



April 30, 2020

BY EMAIL ONLY (christopher.goode@ontario.ca)

Christopher Goode
Energy Networks and Indigenous Policy Branch
77 Grenville Street, 6th Floor
Toronto, Ontario M7A 2C1

Dear Mr. Goode:

**Re: Early Access to Land for Environmental Studies on Transmission Projects
(ERO #019-1371)**

Thank you for the opportunity to comment on the Ministry of Energy, Northern Development and Mines' (ENDM) Environmental Registry (ERO) posting on the proposal to give the Ontario Energy Board the authority to grant, under specific circumstances, earlier access to land to electricity transmission project proponents for the purpose of conducting preliminary environmental studies prior to applying for Leave to Construct.

The Toronto and Region Conservation Authority (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 MNRF 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*;
- 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, TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources.

Government Proposal

The Ontario Energy Board (OEB), as the provincial regulator for electricity, evaluates applications from electricity transmission project proponents. Before applying for Leave to Construct, proponents of electricity transmission projects must complete project development and Environmental Assessment (EA) work in order to identify a preferred project route. The completion of environmental and other studies (for example, archaeological or wildlife and habitat studies) to support EA work requires proponents to have access to land within their study area. Currently, electricity transmission project proponents may apply to the OEB for access to land after applying for a Leave to Construct.

We understand the government's current proposal would create a mechanism allowing the OEB to grant earlier access to land to proponents for the purpose of conducting environmental studies. If approved, the mechanism is anticipated to:

- Allow proponents to apply to the OEB for earlier access to land; and
- Set out requirements proponents must meet when applying for early access to land.

Furthermore, it is intended that the OEB's process for considering applications for early access to land will allow for input from affected landowners and that the OEB can attach conditions to a grant of access with which the proponent must comply.

General Comments

Access to land for the purpose of conducting environmental studies is critical to sound decision making in the infrastructure planning process. TRCA staff are supportive of gathering and using as much background information as early as possible to inform the Environmental Assessment (EA) process or other studies related to electricity transmission corridor siting and design. This information is particularly important to inform decisions of preferred route/alignment alternatives and avoidance, mitigation and/or compensation measures for natural heritage systems and for managing natural hazards.

Types of studies

In TRCA's experience as a reviewer of EAs for infrastructure within TRCA regulated areas, project submissions' focus is on surface features (wetlands, woodlands, watercourses). While avoidance of these areas is important, geotechnical and hydrogeological studies may also be needed to assess potential impacts. Flooding, streambank erosion, streambed downcutting and drawdown from dewatering are some of the potential risks associated with installation of infrastructure affecting natural features. The likelihood of these risks being present along an alignment and the magnitude of the risks both need to be assessed through environmental studies, scoped for project scale and site sensitivities.

Timing of studies

While it is true that the results of these studies drive a mitigation plan that is implemented at the detailed design stage, it is important for studies to be undertaken at the EA stage or even prior to the EA, when potential project route alternatives are still being identified. Early environmental study is needed to determine construction feasibility, a mitigation plan, and long-term maintenance and monitoring requirements that consider the surface and underground conditions of a site, and the construction's effects on the features' and their functions' long-term survivability. As well, early in the process is when opportunities are greater for balancing stakeholder interests and to determine the appropriate mitigation measures to avoid impacts to both the infrastructure and the environment.

There have been instances in the past where during detailed design there were issues, (e.g., sinkholes), requiring last minute changes in alignments as the proper studies were not done early on. Such changes end up being costly to the proponent and to the environment due to limited timelines after Leave to Construct is granted.

Further, the timing and duration of access granted should account for the temporal, seasonal and weather-dependent nature of habitat functions. Conditions for granting early access should ensure that possible long-term, multi-year monitoring requirements are considered by the proponent in their study design, and access timelines should reflect those requirements. For example, wetland hydrology monitoring required for seasonally-based wetland water balance requires multiple site visits at different points during the year.

Agency pre-consultation and coordination for access

Conditions for early access should provide opportunities for other public agency staff to also be given early access to lands to complete necessary investigations, as needed. In current practice, TRCA field staff request permission annually to enter private lands to complete terrestrial biological inventories across TRCA's jurisdiction. The Northwest GTA Transmission Corridor Study is an example where correspondence was sent earlier this year by TRCA field staff requesting permission to enter private lands while at the same time Ministry of Transportation consultants requested similar permissions to enter lands for investigations within the same general area. While we understand that the government's current proposal regarding early access is a broad request not tied to one specific project, it is recommended that permissions and conditions for access be coordinated among all agencies to avoid duplication of effort and delay.

Provincial direction for agency coordination will also support opportunities for pre-consultation among public agencies and proponents, thereby enhancing certainty of upfront requirements among all stakeholders. As a regulator under Section 28 of the *Conservation Authorities Act*, TRCA would advise proponents of environmental study requirements in support on a permit application for works within TRCA regulated areas. Agency coordination and pre-consultation would also achieve the intended outcome of this proposal to increase the quality of the environmental information and create a more streamlined, efficient EA process.

Parameters for granting earlier access to land

The posting is not clear as to the effect that granting early access to land will have on the property access requirements of other public agency landowners. As a major landowner in the Greater Toronto Area, we anticipate that environmental studies will occur on TRCA property in multiple locations based on currently proposed electricity transmission projects. TRCA requests confirmation from ENDM that proponents will continue to require permission to enter (PTE) from TRCA should they need to access to TRCA property for any sort of investigation related to electricity transmission corridor project planning. In accordance with TRCA requirements, prior to accessing TRCA-owned lands, proponents must obtain the necessary approvals including the following:

- provide details such as timing, scope of work, and restoration plans, if applicable. This allows TRCA to review the full scope of the proposal;
- meet TRCA study requirements for any works that may disturb or alter the property, (e.g., archeology investigations, stabilization and/or restoration);
- provide advance notice to TRCA with respect to the proposed date of entry;
- secure appropriate insurance, naming TRCA as an additional insured, and indemnification to protect TRCA, and that the proponent be required to provide supporting documentation to that effect;
- indemnity for liability or damage to property and for business interruption; and
- secure statutory allocation of liability on the part of the entrant when they enter private property under a contemplated right of entry provision.

TRCA Recommendations

In order to support the government's proposal to grant earlier access to land to electricity transmission corridor project proponents for the purpose of conducting environmental studies, and inform Environmental Assessments and other planning processes, and continue to ensure the protection of people and property from natural hazards and the conservation of natural resources, TRCA recommends to ENDM:

- 1) That permission for earlier access to lands also be granted to and coordinated among all public agencies to avoid duplication of effort and delays. This would allow agency staff to undertake and complete any necessary field investigations.
- 2) That proponents be required to coordinate pre-consultation with conservation authorities and other agencies to confirm review requirements (i.e., the type, scale and scope of environmental studies, landowner permissions, etc.) for complete applications. As a regulator under Section 28 of the *Conservation Authorities Act*, TRCA would advise proponents of environmental study requirements in support on a permit application for works within TRCA regulated areas.
- 3) That as a condition of granting permission for access, the environmental studies be completed at an early planning stage, prior to EAs, to inform the identification of preferred route/alignment alternatives.
- 4) That the process to grant access recognize the temporal, seasonal, and weather-dependent nature of certain environmental studies, that multiple site visits may be required, and that certain studies require long-term, multi-year monitoring protocols. Application review should confirm whether these requirements are incorporated into proponents' study designs, and timing and duration of access granted should reflect those requirements.
- 5) That proponents obtain permission to enter from TRCA should they require access to TRCA-owned property for any sort of investigation related to electricity transmission corridor project planning. Furthermore, that proponents satisfy all necessary TRCA requirements, studies and approvals for such permission prior to accessing TRCA-owned land. This would include but not be limited to securing appropriate insurance, naming TRCA as an additional insured, and indemnification to protect TRCA; indemnity for liability or damage to property and for business interruption; and secure statutory allocation of liability on the part of the entrant when they enter private property under a contemplated right of entry provision.

Thank you once again for the opportunity to provide comments on the Early Access to Land for Environmental Studies on Transmission Projects proposal. 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

BY E-MAIL

cc:

TRCA: Laurie Nelson, Director, Policy Planning
Sameer Dhalla, Director, Development and Engineering Services
Moranne McDonnell, Director, Restoration and Infrastructure