

November 10, 2020

Sharifa Wyndham-Nguyen  
Client Services and Permissions Branch  
135 St. Clair Avenue West, 1st Floor  
Toronto, ON, M4V 1P5 Canada

RE: *Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA)* (ERO number 019-2377)

To Sharifa Wyndham-Nguyen,

We are writing in our capacities as Wildlife Conservation Society (WCS) Canada scientists to provide comments on the *Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA)* (ERO number 019-2377).

WCS Canada is a national non-government organization that has been engaged in Ontario since 2004, with research and conservation priorities in Ontario largely focused on the far northern region. We conduct research on species and ecosystems to inform conservation decisions, and we are some of the few scientists with continuous presence in the region. We lead ongoing field-based research programs that are currently focused on wolverine and freshwater fish; we support and collaborate with First Nations on community-based monitoring projects; and we support and collaborate with academic and government researchers, and First Nations conducting ecological studies in the region. WCS Canada has a long-term and consistent engagement around impact assessment at the federal and provincial level, particularly for projects in northern Ontario<sup>1</sup>.

We do not support the approach being taken by the Ontario government through the passing of Bill 197. As currently presented, the proposed changes to the *EAA* within Bill 197 will result in a system that is regressive, narrow, and inadequate to safeguard the environment and the people of Ontario in the face of new or expanded developments as well as climate change. Our overarching recommendation is that the provisions related to the *EAA* within Bill 197 be reversed; and that the Ontario government present, for public consultation, a proposed approach to *EAA* reform that is robust, evidence-based, and includes modern considerations such as sustainability, climate change, and cumulative effects. Finally, we support the individuals, environmental organizations, and First Nations that argue the passing of Bill 197 without public consultation was illegal.

We have grave concerns regarding the overall process and content of Ontario's *EAA* reform, and we refer you to comments that WCS Canada has previously submitted on the *Made-in-Ontario Environment*

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<sup>1</sup><https://www.wcscanada.org/Policy-Comments/Environmental-Assessment.aspx>

*Plan* (ERO 013-4208), and the *Discussion Paper on Modernizing Ontario's Environmental Assessment Program* (ERO 013-5101), *Proposed Changes to the Environmental Assessment Act*<sup>2</sup> for our overall recommendations to the Ontario government on EAA reform.

Here, we respond specifically to ERO number 019-2377, the *Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA)*, and outline our concerns and recommendations specifically about Ontario's proposed list of projects.

Our major concerns are that:

1. Ontario's highly selective project list reflects an inadequate approach that is inconsistent with the purposes of the EAA, and fails to safeguard the health of the environment and people.
2. Ontario's listing process is not evidence-based, does not list any criteria for inclusion or thresholds, and lacks credibility, transparency, and accountability.
3. For decades, Ontario has relied on federal impact assessment for mines, while ignoring its role and responsibilities in environmental assessment. In the currently proposed approach to EA, mines and associated infrastructure still will not be subjected to provincial EA.
4. Ontario's project list fails to meet the government's stated objectives of EAA reform including harmonization and reducing duplication with other processes such as the federal *Impact Assessment Act (IAA)*.
5. Ontario's proposed approach will increase losses for the environment and for people through cumulative effects, and may ultimately increase timelines (and costs) for complex development projects.

Following from these major concerns, our recommendations are:

1. Implement an "all in unless excluded" approach for projects under the EAA.
2. The rationale for exclusion from the "all in unless excluded" approach should be evidence-based, transparent, and participatory.
3. Because of the risk they post to the environment and human health, all proposed mines in Ontario should be assessed under EAA. The physical works associated with mining such as smelters, quarries for aggregate and road building to access mines, and refineries, should also be included. Ontario should consider the experience with mining in Québec and British Columbia, particularly for the far north of Ontario, including the Ring of Fire.
4. To support harmonization between federal and Ontario environmental assessment, Ontario must significantly improve and reform the EAA to better align with the federal environmental process (e.g., participant funding, cumulative effects, climate change considerations, Indigenous rights and interests, etc.).
5. Ontario should consider the value of proactive regional IA for the purpose of reducing timelines on complex individual projects, particularly in the far north.

We provide further detail regarding these concerns and recommendations below.

***Recommendation 1: Rather than using an overly narrow project list approach, implement an "all in unless excluded" approach for projects under the EAA.***

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<sup>2</sup><https://www.wcscanada.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=36295&PortalId=96&DownloadMethod=attachment>

**Ontario's highly selective project list reflects an inadequate approach that is inconsistent with the purposes of the EAA, and fails to safeguard the health of the environment and people.** The Ontario government has stated that its intention with the project list is to restrict the “comprehensive” EA process to only those projects that “demonstrate the potential for the highest degree of environmental impact.” However, this very narrow scoping of projects is inconsistent with the purpose of the EAA, which is “the betterment of Ontarians by providing for the protection, conservation, and wise management of the environment.”<sup>3</sup>

The inconsistency of the proposed approach with the purpose of the EAA reflects a more general tendency of the Ontario government to equate the EA process to “red tape.” However, this is wrong. Environmental assessment is one of the few legal processes to consider environmental degradation in advance of project approvals. 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, 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 environmental assessment 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.

In short, EA is not “red tape”, but rather an important environmental planning tool that should prevent environmentally harmful and socially unacceptable projects from proceeding, while allowing projects to proceed that are in the public interest and subject to enforceable and effective approval conditions. Importantly, it is also an assessment process, not an approval process. Ignoring these issues at the beginning of projects may be less expensive in the short term, but can bring about negative consequences in the longer term that are far more expensive, and potentially impossible to reverse.

Moreover, the government’s emphasis on reducing timelines for projects undergoing EA undermines the importance of the consultation process; honouring this process means allowing for meaningful engagement with the public and with Indigenous Peoples who will be impacted by these projects, and allowing time for this engagement to occur.

The current proposed approach will mean that the vast majority of projects are never assessed. As an example, the threshold for 200 megawatts for hydroelectric facilities means that of the 139 hydroelectric facilities in Ontario, only 10 of these facilities would be subject to “comprehensive” EA if they were built under the current proposed project list. With such a vast number of projects that are never assessed through EA, the potential for losses through cumulative effects is assured.

***Recommendation 2: The rationale for exclusion from the “all in unless excluded” approach should be evidence-based, transparent, and participatory.***

**Ontario’s listing process is not evidence-based, does not list any criteria for inclusion or thresholds, and lacks credibility, transparency, and accountability.** As noted above, The Ontario government has stated that its intention with the project list is to restrict the “comprehensive” EA process to only those projects that “demonstrate the potential for the highest degree of environmental impact.” Beyond the concern that this overly narrow scoping is inconsistent with the purposes of the EAA and results in an

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<sup>3</sup><https://www.ontario.ca/laws/statute/90e18>

inadequate approach, as outlined above, no information has been provided about how the project categories and thresholds were determined.

The Registry notice suggests that the Ministry of the Environment, Conservation and Parks (MECP) considered various factors to determine environmental significance (e.g., the magnitude, duration, frequency and geographic extent of potential impacts) when selecting the project categories and thresholds for the proposed list. However, a review by the Canadian Environmental Law Association (CELA)<sup>4</sup> noted that these factors do not exist in the amended EAA, which leaves the Ontario government with the discretion to determine which projects should (or should not) be added to the list. MECP's consideration of these factors was also based on "experience," rather than any objective measures. No information is available on how determinations were made as to which project types had "the potential for the highest degree of environmental impact."

We note that under Ontario's discretionary approach, some projects that clearly have the potential for serious impacts are omitted from the proposed project list. Most notably, mines and smelters have well-known and well-documented negative impacts on the environment and on human health, and are not on the Ontario government's proposed project list.

A functional and effective EA approach must use a transparent and evidence-based approach, not a discretionary approach, to determine which projects require "comprehensive" assessment.

***Recommendation 3: Because of the risk they post to the environment and human health, all proposed mines in Ontario should be assessed under EAA. The physical works associated with mining such as smelters, quarries for aggregate and road building to access mines, and refineries, should also be included. Ontario should consider the experience with mining in Québec and British Columbia, particularly for the far north of Ontario, including the Ring of Fire.***

**For decades, Ontario has relied on federal impact assessment for mines while ignoring its role and responsibilities in environmental assessment. In the currently proposed approach to EA, mines and associated infrastructure still will not be subjected to provincial EA.** We suggest other jurisdictions such as Québec and British Columbia offer relevant modern approaches to assessment of mines in northern regions and provide models that Ontario should consider. For example, there are two different impact assessment regimes in Québec. In the north, environmental assessment procedures provide for substantial participation of Indigenous Peoples and recognize the role of Indigenous communities in the future of the region. Similarly, the far north in Ontario is populated by First Nations under Treaty No. 9 who bear the burden of both the impact assessment process as well as the social, ecological, and economic impacts of the developments. Ontario has an important opportunity to address this directly in its plans for modernization.

***Recommendation 4: To support harmonization (e.g., "one project, one assessment") between federal and Ontario environmental assessment, Ontario must significantly improve and reform the EAA to better align with the federal environmental process (e.g., participant funding, cumulative effects, climate change considerations, Indigenous rights and interests, etc.).***

**Ontario's project list fails to meet the government's stated objectives of EAA reform including harmonization and reducing duplication with other processes such as the federal *Impact Assessment***

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<sup>4</sup><https://cela.ca/preliminary-review-proposed-project-list/>

**Act (IAA).** The Ontario government has stated in the Registry notice that some of the goals of the changes to the *EAA* are to harmonize the Ontario process with federal processes (i.e., the “one project, one process” approach) and to eliminate “duplication with other legislation, policies and processes.” Our experience with the current provincial and federal assessments of the road projects in northern Ontario is that these processes are proceeding entirely in parallel, with little to no evidence of coordination. However, at its face, the narrow nature of Ontario’s proposed list (which contains 13 categories of designated projects) is inconsistent with the federal project list under the *IAA* (which contains 61 categories of designated projects). Further, the review by CELA noted that Ontario has not identified any actual instances of unnecessary overlap or duplication between the *EAA* and other statutory regimes<sup>4</sup>.

Therefore, the government has shown no evidence that this approach reduces any overlap, and the proposed list currently moves Ontario further away from harmonization between provincial and federal processes. Harmonization should be upward to the higher standard of process. This includes a consistent, minimum assessment standard, with harmonized assessments guided by key principles of understandable and accessible information, meaningful opportunities for public participation and precaution. Equivalency should remain an option where Indigenous jurisdiction is involved to demonstrate recognition of both the equal legitimacy of Indigenous laws and the historical context.<sup>5</sup> Lastly, aligning the provincial EA process more closely with the federal EA process could actually reduce duplication, delays, and regulatory “burden” for project proponents in the long-term: a goal that the government has emphasized throughout legislative changes to EA processes.

***Recommendation 5: Ontario should consider the value of regional and strategic EA for the purpose of reducing timelines on complex individual projects, particularly in the far north.***

**Ontario’s proposed approach will increase losses for the environment and for people through cumulative effects, and could ultimately increase timelines (and costs) for development projects.** By setting arbitrary thresholds on projects that will be subject to “comprehensive” EAs, the Ontario government is creating a system where developers are, in effect, encouraged to undertake multiple projects below the threshold. The cumulative effects of these multiple projects will therefore never be assessed, and there are no opportunities to manage these effects.

Our experience is that project level EAs are already inadequate for addressing many of the ecological, social, and economic values in the northern region in Ontario, and reducing the number of projects that undergo “comprehensive” EA will only exacerbate the problem. Further, the Ontario government has stated the goal of “streamlining” EA processes, but implementing an inadequate and piecemeal process will ultimately lead to delays and reduced certainty for development projects.

Ontario has had environmental assessment legislation since 1997, and has yet to apply this in a proactive way to planning, particularly in northern Ontario. Importantly, impact assessment in Ontario is also not tied in any objective way to Ontario policy. This is particularly obvious in the far north of Ontario where previous community-based land use planning under the *Far North Act, 2010* was concurrent but not integrated with impact assessment whether the Victor Diamond Mine, the Musselwhite Gold Mine, or the current road proposals to access the Ring of Fire. The latter projects are unfolding in a vacuum with no attention to cumulative effects or the regional impacts on communities and the ecosystems in the region. Ontario’s *EAA* should enable an assessment of Ontario’s programs and

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<sup>5</sup>[https://www.wcel.org/sites/default/files/publications/WCEL\\_FedEnviroAssess\\_proceedings\\_fnl.pdf](https://www.wcel.org/sites/default/files/publications/WCEL_FedEnviroAssess_proceedings_fnl.pdf)

plans (*sensu* strategic impact assessment), and consider regional assessments for the purposing of reducing cumulative effects, timelines, and costs associated with region-opening and multi-sectoral projects.

### **Summary**

We conclude that Ontario's proposed project list is inadequate, lacks credibility, and does not meet the governments' stated objectives. Accordingly, we recommend that the Ontario government should substantially revise its approach to have an "all in unless excluded" project list, with evidence-based justification for exclusions. Mining and mining infrastructure must be assessed by Ontario EA. We recommend that for better alignment with other processes, there is the incorporation of modern safeguards such as cumulative effects, climate change considerations, and Indigenous rights and interests. For complex and region-opening projects, we recommend the consideration of regional and strategic assessments rather than project-level assessments, to both reduce cumulative effects and reduce overall timelines. We note that implementing all of these recommended changes must involve meaningful public participation.

Thank you for your consideration of these concerns and recommendations. We welcome opportunities to engage in any discussion regarding these legislative changes.

Sincerely,



Constance O'Connor, PhD  
Landscape Lead and Associate Conservation Scientist



Cheryl Chetkiewicz, PhD  
Conservation Scientist



Claire Farrell, MSc  
Associate Conservation Scientist



Justina Ray, PhD  
President and Senior Scientist