Strengthening Regulatory & Supply Chain Efficiency
Privy Council Office
Government of Canada
Ottawa, Ontario

[Submitted Electronically]

RE: Getting Major Projects Built in Canada - Discussion Paper on Proposed Legislative, Regulatory, and Policy Reforms

On behalf of the Prospectors & Developers Association of Canada (PDAC) and our more than 9,000 individual and corporate members, we provide a voice for Canada's vital mineral exploration and development sector. We welcome the opportunity to comment on the Government of Canada's proposed legislative, regulatory, and policy reforms to enable more efficient major project development in Canada.

Government recognizing that major project decision-making processes are often complicated, duplicative, and excessively time-consuming is a positive step forward; the lead time from discovery through building a new mine in Canada averages over 25 years, nearly the longest of any other mining nation, with permitting widely regarded as the primary cause of these extended timelines[1]. PDAC is encouraged to see commitments in the Discussion Paper aimed at addressing some of these structural inadequacies. The following recommendations are intended to better align these commitments to the realities of the mineral exploration and development sector.

Proposal 1: Federal Review and Decision-Making in No More than One Year

PDAC strongly supports legislating firm federal review timelines and, where feasible, moving from sequential to concurrent permitting. However, the following considerations must be made in order to achieve these objectives:

1. **Clearly define the scope of the concurrent review.** The proposal notes that permits not included in the one-year timeline "…will proceed through the assessment and permitting processes one after the other". PDAC urges the Government to maximize the scope of permits included in the concurrent process and to clearly define, in advance, which permits are excluded and why. Not implementing these recommendations will generate uncertainty for proponents and stakeholders.

2. **Establish clear accountability mechanisms for the Federal Review Coordinator.** Legislated timelines are only as effective as their enforcement. PDAC recommends that the Federal Review Coordinator be given explicit authority to enforce deadlines across participating departments. PDAC also recommends mandating annual reporting to

[1] Bonakdarpour, Mohsen, Frank Hoffman, and Keerti Rajan. Mine Development Times: The US in Perspective. New York: S&P Global Market Intelligence, June 2024. https://cdn.ihsmarkit.com/www/pdf/0724/SPGlobal_NMA_DevelopmentTimesUSinPerspective_June_2024.pdf.

Parliament on adherence to review timelines to ensure accountability and drive the culture shift needed across federal regulators to achieve these timelines.

3. **Avoid unintended delays or deferral of government accountability via proponent-led pause mechanisms.** The Discussion Paper notes that proponents will have the option to extend or delay timelines for specific permits. PDAC supports proponent flexibility as circumstances may drive material changes in scope and scale along the development path. However, we caution that such pause mechanisms could become a way for external parties to force proponent extensions and circumvent the government's goal of establishing legislated timelines. Government must take steps, internally and with engagement partners, to discourage the use of proponent-driven pauses as a mechanism for third-party objectives.

4. **Clarify all activities included the proposed one-year timelines.** Government must be realistic and transparent about whether the proposed one-year federal review period covers only the government's review of a completed application, or whether it also captures the studies, information compilation, engagement, and submission review cycles that proponents must undertake prior to submission. Previous timeline commitments have applied once a complete permit application has been received from a proponent. In the past, this period has restarted if clarity or amendments are sought by government on submitted applications.

   It is critical for government to make a distinction: if a one-year period does not begin until a complete application is made, the practical reduction in overall project timelines may not be significant. PDAC urges the Government to define explicitly what the one-year period covers and to address pre-submission information requirements, engagement expectations, and government-mandated studies as part of this reform.

Proposal 2: One Crown Consultation Process

PDAC supports the principle of a single community of interest determination and coordinated consultation process across federal departments for a project. Consultation fatigue and inconsistent community of interest determinations are a significant source of delay and uncertainty for proponents and for the Indigenous communities who participate in these processes.

1. **Mandate transparent, evidence-based community of interest determinations**. Proponents continue to encounter inconsistent designations between federal departments and provincial/territorial regulators with limited explanation, causing confusion and uncertainty for proponents and Indigenous communities alike. The Consultation Hub must be mandated to produce transparent, evidence-based community of interest determinations that are: based on the spectrum of impact and strength of claim, aligned between federal and provincial regulators, provided to proponents and communities early in the process, and documented with clear rationale.

2. **Maintain the Duty to Consult as a responsibility of the Crown.** While proponents often take an active role in supporting the capacity and participation of Indigenous Peoples in the mineral sector, and procedural aspects of consultation are frequently delegated to

proponents, the legal obligation to fulfil the Duty to Consult must remain with the Crown. The Discussion Paper should confirm this unambiguously.

Furthermore, while government may "provide guidance […] about how to engage with Indigenous communities in a meaningful way", direct government involvement in the negotiation of Impact Benefit Agreements and other cooperation mechanisms between proponents and Indigenous communities risks undermining the conditions that create productive negotiating environments, potentially reducing the willingness of parties to reach mutual understanding.

3. **Clarify the meaning of Free, Prior, and Informed Consent.** The Discussion Paper states that engagement should occur "with the goal of ensuring free, prior, and informed consent". Clarity on the role and influence of the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) in federal consultations and accommodations, and the related definition of Free, Prior, and Informed Consent (FPIC), is of the utmost importance. As it stands, courts across Canada have been inconsistent in the application of UNDRIP in cases relating to the implementation of the Duty to Consult, giving rise to a litigious and volatile landscape.

   The federal government must remain steadfast and vocal in reiterating initial interpretations. Per comments made by the active Justice Minister of the time, David Lametti, "free, prior and informed consent does not constitute veto power over the government's decision-making process" and Bill C-15 "[would] not change Canada's existing duty to consult with Indigenous peoples or the other consultation and participation requirements under other legislation". Proactive guidance in these instances by the federal government can ensure that interpretations of the Act at the federal and sub-sovereign level align with its originally stated intentions, and that the Act remains consistent and equitable across Canadian jurisdictions.

   This guidance must further clarify that, while refusal to engage or a lack of response to proponent and government outreach may not equal consent, silence following reasonable efforts to engage cannot hinder project approvals. Furthermore, considerations for when consent is not provided must clearly state that final decisions lie with the Crown, and that those decisions are made with due consideration of all environmental, social, and economic impacts of a proposed development.

Proposal 3: One Project Decision

PDAC is generally in support of consolidating federal decision-making into a single document for projects that are subject to the *Impact Assessment Act*, with the following recommendations.

1. **Clearly define the scope of the single decision document for proponents**. PDAC recommends that the Government publish, in advance, a clear and complete list or framework of federal decisions that will be captured in the single document. This list should be applicable to all projects subject to an impact assessment, not determined on a case-by-case basis, as such determinations only add to proponent uncertainty and strain on government resources.

The Discussion Paper's statement that "permits not included in the proposed one-year federal review and decision timeline will not be part of the single decision but will proceed through the assessment and permitting processes one after the other" is relatively vague. PDAC urges the Government to ensure that the single decision captures the broadest possible set of federal approvals, and that those approvals that will be excluded are identified to proponents at the earliest stages of project development.

2. **Tailor information requirements with consideration for project stage**. One project decision is only achievable if information requirements are calibrated to what is reasonably required to commence processes. Most mineral project proponents are Canadian public issuers who generate no revenue and must attract significant capital investment from the public market to fund ongoing exploration, scoping and assessment work (precise pit shape, discharge rates, tailings volume) that are currently expected during early project permitting.

   PDAC recommends that information requirements be carefully tailored to what is directly relevant to commence assessments, with detailed design deferred to later in the development and approval timeline where it is appropriate and necessary.

Proposal 5: Enable Economic Zones through Regional Impact Assessments

We support evidence-based policies, as well as Canada's goal to increase our mineral supply chain capacity and sustainability. To achieve these targets, land use designations must consider mineral development potential.

The legislation of Federal Economic Zones must, amongst other factors, consider the following:

1. **Define zone criteria clearly, with geological potential as an explicit factor.** Any Federal Economic Zone framework must clearly define both the criteria for inclusion and the activities that are pre-approved within a zone. Geological potential and the presence of existing mineral exploration and development activity must be factored in as part of these criteria.

2. **Ensure early-stage mineral exploration is accommodated within zone frameworks.** Zoning for transportation corridors, telecommunications networks, energy production and transmission, and industrial regions must not inadvertently constrain mineral exploration activities in these regions. Mineral exploration and related infrastructure should be explicitly accommodated within designated zones.

Proposal 6: Streamlined and efficient regulatory environment

PDAC strongly supports efforts to streamline regulation and offers the following comments on items of direct relevance to the mineral exploration and development sector. For more of PDAC's recommendations to reduce red tape, read our recent response to the Red Tape Review.

1. **Narrowing the types of activities that require navigation permits (1).** PDAC supports narrowing activities requiring navigation permits and expanding the Minor Works Order to include temporary structures, short-term water crossings, and other low impact works that are routine in mineral exploration. Standardized exemptions for well-understood, low-impact activities will help reduce the burden on regulatory resources. For more information, read PDAC's recent response to the modernization of regulations under the Canadian Navigable Waters Act.

2. **Making permits for fish and fish habitat more flexible for offsetting (2).** PDAC supports increased flexibility for offsetting permits under the Fisheries Act. We reiterate our call, consistent with our recent submission, for DFO to streamline authorization requirements for routine, low-risk activities through expanded Codes of Practice and Prescribed Works and Waters Regulations, using standardized templates and reduced documentation to redirect resources toward higher-impact projects. Biological and habitat data requirements should be proportionate to risk, permitting use of existing datasets and established best practices in place of extensive new baseline studies.

3. **Ensuring project requirements are technically and economically feasible (4).** Ensuring project requirements, including alternatives and mitigation measures, are technically and economically feasible is the baseline expectation for existing regulatory processes. PDAC urges the Government to recognize that realizing this commitment will rely on alignment within federal departments, wherein feasibility is treated as a design constraint from the outset of the permitting process, embedded in regulatory guidance and training, and consistently applied across all reviewing bodies.

4. **Allowing early construction activities (5).** The proposal to allow early construction activities to commence prior to making an impact decision is generally positive, however there are two practical constraints which must be considered. First, a decision to construct and the associated financing is often contingent on projects having all necessary permits and regulatory approvals; proponents may find it difficult to attract capital for early construction activities before all permits have been received. Second, if an impact decision is later delayed or denied, proponents could be left in a position where some development has already occurred, but the project cannot proceed. The carrying or rehabilitation costs in this scenario could be unmanageable, and therefore an existential risk, for companies and projects. Allowances for early construction activities prior to an impact decision must only be made when a certain degree of confidence can be guaranteed by the government to the proponent on the outcome of that decision.

5. **Ministerial authority to adjust conditions (6 & 7).** PDAC cautions that ministerial authority to adjust impact assessment conditions post-approval, if not tightly constrained, risks introducing serious financial and operational uncertainty for proponents and stakeholders. Any such authority must be limited by clear, pre-established triggering criteria, meaningful notice and consultation with affected parties, and constraints on the scope and frequency of adjustments. Proponents who have already met approval conditions to the satisfaction of the review process should not face open-ended exposure to condition changes based on vague, evolving, or politically motivated standards.

6. **Exempt projects from the jeopardy test for species at risk (8).** PDAC supports granting the Governor in Council limited authority to exempt specific projects from the jeopardy test in defined public interest circumstances. This proposal addresses the existing inequity of the jeopardy test which, unlike most federal environmental thresholds, currently functions as a near-absolute barrier with no mechanism to weigh broader public interest factors. Two conditions are essential to its effectiveness: first, the "reasonable efforts" standard must be defined in regulation before implementation, as undefined standards in Canadian environmental law create unpredictably; and second, jeopardy findings must be grounded in current, site-specific data rather than regional or national species status assessments.

Additional Considerations

The Discussion Paper does not explicitly address the thresholds under the Physical Activities Regulations that determine which projects require an Impact Assessment. This is a foundational challenge to approval timelines within the sector and must be part of this reform process.

PDAC recommends amending the Project List to significantly increase thresholds for new metal, rare earth element, uranium, and diamond mines to better capture only those that pose the potential for significant adverse effects in federal jurisdiction. The current threshold of 5,000 tonnes per day virtually guarantees that any mine contemplated by a public issuer in the future will be captured by the IA process, an action that is directly counter to the Government's target to streamline regulatory processes. Additionally, exclude brownfield sites and project expansions from the Project List. Clearly define brownfield sites as "areas that have been disturbed to the extent that they are no longer representative of surrounding environmental conditions"

PDAC appreciates the Government's attention to the regulatory challenges facing the mineral exploration and development sector and welcomes the opportunity to respond to any future proposals regarding major project approvals in Canada. Please contact Jeff Killeen (PDAC Policy & Programs Director) at jkilleen@pdac.ca should you wish to discuss our comments further.

Kind regards,

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