



Anishinabek

**ANISHINABEK
MINERALS AND MINING**

Community Engagement Sessions
Report 2011

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Executive Summary

The Union of Ontario Indians (UOI) and the Ministry of Northern Development, Mines and Forestry (MNDMF) held regional consultations in December 2010 and January 2011 to obtain the input of the Anishinabek Nation to the Regulations that were being drafted to implement the Modernized Mining Act.

There were six major changes in the Mining Act that would respect Aboriginal and Treaty Rights. These would provide:

- notification of activities on First Nation lands;
- protection of culturally significant sites;
- a prospectors awareness program on First Nations culture;
- encouraged partnerships between industry and First Nations;
- a graduated system for granting plans and permits; and
- a dispute resolution process to resolve consultation related issues.

The Anishinabek Nation supported some of these changes and expressed its concerns that many of these amendments did not go far enough in recognizing their jurisdiction over lands and resources, did not adequately address the Crown's duty to consult and accommodate with First Nations, did not permit First Nations to reject mining developments, did not provide adequate funding to build capacity in First Nations communities and were incomplete when defining and protecting Aboriginal cultural sites. "We need Capacity in terms of education AND funding to understand and reply to proposals and we request that both industry and MNDMF provide this funding. The timelines are too fast."

One of the major concerns of the participants in the regional sessions dealt with the importance of obtaining good jobs for their membership. They reported many past instances of "being told that jobs will be available as a form of accommodation, and later finding out that the caliber or duration of postings were sub par."

Members stated "It is our right to have fair and adequate Consultation and Accommodation (C&A). We want to be included in the decision process from the get go."

Regional session participants discussed the Withdrawal of Culturally Significant Sites, as there was much confusion around this important topic. Members were concerned about the identification process. They said that a clearer process for site identification is required.

First Nation participants pointed out that the verification criteria that have already been presented are inadequate because the ultimate decision is out of First Nation control. They emphasized that "Verification is troublesome because it reserves the Minister the right to kibosh the First Nation and can give the go ahead to mine an area even if we identified it as significant."

These engagement sessions have allowed the voices of the Anishinabek Nation to reach the Government of Ontario indicating they should be equal partners in all initiatives and decision-making processes from the preliminary stages. Oftentimes, the decisions that the Governments make affect the Anishinabek Nation's citizens inherent Aboriginal and Treaty rights and ways of life.

Introduction

The Anishinabek Nation has taken a leadership position on the stewardship of natural resources, and is dedicated to providing support to their member First Nation communities on Minerals & Mines issues. The Ministry of Northern Development, Mines and Forestry (MNDMF) plays a significant role in ensuring that Ontario's natural resources support the needs of the residents of Ontario and provide a healthy environment now and for future generations.

The Anishinabek Nation held extensive leadership engagement sessions with its membership in the fall and winter of 2008 and 2009 and developed "Below the Surface, Anishinabek Mining Strategy" in January 2009 to provide our input into the modern-

ization of the Ontario Mining Act. The Mining Act received Royal Assent on October 28, 2009. The MNDMF has, to date, only adopted and incorporated some of our recommendations into the new Ontario Mining Act and the UOI will continue to pursue our goals in mining.

Our Nation currently faces the immediate task of engaging with MNDMF to provide input into the Mining Act Regulations which will be used to implement the Mining Act and will drive the development of operational policies and day to day practice.

The Anishinabek community engagement process in the fall and winter of 2010-11 identified the issues of increased capacity, the need for community consultation, accommodation with and informed consent at each stage of the mining process. This report will summarize the Anishinabek Minerals and Mining sessions on the preparation of mining regulations.

Background

The Anishinabek Nation became more involved with the mining sector in Ontario in 2007 when the Director of Lands and Resources of the Union of Ontario Indians (UOI), met with officials of the Ministry of Northern Development, Mines and Forestry (MNDMF) to discuss key issues such as economic opportunities, consultation, accommodation with, education, and awareness. MNDMF indicated that it was committed to meeting its constitutional obligations by recognizing existing treaty and Aboriginal rights and the duty to consult & accommodate with First Nations on activities that affect them.

The UOI expressed a desire to strengthen collaboration, educate and heighten the level of awareness of the minerals and mining process in its members, especially among its youth, and to promote the importance of the mining sector to First Nation communities.

In 2008 the Anishinabek Nation decided to conduct its own consultations on the proposed Mining Act after the province failed to consult First Nations. UOI consulted many communities and prepared a report entitled "Below the Surface, Anishinabek Mining Strategy" and presented it to the government of Ontario in January 2009. The Nation's 30 recommendations can be categorized into ten broad areas:

- 1) Recognition of First Nation Jurisdiction;
- 2) Duty to Consult & Accommodate With First Nations;
- 3) Obtaining First Nations' Consent;
- 4) Recognizing First Nations' Priority Considerations for Mining Development;
- 5) Utilizing First Nations Criteria for Review and Assessment of Mining Applications;
- 6) Recognizing First Nations Operating Requirements;
- 7) Building Capacity in First Nations;
- 8) Recognizing First Nations Monitoring & Review Criteria;
- 9) Maintaining a Dispute Resolution Mechanism; and
- 10) Implementing a Moratorium.

The Anishinabek Nation's **recognition of First Nation jurisdiction** refers to making a direct reference in the Mining Act to Aboriginal & Treaty Rights and including Section 35(1) of Canadian Constitution in the First Nation Values section of Mining Act. Recognition of jurisdiction would also include stating that the purpose of the Act should reflect the Crown's duty in dealing with First Nations to ensure that any prospecting, exploration, and mining activity is conducted in a manner that protects their inherent rights.

The **duty to consult and accommodate with** First Nations was defined by the Anishinabek member nations as full and bona fide consultation which means: acknowledged and informed notification; a jointly developed community engagement strategy; funding and resources to adequately conduct and ensure participation and; sufficient time to conduct a consultation process.

The duty to consult and accommodate with also included the request for a Full and Comprehensive Consultation through a specific First Nations process after the first reading of the Mining Act as well as the request for an integrated Consultation Process with appropriate consultation with First Nations occurring at every stage of the mining sequence and the level of consultation needing to correspond to the level of impact on First Nations. The Anishinabek Nation also requested that the Free Entry System needed to be addressed by incorporating a two stage staking approach at the beginning of the mining sequence. It would include both map staking and a traditional staking system which would mean that the company/pro prospector could use map staking to secure the area and then have time to approach the First Nation to discuss their plans to enter the traditional territory. Member Nations also recommended that the Mining Act recognize First Nations Consultation and Resource laws related to mining, including requirements for permits, reporting, development agreements and minimum standards for consultation. Finally, recommendations included the need for government to recognize and harmonize with First Nations traditional laws that are applicable to activity and to those undertaking activity on First Nations traditional territories.

The third category of the Anishinabek Nation Mining Strategy recommendations dealt with **the need to obtain informed consent** from First Nations affected by mining developments. First Nations reserved the right to reject development or other processes within the mining sequence that may have an adverse impact on First Nations or their territory. They recommended that consultation for early exploration shall be based on an improved process of notification and consent of First Nations. They may consent to the claim, reject, or reserve the right to require a further, jointly-developed consultation process or preliminary consultation agreement before the claim can proceed. They further requested that no permits should be issued without the written agreements from the affected First Nation.

The fourth category of Anishinabek Nation recommendations addressed their **priority environmental considerations for mining development as follows:**

- Environmental protection of water;
- First Nations involvement in environmental assessment;
- Need for environmental stewardship;
- Land to be excluded from mining activity;
- Recognition of First Nations interests in land; and the
- Need for an interim process to deal with culturally significant sites.

Environmental Protection of Water, the lifeblood of Mother Earth, refers to the need for considering and accounting for the following when evaluating mining proposals: making adequate provision to protect all bodies of water potentially affected by mining, especially exploration and mining under lakes; and protecting First Nation rights in lake beds and off shore interests from future claims as these rights have never been ceded.

First Nation Involvement in Environmental Assessment refers to the need for First Nations to be involved in all aspects of the environmental process from the approval of a mine, ongoing monitoring and mine closure planning and operations.

Environmental Stewardship addresses the First Nations request that their role as stewards of the land be recognized & supported.

The Anishinabek Nation requested that land to be excluded from Mining Activity should include lake beds and off-shore interests and be added to site withdrawals as these were never ceded. The Nation recommended that the Mining Act support the withdrawal of culturally significant sites until comprehensive land use plans are completed by First Nations. Moreover, member nations requested that the Mining Act should expand the area of Culturally Significant Sites & Site Withdrawals to include a larger land area and buffer zone within 10 kilometers from a culturally significant site to protect continued land use. First Nations also recommended that the definition of culturally significant sites needs to be expanded to include, but not be limited to: cultural sites, gathering sites, sites containing artifacts, ceremonial sites, burial sites, trap lines, hunting, fishing sites, and places to gather medicine.

Furthermore, members of the Anishinabek Nation requested that additions to reserve, potential land claim settlement areas, areas under dispute, and potential crown land that may be used for community First Nation expansion must be subject to site withdrawal.

Moreover, the Anishinabek Nation requested the development of an interim process to deal with the uncertainty of mineral rights pertaining to site withdrawals and culturally significant sites.

The fifth category of Anishinabek Nation's recommendations dealt with including First Nations **principles and value statements** in the preamble of the Act and as part of the criteria for the Review and Assessment of mining applications.

The sixth category of Anishinabek Nation mining recommendations dealt with First Nation **operating requirements** for mining on their territories. Member nations recommended the need for **partnership/co-management** arrangements, **impact benefit agreements** and **mandatory training** for their membership. First Nations defined Partnership/Co-management as the Ministry entering into partnership/ co-management agreements where First Nation skills would be used for monitoring and compliance, First Nation experts would be called upon to work with provincial staff to provide environmental assessments and impact statements on mining, and Ontario involving First Nations in meaningful consultation and participation in discussions when amending Mining Act.

Anishinabek member nations recommended that mining companies must negotiate Impact Benefit Agreements (IBAs) as a means of accommodating First Nation interests. They stated that IBAs should be mandatory and should include revenue sharing, jobs, training, procurement and various protocols as necessary. They requested that the Minister should require IBAs as a condition for issuing permits, and for the advanced exploration and development phases of the mining sequence.

First Nations further recommended that prospectors and others in the mining industry undertake a mandatory course in understanding and respecting their communities, cultures, practices, beliefs and Aboriginal and Treaty rights as a condition of obtaining permits, licenses and leases. First Nations requested that they would play a lead role in developing and delivering the course and an accompanying resource guide.

The seventh set of recommendations dealt with **building capacity in First Nation communities**. They recommended that government funding be provided for building core capacity, for improving their staff capacity for the notification process for mining applications, for improving the First Nation inventory of their resources, for conducting GIS, mapping and land use planning initiatives, and for identifying the First Nation ITK intellectual property on their lands.

Anishinabek Nation members requested that MNDMF provide Core Capacity funding to First Nations to develop human resources and knowledge transfer and to ensure meaningful and sustained participation in mining activity based on community needs.

First Nation member communities further requested that the notification process be improved by ensuring both the province, prospectors and mining companies know who to notify and to ensure that applications are understood through capacity support and developing a GIS system for them. The provision of capacity support will improve the ability of the First Nations to respond appropriately and in a timely manner to that notification.

Anishinabek Nation members also recommended that government fund capacity in member communities to enable them to undertake a comprehensive inventory to identify current land use and culturally significant sites.

First Nation members recommended that Ontario provide capacity support in the form of funding, human resources, and knowledge transfer to enable them to develop and maintain a GIS program to store and manage map-based data for the following:

- preparing and managing an inventory of First Nation lands and traditional territories for resource development;
- preparing and managing an inventory of withdrawal sites and culturally significant sites;
- preparing and managing an inventory of Indigenous Traditional Knowledge (ITK) values & mapping;
- preparing and managing comprehensive community & regional land use planning; and
- negotiating agreements such as Memorandums of Understandings (MOUs), Interim Measures Agreements (IMAs), Impact Benefit Agreements, and Resource Revenue Sharing.

Anishinabek First Nation members also recommended that Ontario expand land use planning initiatives to the near north & central Ontario with a focus on supporting land use planning by First Nations on traditional territory. They further requested that MNDMF approve no advanced exploration or mine openings without a completed First Nations land use plan.

The members also requested that intellectual property which is Information gathered for ITK mapping and ascertaining an area's significance to First Nations would be the sole property of the First Nation who gathered it.

The eighth set of recommendations dealt with **monitoring and review**. The Anishinabek Nation requested that the Act should require a set of indicators to measure the effectiveness of Sustainability and Stewardship and recommended the use of a test that would determine whether the proposed mine contributes to First Nations goals and aspirations.

They suggested the use of indicators such as an increase in post secondary enrollment or a decrease in welfare rates. Anishinabek members also requested a mandatory review of the Act and Regulations every three years. They proposed that Ontario in partnership with First Nations would undertake the review and if necessary make amendments to the Act and its regulations.

The ninth set of UOI recommendations requested the inclusion of a Dispute Resolution Tribunal (DRT) within the Act. They recommended that the DRT shall include equal representation through appointments by the Minister and First Nations. They requested that in cases where there is lack of agreement on First Nations consultation and accommodation, significant concerns identified by First Nations, or a work plan or permit application that is under dispute as a result of First Nations concern, the parties to the dispute be referred to a new independent Dispute Resolution (DT) body and the process be established by Minister and First Nations. They pointed out that the DT process may use, when appropriate, First Nation DT methodologies, including mediation by Elders, and traditional circles.

The Final Anishinabek Nation mining recommendation requested Ontario to **implement a moratorium prior to the new Mining Act coming into force**. The purpose will be to ensure that unintended consequences such as mass staking do not occur that undermine the purposes of the new Act.

The **Serpent River First Nation held a special session dealing with uranium mining** and presented a report to include its community responses into this process. Serpent River responses that deal with uranium recommendations in general are included in this report.

Uranium Mining began in Elliot Lake in 1955, upstream from the Serpent River First Nation and the mining continued until the early 1990's. During this time, large uranium mining and milling was not originally designed with the current acceptable standards like today. From mismanaged planning, practices and lack of monitoring, the Serpent River First Nation has and still experiences severe detrimental and unmitigated environmental, health, social, cultural, and economic impacts from uranium mining, milling and tailing disposal.

The Serpent River Watershed still holds several million tons of radioactive uranium tailings, and neither the federal nor the provincial governments can confirm the locations and quantities of these uranium tailings. This has raised an enormous concern within the leadership because these radioactive tailings are still affecting the traditional livelihoods of our community members and the ecosystems that rely on the waterways to survive.

Uranium as a mineral is considered under a multi-jurisdictional framework that belongs both to Provincial and Federal Governments, and in some cases international governments. It does not make sense for the Ontario Government to permit exploration in an area that has historically been mined and has a social stigma and legacy of environmental disaster. The Ontario Mining Act needs to take into account that with respect to Uranium, where the Federal Crown holds jurisdiction on both existing licensed tailings management areas and proposed production, there is a more conclusive need for triggers to allow or assess proposed exploration. Radioactive waste may be present in ore bodies in Ontario, so any permits being issued should include an environmental assessment of any potential radioactive waste that may come about as a result of exploration and / or other activities conducted by a mining company.

The old Ontario Mining Act, like most provincial legislation did not deal with Aboriginal and Treaty rights. The Acts in Ontario contained a standard non-derogation clause. This does not go far enough as the legal and constitutional protection given to Aboriginal, and Treaty rights calls for a higher level of attention. Both the province and crown have a shared duty to ensure there is a parallel inter-jurisdictional dialogue to ensure that the amendments to the Mining Act are consistent with current court decisions and policy changes at the provincial and federal levels. Policy changes must ensure and guarantee that Aboriginal and Treaty rights will not be infringed, will minimize infringement where possible and ensure compensation is afforded when rights are infringed.

Ontario and Canada both have a broader duty to the First Nation communities that is more encompassing than those things addressed under the Mining Act. Dialogue or consultation on amendments to the Ontario Mining Act should not be considered the entirety of First Nation consultation. Environmental Bill Registry (EBR) postings are not meaningful consultation and accommodation as timeframes are unrealistic.

Ongoing Initiatives

The Union of Ontario Indians remains engaged with MNDMF and will continue to advocate for the adoption of the remaining recommendations in legislation and/or regulations so that the mining industry in Ontario and the MNDMF are aware of and can address the Anishinabek member First Nations concerns.

The Ministry (MNDMF) and the Union of Ontario Indians held community consultations in December 2010 and January 2011 in order to obtain input from members into the drafting of the regulations to implement the new Ontario Mining Act. Community consultations were held in Toronto, Whitefish Lake and Thunder Bay in an effort to obtain the views of the Anishinabek membership in each of the four regions of the territory.

Our Peoples' Key Statements

The Anishinabek Nation leadership and its members responded to the MNDMF presentation on the Modernization of the Mining Act and its Regulations during the regional sessions that were held. Their views are presented in the order of priority of time taken for and interest in their responses.

Lack of Capacity

Anishinabek members emphasized that the lack of capacity at all levels was the primary issue facing them. They said that "the lack of capacity limits the equal playing field for their members and excludes them from real, meaningful participation in the mining industry." They stated that their general lack of capacity in education and training levels limits their general understanding of the mining process, and their ability to understand claims and to respond to the mining proposals. Meanwhile, industry has constant education that is unparalleled in our communities and this makes partnerships unequal and difficult. "We need Capacity in terms of education AND funding to understand and reply to proposals and we request that both industry and MNDMF provide this funding. The timelines are too fast."

They stated that many First Nation communities face a real challenge in the transition period caused by high leadership turnover and are slow in getting up to speed on understanding and being able to respond to mining proposals. They emphasized that they especially "lacked the capacity to understand closure plans" which are very technical and very complicated and requested financial help to address this lack of capacity.

Regional workshop participants also pointed out that their lack of capacity in education and experience prevented them from understanding resource revenue sharing in general from past and present mining endeavors and stressed that their capacity needs must be addressed.

Request for Consultation and Accommodation With

"It is our right to have fair and adequate Consultation and Accommodation (C&A). We want to be included in the decision process from the get go."

Participants recognized that there were various levels of consultation and accommodation and that the process will vary on a case by case basis. However, they were worried that Ministry is shifting the consultation process onto industry. They stressed that Ontario has a responsibility to incorporate First Nations participation before giving away reserve mineral rights to private industry. They emphasized that no one is listening to what First Nations have reserved as their lands. They pointed out that the Crown has inherited the fiduciary responsibility to the subsurface of their lands. They stated that "the consultation process is recognized in the courts, so consultation policies in the Mining Act need to be in line with Supreme Court decisions in order to have some harmonization."

Participants stated that the Ring of Fire has potential for meaningful consultation and accommodation and requested a clear and open process in mining. They asked "What does minimal consultation look like? How will decisions be made? Who trumps who? We need more than one representative from each community to qualify for consultation, you can't have one voice representing everyone."

One of the major concerns of the participants in the regional sessions dealt with the importance of obtaining good jobs for their membership. They reported many past instances of "being told that jobs will be available as a form of accommodation, and later finding out that the caliber or duration of postings were sub par."

Participants made specific comments on the need for consultation at various stages of the mining process, especially for closure plans, culturally significant sites and the permit process. They stated "We need to be consulted from the beginning on aspects such as closure plans and significant sites. Ontario should make proponents realize that they have an obligation to the First Nation Signatories in the permit process."

Culturally Significant Sites

Regional session participants discussed the Withdrawal of Culturally Significant sites, as there was much confusion around this important topic. Members were concerned about the identification process. They said that a clearer process for site identification is required.

"What is needed within the process can be confusing; with differences between what is part of the site (i.e. geography) and what can be taken away (i.e. Medicines)."

"Even if a First Nation group identifies the site as significant, there are no numbers for how far or deep the site is respected. More emphasis is needed on respecting the surface, not the substrata... we need more structure and hard and fast numbers."

They stated that there is a pilot project right now up North that will be First Nation controlled, with a First Nation developing process, and that they were hoping to use this as a mirror process for the Act. The Minister will need to sign off on some parts, and it is hoped that because the process is First Nation driven, that the sign off will be in line with what the communities want.

First Nation participants pointed out that the verification criteria that have already been given are inadequate because the ultimate decision is out of First Nation control. They emphasized that "Verification is troublesome because it reserves the Minister the right to kibosh the First Nation and can give the go ahead to mine an area even if we identified it as significant."

Anishinabek Traditional Knowledge

Participants also expressed serious concerns over confidentiality and the protection of Anishinabek Traditional Knowledge (ATK). They emphasized that ATK was important to the First Nation culture and tradition and that an element of trust with government was needed.

They stressed that it is important to guard ATK confidentiality during the mining operations and planning process. They questioned if government and mining logistics could guarantee complete confidentiality, and if not, this presents a problem for First Nations. They posed questions such as "Who owns it? Who do we share it with? Does receiving funding mean government has ownership? Will there be consistency in values mapping?"

On Line Staking

Regional Session participants raised many questions and some concerns with the introduction of Online Staking and requested notification and additional clarification of the process. They questioned "How it works? Will it be the Free Entry System? Are people staking all our land? Are these general claims? "

They emphasized that they had a debatable comfort level with this process and that they "Need to know when it's taking place."

Moreover, participants recommended that a First Nation information course for exploration teams should be required. They also stressed that "auditing in the exploration stage should be happening" and recommended that Ontario address this issue.

Closure Plans

The Ministry explained the proposed Closure Plan process to First Nations participants and provided assurances on land disturbance and remediation after the mine has run its course. Participants requested clarification on the consultation and accommodation process for closure plans and stressed the need for “guarantees to reflect the previous quality of life that First Nations communities enjoyed.” They recommended that “assurances need to be many and well incorporated within the plans.”

Participants recommended that Ontario provide more information on how the closure plan process would work. For example, “Where does consultation fit in? How can changes be made to closure plans?”

First Nation members were adamant that the “proposed suggestion of 20 days within the process is unacceptable and not enough time. There needs to be a balance to ensure work can get done but adequate time for First Nations input.”

Anishinabek Priorities

To conclude the regional sessions, the Union of Ontario Indians provided the opportunity for discussions to allow participants the chance to speak on issues without government being present. Their comments fell into several basic categories.

Recognition of First Nation Jurisdiction

Participants emphasized that Ontario has to recognize First Nation jurisdiction over lands and resources as provided for in Section 35 of the Canadian Constitution and the rulings of the Supreme Court. They stated that “First Nations need some control.” They further emphasized that “their (Ontario’s) exploration permits do not issue our rights.”

Some participants stated that “We should be proactive and speak with a united voice” and get Ontario “to put some teeth behind the Mining Act.”

Other participants requested a further explanation of “What rights do the Métis have?”

Commitment to Consultation and Accommodation With

Recent Supreme Court rulings stressed that First Nations have rights and interests over land and resources and that consultation and accommodation with them is required. Participants of regional sessions, however, questioned the sincerity of Ontario’s commitment in the Mining Act. Some participants made comments such as “We need Community forums to help identify resources. Without money, our input is for show; they have a plan and are going to go ahead with it, regardless of what we want. How do we get money?”

Operations

Participants stated that they wanted more information, clarification and regulation over some sections of the mining process.

Some participants stated that MNDMF “presentations lacked focus, and they had little idea of what it was supposed to look like”. Other participants requested “more explanation on the “Free Entry “system.”

Many participants had “issues with amount of time to submit comments”.

Others stressed that accountability should be strengthened by having “auditing taking place all through the process.”

Some participants requested that confidentiality regarding ATK (for Anishinabek Traditional Knowledge) be ensured. They said “We sign confidentiality with government, why can’t they do the same with us?”

Next Steps

Participants of the Regional Sessions recommended several Next Steps. These are listed below by frequency of comments and by category.

Capacity Building

Participants wanted to ensure that mining developments created capacity in the communities and opportunities for their youth, especially in the nature of job creation. They said "Government should be working with kids from communities who show potential to work in logistics."

Recognizing Jurisdiction

Respondents agreed that more work was required on the withdrawal and restriction of Culturally Significant sites. They recommended "Work on the Withdrawal piece to ensure our rights are maintained."

Other participants recommended "a shared vision between all communities." They also requested a "follow up initiative that is linked to ministries responsible for Water."

Furthermore, participants agreed that the UOI - MNDMF Technical Table "will provide focus and maintain our interests."

Anishinabek participants recommended that prospectors and others conducting exploration "take a prospector training course similar to the one offered by Pic River."

Consultation

Participants requested a more informed consultation and a clarification of process.

They requested "more meetings" and a well defined "process on information collecting and online staking." They also requested that proponents and government ensure that "Respond by" dates are provided when addressing or listing concerns to ensure First Nation response.

Conclusion

The citizens of the Anishinabek Nation have inherent Aboriginal and Treaty rights with respect to lands and resources. "We never gave up those rights to what lay below the surface of those lands." The Anishinabek Nation has taken a leadership position with respect to all Mineral and Mining resources.

The purpose of the Anishinabek – UOI Mineral and Mining Sessions was to provide opportunities for Anishinabek First Nation leadership and citizens to gather to provide input into the proposed regulations to the Modernized Mining Act which are scheduled to come into effect in 2012.

This participation from the members of the Anishinabek Nation will help the Government of Ontario to understand the importance of partnerships and collaboration. Working together in education, awareness, policy development, information management, implementation, monitoring, conservation, research, and compliance will help ensure that Mother Earth will remain healthy and sustainable for all Anishinabek Nation citizens, including the future seven generations.

These engagement sessions have allowed the voices of the Anishinabek Nation to reach the Government of Ontario indicating they should be equal partners in all initiatives and decision-making processes from the preliminary stages. Oftentimes, the decisions that the Governments make affects the Anishinabek Nation citizens inherent Aboriginal and Treaty rights and ways of life.

Presentation of the Ministry of Northern Development, Mines and Forestry

MNDMF officials provided an overview of the impacts of the proposed changes to the Ontario Mining Act while highlighting both the environmental challenges and economic gains the sector provides. The purpose of these sessions was to gain First Nation community input on the regulations that would start making these changes.

The presentation demonstrated how these proposed changes would respect Aboriginal and Treaty rights by providing:

- Notification of activities on First Nation lands;
- Protection of culturally significant sites;
- A prospectors awareness program on First Nation’s culture;
- Encouraged partnerships between industry and First Nations;
- A graduated system for granting plans and permits; and
- A dispute resolution process to resolve consultation related issues.

MNDMF stated that the Mining Act will be proclaimed in a phased in approach lasting 3 to 5 years. Proclamation will be dependent on relevant details, implementation and transitional requirements. The figure below is a schematic of this phased approach and the activities involved at each stage.

Phase 1 (Within 1 Year) Minimum business process requirements	Phase 2 (2-3 years) Significant business process requirements	Phase 3 (3-5 years) I&IT delivery model and solutions
<ul style="list-style-type: none"> • Paper staking in S. Ont. • Criteria to withdraw Crown mineral rights under privately held surface rights in N. Ont; • Criteria for protection of sites of Aboriginal cultural significance • Ground proofing for map staking. 	<ul style="list-style-type: none"> • Exploration plans and permits; • Prospector’s awareness; • Assessment work; • FN & M capacity and stewardship; • Dispute resolution. 	<ul style="list-style-type: none"> • Online map staking; • Mining Act administration

Figure 1: Phased Approach to Proclamation

At each session, MNDMF handed out consultation workbooks that were developed to facilitate input on the modernization of the mining act. The following were the primary focus areas of the phased approach:

1. MNDMF will introduce a **Prospector’s Awareness Program** that would be an educational tool for proponents and would highlight Aboriginal culture and considerations, consultation requirements and would minimize the effects on the environment from mining activities. MNDMF is looking for feedback on an appropriate delivery model for the program and other relevant content.
2. MNDMF will introduce **online map staking**, which will be new to Ontario but is already in place in other provinces. MNDMF anticipates that this will take place over the next 3-5 years and Anishinabek input is required on how to create a competitive process for acquiring claims while maintaining a level “playing field”.
3. MNDMF will introduce **Exploration Plans and Permits** as part of the graduated mining system in order to increase the consideration of Aboriginal and Treaty rights, environmental concerns and the interests of private surface rights holders. The provisions and conditions for granting these permits as well as the reviewing and processing structure for applications still have to be developed.
4. MNDMF will change the **Assessment Process** by allowing the costs associated with Aboriginal consultation to qualify as an assessment credit. Revisions will be made to the assessment requirements and a “payment in lieu” [of assessment work performed] will be introduced as an option. Issues for consideration and input include assessment of First Nation Consultation for work credits; and ensuring no loss of mineral tenure by selectively using the “payments in lieu option”.
5. MNDMF will address First Nation concerns about **Culturally Significant Sites** in the Mining Act by providing an opportunity for the withdrawal of mining activities from these sites. MNDMF will also introduce conditions to restrict surface access on parts of existing mining claims where sites of aboriginal significance has been identified. The ministry emphasized that it needs to understand how to identify well defined sites of First Nation Significance.

6. MNDMF reported that **input from Consultations with First Nations** will be incorporated into the mining legislation and the regulations. MNDMF is still deciding on how input from consultations will be addressed during the implementation of the act. Further identification of the roles of First Nations will be necessary.
7. MNDMF requested input from First Nations on an effective model for a **Dispute Resolution** process that is clear, effective and efficient.
8. The new Mining Act will respect Private Surface Rights in southern Ontario. However land owners In Northern Ontario will be required to apply to have the **Crown Mineral rights withdrawn from staking**. First Nations can provide input on considerations for withdrawing mineral rights and the process for reopening private lands for staking.

MNDMF stated that the Mining Act can foster change and build better relationships between First Nations, Government and Industry by providing ways to encourage meaningful input and positive change. MNDMF has been talking to First Nations through meetings with tribal councils, technical tables, Elders forums and UOI community engagement sessions and wishes to remain engaged till regulations are finalized.

Plans and Permits

Prior to the modernization of the Mining Act, there was no requirement for industry to notify or obtain permission from MNDMF to begin early exploration activities. It was only once the process had begun, and would continue on that notification had to be given to anyone, including MNDMF. Many First Nations requested that they be informed of what was happening on their land. The new Mining Act will require explorationists to either submit a plan or apply for a permit to begin even early exploration activities. MNDMF stated that it will classify exploration activities according to the potential impact of the proposed activity on the land. MNDMF emphasized that it will establish rules and criteria on how activities will be conducted and what rehabilitation will be required.

Key considerations for submitting plans and granting permits will include:

- Recognition and affirmation of Aboriginal and Treaty rights;
- Maintain industry health and viability by establishing clear rules and clarity of timelines;
- Consideration of surface rights and other stakeholders' interest;
- Minimizing the environmental impact of mineral exploration activities;
- Minimizing the impact of mineral exploration activities on public health and safety; and
- Consultation should reflect the potential impact of early exploration activities on the land.

The new Mining Act is based upon a graduated mining sequence. This sequence allows for checks and balances along the way, while maintaining baseline themes of education, capacity building, awareness, best practices and where applicable, values mapping. Table 1 summarizes this proposed sequence and highlights the activities involved at each stage of the process.

Pre-Staking	Staking	Plans	Permits	Closure Plan
Minister's consent to stake (Section 29)	First Nations notification tool	Notification	Consultation	Enhanced consultation
Lands not open (Section 30)	Claimholder letter	Activities	Activities	Dispute resolution
Withdrawals (Section 35)	SRO notification	Activity rules	Activity rules	Restrictions (Section 51)
	Southern Ontario paper staking (near future)	Other federal or provincial regulatory requirements or restrictions (Section 51)	Terms and conditions	Assessment credit for consultation

Pre-Staking	Staking	Plans	Permits	Closure Plan
	Map selection (near future)	MNDMF Facilitation of questions	Dispute resolution	Other federal or provincial regulatory requirements
		Compliance and enforcement	Other federal or provincial regulatory requirements or restrictions (Section 51)	Compliance and enforcement
			Facilitation of consultation	
			Assessment credit for consultation	
			Compliance and enforcement	

Table 1: Graduated mining sequence and activities

The above table will require discussion points centered on what types of activities would be considered in the Act’s regulations and what rules would govern said activities. Further clarification will also be given to terms such as “notification”, “term & scope” as well as “supporting tools”.

Exploration Plans

MNDMF defined an exploration plan as a document which allows a claim holder to carry out early exploration activities with a low potential impact on their staked land. The addition of this requirement for early exploration provides the opportunity for First Nations, government and other stakeholders to be notified and informed of all activities, and begins a streamlined process by introducing and applying standardized rules (prescribed requirements) to all activities regardless of impact or location. The duration of the plan should reflect not only the interests of local First Nation communities and other rights holders, but also the operational requirements of the industry.

Specifically, exploration plans will be required for low level activities on unpatented mining claims, license of occupation and mining leases. Low impact activities are those with minimal intrusion on the land base and generally employ hand held or non mechanized equipment. For example activities could include:

- Hand sampling;
- Ground geographical surveys;
- Geochemical surveys;
- Seismic survey with no use of explosives;
- Cutting gridlines or baselines; and
- Drilling if drill is less than 100kg

MNDMF stated that there are some activities that do not require a plan or permit. These types of activities include those that either have no impact or are regulated through another Ministry (ex. MNR or MOE) such as remote sensing, site access, camps and trails, road construction or dewatering pits and trenches to name a few.

MNDMF prescribed requirements dictate how the submission process will be carried out and what activities are included in the process. These requirements will be written directly into the regulation by way of submission of information, operating terms and conditions, reporting, and rehabilitation. While these requirements may differ between plans and permits, there will be

some general rules that will apply to both. It then becomes a question of what they will be. MNDMF presents a few points for consideration such as:

- Sensitive features
 - Looking for input on what these features may be, for example a suspected archaeological, environmental or burial site, and what actions, such as suspension of work, should be taken.
- Site condition
 - Keeping sites in a clean and tidy condition, seeking input for other factors
 - Not interfering with existing access.

PLANS	PERMITS
Prescribed General Rules applicable to all activities	
Rules specific to Planned Activities	Rules specific to Permit Activities
	Permit Specific Terms/Conditions if Necessary

Figure 2: Prescribed rules for plans and permits summary

The duration of a plan should reflect the interests of local Aboriginal communities, surface rights holders and other stakeholders as well as the operational requirements of the industry. Plans will be required for a short duration for specifically identified activities and for a longer duration for a range of activities.

MNDMF stated that it is considering using a paper based process for notification. The exploration plan should be in plain language and be submitted to the ministry. The Ministry or proponent can then provide it to affected First Nation communities at least 20 days (proposed) and post it on its website. First Nations may then address questions to MNDMF or the mining proponent. Early exploration mining activities may commence after a 20 day (proposed) notice period, subject to the standard requirements.

Section 21 addresses restrictions available to address sites of Aboriginal cultural significance and other values.

The shaded portions indicate areas of direct discussion and desired input.

Exploration Plan geared to non technical audience is submitted to MNDMF → Proponents and/or MNDMF provide plan to First Nation communities as identified and surface rights owners at least X number of days before the commencement of activities → plan summary posted on MNDMF website as information → communities may address questions to project proponent or MNDMF → activities may commence after X amount of days without further process and subjected to standard prescribed requirements.

Fig 3: Proposed notification process for plans and permits

Exploration Permits

A permit is an instrument, which can be granted to a proponent by MNDMF, that allows a claim holder to carry out early exploration activities with a potential for low to moderate impact and may have more of a presence on the land base than planned activities. These activities may require the use of heavy mechanized equipment and may require the use of explosives.

The new Mining Act (Section 78) will require exploration permits to allow:

- Proponents to consult First Nations on low to moderate impact activities
- Recommend First Nation consultation to be face-to-face;
- To mitigate any potential impacts by applying standard rules; and
- To mitigate any additional potential impacts, identified through the consultation process, by applying site specific rules.

Permits are required to carry out low to moderate impact exploration activities on their:

- Unpatented mining claim;
- Licence of occupation; or
- Mining lease.

Some allowable activities found on permits include:

- Mechanized drilling (drills >100 kg);
- Power stripping (<10,000 sq. meters or cubic meters/ <2,500 sq. meters or cubic meters within 100 meters of a water body);
- Seismic survey using explosives; and
- Test pitting and trenching (<1000 tonnes).



Figure 4: Examples of power stripping

Permits also include prescribed requirements which are rules that apply to the submission process and how activities will be carried out and what activities are included in the process. These requirements will be written directly into the Regulations. Regulations can include the submission of information requirements, operating terms and conditions, and reporting and rehabilitation requirements. MNDMF listed the following as prescribed requirements for considerations for inclusion on exploration permits:

1. **Drilling**
 - Sealing and capping drill holes;
 - Storage and handling of core samples for drill holes;
 - Volumes of overburden that may be moved/disturbed for drill rig set up;
 - Drill hole identification;
 - Uranium;

- Restrictions on handling drilling waste by-products;
- Removing of surface drill casings;
- Sealing by grout all drill holes under lakes, streams, muskeg, artesian conditions or seasonally inundated areas;
- Sealing drill holes with uranium content greater than a specified amount; and

2. Rehabilitation requirements

- Store all overburden and waste rock at a stable slope;
- Stock piling materials for future use or rehabilitation;
- Reduction of rock faces or sloping of pit walls greater than three meters in height;
- Restoration and contouring of the disturbed area using waste rock, stockpiled overburden and topsoil;
- Re-vegetation of restored and contoured areas; and
- Rehabilitation work be completed within a specific time frames after completion of the work

MNDMF recommends face-to-face consultation with First Nation communities in the exploration permit process. For both community consultations and a paper based (moving towards online delivery) application submission, they were seeking input on the following proposed process where the application process would take maximum of X days (MNDMF suggests 60) from submission of application to date of decision to issue or refuse permit (a minimum of 35 days is needed to address EBR posting requirements).

MNDMF to forward application in plain language to First Nation communities and SRO as identified, and post the proposal on the Environmental Registry ➡ Aboriginal communities/SRO requested to respond, in writing and copied to both MNDMF and the applicant proponent, **within X days (MNDMF suggested 30)** of receipt, with concerns they may have about the potential adverse affects of proposed activities on their aboriginal or treaty rights ➡ Mandatory 30 day Environmental Registry posting for all other stakeholder comments ➡ Prior to the expiry of the **X days (MNDMF suggested 30)**, if after 30 days a written response is not received from First Nations, proponents will contact **First Nations who received the application to answer questions** or provide additional information that may be requested, in order to facilitate communities/SROs preparing their written responses ➡ If after **X days (MNDMF suggested 30)** a written response is not received from one or more aboriginal communities/SRO or other stakeholders (ER), applicant proponents will contact MNDMF for further direction ➡ Once responses are received (or otherwise as directed by MNDMF), applicant proponents will submit a Consultation Report to the MNDMF, in a form to be directed by MNDMF, detailing the consultation process and their proposals to mitigate concerns raised, if any ➡ Applicant proponents' Consultation Reports, containing their mitigation strategies, must be received at least 10 days prior to the decision deadline ➡ Within **60 days** MNDMF will decide, upon consideration of all comments received, to issue or refuse a permit with the appropriate terms and conditions if required ➡ If permit is refused on grounds related to consultation, reasons for the decision will be provided to the applicant proponent.

Figure 5: Proposed process for permit submission. The shaded portions indicate areas of direct discussion and desired input.

The application process may be suspended at the request of the applicant proponent at any time to allow further time to consider mitigation strategies or for any reason the applicant chooses. The process may be recommenced at the request of the applicant and resumes at the point in the process that it was suspended. Applicant proponents may request assistance or further direction from MNDMF with regard to responses received, or the process in general, at any point in the process. First Nations, SROs and other stakeholders may also request assistance or information from MNDMF at any point in the process.

Applications submitted with documentation of consultation that occurred prior to the submission of the application will be considered accordingly and may be eligible, at the MNDMF's discretion, for a decision prior to the usual X days (MNDMF suggested

60). Applications received with documentation pertaining to any arrangements that may have been reached between the applicant proponents and First Nation communities/SROs will also be given due consideration and may be expedited through the process. The Environmental Registry process (30 days + time to reconcile comments) will still be the minimum timeline in the case of an expedited process.

The duration of the Exploration Permit should reflect the interests of the First Nation, and surface rights holders.

Closure Plans

In advance of preparing a Plan for Consultation, proponents will confirm what aboriginal communities MNDMF identifies for consultation in the circumstances. A proponent who files a proposed Plan for Consultation, in a form to be approved by MNDMF, ideally would have prepared the document in dialogue with aboriginal communities as identified by MNDMF, at the time of filing the Notice of Project Status a minimum of X days (MNDMF suggested 120) prior to filing Closure Plan. There should be some discussion on whether considerations should be the same for advanced exploration versus mine development.

MNDMF will provide guidance or set out guidelines on sufficiency of the proposed Plan for Consultation. MNDMF pointed out that, at a minimum, the Plan for Consultation will document:

- how the proponent will inform aboriginal communities about the nature and details of the project (written materials, open houses, meetings);
- how the proponent will gather information and feedback from aboriginal communities, particularly with regard to community concerns about adverse affects on their treaty or aboriginal rights (written responses, meetings, studies to be commissioned); and
- how the proponent proposes to advise and/or involve MNDMF throughout the process.

Furthermore, the Plan for Closure may:

- incorporate and document consultation that may have occurred prior to the filing of the Plan for Consultation and Notice of Project Status;
- incorporate elements of local aboriginal community protocols, as may be appropriate to the particular circumstances in the Plan for Consultation; and
- refer and relate to other permitting consultation processes contemplated through One Window Planning.

Once the Plan for Consultation has been reviewed by MNDMF and further direction provided, if any, proponents will carry out their Plan for Consultation, seeking further guidance or direction from MNDMF as may be appropriate as issues arise.

MNDMF stated that at the conclusion of the process, and on or before the date of submitting the certified closure plan, proponents will file a Consultation Report in a form to be directed by MNDMF, documenting the consultation process and mitigation strategies proposed. MNDMF will review the Consultation Report and assess the sufficiency of the consultation, and accommodation/mitigation measures proposed, having due regard for any arrangements that may have been reached between the proponent and First Nation communities potentially affected by the project.

Proponents or consulted communities may seek advice, further direction, or facilitation from MNDMF at any point in the process, prior to the Director's decision to "file" the closure plan or earlier. Proponents or consulted First Nations may request dispute resolution assistance, as contemplated by section 170.1 of the Act, at any point in the process, prior to the Director's decision to "file" the closure plan or earlier. MNDMF will assess that request and refer the dispute to a third party, in appropriate circumstances. Closure plan amendments will be assessed case-by-case and appropriate direction given to proponents as to consultation that may be required.

What does this look like in a sequence?

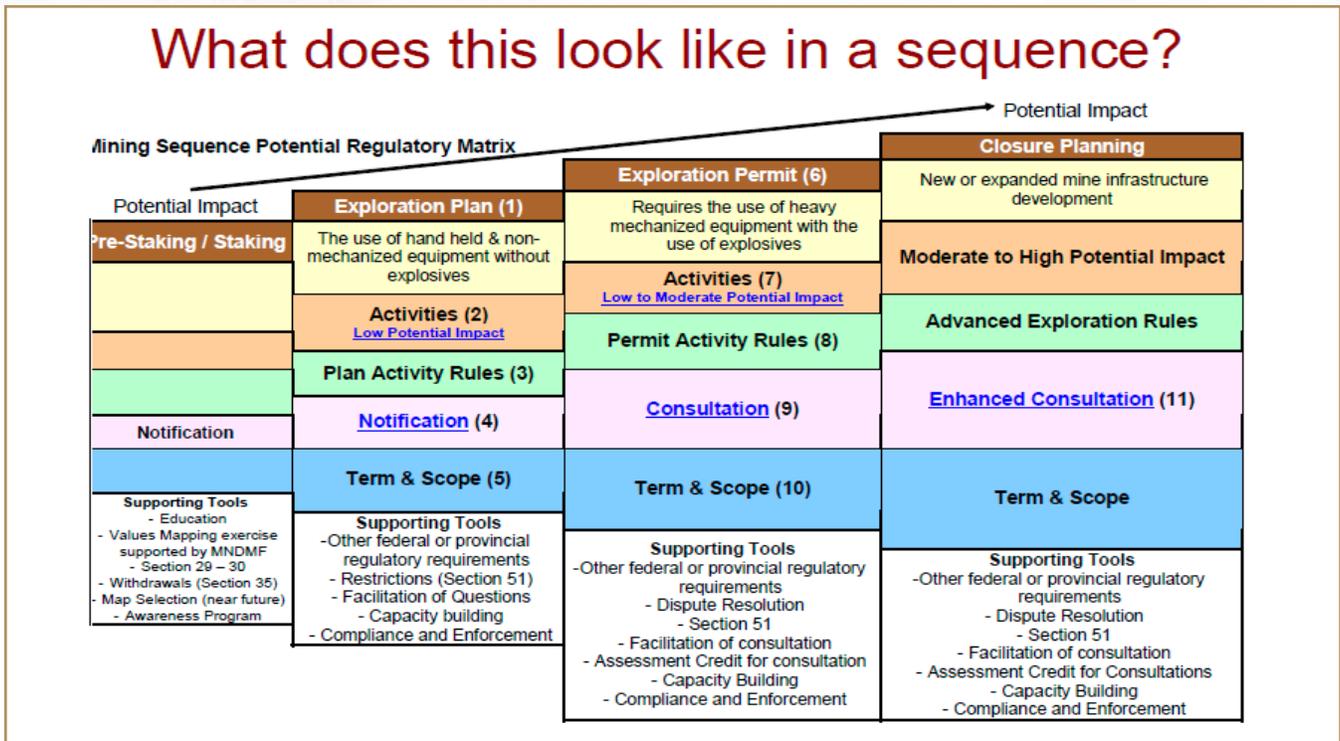


Figure 6: Mining Sequence Potential Regulatory Matrix

Withdrawal of Culturally Significant Lands

Sections 35 and 51 of the Act address this topic. Sites of First Nation cultural significance must be well defined, in that it has an explicit location that can be shown on a map, and accepted by the First Nation community as being significant in traditional, sacred or ceremonial importance. A site could have one or more cultural components contributing to its importance such as traditional knowledge or social value. While cultural significance may be difficult to measure, it is embodied in the setting, use, associations, meanings, records and related sites and/or objects.

MNDFM must verify these sites and ensure that there is flexibility to recognize the uniqueness of the site amongst communities. The community determines the management of their data while ensuring data confidentiality in a consistent approach. Some limitations involved with this proposed process include:

- well defined site versus a general area;
- cultural versus economic or other uses;
- community versus an individual or family;
- permanent versus temporary;
- existing value versus potential value; and
- mineral sector versus other resource development.

The figure below is a summary of the Mining Sequence. The withdrawals of culturally significant lands under section 35 are most likely to occur between the "Open Crown Land" and "Mining Claim" stages.



Figure 7: Mining Sequence

MNDFM stated that it wants to take a proactive approach to protecting First Nation values through best practices and awareness, values mapping, encouraging industry/Aboriginal community dialogue and through the withdrawal conditions of section 35. There are also reactive aspects within the Act such as the terms and conditions of exploration permits and Section 51 surface restrictions on existing mining claims where sites of cultural significance have been identified.

Under Section 35 of the Mining Act, the Minister may order the withdrawal of sites of Aboriginal cultural significance from claim staking on Crown lands. Under this section, the Minister may order the withdrawal from prospecting and staking any land, mining rights, or surface rights, which are the property of the Crown. This Section gives the Minister the authority to consider whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance.

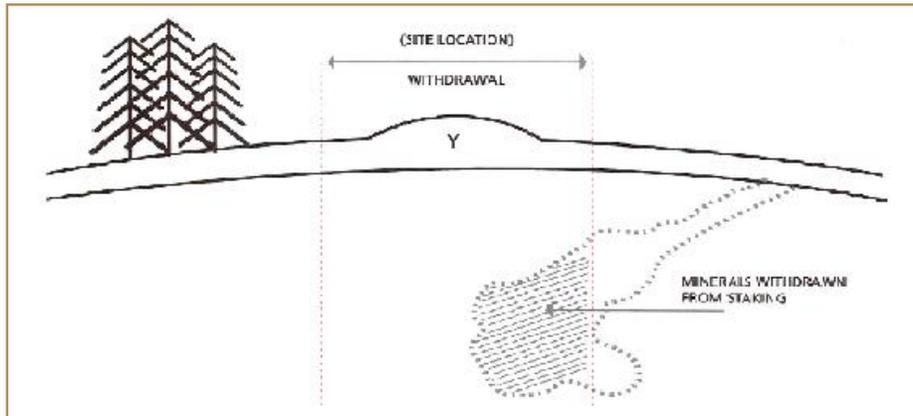


Figure 8: Visualization of Full Withdrawal of Significant Lands Scenario

Additionally, under Section 51, the Minister may by order, restrict access to existing mining claims where sites of Aboriginal cultural significance have been identified and meet the prescribed criteria.

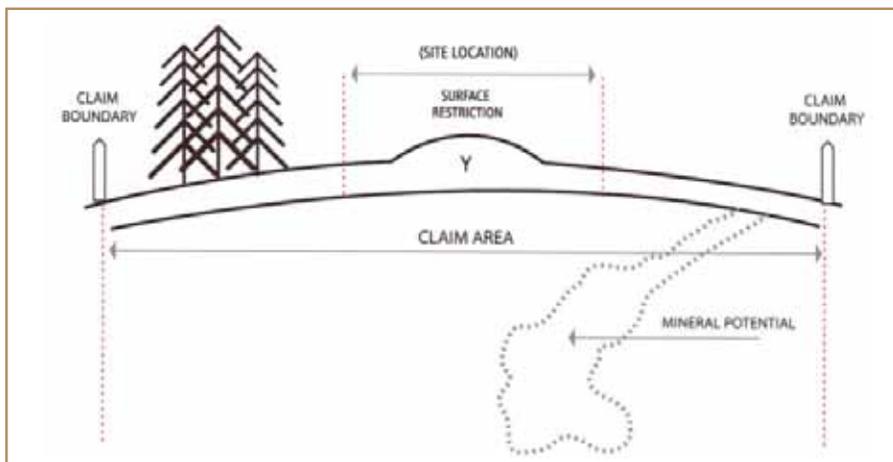


Figure 9: Visualization of Site Restriction Withdrawal of Significant Lands Scenario

Under the proposed regulation/policy, all well defined Aboriginal culturally significant sites should exhibit the following:

Site Characteristics	Site Size
<ul style="list-style-type: none"> • long term or permanent fixture; • few hectares in size (site vs. area); • place of traditional, ceremonial or sacred importance to the community; • have physical or intrinsic qualities that require this type of protection to ensure it remains suitable for its purpose to the community; and • is formally recognized by the community as having cultural significance to them; and • have specific geographic boundaries 	<p>Withdrawal</p> <ul style="list-style-type: none"> • minimum size: normally 4 hectares; thereafter round up to the next increment of 4 hectares; • No maximum size; and • Typical 4 sided polygon shape. <p>Surface Restriction</p> <ul style="list-style-type: none"> • No minimum size; • Legislation says "portions of the surface rights of a mining claim"; and • Can be any polygon shape.

Table 2: Site descriptions for withdrawal process

Examples of Aboriginal culturally significant sites include burial grounds or cemeteries, places of worship, places of spiritual significance such as a visioning site, places of traditional teaching sites, traditional meeting sites, and ceremonial sites, medicinal plant gathering sites, and pictographs.

There are 4 steps involved in the withdrawal process. Step 1, site identification, starts when a community decides they wish to participate and information about the sites is gathered through Elders or through another forum agreed upon by the community. Once the community endorses these sites and files a formal application to MNDMF, the process begins. Step 2 includes a site screening stage where MNDMF staff will determine if the sites of application meet the criteria for withdrawal or restriction. Step 3 includes site verification which is a process by which MNDMF satisfies itself that a site is robust enough. MNDMF has the option of accepting the site as submitted by the community or MNDMF can do further verification. MNDMF states that further verification should be expected until these sites and the process for identifying them is better understood. MNDMF officials stated that they would require the following types of input from the community:

- Use of people and/or a company that is experienced in best practices for this kind of information collection;
- Specific information is provided about each site, including the accuracy of location;
- Discussions about the specific importance of the identified site(s) with MNDMF staff members;
- A statement that there is no known conflict about the site being protected this way with another Aboriginal community (s) within the areas; and
- A Community report is created detailing site information.

Step 4, once sufficient information has been collected, screened and verified, the mineral sector will be notified of the site withdrawal, while limiting information about the site. Withdrawal sites will be listed on the web’s “CLAIMap” and will become part of the public record, but associated information will be kept as general as possible. It is for this reason that total content confidentiality cannot be guaranteed.

If the site qualifies for a surface restriction, appropriate mitigation strategies will be implemented to protect the site and minimize the impact on the claim holder. The claim holder is to be engaged in mitigation discussions and strategies, as they have 30 days to make representation to the Minister prior to the Minister making the proposed surface restriction.

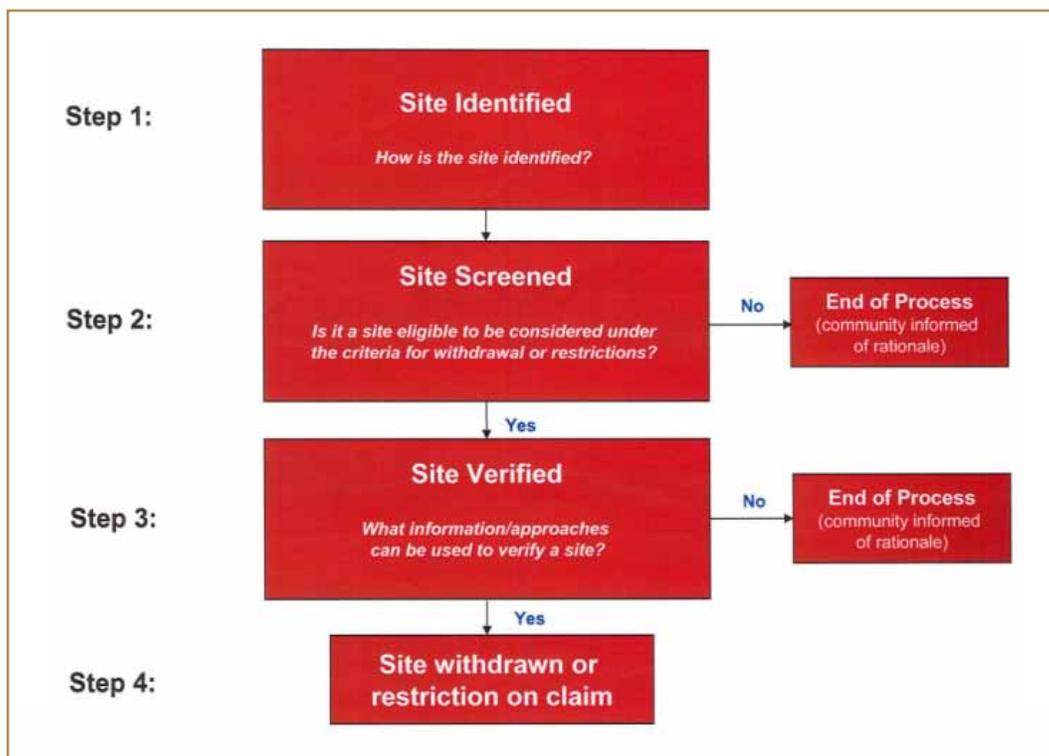


Figure 10: Summary of Site Withdrawal Process

The goal of Mining Unit is to provide analysis on a wide range of government related mining policies for our communities with an emphasis on environmental and natural resource related policy and regulation, by monitoring issues of concern as well as offering technical support and advocacy to member First Nation communities.



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