



May 28, 2019

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**Re: Conservation Ontario's comments on: Modernizing Ontario's environmental assessment program – *Environmental Assessment Act* (ERO#013-5102), Discussion paper: Modernizing Ontario's environmental assessment program (ERO#013-5101), and Schedule 6 of Bill 108, *More Homes, More Choice Act*, 2019**

Thank you for the opportunity to provide comments on *Modernizing Ontario's environmental assessment program – Environmental Assessment Act*, as well as the *Discussion Paper: Modernizing Ontario's environmental assessment program*. Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through the *Environmental Assessment Act* review and consultation process.

Conservation authorities bring an important perspective to this review; as proponents of Class Environmental Assessments (Class EAs) and as members of the provincial Government Review Team (GRT) which provides feedback on Terms of References and environmental assessments in Ontario. As a major landowner and resource management agency in the most densely populated areas in Ontario (90% of Ontario's residents live in a CA watershed), CAs are the proponent or co-proponent of a number of environmental assessments (EA), both Individual EAs and through the provincial Class EA process. Conservation Ontario has managed the *Class Environmental Assessment for Remedial Flood and Erosion Control Projects* (Class EA) since 1993. The Class EA establishes a planning and approval process for a variety of remedial flood and erosion control projects that may be carried out by CAs. The Class EA sets out procedures and environmental planning principles for CAs to follow to plan, design, evaluate, implement and monitor remedial flood and erosion control projects so that environmental effects are considered as required through the Ontario *Environmental Assessment Act*.

**Modernizing Ontario's environmental assessment program – *Environmental Assessment Act* (ERO# 013-5102)**

This proposal contains three components, including: modernizing the EA program, ensuring timeliness, and clarifying the Minister's authority. Conservation Ontario is supportive of the third component, namely, clarifying the Minister's authority to reconsider an approval of a project and ask for additional information on an individual EA, and therefore has not provided further comments on this subject. Comments on the remaining two components can be found below.

- I. *Modernizing the environmental assessment program to focus on higher-risk projects*

This posting identifies immediate actions the Ministry is proposing to undertake to ensure the EA program focusses on projects with the greatest potential for environmental impacts by exempting very low-risk activities. Conservation Ontario is supportive of the current proposed legislative amendments, particularly with regard to the provisions which would allow other Class EA proponents to identify undertakings within the class to which the *Act* would not apply, including as a result of screening criteria specified within the Class EA parent document.

The Conservation Ontario Class Environmental Assessment for Remedial Flood and Erosion Control Projects (herein, “the Class EA”) outlines a planning and design process for undertakings applicable to the Class EA parent document. The Class EA utilizes screening criteria to assist the proponent CA with selection of the preferred alternative method(s) for an undertaking, as well as the detailed environmental analysis of the preferred alternative which results in the selection of the appropriate documentation for the undertaking. The proposed amendments to the *EAA* would allow Conservation Ontario to work with the Ministry and Ontario’s 36 conservation authorities to identify activities with a low potential risk for net environmental impacts to be exempt from the requirements of the *Act*. The current undertakings covered by this Class EA are routine in nature and have generally known and manageable environmental impacts. Conservation Ontario is committed to working with the Province to identify opportunities through future streamlining amendments to our parent Class EA document to better align projects with the appropriate level of assessment.

Lastly, although some activities may become exempt from the requirements of the *EAA*, it is important that the proponent be aware of their obligations under the *Clean Water Act* source protection plans for all applicable undertakings. The *Clean Water Act* allows for the identification of activities that could pose a risk to drinking water sources, which are assigned a risk level based on scientific methodologies under the *Act*. For example, in areas of a certain percentage of impervious surface, activities such as: the storage of snow, road salt application and road salt storage may be assessed as “significant level risks” to the local drinking water source. In such cases, mandatory policies apply to manage the risks. It is recommended that Class EA proponents utilize and incorporate the risk assessment under the *Clean Water Act* when identifying activities for non-application of the *EAA*.

*II. Ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project (i.e. “bump-up”)*

Conservation Ontario is supportive of the proposal to ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project. In the past, Conservation Ontario has submitted comments to the Ministry encouraging that there be more guidance on the process, to prevent Part II Order requests that are submitted solely for the purposes of delaying a project, as well as those submitted without the requester attempting to first resolve its concerns with the project through consulting directly with the proponent.

Conservation Ontario commends the Province for clearly defining which matters bump-ups can be requested on, including matters related to Aboriginal or treaty rights of the Aboriginal peoples of Canada or a prescribed matter of provincial importance (to be defined further in regulation). When developing the regulation which identifies matters of provincial importance, Conservation Ontario recommends the Province clearly delineate and define specific matters of provincial interest in order to provide clarity to the public with regard to filing Part II Order Requests with the Minister. Conservation Ontario recommends that matters related to natural hazards protection and management and drinking water source protection are included in the proposed regulation.

It is Conservation Ontario's understanding that the prescribed matters of provincial importance, as well as the proposed limits on when the Minister must make decisions on requests and deadlines for Part II Order Requests, will be outlined in regulation which will be posted to the Environmental Registry for public review and comment. Conservation Ontario welcomes the opportunity to continue to engage with the Province on these matters when the opportunity becomes available.

The posting further proposes amendments to the *Act* such that Ontarians are given priority over other interests by limited bump-up requests to only those that live in Ontario. Conservation Ontario notes that many projects have the potential for transboundary environmental impacts (e.g. upstream or downstream impacts associated with in-water works). In such cases, the interests of those residing outside of Ontario should be accommodated and considered. An amendment to Schedule 6 of Bill 108 is recommended to address those cases.

With regard to the proposed amendments for timelines associated with Part II Order Requests, Conservation Ontario strongly supports the proposal to prescribe a deadline which would apply to the Minister's decision whether to issue an order to comply with Part II of the *Act* after a request has been received. Additional commentary on the proposed amendments found within Bill 108 are included below.

#### **Schedule 6 - Bill 108, More Homes, More Choice Act, 2019**

The following comments on Bill 108 are arranged around the two components found within the "Modernizing Ontario's environmental assessment program – *Environmental Assessment Act*" posting discussed above.

##### *I. Modernizing the environmental assessment program to focus on higher-risk projects*

The proposed legislative amendments as described in section 15.4 of the *Act* would allow the Minister or Director to "amend an approved class environmental assessment on the Minister's or Director's own initiative". This proposed addition to the *Act* does not identify a requirement or process for notification/consultation with proponents of class environmental assessments. Conservation Ontario recommends that prior to publication of a notice of the proposed amendment to the Environmental Registry, the Director or Minister notifies and consults with the applicable proponent(s) and identifies the rationale for the proposed amendments.

##### *I. Ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project (i.e. "bump-up")*

The proposed amendments identified in Bill 108 state that the Minister would be required to provide written reasoning to the proponent of the undertaking and the person(s) who requested the order should the Minister not make a decision within the prescribed timeline. It is recommended that this be amended such that the Minister would be required to notify both parties prior to the deadline as prescribed. As written, the proposed legislation does not identify when in the review process the Minister would need to provide this notice to both parties, which would potentially create significant delays in notifying parties on the status of Part II Order Requests. Ensuring that both parties are notified prior to the prescribed deadline would increase transparency regarding government decision-making and would allow proponents to adjust project timelines accordingly to accommodate the extended

review period for the request. Currently, the Class Environmental Assessment for Flood and Erosion Control projects outlines that, upon receipt of all necessary and satisfactory information from the requester, the Ministry will review the information and prepare a recommendation to the Minister on whether to approve or deny the request within a minimum target of 45 days. It is recommended that the Province clearly define, in regulation, a deadline for the review and Minister's decision on Part II Order Requests and that the regulation identifies a clear process with defined timelines for extensions under exceptional circumstances.

Lastly, in addition to the proposed timelines prescribed in regulation, Conservation Ontario is supportive of the amendments in Bill 108 which would allow the LGIC to introduce a regulation which would prescribe deadlines for Part II Order Requests in order to provide transparency for proponents of class environmental assessments. It is recommended that the Province maintain the current approach outlined in the Class Environmental Assessment for Flood and Erosion Control projects, which states that a Part II Order Request must be received by the Ministry within the 30-day review period following a 'Notice of Filing', or 15-day period in the case of a 'Notice of Addendum'. Aligning the deadline for Part II Order Requests with the review timelines currently prescribed in the class environmental assessment parent documents is appreciated and provides clarity and certainty regarding these requests to proponents.

#### **Discussion paper: Modernizing Ontario's environmental assessment program**

The following section offers comments on the four areas of focus identified in the *Discussion Paper: Modernizing Ontario's Environmental Assessment Program* (ERO#013-5101).

#### **Ensure better alignment between the level of assessment and the level of environmental risk**

The discussion paper poses the question of what kind of projects should require an environmental assessment in Ontario, citing the different approaches taken across other Canadian jurisdictions, such as inclusion of private-sector undertakings and the use of a project list to clearly delineate which projects should be required to complete an EA based on size, type and location. Conservation Ontario recommends the applicability of the *EAA* be extended to any activity or undertaking where design alternatives exist and which has the potential to cause significant adverse environmental impacts. The applicability of the *EAA* to any activity or undertaking should include, but not be limited to impacts to matters of provincial interest as prescribed in a future regulation under the Act.

Further, the discussion paper outlines the potential move to a project list under the *EAA* which would be used to identify which projects are subject to an EA. Conservation Ontario has a number of concerns with this proposed approach. While Conservation Ontario agrees that the move to a project list would align Ontario's approach with other jurisdictions in Canada, including with the Federal approach, we recommend the Province retain the current approach of requiring all project types to be subject to the requirements of the *EAA* unless otherwise exempt. While the project list does pose some benefits for proponents such as ease of identification of projects and standard terminology/consistency across all project types, this approach may not adequately address case or site-specific environmental impacts associated with a particular undertaking. The project list approach would also need to be highly flexible and iterative, as a standardized list may not be able to adequately address all projects that have the potential for adverse environmental impacts particularly within a sector which is evolving. With the need for an iterative approach, a project list may create more confusion for proponents and members of the public regarding whether or not a project is subject to the *EAA*.

Through the approved parent Class EA documents, Ontario's current approach to EA allows for the level of assessment to be appropriately aligned with the level of risk, allowing for a more streamlined approach for designated projects. Introducing a project list has the potential to be duplicative of the designated undertakings currently covered under Ontario's approved Class EAs. Should the Province proceed with the project list approach, the *EAA* should be amended to allow for the Minister to have powers to designate additional projects to be subject to the requirements of the *EAA*, if it is in the opinion of the Minister that the project may cause adverse environmental impacts.

#### Eliminate duplication between environmental assessments and other planning and approvals processes

The discussion paper identifies that, since the inception of the *EAA* in Ontario, many other processes have been put in place that may duplicate requirements for projects subject to the *Act*. Conservation Ontario is supportive in principle of the proposal to look at streamlining opportunities where similar requirements exist in other legislation or perhaps, more importantly, when there are multiple approvals required for the same undertaking (see further comments in section below).

Further, many projects which take place in Ontario initiated under one class environmental assessment process have the potential to trigger multiple environmental assessments due to the nature of the work. These triggers can result in the need for multiple consultation processes to take place for the same project, usually involving the same group of interested individuals (for instance, when conservation authorities wish to convert construction access routes for erosion control projects to publicly accessible trails). It is recommended the Province explore creating clear guidance for project proponents as well as Class EA managers for when multiple EA requirements are triggered for a single undertaking.

#### Find efficiencies to shorten timelines from start to finish

The discussion paper outlines the potential need for the Province to coordinate a "one-window approach" for the EA program, citing the need to provide proponents with a platform which clarifies EA requirements and coordinates EAs with multiple planning and approvals processes. Conservation Ontario offers the following comments and suggestions related to the "one-window" approach for the EA program.

The EA process deals with conceptual design, whereas many of the subsequent permits and approvals which may be required for a project require detailed design. Due to this reason, it is not recommended that the EA process be used as a "one-window" approval. The EA process, however, is a powerful tool to streamline the approvals process. For example, all provincial approval agencies should use the EA process to identify when a provincial approval may be required for a project. This will require that the provincial approval agencies be involved in the upfront planning of the undertaking, rather than at the end, when the preferred alternative has already been selected. Through such an approach, the detailed technical information which is collected within the EA process could be catalogued in a central registry and used to support subsequent technical studies required for permitting and approvals processes, as well as future projects within the same geographic context. It is recommended that this central registry be used for provincial approval agencies to share comments and to review submissions. This will ensure coordination between the approval agencies, help to avoid conflicting requirements, allow similar work completed in one process to be used for other processes and allow applicants to initiate and streamline certain permit and approval applications during the EA process (where appropriate to do so). While more information is required on details of the proposed "one-window approach", it is recommended that the Province explore opportunities to collect information gathered throughout the EA process which can be accessed for subsequent permits/approvals for a project.

Additionally, the discussion paper identifies deficiencies in the current EA program with regard to proponent knowledge of Ministry requirements for documentation and consultation. These deficiencies can result in a need to pause the Ministry's review process to allow proponents time to provide missing information or additional data, as well as potential delays associated with significant concerns being identified at a later stage in the EA process, triggering the need for further information/studies. In order to avoid delays associated with these deficiencies, as a primary step, Conservation Ontario recommends the Province review and update the Codes of Practice for Ontario's EA program. The Codes of Practice are useful guides for proponents which outline the legislative requirements and Ministry expectations for various aspects of the EA program, including preparation of an EA, preparation of a Terms of Reference, and requirements for Class EA proponents. While the Codes of Practice are useful guides for proponents, the majority have not been updated in several years. It is recommended the Ministry review and update these guides as appropriate to reflect any changes to the EA program and that technical bulletins be released in between substantive updates to keep the documents current. In addition to the Codes of Practice, there are a number of areas of the EA program which could benefit from clearer guidance from the Ministry. For instance, particularly for proponents of an EA who are not agencies of the Crown, there is a strong need for guidance and increased clarity regarding First Nations consultation. While it is understood that the Crown may delegate the procedural aspects of consultation to proponents of non-Crown agencies such as conservation authorities, there is great uncertainty regarding expectations and a lack of guidance on the process which needs to be utilized for consultation. In order to modernize and clarify this process, it is recommended that the Ministry clearly outline expectations regarding procedurally delegated consultation activities to provide proponents and Indigenous communities with increased clarity and certainty regarding the Ministry's expectations.

#### Go digital by permitting online submissions

The discussion paper proposes the creation of an electronic registry to support the submission and review of EA documentation as a centralized, digital location for proponents and members of the public to access information related to ongoing EAs in Ontario. Conservation Ontario strongly supports the development of such a registry to enable effective data sharing and increase transparency broadly for EA activities. It is recommended that, in addition to relevant EA documents such as notices, reports, drawings and models, the registry include a spatial component whereby projects are geo-referenced so interested parties are able to view on-going projects within a specified geographic region. It is further recommended that the online registry be searchable and AODA compliant to improve access for all Ontarians. Lastly, the discussion paper mentions that the Ministry is currently implementing a "modern approach to other environmental approvals and permits through the creation of online registries and electronic submission processes". It is recommended that the proposed EA registry be nested within a broader online portal for environmental approvals and permits administered by the Ministry as per our comments above. As EAs may be required as part of other approval processes, such as *Planning Act* applications, it would be appropriate for the Province to administer a broad online portal which links on-going EA projects with other environmental approvals and permits.

While the use of an electronic registry may be useful for posting project information and notices, the registry should not fully replace the need for notification of EA project stages at the local level. Conservation Ontario appreciates a stronger focus towards digital notification and documentation for EA projects, however, it is recognized that physical distribution of project notices will still be required to ensure equal access for Ontarians without or with limited online access, particularly those in remote and rural areas. It is recommended that, in addition to the proposed registry, the Province identify opportunities for targeted physical distribution of notices and other EA documents as the public shifts from traditional forms of media (e.g. newspaper notices) to more modern platforms.

Thank you for the opportunity to review and provide comments on *Modernizing Ontario's environmental assessment program – Environmental Assessment Act*, the *Discussion Paper: Modernizing Ontario's environmental assessment program*, as well as the proposed amendments to the *Environmental Assessment Act* set out in Schedule 6 of Bill 108, *More Homes, More Choice Act*, 2019. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,

A handwritten signature in black ink that reads "Nicholas Fischer". The signature is written in a cursive, flowing style.

Nicholas Fischer  
Policy and Planning Officer

c.c. All CA CAOs/GMs