



## **Highways and Environmental Assessment**

**Do exemptions meet the goal of EA/IA?**

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# About Ecojustice

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Ecojustice is a charity that uses the law to defend nature, combat climate change and fight for a healthy environment for all.

Offices across the country

Recently involved in GTA West and Bradford Bypass

# History of EA

- US passed National Environmental Policy Act (NEPA in 1970s)
- Was supposed to be an environmental bill of rights ensuring that decisions were sustainable
- Was supposed to be both procedural and substantive i.e. was supposed to ensure specific environmental outcomes, not just be a process to be followed
- Ontario Environmental Assessment Act in 1970s was similar in nature – betterment was the substantive outcome.

# History of EA

- Over time, erosion of EA
- Became almost wholly procedural, not substantive
- Disconnected from ensuring specific environmental outcomes, seen as “red-tape”

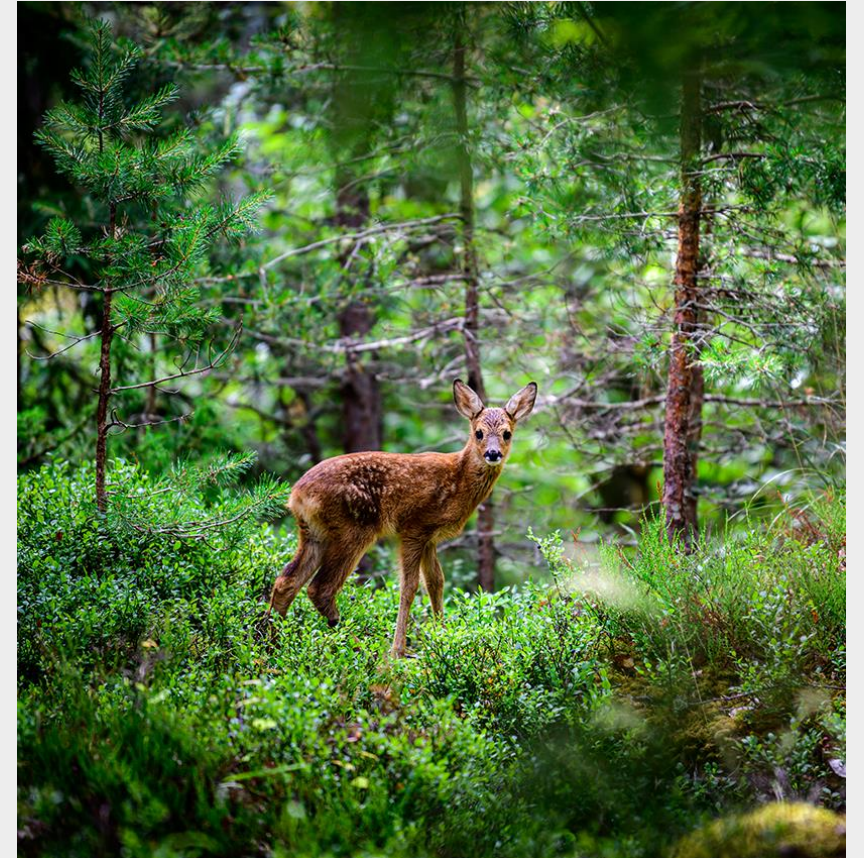
# Ontario has had many contentious highways

- Highway 407
- Highway 404 extension
- Red Hill Creek Expressway
- Gardiner Expressway
- Bradford Bypass
- GTA West

# History: Red Hill Valley Parkway/Expressway

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- Controversial highway through Niagara escarpment in Hamilton
- Wetlands, old landfills, Escarpment SAR corridor
- QEW/403
- Board of Control rejected in 1958
- Council adopted Transportation Plan in 1964 involving expressway
- 1970s city requested designation under EAA
- 1980 exemption from EAA reg 675/80
- Joint Board (OMB/OEAB) gave approval in 1985 conditional on no opening through escarpment
- 1987 Cabinet approval
- Un-successful challenge to Divisional Court/Cabinet 1990s





# Red Hill cont'd

- 1990 sod-turning ceremony followed by removed funding
- Cabinet approvals in 1997-1998
- Amended to include blasting through escarpment
- NEC expressed concerns effects on escarpment
- 1996 DFO said CEAA 1995 triggered (8 crossings of Red Hill Creek) – Initial report said serious impacts could not be mitigated.
- 1997 Ontario MOE exempted from EAA with conditions
- 1999 Federal Min of Enviro referred to review Panel under CEAA 1995
- 2000s litigation in Federal Court



# Red Hill Cont'd

- Federal Court/FCA CEAA does not apply to the expressway project
- People sat in the trees
- Opened in 2007
- Friction tests buried by council - slippery
- Now subject of public inquiry b/c built in a floodplain and slippery, causing many casualties
- <http://rhvpi.ca/>





# Bradford Bypass

- Different proposals considered in 1970s and 1980s
- Bypass proposed in 1989
- EA under Ontario EAA began in 1993
- **Exempted** from OEAB process!
- EA Completed in 1997 – very controversial, Holland Marsh impacts
- Not approved until 2002 with numerous conditions req further study (groundwater etc.)



# Bypass cont'd

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- Shelved by McGuinty govt as a result of greenbelt, growth plan processes. In mid-2000s
- 2018 election, new government announced EA update
- Proposed exemption from EAA (no class EA)
- Exemption later passed
- 2 requests for designation under IAA – both denied,
- One refusal declared unreasonable by Federal Court



# GTA West/Highway 413

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- Proposed 2002 in transportation directions study of MTO
- EA began in 2007
- Halton-Peel freeway study
- 52 km from 401/407 to 400 N. of Brampton/Bolton
- 2012-14 reports
- 2016 advisory panel – not needed use 407
- 2020 route and exemption proposal (not yet approved)
- 2021 designated for IA (SAR)
- Next step IAA Project description
- Exemption?

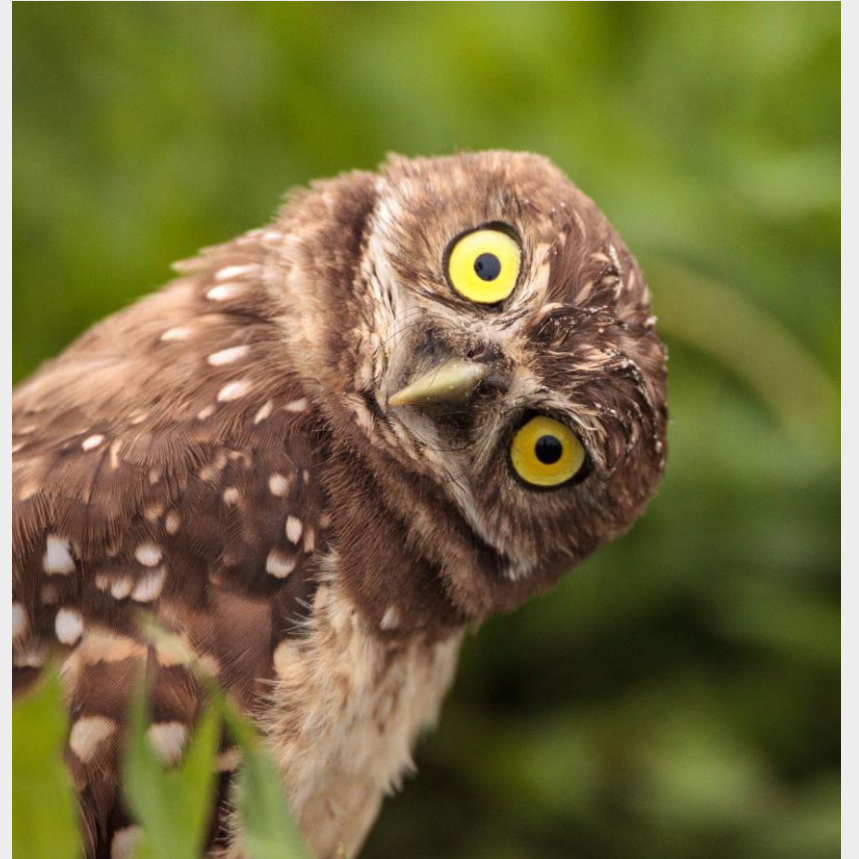




# Lessons?

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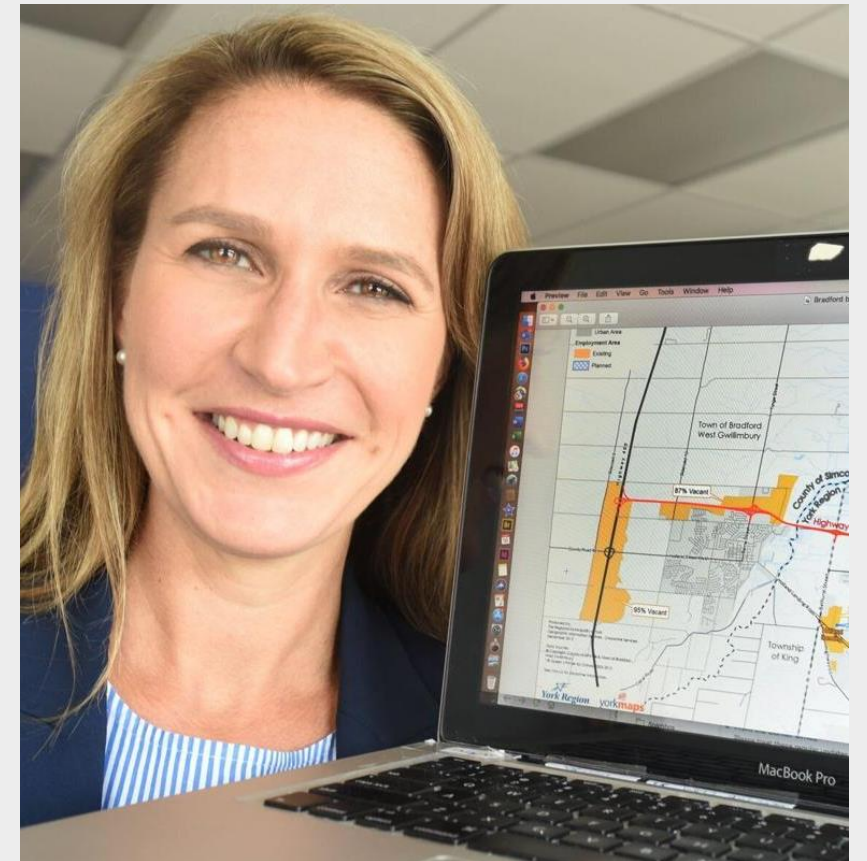
- A prolonged and convoluted but ultimately ineffective planning process
- Too many exemptions = incomplete evaluations of impacts over a long period of time
- Public controversy
- Jurisdictional issues
- Unaddressed impacts and public concerns, safety issues



# More Lessons

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- Highway decisions are about political winners (concrete, aggregate, developers) and losers (environment, public health)
- The ribbon-cutting effect
- Hugely expensive
- Poor considerations about need and alternatives are very common
- Boondoggle or needed public infrastructure?





# How can we move forward?

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- EA should not be reduced to a procedural checklist of mitigation measures
- Should be a *bone fide* evaluation of need and alternatives including transit – do nothing
- Impact evaluations need to be complete – not avoid contentious impacts
- Exemptions **do not** speed projects up, they slow them down, often by decades.
- A good project should be able to complete the full process
- Infrastructure projects should be based on transparent evidence



# Climate realities

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- Highways induce demand and reduce viability of more energy-efficient, climate-friendly alternatives.
- Highways have unacceptable air quality impacts that are not currently health-assessed
- Highways have unacceptable water quality impacts that cannot be mitigated
- Land use impacts of Highways are permanent and significant
- Deciding to build first, and partially study impacts later is not a responsible approach in a climate emergency.



# Greenhouse gas emissions

- Vehicle emissions are the largest source of GHGs in Ontario (35%)
- Vehicle emissions are also the fastest growing source of emissions in Ontario
- 13.1 million trips per day in GTHA
- Increase from SUVs and light trucks
- Increases from heavy diesel trucks





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# Nitrogen oxide near highways in Toronto



## Figure 7: Estimated Deaths in Ontario from Modelled Exposure to Ambient Atmospheric Fine Particulate Matter, Nitrogen Dioxide and Ozone above Background Levels, 2016\*

Source of data: Health Canada

<b>Acute Exposure Mortality</b> (associated with nitrogen dioxide and ozone)	<b>1,800</b>
<b>Chronic Exposure Respiratory Mortality</b> (associated with ozone)	<b>580</b>
<b>Chronic Exposure Mortality</b> (associated with fine particulate matter)	<b>4,200</b>
<b>Total</b>	<b>6,580</b>

\* Most recent estimate available.



# Premature childhood death

- The premature mortality risk within a 0-100m buffer of a major road was **566% higher** than for a 301-400m buffer
- a  $10\mu\text{g}/\text{m}^3$  increase in PM<sub>2.5</sub> and PM<sub>10</sub> was estimated to be associated with **3.4% and 2.5% increase in infant and child under-five mortality**, respectively. In this same review and meta-analysis, a **1 ppb increase in CO, NO<sub>2</sub> and sulphur dioxide (SO<sub>2</sub>)** was estimated to be associated with a **3.1%, 1.7%, and 2.0% increase in infant and child under-five mortality**, respectively

# **MTO Environmental Guide for Assessing and mitigating Air Quality Impacts and GHGs (2020)**

- No legal obligation for MTO to meet any specific Air Quality Standard
- No health impact assessment of any kind.

# Questions

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