



March 17, 2024

BY EMAIL ONLY
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Ministry of the Environment, Conservation and Parks
5th Floor, 777 Bay Street
Toronto, Ontario M7A 2J3

**Re: New regulation to focus municipal environmental assessment requirements
ERO 019-7891)**

Thank you for the opportunity to comment on the Ministry of the Environment, Conservation and Parks' (MECP) Environmental Registry of Ontario (ERO) posting on a "New regulation to focus municipal environmental assessment requirements." This proposal was posted on February 16, 2024.

Toronto and Region Conservation Authority (TRCA) is a key participant in the environmental assessment (EA) process within its watershed-based jurisdiction, both as a reviewer of EAs and as a proponent of undertakings under the Environmental Assessment Act. TRCA supports its federal, provincial, and municipal partners and stakeholders, where proposals fall within a regulated area, to meet shared objectives for safe and sustainable infrastructure planning, siting, and design. We carry out these roles in accordance with our mandate under the Conservation Authorities Act and associated regulations.

Government Proposal

We understand that, as part of the Province's efforts to modernize the Environmental Assessment (EA) process, MECP is proposing to revoke the Municipal Class EA process and introduce a new streamlined EA regulation for municipal infrastructure.

The Municipal Class EA would be replaced by:

- A regulation that would designate certain municipal infrastructure projects as Streamlined EA projects under Part II.4 of the Environmental Assessment Act.
- A regulation setting out the streamlined EA process for these Part II.4 projects (Municipal Project Assessment Process).

The proposed process for the new streamlined EA process under the new regulation is contained in a supporting document found in the ERO posting: "Summary of Proposed Requirements, Proposed Municipal Project Assessment Process Regulation."

We note that the proposal summary in the ERO posting lists the types of MCEA projects that would *not* be subject to the new Regulation and would therefore **no longer have EA Act requirements** (emphasis added), including projects routinely circulated to TRCA where they fall within our regulated area, such as:

- Certain projects that are currently subject to Schedule B of the MCEA (2023), including constructing a new pumping station; a new, expansion or replacement of water intake pipe for a surface water source; or, expanding a sewage treatment plant, including relocation or replacement of an outfall to a receiving water body, up to existing rated capacity where new land acquisition is required;
- All municipal roads or new parking lots in any location, reconstruction of any bridges with or without cultural heritage value, all water crossings;
- All private sector infrastructure projects for residents of a municipality regardless of size, including a new sewage treatment plant of any size;
- The municipal projects that are currently exempt through the Class EA or by Section 15.3 (4) of the EA Act (Bill 108) and those proposed to be exempted under the Comprehensive Project List (CPL) regulation proposal, are not proposed to be made subject to the streamlined EA process under this proposed regulation;
- Transit projects in the CPL regulation proposal (ERO posting 019-4219) would be subject to the process articulated in that proposal, rather than this proposal (*we note that on February 22, 2024, a Decision Notice was issued for the proposal outlined in ERO 019-4219, such that projects requiring a Comprehensive EA are now set out in regulation*).

Finally, we note that the ERO posting states that,

“Depending on the project and location, there may be other legislative, regulatory and/or municipal requirements outside of the EA Act. Any applicable permit or approval would still be required. Municipalities will continue to consult on official plans. Municipalities may continue to carry out master servicing planning under their own processes to assess planned municipal infrastructure.”

TRCA Comments

The proposed projects *not* to be subject to the new regulation and *not to have any EA requirements* include project types that in TRCA’s experience can have significant effects on the environment or could be at risk due to hazards, such as municipal roads, new parking lots in any location, reconstruction of any bridges, and all water crossings, and all private sector infrastructure projects. Eliminating EA requirements for these activities creates additional risk and compromises the ability for regulatory agencies such as conservation authorities to provide early comments and additional considerations to proponents in support of the selection of a less risky and more environmentally sound preferred alternative.

TRCA is concerned that the removal of a requirement to conduct an EA for these undertakings will remove an important mechanism for flagging necessary alternative methods for the undertaking, or other measures to avoid and mitigate environmental losses and reduce risk of economic losses from infrastructure failures. Further, there is no mechanism in the proposed regulation, and no required criteria for the projects to be exempted from the EA process, for notifying conservation authorities (CAs) of projects within our regulated areas.

Although the ERO posting notes that “any applicable permit or approval would still be required,” such mention is not proposed for inclusion in the new regulation or any associated provincial implementation guidance on exemptions. We ask that such a requirement be included in the regulation. Further, although the ERO posting states that, “Municipalities may continue to carry out master servicing planning under their own processes to assess planned municipal infrastructure,” there is no requirement for municipalities to undertake a master planning, or similar, process, let alone standards set out for that process.

Some projects should continue to be required to proceed as EAs especially within sensitive environments. As an example, Section 41 of the Oak Ridges Moraine Conservation Plan (ORMCP) requires that municipalities shall “ensure the development of new infrastructure or upgrading or extension of existing infrastructure is supported by the necessary studies, assessments and documentation such as infrastructure master plans, asset management plans, land use and financial scenarios, watershed studies and subwatershed plans, environmental assessments and other relevant studies”. The ORMCP provides guidance on the type and level of information, analysis and evaluation that should be included in the necessary studies, assessments, and documentation.

In the past in our jurisdiction, TRCA staff have collaborated closely with MECP staff and proponents to ensure that the EA process for projects in or near the Greenbelt or ORMCP is coordinated with municipal ORMCP plan conformity reviews and leveraged as an important process to efficiently study, avoid and mitigate impacts on the natural environment and cultural heritage resources (e.g., Teston Road EAs). This regulation could include a requirement to maintain the requirement for an EA for undertakings within these areas. Due to specific Plans such as the ORMCP S. 41 requirements, municipalities and or their co-proponents would be in position of having to complete a similar amount of study and work to adhere to provincial Plan requirements in any case, so such an approach of maintaining an EA requirement may be practical in these circumstances.

A comprehensive, upfront assessment of potential impacts through an EA or a master plan, for example, is crucial for avoiding, mitigating and/or compensating for the environmental impacts of infrastructure. This early assessment of potential impacts ensures resilience of the natural systems the infrastructure is affecting as well as the protection of the infrastructure itself. Moreover, there may be increased costs and time taken through the procurement process for detailed design and studies left to the permit stage that would be more efficiently completed at the early stages of master planning or in pre-consultation to the permit stage.

In TRCA’s experience working with our municipal partners, master planning often focuses on the need for the infrastructure and does not always entail the level of study needed to demonstrate TRCA’s interests for safe and resilient infrastructure works, for which we could issue a permit at the detailed design stage under the CA Act and associated permit regulation. Many of our municipal partners are responsive to TRCA’s process for requiring the appropriately scoped level of study for their project footprint. The process for EA-exempted projects would benefit from specific direction from the Province for clear, consistent, and comprehensive standards to be met in the early master planning stages as appropriate. Similarly, standards for study requirements should also apply to private sector infrastructure projects also proposed for exemption under this ERO proposal.

We note that since these privately driven infrastructure projects are proposed to be exempted from an EA process, such infrastructure would then be subject to the Provincial Policy Statement (PPS) and Provincial Plans. Therefore, it should be clarified that municipalities must ensure for their approval processes under the Planning Act, that private proponent led projects are consistent with the PPS and are in conformity with provincial plans. For example, the infrastructure requirements of the area-specific provincial Acts and Plans (e.g., Oak Ridges Moraine Conservation Plan and Greenbelt Plan) would be applicable to a road project in addition to a CA permit where they fall within a regulated area.

For publicly driven infrastructure, there would need to be a significant emphasis placed on the review of master plans as this would be the only trigger of a pending infrastructure change, and the only opportunity to provide feedback to the municipalities on their future projects. It is recommended that the province consider a) requiring municipalities to complete infrastructure

master plans for all transportation (road, transit, active), water and wastewater, and park facilities for a 20-year horizon (matching the municipal official planning cycle), to be updated every five years. This would give regulatory agencies the ability to flag concerns early in the process, and as necessary begin a pre-application consultation process to the inform planning and procurement process for projects in the master plan(s). The desired outcome is to achieve safe and resilient infrastructure from the impacts of natural hazards and climate change, in a fiscally, sustainable manner.

Our concern is exemplified as follows. One of the Ontario Environmental Assessment Act legislative requirements is that a project must be buildable, which is interpreted as the project can be approved and permitted by regulatory agencies. TRCA spends considerable time during this planning stage confirming project details and ensuring that permits can be issued during detailed design. At the detailed design stage, because of the upfront planning work, the permitting timeframe is significantly shorter and more cost effective than if there was no planning stage review. However, if projects are exempt from EA review and there is no requirement for a master plan that involves regulatory agencies that must ultimately be involved in permitting the project, then there is no trigger for regulatory agencies to flag concerns early on. The regulatory agency is then put into the position of confirming that a project can meet its regulatory tests quite late in the process creating significant risk for the proponent. At the permitting stage, much time and funding are put into detailed design of a project that may or may not be buildable. This is particularly important when considering new road proposals or transit that are to be built within unopened road allowances or new road or transit infrastructure are proposed within valley corridors and that cross or run parallel to areas regulated by conservation authorities. If there is no planning stage which requires public review, there is no opportunity for preliminary comment and no opportunity to look for alternative alignments that may be more cost effective, less damaging, and ultimately result in more successful and timelier project implementation.

Examples from TRCA's experience that illustrate our concerns include the Pine Valley Drive Extension in Vaughan, and the Brampton LRT extension through Etobicoke Creek. These projects which TRCA worked closely with MECP and the proponents on were identified and reviewed at the EA (planning) stage, prior to the commencement of detailed design. TRCA's Board of Directors recommended to the municipality and to the Province that these projects not proceed as they could not meet the regulatory tests of natural hazard management related to both flooding and erosion. Neither project received provincial EA approval and design work did not proceed. Alternative routing was then and is being considered, respectively. Had these projects been first reviewed by the TRCA at the detailed design (permitting) stage, there would have been considerable municipal and provincial financial investment made in the design procurement, and TRCA staff inevitably would have recommended denial of the permit application to our Executive Committee. TRCA has worked with proponents on other projects including Teston Road in Vaughan where MECP and MNRF staff flagged significant issues at the EA stage due to Keele Valley landfill monitoring networks and natural heritage issues resulting in a revised alternative approach.

RECOMMENDATIONS

On the basis of the above comments, TRCA recommends:

- That municipal infrastructure projects exempted from an EA process, be required to be assessed through a municipal master planning, or similar process that examines the environmental impacts of alternatives, and that notification to the conservation authority be required where projects are proposed within regulated areas.

- That the exemption for municipal projects in areas subject to Provincial Plans including the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Parkway Belt West Plan, Niagara Escarpment Plan, etc. be reconsidered.
- That the new regulation includes criteria for projects prior to receiving exemption from the EA process, e.g., X type of undertaking may only be exempt from obtaining an EA, provided it has examined the impacts of alternative alignments through a master plan, or similar process. In addition, the exemption criteria should direct proponents to the applicable conservation authority for determining whether a Conservation Authorities Act permit is required and undertake pre-consultation to assure certainty and clarity for all stakeholders.
- That conservation authorities continue to be engaged, in support of the streamlining process, to identify environmental concerns and flag necessary measures to avoid and mitigate environmental losses and reduce risk of economic losses from infrastructure failures.

Please find below our detailed comments on select sections of the document, “Summary of Proposed Requirements, Proposed Municipal Project Assessment Process Regulation” for those projects proposed to be subject to the new streamlined EA regulatory process (the MPAP).

Section	Comments
Context/Overview	<p>This section notes that the Private Sector Developers Regulation “is proposed to be revoked, as the ministry is proposing to focus EA Act requirements only on infrastructure projects undertaken by a municipality.” In TRCA’s experience, locations where new development is occurring (e.g., Seaton community in Pickering), many of the new and extended arterial roads are developer driven but will be, or are existing, municipal roads. This should be clarified in the new regulation to ensure the appropriate studies take place where major arterials for instance will be constructed or expanded.</p> <p>Additionally, acknowledging that through the elimination of road projects in the Class EA process, it is foreseeable that there be increased costs and time taken through the procurement process for detailed design when studies are left to the permit stage that would be more efficiently completed at the early stages of master planning or in pre-consultation to the permit stage. TRCA has specifically and effectively worked with municipalities through the EA process to reduce costs and timelines at detailed design. It will be imperative that the master plan and pre-consultation processes be effectively employed and that agencies such as CAs with specific regulatory requirements be consulted.</p>
Proposed Project List	No comments.
Table 1: Proposed Part II.4 Project List	<p>Many of the projects listed in this table (e.g. new water distribution system, all the shoreline/in-water works projects) have the potential to have significant socio-economic and environmental impacts. For example, a new water distribution system can involve many kilometres of construction that could impact communities in several ways and often needs many levels of consultation with the community and others. A master plan</p>

Section	Comments
	should be required for all municipal infrastructure to provide direction, timing and costing for all projects, and further that a pre-consultation phase be established in the MPAP workflow to allow for advanced consultation prior to the start of the 120-day period.
<i>Ancillary activities</i>	No comments.
Table 2: EA Requirements for ancillary activities	No comments.
<i>Emergency Projects</i>	<p>This section proposes to exempt any project described in Table 1, “if the project must be undertaken to address an emergency.” Clarification as to what constitutes an emergency should, such that a project in Table 1, as well as the process for a proponent identifying an emergency should be provided.</p> <p>For example, TRCA’s Board of Directors has approved TRCA staff use of the following definitions in its review of Emergency Infrastructure Works permit applications:</p> <ul style="list-style-type: none"> • Failure: Infrastructure has failed and resulting response is immediate; works may proceed in advance of TRCA Emergency Infrastructure Works permit. • Urgent: Infrastructure failure is imminent and structural soundness is questionable; response is immediate and on-site planning is implemented. TRCA Emergency Infrastructure Works permit to be obtained prior to construction. • Critical: Infrastructure is exposed but structurally sound; repairs are planned within one year or sooner. TRCA Emergency Infrastructure Works permit to be obtained prior to construction.
Proposed Regulatory Requirements of MPAP	<p>It is recommended that a pre-consultation box be added to the beginning of the figure. This has proven to be particularly useful in the TPAP process where Metrolinx engages TRCA in advance of the Notice of Commencement being issued, allowing TRCA the ability to review procurement documents to ensure applicable studies are being commissioned, as well as time to review these studies in advance of the formal process being initiated to ensure our comments are incorporated and addressed. This has greatly improved the 120-review period review and has allowed Metrolinx to bring TRCA into the conversation with the public on controversial issues.</p> <p>TRCA would be pleased to review the Province’s draft guidance materials to ensure recommended points of consultation with CAs/Source Protection Authorities are appropriately documented.</p>
Figure 1: Key steps in the municipal infrastructure project assessment process	
1. Consultation Planning	Again, it is recommended that text related to pre-application consultation be added to the consultation planning stage. In the TPAP process, there have been significant delays to projects as well as significant changes to project approval details when this consultation has not been given the appropriate time.

Section	Comments
2. Notice of Commencement	No comments.
3. Time out Process	<p>Through the consultation process it is conceivable that a “showstopper” or very significant issue may be identified that requires more detailed consideration and conversation. This could be avoided through pre-consultation.</p> <p>A box should be added to the diagram which shows that the municipality can terminate and restart the project at any point in time prior to submitting the notice of completion.</p>
4. Documentation Requirements	<p>The text states “Proponents would be required to document issues raised by any regulatory agency and how they were addressed and provide this documentation to the relevant agencies before releasing the Environmental Project Report for review (when the Notice of Completion is given). Doing so will help avoid fundamental concerns or disagreements being raised at a late stage in the MPAP process. Providing regulatory agencies with an opportunity to comment on draft reports may help proponents meet timelines specified in the proposed Regulation.” Please note that through experience, it may not be practicable for such documents to be submitted to TRCA if not required through the procurement process. This concern can be eliminated if the pre-application review process is followed as noted throughout this submission. Should these studies not be procured at the planning stage and the EA approved, they will be required at the detailed design stage causing delays in the permitting and construction of the project, as well as increasing the overall costs.</p>
5. Notice of Completion	<p>The Statement of Completion is only proposed to be submitted to the Director of the Environmental Assessment Branch of MECP. TRCA recommends that the Statement of Completion be provided to the same distribution list as the Notice of Commencement (relevant regulatory agencies such as conservation authorities, adjacent property owners, Indigenous communities, etc.). This Notice would make regulatory agencies such as conservation authorities aware of project timing and potential approvals required to facilitate successful and timely implementation; providing a link to where it is posted online would suffice.</p>
6. Minister’s Order Requests	<p>It is concerning that as the precipice of the EA Act, the project must be buildable, and as such, regulatory agencies such as conservation authorities must consider themselves to be able to issue a permit at the detailed design stage. If TRCA concerns are not addressed by the municipality or Minister, then regulatory agencies such as TRCA may not be able to support the project or issue permits at the detailed design stage.</p>
7. Minister’s Initiative	<p>Note that it is not uncommon for TRCA to be engaged in permit review in advance of EA completion for projects the municipality deems necessary. TRCA advises the municipality that such</p>

Section	Comments
	review is completed at risk to the municipality should the project not be approved, and that the permit will not be issued until the approval process for the EA has been completed. We do not anticipate our service changing in this regard as it is largely beneficial to the municipality.
8. Statement of Completion	This section proposes that “Construction or installation of a municipal infrastructure project subject to the MPAP would not be permitted to begin until the requirements of the MPAP have been met...”. Please add a sentence to the effect of, “unless declared an emergency” by the municipality, as noted above.
9. Addendum Process	Here it is noted that, “If a proponent is of the opinion that the proposed change is not significant, the proponent will be required to document the reasoning behind this opinion and keep a record of the addendum to the Environmental Project Report with its project file/documentation. It is proposed that there would be no public notice requirements for changes that the proponent is of the opinion are not significant.” This appears to be at the sole discretion of the proponent. It is unclear what a significant change would be. Please clarify or provide criteria. How significant of a change would it have to be for an addendum to be required? Please also add “relevant regulatory agencies” to the bullet point “any feedback from Indigenous communities or stakeholders on the change”.
10. Review of municipal infrastructure projects not commenced within 10 years	No comments.
11. Termination and re-start of a project	Please add to the diagram that the municipality can terminate and restart a project at any time prior to submission of the notice of completion.
12. Project-specific monitoring	No comments.
Additional changes required to ensure a smooth transition to the new process	Inclusion of the master plan as a requirement as well as pre-consultation in advance of permitting for projects exempt from the Class EA is recommended.
Glossary	No comments.

We trust the above is clear and helpful for improving the proposed regulations and ensuring timely, cost-effective, and comprehensive review and approvals of public infrastructure works both inside and outside the EA process. CAs’ environmental review of the planning and implementation of municipal infrastructure projects is vital for reducing the risks of natural hazards, protecting public health and safety as well as resilience of our natural environment from the impacts of rapid urbanization and the compounding effects of climate change.

Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned at 437.880.2282 or at laurie.nelson@trca.ca.

Sincerely,

<Original signed by>

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