



100 Whiting Avenue
Oshawa, Ontario
L1H 3T3
Phone (905) 579-0411
Fax (905) 579-0994

Web: www.cloca.com
Email: mail@cloca.com

Member of Conservation Ontario

May 17, 2019

via email to alex.mcleod@ontario.ca

Mr. Alex McLeod
Natural Resources Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street
Peterborough ON K9J 8M5

Dear Mr. McLeod:

**Subject: Central Lake Ontario Conservation Authority Comments for
Conservation Authority Development Permits
Environmental Registry of Ontario Notice Number 013-4992
CLOCA IMS No: ASLA3**

At their meeting of May 14, 2019 the Central Lake Ontario Conservation Authority (CLOCA) Board of Directors passed the following Resolution:

Res. #54 Moved by C. Leahy
Seconded by I. McDougall

***THAT the Analysis Commentary in Staff Report 5639-19 be endorsed and submitted to the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Environmental Bill of Rights Registry Posting 013-4992; and, THAT the Minister of Natural Resources and Forestry be requested to share any proposed regulations in draft form with CLOCA for meaningful consultation prior to enactment;
THAT Staff Report 5639-19 be circulated to Watershed Municipalities, Members of Provincial Parliament, Members of Parliament and adjacent Conservation Authorities for their information.***

CARRIED

What we do on the land is mirrored in the water

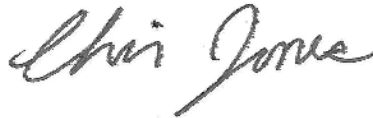


Ministry of Natural Resources and Forestry

May 17, 2019

Accordingly, please find the endorsed Staff Report containing the comments of the Central Lake Ontario Conservation Authority enclosed with this letter.

Yours truly,



Chris Jones, MCIP, RPP
Director of Planning and Regulation
CJ/

Encl. CLOCA Staff Report 5639-19

cc: Hon. Erin O'Toole, MP (Durham) Erin.OToole@parl.gc.ca
Colin Carrie, MP (Oshawa) Colin.Carrie@parl.gc.ca
Celina Caesar-Chavannes, MP (Whitby) Celina.Caesar-Chavannes@parl.gc.ca
Hon. Mark Holland, MP (Ajax) Mark.Holland@parl.gc.ca
Jennifer O'Connell, MP (Pickering—Uxbridge) Jennifer.OConnell@parl.gc.ca
Hon. Rod Phillips, MPP (Ajax), Minister of the Environment, Conservation and Parks
rod.phillipsco@pc.ola.org
Lindsey Park, MPP (Durham) kindsey.parkco@pc.ola.org
Jennifer K. French, MPP (Oshawa) JFrench-CO@ndp.on.ca
Lorne Coe, MPP (Whitby – Oshawa) lorne.coeco@pc.ola.org
Hon. Peter Bethlenfalvy, MPP (Pickering-Uxbridge), President of the Treasury Board
peter.bethlenfalvyco@pc.ola.org
Ralph Walton, Regional Municipality of Durham, ralph.walton@durham.ca
Alec Harras, Town of Ajax, Alexander.harras@ajax.ca
Anne Greentree, Municipality of Clarington, agreentree@clarington.net
Clerk, City of Oshawa, clerks@oshawa.ca
Debbie Shields, City of Pickering, clerks@pickering.ca
JP Newman, Township of Scugog, jnewman@scugog.ca
Debbie Leroux, Township of Uxbridge dleroux@town.uxbridge.ca
Chris Harris, Town of Whitby, harrisc@whitby.ca
Linda Laliberte, Ganaraska Region Conservation Authority, llaliberte@grca.on.ca
Mark Majchrowski, Kawartha Conservation, MMajchrowski@kawarthaconservation.com
Mike Walters, Lake Simcoe Region Conservation Authority, m.walters@lsrca.on.ca
Dan Marinigh, Otonabee Conservation, dmarinigh@otonabee.com
John MacKenzie, Toronto and Region Conservation Authority, john.mackenzie@trca.on.ca
Nicholas Fisher, Conservation Ontario, nFischer@conservationontario.ca

g:\planning\planning\comments\2019\ca development regulation ero posting_cloca comments.doc



REPORT

CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

DATE: May 14, 2019
FILE: ASLA3
S.R.: 5639-19
TO: Chair and Members, CLOCA Board of Directors
FROM: Chris Jones, Director of Planning and Regulation
SUBJECT: **Proposed Provincial Changes to CLOCA's Development Regulation**

APPROVED BY C.A.O. 

The purpose of this report is to provide a review and detailed commentary for proposed provincial changes to CLOCA's regulatory powers under the *Conservation Authorities Act* in response to a recent policy proposal posted to the Environmental Registry of Ontario on April 5th.

Background

On April 5, 2019, the Ministry of Natural Resources and Forestry (MNRF) posted a notice on the Environmental Registry of Ontario of proposed changes to the *Conservation Authorities Act* entitled "*Focusing conservation authority development permits on the protection of people and property.*"

Staff report 5633-19, which was received for information by the Board of Directors at its last meeting on April 16, 2019, briefly summarized the provincial notice and committed to review proposed changes in detail and present comments for Board consideration and endorsement for the May 14, 2019 meeting.

In releasing the policy proposal, the Minister of Natural Resources and Forestry, the Honourable John Yakabuski stated that "Improving the efficiency and effectiveness of our regulations is a critical component of our government's strategy for strengthening Ontario's resiliency to extreme weather events." Further, the news release accompanying the registry posting advised that the recommended changes "support conservation and environmental planning and improve Ontario's resilience to climate change" and that "losses associated with flooding and natural hazards in Ontario are lower than those experienced in other jurisdictions due to Ontario's prevention-first approach, achieved in part through the planning and regulatory approaches delivered by conservation authorities."

CLOCA currently regulates Development, Interference with Wetlands and Alterations to Shorelines and Watercourses through a regulation made by CLOCA directly and approved by the Minister of Natural Resources in 2006 (Ontario Regulation 42/06). The *Conservation Authorities Act* currently defines five critical terms used in the regulation directly in the Act, as summarized in the following table:

Current Defined Terms in the <i>Conservation Authorities Act</i>	
Term	Definition in subsection 28 (25) of the Act
Development	<ul style="list-style-type: none">• Construction, reconstruction, erection or placing a building or structure of any kind;• Any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;• Site grading; and,• Temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.
Hazardous Land	Land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock.
Pollution	Any deleterious physical substance or other contaminant that has the potential to be generated by development in a regulated area.

Current Defined Terms in the <i>Conservation Authorities Act</i>	
Term	Definition in subsection 28 (25) of the Act
Watercourse	An identifiable depression in the ground in which a flow of water regularly or continuously occurs.
Wetland	Land that: <ul style="list-style-type: none">• Is seasonally or permanently covered by shallow water or has a water table close to or at its surface;• Directly contributes to the hydrological function of a watershed through connection with a surface watercourse;• Has hydric soils, the formation of which has been caused by the presence of abundant water, and;• Has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, But does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic as described above.

Defining the terms listed above directly in the Act means that any change would have to be approved by the Legislative Assembly through the review and passage of a Bill. In 2017, through the passage and enactment of the *Building Better Communities and Conserving Watersheds Act, 2017* the Ministry of Natural Resources and Forestry (MNRF) was given new broad regulation-making powers under the *Conservation Authorities Act* to define and establish how conservation authorities undertake their regulatory functions. These changes do not require any further legislative scrutiny and may be passed by the government at any time, subject to the notice obligations imposed on the government by the Environmental Registry of Ontario. It is therefore critical to ensure that any new regulations are drafted in a manner that meets the government's objectives and ensures that people and property are protected.

Proposed Changes and Analysis

1. Repeal of CLOCA's Ontario Regulation 42/06 and Replace With One Ontario-wide Regulation

MNRF is proposing to repeal all existing conservation authority development regulations and replace them with one Ontario-wide regulation that would cover all 36 conservation authorities to be enacted by the Minister. The Ministry states that this approach would, consolidate and harmonize the existing regulations. The Ministry proposes to "still allow... for local flexibility based on differences in risks posed by flooding and other natural hazards."

Analysis:

It is not possible to meaningfully comment on the appropriateness of this approach in the absence of a draft regulation to consider. The Ministry has been given this power in 2017, as described above. The posting in this regard is essentially an announcement of its intent to use this power. Factors to consider are:

- The need to have a meaningful opportunity to review a draft regulation prior to enactment.
- The need to ensure that CLOCA's local context is considered in the regulation including:
 - maintaining the existing reference to the *Lake Ontario Shoreline Management Plan* and any future updates;
 - maintaining an appropriate regulatory flood event standard in the regulation;
 - ensuring that wetland protection in the regulation is appropriate for our portion of southern Ontario in the context of the Oak Ridges Moraine, Greenbelt, Growth Plan and other provincial and local wetland protection policy;
 - ensuring that CLOCA will continue to have the ability to keep locally prepared and up to date regulation area mapping integrated with the regulation.
- Ensure that the regulation addresses shoreline alteration, including alterations to the Lake Ontario shoreline.
- Use, readability and administrative efficiency: that the consolidated and harmonized regulation is clear, easy to use and not overly cumbersome and complicated, as it will have to address the needs of 36 conservation authorities and their local contexts.

2. Update Definitions for Key Regulatory Terms to Better Align with Other Provincial Policy

MNR is proposing to update definitions for the critical terms used in the regulation, including “wetland,” “watercourse,” and “pollution.”

Analysis:

Again, it is not possible to evaluate the appropriateness or effectiveness of this proposal in the absence of draft definitions and draft regulatory language. Factors to consider are:

- The need to have a meaningful opportunity to review the draft definition text prior to enactment.
- Maintain the definitions for “Development,” “Watercourse” and “Pollution,” as they have specific legal meaning and application which are appropriate and have been refined over time to ensure that the regulation can be administered efficiently and effectively along with other related legislation, especially the *Planning Act*, and the *Building Code Act, 1992*.
- Ensure that the definition of “wetland” better aligns with land use policy including the definition of wetland in the *Provincial Policy Statement* and the provincial land use plans such as the *Greenbelt Plan*.
- Recognize that all wetlands in a watershed have a hydrologic function that helps mitigate against flooding and erosion hazards.

3. Define Undefined Terms Including “Interference,” and “Conservation of Land”

MNR is proposing to newly define terms in the *Conservation Authorities Act* and new regulation that are currently undefined including the concepts of “Interference” and “Conservation of Land” in a manner that is “consistent with the natural hazard management intent of the regulation.”

Analysis:

Defining concepts and terms that are currently undefined could have a significant impact on the efficiency and effectiveness of CLOCA’s ability to regulate for the purposes of protecting people and property and on long-term protection through an integrated approach with the land use planning system. Ontario needs to maintain a prevention-first approach, which means ensuring the regulation operates at watershed, subwatershed and site-specific scales to ensure that natural heritage features that maintain the hydrologic integrity of a watershed are protected for the long-term. Practically, this means that wetlands, valleylands and stream corridors need to be protected from impairment or destruction due to development or alteration. Since the Ministry has not provided draft definitions for “Interference” or “Conservation of Land” and the associated regulatory provisions, it is not possible to meaningfully comment on the appropriateness or effectiveness of this proposal. Factors to consider include:

- The need to have a meaningful opportunity to review the draft definition text prior to enactment.
- The hydrological imperative to protect wetlands, valleylands and stream corridors from hydrologic impairment from development or alteration specifically and cumulatively at a watershed, subwatershed and site-specific scale.
- The Ministry must not narrowly define terms so as to negate the critical prevention-first approach that is most appropriate and effective.
- “Interference” needs to address hydrologic impairment or removal in relation to all wetlands and watercourses within a watershed including any anthropogenic act or instance which hinders, disrupts, degrades or impedes in any way the hydrologic and ecologic function of a wetland or watercourse.
- “Conservation of Land” needs to address hydrologic impairment and prevention or aggravation of erosion or slope stability associated with wetlands, watercourses and their corridors and valleylands at all scales appropriate to maintain and improve the hydrologic integrity of a watershed.
- The language in the posting implies that other terms in the legislation could be defined; meaningful notice and consultation on any terms must be provided by the Ministry prior to enactment to ensure efficient and effective local administration of the regulation(s).
- Implementing technical policy and guidelines must be provided in a timely fashion and developed collaboratively between the relevant ministries, Conservation Ontario and individual conservation authorities.

4. Reduce Regulatory Restrictions Between 30m and 120m of a Wetland and Where A Hydrological Connection has been Severed

MNRF is proposing to reduce the effect of the regulation for larger wetlands (above 2 hectares in size). Currently, the regulated area extends 120m around the wetland “where development could interfere with the hydrologic function of a wetland.”

Analysis:

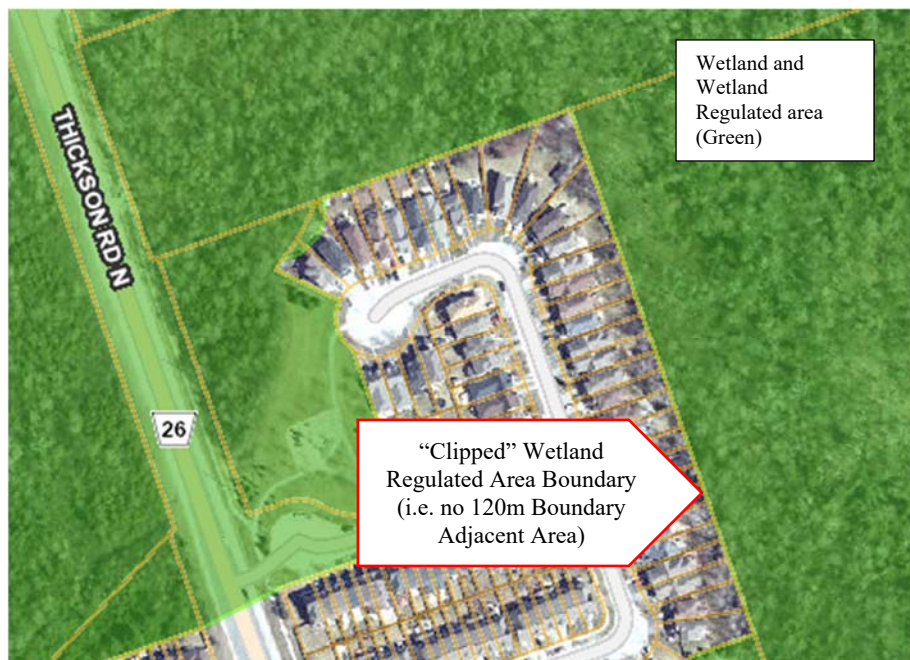
The current intent and effect of the regulation is to regulate development up to 120m from certain wetlands (larger wetlands above 2 hectares in size and Provincially Significant Wetlands) and potentially prohibit certain development activities in instances where there would be an unacceptable impairment of the hydrologic function of a wetland. In the CLOCA watershed, this provision has the effect of including large areas of land within the regulated area in instances where there are many large or significant wetlands. It may be reasonable to focus the regulation in these areas but only in a manner that maintains wetland hydrologic protection and that is administratively efficient and effective. The Ministry should evaluate the types of development that can interfere with the hydrologic function of a wetland and clearly regulate those activities. This could include: larger scale site grading, fill placement and compaction, servicing and utility construction, infrastructure works that require a Permit to Take Water, and the development of large impervious surfaces or structures (a threshold used in the provincial plans could be development over 500m² in size. In any event, the Ministry needs to provide a draft concept and a meaningful opportunity to provide comment prior to enactment of any implementing regulation(s).

5. Reducing effect of Regulation where there is no Hydrological Connection

MNRF is also proposing to reduce the effect of the regulation where a hydrological connection has been severed.

Analysis:

CLOCA currently takes a pragmatic approach to the regulation in instances where the hydrological connection to a wetland has been severed due to previous development activity by “clipping” the regulated area. For example, the Taunton North community in Whitby benefits from the many Provincially Significant Wetlands located along an east-west band of the former Lake Iroquois Beach. As development has been reviewed and approved in these areas, the regulated area has been “clipped back” to ensure that the residential neighbourhoods are not over-regulated in instances where there is no reasonable prospect of further interference with the nearby wetland communities due to development activity. This is illustrated in the figure below. The areas shaded green would otherwise extend into the adjacent subdivisions:



While CLOCA's current practice is to "clip" the regulated area boundary in certain instances so as to reduce the effect of the regulation where a hydrological connection has been severed, it's clear that this can be undertaken now without the imposition of new regulatory language. Should the Ministry enact a regulation that would require conservation authorities to undertake clipping or other similar regulatory approaches, meaningful notice and consultation on any proposed regulatory text must be provided by the Ministry prior to enactment to ensure efficient and effective local administration of the regulation(s). Implementing technical policy and guidelines must be provided in a timely fashion and developed collaboratively between the relevant ministries, Conservation Ontario and individual conservation authorities.

6. Exempt Low-Risk Development Activities from Requiring a Permit and Allow Conservation Authorities to Further Exempt Low-Risk Development Activities Through Policy

MNR is proposing to exempt low-risk development activities from requiring a permit and enabling conservation authorities to further exempt low-risk development activities from requiring a permit in accordance with adopted conservation authority policies.

Analysis:

In the context of natural hazards, the apparent increasing frequency and severity of storm events, and the need to protect people and property in varying contexts that may not be predictable, it is critical that the existing enabling definition of development, which includes the construction, reconstruction, erection or placing a building or structure of any kind is maintained intact without any arbitrary fettering that might be enshrined in regulation out of context.

All regulatory decisions made under the *Conservation Authorities Act* are made in a specific context. This context involves the location of works, the scale, the risk of the development, the contextual risk in terms of the presence and severity of the hazards and specific risks to people, for example, the ability of people to seek refuge away from the a flood plain in the event of a flooding event.

As the definition and regulation of development is necessarily broad in order to ensure that varying contexts are addressed, smaller-scale works are currently often 'exempted' from the regulation either by existing CLOCA policy or by sound professional judgement of staff. This has been CLOCA's standard operational mode in recent years and is subject to both senior management and Board oversight (i.e. monthly permit reports to the Board of Directors).

As the Ministry has not provided any examples of what is considered to be "low-risk development" or draft regulation text, is not possible to meaningfully comment on the appropriateness of this approach. However, it is recommended that instead of a rigid regulatory approach from the Ministry (that may not be appropriate in certain circumstances), the Ministry create a policy document, which would provide conservation authorities with province-wide and consistent guidance articulating types and contextual settings for "low-risk development" and direction as to how and when it might be exempt from permit obligations. Implementing technical policy and guidelines must be provided in a timely fashion and developed collaboratively between the relevant ministries, Conservation Ontario and individual conservation authorities.

With respect to enabling conservation authorities to further exempt low-risk development activities from requiring a permit in accordance with adopted conservation authority policies, this is a current business practice at CLOCA and many (if not all) other conservation authorities that should not require further regulatory burden from the Ministry to implement, but should also be addressed in the guidance recommended above.

In any event, the Ministry needs to provide a draft concept and a meaningful opportunity to provide comment prior to enactment of any implementing regulation(s).

7. Require Conservation Authorities to Develop, Consult On, Make Publicly Available and Periodically Review Internal Policies that Guide Permitting Decisions

MNR is proposing to enact a regulation(s) requiring conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions.

Analysis:

CLOCA first adopted a comprehensive suite of policies, following a period of public consultation, through the *Policy and Procedural Document for Regulation and Plan Review* in 2013. The document has always been a public facing document and is available on our website for viewing and downloading. The document contains a commitment for periodic review, which has also been incorporated in to the corporate Strategic Plan work plan for staff. Accordingly, this activity is standard business practice that does not require a ministerial regulation in order to compel CLOCA to undertake this work.

CLOCA's policies were developed, in part, on province-wide policies that were developed collaboratively between Conservation Ontario and individual conservation authorities, including the Section 28 Committee of Conservation Ontario. If the Ministry wishes to prescribe such matters as the development, consultation requirements, accessibility and review period of internal policies, it should prepare model guidance in collaboration with Conservation Ontario and individual conservation authorities before sharing a draft regulation(s) for meaningful comment prior to enactment. Depending upon the nature of the ministry's regulation, there could be additional imposed costs on CLOCA in terms of the consultation approach prescribed and the level of staff time required to meet any Ministry imposed regulatory obligations.

8. Require Conservation Authorities to Notify the Public of Changes to Mapped Regulated Areas Such as Flood Plains or Wetland Boundaries

MNR is proposing to prescribe through regulation conservation authority business practices related to notification of changes to mapped regulated areas.

Analysis:

Understanding implications of this proposed regulatory requirement is challenging in the absence of a proposed new province-wide regulation, as discussed under item number 1 above, and the associated design of the mapping in support of the regulation. CLOCA developed its initial regulated area mapping in support of the 2006 regulation through a public consultation process, as mandated at the time by the Ministry of Natural Resources and the Conservation Ontario Section 28 Regulations Committee. Periodic housekeeping amendments have been made since the initial 2006 mapping through reporting to the Board of Directors.

CLOCA staff support a public notification of changes to mapped regulated areas. Further, it should be understood that the regulated area mapping, under the current regulatory framework, does not change the legal effect as to whether or not an activity is regulated or not, as the maps are *not statutory*, and it is the textual provisions of the regulation that actually determine whether or not certain lands are regulated or not and whether the proposed activity is regulated or not. This is due to the reality that the regulation and its administration is entirely contextual, as is appropriate, given the nature of regulating both dynamic natural hazards and the interface of development of varying scales with natural hazards.

Accordingly, the Ministry should not prescribe an overly rigid notification standard that would be confusing for landowners and the public in relation to the true operation and legal effect of the regulation. In any event, the Ministry needs to provide a draft concept, draft text, and a meaningful opportunity to provide comment prior to enactment of any implementing regulation(s). Finally, depending upon the nature of the Ministry's regulation, there could be additional imposed costs on CLOCA in terms of the consultation approach prescribed and the level of staff time required to meet any Ministry imposed regulatory obligations.

9. Require Conservation Authorities to Establish, Monitor and Report on Service Delivery Standards

MNR is proposing to enact a regulation(s) that would require conservation authorities to establish, monitor and report on service delivery standards including requirements and time lines for determination of complete applications and time lines for permit decisions.

Analysis:

It is not clear from the statement of intent above whether or not the Ministry will prescribe exactly what the service delivery standards would be or whether that would be determined by each individual conservation authority, as the Ministry has not proposed any draft regulatory text related to this proposal. Depending upon the nature of the regulation, there could be significant budgetary implications imposed upon CLOCA based on what service standard might be prescribed or there could be limited budgetary implications if a locally created standard is permitted.

CLOCA's current staff compliment and budget is premised on providing a reasonable standard of service that is tuned to the varying demand for service placed on CLOCA. The demand for our services depends upon the economic environment and the amount of development activity proposed within the watershed. In turn, staffing levels are adjusted based on fee-for-service revenues determined by the annual fee schedule updates. In recent years, CLOCA has been nearing full cost recovery for planning and regulation services, which means that this area of CLOCA's budget is not supported by the property tax base (or by provincial funding transfers). The Ministry should respect and understand (especially in the absence of a financial partnership) the local budgetary and management decisions that have led to this local solution to the financing and management of CLOCA's planning and regulation services without imposing centralized regulations that may not be sensitive to local conditions.

Any prescribed time lines for permit decisions must take into account the concept of a 'complete application' and that CLOCA cannot be required to make positive regulatory decisions in the absence of complete or accurate submissions given CLOCA's obligation to due diligence in carrying out its regulation functions.

In any event, the Ministry needs to provide a draft concept, draft text, and a meaningful opportunity to provide comment prior to enactment of any implementing regulation(s).

Conclusion

In announcing the proposal, Ontario has stated that conservation authority regulations "are a critical component of Ontario's approach to reducing risks posed by flooding and other natural hazards and strengthening Ontario's resiliency to extreme weather events." As a critical component of environmental and public safety law, the provincial government needs to ensure that any changes are well vetted by the individual conservation authorities that are responsible for financing, local administration and customer service required for efficient and effective delivery. As noted throughout this report, it is critical that draft regulation text be shared for a meaningful consultation prior to enactment.

RECOMMENDATIONS:

THAT the Analysis Commentary in Staff Report 5639-19 be endorsed and submitted to the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Environmental Bill of Rights Registry Posting 013-4992; and,

THAT the Minister of Natural Resources and Forestry be requested to share any proposed regulations in draft form with CLOCA for meaningful consultation prior to enactment;

THAT Staff Report 5639-19 be circulated to Watershed Municipalities, Members of Provincial Parliament, Members of Parliament and adjacent Conservation Authorities for their information.