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Subject:	**Niagara Region comments – Modernizing Ontario's Environmental Assessment Program – Discussion Paper and Environmental Assessment Act amendments (ERO #013-5101 and #013-5102)**
Date:	**May 24, 2019**
To:	**Sharifa Wyndham-Nguyen**, Client Services and Permissions Branch
From:	**Catherine Habermebl**, Acting Commissioner Public Works, Niagara Region

Thank you for the opportunity to comment on the proposed changes to the _Environmental Assessment Act._ Please accept this submission in response to Environmental Registry of Ontario (ERO) postings on matters regarding the "Discussion Paper: Modernizing Ontario's Environmental Assessment Program" (ERO #013-5101) and "Modernizing Ontario's Environmental Assessment Program - Environmental Assessment Act" (ERO #013-5102).

Niagara Region's Public Works and Planning and Development Services staff have undertaken a joint review of proposed materials contained in these postings.

This cover letter is accompanied by three (3) attachments. Each attachment contains comments offered by respective review teams as listed below:

Attachment 1 – response to ERO #013-5101

Public Works - Transportation Services Division comments towards the Ministry of Environment, Conservation and Parks (MECP) Discussion Paper: Modernizing Ontario's Environmental Assessment Program.

Attachment 2 – response to ERO #013-5101

Public Works – Waste Management Services and Water Wastewater Services comments towards MECP's Discussion Paper: Modernizing Ontario's Environmental Assessment Program.

Attachment 3 – response to ERO #013-5102
Planning and Development Services comments towards MECP's Modernizing Ontario's Environmental Assessment Program – Environmental Assessment Act.

In general, regional staff is supportive of the MECP's efforts to modernize the Ontario Environmental Assessment Program and sees significant value in streamlining the process to reduce burdens associated to time, effort, and cost. The creation of project lists and the relaxation of capital cost methodology for determining project schedules

should simplify the process to plan for and deliver capital improvement projects; cost is not always a precursor to the magnitude of the impacts present.

Further, a defined Terms of Reference for major transportation projects should aid coordination efforts amongst the various tiers of government while undertaking of large-scale cross-jurisdictional capital work projects. Regional staff agree that a clearly defined Terms of Reference is an effective tool that can be utilized to ensure that all necessary studies are completed and required duties to consult are fulfilled.

Additional comments for your consideration are provided in the attachments. Regional staff appreciate the opportunity to provide these comments. Please contact me if you have any questions or require additional information.

Respectfully submitted and signed,

Catherine Habermebl
Acting Commissioner, Public Works
Niagara Region

Attachments:

1. Public Works – Transportation Services Division comments
   (ERO #013-5101)

2. Public Works – Waste Management and Water Wastewater Services comments
   (ERO #013-5101)

3. Planning and Development Services comments
   (ERO #013-5102)

ATTACHMENT 1 - ERO #013-5101
Discussion Paper: Modernizing Ontario's
Environmental Assessment Program
Prepared by: Transportation Services Division, Public Works

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Introduction

The Ministry of the Environment, Conservation and Parks' (MECP) *Discussion Paper* opens with the overall context that Environmental Assessment (EA) process in Ontario has not fundamentally changed in almost 50 years; instead, it has only been the subject of infrequent updates. Overall, it is generally accepted there is an identifiable need to revisit the EA process to ensure it aligns with contemporary thinking and more importantly includes future-proofing for years to come.

Noted Takeaways

While the Municipal Class EA process provides a tried-and-tested framework, some of its key principles need revision and below are some of the noted takeaway items through reviewing the *Discussion Paper*.

Capital Cost Threshold and Schedule Application

The application of a capital cost threshold to determine the appropriate level of assessment for road projects; a threshold that neither reflects the scale of potential environmental effects nor has been updated consistently to account for multiple fluctuations contributing to those costs. The periodic amendments to the Municipal Class EA document have sought to tweak the process, but have not significantly addressed certain key structural issues such as the ways in which Schedules are applied to different undertakings.

Niagara Region therefore supports a movement to revisit the Provincial EA program; however, any changes should be deeply rooted in the desire to facilitate a more nuanced evaluation of potential environmental effects in an ever-changing context, improve engagement among all parties involved, and ultimately lead to better decisions. Cost should not be a qualifier for determining the level of engagement or analyses required.

Process Improvement Beneficiaries and Leading Statements

The rationale immediately presented in the *Discussion Paper* highlights a perception that the process is "discouraging job-creators from coming to Ontario to do business". This statement at once focuses on a specific beneficiary, while the *Discussion Paper* does not seem to provide concrete evidence to support this. Further statements used in the introduction to the *Discussion Paper* such as "reduce red tape and burden" and "find efficiencies" are also terms likely to gain a heightened level of attention among EA practitioners.

Niagara Region understands the perception stated within the *Discussion Paper* but does not believe that this should be the sole beneficiary stated. The EA process has encumbered Regional and Municipal staff through comprehensive and time-consuming processes to gain approval for needed capital projects and ultimately costing the public/tax-payers more. Niagara Region supports reducing "red tape" and "finding efficiencies" but state that it should be to support more than just job-creators; it should benefit the public through efficient delivery of capital projects currently delivered under the EA process.

Early Actions and Low-Risk Projects

The *Discussion Paper* presents some "early actions" to address elements perceived to be "in critical need of attention". One of these is the required level of assessment attributed to "low-

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Discussion Paper: Modernizing Ontario's
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risk" projects, which are specifically defined by their likelihood to create negative environmental effects.

The paper proposes to immediately exempt low-risk projects from requiring an EA, citing the examples of routine activities such as snow-plowing and de-icing operations. These particular examples and similar routine or emergency maintenance activities are specifically identified in the Municipal Class EA document as Schedule A (or at best A+) undertakings, meaning they are likely to have minimal adverse environmental effects and may proceed to implementation without following the EA process in its entirety.

Niagara Region supports the relaxation of requirements for low-risk projects and the introduction of low-risk project definition.

The Region as well supports the development of a project list to determine which projects require the rigors of a comprehensive EA. The concept of increasing the rigors for private developments and the need to undertake an EA is also supported given the potential array of impacts in which private developments may have.

Part II Orders/Bump-Up Requests

An early identified is a modernization of the Part II Order request process, namely the mechanism by which formal objections are made. There is evidence provided in the *Discussion Paper* that the average time for a decision has been 266 days. This timeframe leads to long delays created by requests either unrelated to the project or unsubstantiated in many cases. The *Discussion Paper* suggests a move towards prioritizing concerns related to "matters of provincial importance or a constitutionally protected Aboriginal or treaty right", which is in keeping with the threshold used by the streamlined provincial Transit Project Assessment Process. It is also suggested that very low-risk activities be exempted from Part II Order requests, with a need to provide more clarity on defining which matters are eligible and confirming deadlines for requests and decisions.

It is Niagara Region's stance that these objectives are generally supported, but it remains to be seen how this is applied in practice and the extent to which it appropriately limits public participation by exempting certain projects. It remains vital that adequate opportunities are provided to allow those truly affected by projects to provide meaningful input and know that their feedback will be used to inform decision-making.

One notable action suggested in the Province's discussion paper is that Ontarians are given priority by limiting Part II Order requests to only those that live in Ontario. This seems like a very complex issue to tackle and one that could prove extremely difficult to enforce – it is also unclear whether this is really a priority issue that requires direct intervention or this action may result in a case whereby the expert entity does not participate in the process by providing comments.

Modernization Objectives

Overall Vision: The "Vision for a Modern Environmental Assessment Program" is focused on four key objectives laid out in the following subsections:

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Objective A) Ensure better alignment between the level of assessment and the level of environmental risk associated with a project.

Regarding the first objective, the key action suggested is to move to a "project list" similar to other jurisdictions and indeed the framework used for federal EA. The intent here is to scale the level of assessment for a project to the likelihood and nature of its potential environmental effects.

From Niagara Region's perspective, this move makes sense; however, the detail will be in the types of projects that make the list. One of the concerns broadly levelled at changes under the Canadian Environmental Assessment Act (CEAA 2012) was the significant reduction in eligible projects. Consideration should be given to categorizing the projects as follows:

Subject to EA:

- Construction of a new roadway within a new right-of-way.
- Construction of an existing roadway with a new alignment within a new right-of-way.
- Construction of an existing roadway resulting in a change of classification/designation.
- Construction of a new or existing roadway requiring improvements to a stormwater drainage channel or outlet.
- A tiered approach could be applied to the projects subject to EA starting from screening to a full EA depending on the level of risk identified during the screening.

Not Subject to EA:

- Rehabilitation of an existing roadway.
- Reconstruction of an existing roadway within an existing right-of-way.
- Reconstruction of an existing roadway with a new alignment within an existing right-of-way.
- Intersection improvements.
- Construction of a new or existing roadway not requiring improvements to a stormwater drainage channel or outlet.

Objective B) Eliminate duplication between environmental assessments and other planning and approvals processes.

On the second objective, the desire is to reduce duplication between the Federal and Provincial EA processes to create a "one-project-one-review" framework. This also has merit providing that the various legislative requirements can be aligned under one process, as it reduces the need to consult and produce documentation on the same project twice. In this case, much remains to be seen on the outcome of Bill C-69 to implement a new Federal Impact Assessment Act; however, it is hoped that federal and provincial agencies can effectively collaborate to develop a framework that respects the interests of all affected parties. An interesting point is also raised that duplication with other provincial processes should be phased out, with reference to certain Planning Act requirements among others.

Niagara Region supports the concept of developing a one-project-one-review process for provincial and federal requirements and recommends further that the municipal and provincial requirements for EA processes be combined to extend the one-project-one-review concept.

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Objective C) Find efficiencies in the environmental assessment process and related planning, and approvals processes to shorten timelines from start to finish.

Regarding the third objective, the suggested action is to create a "one window" system that combines planning and permitting requirements to reduce the overall timeframes to get to implementation. This presents somewhat of a logistical challenge based on the level of detail typically associated with the planning and permitting phases. One of the key purposes of an EA is essentially to gain consent at the strategic planning level, based on a preliminary understanding of the project and its anticipated environmental effects, mitigation and monitoring requirements. This level of detail is often insufficient to obtain permits and approvals, because there are certain design details sought by review agencies that necessarily require further refinement during detail design. If the required level of design to obtain those permits and approvals was rolled into the EA process, it could serve to make the completion of EA studies more complex and time-consuming, with a potential delay on strategic planning decisions. That being said, if sufficient information is reasonably available at the EA stage for certain permits or approvals, then increased opportunities for discussing and obtaining those during the process should be explored.

One action Niagara Region supports is the proposal to create clearer documentation on provincial requirements for EA documentation and consultation. Any actions that help to clarify expectations and create a better EA process for proponent and public alike can only be a positive step. The idea of creating sector-relevant Terms of Reference for certain types of EAs with commonalities is an interesting one, providing that it includes sufficient flexibility to account for the specific context of each project within those frameworks. Some level of standardization across similar studies may be worthwhile for Class EA studies for example, where the self-assessment nature of the study can lead to differing interpretations across Ontario in how requirements are met beyond minimum specified requirements.

Furthermore, the alignment of the site plan application process and the EA process should be better defined. Niagara Region recommends to update and streamline the planning act and similar acts that may be involved in the EA process or to develop a policy that allows the EA process to override the site plan application process given that a site plan application may sit dormant for many years without expiration and could contradict the findings of an EA which was undertaken afterwards.

The Region also supports an update to the requirements of various government agencies that are involved in the EA process including Ministry of Natural Resources and Forestry, Ministry of Tourism, Culture and Sport for better understanding and effective and early engagement to support cost and time savings.

Objective D) Go digital by permitting online submissions.

Lastly, the fourth objective to "go digital" by creating a centralized registry is perhaps secondary to more fundamental principles, but nonetheless potentially welcome. In keeping with wider societal trends, there is an increasing need (and some would say environmental obligation) to reconsider providing hard copies of EA studies in the context of widespread internet access, established use of project websites and other forms of social media. Digital transmission of project materials potentially allows for a wider audience to be reached and is already well-utilized by proponents and even expected by the public. Notwithstanding, there is a need to consider

inclusive accessibility to materials and respect that certain groups or communities may prefer (or even require) different forms of consumption. While there may be a shift towards full digitization, it therefore remains to be seen if physical materials may be completely phased out.

In addition, Niagara Region supports the move to digital submissions for consultation on EA projects as well. A general stakeholder registry in which the Ministry holds for all consultation and not just the indigenous peoples could streamline this process. This registry could be the responsibility of the stakeholders to provide updated contact information as roles change at the various stakeholders. This should ensure that all stakeholders have the onus put on them to be consulted with and it will also greatly reduce the efforts of those complete EAs to compile and confirm that each stakeholder list for each assignment is accurate and complete.

ATTACHMENT 2 - ERO #013-5101
Discussion Paper: Modernizing Ontario's Environmental Assessment Program
Prepared by: Waste Management Services & Water Wastewater Services, Public Works

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Reference in Discussion Paper	Niagara's comments
Ensure better alignment between the level of assessment and the level of environmental risk associated with a project.	
In order to focus on higher risk activities, the province is proposing to modernize the Environmental Assessment (EA) program to immediately exempt these low risk projects. (p. 10)	Niagara Region requests MECP to clarify who has the authority to determine which projects are considered 'low risk'.
Ontario is considering moving to a project list, identifying which projects are subject to an EA. (p.15)	Niagara Region supports moving to a project list model as a means of improving clarity and predictability in the EA process. The process of developing the project list must be transparent and include clear criteria. Stakeholder input should be sought early and throughout the development of this list. It is recommended to include a requirement for periodic reviews of the list to ensure it is working effectively.
What kind of projects should require EA in Ontario? (p.16)	An EA (EA) should be required for all projects that pose known or potentially significant environmental risks or where there is uncertainty about potential impacts. Niagara Region recommends the Ministry of Environment, Conservation, and Parks (MECP) develop a screening process or ranking/scoring matrix to determine sensitivities and potential threats/AOCs to determine whether an EA is necessary/required. With respect to waste management projects, there should be differentiation between stabilized landfills and the traditional landfilling sites, considering the more benign environmental impacts associated with stabilized waste. Waste management projects with demonstrated controlled, mitigated or low risk environmental impacts should be considered for exemption from individual EAs.

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Reference in Discussion Paper	Niagara's comments
Are there some types of projects where a streamlined assessment process is appropriate?	The streamlined assessment process can be appropriate for routine projects with known, predictable and manageable impacts. Implementing appropriate thresholds for effects is critical in determining the types of projects that require individual or streamlined assessment to ensure that the process is proportional to a project's impacts.
Eliminate duplication between EAs and other planning and approvals processes.	
Ontario will work with the federal government to ensure one-project, one-review, in order to eliminate duplication and provide applicants with more predictable and consistent timelines. (p.18)	Niagara Region supports of the elimination of redundant EA requirements and encourages a streamlined process that consolidates EA-related consultation, reporting, and meetings.
What could a one-project-one-review process look like for projects in Ontario subject to both provincial and federal requirements? (p.18)	A one-project-one-review process will require a review of the requirements for both levels of government to identify opportunities for integration. The end result should be a process that allows for one set of documentation that integrates the substantive considerations of relevant approval processes and satisfies the requirements for all relevant agencies. An online system may facilitate this by allowing a guided step-by-step process that addresses applicable approvals for each project.
Can you identify any other examples of provincial processes that could be better integrated?	Other opportunities for integration include coordinating timelines for all government review processes and public input to create clarity and increase predictability for both proponents and the public.
What other actions can the ministry take to eliminate duplicative or redundant processes or approvals?	The ministry may consider looking for opportunities to delegate responsibility to another jurisdiction or find equivalencies in other approval processes. In the elimination of similar, duplicative processes, the more comprehensive, rigorous process should take precedence.

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Find efficiencies in the EA process and related planning, and approvals process to shorten the timelines from start to finish.	
What could a coordinated one-window approach look like for Ontario projects? (p.24)	A coordinated one-window approach could take the form of step-by-step, online process, where each piece of documentation or technical report is submitted to all relevant agencies for approval at each stage of the process.
Can you identify any areas in the EA process that could be better streamlined with the municipal planning process or with other provincial processes? (p.24)	Niagara Region supports efforts by the Province to streamline the environmental approval and other approval processes. Under existing circumstances, a single permit delays the entire EA process. An updated approval process could mitigate delays to EA timelines and reduce complexity for project proponents and stakeholders. All projects, whether municipal or provincial, that focus entirely on efficiency upgrades should be considered for reduced timelines to facilitate undisrupted service to residents.
What advantages and disadvantages do you see with the ministry's EA process being the one-window for other approval/permit processes? (p.24)	A potential advantage to the one-window approach would be having consistent reviewers throughout the EA and subsequent review processes.
Inadequate consultation activities may result in significant concerns being identified by interested parties at later stages in the process, triggering the need for further information/studies or changes to the proposal. Inadequate consideration of concerns raised through consultation may also increase the likelihood of a Part II Order request for a project. (p. 25)	Niagara Region suggests mandatory engagement with MECP/EC early in the EA process to demonstrate appropriate project scope and requirements. Further, Niagara Region requests clarification in regards to MECPs expectations on what is considered to be 'adequate' or 'inadequate' consultation.

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To improve the timelines related to EA and reduce uncertainty, we could consider clarifying our expectations with respect to complete and accurate documentation through guidance. (p.25)	For proponents and stakeholders that do not routinely engage in the EA process, the provision of accessible guidance documents and well-articulated procedures would be beneficial and is encouraged.
What areas of the EA program could benefit from clearer guidance from the ministry? (p. 25)	Niagara Region requests MECP clarify or provide a list of agencies required to be included during consultation. Through previous experiences, staff note that each EA project varies and up to discretion of proponent. This could result in inadvertently excluding agencies from the EA consultation process.
What other actions can we take to reduce delays and provide certainty on timelines for environmental assessment? (p. 25)	Niagara Region suggests MECP to explore means to better incorporate social media and digital technologies into the consultation process, in favour of newspaper advertisements which have a limited outreach and can be costly.
Ontario could consider developing template Terms of Reference for various sectors. (p. 26)	Niagara Region supports the development of templates for Terms of Reference for various sectors to increase efficiency and reduce process complexity; however, cautions that this Terms of Reference may not be a 'one-size-fits-all' practice.
What are the advantages and disadvantages of using sector-based terms of reference? (p.26)	Using sector-based terms of reference will expedite review by the MECP and other agencies, as all proponents' submissions will be similarly structured. It will also increase consistency, as projects with similar benefits and risks should be treated the same way. Templates should be developed in close consultation with the relevant sectors.
We could consider implementing a review service standard (p.27)	Niagara Region is supportive of the implementation of a review service standard, as a means of providing greater clarity about project requirements and timelines.
Are there other ways we could improve our review timelines? (p.27)	Niagara Region recommends providing a guaranteed turnaround timeline, or outline of service level, to facilitate project scheduling. Clearly defined start and end dates for all phases would reduce uncertainty.

Further, Niagara Region suggests MECP assign personnel as a 'touchpoint contact' throughout life of an EA project. |

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Reference in Discussion Paper	Niagara's comments
Go digital by permitting online submissions.	
Potential opportunities involve creating a new electronic registry specific to the EA program or integrating EA into existing online platforms. (p.29)	Providing an online EA registry would improve transparency and accessibility for proponents and members of the public. As with the Canadian EA Registry, the resulting searchable database of completed and ongoing projects is a valuable resource.
How would you like to be consulted on EA projects? (p.29)	Niagara Region welcomes the opportunity to be consulted on relevant EA projects. Early notification of projects that are initiated within the Niagara region, through email or existing bulletin systems, is preferable. Municipal governments are key stakeholders in projects within their boundaries and should be included in each key stage of the EA process. Other potential avenues for consultation include the development of sector-specific working groups, consisting of government representatives, proponents and stakeholders, to consult on sector-specific policies and the establishment of an advisory group to solicit and coordinate public, industry and government input.
Would an online EA registry be helpful for you in submitting an EA or accessing EA information? (p.29)	Niagara Region supports moving to an online registry system for submitting and accessing EAs. This would provide a consistent, centralized system for documenting, storing and organizing EAs. An online approach can also facilitate increased efficiency and decreased response times. As an organization, Niagara Region is continually seeking ways to reduce waste. Moving to an online registry could significantly reduce paper consumption and waste.
What type(s) of EA project information would you like to access online? (p.29)	Niagara Region recommends that the provincial EA website include the following information: • A searchable database of projects in all stages (i.e. in process, completed, cancelled, etc.) • A project page with a summary of project details (i.e. brief description, reference number, project status, etc.)

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Reference in Discussion Paper	Niagara's comments
	• Links to project documents, including notices of public hearings, terms of reference and other relevant records. • Links to relevant legislation and explanations of the EA process • A mechanism for tracking a project's progress.
Are there any existing online tools that would be appropriate to use for EA information? (p.29)	Integrating online mapping tools into the environmental process may assist proponents and interested stakeholder in identifying potential effects and appropriately characterizing sites. Drawing on existing resources, such as the Land Information Ontario Metadata Management tool, the Ontario Natural Heritage mapping tool and the Ontario Well Records map, the Province could bring relevant mapping tools to the EA process. Working towards creating a comprehensive mapping resource that provides information about topography, geologic and soil characteristics, the location of water resources and other key natural and heritage features could increase efficiency and improve the quality of EAs.

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Section #	Proposed Environmental Assessment Act revisions ~~Text~~ = Province removed Text = Province added	Niagara's comments
PART II.1 CLASS ENVIRONMENTAL ASSESSMENTS		
15.3 Non-application of Act, certain undertakings		
15.3 (1)	**Non-application of Act, certain undertakings** A class environmental assessment as it is approved or amended may provide that this Act does not apply with respect to one or more undertakings within the class, including as a result of the evaluation of screening criteria specified within the class environmental assessment.	Who determines the screening criteria? Is it the proponent or will it be included in the MCEA document?
15.4 Amendment of an approved class environmental assessment		
15.4 (1)	**Amendment of an approved class environmental assessment** The Minister may amend an approved class environmental assessment in accordance with this section.	If an Environmental assessment has been approved what criteria will the Minister be using to determine justifying an amendment to the approval?
16 Order to comply with Part II		
16 (4.1)	**Grounds for order** After considering the matters set out in subsection (4), the Minister may issue an order under subsection (1) or (3) only if the Minister is of the opinion that the order may prevent, mitigate or remedy adverse impacts on, a) the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*; or b) a prescribed matter of provincial importance.	Will the Act include a definition of "provincial importance"?