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Planning Consultation
Provincial Planning Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay Street, 13th floor
Toronto, ON M7A 2J3

To whom it may concern,

Re: ERO 019-2811 – Amendments to the *Planning Act*

I am writing on behalf of our clients Wilderness Committee and Greenpeace Canada regarding the above ERO posting. Please note that Environmental Defence and Ontario Nature are submitting their own comments under separate cover, these comments are not sent on their behalf. The above posting fails to specify what the Ministry is consulting on. There is no legislative proposal or true "policy" proposal. It is unclear if the Ministry proposes to create formal policy around the use of the expanded Ministerial Zoning Order (MZO) powers in Bill 197 or not. If so, it is not clear what that policy is. Accordingly the posting is not a *bona fide Environmental Bill of Rights* (*EBR*) consultation.

In our clients' view, this proposal does not and cannot replace public notice and consultation on Schedule 17 of Bill 197 prior to implementation. This is an attempt to pass legislation and retroactively consult which the EBR does not allow for. The posting does not include all of the environmentally significant aspects of Schedule 17 such as changes to community benefits charges. Second, our clients are mystified about what it is the Ministry is proposing to do or not do with the expanded MZO powers in Bill 197. Finally, any policy that the Ministry adopts that would restrict how it uses those expanded MZO powers would be policy, not law, and cannot replace the assurances of a legislative process.

By finally posting some of the Schedule 17 amendments at this late stage, the Ministry appears to implicitly recognize that they should have been subject to public comment and that they have environmental significance. This inference is supported by the Ontario government's recent MZO track record, which amply demonstrates the continuing misuse of MZOs to enable large-scale development on provincially significant wetlands and important agricultural lands.

The registry notice does not indicate how or when the Ministry came to the realization that Schedule 17 was sufficiently significant in the environmental context to warrant public notice/comment under the *EBR*. Moreover, the registry notice does not identify or evaluate the potential environmental effects of using MZOs in general, or using the new powers under section 47 of the *Planning Act* (e.g. site plan control) in particular. In addition, the registry notice makes no suggestions on how the environmental effects of MZOs can be prevented, minimized or mitigated. This denies our clients a meaningful opportunity to comment.

Our clients note that the use of MZOs is an extraordinary power that purports to override local democratic processes and carefully crafted rules for planning. It is our clients' view that these powers ought not to have been expanded through Bill 197 into detailed planning matters such as site plan control for any part of Ontario. Site plan control should be left to local municipalities.

In our clients' view, Schedule 17 ought to be repealed entirely and - if the government wishes to pursue the expanded powers (specifically s 47(4.1) to 47(4.16) and 47(9.1) of the *Planning Act* regarding Minister's zoning orders) - it should be re-tabled with a properly carried out consultation on a proposal for an Act under s.15(1) of the *EBR*. This consultation should include all potentially environmentally significant aspects of Schedule 17.

Although the Minister (and his Cabinet colleagues) already decided several months ago to enact the Schedule 17 amendments, the registry fails to explain how the Ministry's Statement of Environmental Values (SEV) under the *EBR* was considered when this decision was made in July 2020. On this point, the *EBR* expressly requires the Minister to "take every reasonable step" to ensure that the SEV is considered whenever environmentally significant decisions are made within the Ministry. On the record, however, there is no indication that the important planning principles and commitments in the Ministry's SEV[1] were duly considered or applied when Schedule 17 was drafted, introduced, enacted and proclaimed into force.

If the Ministry chooses to do so our clients would submit comments on the impact of Schedule 17 at that time. A proposal to simply refrain from using the expanded powers in certain circumstances, is not acceptable. Indeed it is unclear if that is actually what the Ministry's proposal is. The posting essentially serves as a non-committal "sounding board" that enables people to simply vent about Schedule 17 without knowing what, if anything, that the Ministry proposes to do about the *Planning Act* changes.

The registry notice contends that any public feedback on Schedule 17 will be "meaningfully considered" by the Ministry. Our clients do not accept this at face value since the Minister has issued several MZOs since enacting Bill 197, contrary to prior government practice and has further entrenched and expanded the legal effects of MZOs through Bill 229 as recently as December of 2020, without any public consultation.

Further we note that the Ministry purports in the media to have a policy framework for the increasing and now frequent use of the extraordinary MZO powers in s.47 of the *Planning Act*. We are advised via contacts in the Ministry that the Ministry has created a new unit or department

[1] See Statement of Environmental Values: Ministry of Municipal Affairs and Housing | Environmental Registry of Ontario.

with staff time allocated for the processing of increasing numbers of MZO requests. Further, members of the government have made statements in the media that imply the Minister would only utilize MZOs where requested by a municipality or on provincial lands. However there appear to be examples where MZOs were issued by the Minister with no formal municipal request or approval. It is clear that the Ministry has already made and has acted upon a policy decision that a) it will use MZOs more frequently and more freely; b) has considered criteria it might apply in considering MZO requests; c) has taken steps to expand the powers to issue MZOs through Schedule 17; and d) has taken steps to eliminate other environmental approval processes through Schedule 6 of Bill 229. All of these policy and legislative decisions were made without the legally required public consultation under Part II of the EBR.

Our clients are concerned that the Ministry lacks transparency with respect to major changes to how it is using section 47 of the *Planning Act* more broadly. These concerns go beyond the changes in Schedule 17. A policy proposal to change how the Ministry uses MZOs was not posted on the environmental registry for consultation as is required by section 15(1) of the *EBR*. The Ministry is in violation of section 15(1) of the *EBR* because it created and implemented a policy for the expanded use of s.47 of the *Planning Act* without the required public consultation. It further violated section 15(1) by failing to post the expanded section 47 legislated powers in Schedule 17 before it was implemented.

The current registry posting does not provide a clear policy framework for the broader use of section 47 that the Ministry currently purports to use, or proposes to use or implement. The registry posting does not provide the public with any opportunity to provide feedback on broader s.47 policy – beyond the expanded s.47 powers in Schedule 17. If such a policy exists, is proposed, or has been implemented it should have been included in the posting as it would be environmentally significant and would also apply to the expanded use of s.47 powers in Schedule 17.

Section 47 should be amended in its entirety to restrict the circumstances in which the Minister can issue an MZO. The circumstances should be limited to unorganized territories or potential limits to development where there is a provincial interest. All MZOs should conform to or be consistent with applicable official plans, provincial plans and provincial policies. The amendments in Schedule 17 of Bill 197 should be repealed. Public and First Nations consultation should be required for MZOs under Part II of the EBR, and for any amendment or revocation thereof. The province should also reinstate the binding appeal process for MZOs. These amendments would be consistent with past practices regarding MZOs in Ontario and earlier versions of the *Planning Act*.

Accordingly, this posting cannot cure the defects in the Ministry's improper policies, practices and legislative dealings regarding Schedule 17 or Bill 197 or its closely related abuse of the powers provided in s.47 of the *Planning Act*. The Ministry continues to refuse to meet its obligations under Part II of the *EBR* to provide sufficient information in registry postings for the public to meaningfully comment on the environmentally significant changes in government laws and policies. It is clear that the Ministry has simply moved forward with an agenda of abusing the powers of section 47 of the *Planning Act* without regard to the need to consult the public on the changes to its internal policies that permitted such a shift.

Sincerely,

Laura Bowman
Staff Lawyer

cc: Ian Miron, clients