

July 31, 2020

Ontario Growth Secretariat  
Ministry of Municipal Affairs and Housing  
777 Bay Street,  
23<sup>rd</sup> Floor, Suite 2304  
Toronto, Ontario  
M7A 2J3

Via email: [growthplanning@ontario.ca](mailto:growthplanning@ontario.ca)

Dear Members of the Ontario Growth Secretariat,

### **PART I - Introduction**

Thank you for the opportunity to comment on ERO 019-1680, the proposed changes to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) and ERO 019-1679, the Lands Needs Assessment Methodology (“methodology”). Both proposals were placed on the Environment Registry of Ontario on June 16, 2020, with comments due by July 31, 2020.

The Growth Plan is a unique land-use planning framework that proposes to balance urban growth with protection of the natural environment and farmland within the Greater Golden Horseshoe (GGH). The Growth Plan recognizes that the

“GGH contains a broad array of important hydrologic and natural heritage features and areas, a vibrant and diverse agricultural land base, irreplaceable cultural heritage resources, and valuable renewable and non-renewable resources. These lands, features and resources are essential for the long-term quality of life, economic prosperity, environmental health, and ecological integrity of the region. They collectively provide essential ecosystem services, including water storage and filtration, cleaner air and habitats, and support pollinators, carbon storage, adaptation and resilience to climate change.”<sup>1</sup>

According to the Growth Plan, these “valuable assets must be wisely protected and managed as part of planning for future growth.”<sup>2</sup>

Decision-makers, including municipal councils, as well as administrative tribunals, such as the Local Planning Appeal Tribunal, must ensure that planning decisions conform with provincial plans, or

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<sup>1</sup> *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*, OIC No 641/2019, (May 2019), Policy 4.1, para 1, (“Growth Plan”).

<sup>2</sup> *Ibid* at para 2.

shall not conflict with them, as the case may be.<sup>3</sup> Consequently, Growth Plan policies have a major influence on land-use planning in the GGH.

We, the 63 undersigned organizations, believe both proposals, if implemented, would cause significant adverse effects on the GGH. It will facilitate urban sprawl, lead to an over-designation of land for urban growth, result in the unnecessary loss of farmlands, and destroy endangered and threatened species habitats.

It is important to remember that the GGH is one of the most biodiverse and heavily developed regions in Canada, where anticipated growth must be carefully managed to sustain the health of our lands, waters and wildlife. It is home to at least a third of Ontario's over 230 species at risk and has suffered extensive losses of wetlands, woodlands and other ecosystems. In Niagara region, for example, wetland loss exceeds 90 percent.

Further, as outlined in the ERO submission of the Ontario Farmland Trust, agricultural land in the GGH is among the most fertile in the province and "faces some of the highest levels of development pressure." Already, non-agricultural development on farmland has "impacted the viability of Ontario's agri-food economy." Given what is at stake, the proposed changes are fundamentally at odds with the objectives of the Growth Plan, which include establishing "a land-use planning framework for the GGH that supports the achievement of complete communities, a thriving economy, a clean and healthy environment, and social equity."<sup>4</sup>

Our concerns and recommendations are outlined in more detail below.

## **PART II- The Proposed Amendments to the Growth Plan**

ERO 019-1680 outlines several proposed policy revisions to the Growth Plan. The government is also consulting concurrently, through ERO 019-1679, on a proposed methodology for assessing land needs to support implementation of the Growth Plan.<sup>5</sup> A detailed discussion about the methodology is provided in the technical report prepared by Hemson Consulting Ltd. for the Ministry of Municipal Affairs and Housing ("Hemson Report").<sup>6</sup>

ERO 019-1679 states that the government is proposing to do the following:

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<sup>3</sup> *Planning Act*, R.S.O. 1990, c.P.13, s 3(5).

<sup>4</sup> *Supra* note 1 at s 1.1 para 15 (p.3).

<sup>5</sup> Ontario, Environmental Registry of Ontario, *Proposed Land Use Methodology for a Place to Grow: Growth Plan for the Greater Golden Horseshoe*, (policy), ERO 019-1679, online: <<https://ero.ontario.ca/notice/019-1679>>. ("ERO 019-1679")

<sup>6</sup> Hemson Consulting Ltd, *Greater Golden Horseshoe: Growth Forecast to 2051*, (Toronto, June 16, 2020), online: < <https://www.hemson.com/wp-content/uploads/2020/06/HEMSON-Schedule-3-Forecasts-FINAL-16JUN20.pdf>> ("Hemson Report")

- Establish a methodology which would provide the key steps for assessing community and employment land needs. Municipalities must follow the steps of the methodology as part of the municipal comprehensive review to ascertain the amount of land required to accommodate the amount and type of additional housing units and jobs required to meet market demands in conformity with the Growth Plan.<sup>7</sup>
- Schedule 3 of the Growth Plan is the baseline to be used by municipalities for growth forecasts. Lower forecasts for population, dwellings by type or employment are not permitted.<sup>8</sup>
- The proposed methodology does not preclude municipalities from considering alternate assumptions about population and employment growth to the horizon of the Plan. A municipality may test alternative growth assumptions to establish the case for a higher density target. Assumptions that include density targets lower than those required in the Growth Plan, however, require Ministerial approval.<sup>9</sup>

ERO 019-1680 proposes to make the following changes to the Growth Plan:

- Amend the Growth Plan with one of the following growth outlooks: The Reference Growth Forecast, High Growth Scenario, or Low Growth Scenario. The Reference Growth Forecast represents the most likely future growth outlook. Municipalities will be required to select the growth outlook as the updated forecasts, or use higher forecasts determined through the municipal comprehensive review, to meet the conformity deadline of July 2022.
- Extend the Plan horizon from 2041 to 2051 to ensure municipalities have sufficient land to support the fostering of complete communities, economic development, job creation, and housing affordability.
- Make it easier to establish new mineral aggregate operations in the Greater Golden Horseshoe, outside of the Greenbelt.
- Allow conversion of employment areas to non-employment uses within a provincially significant employment zone that is located within a MTSA (major transit station area) outside of a municipal comprehensive review.

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<sup>7</sup> *Supra* note 5 (ERO 019-1679)

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

- Make it mandatory for municipalities to engage Indigenous communities in local efforts to implement the Growth Plan.
- Change various definition sections in the Growth Plan, including removing the term “hydrologic functions” from the definition of “Ecological Functions,” and establish a definition for the “The Impacts of a Changing Climate.”

### **PART III – Comments on ERO 019-1679**

The Hemson Report makes population and employment forecasts for a thirty-five year time horizon, from 2016 to 2051 for the GGH.<sup>10</sup> The stated purpose of the forecast was to update the forecasts in Schedule 3 of the Plan.<sup>11</sup> The forecasts are to be used by upper and single-tier municipalities in the GGH to determine the quantity of land needed to accommodate growth.<sup>12</sup>

The reliance on a thirty-five-year time horizon for land use planning is totally unrealistic as it operates within the realm of speculation. As the study itself notes, “[p]reparing a forecast of GGH employment is a challenge, as the region is fast growing, diverse, and constantly undergoing structural change. A complicating factor is a forecast time that is a generation in length, during which there will inevitably be swings of growth and decline and likely a significant recession or two.”<sup>13</sup>

In order to fully grasp the speculative nature of the time horizon utilized in the proposed methodology, consider the profound changes that have occurred to the state of technology, the environment and the economy over the past thirty-five years: In 1985 there was no internet, no cell phones, only nascent scientific consensus on the impacts of climate change, an economy that was largely based on manufacturing and a society that was far less diverse than Ontario is today.

The current pandemic has injected further uncertainty on the Hemson Report’s GGH forecasts. Under the heading, “Long-term impacts of COVID-19 could disrupt the GGH Forecast,” the report states:

[m]ajor events like plagues and wars are often catalysts for far-reaching social, political and economic change. Some GGH industries - travel, tourism, conventions, retail restaurants and print media - may never fully recover.

...

These impacts have the potential to disrupt the labour force, distribution of jobs, and housing choices in the GGH and, by extension the Schedule 3 forecasts.

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<sup>10</sup> *Ibid*, p.1.

<sup>11</sup> *Ibid*.

<sup>12</sup> Ontario, Environmental Registry of Ontario, *Proposed Amendment 1 to A Place to Grow: Growth Plan for the Greater Golden Horseshoe*, (policy), ERO 019-1680, online: <https://ero.ontario.ca/notice/019-1680>.

<sup>13</sup> *Supra* note 6 at p. 8. (“Hemson Report”).

The Hemson Report also notes that the 2012 forecasts assumed a “gradual rise in fertility rates, consistent with the rise in fertility observed from 2001 to 2007.” However, what occurred instead since 2007 was a gradual decline in the GGH total fertility rate.<sup>14</sup>

Despite these significant variables, the report understates the inherent uncertainty in making land and employment forecasts on a thirty-five-year time horizon. Indeed, after 2024, the forecasts in the Hemson Report assume an undifferentiated upward trajectory for the GGH forecasts. Accordingly, the proposed methodology cannot serve as the basis for effective land-use and infrastructure planning.

With its hypothetical upward trajectory in population forecasting, the methodology has an inherent orientation towards sprawling development: simply put, the greater the predicted number of people, the more land is slated for roads, highways, sewers and expansive subdivisions. The insertion of “at a minimum” in the proposed policy change (2.1, second paragraph) emphasizes the assumed upward trajectory:

Current 2019 policy (2.1): “By 2041, this area is forecast to grow to 13.5 million people and 6.3 million jobs.”

Proposed revised policy (2.1): “By 2051, this area is forecast to grow to, at a minimum, 14.9 million people and 7.0 million jobs.”

Further reinforcing the sprawl trajectory, the proposal allows a municipality to establish higher forecasts through a municipal comprehensive review (MCR).<sup>15</sup> Yet the government would prohibit lower forecasts, except with Ministerial approval.<sup>16</sup>

The region-wide forecast is a pillar of the Growth Plan, intended to prevent individual municipal forecasts from exceeding a reasonable regional total and thus to avoid unrealistic municipal infrastructure planning/budgeting. There is no need to allow exceedances since the Growth Plan forecasts are long term and regularly reviewed. There is good reason, however, to avoid exceedances as explained by the Ontario Farmland Trust in its ERO submission: “Allowing municipalities to use higher growth forecasts in their land use planning will open the door to land speculation, making farmland unaffordable and threatening the viability of the agri-food system.”

**Recommendation No. 1: Do not proceed with allowing municipalities to exceed the forecasts.**

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<sup>14</sup> *Ibid*, p. 9.

<sup>15</sup> Proposed amendment to policy 2.2.1.1.

<sup>16</sup> *Supra* note 5 (ERO 019-1679).

The proposed amendments, like the previous 2019 amendment to the Growth Plan, place an emphasis on the need for a sufficient housing supply to reflect market demand over balancing other objectives in the Plan.<sup>17</sup> However, there are solid empirical data which indicate that there is, in fact, an ample supply of land in the GGH to accommodate housing needs. A 2017 report by the Neptis Foundation, titled “An Update on the Total Land Supply: Even More Land Is Available for Home and Jobs in the Greater Golden Horseshoe” found that the

“total unbuilt supply of land to accommodate housing and employment to 2031 and beyond now stands at almost 125,600 hectares... Most of that land is in the Designated Greenfield Area contiguous to existing built up urban areas, where full municipal water and wastewater servicing is available or planned.”<sup>18</sup>

These findings raise further questions about the underlying assumptions and data utilized in the Hemson Report. We do not support the government’s preference to use this forecast rather than that of the Ministry of Finance which is based on actual census data.

Previous Growth Plan forecasts have not occurred as predicted.<sup>19</sup> An analysis of the 2013 Growth Plan forecasts revealed that most municipalities, in fact, had experienced lower than forecasted population growth.<sup>20</sup> In contrast, the Region of Peel and the City of Toronto were expected to significantly exceed their population growth forecasts.<sup>21</sup> According to a planning expert, this trend has “significant implications including the potential for over-designation of land for urban residential uses, thereby unnecessarily consuming agricultural land and putting pressure on environmental areas.”<sup>22</sup> The challenges associated with Growth Plan forecasts led a municipal councillor to make the following observation, underlining the costs to taxpayers of inaccurate forecasts:

Consequences of poor forecasts are significant. Municipalities designate land for development in their Official Plan and subsequently approve developments and building infrastructure using this plan. If the growth does not occur as planned by 2051 who do you think will pay? Answer: the taxpayers who are there. If the Province does its job it will build transportation

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<sup>17</sup> See Canadian Environmental Law Association, *Comments on the Proposed Amendment to the Growth Plan for the Greater Golden Horseshoe, 2017, ERO Number 013-4504 And on the Proposed Framework for Provincially Significant Employment Lands, ERO Number 013-4506*, (Toronto: CELA, February 28, 2019), p.4. (“CELA Brief”)

<sup>18</sup> Neptis, *An Update on the total land supply: Even More land available for homes and jobs in the Greater Golden Horseshoe*, (Toronto: Neptis, March 9, 2017), online: [https://www.neptis.org/sites/default/files/land\\_supply\\_briefs\\_2016/an\\_update\\_on\\_the\\_total\\_land\\_supply\\_even\\_more\\_land\\_available\\_for\\_homes\\_and\\_jobs\\_in\\_the\\_ggh.pdf](https://www.neptis.org/sites/default/files/land_supply_briefs_2016/an_update_on_the_total_land_supply_even_more_land_available_for_homes_and_jobs_in_the_ggh.pdf) at p.8.

<sup>19</sup> Kevin Eby, *Population Forecasting in the GGH: A Comparison of the Growth Plan Population Forecasts and the Ministry of Finance Population Projections*, March 26, 2020, p.3.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

networks to service the expected population; who is going to pay for this? Answer: Ontario taxpayers. And finally, land, which provides your local food, is unnecessarily consumed and pressures on the environment are increased.<sup>23</sup>

Extending the forecast period at this time is fraught with risk, and there is no need to do so. The 2017 Growth Plan Review revealed both that there were vast amounts of land already approved for urbanization and that it was being urbanized at half the rate initially anticipated. Given the uncertainties arising from the COVID-19 pandemic, we urge you to await the results of the 2021 Census before considering an extension of the forecasts. At that time, as noted above, the forecasting should be done by the Ministry of Finance, a senior ministry that bases its forecasts on actual census data.

**Recommendation No. 2: Extension of the forecasts should await the results of the 2021 Census, which will be available within a couple of years.**

**Recommendation No. 3: The Ministry of Finance should lead the development of any new forecasts.**

A key basis for the flawed municipal allocation is the fact the consultant forecast assumes that ground related housing is going to increase to 64 percent of all housing starts in the GGH by the year 2051 despite such starts only comprising 54 percent of all new units for almost the last 10 years. As a corollary, this assumes that new apartment units will decrease from comprising 45 percent of all new units over the last 10 years to only 35 percent. Both assumptions are directly contrary to the actual housing start data over the last 10-15 years which show new single detached units have decreased by almost 50 percent while apartments have increased by upwards of 200 percent.<sup>24</sup> This trend is region wide but particularly evident in Toronto and Peel where the presence of existing and planned rapid transit and massive job creation have attracted much more growth than the Growth Plan forecast and why the Ministry of Finance predicts this to continue into the future. Indeed, if one excludes Toronto, the consultant assumes 75 percent of all housing in the GGH for the next 30 years will be ground related. Using these flawed housing mix assumptions underpins the allocation of more growth to suburban and exurban locations/municipalities – the vast majority of which will involve the conversion of farmland for ground related, car dependent housing.<sup>25</sup>

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<sup>23</sup> Debbie Schaefer, “More Sprawl” (July 14, 2020), online: *debbieschaefer.ca* <<https://debbieschaefer.ca/2020/07/more-sprawl> .

<sup>24</sup> Victor Doyle, “The Growth Plan and the Greenbelt Plan Setting the Record Straight” (May 7, 2017) p. 20. [http://aware-simcoe.ca/wp-content/uploads/2018/03/Setting\\_the\\_Record\\_Straight.pdf](http://aware-simcoe.ca/wp-content/uploads/2018/03/Setting_the_Record_Straight.pdf)

<sup>25</sup> Victor Doyle, former Manager of Planning for Central Ontario at the Ministry of Municipal Affairs and Housing, Personal Communication, July 26, 2020.

**Recommendation No. 4: Reject the housing mix assumptions underlying the proposed forecasts and revisit them in conjunction with the review based on the 2021 Census - again with the Ministry of Finance as lead.**

**PART IV- Comments on ERO 019-1680**

**(a) Proposal to allow aggregate extraction within the habitat of endangered and threatened species**

The Growth Plan policies for mineral aggregate resources are to be amended. The proposed change would remove the Growth Plan policy that prohibits aggregate operations and wayside pits and quarries in the habitat of endangered and threatened species throughout the Natural Heritage System (4.2.8.2 a) ii).

The proposed amendment is fundamentally at odds with the vision for the GGH, which is to ensure a healthier environment is passed on to future generations. The Growth Plan states that:

The GGH contains many of Ontario’s most significant ecological and hydrologic natural environments and scenic landscapes, including the Oak Ridges Moraine, the Niagara Escarpment and the other natural areas in the Greenbelt Area and beyond. These natural areas support biodiversity, provide drinking water for the region’s inhabitants, sustain its many resource-based industries, support recreational activities that benefit public health and overall quality of life, and help moderate the impacts of climate change.<sup>26</sup>

After extensive public consultation, the Growth Plan was amended in 2017 to include, among other changes, a regional Natural Heritage System offering a higher level of protection for key hydrologic and natural features and areas. The proposed amendment would undermine this higher level of protection. To be clear, aggregate operations can already occur throughout most of the GGH, including the Natural Heritage System. Given that the purpose of the Natural Heritage System is to protect biodiversity, prohibiting aggregate extraction within the habitats of our most vulnerable plants and animals is the bare minimum that should be required.

Further, as noted by the Ontario Farmland Trust in its ERO submission protecting this habitat also has the added benefit of protecting farmland:

“Farmland is part of a larger ecosystem, and is often home to endangered and threatened species. Removing the protections for these species directly places farmland and the associated farm ecosystems at risk of being destroyed by aggregate operations.”

The aggregates industry already receives preferential treatment over the protection of our natural and agricultural lands, waters and wildlife. As the Environmental Commissioner of Ontario (“ECO”) has observed, our

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<sup>26</sup>*Supra* note 1, p.1. (Growth Plan)



“current land-use planning system is weighted in favour of extractive and destructive uses of the land... This approach undermines the resilience of the lands, waters, and other aspects of the natural environment that communities value and upon which they depend.”<sup>27</sup>

When revising the *Aggregate Resources Act* in 2019, the government chose to ignore the advice of the ECO who, in 2017, identified the need to undertake further measures to “lighten the environmental footprint of aggregates in Ontario.”<sup>28</sup> Instead, the government decided to weaken environmental protections, for example, by stripping away the right of municipalities to use zoning restrictions to safeguard groundwater and to prohibit pits and quarries on Crown land.

Aggregate operations are a highly intrusive activity which involve removing the natural vegetation and topsoil and digging deep into the ground to extract the aggregate beneath. They can also involve ancillary activities such as dewatering, fuel storage and asphalt production.<sup>29</sup> Aggregate operations are known to result in loss of wildlife and their habitat, loss of biodiversity, blasting impacts, soil erosion, increased truck traffic, noise and dust and to negatively impact water quality and quantity.<sup>30</sup> In addition, since pits and quarries are generally established in close proximity to areas where “nature deposited the most desirable types of rock,” there can be cumulative environmental impacts.<sup>31</sup> In view of these significant adverse environmental impacts, it seems inconceivable that aggregate extraction would be permitted within the habitat of endangered species and threatened species in the regional Natural Heritage System.

The aggregate industry and the provincial government have taken the position that the impacts of aggregate operations are an “interim” land-use and, thus, more benign in comparison to other industrial activities. However, the ECO has challenged this assumption.

“[a]nother reason to challenge the concept of an “interim land-use” is that sites are rarely returned to their original condition. More likely, pits are converted to housing or golf courses, and if a quarry has gone below the water table, the site will be permanently flooded, resulting in a man-made lake. Some quarries will require manipulation of water levels in perpetuity.”

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<sup>27</sup> Ontario, Environmental Commissioner of Ontario, *Annual Report 2008-2009, Building Resilience*, p.31, online: <https://www.auditor.on.ca/en/content/reporttopics/envreports/env09/2008-09-AR.pdf>.

<sup>28</sup> Ontario, Environmental Commissioner of Ontario, *Annual Report 2016-2017: Good Choices, Bad Choices*, p. 175.

<sup>29</sup> Canadian Environmental Law Association, *ERO Notice #019-0556 – Proposed Changes to the Aggregate Resources Act and Ontario Regulation 244/97*, (Toronto: CELA, November 2019), p. 2, online: <<https://cela.ca/proposed-changes-to-the-aggregate-resources-act-and-ontario-regulation-244-97>>.

<sup>30</sup> Environmental Commissioner of Ontario, *2017 Annual Report, Good Choices, Bad Choices*, p. 168, online <<https://www.auditor.on.ca/en/content/reporttopics/envreports/env17/Good-Choices-Bad-Choices.pdf>>.

<sup>31</sup> *Ibid.*

The term “interim” suggests “short-term,” but “the impact of aggregate operations on the environment and communities is rarely that. The Greenbelt Task Force report on aggregates, for example, noted that most existing quarries in the Greenbelt Plan Area are more than 50 years old.”<sup>32</sup>

Thus, the land used for a quarry could be unavailable for any other use for many decades. Additional years will be needed to complete the rehabilitation of the site following the completion of the extraction operation. According to the ECO, it has been observed that “no reasonable person could consider this length of time an ‘interim’ use.”<sup>33</sup>

As noted by the Ontario Farmland Trust in its ERO submission,

“[a]ggregate extraction on farmland results in irreversible damage. Even if rehabilitation occurs on the site, the productivity of the farmland is negatively impacted, and there is a significant likelihood that the land will never be returned to agricultural uses.”

An additional problem with aggregate operations in Ontario is that most operators are not conducting progressive or final rehabilitation as required. The ECO has observed that “low rates of rehabilitation remain a chronic problem due to a lack of inspection and enforcement capacity in the MNRF.”<sup>34</sup>

The proposed amendments are particularly troubling when considered in the context of the recent changes made to Ontario’s *Endangered Species Act, 2007* (ESA).<sup>35</sup> These include:

- Species listed as threatened or endangered may no longer be automatically protected.<sup>36</sup>
- Species assessments are no longer to be based on the status of a species in Ontario, but instead on their status throughout their range. For example, southern Ontario at-risk species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario. The change allows Ontario to simply opt out of protecting species at home.<sup>37</sup>
- Introducing a pay-to-proceed system on harmful activities.<sup>38</sup> Developers and proponents are allowed to pay their way out of protecting endangered species’ habitats.

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<sup>32</sup> Environmental Commissioner of Ontario, *Annual Report 2006-2007, Reconciling Our Priorities*, p. 46, online: <<https://www.auditor.on.ca/en/content/reporttopics/envreports/env07/2006-07-AR.pdf>>.

<sup>33</sup> *Ibid* at p. 46.

<sup>34</sup> *Ibid* at p. 191.

<sup>35</sup> Ontario Nature, *Statement on the Ontario government’s proposal to change the Endangered Species Act*, (Toronto: Ontario Nature, April 18, 2020), online: <https://ontarionature.org/news-release/government-proposes-to-gut-endangered-species-act>.

<sup>36</sup> *Endangered Species Act, SO 2007*, c 6, ss 8.1(1), 8.2(1).

<sup>37</sup> *Ibid* at s 5(4)(b).

<sup>38</sup> *Ibid* at s 20.3(1).

- Opening the scientific committee that determines the status of species at risk to members without adequate scientific or Indigenous knowledge.<sup>39</sup> This change would allow people who do not have adequate expertise to be involved in decisions about whether to list a species as at risk.
- Giving the Minister the discretion to interfere with the listing of at-risk species, bringing politics into the protection of endangered species.<sup>40</sup>

The proposed amendment to the Growth Plan, in conjunction with these recent amendments to the ESA, places endangered and threatened species in Ontario at added risk.

Now is not the time to be further dismantling protections for species at risk. In May 2019, the United Nations released a devastating report on the state of biodiversity which laid bare the unprecedented decline of biodiversity over the past 50 years: globally, an estimated 1 million plants and animals are at risk of extinction, and the rate of loss is accelerating due almost entirely to human activity. At the time, Sir Robert Watson, then Chair of the UN Intergovernmental Panel on Biodiversity Ecosystem Services, warned that “we are eroding the very foundations of our economies, livelihoods, food security, health, and quality of life worldwide.”<sup>41</sup>

The government should heed this warning - Ontario is not immune to the global trend of ongoing biodiversity loss and its impacts on our well-being. Pressures are particularly acute in the GGH, one of the most biodiverse and heavily developed regions in Canada, where anticipated growth must be carefully managed to sustain the health of our natural and agricultural lands, water and wildlife. We urge you to strengthen rather than weaken our environmental laws and policies and not to proceed with the proposed amendment to allow aggregate extraction in the habitat of threatened and endangered species throughout the region’s Natural Heritage System.

**Recommendation No. 5: Retain the current prohibition on aggregate extraction in the habitat of endangered and threatened species in the regional Natural Heritage System to safeguard against the destruction of Ontario’s most vulnerable plants and animals.**

**(b) Proposal to allow conversion of employment areas outside of a municipal comprehensive review.**

The government proposes to allow municipalities to convert lands within Provincially Significant Employment Zones to non-employment uses in advance of an MCR process.

We are concerned that allowing the conversion of employment land to non-employment uses in advance of an MCR will undermine the principle of integrated growth management, a key feature of the Growth Plan. Integrated growth management is critical to ensure that development proceeds in an environmentally, socially and fiscally sustainable manner.<sup>42</sup> Under the Growth Plan certain key

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<sup>39</sup> *Ibid* at s 3(4)(b).

<sup>40</sup> *Ibid* at s 9(1.2).

<sup>41</sup> <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

<sup>42</sup> *Supra* note 17 at p. 5, (CELA brief).

policies, such as the conversion of employment lands for non-employment uses and settlement area boundary expansions, must be implemented in an integrated and comprehensive manner through an MCR. The MCR process establishes a framework for managing growth by considering such things as population and employment forecasts, an assessment of the availability of land, as well as infrastructure needs. It is an iterative process which allows for orderly and efficient planning whereby municipalities can undertake research and analysis, engage in public consultation, produce background studies, and formulate policies in an integrated and comprehensive manner.

**Recommendation No. 6: Retain the current prohibition against the conversion of lands within Provincially Significant Employment Zones to non-employment uses outside the MCR process.**

**(c) Mandatory requirement for municipalities to engage Indigenous communities in local efforts to implement the Growth Plan.**

A new policy is to be added to the Growth Plan to require municipalities to engage Indigenous communities in local efforts to implement the Plan, and to provide necessary information to ensure the informed involvement of these communities. Under the current Growth Plan, municipalities are “encouraged to engage” with Indigenous communities.<sup>43</sup> The proposed amendment uses the term “shall engage,” thereby making consultation with Indigenous communities mandatory.

We support the mandatory requirement for municipalities to engage Indigenous communities in their local efforts to implement the Growth Plan. The duty to consult is a constitutional obligation that arises from s.35 of the *Constitution Act, 1982*, which recognizes Aboriginal and treaty rights. This duty is triggered whenever the Crown has either constructive or real knowledge of the potential existence of an Aboriginal right or title and contemplates conduct that may adversely affect it.<sup>44</sup>

In its revisions to the Provincial Policy Statement 2020, the government appropriately strengthened the language regarding municipal engagement with Indigenous communities, with revisions to sections 1.2.2 and 2.6.5, including making such engagement mandatory for municipalities:

Previous (2014) policy 1.2.2: “Planning authorities are encouraged to coordinate planning matters with Aboriginal communities.”

Revised (2020) policy 1.2.2: “Planning authorities shall engage with Indigenous communities and coordinate on land use planning matters.”

Previous (2014) policy 2.6.5: “Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources.”

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<sup>43</sup> *Supra* note 1, Policy 5.2.3(3), (Growth Plan)

<sup>44</sup> *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73 at para 35.

Revised (2020) policy 2.6.5: “Planning authorities shall engage with Indigenous communities and consider their interests when identifying, protecting and managing cultural heritage and archaeological resources.”

The proposed Growth Plan amendment is consistent with these changes.

Municipalities engage in a myriad of land-use planning decisions which have the potential to adversely impact Indigenous people. These include land-use planning decisions such as the siting of a development project which could, for example, impact on burial grounds or a rezoning decision which could directly or indirectly limit access to hunting, fishing or harvesting rights.<sup>45</sup> Municipalities, therefore, should engage in consultation and accommodation.<sup>46</sup>

Consequently, we support the requirement for municipalities to engage with Indigenous communities in local efforts to implement this Plan and to provide necessary information to ensure the informed involvement of these communities. Municipalities should be provided with appropriate resources to undertake consultation, including guidance materials on the duty to consult, and an appropriate level of funding to undertake the consultation process.

In keeping with the spirit and intent of these changes, it is our hope and expectation that the Ministry of Municipal Affairs and Housing will fulfill its duty to consult with all Indigenous communities affected by these and other proposed amendments to the Growth Plan.

**Recommendation No. 7: Proceed with the amendment to require municipalities to engage with Indigenous communities in local efforts to implement the Growth Plan, and to provide necessary information to ensure the informed involvement of these communities.**

**Recommendation No. 8: Provide municipalities with appropriate resources to undertake consultation, including guidance materials on the duty to consult and appropriate levels of funding to undertake the consultation process.**

**(d) Removal of the term “hydrologic functions” from the definition of “Ecological Functions”**

The government proposes to amend the definition of “Ecological Functions” in the current Growth Plan. Ecological functions would no longer include the term “hydrologic functions.” Instead they would only encompass biological, physical and socio-economic interactions. This would decrease protections that are currently explicitly afforded to source and surface waters under the Growth Plan.

Subsection 5(b) of s.4.2.4 of the Growth Plan, under the heading “Lands Adjacent to Key Hydrologic Features and Key Natural Features,” for example, states that infill development, redevelopment, and

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<sup>45</sup> Nancy Kleer, Lorraine Land & Judith Rae, “Bearing and Sharing the Duty to Consult and Accommodate in the Grey Areas of Consultation: Municipalities, Crown Corporations and Agents, Commissions and the Like,” (Canadian Institute Conference, February 24, 2011), online: <http://www.oktlaw.com/wp-content/uploads/2016/10/njkGreyAreas.pdf> at p.7.

<sup>46</sup> *Ibid* at p. 8.

resort development of shoreline areas or inland lakes are permitted outside of settlement areas if the development will, "restore, to the maximum extent possible, the ecological features and functions in developed shoreline areas."<sup>47</sup> Currently, restoration of hydrologic functions is an explicit requirement. Under the proposed amendment, however, this requirement would be removed. This is particularly important given the proximity of these lands to water, and the potential for impacts on hydrologic functions. Although section 5(c)(iii) provides explicit protection for hydrologic functions, it is limited to redevelopment and resort development, and would not include infill development.

With the removal of the term "hydrologic functions" from the definition of "ecological functions," the Growth Plan provides far less explicit protection to water sources and their functions.

The proposal is also fundamentally at odds with the A Made-In-Ontario Environment Plan ("The Environment Plan"), that was released by the Ministry of Environment, Conservation and Parks ("MECP") two years ago. The Environment Plan states:

"[o]ur lakes, waterways and groundwater are the foundation of Ontario's economic prosperity and wellbeing – supplying water to our communities, sustaining traditional activities of Indigenous peoples, supporting Ontario's economy, and providing healthy ecosystems for recreation and tourism."<sup>48</sup>

The MECP has established the Water-Quantity External Working Group ("Working Group"), a multi-stakeholder advisory committee, to undertake a comprehensive review of the current water quantity management framework. The findings from the review, which were recently released, indicated that municipal water supply is vulnerable in the future due to growth, land-use changes, drought and climate change.<sup>49</sup> Surface water was found to be stressed in areas where agricultural irrigation is common.<sup>50</sup> In fact, in certain areas of the province such as Guelph-Wellington County and Orangeville future reliance on groundwater as a municipal supply is uncertain while surface water resources are expected to become unsustainable.<sup>51</sup> The Working Group, therefore, recommended that water servicing needed to be better integrated into the land-use planning process. The proposed amendment in the Growth Plan, however, directly contradicts the recommendations from the Working Group and undermines protection of source water and surface water in the GGH.

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<sup>47</sup> *Supra* note 1 at 45. (Growth Plan).

<sup>48</sup> Ontario, Ministry of Environment, Conservation and Parks, *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario*, at p. 11, online: <https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf>.

<sup>49</sup> Ontario, Ministry of Environment, Conservation and Parks, Engagement on Ontario's Water Quantity Management Framework, July 10, 2020, p. 11.

<sup>50</sup> Tiffany Svensson, Summary: Assessment of Water Resources to Support a Review of Ontario's Water Quantity Management, March 2019 [PowerPoint Presentation] Ontario Ministry of Environment, Conservation and Parks' Water Quantity Protection External Working Group teleconference, July 10, 2020, p.7.

<sup>51</sup> *Ibid.*, p.6.

**Recommendation No. 9: Retain the term “hydrologic functions” in the definition of “Ecological Functions” so as not to undermine source and surface water protection conferred through the Growth Plan.**

**(e) The definition of “Impacts of a Changing Climate” is too narrow**

The list of definitions in the Growth Plan would be amended by adding “Impacts of a Changing Climate” and defining it as “The present and future consequences from changes in weather patterns at local regional levels including extreme weather events and increased climate variability.”

The definition is far too narrowly scoped and should be amended to encompass the vast socioeconomic, hydrologic and ecological impacts that are arising from climate change. Looking at weather events and climate variability at a local regional level is simply inadequate.

Other manifestations of climate change impacts include, for example, the potentially synergistic relationships between climate change and air quality issues, leading to smog and heat episodes of increased frequency and intensity, with significant adverse impacts on human health, especially to vulnerable populations.<sup>52</sup> Public health concerns are also emerging as a result of the expanded range for disease vectors which were previously constrained by cold winters, leading to the increasing occurrence of illnesses not normally seen in Ontario such as West Nile Virus, Hantavirus, and Lyme disease.<sup>53</sup> Climate change has a disproportionate impact on Indigenous communities who maintain close, direct relationships with land, water and wildlife. Vulnerable and disadvantaged groups will suffer more than others from the disruption in food production, unstable prices and reduced access to food and water that stem from global climate variability. For example, according to Canada’s Changing Climate Report, there will be changes in freshwater availability due to increased evaporation of surface water.<sup>54</sup> Even with increases in annual average precipitation, increased evaporation and evapotranspiration due to higher temperatures may lead to lower water levels.

Agriculture is at risk to due to drought, pests, disease and climate variability.<sup>55</sup> This is a fundamental food security issue of concern at the local, provincial, national and international levels, as indicated, for example, in a 2019 report of United Nations Intergovernmental Panel on Climate Change.<sup>56</sup>

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<sup>52</sup> Environmental Commissioner of Ontario, *Facing Climate Change: 2016 Greenhouse Gas Progress Report*, p. 29, online: <<https://www.auditor.on.ca/en/content/reporttopics/envreports/env16/2016-Annual-GHG-Report-EN.pdf>>.

<sup>53</sup> *Ibid* at p. 30.

<sup>54</sup> Government of Canada, *Canada’s Changing Climate Report* (2019), online: [https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/Climate-change/pdf/CCCR\\_ExecSumm-EN-040419-FINAL.pdf](https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/Climate-change/pdf/CCCR_ExecSumm-EN-040419-FINAL.pdf) at p. 13.

<sup>55</sup> Environmental Commissioner of Ontario, *Feeling the Heat: 2015 Greenhouse Gas Progress Report*, p. 5, online: <<https://www.auditor.on.ca/en/content/reporttopics/envreports/env15/2015-GHG.pdf>>

<sup>56</sup> <https://www.nationalobserver.com/2019/08/08/news/canadian-food-supplies-risk-if-climate-change-not-slowed-new-un-report-shows>

Native biodiversity is also gravely affected by climate change and associated habitat loss, disease, extreme weather events and other impacts. Indeed, according to the United Nations Millennium Ecosystem Assessment climate change is “likely to become one of the most significant drivers of biodiversity loss by the end of the century.”<sup>57</sup>

The proposed definition, therefore, misses several key aspects of climate change impacts beyond local or regional changes in weather patterns.

**Recommendation No. 10: Amend the definition of “Impacts of a Changing Climate” so that it encompasses the full range of potential impacts, including but not limited to impacts on health, biodiversity, water resources and food production and security.**

**Recommendation No. 11: Explicitly acknowledge the disproportionate impact of climate change on Indigenous communities and vulnerable and disadvantaged groups in the Growth Plan definition.**

## PART V- CONCLUSION

The Growth Plan seeks to plan for growth and development in Ontario by balancing economic prosperity with environmental protection to ensure Ontarians can enjoy a high quality of life. Unfortunately, many of the proposed policy revisions would weaken safeguards for natural and agricultural lands, water and biodiversity. In conjunction with the extended timeline and methodology for forecasting population and employment growth, the proposed revisions would facilitate urban sprawl and cannot be reconciled with the purported objectives of the Plan.

We trust that you will take our recommendations into account and look forward to your response.

Yours truly,

*Theresa McClenaghan*  
Executive Director  
Canadian Environmental  
Law Association

*Caroline Schultz*  
Executive Director  
Ontario Nature

*Tim Gray*  
Executive Director  
Environmental Defence



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<sup>57</sup> <https://www.cbd.int/climate/intro.shtml>



*Yannick Beaudoin*  
Director General, Ontario  
and Northern Canada  
David Suzuki Foundation



*Hannah Barron*  
Director, Wildlife  
Conservation Campaigns  
Earthroots



*Paul Mero*  
Executive Director  
EcoSpark



*Geoff Kettel*  
President  
Federation of Urban  
Neighbourhoods



*Michael Mesure*  
Executive Director  
FLAP Canada



*Graham Flint*  
Past President  
Gravel Watch Ontario



*Shane Moffatt*  
Head of Nature and Food  
Greenpeace Canada



*Don Ciparis*  
President  
National Farmers Union –  
Ontario



*Liz Benneian*  
Executive Director  
Ontariogreen Conservation  
Association



*Alison Howson*  
Executive Director  
Ontario Land Trust Alliance



*Ian McLaurin*  
Chair  
Ontario Soil Regulation Task  
Force



*Katie Krellove*  
Ontario Campaigner  
Wilderness Committee



*Judy Mabee*  
President  
Belfountain Community  
Organization



*Deb Sherk*  
President  
Bert Miller Nature Club



*Norm Wingrove*  
Acting President and  
Secretary-Treasurer  
Blue Mountain Watershed  
Trust Foundation



*Amy Schnurr*  
Executive Director  
BurlingtonGreen  
Environmental Association



*Tom Wilson*  
President  
Carden Field Naturalists



*Marcie Jacklin*  
President  
Community Voices of Fort  
Erie Inc.



*Michael Douglas*  
Chair  
Concerned Citizens of  
Ramara



*Lois Gillette*  
President  
Durham Region Field  
Naturalists



*Lynda Lukasik, Ph.D.*  
Executive Director  
Environment Hamilton



**Michael Fox**

*Chair*

Friends of One Mile Creek



**Don Scallen**

*Past President*

Halton/North Peel Naturalist Club



**Gord McNulty**

*Director of Conservation and Education*

Hamilton Naturalists' Club



**George Skoulikas**

*President*

Henderson Forest Aurora Ratepayer Association Inc.

**Karen Yukich**

*Co-chair*

High Park Nature



**James Corcoran**

*Co-chair*

Lakeshore EcoNetwork

**Mary Delaney**

*Chair*

Land Over Landings



**Marilyn Murray**

*Chair*

Lennox and Addington Stewardship Council



**Janet McKay**

*Executive Director*

Local Enhancement and Appreciation of Forests



**John Lavoie**

*President*

Manitouwadge Conservation Club

**Susan Hirst**

*President*

Midland-Penetanguishene Field Naturalists



**Alan McNair**

*Conservation Chair*

Nature Barrie



*Rose Feaver*  
President  
Nature League



*Gordon Neish*  
President  
Nature London



*Joyce Sankey*  
Conservation Director  
Niagara Falls Nature Club



*Dorothy Wilson*  
Communications Officer  
Nith Valley EcoBoosters



*Susan Walmer*  
CEO  
Oak Ridges Moraine Land Trust



*Denis Paccagnella*  
President  
Orillia Naturalists' Club



*Bob Highcock*  
President  
Peninsula Field Naturalists



*Marg Reckahn*  
President  
Penokean Hills Field Naturalists



*Susan Robertson, MCIP, RPP, MES(PI)*  
Principal Planner  
People Plan Community



*Steve Paul*  
Director  
Peterborough Field Naturalists



*Steve LaForest*  
President  
Pickering Field Naturalists



*George Thomson*  
President  
Quinte Field Naturalists



*Ian Attridge*  
 Co-Coordinator  
 Reimagine Peterborough



*Claire Malcolmson*  
 Executive Director  
 Rescue Lake Simcoe  
 Coalition



*Angus Inksetter*  
 President  
 Saugen Nature



*David Euler*  
 President  
 Sault Naturalists of Ontario  
 and Michigan



*Debbe Crandall*  
 Director of Policy  
 Save the Oak Ridges Moraine  
 Coalition



*David Laing*  
 Executive Member  
 Sierra Club Peel



*Mark Cranford*  
 President  
 South Peel Naturalists' Club



*Mark Bisset*  
 Executive Director  
 The Couchiching  
 Conservancy



*Otto Peter*  
 President  
 Thickson's Woods Land Trust



*Bruce Thacker*  
 President  
 Thunder Bay Field  
 Naturalists Club



*Heather Marshall*  
 Campaigns Director  
 Toronto Environmental  
 Alliance



*David James*  
 President  
 West Elgin Nature Club





*Tim Tottenham*

*President*

Willow Beach Field  
Naturalists



*Gloria Marsh*

*Executive Director*

York Region Environmental  
Alliance



*Rick Berry*

*President*

York Simcoe Nature Club



- cc. The Honourable Steve Clark, Minister of Municipal Affairs and Housing  
The Honourable Jeff Yurek, Minister of Environment, Conservation and Parks  
The Honourable Jonathan Wilkinson, Minister of Environment and Climate Change Canada  
Jerry DeMarco, Commissioner of the Environment  
Andrea Horwath, Leader of the Ontario New Democratic Party  
Mike Schreiner, Leader of the Green Party of Ontario  
Stephen Blais, Critic, Municipal Affairs and Housing for the Liberal Party of Ontario