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EA Modernization Project Team
Environmental Assessment Modernization Branch
Ministry of the Environment, Conservation and Parks
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Re: **DRAFT PROJECT LIST REGULATION UNDER THE ENVIRONMENTAL ASSESSMENT ACT (ERO 019-4219)**

Dear Members of the EA Modernization Project Team:

We provide this submission in our respective capacities as Wildlife Conservation Society (WCS) Canada scientists with expertise and experience with provincial, territorial, and federal impact assessment processes in policy and practice. We are conservation biologists who have been conducting scientific research to support policy and legislation on species at risk and environmental planning for terrestrial and freshwater ecosystems in and around the far north in Ontario for almost two decades.

As part of the Ontario's continued "modernization" efforts, this proposed project list regulation presents yet another regression from best practices for environmental assessment (EA) in Ontario, and a departure from the stated purpose of the *Environmental Assessment Act (EAA)*--namely "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment" (s. 2).

The move to a project list approach represents a perpetuation of the status quo, rather than "modernization" of the EAA. We therefore recommend a complete overhaul of the proposed regulation in an expert-driven process. We base this on four major concerns with this proposed regulation:

- 1) The project list is insufficiently inclusive of those most likely to have significant impacts;
- 2) There is no evidentiary basis for "thresholds" for inclusion on the project list;
- 3) The approach perpetuates lack of attention to cumulative effects in the *EAA*; and
- 4) There is no clear process that enables Ontarians to request designation of non-listed projects that warrant a Comprehensive EA.

1) The project list is insufficiently inclusive of those projects most likely to have significant impacts

In order to meet the many commitments to strong environmental protection claimed throughout the discussion paper, it is important to ensure that the regulatory list is sufficiently inclusive of public and private undertakings that may cause significant adverse environmental and/or socio-economic impacts, including cumulative impacts. In contrast, the proposed regulation would take EA in the opposite direction, adopting an exceedingly narrow approach that largely maintains the status quo for the sake of “streamlining” project approvals, rather than improved planning and decision making.

We highlight three aspects of the proposed regulation that define this regression:

- 1) The absence of objective rationale or evidence-based criteria for what project types must be included in the regulation;
- 2) The relaxation of existing EA requirements for some project types; and
- 3) The lack of inclusion of many project types altogether.

Regarding the first point, it seems evident that between the time when the move to a project list approach under the *EAA* was first discussed to Ontarians in 2020 (ERO 019-2377)¹ and when the draft regulation was posted about a year later, the principal filter for determining which projects would be on the list was those “with the most significant impacts”. The 2020 posting listed six criteria that would be taken into account to make this determination: magnitude of the effect, geographic extent of the effect, duration of the effect, frequency of the effect, degree of reversibility of the effect, and possibility of occurrence of the effect. However, “significant impacts” as an overarching reason to include projects in the list is not mentioned in this posting, making it difficult to understand any rationale for projects that are included in the draft project list regulation. Moreover, there is no indication anywhere in the 62-page discussion paper of any consideration of the aforementioned criteria to determine inclusion (see discussion of thresholds below).

Secondly, we note that for certain project types, the draft regulation varies or alters existing EA requirements, almost always relaxing requirements (streamlining) rather than requiring a Comprehensive EA. This is justified in the proposal because 1) other legislation and policy may be in place that require statutory approval laws (which are never specified in the discussion paper), 2) the cabinet has discretion to designate a non-listed project as being subject to the *EAA*, or 3) a proponent can voluntarily agree to conduct an assessment under the *EAA*. Long experience, however, demonstrates that these pathways are each rather unlikely for various reasons, and procedures are neither transparent to the public nor consistently implemented.

¹ <https://ero.ontario.ca/notice/019-2377> <https://ero.ontario.ca/notice/019-2377>

Therefore, there is a much stronger argument to be made for having an inclusive and comprehensive list of project types that will require a Comprehensive EA and undertake public and Indigenous engagement and consultation. Exemptions from assessment would then be made on a case-by-case basis if certain criteria are met.

On our third point, there are numerous outright omissions to the proposed project list:

- In spite of a new definition of “project” in the amended *EAA* that includes a “proposal, plan, or program”, nothing that meets this description is included in the proposed project list types in the draft regulation. Ontario’s transportation plans, climate change plans, and growth plans, etc. should be subject to EA at the earliest of stages to understand potential cumulative impacts that are generally more far-reaching in scope (geography and time) than individual projects.
- The draft regulation fails to include any private sector projects, like mining operations or chemical manufacturing facilities (e.g., smelters and refineries), despite some indication in 2020 that MECP might include them². No explanation is provided in the discussion paper why such projects are still not included in the project list, contrary to the ERO posting that “projects that require a comprehensive [EA]....will be listed in the regulation rather than being based mainly on who is proposing the project.” This continued omission in 2022 would mean that Ontario remains the only province in Canada where mines are not automatically subjected to a provincial environmental assessment and public consultation process³. Global financial markets are paying increasing attention to the adequacy of EA processes for meeting investor, Indigenous and public concerns about social, economic and environmental impacts. As such, exemption from any impact assessment in Ontario could easily be perceived to heighten risk to investors.
- As highlighted by our colleagues at Canadian Environmental Law Association, the draft regulation omits “several dozen project types that are otherwise on project lists in one or more other jurisdictions across Canada”. These range from dams, dykes, reservoirs, water diversion, land drainage and irrigation projects, to pipelines, to major commercial residential projects, none of which receive the type of attention and planning that is characteristic of robust EA. Despite the Ministry’s professed interest in aligning the *EAA* with the federal *Impact Assessment Act* (IAA), the project list that Ontario is offering in this draft regulation contains a fraction of the 61 different categories of projects that trigger assessment obligation in the federal project list (SOR/2019-285). We also note that with Ontario having removed logging on Crown lands from *EAA* coverage last year,

² <https://ero.ontario.ca/notice/019-2377>

³ Auditor General of Ontario. 2015. 2015 Annual Report of the Office of the Auditor General of Ontario. “4.4.5 Provincial Environmental Assessment Not Mandatory for Mining Projects”. 460-461. <http://www.auditor.on.ca/en/content/annualreports/arreports/en15/3.11en15.pdf>

its approach to resource management is now largely exempt from environmental impact assessments.

2) There is no evidentiary basis for “thresholds” for inclusion on the project list

With the Ministry having apparently abandoned the criteria (mentioned above) for inclusion on the project list, the thresholds described in the regulation are particularly arbitrary. The discussion paper contains no evidence or analysis, apart from some inclination to adopt those thresholds that they have been used elsewhere (e.g., federal legislation). For the most part, these represent a continuation of pre-existing thresholds, with no justification for why they don't require updating.

We are quite familiar with the project list approach under the *IAA* (2019), which, like the proposed Ontario regulation, uses thresholds such as production capacity, length and other variables as proxies for the relative impact of the project category in question. However, despite public commitments by the federal government to a “transparent, evidence-based approach to creating a new Project List”, no evidence or analysis to support the proposed categories of projects has been provided to date, even following requests for such evidence by us and our colleagues. This means that Ontario adopting other approaches with weak evidentiary basis simply perpetuates the arbitrariness and risks of such thresholds.

In a general sense, as scientists, we caution against reliance on a pre-defined threshold approach for determining whether a project meets the test of having “the greatest potential to cause effects”, for a number of reasons:

- Distinct ecological tipping points in terms of impact of a single project are rarely known and difficult (if not impossible) to isolate to the particular undertaking;
- Degree of ecological and social impact is more dependent on context (e.g., geography, environmental sensitivity, position of other development, etc.) than project type;
- The experience in Canada has generally been to develop production thresholds with an eye towards controlling the expected number of projects in a given project type to be assessed, rather than relative impact. With such a limited and approach in Ontario, many projects will not meet the size or production thresholds, but it is well known that the smaller projects (or multiple small undertakings) can contribute importantly to adverse and significant cumulative effects. Ontario has no provisions for generic environmental guidance for categories of small projects, and no mechanisms for considering the cumulative effects of multiple small undertakings in the *EAA* or any policy for that matter; and
- There is a well-documented tendency for developers to staying just below the threshold for production within project types to avoid assessment, including purposefully

designing the development so that it comes online in increments (e.g., Holmes River hydro project, BC), phases (e.g., Wataynikeneyap Power, ON), or extensions (Tango Extension at Victor Diamond Mine, ON).

3) The project list approach perpetuates lack of attention to cumulative effects in the EAA

A key additional consideration that cannot be addressed through a project list approach by project type is the growth-inducement potential of the project. By this we mean the likelihood that the approval of one project to stimulate or enable additional projects and expansion of infrastructure, (e.g., to provide access in a previously undeveloped region for which no current regional plan or strategy exists such as the Ring of Fire in northern Ontario). Experience demonstrates that it often takes one project to “open” a region where there is a great deal of natural resource potential, (e.g., mineral deposits). As such, the first project plays a disproportionate role in when considering both impacts and cumulative effects assessment as it enables other projects to become economically feasible where they were not previously due to remoteness.

This gap is even more significant in the context of the Ontario EAA because of the complete absence of consideration of cumulative effects in the law or associated policies, and the lack of regional and/or strategic assessment instruments.

4) The draft regulation fails to establish a clear process that enables Ontarians to request designation of non-listed projects which warrant a Comprehensive EA.

If the Ontario project list remains this narrow, it will be all the more important for Ontarians to be able to request designation of non-listed projects in a clear and transparent process.

A truly robust process, as claimed by the discussion paper, will go hand in hand with public trust. But trust will require clear processes for public input, and a mandatory duty for the Minister to publicly convey reasons for their decision under certain time limits. There is no sign of any of these elements at this time in Ontario’s environmental planning processes.

Recommendations/conclusions:

There is a general tendency in the way MECP communicates to the public through these proposals and its “Open for Business” mission, to equate the process of EA to “red tape” that requires “streamlining”. This is wrong. EA is one of the few legal processes to prevent environmental degradation over time. It does this by creating a process to identify and resolve potential environmental problems before actual damage occurs. One way in which it does so is by considering the need for the project (or program or plan), alternatives to both the project and its methods, and identifying ways to prevent or mitigate likely impacts. Determining whether the assessment is adequate and whether it should be approved, without compromising the integrity of the EA process, needs to be informed by experts’ and Indigenous

Peoples, with adequate accommodation for engagement with the public and their perspectives. If unacceptable, the project should be abandoned or redesigned to eliminate or reduce the anticipated impacts.

Meaningful EAs need not be prolonged processes, and rather than being preoccupied with speeding up approvals, Ontario should look to strengthening assessments. There is overwhelming evidence that ignoring impacts in the short term will simply accumulate into major and avoidable impacts down the road. Adopting the project list approach is already problematic for the reasons we have explained. Ontario shouldn't worsen the risk by adopting such a narrow approach as characterized by this draft regulation.

EA should be a critical planning tool to prevent environmentally harmful and socially unacceptable projects from proceeding while allowing projects that are in the public interest and subject to enforceable effective approval conditions to proceed. However, despite its many assurances that there will be "appropriate" environmental protection and oversight, the discussion paper justifying Ontario's approach to this regulation contains no evidence or explanations for how a sufficient standard of environmental protection will be upheld under continued weakening of EA processes.

In light of the profound shortcomings to the draft regulation that we have described in this letter, we strongly recommend that:

- The process be re-initiated and undertaken through an expert-driven approach with ample opportunity for public participation;
- Relevant information from EA experience be gathered to inform the formulation of scientifically based thresholds that are indicative of relative impact of project type where they exist;
- Growth-inducement potential be added as a criterion to the usual thresholds of size and length in order to explicitly consider the project's contribution to cumulative effects. In other words, if a road is shorter in length than the identified threshold, its potential to spur more development in the future (as described above) must be a factor in the decision whether or not to require a comprehensive assessment;
- The list be comprehensive and inclusive, with exemptions from requirements for comprehensive EAs be granted with justification along certain criteria in a transparent process;
- Designated projects include environmentally significant governmental proposals, plans, and programs, in keeping with the new definition for "project" under the *EAA*; and
- The resulting product provide clear explanations for decisions rendered and a commitment to re-evaluate and revise the project list and thresholds on a regular basis with new experience.

We hope our comments are useful, and we would be pleased to engage in any discussions regarding our recommendations. To do so, you may contact Justina Ray at 416-850-9038 or jray@wcs.org. Thank you again for this opportunity to provide feedback.

Sincerely,



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