GICHI OZHIBI'IGE OGAAMIC
ADMINISTRATIVE OFFICE

April 16th, 2023

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**Re: Proposed legislative amendments to *Mining Act* and its regulations associated with Bill 71 - *Building More Mines Act, 2023***

**Background:** The comments below are representative of the Territorial Planning Unit (TPU) of Grand Council Treaty #3. Grand Council Treaty #3 is the Traditional Government of the Anishinaabe Nation in Treaty #3. The Treaty #3 Territory is comprised of 28 First Nations across the Territory. Grand Council's mandate is to protect the future of the Anishinaabe people by ensuring the protection, preservation, and enhancement of inherent and treaty rights. The TPU is a department within the Grand Council that works with Treaty #3 Communities, membership and leadership to protect the lands, water, and resources within the 55,000 square miles of Treaty #3 Territory. The TPU is guided by Anishinaabe Inakonigaawin - Manito Aki Inakonigaawin (Great Earth Law) and the Treaty #3 Nibi (water) Declaration.

**Governance:** Treaty #3 territory is governed by Anishinaabe laws, in relation to the land and water, the laws are called Manito Aki Inakonigaawin (Great Earth Law), and the Nibi declaration. Manito Aki Inakonigaawin represents respect, reciprocity, and responsibilities with all relations in regards to Mother Earth. The law outlines the responsibilities of the Anishinaabe Nation in Treaty #3 in how decisions are made in relationship to the land and water in Treaty #3. This duty guides processes for major projects and developments impacting the shared land of the Treaty #3 Territory. The law is unique to Treaty #3 territory and passed on through our elders and knowledge keepers as the authoritative copy is held in protocols and ceremony. The written is explained in the Treaty #3 MAI Toolkit.

The Nibi Declaration represents respect, love, and the sacred relationship with nibi (water) and the life that it brings. It is based on teachings about water, lands, other elements like air and wind, and creation. The declaration is meant to preserve and share knowledge with youth and future generations. The declaration guides us in our relationship with nibi so we can take action individually, in our communities, and as a nation to help ensure healthy, living nibi for all creation.

**Commentary:**

The following proposed legislative amendments to the *Mining Act* and its regulations as part of *Bill 71-Building More Mines Act, 2023* (**Proposed Building More Mines Act, 2023 - ERO Number: 019-6715)** must consider the rights and values of the First Nations in Treaty #3. In determining changes to legislation, it is the responsibility of the crown to work in partnership with the Anishinaabe Nation in Treaty #3 to meaningfully discuss policy prior to tabling. Further, Bill 71 suggests reducing environmental regulatory oversights to increase the speed of mine development and decrease the involvement, accountability and responsibility of Ministry of Mines technical staff. Although technically the Ontario government does not have an obligation to consult with First Nations when creating or amending Acts and legislation, the honour of the crown still rests in building strong, meaningful government to government relationships with the Anishinaabe Nation in Treaty #3. It is the expectation of the Anishinaabe Nation in Treaty #3 as Treaty Partners, that Crown and Anishinaabe processes are harmonized and respected, this means in the event of major projects, inclusive of mines, regulatory processes are harmonized and respected. In relationship to policy development, Governments may work together to ensure that each governing system is respected. Legislation, acts, regulations, policies and any relating amendments that could impact this respect of both government's decision making and jurisdiction in the shared jurisdiction of treaty land should be duly discussed. Grand Council Treaty #3 also has a relationship table with the Ministry of Mines, that is created to have these discussions in a mutually beneficial and respectful manner. The Anishinaabe Nation in Treaty #3 and Treaty #3 communities are the only parties as rightholders that can accurately assesses both the positive and negative impacts of legislation and major projects on inherent and treaty rights in Treaty #3.

A number of requests and questions follow:

Under the "Proposal Details" section of **Proposed Building More Mines Act, 2023 - ERO Number: 019-6715**, purpose of the legislative amendments, paragraph one reads: *The Ontario government is improving the Mining Act to create the conditions for companies to build mines more efficiently. Proposed amendments to the Mining Act demonstrate responsiveness to feedback received from industry.* Given the underlined statement, Grand Council Treaty #3 would like to request a copy of this feedback from industry (mining proponents) that outline their concerns with, and recommendations for changing the *Mining Act*. It's important that there is transparency when it comes to who is actually requesting legislative amendments and why.

Under the "Proposal Details" section of **Proposed Building More Mines Act, 2023 - ERO Number: 019-6715**, purpose of the legislative amendments, paragraph two reads: *Proposed improvements align with the purpose of the Mining Act which includes encouraging prospecting, registration of mining claims and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights (including the duty to consult) and to minimize the impact of these activities on public health and safety and the environment.* Has the Ministry of Mines asked First Nation community's how this increase in mining activity would or could affect their surrounding traditional lands and ways of life? Has the Ministry of Mines asked First Nation community's how the increase in mining activity would affect the capacity of their staff, such as the Mineral Development Advisor's (MDA's) in performing their day-to-day tasks of analyzing and assessing mining claims, exploration permits and exploration plans? Does the Ministry of Mines plan on increasing their funding to support First Nation community's to help deal with the rise in mining activity and limited capacity?

The timeframe (45 days) for Grand Council Treaty #3 policy staff as well as Mineral Development Advisors (MDA's) within the community's in Treaty #3 to properly analyze the five proposed amendments to the Mining Act (three legislative and two regulatory) and provide "meaningful"

comments to the Ministry of Mines is not adequate. The amount of background material (Mining Act; Mining Act Regulations; letters from the Ministry of Mines; Consultation Framework; Bill 71 – full document; Bill 71 Information Session Slide Deck; five ERO notification postings; Ontario Critical Mineral Strategy, etc…) to read and understand prior to commenting is substantial. Also, the capacity and workload of Grand Council Treaty #3 staff and community MDA's is overwhelming. MDA's are also involved in reviewing Mining Claims; Mining Permits; Mining Plans; Mining Closure Plans; Mining Agreements; etc… on a day-to-day basis.

In consultation in the Anishinaabe Nation in Treaty #3 one "yes" from one community does not mean that consent is given by other nearby Treaty #3 communities and the Nation to the same project. The MAI toolkit outlines the process through MAI in order for authorization to be provided by the Anishinabe Nation in Treaty #3. In order for a project authorization, Treaty #3 communities must also provide authorization through community process, protocols and laws. The *"Consultation framework: Implementing the duty to consult with Aboriginal communities on mineral exploration and mine production in Ontario"* should be revised to reflect the processes and protocols of the Anishinaabe Nation in Treaty #3 through MAI.

A Closure Plan is important step in the mining process because it gives a full understanding of the scale of operations that could potentially be introduced to Treaty #3 lands. It also outlines how lands will be rehabilitated once a mining site is closed. The Anishinaabe Nation in Treaty #3 through MAI, evaluates the Social, Cultural, Environmental and Economic benefits and impacts of any proposed project and closure plans are an important piece in relation to rehabilitation of mine sites and the return of land back to original state. Therefore, any proposed changes or amendments to Ontario Regulation 240/00 – Advanced Exploration, Mine Development and Closure Under Part VII of the Act needs to be discussed with all of the Communities and the Nation in Treaty #3 before being tabled, the TPU is open to providing support and guidance in this undertaking. It is important through the lens of reconciliation that relationships are built and nurtured through early and meaningful conversations.

Below is a more detailed description of each proposed amendment and the coinciding comments / questions from the Territorial Planning Unit of Grand Council Treaty #3.

**Amendments to the Mining Act: Closure Planning (ERO Number 019-6718)**

**(1) Changes to the definition of "Rehabilitate"**

a. Grand Council Treaty #3 does not support the proposed change to the definition of "Rehabilitate" – "*The new definition of "rehabilitate" in the Mining Act would involve restoring the lands to their former use or condition to the extent required in regulations, or to a condition that is: (i) compatible with the use of adjacent land; or (ii) suitable for an alternative future use of the site, in each case as determined by the Minister in accordance with the regulations."*
b. The Definition of "Rehabilitate" should reflect the same as per the Mining Act, with the following additions: (i) <u>is left in a better condition than before</u>, or (ii) is made suitable for a use that the all jurisdictions inclusive of Indigenous Nations see fit, <u>and protocols and processes for Indigenous Nations in the region are followed.</u>
c. First Nation communities and organizations need to be involved in the decision making process *to "allow an alternate use or condition or feature to remain on-site post-closure (e.g., infrastructure)"* as well as decision making for *"allowing alternate rehabilitation measures and post-closure land uses."*
d. Currently "Protective Measures" is defined as *steps taken in accordance with the prescribed standards to protect public health and safety, property and the environment.* It is recommended that this definition remain worded as is.
e. In the new proposed definitions, there is no mention of the length of time that a mine site can be left without being rehabilitated. There is also no mention of the

scope of environmental monitoring involved in leaving a mine site "dormant" or leaving a feature on a mine site. Further clarification is needed.

**(2) Conditional Filing Order**

a. The definition of a "Conditional Filing Order" needs to be determined before Bill 71 can be finalized. A Closure Plan should include all required elements before construction of a mine begins. However, if a proponent is proposing to leave out a specific required element of a Closure Plan, then an in-depth analysis of all possible risks & consequences needs to occur before consent is given. A "Conditional Filing Order" is much too broad. Each required element of a Closure Plan needs to be assessed separately.
b. The Minister of Mines should not be involved in the analysis of the "Conditional Filing Order." This task should be completed by the Director of Mine Rehabilitation since they have the knowledge, expertise and year of experience required to analyze and interpret Closure Plans and harmonized with the corresponding process in indigenous nations.

**(3) Phased Financial Assurance (FA)**

a. A mining proponent needs to be able to prove that they have the finances to pay for all phases of a proposed project including the completed life cycle of a mine, as well as all necessary rehabilitation. Finances need to be secured up front before a mining project begins so that there is financial reassurance and accountability in the event that an unforeseen negative impact occurs, such as, but not limited to: The mining company going bankrupt; unexpected costs prohibiting the advancement to the next stage of a mine life cycle; staff shortages; government standards & policy changes; inflation; procurement issues; etc… Given the fact that there are many risks involved in mining life cycle, the Ministry of Mines needs to do their due diligence to make certain that all mining proponents (i) Have enough finances for the entire project; and (ii) Are held accountable to pay for all of costs incurred in ever cycle or phase.
b. The goal of "Phased Financial Assurance" is to reduce up-front expenses for proponents. However, proponents and the Ministry of Mines needs to make sure that there is no cost cutting associated with capacity for consulting and engaging with First Nation communities early and often throughout every phase of the mining life cycle.

**(4) Adjust when Notices of Material Change are required and allow deemed amendments**

a. *"A receipt of a Notice of Material Change (NMC) will trigger a determination by the ministry as to whether the activities or changes proposed in the Notice require consultation with Aboriginal communities"* (excerpt taken from Consultation Framework, 2021). That being said, if NMC's are changed, this could limit the amount of NMC's that the Ministry reviews, thereby potentially "missing" consultation requirements that should have taken place. This proposed amendment may let important NMC's "slip through the cracks" and not receive proper consultation. First Nation communities need to assess a NMC themselves in order to determine if it has the potential to trigger the duty to consult process. In the Anishinaabe Nation in Treaty #3, the TPU can support this work with the Ministry of Mines and ensure compliance to MAI.
b. All NMC's should go through the Duty to Consult Consultation Framework for proper assessment as well in Treaty #3 be guided by MAI for project authorization.
c. The definition of "Minor (non-material) site alterations" needs to be further elaborated on – more detail is required.
d. Financial assurance, change of ownership and expansion of mining site property should all receive a NMC and corresponding amendment and be reviewed by First Nation communities as well as Grand Council Treaty #3.

**(5) Framework for certifications**

a. The term "Qualified Person" has yet to be defined in greater detail. This term needs further clarification before proper recommendations can be given
b. How will you know if the "Qualified Person" (that is needed to review Closure Plan) works for a mining proponent and/or has an affiliation / relationship with them? This would be a conflict of interest. How will this issue be addressed or eliminated?
c. Technical Certifications – the ministry is proposing that a closure plan must contain certifications from one or more "Qualified Persons," stating that the closure plan either: (i) Complies with the requirements of each applicable Part of the Code, or (ii) Otherwise meets or exceeds the *objective* of that Part of the Code. What is the difference between (i) and (ii)? Complying with the regulations, codes and standards should be mandatory without exception.
d. A "Qualified Person" should also include people knowledgeable to the land (traditional knowledge) such as, but not limited to: First Nations Community leadership & staff; First Nations Elders; and Mineral Development Advisors (MDA).
e. Both First Nation Communities and the Territorial Planning Unit in Treaty #3 have a right and obligation to analyze and interpret all "Technical Studies and Reports" (environmental studies, feasibility studies, etc…) related to any part of a proposed mining site within Treaty #3. These documents are important for First Nation communities so that they can review and analyze them in order to make sure that their land and way of life is being protected and that a process for decision making in compliance with MAI is developed.

**Amendments to the Mining Act: Recovery of Minerals and Decision-making Authorities (ERO Number: 019-6717)**

**(1) Amend the Recovery of Minerals Framework**

a. Changes in the wording of this section should be implemented. Currently, the "Recovery of Minerals Framework" reads: *To obtain a permit to undertake this activity (a "recovery permit"), an applicant is required to demonstrate in its application that it will remediate the land such that the condition of the land, with respect to one or more of: (i) public health and safety or (ii) the environment, is improved following the recovery and remediation activities.* However, this section should be changed to read: … *with respect to ~~one or more of~~: (i) public health and safety <u>and</u> (ii) the environment, <u>being</u> improved following the recovery and remediation activities.* The language must be revised to provide concrete deliverables not up for interpretation.
b. The land should not be made "*comparable to or better than*" the prior condition. The word "comparable" needs to be omitted from Bill 71. Instead, this proposed amendment should read: The land should be left *"better than it was before,"* especially for the benefit of those First Nation communities that live in or adjacent to these lands in question. The language must be revised to provide concrete deliverables not up for interpretation.

**(2) Decision-making Authority within the *Mining Act***

a. Currently the Minister of Mines does not have statutory authority to make certain decisions under Part VII of the *Mining Act* regarding mine rehabilitation (e.g. decisions to file closure plans) or decisions related to early exploration. These decision-making authorities are currently vested in the Director of Mine Rehabilitation and Director of Exploration respectively. The recommendation from Grand Council Treaty #3 is that this remain the same and that the Minister of Mines NOT have decision-making authority as per the proposed amendments in Bill 71 for the following reasons:
    i. The Minister does NOT have an environmental science background needed to make decisions related to under Part VII of the *Mining Act* regarding mine rehabilitation. The Director of Mine Rehabilitation and the Director of

Exploration currently have the background, knowledge and years of experience needed to make such important decisions. This should not change.

ii. Political pressure could take place if the Minister of Mines takes over all decision-making responsibilities. Politics nor political parties should have decision-making authority with respect to Part VII of the *Mining Act* regarding mine rehabilitation.

iii. If there is a cabinet shuffle and a new Minister of Mines is elected, this individual may have less mining knowledge and background than the current minister.

iv. This being said, all authorizations in the shared Territory of Treaty #3 must occur jointly between governments and comply with MAI and have consent of both the Nation and Treaty #3 Communities.

**Key Recommendations:**

- It is recommended that the legislative process be paused prior to Bill 71 advancing to the next stage of the legislative process so that proper consultation can take place with both the Anishinaabe Nation in Treaty #3 and Treaty #3 communities through an MAI process.

- It is expected that all questions in this document be answered and responses sent to the Territorial Planning Unit. All recommendations and comments in this document will be reviewed thoroughly and resulting application of the recommendations (or not) should be outlined to the TPU.

- Ministry of Mines Technical staff should still have the responsibility of reviewing Closure Plans so that accountability can be maintained.

- The Minister of Mines current decision-making authority should not be changed and any decision making of major projects in the shared territory of Treaty #3 is to be done jointly in a harmonized process compliant to MAI.

These comments are prepared by the Territorial Planning Unit of Grand Council Treaty #3. If you require further information, please do not hesitate to reach out to the TPU at tpudirector@treaty3.ca or call us at 807.548.4214.

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