November 23, 2022

Public Input Coordinator
MNRF - PD - Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South Tower
Peterborough,
ON K9J 3C7
PlanningConsultation@ontario.ca

Re: Proposed Updates to the Ontario Wetland Evaluation System ERO Number 019-6160

Please accept this submission of Ontario Land Trust Alliance (OLTA) in response to Environmental Registry of Ontario ("ERO") Number 019-61601.

Ontario Land Trust Alliance (OLTA) is an environmental charity, focused on providing community, knowledge sharing and support to land trusts across Ontario. OLTA empowers and supports highly effective, well-governed land trusts that engage their communities to protect forests, wetlands, nature, water sources and provide natural climate solutions.

OLTA represents a network of 36 land trusts and 14 other conservation organizations across Ontario. Land trusts are community-based, non-profit organizations that are primarily focused on protecting significant natural landscapes for future generations. Since 2002, the Recipient's members have protected 47,000 hectares of conservation lands in the Province of Ontario to date. OLTA builds capacity through training and educational programs; connecting land trusts to each other, resources and their communities; leading and supporting on-the-ground conservation work; sharing knowledge and best practices, reducing financial barriers to land conservation, promoting organizational excellence, providing access to current research and acting as a voice for land trusts among the public, governments and others stakeholders and rightsholders. Our members and partners work from Rainy Lake, to Windsor and to Cornwall in the east in 50 connected charities and communities.

OLTA supports all the recommendations and supporting arguments outlined in the submission from the Canadian Environmental Law Association to this consultation ERO Number 019-6160, The summary recommendations are as follows:

> RECOMMENDATION NO. 1: CELA recommends that MNRF apply an equity lens in crafting the OWES.
> RECOMMENDATION NO. 2: Sections of the OWES dealing with wetland complexes should not be removed.

RECOMMENDATION NO. 3: Sections of the OWES which provide for consideration of reproductive habitat and migration, feeding or hibernation habitat for an endangered or threatened species during the evaluation of a wetland should not be removed.
RECOMMENDATION NO. 4: The Ministry should remain the approval authority for all wetland evaluations completed under the OWES.
RECOMMENDATION NO. 5: The section of the OWES dealing with "locally important wetlands" should not be removed.

Furthermore, OLTA recommends that consideration be given to the Government of Ontario's excellent record supporting privately protected areas across Ontario, through CLTIP, MFTIP and the Greenland Conservation Partnership Program amongst other initiatives. Protected areas provide ecosystem services to communities, such as clean air and water, enhance resilience to the impacts of climate change (e.g., flooding, drought), and offer the benefits of nature to human health and well-being. Maintaining healthy natural ecosystems is a cost-effective way to support sustainable and livable communities, protect the environment, and advance economic development. Nature also underpins Ontario's reputation as a top destination in which to live, work and invest. Protecting wetlands is a critical piece of this and land trusts in Ontario work daily to support the Government of Ontario's efforts.

Removing wetland complexes, and consideration of reproductive habitat and migration, feeding or hibernation habitat for an endangered or threatened species, during the OWES evaluation process will result in changes to lands that are currently identified as eligible under CLTIP. This will likely result in smaller areas of land trust lands being eligible for CLTIP, and increased taxes for land conservation charities, which could cripple these local community organizations.

Changes to OWES must ensure that the ability of land trusts and other landowners to conserve these lands is not negatively impacted. The Conservation Land Tax Incentive Program is an essential program for land trusts providing tax relief to conservation organizations focused on private stewardship of provincially important natural areas. These areas provide essential ecosystem services to local communities.

ADDITIONAL RECOMMENDATION: Any changes to the OWES should ensure that the value of existing conservation lands is not eroded.

Thank you for providing an opportunity for OLTA to comment on these proposed updates. We would be happy to meet to discuss our comments and recommendations.

Sincerely,

Alison Howson
Executive Director

Inc. Submission from the Canadian Environmental Law Association to this consultation ERO Number 019-6160

Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

November 22, 2022

DELIVERED VIA EMAIL

Public Input Coordinator
MNRF - PD - Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South Tower
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Re: Proposed Updates to the Ontario Wetland Evaluation System
ERO Number 019-6160

Please accept this submission of Canadian Environmental Law Association ("CELA") in response to Environmental Registry of Ontario ("ERO") Number 019-6160[1].

A. About the Canadian Environmental Law Association

CELA is a non-profit, public interest law organization that works toward protecting public health and the environment by seeking justice for those harmed by pollution or poor decision-making and by advocating for improvements to laws and policies to prevent problems in the first place. Since 1970, CELA has used legal tools, conducted public legal education, undertaken ground-breaking research, and advocated for increased environmental protection and to safeguard communities. As a specialty clinic funded by Legal Aid Ontario, our primary focus is on assisting and empowering low-income, disproportionately impacted, and vulnerable communities to further access environmental justice.

Since our inception, CELA has advocated for the timely development and implementation of effective laws, regulations, and policies to protect water resources within Ontario and across Canada. For example, CELA provided comments and recommendations in response to the proposed Wetland Conservation Strategy for Ontario 2016-2030[2] and the Discussion Paper on wetland conservation in Ontario[3].

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[1] See: https://ero.ontario.ca/notice/019-6160
[2] Letter from Ontario Nature *et al.* to Terese McIntosh, Biodiversity and Wetlands Program Officer and Policy Advisor, Ministry of Natural Resources and Forestry (November 16, 2016) "EBR 012-7675: A Wetland Conservation Strategy for Ontario 2016-2030", online: <https://cela.ca/wp-content/uploads/2019/07/wetlands-strategy-35-signatory-orgs.pdf>
[3] Letter from Ontario Nature *et al.* to The Honourable Bill Mauro, Ministry of Natural Resources and Forestry (October 30, 2015) "EBR Registry Number 012-4464: Wetland Conservation in Ontario: A Discussion Paper" online: <https://cela.ca/wp-content/uploads/2019/07/1042WetlandsStrategicPlan.pdf>

On the basis of our decades-long experience, CELA has carefully considered the proposed updates to the Ontario Wetland Evaluation System (the "OWES") provided by the Ministry of Natural Resources and Forestry ("MNRF") from a public interest perspective.

B. CELA's Comments on Proposed Updates to the Ontario Wetland Evaluation System

CELA is opposed to the proposed amendments to the OWES. According to the ERO posting, the proposed changes are intended to "provide greater certainty and clarity related to how significant wetlands are assessed and identified".[4] However, the effect of the proposed updates is quite the opposite. The document includes significant removals and changes which substantially reduce the amount of detail and clarity surrounding procedures and criteria for determining and identifying significant wetlands and their boundaries.
Overall, these changes make it unclear whether existing wetlands will continue to qualify for protection and CELA is concerned that the proposed updates will result in a significant loss of wetlands in the province. Our specific concerns are addressed in more detail below.

i. The Proposed Updates Fail to Address Equity Concerns

The OWES was created to help guide land use planning in the province and ensure the protection and sustainable management of Ontario's significant wetlands. CELA submits that equity concerns must play a central role in any review of the OWES, as land use planning decisions have and continue to play a role in creating and perpetuating discriminatory practices against low-income, vulnerable, and disadvantaged communities.

For example, a recent study found that vulnerable groups including visible minorities, the elderly, lone-parent households, Indigenous peoples, and low-income residents are at a higher risk for flooding in Canada.[5] Another study concluded that the overall flood risk caused by climate change is higher in Indigenous communities than in other communities in Canada.[6] Since Ontario's wetlands play a critical role in enhancing our resilience to climate change and flood risk (through soil stabilization, water filtration, flood mitigation and carbon storage), it is particularly important that MNRF apply an equity lens when making decisions related to wetland conservation and protection.

RECOMMENDATION NO. 1: CELA recommends that MNRF apply an equity lens when updating the OWES.

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[4] See: https://ero.ontario.ca/notice/019-6160
[5] L. Chakraborty *et al.* "Leveraging Hazard, Exposure, and Social Vulnerability Data to Assess Flood Risk to Indigenous Communities in Canada" (2021) 12 Int J Disaster Risk Sci 821–838. <https://link.springer.com/article/10.1007/s13753-021-00383-1>
[6] L. Chakraborty *et al.* "Leveraging Hazard, Exposure, and Social Vulnerability Data to Assess Flood Risk to Indigenous Communities in Canada" (2021) 12 Int J Disaster Risk Sci 821–838. <https://link.springer.com/article/10.1007/s13753-021-00383-1>

ii. Removal of Wetland Complexing and Endangered Species Criteria May Result in the Downgrading of Provincially Significant Wetlands

The loss of wetlands in Ontario is of deep concern. South of the Canadian Shield, more than 70 percent of the original wetlands have been lost, with losses exceeding 85 percent in some areas. Across the province, wetlands continue to be threatened by development, land conversion, alterations to natural water levels, invasive species, and climate change. CELA is deeply concerned that many of the proposed changes to the OWES will exacerbate this problem, resulting in a significant loss of wetland protections in the province.

For example, wetland complexing has been entirely removed from the OWES. Wetland complexes occur where two or more small wetlands separated by a non-wetland area are functionally linked, meaning that they provide migration corridors or forage areas for wildlife, and/or provide surface and ground water connections. Most wetlands in Ontario are complexes.[7] Since the proposed updates also allow single wetland units that are part of a larger complex to be re-evaluated (re-scored and re-mapped) individually, CELA is concerned that this may result in the downgrading of many existing Provincially Significant Wetlands ("PSWs") that would not qualify for that status when evaluated individually. Currently, PSWs have the highest level of policy protection in the province. Without this status, many of Ontario's most valuable wetlands will be at risk of development.

The proposed updates also eliminate consideration of reproductive habitat and migration, feeding or hibernation habitat for an endangered or threatened species from evaluation of a wetland. Currently, scoring for a wetland is heavily weighted to protect habitat. Without consideration of these important factors, CELA is concerned that many PSWs would no longer qualify for that status.

RECOMMENDATION NO. 2: Sections of the OWES dealing with wetland complexes should not be removed.

RECOMMENDATION NO. 3: Sections of the OWES which provide for consideration of reproductive habitat and migration, feeding or hibernation habitat for an endangered or threatened species during the evaluation of a wetland should not be removed.

iii. The Proposed Updates Substantially Reduce the Amount of Detail and Clarity Surrounding Wetland Evaluation Procedures

Wetland evaluations are highly technical and should be carried out by qualified professionals following specific protocols and procedures. CELA is concerned that several of the proposed updates to the OWES substantially reduce the amount of detail and clarity surrounding wetland evaluation procedures. For example, the proposal removes critical guidance about what should be

[7] Ontario Ministry of Natural Resources, *Significant Wetlands and the Ontario Wetland Evaluation System*, online: Kawartha Conservation <https://www.kawarthaconservation.com/en/resources/significant-wetlands.pdf>

included in a wetland evaluation file and what sources of information should be consulted during the evaluation.

The proposed updates also remove several sections that either require or encourage the evaluator to consult with MNRF throughout the wetland evaluation process. CELA is concerned that this will result in a significant loss of expertise. As the current OWES sets out, the Ministry "has a detailed understanding of the natural heritage features and functions of the area, has access to current and historic reports, may be aware of relevant information and reports not readily accessible to others, and has connections with other organizations that gather natural heritage information."[8] Without this input, the quality of wetland evaluations conducted under the OWES will likely be negatively impacted.

iv. The Proposal Shifts Approval Authority from the Ministry to Local Decision Makers

CELA is deeply concerned about the proposal to shift the authority to approve wetland evaluations from the Ministry to local decision makers addressing a land use development or resource management matter. One of the MNRF's mandates is the protection and sustainable management of the province's natural heritage features, including wetlands. It is through this lens that wetland evaluations should be reviewed and approved. Local decision makers addressing a land use planning matter are not required to consider the preservation of wetlands in the same manner, nor do they have the knowledge and expertise to adequately assess whether a wetland evaluation has been properly conducted.

RECOMMENDATION NO. 4: The Ministry should remain the review and approval authority for all wetland evaluations completed under the OWES.

v. The Proposed Updates Remove Important Direction Related to "Locally Important Wetlands"

CELA is concerned that the proposed updates to the OWES remove important direction for municipalities in terms of identifying "locally important wetlands." Where evaluated wetlands have been identified as not provincially significant, or partially or unevaluated wetlands have been confirmed as wetland habitat, this section currently provides important guidance to municipalities in terms of the criteria to be considered in deciding whether these wetlands are significant on a local scale. The 2012 Great Lakes Wetlands Conservation Action Plan report emphasized the importance of identifying and protecting wetlands at the municipal level:

[8] Ministry of Natural Resources and Forestry, *Proposed Updates to the Ontario Wetland Evaluation System* (Toronto: Ministry of Natural Resources and Forestry, October 25, 2022) at 6. <https://prod-environmental-registry.s3.amazonaws.com/2022-10/Proposed-Updates-to-the-OWES-2022-10-25-EN-acc.pdf>.

> Working with municipalities to build wetland policy into their Official Plans remains one of the most important and effective ways of protecting wetlands throughout the Great Lakes Basin.[9]

CELA submits that this section of the OWES should not be removed, as it assists communities in identifying wetlands that need to be protected from development, especially in municipalities where historic wetland losses have been particularly intense or where certain types of wetlands are rare.

RECOMMENDATION NO. 5: The section of the OWES dealing with "locally important wetlands" should not be removed.

vi. Overall Potential for Downgrading of Wetlands in the Revised OWES Will Make it Easier for Development Proposals to Suggest and Governments to Permit Wetland Offsets That Will Further Accelerate Loss of Wetlands in Ontario

Although the proposed revisions to the OWES never use the phrase "wetland offset" in the revised criteria discussed in Part B.ii., and which have the potential to downgrade provincially significant wetlands, there is also the potential to increase development pressure to allow wetland offsets. Wetland offsets have been defined as restoration or creation of new wetlands to compensate for the negative impacts of development. Unfortunately, wetland offsets have also been called "risky business" because the incentive to restore a wetland is directly related to the desire to obtain a permit to conduct activities that are harmful to other wetlands.[10] Offsets are plagued with problems that cast significant doubt on their effectiveness in producing robust substitutes for the wetlands nature created let alone ensuring there is "no net loss" of remaining wetlands in Ontario. The following are some of the problems that Ontario Nature has identified with wetland offsetting:

- Failure to treat offsets as a last resort and avoid harm in the first place;
- Failure to consult with affected Indigenous communities;
- Lack of performance standards;
- Low levels of compliance monitoring;
- Lack of oversight and enforcement by government agencies;
- Poor design, including:
    - Lack of science to determine baseline conditions;
    - Failure to consider multiple values and benefits;
    - Failure to consider landscape-level impacts;
    - Lack of appropriate metric for measuring losses and gains;
- Careless implementation;

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[9] Great Lakes Wetlands Conservation Action Plan, *Great Lakes Wetlands Conservation Action Plan Highlights Report 2005–2010* (Peterborough: GLWCAP, 2012) at 24. online: Ontario Nature <https://ontarionature.org/wp-content/uploads/2016/11/GLWCAP_Highlights_2005-2010_EN.pdf>

[10] Ontario Nature, *Navigating the Swamp: Lessons on Wetland Offsetting for Ontario* (Toronto: Ontario Nature, July 2017) at 1. <https://ontarionature.org/wp-content/uploads/2017/11/wetlands_report_Final_Web.pdf>

- Poor record keeping.[11]

The litany of problems with wetland offsetting underscores: (1) the importance of the 2017 recommendation of Ontario Nature that provincially significant wetlands and significant coastal wetlands be strictly off limits to all forms of development;[12] and (2) the importance of CELA's second recommendation to ensure that wetland complexes are valued in the OWES.

C. Summary of Recommendations

RECOMMENDATION NO. 1: CELA recommends that MNRF apply an equity lens in crafting the OWES.

RECOMMENDATION NO. 2: Sections of the OWES dealing with wetland complexes should not be removed.

RECOMMENDATION NO. 3: Sections of the OWES which provide for consideration of reproductive habitat and migration, feeding or hibernation habitat for an endangered or threatened species during the evaluation of a wetland should not be removed.

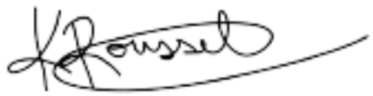
RECOMMENDATION NO. 4: The Ministry should remain the approval authority for all wetland evaluations completed under the OWES.

RECOMMENDATION NO. 5: The section of the OWES dealing with "locally important wetlands" should not be removed.

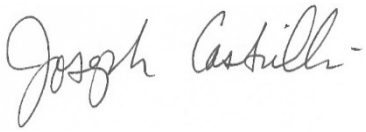
CELA would be happy to meet to discuss any of our comments or recommendations.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Krystal-Anne Roussel, Counsel & Water Policy Coordinator, Healthy Great Lakes



Joseph F. Castrilli, Counsel

Cc: Tyler Schulz, Commissioner of the Environment / Assistant Auditor General
Office of the Auditor General of Ontario (tyler.schulz@auditor.on.ca)

[11] See generally, Ontario Nature, *Navigating the Swamp: Lessons on Wetland Offsetting for Ontario* (Toronto: Ontario Nature, July 2017).
[12] *Ibid.* at 35.