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SUBMISSIONS BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION TO THE GOVERNMENT OF CANADA REGARDING "GETTING MAJOR PROJECTS BUILT IN CANADA – DISCUSSION PAPER ON PROPOSED LEGISLATIVE, REGULATORY AND POLICY REFORMS"

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PART I - INTRODUCTION

On May 8, 2026, the Government of Canada published an online Discussion Paper that outlines various proposed reforms to federal assessment and permitting processes.[1]

The overall goal of the Discussion Paper proposals is to "simplify" these processes so that major projects can be more quickly approved and implemented in a faster manner.

The public consultation period on the Discussion Paper ends on June 7, 2026.[2] The Government of Canada has committed to "moving quickly to introduce legislation following the engagement period."[3]

For the reasons described below, CELA is strongly opposed to the Discussion Paper proposals. In our view, the Discussion Paper proposals are unjustified, regressive, and contrary to the public interest. If enacted, the proposed changes will significantly reduce environmental protection, public participation, transparency, and accountability under federal environmental law.

Accordingly, we urge the Government of Canada to withdraw and discontinue these ill-conceived reforms, which constitute the most significant rollback of federal environmental laws in recent decades.

(a) Overview of Discussion Paper Proposals

The Discussion Paper provides the federal government's objective in developing reforms to existing assessment and permitting laws:

> *This proposal would create a simpler, more coordinated process in Canada, where federal decisions for major projects could be completed in shorter timelines. It would help project proponents successfully build projects that boost Canada's economy while ensuring*

[1] Getting Major Projects Built in Canada - Discussion Paper on Proposed Legislative, Regulatory, and Policy Reforms - Canada.ca ["Discussion Paper"].
[2] Engagement: Supporting timely-decision-making for major projects - One Canadian Economy - Canada.ca.
[3] Discussion Paper.

environmental protection, respecting Indigenous rights, and supporting meaningful consultation with Indigenous Peoples.

To achieve this objective, the Discussion Paper, among other things, proposes that:

- federal impact assessments and permit reviews will happen concurrently and must be completed within two years (i.e. one year for the proponent to submit finalized reports and studies, and one year for federal authorities to complete their decision-making)

- a new Crown Consultation Hub will be created within the Impact Assessment Agency of Canada (IAAC) to oversee and direct coordinated Indigenous consultation processes for major projects

- for certain designated projects not under the jurisdiction of the Canadian Energy Regulator (CER) and Canadian Nuclear Safety Commission (CNSC), the *Impact Assessment Act* (IAA) will be amended to empower the Minister of Environment, Climate Change, and Nature to issue a single decision document, which will include all federal decisions required for a major project to move forward.

- projects regulated by the CER (i.e. international or interprovincial pipelines and transmission lines) will no longer require impact assessments, while the CNSC will be responsible for conducting impact assessments of nuclear and uranium projects under the IAA and determining whether such projects would cause significant negative federal effects

- new legislation will be enacted to authorize the establishment of Federal Economic Zones through regional assessments to cover areas such as transportation corridors, telecommunications networks, energy production and transmission, and industrial regions

- several federal permitting regimes will be streamlined, including those related to navigation, ocean dumping, fish, fish habitat, and species at risk, and some early construction activities will be allowed to start before an impact assessment decision has been made.

CELA's general and specific comments about the foregoing proposals are set out below.

(b) CELA's Background and Experience in Federal Environmental Laws

CELA is a specialty legal aid clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. With funding from Legal Aid Ontario, CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in court proceedings and administrative hearings. In addition, CELA works on environmental legal education and reform initiatives.

For example, CELA has participated extensively in various administrative proceedings, court cases, and law reform efforts under the IAA and its predecessors (e.g. *CEAA 2012, CEAA 1992,* and the *EARP Guidelines Order*). CELA also intervened in the constitutional reference on the IAA and project list regulation conducted by the Alberta Court of Appeal, and we participated in the subsequent appeal heard and decided by the Supreme Court of Canada in 2023.

At present, CELA is representing clients who are involved in ongoing impact assessments for various designated projects under the IAA (i.e. gold mine, nuclear power plants, deep geologic repository for used nuclear fuel waste, etc.) which may be affected by the Discussion Paper proposals if implemented by the Government of Canada. CELA also routinely participates in licensing processes and regulatory matters conducted by the CNSC under the *Nuclear Safety and Control Act* (NSCA).

Given our decades-long experience under federal assessment and permitting regimes, CELA has carefully considered the Discussion Paper proposals from the public interest perspective of our client communities, and through the lens of ensuring access to environmental justice.

PART II – GENERAL COMMENTS ON THE DISCUSSION PAPER

CELA's specific comments on the Discussion Paper proposals are set out below in more detail in Part III of this submission.

However, CELA also has a number of general comments and concerns about the nature, scope, and content of the Discussion Paper as well as the adequacy of the consultation efforts by the Government of Canada in relation to the Discussion Paper.

(a) The Discussion Paper is Sparse and Devoid of Implementation Details

Although the Discussion Paper proposes a number of fundamental changes to the IAA and other federal legislative regimes, the document is surprisingly sparse and fails to provide adequate information, at a sufficient level of detail, on precisely why the proposed changes are necessary or how they will be implemented.

For example, the so-called "rationale" for the proposed changes is expressed in the Discussion Paper as follows:

> *Major projects in Canada can sometimes face a complicated and time-consuming decision process. There are issues like duplication, poor coordination between government departments, and consultation processes that can be difficult for Indigenous Peoples and project proponents to navigate…*
>
> *In the past, it has often taken more than five years for a project to receive the federal decisions necessary to begin construction* (emphasis added).[4]

[4] Discussion Paper.

However, the Discussion Paper fails to:

- specify how frequently (or infrequently) this situation arises, either historically or since the IAA was enacted in 2019 or amended in 2024
- quantify how much time is "consumed" by the decision-making process (i.e. either by individual project, by project category, or by sector)
- describe the alleged "duplication" within or between federal processes
- provide details on "poor coordination" between federal departments
- identify the aspects of public consultation that proponents find "difficult"
- analyze the actual reasons for delay (i.e. proponents' submission of deficient impact statements, failure to carry out studies in a timely manner, failure to respond adequately to information requests, requests for pauses or time-outs in the process, failure of the decision-maker to consider statutory factors,[5] etc.).

CELA does not dispute that time-limited delays may occasionally arise in federal processes involving contentious major projects. However, the Discussion Paper does not satisfactorily demonstrate that delay is solely (or largely) attributable to the substantive requirements of the process itself, rather than for reasons related to the proponent's own conduct or other extraneous factors (i.e. changing market conditions that affect the economic viability of the project). In CELA's experience, the major reasons for delay in certain complex projects such as nuclear fuel cycle projects arise either because the proponent was not ready to commence the process, has failed to provide the required information, or has sought additional time to provide the required information. In several cases, the request to initiate the process was premature and/or the circumstances had changed, causing the proponent to delay the process indefinitely. In none of these cases was delay due to the process or requirements themselves, nor to the participants.

At the very least, the Discussion Paper should have contained persuasive and cogent evidence-based reasons to justify the extensive changes being proposed for federal assessment and permitting laws that have been duly passed by Parliament to safeguard the public interest.

At the same time, the Discussion Paper should have more precisely described how the changes will be implemented through legislative, regulatory, administrative, and policy changes. In this regard, CELA finds that the Discussion Paper tends to raise more questions than it answers.

For example, the Discussion Paper indicates that the Federal Review Coordinator at the IAAC will be "responsible" for ensuring adherence to the new proposed deadlines for information-gathering and decision-making. However, the Discussion Paper fails to identify any new or amended

[5] *Canadian Nuclear Laboratories Ltd. v. Attorney General of Canada*, 2026 FCA 106.

legislative and regulatory tools that will be available to the Coordinator to require compliance with the prescribed deadlines, especially if delays are being caused by proponent-related actions (or inaction) rather than federal authorities.

Similarly, assuming that the Coordinator will have some residual discretion when carrying out their responsibilities regarding deadlines, the Discussion Paper proposes no criteria, guidelines or factors to help structure the exercise of such discretion. This omission inevitably undermines certainty, transparency, and accountability under the proposed regime.

More fundamentally, the Discussion Paper even fails to precisely define what types of major projects will be subject to the proposed reforms. CELA acknowledges that the Discussion Paper mentions "mines, ports, airports, pipelines, nuclear facilities, and transportation infrastructure" as illustrative examples, but the full range of "major projects" subject to the new regime remains unknown and unclear at present.

For example, the term "major project" is not used in the IAA, but there is a regulatory list of the designated project categories that trigger an impact assessment. Nevertheless, the Discussion Paper does not specify whether some, most, or all project entries (or thresholds) under the IAA regulation will be candidates for the speedier and streamlined process proposed by the Government of Canada, even if such projects have potential to adversely affect treaty, Aboriginal and inherent rights of Indigenous communities.

On this point, CELA notes that the Discussion Paper merely states that "the Government of Canada is proposing legislative changes for certain projects listed under the *Physical Activities Regulations* of the IAA" (emphasis added). However, the specific project types (or the criteria to be used to identify them) are conspicuously absent from the Discussion Paper.

In the absence of these and other particulars, it is exceedingly difficult for members of the public and Indigenous communities to provide meaningful feedback on the abstract concepts, vague proposals, and ambiguous statements contained in the Discussion Paper.

Moreover, given the paucity of statistical information or analysis in the Discussion Paper, CELA concludes that the federal government has fundamentally failed to demonstrate the rationale for the proposed changes.

In our view, it is ironic that while the federal government's public notice[6] urges stakeholders to "please provide a rationale and/or evidence for your input, wherever possible," the drafters of the Discussion Paper failed or refused to provide a persuasive rationale or supporting evidence for its proposals.

(b) Federal Consultation Efforts on the Discussion Paper is Inadequate

CELA submits that the Government of Canada's meagre consultation efforts regarding the Discussion Paper are unsatisfactory and inconsistent with meaningful public participation.

[6] Engagement: Supporting timely-decision-making for major projects - One Canadian Economy - Canada.ca.

Despite the sweeping nature of the proposed changes, the Discussion Paper was simply posted online and triggered a perfunctory 30 day comment period. To our knowledge, no additional forms of public engagement (i.e. webinars, workshops, public meetings, etc.) were undertaken by the federal government to solicit informed comments or recommendations from members of the public.

This problem is compounded by the Discussion Paper's insistence that the Government of Canada will "quickly" enact implementing legislation after the consultation period has ended, irrespective of public views on (or opposition to) the proposed changes. In our view, this approach will likely reduce or discourage input from members of the public, especially if they perceive that the outcome is already pre-determined.

We note that the federal government has claimed that "all feedback received will be incorporated into determining next steps and developing any legislative or regulatory proposals."[7] However, CELA gives little or no credence to this federal claim in light of the numerous public pronouncements by Prime Minister Carney and other Ministers of the Crown which indicate their unequivocal support of this misguided reform initiative.

(c) The Discussion Paper Discounts or Ignores Recent Legislative Developments

The Discussion Paper proposes various reforms to federal assessment and permitting processes, but does not acknowledge or even discuss the fact that there are already legislative mechanisms in place to address the perceived problems in approving major projects in Canada.

For example, after extensive public consultation and consideration of an independent Expert Panel report, the IAA itself was carefully crafted by Parliament to address proponent and provincial concerns about the timeliness and efficiency of the federal assessment process.

After the 2023 Supreme Court of Canada ruling, the IAA was further amended to clarify -- if not narrow -- its potential application to projects that are primarily regulated by provincial governments. In addition, the amended IAA contains provisions which the federal government may use to exclude designated projects from individual impact assessment requirements if a regional assessment has been carried out.[8]

After the IAA amendments were enacted by Parliament in 2024, the Government of Canada has recently executed a series of co-operation agreements with several provinces to further constrain the application of the IAA to designated projects (i.e. substitution to provincial assessment processes).

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[7] *Supra*, footnote 2.

[8] IAA, sections 112(1)(a.2) and 112.1. See also SOR/2019-285 | Physical Activities Regulations | CanLII, section 2(2) regarding offshore wind power projects and offshore exploratory drilling for oil/gas.

Moreover, Parliament passed the *Building Canada Act*[9] (BCA) in 2025 to help advance major nation-building projects, such as highways, railways, ports, airports, oil pipelines, critical minerals, mines, nuclear facilities, and electricity transmission systems. The BCA enables the federal government to add such national interest projects to Schedule 1, which effectively pre-approves the projects under prescribed environmental laws, such as the *Fisheries Act, Species at Risk Act*, and *Canadian Navigable Waters Act*. However, to our knowledge, no projects have been designated under Schedule 1 of the BCA to date.

Given this recent chronology of federal law reforms, it is unclear why they are largely ignored in the Discussion Paper, or why the Government of Canada believes that they are not effective or workable despite their recent passage.

PART III – SPECIFIC COMMENTS ON THE DISCUSSION PAPER

CELA's specific comments follow the general structure and chronology of the Discussion Paper, which has been organized into six topics or themes:

- Federal review and decision-making in no more than one year
- One crown consultation process
- One project decision
- Single project authority
- Enable economic zones through regional impact assessments
- Streamlined and efficient regulatory environment

Each of these matters is discussed below in more detail.

(a) One-Year Deadline for Federal Review and Decision-Making

The Discussion Paper proposes new formalized targets for information-gathering and decision-making under the IAA:

> *The Government of Canada is proposing legislative changes to ensure that federal impact assessments and permit reviews happen at the same time instead of one after the other. This process would begin at the Notice of Commencement, if an impact assessment is required, or when a permit plan is issued, if no impact assessment is required. Proponents will have one year to submit their finalized studies and information. However, if proponents need more time for a specific permit, they will have the option for more time for the*

[9] SC 2025, c 2, s 4 | Building Canada Act | CanLII. See also CELA's comments on the BCA: CELA Submission re: the Need to Pause or Fix Bill C-5 (One Canadian Economy Act) - Canadian Environmental Law Association.

> *decision. For its part, the federal government's review and decision-making timeline would take no more than one year. It is proposed that legislation be amended to formalize these targets.*

CELA is opposed to this Discussion Paper proposal for several reasons.

First, we are concerned about the technical feasibility and environmental soundness of attempting to compress all "finalized" information-gathering by proponents into a single year, and all decision-making by federal authorities into the following year. In CELA's experience to date, these timeframes seem unworkable and unrealistic, particularly in relation to large contentious projects that require lengthy field studies (i.e. four season inventories of flora and fauna), public engagement to ensure that the collected information is complete and accurate, and meaningful consultation with affected Indigenous communities. As a practical matter, it seems that for the proponent's one-year deadline to be met, much of the proponent's work would have be underway (if not largely completed) long before the Notice of Commencement or Permit Plan is issued. Accordingly, from the proponent's perspective, no overall time or resource savings may actually accrue if this necessary pre-submission work is simply pushed back to an earlier point in time before the assessment or permitting process is formally commenced. Furthermore, doing so will decrease early public engagement and limit transparency, resulting in the omission of important decision-making factors and perhaps causing even more conflict in relation to the project.

Second, this Discussion Paper proposal appears to be premised on the erroneous assumption that a faster process is necessarily a better process. On this point, CELA notes that in the context of a provincial attempt to speed up transit assessments, the former Environmental Commissioner of Ontario was highly critical of the expedited process which omitted essential assessment requirements.[10] CELA submits that this same concern applies to the Discussion Paper proposal to condense assessment and permitting process into arbitrary timelines, which may incentivize proponents or federal authorities to cut corners, omit key issues, and otherwise gloss over, discount or ignore environmental and health concerns raised by the public and Indigenous communities. More generally, there is no explanation or rationale given in the Discussion Paper for selecting the one-year timeframes.

Third, the Discussion Paper states that "federal permit applications would be reviewed concurrently with environmental assessments, subject to the option for a proponent to extend or delay timelines." If the governmental goal is to shorten assessment and permitting processes, then it is unclear why proponents would be given the option of requesting more time. This is particularly true since the Discussion Paper does not specify the criteria or grounds upon which more time can be requested by the proponent, or whether such requests will be reviewed or approved by federal authorities, or how much additional time is permissible. More fundamentally, if the outcome of the assessment process is supposed to inform and direct what happens in the permitting process, then it is unclear how this can be accomplished if the assessment and permitting processes are operating "concurrently." It is also inefficient to engage decision makers, departmental staff, First Nations and the public on permitting processes before the fundamental decision has been made that the project will not cause adverse effects or is nevertheless justified and the proponent decides

[10] Environmental Commissioner of Ontario, *Annual Report 2008-09*, at pages 80-81.

to actually proceed with the project. Furthermore, the impact assessment process imposes terms and conditions which themselves must be woven into subject-specific or site-specific permits and approvals, whether they be permits under the *Species at Risk Act* or licensing under the *Nuclear Safety and Control Act*, to name two examples.

Fourth, the Discussion Paper asserts that "we are creating a process that will lead to earlier and more coordinated consultation, and accordingly better and more efficient outcomes for Indigenous Peoples and proponents alike." As described below, there are insufficient details provided by the Discussion Paper about the nature, scope and content of this new consultation process. Therefore, it is premature to conclude that this unknown process will lead to "better" outcomes for Indigenous communities across Canada.

Fifth, mega projects generally pose the inherent risk of producing mega problems (i.e. adverse environmental, social, and economic impacts) that are not acknowledged by, let alone addressed in, supporting material filed by proponents. The more hazardous the technology, the more likely such risks will materialize. Failure by proponents to adequately identify, evaluate, and prevent or mitigate such risks undermines the effectiveness of the consultation process purportedly designed to address them. Indeed, certain high-hazard technologies may not be capable of mitigation and only a robust consultation and decision-making process can reveal this likelihood and protect the public interest from short, intermediate, and long-term harm. Furthermore, the more mega the project, the more mega the time necessary to evaluate it. A one-size fits all one-year timeline ignores the reality that not all environmental impacts are created equal.

(b) One Crown Consultation Process

The Discussion Paper states that:

> *The Government of Canada has heard from Indigenous Peoples that the consultation processes for major projects need to be improved to avoid consultation fatigue. To address this, the Government is proposing changes to create a Crown Consultation Hub within the Impact Assessment Agency of Canada (IAAC).*
>
> *This new Consultation Hub will work with federal departments and agencies to ensure that each Indigenous group affected by a major project goes through one clear and coordinated consultation process for each project. This will replace having multiple, overlapping, or redundant processes. The new consultation approach will apply only to major projects…*

While CELA represents Indigenous communities in court hearings and administrative proceedings (including under the IAA), we take no position on this Discussion Paper proposal. Instead, we defer to the views of Indigenous persons, communities, and organizations on the adequacy, effectiveness, and acceptability of the proposed Consultation Hub within the Agency.

However, it appears to CELA that every project, whether "major" or not, should be subject to a clear, coordinated and meaningful consultation process if Indigenous lands, rights or interests may be affected by the project. Interestingly, this section of the Discussion Paper does not actually

mention the Crown's duty to consult, the honour of the Crown, section 35 treaty/Aboriginal Rights, UNDRIP, or the federal UNDRIP Act.

Instead, the Discussion Paper seems to be largely focused on internal administrative arrangements rather than ensuring that the Crown's legal and constitutional duty to consult and accommodate is carried out in a respectful and meaningful manner. On this point, we note that this section of the Discussion Paper refers to the free, prior and informed consent (FPIC) principle entrenched in UNDRIP, but the Consultation Hub is merely directed to provide "guidance" to federal authorities and proponents on how to achieve the "goal" of FPIC in relation to major projects.

(c) One Project Decision

The Discussion Paper contains the following proposal to consolidate federal decision-making on major projects:

> *To improve faster and clearer project decisions, the Government of Canada is proposing legislative changes for certain projects listed under the Physical Activities Regulations of the IAA. These changes would allow one federal decision document to be issued by the Minister of Environment, Climate Change, and Nature (ECCN). This document would include all federal decisions required for a project to move forward.*

CELA opposes this Discussion Paper proposal for several reasons.

First, it should be noted that in principle, CELA generally supports the "one project one review" approach that has been recently proposed by the Agency. However, CELA has numerous concerns[11] about how this approach is intended to be implemented under the IAA and provincial assessment regimes, particularly in light of the problematic co-operation agreements which have been executed between the federal government and provincial governments, including Ontario.[12]

Second, our support for the "one project one review" approach (i.e. via harmonized or joint federal/provincial assessments) does not extend to the Discussion Paper proposal to consolidate all federal decision-making into a single document to be issued by the Minister of Environment, Climate Change, and Nature. According to the Discussion Paper, this Minister must still "decide whether any negative federal effects of a project are considered significant," but there are no suggested criteria or factors to structure the exercise of Ministerial discretion when applying this significance test. In addition, CELA draws no comfort from the Discussion Paper's assurance that in certain circumstances, joint decision-making will occur between different Ministers who have jurisdiction over the same major project. This is particularly true since the Discussion Paper does not provide any insight or express criteria on when such Ministers may "decide to refer the determination to the Governor in Council."

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[11] For a review of CELA's concerns about the proposed implementation of the "one process one review" approach, see: Joint submission on Impact Assessment Agency of Canada Consultation Paper, "'One Project, One Review" - Canadian Environmental Law Association.

[12] For a review of CELA's concerns about the Canada-Ontario co-operation agreement, see: CELA Submission on Draft Co-operation Agreement between Ontario and Canada on Environmental and Impact Assessment - Canadian Environmental Law Association.

Third, the Discussion Paper lacks other critically important details about this unprecedented proposal. For example, the Discussion Paper suggests that the Government of Canada will make legislative changes for certain projects on the IAA project list, but neither specifies the amendments that are being contemplated nor identifies the project categories that will receive this special treatment. Similarly, the Discussion Paper claims that "the Federal Review Coordinator would make sure everything stays organized and on track," but there is no description of the legislative, regulatory or administrative tools that will be available to the Coordinator to achieve this objective, as discussed above. In addition, the Discussion Paper states 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." However, the Discussion Paper fails to disclose which federal permits are included or excluded from the proposed revisions of the assessment and permitting processes.

Fourth, the Discussion Paper states that "these changes will not apply to the Canada Energy Regulator (CER), which will be making decisions for pipelines, transmission lines and offshore energy projects, or the Canadian Nuclear Safety Commission (CNSC), which will be making decisions for nuclear and uranium projects." For the reasons outlined below, CELA opposes the proposal to effectively transfer final decision-making authority under the IAA to these regulatory bodies.

(d) Single Project Authority

The Discussion Paper proposes significant changes in assessment reviews by the CER and CNSC:

> *To give investors more confidence in the project decision process, the Government of Canada is proposing to assign responsibility for certain projects to the federal organization with the most expertise, namely:*
>
> - *CER would handle reviews for international and interprovincial pipelines, transmission lines, and offshore renewable energy projects.*
> - *CNSC would handle reviews for nuclear and uranium projects.*
>
> *Projects overseen by the CER would no longer require a separate impact assessment under the IAA. The Governor in Council (GIC) would make the decision about whether the project is in the public interest for pipelines with lengthy routes. To reduce risks and costs for investors, this decision would be made at the beginning of the decision process, before the CER completes its review of conditions and routing details. For smaller projects, the CER Commission would make the final decision and timelines for those decisions would be reduced.*
>
> *For nuclear and uranium projects, CNSC would be responsible for conducting the impact assessment under the IAA. The CNSC would also determine whether the project would cause significant negative federal effects. If the effects are considered significant, the project would be referred to the GIC through the Minister of Energy and Natural Resources to decide if it is in the public interest to go ahead.*

In CELA's view, this proposal is arguably one of the most objectionable aspects of the Discussion Paper and should be rejected for several reasons.

First, aside from the unsubstantiated claim that this proposal will boost "investor confidence," there is no compelling public interest justification for wholly exempting CER-regulated projects from existing IAA requirements. When the project list regulation was being developed under the IAA several years ago, the federal government expressly focused its attention on identifying projects which have the greatest potential to cause adverse effects within federal jurisdiction.[13] Not surprisingly, large-scale CER-regulated projects – such as international electrical transmission lines, interprovincial power lines, offshore oil/gas pipelines, and pipelines greater than 75 km – are included on the current regulatory list[14] precisely because of their considerable potential to adversely affect matters within federal jurisdiction. The environmental significance of these CER-regulated projects has not materially changed, and the alleged financial benefits to investors should not be used as the pretext for removing these projects from IAA coverage. Accordingly, these projects should remain on the project list and continue to trigger impact assessments under the IAA.

Second, the general proposition that the CER and CNSC should conduct assessments of projects within their jurisdiction was a widely discredited feature of *CEAA 2012* that led to the loss of public confidence in the federal assessment process. As noted at the time by a leading commentator:

> Experience over the years has often shown that regulatory agencies are more focused on technical issues, and less interested in the big picture planning issues so fundamental to effective EAs. There are also legitimate concerns that some regulators may be captured by their industry, making it difficult for them to consider whether the industry sector they regulate offers the most sustainable long-term solution to the need or purpose being pursued with the proposed project. Furthermore, the perception of capture tends to undermine the credibility of the EA process to the general public. It is curious, then, that while *CEAA* 2012 generally signals an abandonment of the self-assessment experiment, which clearly had been unsuccessful under *CEAA* 1995, it allows the NEB and the CNSC to continue to play a self-assessment role.[15]

Accordingly, this approach was properly jettisoned when the IAA was enacted by Parliament in 2019, and the Agency or independent review panels now conduct impact assessments.[16] In our view, the Discussion Paper fails to justify or explain why Parliament should turn back the clock and return to the much-criticized *CEAA 2012* approach.

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[13] Physical Activities Regulations: Regulatory Impact Analysis Statement, (2019) C Gaz II, Vol 153, No 17, 5661 at pages 5661 and 5663.
[14] SOR/2019-285 | Physical Activities Regulations | CanLII, sections 39-41.
[15] Meinard, Doelle, "CEAA 2012: The Death of Federal EA as we Know It?", 24 JELP 1, at pages 5-6.
[16] CELA recognizes that CER and CNSC members can be appointed to review panels under the IAA, but they cannot form the majority of the panels: see IAA, sections 44(4) and 47(4).

Third, CELA's concern about this revisionist approach is particularly aggravated by the Discussion Paper's proposals in relation to nuclear projects regulated by the CNSC. Alarmingly, the Government of Canada proposes that not only would impact assessments of such projects be conducted by the CNSC, but also that final decision-making under the IAA will be given to the CNSC (unless the CNSC finds that the project would cause "significant negative federal effects," in which case the decision is to be referred to Cabinet for a decision). However, it has been our experience in CNSC proceedings over the decades that the above-noted concerns about regulatory capture, highly technical focus, and exclusion of threshold questions (i.e. the need for and alternatives to the project) are directly relevant to the CNSC. Accordingly, the CNSC should not be relied upon for the purposes of carrying robust, credible, and participatory impact assessments, or for making final determinations about whether the project may cause significant adverse effects that cannot be mitigated. This view was also shared by the independent Expert Panel that extensively consulted on federal assessment reform and provided advice to the federal government prior to the enactment of the IAA:

> Other participants were concerned about having the NEB and CNSC conduct assessments. A frequently cited concern was the perceived lack of independence and neutrality because of the close relationship the NEB and CNSC have with the industries they regulate. There were concerns that these Responsible Authorities promote the projects they are tasked with regulating. The apprehension of bias or conflict of interest, whether real or not, was the single most often cited concern by participants with regard to the NEB and CNSC as Responsible Authorities. The term "regulatory capture" was often used when participants described their perceptions of these two entities. The apprehension of bias on the part of these two Responsible Authorities eroded confidence in the assessment process.
>
> Additionally, some participants argued that these industry specific regulatory agencies are more focused on technical issues than they are on the planning process that is fundamental to a thorough IA. Participants felt that issues were not properly being assessed and were being put off to the post-decision regulatory phase. The Agency, by contrast, was described favourably, largely for not being subject to the same pressures faced by the NEB and CNSC as regulators.[17]

Accordingly, the Expert Panel recommended against having the CER and CNSC conduct impact assessments, and did not recommend that these bodies should have final decision-making authority under the IAA.

Fourth, CELA objects to the transitional provisions that the Discussion Paper proposes in relation to ongoing impact assessments involving nuclear projects. For example, the Government of Canada suggests that for nuclear assessments still in the planning phase under the IAA, the decision-making will "shift" to the CNSC. For nuclear projects at a more advanced stage of the assessment process, the Government of Canada proposes that proponents may elect between continuing under the current IAA regime or moving to the new CNSC-led assessment regime. However, as noted above, CELA is actively involved in several ongoing nuclear-related impact

[17] Final Report of the Expert Panel, *Building Common Ground: A New Vision for Impact Assessment in Canada* (2017), at pages 49-50. Online: building-common-ground.pdf.

assessments that could be potentially affected by these transitional arrangements. Aside from fairness and natural justice considerations that arise from sudden mid-stream changes in the assessment process, CELA submits that such transitions do not remedy or address the above-noted governance issues identified by the Expert Panel in relation to CNSC assessments of CNSC-regulated projects. CELA therefore maintains that all ongoing impact assessments must continue unabated under the IAA in the normal course, and that proponents should not be given the opportunity to select between continuing under the IAA or transitioning to the new CNSC-led assessment regime.

Fifth, the Discussion Paper proposes further changes in the approval of major projects regulated by the CER:

> Projects overseen by the CER would no longer require a separate impact assessment under the IAA. The Governor in Council (GIC) would make the decision about whether the project is in the public interest for pipelines with lengthy routes. To reduce risks and costs for investors, this decision would be made at the beginning of the decision process, before the CER completes its review of conditions and routing details. For smaller projects, the CER Commission would make the final decision and timelines for those decisions would be reduced.

However, it is unclear to CELA precisely how and when – and on what evidentiary basis or criteria – that the public interest determination would be made by the CER at the beginning of the decision-making process. In addition, the Discussion Paper fails to explain how making this determination "at the beginning" is consistent with the Crown's duty to meaningfully consult Indigenous communities. Similarly, the Discussion Paper fails to fully articulate the quantitative or qualitative distinction between "lengthy routes" and "smaller projects."

(e) Federal Economic Zones

The Discussion Paper proposes new legislation to enable the creation of "Federal Economic Zones" to sidestep separate project reviews for individual developments within the Zones:

> *The Government of Canada is proposing legislation to create Federal Economic Zones. These zones would cover areas like transportation corridors, telecommunications networks, energy production and transmission, and industrial regions. Setting up these zones ahead of major developments would remove the need for separate project reviews, make the permitting process simpler, and reduce risks for investors.*
>
> *Under this proposal:*
>
> - *The Governor in Council would have the authority to decide that certain developments within specific zones are pre-approved, subject to conditions for the projects themselves.*
> - *The zones and the types of activities allowed in them would be clearly defined…*

CELA opposes this vague Discussion Paper proposal for several reasons.

First, it is unclear how this proposal is conceptually different from, or even preferable to, the "pre-approval" regime that now exists under the recently enacted *Building Canada Act*.[18] Put another way, since a "pre-approval" approach already exists for national interest projects under the *Building Canada Act*[19] (which has not been used to date to designate and pre-approve such projects), the Discussion Paper has failed to demonstrate why yet another pre-approval regime is necessary at the federal level. At the very least, the existence of two pre-approval regimes at the federal level appears duplicative and should be avoided for the purposes of regulatory certainty.

Second, there is an astounding lack of detail in the Discussion Paper about how this approach would actually be implemented across Canada, particularly if such zones are to be established in or near Indigenous communities without their FPIC. For example, the Discussion Paper indicates that "consultation" and "collaboration" with Indigenous Peoples will be undertaken, but the FPIC principle is conspicuously absent from this section of the Discussion Paper. Similarly, the Discussion Paper provides no information or details on the criteria or factors to be used by Cabinet for publicly consulting upon and delineating Federal Economic Zones, or for determining which types of development or activities are effectively pre-approved within these zones, or for determining the conditions (either generic or site-specific) which will govern such projects. On this latter point, the Discussion Paper mentions some illustrative examples (i.e. infrastructure or industrial projects), but does not indicate whether this is an exhaustive list or whether other projects may also receive pre-approval within Federal Economic Zones. In the absence of such implementation details, it is difficult for members of the public to comment meaningfully on this Discussion Paper proposal.

Third, there is a similar lack of detail regarding the Discussion Paper's proposals that this zone-based approach would involve regional assessments which subsequently obviate the need for project-specific assessments of facilities or activities which are pre-approved. Although similar provisions currently exist in the IAA, the Discussion Paper proposal raises serious concerns about cumulative effects and the rule of law since they purport to conditionally exempt individual designated projects from conducting impact assessments otherwise required by law. This exclusionary approach prompted a legal challenge in the context of the regional assessment of offshore exploratory oil/gas drilling in Newfoundland and Labrador,[20] and it is reasonable to anticipate that similar challenges may be brought in relation to Federal Economic Zones if implemented as proposed in the Discussion Paper.

Fourth, the concept of "Federal Economic Zones" appears to be largely drawn from Ontario's recently enacted and highly controversial *Special Economic Zones Act, 2025*,[21] which similarly empowers the provincial government to establish zones throughout the province in which projects

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[18] See CELA's detailed response to the *Building Canada Act*: CELA Submission re: the Need to Pause or Fix Bill C-5 (One Canadian Economy Act) - Canadian Environmental Law Association.
[19] SC 2025, c 2, s 4 | Building Canada Act | CanLII.
[20] *Sierra Club Canada Foundation v. Canada*, 2024 FCA 86. This case was dismissed primarily on the grounds of mootness.
[21] Special Economic Zones Act, 2025, S.O. 2025, c. 4, Sched. 9 | ontario.ca.

or proponents may be exempted from municipal by-laws and provincial environmental statutes.[22] While there has been public discussion and political musings about where such zones may be established under the Act (i.e. Toronto Island airport expansion), none have been formally promulgated to date. Accordingly, there is no track record under Ontario's *Special Economic Zones Act, 2025* which demonstrates that this zone-based approach for circumventing environmental laws is workable or acceptable at the federal level.

Fifth, like the Ontario Bill 5 concept of Special Economic Zones, the Discussion Paper proposal for Federal Economic Zones has the potential to create what David Boyd, former UN special rapporteur on human rights and the environment, characterized as "environmental sacrifice zones."[23] As Boyd points out, such zones are not limited to third world countries but occur in first world countries as well (i.e. Louisiana's "cancer alley" in the United States). In CELA's view, the Discussion Paper proposals and/or the *Building Canada Act* are preparing the groundwork for institutionalizing this environmental injustice and human rights problem in Canada.

(f) Streamlining Regulations

The Discussion Paper proposes to undertake sweeping reforms of many environmental permitting regimes and regulations at the federal level:

> *Some federal laws have rules that can make regulatory processes slow, repetitive, and less flexible. To improve this, the Government of Canada is proposing changes to streamline these processes, including for example:*
>
> 1. *Narrowing the types of activities that require navigation permits.*
> 2. *Making permits for fish and fish habitat more flexible for offsetting (replacing or compensating for environmental impacts) and for permits related to Disposal at Sea.*
> 3. *Transferring certain decision powers from the Governor in Council (Cabinet) to the relevant Minister to speed up decision-making.*
> 4. *Ensuring project requirements are technically and economically feasible; to avoid inflating construction costs and the time it takes to build a project.*
> 5. *Allowing some early construction activities to start before an impact decision is made, if necessary permits are approved.*
> 6. *Authorizing the Minister of Environment, Climate Change and Nature to adjust impact assessment conditions, in exceptional circumstances.*

[22] For CELA's comments on Ontario's *Special Economic Zones Act, 2025* and related reforms in Bill 5, see: CELA Comments on Bill 5 "Protect Ontario by Unleashing our Economy Act, 2025" - Canadian Environmental Law Association.
[23] See Millions suffering in deadly pollution 'sacrifice zones', warns UN expert | Pollution | The Guardian.

7. *Authorizing the Minister of One Canadian Economy to adjust environmental conditions for projects of national interest, when needed.*

8. *Giving the GIC limited power, with a high threshold to be met, to exempt specific projects from the application of the jeopardy test for species at risk, but only if it's in the public interest and if the proponent has made all reasonable efforts to avoid or reduce impacts on at-risk species.*

CELA strongly opposes this Discussion Paper proposal for several reasons.

First, given the nature of what is being proposed in this section of the Discussion Paper, it is a misnomer to call this initiative mere "streamlining." In our view, it would be more accurate to refer to this proposal as the unwarranted evisceration of important legislative safeguards that protect navigable waters, marine environments, fish and fish habitat, and species at risk. These legal protections are not antiquated "red tape," but are instead public interest provisions that should be expanded and strengthened rather than gutted for reasons of economic expediency. In addition, the Discussion Paper indicates that the proposed changes include, but are not necessarily limited to, the above-noted eight examples.

Second, the Discussion Paper fails to include any statistical evidence or detailed information about the legislative "rules" that allegedly "make regulatory processes slow, repetitive, and less flexible." Instead, the Discussion Paper simply contends – but does not substantiate – that these unspecified rules exist and must therefore be modified or restricted. However, the Discussion Paper's overgeneralized statement fails to recognize the important environmental and socio-economic benefits provided by the current legislative framework. In addition, there is no indication that the drafters of the Discussion Paper systematically considered other alternatives for addressing the perceived problem (i.e. "slow, repetitive and inflexible processes") before seizing upon the drastic and unjustified changes outlined in this section of the Discussion Paper.

Third, the Discussion Paper proposes to make the issuance of permits for fish and fish habitat more "flexible" for offsetting purposes in order to compensate for environmental impacts caused by major projects. However, there is no indication about precisely how *Fisheries Act* permits will be made more flexible for the purposes of facilitating major projects. Similarly, there is no explanation, evidence, or analysis demonstrating how the existing permit requirements have blocked or delayed major projects from proceeding. Moreover, while offsetting schemes may appear attractive in theory, offsetting is the lowest priority in the mitigative hierarchy, which consists of: (a) avoidance first (i.e. re-locate the project or do not proceed with it); (b) minimization (mitigation measures); (c) on-site restoration (measures to restore/rehabilitate affected habitat); and (d) offsetting.[24] In our view, making it easier for proponents to propose questionable offsets in exchange for authorized habitat destruction is inconsistent with precautionary "avoidance first" approach and other approaches for preventing such destruction in the first place.

Fourth, the Discussion Paper alarmingly proposes that the federal Cabinet should have "limited power, with a high threshold to be met, to exempt specific projects from the application of the jeopardy test for species at risk, but only if it's in the public interest and if the proponent has made

[24] Shaun Fluker, Biodiversity Offsets and the Species at Risk Act (Canada) – ABLawg (2023).

all reasonable efforts to avoid or reduce impacts on at-risk species." However, there is no attempt in the Discussion Paper to explain, define, or particularize the numerous qualifiers which are present in this risk-laden proposal. For example, key unanswered questions include what is "limited power", what is the "high threshold", what is the "public interest" determination, and what constitutes "all reasonable efforts" by the proponent? More fundamentally, this proposal unjustifiably calls for a carve-out for major projects from the important provisions of the *Species at Risk Act* (SARA) which prohibit the Minister from entering into agreements or issuing permits to allow activities that jeopardize the survival or recovery of a listed species.[25] In CELA's view, exempting major projects from the SARA jeopardy test is unconscionable and unacceptable, and must be abandoned forthwith in order to uphold the paramount purposes of SARA:

> The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened.[26]

Fifth, CELA has serious concerns about the various governance reforms outlined in the Discussion Paper. For example, the Government is proposing that "certain decisions" made by Cabinet will be transferred to the "relevant Minister." However, the specific decisions under consideration for such transfers are not identified in the Discussion Paper. Similarly, while the Discussion Paper suggests that removing the need for Cabinet decisions will speed up the process, there is no attempt to explain or quantify how much time is typically required (or would be saved) in obtaining a Cabinet decision. In any event, if obtaining a Cabinet decision is, in fact, an onerous and time-consuming task, then it may be preferable to update Cabinet's internal procedures rather than amend the relevant legislation.

Sixth, CELA generally supports the requirement for Cabinet rather than Ministerial decision-making for major projects. By their very nature, major projects may cause adverse biophysical, ecological, social, cultural, or economic impacts, or may adversely affect Indigenous lands, rights and interests. Accordingly, the potential approval of such projects under federal law (despite their environmental risks and impacts) necessarily involves polycentric decision-making and requires the careful weighing of public and private interests, all of which is better suited to Cabinet-level deliberations rather than closed-door decision-making by a single Minister of the Crown.

Seventh, decisions in relation to major projects may transcend the institutional expertise of the "relevant Minister," and will often engage the mandate and interests of other Cabinet ministers whose portfolios may be relevant to the project and its broad range of actual or potential impacts. This is particularly true if the approval decision involves the imposition of terms and conditions which are intended to prevent, minimize, or mitigate adverse effects upon the environment, public health and safety, or Indigenous lands, rights and interests.

Eighth, CELA is gravely concerned about the Discussion Paper's proposed constraint on conditions that can be imposed in relation to major projects. In particular, the Discussion Paper

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[25] SARA, section 73(4).
[26] SARA, section 6.

suggests that "project requirements" must be "technically and economically feasible" in order to "avoid inflating construction costs and the time it takes to build a project." However, the Discussion Paper fails to provide any actual examples, information, or analysis of project requirements that allegedly "inflated" costs or produced delays in construction. In CELA's view, the phrase "technically and economically feasible" is a vague and inappropriate test for approval conditions (especially in the absence of express criteria), and is likely lead to diluted, ineffective or "lowest common denominator" conditions which are agreeable to proponents of major projects. CELA submits that if stringent conditions are required to achieve the purpose of the relevant legislation, then they should be readily imposed despite protestations from the proponent that they are not technically and economically feasible.

Nineth, CELA is opposed to the Discussion Paper's open-ended proposal to allow federal Ministers to subsequently amend conditions that had been duly imposed by federal authorities in relation to major projects. For example, the Discussion Paper proposes to empower the Minister of Environment, Climate Change and Nature to "adjust" impact assessment conditions "in exceptional circumstances." Similarly, the Discussion Paper proposes to enable the Minister of One Canadian Economy to "adjust" environmental conditions for projects of national interest "when needed." However, it appears to CELA that this Ministry does not have the requisite environmental expertise or institutional capacity to make ecologically sound adjustments to conditions that have been put forward by other federal authorities. Similarly, there is no explanation of what the term "adjusts" entails, but if it likely includes amending or removing conditions, then CELA is concerned that this power will inevitably result in the weakening or revocation of protective conditions which have been properly imposed on the evidence to safeguard the public interest. In addition, there is no attempt in the Discussion Paper to define (or provide criteria) when "exceptional circumstances exist" or when condition adjustments are "needed." It also unclear whether these extraordinary "adjustment" powers will be exercised on the Ministers' own initiative, or upon request by the proponent, provincial/territorial governments, members of the public, or Indigenous communities.

Tenth, the Discussion Paper proposes to allow some early construction activities to start before an impact assessment decision is made, provided that the necessary permits are issued to the proponent. CELA submits that this proposal lacks sufficient specificity since it does not identify what categories of early construction activities are permissible before the end of the assessment process. Similarly, the types of "necessary permits" required by proponents have not been clearly identified in the Discussion Paper. More fundamentally, allowing the issuance of upfront permits to proponents seems inconsistent with the Discussion Paper's proposal to have assessment and permit processes running concurrently. This approach is also contrary to the Discussion Paper's recognition that "impact assessments and regulations are important because they protect the environment and ensure major projects are developed sustainably." At the same time, CELA is concerned that permitting the proponent to proceed with early construction activities may unduly influence or skew the outcome of the assessment process (i.e. granting approval to proceed with the major project under the IAA since it is effectively underway already). It is also unclear how early issuance of permits and allowing construction to proceed is consistent with the Crown's duty to meaningfully consult Indigenous communities.

PART IV – CELA RESPONSE TO CONSULTATION QUESTIONS

The Discussion Paper poses just three general questions for "engagement" by the public and Indigenous communities:

- What opportunities do you see emerging from these proposals to improve the assessments and permitting processes related to building major projects?

- What are your views/general impressions on these proposals to improve regulatory efficiency related to building major projects faster in Canada?

- What do businesses and Indigenous Peoples require to advance major projects within a shorter timeframe under these proposals?

First, in CELA's view, these oddly worded questions are skewed in favour of soliciting supportive comments from pro-development governments and certain sectors (i.e. industrial proponents and their shareholders) that will benefit from the proposed changes.

Second, the questions are premised on the erroneous proposition that the Discussion Paper proposals will actually "improve" existing processes or make them more "efficient." For the reasons outlined above, CELA submits that this is an unsubstantiated leap of faith made by the drafters of the Discussion Paper.

Third, for the purposes of facilitating meaningful public and Indigenous engagement, the Discussion Paper questions should have been more open-ended and consultative in nature. For example, it would have been more appropriate to ask the public and Indigenous communities about key threshold issues, such as whether the proposals should proceed at all, whether they have been adequately justified, and or whether there are other more practical or preferable options for reforming federal assessment and permitting processes.

Accordingly, CELA does not find it necessary or appropriate to answer these narrowly framed questions, and we prefer to address the "merits" of the Discussion Paper proposals in this submission.

PART V – CONCLUSIONS AND RECOMMENDATIONS

For the foregoing reasons, CELA concludes that the Discussion Paper proposals are highly problematic, unsupported by persuasive evidence, and contrary to the public interest.

In our view, if the Government of Canada is committed to assessment and permitting regimes that are credible, robust, efficient, evidence-based, and participatory, then the Discussion Paper proposals are unacceptable and cannot proceed in their current form. At best, the Discussion Paper amounts to wishful thinking by the Government of Canada about desired outcomes (i.e. speedier approvals and timely construction), and it does not constitute a carefully constructed and reasonably detailed action plan for reforming federal assessment and permit processes.

Accordingly, CELA recommends that the Government of Canada should not proceed with the unjustified and regressive changes proposed in the Discussion Paper, and that Parliament should not "quickly" introduce or enact legislation to implement these changes.

To the contrary, the Government of Canada should immediately reconsider the proposed changes and re-focus its reform agenda away from speeding up federal processes, fast-tracking contentious mega-projects despite adverse impacts upon areas of federal jurisdiction, and limiting or removing environmentally significant projects from robust, credible and participatory federal review processes.

Instead, the Government of Canada should develop, with meaningful public and Indigenous consultation, an appropriate suite of reforms which actually strengthen – not rollback – environmental safeguards incorporated within existing federal environmental laws duly enacted by Parliament.

In making this submission, CELA wishes to reiterate that we do not oppose economic activity, good jobs, or sustainable resource management. Moreover; as a legal aid clinic, CELA strongly supports measures that reduce poverty and increase resilience, especially in remote, rural, northern and Indigenous communities. However, the Discussion Paper proposals are inconsistent with strong and robust environmental protection that ensures the health of current and future generations and that does not repeat the mistakes of the past.

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