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Federation of Ontario Cottagers´ Associations

November 26, 2019

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Response to the proposed Bill 132, Better for People, Smarter for Business Act, 2019
ERO 019-0774

The Federation of Ontario Cottagers' Associations (FOCA) is a member-based group representing community associations across Ontario. Our 520 member groups represent 50,000 member families. Waterfront property owners in Ontario contribute over $800 million in rural property taxes annually and own a collective 50,000 hectares and 15,000 kilometers of environmentally important shoreline property in Ontario. As residents of hundreds of rural municipalities, we are vested and highly interested parties when it comes to community development and land use planning.

Overall, FOCA is concerned by the breadth and the speed at which Bill 132 is progressing through the legislative process. Our concern is that in terms of the changes to environmental oversight and management, much of what is being called red tape are important protections for our environment and human health. Such extensive and important changes are worthy of more robust public consultation and debate by the public and other stakeholders.

FOCA is, however, pleased that the Act proposes to amend the Public Lands Act Section 21.1, providing clarity in allowing docks and single-storey boathouses located on Crown land without the need for a permit or annual rent.

With respect to the Aggregate Resources Act (ARA), we believe the proposed changes might exacerbate some conflicts that already exist on the landscape, where the preferential treatment of aggregates conflicts with other municipal objectives and may be problematic for a variety of reasons related to groundwater, noise, dust, and traffic for other land uses and users.

Schedule 16 purports to remove municipalities' authority to protect groundwater resources through zoning by-law restrictions on the depth of extraction. FOCA believes that making zoning by-laws inoperative in this manner weakens – not strengthens – groundwater protection, and unduly interferes with the municipalities' duty to identify and protect water resources in accordance with the Provincial Policy Statement issued under the Planning Act. Moreover, we are unaware of any compelling jurisdictional, legal or technical reasons why the ARA amendments should strip away the existing municipal right to utilize zoning restrictions that

safeguard groundwater, especially in the numerous communities across Ontario that are wholly dependent on aquifers for drinking water supply purposes.

New subsection 13.1(4) in Schedule 16 specifies that municipalities or members of the public may file objections to new below-water table extraction at existing sites, and the Minister may, in his/her discretion, refer such objections (or just certain issues) to the LPAT for a hearing. In FOCA's view, the onus of protecting groundwater should not fall by default to municipalities or concerned citizens, who must expend time, money and effort in appealing matters to the LPAT.

Instead, FOCA submits that it is the primary responsibility of the Ontario government at first instance to set and enforce clear, comprehensive and effective standards for protecting groundwater resources from extraction-related impacts. Schedule 16 stipulates that zoning by-laws are "inoperative" if they include prohibitions against the establishment of pits and quarries on Crown land, yet no rationale has been provided for extinguishing municipal authority in this manner under the ARA, or justification for why third parties operating on Crown land shouldn't be subject to applicable zoning by-laws.

Due to the considerable nuisance and safety concerns, as well as property tax implications from road damage, FOCA objects to the new provision in Schedule 16 which would prohibit the Minister or the LPAT from taking into account "the main haulage routes and proposed truck traffic to and from the site", and from considering "road degradation that may result from proposed truck traffic to and from the site." If enacted, this prohibition would apply to all pending and future licence applications, and FOCA cannot support this provision, since road damage and wear-and-tear from high-volume truck traffic is an important consideration, particularly for residents living along haul routes and smaller municipalities with numerous aggregate operations and limited funds for road repair and maintenance.

FOCA is pleased to see explicit acknowledgement that (under Schedule 16 of Bill 132) an ARA licensee is not entitled to an LPAT hearing if the Minister adds or varies licence conditions in order to implement source protection plans approved under the Clean Water Act (CWA), in accordance with the mandatory CWA requirement that prescribed instruments – such as ARA licences for pits and quarries – must be amended to conform to policies in source protection plans that address significant drinking water threats.

While recent proposed changes to the ARA are meant to "strengthen groundwater protection through a more 'robust' application process for aggregate extraction below the water table", it appears that there is little or nothing in Schedule 16 of Bill 132 that actually implements this commitment.

For example, Schedule 16 proposes to expand the regulation-making authority under the ARA to enable the provincial Cabinet to define the term "below the water table," but no proposed definition has been offered. Moreover, while Schedule 16 adds or amends provisions regarding licence/permit applications, licence/permit conditions, and site plans, there seems to be no material change in the application process used to review and approve these items.

In Schedule 16 of Bill 132, there is a new proposed section under 13.1 in the ARA to address situations where an operator of an above-water table pit or quarry wants to extract aggregate from below the water table. There are, however, no substantive safeguards in this new provision that expressly protect groundwater quantity or quality. There should be effective and enforceable controls on below-water table extractions included through new regulatory

standards under the ARA in order to deliver on the government's claim that the new application process will better protect groundwater.

Schedule 16 proposes to make it easier for licenced site boundaries to be expanded to include adjoining road allowances, provided that "prescribed conditions, if any, are satisfied." However, since the proposed regulatory conditions (or the proposed "simplified process") have not been disclosed by the provincial government to date, FOCA is unable to comment further on this provision, or whether it affords appropriate oversight or direction in this regard.

Schedule 16 proposes to expand the Cabinet's regulation-making authority under the ARA in relation to site plan amendments. Currently, this authority only permits regulations that address "minor" site plan amendments that can be made without the Minister's approval. However, Schedule 16 proposes to delete the word "minor," which potentially allows proponents to make even major changes without Ministerial approval, provided that the prescribed regulatory requirements are met. Since the Ontario government has not identified the types of "self-filed" site plan amendments that will be permissible and has not released draft regulatory language on this matter, FOCA cannot support this ARA amendment.

For the foregoing reasons, FOCA recommends that the Ontario government should not proceed with the proposed ARA amendments pertaining to road degradation (section 2), exclusion of municipal zoning by-laws to aggregate extraction depths (section 3) or Crown land (section 11), and amendments to site plans without Ministerial approval (section 18(2)).

From the land-use planning, public oversight and right of appeal perspective we're concerned that the Local Planning Appeal Support Centre will be eliminated, given the public's need to engage in land-use planning in an informed manner. Having the resources to appropriately and effectively respond to legitimate concerns about land-use planning is an important way to ensure our communities develop sustainably.

We also have some concerns over the amount of ministerial authority with respect to the Crown Forest Sustainability Act and in particular the authority to extend forest management plans. These FMP's generally have prescribed and well-understood opportunities for other forest interests to contribute comments and input related to proposed cutting activities.

We trust these comments are helpful.

Sincerely,

Terry Rees, Executive Director

On behalf of
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