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

**ERO: 013-4992: *Conservation Authority Act*, Development Permits**

To Whom it May Concern:

The Mississaugas of the Credit First Nation ("MCFN") submits the following comments in respect of the proposed regulation related to permitting that would be developed under the amended *Conservation Authorities Act,* R.S.O. 1990 ("the Act") as proposed in the **ERO 013-4992.**

MCFN has serious concerns regarding the proposed new regulation, which in conjunction with the proposed amendments to the Act itself will gut many of the existing protections. Of greatest concern is that the proposed regulation will enable a system which exempts projects from review or permits, thus effectively creating a regulatory regime that provides no meaningful opportunity for consultation and accommodation regarding the impacts on MCFN's Territory and rights—especially in respect of its stewardship responsibility to protect the health and integrity of its lands.

***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.

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 Regulation***

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

1. *Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;*

   It is not clear why this amendment is necessary or what scientific basis or authority will determine when "severing" occurs. It also presumes that once severed wetlands are effectively abandoned from protection. This is inappropriate, in some cases where wetlands are severed, the hydrological connection may be re-established.

2. *Exempt low-risk development activities from requiring a permit including certain alterations and repairs to existing municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act Protocol;*

   The cumulative impact of changes to municipal drainage may have significant impacts on MCFN rights depending on the nature of those changes, it is unclear what process will be put in place to ensure that MCFN will be appropriately consulted about this matters.

3. *Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;*

   The proposed change effectively sets up a regulatory regime that will not allow for s. 35 consultation and accommodation if "low-risk" activities are exempted in advance from any effective regulatory oversight. There is no clarity on what constitutes a "low-risk" activity in the new regulation. Even if a clear definition is provided, the experience of MCFN is that activities that may be "low-risk" from the perspective of the proponent may in fact have serious risks to the rights and interests of MCFN. The Supreme Court of Canada made very clear in *Chippewas of the Thames/Hamlet of Clyde River* companion decisions that impacts on the environment are not the same as impacts on Aboriginal interests and rights.

   Further, while conservation authorities will be required to "consult on" these new internal policies, there is no clear requirement for the consultation on those policies with First Nations.

***MCFN Recommendations***

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

However, should the Government go ahead with the amendments, then there must be a clear and rigorous process for consulting First Nations about the content of the regulations if there is any hope of these regulations being consistent with s. 35 of the *Constitution Act.*

***Regards,***

***Mark LaForme,***
***Director, MCFN-DOCA***

**DEPARTMENT OF CONSULTATION AND ACCOMMODATION**
Mississaugas of the Credit First Nation
4065 Hwy #6, Hagersville, Ontario N0A 1H0
Phone: (905) 768-4260