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**Ontario Ministry of Mines**

Honorable Minister Pirie, Minister of Mines
99 Wellesley Street West, Toronto, Ontario, M7A 1W3

Submitted via ERO webform and email at: MiningActAmendments@ontario.ca

**April 20, 2023**

**RE Environmental Registry of Ontario File Number 019-6750 (a component of Bill 71, the "Building More Mines Act, 2023")**

Dear Minister Pirie,

I am writing to share Tesla's comments and feedback on the Proposed Amendments to the Ontario Mining Act, presented through Bill 71, the "Building More Mines Act, 2023[1]". We thank you for the opportunity to provide input into this important consultation in support of strengthening Ontario's critical minerals supply chains for batteries and electric vehicles.

Tesla only works with those mines and refineries that adhere to the highest environmental and social standards. We expect our suppliers to operate in a sustainable manner. For example, Tesla expects all mines in its supply chain to undergo an external audit against an international responsible mining standard. This is further outlined in *Appendix 1 'Overarching Considerations for the Mining Act Amendments'* which is provided as a first-principles document for the Ontario Government's consideration pertaining to all amendments to the Mining Act.

Tesla fully supports the government's efforts to expedite mine-related approvals – this is an important and prudent undertaking. However, Tesla also believes that we must find a way to ensure the highest environmental standards will be upheld while also accelerating mining and refining approvals to keep pace with the demand for critical minerals in North America. We believe the recommendations provided here, if adopted, will help achieve expedited approvals while continuing to protect the environment and Ontario communities.

Tesla's mission is to accelerate the transition to sustainable energy. As proof of our commitment to this mission, our Canadian operations have seen tremendous growth. We now have 1,300+ employees in Canada, two manufacturing facilities in Ontario, three battery-related R&D locations, a coast-to-coast network of over 1,750 Direct Current Fast Chargers, and 26 electric vehicle retail stores and service centers. Moreover, Tesla is striving to produce 20-million electric vehicles per year by 2030. Achieving these targets will require both recycled and new virgin mineral resources, particularly for battery electrode. As such Tesla shares the Government of Ontario's objective of expediting new mining projects through approvals so that

[1] Building More Mines Act, 2023 via Ontario Legislative Assembly, at
: https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-71

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minerals can be brought to the market as quickly as possible – particularly for Ontario lithium and Class-2 nickel.

In pursuit of these objectives, Tesla supports the Government of Ontario's efforts to have a modern and competitive regime for mineral development, capable of competing with markets in Asia-Pacific, Australia, and the USA. We appreciate the opportunity to provide the following comments.

## ERO Number 019-6750: Proposed regulatory changes to closure plan rehabilitation requirements for advanced exploration and mine production and adding an additional class of facilities to the list of such classes that are excluded from the definition of "mine".

### Definition of a Qualified Person

Tesla recognizes the importance of qualified persons, in the context of the public disclosure of technical reports on mining projects and supports government objectives of reducing red tape and the length of time for approvals. Tesla agrees with the government's proposal to establish requirements for a qualified person in a way that would set minimum standards of education, work experience, and credentials.

> Tesla recommends maintaining the ability to certify a closure plan with technical experts.
>
> Tesla recommends adding a requirement that the qualified person be a Professional Engineer or Geoscientist in a managerial role in closure plan engineering, preferably with extensive experience.

### Technical Review

Tesla is of the view that the Ministry of Mines technical review is an important step in assuring the environmental and technical certainty that closure plans are appropriate. Rather than eliminating the requirement all together as a means of expediting approvals, Tesla proposes that the government maintain the requirement but specify a service standard to complete the review to ensure the project can advance in a timely way.

> Tesla recommends maintaining a technical review by the Ministry of Mines Director of Mine Rehabilitation, in addition to a Qualified Person review. Tesla also recommends establishing a service standard of no more than 60 business days to review any applications.

### Exemptions

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Tesla recognizes that on occasion, the Director of Mine Rehabilitation can determine that a closure plan meets or exceeds the objectives of the provision in which the standard, procedure or requirement is set out. This enables the Director of Mine Rehabilitation to exempt a proponent from complying with any standard, procedure, or requirement in the Regulation and Code. However, there is no clear process for seeking these discretionary exemptions.

> Tesla recommends clearly identifying exemptions and consulting with qualified persons who are in managerial roles at engineering companies to determine if these exemptions are acceptable to industry.

## Changes to the Mine Rehabilitation Code

### Updates and Additions to the Code

Tesla agrees with clarifying the language in Part 1 of the Mine Rehabilitation Code to ensure all access to mine openings are prevented after a mine's closure, rather than solely *inadvertent* access.

Tesla agrees with the Ministry of Mines' inclusion of Canadian Dam Association Dam Safety Guidelines and other industry standards that could be included into the objectives for tailings dams and other containment structures. Tesla also agrees that the objective statement will assist qualified persons to certify whether alternative measures meet or exceed the objective of this part of the code.

> Tesla recommends including standards developed by the International Council on Mining & Metals Global Industry Standard on Tailings Management into the objectives for tailings dams and other containment structures found in Part 4 of the Mine Rehabilitation Code.

Tesla would like to reinforce the importance that any changes to the objectives for tailings dams and other containment structures be made such that the new objectives are meeting or exceeding current objectives. Tesla agrees with the objective statement that will assist qualified persons to certify whether alternative measures meet or exceed the objective of Part 4 of the Code.

Regarding Part 6 of the code, as it relates to ground water monitoring, Tesla recognizes the impact tailings and other mine wastes could have on groundwater sources in the event of seepage from a containment structure.

> Tesla recommends that the Ministry of Mines consider expanding the objective of Part 6 to ensure that groundwater quality is comparable to its quality before the impact of mining operations.

### Movement of the Mine Rehabilitation Code to Policy

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Tesla supports processes that ensure the protection of the environment and the reduction in the probability of catastrophic mine failure which are easily updated, modernized, and able to adapt to changes in the market. This is consistent with other jurisdictions and will allow for more innovative approaches to mine rehabilitation.

**Determining Compatibility with Adjacent Land or Alternative Future Uses**

Tesla agrees with the need for some amendments to the definition of "rehabilitate". Tesla also agrees that any new definition should make clear that "rehabilitate" means restoring lands to their former use or a condition that is compatible with the use of the adjacent lands or the future planned use of adjacent lands as documented in established municipal bylaws. However, Tesla has concerns with the second part of the definition being that the land is suitable for an alternative future use of the site, in each case as determined by the Minister of Mines in accordance with the regulations.

> Tesla recommends before a Ministerial decision is made, the Minister of Mines should be obligated to receive and consider input from the Ministry of Environment, Conservation and Parks, the Ministry of Mines Director of Mine Rehabilitation, and Ministry of Municipal Affairs and Housing. In the event the Director of Mine Rehabilitation is not the approving entity (i.e., the Minister has made a decision in the absence of the Director), the rules should require disclosure of the decision and rationale for the decision.
>
> Tesla also recommends an interdepartmental committee made up of officials from the Ministry of Environment, Conservation and Parks, Ministry of Mines, and Ministry of Municipal Affairs and Housing to determine a compatible future use of the site. Tesla recommends a service standard of no more than 60 business days to complete the review.

**Stages of Closure: Section 22, 23 and 24 of the Regulation**

Tesla agrees with the clarification of the provisions of Section 24 of the Regulation as they do overlap with Sections 22 and 23.

**Delayed Delivery of Baseline Studies**

Tesla agrees with allowing mining operations or advanced exploration to commence if at least 1.0 years of ground and surface water data has been collected prior to commencement. Tesla also agrees in allowing the Ministry of Environment, Conservation and Parks to still regulate and analyze all operational water quality objectives for all sites. Tesla also agrees that conditions which meet the prescribed requirements still be received by the Ministry of Mines 2.0 years after the commencement of advanced exploration or mine production.

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**Adding a Class of Facilities Exemption for Battery Mineral Concentrates**

Tesla supports the objective of reducing regulatory burdens to enable faster ramp up of mineral processing. In Tesla's view, facilities that process battery material concentrates may or may not be located adjacent to mine locations, the source of the concentrate feedstock.

Tesla agrees that plants, premises, or works which do not produce by-products for perpetual landfill disposal or require environmental/hazardous waste management should not be considered a mine. However, applicable air emissions and water effluents regulations and laws should still apply.

Tesla sees three possible scenarios:

1) Facilities producing by-products that are harmful to either the environment or public health.
2) Facilities producing by-products that cause no harm to the environment or public health but must be stored or disposed of perpetually.
3) Facilities producing by-products that cause no harm to the environment or public health and have other commercial applications.

If a plant, premise or works discharges a by-product that is harmful to the environment or public health then the plant, premise, or works should be considered a "mine" and have closure planning requirements applied on it.

If a plant, premise or works does discharge a by-product that is not harmful to the environment or public health but does require perpetual landfill disposal of the otherwise harmless by-product, then the plant, premise, or works should not be considered a mine. It should be left to the local municipal planning frameworks to determine whether storing or disposing of the non-harmful by-product in a landfill is an appropriate use of the land. Traditional air emissions and water effluent monitoring and regulations should still be applied.

If a plant, premise, or works does discharge a by-product that is not harmful to the environment or public health and can have other commercial applications, removing the need for perpetual landfill disposal, then the plant, premise, or works should not be considered a mine. Traditional air emissions and water effluent monitoring and regulations should still be applied.

This approach provides for appropriate oversight at the municipal level to deal with the visual impacts of the facility, stored materials, and landfill requirements. This will also continue to protect the environment and public health; however, the definition of a mine will not apply because the by-product is not harmful to the environment or public health.

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We believe that Ontario can establish a world leading critical mineral mining sector. We appreciate the opportunity to comment on Ontario's amendments to the Mining Act and thank

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you for your time and consideration in this matter. We look forward to continuing our engagement with you. Please note that Tesla is also filing additional comments related to the proposed amendments through three other ERO postings and this submission alone does not represent the totality of Tesla's comments.

Sincerely,

Aleem Ladak, P. Eng.

Critical Minerals & Supply Chain Policy Advisor, Public Policy & Business Development – Global

cc: Iain Myrans, National Senior Manager, Public Policy & Business Development – Canada. Tesla.

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## Appendix 1 - Overarching Considerations for the Mining Act Amendments

***The Content of this Appendix is consistent and attached to each of Tesla's filings pertaining to ERO Numbers 019-6717, 019-6718, 019-6749 and 019-6750***

In addition to our comments on the proposals above, Tesla wanted to take the opportunity to share overarching considerations regarding mining regulations.

### Recognition of Audit Schemes

Tesla views external audits as an important tool in ensuring mining is performed responsibly. Tesla expects mine sites in its battery supply chain to undergo independent external audits against international responsible mining standards such as the Initiative for Responsible Mining Assurance (IRMA) Standard, Towards Sustainable Mining (TSM), and the International Council on Mining and Metals (ICMM) Performance Expectations. The governing organizations have standards that are applicable to the mining as well as exploration stage of projects. Tesla is also a member of IRMA and views the IRMA Standard as the most robust standard and assurance scheme for mines. IRMA and other standards include criteria that apply to all aspects of mining, including those included in the below proposals.

Tesla recognizes that regulation governing mineral supply chains can include expectations that companies in scope undergo external audits within a specified timeframe, as was done with the EU Conflict Minerals Regulation.

> Tesla recommends adding a) a process for the recognition of external audit schemes against international responsible mining standards (acknowledging that enshrining a specific standard in regulation is difficult) and b) an expectation that mining companies in scope of the proposed regulation undergo audits within a specified timeframe.

### GHG Emissions

Tesla has identified the mining and refining of battery minerals as a potential hotspot for GHG emissions in our supply chain and has started collecting GHG data from our suppliers. Multi-stakeholder forums such as the Global Battery Alliance (GBA) have started developing and piloting standardized GHG reporting frameworks applicable to all stages of the battery minerals supply chain, including mining and refining.

> Tesla recommends including a requirement for mining and refining companies to report GHG emissions in a standardized format within a specified timeframe.

### Indigenous Peoples Engagement

Tesla has identified the respect and engagement of indigenous peoples as one of the priority engagement areas in our battery minerals supply chains.