



RESIDENTIAL AND  
CIVIL  
CONSTRUCTION  
ALLIANCE OF  
ONTARIO  
**Constructing Ontario's Future**

An Independent Study Commissioned by



# Are Ontario's **Municipal Class Environmental Assessments**

Worth the Added  
Time and Costs?

**The 2014 Edition**



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CIVIL  
CONSTRUCTION  
ALLIANCE OF  
ONTARIO  
**Constructing Ontario's Future**

## RCCAO

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The Residential and Civil Construction Alliance of Ontario (RCCAO) unites management and labour groups from the residential and civil sectors to advocate on behalf of the construction industry and provide real solutions. With our member expertise and strength in numbers, we are able to speak with one voice on matters such as infrastructure, land supply and use, and regulatory reform.

RCCAO has independently commissioned close to 30 reports on planning, procuring, financing, and building infrastructure, and we have submitted position papers to politicians and staff to help influence government decisions.

The Municipal Class Environmental Assessment (EA) process is firmly entrenched in Ontario for core municipal infrastructure like roads, water, sewer, and bridge projects. Unlike other Canadian municipalities, those in Ontario face additional hurdles and delays in implementing the process.

## RCCAO members include:

- Joint Residential Construction Council
- Heavy Construction Association of Toronto
- Greater Toronto Sewer and Watermain Contractors Association
- LIUNA Local 183
- Residential Carpentry Contractors Association
- Carpenters' Union
- Toronto and Area Road Builders Association
- International Union of Operating Engineers, Local 793
- International Union of Painters and Allied Trades District Council 46

For more information on the RCCAO or to view copies of other studies and submissions, please visit the RCCAO website at [rccao.com](http://rccao.com)

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# Are Ontario's **Municipal Class Environmental Assessments** Worth the Added Time and Costs? **The 2014 Edition**

A Follow-Up to the  
2010 Independent Study  
Commissioned by the  
RESIDENTIAL AND CIVIL CONSTRUCTION  
ALLIANCE OF ONTARIO

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## EXECUTIVE SUMMARY

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**T**his is the fourth in a series of studies commissioned by the RCCAO on Municipal Class Environmental Assessments (EAs). Prior studies commissioned by the RCCAO include:

- i. Environmental Assessment Reform – A Tool for Economic Recovery, a February 2009 study completed by MMM Group Limited (the “**MMM Study**”);
- ii. Are Ontario’s Municipal Class Environmental Assessments Worth the Added Time and Costs? a March 2010 study by Frank J. E. Zechner Professional Corporation (the “**Original Study**”); and
- iii. Municipal Class Environmental Assessments – Categorization Review Study, a January 2012 study by Frank J. E. Zechner Professional Corporation.

In the Original Study, a total of 99 Municipal Class EA Class B and C construction projects were reviewed, including new or improved roads, intersections, bridges, sewer or water works, and recreational paths. In this study, a further 28 Municipal Class EA Class B and C construction projects were reviewed, in which the EA study data was completed after March 2010. In fact, of the 28 projects in this report, 20 had the relevant EA studies completed during the 2012 or 2013 calendar years while the other eight were completed in 2009, 2010, or 2011.

The main finding of the Original Study was that the lengthy time frames and higher costs to comply with the Municipal Class EA process were not providing additional environmental or other benefits. Although improvements were made to the Municipal Class EA process in 2011, **the time to complete an EA has increased from an average of 19 months to 26.7 months, and the EA study report costs have increased from an average of \$113,300 for the Original Study data to \$386,500 for the data behind this report.**

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Significant municipal resources are being allocated to meet the requirements for Municipal Class EA approval. These costs are difficult to calculate, but this continues to be an inefficient use of limited municipal staff time in order to facilitate the building of basic municipal infrastructure.

Unlike those in any other province in Canada, Ontario municipalities face additional environmental assessment hurdles in order to proceed with certain traditional municipal infrastructure projects, such as road extensions, road widenings, bridge replacements, and alterations or expansions of sewer and water infrastructure.

In the Original Study, the 99 Municipal Class EA infrastructure projects showed average delays of 19 months. The data for the 28 municipal infrastructure projects in this study indicates that the average completion time has actually increased from 19 months to more than 26 months. The fact that there was an increase and not a decrease was unexpected, and the magnitude of the increase is, quite frankly, shocking.

Not only are more recent Municipal Class EA infrastructure projects slowed by an average of more than 26 months, they also faced substantially higher costs through the EA process. The cumulative value of all of the 28 construction projects in this study is \$1.519 billion. Adding together the costs paid to third parties for EA reports and the inflationary increases of construction for the duration of the EA reports results in a total cost of \$157 million for the 28 projects, or an average of 10.25% of incremental costs, as compared to the 14.5% of incremental costs indicated by the Original Study.

This reinforces the question, “Are Ontario Municipal Class EAs worth the added time and costs?” Projects such as intersection improvements, road widenings, and bridge replacements have faced delays averaging more than 26 months and added costs of about 10% to comply with the EA process for municipal infrastructure projects. These costs and delays are unique to Ontario as other Canadian jurisdictions have minimal or no EA requirements for basic infrastructure projects.



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There were 93 Municipal Class Schedule B or Schedule C studies completed in 2009 and 60 studies completed in 2010. Applying the data associated with the 28 projects in this report means the cost of studies and delays associated with the Municipal Class EA process were, provincewide, \$517 million in 2009 and \$334 million in 2010.

This report has nine specific recommendations, as listed below, to reduce delays and incremental costs associated with Municipal Class Schedule B or Schedule C projects.

- 1. Fast-track Certain Schedule B Municipal Class Projects:** An average delay of 18 months to complete a Schedule B EA is an unacceptably long time. If many transit projects can be fast-tracked to 120 days for completion of an EA report as required by Section 6 of Ontario Regulation 231/08, then there should be a reasonable opportunity to fast-track Municipal Class Schedule B projects to have the EA reports completed within 180 days of the date of the Notice of Commencement.
- 2. Fast-track Certain Schedule C Municipal Class Projects:** An average delay of 33 months to complete the EA is an unacceptably long time. While it may not be appropriate to fast-track Schedule C projects to as short a time frame as Schedule B projects, it would be worthwhile to target a completion deadline of somewhere between 12 and 18 months for the completion of a Schedule C Municipal Class infrastructure project. Implementation could be achieved through amendments similar to those made under Ontario Regulation 231/08.
- 3. Establish New Criteria Other than Capital Costs as Thresholds Between Various Schedules of Municipal Class EA Projects:** Ontario is the only jurisdiction in Canada (and perhaps the Western world) for which the capital cost of an infrastructure project is a threshold to determine the degree of public consultation and reporting of environmental assessments. New criteria could be established, such as road length (roads up to five kilometres) or capacity (cubic metres per day for water and wastewater systems). It is recommended that the thresholds be rewritten to replace capital cost thresholds with physical criteria of infrastructure projects.

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**4. Reduce Potential Abuses of the Right to Apply for a Part II Order:**

To reduce the likelihood of Part II Order requests that have little or no merit, measures such as the following should be considered: a) a nominal fee to any person requesting a Part II Order, and b) delegate certain authority by the Minister to a Director to dismiss frivolous applications.

**5. Reduce the Scope and Complexity of EA Reports:** There appears to be a noticeable increase in the size and complexity of EA study reports since the Original Study. EA reports accessed online are in many cases several hundreds of pages in length and the average costs of such studies have increased from an estimated \$113,300 for the 99 projects examined in the Original Study data to \$386,500 for the projects examined in this report. It is recommended that municipalities exercise reasonable efforts to simplify and streamline study scope to reduce costs and delays, and facilitate focused feedback from stakeholders.

**6. Continue Efforts to *Harmonize Environmental Assessment Act* consultations with *Planning Act* consultations:** The review of alternative routes for roads and sewers continues to be a significant part of public consultations and EA study reports. To the extent that road alignments have been identified as part of Official Plans or Master Plans, every opportunity should be utilized to reduce the review of alternative routes. Municipalities are following the provincial requirements, but their reluctance to apply an integrated process for both statutes suggests there are insufficient savings in time or costs. To the extent that Official Plans are being amended or Master Plans are being established, municipalities should exercise their best reasonable efforts to include public consultation on environmental assessment issues.

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**7. Establish Transparency for Completed EA Reports:** It is strongly recommended as a measure of transparency and comparability that there should be public viewing access through the Ontario Ministry of Environment (“MOE”) websites to all notices of completion both current and historical as well as to the actual EA study reports and any conditions imposed by the Ministry as a result of an application for a Part II Order. In a large number of projects, construction does not start for several years after the relevant EA reports are completed. Often those reports are removed from municipal websites, thereby depriving stakeholders the opportunity to compare EA report recommendations and MOE conditions on final design and construction practices.

**8. Continue to Reduce the Time Frames for EA Bump-up Requests:** In 2007 and 2008, both the Municipal Engineers Association (“MEA”) and the Environmental Commissioner of Ontario called for faster responses from MOE to Part II bump-up requests from proponents. In December 2009, the Ministry resolved to make decisions on bump-up requests within 30 to 66 days. While those time frames were never achieved, there was significant improvement in turnaround times for decisions issued in 2009 and 2010. However, processing times started to increase again in 2011. The Ministry should ensure it has adequate resources to issue Part II Order request decisions within 180 days.

**9. Cycling Infrastructure to be Expressly Referenced in EA Tables:** MEA recommended changes to the Municipal Class EA tables so cycling lanes and multi-facility paths fall within the scope of various Schedule A and Schedule A+ projects. Cycling and multi-purpose paths are common and the environmental impacts are predictable. These facilities should be included in the comparable Schedule A and Schedule A+ descriptions for roads and intersections as well as underpasses and overpasses.

## **1.0 INTRODUCTION AND PURPOSE OF THIS UPDATE REPORT**

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### **1.1. Genesis for the Original Study**

RCCAO has, over the years, expressed concerns held by its members that the Environmental Assessment process for municipal infrastructure projects in Ontario is too time consuming and expensive relative to the outcomes.

Notwithstanding the Ontario government's announcements about streamlining and other improvements for Municipal Class EAs in 2006<sup>1</sup> and in 2007,<sup>2</sup> RCCAO determined in 2008 that the potential impact of Municipal Class EAs and federal EAs on what was then anticipated infrastructure stimulus funding by both the Ontario and federal governments warranted a study. The MMM Study, Environmental Assessment Reform – A Tool for Economic Recovery, was completed in February 2009 and can be viewed and downloaded through the RCCAO website.<sup>3</sup> While the MMM Study provided a series of recommendations, it did not quantify the trends and experiences across Ontario.

Many RCCAO contacts suggested that, in addition to the normal tendering processes, a significant number of Municipal Class Schedule B and C EA studies by municipalities in and around the GTA would hold up project approvals to proceed with a range of road, water, and sewer work. RCCAO therefore concluded that a subsequent study was warranted, providing actual data related to completed EA studies. The author was commissioned to prepare the Original Study to quantify provincial trends and based on that data, provide recommendations to improve and streamline the Municipal Class EA process. The executive summary of the Original Study is attached in Appendix B.

### **1.2. Why an Update Study is Warranted**

A number of changes were made to the Municipal Class EA study process in 2011 with the object of reducing costs and delays. Ontario municipal resources are limited due to fiscal deficits that continue at both the provincial and federal levels into 2014 and beyond.

In the face of infrastructure deterioration due to age and inadequate infrastructure capacity due to climate change (such as the December 2013

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ice storm and July 2013 flooding in the GTA and the June 2013 floods in southern Alberta), Ontario municipalities are under increasing pressure to stretch their limited resources as far as possible.

### **1.3 Scope and Methodology**

#### **General**

Whereas the Original Study examined 99 Ontario Municipal Class EA Schedule B or C construction projects, this study examines a subsequent 28 Ontario Municipal Class EA Schedule B or C construction projects. The objective is to answer the following questions:

- a) What changes in the time frames and costs are municipalities experiencing when they have a basic infrastructure project that triggers either a Schedule B or C Municipal Class EA?
- b) What are the changes in the relative percentages of projects triggering a Part II application (bump-up requests) from affected stakeholders such as local residents?
- c) Are there any further changes or alternative procedures that need to be considered or implemented to reduce the number of bump-up requests?
- d) Are there any significant changes in the cost or complexity of EA study reports since the Original Study?
- e) Beyond the changes that were implemented in 2011, what additional changes, if any, should be proposed for the Municipal Class EA system to reduce delays and added costs?

MEA has summarized some information related to Municipal Class EAs through their website, but such information only relates to EA studies and reports completed during the calendar years 2009 and 2010.<sup>4</sup> Very little MEA data is available for Municipal Class EAs completed during the 2011 and 2012 calendar years as the MEA was focusing its resources on the review

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of the Municipal Class EA process that led to its recommended changes that were tabled for discussion in 2013.<sup>5</sup>

Transit projects were expressly excluded from the Original Study and this report because the Province implemented new regulatory procedures in 2008 to streamline approvals for municipal transit projects.<sup>6</sup> Those changes shortened the environmental assessment process to six months for selected projects and exempted other specified transit projects from the requirements of the *Environmental Assessment Act*.

MOE still does not maintain any central registry accessible to the public listing the commencement or completion of Municipal Class EA studies. While many municipalities post notices of commencement and notices of completion on their public websites, such information is often there for only a limited time, and in the majority of cases reviewed, the EA study report and associated conditions are no longer posted even though the relevant construction project has not yet been tendered for bids.

There is still no requirement by municipalities or the MOE to advise the public if a Part II request has been made for any particular project. Even where such information is obtained from reports to council, copies of the actual Part II requests are only available through a lengthy and tedious freedom of information (FOI) request. Also, there is still no mechanism to search for Municipal Class EA reports through the Ontario Environmental Bill of Rights Registry.<sup>7</sup>

Only a limited amount of construction tender information is available for review, and those are often limited to projects that are currently out for tender or have recently been awarded. Of the limited number of construction tenders reviewed as part of this study, there was no reference in the tender documents to the relevant EA report. This brings to question the value of the EA study reports if its findings and recommendations are not passed onto the parties responsible for actually building the relevant municipal infrastructure.



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The purpose of this study was to review data from a reasonably significant number of Municipal Class EA Schedule B or C projects to identify whether there were changes to the findings of the Original Study and whether its recommendations are still valid.

As the Original Study examined 99 projects at a time when between 97 and 140 EA studies were completed each calendar year, it was reasoned that a follow-up study would not require as large a sampling, but that between 20 and 30 more recent projects would be sufficient to identify trends. Interestingly, 93 EA studies were completed in 2009, and 60 in 2010, according to MEA published data.<sup>8</sup> The reduced number of completed EA studies per year would tend to increase the validity of the sample size of 28 projects chosen for this study.

To be considered, eligible Municipal Class EA reports must have been completed as of January 2014 and actual construction must either have started or reasonably expected to start by early 2017. Selected projects were also chosen to reflect different geographic regions and sizes of municipalities as well as relate to one or more of the following basic infrastructure projects:

- Road widenings, reconstructions, or extensions;
- Bridge replacement or reconstruction work;
- Sewer works, either storm, sanitary, or combined, including wastewater treatment plants;
- Water distribution works, including pumping stations and reservoirs; and
- Other works such as flood control works, traffic calming devices, and recreation trails.

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The 28 projects forming the basis of this report were sourced by examining each and every website for the more than 400 separate municipalities across Ontario, downloading what information was available related to the commencement or completion of Municipal Class EA studies, and then initiating numerous phone calls, messages, and emails to the respective works departments, engineering departments, and external consultants to obtain the relevant data.

A recommendation was made in the Original Study<sup>9</sup> to enhance transparency for completed EA reports by some form of public internet access to view MEA notices of completion and the associated EA study reports. The Municipal Engineers Association 5 Year Review Report<sup>10</sup> addressed this issue by noting that municipalities are continually expanding their website content and many now include completed Class EA documents or contact information on how to obtain access to the documents. The MEA will not be preparing or hosting a database of completed Class EA documents as it takes the position that this would be an exceptionally onerous task.

### **Anonymity**

In order to gain the assistance of municipalities and not be forced to pursue data through a prolonged and costly FOI request, a decision was made for the Original Study that no individual project would be identified but that the data would be presented in aggregated and statistical form. That methodology was maintained for this report.

## 2.0 THE CURRENT PROCESS FOR MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENTS IN ONTARIO

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### 2.1 The Environmental Assessment Act

Ontario's *Environmental Assessment Act* was first introduced in the early 1970s at about the same time as the introduction of Ontario's *Environmental Protection Act*. The purpose of the *Environmental Assessment Act* is for the betterment of the people of Ontario by providing for the protection, conservation, and wise management of the environment. The mechanism used by the Act is to require municipal proponents of projects to consult with the public and file terms of reference and an assessment of environmental impact of a proposed undertaking for the MOE's approval.

Part II.1 of the Act allows for class environmental assessments so that projects falling within a defined class would not be required to formulate and consult with the public on terms of reference. As of December 31, 2013, there are 10 separate class environmental assessments that have been approved by the Ministry, as set out in Table 1.

### 2.2 Municipal Class EAs and the Municipal Engineers Association

MEA was established to provide unity and focus for licensed engineers employed by Ontario's municipalities by addressing issues of common concern and by facilitating the sharing of knowledge and information.

The Municipal Class Environmental Assessment (EA) system is a collaborative effort among the MOE, the Ministry of Municipal Affairs and Housing, and the MEA to allow municipal infrastructure projects to both comply with the provisions of the *Environmental Assessment Act* and proceed in an efficient and timely manner.

The Municipal Class EA dates back to 1987 and was used initially for local road projects and municipal water and sewer projects. In 2000, the Class EAs for municipal road projects and municipal water and wastewater projects were consolidated, updated, and approved under Part II.1 of the amended Ontario *Environmental Assessment Act*.

**Table 1: Class Environmental Assessments<sup>11</sup>**

NAME	DATE APPROVED	PROPONENT
<b>Municipal Class</b>	<b>Oct. 2000, amended Sep. 2007 and Aug. 2011</b>	<b>Municipal Engineers Association</b>
Provincial Transportation Facilities	Dec. 1997 and Jul. 2000	Ministry of Transportation
GO Transit Class	Dec. 2003, amended 2005	GO Transit
Minor Transmission Facilities	Apr. 1992	Hydro One
Ministry of Energy and Infrastructure for Realty Activities Other Than Electricity Projects	Apr. 2004, amended 2008	Infrastructure Ontario
Remedial Flood and Erosion Control Projects	Jun. 2002, amended Sep. 2009 and Jun. 2013	Conservation Ontario
MNR Resource Stewardship and Facility Development Projects	Mar. 2003	Ministry of Natural Resources
Provincial Parks and Conservation Reserves	Dec. 2004	Ministry of Natural Resources
MNR Forest Management on Crown Lands	Jun. 2003, amended Mar. 2007	Ministry of Natural Resources
Waterpower Projects	Oct. 2008, amended Mar. 2011	Ontario Waterpower Association
Class Environmental Assessment Activities of the Ministry of Northern Development and Mines under the Mining Act	Dec. 2012	Ministry of Northern Development and Mines

Regulation 334 made under the *Environmental Assessment Act* establishes that any municipality in Ontario and private sector developers designated under Ontario Regulation 345/93 may use the Municipal Class Environmental Assessment to obtain *Environmental Assessment Act* approval.

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The Municipal Class EA consists of three separate classes of municipal projects:

**Schedule A** projects are deemed to be pre-approved by the MOE and consist of routine maintenance and replacement of municipal infrastructure elements, such as the repaving of roads, the replacement of cracked sidewalks, aging water pipes, with works of similar design and capacity. **Schedule A+** projects are also pre-approved, but the public is to be advised prior to project implementation.

**Schedule B** projects generally include improvements and minor expansions to existing facilities. The estimated capital cost of the proposed expansion is often used as a means of distinguishing between minor and major expansions. Schedule B projects are concluded by the issuance of a project file report, whereas Schedule C projects are concluded by the issuance of an environmental study report.

**Schedule C** projects generally include the construction of new facilities and major expansions to existing facilities. In 2008, municipal transit projects were added to the Municipal Class Schedule C list.

### 2.3 The 2011 Amendments to the Municipal Class EA Systems

Several changes proposed by the MEA in 2010 as part of the Ministry's five-year review of the Municipal Class EA were approved by the MOE in August 2011. These changes included the following:

- An indexing system of certain cost thresholds that would otherwise distinguish a Schedule A or A+ project from a Schedule B project or a Schedule B project from a Schedule C project;
- An integrated public consultation process for new growth areas, Plans of Subdivision, Secondary Plans, Block Plans, and Municipal Class Environmental Assessments through which combined scope meetings could be used to address the legislated consultation requirements under both the *Planning Act* and the *Environmental Assessment Act*;

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- A reduction in the number of bridge reconstruction projects that would be subject to an EA from all bridges and adjacent gradings more than 40 years old to only those structures more than 40 years old that are historically significant within the context of the *Heritage Act*;
  - Changing streetscaping projects costing more than \$2.7 million from Schedule B to Schedule A+;
  - Changing operational road intersection improvements projects costing more than \$2.7 million from Schedule B to Schedule A+, and certain other intersection improvements like stopping lanes and turning lanes from Schedule B to Schedule A;
  - Changing roadside parks and picnic areas from Schedule B to Schedule A;
  - Changing new or larger size drainage culverts from Schedule B to Schedule A+;

## **2.4 Post-2011 Amendments to the Municipal Class EA System**

There do not appear to be any amendments to the Municipal Class EA systems approved by the MOE after August 2011.

## **2.5 Part II Order Requests (“Bump-up” Requests)**

Upon the completion of the EA study report, a notice of completion must be posted by the proponent municipality for a 30-day public comment period. There is no requirement for the municipality to actually post a copy of the report, but the report must be reasonably available for inspection during the comment period at a public place such as municipal offices. During that period, any interested person may, pursuant to Section 16 of the *Environmental Assessment Act*, make a request to the MOE for an order under Part II of the Act to hold an environmental assessment hearing for the proposed project.

In the Original Study, 17 of the 99 projects (17%) were the subject of bump-up requests. In this report, six of the 28 projects (24 %) were the subject of a bump-up request. Detailed information on bump-up requests is still difficult



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to obtain. There is no central public registry available to identify the number or nature of Part II bump-up requests, and since bump-up requests occur after the Notice of Study Completion, it is not included in the study report.

The MEA reported that the MOE denied 16 requests for Part II Orders in 2009 and issued a Part II Order for one project. In 2010, the MOE denied all 26 requests for Part II Orders that year. In 2009 and 2010, only two decisions on Part II Orders were not issued within 120 days after the application was submitted, and in those two cases, the process time was still fewer than 180 days. That turnaround time appears to have slowed for Part II Order requests decided in 2011 as the average response time had increased to 181 days.<sup>12</sup>

In 2007, processing times for Part II Order requests ranged from a minimum of 149 days to as long as 840 days. Although the Ministry took the position as of December 2009 that a decision be made on a bump-up request in 30 to 66 days,<sup>13</sup> the review time in every Ministry decision made in 2009 and 2010 was more than 66 days. Compared to the processing times of Ministry decisions issued in 2007, processing times have improved dramatically, except for 2011 data that indicate Part II Order delays may be growing longer.

In September 2013, the MOE's Environmental Approvals Access and Service Integration Branch sent letters to proponents of various Parent Class EA documents announcing the ministry was proposing to create an exemption from the Part II order provisions of certain low-risk projects identified in many Parent Class EAs. By creating an exemption section, the specified low-risk projects would not be subject to a Part II Order request.

Municipal proponents were invited to submit lists of what they considered to be low-risk projects by late fall 2013. Once all of the suggested lists of projects have been submitted, the Ministry will require some time to prepare a detailed exemption proposal, which in all likelihood would be in the form of a regulation, and that proposed regulation would need to be posted on the Environmental Bill of Rights Registry for a minimum period of 30 days for public comment.<sup>14</sup>

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## 2.6 Characterization and Compliance Issues for Municipal Class EA Projects

The MOE completed an audit of 10 randomly selected Municipal Class EA projects for the 2011-2012 fiscal year.<sup>15</sup> The audit results indicate one instance of non-compliance with conditions on a Part II Order request; it was denied because the proponent failed to provide certain information to the Ministry related to specific mitigation measures. The Ministry was working with the proponent to ensure that the conditions imposed by the Ministry for the project are met.

There appears to be somewhat of a disconnect between the preparation of the EA report, any conditions imposed by the Ministry as a result of a Part II Order request, and the actual tender and other information forwarded to the successful construction contractor. While a detailed examination of construction tender documents was beyond the scope of this study, the few tender documents that were reviewed were silent on the existence of an EA report and any additional conditions imposed by the Ministry. While it is likely that such information was likely incorporated into the detailed design process, there was no overriding provision in the tender documents stating the contractor must comply with any criteria established in the final EA report.

In many instances, there is a space of several years between the time an EA report is completed and the actual commencement of construction activities. Curiously, many municipalities only post active, ongoing EA studies and information on their municipal websites. The EA reports for projects that are about to go to tender or commence construction are no longer readily available to residents or other stakeholders.

To the extent that a project may have been misclassified by a municipality as a Schedule A+ instead of a Schedule B, or as a Schedule B instead of a Schedule C, there have been several complaints launched through the courts and through the Environmental Commissioner of Ontario. One of those complaints is summarized in Appendix D.

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## 2.7 Harmonization with Federal EAs

Of the 28 Municipal Class EA projects examined for this paper, only two of the 28 triggered potential federal EA concerns. While better coordination between the two EA processes would speed up those few projects that require an EA under both regimes, such coordination would have little impact on the provincewide results cited in this report and the Original Study.

Recent changes to the *Canadian Environmental Assessment Act*<sup>16</sup> have decreased the number of typical municipal infrastructure projects that would be subject to a federal EA.

## 2.8 Integration of the Municipal Class EA and *Planning Act* Processes

With respect to better coordination between the Municipal Class EA and land-use planning processes, data published by the MEA<sup>17</sup> indicates that of the 93 Municipal Class EA studies completed in 2009, none related to integration projects or Master Plans and only one of the 60 Municipal Class EA studies completed in 2010 related to a Master Plan. Of the 28 Municipal Class EA projects examined for this paper, only three of the 28 involved Master Plans. To date, very few projects have been done under the integrated process but there is potential to streamline the process under the right circumstances.

One of the drawbacks of pursuing an integrated *Planning Act* and *Environmental Assessment Act* planning and public consultation process is the fact that proponents potentially face two separate sets of appeals: one being a Part II Order request under the *Environmental Assessment Act*, and another being an Ontario Municipal Board appeal under the *Planning Act*. Regulatory changes were proposed by RCCAO in a letter to the Minister of the Environment dated February 16, 2012. The Minister acknowledged the “potential delays and uncertainty” associated with the “Integrated Process” and stated in a letter dated July 24, 2012:

“Staff at my ministry’s Environmental Approvals Branch are carrying out a review of the concerns raised in your letter and will consider your proposal in their review.”

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While one understands a reluctance to remove a right of appeal from the public, one must ask if it is necessary and efficient for a single project to be subject to two separate and independent appeal processes. The potential for two separate appeals is one of the reasons why so few Municipal Class EA projects use the integrated projects approach. Both the Ministry of Municipal Affairs and Housing and the MOE need to do more to remove obstacles and promote advantages of such an approach.

The MOE, in the latest amendments to the MEA, removed fairly clear language about projects planned under an integrated process with the *Planning Act* being treated as Schedule A projects, and replaced it with much more generalized language advising proponents to refer to the text of the document to explain how an integrated process would work. This removed the certainty that an integrated process was a Schedule A project under the Class EA and provides a new barrier to proponents finding time and cost economies in this approach.

## **2.9 Source Water Protection Zones**

Source water protection is an environmental issue that has a direct impact on the location and nature of municipal infrastructure, including roads, bridges, and water and wastewater systems. As a result of the passage of the *Clean Water Act, 2006*<sup>18</sup> and the passage of Ontario Regulation 287/07, there is a need to manage potential, adverse impacts to drinking-water sources within the various types of wellhead protection areas defined in Regulation 284/07. Significant delays can result if an EA report does not identify and adequately address various wellhead protection areas. The MEA has made recommendations to the MOE to amend the Municipal Class EA process to address this concern.<sup>19</sup>

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## 2.10 Municipal Cycling Infrastructure

Cycling and multi-use facilities are increasingly common infrastructure projects for municipalities. To the extent that the construction of such facilities provides mobility and health benefits to Ontarians by providing a safe exercise alternative, reducing greenhouse gas emissions, reducing traffic burdens on existing roadways, and reducing the consumption of non-renewable energy resources, the related EA process should be simplified as much as possible. Cycling facilities are not specifically included in the Municipal Class EA process, so municipalities must either (a) rely on the exemption under Ontario Regulation 334 if the project is below a prescribed capital value<sup>20</sup> or (b) complete an individual project environmental assessment. The MEA has made recommendations to the MOE to amend the Municipal Class EA process to address this concern.<sup>21</sup>

### 3.0 STUDIES AND SUBMISSIONS RELATED TO ONTARIO'S MUNICIPAL CLASS EA SYSTEM

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#### 3.1 Annual Reports of the Environmental Commissioner of Ontario

##### Who Enforces the Class EA? The ORC Case<sup>22</sup>

The 2007-2008 annual report by the Environmental Commissioner of Ontario reviewed an earlier challenge in relation to the Ontario Realty Corporation (“ORC”). Purchases and sales by the ORC fall under another EA class; they are not part of the Municipal Class EA system. The allegation against the ORC was that it failed to follow the prescribed steps and procedures for the relevant Municipal Class EA because the transaction was wrongly characterized as Schedule B instead of Schedule C. The Ministry reviewed the complaint and denied the request for further prosecution or action in the matter.

The applicants, not satisfied with the outcome through the MOE retained counsel to conduct a private prosecution of the alleged ORC infraction of failing to correctly characterize the proposed transaction and follow the public consultation steps associated with a Schedule C transaction. In 2004, a justice of the peace, hearing the private prosecution, found the ORC guilty of violating the *Environmental Assessment Act* and imposed a fine of \$7,500, being 75% of the maximum prescribed penalty through the *Provincial Offences Act*.

Although this particular Environmental Commissioner of Ontario report dealt with a different Class EA system, the Class EA for ORC Realty Activities, and not the Municipal Class EA system, the case still raises the question of whether a person could challenge the mischaracterization of the Schedule of a Municipal Class EA project, and what remedies, if any, the courts might provide.<sup>23</sup>

##### The Environmental Commissioner of Ontario's 2007/2008 Report to the Legislature<sup>24</sup>

The ECO's annual report for 2007/08 entitled “Getting to K(no)w” included a section entitled Environmental Assessment: A Vision Lost, which addressed continuing calls from various stakeholders for improvements to the EA



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process. The section reviewed several site-specific EA cases, as opposed to Class EA cases.

### **Transit Assessments: Is Faster Always Better?**<sup>25</sup>

The report focused on changes under the *Environmental Assessment Act* for transit projects through O. Reg. 231/08. The concern is that the new Transit EA regulation explicitly limits the grounds upon which public concerns will trigger government intervention. One concern expressed by the Environmental Commissioner of Ontario is the one-size-fits-all approach under which large projects like the Union Station–Pearson Airport Rail Link are subject to the same assessment process as much smaller projects with fewer potential impacts. Unlike other streamlined environmental assessment processes that MOE introduced, there is no “classification” or categorization for transit projects within O. Reg. 231/08 based on the type or size of the project or the scale of potential environmental impacts.

### **The Environmental Commissioner of Ontario’s 2012/2013 Report to the Legislature**<sup>26</sup>

The ECO’s annual report for 2012/2013 entitled *Serving the Public* included a section on Class EAs in Ontario. The Commissioner noted that the *Environmental Bill of Rights Act* prescribes certain ministries to post a proposal for an environmentally significant policy on the Environmental Registry at least 30 days before the proposal is implemented and that the Environmental Commissioner of Ontario considers a change to a parent class EA document as requiring a posting. MOE committed as recently as October 2012 to carefully consider the issue and would be in touch with the Environmental Commissioner of Ontario shortly, but no such confirmation appears to have been made as of mid-2013.

## **3.2 RCCAO Study – Environmental Assessment Reform – A Tool for Economic Recovery**

RCCAO commissioned a study by the MMM Group Limited<sup>27</sup> on Environmental Assessment Reform – A Tool for Economic Recovery. The

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MMM Study was completed in February 2009 and can be viewed and downloaded through RCCAO's website.<sup>28</sup> The MMM Study provided a series of recommendations (summarized in Appendix A) as well as anecdotal examples of several municipal construction projects.

### **3.3 RCCAO Study - Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?**

This study, commissioned by the RCCAO and completed in March 2010, can be viewed and downloaded through the RCCAO website.<sup>29</sup> The study's objective was to quantify trends and impacts of the Municipal Class EA process. Prior to this report, there was no information available through the MOE or any other sources as to the actual costs and wait times municipalities were experiencing under the *Environmental Assessment Act*.

This study examined 99 separate Municipal Class EA projects across Ontario in which an EA report had been completed and the project had either proceeded or was about to proceed to construction. The nine recommendations from that report can be found in Appendix B.

### **3.4 MOE – Reply Letter to RCCAO re 2011 MEA Amendments and RCCAO 2010 Study**

Following the publication of the RCCAO's Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs? report, – MEA developed proposed amendments to the Municipal Class EA process and documentation. RCCAO sent a letter to the MOE dated August 4, 2011, providing comments on the MEA's 2011 Municipal Class EA amendments. The MOE responded to the RCCAO with the letter and attachments in Appendix E.

One of the issues was the need for a “screening checklist to assist proponents in making the determination as to whether a bridge structure that is 40 years of age or older has cultural heritage value,” and the Ministry had expected that such a resource would be posted on the MEA website during the summer of 2012. A resource was posted as of February 2013 as a series of YouTube videos.<sup>30</sup> As of February 13, 2014, those videos appear to have

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been viewed fewer than 50 times. If this is the primary mechanism used to provide a screening checklist, it does not appear to be well utilized given that Ontario has more than 400 municipalities.

Another issue was an online training module to assist proponents in properly scoping projects and eliminating any unnecessary considerations of project alternatives. Such an online resource, in the form of several YouTube videos, was posted online in July 2012<sup>31</sup> although it was expected before the end of 2011. As of February 13, 2014, that series of videos appears to have been viewed fewer than 60 times.

The MEA did adopt a process for annually indexing the cost of project thresholds to determine which EA process applies, but this has created considerable confusion in the industry. Since the Class EA is not readily accessible, it is not easy to find current thresholds. It is difficult to determine which years' cost threshold to apply on the project. There also remains confusion as to what items to include in a cost estimate. These difficulties would not arise if the threshold criteria were physical measurements such as length of a road or volumetric capacity of a water or sewer line.

The RCCAO has tried on numerous occasions to seek further integration of decisions made under the *Planning Act* and the Class EA process, but the MOE reply letter suggests proper training under the existing process is needed rather than process improvements. Since 2010, the status of Schedule A<sup>32</sup> projects and their exposure to a Part II Order request has come into question. Although a regulation to rectify this matter was anticipated, it is not yet in effect.

### **3.5 RCCAO Report – Municipal Class Environmental Assessments – Categorization Review Study**

The criterion that distinguishes certain types of Municipal Class EA projects in Ontario is sometimes the capital cost of the specific project. To address the concern that inflationary pressures may be responsible for determining whether a Municipal Class EA project fell within the less-complex

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Schedule B process or a more-complex Schedule C process, the RCCAO commissioned a further review study to examine distinguishing criteria in 20 other jurisdictions outside Canada. The Municipal Class Environmental Assessment Categorization Review Study was completed in January 2012 and can be accessed through the RCCAO website.<sup>33</sup> A copy of the Executive Summary is attached as Appendix C.

Surprisingly, the use of capital cost of a construction project was not used in any other of the 20 jurisdictions reviewed in the report. Instead, other jurisdictions relied upon physical parameters such as the length of a road, capacity parameters such as the number of lanes or anticipated volume of water, or proximity to sensitive sites such as certain water courses. It is recommended that Ontario base its criteria on physical or capacity parameters instead of capital costs.

### **3.6 CELA – A Review of Environmental Assessment in Ontario**

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate for environmental law reforms. In 2000, CELA initiated a review of the provincial EA regime, which resulted in the publication *A Review of Environmental Assessment in Ontario* in the *Journal of Environmental Law and Policy*.<sup>34</sup>

CELA's comments likely were not directed so much at Municipal Class EAs as they were at other Class EAs such as the MNR Resource Stewardship class. For instance, there is nothing in the CELA report that specifically addresses intersection improvements, streetscaping changes, road widenings, or the replacement of antiquated bridges in an urban setting.

As to subsequent CELA publications, CELA made a submission on the proposal on what would become Ontario Regulation 231/08 through the Environmental Bill of Rights Registry,<sup>35</sup> in which CELA expressed general support for fast-tracking municipal transit projects. In 2010, CELA published a further article on Ontario EAs, which is discussed in Section 3.7 below.

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### 3.7 CELA - Environmental Assessment in Ontario: Rhetoric vs. Reality

In 2010, Richard D. Lindgren, counsel for the Canadian Environmental Law Association, and Burgandy Dunn published an article entitled *Environmental Assessment in Ontario: Rhetoric vs. Reality*.<sup>36</sup> The article examines the full spectrum of undertakings and projects governed by the *Environmental Assessment Act*, not merely Municipal Class EA projects, and raised concerns that recent amendments in 2006 and 2007, including Ontario Regulation 231/08, to fast track transit projects were ineffective. The authors raise concerns about several exemptions, most notably the *Electricity Projects Regulation*<sup>37</sup> and the *Waste Management Projects Regulation*<sup>38</sup> as well as municipal class exemptions for projects costing less than \$3.5 million.

The article also highlights numerous difficulties in attempting to integrate *Environmental Assessment Act* requirements with those under the *Planning Act* and quoted a portion of the Environmental Commissioner of Ontario's 2008 report :

“Municipalities are expected to consult with the public on Master Plans, but Master Plans do not require approval under the *Environmental Assessment Act*—only specific projects within the Master Plan are subject to environmental assessment. [...] For example, the York Durham Sewer System was assessed as 14 different Class EA projects despite broad regional implications; the construction phase alone has required a massive dewatering effort, removing vast amounts of water from aquifers in York Region.”

Part of the 2011 amendments by the MEA to the Municipal Class EA process includes Section A.29, “Integration with the *Planning Act*”<sup>40</sup>; however, there are still issues that may require additional time and/or study. An example would be if the implementation of a Master Plan triggers a need for additional municipal infrastructure outside of the *Planning Act* application boundaries, such as changes to an arterial road or connections to water or wastewater facilities. The additional off-site infrastructure may still require an independent Municipal Class EA notwithstanding the integrated project approach.

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### 3.8 Municipal Engineers Association – Proposed Amendments to the Municipal Class Environmental Assessment Process

The MEA made several written submissions in 2013 to the Minister of the Environment regarding changes to the Municipal Class EA process, including the MEA's December 5, 2013 letter and the attachments thereto.<sup>41</sup>

MEA's requested changes address several issues including but not limited to:

- a) Potential impacts related to source water protection zones as prescribed by the *Clean Water Act*;
- b) Procedures and forms for making a request for a Part II Order; and
- c) Revised EA tables relating to cycling facilities.

The source water protection zone is more in the nature of an informational/educational recommendation to ensure that relevant impacts are not overlooked.

The changes related to Part II Order requests are attempts to reduce the potential for abuse. Members of the public would be reminded to use the public consultation process to express concerns about potential environmental impacts of a project and not wait until the EA study report is completed to raise the issue. The actual Part II Order request form would include not only a statement that members of the public have a responsibility to bring their concerns to the proponent early in the process, but also an explanation of how the applicant has participated in the EA process and why the applicant believes the concerns have not been reasonably addressed.

The MEA has also recommended changes to the EA tables so cycling lanes and multi-facility paths fall within the scope of various Schedule A and A+ projects. It is noted that cycling and multi-purpose paths are common and similar to roads in that the environmental impacts are predictable and that these facilities should be included in the comparable Schedule A and A+ descriptions for roads and intersections as well as underpasses and overpasses.

The MEA recommendation on cycling is also tied to a recommendation by the Environmental Commissioner of Ontario in relation to a judicial review challenge by a local rights group in Toronto in 2008. A summary of that proceeding and the ECO's recommendation is attached as Appendix D.



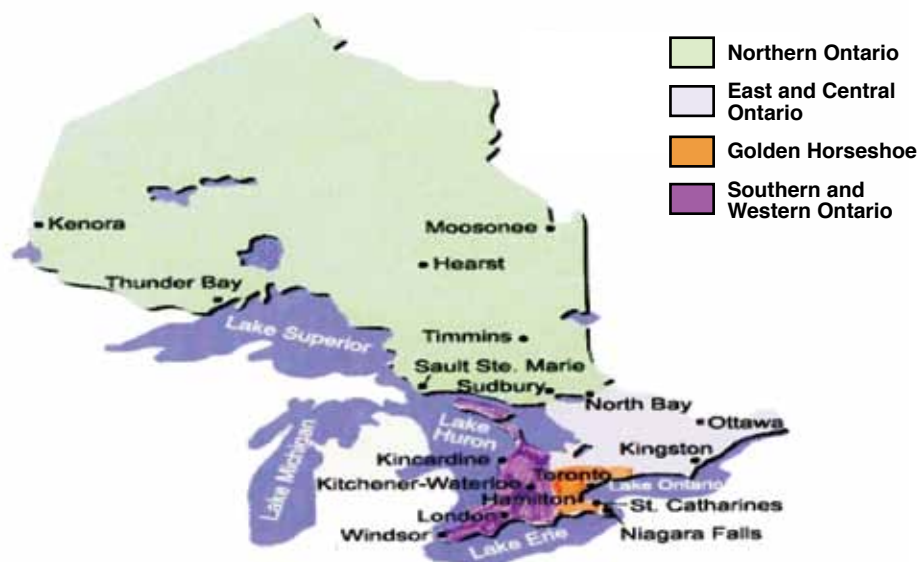
## 4.0 KEY DATA ANALYSIS

### 4.1 General

Whereas the Original Study consisted of a review of 99 separate Municipal Class EA construction projects in Ontario, this report examines a subsequent 28 Municipal Class EA projects that satisfy the following parameters:

- i. The projects are municipal construction projects in which either a Schedule B or C EA study report has been completed and that either has been constructed or for which construction is expected to start before April 1, 2017.
- ii. The construction projects consist of the construction or reconstruction of roads, including road widenings and extensions; bridges; water or wastewater infrastructure; as well as a small number of other projects such as flood control works and recreation trails.
- iii. Projects reflect geographic diversity as well as a range of sizes of the respective municipalities.

**Figure 1: Map showing the four geographical regions of Ontario**



**Table 2: Project Type and Regional Location for 28 Class EA Projects**

Project Type	Golden Horseshoe	Eastern and Central	Northern	Southern and Western	TOTAL
Road Widening and Extensions	5	1	1	2	<b>9</b>
Bridge Reconstructions and Replacements	2	3	0	1	<b>6</b>
Sewer, Water and Facilities	2	3	0	1	<b>6</b>
Other, e.g. flood control and recreational paths	5	1	0	1	<b>7</b>
<b>TOTALS</b>	<b>14</b>	<b>8</b>	<b>1</b>	<b>5</b>	<b>28</b>

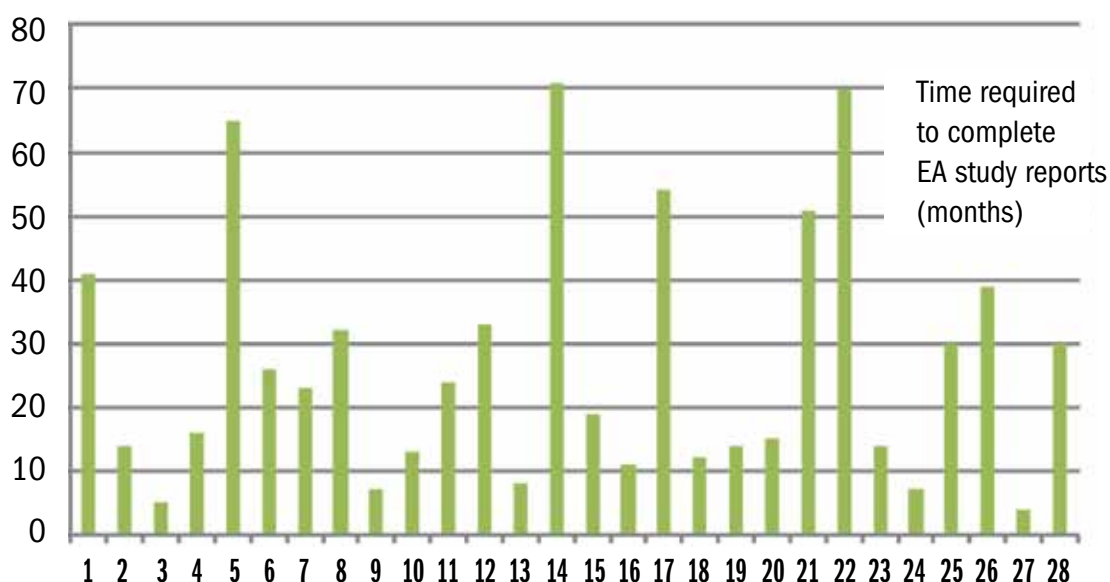
## 4.2 Anonymity of Specific Projects and Municipalities

Please refer to the discussion in Section 1 of this paper under the heading “Anonymity”.

### 4.3 Duration of EAs

Figure 2 shows the length of time it takes for each of the 28 projects to go through the Municipal Class EA process. The average time between notice of commencement and notice of completion for the 28 projects was 26.7 months,<sup>42</sup> which represents an unexpected increase from the average time of 19.3 months required for an EA examined in the Original Study.

**Figure 2: Duration of the 28 Individual EAs**



One of the longer EAs was project No. 117\*, a Schedule C collector trunk sewer in the Golden Horseshoe that took 54 months to complete. There were four rounds of public consultations and an amended EA report. There were further delays due to Part II Order requests by local opponents and those delays are in addition to the 54 months to complete the final EA report.

The Schedule B EA report for project No. 122\*, a river crossing of a watermain in Eastern Ontario required 70 months to complete. Even though it was a replacement of an existing watermain, the project would have also been subject to a federal EA. The federal law was changed in 2012 and the need for a federal EA report was avoided.

\*The Original Study examined projects 1 to 99; this study examined projects 101-128

**Table 3: Duration of EAs by Provincial Region (months)**

	<b>Golden Horseshoe</b>	<b>Eastern and Central</b>	<b>Northern</b>	<b>Southern and Western</b>
Minimum	4	12	16	5
Average	30	26	16	16
Maximum	71	70	16	30

**Table 4: Duration of EAs by Project Type (months)**

	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
Schedule “B” Roads*	7	7	7
Schedule “C” Roads	14	34	71
Schedule “B” Bridges	4	19	30
Schedule “C” Bridges	24	38	51
Schedule “B” Sewer and Water	14	33	70
Schedule “C” Sewer and Water	15	36	54
Schedule “B” Other	5	9	13
Schedule “C” Other	8	24	31

\*There was only one Schedule B roads project among the 28 projects examined for this report

**Table 5: Duration of EAs by Year EA Started (months)<sup>43</sup>**

	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
Before 2005	64	67	71
During 2005-2008	32	50	70
During 2009	16	32	51
During 2010	7	15	23
During 2011	4	12	24
During 2012	5	10	14

**Table 6: Duration of EA by Year EA Completed (months)**

	Minimum	Average	Maximum
During or Before 2009*	54	54	54
During 2010	7	30	65
During 2011	4	14	26
During 2012	5	22	71
During 2013	14	34	51

\*There was only one EA completed during or before 2009 among the 28 projects examined for this report

**Table 7: Duration of EAs by Municipal Populations (months)**

Population of Municipality	Minimum	Average	Maximum
59,000 or less	12	13	15
59,001 to 199,000	14	34	51
199,001 to 600,000	5	26	65
600,001 or more	4	24	71

**Table 8: Duration of EAs by Project Type**

Project Schedule Type	Minimum	Average	Maximum
Schedule “B”	4	18	70
Schedule “C”	8	33	71
All Types	4	26	71

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#### **4.4 Part II Order or 'Bump-up' Requests**

Six of the 28 Municipal Class EA projects were subject to Part II Order requests (bump-up requests). Given the limited data available on bump-up requests, the additional time to address those requests was excluded from the EA delay and cost estimates presented in this paper.

MEA data suggests that of the 93 Municipal Class EA study reports completed in 2009, 22 were the subject of a Part II Order request; and of the 60 Municipal Class EA study reports completed in 2010, 16 were the subject of a Part II Order request. Overall, about one-quarter of all Municipal Class EA study reports appear to be subject to Part II Order requests.

While there is no doubt that a Part II Order request imposes administrative burdens on the municipality to respond, it is beyond the scope of this review to quantify such burden or whether that burden justifies the proposed measures to restrict the availability of Part II Order requests.

#### **4.5 Cost of EAs**

The cost of EAs for the purposes of this report has two components, the costs of the study or report itself and the inflationary costs for the period spanned between the commencement and completion of the EA study.

The first component of the total costs of EAs is the costs paid to third party consultants to conduct all related investigations and studies such as traffic study reports, archeological and heritage investigations, etc. that comprise the full EA report. Actual cost data for the EA study was obtained in about 20% of the 28 projects as contrasted to one-third of the projects in the Original Study. In many instances the contract value for tender awards was withheld by the municipality. While other recent EA study cost data were available on about a dozen projects that were not part of this or the Original Study, and those results were used to generate an estimate of actual EA study report costs.

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Project No. 111 involved a bridge replacement in the Golden Horseshoe area. The amount paid to third-party consultants for preparation of the investigations such as traffic and heritage elements as well as the final EA document was about \$150,000. Construction costs escalated by an estimated \$3.473 million to about \$69 million during the 24 months that it took to complete the EA study report. The total cost of the Schedule C EA report for project No. 111 is therefore calculated to be \$3.623 million.

In most cases where data are available, the actual costs of preparing the EA study documents represented about 1% to 2% of the total project cost. The balance of the estimated EA costs are attributed to the delays in moving the project forward.

Over the past decade, construction costs have increased at a faster rate than most consumer prices as many construction costs are tied to the cost of energy and other resources. This study estimated the rise in construction costs as the increase in construction costs during the period starting with the publication of the notice of commencement of the EA study and ending upon the publication date of the notice of completion of the EA study. The inflation rate used is not the Statistics Canada consumer price index but is an average of the Statistics Canada Institutional Construction Price Index and the Industrial Construction Price Index for the Province of Ontario. The prior study used the MTO Tender Price Index for the Province of Ontario, but unfortunately, this index no longer appears to be published. While the Statistics Canada Institutional Construction and Industrial Construction Price indexes may not fully reflect variances in many civil construction costs, such as roads, bridges, and water infrastructure, it is much more likely to reflect changes in civil construction prices than any other readily available construction price index for Ontario.



**Table 9: Estimated Infrastructure Construction Price Changes 1998-2013**

Year	Index	Change from Prior Year	Year	Index	Change from Prior Year
1998	89.0	n/a	2006	130.0	8.97%
1999	90.8	2.02%	2007	139.5	7.31%
2000	97.1	6.94%	2008	152.5	9.32%
2001	98.4	1.34%	2009	142.5	-6.56%
2002	100.9	2.54%	2010	147.2	3.30%
2003	103.9	2.97%	2011	151.6	2.99%
2004	113.6	9.34%	2012	154.9	2.18%
2005	119.3	5.02%	2013	156.5	1.03%

Not only are more recent Municipal Class EA infrastructure projects slowed by an average of more than 26 months, they also faced substantially higher costs through the EA process. The cumulative value of all of the 28 construction projects in this study is \$1.519 billion. Adding together the costs paid to third parties for EA reports and the inflationary increases of construction for the duration of the EA reports, results in a total cost of \$157 million to the 28 projects, or an average of 10.25% of incremental costs, as compared to the 14.5% of incremental costs indicated by the Original Study.

In addition to the foregoing it is arguable that there is a third component of costs for an EA, being the staff time and municipal resources expended to initiate and support an EA study report. No estimate has been made for internal municipal costs for the EA process, such as staff time and resources for tendering or selection of the EA consultant; publication of notices; or any legal fees related to the EA. Such costs would be in addition to the costs outlined in this report.

**Table 10: Average Cost of EAs by Geographic Region  
(as a % of capital cost)**

Geographic Region	Minimum	Average	Maximum
Golden Horseshoe	0.4%	9.0%	23.8%
Eastern and Central Ontario	3.8%	8.6%	19.2%
Northern Ontario	1.7%	1.7%	1.7%
Southern and Western Ontario	1.4%	3.7%	8.5%

**Table 11: Average Cost of EAs by Size (population) of Municipality  
(as a % of capital cost)**

Municipality Size	Minimum	Average	Maximum
59,000 or less	3.8%	7.6%	11.4%
59,001 to 199,000	1.7%	7.3%	19.2%
199,001 to 600,000	2.6%	8.9%	23.8%
600,001 or more	0.4%	6.3%	21.1%

## **5.0 DURATION AND COST OF THE MUNICIPAL CLASS EA PROCESS**

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### **5.1 Expected Durations for Municipal Class EA Reports**

Aside from the Original Study, there are very few if any references by the MOE or by any other authorities as to what the expected timeframes and costs are for conducting Schedule B or Schedule C Municipal Class EAs.

The MMM Study did not cite any official time expectations but did indicate that the most effective Class EA processes still typically take six to 18 months to conclude. While not indicative of time frames for streamlined Class EAs, the prescribed deadlines under Ontario Regulation 616/98 for a full EA after the Minister has approved the Terms of Reference are 17 weeks from completion of the EA to the end of public inspection and consultations. The time frame between notice of commencement and the completion of the EA study report is a maximum of 120 days for a Transit EA under the new Transit Projects EA Regulation.<sup>44</sup>

The average time between notice of commencement and notice of completion for the 28 projects was 26.7 months, a significant increase over the average time frames cited in the Original Study (19.3 months).

### **5.2 Expected Costs for Municipal Class EA Reports**

The third-party costs for the preparation of a Schedule B or Schedule C report, including all relevant traffic pattern and volume studies, archeological assessments, and endangered species assessments, is still generally below the 3% of capital cost of project estimates cited in the Original Study, but a much larger portion of the report costs are much closer to that 3% ceiling than what was observed in the Original Study.

The average EA study report costs have increased from an average of \$113,300 for the Original Study data to \$386,500 for the data behind this report.

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### 5.3 Comparing Ontario's EA Process for Municipal Infrastructure to other Provinces

The introduction of Ontario's *Environmental Assessment Act* in 1975 was the first legislation of its kind in Canada. The original intent of the Act was to ensure that public infrastructure projects were subject to the scrutiny of an environmental review process.

While most other Canadian provinces have introduced their own EA statutes or amended their other environmental statutes to include EA obligations, Ontario is still the only Canadian jurisdiction that imposes EA obligations on routine municipal infrastructure such as road widenings or new watermains.

In Canada, the province other than Ontario that appears to have the most comprehensive EA requirements for municipal infrastructure is Manitoba. In Manitoba, projects including certain municipal projects are categorized as either a Class 1, Class 2, or Class 3 development.<sup>45</sup>

Manitoba Class 1 developments include various industrial facilities, such as cement plants, foundries, sawmills, as well as wastewater treatment plants. In the case of Class 1 projects, the proponent must submit a description of the proposal with the Province and advertise it to the public in a local newspaper or by radio. The Province will then determine, within specified time frames (approximately 2 to 4 months) what, if any, additional measures must be taken by the proponent. The Province may also decide to characterize the project as a Class 2 project.<sup>46</sup>

Manitoba Class 2 developments include new electrical power generation less than 100 MW capacity, pulp and paper mills, and two-lane roads at a new locations, other than roads approved in a plan of subdivision. Class 2 projects may, at the discretion of the director, be subject to one or more of the following requirements:

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- (a) Require additional information from the proponent;
  - (b) Issue guidelines and instructions for the assessment and require the proponent to carry out public consultation;
  - (c) Require the proponent to prepare and submit to the director an assessment report to include such studies, research, data gathering and analysis or monitoring, alternatives to the proposed development processes and locations, and the details of proposed environmental management practices to deal with the issues;
  - (d) Conduct or cause to be conducted a review of the assessment report; or
  - (e) Request the minister to direct the chairperson of the commission to conduct a public hearing.

Manitoba Class 3 projects include new electrical power generation more than 100 MW capacity and four-lane roads. While the options are similar to those for Class 2 Developments, the Minister of the Environment makes the decision whether to require one or exercise one of the options similar to those associated with a Class 2 project.

However, in Manitoba, when a municipality intends to construct, alter, or operate a Class 2 or 3 development which, in the opinion of the minister, will not have an environmental impact beyond the municipality—and which has been or will be the subject of an appropriate EA by the municipality that includes public consultation and addresses environmental issues—then such a development is exempted from the requirements under the Act. Of particular interest is the fact that, in January 2014, the Manitoba Law Reform Commission published a discussion paper on Manitoba’s environmental assessment and licensing regime, however, the report generally flags issues for public consideration as opposed to specific procedural recommendations. For instance, proponents do not need to examine alternatives to the project, and the discussion paper raises the issue of whether or not environmental assessment reports and environmental impact statements should require the proponent to review alternatives to the proposed project.<sup>47</sup>

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British Columbia requires EAs for various classes of projects such as manufacturing facilities with a capacity of 100,000 tonnes per year or more of non-dangerous materials or more than 5,000 tonnes per year of dangerous goods; new wood-pulp manufacturing facilities, regardless of size; certain-sized mines; certain electrical generation and electrical energy transmission projects, but not basic municipal infrastructure such as roads, walkways, intersections, watermains or sewers.<sup>48</sup>

In Quebec, certain water-related activities such as constructing a dam or altering a watercourse may be subject to an EA and review process. With respect to typical municipal infrastructure, roads more than one kilometre in length with four or more lanes where the right-of-way was acquired by the municipality after 1980 are subject to the EA and review process.<sup>49</sup> The Minister reviews the prescribed project description and notice and determines the scope of assessment reporting and public consultation to be provided by the proponent.<sup>50</sup>

In Nova Scotia, EAs do not apply to municipal roads or multi-use pathways but do apply to water and wastewater works as well as the construction of a bridge where a portion of the structure is in a watercourse or use of equipment in the watercourse or three metres from the edge of the watercourse is required. In cases subject to Act,<sup>51</sup> the Minister upon receipt of a prescribed form of notice makes a decision on whether or not the following occurs:<sup>52</sup>

- (a) Additional information is required;
- (b) A focus report is required;
- (c) An EA report is required;
- (d) All or part of the undertaking may be referred to alternate dispute resolution; or
- (e) A focus report or an EA report is not required, and the undertaking may proceed.

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## 5.4 Are Municipal Class EAs Worth the Added Costs and Delays?

The added costs and delays for Municipal Class EAs in Ontario are significant, with average delays of more than 26 months and additional costs due to EA study reports and rising construction costs of 10% or more during the time it takes to complete EAs.

It may seem puzzling as to how the delays can increase from the projects reviewed in 2014 over those reviewed in 2010, yet the costs associated with the delays decreased from 14.5% to 10.3%. Due to the economic slowdown in 2008-2009, there was a positive financial impact as construction prices dropped significantly during this period. Consequently, projects that were delayed from mid-2008 to the end of 2009 or early 2010 would have saved some money through reduced construction pricing.

If we extrapolate the findings for the 28 projects covered by this study to the approximately 60 to 90 municipal infrastructure projects which are subject to Municipal Class EA Schedule B or Schedule C requirements, we can conclude that, provincially, the cost of studies and delays associated with the Municipal Class EA process in 2009 was \$517 million in 2009 and \$334 million in 2010. These figures exclude any costs or delays associated with Part II Order requests and also exclude municipal staff costs and resources to administer the Municipal Class EA process.

The answer to the question of whether Municipal Class EAs are worth the growing costs may vary depending on which person or organization you ask. While some EA advocates state that there are environmental and economic benefits that accrue from the EA process, this claim is rarely backed up.



## **6.0 RECOMMENDATIONS TO REDUCE MUNICIPAL CLASS EA DELAYS AND COSTS**

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### **6.1 Fast-track Certain Schedule B Municipal Class Projects**

Of the construction projects examined as part of this study, 12 of the 28 (43%) were Schedule B projects. The average delay for a Schedule B construction project to complete the EA was about 18 months as compared to the average time of 16 months for Schedule B projects in the Original Study.

A delay of 18 months to complete a Schedule B EA study report is an unacceptably long time. If many transit projects can be fast-tracked to 120 days for completion of EA reports under Section 6 of Ontario Regulation 231/08, then there should be a reasonable opportunity to fast-track Schedule B projects to have the EA reports completed within 180 days of the date of the Notice of Commencement.

### **6.2 Fast-track Certain Schedule C Municipal Class Projects**

Of the construction projects examined as part of this study, 16 of the 28 (57%) were Schedule C projects. The average delay for a Schedule C construction project to complete the EA was about 33 months as compared to the average time of 21 months for Schedule C projects in the Original Study.

An average delay of 33 months to complete an EA study report appears to be an unacceptably long time. While it may not be appropriate to fast-track Schedule C projects to as short a time frame as Schedule B projects, it certainly appears to be possible to target a completion deadline of somewhere between 12 and 18 months for the completion of a Schedule C infrastructure project. Four of the 16 Schedule C projects reviewed in this study required fewer than 18 months, and two were completed in fewer than 12 months.

### **6.3 Establish New Criteria Other than Capital Costs as Thresholds**

The cost of construction, particularly for basic municipal infrastructure, continues to increase at a rate that is often higher than the consumer price index reported by Statistics Canada. There are undoubtedly a number of reasons for this difference, including shortages of materials such as steel and concrete and higher fuel costs. It is beyond the scope of this paper

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to determine what the exact differences are or whether they are justified, but they are significant. The Original Study had recommended that the threshold capital costs be indexed annually to the MTO's Tender Price Index. Some feedback indicates that annual indexing of capital costs creates unnecessary confusion, particularly since the average length to complete an EA study report has been increasing and now would span more than two annual adjustments. Furthermore, the MTO no longer publishes its Tender Price Index.

RCCAO commissioned a separate report to examine threshold criteria in other jurisdictions, and the conclusion was that Ontario appears to be the sole jurisdiction for which the capital cost of an infrastructure project is a threshold to determine the degree of public consultation and reporting of EAs. Examples of such physical criteria could include length (roads up to five kilometres in length), capacity (number of vehicle lanes for roads or bridges, households served, or cubic metres per day for water and wastewater infrastructure), or proximity to sensitive areas (within x metres of a permanent water body or designated nature reserve). It is recommended that the thresholds be rewritten to remove references to capital costs and reference physical criteria of infrastructure projects.

#### **6.4 Reduce Potential Abuses of the Part II Order Request Rights**

Of the 28 projects reviewed in this study, six of the projects received requests for Part II Orders (bump-up requests). All bump-up requests were eventually denied by the Minister. Based on the projects examined in this report and MEA data available for 2009, 2010, and 2011, it appears that approximately 20% to 25% of all Municipal Class EA Schedule B and Schedule C projects are subject to a Part II Order request. The comparable value of projects subject to a Part II Order request in the Original Study was only 15% to 20% of projects.

Almost all Part II application decisions in 2009, 2010, and 2011 were rejections and fewer projects were subject to additional Ministry conditions as compared to the data for 2007 and 2008. In at least two of the projects

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examined in this report, there were multiple Part II Order applications and the applications came from individuals and organizations that had already expressed their concerns and views through the public consultation process.

To reduce the likelihood of Part II Order requests that have little or no merit, RCCAO's MMM Study had suggested measures to reduce the most frivolous or abusive requests, including a nominal fee be charged to any person requesting a Part II Order (e.g., \$125.00 as is used for the Ontario Municipal Board). Both reports also supported delegated authority from the Minister of the Environment to a Director to dismiss a Part II Order request when it is being used frustrate the implementation of a reasonable project decision that has already had extensive public process.

Other potential measures to reduce meritless Part II Order requests, as suggested by the MEA and others, include:

- Providing general criteria in the legislation for the Minister to grant a Part II Order, and
- Including a specific prohibition for requests that are frivolous, vexatious or for the purpose of delay.

In a letter dated August 26, 2011 from the Ministry to the RCCAO (copy of letter attached as Appendix E), the Ministry responded to concerns raised by the RCCAO about the possibility of dual appeals to an integrated *Planning Act* and *Environmental Assessment Act* public consultations, in that opponents may be able to appeal to both the Ontario Municipal Board and apply for a Part II Order under the *Environmental Assessment Act*. The Ministry's response was that they have received similar expressions of concern from other organizations and that the Ministry will be initiating a review for legislative changes/delegation of decision-making authority for Part II Order requests in the near future.

The Ministry should consider additional measures to restrict potential abuses of the right to request Part II Orders by restricting the appeal

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rights in integrated *Planning Act* and *Environmental Assessment Act* public consultations to a single body: one can either pursue a Part II Order request or appeal to the Ontario Municipal Board, but not both.

The Ministry should also expedite any possible exemptions for Part II Order requests for certain Municipal Class infrastructure projects of low environmental impact risk as discussed in Section 12.5 of this report.

### **6.5 Reduce the Scope and Complexity of Municipal Class EA Reports**

There appears to be a noticeable increase in the size and complexity of EA study reports since the Original Study. EA reports accessed online are in many cases several hundreds of pages in length, and the costs paid by municipalities to prepare these reports have also increased significantly from an estimated \$113,300 average for the 99 projects examined in the Original Study data to \$386,500 for the projects reviewed in this report.

The increase in complexity and document size appear to be linked to the increased time to complete the EA study, but they do not appear to be driven by any changes in the regulations or the MEA documents. Increased documentation/background studies and the costs of these reports may be due in part to concerns by municipalities to avoid Part II Order requests.

The Original Study included several recommendations related to reduce scope, namely that certain road projects need not re-examine alternatives where the proposed location and type of infrastructure had previously been discussed in the establishment of Official and Master Plans. By reducing the scope and complexity of EA reports, municipalities will likely be able to reduce study costs and delays while simplifying and streamlining stakeholder feedback on environmental issues of concern.

### **6.6 Continue Efforts to Harmonize *Environmental Assessment Act* Consultations with *Planning Act* Consultations**

The review of alternative routes for roads and sewers continues to be a significant part of public consultations and EA study reports. To the extent

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that road alignments have been identified as part of Official Plans or Master Plans, or where a water or wastewater conduit is to be constructed entirely within a road allowance, every opportunity should be utilized to reduce the complexity of the EA process.

To the extent that Official Plans are being amended or Master Plans are being established, municipalities should exercise their best reasonable efforts to include public consultation on EA issues even where it is not yet certain when the proposed infrastructure will be constructed.

### **6.7 Establish Transparency for Completed EA Reports**

The MOE email address, MEA.Notices.EAAB@ontario.ca, has been in use since 2010 by which every “Notice of Completion” for each Municipal Class EA Schedule B project and every “Notice of Completion of Environmental Study Report” for each Municipal Class EA Schedule C project is sent. There does not appear to be any mechanism by which the public can use the Internet to view any MEA notices of completion unless the relevant municipality provides a posting on its own website.

It is strongly recommended as a measure of transparency and comparability that there should be public viewing access through the MOE websites to all notices of completion both current and historical as well as to the actual EA study reports and any conditions imposed by the MOE as a result of an application for a Part II Order. This recommendation is an after-the-fact filing and is not intended to slow down or further delay the completion of EA reports or the construction of the subject basic municipal infrastructure project.

### **6.8 Continue to Reduce the Time Frames for EA Bump-up Requests**

In 2007 and 2008, both the MEA and the Environmental Commissioner of Ontario called for faster responses from the MOE to Part II bump-up requests from proponents. In December 2009, the MOE resolved to make decisions on bump-up requests within 30 to 66 days.<sup>53</sup>

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Of the 28 projects reviewed in this study, six of the projects received requests for Part II Orders (bump-up requests). All bump-up requests were eventually denied by the Minister. MEA data shows that while Ministry response times were at an acceptably low level in 2009 and 2010, response times started to grow again in 2011.

Given indications that approximately 20% to 25% of all Municipal Class EA Schedule B and Schedule C projects are subject to a Part II Order request, lengthening response times by the MOE are likely to have a significant impact on municipal infrastructure costs and delays across the province. The MOE should take such measures as are needed to ensure that Ministry response times are below 180 days for Part II Order requests.

## **6.9 Cycling Infrastructure to be Expressly Referenced in Municipal Class EA Tables**

The MEA recommended changes to the EA tables so that cycling lanes and multi-facility paths fall within the scope of various Schedule A and A+ projects. It noted that cycling and multi-purpose paths are common and similar to roads in that the environmental impacts are predictable and that these facilities should be included in the comparable Schedule A and A+ descriptions for roads and intersections as well as underpasses and overpasses.

MEA's recommendation on cycling is also tied to a recommendation by the Environmental Commissioner of Ontario in relation to a judicial review challenge by a local rights group in Toronto in 2008. A summary of that proceeding and the Environmental Commissioner of Ontario's recommendation is attached as Appendix D.

## APPENDIX A

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### **Recommendations from the RCCAO Report Environmental Assessment Reform – A Tool for Economic Recovery dated February 2009 by MMM Group**

- a) Projects of Special Status: In the short term, as part of the economic recovery process, the Province should either adopt a special regulation or issue a Declaration Order for all economic stimulus projects to remove the requirement for consideration of alternatives for this defined list of projects.
- b) Where a piece of infrastructure is shown in a provincial growth management plan, a proponent should not be required to consider “Alternative Solutions” for the undertaking, as recognition should be given to the broader planning exercise done by the Province or Metrolinx.
- c) Clarify and improve the process of harmonization between land use planning and environmental assessment processes, so that there are not independent or ‘dueling processes’. This includes improving the way land use planning considers alternatives, but then allowing the land use planning process to fulfill EA requirements. This would also require clarifying the role of the Ontario Municipal Board, and the role of private players in the process. Figure 3 illustrates potential coordination between the planning process and EA processes.
- d) Give the Director the power to dismiss a “Part II Order Request” when it is being used frivolously to frustrate the implementation of a project that has already had extensive public process.
- e) Provide general criteria in the legislation for the Minister to grant a Part II Order, and as in other legislation, include a specific prohibition for requests that are frivolous, vexatious or for the purpose of delay. These are requests that are apparently intended to serve the interests of an individual, at the expense of broader public interests, or which have no reasonable environmental grounds and are merely attempts to frustrate or slow a project. There are certainly legitimate concerns raised on many projects, but there must be some limits on blatant abuse and delay tactics.



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f) Implement a requirement to pay a nominal fee to request a Part II Order (e.g., \$125.00 as is used for the Ontario Municipal Board), so that it would eliminate the most frivolous requests.

g) Conduct a detailed review of Schedule B Municipal Class EA projects. Many could be reclassified as Schedule A+ projects. This would expand the list of “pre-approved projects”, even if the proponent is still required to do some form of public notification. Others might be reclassified as Schedule C if the range of environmental interests routinely merits a more extensive process. The result may be that Schedule B is redundant. Examples of potential reclassifications are included in Appendix A of this report.

h) In the event that Schedule B remains valid, the intent, content and documentation requirements of the “Project File Report” should be clarified.

i) Provide additional education to municipalities and the public on effective participation in the process, including providing more information on best practices for environmental management and mitigation of construction projects. Better education on these basic process parameters will create benchmarks against which processes can be tested in the event of a process-related Part II Order request.

j) The Agency should be charged with developing a procedure for screening routine projects, including sample Screening forms. They should encourage a consistent approach to and simplified screenings among Departments. They should encourage streamlining of the matters considered in the screenings when funding is the only trigger, and/or when routine federal permits are the trigger.

k) The Agency should be charged with working with each Federal Department to develop a two-track Screening process. “Routine Screenings” for projects that are common, limited environmental impact, or for which comparable approval processes have addressed environmental management issues should have a proportionately simple Screening form and process. In particular,

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this should be targeted to projects where the only Federal participation is in the funding of a project. “Complex Screenings” should remain the case for projects that merit a more rigorous review, where Federal environmental commitments are more significant, or where there is a demonstrated controversy of the project in the general public. Projects could be elevated at the discretion of the RA from “Routine” to “Complex Screening”. No legislative change is required for this.

l) Federal Departments are required to post information on screenings on a computer registry, but this tool is still difficult to use, and it is not used effectively as a management tool to track screenings. The Agency should upgrade the site as both an information and as a management tool to avoid these problems;

m) In the event of a conflict between the activities of multiple departments, or merely in the event of excessive delay in a single department, the Agency should be given the mandate to assist project proponents to resolve these issues in the most expedited manner possible.

n) The Agency should be charged with developing procedures for the earlier assessment of projects, and earlier participation of Federal departments, even if triggers for Canadian *Environmental Assessment Act* (“CEAA”) are not fully known.

o) The Agency should be empowered to be a “one-window” for approaching the Federal government on all CEAA Screenings. They should be able to coordinate Federal participation in a project, even if triggers are not fully certain (the “in the process until you are certain you are not” principle). They should be legally empowered to be the “coordinating Responsible Authority” where no other clear RA is identified.

p) The RAs should be instructed to defer to or “harmonize” the Screenings with comparable environmental management processes of other levels of government.

### **Recommendations from the RCCAO Report “Are Ontario’s Municipal Class Environmental Assessments Worth the Added Time and Costs?” dated March 2010 by Frank J. E. Zechner Professional Corporation**

#### **6.0 Alternatives to Reduce EA Study Delays and EA Study Costs**

##### **6.1 Redraft the criteria for Schedule A+ and Schedule B Projects**

Of the construction projects examined as part of this study, 36 of the 99 (36%) were Schedule “B” projects. Collectively they accounted for \$26.6 million of incremental costs on the 36 separate projects or approximately \$740,000 per project. The average delay for a Schedule B construction project to complete the EA study was about 16 months.

Only 1 of the 36 Schedule B projects were the subject of a Part II order request, as compared to 16 of the 63 Schedule C projects, suggesting that Schedule B projects may have far less potential impact than Schedule C projects.

If the Schedule B projects had been characterized as Schedule A+ projects, the vast majority of those incremental costs of \$26.5 million would have been saved by the participating municipalities for investment in other infrastructure construction projects or services.

##### **6.2 Fast track, certain Municipal Class EAs**

On September 11, 2007 the Ontario Ministry of the Environment announced the approval of a new “Class” Environmental Assessment (EA) process for municipal transit projects that would help streamline the approval process for major transit infrastructure improvements. Prior to the approval many transit projects were required to follow the full “Individual” EA process. The Province concluded that without the need for developing and obtaining Ministry approval of detailed Terms of Reference for a project the new Transit Class EA process would be completed and approved up to one year faster than had previously been possible.

Although the Ministry claimed that Transit Class EAs would result in a process that would save one year and thus accelerate the construction process,

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the Province sought to further speed the approval of new transit projects through a new Transit regulation proposal.<sup>54</sup> Under the new Regulation, proponents are not required to assess different alternatives to the project, which is in contrast to a continuing requirement under the Municipal Class EA. The new regulation also sets a time limit of four months from the posting of a Notice of Commencement to completion of the Environmental Project Report, to consult with interested persons. The regulation does not prescribe the manner in which consultations must occur as this is left to the proponent to determine. The Regulation was made as of June 4, 2008 and published in the July 12, 2008 edition of the Ontario Gazette.<sup>55</sup>

The review of alternatives to the proposal is still an integral part of the Municipal Class EA framework and there is no time frame limit for the completion of any reports under the Municipal Class EAs.

In most of the road widening and intersection improvement related EA's reviewed in this study, the alternatives considered and canvassed as part of the EA included:

- a) 'do nothing';
- b) make improvements to other nearby roads and/or intersections;
- c) restrict traffic and development; and
- d) improve local transit.

Clearly each of these alternatives are an integral part of most municipal official planning and budgetary debates and arguably do not require a "re-vetting" through the EA process. The same alternatives were often repeated in most of the bridge replacement EAs.

Consideration should therefore be given to a Municipal Class EA regulation that would remove the need to consider alternatives for road widenings and intersection improvements as well as bridge replacements, and would also establish the same time limits for Municipal Class EAs that apply to transit projects under Ontario Regulation 231/08.

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It is noted that the Ministry has implemented some new time frames as of April 2009, as more particularly described in section 2.5 of this report, however those time frames only relate to municipal responses within two weeks to key issues raised in any Part II order requests. The notice does not imply or require that the Ministry would resolve a Part II order request within any specified time frame.

There may however be some argument for new roads (as compared to road widenings) or new bridges (not a replacement for an existing water crossing) that alternative alignments should continue to be addressed as part of the Municipal Class EA process.

### **6.3 Establish Automatic Indexing of Threshold Capital Costs**

The cost of construction, particularly for basic municipal infrastructure, continues to increase at a rate that is significantly higher than the consumer price index reported by Statistics Canada. There are undoubtedly a number of reasons for this difference, such as shortages of materials such as steel and concrete, higher fuel costs, higher risk management and WSIB premiums, more onerous and slower regulatory approvals such as water taking permits. It is beyond the scope of this paper to determine what the exact differences are or whether they are justified, but they are significant.

Several government and other organizations track this information. The Ontario Ministry of Transport has maintained a Tender Price Index dating back to 1992. For the period December 31, 2006 to December 31, 2007 the Ministry of Transport reported an increase of 10.2%. For the year ending December 31, 2008 the Ontario Construction Exchange reported a year over increase of a further 7.8%. The net result is that a basic municipal infrastructure project that might have cost \$2 million at the end of 2006 would now cost \$2.376 million. Such an inflationary impact over two years, has not only added more than 18% to the construction costs, it has likely reclassified a project such as a Streetscaping project from a Schedule A+ to a Schedule B Municipal Class EA thereby adding further significant costs and delays of between 6 and 24 months. If the project was a road widening

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the project might have been reclassified from a Schedule B to a Schedule C Municipal Class EA.

It is therefore recommended that the threshold values in the Municipal Engineers Association guideline document be automatically indexed on an annual basis to an objective construction index such as the MTO tender price index or the Ontario Construction Exchange's non-residential construction price index.

#### **6.4 Reduce Abuses of the Part II Order Request Rights**

Of the 99 projects reviewed in this study, 17 of the projects received requests for Part II Orders (bump-up requests). All bump-up requests were eventually withdrawn or denied by the Minister, however the process to resolve the bump-up requests added anywhere from 4 to 24 months to the overall process. In several instances the direct costs of responding to bump-up requests and the increase in construction costs during the period of addressing the bump-up requests, pushed the project costs beyond the capital budget limits of the municipality, necessitating further delays until additional funding became available.

The MMM Study had suggested three separate measures to reduce the most frivolous or abusive requests,<sup>56</sup> including:

- a nominal fee be charged to any person requesting a Part II Order (e.g., \$125.00 as is used for the Ontario Municipal Board);
- give the Director at the Ministry of the Environment the power to dismiss a "Part II Order Request" when it is being used frivolously to frustrate the implementation of a project that has already had extensive public process; and
- provide general criteria in the legislation for the Minister to grant a Part II Order, and as in other legislation, include a specific prohibition for requests that are frivolous, vexatious or for the purpose of delay. These are requests that are apparently intended to serve the interests of an individual, at the expense of broader public interests, or which have no reasonable environmental grounds and are merely attempts to frustrate or slow a project.

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While the first measures would likely reduce some frivolous Part II order requests it would be unlikely to deter property owners who are seeking additional compensation for lands that might be sold to or expropriated by the proponent municipality to carry out the proposed project. The second and third measures recommended in the MMM report have the potential to remove Part II order requests that are made purely for financial land compensation reasons, but such Part II order requests are likely to be masked by other issues and there is a concern that the application might be wrongly interpreted and thereby restrict the raising of legitimate environmental assessment issues.

## **6.5 Establish Protocols with Federal Agencies**

Eleven of the 99 municipal construction projects involved either bridge reconstruction or bridge replacements.

Project #23 involved a bridge replacement: the original structure was a single lane bridge dating back to the First World War. Over time and due to corrosion, the bridge was taken out of service for safety reasons in mid-2004. The notice of commencement for the EA to replace the structure was posted 4 months after the bridge was closed, and took a further 13 months to completion. Construction of the replacement bridge took over a year and was completed in late 2007. During the period from mid-2004 to late 2007 nearby residents were subjected to additional risks as alternative routes were significantly longer in the event that any emergency services were required.

It appears that one of the reasons for the prolonged EA study was to resolve conflicting positions between the Ontario Ministry of the Environment and federal government agencies on matters such as the clearance between the high water level and the bottom of the proposed bridge structure where the water body was a navigable water. It is recommended that Ontario agencies defer to federal authorities on matters such as clearances for navigable waters and construction practices, procedures and schedules to protect local fish habitats.



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## 6.6 Extend ‘Shelf Life’ of pre 2007 EA Study Reports

Seven of the 99 projects reviewed in this study required an addendum due to the passage of more than five years since the completion of the original EA report before any construction commenced. The changes to the Municipal Class advanced by the MEA and approved by the Ministry in November 2007 extended the shelf life of EA reports for both Schedule B and Schedule C projects from 5 years to 10 years. While this may appear to reduce the need for a growing number of addendum studies, the Ministry appears to have interpreted the new ‘shelf life’ as applying to projects that were initiated under the post-2007 criteria and would not extend the life of pre-November 2007 study reports beyond five years. A copy of the Ministry’s interpretation letter is attached as Appendix ‘C’ to this report. It is suggested that the MEA position that the shelf life of all post-2000 study reports be extended from 5 to 10 years.

## 6.7 Expand the Recognition of prior *Planning Act* consultations

A few of the 99 projects reviewed through this study involved a minor road extension along an existing municipal right of way that had been previously approved through the *Planning Act*. Where no land acquisitions are required and the connecting link is a relatively short distance (e.g. less than 1 kilometre), consideration should be given to classifying such projects as a Schedule A+ project.

## 6.8 Establish Transparency for Completed EA Reports

The Ministry of the Environment has already advised the MEA that in order to better track copies of the “Notice of Completion” for each Municipal Class EA Schedule B project and the “Notice of Completion of Environmental Study Report” for each Municipal Class EA Schedule C project, all future notices of completion should be sent to a newly created ministry e-mail address (MEA.Notices.EAAB@ontario.ca). There has been no indication that the next logical step will be taken, that is to allow public internet access to view MEA notices of completion.

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It is strongly recommended as a measure of transparency and comparability that there should be public viewing access to all notices of completion both current and historical. This recommendation is an ‘after the fact’ filing and is not intended to slow down or further delay the completion of EA reports or the construction of the subject basic municipal infrastructure project.

## 6.9 Continue to Reduce the Time Frames for EA Bump-up Requests

**In project #21** the time to complete the EA study for a road extension was 14 months, but it took the Ontario Ministry of the Environment a further 22 months to resolve the bump up requests.

**In project #31**, the time to complete an EA study for a road reconstruction was 18 months, but a further 18 months was required to resolve two ‘bump up’ requests.

**In project #45**, the time to complete the EA study for a road extension was 29 months, which was followed by several bump up requests. The Ministry’s resolution of the bump up requests took a further 24 months. The imposition of the Ministry’s conditions required an addendum to the original EA study. Not surprisingly the posting of the addendum triggered a further bump up request.

**In project #73**, a bump up request was only addressed after 10 months by a Minister’s decision.

**In project #95**, another road extension, the Minister’s response to a bump up request also took an additional 10 months.

The Municipal Engineers Association and the Environmental Commissioner of Ontario have both indicated a need for faster responses from the Ministry of Environment to Part II bump-up requests from proponents. In December 2009 the Ministry resolved to make decisions on bump-up requests within 30 to 66 days.<sup>57</sup> This shorter time frame excludes any preparation or consultation times by the municipality. In addition, there are also concerns about multiple bump-up requests. As was the case with project #45, where a bump-up requests results in an amended study, will a bump-up request on the amended study also trigger a delay of one to two months?

## APPENDIX C

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### **Executive Summary from the RCCAO Report “Municipal Class Environmental Assessments – Categorization Review Study” dated January 2012 by Frank J. E. Zechner Professional Corporation**

#### **1. EXECUTIVE SUMMARY**

This review included the environmental assessment laws and procedures of more than 20 other jurisdictions outside of Canada as they relate to municipal infrastructure projects such as roads, water and wastewater systems. The review included countries on every continent with the exception of South America and Antarctica and more than a dozen separate US states.

The original purpose of this study was to conduct a review of cost parameters and the potential use of indexing in selected jurisdictions. Surprisingly, none of the other jurisdictions reviewed used capital cost of the construction project as a determining factor with respect to the level or intensity of environmental assessment for such projects.

Whether it relates to road improvements or expansions to wastewater treatment plants, every other jurisdiction that was reviewed requires some form of environmental assessment for such projects. Those other jurisdictions however use physical measurements such as length of the road, width of the road allowance or quantity of wastewater to determine whether certain projects are subject to a less intense environmental scrutiny or an exemption.

Ontario should continue to review from time to time the types of projects that require some form of environmental assessment and the criteria that distinguish smaller projects that are likely to have fewer environmental impacts from larger projects that are more likely to have environmental impacts.

In conclusion, the use of capital cost of a construction project or improvement was not used in any other jurisdiction to determine the intensity of environmental assessment. Therefore, the primary recommendation is to discontinue the use of “capital cost” of a municipal infrastructure project under the Municipal Class EA process. Instead, the use of physical parameters for Class EA projects will improve predictability and certainty with respect to the regulatory oversight embedded in the schedule scheme already in place for those projects.

### **Judicial Review Application re Alleged Violation of *Environmental Assessment Act* by City of Toronto**

In August 2008, an application for investigation was filed on behalf of two cycling advocacy groups alleging that in misclassifying the Bloor Street Transformation Project under the Municipal Class Environmental Assessment (MCEA), the City of Toronto contravened the *Environmental Assessment Act* (EAA). The applicants argued that as a result, the city failed to hold broad public consultations or consider design alternatives that would make more room for cyclists on the redesigned street.

The purpose of the project is to beautify Bloor Street in Toronto between Church Street and Avenue Road by widening and resurfacing sidewalks and reconstructing the road. The road construction, which will retain the four existing traffic lanes, will be paid for by the city. The remaining work will be paid for through a city loan to the members of the Bloor Street Business Improvement Area (BSBIA). The project was classified in 2001 under the MCEA as a Schedule A project (which, being the lowest classification, does not require public consultation).

After the MCEA was revised and approved by the Ministry of the Environment (MOE) in 2007, the project was re-classified as a Schedule A+ project. Since the estimated cost of the project is \$25 million, the applicants argued that the project exceeds the MCEA threshold and requires at least a Schedule B designation and perhaps even a Schedule C designation.

The applicants argued that if the project had been properly classified as a Schedule B project, the public would have been consulted and able to promote the consideration of cycling infrastructure in the street's redesign. The applicants also alleged that the city is ignoring directions in provincial planning laws and policies that require consideration of cyclists' safety in municipal planning decisions. Furthermore, the applicants submitted evidence of the adverse impacts of motor vehicle pollution to support their claim that the project would cause environmental harm.

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In August 2008, a group called the Concerned About Bloor Coalition (CABC) announced it would seek a judicial review (JR) of the city's classification of the project. Two months later, Ontario's Divisional Court dismissed the JR application, concluding that the classification of the project was reasonable and that the project appeared to fit within Schedule A in 2001 and, subsequently, within the new Schedule A+.

On October 21, 2008, MOE denied the application for investigation, stating that it had already considered the applicants' concerns and received the relevant environmental assessment documents from the city. MOE went on to describe the obligations of a proponent under the MCEA, noting that "the description of the undertaking is determined by the proponent and may be defined in broad terms or in very specific terms." In MOE's opinion, the city complied with the MCEA and, therefore, an investigation into whether a contravention had occurred was unwarranted.

### **ECO Comment**

While we believe that MOE's decision not to investigate was reasonable, the ECO is troubled by some of the implications of the application and the MCEA process followed by the City of Toronto. For more than a decade, the ECO has raised concerns about consultation processes used for projects approved under Class EAs. In our 2007/2008 Annual Report, we noted public complaints about problems and deficiencies with proponent consultation processes, and MOE's apparent lack of interest in promoting fairness and adherence to Class EA requirements outlined in approval documents such as the MCEA.

This application also illustrates how difficult it can be for the public to gain access to (or even learn about the existence of) EA approval documents. The ECO is disappointed that MOE was slow to provide documents requested by the applicants, forcing them to make requests under the Freedom of Information and Protection of Privacy Act. The ECO is also concerned that MOE provided the public with incorrect information about the MCEA and the EAA on a number of occasions and that MOE staff were confused as to the proponent of the project, the legal status of the BSBIA and its relationship to the city.

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These observations suggest that MOE does not have sufficient resources to properly monitor the large number of Class EA approvals being issued under the EAA, and that MOE staff need better training and information about the nuances of the MCEA and other Class EAs. This review also demonstrates that MOE continues to rely on a complaint-based compliance model, and the ministry is reluctant to prosecute proponents for failures to comply with the terms of approvals under Class EAs and the EAA. The ECO urges MOE to develop an enforcement policy that applies to alleged contraventions of the EAA.

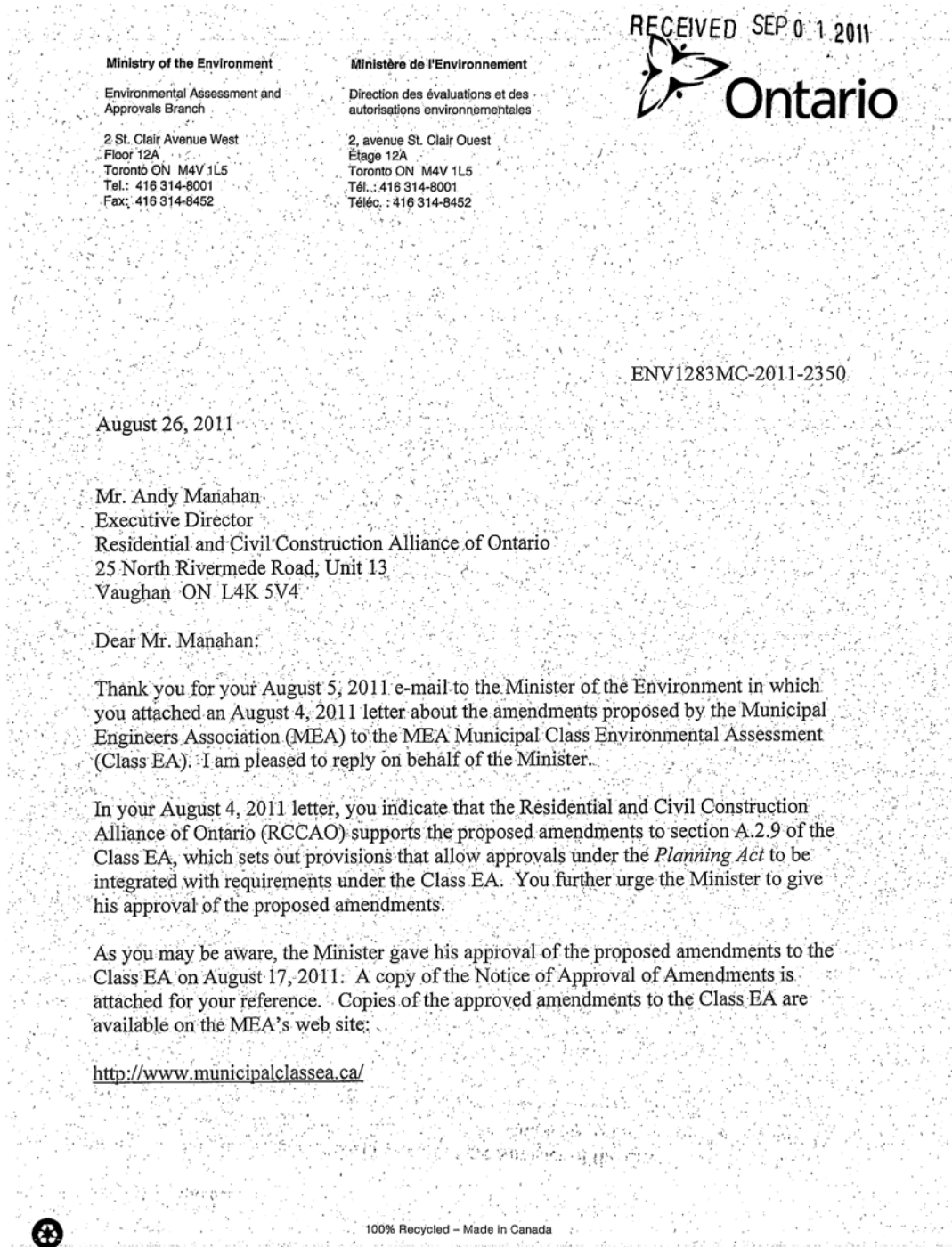
The ECO believes that the city could have undertaken a more transparent consultation process in this case, and MOE should have dealt with this aspect of the application more thoroughly. Some of the applicants' concerns could have been avoided, in part, if the MCEA required municipalities to publicize the classification of all MCEA projects. The ECO urges MOE to review these provisions of the MCEA and consider ordering appropriate amendments.

The application raises broad societal implications related to the sharing of roads by motorists and cyclists. While its straightforward street grid and relatively flat topography give Toronto the potential to become a great cycling city, this potential is unlikely to be achieved without leadership and support from the Ontario government to develop a cycling infrastructure. We urge Ontario ministries that oversee municipal planning to encourage municipalities and planners to engage cyclists in their deliberations on planning and uphold the spirit of the Provincial Policy Statement, 2005. To facilitate improved planning that promotes cycling and walking in Ontario communities, MOE should consider ordering the Municipal Engineers Association (MEA) to prepare modifications of the MCEA, as it did in 2007 to promote public transit.

**Recommendation 4:** The ECO recommends that MOE consider ordering the Municipal Engineers Association to amend the Municipal Class Environmental Assessment to explicitly promote cycling and walking as modes of transport.



## APPENDIX E



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Mr. Andy Manahan  
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In your letter, you indicate concern that the ability for a Part II Order to be requested for a project being planned in accordance with the integration provisions when the associated approvals under the *Planning Act* can also be appealed to the Ontario Municipal Board, may lead to potential delays and uncertainty for project proponents. On the basis of this concern, you request the Ministry of the Environment (MOE) work with the RCCAO and other stakeholders to make the necessary legislative changes to remove projects being planned under the integration provisions from being the subject of Part II Order requests or alternatively, that the decision-making authority for Part II Order requests be delegated from the Minister to the Director of the Environmental Assessment and Approvals Branch (EAAB).

As you are aware, the MOE has received similar requests from other organizations and will be initiating a review of the request for legislative changes/delegation of decision-making authority for Part II Order requests in the near future. The MOE appreciates the RCCAO's participation in the MEA's consultation process to amend the Class EA and bringing these concerns to the MOE's attention.

In your letter, you also indicate concern that some of the recommendations put forward by the RCCAO in its March 2, 2010 report entitled: "Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?" were not incorporated into the amendments to the Class EA. The specific recommendations of concern are discussed in a July 18, 2011 to the MOE. The status of the MOE's review of these recommendations of concern is as follows:

**Recommendation 1:** Threshold values in the MEA's guideline document (e.g. the MEA Class EA) should be automatically indexed on an annual basis to an objective construction index (such as the Ministry of Transportation's (MTO) tender price index) to account for inflationary impact, which may effect the classification of a project within schedules (e.g. distinguish a Schedule A or A+ project from a Schedule B project or a Schedule B project from a Schedule C project).

**Status:** The approved amendments to the Class EA include an index that will allow the MEA to adjust the cost thresholds for road activities in the Class EA on an annual basis. The index is based on the MTO's tender price index. The MEA Monitoring Committee will calculate the new cost thresholds on an annual basis, will notify interested persons of the new cost thresholds and post the new cost thresholds on the MEA web site. Cost thresholds will be in effect from January 1 to December 31 of each year. The cost threshold in place at the time a project is



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initiated shall be the cost threshold used to determine the applicable process to be followed through to the completion of that Class EA.

**Outcome:** The MOE is satisfied that Recommendation 1 has been addressed.

**Recommendation 2:** A screening checklist to assist proponents in making the determination as to whether a bridge structure that is 40 years of age or older has cultural heritage value should be posted on the MEA's web site. This will assist proponents when following the revised bridge structure activities under the Class EA.

**Status:** The MEA is working with the Ministry of Tourism and Culture (MTC) and expects to have the screening checklist completed and made available on the MEA web site during the summer of 2012. On an interim basis, proponents of projects involving the reconstruction or alteration of a structure or the grading adjacent to it when the structure is 40 years of age or older should continue to consult with the MTC for assistance in determining whether the structure has potential cultural heritage value.

**Outcome:** The MOE is satisfied that Recommendation 2 will be addressed in the summer of 2012 and that appropriate measures are in place to provide advice to project proponents on an interim basis.

**Recommendation 3:** While the MEA did implement a change that new storm water retention ponds, where no additional property is required, be changed to a Schedule 'A' project instead of a Schedule 'B' project, the MEA did not propose changes to the current Schedule B classification for berms along a watercourse, even if no additional property is required.

**Status:** A rescheduling of new storm water retention ponds was not proposed by the MEA. Rather, additional text was added to the existing description of the activities for clarification purposes only. Any rescheduling of activities involving the construction of flood control berms would need to be assessed in more detail.

**Outcome:** The MOE is satisfied that if concerns about Recommendation 3 remain, that these can be addressed during the upcoming five year review of the Class EA.

**Recommendation 4:** The MEA now characterizes intersection improvements, such as new left hand turn lanes, as a Schedule 'A+' project instead of a Schedule

'B' project. If the intersection improvements also include an element of traffic calming (e.g. speed bumps) then the entire project consisting of a left hand turn lane and speed bumps or other traffic calming measures may yet make such improvements a Schedule 'B' or Schedule 'C' project.

**Status:** Under section 3.3 of the *Environmental Assessment Act* (EAA), traffic calming measures are exempt from EA requirements. Changes to the description of roads (activity No. 12 in the Class EA), which includes the construction of localized operational improvements at specific locations were therefore not incorporated.

**Outcome:** The MOE is satisfied that the concerns raised in Recommendation 4 have been considered by the MEA in determining the new description of roads activity No. 12 in the Class EA.

**Recommendation 5:** Road widenings and new routes to construct paved bicycle lanes are still treated in the same manner as ordinary motor vehicle lane widenings. There may be valid arguments that the addition of a paved bike lane on an existing municipal right-of-way should not be exempted from the requirement of an environmental assessment study. There are also arguments that a Schedule B or Schedule A+ characterization may be more appropriate than a Schedule C study given the greenhouse gas, noise and fitness benefits associated with bicycle and recreation paths.

**Status:** The construction of bicycle lanes within an existing right-of-way is classified as a Schedule A+ activity under the Class EA. The requirement for additional lands/lanes would elevate a bicycle lane project to a higher schedule of the Class EA. However, if the bicycle lane were a stand alone component, it is unlikely that the project cost would exceed the \$2.7 million project cost threshold that would trigger the need for a Schedule C process to be completed. As a result, the majority of bicycle lane projects would be categorized under Schedule A+ or Schedule B of the Class EA.

In the unlikely event that an on-street bicycle lane were a Schedule C activity, it could involve a change in the purpose, use and capacity of the roadway (e.g. through the removal of a traffic lane), which could also have unintended negative impacts to the environment as vehicles operating under congested conditions may increase greenhouse gas and noise emissions. Further studies would need to be carried out to determine the appropriateness of using such criteria to categorize



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municipal infrastructure activities. As the scope of work required to make this determination was outside the scope of the amendments being considered, the MEA did not recommend any further changes to the scheduling of this activity at this time.

**Outcome:** The MOE is satisfied that if concerns about Recommendation 5 remain, that these can be addressed during the upcoming five year review of the Class EA require further study by the MEA.

**Recommendation 6:** The 2010 RCCAO Report recommended that the review of alternatives to road widening and bridge replacement projects should not need to include alternatives to the road widening, if such alternatives have already been publicly vetted through other processes such as Official Plans. There are a significant number of municipal roads that are expected to be widened to either four or six lanes in dense commercial and retail areas across the Province. A full Schedule C study may not be warranted in cases where a municipality follows the existing Official Plan and carries out such widenings.

**Status:** The MEA is developing a series of on-line training modules that will include information intended to assist proponents in properly scoping projects and eliminating any unnecessary considerations of project alternatives. It is expected that these training modules will be available by the end of this year.

In addition, it should be noted that proponents can make use of previous studies and planning exercises in carrying out a Class EA. For example, municipal Official Plans may be developed in conjunction with the Master Planning process outlined in the Class EA. As such, studies carried out during the Master Planning and Official Plan processes may be used to fulfill or inform the various Phases of the Class EA depending on the specific Master Planning approach taken (see Appendix 4 of the Class EA for more details). Properly scoping a project will ensure that project proponents do not duplicate their efforts in carrying out studies to determine how to address long-term transportation capacity needs.

**Outcome:** The MOE is satisfied that the concerns raised in Recommendation 6 can be addressed through education and outreach materials that the MEA is preparing and that there are existing mechanisms that allow project proponents to make Class EA decisions based on previous studies and planning work that has already been carried out.

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**Recommendation 7:** Fast track certain Municipal Class EAs by creating a Municipal Class EA Regulation in the same manner as Ontario Regulation 231/08 has 'fast tracked' Transit EAs and the scope of the reports be streamlined by removing the need to consider alternatives, particularly where there has already been public scrutiny (e.g. through the *Planning Act* processes).

**Status:** The development of a Municipal Class EA Regulation is not supported by the MOE. The Class EA already provides for a streamlined approval process for municipal infrastructure projects. The pace at which a Class EA is completed is determined to a large extent by the project proponent as the Class EA is a proponent-led self-assessment process. Other factors, such as the complexity of the project, extent of possible environmental effects and the level of consultation undertaken can also influence the period of time required to carry out a Class EA. As noted above, the MEA is developing a series of on-line training modules that will include information to assist proponents in scoping projects and possibly eliminating any unnecessary considerations of project alternatives.

**Outcome:** The MOE is satisfied that the concerns raised in Recommendation 7 can be addressed through education and outreach materials that the MEA is preparing.

**Recommendation 8:** Establish transparency for the Municipal Class EA process by establishing a publicly accessible database of Notices of Completion for current as well as historical projects.

**Status:** A listing of each Schedule B and Schedule C project that has been completed in the previous calendar year is contained in an appendix to the MEA Class EA Annual Monitoring Report which is posted on the MEA web site. It should also be noted, that many municipal proponents maintain information about Class EA projects on their web sites or web sites developed for the specific Class EA project.

**Outcome:** The MOE is satisfied that information requested in Recommendation 8 is accessible through the MEA web site.

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I trust the foregoing is of assistance. The MOE appreciates the RCCAO's continued input and comments on the MEA Class EA. Should you have further questions, please contact D. Jeffrey Dea, Special Project Officer of the EAAB; at 416-314-7213 or by e-mail at [jeffrey.dea@ontario.ca](mailto:jeffrey.dea@ontario.ca)

Yours sincerely,

  
For Agatha Garcia-Wright  
Director

Environmental Assessment and Approvals Branch

Attachment – Notice of Approval of Amendment

Cc: Mr. Paul Knowles, Chair, MEA Monitoring Committee

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***Environmental Assessment Act***

**NOTICE OF APPROVAL OF AMENDMENTS**

**Municipal Engineers Association  
Municipal Class Environmental Assessment**

RE: Municipal Class Environmental Assessment (Class EA)

Proponent: Municipal Engineers Association (MEA)

EA File No.: EA-03-03-02-02

Having considered the purpose and provisions of the *Environmental Assessment Act* and the Class EA, the MEA's submissions, the MEA's public consultation and its response to those submissions, I hereby amend the Class EA.

**REASONS**

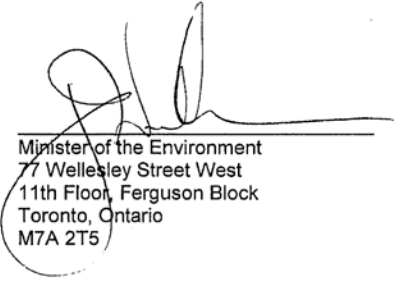
My reasons for amending the Class EA are as follows:

- (1) The amendments were prepared in accordance with the amendment provisions outlined in section A.1.5.2 of the Class EA.
- (2) The MEA consulted with government agencies, EA practitioners, industry representatives, interested persons and Aboriginal communities and organizations about its amendments. The MEA has demonstrated that the amendments are consistent with current regulatory requirements and planning practices and will provide for a more effective planning process to deliver municipal infrastructure and servicing in a more efficient and environmentally sustainable manner.
- (3) The MEA submitted a record of consultation that outlines the results of the consultation with government agencies, EA practitioners, industry representatives, interested persons and Aboriginal communities and organizations. The record of consultation indicates that there are no outstanding concerns that have not been addressed.
- (4) The amended Class EA process would allow for a more expeditious review of municipal infrastructure projects while maintaining a detailed review of environmental effects and ensuring that a consistent provincial environmental assessment process is followed.
- (5) The amendments to the Class EA will minimize duplication in planning and EA requirements as well as unnecessary costs for private sector proponents while maintaining environmental protection.



- (6) The MEA's amendments are consistent with its Class EA, the purpose and provisions of the *Environmental Assessment Act* and are in the public interest.

Dated the 17<sup>th</sup> day of August 2011 at TORONTO.



Minister of the Environment  
77 Wellesley Street West  
11th Floor, Ferguson Block  
Toronto, Ontario  
M7A 2T5

Copies of the Notice of Approval of Amendments [ I thought a Notice of Amendment would be different than a Notice of Approval? can be obtained in the public record file located at:

**The Ministry of the Environment  
Environmental Assessment and Approvals Branch  
Floor 12A  
2 St. Clair Avenue West  
Toronto, Ontario  
M4V 1L5  
(416) 314-8000 (Phone)  
(416) 314-8452 (Fax)**

Further information on the Municipal Class EA can be obtained at the Municipal Engineers Association web site at [www.municipalengineers.on.ca](http://www.municipalengineers.on.ca).

## ENDNOTES

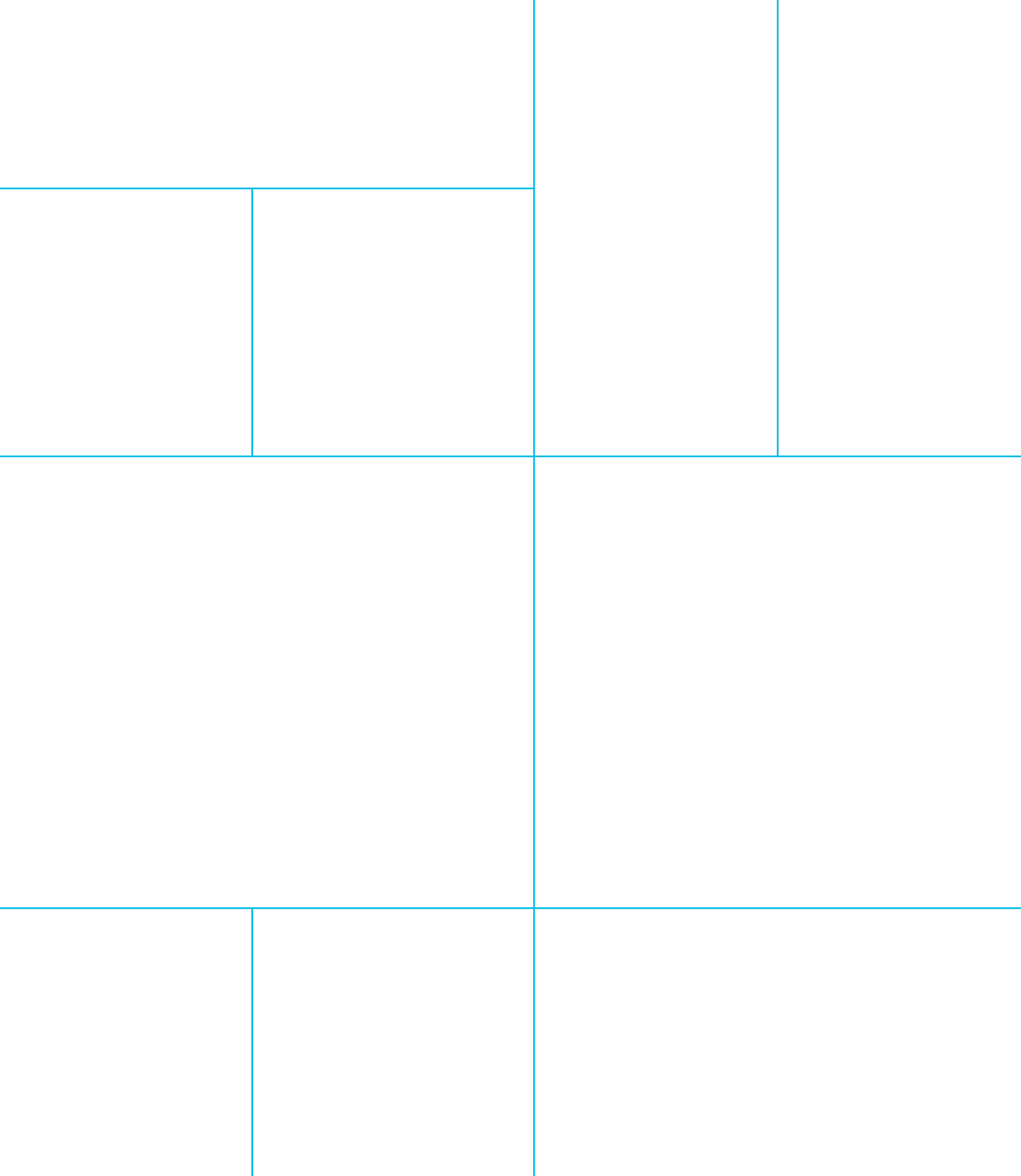
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- 1 See <http://www.ene.gov.on.ca/en/news/2006/060601.pdf>, [http://www.ene.gov.on.ca/en/about/minister/speeches/060606\\_2.php?print=1](http://www.ene.gov.on.ca/en/about/minister/speeches/060606_2.php?print=1) and <http://www.ene.gov.on.ca/envision/news/2006/060601at.htm>
- 2 See [http://www.ene.gov.on.ca/envision/env\\_reg/er/documents/2007/ConsultationJune2007.pdf](http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/ConsultationJune2007.pdf)
- 3 See <http://www.rccao.com/news/files/RCCAO-EA-Reform-Report-02-2009.pdf>
- 4 See data available at <http://www.municipalclassea.ca/AnnualMonitoringReports.aspx>
- 5 See MEA submission dated December 05 2013 available at <http://www.municipalclassea.ca/Amendments/NoticeofProposedAmendments.aspx>
- 6 In June 2008, the Transit Projects and Greater Toronto Transportation Authority Undertakings Regulation (O. Reg. 231/08) was made which applies to public transit projects
- 7 See [www.ebr.gov.on.ca](http://www.ebr.gov.on.ca) and the Environmental Bill of Rights Registry Act
- 8 See [www.municipalclassea.ca](http://www.municipalclassea.ca)
- 9 See Recommendation #6.8 in Appendix B
- 10 See Report dated November 1, 2012 - Section 5.2.4 at <http://www.municipalclassea.ca/AnnualMonitoringReports/tabid/139/ctl/DisplayAttachment/mid/616/AnnotationId/3285a3a8-53d7-e211-9cac-00155d607900/Default.aspx>
- 11 As presented by the Ministry of the Environment at the following internet link [http://www.ene.gov.on.ca/environment/en/industry/assessment\\_and\\_approvals/environmental\\_assessments/STDPROD\\_075722.html](http://www.ene.gov.on.ca/environment/en/industry/assessment_and_approvals/environmental_assessments/STDPROD_075722.html)
- 12 MEA data indicates that 8 of the 17 responses issued in 2011 were from 2010 or earlier and one of the applications dated back to 2006.
- 13 See Ministry internet posting at <http://www.ene.gov.on.ca/en/eaab/partIIorders.php>
- 14 The Proposed Regulation under the *Environmental Assessment Act* for Accelerating the Environmental Assessment Process for Public Transit Projects, instrument #010-2760 was posted on the EBR Registry for public consultation for 45 days
- 15 MEA Municipal Class EA – 5 Year Review Report accessible via the internet at <http://www.municipalclassea.ca/AnnualMonitoringReports/tabid/139/ctl/DisplayAttachment/mid/616/AnnotationId/3285a3a8-53d7-e211-9cac-00155d607900/Default.aspx>
- 16 The Canadian *Environmental Assessment Act*, S.C. 1992 C-37 was repealed and replaced with the Canadian *Environmental Assessment Act*, 2012 with the Royal Assent of Bill C-38 on June 29, 2012. Previously a federal EA was required for prescribed projects which occurred on federal lands, required a federal permit or received federal financial assistance. Under the new Act, only projects designated by regulation or by the Minister are subject to federal review.



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- 17 See [www.municipalclassea.ca](http://www.municipalclassea.ca)
- 18 See Bill 43, 39th Legislature which received Royal Assent and proclaimed in force on October 19, 2006
- 19 See <http://www.municipalclassea.ca/Amendments/NoticeofProposedAmendments.aspx>
- 20 See Section 5 of Ontario Regulation 334, the current prescribed value is \$3.5 million. Please also see Recommendations #16.3 in this report recommending the replacement of capital value thresholds with physical criteria such as overall length of a road or path.
- 21 See <http://www.municipalclassea.ca/Amendments/NoticeofProposedAmendments.aspx>
- 22 Annual Report of the Environmental Commissioner of Ontario 03/04, article separately accessible at [http://www.ecoissues.ca/wiki//index.php?title=Who\\_Enforces\\_the\\_Class\\_EA%3F\\_The\\_ORC\\_Case](http://www.ecoissues.ca/wiki//index.php?title=Who_Enforces_the_Class_EA%3F_The_ORC_Case)
- 23 As of December 31, 2013, there appears to be no reported Ontario court decisions on the mischaracterization of the Schedule of a Municipal Class EA, however it is unlikely that the court would reverse the decision of the Ministry denying a bump-up request absent evidence that the Ministry's decision was made in bad faith or that it was unreasonable for the Ministry to render the decision. See also the 2006 Ontario Divisional Court decision on an appeal of a bump-up request in *SOS - Save Our St. Clair Inc. v. Toronto (City)*, a copy of which is accessible via the internet at <http://www.canlii.org/en/on/onscdc/doc/2006/2006canlii4945/2006canlii4945.html>
- 24 Pages 28 to 48, Annual Report of the Environmental Commissioner of Ontario 07/08
- 25 From the 2008/09 Annual Report of the Environmental Commissioner of Ontario, accessible via the internet at [http://www.ecoissues.ca/wiki//index.php?title=Streamlined\\_Environmental\\_Assessments\\_for\\_Transit\\_Projects](http://www.ecoissues.ca/wiki//index.php?title=Streamlined_Environmental_Assessments_for_Transit_Projects)
- 26 Pages 24 to 27, Annual Report of the Environmental Commissioner of Ontario 2012/2013 [http://www.eco.on.ca/uploads/Reports-Annual/2012\\_13/13ar.pdf](http://www.eco.on.ca/uploads/Reports-Annual/2012_13/13ar.pdf)
- 27 Formerly known as Marshall Macklin Monaghan Limited ([www.mmm.ca](http://www.mmm.ca))
- 28 See <http://www.rccao.com/news/files/RCCAO-EA-Reform-Report-02-2009.pdf>
- 29 See <http://www.rccao.com/research/municipalAssessments.asp>
- 30 See [https://www.youtube.com/watch?v=\\_pY8TFrgXxc](https://www.youtube.com/watch?v=_pY8TFrgXxc)
- 31 See <https://www.youtube.com/watch?v=PjzkHhS68B0>
- 32 See Section 2.7 of this paper
- 33 See [http://www.rccao.com/news/files/RCCAO\\_Report\\_JAN2012.pdf](http://www.rccao.com/news/files/RCCAO_Report_JAN2012.pdf)
- 34 A report by the Canadian Environmental Law Association dated June 2002 and accessible via the internet at [http://s.cela.ca/pdf/ea\\_review02.pdf?q=pdf/ea\\_review02.pdf](http://s.cela.ca/pdf/ea_review02.pdf?q=pdf/ea_review02.pdf)

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- 35 See CELA's 31 page submission dated May 12, 2008 and accessible via the internet at <http://www.cela.ca/publications/response-draft-regulations-under-emenvironmental-assessment-act-emfor-public-transit-pr>
- 36 See Journal of Environmental Law & Practice, Volume 21, 2010 and also available via the internet at <http://s.cela.ca/files/766.LindgrenDunnFinal.pdf>
- 37 See O. Reg. 116/01
- 38 See O. Reg. 101/07
- 39 ECO, Annual Report 2007-2008 at page 42 - [http://www.eco.on.ca/uploads/Reports-Annual/2007\\_08/ECO-Annual-Report-2007-2008.pdf](http://www.eco.on.ca/uploads/Reports-Annual/2007_08/ECO-Annual-Report-2007-2008.pdf)
- 40 Accessible via the internet at <http://www.municipalclassea.ca/Amendments/Approved.aspx>
- 41 See <http://www.municipalclassea.ca/Amendments/NoticeofProposedAmendments.aspx>
- 42 These projects are randomly numbered on the bar graph.
- 43 The average and maximum duration of EAs started in 2010 to 2012 are most likely understated due to the fact that EA studies started in 2010, 2011, or 2012 and not completed by December 2013 were excluded from the list of evaluated projects.
- 44 Ontario Regulation 231/08 Transit Projects and Greater Toronto Transportation Authority Undertakings
- 45 *Classes of Development Regulation* - Man. Reg. 164/88
- 46 *The Environment Act*, C.C.S.M. c. E125
- 47 See [http://www.manitobalawreform.ca/pubs/pdf/additional/Discussion\\_Paper\\_Jan27.pdf](http://www.manitobalawreform.ca/pubs/pdf/additional/Discussion_Paper_Jan27.pdf)
- 48 *Reviewable Projects Regulation* B.C. Reg. 2370/2002 to the *Environmental Assessment Act*, S.B.C. 2002, c.43
- 49 *Regulation respecting environmental impact assessment and review procedure*, CQLR c.Q-2, r 23
- 50 Division IV.1, *Environment Quality Act*, CQLR c. Q-2
- 51 *Activities Designation Regulations*, NS Reg. 47/95
- 52 See Section 34, *Environment Act*, SNS 1994-95 c.1
- 53 See Ministry internet posting at <http://www.ene.gov.on.ca/en/eaab/partllorders.php>
- 54 See [http://ogov.newswire.ca/ontario/GPOE/2008/06/25/c7732.html?lmatch=&lang=\\_e.html](http://ogov.newswire.ca/ontario/GPOE/2008/06/25/c7732.html?lmatch=&lang=_e.html)
- 55 See <http://www.ontario.ca/ontprodconsume/groups/content/@gopsp/@ontgazette/@gazettes/documents/infobundlecontent/247852.pdf>
- 56 See MMM Study Section 3.3 at pages 11 and 12
- 57 See Ministry internet posting at <http://www.ene.gov.on.ca/en/eaab/partllorders.php>





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