

Lee D. Doran, M.Sc.  
#218 – 2 College Street  
Toronto, ON  
M5G 1K3  
lee@ecowrite.net

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Mark A. Stevenson, BA (Hons.), MSc (Planning)  
Board of Directors  
Ontario Association for Impact Assessment

by electronic mail

Mark,

**Re: OAIA Response to Proposed Regulation under the Environmental Assessment Act for Accelerating the Environmental Assessment Process for Public Transit Projects**

**EBR Registry Number: 010-2760**

I am pleased to provide this compilation of comments as a contribution to the Ontario Association for Impact Assessment (OAIA) response to the Government of Ontario's public consultation on the proposed regulation for the environmental assessment of public transit projects (above referenced). Thank you for the opportunity.

As you will recall, after the EBR posting of this draft regulation on March 28, 2008, the Board of Directors encouraged OAIA members to participate in the ensuing consultation. The Board suggested that members provide their responses directly as set out in the posting while providing a copy to me, as the coordinator for the OAIA response. In addition, some OAIA members attended the Information Session on the proposed regulation and the associated Transit Priority Statement sponsored by the Ministries of Environment and Transportation on April 30<sup>th</sup> in Toronto. Finally, OAIA sponsored an evening event on May 6<sup>th</sup>, 2008 attended by more than 20 members and friends to review and discuss the proposal as a further contribution to the preparation of this OAIA response.

As the Board had anticipated, members' views on the proposals are numerous, diverse and wide-ranging. Reflecting that diversity, this response document provides a compilation of the comments made and issues identified by respondents. As agreed by

the Board, I have not attempted to craft an organizational consensus or OAlA ‘position’ across the wide spectrum of views expressed in the limited time available. Nonetheless, I trust that the following summary of issues makes a useful contribution to the public consultation process in highlighting topics identified by OAlA’s community of interest.

### **Specific Issues Identified in the Review and Discussions**

A number of specific issues were identified during the discussions and review; they are summarized in the following sections.

#### ***Definitions***

A number of terms needing more rigorous or amplified definition were identified by respondents. They included:

- Bus and rail projects; are subways, streetcars and school buses included?
- Whether ferries are included
- Limits to or extent of facilities or activities associated with the core project
- How staging or phasing in of project activities might be accommodated
- Provincial interest in natural environment (and its relationship to EAA definition of environment)
- Whether private as well as public (or private public partnership) proponents are captured by the regulation
- Transit projects: The definition does not make specific reference to “public” transit projects or what makes a transit project “public”.

#### ***Pre-Planning Activities:***

Concerns were expressed that the levels of effort, content and depth of analysis, kinds and extent of consultations, and disclosure of information, if any, before commencing the Transit Project Assessment Process appear to be at the discretion of the proponent. As a result, the rationale for the project and the alternatives to the preferred project may not be available to stakeholders external to the proponent. Comments included:

- Pre-planning activities need to be done well and be seen to be done well
- These are Planning Activities and should not be considered “Pre-Planning”.
- Truncating the usual considerations of rationale and “alternatives to” in an Environmental Assessment (EA) process will be resisted by stakeholders as a significant departure from the rational and clear planning and decision-making processes that have been core features of Ontario’s approach to EA
- The lack of any required consultation during the pre-planning activities is a significant gap in the process
- Loss of faith in the process may result and tend to focus or reinforce stakeholders’ scepticism about or opposition to projects in the process
- Pre-planning activities should be incorporated into the process in some way, perhaps by requiring their documentation and disclosure, and including a separate (Ministry or lead agency?) evaluation before the Notice of

Commencement is issued; this might include an option to pursue other EA instruments (Class or Individual EA) from this point forward

### ***Notice of Commencement***

Requirements for disclosure and distribution of the notice were queried by some respondents. Suggestions included:

- Precise definition of distance requirements, including for subway corridors
- Mailing the notice to landowners beyond 30 m of the project site – up to 100m of a facility site and 50 m of a transit project route
- Greater ease of access to the notice, perhaps by posting on a Ministry website

### ***Proponent's Four-Month Period & Environmental Project Report***

Respondents noted that this Proponent-driven self assessment process results in an Environmental Project Report within four months (subject to Time-out provisions, discussed below), regardless of the scale or extent of the project. Comments included:

- No rationale is provided for choosing the four month period; it could prove too long for minor projects or facilities and too short for large and complex projects
- the Proponent's consultation appears to occur at the same time it is conducting data collection, analysis of impacts, development of mitigation and determination of net effect; there is little or no opportunity to incorporate local knowledge into the data collection and analysis stage
- There are no requirements around the type or level of consultation or who is to be consulted (in the public); the proponent needs only to document the consultation
- The draft regulation appears to assume that there are no natural environmental effects: it is not possible to compile 4 seasons of environmental data in a one or two month period
- There is no consideration of interactions with other planning or EA processes, including that of the Federal government
- There is no mention of the need or responsibility for translation into French, which could severely challenge the four-month timeline
- There is no provision as to how or if the Environmental Project Report, including its consultations, will be evaluated by the government

### ***Notice of Issue ("Time-out")***

The draft regulation provides a process for the Proponent to take a Time-out from the four month timeline. A time-out is only allowed with respect to three categories of issue, however; they are a matter of provincial interest that relates to the natural environment or that has a cultural heritage value or interest or on an established or asserted aboriginal or treaty right. Significant reservations were expressed by a number of respondents over this provision. Comments included:

- The Proponent may find that there are other potential effects or other considerations it needs more time to address; the proposed process does not allow for this possibility

- Local issues, including social, economic or public safety concerns, for example, are automatically excluded from further consideration during a time-out; it is not clear how and by whom such issues would be addressed if the regulation goes forward as proposed
- Could there be some flexibility introduced here, perhaps by allowing a time-out for additional consultations on any significant issue that emerges
- Other provincial policy or legislative requirements should be eligible for time-out consideration
- Is this provision providing tacit acknowledgement that concerns other than these three of provincial interest can be ignored?
- For significant issues that are not defined as of provincial interest, there could be a mediation / arbitration step with a time-out of a few months if required
- This provision is likely to result in project opponents seeking other legal fora outside this process, including judicial reviews, to express and adjudicate other issues of concern to them; such an outcome could extend the actual timeline to a final decision considerably

### ***Proposed Timelines***

The proposal to apply time limits to all the participants in the process was acknowledged (and is something that OAlA has supported in the past). Significant concerns were expressed, however, that the proposed timelines are too tight for large and complex transit projects. (They may also be too long for minor facilities or activities.) Comments included:

- Credible analysis and consultation can not be achieved in 4 months
- The 1-month review period after the Environmental Project Report is disclosed does not provide enough time for the government to carry out its duty to consult with aboriginal interests
- It is inappropriate to allow 35 days for the Minister's decision which involves Ministry staff reviews when the public and government agencies are provided only 1 month for a review
- One month is unrealistic for public review (the public must review on their own time)
- It is not appropriate that, if the Minister does not make a decision in 35 days, the project can proceed; there may be times when the Minister is not in a position to render a decision due to staff delays or for other reasons
- There may be concerns that such a ministerial non-decision does not provide the proponent with the certainty required to proceed with its project

### ***Objections***

It was noted that the same three categories of issues of provincial concern (see Notice of Issue, above) are the only grounds allowed for reviewers to object to the project in their response to the Minister under the proposed regulation. The same reservations apply to the grounds for objection as to the time-out issues, as noted above.

### ***Transition Provisions***

A project currently in an EA process that has identified significant public concerns should not be able to transition into the 6 months process to avoid the concerns. Perhaps those concerns could be mediated / arbitrated prior to transitioning.

### ***Other Issues***

Discussions took place around a number of other issues, including the links with and interactions with Class EA provisions for transit, the possibility that master or regional planning processes could provide a framework for the transit process, and the capability of municipalities to manage the process as proposed.

### ***Overall***

In summary, concerns were expressed by some participants that, as currently drafted, the proposed regulation may not achieve its primary objective: timely EA decision-making on public transit projects in Ontario. Perhaps incorporation of some of the suggestions here can help to alleviate such concerns going forward.

I hope the OAIA Board finds this compilation useful. My thanks to the OAIA members and friends who participated in the review for their assistance. As EA practitioners, we place great value in stakeholder engagement and aspire to do it well ourselves.

Yours truly,



Lee D. Doran, M.Sc.  
Former President, OAIA