



**VANCOUVER**  
#1400 – 400 Burrard St.,  
Vancouver, BC, V6C 3A6,  
Canada  
+604-685-6269

**LIMA**  
Av. Conquistadores  
1144, Piso 6, San Isidro,  
Lima, Perú  
+511-711-6400

**HERMOSILLO**  
Boulevard Jose Maria Morelos 307  
Building F, Local 06  
Hermosillo, Sonora, Mexico, 83150  
+52-662-215-8100

[info@bearcreekmining.com](mailto:info@bearcreekmining.com)

[www.bearcreekmining.com](http://www.bearcreekmining.com)

July 13, 2022

To: Chris Collins  
Chief Mining Advisor, Corporate Finance  
British Columbia Securities Commission  
[ccollins@bcsc.bc.ca](mailto:ccollins@bcsc.bc.ca)

The Secretary  
Ontario Securities Commission  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Cc: British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office

Dear Secretary and Messers. Collins and Lebel

**Re CSA Consultation Paper 43-101**

Bear Creek Mining Corporation (“Bear Creek” or the “Company”) is a Canadian-based mining and mineral development company with a primary listing on the TSX Venture Exchange (symbol BCM) and additional listings on the Bolsa Valores de Lima (symbol BCM) and the Frankfurt Exchange (symbol OU6) and posted for trading in the US on the OTCQX platform (symbol BCEKF). Bear Creek owns and operates the Mercedes gold mine in Sonora, Mexico and is developing the Corani silver project in Puno, Peru, one of the largest fully permitted silver deposits in the world.

Bear Creek is pleased to provide comments regarding CSA Consultation Paper 43-101 - *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* dated April 14, 2022.

### **General Comments**

For more than 20 years, NI 43-101 has provided the framework for mineral project disclosure that is both rigorous and standardized, allowing investors to accurately assess and compare mineral projects with a high degree of confidence in the quality of scientific and technical information being disclosed.

We believe NI 43-101 has functioned as intended throughout its 20+ year history and we agree that periodic re-evaluation and revision of the instrument is valuable in order to meet the evolving needs and expectations of investors.

We also believe clarification of certain sections of NI 43-101 would be greatly beneficial to issuers.

### **Specific Comments**

In response to questions raised in CSA Consultation Paper 43-101, Bear Creek has the following comments.

#### Section E, Question 16

*Is there anything missing or unclear in the current qualified person definition? If so, please explain what changes could be made to enhance the definition.*

Bear Creek has direct experience related to this question, having had a technical rejected upon review by the British Columbia Securities Commission in May 2022 as a result of the qualification of certain authors of the report on the basis of their length of relevant experience. As stated in CSA Consultation Paper 43-101, “the current qualified person definition is not well understood, and [CSA staff] have seen an increase in practitioners with less than 5 years of experience as professional engineers or geoscientists acting as qualified persons in technical reporting.” We vigorously concur that there is a misalignment between issuers’ and some securities commissions’ interpretation of the qualified person definition in NI 43-101, particularly in respect of the experience criteria set out in part (a) of the definition below.

NI 43-101 defines a qualified person as “an individual who

- (a) is an engineer or geoscientist with a university degree, or equivalent accreditation, in an area of geoscience, or engineering, relating to mineral exploration or mining;
- (b) has at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these, that is relevant to his or her professional degree or area of practice;
- (c) has experience relevant to the subject matter of the mineral project and the technical report;
- (d) is in good standing with a professional association; and
- (e) in the case of a professional association in a foreign jurisdiction, has a membership designation that
  - (i) requires attainment of a position of responsibility in their profession that requires the exercise of independent judgment; and
  - (ii) requires
    - A. a favourable confidential peer evaluation of the individual’s character, professional judgement, experience, and ethical fitness; or
    - B. a recommendation for membership by at least two peers, and demonstrated prominence or expertise in the field of mineral exploration or mining;”

The definition of qualified person in NI 43-101 does not state that practitioners must have at least “5 years of experience as professional engineers or geoscientists”.

We, and we believe the vast majority of issuers and the consulting engineering firms they rely upon for the preparation of independent technical reports, read this definition to mean four separate criteria:

1. The qualified person must have a university degree or equivalent accreditation in geoscience or engineering related to mineral exploration or mining
2. The qualified person must have a minimum of 5 years of experience relevant to their degree or area of practice
3. The qualified person must have experience relevant to the subject matter they are reporting on
4. The qualified person must be in good standing with a professional association, which if in a foreign jurisdiction, must be effectively equivalent to the standards of a Canadian professional association.

In accordance with our experience, and as stated in CSA Consultation Paper 43-101, securities commissions are applying a significance to the terms “engineer” and “geoscientist” in part (a) of the qualified person definition that is not clear or understood by issuers. Specifically, “engineer” and “geoscientist” are apparently NOT a person with a university degree or equivalent accreditation in geoscience or engineering related to mineral exploration or mining (which is how part (a) of the definition reads), but rather, strictly, and only, a person who is a member of a professional association. This application of the terms “engineer” and “geoscientist” subsequently inform part (b) the definition to insinuate that the “five years of experience” criteria is restricted to five years of experience *only after achieving accreditation under a professional association*.

We submit that well-qualified, university degree-bearing geoscientists and engineers who are members in good standing of professional associations and have ample relevant experience are being dismissed as qualified persons when in reality they are enormously qualified to author technical reports in the service of protecting investors. However, if securities commissions are committed to the interpretation described above, clarification of the definition of a qualified person is an absolute necessity.

The misalignment between the letter of the NI 43-101 qualified person definition and its application by securities commissions is leading issuers to submit technical reports that they believe comply with the provisions of the instrument only to have those technical reports rejected, which causes undue investor uncertainty, damage to the issuer’s reputation, greater cost burden and the potential for delays in and potentially failure of corporate transactions.

#### Section E, Question 19

*Should directors and officers be disqualified from authoring any technical reports, even in circumstances where independence is not required?*

Bear Creek strongly advocates for, and adheres to, best practices in corporate governance. We believe that issuers should not only meet regulatory requirements but consider the optics of a situation in order to maintain investor confidence. We agree with the provisions of NI 43-101 Section 5.3 that stipulate the circumstances wherein a technical report must be authored by qualified persons that are independent of the issuer.

Many smaller issuers rely heavily on the few technical specialists who meet the definition of a qualified person, and in many cases these specialists may be a director or officer of the issuer. We recommend that issuers’

directors and officers NOT be disqualified from authoring technical reports that are not required to be independent technical reports if they otherwise meet the definition of a qualified person.

Furthermore, we strongly recommend that issuers' directors and officers NOT be disqualified from acting as an issuers qualified person for purposes other than authoring a technical report (in respect of disclosures under NI 43-101 Sections 2 and 3). Given the clear misalignment regarding the definition of a qualified person as discussed above, we strongly recommend that any potential ambiguity on the circumstances under which a director or officer may act as an issuer's qualified person be considered and mitigated in the event NI 43-101 is revised.

Section I, Questions 28 and 29

*Do you think the current environmental disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?*

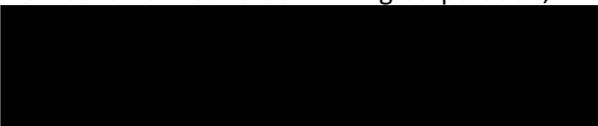
*Do you think the current social disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?*

Public and investor awareness of environmental and social issues has become widespread in recent years. Investors rightly want to know that issuers are adhering to best practices in environmental stewardship and social responsibility, both as a matter of good corporate citizenry and mitigation of business risk. While disclosure of these sustainability issues has been largely voluntary to date, certain widely recognized disclosure frameworks provide excellent coverage of material sustainability issues, and Canadian regulations regarding ESG disclosure are highly likely to soon be mandated. We believe that the totality of an issuer's disclosure obligations should provide a fulsome account of the issuer's business practices, but that it is unnecessary for these disclosures to be overly redundant.

We believe that Items 4 and 20 of Form 43-101F1, as written, adequately cover disclosure of environmental and social matters, particularly in respect of the disclosure of scientific and technical information that is material to a mineral property. It is not necessary for Form 43-101F1 to address the full scope of environmental and social matters but rather should continue to focus on known environmental, social and community impact factors and in particular those that may impact the technical or economic viability of a mineral property. There are existing continuous disclosure document requirements and other disclosures (such as ESG reports and soon to be regulated climate-related disclosure documents) that address risk factors and social and environmental matters in more granular detail that are available to investors and which satisfactorily contribute to the mosaic of material information available to investors.

Bear Creek Mining Corporation appreciates the opportunity to provide comments on CSA Consultation Paper 43-101 and fully supports efforts to clarify the expectations of issuers under NI 43-101 and ensure it meets the needs and expectations of investors.

On behalf of Bear Creek Mining Corporation,

  
Eric Caba  
President and COO