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## Conservation Ontario Council Report

From: Sarah Nichol, Policy and Planning Assistant

Date: June 5, 2018

Subject: CO Comments on “Updating the Part II Order request process under the Environmental Assessment Act” (EBR #: 013-2099)

### Summary

On February 27, 2018 the draft “Operational Policy on Submission of Part II Order Requests under the Environmental Assessment Act” (EBR #: 013-2099) was posted on the Environmental Registry. The Operational Policy is intended to provide guidance on what content is required to be included in the submission of a Part II Order request for Class Environmental Assessments under the *Environmental Assessment Act*. Conservation Ontario has made a number of recommendations regarding the Operational Policy. In addition to the Operational Policy, MOECC has released a standardized form for requesters of a Part II Order to use in making their request. The use of this standardized form will be required through regulation effective July 1, 2018.

### Recommendation

*That the comments on “Updating the Part II Order request process under the Environmental Assessment Act” (EBR #: 013-2099) submitted to the Ministry of Environment and Climate Change on April 13, 2018 be endorsed.*

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### Background

On February 27, 2018 the draft “Operational Policy on Submission of Part II Order Requests under the Environmental Assessment Act” (EBR #: 013-2099) was posted on the Environmental Registry for public feedback. Generally, a Part II Order request is where an individual requests that the Minister of Environment and Climate Change (or delegate) elevate a Class EA project to an individual EA or apply additional conditions on the project, including further studies, before the project can proceed.

Conservation Ontario manages the *Class Environmental Assessment for Remedial Flood and Erosion Control Projects* on behalf of the Conservation Authorities. The Operational Policy was sent to all CA Class EA contacts for comment. Feedback was received from Credit Valley and Toronto and Region Conservation Authorities. Conservation Ontario's response was submitted to the Ministry of Environment and Climate Change on April 13, 2018.

### **Current Status**

In addition to the Operational Policy, on April 16, 2018, the Ministry of Environment and Climate Change has released a standardized form for individuals to use in making a Part II Order request. The use of this standardized form will be required through regulation July 1, 2018.

Generally, there is support among the Conservation Authorities for the proposed Operational Policy. It is felt that the Policy will provide more guidance on what content is required to be included in the submission of a Part II Order request for Class Environmental Assessments under the *Environmental Assessment Act*. The additional guidance from the Operational Policy and the standardized form may serve as a deterrent to Part II Order requests that are submitted solely for the purposes of delaying a project, or without the individual making the request attempting to first resolve its concerns with the project through consulting directly with the proponent.

In a Conservation Ontario Class EA context, delays to remedial flood and erosion control projects, created from incomplete and spurious Part II Order requests, causes prolonged or even increased risks to people's safety, well-being, property, and public infrastructure. It was recommended that the "Importance of Providing Adequate Information" section of the Operational Policy be amended such that, for the request to be considered, all mandatory information is to be provided within the public review period of the Project Plan. As well, that if MOECC requires additional information then this section should include a stipulated time period for providing the additional information. It was also recommended that the Operational Policy add a paragraph to enable the proponent to provide written proof of resolution of the requester's concerns to the Minister of Environment and Climate or delegate to allow for the withdrawal of the Part II Order request if the requestor has not done so after the concerns have been resolved.

### **Conclusion**

MOECC staff have indicated that the majority of the comments received on this proposed Operational Policy have requested a rewrite of the document to reflect that it is a guide for the public. There is currently no timeline for the release of an updated document. In the interim, the standardized form for Part II requests will become mandatory effective July 1<sup>st</sup>, 2018.



April 13, 2018

Kristina Rudzki  
Supervisor  
Ministry of the Environment and Climate Change  
Environmental Assessment and Permissions Division  
Environmental Assessment and Permissions Branch  
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**Re: Conservation Ontario's Comments on "Updating the Part II Order request process under the Environmental Assessment Act" (EBR #: 013-2099)**

Dear Ms. Rudzki:

Thank you for the opportunity to provide comments on the draft "Operational Policy on Submission of Part II Order Requests under the *Environmental Assessment Act*". Conservation Ontario is the network of Ontario's 36 Conservation Authorities (CAs). These comments are being provided to you as a result of consultation with CA staff who have extensive experience working with Class Environmental Assessments (Class EAs), including Conservation Ontario's Class Environmental Assessment for Remedial Flood and Erosion Control Projects. These comments are not intended to limit consideration of comments shared individually by Conservation Authorities.

Generally, there is support among the Conservation Authorities for the proposed Operational Policy, as the Policy will provide more guidance on what content is required to be included in the submission of a Part II Order request. This additional guidance will hopefully help prevent Part II Order requests that are submitted solely for the purposes of delaying a project, as well as submitted without the requester attempting to first resolve its concerns with the project through consulting directly with the proponent.

### **Specific Comments on the Proposed Operational Policy**

#### Content of the Part II Order Request:

This section of the proposal includes a list of information that needs to be included in the Part II Order request. For additional clarity for both the proponent and the Ministry of the Environment and Climate Change (MOECC), the requester should also be instructed to outline these discussions in chronological order under the sub-bullet detailing "when and how did the requester raise concerns with the proponent". It is recommended that this content list be amended as follows:

- **"List chronologically** when, and how, did the requester raise their concerns with the proponent".

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Conservation Ontario is supportive of the direction that the “request submitted to the Minister needs to focus on the potential environmental effects of the project, the Class Environmental Assessment process undertaken for the project, and how the order will provide information that should be considered before the project may proceed”. This should help to reduce spurious Part II Order requests that are designed to stall a project at the implementation phase through focusing the requests on environmental outcomes.

Importance of Providing Adequate Information:

Many towns and cities in Ontario have been established, totally, or in part, in river valley flood plains or along lake shorelines. Development within, along or in close proximity to these areas are subject to periodic flooding, bank/bluff instability and erosion. These natural processes result in risks to human life, and property damage, disruption of various corridors including roads, highways, bridges, pipelines, storm and sanitary sewers, telephone and hydro lines, and damage to surface water intakes and quality of water received there. For that reason, the “CO Class Environmental Assessment for Remedial Flood and Erosion Control Projects” is a valuable tool used to protect human life and property, in previously developed areas, from these impending critical issues related to flood and erosion.

Delays to remedial flood and erosion control projects, created from incomplete and spurious Part II Order requests, causes prolonged or even increased risks to people’s safety, well-being, property, and infrastructure. It is recommended that this section of the Proposed Operational Policy be amended such that for the request to be considered, all mandatory information listed in the previous section is to be provided within the public review period of the Project Plan. This public review period is 30 days for the CO Class EA. Additionally, if the MOECC requires supplemental information or clarification from the requestor, then it is recommended that this section includes a stipulated time period, such as 14 days, for providing the additional information.

As a result of no previous information submission timeline requirements, Conservation Authorities in the past have experienced long project delays due to Part II Order requests containing incomplete or no information. For example, the Toronto and Region Conservation Authority had the implementation phase of one of its projects delayed by six months by a Part II Order request that contained *no* reasons for nor any information related to that request. One month after the Part II Order request was submitted, MOECC contacted the requestor for additional information. Three months after the Part II Order request was submitted, MOECC staff determined that a Minister’s response would be required. Six months after the request was submitted, the Minister ultimately rejected the request to issue a Part II Order as the requester still did not offer any reason for the initial request. This delay in implementation could have had serious consequences for public safety and is an unnecessary drain on public resources.

Lastly, please consider adding the following paragraph to this section *“If the proponent satisfies the concerns of the requester, it is the requester’s responsibility to withdraw the request for a Part II Order. Such withdrawals should be in writing to the Minister of the Environment and Climate Change or delegate and should be copied to the proponent. However, if the requester does not fulfill this responsibility, the proponent may provide written proof of resolution of the concerns to the Minister of the Environment and Climate Change or delegate to withdraw the request for a Part II Order. Such withdrawals should be in writing to the Minister of the Environment and Climate Change or delegate and should be copied to the requester. The Director of the Environmental Assessment and Permissions Branch*

may accept and may act upon withdrawals on behalf of the Minister of the Environment and Climate Change”.

Thank you for the opportunity to provide comments on the proposed “Operational Policy on Submission of Part II Order Requests under the *Environmental Assessment Act*”. The “CO Class Environmental Assessment for Remedial Flood and Erosion Control Projects” is a valuable tool used by Conservation Authorities to undertake projects that are required to protect human life and property, in previously developed areas, from an impending flood or erosion problems. Conservation Ontario is supportive of the proposed “Operational Policy on Submission of Part II Order Requests under the *Environmental Assessment Act*” as it will hopefully reduce Part II Order requests that are submitted solely for the purposes of delaying projects that are often necessary for public safety or submitted without taking reasonable steps to consult with the proponent. To further prevent delays it is recommended that MOECC includes within this proposed Operational Policy a strict timeline for the requester to submit the mandatory information as well as any additional information requested by the ministry. Additionally, the MOECC should enable proponents to provide written proof of resolution of the concerns to the Minister of Environment and Climate Change or delegate as a means to withdraw the request for a Part II Order. Should you have any questions about this letter, please contact Sarah Nichol at extension 228.



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Leslie Rich, RPP  
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c.c. All CA GMs  
Members of the Environmental Assessment Proponents Group