



August 22, 2020

BY E-MAIL ONLY (EAmmodernization.MECP@ontario.ca)

Ms. Antonia Testa
Ministry of Environment, Conservation and Parks
Environmental Assessment Branch
135 St. Clair Ave., W.
Toronto, ON M4V 1P5

Dear Ms. Antonia Testa:

Re: Proposal to exempt various Ministry of Transportation projects from the requirements of the Environmental Assessment Act (ERO #019-1883)

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' (MECP) Environmental Registry (ERO) posting on a proposed regulation to exempt select Ministry of Transportation (MTO) projects from the requirements of the *Environmental Assessment Act*, subject to conditions. The Highway 401/Leslie Street (Date of TESR: August 2011) project, located within the jurisdiction of the Toronto and Region Conservation Authority (TRCA), is included in the list of select projects.

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. TRCA is:

- 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, and as stated in the *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. TRCA provides technical support to its municipal partners, as a Source Protection Authority and through Memorandums of Understanding and Service Level Agreements in implementing the natural heritage, natural hazard and water resource policies of municipal and provincial plans.

Government Proposal

As part of the government's commitment to modernize the environmental assessment program, MECP is proposing a regulation to exempt select MTO projects from the requirements of the Environmental Assessment Act (EA Act), subject to conditions. MTO reviewed critical transportation infrastructure and

identified priority projects that previously went through an environmental assessment process but were not implemented, including one MTO class environmental assessment (Class EA) for Provincial Transportation Facilities (Class EA) projects within TRCA's jurisdiction, the Highway 401/Leslie Street (Date of TESR: August 2011) project. Based on the ERO posting, these select projects have completed a Transportation Environmental Study Report (TESR)

If a project has not been implemented within five years of completing a TESR, MTO is required to do an addendum in accordance with the MTO Class EA. The purpose of an addendum is to consider any significant changes which have taken place since the submission of the original Class EA project. The changes may include new conditions in the study area, new government policies, new engineering standards, or new technologies for mitigating measures. As such the above project is now subject to the five-year addendum process.

If the proposed exemption regulation is approved, the MTO would no longer be required to complete the addendum process as outlined in the MTO Class EA for this project. As a result, MTO would not be required to complete a review of the original TESR which is normally completed to document any changes to the project. By exempting these requirements, there would not be any opportunity for public review of an addendum nor any opportunity to submit Part II Order requests.

In addition, MTO would not complete a Design and Construction Report (DCR) documenting the environmental assessment process during detail design for public review. There also would not be any opportunity to submit Part II Order requests on the DCR. However, the proposed regulation would impose additional conditions on the project, as appropriate. For example, the MTO would be required to:

- issue a public notice to proceed with the implementation and construction of the project in accordance with the completed Class EA;
- begin construction of these projects within ten years of this regulation;
- continue consulting with Indigenous communities, as necessary for the individual projects; and
- fulfill conditions of a Minister's decision on Part II Order requests that have already been submitted for projects listed above, as applicable.

Detail design for the projects on the list above will still occur, and project-specific permits and approvals will need to be obtained. MTO's infrastructure is designed by professionals bound by legislation, policies, and procedures, and this would not change in the absence of a discrete environmental document. Likewise, impacts to the environment would still need to be predicted, measured, and mitigated, as dictated by other provincial and federal legislation.

General Comments

In 2011, MTO completed the Preliminary Design and Class EA for the development of a rehabilitation strategy for Highway 401 from west of Leslie Street to East of Warden Avenue in the City of Toronto, in the Don River watershed. As such, the associated 2011 TESR covered a broad area. The rehabilitation strategy investigated pavement concrete base repairs; repairs/improvement to the drainage system; rehabilitation and/or replacement of 17 existing bridges within the study area (including over the Don River); and a shift in the Leslie Street interchange to the south including alterations to the GO Transit station parking lot.

TRCA staff reviewed and provided comments on the 2011 TESR, including a conceptual Flood Plain Hydraulic Study prepared by MTO which was determined to be generally satisfactory at a high level, subject to refinement at detailed design. Following the EA study, TRCA reviewed a Flood Plain Hydraulic Study prepared by Delcan Corporation. TRCA comments on this study included concerns with respect to insufficient model

information and increases to flooding on private property at Manorpark Court. In correspondence to MTO dated October 11, 2011, staff identified TRCA's provincially mandated regulatory authority with respect to natural hazard management and noted the design as proposed could not be supported as it could result in unacceptable risk to health, safety or property damage and that this issue be addressed at the final detailed design stage.

TRCA has been involved in other project reviews and designs for this area, including a 2014 detailed design and Class EA for the Leslie Street off-ramp. TRCA provided comments on the eastbound off-ramp configuration until 2016, at which point MTO declined to proceed with the review of final designs through the TRCA's Voluntary Project Review process. Engagement with TRCA in this project area resumed in 2018 with a new detailed design and Class EA for the rehabilitation of the Highway 401 Eastbound Collector Lanes from Avenue Road to Warden Avenue and included rehabilitation of the existing Don River bridge. TRCA believes that this EA is within the scope of the Highway 401/Leslie Street (Date of TESR: August 2011) project, and therefore subject to this ERO posting. On August 21, 2020, TRCA received the 60% design drawings from MTO. In order to provide a fulsome response to concerns related to our interest in works proposed at the Leslie Street interchange, (i.e., the Don River bridge and the culvert works), TRCA requested copies of the study reports for the natural environment (e.g. terrestrial, aquatic, etc.), geotechnical reports (e.g. borehole investigations, slope stability analyses, etc.), hydraulic analyses (e.g. HEC-RAS model, SWM reports, etc.) and any hydrogeological reports. In response, MTO staff requested clarification noting that while TRCA is entitled to review and provide comments, MTO is not seeking approvals or permits from TRCA as MTO is exempt from TRCA's regulatory approval.

Detailed Design and Voluntary Project Review

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 basis (Voluntary Project Review (VPR)); uptake on voluntary review highlights the need for provincial infrastructure to be protected from natural hazards of flooding and erosion. Strongly linked to this is the need to manage natural resources, critical for resiliency of natural systems and infrastructure due to the impacts of urbanization and the compounding effects of climate change.

As MTO is exempt from the regulatory requirements of the *Conservation Authorities Act*, TRCA has significant concerns there is no mechanism in place for the protection of life and property or the management of natural resources at the detailed design stage, which fails to fulfill the objects of the EA Act. The mandate of the conservation authorities strongly aligns with provincial objectives for resilient public infrastructure and meeting the intent of the EA Act to provide for the protection, conservation and wise management of Ontario's environment. Accordingly, it is recommended that MTO commit to receiving VPR signoff at the design stage as it relates to TRCA's regulatory and policy interest, as well as provincially delegated responsibilities.

Proposed Regulation - TRCA Recommendations

A proposed draft regulation has not been included as part of this ERO posting; rather the posting generally describes the requirements to be included in the regulation. To date, TRCA's legislated, provincially delegated and regulatory interests have not been addressed. In order to support the government's proposal to stream the existing environmental assessment process with a regulation for select MTO projects and continue to ensure the protection of people and property from natural hazards and the conservation of natural resources,

TRCA recommends the following conditions be placed on this project as part of the provincial approval process:

- 1) That the regulation requires MTO to engage with TRCA through the detailed design process to ensure TRCA's legislated, provincially delegated and regulatory interests related to natural hazard and natural heritage be addressed.
- 2) That the regulation requires MTO to commit to TRCA's Voluntary Project Review process.
- 3) That the regulation requires MTO to provide Natural Heritage Compensation to TRCA or the City of Toronto, as per provisions of the TRCA compensation guidelines, the Metrolinx compensation guidelines or City of Toronto policy.

Thank you once again for the opportunity to provide comments on the proposed regulation to exempt select Ministry of Transportation projects from the requirements of the Environmental Assessment Act, subject to conditions. 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 416.661.6600, extension 5217 or at beth.williston@trca.ca.

Sincerely,

<Original signed by>

Beth Williston, H. BA, MCIP, RPP
Associate Director
Infrastructure Planning and Permits

BY E-MAIL

cc:

TRCA: John MacKenzie, Chief Executive Officer
Laurie Nelson, Director, Policy Planning and Regulation
Sameer Dhalla, Director, Development and Engineering Services