Nibinamik First Nation Comments on Bill 5, *Protect Ontario By Unleashing Our Economy Act*

(15 May 2025)

ERO No. 025-0391	Special Economic Zones Act, 2025
ERO No. 025-0409	Proposed amendments to the Mining Act 1990, Electricity Act 1998, and Ontario Energy Board Act 1998, to protect Ontario's Economy and Build a More Prosperous Ontario
ERO No. 025-0380	Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025
ERO No. 025-0396	Addressing Changes to the Eagle's Nest Mine Project
ERO No. 025-0418	Proposed Amendments to the Ontario Heritage Act

As Ogamakan (Chief) of Nibinamik First Nation ("**Nibinamik**"), I am writing to register Nibinamik's serious concerns about the Government of Ontario's ("**Ontario**") proposed *Protect Ontario by Unleashing Our Economy Act, 2025* ("**Bill 5**"). Nibinamik strongly opposes Bill 5 and any unilateral action by Ontario to rush development in our Homelands, including the Ring of Fire area. No development can occur in our Homelands without our free, prior, and informed consent. We know change is coming in our Homelands, and we are open to exploring all opportunities that will lead to a better future for our community and people. This must start with direct engagement and partnership. We will not surrender stewardship of our Homelands to distant decision makers.

Nibinamik requests that Bill 5 be withdrawn in full and that Ontario work with Nibinamik and other First Nations in partnership to develop processes that respect our rights, laws, and responsibilities to our Homelands and community members. Notwithstanding this, we have provided comments on specific schedules of Bill 5 that must not proceed. We also request that Ontario travel Bill 5 to northern First Nation communities to ensure our voices and concerns are heard and considered. Our comments relate to the above-noted postings on the Environmental Registry of Ontario.

Nibinamik First Nation and Our Rights and Responsibilities in Our Homelands

Bill 5 completely ignores First Nations'—including Nibinamik's—rights, laws, jurisdiction, and responsibilities to the land on which Ontario is proposing to rush development.

Nibinamik is an Oji-Cree community of approximately 575 people with approximately 350 living at the Summer Beaver settlement, 500km north of Thunder Bay. Nibinamik is a remote, fly-in community accessible by airport and seasonal winter roads. There are no non-Indigenous communities in our Homelands. As a practical matter, the lands and hunting grounds surrounding our community are governed by our own Anishinaabe laws and protocols.

Nibinamik's Homelands include the area Ontario and many others now call the Ring of Fire. The Ring of Fire area has been our community's Homelands since time immemorial. It holds the stories of how our community travelled the rivers and waterways around our four original settlements. It is where our members hunt, fish, and trap to feed their families. It is where we teach our children, bury our Elders, and hold our ceremonies. The Ring of Fire is not a distant uninhabited land. It is our store, our church, and the very heart and home of our community.

As Anishinabek people, Nibinamik holds rights and responsibilities for the ongoing stewardship and sustainable development of the lands, waters, and resources of our Homelands. We also have the fundamental right to protect our Homelands to ensure they

can sustain our people today, and into the future, as they have done since time immemorial. These rights and responsibilities are the guiding principles that inform our decision making as a community, and our relationship with Ontario and others who seek access to our lands.

Some of our rights have been outlined in the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**"), which includes, among other rights, the rights to self-determination and self-government (Articles 3 and 4); the right to maintain and strengthen our distinctive relationship with our territories (Article 25); the right to own, use, develop, and control our lands and territories (Article 26); the right to conservation and protection of the environment (Article 29); the right to determine and develop priorities and strategies for the development or use of our lands, territories and other resources (Article 32(1)); and the right to be consulted in order to obtain our free and informed consent prior to the approval of a project affecting our lands, territories, or resources (Article 32(2)). The Supreme Court of Canada has recently confirmed that UNDRIP "is incorporated into the country's domestic positive law."[1] While framed as rights, these also fundamentally represent our responsibilities to the lands, waters, and resources of our Homelands and our obligation to manage, protect, and sustain them for future generations.

As a signatory to Treaty 9, Nibinamik also holds Aboriginal and treaty rights throughout our Homelands in Treaty 9 territory. Since 1982, our Aboriginal and treaty rights have been recognized and affirmed by section 35 of the *Constitution Act, 1982*. Our treaty promised that we would be able to continue to sustain our community into the future by relying on our Homelands as we had always done. This requires that we be involved in decision-making and careful environmental stewardship and consideration of how development and other activities will affect the lands, waters, and exercise of our rights for future generations.

Our rights—and responsibilities—as Anishinabek people, and our constitutionally protected Aboriginal and treaty rights, guide our work as a First Nation in planning for the future. Part of this work has been expressed through our community-led land use planning process, which has been ongoing since the 1980s. In 1983, Nibinamik developed our community Land Use Plan. This was done through a grassroots approach involving the guidance of our Elders and leadership. In 2005, Nibinamik developed our Nibinamik Traditional Land Use Access Protocol that guides access and activities in our Homelands and is a key part of exercising our stewardship rights and responsibilities. Since 2005, we

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[1] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 15; *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at paras 47, 117.

have continued to implement and update our community-based land use plan with guidance from our Elders and community members.

Nibinamik's relation to the land and Ontario is unique, in that we do not have a federally recognized reserve. Rather, our settlement at Summer Beaver is located in an area Ontario considers provincial Crown land and has withdrawn from mining claims under the *Mining Act*. It thus falls on Ontario to discharge the Crown's fiduciary duties to protect our interest in and relationship with our Homelands.

Bill 5 completely ignores Nibinamik's reality. Rather than seeking to harmonize Ontario's regulatory processes with our laws and decision-making, Bill 5 seeks to remove oversight for harmful activities and eliminate opportunities for our governments to collaborate in relation to proposed projects. Our Anishinaabe laws govern our Homelands. Bill 5 and any regime regulating development in our Homelands must respect us as equal partners.

Special Economic Zones – the proposed *Special Economic Zones Act, 2025* (Schedule 9)

Nibinamik is concerned that Ontario's proposed *Special Economic Zones Act, 2025,* would establish areas where Ontario will reduce or eliminate the checks and balances necessary for understanding impacts to our Homelands and to our rights. This is incompatible with creating the partnerships required for successful development. Schedule 9 must be withdrawn in full.

The *Special Economic Zones Act, 2025,* would allow Ontario to create "special economic zones" where certain permitting and approval processes under other Ontario laws could be modified or removed for preferred proponents and projects. The Lieutenant Governor in Council would have the authority to prescribe criteria for special economic zones, as well as proponents and projects eligible to benefit from the same. Ontario says that the proposed law "is meant to quickly advance strategically important economic activity and priority projects" and expects the first zone to be established by September 2025.

First, Nibinamik is concerned that establishing special economic zones will lead to destructive development and irreversible impacts to our Homelands and constitutionally protected rights. By removing requirements for permitting and approvals, Ontario would be removing key opportunities to understand the potential impacts of a project on the environment, wildlife, and our Aboriginal and treaty rights. Ontario relies on these permitting/approval processes in part to discharge its duty to consult and accommodate First Nations. They are vital opportunities for our community to engage with Ontario and proponents before a project proceeds. Removing or streamlining them puts an undue burden on First Nations to monitor proposed projects in our Homelands and will

undoubtedly allow projects to proceed with more unmitigated impacts. In proposing Bill 5, the government has paid lip service to its duty to consult and accommodate First Nations but has not explained how it would discharge this duty after permitting/approval processes are removed.

Second, Nibinamik is concerned with the sweeping powers the *Special Economic Zones Act, 2025,* would give the Minister and government. The proposed statute is only three pages long and places the power to create criteria and processes for designating special economic zones, trusted proponents, and designated projects with the executive branch. It also gives the executive nearly unfettered power to determine which laws, regulations, and other rules designated projects and trusted proponents can be exempted from. This eliminates important safeguards needed to maintain responsible government and ensure the executive is accountable to the legislature and the people of Ontario. We worry that special economic zones will, in essence, be law-less zones.

Lastly, Nibinamik is concerned that Ontario has already indicated that if Bill 5 is passed, "the first special economic zone that the government will invoke will be in the Ring of Fire."[2] Designating the Ring of Fire area as a special economic zone would be a "strategic, higher-level" decision likely to impact Aboriginal and treaty rights and claims. This decision would trigger the Crown's duty to consult and accommodate First Nations, including Nibinamik.[3] The duty to consult must be discharged <u>before</u> a decision is made.[4] If Bill 5 is passed, Ontario must consult and accommodate Nibinamik and other First Nations <u>before</u> making any decision to designate a special economic zone in our Homelands..

"One Project, One Process" Approach for Mine Permitting – proposed amendments to the *Mining Act* (Schedule 5)

Similarly, Nibinamik is concerned that proposed amendments to the *Mining Act* to create a new process for mine permitting will result in fewer opportunities for meaningful engagement on potential impacts of proposed mining activities in our Homelands. Schedule 5 must be withdrawn in full.

The proposed amendments, if passed, will allow the Minister to establish a Mine Authorization and Permitting Delivery Team ("**MAPDT**") for designated projects, which would be responsible for preparing an integrated plan for obtaining the permits and authorizations required under Ontario law, and coordinating with government ministries to

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[2] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 44-1, No 7 (29 April 2025) at 139.

[3] *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 44.

[4] *West Moberly First Nations v British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247 at para 106.

expedite the process for obtaining those permits and authorizations. The proposed amendments also say that the MAPDT "may support" government efforts to fulfill the duty to consult and accommodate, including by coordinating communication between Indigenous nations, the proponent, and affected ministries. However, it is unclear how the MAPDT would support fulfilling the Crown's duty to consult and accommodate.

Ontario's free-entry mining regime, which allows the staking of claims in treaty territory without any consultation with First Nations, is already deficient. Courts in Yukon, British Columbia, and Québec have held that similar regimes in those jurisdictions violate the duty to consult.[5] Courts in this province have suggested the same is true here.[6] Bill 5 does not solve this problem. Rather than remedying Ontario's regime, Bill 5 adds further uncertainty to how Ontario will attempt to fulfil its duty to consult, and whether this will be constitutionally compliant.

Cancelling Eagle's Nest Mine Assessment – proposed changes to the *Environmental Assessment Act* (Schedule 3)

Nibinamik strongly opposes the proposed changes to the *Environmental Assessment Act* to cancel the agreement for comprehensive environmental assessment of the Eagle's Nest Mine and to revoke the approval for the terms of reference for the assessment. Schedule 3 must be withdrawn in full.

The Eagle's Nest Mine is a proposed multi-metal underground mine near McFaulds Lake in the Ring of Fire area and in Nibinamik's Homelands. The area surrounding the proposed project is intact boreal forest and peatland that, despite being inhabited for thousands of years, remains largely undisturbed by large-scale industrial development. The region is home to globally significant fish and wildlife species and is one of the largest carbon sinks on earth, playing a critical role in global carbon sequestration, a key factor in mitigating climate change.

The Eagle's Nest Mine and its associated facilities and infrastructure will cause irreversible impacts to our Homelands, and to the exercise of our Aboriginal and treaty rights. It is imperative that this project, and any potential mines in our Homelands, are subject to robust environmental assessment processes that are conducted in partnership with Nibinamik and other First Nations that stand to be impacted by the project. Additionally,

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[5] *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14; *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680; *Mitchikanibikok Inik First Nation (Algonquins of Barriere Lake) c Procureur général du Québec*, 2024 QCCS 4007.

[6] *Frontenac Ventures Corporation v Ardoch Algonquin First Nation*, 2008 ONCA 534 at paras 61 and 62.

these processes must consider the economics behind proposed mining projects to ensure that they do not become another liability to taxpayers during the remediation phase.

Ontario must respect our responsibilities for the ongoing stewardship and sustainable development of the lands, waters, and resources of our Homelands. This includes ensuring that the impacts of mine projects in our Homelands are properly studied and understood, before they are allowed to proceed.

"Registration-First" Approach to Protecting Endangered Species – proposed changes to endangered species legislation (Schedules 2 and 10)

Nibinamik fundamentally opposes Ontario's proposed amendments to Ontario's endangered species protection regime, including "immediate" amendments to the *Endangered Species Act, 2007* ("**ESA**") followed by a repeal of that legislation and replacement with the proposed *Species Conservation Act, 2025*. The proposed amendments will not protect species at risk and their critical habitats adequately and will result in adverse impacts to Nibinamik's constitutionally protected rights and interests. Schedules 2 and 10 must be withdrawn in full.

First, Nibinamik opposes amending the purpose of the ESA to include balancing socio-economic factors, including "sustainable economic growth" against species protection. The sole purpose of legislation designed to protect endangered species, must be to identify, protect, and promote the recovery of species at risk and their habitats.

Second, Nibinamik opposes the proposed amendments aimed at developing a *registration-first* approach to protecting endangered species. Under the current ESA, activities that are harmful to species and their habitats are prohibited, but the Minister can issue a permit for harmful activities in certain circumstances. If the proposed changes are passed, harmful activities are prohibited *unless a proponent registers the activity first.* Only in limited (currently undefined) circumstances will harmful activities require a permit.

Similar to special economic zones and one project, one process approaches, eliminating permits over a wide range of destructive activities erodes the process by which Ontario performs its duty to consult Nibinamik and other First Nations. Courts have recognized that *registration-first* approaches that remove opportunities for Crown consultation may be unconstitutional.[7] Additionally, this approach fails to recognize the value of species to Nibinamik and leaves no opportunity for considering the impacts of "registered" harmful activities on the rights and interests of Nibinamik community members.

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[7] *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14; *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680; *Mitchikanibikok Inik First Nation (Algonquins of Barriere Lake) c Procureur général du Québec*, 2024 QCCS 4007.

Third, Nibinamik opposes the drastic narrowing of the definition of "habitat", the removal of the prohibition on the harassment of species, and the removal of requirements for recovery and management plans. These proposed amendments would eliminate protections for the vast majority of the areas endangered species rely on for survival and would eliminate key efforts to monitor the recovery of endangered species.

Taken together, these proposed changes drastically weaken Ontario's endangered species legislation. Ontario's proposed *registration-first* approach will result in unchecked harm to species and the critical habitat—forests, rivers, and wetlands—they need to survive.

Discretion to Avoid Archaeological Assessment - proposed changes to the *Ontario Heritage Act* (Schedule 7)

Nibinamik strongly opposes the proposed amendments to the *Ontario Heritage Act*. The amendments, if passed, would allow Ontario to exempt property from requirements to conduct an archaeological assessment, when it is of the opinion that the exemption could potentially advance a provincial priority. These changes put our lands and sacred and ceremonial sites at risk. Schedule 7 must be withdrawn in full.

Nibinamik opposes providing Ontario with discretion to override requirements for archaeological assessments. Archaeological assessments often trigger the duty to consult First Nations if a known or potential sacred site is identified. Exempting properties from requirements for archaeological assessments permits the evasion of the duty to consult. It puts our sacred sites, artifacts, and burials at risk by removing important safeguard before development occurs and before irreparable damage may be caused. Ontario's proposal could allow vaguely defined provincial priorities to take precedence over the integrity of our ancestors' remains. This cannot be allowed.

Conclusion

Bill 5's aim to rush development in our Homelands will have significant impacts on our Aboriginal and treaty rights and our relationship with the Crown. The proposed changes remove key points of contact between First Nations, the government, and proponents, to discuss potential impacts from projects in our Homelands. Ontario currently relies on these points of contact to fulfil its duty to consult Nibinamik other First Nations. Bill 5 proposes nothing to fill the void left by these cuts.

The solution is working in partnership with First Nations, not attempting to remove them from the conversation. Any process aimed at expediting development in our Homelands must be designed in partnership with us and in a way that respects our Anishinaabe laws and decision-making processes. Ontario and proponents must engage with Nibinamik with a view to obtaining our free, prior, and informed consent for development in our

Homelands.[8] As the Supreme Court of Canada noted, "[n]o one benefits—not project proponents, not Indigenous peoples, and not non-Indigenous members of affected communities—when projects are prematurely approved only to be subject to litigation."[9] Bill 5 must be withdrawn in full.

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[8] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007), art 32(2); *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319.

[9] *Clyde River (Hamlet) v Petroleum Geo-Services Inc,* 2017 SCC 40 at para 24.