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# Table of Contents

|  | page       |
|--|------------|
| <b>3. Overview of the Federal EA Process.....</b>                    | <b>3-1</b> |
| 3.1 The Federal EA Process and the Responsible Authorities.....      | 3-1        |
| 3.1.1 Role of the Responsible Authorities.....                       | 3-4        |
| 3.1.1.1 <i>Role of Other Potential Responsible Authorities</i> ..... | 3-4        |
| 3.1.2 Role of Expert Federal Authorities.....                        | 3-5        |
| 3.1.2.1 <i>Environment Canada</i> .....                              | 3-6        |
| 3.1.2.2 <i>Health Canada</i> .....                                   | 3-8        |
| 3.1.2.3 <i>Natural Resources Canada</i> .....                        | 3-8        |

## List of Figures

|   |     |
|---|-----|
| Figure 3-1 Federal-Provincial Coordination Process..... | 3-3 |
|---|-----|

### 3. Overview of the Federal EA Process

#### 3.1 The Federal EA Process and the Responsible Authorities

In January 2008, the Ontario Ministry of Transportation (MTO) submitted a document entitled “407 East Environmental Assessment – Project Description for CEAA” to the Canadian Environmental Assessment Agency (the CEA Agency) and a number of Federal authorities. This document provided background information on the project, and an overview of the MTO’s proposal. Following the circulation of the project description, a number of Federal authorities were identified as either having the responsibility to ensure that an Environmental Assessment (EA) was carried out, and/or specialist or expert advice that may be necessary to conduct the assessment. These included: Transport Canada (TC), the Department of Fisheries and Oceans Canada (DFO), the Canadian Transportation Agency (CTA), the National Energy Board (NEB), Environment Canada (EC), Health Canada (HC) and Natural Resources Canada (NRCan). Subsequently, it was determined that Transport Canada and Fisheries and Oceans Canada would act as the Responsible Authorities (RAs) for the purposes of the Federal EA process. The CTA and the NEB participated as potential RAs.

- TC’s role as an RA under the *Canadian Environmental Assessment Act* arose from the potential requirement for approval of a number of watercourse crossings under section 5(1)(a) of the *Navigable Waters Protection Act* (NWPA). Subsequently, it was confirmed that there are no NWPA approval requirements. In addition, the undertaking as proposed would require the use of a small amount of Federal property (Pickering Airport Lands) in the vicinity of Brock Road and Highway 7.
- DFO’s role as a Responsible Authority arises from the anticipated requirement for authorizations under section 35(2) of the *Fisheries Act*.
- The CTA and NEB participated as potential RAs, as there may be a requirement for an approval under the *Canada Transportation Act* and/or the *National Energy Board Act*.

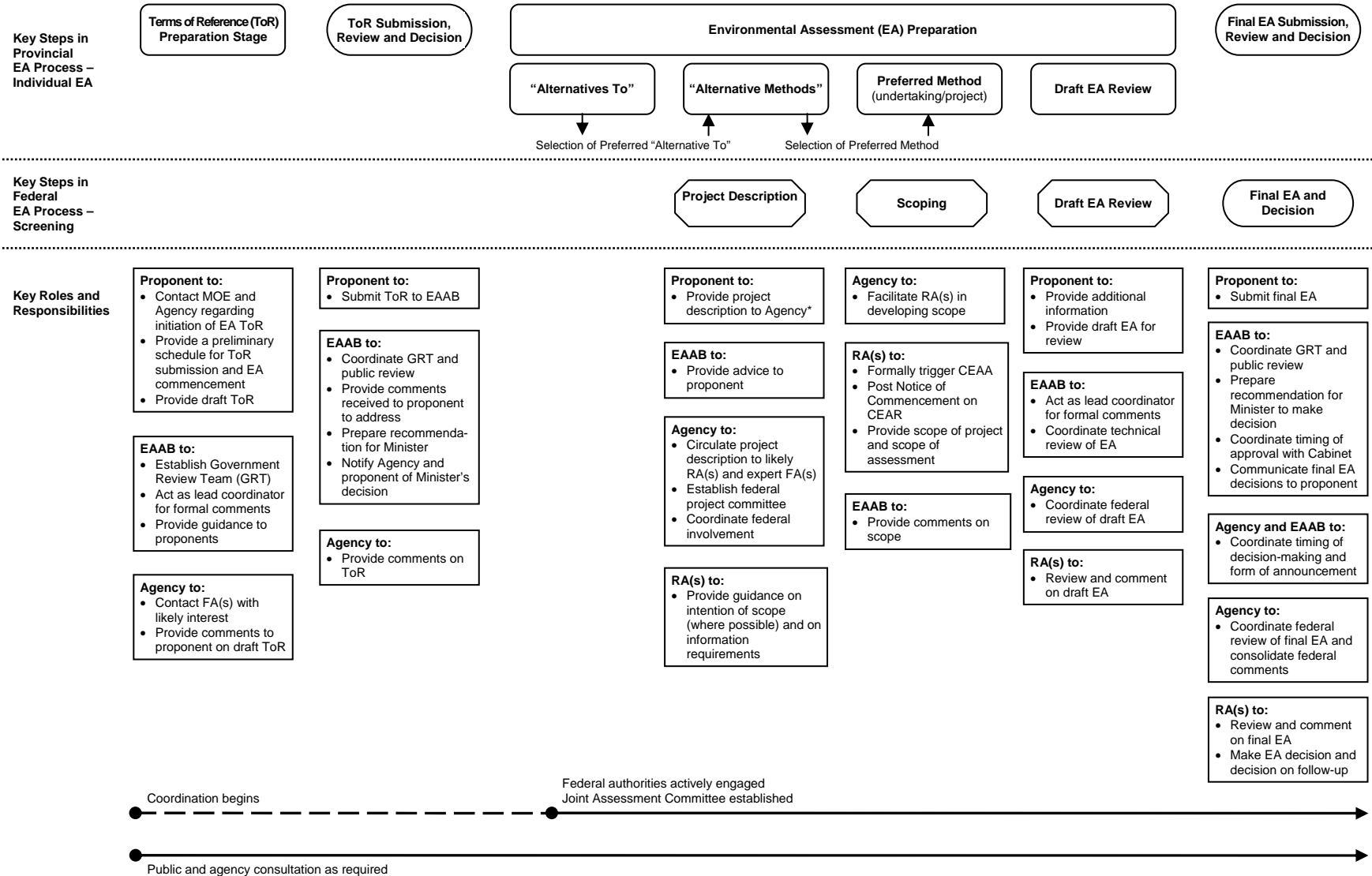
The Government of Canada and the Province of Ontario signed the *Canada-Ontario Agreement for Environmental Assessment Co-operation* whereby the two governments have agreed to use the same information generated as the basis of their respective environmental assessment decisions. While the agreement maintains separate legislative and decision-making responsibilities, it promotes co-operation and co-ordination in order to ensure administrative efficiency in the EA process. To this end, consultation with the Ontario Ministry of the Environment also took place, to ensure that Federal EA process requirements were co-ordinated with the ongoing Provincial EA. The Canadian Environmental Assessment Agency served as the Federal Environmental Assessment Co-ordinator (FEAC). **Figure 3-1** depicts the Federal-Provincial coordination process that was followed for the 407 East EA.

Based on the authority provided in subsection 17(1) of the CEAA, the preparation of a screening report was delegated to the MTO by the RAs.

In February 2009, Draft EA Guidelines were issued for the preparation of an Environmental Screening Report by the MTO. The purpose of this document was to provide guidance to the proponent on the needs of the Federal EA to assist them in their preparation of the Environmental Screening Report. The document also served to describe the Federal EA process and the proposed scope of project for the purposes of the environmental assessment, the factors proposed to be considered, and the proposed scope of those factors.

In July 2009, MTO submitted a draft Environmental Screening Report to the Canadian Environmental Assessment Agency, in its capacity as the FEAC. The Agency distributed the Environmental Screening Report to the Federal review team for initial review and comment. Supporting documentation in the form of the Provincial EA and its technical supporting documents were made available to the RAs and others upon request. The Federal review team conducted a compliance check with the EA Guidelines, provided the MTO with preliminary comments, and requested that revisions be made to the Environmental Screening Report.

Early in the Federal EA process, the RAs established a Public Registry for the assessment, as required by section 55 of the *Canadian Environmental Assessment Act*. This included the posting of the assessment in the Canadian Environmental Assessment Registry (CEAR), which can be accessed on the Internet website of the Canadian Environmental Assessment Agency ([www.ceaa.gc.ca](http://www.ceaa.gc.ca)). The CEAR number for this project is [08-03-39781](#).



\* Proponent to provide project description when the preferred “alternative to” has been selected and a general study area is identified.

**Figure 3-1 Federal-Provincial Coordination Process**

### 3.1.1 Role of the Responsible Authorities

As noted above, the preparation of a screening report was delegated to the MTO by the RAs. However, in conducting the environmental assessment as the RAs, TC and DFO:

- determined that the project was a screening;
- ensured that the EA was conducted as early as practicable in the planning stages and before irrevocable decisions were made;
- did not exercise any power or perform any duty or function which may have allowed the project to proceed until completion of the EA;
- established and maintained the public registry;
- determined the scope of the environmental assessment; and
- determined the significance of the residual effects of the project.

The RAs, TC and DFO, will also:

- provide public notice of their course of action;
- ensure that all appropriate mitigation measures are implemented; and
- consider the need for a follow-up program.

#### 3.1.1.1 Role of Other Potential Responsible Authorities

##### Canadian Transportation Agency

The Canadian Transportation Agency (CTA) is an independent, quasi-judicial tribunal that makes decisions on a wide range of economic matters involving Federally-regulated modes of transportation (air, rail and marine). Along with its roles as an economic regulator and an aeronautical authority, the Agency works to facilitate accessible transportation, and serves as a dispute resolution authority over certain transportation rate and service complaints.

The *Canada Transportation Act* is the Agency's enabling statute to implement the Federal government's transportation policy. The Agency also shares responsibility for administering other Acts and their related regulations, including the *Railway Safety Act*.

Pursuant to the *Canada Transportation Act*, an agreement between Canadian Pacific Railway (CPR) and MTO will be required in order to construct the 407 East Recommended Design (transportation corridor) at two Canadian Pacific Railways (CPR) crossings: (1) east of Lake Ridge Road and between Rossland Road and Taunton Road in Whitby (West Durham Link) and (2) west of Solina Road and north of Highway 401 in Clarington (East Durham Link). This will involve MTO negotiating an agreement with CPR regarding construction of the 407 East Recommended Design (transportation corridor) at these proposed crossing locations. Also, agreement with Canadian National Railways (CNR) is required for the Lake Ridge Road structure crossing near Highway 401 west of the West Durham Link.

Under the *Canada Transportation Act*, MTO have the choice of two options for proceeding to obtain the necessary authorization:

1. Under subsection 101(1) of the Act, MTO may reach an agreement with CPR and/or CNR for the proposed crossings and no EA is required under CEAA; or
2. Under subsection 101(3) of the Act, if MTO are not able to achieve an agreement with CPR and/or CNR they may make an application to the Canadian Transportation Agency (CTA) for authorization to construct the crossings.

Therefore, if an agreement is not reached with CPR and/or CNR and an application is made to CTA by MTO under subsection 101(3), this would constitute a trigger under CEAA and the CTA may be a Responsible Authority.

### National Energy Board

The National Energy Board (NEB or Board) is an independent Federal agency established to regulate international and interProvincial aspects of the oil, gas and electric utility industries. The purpose of the NEB is to promote safety and security, environmental protection and efficient energy infrastructure and markets in the Canadian public interest. The *National Energy Board Act* is the Board's enabling statute to implement the Federal government's energy policies. The NEB is accountable to Parliament through the Minister of Natural Resources Canada.

An agreement between pipeline companies (oil and gas) and MTO will be required in order to construct the 407 East Recommended Design (transportation corridor) at four pipeline crossings. The Trans-Northern Oil Pipeline crossings are as follows:

- east of Lake Ridge Road, north of Taunton Road in Whitby (West Durham Link)
- east of Solina, north of Pebblestone in Clarington (East Durham Link)

The Trans-Canada Gas Pipeline crossings are as follows:

- west of Simcoe Street, north of Winchester Road in Oshawa (407 East Mainline)
- west of Rundle Road, north of Taunton Road in Clarington (East Durham Link)

This approval process would include a review by the National Energy Board (NEB). Should the pipeline company(s) or the NEB object to the proposed crossing, then a separate NEB approval would be required under the *National Energy Board Act*. If an agreement is not reached with one or both pipeline companies, MTO can or may elect to make an application to the NEB; this application would trigger CEAA and the NEB may be an RA.

### **3.1.2 Role of Expert Federal Authorities**

During the course of the EA, Transport Canada and Fisheries and Oceans Canada sought the expert knowledge of Environment Canada, Health Canada and Natural Resources Canada. Subsection 12(3) of

the *Canadian Environmental Assessment Act* (CEAA) sets out the responsibility as a Federal Authority (FA) as follows: “Every Federal authority that is in possession of specialist or expert information or knowledge with respect to a project shall, on request, make available that information or knowledge to the responsible authority or to a mediator or a review panel.”

### 3.1.2.1 Environment Canada

The mandate of Environment Canada (EC) is determined by the statutes and regulations assigned to it by Parliament through the Minister of the Environment. In delivering this mandate, EC is responsible for developing and implementing policies, guidelines, codes of practice, inter-jurisdictional and international agreements and related programs. The mandate of EC is defined by the *Department of Environment Act* (DOE Act) which establishes EC as a Department of the Federal government and provides EC with general responsibility for environmental management and protection, including:

- preservation and enhancement of the quality of the natural environment, including water, air and soil quality;
- renewable resources including migratory birds and other non-domestic flora and fauna;
- water;
- meteorology;
- enforcement of any rules or regulations made by the International Joint Commission relating to boundary waters and questions arising between the United States and Canada, as they relate to the preservation and enhancement of the quality of the natural environment; and
- co-ordination of Federal policy and programs respecting preservation and enhancement of the quality of the natural environment.

Environment Canada is also responsible for the *Canadian Environmental Protection Act*, *Migratory Bird Convention Act*, *Species at Risk Act* and certain provisions of the *Fisheries Act*.

- Canadian Environmental Protection Act, 1999

Proclaimed on March 31, 2000, the goal of the updated *Canadian Environmental Protection Act*, 1999 (CEPA) is to contribute to sustainable development through pollution prevention and the protection of the environment, human life and health from the risks associated with toxic substances. With respect to the 407 East Transportation Corridor, hazardous substances may be used and/or contaminated soils may be encountered. Without proper design and mitigation, these substances may pose a risk to the environment and/or human health during the Construction Phase and/or its Operations and Maintenance Phase.

- Migratory Birds Convention Act, 1994

The purpose of the *Migratory Birds Convention Act* 1994 (MBCA) is to implement the “Convention for the Protection of Migratory Birds in Canada and the United States” by protecting and conserving migratory birds, as populations and individual birds, their habitat and nests. The Regulations under the MBCA

provide for the conservation of migratory birds and for the protection of their nests and eggs. Specifically, they prohibit depositing or permitting the deposit of a substance that is harmful to migratory birds in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area. A prohibition against the disturbance, destruction, or taking of a nest, egg or nest shelter of a migratory bird without a permit is also set out in the Regulations. Possession of a migratory bird, nest or egg without a permit is also prohibited. “Incidental take” is the killing or harming of migratory birds due to actions, such as economic development, which are not primarily focused on taking migratory birds. At present, no permit can be issued for the incidental take of migratory birds or their nests as a result of economic activities. With respect to the 407 East Transportation Corridor, migratory birds may be encountered, and without proper design and mitigation, individuals or their habitats may be affected during the Construction Phase and/or its Operations and Maintenance Phase.

- Species at Risk Act

The *Species at Risk Act* (SARA) is a result of the implementation of the Canadian Biodiversity Strategy, which is in response to the United Nations Convention on Biological Diversity. The purpose of the SARA is to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered, or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming threatened or endangered. With respect to the 407 East Transportation Corridor, Species at Risk may be encountered, and without proper design and mitigation, individuals or their habitats may be affected during the Construction Phase and/or its Operations and Maintenance Phase. Pursuant to Section 79(1) of SARA the Responsible Authorities must notify the competent Minister responsible for the listed species, which in this case is the Federal Minister of Environment. Moreover, because Environment Canada is obliged to ensure that effective protection is provided of listed species, the Responsible Authorities shall endeavour to advise Environment Canada of efforts to protect the listed species undertaken by MTO and/or the Province of Ontario.

- Fisheries Act

Environment Canada’s mandate to advocate for the protection of water quality also stems from the pollution prevention provisions of the *Fisheries Act* (including section 26), which are administered (including enforcement of) by EC. The Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* states that compliance with the Federal *Fisheries Act* is mandatory. Subsection 36(3) of the *Fisheries Act* specifies that, unless authorized by Federal regulation, no person shall deposit or permit the deposit of deleterious substances of any type in water frequented by fish, or in any place under any conditions where the deleterious substance, or any other deleterious substance that results from the deposit of the deleterious substance, may enter any such water. With respect to the 407 East Transportation Corridor, without proper design and mitigation, deleterious substances may enter a watercourse during the Construction Phase and/or its Operations and Maintenance Phase.

### 3.1.2.2 *Health Canada*

Health Canada (HC) has an advisory role as a Federal authority (FA) under the *Canadian Environmental Assessment Act (the Act)*, providing expertise in its possession when requested to do so by a Responsible Authority. With respect to the 407 East Transportation Corridor Environmental Screening, HC's relevant areas of expertise include air quality, country foods, water quality, noise and contaminated sites.

### 3.1.2.3 *Natural Resources Canada*

When not acting as a Responsible Authority, Natural Resources Canada (NRCan) has an advisory role as a Federal Authority (FA) under the *Canadian Environmental Assessment Act*, providing expertise in its possession when requested to do so by a Responsible Authority. With respect to the 407 East Transportation Corridor Environmental Screening, NRCan's relevant area of expertise was geoscience.