

Private Land Conservation and the Mineral Resources Act

Recommended Amendment to Bill 149 (April 2016)

The Issue and the Opportunity

Private land conservation, through the work of non-government land trusts, is widely recognized as making an irreplaceable contribution to biodiversity conservation and protected areas in Nova Scotia. Such conservation is also economically important in diverse ways from tourism and recreation to contributing to the quality of life so central in attracting and retaining people and capital to our Province. Land trust efforts, focused on private lands, are expected to play an even more critical role in the future.

Yet there is a barrier impeding our efforts. *All land trust protected areas are at risk of mineral development.* Such uncertainty limits our ability to achieve conservation. It also limits our ability as critical partners to the Province in meeting provincial and national environmental commitments, and meeting public expectations to protect natural areas. Land Trust Protected Areas cannot be counted in national environmental reporting, because unlike the Province's own protected areas, ours do not exclude mineral development, so do not meet international conservation standards.

At the same time, mineral development is an important economic activity for Nova Scotia. There is problematic uncertainty around access for the mineral industry, with potential conflict on land trust protected areas, causing potential delay and/or damage to the industry's public image. Resolving this uncertainty would benefit both land trusts and the mineral industry.

The Mineral Resources Act provides just such an opportunity. If amended as we recommend, a mechanism could be created to assess potential conflicts through a rational and supportable decision-making process, balancing mining and conservation interests, and addressing potential conflict in a cooperative, positive manner, *before* an actual conflict occurs.

The "Now or Never" report calls for bold, innovative approaches to expand economic growth while ensuring environmental sustainability. We encourage the Province to seize this opportunity to create such balance with the new Mineral Resources Act.

Recommended Amendment to the Mineral Resources Act

The Act allows for the Minister of Natural Resources to withdraw lands from mineral activity for various purposes such as research. **We recommend an amendment to allow the Minister to withdraw land for the purpose of conservation by designated ecological land trusts.** We recommend regulations (see Appendix 1) which ensure such withdrawals are limited in scope, safeguarded from abuse, subject to a balanced review of mineral and ecological conservation values, and managed through a transparent and fair process under the control of the Minister.

A Win/Win Proposition

Those who invest in mineral exploration and development look for Government assurance that there is certainty and efficiency of process related to access and development of minerals. Those who wish to conserve their lands or invest in conservation (citizens, business and all levels of government) require the same regulatory certainty that the lands they protect or invest in will be protected for future generations. Our recommendation provides such certainty for all, through due process overseen by the Minister.

Implementing the recommended amendment has negligible impact on the pursuit of mineral development for several reasons.

Likelihood of actual overlap in priority interests is low

- Land trust protected areas are highly important, but small, representing just 17,000 hectares out of 321,00 hectares under active claim)
- Overlap between such protected areas and active claims is less than 1500 hectares or 0.5%
- Likelihood of conflict within this small area of overlap is even more remote

Balanced approach to decision making on withdrawals

- Both conservation and mineral development values would be assessed
- Control and decision-making would remain in the hands of the Minister

Benefits for the Province

- A balanced approach to addressing potential conflict between mineral development and land trust efforts and greater opportunity for positive dialogue and cooperation
- Removal of impediment to private land conservation, which is the most cost-effective mechanism for land conservation in Nova Scotia, a critical complement to provincially-designated protected areas
- Ability to count land trust protected areas in national environmental reporting
- Consistent provincial policy on mineral development and protected areas (all Government Protected Areas have protection against mineral development)
- Increased certainty on land access for the mineral industry
- An exemplary success in moving towards the One Nova Scotia vision, cooperating and innovating to foster economic growth while sustaining environment
- Enhanced profile in Canada as a leader in environment and sustainable development

Conclusion

We have been asking the Province to remove the uncertainty and risk related to mineral development on land trust protected areas for almost 20 years. We have developed a simple, straightforward, and easily-implemented solution (see proposed amendments in Appendix 1) and the opportunity lies before us to implement this solution through the Mineral Resources Act. Our amendment provides a transparent, fair, and consistent mechanism for decision making, a balance between mineral and conservation interests, and removes a major impediment to advancing both mineral development and private land conservation in Nova Scotia. There is still opportunity for amendment. We hope you will help in making that happen, through the Law Amendments process and Third Reading of the bill.

The One Nova Scotia vision calls for boldness, innovation and collaboration. It asks us to “do things differently, to change old attitudes that limit our capacities to come together in common cause.” We hope that you, and ultimately the Province, will seize this opportunity to provide a modern and responsive legislative framework for mineral resources that is successful both economically *and environmentally*, and which helps to build a better future for all Nova Scotians.

Appendix 1

Proposed Amendments to the Mineral Resources Act and Regulations

ADDITIONS TO THE ACT:

Withdrawals for Land Trust Protected Areas

The Minister may, upon application by an Eligible Body prescribed by this Act and with the approval of the Governor in Council, withdraw Land Trust Protected Areas in the Province from being subject to granting of exploration licenses, special licenses and leases.

Where any land, or part thereof, to which this Section applies, ceases to be Land Trust Protected Area, the Minister, with the approval of the Governor in Council, may re-open the land for granting of exploration licenses, special licenses and leases.

Definitions

Eligible Body: A charitable land trust organization dedicated to biodiversity conservation and prescribed by Regulation.

Land Trust Protected Area: Land that is

- (i) subject to a conservation easement that is primarily dedicated to the protection of biodiversity and natural processes, and is entered into in perpetuity within the meaning of the Conservation Easements Act
- (ii) owned by an Eligible Body and primarily dedicated to the protection of biodiversity and natural processes;

Excluding any buildings or structures on the land and any of the land used in connection with those buildings or structures, and excluding any lands used or permitted to be used primarily for purposes other than the protection of native biodiversity and natural processes.

ADDITIONS TO REGULATIONS (Tied to new section of the Act)

Ministerial Direction

- (1) The Minister may, with the approval of the Governor in Council, direct that any lands within a Land Trust Protected Area are withdrawn from any new mineral exploration licenses, special licenses and leases.
- (2) Such direction must be given to the Registrar, who must then indicate on the appropriate claim reference maps that the area designated by the Minister is restricted from the activities specified by the Minister.
- (3) Such direction may only be amended or rescinded by an Order-in-Council from the Provincial Cabinet.

Scope of Withdrawals

- (4) Withdrawals apply only to that section of a claim overlapping the Land Trust Protected Area.

- (5) For lands with existing active claims, the withdrawal comes into effect upon expiry of the current claim, or can be given up voluntarily before the claim's expiry date by the current claim holder.
- (6) Withdrawals remain in place as long as the lands remain a Land Trust Protected Area. If the lands are no longer a Land Trust Protected Area, the Minister, with the approval of the Governor in Council, may re-open the land for granting of exploration licenses, special licenses and leases. The withdrawal is removed from the claim reference map.

Designation as an Eligible Body

- (7) An organization may apply to the Minister to be designated as an Eligible Body.
- (8) An Eligible Body must meet the following minimal criteria:
 - (a) a land trust organization dedicated primarily to conservation of biodiversity and natural processes.
 - (b) registered as a Canadian charity (equivalent in the organization's jurisdiction).
 - (c) approved as an Eligible Body under Nova Scotia's Conservation Easements Act
 - (d) approved as an eligible recipient of Ecological Gifts (if a Canadian organization).
 - (e) in good standing with the Registrar of Joint Stock Companies (or equivalent authority in the organization's jurisdiction).
- (9) Applications are reviewed by Nova Scotia Environment and Department of Natural Resources staff, with joint recommendation to the Minister of Natural Resources.
- (10) If the Minister is satisfied that an organization has complied with these regulations, the Minister may approve the application and recommend to the Governor in Council that the organization be designated.
- (11) Approvals are granted by the Governor in Council.
- (12) Application for designation must be made on Form 20 and must include all requested information.
- (13) The applicant must be notified of the outcome of an application within 90 days of the application.

Revocation of Designation as an Eligible Body

- (14) A designation may be revoked and the organization's name removed from the relevant Regulation if the organization:
 - (a) fails to remain legally incorporated without purpose of gain for its members under legislation that requires that any profits or other benefits to the organization be used solely to promote its objectives.
 - (b) fails to maintain current registration and good standing issued by the Registrar of Joint Stock Companies (or equivalent authority in the jurisdiction in which the organization was incorporated or registered).
 - (c) amends its objects so that they are no longer directed to purposes that are beneficial to the public and no longer primarily directed toward the conservation of biodiversity and natural process.
 - (d) contravenes the Act or these regulations.

Application for Withdrawal

- (15) An Eligible Body may apply to the Minister for a withdrawal for a Land Trust Protected Area.
- (16) Application must be made on Form X and must include all requested information.

- (17) Application may be made in advance of the registration of a conservation easement or acquisition of land by the Eligible Body. The withdrawal comes into effect upon registration of the conservation easement or registration of the deed in the name of the Eligible Body.
- (18) Applications are reviewed by Nova Scotia Environment and Department of Natural Resources, with recommendations to the Minister of Natural Resources.
- (19) If the Minister is satisfied that an organization has complied with these regulations, the Minister may approve the application and recommend to the Governor in Council that the withdrawal be enacted and indicated on the claim reference maps
- (20) Approvals for withdrawal are granted by the Governor in Council.
- (21) Withdrawals may not be unreasonably withheld. Should an application be denied, written explanation must be provided to the applicant. The Eligible Body may not re-apply on the same property for five years, unless a material change in circumstances had occurred.
- (22) The applicant must be notified of the outcome of an application within 90 days of the application.