

Attachment 3: TRCA Submission on ERO#019-2814

February 5, 2021

BY E-MAIL ONLY (sarah.peckford@ontario.ca)

Sarah Peckford
Ministry of Agricultural, Food and Rural Affairs
Food Safety and Environmental Policy Branch
1 Stone Road West
Ontario Government Building, 2nd floor, Southwest
Guelph, ON
N1G 4Y2

Dear Ms. Peckford:

Re: Drainage Act Regulatory Proposal (ERO #019-2814)

Thank you for the opportunity to comment on the Ministry of Agricultural, Food and Rural Affairs' (OMAFRA) Environmental Registry (ERO) posting on the Drainage Act Regulatory Proposal.

The Toronto and Region Conservation Authority (TRCA) conducts itself in accordance with the objects, powers, roles, and responsibilities set out for conservation authorities (CAs) under the *Conservation Authorities Act* (CA Act) and the MNRF Procedural Manual chapter on CA policies and procedures as:

- 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;
- A regulatory authority under section 28 of the CA Act;
- A service provider to municipal partners and other public agencies;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

In these roles, TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. As stewards of the land, the agricultural community is a key partner in achieving the long-term health of our watersheds.

Proposal

We understand that a new Minister's Regulation is proposed that would implement the amendments to the *Drainage Act* under the *COVID-19 Economic Recovery Act, 2020*, in order to:

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- Provide a simplified process for minor improvements to municipal drains;
- Simplify the process for approving updates to engineer's reports for changes to the design made during construction; and
- Adopt the "Drainage Act and Conservation Authorities Act Protocol" (DART Protocol) by reference.

Please note that TRCA previously commented on related ERO posting # 019-1197 in our letter to you, dated February 19, 2020; we note that in the ERO Decision Notice for this proposal it states that OMAFRA will be considering an expansion of the DART Protocol to continue to streamline approvals with the CA Act while maintaining environmental protections. TRCA looks forward to being notified of any future initiatives and consultation in this regard, in coordination with Conservation Ontario, and other CAs.

General Comments

TRCA continues to support the government's initiative to streamline review processes to facilitate drainage critical for agricultural productivity and the production of food. Sustainable agricultural practices are associated with numerous ecosystem goods and services, such as food, fibre and bioenergy production, maintenance of water quality and quantity, soil conservation, soil structure and fertility maintenance, nutrient recycling, pollination, pest control, biodiversity maintenance and carbon sequestration.

TRCA appreciates the government's acknowledgement that the new regulation may better facilitate projects that provide flood protection with environmental co-benefits such as reduced erosion and nutrient loss, including those that incorporate green infrastructure principles by using the "DART" protocol to apply for CA permits. Implementation of the DART protocol has improved regulatory certainty, reduced burden, and streamlined permitting requirements under section 28 of the CA Act for routine maintenance and repair of municipal drains. Through this new regulation, we hope that the DART protocol, and any refinements to it, continues to benefit landowners that depend on municipal drains and municipalities liable for the drainage work, while meeting CA permitting requirements.

Additionally, TRCA is pleased to see that the proposed streamlining measures for municipal drain improvements projects will not result in a reduction or removal of the existing environmental protections and CA permitting requirements, regardless of whether projects are minor or major.

TRCA Responses to Questions in the Drainage Act Regulatory Discussion Paper (1,4,5,6)

Key points are in **bolded text**.

1) Do you agree with the proposed minor improvement criteria?

TRCA generally supports the proposed criteria as it will help simplify the process to expedite requests for minor improvements to municipal drains. However, for projects that meet these criteria and can follow one of the two streamlined processes, the Discussion Paper (p.3) indicates that this could include a municipality sending notice to the CA (including for updates to engineer's reports). We note that the Q&A provided by OMAFRA staff following their January 2021 Drainage Act Webinar

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acknowledged that CAs need to be notified early on because, “there are instances where comments aren’t incorporated appropriately,” but maintained that “regulatory agencies are notified as required” and, “there should be no issues because they have been involved throughout the process.” In TRCA’s experience, this is not always the case. Timely notification and pre-consultation enable CA permitting requirements to be identified early and facilitate an efficient review process by ensuring submissions of complete applications. This is of particular importance given that, under the proposed new regulation, on-site meetings and pre-consultation with approval agencies would no longer be required, the timeline for an engineer’s report to be completed would be 90 days (formerly 1 year), and the proposed eligibility criteria for streamlining projects makes no explicit mention of the potential need for conditions of environmental approvals.

Therefore, TRCA recommends that greater emphasis be placed on the need to consult with CAs upfront in the project review process and that consideration be given to the development of guidance materials that would provide a more fulsome disclosure of information and requirements where CA permits may be required.

4) Are there other opportunities to further reduce burden for minor improvements?

The Discussion Paper indicates that,

“pre-approved designs for straightforward minor improvement projects would be developed through a collaborative process for inclusion in a future protocol that could be incorporated by reference. It would take time for the ministry to develop a protocol for the second process. In the meantime, the first process would be available.”

To assist applicants, guidance should be provided that clearly articulates what is required in engineer’s reports required to support a minor improvement project. This additional guidance would enhance certainty for all stakeholders and contribute to efficient and effective review processes.

5) Are the proposed criteria for updating an engineer’s report appropriate?

TRCA is supportive of a simplified process to update the engineer’s report to account for any changes made during construction. This could be a practical measure and an improvement in the process.

TRCA suggests that any design changes from the permitted/approved design should be in conformance with any conditions of the initially permitted design.

In addition, during the OMAFRA Webinar, it was conveyed that **engineer’s reports would include how environmental approvals that affect the physical design and operation of the drain are to be addressed. This requirement was not clear in the materials provided in the ERO and therefore we recommend providing clear direction through the proposed regulation.**

6) What new protocols would you prioritize?

The Discussion Paper indicates that the regulation would enable an expanded DART protocol related to pre-approved engineered designs for minor improvements. Please consider prioritizing green infrastructure for any pre-approved engineering designs for minor improvements to incentivize

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landowners to employ best management practices. **To ensure they are consistent with CA regulatory requirements and to leverage CA expertise in this regard, CAs should be consulted on these pre-approved designs.** To this end, we note that OMAFRA has committed to working with other ministries, regulatory agencies, CAs, municipalities, farming and indigenous organizations to develop new protocols. As above, we look forward to collaborating on any revisions and/or expansions of the DART protocol with OMAFRA and other stakeholders to support compliance with *Drainage Act* and CA Act requirements.

Thank you once again for the opportunity to provide comments on the Drainage Act Discussion Paper. 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 416.661.6600, Ext. 5281 or at laurie.nelson@trca.ca.

Sincerely,

' Original signed by -

Laurie Nelson, MCIP, RPP
Director, Policy Planning

BY E-MAIL

CC:

TRCA: John MacKenzie, Chief Executive Officer
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