



February 12, 2019

MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS
Environmental Assessment and Permissions Division
135 St. Clair Avenue West, 14th floor
Toronto, Ontario M4V 1P5

Attention: Sarah Paul, Assistant Deputy Minister

Re: **EBRO File No. 17EBR001.R**

Application for Review of the *Environmental Assessment Act*, Regulation 334 (General), Ontario Regulations 681/94 and 73/94 under *Environmental Bill of Rights*, 1993 and all MECP policies and guidance related to the Municipal Class Environmental Assessment process.

Both RCCAO and MEA acknowledge receipt of your correspondence dated January 30, 2019. Due to the momentum that was achieved during consultation meetings in the spring of 2018, we are recommending that there be an extension of the EBR time period to the end of 2019 and that consultation meetings be reinstated immediately. RCCAO sounded the alarm about growing costs and delays associated with the Municipal Class Environmental Assessment processes through a series of independent research studies between 2009 and 2015. Multiple stakeholders called on the Ministry to reform the MCEA processes, which culminated in the 2016 Auditor General's Value for Money Audit and the joint MEA/RCCAO Application for Review in early 2017. Waiting until mid 2019 to prepare a discussion paper will hamper economic growth and unnecessarily delay building all types of infrastructure, including those projects that are required to foster resiliency. In addition, further delay will generate confusion and add to frustrations among many stakeholders, most notably smaller municipal proponents. Re-establishing that MCEA reform is a priority matter, in conjunction with streamlined planning processes for municipal infrastructure and other projects, would signal that the Ministry views this as an essential matter.

First, we wish to express our disappointment that the EBR application ended with so little in the way of promised outcomes. MEA and RCCAO, with the support of 13 signatory organizations in the application, had been advocating for many years that a modernization of the Municipal Class Environmental Assessment system was long overdue. For example, a simple, non-legislative change to delegate Part II Order Request (PIOR) decision-making to the director would reduce turnaround times for many projects by several months. Countless provincial politicians from all parties have spoken at municipal conferences espousing the value of local autonomy, but for some reason, we are advised that it is essential for the Minister to weigh in on local infrastructure projects such as bicycle paths.

To put this into perspective, the Auditor General's 2018 annual report contained a "Follow-Up on VFM Section 3.06, 2016 Annual Report" which said that as of September 4, 2018 the Ministry had implemented only 21% of the actions that had been recommended in the 2016 report, and that "Little or no progress has been made regarding 63% of the actions." It is worth noting that the inability of the Ministry to make meaningful progress can be measured in decades. The 2016 VFM (Section 3.06) says that Ontario's EA legislation is "the oldest environmental legislation in Canada" and "falls short of achieving its intended purpose." The Auditor General referred to the 2005 program review by the Environmental Assessment Advisory Panel where there were recommendations to implement a more efficient process for reviewing PIORs. The conclusion: "the Ministry has not acted on this recommendation" (p.361). No substantive reform over a period of 13+ years is unacceptable by any reasonable standard.

Second, the April 13, 2017 letter noted that “The ministry will be undertaking this review in parallel with commitments made to implement recent recommendations of the Auditor General and other initiatives to modernize the environmental assessment program.” Your correspondence does not reflect this aspect of the acceptance of the application even though it was part of the former ADM’s decision-making process to proceed with the EBR application.

Despite the slow start by the Ministry in launching a series of seven non-public, stakeholder consultation meetings in the spring of 2018 (first meeting hosted on March 21st), former deputy minister Paul Evans wrote an email to RCCAO, MEA and OGRA representatives on February 23, 2018: “On the review of the Class EA, we are confident that a review can be undertaken and completed before the end of the year.” Clearly, the deputy knew that there was an upcoming provincial election but was still confident that the review would be complete by December 2018.

It was our expectation, based on the established practice of your Ministry in dealing with Requests for Review over the past 25 years, that the Ministry would have prepared a draft list of proposed changes that would be the basis for public consultation and ultimately posted on the Environmental Bill of Rights Registry for public comment. The Ministry’s suggested course of action, namely to develop a discussion paper by end of spring 2019, falls far short of our expected outcome for your Ministry’s review.

While some progress has been made by the Ministry (we were most impressed by MECP staff who led the discussions last spring), it is unfortunate that there was no form of Ministry action plan to achieve more significant and constructive changes, including changes that might require new regulations and/or statutory amendments. For example, during a conference call last July there was a sincere discussion with your staff on options to maintain forward momentum. This included finishing the spring consultation process by engaging with indigenous and non-governmental environmental organizations, establishing an expert panel and developing processes that work better.

As the new government had expressly run on a platform of streamlining processes and cutting unnecessary red tape, MECP staff should have been at a minimum, preparing internally to deliver on this mandate. The Ministry’s response does not indicate whether any parts of the EA Act were reviewed to identify need improvements. We believe that much more work is needed by all stakeholders, including the Ministry, to reduce the costs and completion time for various MCEA studies and reports, reduce the time needed to respond to PIIORs and better integrate studies and consultations under the *Planning Act* with studies and consultations under the EA Act.

Reducing costs and time to complete MCEA studies and reports remains a vital objective not only for the applicants, but also the more than 120 separate municipal councils that passed resolutions urging your Ministry to speed up the MCEA process and reduce study costs by, for example, eliminating duplication and curbing ‘scope creep’.

The Review Summary document prepared by your Ministry is helpful in identifying what progress had been achieved and what measures remain to be completed. Based on only six business days to respond to your letter, here are our comments on portions of the Review Summary:

1. Part II Order Requests

a) Availability of Part II Order Requests

The issue is whether or not Schedule ‘A’ and ‘A+’ projects are subject to a PIIOR. The Ministry claims that it has “consistently” taken the position that a PIIOR can be submitted for a Schedule ‘A’ or ‘A+’ project as there is no restriction on the availability of a PIIOR in section 16 of the *EA Act*. The MEA has been the administrator/custodian of the MCEA Manual since its inception in the 1980’s and has been one of the primary providers of training and resources to municipalities for the MCEA process. It remains our position that when the MCEA Manual was first approved by your Ministry, that Schedule ‘A’ and ‘A+’ projects were deemed to be ‘pre-approved’ and exempt from any PIIORs.

The Ministry's response suggests that the availability of a PIOR for a Schedule 'A' or 'A+' project is not a significant concern as only two of the 117 PIORs between 2012 and 2017 involved Schedule 'A' or 'A+' projects. The Ministry's response did not discuss the timing issues, e.g. the 30-day window that starts when a Notice of Completion of the Project is issued. As neither Schedule 'A' nor Schedule 'A+' projects require a Notice of Completion, it is far from clear whether basic Schedule 'A' and 'A+' projects are subject to any time restriction for submitting a PIOR. (Please note that the original interpretation and practice until 2011 was that Schedule A/A+ projects were deemed to be 'pre-approved' due to the low risk categorization of this class of project).

b) Delegation of Authority to Respond to Part II Order Requests

In order to reduce the time lines for a decision on a PIOR, the Minister's decision-making on PIOR's for Schedule 'A' and 'A+' projects has been delegated to the Director since April 2017. Since the Ministry cites that only two of the 117 PIOR's received between 2012 and 2017 were for Schedule 'A' or 'A+' projects, we question how delegating the decision making for only two projects has sped up decision making on all PIORs.

c) Mandatory Use of a Standard Part II Order Request Form

The Ministry passed a new regulation in July 2018 mandating use of a standardized form for making a PIOR. This was a positive move that MEA has supported for the past decade.

d) Ensuring that Part II Order Requests are Bona Fide

The Ministry made use of a new PIOR form mandatory and anticipates releasing a draft guidance on how to use the form and submit a PIOR by spring 2019. We expect that the Ministry will share its views and intentions with us before the guidance document is finalized.

Between July and November 2018, the Ministry hosted 18 "triage meetings" (meetings between the Ministry and proponents) to attempt to resolve concerns raised through the PIOR process. The Ministry did not indicate whether these meetings significantly reduced the timelines for completing the review of the relevant PIORs or eliminated any non bona-fide PIORs. The implementation of triage meetings, particularly for more complex Schedule 'C' projects, is an improvement by your Ministry to the MCEA process.

While the Ministry's response suggested that the implementation of the triage meetings will help to reduce the processing time for PIORs, MEA's data in late 2018 indicates that the processing time for PIORs has increased over the past 18 months.

e) Posting of Part II Order Requests and Part II Orders on the EBR Registry

The Ministry made a commitment to the Auditor General to examine strategies to improve the transparency of the MCEA process using websites. RCCAO and MEA, together with many other stakeholders, believe that the EBR Registry is an ideal information sharing platform, and is preferable to downloading this burden onto municipalities, particularly smaller ones.

2. MCEA Process Transparency and Stakeholder Access

Most of the Ministry's responses to the transparency and stakeholder concerns have already been noted in items 1.d) and 1.e) above.

3. Harmonization and Integration of the EA Act and Planning Act Processes for MCEA Projects

The Ministry's response merely affirms that the current structure of the two processes under the EA Act and the *Planning Act* are not easily integrated. The Ministry has failed to state why two overlapping consultation and decision systems should be allowed to continue in their current format.

4. Focused Scope of Reports and Studies

a) Scope Creep of Reports

The Ministry does not appear to view scope creep or the time and cost factors for MCEA projects to be an urgent concern. The Ministry has simply stated that it will continue to examine other ways to address scope creep through public consultations and a discussion paper (to be released by this spring).

b) Climate Change

The Ministry response does not offer any assistance on how MCEA projects are to address climate change in the public consultation process.

5. Indigenous Consultations for MCEA Projects

Indigenous consultation processes and resources was not a specific element of the request for Review but the issue was raised in the stakeholder discussions during the spring of 2018. Several smaller population municipalities outside of the Golden Horseshoe believe that there are significant shortfalls or gaps in the ability of municipalities to deal effectively and efficiently with indigenous communities.

On May 22, 2018 RCCAO and MEA prepared a "Report on Stakeholder Consultation Meetings re Improvements to the MCEA Process" which we would encourage you to review. Following receipt by Ministry staff, these notes were deemed to be an accurate reflection of outcomes from the seven stakeholder meetings. In your attached Appendix 1 (Summary of Discussion), we have spotted certain inaccuracies or wording that did not reflect certain viewpoints.

RCCAO and MEA remain committed to identifying and implementing improvements to the MCEA process. As there has been substantial effort since the Application for Review was filed over two years ago, we are recommending that there be an extension of EBR time period to the end of 2019 and that consultation meetings be reinstated as soon as possible.

Sincerely,



Andy Manahan
Executive Director, RCCAO



Steve Lund
MEA President

Copy to:

Tyler Schulz, Environmental Commissioner's Office (File No. R2016008)
Scott Shaw, MECP Environmental Bill of Rights Office (File No. 17EBR001.R)
Serge Imbrogno, Deputy Minister, MECP
Giles Gherson, Deputy Minister, Red Tape and Regulatory Burden Reduction, Cabinet Office
Laurie LeBlanc, Deputy Minister, MMAH
Chris Traini, President, OGRA
Office of the Auditor General of Ontario

List of Stakeholders that have endorsed the Application for Review for improvements to the Municipal Class Environmental Assessment process:

- Association of Registered Interior Designers of Ontario (**ARIDO**)
- Building Industry and Land Development Association (**BILD**)
- Ontario Home Builders Association (**OHBA**)
- Ontario Construction Secretariat (**OCS**)
- Ontario Electric League (**OEL**)
- Ontario General Contractors Association (**OGCA**)
- Ontario Good Roads Association (**OGRA**)
- Ontario Road Builders Association (**ORBA**)
- Ontario Sewer and Watermain Construction Association (**OSWCA**)
- Ontario Society of Professional Engineers (**OSPE**)
- Regional Municipality of Peel
- Residential Construction Council of Ontario (**RESCON**) and
- Surety Association of Canada (**SAC**)