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**BY MAIL AND EMAIL**

Thushitha Kobikrishna, Clerk pro tem  
Standing Committee on Heritage, Infrastructure and Cultural Heritage  
Whitney Block, Room 1405  
99 Wellesley Street W.,  
Toronto, ON M7A 1A2  
[schicp@ola.org](mailto:schicp@ola.org)

Laurie Scott, MPP  
Chair, Standing Committee on Heritage, Infrastructure and Cultural Heritage  
Whitney Block, Room 1405  
99 Wellesley Street W  
Toronto, ON M7A 1A2  
[Laurie.Scott@pc.ola.org](mailto:Laurie.Scott@pc.ola.org)

Hon. Steve Clark, MPP  
Minister of Municipal Affairs and Housing  
17th Floor, 777 Bay St.,  
Toronto, ON M7A 2J3  
[Steve.Clark@pc.ola.org](mailto:Steve.Clark@pc.ola.org)

Bonnie Henson  
Ministry of Natural Resources and Forestry  
RPDPB – Natural Heritage Section  
300 Water Street, 2nd Floor South,  
Peterborough, ON K9J 3C7  
[Bonnie.henson@ontario.ca](mailto:Bonnie.henson@ontario.ca)

Hon. Graydon Smith, MPP  
Minister of Natural Resources and Forestry  
Whitney Block,  
99 Wellesley Street W.,  
Toronto, ON M7A 1W3  
[minister.mnrf@ontario.ca](mailto:minister.mnrf@ontario.ca)

**Canadian Environmental Law Association**

Tyler Schulz  
Commissioner of the Environment / Assistant Auditor General  
Office of the Auditor General of Ontario  
20 Dundas Street W., Suite 1530  
Toronto, ON M5G 2C2  
[tyler.schulz@auditor.on.ca](mailto:tyler.schulz@auditor.on.ca)

**RE: CELA’S WRITTEN SUBMISSIONS ON BILL 39, THE REPEAL OF THE DUFFINS ROUGE AGRICULTURAL PRESERVE ACT, 2005 AND PROPOSED AMENDMENTS TO THE GREENBELT PLAN AND BOUNDARY REGULATION AND THE OAK RIDGES MORAINÉ CONSERVATION PLAN**

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Canadian Environmental Law Association (“CELA”) is providing these comments on Bill 39, the repeal of the *Duffins Rouge Agricultural Preserve Act, 2005* and the proposed amendments to the Greenbelt Plan and boundary regulation and the Oak Ridges Moraine Conservation Plan (which are the affiliated ERO postings 019-6216, 019-6217 and 019-6218).

**A. About 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 to environmental justice.

**B. CELA’s comments**

***i. Concerns regarding the Repeal of the Duffins Rouge Agricultural Preserve Act, 2005***

CELA has concerns regarding the repeal of the *Duffins Rouge Agricultural Preserve Act, 2005*. These concerns are:

- a) The Environmental Registry posting (ERO number 019-6304) does not satisfy the exemption requirements as prescribed in the *Environmental Bill of Rights (“EBR”)*, and;
- b) The repeal of the restrictions of the lands in question will have significant environmental and social impacts.

**Canadian Environmental Law Association**

**Point a)**

The Environmental Registry posting (ERO number 019-6304) does not satisfy the exemption requirements as prescribed in the *Environmental Bill of Rights*.

ERO number 019-6304, “Repeal of the Duffins Rouge Agricultural Preserve Act, 2005” was posted to the Registry on November 22 2022.

The proposed Duffins Rouge Agricultural Preserve Repeal Act, 2022 (“DRAPRA”) was introduced as Schedule 2 to Bill 39, Better Municipal Governance Act, 2022 on November 16, 2022. If passed, the DRAPRA would:

“end the deeming of easements or covenants that restrict the use of the lands to agricultural uses that apply to the Agricultural Preserve in the City of Pickering to be valid and allow for the amendment or release of these easements or covenants without the consent of the Minister under the Conservation Land Act.”

The posting itself is an “Exception”, meaning it will not be open to public consultation for at least 30 days. The reasoning on the ERO posting is the following:

“The environmentally significant aspects of the proposed DRAPRA are being or have been considered in the consultation undertaken or currently posted in respect of the following proposals on the Environmental Registry:

- Proposed Amendments to the Greenbelt Plan [ERO 019-6216](#)
- Proposal / Proposed amendments to the Greenbelt Area boundary regulation [ERO 019-6217](#)
- Proposal / Notice of Proposed Revocation: Minister's Zoning Order – Ontario Regulation 154/03 [ERO 019-6238](#)
- Proposal / Proposed Revocation of the Central Pickering Development Plan [ERO 019-6174](#)

There will be no additional environmental impacts that would result from the proposed DRAPRA that are not outlined in these ERO postings.

As such, the Minister has concluded, that the environmentally significant aspects of the DRAPRA have already been considered in a process of public participation under the Environmental Bill of Rights (*EBR*) that **is substantially equivalent to posting the DRAPRA for public comment pursuant to section 15 of the *EBR*.**” (emphasis added).

The issue at hand, however, is whether these four other ERO postings are “substantially equivalent” to having posted the DRAPRA for public comment.

**Canadian Environmental Law Association**

DRAPRA was posted on **November 22** while the dates of posting of the other ERO postings are as follows:

- Proposed Amendments to the Greenbelt Plan [ERO 019-6216](#) consultation ends on December 4: this would only allow 12 days for comment between the posting of DRAPRA and the closure of the public comment period
- Proposal / Proposed amendments to the Greenbelt Area boundary regulation [ERO 019-6217](#) consultation ends on December 4: this would only allow 12 days open for comment between the posting of DRAPRA and the closure of the public comment period
- Proposal / Notice of Proposed Revocation: Minister's Zoning Order – Ontario Regulation 154/03 [ERO 019-6238](#) consultation ends on December 4: this would only allow 12 days open for comment between the posting of DRAPRA and the closure of the public comment period
- Proposal / Proposed Revocation of the Central Pickering Development Plan [ERO 019-6174](#) consultation ended on November 24: this only allowed 2 days open for comment between the posting of DRAPRA and the closure of the public comment period

Therefore, none of these alternative ERO postings would enable a 30 day consultation period from the day the DRAPRA was posted to the *EBR* to their respective closing dates.

The *EBR* states:

**15** (1) If a minister considers that a proposal under consideration in his or her ministry for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, **the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.** (emphasis added).

### **Exception**

(2) Subsection (1) does not apply to a policy or Act that is predominantly financial or administrative in nature.

### **Exception: other processes**

**30** (1) Sections 15, 16 and 22 do not apply where, in the minister's opinion, the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument,

- (a) have already been considered in a process of public participation, under this Act, under another Act or otherwise, **that was substantially equivalent to the process** required in relation to the proposal under this Act; or
- (b) are required to be considered in a process of public participation under another Act that is substantially equivalent to the process required in relation to the proposal under this Act. 1993, c. 28, s. 30 (1).

**Same**

(2) If a minister decides under subsection (1) not to give notice of a proposal under section 15, 16 or 22, the minister shall give notice of the decision to the public and to the Auditor General. 1993, c. 28, s. 30 (2); 2018, c. 17, Sched. 15, s. 4.

**Same**

(3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate. 1993, c. 28, s. 30 (3).

The case law supports CELA's concerns about the Duffins Rouge repeal plan and the limited time available for comment on the other postings.

In [\*Greenpeace Canada \(2471256 Canada Inc.\) et al. v. Minister of the Environment, Conservation and Parks\*](#), the Court stated that "subsection 15(1) of the *EBR* requires a minister to give notice of a proposal that is to be listed on the ERO at least 30 days **before the proposal is implemented** (emphasis added). Pursuant to s. 1(6)(b) of the *EBR*, a proposal for an Act is implemented on the date of third reading in the legislature."<sup>1</sup>

In [\*Eastern Georgian Bay Protective Society Inc. v. Ontario \(Minister of the Environment, Conservation and Parks\)\*](#), the Court elaborated on the importance of the equivalence requirement and compared the statutory requirements in sections 30 and 32 of the *EBR*.<sup>2</sup>

The Court explained that the applicant's argument that s. 32 of the *EBR* must be read as requiring a "functionally equivalent opportunity for public consultation on the instrument" must be assessed in the context of the *EBR* as a whole. In particular, the exceptions drafted under s. 30(1)(a) and (b) specify that they only apply where the process of public participation was or will be "**substantially equivalent** to the process required in relation to the proposal under [the *EBR*]". By contrast, section 32(1)(a) simply requires that there have been "an opportunity for public participation", without requiring that it be "**substantially equivalent**" to the notice provisions under s. 22. The Court makes the clear distinguishing between these two clauses, stating "If the Legislature had intended that s. 32 should be read as requiring "functionally

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<sup>1</sup> *Greenpeace Canada (2471256 Canada Inc.) et al. v. Minister of the Environment, Conservation and Parks*, 2021 ONSC 4521 at para 54.

<sup>2</sup> *Eastern Georgian Bay Protective Society Inc. v. Ontario (Minister of the Environment, Conservation and Parks)*, [2021] O.J. No. 3063.

**Canadian Environmental Law Association**

equivalent public participation" to that contemplated under s. 22, s. 32 would have replicated the language found in s. 30".<sup>3</sup> The Court therefore makes a clear point by emphasizing the requirement of "substantial equivalence" in s. 30, something which CELA believes is missing from the Duffins Rouge ERO posting.

Finally, in *Greenpeace Canada (2471256 Canada Inc.) v. Minister of the Environment, Conservation and Parks et al.*<sup>4</sup>, the Court explained what the *EBR* process required. It stated:

"The *EBR* requires more than notice of an intention to implement a new policy. It requires specific notice of the proposed action, an opportunity for Ontarians -- all Ontarians -- to provide comments about the proposed action. It requires the government to consider the comments given to it by Ontarians. And it requires the government to explain what impact, if any, the process of public consultation had on its proposed action."<sup>5</sup>

And,

"The *EBR* does not just provide for notice. It provides for notice, rights of participation, an obligation on the minister to "take every reasonable step" to ensure that "all comments received" during the process of public participation "are considered when decisions . . . are made", and then an obligation on the minister to explain the effect, if any, of the public participation process on the decision taken."<sup>6</sup>

Based on the case law outlined above, and the fact that the "equivalent" ERO postings will not be open for public participation for a minimum of 30 days as required by the *EBR*, CELA is of the opinion that the Duffins Rouge ERO posting does not conform to the *EBR* public participation rights requirements as being "substantially equivalent" to the other affiliated ERO postings.

**RECOMMENDATION:** CELA recommends the Ministry open the Duffins Rouge ERO posting to notice and comment for a minimum of 30 days as per section 27(3) of the *EBR*.

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<sup>3</sup> *Eastern Georgian Bay Protective Society Inc. v. Ontario (Minister of the Environment, Conservation and Parks)*, [2021] O.J. No. 3063 at para 34.

<sup>4</sup> *Greenpeace Canada (2471256 Canada Inc.) v. Minister of the Environment, Conservation and Parks et al.*, 2019 ONSC 5629.

<sup>5</sup> *Greenpeace Canada (2471256 Canada Inc.) v. Minister of the Environment, Conservation and Parks et al.*, 2019 ONSC 5629 at para 50.

<sup>6</sup> *Greenpeace Canada (2471256 Canada Inc.) v. Minister of the Environment, Conservation and Parks et al.*, 2019 ONSC 5629 at para 58.

**Point b)**

Point b), the repeal of the restrictions of the Duffins Rouge lands will have significant environmental and social impacts. As part of the Greenbelt, the following is important to note.

**ii. There is a need to expand the Greenbelt, not shrink it**

The Greenbelt is a system made up of natural heritage features and areas, linkages intended to provide connectivity and improve ecological features in the future, protected countryside and urban river valleys. In fact, it contains some of Canada's most ecologically and hydrologically significant natural environments and scenic landscapes, including the Oak Ridges Moraine and the Niagara Escarpment. These natural areas clean the air, provide drinking water, provide diverse flora and fauna habitats, including pollinators, and they provide opportunities for recreational activities that benefit public health and overall quality of life.<sup>7</sup> "It is a system of farm and forest, water and air, that can't be segmented without damaging the way the system functions as a whole."<sup>8</sup>

CELA believes that the Greenbelt should be expanded to fulfill the vision for which it was originally created. The Greenbelt is intended to be a broad band of permanently protected land which:

- a) Protects against the loss and fragmentation of the agricultural land base and supports agriculture as the predominant land use;
- b) Gives permanent protection to the natural heritage and water resource systems that sustain ecological and human health and that form the environmental framework around which major urbanization in southcentral Ontario will be organized;
- c) Provides for a diverse range of economic and social activities associated with rural communities, agriculture, tourism, recreation and resource uses; and
- d) Builds resilience to and mitigates climate change.<sup>9</sup>

CELA is concerned with the province's proposal to take 15 areas of Greenbelt land<sup>10</sup> out of the protected area, reducing its size by 7,400 acres.<sup>11</sup> In exchange, it would add only one small area

<sup>7</sup> *Greenbelt Plan*, section 1.1, online: <https://files.ontario.ca/greenbelt-plan-2017-en.pdf>.

<sup>8</sup> Susan Elliot, *Doug Ford's broken Greenbelt promise tells youth there's no point in voting*, Toronto Star, 12 November 2022, online: <<https://www.thestar.com/opinion/contributors/2022/11/12/doug-fords-broken-greenbelt-promise-tells-youth-theres-no-point-in-voting.html>>.

<sup>9</sup> *Greenbelt Plan*, section 1.2.1, online: <https://files.ontario.ca/greenbelt-plan-2017-en.pdf>.

<sup>10</sup> Although the ERO postings state that 15 areas of land will be removed, CELA believes the more accurate figure is 19. This was determined by examining the *Redesignations or Removals Map 1 to 11* document attached to the ERO posting, available here: <https://prod-environmental-registry.s3.amazonaws.com/2022-11/Redesignations%20or%20Removals%20Map%201%20to%2011.pdf>.

<sup>11</sup> See: <https://ero.ontario.ca/notice/019-6216>.



of the Paris Galt Moraine and make it part of the Greenbelt.<sup>12</sup> In addition, the government stated that a series of 13 urban river valleys, totaling approximately 9,400 acres, would be given “new” protection. However, some of these urban valleys proposed to be “added” are simply expansions of urban river valleys that are already in the Greenbelt, and all of those urban river valleys were already announced to be protected and added to the Greenbelt earlier this year.<sup>13</sup>

The successful realization of this vision for the Greenbelt relies on it being protected, permanently; not by subjecting it to a death by one thousand cuts.

**RECOMMENDATION:** CELA recommends that the Greenbelt be expanded, not shrunk, to ensure the Greenbelt be protected and realize its original purpose.

### iii. Offsetting is not effective nor recommended

Although the ERO posting does not specifically state that the province will be undertaking “land swapping” or “offsetting”, offsets have been defined as restoration or creation of new lands to compensate for the negative impacts of development. Often used in the cases of wetlands, this practice can apply to other natural lands as well.

Unfortunately, offsets have also been called “risky business” because the incentive to restore a natural area is directly related to the desire to obtain a permit to conduct activities that are harmful to other natural areas.<sup>14</sup>

Offsets are plagued with problems that cast significant doubt on their effectiveness in producing robust substitutes for the areas nature created let alone ensuring there is “no net loss” of remaining natural areas in Ontario. As an illustrative example, 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;

<sup>12</sup> See: <https://ero.ontario.ca/notice/019-6216>.

<sup>13</sup> See: <https://ero.ontario.ca/notice/019-4485>.

<sup>14</sup> 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/wpcontent/uploads/2016/11/GLWCAP\\_Highlights\\_2005-2010\\_EN.pdf](https://ontarionature.org/wpcontent/uploads/2016/11/GLWCAP_Highlights_2005-2010_EN.pdf)>.



- Failure to consider landscape-level impacts;
- Lack of appropriate metric for measuring losses and gains;
- Careless implementation;
- Poor record keeping.<sup>15</sup>

CELA opposes the province's proposal to take 15 parts of Greenbelt land<sup>16</sup> out of the continuous protected area and "adding" that land back somewhere else<sup>17</sup> as this practice inherently destroys a natural environment and alters the land use.

**RECOMMENDATION:** CELA recommends the province not remove the proposed 7,400 acres of land to protect the integrity of the Greenbelt.

#### iv. Creating unnatural forest boundaries is bad

Habitat fragmentation is the consequence of habitat loss in which large, continuous habitat is broken up into many smaller fragments, separated from one another by human-modified land.<sup>18</sup>

When fragmenting the Greenbelt, we are creating boundaries in forests, wetlands and other natural areas as well as isolating others. These boundaries, or edges, are not the same as whole forest or wetland complexes because when you clear a section in the middle of the forest, new forest edges are created and the interior forest habitat that was there is both much smaller and is now fragmented.

The effects of fragmentation are well documented in all forested regions of the world. Fragmentation leads to loss of biodiversity, increases in invasive plants, pests, and pathogens, and reduction in water quality. These wide-ranging effects all stem from two basic problems: isolation between forest communities and edge effects.<sup>19</sup>

<sup>15</sup> See generally, Ontario Nature, *Navigating the Swamp: Lessons on Wetland Offsetting for Ontario* (Toronto: Ontario Nature, July 2017).

<sup>16</sup> Although the ERO number 019-6216 posting state that 15 areas of land will be removed, CELA believes the more accurate figure is 19. This was determined by examining the *Redesignations or Removals Map 1 to 11* document attached to the ERO posting, online: <https://prod-environmental-registry.s3.amazonaws.com/2022-11/Redesignations%20or%20Removals%20Map%201%20to%2011.pdf>.

<sup>17</sup> See: <https://ero.ontario.ca/notice/019-6216>.

<sup>18</sup> Jordan E. Rogan, Thomas E. Lacher Jr, *Defining and Distinguishing Habitat Loss From Habitat Fragmentation* in Reference Module in Earth Systems and Environmental Sciences, 2018, online: <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/forest-fragmentation>.

<sup>19</sup> Mitchell Snyder, *What Is Forest Fragmentation and Why Is It A Problem?*, Northern Woodlands, 13 October 2014, online: <https://northernwoodlands.org/articles/article/forest-fragmentation#:~:text=The%20effects%20of%20fragmentation%20are,and%20reduction%20in%20water%20quality>.

**Canadian Environmental Law Association**

When a forest becomes isolated, the movement of plants and animals is inhibited. Fragmentation is a threat to natural resilience, and connectivity of forest habitats may be a key component of forest adaptation and response to climate change.<sup>20</sup>

Edge effects alter growing conditions within the interior of forests through drastic changes in temperature, moisture, light, and wind.<sup>21</sup> Increased wind, lower humidity, and higher daytime temperatures make fires more likely in forest fragments. In the process, many species will be eliminated.<sup>22</sup>

**RECOMMENDATION:** CELA recommends not removing the proposed areas from the Greenbelt in order to keep the Greenbelt as one continuous protected area.

### C. Conclusion

CELA hopes these comments and recommendations are helpful and encourages the Ministry to rethink its proposal to remove over 7,000 acres of lands from the Greenbelt. We would be happy to answer any questions arising from this submission.

Yours truly,

### CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Theresa McClenaghan  
Executive Director and Counsel



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Zoé St Pierre  
Student-at-law

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<sup>20</sup> Mitchell Snyder, *What Is Forest Fragmentation and Why Is It A Problem?*, Northern Woodlands, 13 October 2014, online: <<https://northernwoodlands.org/articles/article/forest-fragmentation#:~:text=The%20effects%20of%20fragmentation%20are.and%20reduction%20in%20water%20quality>>.

<sup>21</sup> Mitchell Snyder, *What Is Forest Fragmentation and Why Is It A Problem?*, Northern Woodlands, 13 October 2014, online: <<https://northernwoodlands.org/articles/article/forest-fragmentation#:~:text=The%20effects%20of%20fragmentation%20are,and%20reduction%20in%20water%20quality>>.

<sup>22</sup> Richard B. Primack, Rachel A. Morrison, *Edge Effects* in *Encyclopedia of Biodiversity* (Second Edition), 2013, online: <<https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/forest-fragmentation>>.

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