

April 25, 2013

Hon. Sterling Belliveau
Minister of the Environment
PO Box 442
5151 Terminal Road
Halifax, Nova Scotia
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Sent via email: min_env@gov.ns.ca

Dear Minister:

I am writing on behalf of the Mining Association of Nova Scotia (MANS) to express the mining and quarrying industry's concerns about the the Government's Parks and Protected Areas Plan, and to propose some simple, pragmatic solutions that would help achieve an appropriate balance between protecting land and protecting economic opportunity and jobs for future generations.

Background

While MANS supports protecting natural lands for future generations, we also believe that the principles outlined in the *Environmental Goals and Sustainable Prosperity Act (EGSPA)*, which treats economic prosperity and sustainable environment as equally important goals, need to be better reflected in the government's protected lands policy. While there is an obvious public good in protecting lands, we must also acknowledge that economic uses of land are also a public good, and permanently removing land from economic use comes at a significant cost to the province and its economy. It prevents those lands from being used to create jobs, prosperity and tax revenues. It decreases the province's economic potential, both now and for future generations. This is why EGSPA's principles are so important – they highlight the need for balance.

We are concerned that an inflexible regulatory regime will leave Nova Scotians without access to the minerals we need to support our way of life and economic prosperity in the future. For example, aggregate for roads, highways and other construction represents approximately three-quarters of the province's mining and quarrying industry. As the government continues to reduce the amount of land available for exploration and production, it will become increasingly difficult and expensive to access the aggregate we need to build and maintain our infrastructure. The same is true of other minerals which are also vital to our modern society, such as base metals, gypsum, limestone, gold and salt. Protecting natural lands for future generations is important, but so is ensuring that future generations have affordable access to the materials they will need to build homes, roads, hospitals and schools. So are jobs.

We are also concerned that the protected lands policy is creeping beyond its original intention to protect 12 per cent of Nova Scotia’s land mass. Indeed, the government’s fall 2012 amendment to EGSPA, which changed the protected lands target to “at least” 12 per cent, foreshadowed an increase in the amount of land the province is now proposing to protect to almost 14 per cent. We are concerned that the amount of protected land will continue to increase, without proper regard for the negative impact on the province’s economy. We need, to use the government’s phrase, to get “back to balance” when it comes to ensuring future economic opportunity.

Solutions

As we have stated in previous correspondence to the government, MANS believes there are simple, pragmatic solutions to the challenges created by the protected lands policy which reflect EGSPA’s intent that environmental and economic goals be balanced.

To address the harm to existing claims holders, we propose the following:

Additional Revisions to the Proposed Protected Lands

First and foremost, the government should heed the feedback it is receiving from existing claims holders about the impact of the proposed protected lands on their business interests and make additional revisions to the proposed map that will eliminate or minimize harm to the industry.

The Parks and Protected Areas Plan states that “proposed areas overlap about 21,900 hectares of mineral rights.” This creates a tremendously harmful impact on existing claims holders and on the industry’s future growth potential. The Department can clearly do a better job reducing the amount of overlap with existing claims holders.

We are aware of examples where the proposed protected lands not only eliminate future mineral development potential, but also where projects that could proceed to the development phase and create jobs in the near term will also be harmed or prevented. In some cases, this is being done without a significant environmental justification, i.e. the lands being protected are not ecologically extraordinary and the government could exchange them for other lands of similar ecological value but with less economic potential.

The government should also avoid protecting areas with high mineral potential, as outlined in excellent mapping work done by Department of Natural Resources’ Mineral Resources Branch.

Compensation

It is essential that the government treat existing claims holders fairly by compensating them for both sunk costs related to their claims (i.e. money already spent on government fees, exploration, etc.) and future economic potential (i.e. the economic loss to claims holders from the government making it impossible to develop mines on what may now become protected lands).

This is an issue of simple fairness to the explorationists who have undertaken exploration in Nova Scotia in good faith, only to now have the government potentially destroy the economic value of their work. This is a level of “sovereign risk” that we associate with developing nations, not a Western democracy like Canada.

Treating existing claims holders fairly is also necessary in order to avoid sending yet another signal to the global industry that Nova Scotia is closed for business for the mining industry – that our province is an unfriendly jurisdiction in which to invest and try to create jobs.

It would also be in the interest of taxpayers to avoid potential law suits from explorationists who may be left with no choice but to seek redress through the courts.

To address the harm to Nova Scotia’s future economic potential, we propose the following:

Land Swap

A “land swap” mechanism should be added to the protected lands regulatory regime which would allow mining and quarrying companies to access protected land by purchasing land of equal size and ecological value outside of the protected areas and arranging for it to be protected instead. This would ensure that:

- the total amount of protected land remains the same or grows;
- the ecological value of protected lands remains the same or grows; and
- Nova Scotians will continue to be able to access the minerals they need to create jobs and grow the economy.

This policy is substantively the same as the government’s policy on impacts to wetlands, so there is precedent for it.

We believe this proposal would strike an appropriate balance that protects both natural lands and future economic opportunity for Nova Scotians.

Protected Lands Cap

A cap should be placed on the amount of land that the government can protect. This would simply put a reasonable limit on the amount of land that is permanently removed from economic use in future. It would help prevent the endless squeezing out of our industry.

By increasing the amount of land to be protected, and creating the possibility that land will continue to be protected in future without sufficient regard for the impact on the economy, the government is creating tremendous uncertainty that will discourage mineral exploration and make it very difficult to attract investment to the province. The policy change from protecting 12 per cent to protecting “at least” 12 per cent sends a clear signal to prospectors and exploration companies that they have good cause for concern that the claims they operate could be rendered worthless as additional lands become protected in future.

To illustrate: if a potential investor asks an explorer if there is a possibility that an area with mineral potential and/or proven deposits could become protected, the explorer can no longer give any reasonable assurance that will not happen when the government's legislated policy is to protect "at least" 12 per cent of lands, and when the government has already exceeded the 12 per cent target and is now closer to 14 per cent. Investors and explorers need to know that claims will be respected and access to mineral rights will be preserved so mines can be developed and jobs created. Instead, we now have a situation in which there will always be the concern that an area could be added to the province's protected lands and investment of time, energy and money could be lost. Nothing scares away investment like this sort of uncertainty.

It is also important to understand that a tremendous amount of Nova Scotia's land mass is already protected or has severe restrictions on it in terms of mineral exploration and development. Indeed, well over 20% of Nova Scotia is already protected in some fashion by federal or provincial legislation or regulation (i.e. provincial or national parks, historic sites, wetlands, game sanctuaries, mining-specific restrictions, water supply areas, etc.). This figure does not include lands that are also *de facto* protected, such urban areas or where development of some sort already exists.

To be clear, a cap would not prevent the government from continuing to increase its crown land holdings, or to otherwise ensure that land is used in ways that maximize its value to Nova Scotians. In the absence of interest from industries such as mining or forestry, crown lands generally remain in their natural state and open to public use. They may not be formally "protected" but the functional result is the same – they remain green spaces that the public can enjoy and where wildlife can thrive. Placing a cap on protected lands, but not on crown lands, would help ensure an appropriate balance between environmental and economic uses of land.

Protected Lands Process

While many individual explorationists and companies are discussing with the Department of the Environment their concerns about how the protected lands policy is impacting their specific claims, we would like to offer several comments about the Department's handling of this issue overall.

Revisions to Protected Lands Map

Following the 2012 release of the original proposed protected lands map, many individual explorationists and companies raised with the Department their concerns about how the proposed map would impact their business interests. A recent survey of our membership shows that most feel their concerns, and impacts on their claims, were not properly taken into account in the preparation of the final proposed protected lands map which was released on February 28, 2013.

We are concerned that not enough consideration was given in the development of the final

proposed map to the impact on the economy and the unique way in which the mining and quarrying industry is impacted by the protected lands policy.

As above, the Department can correct this by making additional revisions to the proposed protected lands that minimize harm to the industry and to the province's economy.

Follow up with Impacted Companies

It is our understanding that the Department has not followed up with most of our members to discuss impacts on their claims following the February 28 release of the final proposed protected lands map.

Page 36 of the Parks and Protected Areas Plan states that "Regardless of the type of designation proposed, all rights-holders will receive a letter explaining the options available for addressing their interests under applicable legislation. The province is prepared to work with individual rights holders regarding any of their additional concerns."

It is our understanding that these letters have not been sent to date. We respectfully submit that these letters should have been sent around the same time that the proposed final map was released, and that sending them after the consultation period has closed, if that is the Department's intention, somewhat defeats the purpose.

Conclusion

Minister, we believe the simple, pragmatic solutions we propose above would strike an appropriate balance that protects both natural lands and future economic opportunity for Nova Scotians. We hope you and your colleagues will give them serious consideration.

Thank you.

Yours truly,



Sean Kirby, Executive Director
Mining Association of Nova Scotia

Cc: Hon. Charlie Parker, Minister of Natural Resources