MISSISSAUGAS OF THE NEW CREDIT FIRST NATION
DEPARTMENT OF
CONSULTATION AND ACCOMMODATION

To Whom it May Concern:

The Mississaugas of the Credit First Nation ("MCFN") submits the following comments in respect of the amendments to the *Conservation Authorities Act,* R.S.O. 1990 that are being proposed in Bill 108, *More Homes, More Choice Act, 2019*.

MCFN has concerns regarding these amendments, and what they could mean in respect of two things: first, meaningful consultation with MCFN in respect of matters falling within the authority of Ontario's Conservation Authorities, and second, the potential implications on MCFN's Territory and rights—especially in respect of its stewardship responsibility to protect the health and integrity of its lands. In our view, both of these elements stand to be compromised by the proposed amendments.

MCFN Rights and Territory

MCFN's traditional territory spans from Long Point on Lake Erie to the Niagara River, then down the River to Lake Ontario, northward along the shore of the Lake to the River Rouge east of Toronto then up that river to the dividing ridges to the head waters of the River Thames then southward to Long Point, the place of the beginning (the "Territory").

The MCFN formally claimed unextinguished Aboriginal title to all water, beds of water, and floodplains in our traditional territory in 2016. The claim is also based on the fact that the water within the traditional territory of the MCFN and was never surrendered by the MCFN or its ancestors. As a result, MCFN continues to have unextinguished Aboriginal title to all water, beds of water, and floodplains in its traditional territory.

MCFN asserts Aboriginal rights not only to continued use of the lands, waters, and watershed ecosystems within its Territory for a variety of livelihood, harvesting, ceremonial and spiritual purposes, but also specifically asserts an Aboriginal right to protect the integrity of the archaeological resources, including cultural materials and human burials, within its Territory.

The MCFN Territory is perhaps the most highly urbanized land in Canada. Unfortunately, much of this development took place at a time prior to the articulation by the Supreme Court of Canada of the Crown's Duty to Consult and Accommodate Indigenous communities ("DTCA"). MCFN was not consulted prior to the vast preponderance of the development that has taken place on its Territory. As a result, a great many archaeological resources, including human burials and cultural materials, have been destroyed and irretrievably lost.

In the exercise of its stewardship responsibility, MCFN's Department of Consultation and Accommodation seeks to ensure that any development activities that occur within their Territory and on their land are carried out in a respectful way. MCFN is of the view that the proposed amendments to the *Conservation Authorities Act* will compromise the extent to which MCFN can do this, as well as how and

the extent to which MCFN will be consulted in respect of these development activities when they are proposed to occur.

The Proposed Amendments

MCFN has particular concerns with the following amendments that are proposed for the *Conservation Authorities Act*:

1. *The amendments that allow for the creation of mandatory programs and services.* The amendments create mandatory programs and services that conservation authorities must provide, where they are prescribed in the regulations. The programs could relate to things like risk of heavy rain/flooding and other natural hazards; protecting drinking water sources, etc. Related to this, the proposed new section 21.1.4 requires that a Conservation Authority carry out consultations in respect of new programs and services "in a manner specified by the regulations". The proposed new section 40(3)(f) enables the Minister to make regulations governing the consultations that a conservation authority must carry out in respect of new programs and services.

2. *The amendments that provide the Minister with broad regulatory-making authority in respect of development activities.* The proposed new section 40(4) provides the Minister with broad regulatory-making authority relating to the conditions of development.

   For example, the new section 40(4)(a) enables the Minister to make regulations regarding the prohibitions found in section 28, which include restricting people from pursuing activities that would interfere with a wetland, river, stream, etc.; from carrying out a development activity that is hazardous; and from carrying out a development activity that is on wetlands or in areas that are near the Great Lakes/St. Lawrence River system.

   More specifically, the proposed new section 40(4)(a) also enables regulations to be developed that would allow the Minister to:

   - outline the areas in which the prohibitions in s. 28(1) would not apply;
   - outline the activities to which the prohibitions on development will not apply, and the manner or circumstances in which the activities can be carried out;
   - define what terms such as "development activity", "hazardous land", "watercourse", and "wetland" mean; and
   - make regulations defining what "pollution" means in respect of section 28.1.

Impact of the Proposed Amendments

The regulations on consultation are likely to set out the requirements for any consultation: how it is carried out, with who, etc., meaning the regulations would prescribe how consultation should occur. In MCFN's view, this compromises the extent to which consultation processes can be defined by MCFN, thereby infringing MCFN's rights, including those protected by UNDRIP (see below).

The potential impacts associated with the Minister's regulatory-making authority in respect of development activities is also concerning. Without knowing what those regulations will include, a much is left unknown in terms of what the actual implications on MCFN and its Territory will or could be. That said, they could very well be significant, because the Minister has considerable latitude to make regulations relating to development activities: when (and where) they can and cannot occur (and under what conditions); the conditions regarding the issuance, refusal, and cancellation of permits, etc.; even what is meant by terms like "pollution", "hazardous", etc.

In addition, the ability to effectively exempt some development activities or areas from review or oversight also means that the regulations could remove the existence of regulatory triggers for the Duty to Consult and Accommodate. It would be unconstitutional for the Crown to create regulations that would exclude the possibility of consultation and accommodation of impacts on MCFN's rights by removing regulatory oversight of development activities and triggers for the Duty to Consult and Accommodate.

MCFN Recommendations

MCFN's view is that these amendments should not be made.

However, should the Government go ahead with the amendments, then we ask the Government to note the following. MCFN has a right to self-determine, and this includes being able to define and determine what meaningful consultation and accommodation should look like, and how it should be carried out. This is an inherent right, and one that is also provided and supported by Article 18 of UNDRIP, which states that "Indigenous peoples have the right to participate in decision-making matters which would affect their rights … in accordance with their own procedures". The ability of First Nations to determine and/or have a say in what that consultation process looks like should be maintained. At the very least, MCFN (and other First Nations) should be consulted on the development of these regulations relating to consultation that are contemplated under the proposed new section 21.1.4.

In addition, the proposed amendments enable the Minister to make regulations that would have a significant effect on how, where, when, and under what conditions, development activities are or can be permitted to be carried out. These regulations, if and when they are developed, should be the subject of further consultation with First Nations, including MCFN. The Crown's regulatory schemes must provide a meaningful opportunity for consultation and accommodation of MCFN, where MCFN's asserted or proven Aboriginal and Treaty rights are implicated. As the Crown develops these regulations, it must provide for meaningful consultation and accommodation.

Regards,

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