



Informational Briefing Note

October 28, 2025

Taking Action to Stop Bill 5 and Protect Indigenous Rights & Nature: Responding to Ontario's Proposed Regulation to Designate Special Economic Zones

Issue

Ontario is moving ahead with implementing Bill 5 and unless a [newly proposed regulation](#) enabling the designation of Special Economic Zones (SEZs) is withdrawn, the Ontario government will have highly discretionary power and be in a position to override legal safeguards that are key to protecting Indigenous rights, nature, and the public interest.

The deadline to provide comments on the draft regulation via the Environmental Registry of Ontario (ERO) is **November 16, 2025, at 11:59 pm EST**. We strongly encourage you to share your views with the province via the ERO ([ERO No 025-1077](#)) and invite you to draw on our recommendations, detailed below.

Background

On October 2, 2025, the Ministry of Economic Development, Job Creation and Trade released a draft regulation regarding the criteria for designating Special Economic Zones (SEZ) under the *Special Economic Zones Act, 2025* (which was enacted by way of Bill 5, *Protect Ontario by Unleashing Our Economy Act, 2025*). If the draft regulation is not struck down nor reconsidered in partnership with Indigenous communities, the Ontario government will have unrestricted powers to authorize resource development - without regard for Indigenous rights, environmental protection, or the public's right to have a say - and decide which legal safeguards do or do not apply in a SEZ.

The draft regulation sets out the criteria that must be in place before the government can designate a Designated Project, led by a Trusted Proponent, inside a SEZ:

1. **Special Economic Zone** is a single area that, in the opinion of the Lieutenant Governor in Council, is "no larger than necessary" for activities to occur which are or will be "economically significant" or "strategically important to the Ontario economy";

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2. **Designated Project** can only occur within a SEZ and which, in the opinion of the Minister, will have “significant long-term economic benefits for Ontario” (considering job creation, tax revenue, economic diversification, and other factors); will benefit communities (located within and outside of the SEZ); and “will likely succeed”; and
3. **Trusted Proponent**, defined as the Crown (i.e. Ontario government), a Crown Agency or Municipality, or a for-profit or non-profit entity (i.e. corporations), are those who will lead a Designated Project and who, in the opinion of the Minister have a “good record of complying with legal requirements” including health, safety and environmental protections; has a plan - if needed - for Indigenous engagement and a “history of working successfully with Indigenous communities”; and will not change project ownership or control without the Minister’s consent.

In addition to the draft regulation, the government posted the following supporting materials to the ERO:

- [Draft Policy Intent for SEZ Criteria](#), which the Ministry claims was shared with Indigenous communities at the start of Indigenous consultation describing the proposed criteria to designate zones, projects, and proponents;
- [Indigenous Communities Consultation Feedback](#), which the Ministry claims summarizes the feedback the Ministry has received to date from Indigenous communities on the Policy Intent

LAND’s Position

LAND strongly opposes this proposal and continues to call for the repeal of Bill 5¹.

We categorically reject this proposal and maintain that the *Special Economic Zones Act, 2025 (SEZA)* violates the rule of law and undermines the rights of Indigenous communities, the public and nature. Accordingly, we recommend that the draft regulation, alongside the *SEZA* be withdrawn in full.

Summary of Recommendations

Our recommendations reflect the principles and minimum actions we feel are necessary to safeguard and advance the protection of Indigenous rights and nature. We provide these recommendations without prejudice to our continued stance that Bill 5 ought to be repealed.

Each of the following recommendations are detailed below:

- 1) **Promote good governance by limiting discretion and political decision-making.** This means limiting the discretion of the Minister and Lieutenant Governor in Council to decide whether designation criteria have been met and instead employ an evidence-based approach where

¹ For a more detailed analysis of the impacts of Schedule 9 of Bill 5 (enabling the *Special Economic Zones Act*), see pages 9-10 of our legal briefing [here](#).

criteria are clearly defined and measurable, and establish oversight mechanisms to increase public participation in and transparency of designation decisions;

- 2) **Respect and uphold Indigenous rights and sovereignty.** This means ensuring any decision-making process respects Indigenous rights and sovereignty by enabling their meaningful participation, equitable benefit sharing, mandating the assessment of social, cultural, environmental and cumulative impacts, and explicitly referencing the rights and principles enshrined in the [*United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)*](#), including Free, Prior and Informed Consent; and
- 3) **Remove the threat of SEZs operating outside of the law.** This means withdrawing the draft regulation and repealing the *SEZA* that would allow the province to decide what - if any - laws apply to designated projects/proponents within a SEZ.

Detailed Recommendations

1. Promote good governance by limiting discretion and political decision-making

The criteria for designating a Designated Project, led by a Trusted Proponent, inside a SEZ is largely dependent on the opinion or satisfaction of the Minister and/or Lieutenant Governor in Council. For instance:

- **Special Economic Zone:** the draft regulation does not clarify how “economic significance” and “strategic importance” are defined or measured, which suggests that the government will have the power to unilaterally designate a SEZ if they are of the opinion that these undefined and unmeasurable criteria have been met. There is no requirement for the cultural or ecological significance of the zone to be considered.
- **Designated Project:** the criteria for a Designated Project is largely subject to the Minister’s opinion, which suggests that the Minister will have the power to unilaterally designate a project. The Minister does not have to be of the opinion that the project will provide benefits to Indigenous communities. The Minister does not have to be of the opinion that work has been done to identify potential impacts on health and the environment or that risk mitigation strategies have been identified.
- **Trusted Proponent:** similar to a Designated Project, the Minister’s discretion to designate a Trusted Proponent remains highly unrestrained as the criteria is subject to the Minister’s opinion and satisfaction, with no definition or explanation as to what constitutes a “good record of complying” or a “history of working successfully with Indigenous communities”. There is no requirement for Indigenous communities to be engaged, and no clarity around which Indigenous communities would be engaged or how they would be identified and notified.

This is not an evidence-based approach and risks decreasing transparency in decision-making and public trust in the government. For instance:

- There are no stated requirements for the Minister and Lieutenant Governor and Council to provide reasoning and/or evidence in support of their opinions. Without any oversight or appeal mechanisms, the Minister and Lieutenant Governor in Council have near unrestricted powers to issue designations which will have far reaching social, economic, cultural and environmental impacts.
- The draft regulations and policy intent documents do not identify public participation in decision-making as a priority or as a right that will be respected. This suggests that the public will not have an opportunity to have their say when a designation is being considered, nor will they be able to appeal any designation decisions. Similarly, there are no specific information disclosure requirements regarding the designation process. The province ought to respect every person's right to be informed and have a say by establishing information disclosure requirements (such as a public registry) and mechanisms to participate.

2. Indigenous rights and sovereignty must be respected and advanced

Like the *SEZA*, the text of the draft regulation excludes any express mention of Indigenous rights, including commitments to reconciliation, respect for Indigenous self-determination, or Indigenous inclusion in decision-making.

While the government's [summary of feedback](#)² from consultation with Indigenous communities acknowledges the several issues raised by those consulted - including concerns that the designation processes lack oversight, transparency and participation mechanisms and do not consider social, environmental and cumulative impacts - the document clarifies that this feedback "is not reflected in the current draft proposed regulation."

Additionally, the government confirmed that such issues - including express reference to the rights and principles protected by *UNDRIP*, including Free, Prior and Informed Consent - are "unlikely to be included in further drafts of the regulation".

Ontario has continuously claimed that Indigenous communities will benefit from the economic growth facilitated by the *SEZA*. However, Ontario is choosing not to implement the feedback Indigenous communities have provided regarding what's needed for them to benefit equitably, including: revenue sharing, employment and other benefits from projects within their territories, clarity around how Indigenous-led projects, Indigenous proponents or Indigenous governments could be designated, and

² In referencing this document, we are not suggesting that the Ministry's 'consultation' was sufficient to discharge the constitutional duty to consult.

support to encourage Indigenous business participation. Failing to incorporate this feedback sends a clear message that the Ontario government is not interested in advancing 'economic reconciliation'.

3. Remove the threat of SEZs operating outside of the law

Once the criteria has been satisfied to create a SEZ (see the [Background](#) section above for more detail), the government can create exemptions or modifications to permits, approvals or other legal requirements for designated projects and proponents in those designated zones.

This means the government will have the ability to choose what - if any - permitting processes apply to designated projects/proponents, and restrict or eliminate the application of specified laws and regulations within a SEZ. For example, if a SEZ is designated to fast-track a mining project, the government could decide that the mining project can skip key procedures aimed at protecting the health of communities and the environment, such as requirements for the mining company to have an environmental restoration plan in place, or to consult with the public and engage Indigenous communities. The same could be true for workers, where the province could choose to exclude all or some aspects of employment and labours laws aimed at upholding workers' rights, health and safety.

Questions?

You are welcome to reach out to us.

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