



Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations d'Ottawa

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February 20, 2024

Public Input Coordinator
Species at Risk Protection Policy Section
300 Water Street
5th Floor, North Tower
Peterborough, ON K9J 3C7

Re: ERO Number: 019-8016 - Regulatory changes under the Endangered Species Act to improve implementation of the species at risk program

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as a submission to the government's request for feedback on Regulatory changes under the Endangered Species Act (ESA) to improve implementation of the species at risk program (ERO Number: 019-8016).

In addition to our comments, we support those submitted by the Ontario Home Builders' Association (OHBA), the West End Home Builders' Association and the Building Industry and Land Development Association.

General Comments

Streamlining the ESA approvals process would benefit the Ministry of the Environment, Conservation and Parks (MECP) as well as provide greater clarity, consistency, and efficiency to development proponents.

The MECP should adopt a risk-based standardized approach to approvals based on a prescribed standard set of conditions instead of proceeding through the regular, uncertain and time-consuming negotiated approvals process.

We note that many of our members have expressed frustration with a lack of consistency in the application, implementation and interpretation of the Act by Ministry field staff. There is a general lack of confidence in the process. It needs to be more transparent, consistent and fair.

GOHBA supports the protection of environmentally sensitive lands and features. However, this must be balanced with an urban lens in terms of resource management that should be applied to the very small portion of Ontario's land mass where urban growth is planned to accommodate significant population and employment needs for decades to come.

GOHBA recommends that a settlement area urban lens be applied to Natural Heritage System planning, in areas designated for growth in municipal and regional Official Plans.

There should be greater accountability and opportunity for a formal appeal within the MECP when there is a professional disagreement between a proponent's ecologists and Ministry field staff. This applies to both "in the field" and "in the office" disagreements, over topics such as: results of field surveys, delineation of habitat, the need for a permit, and requirements to achieve overall benefit.

GOHBA is concerned that the current process to "sign off" on an overall benefit permit is inefficient and can result in months of delay, even after the Ministry's district field office has come to an agreement with a development proponent.

It is noted that even after a permit has been agreed to at the district level, that it goes to the Regional Office in Peterborough for review, and then to the Ministry Queen's Park office and eventually to the Minister's desk to actually receive a signature.

GOHBA is concerned about this multi-step process - a couple of months delay on a permit can cause havoc for short construction season windows that can further be complicated by important species life-cycle functions where activities cannot disrupt habitat.

This means that two or three months delay in obtaining and signing off on permits can actually disrupt a project timeline by a year or more.

Consistent with the experience and insight gained over the past 17-years since the ESA was established, GOHBA is supportive of the MECP proposed direction that would enable positive outcomes for species at risk, while streamlining processes and providing greater clarity for those who need to implement the Act.

GOHBA notes that the proposed amendments will support the More Homes, Built Faster: Ontario's Housing Supply Action Plan 2022-2023, as they will create smarter and more efficient environmental permissions processes that reduce unnecessary burden to support housing and build critical infrastructure.

GOHBA is supportive of provincial efforts to improve the effectiveness and implementation of the species at risk program and is generally supportive of the proposals to amend several regulations made under the ESA to increase certainty and streamline processes for Ontarians, while also delivering ESA protections where they are needed most.

GOHBA appreciates the opportunity to provide specific technical feedback, as detailed below.

Regulatory amendments regarding habitat protections for Redside Dace

Our members across Ontario have extensive practical experience with development in Redside Dace habitat. We request that the province engage directly with Ontario's residential construction sector to ensure we can continue to effectively contribute to the protection and recovery of this species.

It is our understanding that Ontario Streams has been asked to draft an addendum to a provincial guidance document released by MNRF in March 2016, *Guidance for Development Activities in Redside Dace Protected Habitat*. If this is correct, we also request clarification regarding why the provincial guidance document is being completed by an Environmental Non-Governmental Organization external to the province. Our industry should be involved in any discussions and/or proposals to update that provincial guideline document.

To ensure any amendments regarding this species are practical and implementable, we request formal and direct engagement in the proposed amendments.

While it makes sense that the timeframe for occupancy of a reach by this minnow species is reduced from 20 years to 10 years, we suggest a more fulsome discussion to see whether other amendments would be beneficial (e.g., exclusion of Redside Dace regulations where a project and associated infrastructure are required to meet urgent goals related to the provision of more homes).

We note that the regulatory amendments give special attention to the mining industry for the reopening and use of exploration trails with exemptions from aspects of the ESA. While not explicitly stated, we expect that this exclusion is proposed to increase the speed with which mineral exploration can access critical minerals.

We believe that the province needs to give serious attention to exclusions for the housing industry, in our efforts, together with the province, to meet housing supply targets needed to properly accommodate the residents of Ontario, both now and in the future.

Regulatory amendments regarding select conservation fund species and related administrative changes

In 2019, OHBA supported the MECP proposal to create Canada's first independent Crown agency, the Species Conservation Action Agency, to allow the option to pay a charge-in-lieu of completing certain on-the-ground activities required by the Act.

The funds were intended to support strategic, coordinated and large-scale actions that assist in the protection and recovery of species at risk.

Direct financial contributions to broader recovery efforts and initiatives through a "special purpose fund" may achieve more positive outcomes for species than the current permitting system.

A shift towards a “conservation fund” within a Species Conservation Action Agency could enhance cost certainty and significantly speed up the process while focusing investments on species at risk to achieve the best possible outcomes for the species.

GOHBA continues to be supportive of changes that would authorize the creation of a regulatory charge that could be paid by persons who are permitted to carry out otherwise prohibited activities under certain permits, agreements, and regulations. The charge would be paid-in-lieu of fulfilling certain potential conditions that could otherwise have been imposed under the permit, agreement, or regulation. We respect that “clients would still need to fulfill some on-the-ground requirements, including considering reasonable alternatives for their activity and taking steps to minimize the adverse effects of the activity on the species at risk.”

Furthermore, GOHBA is supportive of an approach in which the MECP could make a regulation to specifically prescribe a subset of the species prescribed under the listing regulations as eligible for the payment-in-lieu charge. We believe a wide range of species should be considered for such an approach.

The Species Conservation Action Agency could receive the funds and ensure informed, unbiased and expert decisions are made to disburse the funds to third parties that will undertake the activities in accordance with the purposes proposed to be set out in the statute. Overall, GOHBA continues to support the MECP proposed Species at Risk Conservation Trust to provide greater certainty to business and better enable positive outcomes for species at risk compared to the current piece-meal industry-led approach.

We appreciate that the province has taken this opportunity to consider the conditional exemptions for conservation fund species, including butternut. We offer the following comments regarding butternut, a species that our members often encounter, as well as comments on additional species.

- Butternut is at risk because of a non-native fungal pathogen commonly known as butternut canker. In a similar manner, some bat species are at risk because of infection by a fungus that affects the skin of bats during hibernation (white-nose syndrome). This fungus can disturb hibernation, resulting in dehydration, starvation, and death of bats. Our organizations and members believe that these species and others that are at risk due to factors outside of habitat loss and habitat degradation should be granted exclusion in circumstances where we are working together with the province to meet housing supply targets.

Additional species for which funds could also be pooled towards research toward a solution for white-nose syndrome rather than focusing on habitat protection. Such an approach could have better long-term conservation outcomes.

- Chimney Swifts should be considered for the Species at Risk Conservation Fund, as:
 - Chimney swifts can be found in dense urban areas (like downtown Toronto).
 - Due to development timelines, land owner can often only complete due diligence field investigations via drone and camera to observe characteristics of chimney from opening to base to see if there is evidence of nesting and roosting.
 - Due to development timelines, there often is not multiple breeding seasons available to monitor chimneys.
 - Classification of chimney as habitat can be based on public observation, even if due diligence investigation by professional concludes no habitat.
 - Notification of habitat late in development process delays construction of new housing, especially as chimney cannot be demolished during active season - generally considered to extend from the end of April to the middle of October.
 - Requirements for replacement habitat are very difficult to achieve in dense urban areas.
 - Paying a charge into a species conservation fund would allow new habitat to be built in an appropriate location, without delaying construction.

Furthermore, funds could be pooled to acquire large contiguous areas of managed habitat for both Bobolink and Eastern Meadowlark rather than obtaining smaller non-contiguous plots of land which may be required as part of an overall benefit permit.

Home builders and land developers have contributed substantial funds to the Species Conservation Action Agency (SCAA) have concerns that those funds have still not been invested in projects to help species at risk.

For example, almost two years after the activation of the fund, we do not know how the funds have been invested to improve the conservation and recovery of butternut. Anecdotally, we have heard concerns from the Forest Gene Conservation Association (FGCA) that their revenues to ensure the protection and recovery of butternut has been significantly diminished. Funds from our members were used actively, transparently, and progressively by FGCA before the establishment of the SCAA.

We request a transparent accounting of the funds received and invested by the SCAA since its inception. While we welcomed the SCAA as a means of simplifying the work of our members, we are concerned that conservation and recovery actions for butternut have been reduced or halted. We also understand that while the SCAA programs have been activated, the agency is still without permanent staff or leadership.

Regulatory amendments to add newly listed species to existing conditional exemptions and other administrative changes to conditional exemptions

In reviewing the factors the province uses to determine exemptions, we note that there is no consideration of the source of the threats against the subject species at risk. Our members report that the time and effort to address species in declines from pathogens that are not related to our industry activities are substantial. We are concerned that those efforts are not resulting in meaningful and timely actions.

In terms of meeting home and community building targets, we strongly recommend that Butternut, species at risk Bats and Chimney Swifts be exempted from efforts to build more home faster.

As the SCAA becomes more established and results are better understood, there may be important work that can be achieved to address opportunities for more advanced control of problematic pathogens.

For the edification of our members and organizations, we would like to better understand how the SCAA is making or will make decisions regarding the disposition of funds. We hope that important ongoing work will not be underfunded while the SCAA considers how to use the funds for “strategic, large-scale, and coordinated actions led by species conservation experts to support more positive outcomes for the long-term interests of conservation fund species.”

Regulatory amendments regarding the conditional exemption for early exploration mining

Given that these set of proposals do not directly impact the land development and housing sector, GOHBA does not have any comments for this section of the consultation.

Conclusion

GOHBA continues to support provincial actions which streamline processes, permissions and approvals to facilitate the implementation of policy required to support housing availability and new housing supply in the province. We are strongly supportive of the provincial goal to build 1.5 million new homes across Ontario over the next decade. Achieving such an ambitious goal will require cooperation from all three levels of government and smart public policy adjustments to expedite both infrastructure and housing.

Through our provincial association (OHBA), the residential construction industry has participated in and supported the general direction of several initiatives over the past few years to streamline permissions and expand opportunities for low-risker activities.

GOHBA notes that this initiative (ERO #019-8016) represents the province's ongoing work to modernize environmental approvals and improve the implementation of the Species at Risk program. OHBA has been working with MECP in this regard to seek efficiencies in the approval processes that reduce unnecessary regulatory burdens and promote housing choice for residents of Ontario, while continuing to provide Ontarians with strong environmental protections.

GOHBA and its counterparts across the province support the protection of species at risk. However, the ESA continues to have a number of operational and implementation challenges that need to be improved while continuing to provide important species at risk protection.

It is important that the Government recognize the progress we have made protecting species at risk and find a balanced solution that provides business certainty, makes life more affordable for families, and takes Ontario's role in protecting species at risk seriously.

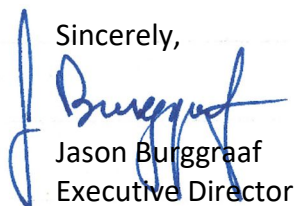
GOHBA is supportive of the government's commitment to ensuring that the ESA provides stringent protections for species at risk. We are supportive of continuing its work with stakeholders and Indigenous peoples to improve its effectiveness, and modernizing the program based on best practices in other jurisdictions.

GOHBA strongly supports an approach that increases clarity of requirements, streamlines the process and implements fair and reasonable response times, while balancing the environmental, social and economic goals of the province to ensure a prosperous and high quality of life for Ontario citizens.

On behalf of GOHBA's 415+ member companies, we appreciate the opportunity to provide the provincial government with our feedback and recommendations for regulatory changes under the Endangered Species Act to improve implementation of the species at risk program.

We are pleased to answer questions or provide further information as requested. In coordination with Ontario Home Builders' Association and our fellow municipal HBAs, we would be pleased to meet directly with MECP officials to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Burggraaf", is written over the printed name and title.

Jason Burggraaf
Executive Director