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TO

Government of Ontario
Legislative Building
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RE: Proposed Legislative Amendments: Protect Ontario by Unleashing our Economy Act, 2025

I am writing to you on behalf of the Wabun Tribal Council ("Wabun") to provide comments with regards to the proposed legislative amendments that set out in *Bill 5, the Protect Ontario by Unleashing our Economy Act, 2025*.

Wabun and its member First Nations strongly oppose the legislative changes associated with Bill 5 as they will significantly impact our Aboriginal and treaty rights. They threaten to take away essential procedural steps for regulating development and protections related to the environment, archaeology, and species at risk. They remove our ability to work cooperatively with proponents and government agencies under a strong legislative framework.

While our member First Nations are open to responsible development and work frequently with developers, Bill 5 threatens to instead create uncontrolled and irresponsible development which will both unjustifiably infringe and harm our ability to exercise our Aboriginal and treaty rights, and further remove triggers for the Duty to Consult and Accommodate ("DTCA") which protect those rights. The regulatory changes will introduce significant uncertainty in the regulatory system as First Nations are forced to work without a reliable provincial partner to ensure the protection of our traditional territories. In a time when we must work together to protect Ontario's economy and the livelihoods of our people, these proposed developments instead threaten to create an adversarial system that will lead to further delays and lost projects.

Introduction

Wabun is a non-profit organization that takes direction from, and is accountable to, the Chiefs of the Brunswick House, Chapleau Ojibwe, Flying Post, Matachewan, and Mattagami First Nations and Beaverhouse (affiliate) in northeastern Ontario. The collective traditional territory of our member First Nations is roughly the size of France and spans an area that is one of the busiest for mineral exploration and natural resource development in not only Ontario, but also Canada.

Collectively, our member First Nations have seen more than **65** mining operations within their traditional territories since the signing of Treaty 9 in 1906 and currently have **13** operating mines within the same boundaries. This includes projects such as the Agnico's Macassa mine, Alamos' Young-Davidson Mine, IAMGOLD's Côté Gold Mine and the Discovery Porcupine complex that encompasses the Dome Mill and the Hollinger, Pamour, Hoyle Pond and Borden mines. Our ancestral lands also continue to be significantly impacted by additional natural resource development projects such as forestry, energy and agricultural developments.

Wabun assists its member First Nations by organizing and facilitating services that include healthcare, governance, and economic and resource development. In the context of natural resource projects, Wabun provides support to our member First Nations by overseeing technical reviews, working with regulatory bodies during consultation processes for proposed projects and where appropriate, reaching agreements with proponents to ensure that there are equitable socio-economic benefits for our collective members and that negative impacts on our rights are minimized.

Due to the continued interest in natural resource development and mining on the collective territory of our member First Nations, Wabun has a strong interest in ensuring that mining in Ontario is properly governed. This is essential in protecting our member First Nation's treaty and aboriginal rights.

We have provided specific feedback on specific proposals by Ontario below.

Specific Feedback

The Special Economic Zones Legislation Must Be Withdrawn

The *Special Economic Zones Act* (“SEZA”) will grant Ontario virtually unlimited power to provide any proponent or business with the ability to conduct any activity it wants, in any area of the province the government chooses, without any regulatory oversight.¹

Wabun and its Member First Nations are deeply concerned about the breadth of the proposed legislation. It allows Ontario to exempt any law without legislative oversight or a publicly transparent process. We will no longer be able to depend on the certainty associated with strong provincial laws when considering whether we will provide our consent for development. Instead, it opens the door that Cabinet may, in its sole discretion, remove essential protections that guarantee the continued exercise of our Aboriginal and treaty rights, such as:

- Ensuring that mining companies file, and then follow, acceptable closure plans that are essential for minimizing environmental impacts;
- Ensuring proponents follow the requirements of a Forest Management Plan; and
- Ensuring that there are decision-points related to development which require for First Nations to be consulted and accommodated for impacts to their Aboriginal and treaty rights.

While Ontario has claimed it will live up to its constitutional obligation to consult and accommodate our rights, the *SEZA* does not provide mechanisms for First Nation involvement when decisions are being made related to our territories. This is not consistent with Ontario’s constitutional obligations and the Honour of the Crown. If *SEZA* passes into law, our member First Nations may be left with no choice but to act swiftly, aggressively and proactively to ensure the protection of our territory when an exemption is passed that we do not agree with. It may create unnecessarily adversarial situations between First Nations, the Crown, and proponents.

The Changes to Species at Risk Protections Will Be Disastrous

Bill 5 proposes to replace the *Endangered Species Act* (“ESA”) with a new *Species Conservation Act* (“SCA”) and, in the interim, Bill 5 would amend the *ESA* to make many of the same changes planned for the *SCA*. The proposed changes gut the existing protections and will put many species at risk of disappearing entirely. We note that our Traditional Territory includes many different species which have been classified as Species at Risk. These species, with whom we have a close relationship, are essential to the exercise of our Aboriginal and treaty rights.

We have commented on some specific concerns with the proposed *ESA* and *SCA* proposals below.

- 1. The COSSARO’s Classifications Must Be Paramount:** Under both the amended *ESA* and the *SCA*, Ontario is removing the existing requirement for any species identified by the Committee on the Status of Species at Risk (COSSARO) to be added to the associated list

¹ Bill 5, *Protect Ontario by Unleashing our Economy Act*, 1st Sess, 44th Leg, Ontario, 2025, Schedule 9, ss 2, 3.

of protected species. Instead, the final decision related to protections will be made by Cabinet.

This is an unacceptable change that shifts essential decision-making away from an independent body – which incorporates Indigenous engagement and Indigenous Traditional Knowledge in its decision-making – to a political body that does not have any scientific or traditional knowledge regarding species and their habitats. It risks creating situations where our rights will be subject to the whims of governments who may be swayed by lobbying by industry groups.

- 2. The Definition of Habitat Must Not Be Reduced:** The proposed changes to the definition of a habitat, which will now only protect *the immediate surroundings* of an animal's den, nest, wintering or staging area, or a plant's root zone, will have disastrous consequences. Such a limited habitat definition for at-risk animal and plant species is certain to result in their further decline in Ontario. Habitat for animals and plants must be defined *to ensure protection of the entire area that any member of the species requires to carry out its life processes*.
- 3. Protections Against Harassment of Species Must Be Maintained:** We oppose the removal of protections against "harassment" of species from the *ESA* and the *SCA*. Your proposed changes will allow for proponents, especially during early exploration, to unreservedly impact areas in ways which will disrupt the normal behaviour of a species at risk. This change, combined with the narrow definition of habitat, will inevitably lead to several species disappearing from the territories of our member First Nations.
- 4. Ontario Must Not Move To A Registration-First System:** Wabun and its member First Nations are also opposed to the proposed changes to the existing permitting process. Currently, the permitting process involves review by environmental experts and consultation with our member First Nations. Under Bill 5, that process is replaced in nearly all cases by an online registration form that, once submitted, allows the project to proceed with no expert review and no obligation to consider less impactful alternatives.

By removing opportunities for the government to review plans and impose protective conditions, the proposed amendments will also eliminate opportunities for First Nations to be consulted and accommodated. This is a direct attack on our Aboriginal and treaty rights and is unconstitutional. We note that similar systems have been used in the mining context and have been challenged as unconstitutional because they try to circumvent the Crown's duty to consult and accommodate.²

² See for example *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at [paras 426-430](#).

The Province Must Not Exempt Requirements Related to Archaeology

Wabun's member First Nations have lived within their Traditional Territories since time immemorial. There are important archaeological sites, which have invaluable importance to our history, throughout our territory. Years of irresponsible development have already impacted some of these sites, and we have worked hard to ensure that these sites are protected and properly accounted for.

The *Ontario Heritage Act* ("OHA")'s requirements related to archaeological assessments and the protection of these sites are essential to the protection of the culture of Wabun's member First Nations. It helps ensure that developers, planning authorities and individuals understand that there are protections in place in Ontario and ensures that our sites are legislatively protected.

However, the proposed amendments to the *OHA* will undermine these protections by allowing for Ontario to exempt a proponent from these provisions as it sees fit.³ Ontario could, for example, exempt a proponent from getting a license to disturb an archaeological site such as hunting camps or villages, or from needing to conduct an archaeological assessment, even where development is happening in areas where there is a high likelihood of archaeological sites being discovered.⁴

This is an unacceptable and dramatic attack on the culture of Indigenous peoples. Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples speaks directly to the rights of Indigenous peoples to practice and revitalize their cultures, including our right to protect archaeological and historic sites, as well as artifacts. The changes being introduced through Bill 5 would be entirely counter to Ontario's commitment to reconciliation with Indigenous peoples, and the ongoing duty to consult owed to First Nations groups in the province. We are firmly opposed to these changes.

Concluding Remarks

As First Nations' people, we have a responsibility in accordance with our own laws to protect our lands and waters. We cannot properly exercise our responsibility alone and so we must work together with Ontario's regulatory staff in order to carry out our responsibilities in the exploration and mining sector. Take away those processes, and the duty to consult doesn't go away, but it will be significantly less reliable as a backstop to prevent adversarial relationships from developing between our First Nations and proponents and the Crown. The result is sadly predictable: consultation and accommodation will be done badly, or not at all, and the result will not be unleashing of the economy but battles in court and on the land and more delays.

³ Bill 5, *Protect Ontario by Unleashing our Economy Act*, 1st Sess, 44th Leg, Ontario, 2025, Schedule 7, s 4.

⁴ See: Environmental Registry of Ontario, "[*Proposed Amendments to the Ontario Heritage Act, Schedule 7 of the Protect Ontario by Unleashing our Economy Act, 2025*](#)"

Ontario's proposed amendments under Bill 5 are setting Ontario up for failure. By removing consultation triggers related to the environment, species at risk, and archaeology, you are creating uncertainty in how natural resource development will take place in Ontario. If Ontario is unwilling to ensure that our rights are protected, we will be forced to take additional actions ourselves.

Our constitutionally protected rights will always take precedence over any particular law or regulation. Ontario will always need to consult and accommodate, and to respect the spirit and intent of the Treaties. It is us and the lands and natural resources in our traditional territories who will bear the brunt of irresponsible development. Ontario **must** reconsider these changes and withdraw this bill in order to work with First Nations to find an acceptable path forward.

Yours truly,



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Executive Director
Wabun Tribal Council

- c. Chief Jennifer Constant/ Mattagami First Nation
Chief Murray Ray/ Flying Post First Nation
Chief Cheryl StDenis/ Brunswick House First Nation
Chief Alex Batisse/ Matachewan First Nation
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