

May 24, 2019

BY E-MAIL ONLY (eamodernization.mecp@ontario.ca)

Sharifa Wyndham-Nguyen
Client Services and Permissions Branch
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Dear Sharifa Wyndham-Nguyen:

Re: Modernizing Ontario's Environmental Assessment Program: Environmental Assessment Act (ERO #013-5102)
Discussion paper: Modernizing Ontario's Environmental Assessment Program (ERO #013-5101)
Schedule 6 of Bill 108, "More Homes, More Choices Act"

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' proposed changes to the *Environmental Assessment Act, 2010* (the EA Act) and the accompanying Discussion Paper, "Modernizing Ontario's Environmental Assessment Program".

The 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 EA Act. TRCA conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement (PPS);
- A regulatory authority under section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A resource management agency; and
- A landowner, being second only to the Province in area of land ownership in the GTA.

TRCA understands the government's review of the EA Act is intended to modernize Ontario's EA program and to ensure strong environmental protections. At the same time, the review is meant to address duplication and delay through streamlining processes, providing clarity to applicants, and improving service standards, while better recognizing other planning processes that have evolved since the Act was established nearly 45 years ago.

The two separate postings for this review are requesting public input on proposed changes to the EA Act and on a Discussion Paper that raises the above noted process issues. Further to these postings, on May 2, 2019, the government introduced Bill 108, the *More Homes, More Choice Act*, as part of the Province's Housing Supply Action Plan of the same name. Bill 108 is an Act to amend several

provincial statutes, including the EA Act. Schedule 6 of Bill 108 contains proposed legislative amendments to the EA Act.

General Comments

TRCA is an active jurisdiction with major urban growth, redevelopment, and intensification with substantial ongoing infrastructure projects required to service this growth. Given that TRCA is a commenting body under both the planning and EA processes and an advisor to our municipal partners on their Master Plans, TRCA reviews several types of public infrastructure proposals from both public and private proponents. This is important for consideration of the cumulative impacts that come from multiple infrastructure projects being proposed in TRCA watersheds combined with numerous private development proposals under the *Planning Act*.

In TRCA's highly urbanized and intensifying jurisdiction, aging infrastructure in need of renewal is prevalent. Where exposed, at-risk infrastructure is proposed for replacement, repair, or expansion, TRCA works with public and private proponents to improve conditions. This is often accomplished through adapting and retrofitting infrastructure and remediating existing natural hazards that reduces the risk to public safety and enhances the long-term functioning of infrastructure.

Through service level agreements with municipalities, and other public infrastructure providers (e.g., Metrolinx, Enbridge Gas Distribution), TRCA provides technical advice during the completion of various EAs, as well as at later stages of detailed design and construction under our regulatory role. Where a Crown agency is exempt from the regulatory requirements of the CA Act, TRCA has service agreements in place with select agencies to offer review and comment on a voluntary basis; uptake on voluntary review highlights the need for provincial infrastructure to be protected from natural hazards, including flooding and erosion.

TRCA's "The Living City Policies" (2014) directs staff participating in the review of applications under the EA Act and the *Planning Act*, to ensure that the applicant and municipal planning authority are aware of TRCA permitting requirements under our CA Act regulation, where applicable; and further, our staff assist in the coordination of these applications to avoid ambiguity, conflict and unnecessary delay or duplication in the process.

As a major landowner and close working partner with our member municipalities, TRCA is also a proponent or co-proponent of several remediation and infrastructure-related projects, in which the processes set out in the Conservation Ontario Class Environmental Assessment for Remedial Flood and Erosion Control Projects document (CO Class EA) and/or the Municipal Class EA document are followed. As a landowner, the CO Class EA allows TRCA to undertake remedial flood and erosion control projects without applying for formal approval under the EA Act, on condition that the planning and design process in the document is followed, and that all necessary federal and provincial approvals are obtained. Examples of current TRCA projects under the CO Class EA are erosion protection works along the Scarborough Bluffs and other sections of the Lake Ontario shoreline, as well as joint CA-municipal Class EA undertakings for flood remediation to facilitate urban renewal, e.g. Downtown Brampton flood protection EA.

TRCA understands the proposed amendments to the EA Act involve the following:

- Focus on higher-risk projects by exempting low-risk activities (e.g. snow plowing and de-icing operations, constructing roadside parks and adding bike lanes) from class EAs;
- Ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project (i.e. "bump-up"), specifically by:

- Clearly defining on which matters bump-ups can be requested, including matters related to Aboriginal or treaty rights and other matters of provincial importance as prescribed;
- Authorizing the creation of a regulation that would prescribe limits on when the Minister must make decisions on requests, and deadlines for requesting a bump-up to provide transparency for all involved in the process;
- Ensuring that Ontarians are given priority over other interests by limiting bump-up requests to only those that live in Ontario; and
- Clarifying the Minister's authority to reconsider an approval of a project and ask for additional information on an individual environmental assessment, if deemed appropriate.

The proposed amendments to enhance existing Class EAs by enabling exemptions for low-risk activities aligns well with the objectives of current TRCA-CO discussions and plans to update the CO Class EA. The discussions are contemplating a major amendment to the CO document for developing classes of undertakings and establishing exemptions based on screening criteria in the CO Class EA.

With TRCA's diverse roles and experience in mind, we offer the following comments to the proposed changes to the Act. Our detailed comments below are organized by the Discussion Paper questions and then the government's summary of the amendments to the EA Act under Bill 108.

Discussion Paper Questions	TRCA Comments
p. 16 - What kind of projects should require environmental assessment in Ontario? Are there some types of projects where a streamlined assessment process is appropriate?	TRCA supports streamlining low risk undertakings subject to meeting criteria vetted through a formal amendment process to Class EA documents. For example, TRCA and Conservation Ontario have begun discussions to propose amendments to the CO Class EA that would include additional screening criteria and project categories.
p. 18 - What could a one-project-one-review process look like for projects in Ontario subject to both provincial and municipal requirements?	TRCA is supportive of enhanced coordination between the federal and provincial EA processes where both may apply to an undertaking in order to avoid duplication, conflict or delay. During the EA review it would be helpful to EA proponents if reviewing provincial and municipal agencies could stipulate at the outset of their reviews permits and approvals required and provide a comprehensive list of additional information needed to facilitate approvals.

<p>p. 20 - Can you identify any other examples of provincial processes that could be better integrated?</p> <p>What other actions can the ministry take to eliminate duplicative or redundant processes or approvals?</p>	<p>For partnership projects which may involve multiple agencies the completion of more than one EA for the same undertaking may be required, e.g. the proponent completes one Class EA and the landowner a separate EA. Only one EA per project should be required contingent on meeting the requirements of the EA process.</p> <p>TRCA is supportive of enhanced coordination between <i>Planning Act</i> and EA review and approval processes where both may apply to an undertaking in order to avoid duplication, conflict or delay. It is important to note that some coordination and exemption already exists, i.e., a new stormwater management pond servicing a proposed subdivision would be reviewed under the <i>Planning Act</i> application process and not require an EA; further, a conservation authority permit for detailed design of the SWM infrastructure would likely be expedited given that the CA would have been in its advisory capacity to the municipality from the start of the <i>Planning Act</i> review. TRCA notes that some duplication would still exist if a Certificate of Approval (CofA) were required under s. 53 of the <i>Ontario Water Resources Act</i>.</p> <p>Also of note is that provincial agencies are not always participants in the EA process, meaning that when projects are reviewed that require provincial permits or approvals, ministerial comments are deferred to detailed design. This can lead to inefficiencies in project review if provincial concerns are delayed, resulting in project changes that should have been earlier raised and addressed during the EA stage. This could be avoided if the Province were to play a role during the initial commenting stages of the EA process, or a one-window approach to environmental reviews was (e.g., <i>Endangered Species Act</i>, CofAs, etc.) delegated to CAs where CAs exist and have capacity.</p> <p>TRCA's approach to coordination of its advisory roles (planning and EAs) and regulatory role (CA Act permits), through upfront collaboration and clarity to support certainty of requirements early in the application review process, is a good model for achieving streamlined approvals. For example, TRCA has augmented the municipal Class EA recommended contact points to include recommended contact points with TRCA, including the submission and reviews of draft environmental assessment documents and background technical reports.</p>
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<p>p. 24 - What could a coordinated one-window approach look like for Ontario projects?</p> <p>Can you identify any areas in the environmental assessment process that could be better streamlined with the municipal planning process or with other provincial processes?</p> <p>What advantages and disadvantages do you see with the ministry's environmental assessment process being the one-window for other approval/permit processes?</p>	<p>TRCA is supportive of a one window approach where multiple approval processes apply. As a reviewer, TRCA routinely collaborates with other approval agencies in its roles as a service provider, public commenting body and regulator. As a landowner and proponent of CO Class EAs and as a co-proponent of Municipal Class EAs, TRCA works regularly with its municipal partners to reduce duplication and delay. At the same time, we recognize the importance of a robust assessment of environmental, social and economic considerations and public consultation processes, appropriately scoped for project scale and location.</p>
<p>p. 25 - What areas of the environmental assessment program could benefit from clearer guidance from the ministry?</p> <p>What other actions can we take to reduce delays and provide certainty on timelines for environmental assessment?</p>	<p>TRCA has a "recommended consultation points" flow chart that is an adaptation of the Municipal Engineers' Association work. We use this to receive and review draft information, including technical studies and reports, 30% detailed design of preferred alternatives, and the draft Environmental Study Report (ESR). This approach facilitates an expedited "sign off" upon the final ESR being filed for public review. TRCA will initiate the review of detailed design related to the EA prior to approval of the EA if required/requested by the proponent, recognizing that the TRCA permit cannot be approved in advance of the EA approval. Through this process, TRCA has found that the typical EA review is 1 to 2 years, and that the permit review and issuance is less than 6 months (where the proponent provides complete submissions and does not delay turn-around times).</p> <p>In TRCA's experience, the Transit Project Assessment Process (TPAP) works well for transit projects and should be expanded for all Class EA level work. By having the technical studies completed and reviewed in advance of public consultation, there is opportunity to address technical concerns and ensure accuracy. The expedited 120-day public consultation process with improved timelines for ministerial review and approval is also of public benefit and results in more timely reviews and approvals.</p>

p. 26 - What are the advantages and disadvantages of using a sector-based terms of reference?	TRCA would support the development of sector-based terms of reference and would be pleased to work with the government and other stakeholders to contribute to their development where conservation authority interests are affected.
p. 27 - Are there other ways we could improve our review timelines?	In TRCA's experience working with provincial and municipal public infrastructure providers, sector-based service level agreements that standardize review roles, fees and timelines, and stakeholder workshops to educate proponents about agency requirements, are exceedingly helpful for reviewers and proponents. A number of neighbouring CAs have adopted these approaches and TRCA staff would be pleased to meet with the Province to outline how these arrangements have worked to improve review and approval processes.
<p>p. 29 - How would you like to be consulted on environmental assessment projects?</p> <p>Would an online environmental assessment registry be helpful for you in submitting an environmental assessment or accessing environmental assessment information?</p> <p>What type(s) of environmental assessment project information would you like to access online? Are there any existing online tools that would be appropriate to use for environmental assessment information?</p>	<p>A centralized online tool for submission of EA notices and other documentation that directs proponents to appropriate provincial contacts would be beneficial.</p> <p>As a proponent, TRCA believes that an online tool that shows spatial information and key project details for all active/initiated EAs linking to project specific webpages for more detail would be helpful. Information could include project name, proponent, location of project area in a map, category of EA, and links to other online resources. This would allow for more integrated planning between projects.</p> <p>All key information in a web portal including public notices, the ESR document, a tool that allows for submission of public comments and posting of responses, and up-to-date status of the EA, including status of current review by agencies would also be useful.</p> <p>Online tools where public comments and proponent responses for projects are posted may also be helpful to ensure adequate consultation and allow transparency in decision-making.</p> <p>As a review agency, it would also be of benefit for TRCA to be able to access appropriate EA documentation on-line.</p>

Environmental Assessment Act Summary of Significant Amendments	TRCA Comments
<p>The new section 15.3 provides that a class environmental assessment may exempt specified categories of undertakings within the class from the Act. It would also exempt certain undertakings that are currently subject to approved class environmental assessments.</p> <p>The new section 15.4 provides a new process governing amendment to approved class environmental assessments. This includes enabling the Minister of the Environment, Conservation and Parks to exempt other undertakings from the Act by amending class environmental assessments and providing rules governing those amendments, including requirements for public consultation.</p>	<p>TRCA supports these amendments to provide screening criteria in Class EA documents that if met would exempt an undertaking from a Class EA review process (new subsections 15.3 (1) and (2)). TRCA is currently conducting a review of the CO Class EA document that aligns well with the intent of these amendments to the Act. Subject to Ministerial approval, the CO Class EA document may be amended to include classes of undertakings and to establish exemptions based on screening criteria for low-risk undertakings.</p> <p>The next sub-section of the Act that the government is proposing, however, requires clarification. New sub-section 15.3 (3) lists a number of Class EA documents that would fall under the screening criteria and exemption scenarios described in new 15.3 (1) and (2). The list does not include the CO Class EA document. TRCA requests clarification that the CO Class EA document would still be eligible for amendments for exemption screening criteria, despite it not being in the list of Class EAs in sub-section 15.3 (3).</p> <p>With respect to new sub-section 15.4, TRCA acknowledges that any amendments to the CO Class EA document and any associated public consultation requirements are subject to Minister's approval.</p> <p>It is important to note that undertakings determined to be exempt from the Class EA process subject to new screening criteria within Class EA documents, and as permitted through the amendments to the EA Act, may still be subject to regulations under section 28 of the <i>Conservation Authorities Act</i>. For example, projects meeting the definition of development under the CA Act being undertaken within TRCA's jurisdiction, would still require permission under Ontario Regulation 166/06. However, to ensure that low-risk projects are not unduly delayed, TRCA has expedited review processes in place such as "Routine Infrastructure Works", "Emergency Works" and staff delegated permits or clearances.</p>

<p>Section 6 of the Schedule adds several new subsections to section 16 of the Act.</p> <p>These amendments would specify when the Minister could issue orders under section 16.</p> <p>An order under section 16 could, among other matters, require a proponent of an undertaking subject to a class environmental assessment process to carry out further study. The amendments would limit the Minister's ability to issue such orders to only prevent, mitigate or remedy adverse impacts on constitutionally protected aboriginal or treaty rights or any other matters as may be prescribed.</p>	<p>TRCA has no concerns with the amendments regarding the Part II order process ("bump up" requests to an Individual EA (IEA) process). We note that subsection 16 (4.1) (b) states that the Minister may issue an order as it relates a prescribed matter of provincial importance. When developing the regulation to identify matters of provincial importance, TRCA would argue that these should align with those matters of provincial interest under the <i>Planning Act</i> as described in the Provincial Policy Statement, i.e., natural hazards, natural heritage and water resources, cultural heritage, etc. For example, TRCA works with municipalities in their Master Planning efforts to ensure appropriate schedules are determined based on the perceived level of risk to the natural environment, flood plains or shorelines, as well as public concern, and advocate through this process whether an IEA should be completed. By designating the IEA process at the start of the EA rather than waiting for a potential Part II Order at the end of the EA process, the municipality minimizes risk and ensures a streamlined approval process at the outset. Municipalities have been receptive to this approach.</p>
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To summarize:

- **TRCA is supportive of streamlining opportunities for the EA process and has the expertise and experience to partner with stakeholders to assist the government and contribute to realizing efficiencies, especially where multiple approval processes apply.**
- **As a reviewer, TRCA routinely collaborates with other approval agencies in its roles as a service provider, public commenting body and regulator. As a landowner and proponent of CO Class EAs and as a co-proponent of Municipal Class EAs, TRCA works regularly with its municipal partners to reduce duplication and delay.**
- **The principle of ensuring of a robust assessment of environmental, social and economic considerations and public consultation processes, appropriately scoped for project scale and location should be maintained with any proposed amendments or process changes.**

Thank you once again for the opportunity to provide comments on the amendments to the EA Act and the associated Discussion Paper. TRCA would be pleased to discuss these and other opportunities for enhancing certainty and efficiencies in the infrastructure review process while maintaining the objectives of the EA process. We understand that the Ministry will be consulting on regulations that are developed as a result of changes to the EA Act, and will be hosting webinars for Indigenous

communities and organizations, as well as stakeholder groups. Kindly forward details of any of these engagement sessions when they are known.

Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,



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Chief Executive Officer

BY E-MAIL

cc:

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