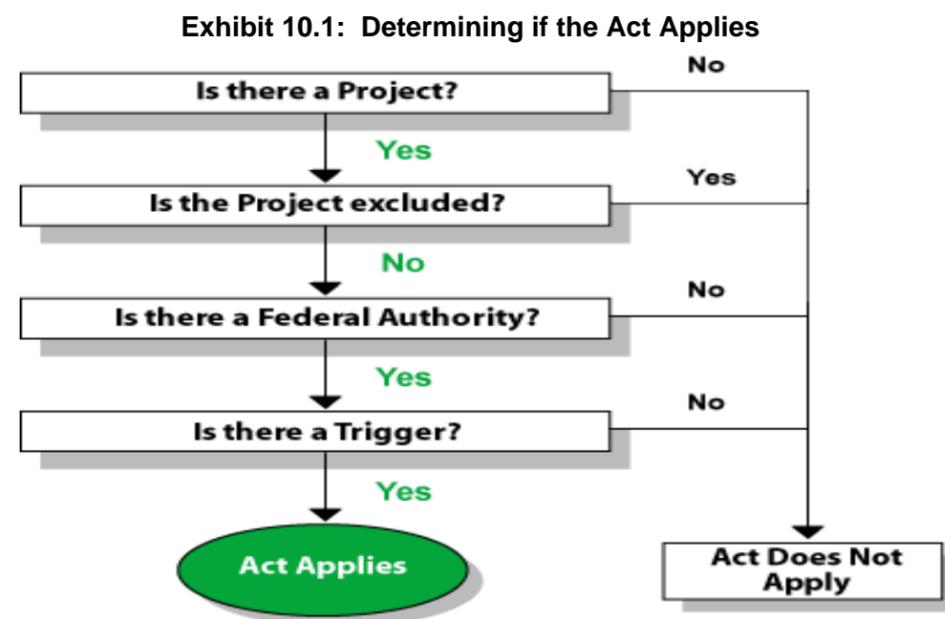


## 10. Canadian Environmental Assessment Act Process

### 10.1 Background

As previously noted in **Section 2.2**, in addition to satisfying the OEAA requirements, the proposed 407 East undertaking must address the federal environmental assessment requirements in accordance with the Canadian Environmental Assessment Act (CEAA) for the following reasons (see **Exhibit 10.1**):

- The proposed 407 East undertaking is considered to be a “physical work” and is therefore considered a “Project” under CEAA;
- The 407 East undertaking is not described or listed in the Exclusion List Regulations, and therefore is not specifically excluded from an EA under CEAA; and
- There are several ‘triggers’ for an EA under CEAA specific to this undertaking. The triggers include the requirement for federal lands to enable this undertaking to be carried out and the need for the federal government to exercise regulatory duties in relation to the undertaking (i.e. issue a permit or license that is included in the Law List Regulations pursuant to CEAA).



The provincial and federal environmental assessments are being undertaken concurrently. The CEAA EA process is being co-ordinated through the Canadian Environmental Assessment Agency (CEAA Agency) who is acting as the Federal Environmental Assessment Co-ordinator (FEAC) on this project. Although the requirements of both the OEAA and CEAA were coordinated during the EA process, two

separate but complimentary reports are being prepared. This EA Report addresses the OEAA requirements while a separate federal screening report is being prepared and submitted to fulfill the federal EA requirements (see **Section 10.3** for further details).

### 10.2 Scope of the Undertaking

For the purposes of the Federal EA, the 407 East undertaking was reviewed in relation to:

1. Section 15 of the CEAA, which provides the federally responsible authorities (RAs) with discretion on how to scope a project that will be subject to a federal EA, provided that the scope of the project includes “in relation to a physical work, any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to the physical work that is proposed by the proponent or that is likely to be carried out in relation to that physical work”;
2. The *Cabinet Directive on Implementing the Canadian Environmental Assessment Act* (November 2005), which sets out a Policy for Determining an Appropriate Scope of Programs for Environmental Assessments; and
3. A document entitled *Interim Approach for Determining Scope of Project for Major Development Proposals with Specific Regulatory Triggers under the Canadian Environmental Assessment Act*, developed by the Federal Environmental Assessment Projects Committee. This document provides guidance to participating federal departments on applying the Cabinet Directive’s Scoping Policy for a specific category of development proposal. The interim approach document provided a structured process and framework for identifying the components of MTO’s development proposal to be included in the project scope.

For the 407 East undertaking, the Interim Approach was applied by a Federal EA Team. Through this process, it was determined that the scope of project for the purposes of the Federal EA includes all components of the undertaking which are directly related to the regulatory and land triggers that are anticipated to be exercised by the federal RAs. The Federal EA Team also concluded that any issues of federal interest and jurisdiction related to non-triggered components should be dealt with adequately and most efficiently through the co-ordinated EA process with the Province of Ontario. To this end, the federal EA considers several individual “projects” that are included in, but do not necessarily comprise, the entire undertaking as proposed by MTO.

With respect to the federal EA, the RAs and their respective triggers are as follows:

- Transport Canada (TC) will require an EA of the project under Section 5 of the CEAA. The indicated triggers are disposition of federal land and Navigable Waters Protection Act Section 5(1)(a).

- Fisheries and Oceans (DFO) will require an EA of the project under Section 5 of the Act. The potential trigger is Fisheries Act Section 35(2) in relation to several water crossings.

Additional triggers relate to oil and gas pipeline crossings and Canadian National and Canadian Pacific railway crossings, overseen by the National Energy Board (NEB) and the Canadian Transportation Agency (CTA), respectively. In both cases, MTO will work with and negotiate an agreement with the pipeline companies and railway authorities and obtain concurrence from the NEB and CTA to ensure that a formal trigger will not be required. Therefore, these components will not be included in the federal screening.

In addition to the RAs, expert Federal Authorities (FAs) are also involved in the process and have the role of informing and providing technical advice. Expert FAs include the following:

- Environment Canada (EC) is in possession of specialist or expert information and has an interest in the project;
- Health Canada (HC) has determined that it is not an RA, but under subsection 12(3) of the Act, HC may provide expertise as an expert FA; and
- Natural Resources Canada (NRCan) has determined that it is not an RA but under subsection 12(3) of the Act, NRCan may provide expertise as an expert FA.

The scope of the environmental assessment under CEAA includes all the factors identified in paragraphs 16(1) (a) to (d) of the CEAA and, as provided for under paragraph 16(1) (e), any other matter that the Regulatory Authorities (RAs) require to be considered. Paragraphs 16(1) (a) to (e) require that the following factors be included:

- the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;*
- the significance of the effects referred to in paragraph (a);*
- comments from the public that are received in accordance with this Act and the regulations;*
- measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and*
- any other matter relevant to the screening, such as the need for the project and alternatives to the project, that the responsible authority or, except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered.*

In accordance with CEAA, the term “environment” means the components of the Earth, and includes:

- land, water and air, including all layers of the atmosphere,*
- all organic and inorganic matter and living organisms, and*

- the interacting natural systems that include components referred to in paragraphs (a) and (b).*

In accordance with CEAA, the term “environmental effect” means, in respect of a project,

- any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act;*
- any effect of any change referred to in paragraph (a) on*
  - health and socio-economic conditions,*
  - physical and cultural heritage,*
  - the current use of lands and resources for traditional purposes by aboriginal persons, or*
  - any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; or*
- any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada.*

As provided for under paragraph 16(1) (e), the other matters that the Regulatory Authorities may require to be addressed are outlined in the EA Guidelines.

The scope of factors considered in the assessment includes, but may not necessarily be limited to, potential effects (including cumulative effects) on the following environmental components:

- Air quality and climate;
- Surface water and groundwater (quality and quantity);
- Surface and subsurface geology and soils;
- Vegetation, vegetation communities and wetlands;
- Fish and fish habitat;
- Wildlife and wildlife habitat, including migratory birds;
- Species at risk, including those species listed under the *Species at Risk Act*;
- Noise and vibration; and
- Contaminated sites and waste management.

In keeping with the definition of “environmental effect”, the scope of the factors also includes the effect of any change that the project may cause in the environment on:

- Socio-economic factors;
- Physical and cultural heritage;
- Current use of lands and resources for traditional purposes by Aboriginal peoples; and
- Things of historical, archaeological, paleontological or architectural significance.

### 10.3 EA Documentation – Screening

The factors required by subsection 16(1) and 16(2) of the CEAA were considered systematically in the EA. Specifically, the screening report will describe:

- Application of the CEAA;
- Scope of the project;
- Scope of the assessment;
- Project description;
- Spatial and temporal boundaries of the assessment;
- Description of existing environment;
- Assessment and mitigation of environmental effects;
- Cumulative environmental effects;
- Magnitude and significance of residual effects;
- Stakeholder consultation;
- Follow-up program, if required; and
- Conclusions and recommendations for decision.

TC and DFO, based on the authority provided in subsection 17(1) of the CEAA, have delegated the preparation of the screening report to MTO. The screening report, together with any additional technical studies that are prepared to support it, will be used by federal departments in assessing the project.

MTO will submit the screening report and all supporting technical studies to the CEA Agency, in its capacity as the FEAC. The Agency will distribute the screening report and supporting documentation to the federal review team for review and comment. When the screening report is considered satisfactory, it will be made available for public review and comment. Once it is complete, the RAs will use this information to make a determination on the significance of the environmental effects.

For further information on the Federal Assessment of the 407 East, please visit the Canadian Environmental Assessment Registry (CEAR) website and refer to CEAR reference number **08-01-39781**.