



December 3, 2023

Submitted online to the Environmental Registry of Ontario

RE: WCS Canada comments on "Seeking feedback on opportunities to improve Ontario's mineral exploration plans and permits regime" (ERO number 019-7761)

To Whom It May Concern:

Thank you for the opportunity to comment on proposed changes to Ontario's plan and permit regime for early mineral exploration.

We are submitting this feedback in our capacities as a WCS Canada scientist and spatial data analyst focused on conservation solutions for the far north region in Ontario. WCS Canada (www.wcscanada.org) is a national non-government organization that has been engaged in the far north in Ontario since 2004. As some of the few scientists and experts with continuous presence in the region, WCS Canada scientists lead ongoing field-based ecological research programs, often in partnership with First Nations, we support and collaborate with First Nations on community-based research and monitoring projects, and we develop tools and approaches for proactive planning and conservation prioritization at regional spatial scales. We have a long-term and consistent engagement with policy and regulation relevant to the environment in Ontario, including those related to mining activity.

We have previously commented on the proposed regulations under the Mining Act for recovery of minerals (ERO number 019-7724), proposed *Building More Mines Act, 2023* (ERO 019-6715), and proposed amendments to the *Mining Act* related to the recovery of minerals and decision-making authorities (ERO 019-6717), and related to closure plans (ERO 019-6718), the regulatory changes to closure plan rehabilitation requirements for advanced exploration and mine production and adding an additional class of facilities to the list of such classes that are excluded from the definition of "mine" (ERO 019-6750), and the Critical Minerals Framework Discussion Paper (ERO No. 019-3281).

Particularly relevant to the proposed changes to Ontario's mineral exploration plans and permits regime, as part of our work, we have been tracking mineral claims in Ontario since 2013, and mineral exploration permits since 2016. We are familiar with the scope and extent of mineral claims and early mineral exploration in Ontario, as well as with the processes that exist in the province for finding information about the location and ownership of mineral claims, and the status of early exploration permits and plans.

Given the significant experience we have garnered over the past decade tracking Ontario mineral claims information, we are in a strong and perhaps unique position to understand the inadequacy of the plan and permit regime for early mineral exploration as a means of

consultation with Indigenous Peoples and the public. In short, it is difficult to navigate and difficult to find information for the public, as well as being onerous for proponents. We strongly support an updated approach to Ontario's mineral exploration plans and permits regime.

Our overarching recommendation is that **all changes to Ontario's mineral exploration plans and permits regime must serve to: 1) Improve consultation processes with Indigenous People; 2) Increase transparency of updates about mineral exploration plans and permits regime for the public; and 3) Make it easier for Ontario, Indigenous Peoples, and stakeholders to track and manage cumulative impacts of mineral exploration.**

There are at least two reasons accessible information on early mineral exploration activities are important: 1) They provide a means of tracking the cumulative extent and impacts of early mineral exploration, particularly in ecologically intact areas in the far north in Ontario; and 2) They provide a means for First Nations who are interested or concerned about mining activity within their Homelands to track proposed activities and provide or withhold informed consent.

Any changes to Ontario's mineral exploration plans and permits regime must increase the requirements for consultation with Indigenous Peoples to be consistent with the United Nations Declaration on the Rights of Indigenous Peoples and principle of Free, Prior, and Informed Consent. Currently, Ontario has a free-entry system for mineral claiming where Indigenous Peoples are not consulted when mineral claims are made. In British Columbia, [courts ruled that the same system does not comply with the duty to consult](#), and British Columbia must now update its approach. Further, in Ontario, there is only the requirement for notification at the stage of a proposed mineral exploration plan or permit. We recommend that Ontario overhaul this outdated system to require consultation at these early stages in the mining cycle.

Further, any changes to Ontario's mineral exploration plans and permits regime must increase the transparency of information and ease of accessing information for Indigenous Peoples and for the general public, including spatial information. This is necessary both to enable meaningful consultation with Indigenous Peoples, as outlined above, and also so that the cumulative environmental impacts of mineral exploration can be tracked. Ontario has an obligation to ensure that cumulative impacts of mineral exploration remain within acceptable thresholds for the local environment, and do not infringe of the inherent and treaty rights of Indigenous Peoples. Currently, the Ontario mineral exploration plans and permits regime makes it difficult or impossible to assess whether these obligations are being upheld.

In addition to these overarching recommendations, we also make specific recommendations in response to the Ministry's proposed themes and initiatives, below.

Within theme 1, in response to the Ministry's initiative to review thresholds for plans permits, **our strong recommendation is that adjusting thresholds must not obfuscate the opportunities for public consultation.** Currently, all mineral exploration permits require posting on the Environmental Registry, while mineral exploration plans do not. We are strongly opposed to changes in thresholds that would move activities from permits to plans, and thereby reduce the opportunities for public consultation.

Instead, we encourage the Ontario government to develop approaches and resources that make it easier for Indigenous Peoples and the public to access information on all early mining

activities, including both plans and permits, at relevant spatial scales to see where these activities are taking place.

Within theme 2, in response to the Ministry's initiative to increase the flexibility of plans and permits, we understand the need for operational flexibility, and we were pleased to see that, "the Ministry is committed to exploring changes that will facilitate meaningful consultation with Indigenous communities, including consultation on where proposed exploration activities will take place." **Our recommendation is that increasing flexibility should increase, and not decrease, the ability of the Ontario government, Indigenous Peoples, and the public to track the cumulative impacts of mineral exploration at relevant spatial scales.** For example, we understand that the current approach to plans and permits often requires proponents to request more drill holes than they will ultimately use, which makes it difficult for the government, Indigenous Peoples, or the public to track actual cumulative impacts of early mineral exploration on the landscape, since there is no tracking of actual impacts, and attempting to infer impacts from plans and permits will be inaccurate. Therefore, increasing the flexibility of plans and permits must be accompanied by increased consultation with Indigenous Peoples and the public prior to issuing plans and permits, and must include robust monitoring and reporting requirements such that the actual impacts on the land are updated and tracked, and shared with Indigenous Peoples and the public in a timely manner.

Within theme 3, in response to the Ministry's initiative to increase transparency and create service standards, **our recommendation is that standards should include service standards for transparency, consultation, and timelines for the public, not just service standards for proponents.** While we understand that service standards for proponents are sensible and appropriate, there should be accompanying standards and targets for transparency and communication to the public about mining claims and mineral exploration in Ontario.

Overall, we also **recommend that Ontario updates its approach to mining to be more consistent with the United Nations Declaration of the Rights of Indigenous Peoples, and to be more consistent with other jurisdictions within Canada.** While we recognize that this recommendation is not explicitly within the scope of the proposal, our view is that the current *Mining Act* and associated framework related to mining activity in Ontario is failing to ensure that the inherent and treaty rights of Indigenous Peoples are upheld, and failing to adequately assess and manage the environmental, social, and health risks associated with mining activity.

Therefore, outside of this individual proposal, we recommend that the *Mining Act* and associated framework related to mining activity in Ontario is updated such that the consultation requirements at every stage are consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including ensuring that Indigenous Peoples are able to provide Free, Prior, and Informed Consent for mineral claims, mineral exploration, active mining, and closure of mines on their Homelands.

We further recommend that mines and smelters be added to the environmental assessment project list in Ontario. Despite the well-documented major environmental risks associated with mining activities, there is little or no relationship between the Ontario *Environmental Assessment Act* and Ontario *Mining Act*, and Ontario is the only jurisdiction in Canada that does not require environmental assessment for private projects, including mines. In our experience, individual environmental assessments would provide greater certainty about the risks, benefits, and alternatives to mining projects, providing greater assurance for Indigenous Peoples and the

public that projects will provide net benefit prior to development. This would in turn increase investor and stakeholder certainty about environmental, social, and governance implications of individual projects.

Thank you for your consideration of our recommendations and concerns. We welcome opportunities to engage in any discussion regarding our submission.

Sincerely,



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