

November 4, 2022

Honourable Laurie Scott, MPP  
Chair, Standing Committee on Heritage, Infrastructure and Cultural Policy  
College Park 5th Floor  
777 Bay Street  
Toronto, ON M7A 2J3

**RE: Niagara Peninsula Conservation Authority (NPCA) Comments – Environmental Registry of Ontario Postings: 019-6160, 019-2927, 019-6141 and 019-6161**

Dear Ms. Scott,

Thank you for the opportunity to provide comments on the above noted Environmental Registry of Ontario Postings (ERO) postings. I am writing to you on behalf of the NPCA in response to Bill 23, the *More Homes Built Faster Act, 2022* specifically regarding Schedule 2, which was announced on Tuesday, October 25<sup>th</sup>, 2022. The following are key areas of concerns for the NPCA.

**ERO Posting 019-6160 Proposed Updates to the Ontario Wetland Evaluation Systems (OWES)**

The OWES is a science-based system that outlines a process, and a set of criteria to define, identify, and assess the functions and values of wetlands in Ontario. Conservation Authorities (CAs) rely on this proven scientific methodology as an aid in implementing regulations under the Conservation Authorities Act. This information is used for making decisions for the purposes of public safety, natural hazard prevention and management, regulate wetlands for flood attenuation, natural storage capacities and for preventing shoreline erosion. The NPCA is particularly concerned about the implications of the proposed changes to the OWES. Our concerns are focused on four key areas:

1. Wetland Complexing has been entirely removed from OWES. Upon re-evaluation, each wetland unit must qualify as significant individually.
2. Reproductive Habitat and Migration, Feeding or Hibernation Habitat for an Endangered or Threatened Species sections and scoring has been entirely removed. Scoring was weighted to protect habitat. No consideration or scoring weight adjustment added for this section. The weighted scoring matrix no longer evaluates all criteria against the list of all weighted factors.
3. It is unclear who the 'decision-maker' is and who will ensure evaluations are done by qualified professionals following OWES protocols.
4. It is unclear from the posting who will maintain an appropriate mapping inventory of wetland classifications, particularly non-Provincially Significant Wetlands (PSWs). CAs have been maintaining data inventories of wetlands for many years and would be well-suited to takeover this role with respect to OWES evaluated wetland mapping. This information is vital for municipal decision-making and is well-suited to a CA's resource management agency role.

Requests to re-evaluate a complexed PSW will no longer consider the greater function of that wetland and rather will evaluate it as an isolated wetland unit. The removal of complexing along with the other proposed changes to the OWES would result in the eventual chipping away of our wetland complexes in Niagara. In the NPCA's jurisdiction, there are over 170 wetlands that have been evaluated, with more than 135 evaluated as wetland complexes. With the above changes this means that almost 80% of the NPCA's wetlands that are currently evaluated as complexes could be negatively impacted.

The proposed changes remove language around Locally Important Wetlands (LSWs). These wetlands could be evaluated, partially evaluated or unevaluated. Sometimes they are known as non-PSWs, LSWs, or other wetlands. If these wetlands have been evaluated as non-PSWs, once a re-evaluation of these wetlands occurs, there is no mechanism to identify or preserve it, resulting in negative impacts to evaluated non-PSWs.

#### Key Recommendations:

- Instead of eliminating the OWES complexing and scoring criteria, work with conservation experts such as Conservation Authorities to amend the OWES criteria for complexing and scoring using a scientific approach.
- Should the Province remove MNR as the decision-maker, clearly identify who is responsible for determining if an OWES evaluation has been conducted properly. In the absence of MNR, we recommend that CAs should be identified as the decision-maker to ensure that a consistent standard for OWES evaluations is maintained.
- CAs should be tasked with maintaining the mapping of OWES evaluated wetlands for decision-makers.

#### **ERO Posting: 019-2927 Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario**

The Province is proposing one Regulation to consolidate the various Regulations across all CAs. We recognize this may help provide a more consistent approach across all CAs towards regulating natural hazards, however, there should be flexibility to identify local watershed conditions, e.g. different regulatory flood standards. Several proposed inclusions to the new Regulation are administrative in nature (program service delivery standards, notification requirements for mapping changes, etc.). The NPCA (and many other CAs) already follow such service delivery standards as set out in several Conservation Ontario guidelines.

#### Key Recommendation:

- The consolidated Regulation should also include flexibility to identify local watershed conditions, e.g. different regulatory flood standards.

We are very concerned about the removal of the "pollution test" and the "conservation of land" test from the Conservation Authorities Act and the proposed Regulation. These tests are fundamental to the protection of regulated areas and mitigate impacts of natural hazards to life and property.

#### Key Recommendations:

- In lieu of removing the "conservation of land" test, provide a definition of "conservation of land" in the new Regulation. Conservation Ontario has established a definition for conservation of land that is used by CAs that relates to protection, management, and restoration of lands to maintain and enhance hydrologic and ecological functions.

- Maintain the “pollution” test as the CA Permit is an important first line of defence in pollution prevention during development. Pollution is defined in the Conservation Authorities Act as any deleterious substance or other contaminant that has potential to be generated by development activity. This provision helps to prevent unwanted substances entering into waterbodies and wetlands. Removing this test may have serious environmental implications.

**ERO Posting: 019-6141 Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0**

The proposed changes include exemptions from CA Permits in prescribed municipalities where a Planning Act approval has been granted. It is unclear if this exemption would be limited to certain types of low-risk development and hazards, or if the purpose is to transfer CA responsibilities to municipalities on a much broader scale. While the government wants to focus CAs on their core mandate, this proposed sweeping exemption signals the exact opposite. As proposed in the legislation, the CA exclusions will nullify the core functions of CAs and open up significant holes in the delivery of our natural hazard roles, rendering them ineffective. This will negatively impact our ability to protect people and property from natural hazards, which seem to be more and more prevalent with extreme weather events.

Key Recommendation:

- Maintain CA core mandate responsibilities for delivery of natural hazard management through Plan Review. The NPCA would welcome the opportunity to work with the Province to make further process improvements.

The proposed changes to a CA’s review and commenting role outside of natural hazards may lead to longer review and approval times by municipalities. Many lower-tier and upper-tier municipalities rely on CAs for their expertise in areas such as natural heritage and stormwater management as smaller municipalities may lack this expertise on their staff compliment. The inability of CAs to enter into MOUs with municipalities and other agency partners will result in delays as municipalities have to hire consultants or more technical staff. This may also result in insufficient reviews of natural heritage and stormwater management. It may also result in increased costs to municipalities as CAs are able to provide this necessary service in a more cost-effective manner than private consultants.

Key Recommendations:

- Municipalities should retain the option to enter into MOUs with CAs for plan review services, with clearly defined terms, timelines, and performance measures, as allowed under Section 21.1.1 (1) of the Conservation Authorities Act.
- Work with the Conservation Authorities Working Group (CAWG) to develop guidance for commenting and exploring the option of limiting CAs from commenting beyond natural hazards risks except where a CA has entered into an agreement or MOU.

Proposed changes to the Planning Act will limit appeals on Planning Act matters by CAs to natural hazards only. We appreciate the desire by the province to focus CAs to their core mandate, however, it is unclear if this change will limit the ability of CAs to appeal Planning Act decisions where wetlands are impacted. This is a key component of a CA’s mandate as indicated recently through the Ontario Regulation 686/21 – Mandatory Programs and Services. Given that all Provincial Plans and the Provincial Policy Statement do not explicitly include wetlands as a natural hazard, we encourage the Province to clarify this in the proposed changes.

Key Recommendation:

- Clarify that CAs may appeal Planning Act decisions related to wetlands.

The proposed amendment to the Conservation Authorities Act to allow the Minister to freeze CA fees will not help in the provision of affordable housing. There are no guidelines on the timing or permanence of the fee freeze. The NPCA has recently undertaken an extensive cost-based analysis that has been benchmarked against other development review fees to ensure our fees do not exceed the cost to deliver the service. Should CAs not be able to ensure their fees continue to cover the cost of providing our programs and services, we would be forced to make up any shortfalls from the municipal levy. This would result in the general taxpayer subsidizing the cost of development and seems to go against this government's "User-Pay Principle" outlined in the Minister's April 11, 2022 Fee Policy.

Key Recommendation:

- Require CAs to demonstrate to the Province that permit and planning fees do not exceed the cost to deliver the program or service and only consider freezing fees if CAs are exceeding 100% cost recovery.

The NPCA appreciates the changes to the Planning Act to facilitate a more streamlined process for the disposition of CA-owned lands. This reduces unnecessary process and will allow CAs to dispose of CA-owned lands that were acquired using money under Section 39 grants. However, we have concerns about the intention of the Province's requirement for CAs to identify CA-owned or controlled lands that could support housing development. Nearly all of the NPCA's land contains significant natural heritage features or is hazardous lands and would not be appropriate for development. This typically holds true for all other CAs across the Province. It is unclear if the Province intends for such CA-owned lands to be made available for development (e.g. through powers under Sections 34.1 or 47 of the Planning Act). This would not be an appropriate method to solve Ontario's housing affordability issue.

**ERO Posting: 019-6161 Conserving Ontario's Natural Heritage**

Wetlands play a critical role in mitigating floods and provide valuable ecosystem services. Further wetland loss may result in serious flooding, putting the safety of communities at risk. Wetlands are a cost-effective strategy for protecting downstream properties. The Province must be prudent when considering changes like offsetting, which could negatively affect the ability of wetlands to reduce flooding and confuse roles in wetland management and protection between municipalities and CAs. Any provincial-wide use of offsetting for wetlands should only be allowed in the case of non-PSWs (based on the current OWES scoring criteria), where the protection hierarchy has established that there is no option for avoidance, and there is an ecological net gain to the watershed natural system. Offsetting should also not be used for complete removal of a feature to facilitate development but instead for minor rounding of feature boundaries.

Key Recommendation:

- Offsetting should be limited to non-PSWs where the protection hierarchy has clearly established there is no option for avoidance and an ecological net gain to the watershed natural system can be achieved.

We support the Province's goal of increasing the housing supply. However, the proposed changes affecting CAs and our mandate will have minimal effect in increasing the housing supply and could lead to unintended future consequences associated with the loss of critical natural heritage features such as wetlands. The diminished role of CAs could also lead to more development being

located in natural hazards, higher costs in property damage, increased burden on municipal partners, and absolute erosion of the ecosystem approach applied through the established integrated watershed management lens.

The Province has had such great success through the multi-stakeholder CA Working Group. The NPCA encourages the continued dialog with CAs through this group to help address the lack of housing supply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Foster', with a long horizontal line extending to the right.

Robert Foster,  
Chair,  
Niagara Peninsula Conservation Authority

cc: Ministers MMAH, MNRF, MECP  
Honourable Doug Ford, Premier of Ontario  
NPCA's lower-tier municipalities (Clerks)  
Niagara Region (Clerk)  
City of Hamilton (Clerk)  
Haldimand County (Clerk)  
Conservation Ontario  
Local MPs and MPPs  
Association of Municipalities of Ontario  
Ontario Provincial Planners Institute