



# Caldwell First Nation

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EA Modernization Project Team  
Environmental Assessment Modernization Branch  
Ministry of the Environment, Conservation & Parks  
135 St Clair Ave West, 4th Floor  
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May 9, 2023

**Re:**

**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**

Caldwell First Nation comes from the lands that are now called Southwestern Ontario. This is a region of rapid development, including highways, rail, electricity projects and waste projects.

The CFN Environment and Consultation Department, on behalf the Nation, has concerns about the proposed actions in ERO 019-4219, ERO 019-6693, and ERO 019-6705. These proposals significantly reduce the number of projects subject to an environmental assessment and the scope of that assessment, thereby directly impacting Consultation and capacity building opportunities for our First Nation.

Rather than modernize the environmental assessment process, the proposed actions contribute to a long list of legislative and regulatory changes that have strategically gutted environmental protections; this process is now threatening First Nation Aboriginal, inherent, and Treaty Rights.

This is evidenced in the March 2023 supporting document, “Moving to a Project List Approach Under the Environmental Assessment Act”. The document directly points to situations that will reduce First Nation Consultation opportunities:

“Specific future projects that would have followed an individual or comprehensive EA process and would now follow a class or streamlined EA process if the proposed

Comprehensive EA Projects regulation is implemented, may have **fewer consultation opportunities for Indigenous communities.**” (page 4)

and

“For comprehensive EAs, approval of a Terms of Reference is required, and there are more consultation points throughout the course of a comprehensive EA compared with a typical Class EA process.” (page 11)

Shifting so many major projects from Comprehensive EAs to Class EAs (or simply no EA) is extremely problematic. Elimination of a Comprehensive EA means the elimination of the Terms of Reference (TOR) stage. The TOR stage is the heart of an environmental assessment, given that it provides an opportunity to consider both “alternatives to” and “alternative methods” for fulfilling the stated purpose of a project.

Despite the statements of the ERO bulletins, the direct result of this process is that there will be **less environmental oversight** on all major projects in Ontario. This compounds the already eroded EA legislation. For example, the December 2021 proposal (ERO 019-3937) lowered the threshold for transmission line projects, so that only lines greater than 345 kV and longer than 75km would be subject to an Individual/Comprehensive EA. Now, ERO 019-4219 proposes to reduce those projects to a streamlined assessment, directly impacting our ability to comment on the EA’s workplan, studies to be completed, and alternatives to be considered. As the table below documents, the elimination of a Comprehensive EA will spell the elimination of the TOR stage and the valuable Consultation opportunities that it provides for nearly all major projects in our Traditional Territory.

<b>Project</b>	<b>Comprehensive EA?</b>
All new provincial highways	No
All new municipal highways and major changes to existing ones	No
Railway line projects for freight and passenger	No
Major transformer stations (> 500 kV)	No
Major transmission lines	No

At a time when the Crown should be implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and obtaining the Free, Prior, and Informed Consent (FPIC) of our First Nation, the Crown is instead essentially excluding our community out of the process, assailing our inherent rights and responsibilities as stewards of the land, sky, and water. The proposals, if actuated, would limit First Nation oversight to a very narrowly defined list of projects that would be evaluated through a streamlined process that favours rapid development at the expense of all else.

What’s worse is that the level of Consultation through this narrow view remains undefined. The supporting document states that,

“There is a Code of Practice for Consultation in Ontario’s EA process ... The ministry looks forward to working with Indigenous communities to make sure this code of

practice in particular provides appropriate guidance that reflects the views and perspectives of Indigenous communities.” (page 14)

We do not know when or how the government proposes to engage our Nation on this separate document. It is gravely inappropriate for the Ministry to contemplate the sweeping changes proposed in ERO 019-4219, ERO 019-6693, and ERO 019-6705, while leaving the specifics of First Nation Consultation to a discussion at a later date.

EA reforms are long overdue, but these proposals run contrary to best practices in environmental assessment. Rather than modernize the process, these draconian proposals further risk eradication of environmental oversight on major projects. In an era of biodiversity loss and climate change, we urge you to refocus EA reform toward sustainability and true alignment with protecting these lands and waters for generations to come.

The proposed actions in ERO 019-4219, ERO 019-6693, and ERO 019-6705 are significant. There will be **fewer Consultation opportunities** and **less environmental oversight**, right when numerous major projects are coming to our Treaty and Traditional Territory. As such, we cannot consent to the proposed legislative reform, given its full impact on our First Nation’s constitutionally protected Aboriginal, inherent, and Treaty Rights are not yet fully understood.

Our department, on behalf of Caldwell First Nation, asks that the government immediately withdraw its proposal and seek the Free, Prior, and Informed Consent of our Nation, and every other rightsholding First Nation, on the EA Modernization initiative. This is what meaningful consultation in the EA process must include. Anything less than that risks a failure of the government to uphold the Honour of the Crown.

Respectfully,

A handwritten signature in black ink, appearing to read 'Zack Hamm', with a stylized flourish extending to the right.

Zack Hamm, P, MA,  
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