major addition to the *Mining Act*, as Part VII, following passage of Bill 71 in 1989 (implementation in 1991, with subsequent revisions in 1996.). Further amendments in 2000 included requirements for Aboriginal consultation on closure plans.
- Provisions to ensure the valuation of diamonds in Ontario and the new diamond royalty were added to the *Act* in 2007. In July 2007, diamond regulations were added to the *Mining Act* to address the calculation, payment and administration of diamond royalties.
- The “Good Samaritan” amendment to the *Mining Act* was also passed in 2007 to allow the private sector to conduct voluntary mine rehabilitation on certain Crown-held abandoned mine sites without exposure to undue liabilities.

Purpose of the Review

- Ontario is modernizing its Mining Act **to ensure that this legislation promotes fair and balanced development** that benefits all Ontarians **in a sustainable, socially appropriate way**, while supporting a vibrant, safe, environmentally sound mining industry.
- Modernization will bring the Mining Act into **harmony with the values of today's society** while maintaining a framework that **supports the mineral industry's contribution to Ontario's economy**.
- It supports the **Premier's December 2007 commitment** to an updated Mining Act that "reflects the aspirations of a progressive society here in Ontario."
- This process **supports Premier Dalton McGuinty's July 14, 2008 Far North Planning announcement**, including his promise that the government will **modernize the way mining companies stake and explore their claims** to be more respectful of private land owners and Aboriginal communities.
- It advances the need to **ensure appropriate consultation and accommodation** of First Nation and Métis communities.
- It will address the Mineral Development Strategy **goal of "clarifying and modernizing mineral resource stewardship"** by implementing effective consultation protocols and fostering positive Aboriginal-government-industry relations.

Context

Far North Planning

- Premier Dalton McGuinty set that clear context for a modernized Mining Act when he announced Ontario's Far North Planning initiative on July 14, 2008.
 "We're going to modernize the way mining companies stake and explore their claims to **be more respectful of private land owners and Aboriginal communities,**".
- The Premier stressed that the goal, both in the Far North region and across the province, is to **strike the right balance between conservation and development. Ontario wants to ensure that its mining industry remains strong.** This includes ensuring that mining practices are up to date, and that **Aboriginal rights and interests are given the appropriate consideration.**
 "We think exploration and mine development should only happen with the early consultation and accommodation with local Aboriginal communities,".
- Specifically **in the Far North, the opening of new mines would require community land use plans supported by local Aboriginal communities**

Resource Benefits Sharing

- The Premier also announced that Ontario will develop a system of Resource Benefits Sharing that would see Aboriginal communities benefit directly from resource development.

Discussions to Date

Discussion Paper on Aboriginal Consultation:

- Discussion paper, “Toward Developing an Aboriginal Consultation Approach for Mineral Sector Activities”, released February 2007.
- The ministry has held community-based discussions across Ontario, met with several political territorial organizations and tribal councils, as well as the Métis Nation of Ontario, and held several facilitated workshops. Through these discussions, we learned that Aboriginal communities have a variety of views on mineral sector activities, and when and how they want to be consulted.

Aboriginal communities told us:

- They want to be consulted and accommodated at all stages of the mining sequence, including preliminary exploration;
- They desire meaningful participation in land use decision making and economic development;
- They desire a measure of control over development within their traditional territories, including proposed activities before exploration work is undertaken;
- They require assistance to build capacity that would allow them to participate fully;

Based on what we have heard, the ministry has implemented a transitional approach to consultation that includes:

- A pilot project to protect sites of significant spiritual and cultural value from staking;
- Notifying new mining claim holders on when and how to engage Aboriginal communities; and
- Providing quarterly maps and reports to Aboriginal communities showing recent claims recorded in their general vicinity, and engaging directly with communities to advise of exploration activity within their area of interest.

Discussions to Date

Consultations on Surface Rights and Mining Rights issues:

- The ministry has consulted on issues of concern to private property owners, with particular focus on southern Ontario.
- Based on advice from the Minister's Mining Act Advisory Committee, which includes representation from the mineral industry, surface rights stakeholders, tourist operators, environmental organizations and Aboriginal organizations, the ministry posted proposed Mining Act changes on the Environmental Registry in July 2007.
- The proposal put forward several potential changes:
 - Introducing map staking in place of physical staking in southern Ontario and requiring restoration of surface conditions on private land after exploration;
 - Broadening the list of specific lands that are not open for claim staking;
 - Introducing notification rules for claim staking and enhanced prior notification for exploration work;
 - Requiring landowner consent for exploration on an expanded list of categories of private land

Elements of the Review

The government believes five critical policy issues must be addressed in this review of Ontario's Mining Act:

- 1. Mineral tenure system and security of investment**
- 2. Aboriginal rights and interests related to mining development**
- 3. Regulatory processes for exploration activities on Crown Land**
- 4. Land use planning in Ontario's Far North**
- 5. Private rights and interests relating to mining development (mineral rights/surface rights issues)**

GENERAL COMMENTS

- Process too fast
- Industry needs to review options before passing of bill
- Cost of consultation prohibitive

Elements of the Review

1. Mineral tenure system and security of investment:

- Mineral tenure refers to the system of granting and administering mineral rights.
- In Ontario and throughout most of Canada, this system – commonly known as the free entry system – sets out the rules for acquiring access and title to Crown-owned minerals.
- Mineral tenure is the only asset against which exploration and mining companies can raise financing. Security of mineral tenure is critical to success of the exploration and mining sectors in Ontario.
- In this consultation, we would like to explore potential adjustments to the mineral tenure system that would take into account the concerns of Aboriginal communities and private landholders while at the same time continuing to assure security for mineral investment.

Questions to Consider:

- What potential adjustments to the mineral tenure system, including free entry, could we consider to better address the concerns of First Nation and Métis communities?
- How could we ensure that the Mining Act continues to provide investment security?
- How could we reduce potential conflicts between the property owners who hold only surface rights and prospectors or mining companies who wish to acquire mineral exploration rights on those lands?

What we have heard so far

1. Mineral tenure system and security of investment:

- Protect Free Entry system
- Map staking support split
 - ...not in near north...use revenues to help prospectors...WWF map staking potential!
- Consultation only after staking
- Insist prospectors take course before getting license...be part of association
Map staking in other provinces... is it working?
- quarterly report sent to First Nations should be available off our website.
- Prospectors' being a loose term when deciding who should take a course for a Prospector's License...i.e.: line-cutters, general field crews...

Elements of the Review

2. Aboriginal rights and interests related to mining development:

- Aboriginal communities in Ontario are all different. There is no single approach to consultation that can encompass the needs and outlooks of more than 100 First Nation and Métis communities.
- Our consultation framework must be flexible enough to accommodate a variety of different perspectives. At the same time, it must ensure that consultation requirements are met and that investment continues to be encouraged.
- In this consultation, we want to look at a range of approaches to consultation with and accommodation of Aboriginal communities related to the broad spectrum of mineral sector activities, including claim staking and exploration.

Questions to Consider:

- How could First Nation and Métis communities be engaged, consulted and accommodated in the following stages of the mining sequence:
 - Prior to early exploration
 - Post claim staking exploration
 - Advanced exploration
 - Mine development?
- What are the necessary elements of an open and transparent process?

What we have heard so far

2. Aboriginal rights and interests related to mining development:

- consultation only after staking
- need traditional territories map...asap
- include consultation costs for assessment credits
- stop assessment clock while consulting
- govt should handle all consultations...cannot delegate duty to consult
ensure FN do not have veto
- Education requirement for FN is critical and should be lead by Govt.
- FN communities need to better understand the risk/reward equation
- FN have no capacity
- Need standardized consultation process...guidelines
- Use New Zealand model funding flow through to community (need to verify model)

What we have heard so far...cont

2. Aboriginal rights and interests related to mining development:

- will not go through a process where First Nations interviewed companies and then decided who they would accept.
- 'need timelines' for consultation to work.
- should stop assessment clock during consultation but need a time limit.
- in New Zealand stock 'warrants' are issued to aboriginals – share the risk to share the profit.
- concern over Impact Benefit Agreements (IBAs) because due to the nature of the business there are times when companies must simply drop their mining claims and bad faith between companies and First Nations is likely.

Elements of the Review

3. Regulatory processes for exploration activities on Crown Land:

- The government's traditional perspective has been that most early exploration activity is non-intrusive and that it has minimal impact on Aboriginal and treaty rights.
- Aboriginal communities have told us that such activity may have significant impacts, depending on its timing and location.
- The Mining Act generally does not regulate early stage exploration activities once a claim has been staked. To better address consultation with Aboriginal communities, the Ministry may consider introducing an enhanced regulatory approach under the Mining Act.
- In this consultation, we want to examine various regulatory approaches for early exploration activities.

Questions to Consider:

- How could a regulatory process for exploration activities be designed to ensure that the rights of First Nation and Métis communities are respected?
- What elements could be included in a regulatory process for mineral exploration?
- How could a regulatory process work in a fair and timely fashion?

What we have heard so far

3. Regulatory processes for exploration activities on Crown Land:

- keep it simple
- no need for permit during early exploration
- use notice of assessment to notify surface rights owners of early exploration
- Notice of intent should be sufficient for prospectors

Elements of the Review

4. Land use planning in Ontario's Far North:

- On July 14th, Premier Dalton McGuinty announced that Ontario was launching a Far North Planning initiative.
- As part of this process, the government will work with all northern communities and resource industries to create a broad plan for sustainable development. As well, local plans will be developed in agreement with First Nations. Each year, a number of communities will complete these local plans.
- Mineral staking and exploration will continue during the planning period. However, to ensure proper planning and community input, the opening of new mines in the Far North would require community land use plans supported by local Aboriginal communities.
- In this consultation, we want to discuss how requirements for land use planning can be implemented in the Far North.

Question for Consideration:

- How should community land use planning and local Aboriginal community support for new mine openings be reflected in the approvals system for mining in the Far North?

What we have heard so far

4. Land use planning in Ontario's Far North:

- Requirement for municipal LUP is essentially a veto
- How can we possibly raise capital without knowing LUP outcome
- No capacity in FN communities to do LUP
- How will 50% be determined
- Will bring exploration and mining in FN to a grinding halt
- FN security of tenure is gone
- FN land use planning gets 10-15 years...mining act review gets 2 months????
- how you are supposed to secure tenure **now** when you do not know what part of the lands will be part of the 50% - what about mining claims you have now?

Elements of the Review

5. Private rights and interests relating to mining development (mineral rights/surface rights issues)

- The government would like to build on our previous surface rights/ mining rights consultation to reduce or remove conflicts.
- The proposal put forward several potential changes:
 - Introducing map staking in place of physical staking in southern Ontario and requiring restoration of surface conditions on private land after exploration;
 - Broadening the list of specific lands that are not open for claim staking;
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Questions for Consideration:

- How could a requirement to file an exploration work plan complement the proposed changes to the Mining Act that were discussed in the 2007 EBR posting?
- What other ways could we protect the interests of surface right property owners while maintaining access to Crown mineral resources?

What we have heard so far

5. Private rights and interests relating to mining development (mineral rights/surface rights issues)

- Just do it...re-join mining/ surface rights
- send notice of assessment for early exploration
- Map staking for southern Ontario
- Moratorium exploration and mining for uranium
- Insist that surface right owners notify mining rights owners of issues!
- Mixed opinions on value of re-assembling severed tenure
- mining rights holders not being informed when surface related planning takes place (Planning Act).

Next Steps

- Public consultations starting August 11, 2008.
- Focused discussions with the minerals industry, municipalities and other stakeholders.
- Separate Aboriginal consultations will take place over the next two months. These discussions will build on what we've heard through our Aboriginal engagement process to date.
- Posted on the EBR for comment from August 11 to October 15, 2008.
- Anticipate a Bill to amend the Mining Act to be introduced into the legislature next session.
- Development of regulations if Bill is passed.

How to Respond

- Comments can be forwarded to MNDM by October 15th:
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