

# PROVINCIAL POLICY STATEMENT

## SUBMISSION

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BY



## CONTACT INFORMATION

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## **Introduction**

Bedford Mining Alert (BMA) was formed in 1999 when several families in the Bedford District of South Frontenac discovered that someone had come onto their properties, cut down trees, and staked mining claims. They learned that active mining claims had been recorded on their lands without their knowledge or consent. In many cases, property owners discovered that claims had been filed without complying with the requirements of the Mining Act and that in practice there were no adverse repercussions for the prospectors for having failed to comply and no remedy for land owners.

The membership of BMA has grown to over a hundred families, and the activities of BMA have won support from many regional, provincial and national organizations, local municipalities, conservation groups, residents' associations and others. Many members own the surface rights on their property but not the mineral rights; all of our members are concerned about claim staking, the adverse impact even a remote possibility of mining in our area has on recreational and tourism investment, the subsequent adverse impact on the local economy, and the safety and environmental dangers created by property damage, trenching and other prospecting and early exploration activities. Although improving antiquated mining policy and practices are at the heart of BMA's mandate, the concerns are interwoven with issues surrounding the natural heritage of the area.

Mining has the possibility of creating a temporary economic boom in an area, although this rarely occurs due to the large number of claims that never result in a mine. Even in the remote possibility that a commercial mine is developed, the average life of a mine is only about ten years. However, the threat of a mine under the current legislative and policy regime creates a chill on investments in recreational and tourism activities. In addition, it can cause dissent in a community, especially when community positions and aboriginal rights are given second place to mining companies. BMA encourages setting the highest standards possible for mining practices and accountability, a goal that recognizes the value and long term nature of other land-uses and the need for sustainability. BMA believes that mineral resources should be extracted using methods which are both safe and sustainable and do not have an adverse on other important economic drivers in a community, such as recreation and eco-tourism in an area such as South Frontenac County. Unless there is a pressing public interest in allowing a project to proceed (for example, national security), then development of a mineral resource should be deferred until advances in mining technology and practices allow the resource to be extracted in accordance with principles of safety and sustainability. To implement these principles, Ontario must enact legislation which promotes mining practices that respect property owners, native treaty rights and land claims, the environment, and regional land-use decisions made by local bodies such as municipalities and conservation authorities.

BMA is pleased that the Ontario government has recognized the need to modernize the Mining Act and has begun to address many of the concerns raised by BMA and many other groups. Unfortunately, the Draft Provincial Policy Statement (Under the Planning Act) September 2012 (PPS) has not recognized the need to reform the planning status of mining activities, particularly in the more developed parts of Ontario such as Southern Ontario. This submission outlines amendments which BMA recommends be made to the PPS. The amendments relate specifically to preserving the ability of local authorities, such as the Municipality of South Frontenac, to promote the main economic drivers in their community and the preservation of the environment and heritage features that drive its recreational and tourism economic base.

In some communities mining may be the principal activity. However, for most communities in Southern and Central Ontario, tourism, recreational real estate, and related suppliers and service businesses are much more important. In addition, in Frontenac County there are two overlapping UNESCO designated sites: the Frontenac Arch Biosphere Reserve and the Heritage Rideau Canal. Implicit in this submission is the need to reconsider the current priority which the PPS gives to mining and exploration activities. BMA believes that it is essential to ensure that present and future land-use for tourism and recreational purposes is not adversely affected by potential mining activities. It is important to realize that it is the potential of these activities created by a permissive prospecting system and a priority given to mining by the PPS, and not only mining actually occurring, that acts to depress recreational and tourism investment. It is critical for the PPS to permit communities to reverse this priority where they want to encourage other economic drivers which are not compatible with mining.

All of the proposed changes are confined to Part V of the PPS, which deals with policies related to various economic activities. The proposed revised version of certain sections of the PPS is set out below. Appendix A to this submission is a copy of the proposed revisions, with the deletions and additions to the existing PPS. Since it has not become a major issue in Bedford, BMA is not addressing the issue of pits and quarries. However, BMA strongly supports the position put forth by Nature Ontario and other organizations and is opposed to the PPS's proposals concerning allowing industrial extraction of aggregates in important wetlands, woodlands and wildlife habitat, as well as prime farmland. The proposed rehabilitation will not work.

## Issues

The objectives of BMA's proposed amendments to the PPS include:

- I. To ensure that local communities contribute to the discussion and decision about *prospecting, exploration and mining*, in particular the potential harm to other economic drivers in the local communities;
- II. To support the vision, goals, objectives and sections of the Official Plan of local communities that relate to *prospecting, exploration and mining*;
- III. To require that *prospecting, exploration and mine development* activities are subject to Official Plans and By-laws within municipalities and planning areas;
- IV. To ensure that independent agencies, such as the Conservation Authorities, are involved in monitoring the environmental impact of *prospecting, exploration and mining* (it must be noted that the main mandate of the Ministry of Northern Development and Mining is to promote mining so it cannot serve this function);
- V. To provide greater protection to *surface rights owners* and neighbouring property owners in the context of *prospecting, exploration and mining*, including remediation of *prospecting, exploration and mining* sites;
- VI. To ensure that concerns relating to the character of *natural heritage* and recreation areas are considered prior to proceeding with *prospecting, exploration and mining*;

- VII. To ensure that the entity attempting to proceed with the *prospecting, exploration or development* of a mineral deposit is responsible for the cost of independent monitoring and rehabilitating the affected site;
- VIII. To ensure that the entity attempting to proceed with the *exploration or development* of a mineral deposit pays for the cost of any review of *exploration and development* proposals, including third-party opinions, in the context of mining and exploration;
- IX. To provide greater protection for agricultural land, managed forests, and conservation easements;
- X. To recognize the precautionary principle according to which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;
- XI. To replace the current system of *notice* in the context of *exploration and mining* with one which requires consultation and permission;
- XII. To protect watersheds from the deleterious effects of uranium extraction and processing;
- XIII. To require a municipality's approval prior to the reopening of land by the Minister at request of the landowner; and
- XIV. To prohibit any economic activity that would be incompatible with the character of UNESCO designated sites.

## **Background**

BMA encourages setting the highest standards possible for mining practices and accountability, a goal that recognizes both the value of other land-uses and the need for sustainability. BMA believes Ontario's legislation must promote mining practices that respect property owners, native treaty rights and land claims, the environment, and regional land-use decisions made by local bodies such as municipalities and conservation authorities. The current submission outlines amendments to the Provincial Policy Statement 2005 (PPS) recommended by the BMA.

In light of the socio-economic implications for a community created by the potential that a mine may be developed, it is imperative to reconsider the role municipalities play in the decision-making process leading to the operation of a mine. Under the current legal framework, municipal interests are subsidiary to those of the natural resources industry. However, mining should not receive automatic priority over all other economic activities, which municipalities may wish to pursue. Mining projects last relatively shortly, while the potential of a mining project may deter other economic investments in a community, particularly communities that depend upon recreational, resort and eco-tourism as major economic activities. Investors will not want to locate a resort or recreational property near a mine operation, even if the mine may only be in operation for 10 years (the typical life of a mine).

Recreation, tourism, hunting and agriculture suffer not only during the life of the mine and long after its closure, but can be materially adversely affected by the potential for a mine created by the current priority the PPS gives to mining throughout Ontario. This is particularly the case in more intensively recreationally oriented communities in the southern part of Ontario, particularly south-eastern Ontario. The Mining Act has now recognized this through its recent amendments removing SRO land in southern Ontario from staking. In the

north of the province, community based land use plans are recognized as appropriate tools for governing of mining activities. BMA recommends that the PPS amendments relate specifically to preserving the ability of local authorities, such as the Municipality of South Frontenac, to promote the main economic drivers in their community. In Frontenac County, tourism, recreational real estate, and related suppliers and service businesses are more important than mining development. In addition, in Frontenac County there are two overlapping UNESCO designated sites: the Frontenac Arch Biosphere Reserve and the Heritage Rideau Canal. Critical to this submission is the need to reconsider and reverse the current priority which the PPS gives to mining and exploration activities. BMA believes that it is essential to ensure that present and future land-use for tourism and recreational purposes is not adversely affected by potential mining activities and that prospecting, exploration and mining activities only be permitted where it is established that the activity will not adversely affect other economic activities being promoted by the community or environmental and heritage features that have been identified as to be preserved.

Amendments to the Mining Act in 2009 reflect that other interests in addition to mining should be considered. A primary example of amendments respecting other interests is the withdrawal from staking, sale or lease of all privately owned land in southern Ontario. Other Crown lands in southern Ontario that are not privately owned and open to staking would be subject to legislation under Public Lands Act prior to a change in the land use and would not affect the PPS and its direction to municipalities. Furthermore, in the *Mining Act*, once in force, s 30(g) will prohibit staking a mining claim on land in the Far North if the community has a land use plan inconsistent with mining. Similarly, the PPS should be amended so that in Southern Ontario, if mining exploration is inconsistent with the land use plan of a municipality, it shall be prohibited. The “land use plan” approach would reconcile potential conflicts between the involved stakeholders and would promote the establishment of an ambience within the mining context where parties share equivalent bargaining power with the municipality. The PPS needs to parallel the legislative trend of accommodating concerns of the communities affected by mining projects.

In order not to be misunderstood and misapplied, the PPS should be coherent, unambiguous and precise. The BMA submits that the PPS should employ a stronger language in giving the municipality the right to choose its economic activities. In s.1.2.1 of the PPS as it is formulated, discretion is granted with respect to the consultation and approval of municipalities with planning matters. We propose that in order for s. 1.2.1 to serve its purpose, *shall* replaces *should*. The change would ensure that municipalities will be consulted and approval will be sought in planning matters within their boundaries. Furthermore, the current s. 2.4.2.2 of the PPS does not specifically indicate who has the onus to show that either a) the resource use is not feasible, b) that the non-mining activity serves a greater long term public interest, or c) issues of public health, public safety and environmental impact are addressed. Since, the PPS needs to clearly stipulate the responsibilities of the stakeholders, BMA proposes that s 2.4.2.2 be amended to reflect the fact that the mining company, as the party that seeks to exploit the resource base, should demonstrate that mining is feasible and is in public interest or that mining is within the local authority’s determination of permitted activities and that issues of impact on health, safety and the environment have been addressed to the satisfaction of the municipality and other independent authorities.

BMA’s position on the PPS review process is to maintain the five year review timeline. This reflects the trend towards integration of the affected parties in the decision-making process and an opportunity of the stakeholders to provide their input to the provincial

government. In that regard, the extension of the current five-year review period would be a step backwards. The policy review process constitutes the chief occasion for the various stakeholders to be consulted. Extending the review period will decelerate the legislation's momentum in integrating the public into the consultation process. Extending the period between consultations deprives the provincial government from the opportunity to react rapidly to any challenges or issues arising from the interaction between local communities and mining proponents. Consultations will not be as meaningful if the review period is extended. The reality is that a five year review period means the PPS itself is only amended every eight years or so, due to the needed consultation. Any longer would be too long for something as dynamic as the PPS. Review should, therefore, continue to occur every five years.

In summary, it cannot be assumed that mining is the ultimate economic activity and municipalities should have the ability to choose economic directions within their boundaries. If a mining project commences in Southern Ontario, at the very least, it should be because the municipality has planned, consulted with constituents and decided to permit it. The PPS using a less ambiguous and more precise language will ensure that municipalities are consulted and mining proponents are acquainted with their responsibilities. The current five-year review period should remain in place in order to provide timely consultations. An overall trend towards integration of the public in the decision-making process leading to mining operations is commendable, for it reflects the values and the societal understanding of justice and civil participation, and it should continue.