



January 20<sup>th</sup>, 2022

EA Modernization Project Team  
Environmental Assessment Modernization Branch  
135 St. Clair Avenue West, 4<sup>th</sup> Floor  
Toronto, ON  
M4V 1P5

**Re: Conservation Ontario's comments "Moving to a project list approach under the Environmental Assessment Act" (ERO#019-4219)**

Thank you for the opportunity to provide comments on "Moving to a project list approach under the Environmental Assessment Act" (ERO#019-4219). Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit the consideration of comments shared individually by CAs through the review and consultation process.

Conservation Ontario and CAs bring an important perspective to this review; as a holder and proponent of a Class Environmental Assessment (Class EA); as a member of the provincial Government Review Team (GRT) which provides feedback on Terms of References and environmental assessments (EA) in Ontario; as a prescribed public body under the *Environmental Assessment Act* to review and comment on Class and Individual (comprehensive) environmental assessments that occur within their jurisdiction; and as the proponent or co-proponent of a number of EAs, both Individual (comprehensive) EAs and through the provincial Class EA process.

It is understood that, following amendments to the *Environmental Assessment Act* (EAA) in 2020, the Ministry of Environment, Conservation and Parks (MECP) is now consulting on a proposed comprehensive environmental assessment project list regulation (the "Project List Regulation") which identifies projects that will be subject to the new Part II.3 of the Act (subject to a comprehensive EA), as well as exemptions which may apply to certain undertakings. Once proclaimed, the new Part II.3 of the Act will change the way the Act applies, so that the EAA will only apply to designated projects included in the final regulation. The regulation will include projects as well as associated triggers and thresholds in order for the project to be designated. Following the adoption of a project list approach, all other projects would not be subject to the Act, unless: the project is subject to one of the existing Class Environmental Assessments, 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. 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.

Of interest to our members, the proposed Project List Regulation would include “Waterfront Projects” as a category of projects which would be required to undertake a comprehensive EA (subject to meeting the criteria outlined in the regulation). Additionally, it is understood that in order to move toward the project list approach, the MECP is proposing a number of other actions, including: amending Class Environmental Assessments (“Class EAs”), revocation and replacement of Regulation 334 (General) under the EAA, as well as a new General and Transitional Matters Regulation.

Conservation Ontario offers the following comments on these aspects of the Ministry’s proposal:

- a) Proposed Regulation – Part II.3 Projects – Designations and Exemptions - Waterfront Projects;
- b) Proposed Related Amendments to Class Environmental Assessments;
- c) Proposed Revocation and Replacement of General Regulation 334;
- d) Proposed Regulation – Exemptions from the Act and from Part II.1 of the Act;
- e) Proposed Regulation - General and Transitional Matters; and,
- f) Complementary amendments to regulations made under statutes other than the EAA.

**a) Proposed Regulation – Part II.3 Projects – Designations and Exemptions - Waterfront Projects**

It is understood that the MECP is proposing to establish a new regulation under the EAA titled “*Part II.3 Projects – Designations and Exemptions*” to set out the types of projects that will be required to complete a comprehensive EA. Per the Ministry’s proposal the categories of projects which would be subject to the Project List Regulation include: Electricity Projects, Transit Projects, Waste Management Projects, Highway projects, Rail line Projects, Transit Projects (Ontario Northland Transportation Commission), and Waterfront Projects. Conservation Ontario’s comments are focused on the “Waterfront Projects” category of the proposed regulation.

Through a review of the Consultation Guide and the draft proposed Project List Regulation, it is understood that the Ministry is proposing to require a comprehensive EA for projects in the Great Lakes-St. Lawrence River System that involve a combination of lake or riverbed filling as well as alterations to the shoreline. Any “waterfront project” works would require a comprehensive EA if they: 1) alter at least one kilometer of shoreline in the Great Lakes-St. Lawrence River system and, 2) require at least four hectares of lakebed or riverbed in the Great Lakes-St. Lawrence River system to be filled. It is noted that the length of shoreline and/or the area of the lakebed or riverbed does not include any associated length or area within a tributary of the Great Lakes-St. Lawrence River System, other than the mouth of the tributary. Conservation Ontario acknowledges that the term “works” has been defined in the regulation to mean “any thing that may be established on or near a waterfront including a beach, berm, breakwall, channel, island, marina, pier or riprap”.

Conservation Ontario is generally supportive of the proposed criteria for waterfront projects in the Project List Regulation. As noted in Conservation Ontario’s previous comments to the Ministry on ERO#019-2377 (dated November 10, 2020, endorsed by Council December 14, 2020), we commented that the criteria which would be used to designate a waterfront (then: conservation) project as a Part II.3 project needs to accurately reflect the level of risk, scale and scope of these types of projects as well as capture the potential social, cultural or environmental impacts of a proposed project. At the time, Conservation Ontario had strongly suggested that, given that this category of project often are “multi-purpose” in nature, that no one single quantitative trigger should be used to determine whether the project requires a comprehensive EA. Although Conservation Ontario had recommended that a risk matrix or similar screening tool is a more appropriate means to ensure a project receives the appropriate level of assessment, we are pleased to see the Ministry is proposing multiple criteria which must be met for waterfront projects to need to undertake a comprehensive EA.

To increase clarity on the criteria for waterfront projects, Conservation Ontario recommends that a definition be provided in the regulation for “mouth of any tributary” (“mouth”). We note that this term is currently undefined in the Ministry of Northern Development, Mines, Natural Resources and Forestry’s Technical Guides, nor is a definition provided for it in the Provincial Policy Statement, 2020. Left undefined in the proposed Project List Regulation, this term may lead to some ambiguity for proponents. Additionally, Conservation Ontario notes the proposed definition for “works” would include the establishment of an island near a waterfront. Clarification is requested from the Ministry on how this specific activity would meet the criteria for a comprehensive EA. For instance, if a proponent were to create (establish) an island, the proponent would not be altering 1km of existing shoreline, and as such would likely not meet the criteria to have to undertake a comprehensive EA.

#### **b) Proposed Related Amendments to Class Environmental Assessments**

It is understood that in addition to the new Project List Regulation, the Ministry is proposing to make amendments to existing Class Environmental Assessment parent documents to align with the proposed designated project categories, triggers and thresholds for works subject to a comprehensive EA. For the proposed category of waterfront projects, the Ministry is proposing to amend the Conservation Ontario Class EA for Remedial Flood and Erosion Control Projects (CO Class EA), Municipal Class EA, Class EA for Resource Stewardship and Facility Development, and the Public Work Class EA. The amendments would clarify that where an undertaking to which the Class EA applies meets the criteria in the proposed Project List Regulation, the undertaking would be subject to the comprehensive EA process rather than the Class EA.

In addition to the amendments to ensure alignment with the Project List Regulation, the Ministry will also be amending Class EA parent documents to facilitate a transition to the new EA framework. It is understood that these amendments will include updating terminology and references to provisions of the updated EAA, as well as enhancing clarity about which proponents and projects are subject to a comprehensive EA as compared to the Class EA. Conservation Ontario has no objections to these amendments, and respectfully requests the opportunity to work with the Ministry to finalize and incorporate these amendments into the CO Class EA.

#### **c) Proposed Revocation and Replacement of General Regulation 334**

It is understood that the Ministry is proposing to revoke Regulation 334 and replace it with a new regulation containing certain exemptions from the Act generally, or in some cases, specifically from Class EA requirements (Part II.1 of the Act). The current regulation outlines several exemptions for various proponents under the current EA framework. Specifically, Section 8 contains some exemptions for Conservation Authorities, including: reforestation and woodlot management; provision of conservation area workshops, administration buildings, outdoor education and interpretive centres; conservation services (under \$50,000); flood-proofing; and the development of conservation areas and campgrounds (under \$1,000,000), among others. The Ministry is proposing that some exemptions in Regulation 334 will be carried over to the new regulation, and others will not. Given the new way the Act will apply, if an undertaking is not listed as a designated Part II.3 project, nor subject to a Class EA, the undertaking will not be subject to the EAA. Conservation Ontario notes that none of the exemptions which are listed specifically for Conservation Authorities under Section 8 are proposed to be included in the new regulation, having the effect that these activities will not be subject to EAA. For Conservation Authorities, this will mean that they may proceed with undertakings such as provision of conservation services or developing conservation areas and campgrounds at any cost threshold, without the requirement to undertake a comprehensive EA. Conservation Ontario also notes that the major amendment proposal for the Class EA for Remedial Flood and Erosion Control which is currently before the Ministry for review (see ERO#019-1712 for further details), contains a number of proposals which align with the proposed revocation and replacement of Regulation 334. As such, Conservation Ontario is supportive of these proposals. Should the MECP decide to proceed with this regulation, Conservation

Ontario respectfully requests the opportunity to work with the Ministry to finalize any updates to the CO Class EA, to ensure that the Class EA appropriately aligns with the new EA framework.

**d) Proposed Regulation – Exemptions from the Act and from Part II.1 of the Act**

While generally supportive of the new regulation, Conservation Ontario requests further clarity on the proposed exemptions for operation and retirement (section 7 of the Consultation Draft) to the existing Class EAs. The draft regulation states that operation and retirement of a thing is exempt from Part II.1 of the Act, if at the time the thing started or the construction of the thing commenced, a) no class environmental assessment applied to the start or construction of the thing, and b) approval of the Minister under the Act was not required to proceed with the start or construction of the thing. Conservation Ontario manages the Class Environmental Assessment for Remedial Flood and Erosion Control Projects, which currently states that operation, maintenance and select retirement activities are considered part of the approved project and are not independently subject to the planning and design process of the Class EA. This is also consistent with the major amendment proposal put forward by Conservation Ontario which more clearly provides that the EAA does not apply to operation, maintenance and retirement activities (those which involve the relinquishment of rights, such as operating and maintenance responsibilities) (per Section 15.3 (1) of the Act). Conservation Ontario recommends that the exemptions related to operation, maintenance and retirement as part of the major amendment proposal to the CO Class EA continue to apply to CA structures regardless of the additional exemptions contemplated through this proposed regulation.

**e) Proposed Regulation - General and Transitional Matters**

It is understood that the Ministry is proposing a new regulation to set out transition provisions to support the shift to the new comprehensive EA project list regulation. The proposed Transition Regulation would set out what happens to undertakings that are currently proceeding with an application for approval under Part II of the EAA when Part II.3 of the Act is proclaimed and the Project List Regulation is made. Under the proposed regulation, for any pending applications where a proponent has given a terms of reference to the Ministry (under subsection 6 (1) of the Act), and no decision has been made in respect of the application before the Part II.3 transition date, the undertaking is deemed to be a Part II.3 project. Where no decision has been made in respect to a pending application, the proposed regulation sets out a number of transition rules, including that public notices, approved TORs, and submitted assessments would be considered as complete under the new (unproclaimed) sections of the Act. Conservation Ontario has no objections to this proposed regulation.

**f) Complementary amendments to regulations made under statutes other than the EAA**

Lastly, as a comment more broadly on the comprehensive EA project list, Conservation Ontario notes that several activities proposed for inclusion in the Project List Regulation, such as waste management projects (disposal sites) and mineral development projects, may be prohibited or managed in limited areas through mandatory, drinking water related policies under the *Clean Water Act* within local source protection plans. Applicable source protection plan policies are based on separate criteria which may not match the proposed thresholds. Therefore, it is suggested that general information about the *Clean Water Act* and the Drinking Water Source Protection program should be included in guidance to proponents, such that they are made aware of the possibility of applicable prohibition or management policies for all applicable projects located in a Source Protection Authority jurisdiction. This guidance is suggested in addition to the proposed complimentary amendments the Ministry is proposing to make to various regulations to update references to the EAA and applicable EA regulations, including to regulations under the *Clean Water Act, 2006* and the *Safe Drinking Water Act, 2002*.

Thank you for the opportunity to review and provide comments on “Moving to a project list approach under the Environmental Assessment Act” (ERO#019-4219). Should you have any questions about this letter, please feel free to contact Nicholas Fischer at extension 229 or Leslie Rich at extension 226.

Sincerely,



Leslie Rich, RPP  
Policy and Planning Specialist



Nicholas Fischer  
Policy and Planning Coordinator

c.c. All CA CAOs/GMs