



July 22, 2026

**Open Letter to Canada: Critical Analysis of Federal Government Proposals on
Accelerating Federal Approval Processes for Major Projects**

Attn: The Honourable Dominic LeBlanc, P.C., K.C., M.P. and The Honourable Steven MacKinnon, P.C., M.P.

I. INTRODUCTION

The Assembly of First Nations (“AFN”) is the national advocacy organization representing First Nations peoples in Canada. The AFN advances First Nations Inherent and Treaty Rights through policy development, public education, and the co-development of legislation to build First Nations capacity.

Our mandate is rooted in the recognition that First Nations possess inherent rights of self-determination and self-government, as affirmed by Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) and recognized domestically through the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 (“UNDRIPA”). The AFN writes in its capacity as a representative institution of First Nations peoples, consistent with the participatory rights affirmed in Article 18 of UNDRIP.

This letter constitutes the AFN’s formal response to the correspondence dated May 8, 2026, from the Honourable Dominic LeBlanc and the Honourable Steven MacKinnon, inviting the AFN to participate in engagement on proposed legislative, regulatory, and policy reforms to “strengthen regulatory and supply chain efficiency.”

Canada’s nine proposals, organized under the headings “Getting Major Projects Built in Canada” and “Strengthening One Canadian Economy through Trade and Transportation,” raise profound and systemic concerns regarding Canada’s commitment to upholding its constitutional, statutory, and international obligations to First Nations.

The AFN states unequivocally that this letter does not constitute consent, whether free, prior, or informed, to any of the proposals set out in Canada’s correspondence or the accompanying Discussion Papers. Nor does the AFN’s participation in this engagement process satisfy, discharge, or diminish the Crown’s duty to consult and accommodate under section 35 of the *Constitution Act, 1982*, or the Crown’s obligation to obtain free, prior, and informed consent (“FPIC”) as required by Articles 19 and 32 of UNDRIP and section 5 of UNDRIPA.

Additionally, without further details as how Canada intends to implement each of its proposals, the AFN is necessarily limited to providing high-level critiques and feedback and suggestions until



such time that Canada provides detailed information on its proposed legislative amendments to implement the proposals.

These proposals have significant implications for newly enacted or pending legislation intended to protect First Nations, including Bill C-37, the *First Nations Clean Water Act*. Section 8 of the *First Nations Clean Water Act* currently provides that key environmental statutes, including the *Fisheries Act*, the *Canadian Navigable Waters Act*, the *Migratory Birds Convention Act, 1994*, the *Canada Marine Act*, the *Canadian Environmental Protection Act, 1999*, the *Canada Shipping Act, 2001*, and the *Species at Risk Act*, prevail over First Nation laws to the extent of any conflict. Section 29 of that Act requires the Minister to consult and cooperate with First Nation governing bodies to ensure that First Nation laws protect the environment as much as or more than these federal environmental statutes. The weakening of Canada's environmental regulatory framework through the current proposals would undermine these legislated safeguards. Further, the *First Nations Clean Water Act* recognizes the fundamental importance of protecting source water to manage drinking water in the long term. The proposed changes to Canada's environmental legislation directly threaten First Nations' waters and source waters, contradicting the commitments Parliament has made to ensure safe drinking water for First Nations communities.

For clarity, in raising the concerns set out below, the AFN opposes Canada's proposals to the extent they weaken environmental protections, compress review timelines, limit meaningful consultation, or fail to uphold the standard of FPIC. These concerns are raised without prejudice, and the identification of specific concerns, deficiencies or potential amendments must not be misconstrued by Canada as acceptance of, or consent to, the proposals or any part of them.

The recommendations below are in alignment with the resolutions passed by the AFN at its Annual General Assembly in Ottawa on July 14-26, 2026, Resolutions 7/2026, *Protecting First Nations' Rights in Response to Federal Major Project Fast Tracking and Pipeline Expansion Initiatives* and 8/2026, *Protecting Free, Prior and Informed Consent in Federal Major Projects and Regulatory Reform*. Those resolutions state that the First Nations-in-Assembly oppose any federal legislative, policy or regulatory reforms that would weaken environmental protections, undermine oversight, limit meaningful consultation, compress review timelines, or circumvent First Nations' FPIC in relation to major projects and regulatory streamlining. The resolutions direct the AFN to advocate that any such reforms not diminish, constrain, reinterpret, or override the ability of First Nations to exercise FPIC through their own governance systems, legal orders, laws, customs, and decision-making processes. The resolutions also direct the AFN to seek greater transparency about the proposed changes and additional resources, time, and technical support to fully participate in any future legislative, regulatory or policy changes.

This letter sets forth the AFN's substantive concerns, legal analysis, and calls to action arising from rigorous evaluation of these proposals, and reflects the AFN's firm opposition, consistent with these resolutions, to any measure that would diminish First Nations' rights, title, or the standard of FPIC.

This letter is organized as follows. Part II.A addresses the engagement process. Part II.B responds to the six major project proposals set out under "Getting Major Projects Built in Canada." Part II.C responds to the three supply chain proposals set out under "Strengthening One Canadian Economy

through Trade and Transportation.” Part III sets out the AFN’s non-negotiable and overarching calls to action.

II. SUBSTANTIVE RESPONSE TO CANADA’S PROPOSALS

A. The Engagement Process

As a preliminary matter, the AFN must address the engagement process itself, which raises independent and serious concerns. Canada initially provided approximately 30 days, from May 8 to June 7, 2026, for written submissions on sweeping legislative proposals that would fundamentally restructure the regulatory regime governing major projects across Canada. Following extensive feedback and criticism from First Nations of that timeframe, Canada extended the deadline for written submissions until July 22, 2026.

The revised timeline remains wholly inadequate given the breadth of changes proposed and their potential for the proposals to significantly impact the rights of First Nations in a manner that is inconsistent with their inherent jurisdiction, their constitutionally protected rights and the need to secure FPIC from First Nations. It is both notable and problematic that the short extension that was provided did not include the option for material or meaningful dialogue with the Crown about the proposed changes. This approach is not sufficient to secure FPIC from First Nations.

The Discussion Paper itself acknowledges that “Canada will be moving quickly to introduce legislation following the engagement period.” This statement reveals a predetermined legislative timeline that treats engagement as a procedural formality rather than the genuine, iterative process of dialogue that FPIC demands.

Concerns about inadequate consultation are not new. In 2025, the AFN raised serious concerns regarding the truncated and inadequate consultation process for Bill C-5, the *One Canadian Economy Act* (enacted as the *Building Canada Act*), noting that First Nations were given only seven days to respond to an outline of the bill without being provided the full text in advance.

Article 19 of UNDRIP requires Canada to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” Canada’s own *Principles Respecting Canada of Canada’s Relationship with Indigenous Peoples* (2018) (collectively, the “**Principles**” and each, a “**Principle**”) provide under Principle 6 that Canada recognizes that meaningful engagement with Indigenous Peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights.

The feedback period, with pre-drafted proposals presented on a take-it-or-leave-it basis, does not constitute the co-development that FPIC demands. It is wholly inadequate for First Nations to conduct the internal governance processes, community consultations, and independent technical analyses required to provide informed feedback on proposals of this magnitude. First Nations were not invited to participate in the drafting of these proposals, and no co-development process was established prior to their release.

The AFN calls upon Canada to provide an additional extension of the engagement period of no fewer than 180 days, to establish a genuine co-development process in which First Nations participate as partners in drafting any resulting legislation, and to confirm that no legislation will be introduced until FPIC has been obtained.

B. The Six Major Project Proposals

- (a) Proposal 1: Federal Review and Decision-Making in No More Than One Year

Overview of Proposal

Canada proposes legislative changes to ensure that federal impact assessments and permit reviews occur concurrently, with the entirety of the federal government's review and decision-making timeline taking no more than one year.

Issues Concerning a Timeline Approach to Project Approvals

The AFN asserts that this rigid one-year timeline is fundamentally incompatible with Canada's obligations under UNDRIP, the *Constitution Act, 1982*, and established Supreme Court of Canada jurisprudence.

Article 19 of UNDRIP requires FPIC before the adoption and implementation of legislative or administrative measures that may affect Indigenous peoples. Article 32(2) requires States to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." The FPIC standard contemplates an iterative process of genuine dialogue, not an administratively constrained exercise subordinated to investor certainty.

Canada's own Principle 3 requires the Crown to act with "honour, integrity, good faith, and fairness" in all dealings with First Nation peoples. However, a timeline-driven process principally designed to attract investment subordinates the honour of the Crown to commercial imperatives.

Principle 6 commits Canada to securing FPIC when actions impact First Nation rights. The AFN notes that Canada's existing compressed timeline of two years for this decision process has also been met with significant criticism by First Nations due to consultation concerns.

As such, the proposal to further reduce the timeline to one year is unacceptable and untenable and will give rise to questions about the legitimacy of approvals made without Canada appropriately discharging its obligations to First Nations peoples.

The Duty to Consult and Accommodate and How it is Affected by This Proposal

The decision in *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 ("*Haida*"), establishes that the duty to consult and accommodate exists on a spectrum proportionate to the strength of the claim and the seriousness of the potential adverse impact. Deep consultation at the

high end of this spectrum, which applies to projects that could significantly affect established rights or title, requires extended timelines, multiple rounds of engagement, commissioned studies by First Nation knowledge holders, and iterative accommodation. A legislated one-year cap creates *de facto* pressure to truncate consultations or to shift meaningful engagement to periods where it may lack legal enforceability.

The AFN emphasizes that *Haida* establishes the threshold and minimum content of the Crown's obligations. It is the floor, not the ceiling, of what reconciliation requires. The Supreme Court of Canada in *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 ("*Mikisew*"), confirms that even decisions of apparently general application can trigger the duty to consult and accommodate where they may adversely affect Aboriginal or Treaty rights, and operationalizes the *Haida* framework at the level of specific Crown decisions. These authorities must be read together with the higher FPIC standard set out below, rather than treating the duty to consult and accommodate as the outer limit of the Crown's obligations.

Under the *Impact Assessment Act*, SC 2019, c 28, s 1. (the "*IAA*"), and the *Canadian Energy Regulator Act* (the "*CERA*"), and in relation to authorizations under the fish and fish habitat protection provisions of the *Fisheries Act*, Indigenous knowledge must be considered in project reviews and regulatory decisions. Concerningly, even these requirements may now be discretionary given the new powers held by the Minister under the *Building Canada Act*, compounding the concerns about these new proposals.

The meaningful consideration of Indigenous knowledge is not an exercise that can be administratively compressed. Indigenous knowledge is held by particular knowledge holders, is frequently seasonal or place-specific, and can only be gathered and verified through community-governed processes that operate on their own timelines rather than on a regulatory clock. The collection and use of that knowledge is also subject to Indigenous data sovereignty, including the First Nations principles of *Ownership, Control, Access, and Possession*, which require that knowledge be shared on the community's terms and not be repurposed across decisions without consent. A rigid one-year decision window therefore risks reducing the statutory obligation to "consider" Indigenous knowledge to a procedural formality, gathered too quickly to be properly understood, weighed, or accommodated.

Further, a compressed one-year window in which to consult with First Nations and consider Indigenous knowledge disregards First Nations jurisdiction and decision-making over their own territories. First Nations, who hold constitutionally protected rights, should have a greater role in making decisions about, and regulating, projects within their territories according to their own processes and institutions, rather than being confined to participation within Crown-designed regulatory systems. Several First Nations across Canada have already begun to conduct their own environmental and impact assessments pursuant to their own laws and governance processes. Canada's proposed amendments to the regulatory framework in Canada should strengthen and enhance Indigenous-led assessment and regulation, not further diminish and restrict Indigenous jurisdiction. First Nations must be the ones who interpret and speak to what their knowledge means and how it should inform decisions affecting their lands, waters, and resources.

This concern is compounded by Canada's broader streamlining proposals (discussed below), which would weaken the very statutory mechanisms through which Indigenous knowledge is currently recognized. Taken together, a one-year cap layered over a consolidated and weakened review framework is difficult to reconcile with the honour of the Crown and the commitment to securing FPIC in Principles 3 and 6 of Canada's own Principles. Where the strength of the claim is high and the potential impacts are serious, the deep end of the *Haida* spectrum (and the genuine engagement with Indigenous knowledge that it demands) cannot be subordinated to a fixed timeline tailored to investor certainty. The duty to consult and accommodate, and the consideration of Indigenous knowledge that accompanies it, must drive the timeline.

In addition, the proposal for a one-year decision-making process makes no mention of increased capacity funding for First Nations to account for the compressed timeline of having to review, respond to, and participate in numerous project proposals within a one-year period. Without a commitment from Canada to make significant capacity funding available for First Nations to facilitate the shortened timeline for project reviews, this proposal will only serve to increase bottlenecks within the project review and approval processes. First Nations require sufficient expertise and resources to have meaningful participation in consultations, and funding is essential to ensure a fair and balanced consultation process and a level playing field. In *Saugeen First Nation v. Ontario (MNR)*, 2017 ONSC 3456, the Ontario Divisional Court held that "[t]o have meaningful participation in consultations, a First Nation must have sufficient expertise and resources." The Court cited *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2007 CanLII 20790 (ON SC), for the proposition that "[t]he issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a 'level playing field'." Critics of provincial single-window models have observed that compressing reviews into a rigid one-year federal timeline without significantly increasing community-level capacity funding will likely worsen bottlenecks, rather than alleviate them.

Regulatory Review Process Must Integrate Consideration of Indigenous Knowledge

One of the primary ways that Indigenous knowledge, and the concerns and potential impacts on First Nations rights, are communicated to the Crown, regulatory bodies, and proponents is through the collection of Traditional Land and Resource Use ("TLRU") information, which is often presented in the form of TLRU Studies ("TLRUS"). TLRUS inform proponents, the Crown, and regulatory bodies on how First Nations have historically and presently exercised their rights in areas of proposed project development, so that any decision to approve such projects is informed by a clear understanding of the potential direct and cumulative impacts that the projects may pose. This TLRU information is critical for ensuring that regulatory processes consider the unique impacts to First Nations rights. It is used to inform decision-makers as to whether projects are in the public interest, and what constitutes appropriate mitigation and offsetting measures.

The timeframes for the approval of major projects must allow adequate time to conduct TLRUS, which are critical to inform any decision to approve major projects. In the absence of robust TLRUS information being integrated into such decisions, decisions on whether to approve a project will not be grounded in the necessary understanding of impacts to First Nations rights. Where decisions to approve a project are not informed by critical TLRU information, a project may proceed in a way that does not appropriately avoid or mitigate the direct and cumulative impacts of that project on First Nations' rights. The effective result will be to undermine the

meaningful participation of First Nations in such regulatory processes and to create regulatory uncertainty that will invariably delay the project approvals that Canada is advancing and that industry is supporting through the proposals. Such efforts to streamline engagement and consultation with First Nations without earning the acceptance and consent of First Nations will be contrary to the important objective of building goodwill, and will more likely result in delay, *not* efficiencies. Canada must reconsider this approach.

It is also notable that the problematic proposals to streamline review processes for major projects do not acknowledge that doing so would pose an unacceptable burden upon the human and financial resources of First Nations and their governments. In advancing proposals for streamlined review processes, the proposals do nothing to alleviate this burden.

Impact Assessments and Permit Reviews

The proposal to have federal impact assessments and permit reviews proceed concurrently is problematic.

Under the *IAA*, the Minister's decision statement is considered to be part of the permit that is issued. Decision statements themselves are to be informed by impact assessments.

Canada proposes that the permit review process would happen concurrently with impact assessments. The proposal is unclear as to how the process set out under the *IAA* will be reconciled. For instance, if decision statements (which are to be informed first by impact assessments) are to form part of the permit, how can the permit review process occur prior to the completion of an impact assessment?

The proposal suggests that Canada is of the view that permit reviews do not require information from impact assessments. However, there cannot be a proper review of a permit without consideration of adequate conditions informed by impact assessments, which carry the impacted First Nations' perspectives, concerns, and Indigenous knowledge that form part of meaningful consultation.

This proposal is unlikely to yield an outcome that would streamline project approvals in a sustainable manner. Resources directed to conducting early permit reviews will be wasted, as the issuance of permits must be guided by the information obtained through impact assessments. Should permit approvals be granted without the proper conditions attached, as informed by impact assessments and decision statements, the risk becomes the completion of projects that create substantial and irreparable harm to the environment.

(b) Proposal 2: One Crown Consultation Process (Crown Consultation Hub)

Overview of Proposal

Canada proposes creating a Crown Consultation Hub within the Impact Assessment Agency of Canada to ensure that each Indigenous group affected by a major project goes through “one clear and coordinated consultation process for each project.” The AFN identifies four fundamental concerns with this proposal.

Four Fundamental Concerns with the Proposal

First, Article 18 of UNDRIP affirms “the right [of Indigenous peoples] to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” Article 19 further requires that consultation occur “through their own representative institutions.” A centralized Crown Consultation Hub designed to consolidate engagement processes raises profound concerns about the Crown dictating the form, timing, and structure of consultation rather than respecting First Nation governance systems and decision-making procedures. The unilateral determination by the Crown of what constitutes “one process” per community per project may not align with how First Nations organize their governance, exercise jurisdiction over their territories, or make collective decisions.

Second, Canada’s assertion that the Hub will “ensure free, prior and informed consent from Indigenous Peoples” constitutes a fundamental mischaracterization of FPIC. FPIC is not an administrative outcome that the Crown can “ensure” through its own institutional design. It is the autonomous exercise of First Nations’ collective will, arrived at through their own governance processes, free from external pressure or coercion. Purporting to “ensure” consent through a Crown-administered mechanism may itself impose structural pressures that undermine the “free” element of consent.

Third, consolidating consultation into a single bureaucratic entity risks distancing the consultation process from the actual decision-makers within relevant federal departments who hold the statutory authority to grant or deny permits. This creates a structural disconnect between the consultation record and the ultimate decision. The duty to consult and accommodate is owed by the Crown to individual rights-holding groups, and each First Nation with potentially affected rights is entitled to consultation proportionate to its particular circumstances. A centralized hub risks a “one-size-fits-all” approach that fails to account for the diversity of rights, claims, and governance structures across the hundreds of First Nations in Canada. Ultimately, the constitutional question remains whether regulatory processes produce meaningful two-way dialogue, adequate accommodation, and a decision-maker that is genuinely prepared to modify conclusions, conditions, or approvals in light of what each unique First Nations communicates. A centralized hub risks flattening that process and adopting a pan-Indigenous approach to consultation and accommodation.

Fourth, Canada’s own Principle 1 requires that relations be based on the recognition and implementation of the right to self-determination and self-government. Principle 4 recognizes Indigenous self-government as part of Canada’s evolving system of cooperative federalism and calls for processes that “recognize Indigenous peoples as foundational to Canada’s constitutional framework.” A Crown-designed, Crown-administered consultation hub is fundamentally an exercise in Crown administrative efficiency, not an exercise in partnership or co-governance.

This concern is particularly acute because the CER already contains regulator-specific First Nation engagement mechanisms. A Crown Consultation Hub must not replace, dilute, or bypass those mechanisms. It should strengthen and increase the standard of consultation, not weaken it. If a Crown Consultation Hub is pursued, it must be co-designed with First Nations, governed by clear statutory obligations, and required to respect First Nations’ laws, protocols, governance structures,

and timelines, particularly those that are expressions of First Nations jurisdiction and decision-making.

Alberta's Aboriginal Consultation Office

The proposal of a central Crown Consultation Hub bears resemblance to Alberta's Aboriginal Consultation Office (the "ACO"), which was established to manage the consultation process for the Crown and to bring consultation matters under one Ministry, rather than several. The ACO informs the Alberta Energy Regulator (the "AER") on the adequacy of consultation, where the AER then becomes the relevant decision maker in respect of project approval. The ACO operates through standardized stages of consultation: pre-consultation assessment, information sharing, exploring concerns, verifying the record of consultation, and determining consultation adequacy.

The ACO has been widely criticized in its ability to effectively operate as a central consultation hub. The ACO relies upon a standardized consultation process that fails to account for the unique and comprehensive nature of First Nations rights by treating the consultation process as a checklist of items to be completed. Meaningful consultation requires flexibility in its approach and implementation, as well as a consideration of, and knowledge of, First Nations perspectives. There cannot be one consultation process for every project that utilizes a one-size-fits-all approach.

There is also a significant risk that the proposed Crown Consultation Hub will replicate the jurisdictional gaps observed in provincial single-window models. In Alberta's framework, for example, the Alberta Consultation Office determines if consultation is adequate, but the Alberta Energy Regulator issues the licences. Because the regulator lacks jurisdiction to rule on constitutional consultation adequacy, and the consultation office acts strictly as an administrative clearinghouse, impacted First Nations are left in a legal limbo with no clear administrative avenue to appeal flawed consultation. AFN is concerned that the federal Crown Consultation Hub risks repeating this exact jurisdictional gap, leaving First Nations without meaningful recourse when consultation is inadequate.

Another issue with the ACO operating as the central consultation hub includes the fact that it requires First Nations to engage in a consultation process on the potential adverse effects of a project before the hearing and evaluation process is carried out by the AER. However, the AER is restricted from managing consultation with First Nations because of the presence of the ACO operating as the central consultation hub. This means that consultation ends prior to the First Nations or the ACO knowing what the project conditions are that will form the project approval decision and whether those conditions will address the concerns raised by the First Nations. This creates incomplete consultation.

Further, the proposal relies upon the Crown Consultation Hub to properly identify which First Nations may be impacted by a particular project. The ability of the Crown to properly identify the territories for which different First Nations exercise their Treaty rights has been a common critique of both the ACO and the British Columbia Energy Regulator. The Crown often relies upon inaccurate and outdated consultation maps to determine which First Nations require consultation on any given project. This has led to significant project delays in British Columbia and Alberta as First Nations are required to intervene at later stages in a project's approval process because they

were not initially identified as requiring consultation based on the Crown's reliance on outdated and inaccurate mapping evidence.

Presently, there is an ongoing court matter concerning a constitutional challenge by Mikisew Cree First Nation and Athabasca Chipewyan First Nation regarding Alberta's ACO regime. The lawsuit identifies that Alberta's consultation regime fails to uphold the Crown's consultation duties to First Nations and creates obstacles to judicial review and prevents the Courts from meaningfully overseeing Crown consultation. As the matter is still before the Courts, the question as to whether the ACO is constitutional remains unclear. The questions remain for the proposed Crown Consultation Hub: what information will it be relying upon to determine which First Nations should be consulted on for a project, and through what avenues can First Nations intervene in a project if they were not consulted at the outset of the project review process? Without coordination and a joint-review process with First Nations on the establishment of an agreeable consultation regime, it is likely that this central Crown Consultation Hub will face the same project delays that are seen in British Columbia and Alberta.

(c) Proposal 3: One Project Decision

Overview of Proposal

Canada proposes legislative changes allowing one federal decision document, issued by the Minister of Environment, Climate Change, and Nature, to include all federal decisions required for a project to move forward.

Legislative Considerations

Article 32(2) of UNDRIP requires consultation and FPIC "prior to the approval of any project affecting their lands or territories and other resources." Under the current multi-permit system, each federal authorization represents a discrete opportunity for First Nations to raise concerns specific to that regulatory domain, whether fisheries, navigation, environment, or other areas, and to seek accommodation on each. Collapsing these authorizations into a single decision point risks obscuring the distinct impacts on different aspects of First Nation rights and substantially reducing the number of effective intervention points available to rights holders.

This proposal is also silent on First Nations participation in the decision making and review processes of project approvals under the *IAA*. There is a real concern that Canada is purporting to conduct faster project approvals by taking unilateral control over the review and approval processes of projects under the *IAA* without ensuring the FPIC of First Nations is obtained.

The AFN is further concerned that this proposal shifts the fundamental question from whether a project should advance to how it should advance. Once a consolidated approval has been granted, First Nations' ability to meaningfully shape the project's trajectory is effectively foreclosed.

Principle 7 of the Principles states that any infringement of section 35 rights must meet a high threshold of justification, include Indigenous perspectives, and satisfy the Crown's fiduciary obligations. The consolidation of decisions increases the risk that inadequate consultation on any one aspect of a project will taint the entire decision, potentially generating more, not fewer, legal challenges.

Consideration of the Duty to Consult and Accommodate

This proposal is also silent on First Nations participation in the decision making and review processes of project approvals under the *IAA*. There is a real concern that Canada is purporting to conduct faster project approvals by taking unilateral control over the review and approval processes of projects of the *IAA* without obtaining the FPIC of First Nations.

The duty to consult and accommodate, as established in *Haida* and subsequent jurisprudence, attaches to each Crown decision that may adversely affect Aboriginal or Treaty rights. By consolidating multiple decisions into one, Canada may be seeking to reduce the number of consultative obligations it owes. While administrative consolidation may be defended on efficiency grounds, it must not result in a diminution of the substantive quality of consultation or accommodation. The Crown cannot use procedural restructuring to achieve indirectly what it cannot achieve directly, namely, a reduction in its constitutional duty to consult and accommodate.

(d) Proposal 4: Single Project Authority

Overview of Proposal

Canada proposes assigning responsibility for certain categories of projects to single regulators: the Canada Energy Regulator (“CER”) for international and interprovincial pipelines, transmission lines, and offshore renewable energy, and the Canadian Nuclear Safety Commission for nuclear and uranium projects. Critically, projects overseen by the CER would no longer require a separate impact assessment under the *IAA*. For pipelines with lengthy routes, the Governor in Council would make a “public interest” determination “at the beginning of the decision process, before the CER completes its review of conditions and routing details.”

Issues with Respect to an Early Decision on “Public Interest”

The AFN notes that Resolution 95/2024, *First Nations Leadership in Impact Assessment*, calls on Canada, in the implementation of the *IAA*, to ensure the Impact Assessment Agency of Canada continues to have a role in assessing nuclear projects. The *Impact Assessment Act*, 2019 includes several requirements which protect First Nations rights, such as the mandatory consideration of Indigenous knowledge, the assessment of impacts on rights in decision-making, and regulations allowing First Nations governments to lead impact assessments themselves.

The AFN asserts that this proposal is fundamentally incompatible with Article 32(2) of UNDRIP, which requires FPIC to be sought and obtained prior to the approval of any project affecting Indigenous lands. The proposal that a political “public interest” determination be made before the full scope of a pipeline’s impacts on First Nations lands, waters, and rights is assessed represents the inverse of what Article 32(2) requires: consent must precede approval, not follow it.

The Governor in Council deciding about whether a project is in the public interest without adequately considering the perspectives, knowledge, and impacts of First Nations is an unacceptable outcome that is contrary to the laws of Canada.

Under the current legislative structure, the Governor in Council makes its public interest decision only after the Commission has completed its report and recommendation. A front-end public

interest decision by the Crown would not be in keeping with the honour of the Crown and the duty to consult. This approach could result in a key decision being made to support an application as a public interest project that would invariably impact the rights of First Nations peoples potentially before a proponent is in place, before the scope of such project is clearly known, and (significantly) before potentially affected First Nations have even been identified, funded, heard, and accommodated, and significantly *before* impacts to section 35 rights have been meaningfully considered and assessed.

As this narrow approach would fail to consider the public interest in the context of the rights of First Nations peoples, it would introduce uncertainty and delay for such projects, and it would arguably be unlawful.

Furthermore, the Supreme Court of Canada established in *Haida* that the duty to consult and accommodate arises at the strategic planning stage and deepens as the Crown moves from low-level decisions to high-impact authorizations. A preliminary “public interest” determination that precedes a full regulatory review inverts this logic: the most consequential decision, whether the project should proceed at all, would be made before the detailed assessment that would inform the depth and content of the Crown’s consultation obligations.

Additionally, Principle 6 commits Canada to securing FPIC when proposing actions that impact Indigenous rights and lands, and Principle 8 recognizes that Indigenous peoples must have fair and ongoing access to their lands, territories, and resources. A pre-emptive public interest finding made before conditions and routing are determined fundamentally undermines both of these commitments.

Importance of Impact Assessments

The removal of impact assessments under the *IAA* for CER-regulated projects eliminates a critical mechanism through which the environmental and rights-based impacts of major energy infrastructure on First Nation territories are assessed. Removing the *IAA* layer would not merely eliminate duplication; it would remove a broader and critical assessment framework directed to sustainability, cumulative effects, Indigenous knowledge, impacts on First Nations, adverse impacts on section 35 rights, and transparent public interest decision-making.

Article 26 of UNDRIP protects Indigenous peoples’ rights to their lands, territories, and resources, and Article 29 protects the right to conservation of the environment and productive capacity of First Nation lands. Removing pipelines, transmission lines, and offshore energy from the *IAA* process without establishing an equivalent or superior mechanism within the CER framework risks a net regression in the protection of First Nation rights. Canada must preserve equivalent or stronger protections within the *CERA* itself, including requirements for First Nation participation, First Nation-led studies, cumulative and regional effects assessment, accommodation, and rights-based decision-making.

Further, neither the CER nor the CNSC have the same mandate or expertise to assess the impacts of projects on species-at-risk, freshwater and marine ecosystems, or other environmental considerations. This change would result in decisions that do not adequately consider the impacts, both direct and cumulative, of these projects on First Nations’ lands and waters.

For First Nations, the measure of adequacy of consultation is not whether consultation was centrally administered, but whether the decision-making process remained open to changing its outcome in response to rights-based evidence and proposed accommodation.

Comparisons with the *Building Canada Act*, Bill C-5, and other provincial legislation

The legal risks of compressing consultation timelines are already materializing. First Nations in Ontario have commenced a constitutional challenge against Canada's Bill C-5 (the *One Economy Act*), Ontario's Bill 5, arguing that these fast-tracking measures represent a "clear and present danger" to First Nations' self-determination and rights to ways of life on their territories. The challenge highlights concerns that cabinet-level approvals conducted behind closed doors, without parliamentary debate, and with the ability to override existing laws, conflict with UNDRIP and the principles of self-determination.

Bill C-5 empowers the federal cabinet to classify certain infrastructure projects as being in the "national interest" and allows proponents to streamline the approval process by deeming all federal requirements as pre-emptively "approved" and skipping the planning phase for projects under the *IAA*. First Nations have raised concerns that these accelerated decision-making frameworks were introduced without adequate prior consultation, and that the narrow definition of "national interest" risks excluding First Nations' perspectives and priorities. Failure to adequately consult and accommodate has historically led to significant litigation on past major projects in Canada, and without the necessary support from First Nations communities, project development may be delayed by court proceedings and potential community intervention. Canada's proposal for a one-year decision-making timeline risks inviting similar legal challenges, particularly where projects cross multiple First Nations' territories or involve complex cumulative effects that cannot reasonably be assessed within such constrained timeframes.

Alongside the federal and Ontario legislation, BC has also passed similar streamlining legislation with the *Infrastructure Projects Act* (Bill 15) and the *Renewable Energy Projects (Streamlined Permitting) Act* (Bill 16) that aim to streamline project approval. The BC Environmental Assessment Office has also released a discussion paper proposing an expedited environmental assessment process that would take only 20 months, compared to the 3–5 years required for a standard assessment. While it has not yet received royal assent, with Bill Q-5, Quebec has also contemplated fast-tracking legislation. The federal government has also entered "one project, one review" agreements with every province except Saskatchewan, which aim to eliminate overlapping environmental reviews of major projects and streamline assessments for major developments such as mines and ports.

- (e) Proposal 5: Enable Economic Zones through Regional Impact Assessments

Overview of Proposal

Canada proposes legislation to create "Federal Economic Zones" covering areas such as transportation corridors, telecommunications networks, energy production and transmission, and industrial regions. Developments within designated zones would be "pre-approved, subject to conditions."

Issues with the Proposal

The concept of pre-approved economic zones represents a fundamental challenge to UNDRIP and to the constitutional duty to consult and accommodate. Article 32(1) of UNDRIP affirms Indigenous peoples' right to "determine and develop priorities and strategies for the development or use of their lands or territories and other resources." Article 32(2) requires FPIC on a project-by-project basis prior to approval. By pre-approving categories of development within defined geographic areas, Canada effectively removes project-specific FPIC from the equation, reducing it to a one-time, zone-level engagement rather than the ongoing project-by-project consent that Article 32 contemplates. These cumulative impacts are not limited to environmental and economic effects; they also include cumulative social impacts on First Nations communities, including the disproportionate risk of violence faced by Indigenous women, girls, and 2SLGBTQQIA people as a result of increased development activity within their territories. Calls for Justice 13.1 and 13.2 of the National Inquiry into Missing and Murdered Indigenous Women and Girls require that resource-extraction and development industries consider the safety and security of Indigenous women, girls, and 2SLGBTQQIA people at all stages of project planning, assessment, implementation, management, and monitoring, and that governments and bodies mandated to evaluate, approve, or monitor development projects complete gender-based socio-economic impact assessments, with mitigation provisions built in prior to project approval. A one-time, zone-level consultation process cannot adequately anticipate, assess, or mitigate these compounding social risks across the multiple, unspecified projects that a Federal Economic Zone designation would enable.

Currently, both the CER and IAA frameworks require project-specific consideration of impacts on First Nation rights. The proposed Federal Economic Zones will likely impact the rights of multiple First Nations and may include multiple projects that each have unique impacts to each Nation's rights. Zone-level consultation cannot fully identify, assess, or accommodate those distinct impacts. This approach would be contrary to FPIC and the requirements of the duty to consult and accommodate. As such, this approach would surely give rise to legal challenges.

Article 26 recognizes Indigenous peoples' rights to lands, territories, and resources they have traditionally owned, occupied, or otherwise used, and Article 27 requires Canada to establish, in conjunction with Indigenous peoples, fair processes to recognize and adjudicate Indigenous rights pertaining to their lands. Pre-approval of zones could effectively pre-determine the development trajectory of First Nation lands without project-specific consent processes, which is particularly concerning given that many potential corridor and industrial zone designations would overlay traditional First Nation territories.

Regional level planning and assessment is not inherently problematic. Regional collaboration among First Nations can enhance environmental and project assessment capacity and rigor. Where First Nations themselves organize regionally to develop collective principles to guide the assessment of projects within their territories, as the Grand Council Treaty 3 has done, such collaboration can strengthen First Nations' input and jurisdiction over development in their territories. The AFN's concern is not with regional collaboration led by First Nations, but with the top-down, Crown-designated Federal Economic Zones proposed by Canada, which would pre-determine development outcomes without project-specific FPIC.

The duty to consult and accommodate under section 35 is triggered by specific Crown conduct that may adversely affect specific Aboriginal or Treaty rights. If Canada's position is that zone-level consultation satisfies the Crown's obligations for all subsequent projects within that zone, this would represent a significant and impermissible departure from existing jurisprudence, which contemplates project-specific assessment of impacts and proportionate consultation. The Supreme Court of Canada in *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 ("**Clyde River**"), affirmed that the Crown cannot rely on a regulatory process to discharge its duty to consult and accommodate unless that process provides adequate consultation at the appropriate stage. This includes engagement at the high-level, strategic stage of project approvals. The importance of assessing cumulative effects at this strategic level is underscored by the British Columbia Supreme Court in *Yahey v British Columbia*, 2021 BCSC 1287 ("**Blueberry River**"), in which the Court found that the cumulative effects of extensive, incrementally approved development had unjustifiably infringed Treaty rights. Pre-approving categories of development on a zone-wide basis, without project-specific assessment, risks precisely the kind of unassessed cumulative harm against which the Court in *Blueberry River* cautions.

Principle 1 recognizes the right to self-determination, and Principle 4 calls for involving Indigenous peoples in effective decision-making. Pre-approving development within zones decided upon by the Governor in Council denies First Nations ongoing decision-making authority over activities within their territories and is inconsistent with Canada's stated commitment to recognize First Nations as distinct orders of government with inherent jurisdiction over their lands.

(f) Proposal 6: Streamlined and Efficient Regulatory Environment

Overview of Proposal

This proposal encompasses a broad range of amendments including narrowing activities requiring navigation permits, making fish habitat permits more flexible, transferring decision powers from the Governor in Council to Ministers, allowing early construction activities before impact decisions are made, authorizing the Minister of Environment, Climate Change, and Nature to adjust assessment conditions, authorizing the Minister of One Canadian Economy to adjust environmental conditions for projects of national interest, and granting the Governor in Council limited power to exempt specific projects from the jeopardy test for species at risk. Several elements of this proposal are deeply problematic from the standpoint of First Nations rights.

Issues with the Proposal

Early Construction

First, allowing early construction activities before an impact decision is made directly contravenes Article 32(2) of UNDRIP, which requires consent prior to approval. It suggests that an impact assessment and subsequent approval is a foregone conclusion. Complications will arise if appropriate conditions are not available to address mitigation and to avoid adverse effects are not able to be efficiently incorporated into the project as a result of early construction. Permitting ground-disturbing activities before a determination of effects has been made would create irreversible facts on the ground that prejudice any subsequent consultation. The Supreme Court of Canada has consistently held that meaningful consultation must occur before irreversible decisions

are made; allowing construction to proceed before the Crown has assessed and discharged its duty to consult and accommodate renders subsequent consultation an exercise in mitigating fait accompli rather than genuine engagement about whether and how a project should proceed.

One key example of the risks of approving early construction prior to full assessment is the establishment of temporary workers' camps and related infrastructure. The Calls to Justice underscore that additional safety considerations for early works are critical wherever such activities are permitted to proceed before project approval. If early works are authorized before an impact decision is made, it is unclear how the social and safety risks associated with them, including risks to the safety of Indigenous women, girls, and 2SLGBTQQIA people, would be assessed or mitigated, since the impact assessment meant to identify and address those risks has not yet occurred.

The concept of approving early construction prior to full project assessment suggests that an impact assessment and subsequent approval is a foregone conclusion. The impact assessment process is generally divided into five phases: planning, impact statement, impact assessment, decision, and post-decision activities. The decision is not made until the fourth phase, and at that stage there are several options available: (1) the project is allowed to proceed; (2) the project is allowed to proceed with certain conditions; or (3) the project is not allowed to proceed. If construction activities can begin before a decision is made, it may have a chilling effect on the ability to impose conditions intended to reduce the risk of significant adverse effects or to deny the project if these significant adverse effects cannot be mitigated. These are crucial options and without them the impact assessment process is significantly watered down. It also guarantees additional litigation should additional conditions or decisions be made that result in extra costs to the proponent.

This concern is not limited to full-scale construction. Early works such as clearing, access roads, camps, geotechnical work, water crossings, or site preparation affect lands, waters, cultural heritage, sacred sites, harvesting areas, and Treaty rights. No early works should proceed where they may affect section 35 rights, First Nation lands, waters, cultural heritage, sacred sites, harvesting areas, or Indigenous knowledge unless the affected First Nation has provided FPIC and any required statutory consent has been obtained.

Adjustments to Environmental Conditions

Second, empowering the Minister of One Canadian Economy to adjust environmental conditions for "projects of national interest" introduces a political override of environmental protections that often serve as the very mechanisms through which First Nations rights receive practical protection. This is inconsistent with the FPIC standard and creates a mechanism through which section 35 rights could be infringed without meeting the justification standard established by the Supreme Court of Canada in *R v Sparrow*, [1990] 1 SCR 1075.

Exemptions to the Jeopardy Test

Third, granting the Governor in Council power to exempt projects from the jeopardy test for species at risk threatens biodiversity and ecosystems upon which First Nations depend for the exercise of their rights, including harvesting, cultural, and spiritual practices connected to those

species. Article 29 of UNDRIP recognizes Indigenous peoples' right to "the conservation and protection of the environment and the productive capacity of their lands or territories and resources." Principle 7 of Canada's Principles states that any infringement of section 35 rights must meet a high threshold of justification, and Principle 3 requires good faith and fairness.

The recent Federal Court of Appeal decision in *Canadian Nuclear Laboratories Ltd. v. Canada (Attorney General)*, 2026 FCA 106, confirms the importance of these environmental protections. In that case, involving Kebaowek First Nation as a respondent, the Court found that the Minister's reasons for issuing a permit under the *Species at Risk Act* for a disposal facility "failed to meet the applicable standards of transparency, intelligibility and justification."

Similarly, in *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319, the Federal Court held that the Canadian Nuclear Safety Commission erred in determining it lacked jurisdiction to apply UNDRIP and UNDRIPA when assessing the duty to consult and accommodate. The Court found that FPIC, as articulated in Article 29(2) of UNDRIP, "requires a process that places a heightened emphasis on the need for a deep level of consultation and negotiations geared toward a mutually accepted arrangement." The Court remitted the matter for reconsideration, directing that the consultation process must incorporate Indigenous laws, knowledge, and practices, and work towards achieving agreement. These decisions underscore that any regulatory changes that weaken environmental protections without adequate consultation will face significant legal challenge and that the proposal to exempt projects from the jeopardy test would further increase litigation risk and undermine the Crown's ability to discharge its duty to consult.

Species protection is also a rights issue. Many species at risk are culturally, spiritually, and economically important to First Nations, and adverse effects on species may impair harvesting, food security, cultural practices, and stewardship responsibilities. Exemptions from species protections should not be available where they may adversely affect First Nations' rights unless affected First Nations have been fully consulted and have provided consent.

The cumulative effect of these regulatory streamlining measures, including relaxed environmental standards, early construction, political override, and species-at-risk exemptions, represents a systemic erosion of the protective framework that gives practical effect to section 35 rights. Each individual relaxation of standards may appear modest in isolation, but their combined effect is a substantial weakening of the regulatory architecture within which the Crown currently exercises its duty to consult and accommodate.

C. The Three Supply Chain Proposals

As a preliminary observation, the AFN notes that the Transport Canada Discussion Paper, "Strengthening One Canadian Economy through Trade and Transportation," fails to adequately analyze the labour market implications of its proposals for First Nations communities. The proposed reforms to trade corridors, port governance, and regulatory reporting would restructure industries and supply chains in which First Nations peoples participate as workers, entrepreneurs, and rights holders, yet the Discussion Paper is silent on the workforce impacts of these changes. This omission is a significant deficiency in the analysis underlying these proposals.

The designation of National Trade Corridors and modernization of port governance will have direct consequences for First Nations labour markets and economic participation. Corridor and port infrastructure projects generate significant construction and operational employment, yet historical experience demonstrates that First Nations workers and businesses are routinely excluded from these opportunities absent binding procurement and employment commitments. The Discussion Paper makes no mention of mandatory First Nation procurement targets, workforce training and apprenticeship requirements, or mechanisms to ensure that First Nations communities benefit from the employment generated by these nationally significant infrastructure investments. Without such commitments, these proposals risk replicating the pattern in which major infrastructure projects generate wealth for non-First Nation communities while First Nations communities bear the environmental and social costs.

Furthermore, the proposed regulatory streamlining of transportation regulations risks displacing First Nations workers in industries where regulatory requirements currently create employment and training opportunities. The simplification of reporting requirements and the reduction of regulatory touchpoints may reduce the need for community liaison, environmental monitoring, and compliance positions that First Nations workers currently hold. The proposals also fail to consider the impact on First Nations communities that depend economically on industries connected to the transportation and supply chain sector, including fishing, marine services, and resource transportation. Any restructuring of trade and transportation regulation must be accompanied by a comprehensive labour market impact assessment conducted in partnership with First Nations, with binding commitments to employment equity, First Nation procurement, workforce transition support, and preferential hiring in corridor and port operations located on or adjacent to First Nations territories.

(a) Proposal 7: National Trade Corridors

Overview of Proposal

Canada proposes modernizing Canada's National Transportation Policy to emphasize the importance of supply chain efficiency through the designation of National Trade Corridors.

Issues with Proposal

By designating corridors as nationally significant trade infrastructure, Canada is prioritizing commercial throughput over First Nations land rights and environmental stewardship. The AFN asserts that this is contrary to Canada's obligations under Article 32(2) of UNDRIP, which requires FPIC to be sought and obtained before the approval of any project affecting Indigenous lands.

The proposed corridor designations constitute a strategic Crown decision that pre-determines development priorities for specific geographic areas, many of which traverse traditional First Nation territories. The Supreme Court of Canada's decision in *Haida* establishes that the duty to consult and accommodate can arise at the strategic planning level. Corridor designation would generate cumulative impacts on Aboriginal and Treaty rights that require deep consultation, not merely notification.

Furthermore, Principle 8 recognizes that reconciliation requires that Indigenous peoples "share in the wealth generated from those lands and resources as part of the broader Canadian economy."

The AFN insists that no corridor designation proceed without FPIC, co-governance mechanisms, and binding commitments to equitable revenue sharing, including throughput royalties, equity stakes, and procurement guarantees.

(b) Proposal 8: Modernize Port Governance

Overview of Proposal

Canada proposes modernizing Canada's port governance framework to better reflect the realities of modern trade and to foster collaboration amongst port authorities.

Issues with Proposal

The AFN asserts that this proposal is inconsistent with Articles 3, 4, 18, and 26 of UNDRIP and the Supreme Court of Canada's decision in *Clyde River*. Article 3 affirms the right to self-determination. Article 4 provides for the right to autonomy or self-government in matters relating to internal and local affairs. Article 18 affirms the right to participate in decision-making through representative institutions chosen according to Indigenous peoples' own procedures. Article 26 recognizes Indigenous peoples' rights to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used.

(c) Proposal 9: Simplified Regulatory Reporting

Overview of Proposal

Canada proposes adopting a "tell-us-once" approach to information sharing between departments and agencies and streamlining redundancies and inefficiencies in transportation regulations. While framed as procedural improvement, the AFN identifies three serious concerns with this proposal.

Issues with Proposal

First, this approach would permit First Nation traditional knowledge, consultation records, territorial information, and other sensitive First Nation data shared with one federal department to be disseminated to other departments or agencies without the specific consent of the First Nations concerned. This is a direct violation of First Nation data sovereignty as protected by the Principles of OCAP (Ownership, Control, Access, and Possession) and by Article 31 of UNDRIP, which affirms Indigenous peoples' right to "maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions" and their intellectual property over such knowledge.

Second, the reduction of regulatory "redundancies" may in practice remove requirements that serve essential rights-protective functions for First Nations. What appears redundant from an administrative efficiency perspective may represent distinct consultation obligations owed to different rights-holding groups in connection with different aspects of their rights.

Third, the "tell-us-once" approach may reduce the multiple touchpoints that First Nations actively utilize to participate in decision-making or to raise domain-specific concerns at various stages of project development. As noted above, the Supreme Court of Canada in *Mikisew* held that

administrative decisions of general application can trigger the duty to consult and accommodate where they have the potential to adversely affect specific Aboriginal or Treaty rights. The AFN insists that no sharing of First Nation consultation records or traditional knowledge between departments occur without the explicit, informed consent of the First Nations concerned, and that Canada provide a provision-by-provision accounting of every regulatory requirement proposed for elimination, identifying whether each currently serves a First Nations rights-protective function.

III. THE AFN'S CONCERNS, RECOMMENDATIONS, AND CALLS TO ACTION

Drawing upon the foregoing legal analysis, the AFN sets forth the following calls to action. The “Non-Negotiable Calls to Action” represent absolute limits that must not be breached if the proposals are to remain within the bounds of Canada’s constitutional obligations, statutory commitments under UNDRIPA, and international obligations under UNDRIP. The “Overarching Calls to Action” identify constructive pathways through which Canada may genuinely advance reconciliation while pursuing legitimate economic objectives.

A. Non-Negotiable Calls to Action

The following represent the AFN’s non-negotiable calls to action:

- No early construction before impact decisions are rendered and consultation is completed;
- No political override of environmental conditions without FPIC;
- No species-at-risk exemptions without the FPIC of affected First Nations;
- No pre-emptive “public interest” determinations before full regulatory review and without the FPIC of affected First Nations;
- No pre-approval of economic zones without ongoing project-specific consent mechanisms and co-governance;
- No designation of National Trade Corridors traversing First Nations territories without FPIC, co-governance, and equitable revenue-sharing arrangements;
- No port governance reform without FPIC, mandatory First Nation board representation, co-management of environmental oversight, and revenue-sharing;
- No elimination of regulatory requirements that serve First Nation rights-protective functions without FPIC;
- No sharing of First Nation consultation records, traditional knowledge, or territorial information between departments or agencies without the FPIC of the First Nations concerned; and
- No centralized consultation screening model that relies on maps, zones, or internal Crown tools without notice, disclosure, an opportunity to respond, and written reasons when a First Nation contests whether consultation is required.
- No advancement of major project reforms, Federal Economic Zones, or expedited approvals without the assessment and mitigation of the cumulative social impacts

of increased development activity on Indigenous women, girls, and 2SLGBTQQIA people, consistent with Calls for Justice 13.1, 13.2, and 13.5 of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

The AFN emphasizes that these are non-negotiable limits. Should Canada proceed with any of the proposals in a manner that breaches these limits, the AFN will treat that conduct as a failure to obtain the FPIC of affected First Nations. In that event, First Nations will be entitled to withhold consent, to oppose the measures through all available political and parliamentary avenues, and to pursue the legal rights and remedies reserved at the conclusion of this letter, including challenges to any legislation, project decision, zone designation, or corridor designation made without FPIC.

B. Overarching Calls to Action

(a) FPIC as the Applicable Standard

The AFN asserts clearly and unequivocally that the applicable standard for these proposals is free, prior, and informed consent, not the minimum constitutional floor of the duty to consult. These are legislative and administrative measures that will directly and profoundly affect First Nations rights, lands, territories, and resources. Canada's own UNDRIPA obligates Canada to "take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" (section 5). Article 19 of UNDRIP requires FPIC before adopting legislative measures. Article 32(2) requires FPIC before project approval. Canada's Principle 6 commits to building "processes and approaches aimed at securing consent." The AFN rejects any characterization of this engagement as satisfying the duty to consult, which represents a constitutional minimum, not the ceiling that FPIC represents. The standard that must be met is nothing short of the free, prior, and informed consent of First Nations.

(b) Sustainable and Durable Projects

The AFN challenges the underlying premise of these proposals: that proper First Nation consultation causes efficiency problems for major projects. This premise is false. Projects built with the genuine consent of First Nations, rooted in the principles of FPIC, are more durable, face fewer legal challenges, and create greater economic certainty for all parties, including investors and project proponents. It is failures to engage in genuine consultation that are the primary source of project delays and investor uncertainty. In particular, Indigenous knowledge is built upon generations of living in close contact with the land and it is of great value in informing the historic and current conditions of the environment which helps to preserve the land and supports sustainable projects. As set out in the Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions, Indigenous knowledge enhances the understanding of the potential impacts of projects and its consideration can strengthen mitigation and accommodation measures, help develop project conditions, and contribute to more effective long-term monitoring of project impacts. The AFN recognizes that Canada's economic growth depends in part on reconciling with First Nations, including by avoiding the substantial costs of litigation, remediation, and settlement that inevitably accrue where obligations are not upheld. Canada would better serve its own stated economic objectives by investing in robust, rights-respecting processes

that produce lasting outcomes, rather than by compressing timelines in ways that generate legal vulnerability.

(c) Economic Participation and Revenue Sharing

Consistent with Canada's own Principle 8, which recognizes that reconciliation requires that Indigenous peoples "share in the wealth generated from those lands and resources as part of the broader Canadian economy," the AFN insists that no regulatory streamlining proceed without parallel binding commitments to equitable First Nation revenue sharing, equity participation, and procurement guarantees. Any discussion of accelerated project approvals must be linked to concrete mechanisms for economic participation by First Nations, including equity stakes in projects, throughput royalties for corridors traversing First Nation territories, and mandatory First Nation procurement targets.

(d) Integrated Engagement Framework

The AFN calls on Canada to reconsider the artificial separation between the supply chain proposals and the major project proposals. These proposals must not be assessed in isolation. Their cumulative impact on First Nations' rights, territories, and economic interests is greater than the sum of their individual parts. The AFN calls for the establishment of an integrated engagement framework that allows First Nations to assess the totality of these proposals and their compounding effects on First Nation rights consistent with Canada's obligations under section 35 of the *Constitution Act, 1982* and the FPIC standard.

(e) Uphold Environmental Safeguards

The AFN calls on Canada to uphold and strengthen, rather than weaken, existing environmental safeguards that protect all lands, waters, and ecosystems that support fish and wildlife species, the vast majority of which are migratory, including all First Nation, Crown, and privately held lands and waters. The proposed changes to Canada's environmental regulatory framework would lead to the further degradation of First Nations' lands and waters at a time when many First Nations remain water scarce and insecure. According to a 2024 Policy Horizons Canada Report, biodiversity loss and ecosystem collapse was identified as one of the most likely and high impact events that could disrupt Canadian society in the next decade. The Office of the Auditor General's June 2025 Report on Critical Habitat for Species at Risk identified that Canada is currently not meeting its existing responsibilities regarding protection of critical habitat for species-at-risk, with only 32% of species at risk having critical habitat identified, and the majority of studies on critical habitat completed late or overdue. The loss and degradation of habitat is the primary threat for most species at risk. The First Nations-in-Assembly reaffirmed the declaration of a climate emergency in 2023 and called for transformative and urgent climate action through AFN Resolution 36/2023. Any further weakening of environmental protections would infringe on First Nations' rights and would represent the Crown's derogation from its responsibility and obligations to environmental protection, likely downloading these responsibilities to First Nations and the broader Canadian public.

The accelerated pace and cumulative scale of major project development contemplated by these proposals would also compound the social risks documented in the Calls for Justice of the National

Inquiry into Missing and Murdered Indigenous Women and Girls, which require further socio-economic study and assessment before approving projects, as well as greater policing, health, and social infrastructure supports in areas of resource extraction projects to reduce impacts on First Nations women, girls, and 2SLGBTQIA people.

(f) Co-Governance Model in Place of the Crown Consultation Hub

Rather than accepting the Crown Consultation Hub proposed in Proposal 2, the AFN calls on Canada to establish a co-governance model in which First Nation authorities share decision-making power over projects affecting their territories. This is consistent with Article 18 of UNDRIP, which affirms the right to participate in decision-making through Indigenous peoples' own representative institutions, Article 32(1), which affirms Indigenous peoples' right to determine priorities and strategies for the development or use of their lands, Principle 1, which requires relations based on the recognition and implementation of the right to self-determination, and Principle 4, which recognizes Indigenous self-government as part of Canada's evolving system of cooperative federalism. The AFN proposes that such a co-governance model include First Nation-Crown joint decision-making panels, First Nation consent protocols developed by First Nations according to their own governance traditions, and binding co-decision-making frameworks that ensure First Nation authorities possess genuine, not merely advisory, decision-making power. Implementing a co-governance model will create the certainty all parties desire in the project approval process. Ensuring First Nations are involved early through joint-decision making processes will allow the next stages of project development to proceed knowing that proper consultation has been met. Consistent with this approach, the AFN also calls on Canada to accelerate the development of First Nation Co-Administration Regulations and other mechanisms that empower First Nations to exercise genuine decision-making authority over projects and processes affecting their territories.

(g) First Nation Governance in Trade Corridors and Ports

The AFN insists that the proposals regarding the modernization of port governance and the designation of National Trade Corridors require not merely consultation, but FPIC and co-governance. The AFN calls for the introduction of binding mechanisms for First Nation co-decision-making, including mandatory First Nation board representation on port authorities located on or adjacent to First Nation territories, consent requirements for corridor designation, expansion, or operational changes, co-management of environmental oversight, and revenue-sharing mechanisms including throughput royalties, equity stakes, and procurement guarantees. These mechanisms must be established as preconditions to any modernization, consistent with Principle 8 and Article 32 of UNDRIP.

(h) Arctic Sovereignty and Northern First Nations

The AFN calls on Canada to ensure that any proposed Arctic trade corridors are subject to comprehensive environmental and rights-based impact assessments conducted in genuine partnership with Northern First Nations. The unique environmental vulnerability of Arctic ecosystems and the particular dependence of Northern First Nations on those ecosystems for the exercise of their rights, including harvesting, cultural, and spiritual practices, demand the highest standard of engagement and protection. Article 29 of UNDRIP protects the right of First Nations

to the conservation and protection of the environment and the productive capacity of their lands. No Arctic corridor designation may proceed without the FPIC of affected northern First Nations.

(i) Constructive Engagement

The AFN acknowledges that there are divergent perspectives within First Nations leadership regarding the appropriate response to these proposals. Draft resolutions brought forward at the AFN Annual General Assembly reflect a range of positions, from directing the AFN to engage in parliamentary advocacy to oppose all legislative and policy measures aimed at streamlining regulatory approvals without FPIC, to directing the AFN to advocate for First Nations-directed mechanisms within federal processes that would allow Nations to pause, extend, or modify timelines as required to uphold FPIC. These positions reflect a fundamental strategic question: whether to engage constructively with Canada's proposed reforms by seeking amendments that incorporate adequate First Nations protections, or to fully reject the process as fundamentally flawed and incompatible with FPIC.

The AFN's position is that these perspectives are not mutually exclusive. The AFN can and must oppose any legislative, policy, or regulatory reforms that weaken environmental protections, undermine oversight, limit meaningful consultation, compress review timelines, or circumvent FPIC, while simultaneously advocating for amendments that would strengthen First Nations participation in any reformed process. Resolution 7/2026, *Protecting First Nations' Rights in Response to Federal Major Project Fast Tracking and Pipeline Expansion Initiatives*, directs the AFN to engage in parliamentary advocacy in support of the direct participation of First Nations rights-holders, recognizing that if and when legislation is introduced, First Nations must be positioned to shape its content rather than merely oppose it from outside the legislative process. Resolution 28/2026, *Protecting Free, Prior and Informed Consent in Federal Major Projects and Regulatory Reform*, further directs the AFN to advocate that federal processes recognize the right of First Nations to determine their own decision-making processes regarding FPIC, including through their own laws, legal orders, and governance systems.

The AFN therefore takes the position that its engagement with these proposals, including through this letter, is without prejudice to its right to fully reject any resulting legislation that does not meet the FPIC standard. Constructive engagement in the current process must not be misconstrued as acceptance of the proposals or the process by which they were developed. The AFN's willingness to propose amendments and safeguards reflects its commitment to protecting First Nations rights through all available avenues, not an endorsement of the underlying approach. Should Canada proceed to introduce legislation without obtaining FPIC, the AFN will pursue all available legal, political, and parliamentary remedies, including opposition to the legislation in its entirety.

The AFN calls on Canada to provide a provision-by-provision accounting of every regulatory requirement proposed for elimination, specifically identifying whether each currently serves a First Nations rights-protective function. No regulatory requirement that serves such a function may be eliminated without the FPIC of affected First Nations. The AFN further demands that Canada confirm that the First Nations Principles of OCAP, and Article 31 of UNDRIP which protects First Nation data sovereignty, will be fully respected in any information-sharing regime between departments and agencies.

IV. CONCLUSION AND RESERVATION OF RIGHTS

The AFN reaffirms its unwavering commitment to meaningful, rights-based engagement with the Crown. The AFN does not oppose economic development; rather, the AFN insists that such development must proceed on a foundation of respect for First Nations' Inherent and Treaty Rights, consistent with the *Constitution Act, 1982*, UNDRIPA, UNDRIP, and Canada's own Principles. The nine proposals before us, as presently structured, create substantial risks of diminishing the substantive content of the Crown's constitutional obligations to First Nations. The compressed engagement timeline, the predetermined legislative trajectory, and the absence of co-development processes fall far short of the FPIC standard that Canada has committed to upholding. The AFN calls upon Canada to demonstrate, through its actions and not merely its words, that it is prepared to honour the Nation-to-Nation relationship with First Nations, to respect First Nation self-determination, and to build regulatory frameworks collaboratively, rather than unilaterally. The calls to action set forth in this letter represent the minimum conditions by which FPIC may begin to be sought and obtained during the continued development of these proposals.

The AFN hereby reserves all legal rights and remedies available to it. Without limiting the generality of the foregoing, the AFN reserves the right to challenge any legislation introduced without FPIC, any individual project decisions made under the proposed framework, any zone designations affecting First Nations' territories without consent, any trade corridor designations that affect First Nations' territories without consent, any port governance reforms that exclude First Nation participation and co-governance, and any regulatory changes that infringe section 35 rights without meeting the justification standard established by the Supreme Court of Canada. The AFN further reserves the right to rely upon the inadequacy of this engagement process as evidence in any subsequent legal proceedings.

The AFN looks forward to Canada's substantive response to the concerns and calls to action set forth herein before any of the proposed legislative and regulatory measures are introduced, and to the establishment of a genuine co-development process worthy of the Nation-to-Nation relationship between First Nations and the Crown.

Megwetch,

Cindy Woodhouse Nepinak
National Chief

Cc: AFN Executive Committee