

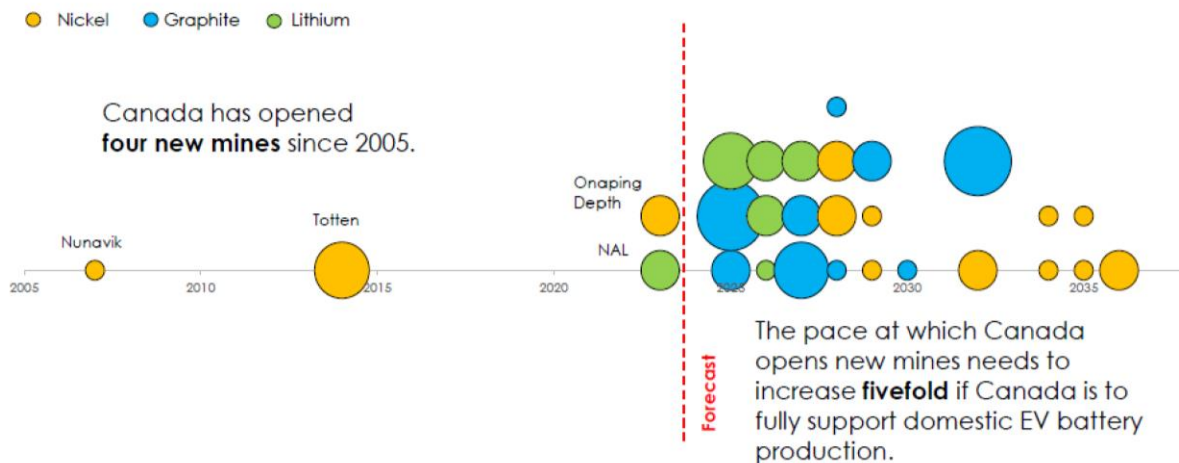
PDAC Response to the Discussion paper on the review of the Physical Activities Regulations

The Prospectors and Developers Association of Canada (“PDAC”), on behalf of our 8,000+ individual and corporate members representing Canada’s vital mineral exploration and development sector, are very keen to provide comments and recommended changes to the Physical Activities Regulations under the *Impact Assessment Act (IAA)*.

As noted in the Discussion Paper, mining projects currently make up 50% of all projects subject to Impact Assessments (IAs or the IA) through the *Act*; mines and minerals specifically are represented 2.4 times more than the next highest sector (oil and gas). Despite Canada’s critical mineral alliances and national strategy, and the [388 new mines](#) needed by 2030 to meet international EV pledges, new mine development continues to be disproportionately affected, and impeded by the IA process.

Since 2020, fewer than 15 new mines have begun operation in Canada; all received permits under CEEA 2012 or provincial/territorial processes, and only three have a primary product on Canada’s critical mineral list. This compared to 15 new mines in the United States, 20 in China, and 49 in Australia (per S&P reporting data) within the same period.

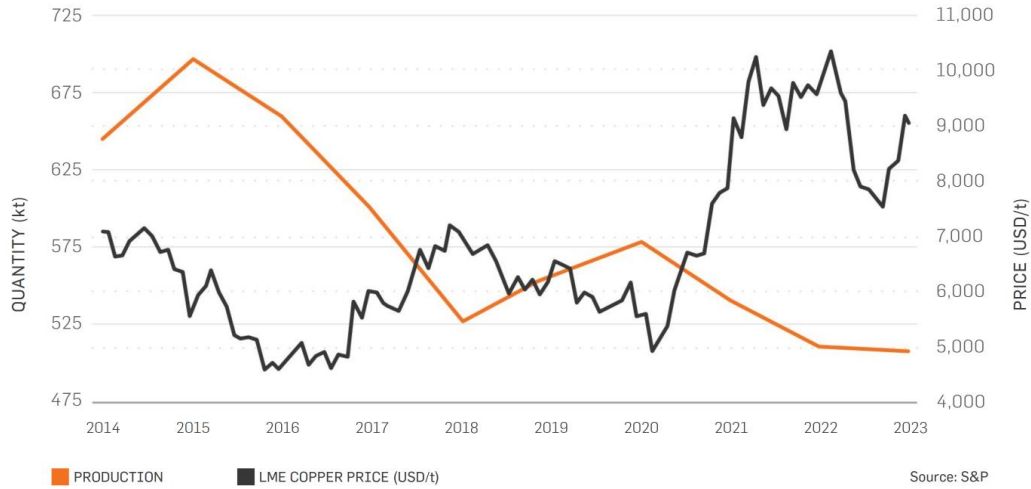
Canadian critical mineral mines built in the last two decades



Source: Natural Resources Canada

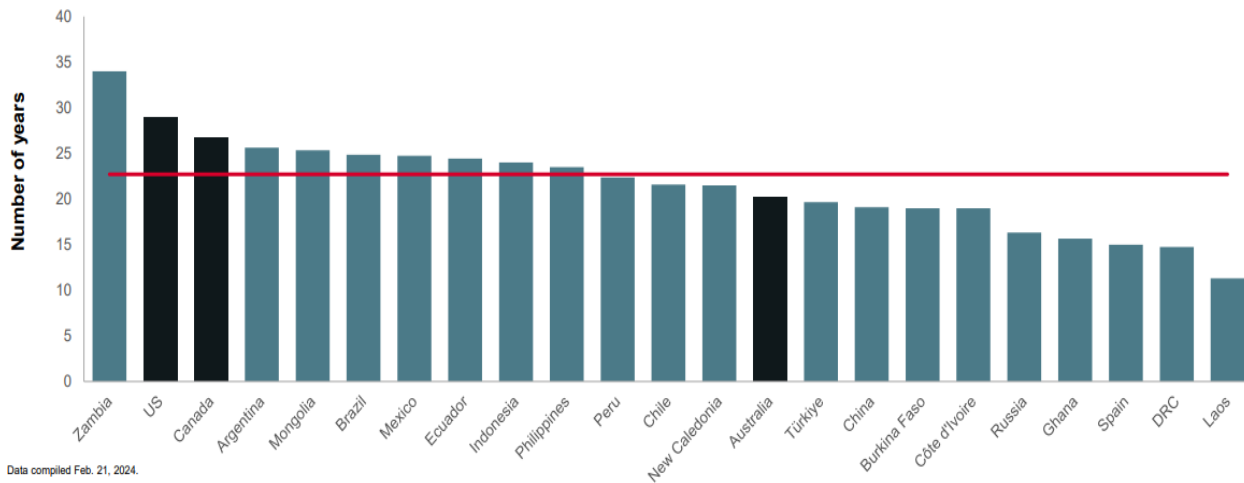
Just how quickly we are losing pace and trending towards falling far short of our goals is exemplified by Canadian copper production. The following chart outlines how despite a relatively strong pricing environment for copper, Canadian production has fallen by nearly 1/3 in just 8 years.

Canadian Copper Production vs. Price



Canada is falling behind in the global race to become a keystone supplier of the minerals needed to power the green economy and when compared to other nations with prominent mineral exploration and mining sectors, our ability to put new mines into production has reached an embarrassing state, as research from S&P below very clearly shows.

Average Mine Development Timeline by Country



The following recommendations are intended to reduce the over-representation of mines and minerals in the IA designation process, and to support a process that respects provincial and territorial jurisdiction, realistically reflects the potential for adverse project effects in federal jurisdiction, and does not overburden proponents, Indigenous communities, and government resources.



Lack of Engagement with the Mineral Industry

The Discussion Paper mentions phase 2 of targeted engagement on the Project List in Fall of 2023. PDAC was not made aware, nor did we participate in this engagement or any of the three advisory committees; we note that the Minister's Advisory Council on Impact Assessment had only one representative from the mineral industry, and the Technical Advisory Committee on Science and Knowledge had none. Considering mines and minerals make up most projects undergoing an IA, this lack of representation is a grievous oversight, leading undoubtedly to discussions and recommendations that lack the perspectives and unique insights that can be provided by the industry that has the most experience with IAs and related processes.

Misleading Terminology

The Discussion Paper, and other related IA documents often refer scope as being, "areas of federal jurisdiction related to the environment". The IA must be transparent in that its current scope lies well outside of environmental effects within federal jurisdiction; 4 out of 7 sections within the Tailored Impact Statement Guidelines relating to project impacts are not environmental, and only 5 out of 24 sections of the Initial Project Description relate to potential environmental effects.

Expanding the Project List

From the Discussion Paper: "[...] *expand the Project List to include other types of sensitive lands, such as critical habitat on federal lands, that may have federal conservation or protection objectives. Feedback also suggested that in certain sensitive federal lands, there is a risk of adverse impacts caused by activities adjacent to these lands.*"

If the Project List considers "other types of sensitive lands", they must be clearly defined as part of a standardized designation process occurring before and distinct from an IA that considers a wide range of factors, including geological potential. Otherwise, the term "sensitive lands" will create significant uncertainty for proponents and result in an additional process of designation that will further delay IA screening decisions and burden Indigenous communities and project proponents.

Assessing adverse impacts in "adjacent" lands raises the same concerns of jurisdictional overreach ruled on by the Supreme Court in October 2023. These effects will no longer fall within federal jurisdiction (i.e. occurring on federal lands) and will create uncertainty in what is considered "adjacent", a subject that will require further resources from the government, proponents, and Indigenous communities to define on a per-project basis.

These considerations open the door for further challenges against the Impact Assessment; PDAC encourages the IAAC to observe the discourse occurring over the recent Emergency Order for Boreal Caribou in Quebec, which sees the federal government seeking to define sensitive lands and their adjacent regions, and permissible activities within them, on provincial jurisdiction.



Increased Thresholds for Mines and Minerals

According to the current threshold for mines and minerals on the IA's Project List, which is currently 5,000 tonnes per day (tpd) ore production capacity, more than 40% of all currently operating mines in Canada (as of September 2024) would have required an Impact Assessment – more than 50% for those whose primary product is a critical mineral. Furthermore, a 5,000tpd threshold is at the lowest end of the scale for economic materiality and viability for a public issuer (i.e. company listed on a public exchange). This current threshold virtually guarantees that any mine contemplated by a public issuer in the future will be captured by the IA process, which is an obvious overstep of the intent of the IAA based on the stated mandate and in direct contrast with the recent SCC decision.

Canada now seeks to become a leading mineral supplier to the world, however, over half of the mines that could come online the next 10 years will require an IA. This regulatory overreach is counter to the GoC's target to streamline regulatory processes, does not “enhance Canada's competitiveness” nor “create opportunities for sustainable economic development”.

PDAC recommends a significant increase to IA thresholds for new metal, rare earth element, uranium, and diamond mines to better capture only those that pose the potential for significant adverse effects. However, **we strongly caution against** only “*raising thresholds for certain types of mining such as copper, nickel, zinc, and rare earth element mines*”.

The potential for “significant adverse effects to federal jurisdiction” rarely, if ever, is a direct result of the mineral to be extracted. Excluding projects purely based on mineral type versus overall viability is beyond to the scope and purpose of the IA, it will create significant uncertainty for developers in the future and is already severe eroding the health of Canada's mineral ecosystem.

Canada's geological landscape predominantly hosts polymetallic orebodies, meaning that critical minerals are often found alongside other minerals that are currently deemed non-critical, such as lead, gold or silver. The coexistence of multiple recoverable minerals or metals is often what makes critical mineral extraction financially viable and can insulate operating margins from downturns in commodity prices. In fact, there is only one operating mine in Canada where critical minerals account for 90% or more of the mine's production.

Furthermore, the position of Canada as a competitive jurisdiction is largely based on the capabilities of supporting businesses (drilling expertise, technical consulting, regulatory disclosure, accounting, financing, legal, and more). These businesses and expertise are highly dependent on gold and precious metals activities, which account for ~60% of all exploration spending in Canada and the economies of scale that this activity supports are what has helped Canada's mineral industry evolve to be a global leader over the last century.

Reviewing projects on the Canadian Impact Assessment Registry, PDAC recognizes several projects that should not require an Impact Assessment:

- Wasamac Gold is a proposed underground mine of ~6,000 tpd and a footprint of ~3 sq km, and within a heavily disturbed area that encompasses municipalities, their associated



infrastructure, highways, forestry activity and existing mineral processing and mining activity. This project is not proximal to federal lands.

- The proposed Upper Beaver Gold Mine is a mid-sized underground operation of ~10,000 tpd, approximate 4 sq km surface footprint, and exists on a brownfields site with an historic open pit and underground mine directly adjacent to already disturbed areas.
- The Eskay Creek Revitalization Project is a small open pit operation proposed to occur on land already disturbed by previous underground mining, making use of existing infrastructure and facilities. In this instance, Eskay Creek's IA has been substituted to the Government of British Columbia, yet the project still requires a decision from the Minister of Environment and Climate Change and reflects continued disregard of provincial authority.

To put these projects into perspective, the proposed [Burin Peninsula EverWind Green Fuels Project](#) will consist of up to 1500-turbines, 55 sq km of solar farms, and an energy production facility for a total surface footprint of approximately 2,683 sq km. The project area contains more than 350 named waterbodies and records of aquatic, avian, bat and terrestrial species at risk and species of conservation concern. This project **has not** been designated under the Impact Assessment Act and implies there is clear bias in the IAA against extractive projects versus other planned developments.

Exclusion of Brownfields Mine Sites

PDAC recommends adoption of “*Technical amendments to clarify that projects that re-open existing sites (that are not expansions) are not captured*”. **PDAC further recommends** removing brownfield sites and project expansions from the Project List.

The effects of activities occurring within brownfield sites, or as expansions on existing sites, are considerations that are well understood under thorough industry best practice. Canada should focus on incentivizing mineral extraction from redevelopment of existing sites as it encourages industrial activities within already disturbed areas near existing infrastructure and transportation corridors and away from potentially undisturbed lands. Redevelopment of brownfields sites can also accelerate reclamation of historic, or abandoned sites. Brownfield distinctions should also consider the presence of other industrial activities, such as forestry and infrastructure corridors, which may have already impacted the region. **PDAC agrees with** the Mining Association of Canada's proposal that Brownfield be defined as “an area that has been disturbed to the extent that it is no longer representative of surrounding environmental conditions”.

Clearer Reasoning for Requiring an Impact Assessment

For every instance in which a mineral project is found to require a full Impact Assessment, the justification within the “Notice of Impact Assessment Decision with Reasons” is nearly verbatim: “*the Agency is of the view that the Project may cause adverse effects within federal jurisdiction, including potential effects on fish and fish habitat, migratory birds, and changes to the health, social, economic and environmental conditions of Indigenous people.*” Under that logic, every



single mining project in Canada exceeding 5,000 tpd that requires DFO approval or occurring on the traditional territory of an Indigenous community will require an Impact Assessment.

PDAC recommends that IAAC provide clear, specific, and detailed justification for each designated project that indicates how a project could potentially cause significant and adverse effects within federal jurisdiction and how existing federal or provincial processes (under DFO, species at risk, etc.) are insufficient to address these concerns.

Information requirements within the IA must then be confined to those areas relating to significant, adverse effects within federal jurisdiction. On average, less than 50% of the content of the Tailored Impact Statement Guidelines or Project Descriptions speaks directly to the three areas of federal jurisdiction outlined in the aforementioned justification. **Assessments should be restricted to significant adverse effects within federal jurisdiction**, lest their documentation and the associated review/comment processes duplicate other processes and overburden proponents, regulators, and Indigenous communities.

In Closing

Physical Activities Regulations must re-evaluate conditions for designation (thresholds, expansions, and brownfield sites), provide greater justification for designation that clarifies what cannot be achieved through existing federal and provincial/territorial processes, and ensure consistent and clear application and definitions that provide predictability and certainty. Through these amendments, IAAC can reduce the overrepresentation of mining projects in the process and create an efficient and equitable process that does not overburden participants or regulators and enables sustainable and responsible economic development. These steps are essential for Canada to remain a competitive player in the global mineral industry.

PDAC remains a keen and informed stakeholder to aid in improving the Impact Assessment Act and hope to see broader inclusion of the mineral industry in future opportunities to enhance regulatory efficiency, including participation in strategic committees.

We welcome further discussion on our recommendations and please contact me at your convenience (jkilleen@pdac.ca).

Sincerely,

Jeff Killeen