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26 October 2016

RE: Guide: Consideration of Climate Change in Environmental Assessment in Ontario (EBR Registry Number: 012-5806)

Dear Mr. Jenish,

Thank you for the opportunity to provide comments to the Ontario Ministry of the Environment and Climate Change (MOECC) on the proposed Guide entitled Consideration of Climate Change in Environmental Assessment in Ontario (Guide). We are submitting this letter in our respective capacities as Wildlife Conservation Society (WCS) Canada scientists specializing in wildlife ecology, landscape ecology, fisheries, conservation biology, and cumulative impacts in northern Ontario. A national organization, our research and conservation priorities in Ontario are largely focused on the Far North, but we have been engaged in environmental assessments at both the provincial and federal level (e.g., Chetkiewicz and Lintner 2014)[1].

The Guide is an important first step for proponents who want to address climate change in their proposed projects. It also provides examples that can *support* risk assessment that should influence both the need for the project and the alternatives. The Guide provides useful ideas and examples on how a proponent *might* consider climate change and identifies provincial sources of information to do this. Following our careful review, however, it is our assessment that this Guide, as currently drafted, is not consistent with the provincial goal of reducing greenhouse gas (GHG) emissions, addressing adaptation approaches to climate change, and considering impacts that cannot be addressed through adaptation and mitigation. We contend that the Guide is unlikely to deliver on addressing the serious nature of climate change through environmental assessment processes because the Guide is unenforceable, has limited application and content, and ignores the limitations of the Ontario *Environmental Assessment Act* (EAA) and current EA practice in Ontario.

Before we discuss the details of our conclusion, we draw your attention to some necessary background information. We then discuss a number of key issues with the Guide and the EAA, and provide recommendations to address these issues.

[1] https://canada.wcs.org/Portals/96/Documents/RSEA_Report_WCSCanada_Ecojustice_FINAL.pdf

Climate change and Ontario's Far North

Much of WCS Canada's field and applied research is focused on Ontario's Far North, where temperature changes are predicted to be the greatest in Ontario, with increases as high as 10°C above 1971–2000 baseline levels by the 2080s (McDermid et al. 2015). Many remote First Nation communities are already experiencing the impacts of climate change, as warmer temperatures compromise winter roads used to connect communities in the winter with each other and the province and bring in diesel fuel, food, and building materials, and extreme wildfires and flooding result in more frequent emergency evacuations[2]. In Ontario, evidence is accumulating that both aquatic (e.g., Dove-Thompson et al. 2011, Shuter et al. 2002) and terrestrial (e.g., Nitutch and Bowman 2014, Varrin et al. 2007) wildlife are being impacted by the changing climate, while fish kills in the Far North have already been documented due to warmer temperatures (Gunn and Snucins 2010).

Climate change and new industrial development in the Far North

The Guide has a section on *Projects in Ontario's North* and *Additional Considerations*, including a list of what the ministry expects to be included in the Terms of Reference such as the project's contribution to climate change related to disturbance of the peatlands. Currently, the main emphasis for development in the Far North is mining, and the associated requirements for all-weather infrastructure (e.g., roads, transmission lines) to ensure mines can get their product to market. Roads and transmission infrastructure are also desired by many First Nations communities as one way to improve economic opportunities, health and education services, and individual and community well-being in remote First Nations communities.

New industrial development and climate change in the Hudson Bay Lowlands will affect the wetlands and peatlands, which annually sequester an amount of carbon equal to about a third of Ontario's total carbon emissions (Far North Science Advisory Panel Report 2010: 23). Globally, the Hudson Bay Lowlands acts as a major carbon reservoir (sink), and any change in the capacity of these wetlands to store carbon, for example through climate warming or new industrial development, may trigger as yet unpredictable atmospheric effects. The effects of climate change on industrial development across this large intact region, as well as the cumulative impacts of new industrial activities on the changing environment, are important areas of concern. To help address these concerns, we have been working to simulate the potential impacts of industrial development and climate change under a variety of scenarios to support planning and decision-making in the region (Carlson and Chetkiewicz 2013)[3]. We have also conducted research on the impacts of climate change on freshwater fish (Edwards et al. *in press*, Stitt et al. 2014, McDermid et al. 2012, McDermid et al. 2010, Chetkiewicz et al. 2012). We remain concerned about the Government of Ontario's lack of regional planning processes under Ontario's *Far North Act, 2010*. We are also concerned about the lack of commitment to wetland protection, particularly the Hudson Bay Lowlands, in Ontario's draft Wetlands Conservation Strategy (EBR 012-7675)[4].

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[2] Ministry of Transportation and Northern Development and Mines. 2016. Northern Ontario Multimodal Transportation Strategy. The northern Ontario context: implications and considerations for strategy development. Available online at https://nomts.ca/resources/reports/

[3] Available online at https://canada.wcs.org/Portals/96/Documents/alces-lowres.pdf

[4] Ministry of Natural Resources and Forestry. 2016. Draft: A Wetland Conservation Strategy for Ontario 2016-2030. Available online at http://apps.mnr.gov.on.ca/public/files/er/wetland-conservation-strategy.pdf

Addressing climate change through environmental assessment

Climate change is a significant threat to the ecological, social, and economic systems in Ontario and both mitigation and adaptation can be addressed through environmental planning, including both land use planning and environmental impact assessment (EIA). In its simplest form, EIA is a planning tool for both information-gathering and decision-making about how to address changes in the environment[5], including climate change. Integrating climate change into EA requires consideration of mitigation, adaptation, and the impacts not prevented through effective mitigation and adaptation efforts which includes loss and damage, or impacts and vulnerability assessment. For example, robust EA requirements could be imposed on a wide range of environmentally significant proposals which release greenhouse gases (GHG) emissions and/or affect carbon storage by site alteration or vegetation removal to consider mitigation.

While we consider EIA to be an important legal mechanism, it is important to stress that Ontario's EA regime has generally fallen short of its promise to anticipate and prevent environmental degradation. Criticisms of Ontario's environmental assessment program have been raised by the Environmental Commissioner of Ontario (ECO) in Annual Reports submitted to the Legislature in October 2008[6] and 2014[7]. The ECO described the "vision lost" in Ontario's environmental assessment program and recommended that the government "restore" the vision through a public review of the EAA and related regulations. To date, there has been no formal commitment to review Ontario's EAA, which remains problematic even in the absence of trying to address climate change. WCS Canada along with the Canadian Environmental Law Association, Wildlands League, and MiningWatch Canada have developed a briefing that describes in more detail why EA reform in Ontario is needed and what needs to change (Appendix 1). Finally, we note that the federal government is addressing concerns about its EA process, including the ability to address climate change, in order to "restore public trust" in environmental decision making[8].

In the following section, we present a number of key issues with the Guide and EAA and provide recommendations to address these issues.

Issue 1: Climate assessment under Ontario's EAA needs to support Ontario's (and ultimately Canada's) climate commitments and goals.

The Guide offers general guidance on how proponents *might* consider climate change in individual EAs, approved Class EAs, and screening processes under the EAA. The Guide explicitly states that it provides "ideas" at a sufficiently "generic level to suggest how a proponent might satisfy MOECC expectations". While well-intentioned, the Guide does not make it clear what MOECC expectations are on climate change in EA. The Guide is also non-binding, so it is not evident how MOECC will make decisions about

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[5] Note: Here we consider environment in the broad sense as defined by the Ontario *Environmental Assessment Act*.

[6] Environmental Commissioner of Ontario. 2008. "Environmental Assessment: a vision lost." Getting to K(No)w, ECO Annual Report, 2007-08. Toronto, ON: Environmental Commissioner of Ontario. 28-48. http://www.ecoissues.ca/index.php/Environmental_Assessment:_A_Vision_Lost

[7] Environmental Commissioner of Ontario. 2014. "Restoring a Vision Lost: Reforming Ontario's Environmental Assessment Act." Managing New Challenges, ECO Annual Report, 2013-14. Toronto, ON: Environmental Commission of Ontario. 132-139. http://ecoissues.ca/index.php?title=Reforming_Ontario%27s_Environmental_Assessment_Act_-_2014&redirect=no

[8] http://eareview-examenee.ca/

projects based on what the proponent chooses to do (or not do) in their analysis of climate change effects on the project and as a result of the project (i.e., in relation to the provincial carbon budget). The latter is most important with respect to project approval.

The stated purpose of the EAA is for "the betterment of the people of the whole any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment". To address climate change, we stress that the EAA needs fundamental reform to require proponents to identify and assess climate change considerations in the project and the alternatives, among other reasons. We would submit that at a minimum, GHG emissions need to be assessed for each undertaking and MOECC should make decisions on approvals, based in part on whether and how far the GHG emissions of a proposal will move Ontario towards or away from its climate goals and commitments. We suggest the key questions for MOECC are: 1) Is this project helping or hindering Ontario's ability to meet its climate commitments; 2) What is the scale at which it is helping or hindering; and 3) By approving the project, is MOECC downloading the problem elsewhere?

In addition, scoping is a critical step in the EA process since decisions are made during the scoping about what is assessed and in how much detail. Any new legal requirement for proponents to address climate change should not be subject to the discretionary Ministerial power to exclude these requirements by approving "narrowly scoped" Terms of Reference on a case-by-case basis.

Recommendation 1: In order for project EAs to appropriately address climate change, the EAA must be amended to expressly require proponents to identify and assess relevant climate change considerations in the proposed undertaking. This consideration cannot be limited to just the Terms of Reference stage.

Recommendation 2: The EAA should be amended to prohibit the Minister from approving Terms of Reference that narrow or exclude obligations of proponents to address climate change within the EA process.

Recommendation 3: Decision making on project approvals must include a transparent and publicly available assessment of how the project either moves Ontario towards or away from meeting its climate goals and commitments.

Issue 2: The Guide fails to consider upstream climate change impacts.

Despite the section on *Documenting Climate Effects in Environmental Assessment* (pg. 21), the Guide fails to address the need for EA to identify and evaluate upstream climate change implications of proposed undertakings. We agree with the language in the Guide that proponents should assess the climate change impacts directly caused by the project (e.g., releasing GHGs, reducing carbon storage), but contend that it is a significant oversight to think the climate change impacts are limited to the footprint of the project, pieces of a project, or activities being proposed.

Addressing the upstream climate change impacts would also align provincial practice with federal measures. The Government of Canada recently addressed the issue of direct and upstream impacts by establishing "interim" climate change measures for certain projects (e.g., mines, pipelines, oilsands developments, etc.) being assessed under the *Canadian Environmental Assessment Act, 2012* (CEAA

2012)[9]. Specifically, Principle 5 of these measures requires an assessment of the direct and upstream GHG emissions linked to the project.

Recommendation 4: Both the EAA and the Guide must be amended to require proponents to assess the direct and upstream climate change impacts of all activities that facilitate or are linked to proposed undertakings.

Issue 3: The Guide fails to address cumulative effects given climate change in any meaningful way.

In addition to the lack of attention to upstream climate change impacts, we are concerned about a similar lack of consideration to cumulative effects within the Guide. This term is mentioned twice and never defined. Where it is mentioned, it is tentative. For example, on pg. 21 of the Guide, climate change "could be added" as part of the baseline, environmental effects and/or cumulative effects "where applicable". The Guide does not indicate when climate change considerations within cumulative effects assessment are "applicable".

The Guide leads us to understand that MOECC thinks climate change and project-based impacts are separate from one another and/or that cumulative effects are only relevant for certain types of projects. Yet, climate change is central to cumulative effects assessment. For example, GHGs persist for many years in the atmosphere, are not confined to a spatial or temporal extent associated with a footprint as defined by a proponent or government ministry, and the rising concentrations of GHGs moves all of society towards critical thresholds. In reality, each new project and activity approved by MOECC through EA contributes to these effects in a cumulative way; for example, climate change can exacerbate impacts already arising from cumulative effects of development, while these impacts can negatively affect the ability of natural systems to adapt to climate change.

Ontario's EAA does not mention cumulative effects. There is increasing realization that this is a significant limitation of the customary application of EAA that demands reform, and that this type of reform becomes even more necessary when we consider climate change[10] (Koehl 2010). Currently, the only way cumulative effects are considered in Ontario is if there is a corresponding federal assessment or if the Minister requests it (e.g., the Terms of Reference for Noront's proposed Eagle's Nest multi-metal mine)[11]. Our main conclusion is Ontario needs to reform EAA to make cumulative effects assessment, including consideration of climate change effects, mandatory. With a mandatory requirement for cumulative effects assessment, climate change would be considered explicitly and consistently by the proponents, including the provincial ministries and agencies (see below on strategic EA). MOECC would also be obligated to consider cumulative effects in decision making about projects and undertakings.

In general, there are a number of points emerging from critical reviews of cumulative effects practise and implementation that could inform future EAA reform (see Duinker et al. 2013, Duinker and Greig 2006) [12]:

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[9] http://news.gc.ca/web/article-en.do?nid=1029999

[10] http://www.envirolawsmatter.ca/easummit

[11] http://norontresources.com/wp-content/uploads/2015/06/Eagles-Nest-Terms-of-Reference-Notice-of-Approval.pdf

[12] http://www.envirolawsmatter.ca/easummit

- Cumulative effects assessment should be focused at the regional-level rather than project-level and on valued components rather than human activities.
- All impacts are presumed to be cumulative.
- Assessments take a long-term and wide-ranging view that includes looking backward at historic evidence to determine existing accumulations of effects, trajectories and directions, to the present-day at multiple and integrating stressors, and forward by projecting, testing and, where necessary, adjusting alternative future scenarios.
- Cumulative effects assessment focuses on achieving sustainability-enhancing outcomes and well-being through the application of a sustainability decision-making framework (e.g., Gibson et al. 2016).

MOECC is well positioned to lead the necessary shift in the mindset of cumulative effects assessment in Ontario from one of minimizing, mitigating or reducing adverse impacts to one of achieving net benefits and of positive contributions on biodiversity and ecosystem services, particularly in light of climate change.

Recommendation 5: Both the EAA and the Guide must be amended to require proponents to assess the cumulative effects of climate change that may be caused by the proposed undertaking in conjunction with other past, present, or reasonably foreseeable activities or projects in the same geographic region, timeframe, or sector.

Issue 4: Neither the EAA nor the Guide can consider the value of regional and strategic-level EA in addressing climate change.

We have repeatedly advocated for regional and strategic assessments, particularly in Ontario's Far North where there are intact, functioning terrestrial and aquatic ecosystems, species-at-risk, Indigenous peoples, and globally significant ecosystem services that will be subjected to increasing rates of climate change and industrial development (Chetkiewicz and Lintner 2014). As part of the current federal review a number of academics, EA practitioners, Indigenous peoples, and stakeholders have suggested that the next generation of environmental assessment[10] must include regional assessment because:

- It furthers the understanding of actual and potential cumulative effects arising from past, present and alternative future scenarios;
- It provides better opportunity for Indigenous peoples and the public to help shape regional visions; and,
- It eases the burden on addressing these issues in project-level assessments.

Project-level climate assessments should be tied to regional and strategic assessments in order to understand the context and significance of GHG emissions, carbon frameworks and budgets, the regional impacts of climate change and whether there is a fair distribution of benefits and burdens of those impacts.

Recommendation 6: Both the EAA and Guide should be amended to enable regional and strategic environmental assessment, particularly in the context of cumulative effects assessment, to improve decision making on projects, activities, and undertakings in the context of climate change.

Issue 5: The Guide ignores the climate change implications of government proposals, plans or programs and Class EAs.

The Government of Ontario creates many proposals, plans, and programs that can affect the climate and be affected by climate as they are implemented. Many of these proposals, plans, and programs are also explicitly exempt by the Government of Ontario from EA even though the EAA defines an "undertaking" as not only an "enterprise or activity" but also "proposals, plans or programs" with respect to enterprises and activities. Key plans we are aware of that likely have significant effects on the climate and will be affected by climate change in turn include the Integrated Power System Plan, the Long-Term Energy Plan, the Northern Ontario Multimodal Transportation Strategy[13], the Mineral Development Strategy, and community-based land use plans and the Far North Land Use Strategy evolving under Ontario's *Far North Act, 2010* which sets out planning objectives affecting 42% of Ontario. However, the Far North Land Use Strategy remains the only source of planning advice (not guidance) on climate change and cumulative effects in the Far North. We have documented our concerns about the limitations of this advice in delivering Ontario's objectives in the Far North through comments on the draft strategy (EBR 012-0598).

Recommendation 7: The EAA should be amended to require provincial ministries and agencies to assess climate change implications of governmental "proposals, plans, or programs" which may release GHGs, affect carbon storage, or be affected by climate change on implementation.

Ontario's EAA allows streamlined approval processes in the form of Class EAs; essentially, projects under Class EA processes are "pre-approved" (Lindgren and Dunn 2010). The Class EA approach, in practice, breaks up major regional infrastructure initiatives for water, wastewater, or transportation into multiple small projects that then proceed on individual approval tracks. These types of project do not require review or approval by the Minister or the Environmental Review Tribunal and are not posted on the Environmental Registry making meaningful public input limited[14]. Another concern is that despite numerous public requests for a "bump-up" of projects under Class EA to an individual EA, the ministry has not granted a single request to do so. Finally, the Class EA for Timber Management on Crown Lands has now been transformed into a declaration order that conditionally exempts the program under the EAA despite the fact that timber management activities (e.g., access roads, clearcutting) typically involves GHG emissions associated with heavy equipment, road construction, and large-scale disturbances of forest carbon stocks (Rick Lindgren, personal communication). We suggest that climate change makes the claim that impacts are "predictable" and "manageable" in Class EAs highly questionable and not adaptive, particularly for infrastructure projects. Overall, this piecemeal and streamlined approach inherent in Class EAs creates uncertainty that MOECC can really address the public interest around climate change and cumulative and regional effects.

Recommendation 8: The Ontario Government should critically consider the role of Class EAs in helping or hindering Ontario's ability to meet its current climate commitments and address ongoing and long-standing public concerns about the Class EA process under Ontario's EAA.

[13] This strategy has explicitly included climate change in its development.
[14] http://www.ecoissues.ca/Environmental_Assessment:_A_Vision_Lost

Issue 6: Ontario's EAA is in need of reform to better consider climate change and improving environmental decision making.

It has been more than 20 years since the Ontario environmental assessment regime has been substantially reformed, and a decade since the Ontario government last formally considered reforms to the environmental assessment program. The recommendations of the Minister's Environmental Assessment Advisory Panel (2004-05)[15] regarding necessary environmental assessment reforms were never fully implemented. We think Ontario is behind other Canadian jurisdictions and international best practices, particularly with respect to applying cumulative effects assessment and strategic and regional environmental assessment. Meanwhile, the federal government has committed to a review of its environmental assessment program in order "to regain public trust and help get resources to market and introduce new, fair processes."[16] We have made a number of recommendations that support the need for EA reform in Ontario. While it is beyond the scope of this submission, and our expertise, to identify all the EA reforms, we request the Ontario government commit to a public review of the EAA to consider more carefully its ability to meet the climate change realities and challenges we are facing in trying to conserve our environment for current and future generations (Appendix 1).

Recommendation 9: The Ontario government should commence a public review of provincial EA processes currently established under the EAA and the regulations.

In conclusion, the Guide signals that MOECC is interested in using environmental assessment as a tool to address climate change mitigation and adaptation. However, for the reasons described above, we do not see how the Guide can be used to address Ontario's goals in addressing climate change. We argue that this is due in part to issues associated with Ontario's current EA regime and practice. We trust that MOECC will consider our recommendations. If you have any questions, please contact Cheryl Chetkiewicz (cchetkiewicz@wcs.org or 807-285-9125).

Sincerely yours,

Cheryl Chetkiewicz, PhD Justina Ray, PhD Connie O'Connor, PhD

cc: The Hon. Glen Murray, Minister of the Environment and Climate Change
Dr. Dianne Saxe, Environmental Commissioner of Ontario
Adam Shedletzky, Senior Advisor, Ministry of the Environment and Climate Change

[15] Minister's Environmental Assessment Advisory Panel – Executive Group. Improving Environmental Assessment in Ontario: A Framework for Reform, Volume I. March 2005.
[16] http://pm.gc.ca/eng/minister-environment-and-climate-change-mandate-letter

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Appendix 1. Briefing Note: Need for Environmental Assessment Reform for Ontario (CELA, Wildlands League, MiningWatch Canada, WCS Canada). June 2016.

Briefing Note:

JUNE 2016

Need for Environmental Assessment Reform for Ontario

Canadian Environmental Law Association, MiningWatch Canada, CPAWS Wildlands League, and Wildlife Conservation Society Canada submit that a review and revision of Ontario's environmental assessment program is badly needed to ensure the legislated purpose[1] of the program is met. Such a review must include consideration of potential amendments to the *Environmental Assessment Act* (EAA), the six regulations made under the authority of the EAA, and related policy documents. We also recommend that the review be as open, accessible, timely, and comprehensive as possible, to serve the vital public policy needs outlined below.

Restoring clarity and credibility in Ontario's environmental assessment program

Ontario's current environmental assessment program fails to provide a predictable, rigorous, and credible process for all interested parties. Properly conceived, environmental assessment processes can provide a futures-oriented planning process that ensures environmental, social, and economic well-being. For example, environmental assessment hearings for the proposed Demand/Supply Plan in the early 1990s forced Ontario Hydro to withdraw an ill-conceived plan, saving the province billions of dollars.

More recently, a disturbing trend of exemptions, "streamlining", and inconsistent application of environmental assessment approvals has emerged. In the past several years, numerous government "proposals, plans, or programs" have been legislatively exempted from the EAA, including the Oak Ridges Moraine Conservation Plan, the Greenbelt Plan, the Lake Simcoe Protection Plan, Growth Plans, transportation planning policy, land-use plans on public lands, Far North policy statements, the Far North land use strategy, and geographically focused initiatives in the Great Lakes Basin.

Controversial projects are currently being addressed with inadequate tools, such as designation and declaration orders, which were used for the proposed Melanchthon mega-quarry and for the extension of the Area of Undertaking for timber management on Crown lands. In addition, private proponents such as mining companies can be subject to dramatically different conditions. For example, Noront's proposed Eagle's Nest nickel-copper-platinum-palladium project and De Beers' Victor Diamond Mine are in the same northern Ontario watershed; the former subject to rigorous Terms of Reference, including consideration of cumulative effects, climate change, and extensive consultations, and the latter with no provincial environmental assessment at all.

Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

MiningWatch Canada

Wildlands League
A chapter of the Canadian Parks and Wilderness Society

WCS Canada

Striving for continuous improvement in environmental decision-making

It has been more than 20 years since the Ontario environmental assessment regime has been substantially reformed and a decade since the Ontario government last formally considered reforms to the environmental assessment program. The recommendations of the Minister's Environmental Assessment Advisory Panel (2004-05)[2] regarding necessary environmental assessment reforms were never fully implemented. As a result, Ontario is falling behind other Canadian jurisdictions and international best practices, particularly with respect to applying cumulative effects assessment and strategic/regional environmental assessment.

Criticisms of Ontario's environmental assessment program have been raised by, among others, the Environmental Commissioner of Ontario (ECO) in Annual Reports submitted to the Legislature in October 2008 and 2014[3]. The ECO described the "vision lost" in our environmental assessment program and recommended that the government "restore" the vision through a public review of the EAA and related regulations.

Meanwhile, the federal government has committed to a review of its environmental assessment program in order "to regain public trust and help get resources to market and introduce new, fair processes."[4] Quebec and British Columbia are also currently reviewing or have been reviewing their environmental assessment programs. In comparison to these other jurisdictions, a particular concern is that Ontario is the largest mining jurisdiction in Canada and its renewed Mineral Development Strategy includes an objective focusing on improving "regulatory efficiency, predictability and transparency [...] including looking at approaches to environmental assessment."[5] Yet, Ontario remains the only Canadian jurisdiction where mines are not automatically subjected to a provincial environmental assessment and public consultation process.[6]

Smoothing the transition to a prosperous, low-carbon economy

Ontario's Climate Change Strategy is the government's "plan to reduce greenhouse gas emissions to 80% below 1990 levels by 2050, and build a prosperous low-carbon economy."[7] As we transition to a low-carbon economy, environmental planning will need to integrate climate change mitigation and adaptation into decision-making.

The EAA and all associated guidance documents are silent on the need to integrate climate change considerations into environmental assessment, both in terms of considering a project's greenhouse gas emissions profile and considering the options for and alternatives to a project in a changing future climate. Further, energy planning, including the Integrated Power System Plan and the Long-Term Energy Plan, have not been subjected to environmental assessment to date. Ontario needs to modernize its environmental assessment program to fully account for climate change impacts and meet its long-term strategy objectives.

Meaningful public engagement in government decision-making

"Ontario's Open Government Initiative is about creating a more open and transparent government for the people of Ontario."[8] In particular, Ontario has committed to improving opportunities for public input into government decision-making and to increased sharing of government data and other information. However, Ontario's current environmental assessment program fails to meet the Ontario government's commitment to Open Government.

With increased "streamlining" of environmental assessments, opportunities for public engagement have been removed or significantly reduced. For example, it is our understanding that there have been only two public hearings related to environmental assessments since 1996 despite the provision in the EAA that allows any person in Ontario to request that the Minister of the Environment and Climate Change refer a matter to the Environmental Review Tribunal. Transparency and meaningful public engagement provides for better informed decisions and sound public policies.

Improving the province's relationship with Canada's indigenous peoples

Land use and environmental planning frequently intersects with the interests of indigenous communities as there may be impacts on aboriginal rights, title or treaty rights. Current consultation protocols and decision processes are inadequate, resulting in potential conflict. Furthermore, consultations are often delegated to the proponents, rather than being based on a more appropriate government-to-government dialogue.

Recommendations

Our organizations recommend that the government proceed with a review and revision of Ontario's environmental assessment program in an open, accessible, timely and comprehensive manner. We submit that the following recommendations for reforms to Ontario's environmental assessment program can address some of the major shortcomings of the current program and close the gap between current good intentions around ensuring sustainability and achieving outcomes that properly address the large climate and environmental challenges we face. We anticipate that with engagement in a meaningful review process, these recommendations will be refined and updated to respond to concerns and solutions raised by other interested parties.

Package of preliminarily identified necessary reforms:

- **Retain the "Terms of Reference" (TOR) mechanism under the EAA**, while revising (or removing) the current Ministerial power to approve "focused" TORs which exclude key environmental planning considerations (e.g., "need", "alternatives to", and alternate sites);
- **Expand the types of projects that are subject to environmental assessment to include private activities** that have the potential to cause adverse environmental effects and/or private activities that will take place on public lands or sensitive areas (e.g., new/expanded landfills, new/expanded quarries, new/expanded mines);
- **Ensure meaningful public participation** by re-introducing an intervenor/participant funding program (funded by proponents) and by referring environmental assessments, in whole or in part, to the Environmental Review Tribunal for public hearings upon request by residents, organizations, municipalities, First Nations, or Métis communities;
- **Establish a credible mechanism (e.g., Environmental Review Tribunal written hearing or reinstating the Environmental Assessment Advisory Committee) for determining public requests for Part II orders** (aka "bump-up" or "elevation" requests) made under approved class environmental assessments and sectoral exemption regulations;
- **Ensure mandatory and meaningful cumulative effects assessment**;
- **Integrate climate change considerations** into all environmental assessment activities under the EAA;
- **Ensure strategic or regional strategic environmental assessments occur** before region-opening new developments (e.g., Ring of Fire) and/or apply to specific sectors (e.g., energy and other types of infrastructure planning); and
- **Enhance consultation protocols or processes for engaging with First Nations and Métis communities** in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior, and informed consent.

For more information, please contact:

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Endnotes

1 The purpose is 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", *Environmental Assessment Act*, RSO 1990, c E 18, section 2.

2 Minister's Environmental Assessment Advisory Panel – Executive Group. Improving Environmental Assessment in Ontario: A Framework for Reform, Volume I. March 2005.

3 Environmental Commissioner of Ontario. 2008. "Environmental Assessment: a vision lost." Getting to K(No)w, ECO Annual Report, 2007-08. Toronto, ON: Environmental Commissioner of Ontario. 28-48. http://www.ecoissues.ca/index.php/Environmental_Assessment:_A_Vision_Lost

Environmental Commissioner of Ontario. 2014. "Restoring a Vision Lost: Reforming Ontario's Environmental Assessment Act." Managing New Challenges, ECO Annual Report, 2013-14. Toronto, ON: Environmental Commission of Ontario. 132-139. http://ecoissues.ca/index.php?title=Reforming_Ontario%27s_Environmental_Assessment_Act_-_2014&redirect=no

4 Minister of Environment and Climate Change Mandate Letter. http://pm.gc.ca/eng/minister-environment-and-climate-change-mandate-letter

5 Ministry of Northern Development and Mines. 2015. Ontario's Mineral Development Strategy, Objective 7, p.23. http://www.mndm.gov.on.ca/sites/default/files/mndm_mds_english_2015.pdf

6 MiningWatch Canada. The Big Hole: Environmental Assessment and Mining in Ontario. December 2014. http://www.miningwatch.ca/publications/big-hole-environmental-assessment-and-mining-ontario

Further, in the Auditor General of Ontario's Annual Report submitted to the Legislature in December 2015 it was recommended that there should be an assessment of the benefits of subjecting mining projects to a provincial environmental assessment process similar to other Canadian jurisdictions. See: 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

7 See https://www.ontario.ca/page/climate-change-strategy.

8 See https://www.ontario.ca/page/open-government.

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