



**Deshkan Zibiing**  
Chippewas of the Thames  
First Nation Treaties, Lands  
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EA Modernization Project Team  
Environmental Assessment Modernization Branch  
Ministry of the Environment, Conservation and Parks  
135 St Clair Ave West, 4<sup>th</sup> Floor  
Toronto, ON M4V 1P5

To EA Modernization Project Team:

**Re: EA Modernization Initiative Notice March 10, 2023**

*ERO # 019-4219 (Moving to a project list approach under the Environmental Assessment Act)*

*ERO # 019-6693 (Evaluating municipal class environmental assessment requirements for infrastructure projects)*

*ERO # 019-6705 (Improving timelines for comprehensive environmental assessments)*

We submit the following comments on the ERO postings listed above on behalf of the Treaties, Lands and Environment Department of Deshkan Zibiing, also known as Chippewas of the Thames First Nation (COTTFN). Given the short timeframe for comments, staff have not had the opportunity to meaningfully brief leadership on these proposals.

COTTFN is a sovereign and self-governing Anishinaabe Nation whose Treaty and Traditional Territory includes all of southwestern Ontario. COTTFN maintains rights and responsibilities to these lands and waters, and its citizens collectively exercise Constitutionally protected Aboriginal rights in the territory. The Nation's inherent rights and prior occupation of these lands create obligations on the Crown when contemplating decisions that will impact the Nation, including the duty to meaningfully consult and accommodate.

Before addressing the specifics of the three proposals, we will comment on the overall EA Modernization engagement process.

***Deficient Rights-Based Consultation***

In July 2020, the Ontario legislature passed the *COVID-19 Economic Recovery Act, 2020*, including substantive amendments to the *Environmental Assessment Act*. These changes -





many of which were unrelated to COVID-19 recovery - were made at the height of the pandemic, at a time when First Nations were scrambling to understand the risks of the pandemic and support their citizens. At COTTFN, offices were closed, staff were redeployed to essential areas, and access to the community was restricted. In this context, Ontario quickly moved forward with changes to the EA regime. While the Ministry of Environment, Conservation and Parks (MECP) offered webinars to review the proposals, webinars alone do not constitute meaningful engagement. In addition, many staff members working from home in the community were struggling with poor internet access, which is very common for rural First Nations dealing with decades of underfunding for infrastructure.

Despite these challenges, we have attempted to stay informed on the EA proposals, including participating in the most recent round of webinars. However, the Ministry staff on the webinars have been unable to answer many of the questions posed. While they offer to provide follow-up responses, the tight timeline means that we do not have time to receive those responses prior to the comment deadline. It is also unclear how the comments from First Nations are reflected in the final decisions. The current proposals do not reflect the feedback that we have given or heard from other Nations throughout this process, and calls for Ontario to substantively consider cumulative effects, federal climate targets, and Indigenous Knowledge in the EA process have gone unanswered.

In general, we are concerned that Ontario is pushing through changes that will reduce consultation with First Nations, at a time when the standards of engagement should be improving and moving towards consent. Through the *UNDRIP Act*, Canada is taking steps to make Canadian laws consistent with the standards in the United Nations Declaration on the Rights of Indigenous Peoples (2007). Will Ontario be passing similar legislation, like British Columbia did in 2019? Of particular relevance is Article 19, whereby:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Ontario's EA Modernization initiative should be focused on amending the *Environmental Assessment Act* and related regulations to make them comply with all of the sections of the United Nations Declaration on the Rights of Indigenous Peoples, including Articles 19 and 32.

The Treaties, Lands and Environment Department is also undertaking this work of reviewing and responding to the EA Modernization proposals without any specific capacity funding from the Ontario government. This is unacceptable as our department is already understaffed and consultation should not be a financial burden on First Nations. While Ontario may provide funding to Indigenous territorial organizations, funding should also be available to the individual First Nations - the rights holders.



### ***Moving to a project list approach under the Environmental Assessment Act***

We have serious concerns with this proposal that would remove important EA requirements from significant infrastructure projects. COTTFN is directly opposed to moving all electricity transmission facilities, railways, and highways to a streamlined approach.

Hydro One Networks Inc. (HONI) is currently engaging with COTTFN on two proposed Longwood to Lakeshore 500kV transmission lines, which is a project that has been undergoing a comprehensive environmental assessment. Given the nature, location and length of these lines, this proposed project will impact our Nation's rights. The comprehensive EA process has been allowing for more time to assess the impacts to those rights, identify culturally significant sites, and engage with HONI on the planning and routing process.

In comparison, other transmission lines that are currently under development (Chatham to Lakeshore and St Clair) fall under the class EA process, which leaves far less time to assess potential impacts. If these proposed changes are approved, Longwood to Lakeshore could also potentially be changed to a streamlined assessment mid-way through the process. This would be detrimental to our Constitutionally enshrined Aboriginal and Treaty rights and could put the project at risk if concerns with consultation lead to legal action.

The EA Modernization proposal suggests that the ability to file a Section 16 Order safeguards Indigenous rights within the overall EA process. However, our previous experience points to the contrary. COTTFN filed a Section 16 Order for the Chatham to Lakeshore project when the draft Environmental Study Report did not contain consideration of Indigenous rights. After filing that order, COTTFN did not hear back from the Ministry for nearly a year, and we have experienced minimal engagement with the Ministry regarding this project. Section 16 Orders are not sufficient to safeguard our Constitutionally enshrined Indigenous rights.

In addition, COTTFN has several concerns with moving these high impact projects to a streamlined EA approach:

- Puts onus on First Nations to request Section 16 Orders on tight timelines, which are then at the full discretion of the Minister, without the right to appeal;
- Without a Section 16 Order in place, the Minister cannot impose additional binding conditions on a project, beyond those contemplated through the class EA process;
- Significantly shortens timeframes and removes early consultation opportunities;
- Lacks clarity on how the consultation adequacy assessment works in a streamlined process; and,
- Makes the quality of consultation more dependent on the initiative of the proponent.

Some of the other changes, including removing projects or initiatives from EA requirements altogether, are difficult to understand and assess from the materials and wording provided. For



example, removing the EA requirement for some “proposals, plans, or programs in respect of Crown activities.”<sup>1</sup> It is unclear what this proposed change would encompass.

Finally, COTTFN directly opposes the decision to continue to exclude major industrial projects from the overall EA process. While it is accurate that these projects require other types of approvals and permits (e.g. environmental compliance approvals, permits to take water), this piecemeal approach makes it difficult, if not impossible, to assess the project’s overall and cumulative impact. Furthermore, the failure to include major industrial projects within the wider EA process is not in the spirit of reconciliation.

### ***Evaluating municipal class environmental assessment requirements for infrastructure projects***

COTTFN currently engages with neighbouring municipalities on potentially impacted project types, including municipal road, water, and wastewater projects. The scope and quality of this consultation is highly dependent upon the initiative of the municipality, which is why a strong, standardized provincial EA framework is essential. It may be reasonable to reduce the duplication of some assessments, as the EA Modernization proposal suggests. However, in the given timeframe, it is difficult to assess the full impact these proposed changes may have. It is highly onerous for our First Nation to determine on a case-by-case basis what other approval processes may cover municipal projects that are deemed lower risk and are thus no longer included in the province’s modernized EA approval process. We require more clarity around the potential impact this modernized EA proposal may have on municipal consultation with our Nation.

### ***Improving timelines for comprehensive environmental assessments***

It is great to see initiatives to improve coordination among Ontario government ministries during the EA process. However, COTTFN requests more information on these proposed changes. We want to be involved as these initiatives unfold, including updates to the Codes of Practice and sector-specific terms of reference, not as an afterthought.

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<sup>1</sup> MECP April 2023 Powerpoint Presentation. “Environmental Assessment Modernization: New Postings.” Slide #41.





## **Summary**

- Changes to the EA process have not been responsive to the needs, timelines, or priorities of First Nations. The changes appear to reduce steps for proponents at the expense of meaningful consultation.
- First Nations require proactive capacity funding to engage in this work of assessing and consulting on any new proposed changes to the EA process. The funding should not be administratively burdensome and must flow directly to the Nations, not only Indigenous territorial organizations.
- Environmental Assessment legislation and regulations must be urgently amended to be consistent with the United Nations Declaration on the Rights of Indigenous Peoples (2007).
- High impact transmission infrastructure, railways and highways must remain within the comprehensive environmental assessment process.
- COTTFN requires clearer information on the impact these proposed EA changes may have on our consultation with municipal projects, and sufficient time to review these potential impacts.
- COTTFN requests ongoing engagement on the current and future development of these modernization initiatives, including updates to the Code of Practice and sector-specific terms of reference.

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