

Chief Executive Officer



January 25, 2022

BY E-MAIL ONLY

EA Modernization Project Team
Ministry of Environment, Conservation and Parks
Environmental Assessment Modernization Branch
135 St. Clair Ave W, 4th Floor
Toronto, ON M4V 1P5

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Re: Moving to a project list approach under the *Environmental Assessment Act* (ERO #019-4219)

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' (MECP) Environmental Registry of Ontario (ERO) posting on "Moving to a project list approach under the *Environmental Assessment Act* (EA Act)."

The Toronto and Region Conservation Authority (TRCA) is a key participant in the environmental assessment (EA) process within its watershed-based jurisdiction, both as a reviewer of EAs and as a proponent of undertakings under the EA Act. TRCA conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures for plan review and permitting activities. TRCA is:

- A public commenting body under the *Planning Act* and EA Act;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under Section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

In these roles, and as stated in "A Made-In-Ontario Environment Plan", TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. Through service level agreements with municipalities, and other public infrastructure providers (e.g., Metrolinx, Enbridge Gas Distribution), TRCA provides technical advice during the completion of various EAs, as well as at later stages of detailed design and construction under our regulatory role. Where a Crown agency is exempt from the regulatory requirements of the CA Act, TRCA has service agreements in place with select agencies to offer review and comment on a voluntary

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basis; uptake on voluntary review highlights the need for provincial infrastructure to be protected from natural hazards, including flooding and erosion.

As a major landowner and close working partner with our member municipalities, TRCA is also a proponent or co-proponent of several remediation and infrastructure-related projects, in which the processes set out in the Conservation Ontario Class EA for Remedial Flood and Erosion Control Projects document (CO Class EA) and/or the Municipal Class EA document are followed. From time to time, major CA or joint municipal-CA projects require an Individual or Comprehensive EA process. Examples of TRCA projects undergoing an Individual EA process are the Scarborough Waterfront project and the Don Mouth Naturalization and Port Lands Flood Protection project.

Government Proposal

We understand that MECP is seeking input on proposed draft regulations and related actions to move toward a project list approach for projects that will require a Comprehensive EA under the EA Act. The proposal follows amendments to the EA Act made through the *More Homes, More Choice Act, 2019* and the *COVID-19 Economic Recovery Act, 2020*. The amendments enabled a project list approach, in which projects that require a Comprehensive EA will be listed in the regulation rather than being based mainly on the project's proponent.

Once amendments are proclaimed and the project list regulation is in place, projects not meeting criteria in the list would not be subject to the EA Act, unless: the project is subject to one of the existing Class EAs, the proponent enters into a voluntary agreement to make the works subject to a Comprehensive EA, or a regulation is made designating the specific project as a Comprehensive EA project. We understand that the Minister will retain the authority to issue a section 16 Order ("Part II Order") to require a proponent to complete a Comprehensive EA for a project which is going through a Class EA process. We further understand that the ministry will be developing regulations and other actions related to the new streamlined EA (Part II.4 of the Act) and will be consulting on these in the future.

TRCA Comments

Please note that we are in receipt of Conservation Ontario's submission on this ERO posting, dated January 20, 2022, and support their comments.

The proposed draft regulations and related actions comprise six new project categories: Electricity, Waste Management, Transit, Highway, Railway, and Waterfront projects. TRCA reviewed the proposal as described in the ERO posting as well as the draft regulations and related actions and provide the following comments.

Please note that we have attached our previous comments of November 10, 2020 to the proposed project list in related ERO #019-2377, as many of the comments and recommendations remain applicable to the current ERO posting. In particular, TRCA maintains that for transportation projects, additional criteria are needed to designate projects as a Comprehensive EA, to ensure the level of review corresponds to the potential for environmental impacts.

Proposed provincial EA regulations and current Federal EA guidelines

Within the current ERO posting's proposed draft regulation for designating a Highway project as a Comprehensive EA, contains the following criteria:

- a. At least 75km in length
- b. Has at least two lanes in each direction
- c. Has a median strip
- d. Has access points primarily grade-separated
- e. Has a posted speed limit

For rail line projects, the draft regulation proposes a 50 km threshold in which proposed rail lines of less than 50 km would be exempt from a Comprehensive EA.

Although the ERO posting states that better alignment with certain thresholds used in the federal EA process is sought, we note that the proposed thresholds for length differ from federal guidelines for transportation projects. The Impact Assessment Agency of Canada (formerly the Canadian Environmental Assessment Agency) requires all-season highways more than 50 km in a new right of way to undergo a federal EA. For new railway lines, the requirement is 32 km or more. Further, the federal Minister of Environment and Climate Change (MECC) may designate a project that is not included in the federal project list based on factors set out in federal legislation. A project may be designated if the MECC considers the project may cause adverse environmental effects or believes that public concerns related to those effects warrant the designation. A risk-matrix is then employed to identify whether a project is likely to cause significant adverse environmental effects. Key technical considerations in determining significance include the following: cumulative effects, likelihood, uncertainty, and benchmarks.

The current provincial ERO posting indicates that the shift to a Comprehensive EA Project List would establish environmental safeguards and help improve harmonization with the federal process. TRCA sees the aforementioned aspects of the federal process as important environmental safeguards that the Province should consider. As stated in our previous comments, the consideration of alternatives in a public process and an ability for appeal to the Minister should remain fundamental parts of provincial EA review. This is required to confirm that the alternative selected through the comprehensive or streamlined processes will fulfill the objectives of environmental assessment, i.e., to support "the betterment of the people of Ontario" and to consider all aspects of the environment, which is broadly defined to include natural, social, economic, cultural and built components.

Transportation projects and environmental impacts

In TRCA staff's experience, transportation project length is not necessarily an indicator of potential environmental impact. The width of a project and the level of modification to terrain should be considered as an addition to the highway and rail project length/size criteria cited above, i.e., whether a transportation corridor is being installed over a natural, undulating area versus a graded and urbanized section of landscape. These aspects of a project can dictate its complexity and the corresponding level of study required.

Recent examples of transportation projects undergoing an Individual (Comprehensive) EA process through TRCA's jurisdiction are the Highway 427 Extension and the Teston Road EA;

both projects are less than 75km in length, but because of the sensitive nature of the subject lands, they were required to undertake an Individual EA. It is anticipated that the level of study will be sufficiently robust to understand potential impacts and determine appropriate mitigation.

As a public commenting body, service provider to public infrastructure providers, and a regulator under the CA Act, TRCA reviews multiple transportation infrastructure undertakings annually under the Municipal Class EA (MCEA) and the Transit Project Assessment Process (TPAP) EA framework. In TRCA's experience, many decisions that would have otherwise been made through the EA process are deferred to detailed design and as the public becomes aware of concerns with preferred alignments, there is no opportunity for comment or alignment correction. Review timelines become extended to resolve fundamental issues that should have been addressed early, during the EA stage, rather than being left to detailed design. Examples of issues for public infrastructure projects in TRCA's jurisdiction have been flood risk (Ontario Line station in the Lower Don), erosion risk (Ontario Line MSF station near Millwood), and natural heritage degradation (Don valley layover). These concerns could have more effectively been addressed during a Comprehensive EA process, initiated through a comprehensive master planning process as in the case of municipal EAs.

Examples of additional criteria from the proposed regulations

We note that, for other types of projects in the proposed regulation, such as transit projects by a municipality or Metrolinx, criteria are applied for whether a project involves, "repairing or replacing a culvert" or "reconstructing a water crossing" or constructing "in or adjacent to a sensitive area." A "sensitive area" is defined in the proposed regulation as, "a) an area of residential land use, or b) an environmentally-sensitive area such as an area that includes natural heritage features, cultural heritage or archaeological resources, recreational land uses or other sensitive land uses." This definition needs refinement, such as adding hazardous lands and hazardous sites, and defining the term "other sensitive uses". Nonetheless, an expanded criteria in Transportation projects, such as construction affecting a water crossing, and construction within a sensitive area, should be considered for capturing other aspects of a highway project less than 75 km or a rail line project less than 50 km.

Recommendations

In light of the above TRCA comments and the previous comments enclosed, TRCA recommends that:

1. The proposed criteria for determining whether Transportation Projects would follow a streamlined or Comprehensive (Individual) EA process be revised, such that:
 - a. The proposed threshold for project length be lowered to better align with federal EA requirements and include a width threshold to reflect overall project size.
 - b. Additional criteria be included to reflect instances where project length is not the sole determinant of potential environmental impact, e.g., through a single or multi-objective risk matrix that considers project size, project cost, number of wetland and/or valley and stream crossings, susceptibility of the

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roadway or upstream properties to natural hazard impacts, and development being facilitated.

2. The definition of “sensitive areas” be expanded to enhance clarity and certainty regarding those areas which are environmentally sensitive, such as: areas regulated by CAs, areas containing key hydrological and/or natural heritage features, key hydrologic areas, hazardous lands and agricultural lands.

Thank you once again for the opportunity to provide comments on “Moving to a project list approach under the Environmental Assessment Act.” Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,

<Original signed by>

John MacKenzie, M.Sc.(PI) MCIP, RPP
Chief Executive Officer

Encl. TRCA Submission to ERO #019-2377, Comprehensive EA Project List

BY E-MAIL

cc: Leslie Rich, Conservation Ontario

TRCA: Laurie Nelson, Director, Policy Planning
Sameer Dhalla, Director, Development and Engineering Services
Beth Williston, Associate Director, Infrastructure Planning and Permits
Anil Wijesooriya, Director, Restoration and Infrastructure



November 10, 2020

BY E-MAIL ONLY (eamodernization.mecp@ontario.ca)

Sharifa Wyndham-Nguyen
Ministry of Environment, Conservation and Parks
Client Services and Permissions Branch
135 St. Clair Ave W
Toronto, ON M4V 1P5

Dear Ms. Wyndham-Nguyen:

Re: Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (ERO #019-2377)

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' (MECP) Environmental Registry (ERO) posting on the Proposed Project List for comprehensive environmental assessments under the *Environmental Assessment Act* (EAA).

The Toronto and Region Conservation Authority (TRCA) is a key participant in the environmental assessment (EA) process within its watershed-based jurisdiction, both as a reviewer of EAs and as a proponent of undertakings under the EA Act. TRCA conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures for plan review and permitting activities, as follows:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act* (EAA);
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under Section 28 of the *Conservation Authorities Act*;
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- A Source Protection Authority under the *Clean Water Act*;
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As a major landowner and close working partner with our member municipalities, TRCA is also a proponent or co-proponent of several remediation and infrastructure-related projects, in which the processes set out in the Conservation Ontario Class Environmental Assessment for Remedial Flood and Erosion Control Projects document (CO Class EA) and/or the Municipal Class EA document are followed. From time to time, major CA or joint municipal-CA projects require an Individual or Comprehensive EA process. Examples of current TRCA projects undergoing an Individual EA process are the Scarborough Waterfront project and the Don Mouth Naturalization and Port Lands Flood Protection Project.

Government Proposal

We understand that MECP is seeking input on a proposed Project List that will be subject to the comprehensive environmental assessment requirements in Part II.3 of the EAA and will be designated in a regulation as Part II.3 projects. The proposal follows recent amendments to the EAA made through the *More Homes, More Choice Act, 2019* and the *COVID-19 Economic Recovery Act, 2020*. In some cases, the project types have been described with specific detail, and in other cases, input is being sought for how to describe projects that should be on the Comprehensive EA Project List. Based on input received on the proposed list of projects, MECP will later seek input on a draft regulation.

General Comments

The proposed Comprehensive EA Project list is comprised of the following project categories: Electricity, Waste Management, Transportation, Conservation, Railway Lines, Mining. TRCA staff have reviewed the proposal as described in the EA posting as well as the draft Project List document and provide the following comments organized by the project types relevant to TRCA.

We note that MECP recently solicited Conservation Ontario and TRCA staff's advice through a conference call to conduct a high level discussion regarding conservation authority EA undertakings in the context of the ERO proposal for establishing threshold criteria for Comprehensive EAs to be used in a new regulation under Part II.3 of the EAA. Staff were grateful for MECP's staff's overview of the proposal as contained in the ERO posting and for the question and answer discussion that followed.

TRCA staff also shared their initial reactions to the proposal, which led to a consensus of all attendees that a multi-criteria approach to setting Comprehensive EA thresholds was needed given that a single criterion such as cost or geographic extent was not necessarily indicative of the complexity of the project.

A Project List Proposal document is posted on the ERO in addition to the information provided within the ERO posting. The posting states that projects included in the Project List Proposal are intended to capture those which, in MECP's experience, were seen to have the potential for significant environmental impacts considering the following criteria:

- magnitude of the effect
- geographic extent of the effect
- duration of the effect
- frequency of the effect
- degree of reversibility of the effect
- possibility of occurrence of the effect

The principle of a project list with threshold triggers is held in common with the federal EA approach allowing streamlining where both EA processes are applicable. TRCA is generally supportive of the project list approach as it can help to ensure greater coordination or harmonization with the federal EA process and to provide certainty at the outset of a project as to the level of study required. It is our experience, however, that this certainty and efficiency requires close cooperation and decision making on whose process (provincial or federal) should be followed as the structure for the EA undertaking early in the process.

Notwithstanding the need for early decision making and agreement by provincial and federal EA bodies related to harmonization, it is imperative that the consideration of alternatives in a public process and an ability for appeal to the Minister remain fundamental parts of EA review. This is required to confirm that the alternative selected through the comprehensive or streamlined processes will fulfill the objectives of environmental assessment, i.e., to support “the betterment of the people ... of Ontario” and to consider all aspects of the environment, which is “broadly defined to include natural, social, economic, cultural and built.” Based on TRCA’s experience, we submit that for some project types the proposed Comprehensive EA thresholds/triggers could be enhanced to ensure the appropriate level of review for projects with potential significant environmental impacts.

Project Types

Transportation

As a public commenting body, service provider to public infrastructure providers, and a regulator under the CA Act, TRCA reviews multiple transportation infrastructure undertakings annually under the Municipal Class EA and the Transit Project Assessment Process (TPAP) EA framework. In the current ERO posting, the proposed Project List for Transportation Projects, new provincial and municipal expressways, freeways and transitways of greater than 75 kilometres in length would need to follow the Comprehensive (Individual) EA process. The same project types that are less than 75km in length, would fall into the one of the streamlined EA processes (MCEA, TPAP or new streamlined process for transit projects).

In TRCA staff’s experience, transportation project length (i.e., geographic extent) is not necessarily an indicator of project impact. The ERO posting’s provincial impact criteria of magnitude, duration, frequency, degree of reversibility, and possibility of occurrence of the environmental effects of a project do not particularly correlate to project length. The need for a more robust level of study regarding the potential for environmental impact of new or expanding transportation corridors is based on whether the project is proposed to cross multiple natural heritage features and lands subject to natural hazards. Further, transitways less than 75 km may also be planned in areas that could impact sensitive watershed ecosystems and environments thus requiring a higher level of study. Similarly, when transit stations (e.g., Metrolinx stations) associated with the project are proposed within or adjacent to environmentally sensitive areas or flood or erosion prone lands a higher level of study is warranted.

The threshold for length also ignores the need to more stringently examine potential impacts due to the width of a transportation project (in distance or in number of lanes). Ultimately, the level of modification to terrain should be considered in the threshold or triggers, i.e., whether a transportation corridor is being installed over a natural, undulating area versus an already graded and urbanized section of landscape. This aspect of a project can dictate its complexity and the corresponding level of study required.

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Recent and current examples of transportation projects undergoing an Individual (Comprehensive) EA process through TRCA's jurisdiction are the Highway 427 Extension and the Teston Road EA west of Dufferin. These projects are less than 75 km in length, but because of environmental and socio-economic factors including sensitive watercourses, the presence of the Keele landfill, and natural heritage features including, in the case of Teston Road, Natural Core Areas within the Oak Ridges Moraine Conservation Plan, they were required to undertake an Individual EA; it is anticipated that the level of study will be sufficiently robust to understand potential impacts and determine appropriate mitigation.

Conservation

The Conservation Project List preamble uses the Lower Don EA as an example of a Comprehensive EA and states that, "Projects such as these are large scale and gain significant public interest during the environmental assessment process. They are not currently covered by a streamlined process but would have comprehensive environmental assessment requirements." Based on the size, scale and complexity of the Lower Don project, it is clearly a Comprehensive EA project. Its magnitude is unique among typical conservation projects and there may be other smaller, multi-objective projects that may still require a higher level of study such as what the Comprehensive EA process affords.

The ERO posting's proposed thresholds or triggers for Comprehensive EA review for major flood, erosion control and associated conservation projects, are: "significant remedial flood and erosion control projects that facilitate or anticipate development, major flood and erosion control projects such as multipurpose projects." Further the proposals states that, "examples of criteria that could be used to further refine the above are land area in number of hectares, total shoreline affected, proximity to major settlement areas, amount of river realigned, within an Area of Concern, impact to significant natural heritage features," and that, "projects on previously developed lands would not be included."

While single-objective flood and erosion remediation projects meant to reduce existing risk to public safety or remediate existing flood infrastructure likely remain suitable for streamlined processes, similar to the existing Conservation Ontario Class EA, TRCA agrees that "multi-purpose" comprehensive flood and erosion remediation projects to facilitate development (such as for urban revitalization, restoring/naturalizing degraded features, and enhancement to the public realm) should be one of the triggers (in combination with others) for consideration. To ensure these outcomes are optimized, especially with respect to understanding natural hazard risk and remediation and mitigation requirements among multiple stakeholders, a Comprehensive EA level of study may be required for projects with these characteristics.

Clarification is requested on why the suggested criteria for refinement of the triggers/threshold stipulates that projects on lands developed previously would not be included. Flood plain issues exist and can be more acute in developed areas as opposed to undeveloped given the increased level of public at risk. In the context of TRCA, flood remediation projects are all by nature on already developed land.

Recommendation

TRCA recommends that further to the criteria suggested under Transportation and Conservation Projects (project length, multi-purpose, etc.) in the ERO posting, the Ministry consider adding a combination of criteria for triggers or thresholds for both Transportation projects and Conservation projects. In addition to lowering the threshold of greater than 75 km in length for Transportation projects, other project aspects could be considered together as triggers in a risk matrix: single or multi-objective, to facilitate development, project size (length and width), project

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cost, number of crossings of wetlands or valley and stream corridors, and whether lands subject to natural or human made hazards (e.g., landfills, or contaminated sites) are part of the study area. Other socio-economic considerations such as the presence of significant archaeological resources (e.g., historic villages or ossuaries), recreation areas (such as Conservation Areas or outdoor education areas we manage) should also be considered.

Thank you once again for the opportunity to provide comments on the Proposed Project List for comprehensive environmental assessments under the *Environmental Assessment Act*. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,

<Original signed by>

John MacKenzie, M.Sc.(PI) MCIP, RPP
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