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VIA EMAIL MinesActProposal@gov.bc.ca

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Assistant Deputy Minister
Energy, Mines and Petroleum Resources

**Re: Intentions Paper - Regulatory Excellence and Continuous Improvement in the Mining Sector,
Proposal for Legislative Changes to *the Mines Act***

The Mining Association of British Columbia (MABC) appreciates the opportunity to submit our comments on the *Intentions Paper: Regulatory Excellence and Continuous Improvement in the Mining Sector, Proposal for Legislative Changes to the Mines Act* (Paper) released on September 21, 2019.

MABC is the voice of mining in British Columbia, representing operating steelmaking coal, metal and industrial mineral producers, as well as smelting operations and advanced development companies in the province. Our mandate is to encourage the safe, responsible development and operation of mining and related facilities across B.C. As Canada's largest producer of copper and steelmaking coal, British Columbia's mining sector is essential to achieving Canada's commitment to a lower carbon future. Our member's operations are among the lowest GHG emission-intensive in the world.

MABC's members include some of this province's most iconic operating companies. In 2018, the mining industry generated \$12.3 billion in economic activity and supported over 33,000 direct and indirect jobs in B.C. The sector contributed approximately \$1 billion in direct payments to the provincial government last year, not including corporate income tax and other employment related taxes. In 2018, B.C.'s mines and smelters spent \$2.9 billion purchasing materials, goods and services from more than 3,700 businesses spread throughout 210 B.C. communities. Mining is a critical component of a diversified British Columbia economy.

Mining is a major partner to Indigenous businesses and is the largest private sector employer of Indigenous people in Canada. In 2018, 120 Indigenous businesses provided materials, goods or services to B.C.'s 17 operating mines and smelters, valued at \$265 million. Indigenous peoples also share in the benefits of mining through innovative Impact Benefit Agreements that Indigenous nations enter directly with our member companies. Many Indigenous nations in British Columbia also share directly in mineral tax revenue from mines operating within their traditional territories, a policy that started with B.C. mining operations. Widely recognized for these industry-leading practices, British Columbia's mining sector remains committed to advancing reconciliation with Indigenous peoples.



MABC acknowledges the Ministry of Energy, Mines and Petroleum Resources' (EMPR) commitment to act on the recommendations of the Auditor General's 2016 report to establish an independent compliance and enforcement unit for mining activities, which was affirmed in *Budget 2019*. A regulatory system that provides clear, fair and timely permitting and oversight of mining projects is essential to maintaining the confidence of British Columbians, Indigenous nations, industry and investors.

An important component of B.C.'s competitiveness is a clear, consistent, fair and functioning regulatory and enforcement continuum which provides a direct line of sight to the environmental protections and human health and safety outcomes that British Columbians expect of their regulatory agencies and the mining sector. For this reason, we support EMPR for adopting the recommendation of the Mining Jobs Task Force to restructure the ministry with separate, dedicated focus on mining competitiveness and authorizations from compliance and enforcement.

Maintaining B.C.'s competitiveness as a mining jurisdiction for investment must remain a core consideration when contemplating legislative amendments under the *Mines Act* (Act).

Integrated Regulatory and Enforcement Continuum

Mining operations in the province are governed by multiple pieces of legislation, regulations and policy guidance documents including the *Mines Act*, *Mineral Tenure Act*, *Environmental Assessment Act*, *Environmental Management Act*, *Water Sustainability Act*, *Forest and Range Practices Act*, and *Wildlife Act*. Each of these Acts empower their respective agencies in the areas of permitting and compliance/enforcement. In certain cases, such as under the revitalized Environmental Assessment Act, compliance and enforcement authorities are being broadened. These expanded authorities are leading to duplication, overlap and confusion among agencies regarding their accountabilities. This is resulting in a lack of clarity, duplication of effort, and delay for the mining sector. This ambiguity is not only challenging for the agencies empowered with oversight, it is leading to confusion among Indigenous nations, the public and industry.

MABC Recommendation 1:

To promote clarity, accountability and transparency across the spectrum of regulatory bodies, duplication and overlap across the permitting and enforcement functions under the aforementioned Acts must be fully eliminated and avoided. Legislative amendments must ensure that the newly established Audit Unit as well as the Mines Health, Safety and Enforcement Division (MHSED) do not encroach on existing oversight provisions under other Acts. MABC further recommends that particular attention be paid to the potential for overlap between the amended *Mines Act*, the *Environmental Assessment Act* and the *Environmental Management Act*.



With the above goal in mind, MABC further recommends that the first audit conducted by the newly established Audit Unit be on the regulatory framework for mining to identify areas of duplication and overlap with recommendations for improved coordination and consistency. Clear audit parameters and responsibilities must also be established.

Regulatory Consistency

In June 2013, the new Limitation Act came into force in British Columbia with the stated goal of making laws easier to understand, and to bring B.C.'s law more in line with other provinces. While the change to the *Limitation Act* related to civil proceedings, the principles behind the change are relevant to the proposed extension of the limitation period under both the *Mines Act* and the *Environmental Management Act*.

The almost doubling of the limitation period from 3 years to 5 years for the *Mines Act* and the *Environmental Management Act* will result in legislative inconsistency within the natural resource sector in British Columbia and will lead to further confusion with respect to the regulatory framework. MABC notes that the limitation periods under the *Forest and Range Practices Act* and the *Wildlife Act* are 3 years.

Additionally, in keeping with the principles expressed by government when changing the *Limitation Act*, the extensions to the limitation period currently proposed under the *Mines Act* do not improve clarity; instead, they move British Columbia in a different direction from other provincial jurisdictions.

MABC Recommendation 2:

MABC encourages the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment to retain the current limitation period of 3 years under the *Mines Act* or the *Environmental Management Act* to ensure that the principle of consistency be maintained within statutes governing the natural resource sector, and to keep British Columbia's legislative framework in line with other provinces.

Preparation and Response Timeframes for Inspection Reports

With the complexity of B.C.'s regulatory framework coupled with the scale and nature of mining operations in the province, MABC recognizes the benefit of adjusting the timeframe noted under Section 15 (4) to allow for an Inspection Report to be completed within 7 business days. In addition to the complexity faced by inspectors in undertaking each inspection and preparing the Inspection Report, MABC would like to bring EMPR's attention to the significant increase in scope of a Mine Manager's responsibilities.



MABC Recommendation 3:

In recognition of the increased scope and complexity of obligations facing Inspectors and Mine Managers, MABC encourages EMPR to extend the same courtesy to Mine Managers by adjusting the response timeframe noted under Section 15 (6) to 15 business days.

Authority for Inspectors to Bring Equipment or People Required to Conduct Their Work

MABC members are committed to maintaining relations with Indigenous nations and have consistently demonstrated their willingness to welcome visitors to their sites, including the guests of inspectors. With greatest deference given to the safety of all visitors to mine sites, the current requirement is for Mine Managers to be notified of and approve all visitors to their site in advance - whether it be for a tour or as a specified component of an inspection. In giving their approval to be on site, the Mine Manager assumes liability for the visitor's safety.

As set out on page 3 of the Paper, the proposed amendment appears to grant full authority to the Inspector to bring individuals to a mine site without prior knowledge of the Mine Manager or their designate. This amendment is a blunt instrument that is being proposed as a solution to a problem that does not exist.

Should the Ministry pursue this amendment, it is crucial to the effective operation of this proposed amendment that a policy be developed that clearly articulates the scope, intent, accountability and liability that the Inspectors are accepting for the accompanying party, including their safety, the handling of information, and standards of conduct. This policy will be needed to provide clarity to the mine operator, and will also be beneficial to the Inspectorate, the accompanying visitor and the Audit Unit.

MABC Recommendation 4:

If the Ministry insists in pursuing this unnecessary amendment, MABC recommends that a clear and transparent policy document be developed to guide Inspectors and Auditors on the usage of this new provision under the Act. This policy should clearly define the authority granted, as well as the scope, accountability and assumed liability for accompanying parties to mine sites. As the Mine Manager has no authority in allowing these accompanying parties on the mine site, all responsibility and liability for the accompanying party must remain with the inspector and the Ministry.



Incremental Costs of Regulatory Change

The Canadian Federation of Independent Business reports that regulation from all levels of government cost Canadian businesses \$36 billion in 2017, with red tape accounting for \$10 billion of that total. Red tape included excessive government regulation (i.e. unfair, overly costly, poorly designed or contradictory rules and regulation).

The increasing complexity and incremental costs of recent and considerable changes to B.C.'s regulatory continuum for mining operations are putting added stress and expense on the ability of our province's mining operations to remain competitive in today's tight foreign capital markets and highly volatile commodity markets. Exacerbating this situation, B.C.'s mining operations are price takers, and unable to pass on these increased costs to their customers.

MABC Recommendation 5:

MABC strongly encourages EMPR to consider the incremental and additive costs of the proposed amendments to mine operators, and the impact that this will have on existing operating mines, as well as the relative attractiveness of B.C. to new entrants in the province's mining sector.

Additionally, MABC invites the Province to work with MABC to urgently revisit its focus on achieving regulatory outcomes through an efficient and agile regulatory system.

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MABC appreciates the opportunity to comment on the Intentions Paper. A clear, integrated and transparent regulatory and enforcement continuum is essential to public trust and confidence, as well as the province's competitiveness as a destination for mining investment. With extreme volatility in commodity markets and high operating cost environment in B.C., the importance of maintaining focus on the province's competitiveness while ensuring practical enforcement and compliance has never been more crucial.

Sincerely,



Michael Goehring
President & CEO



cc: Peter Robb – Assistant Deputy Minister; Energy, Mines and Petroleum Resources
Jennifer McGuire – Assistant Deputy Minister, Environment

