

Written Submission to Standing Committee on Heritage, Infrastructure and Cultural

Policy

Regarding

Bill 23, More Homes Built Faster Act, 2022

17 November 2022



Save Ontario Wetlands

November 17th, 2022

Ms. Laurie Scott, MPP

Chair, Standing Committee on Heritage, Infrastructure and Cultural Heritage

Whitney Block, Room 1405, 99 Wellesley Street W

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[“Save Ontario Wetlands”](#) is a grassroots organization of over 60 aquatic scientists and practitioners in Ontario who are concerned about the conservation of wetlands in Ontario. Save Ontario Wetlands is deeply concerned about the implications of Bill 23 for the conservation and protection of wetlands for the economic, environmental, and social benefit of Ontario.

Save Ontario Wetlands strongly supports streamlining the development application and permitting process, as well as expediting tangible solutions to the housing availability and affordability crisis in Ontario. Yet, Bill 23 will not achieve any of these worthwhile goals. We are in alignment with the vast majority of witnesses to the Committee, who largely agreed that Bill 23 will fail to achieve its objective to increase the housing supply rapidly and efficiently but rather will create many new challenges for communities in Ontario. We dispute that engagement with Conservation Authorities or Regional Planning at the level of higher-tier municipalities are obstacles to affordable housing and we contend that Bill 23 and associated policy proposals will endanger wetlands in Ontario, leading to a loss of ecosystem services and a concomitant increase in costs to taxpayers and homeowners.

We provide a summary of our main conclusions and recommendations regarding Bill 23 below.

Summary of main conclusions & recommendations

Recommendation 1: We are concerned with the process and pace at which changes to environmental management and development policy and legislation are being proposed by the government.

- We strongly recommend that the Committee pause deliberations and extend commenting until at least December 30, 2022.
- We further recommend the Committee revisit the 55 recommendations made by the Housing Affordability Task Force Report and interrogate the degree to which Bill 23 does or does not advance each recommendation.

Recommendation 2: Changes to the Conservation Authorities Act (CAA) (S.2 Bill 23) will have direct effects on Ontario wetlands by weakening the ability of Conservation Authorities (CAs) to protect people and property from natural hazards.

- We recommend your government remove revisions to the proposed legislation from Bill 23 and begin a meaningful process of public consultation through well-established processes. Our organization has a wealth of expertise and years of experience, and we stand ready to provide the best available science to inform any necessary changes

Recommendation 3: We are concerned by proposals within Schedule 9 of Bill 23 purporting to streamline the planning approval process.

- We recommend the changes to regional planning and insertion of Ministerial override of Official Plans be removed from Bill 23 and that the government work with duly elected

leaders of upper-tier municipalities to achieve housing targets in a democratic manner that reflects the unique needs and situations of each region.

- We further recommend the government promote cooperation among municipalities and development planning within a cumulative effects framework.

Recommendation 4: Bill 23 will endanger wetlands through a combination of direct and indirect means.

- We recommend the Committee call on the government to convene a technical advisory group to investigate and report on the implications of Bill 23 and associated policy proposals now under consideration in the Environmental Registry of Ontario for wetland conservation in Ontario in more detail.
- We recommend the Committee review how the many changes to planning, development, and natural heritage management currently proposed will cumulatively impact on wetlands.

Conclusion and Recommendations Details

Recommendation 1: We are concerned by the process and pace at which changes to environmental management and development policy and legislation are being proposed by the government. There are many policy and legislative proposals currently open for public comment on the Environmental Registry of Ontario, including proposed changes to the Ontario Wetland Evaluation System, the Greenbelt Plan, the Conservation Authorities Act, the Planning Act, the Ontario Heritage Act, and the Ontario Land Tribunal Act, among others. Minister Clark also made a new announcement on November 16th, 2022 that will bear on housing development in

Ontario, and hence Bill 23 and potentially on wetlands. These proposed changes will interact, and it is impossible to assess the potential risks and rewards of Bill 23 under such short, restricted timelines, particularly while new amendments continue to be proposed to related legislation and policy.

We strongly recommend that the Committee pause deliberations and extend commenting until at least December 30, 2022. This will allow the Committee to assess all information and evidence and consider all public input and advice relevant to Bill 23 from the ERO postings. This will allow municipalities, community groups, and grassroots organizations such as Save Ontario Wetlands sufficient time to scrutinize the proposed changes adequately through an integrated, cumulative-effects lens.

Due to the complexity inherent in these sweeping proposed changes, we cannot assess the degree to which Bill 23 would achieve any of the 55 recommendations from the Housing Affordability Task Force Report. We strongly recommend that the Committee review each recommendation and evaluate Bill 23 and the proposed policy changes in light of each recommendation to ensure that legislation and policy changes put forward by the government build on past efforts and effectively advance Ontario's solution to the housing affordability crisis.

Recommendation 2: Changes to the Conservation Authorities Act (CAA) (S.2 Bill 23) will have direct effects on Ontario wetlands by weakening the ability of Conservation Authorities (CAs) to protect people and property from natural hazards. These include:

- i. *Restrictions on Entering into Agreements with Municipalities to Review Planning Applications on Behalf of Municipalities:* Bill 23 would amend sections 21.1.1 and 21.1.2

of the CAA so that CAs may not provide a program or service involving review and comment on certain matters under prescribed Acts. Most municipalities do not have expert staff to review planning materials related to natural assets and hydrology. They depend on local CAs to provide expert advice to assist in evidence-based decision-making. These amendments will negatively affect the ability of CAs to advise municipalities during the municipal planning process and to advise on mitigation measures for non-point source water pollution (e.g., erosion and sedimentation caused by stormwater runoff) during development. This could occur if the Planning Act is listed as a prescribed Act under section 21. Non-point source water pollution (suspended solids, road salt, nutrients, etc.) to receiving waters (including wetlands) will increase with increased urban sprawl. This poses concern with respect to the Canadian-Ontario Agreement and the binational Great Lakes Water Quality Agreement pertaining to Annex 4 - Nutrients.

- ii. *Exemption from CA Natural Hazard Permits for Select Municipalities Where Planning Act Approvals Are in Place:* Bill 23 would amend section 28 of the CAA to provide that certain prohibitions on activities in the area of jurisdiction of a CA, such as floodplains and wetlands, do not apply if the activities are part of development authorized under the Planning Act, as well as other specified conditions. Our comments above are also applicable with respect to the section 28 amendments. These amendments, in conjunction with other proposed changes to the Ontario Wetlands Evaluation System, could see many wetlands re-defined to downgrade their significance on the basis of local municipal decision-makers. Additionally, it will produce or contribute to many of the water

pollution and hazard conditions the historical statutory mandate of CAs was designed to avoid.

iii. *Removal of Conservation of Lands and Pollution as Considerations in CA Permit*

Decisions: When making decisions relating to permission to carry out a development project or a permit to engage in otherwise prohibited activities, several factors are normally considered. The factors include the possible effects on pollution control and land conservation. Bill 23 would amend section 28.0.1(17) of the CAA to instead limit CA's consideration of the effects on the control of unstable soil or bedrock. This amendment undermines the historic role of CAs with respect to pollution and the conservation of land. These limitations will create vulnerabilities related to flood protection, water-taking, interference with rivers, creeks, streams, watercourses, wetlands, erosion control, surface and groundwater quality and quantity, and environmental integrity overall.

iv. *Converting to Housing Purposes CA Lands Meant for Environmental and Natural*

Hazard Protection: Detailed amendments to section 21 under Bill 23 set out the circumstances surrounding the potential sale of CA lands to support housing development. The amendments to section 21 contemplate the potential disposition of CA lands that have the following characteristics: (1) areas of natural and scientific interest ("ANSIs"); (2) habitat of threatened or endangered species; (3) forest lands; and (4) natural hazard lands (e.g., dynamic beach hazard, erosion hazard, flooding hazard, hazardous lands or sites, low water or drought conditions, as set out in section 1(1) of O. Reg. 686/21 of the CAA). These proposed amendments clear the way for unmitigated

development on and adjacent to ecologically and socially important areas (including on wetlands) that are irreplaceable and currently protected. Southern Ontario (where most CAs have jurisdiction) has already lost over 70% of wetland cover, with over 90% of wetland loss in urban areas. Further disturbance and destruction of wetlands will only exacerbate the biodiversity crisis and reduce the vital ecosystem services that wetlands provide. It will also expose home owners to risk from flooding, slope failure, and other hazards that the Conservation Authorities have effectively protected Ontario from since Hurricane Hazel.

We recommend the Committee demand that municipalities retain the ability to enter into agreements with Conservation Authorities to ensure appropriate technical expertise for review and comment on development applications such as natural heritage and water resources reviews. Previous legislative amendments by the Ontario Government require agreements prior to Conservation Authorities undertaking this work. Recent regulations define requirements to be included in these voluntary agreements. Conservation Authorities currently provide comments to municipalities in a cost-effective and timely manner, encompassing a more holistic approach that spans municipality geographic jurisdictions. In 2020, through amendments to the Conservation Authorities Act, Conservation Authorities are already prevented from commenting beyond mandatory programs and services, such as natural heritage, without a municipal agreement.

We also recommend that development subject to Planning Act authorizations should not be exempt from requiring Conservation Authority permits and Conservation Authority regulations should not be delegated to municipalities. Additionally, Ontario Regulations 97/04, 42/06, 146/06, 147/06, 148/06, 150/06, 151/06, 152/06, 153/06, 155/06, 156/06, 157/06, 158/06,

159/06, 160/06, 161/06, 162/06, 163/06, 164/06, 165/06, 166/06, 167/06, 168/06, 169/06, 170/06, 171/06, 172/06, 174/06, 175/06, 176/06, 177/06, 178/06, 179/06, 180/06, 181/06, 182/06 and 319/09, set out for the regulation of development, interference with wetlands and alterations to shorelines, must not be revoked; these measures are critical to minimize impacts on surface and groundwater systems (vital to human and animal populations), reduce flooding, maintain wetlands and their ecological services, and advance clean drinking water sources across Ontario and downstream, including users of the Great Lakes. As well, the planning process is insufficient to ensure natural hazard concerns are addressed through design and construction alone. This places additional pressure, responsibility, and liability on municipalities and could result, for example, in building permits being issued in error, endangering people and property. Working beyond political boundaries is essential in the permitting role to consider impacts on upstream and downstream communities. Natural hazards must be considered at both site-specific and watershed levels to ensure public safety, prevent loss of infrastructure, and maintain the ecological integrity of watersheds.

Specific concerns lie with:

- Changing the definition of a watercourse within the Provincial Policy Statement would result in the loss of protection for headwater drainage features. The loss of these features would result in a significant loss of linear stream length, and cumulative or incremental degradation of watershed health.
- The proposed one-time placement of fill not exceeding 10 cubic meters that is not placed within hazardous land or a watercourse or wetland. There are existing regulations within CA's that speak to this, plus provide some boundaries that speak to where fill may be

placed, the type of fill, and volume. For example, within the Lake Simcoe Region Conservation Authority's 2021 Ontario Regulation 179/06 Implementation Guidelines, one may without written permission, place "minor fill placement for landscaping or resurfacing of existing driveways provided the fill does not obstruct flood flows, the volume does not exceed 7 cubic meters and that it is not placed within 15 meters of a watercourse, wetland or shoreline".

- The evaluation and disposition of CA owned lands, including areas of natural and scientific interest, wetlands, the habitat of species at risk, for their potential as areas eligible for development. Conservation Authorities own many properties that support high levels of aquatic biodiversity across southern Ontario, and the loss of these critical habitat anchors can further imperil many species, undermining efforts to conserve and support aquatic biodiversity, including species listed under Ontario's Endangered Species Act. Because these areas are also key for people-nature connections (for recreation and mental health), essential for carbon sequestering, flood control, and the mitigation of extreme weather and climate change, their loss is shortsighted with significant short and long-term consequences.
- The proposed removal of MNRF staff from the assessment and classification of wetlands in Ontario and putting this responsibility on municipalities. We have concerns that excluding technical expertise and existing knowledge of MNRF district staff will jeopardize the integrity and validity of the evaluation process. Most municipalities do not have wetland expertise on staff and have constrained budgets that restrict their ability to pay consultants to perform sufficiently detailed evaluations. Having wetlands evaluated on a piecemeal basis by municipalities also ignores the inherent connectivity of wetlands

in wetland complexes and their hydrological connection to upstream and downstream tributaries and groundwater reservoirs.

- Removal of the ability to have complex wetlands have additive scoring to qualify for PSW status. This would force assessors to not assess based on the cumulative wetland function, but solely assess each wetland unit, thereby setting a higher benchmark for each wetland unit ultimately ensuring fewer wetlands would qualify for PSW status.
- Coupled with the above, the proposal is that existing PSWs can be reassessed where they are currently given PSW status by decoupling aggregate wetland scoring. The species-at-risk elements of scoring would no longer apply. This would ensure species-at-risk habitat will no longer factor into decisions about which wetlands should be protected, concurrently undermining ESA protection of listed species.
- The proposal that “an ecological offsetting regime” would result in a no-net-loss approach to wetlands in Ontario. Based upon the technical expertise within our organization, we are unfamiliar with any existing peer-reviewed science that supports a no-net-loss of function, productivity, and aquatic biodiversity supporting the proposed approach. As such, so-called ecological offsets unequivocally do not replace wetlands nor stop wetland loss.

Conclusion for Recommendation 2: We call on your government to remove revisions to the proposed legislation from Bill 23, and to begin a meaningful process of public consultation through well-established processes. Our organization has a wealth of expertise and years of experience, and we stand ready to provide the best available science to inform any necessary changes.

Recommendation 3: We are concerned by proposals within Schedule 9 of Bill 23 purporting to streamline the planning approval process. We agree that streamlining the development process is a worthwhile endeavour, however, the changes in Bill 23 indicate that the entire planning role of larger upper-tier municipalities is perceived by the Province as an unnecessary administrative burden to housing development, including for where environmental studies and matters surrounding natural hazards are concerned.

Many upper-tier municipalities have a tradition of working efficiently and effectively together with their area municipal counterparts and have, in close collaboration, built capacity and efficiencies when it comes to the protection of natural heritage systems including wetlands and directing development away from areas which pose a natural hazard and risk to life and property. They also provide for coordinated planning and recognition of cross-boundary linkages between and among natural heritage systems, including wetlands. The proposed changes to remove upper-tier planning authorities combined with the proposed changes to the Conservation Authorities Act will destroy this existing capacity, increasing costs, removing efficiencies, and placing greater responsibilities on area municipalities, of which many do not have environmental planners or ecologists on staff. Together, these changes would lead to uncoordinated, environmentally detrimental, and haphazard planning across a massive extent of Ontario's Golden Horseshoe, including the currently protected Greenbelt.

Conclusion for Recommendation 3: We recommend the changes to regional planning and insertion of Ministerial override of Official Plans be removed from Bill 23 and that the government work with duly elected leaders of upper-tier municipalities to achieve housing

targets in a democratic manner that reflects the unique needs and situations of each region. We recommend the government promote cooperation among municipalities and development planning within a cumulative-effects framework.

Recommendation 4: Bill 23 will endanger wetlands through a combination of direct and indirect means. Rather than save money by cutting red tape, the resulting degradation and destruction of wetlands will increase the cost of living and exacerbate the affordability crisis because Ontario's wetlands provide extensive and free ecosystem services. If wetlands are destroyed, the cost of providing those services passes to municipalities, taxpayers, and homeowners. We are concerned that Bill 23 will reduce critical natural infrastructure and ecological health of wetlands, watercourses and greenspaces that serve to reduce flooding, support important recreational activities, such as fishing, and reduce surface and groundwater quality and quantity.

Save Ontario Wetlands agrees with Sommer Casgrain-Robertson, General Manager of the Rideau Valley Conservation Authority, who said "improvements to the system must never be at the expense of protecting people and their properties from flooding, erosion and slope failures, or protecting the very features that reduce these risks such as wetlands." Bill 23, through changes to the funding and regulatory ability of Conservation Authorities, amendments to the Planning Act, removing procedural steps in ministerial orders that override municipal Official Plans, reducing the environmental oversight of the Duffin Creek Water Pollution Control Plant expansion and eliminating the authority of Toronto and other municipalities to require green

development standards will, directly and indirectly, lead to the degradation and destruction of wetlands.

Schedule 10, for example, reduces environmental oversight in the York Region sewage works project and the enlargement of the Duffin Creek Water Pollution Control Plant. This plant is already one of the largest sewage treatment plants in Canada, having received >\$850 million in upgrades since it was taken over by York Region and Durham Region in 1997. Though the plant reduces the amount of dissolved phosphorus from sewage by 94%, increased discharge volume would result in increased loadings of phosphorus to Lake Ontario. The capacity of Lake Ontario and its coastal marshes to absorb additional phosphorus is finite, and from a cumulative-effects perspective, Lake Ontario may already be at its limit for phosphorus loads, particularly in the nearshore zone. Additionally, emerging contaminants of concern (e.g., endocrine disruption hormones, per- and polyfluoroalkyl substances, pharmaceuticals like metformin, nano-silver particles, microplastics) sourced from municipal wastewater are not adequately monitored or mitigated. Thus, appropriate environmental oversight is necessary to ensure that the water pollution control plant expansion does not negatively impact Lake Ontario's water quality and aquatic food webs.

Adjacent to the Duffin's Creek Water Pollution Control Plant is the Duffins Creek Provincially Significant Wetland, which is - through the free provision of ecosystem services - also helping to reduce phosphorus loading to Lake Ontario's near shore. As a wetland complex, it is now in jeopardy of being re-assessed and potentially downgraded to allow development on individual wetland parcels. Carving up the already fragmented wetland complex to allow further

development will only further degrade the wetland's capacity for ecosystem services. A [recent study](#) from the University of Waterloo concluded that wetlands in southern Ontario provide \$4.2 billion in phosphorus removal and sediment filtration services annually. In addition to removing sediment and phosphorus, however, wetlands also help degrade and trap emerging contaminants of concern that wastewater treatment plants are not designed to purify, making them extremely cost-effective in terms of wastewater treatment infrastructure.

Wetlands don't only purify water; they also stabilize shorelines and mitigate flood risks. Wetlands in the Rideau watershed are reported to reduce peak flood levels by 10% by the Rideau Valley Conservation Authority, which certainly helped mitigate the cost of the 2019 flooding in Ottawa. A [study by the Intact Centre on Climate Adaptation](#) concluded that, in urban areas, wetland preservation reduced estimated damages from flooding by 38%. Given that flood damage is driving the escalation of property and casualty insurance losses in Canada (averaging \$1.8 billion per year between 2009 and 2017), retaining and restoring wetlands is a wise investment. When we allow wetlands to be degraded or destroyed to expedite urban sprawl, we put people and property at risk and we end up costing taxpayers more in rising insurance premiums and federal and provincial compensation payments.

Ontario needs more housing, but that housing needs to be affordable and livable. We are concerned that Bill 23 will not encourage sustainable development and the creation of walkable, equitable communities. For example, the Toronto Green Standard reduces emissions and mitigates climate change, but Bill 23 will take away the authority of municipalities to enforce green development standards. Climate change puts pressure on Ontario's wetlands, affecting their water budgets, facilitating biological invasions, increasing the frequency and severity of

storms and droughts, altering thermal regimes and more. But healthy wetlands sequester and store large amounts of carbon to help with climate change mitigation. A [recent study](#) found that wetlands in southern Ontario store about 1.3 billion tonnes of carbon (equivalent to 4.8 billion tonnes of CO₂, about the same as emissions from 1 billion gasoline-powered passenger vehicles driven for one year). At today's federal minimum tax price of \$50/tonne of CO₂ equivalent, that is worth \$280 billion dollars. Wetlands are extremely valuable for their climate change mitigation services, but they are also helping us adapt to climate change. For example, [a report by the National Capital Commission](#) concluded that wetlands in their jurisdiction provided \$2.9 million a year in climate regulation services.

The changes in Bill 23 put wetlands at risk. We contend that the implications of Bill 23 for wetlands cannot be adequately assessed in the available time because Bill 23 will interact with [proposed changes to the Ontario Wetland Evaluation System](#) (ERO# 019-6160), [proposed amendments to The Greenbelt Plan](#) (ERO# 019-6216), the proposed [Conserving Ontario's Natural Heritage](#) (ERO# 019-6161) that would permit wetland destruction with offsetting or mitigation payments, [proposed updates to The Conservation Authorities Act](#) (ERO# 019-2927), and others. Just yesterday (November 16, 2022), Minister Clark announced that the province is repealing the Duffins Rouge Agricultural Preserve Act. These changes will have a cumulative impact on wetlands in Ontario and rather than reducing the cost of living and making housing more affordable, this will lead to the loss of free ecosystem services and an increase in costs borne by taxpayers, property owners, and insurance providers.

Conclusion for Recommendation 4: We recommend the Committee call on the government to convene a technical advisory group to investigate and report on the implications of Bill 23 and associated policy proposals now under consideration in the Environmental Registry of Ontario for wetland conservation in Ontario in more detail. We recommend that the Committee review Bill 23 in light of the 55 recommendations made by the Housing Affordability Task Force Report and the many policy proposals currently open on the Environmental Registry of Ontario that pertain to wetlands, such that the threat to wetlands can be interrogated through a cumulative effects framework.

Signed by the following on Behalf of Save Ontario Wetlands:

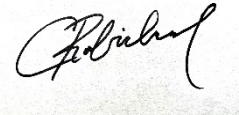
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