

March 8, 2022

**DELIVERED VIA EMAIL**

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**Re: Draft Subwatershed Planning Guide (ERO Number: 019-4978)**

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Canadian Environmental Law Association (“CELA”) provides the following brief comments in response to the proposed Subwatershed Planning Guide (the “Draft Guide”). Current provincial guidance for integrating subwatershed planning into land use planning is out of date, with the latest guidance dating back to 1993. CELA is very supportive of efforts to bring this guidance up to date.

CELA believes that watershed and subwatershed planning can play a significant role in building climate resilient communities, protecting water quality and quantity, and mitigating risks to drinking water sources. However, the often vague and voluntary language used in the Draft Guide undermines this potential. CELA has carefully considered the Draft Guide from a public interest perspective and makes the following comments and recommendations to the Ministry.

**A. Background on Canadian Environmental Law Association**

CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. As a specialty legal aid clinic funded by Legal Aid Ontario, our primary focus is on assisting and empowering low-income people and disadvantaged communities.

CELA has a long history of advocating for stringent and effective laws, regulations, and policies to protect water in Ontario and is supportive of efforts to implement integrated watershed management across the province. In 2018, CELA provided comments in response to the proposed Watershed Planning Guidance (EBR Registry Number: 013-1817). The following comments and recommendations build upon our response to that prior proposal<sup>1</sup>.

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<sup>1</sup> See CELA’s comments in response to the proposed Watershed Planning Guidance (ERO Number: 013-1817) (2018), online: <https://cela.ca/wp-content/uploads/2019/07/1184-CELA-Watershed-Planning-Guidance-Submission.pdf>

## B. General Comments About ERO Proposal Notice and Public Consultation Effort

CELA commends the Ministry for including the full Draft Guide associated with the proposal.<sup>2</sup> Further, CELA appreciates that the Ministry provided a 45-day public comment period and that, promptly after posting the proposal notice, the Ministry hosted webinars for the public to provide details and answer questions. Similar measures ought to be implemented in all situations, as they create the conditions for a more meaningful public engagement process, in keeping with the purpose of Ontario's *Environmental Bill of Rights, 1993*.

CELA **recommends** that: (i) longer comment periods be provided more generally, and (ii) webinars be provided for the interested public.

**RECOMMENDATION NO. 1:** Longer comment periods should be provided more generally and associated webinars should be provided for the interested public.

## C. Analysis of Subwatershed Planning Guide

### i. *Subwatershed Planning – Generally*

#### *Appropriate Planning Scale and Scope*

In previous submissions, CELA has recommended that the Ontario government demonstrate its commitment to fully implementing integrated watershed management in the province by aligning municipal boundaries with watershed boundaries.<sup>3</sup> CELA re-iterates that there is a great deal of complexity in subwatershed planning and coordination is required as there will be municipalities with footprints in multiple watersheds, watersheds with multiple municipalities, conservation authorities, single tier municipalities, upper-tier municipalities, and so on. As such, having municipal boundaries at an ecologically relevant scale would enable more efficient planning on watershed and subwatershed bases.

**RECOMMENDATION NO. 2:** The Ontario government should demonstrate its commitment to fully implementing integrated watershed management in the province by aligning municipal boundaries with watershed boundaries.

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<sup>2</sup> <https://ero.ontario.ca/notice/019-4978>

<sup>3</sup> See for example: CELA's Submission Re: Watershed Planning Guidance (2018), online: <https://cela.ca/wp-content/uploads/2019/07/1184-CELA-Watershed-Planning-Guidance-Submission.pdf>

### *Policy Context*

While CELA supports recognition of the “key land use planning direction related to watershed/subwatershed planning” referenced in the Draft Guide, CELA **recommends** addition of the following:

- **Great Lakes Protection Act** provides clear government commitment to protecting the waters, habitats and species of the Great Lakes and provides that *Planning Act* and other land use planning policy decisions must be in conformity with initiatives and policies of the *Great Lakes Protection Act*.

Subwatershed planning applies in Great Lakes watersheds and must be informed by Great Lakes protection goals and initiatives.

**RECOMMENDATION NO. 3:** The Draft Guide should explicitly recognize the *Great Lakes Protection Act* in its assessment of the policy context for subwatershed planning.

### *Principles for Subwatershed Planning*

In general, CELA supports the Draft Guide’s list of principles for subwatershed planning. Specifically, CELA supports the principle that a plan should “protect, enhance and restore the quality and quantity of water and maintain and restore/enhance critical natural systems interactions [...]” and the recognition that a subwatershed planning process requires a precautionary and adaptive management approach.

However, CELA submits that the language used to describe the principle of Indigenous engagement is insufficient and **recommends** the following revision:

- Planning authorities ~~are encouraged to~~ must build stronger relationships, collaborate, and partner with, and meaningfully involve Indigenous communities.

CELA further **recommends** that the following additional principles be added:

- A subwatershed plan addresses climate change mitigation and adaptation, including resilience to increased flooding risk.
- Planning authorities must apply an equity lens when developing and implementing a subwatershed plan.

Integrating equity into subwatershed planning means that subwatershed plans must be developed and implemented in such a way that they do not lead to differential treatment, hardship, or disadvantage to some populations. For example, the River Network’s WRAP (National Water

Reuse Action Plan) Pilot Project identified that “equity mapping” can be a valuable first step to help ‘set the table’ among stakeholders.<sup>4</sup> This step helps identify what communities, neighbourhoods, or community-based organizations have been historically missing from water planning efforts, despite having needs that could be addressed.

**RECOMMENDATION NO. 4:** The Draft Guide’s principle about Indigenous engagement should be revised to indicate that planning authorities *must* build stronger relationships, collaborate, and partner with, and meaningfully involved Indigenous communities.

**RECOMMENDATION NO. 5:** The Draft Guide’s list of principles for subwatershed planning should include the following:

- A subwatershed plan addresses climate change mitigation and adaptation, including resilience to increased flooding risk.
- Planning authorities must apply an equity lens when developing and implementing a subwatershed plan.

#### *Application Across the Province*

The Draft Guide states that “[t]he Provincial Policy Statement (“PPS”), Greenbelt Plan, A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), Niagara Escarpment Plan, Lake Simcoe Protection Plan, and Oak Ridges Moraine Conservation Plan all recognize or require watershed or subwatershed planning (or equivalent) to inform land use planning by municipalities.”<sup>5</sup>

While CELA supports the inclusion of the land-use planning policies in the Draft Guide, they are insufficient to address the need for watershed and subwatershed planning across the province. CELA **recommends** that subwatershed planning be made mandatory across the province for all municipal planning in conjunction with surrounding municipalities in the same watershed and, where applicable, the local conservation authority.

**RECOMMENDATION NO. 6:** Subwatershed planning should be restored as mandatory across the province for all municipal planning in conjunction with surrounding municipalities in the same watershed and, where applicable, the local conservation authority.

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<sup>4</sup> <https://www.rivernetwork.org/integrated-water-management-planning-equity/>

<sup>5</sup> Draft Subwatershed Planning Guide at p 6.

### *Subwatershed Planning Must be Informed by Watershed Planning*

The Draft Guide states that “[w]atershed planning, where undertaken, may inform subwatershed planning.”<sup>6</sup>

To ensure effective integrated watershed management, CELA submits that subwatershed planning must always be informed by watershed planning. To this end, CELA **recommends** the province enable municipalities, conservation authorities and other land-use planning authorities to work together to undertake watershed planning across the province.

Updated guidance on watershed planning is required to ensure integrated watershed management is fully implemented in Ontario. In 2018, the Ministry of the Environment, Conservation and Parks, and the Ministry of Natural Resources and Forestry, posted a draft Watershed Planning Guidance document on the Environmental Registry of Ontario.<sup>7</sup> According to the ERO, this proposal is still under active review. However, during the “Proposed Subwatershed Planning Guide Information Webinar” hosted on February 16, MECP staff indicated that there was no intention to update and re-release this proposal.

CELA understands that there was extensive and detailed feedback provided during the public comment period for this Guidance document and that those recommendations would require substantive changes to the proposal. CELA **recommends** that the Ministry re-post an updated draft for further consultation.

**RECOMMENDATION NO. 7:** The Province should enable municipalities and conservation authorities to work together to undertake watershed planning across the province so that subwatershed plans are always informed by watershed plans.

**RECOMMENDATION NO. 8:** Taking into account comments and recommendations received in 2018, the Ministry should re-post an updated Watershed Planning Guidance document for further consultation.

#### *ii. The Role of Conservation Authorities*

The Draft Guide states that “[a] municipality may seek the involvement of a conservation authority in watershed or subwatershed planning by entering into a memorandum of understanding or service level agreement with the authority.”<sup>8</sup> CELA submits that the role of conservation authorities in subwatershed planning should be encouraged.

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<sup>6</sup> Draft Subwatershed Planning Guide at p 8.

<sup>7</sup> <https://ero.ontario.ca/notice/013-1817>

<sup>8</sup> Draft Subwatershed Planning Guide at p 13.

As CELA has stated in prior submissions, conservation authorities are the only agency in Ontario that hold deep technical expertise at a watershed-scale.<sup>9</sup> This expertise has been acquired through decades of extensive stewardship, monitoring, research, mapping, and on-the-ground contact with the people within and the lands and waters of the regions in which they operate. There is no other agency, Ministry, or entity in Ontario with the same comprehensive understanding of integrated watershed management.

As such, CELA submits that watershed and subwatershed planning should not be undertaken without the local conservation authority at the table. CELA **recommends** the Ministry review the Draft Guide to strengthen recognition of the important roles and expertise that local conservation authorities can play in leading or supporting subwatershed planning.

**RECOMMENDATION NO. 9:** Review the Draft Guide to strengthen recognition of the important roles and expertise that local conservation authorities can play in leading or supporting subwatershed planning.

### *iii. Climate Change*

Subwatershed planning is critical to addressing climate change and building climate resilient communities. Despite this, a thorough review of how climate change and climate adaptation should be considered in the preparation, implementation and evaluation of subwatershed plans is seriously lacking in the Draft Guide.

CELA **recommends** the Draft Guide be updated to require subwatershed plans:

- be based on recent climate models and scenarios for the subwatershed;
- address climate change mitigation and adaptation, including resilience to increased flooding risk; and
- include guidance on how to set or develop targets using climate information that can support and enhance watershed resilience.

**RECOMMENDATION NO. 10:** Require subwatershed plans (i) be based on recent climate models and scenarios for the subwatershed; (ii) address climate change mitigation and adaptation, including resilience to increased flooding risk; and (iii) include guidance on how to set or develop targets using climate information that can support and enhance watershed resilience.

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<sup>9</sup> See CELA's comments regarding the regulatory proposals (Phase 1) under the Conservation Authorities Act (ERO Number 019-2986) (2021), online: <https://cela.ca/wp-content/uploads/2021/06/CAAct-Phase-1-Reg-Proposal-Submission-ERO-019-2986-210625.pdf>

*iv. Indigenous Engagement and Involvement*

The Draft Guide states that “[m]unicipalities are encouraged to work with Indigenous communities who may be interested in and affected by subwatershed planning” and provides a list of “best practices” for Indigenous engagement.<sup>10</sup> CELA submits that this use of voluntary language to describe Indigenous engagement throughout the Draft Guide is insufficient.

Under the PPS, planning authorities are required to engage with Indigenous communities and coordinate on land use planning matters. Further, there are well-established legal requirements for Indigenous engagement, such as the duty to consult and accommodate.

To the best of our knowledge, Indigenous engagement related to the Draft Guide was minimal. CELA submits a guide such as this needs to be developed in tandem with capacity support for First Nations so they can be effectively engaged and have purposeful roles in watershed planning at “sub” and larger watershed scales.

Further, there is no mention of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) or the related principles of Free, Prior and Informed Consent (“FPIC”), Ownership, Control, Access, and Possession (“OCAP”) in the Draft Guide. For example, with regard to Traditional Ecological Knowledge, the Draft Guide states “[e]ffective engagement with Indigenous communities may include the consideration of traditional ecological knowledge as part of watershed delineation and characterization.”<sup>11</sup> CELA **recommends** the Draft Guide explicitly recognize responsibilities under UNDRIP and incorporate the FPIC and OCAP principles as they pertain to subwatershed planning.

In recognition and respect of Indigenous traditional environmental knowledge, as well as their inherent, aboriginal and treaty rights, CELA **recommends** the province pursue a strategy with the federal government and Indigenous communities that will support the ability of Indigenous communities (and their technical designates) to be full participants in subwatershed planning and implementation. This includes facilitating their involvement in the development of the plan, their participation on subwatershed planning steering and advisory committees, and their involvement in the consultation process and in the implementation of those plans.

**RECOMMENDATION NO. 11:** Ensure Ontario’s obligations to First Nations, Inuit, and Métis are fulfilled regarding subwatershed planning.

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<sup>10</sup> Draft Subwatershed Planning Guide at p 35.

<sup>11</sup> Draft Subwatershed Planning Guide at p 36.

*v. Funding for Subwatershed Planning*

The Draft Guide states that, prior to undertaking a subwatershed plan, best practices include “[d]etermining funding mechanisms and responsibilities. This may involve establishing the extent of funding, who should contribute and phasing.”<sup>12</sup>

CELA submits that all authorities responsible for the development and implementation of subwatershed plans (including conservation authorities, municipalities, Indigenous communities and others) must be provided with adequate resources (including funding or funding tools, technical expertise and training, etc.) to match those responsibilities and allow them to carry them out within the necessary timeframes. We **recommend** the Draft Guide provide more information and guidance about where these resources will come from.

For example, larger municipalities could implement a program similar to existing stormwater charges, where money collected from this charge is used exclusively for integrated watershed management, including watershed and subwatershed planning.

**RECOMMENDATION NO. 12:** Provide more information about the resources that will be provided to assist authorities responsible for the development and implementation of subwatershed plans.

*vi. Thorough Public Participation*

The “Public Engagement” portion of the Draft Guide is very brief and limited in detail.<sup>13</sup> CELA **recommends** this section of the Draft Guide be expanded to provide greater details and examples of how the public and stakeholder groups can play valuable roles in contributing to the preparation and implementation of subwatershed plans.

At a minimum, public engagement in subwatershed planning should ensure:

- Any member of the public has the opportunity to participate in subwatershed planning committees through an application process that is open and transparent.
- The public has easy access, including electronic web access, to all information, including policy instruments and scientific data, relevant to subwatershed planning.
- Subwatershed plans are prescribed for notice and comment on the Environmental Registry of Ontario.

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<sup>12</sup> Draft Subwatershed Planning Guide at p 20.

<sup>13</sup> Draft Subwatershed Planning Guide at p 33-34.

**RECOMMENDATION NO. 13:** Provide greater details and examples of how the public and stakeholder groups can play valuable roles in contributing to the preparation and implementation of subwatershed plans.

**D. Conclusion**

Thank you for the opportunity to comment on the Draft Guide. We would be pleased to discuss these submissions further and we look forward to opportunities for future engagement.

Yours sincerely,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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