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December 2, 2020

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor,
Toronto, Ontario
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Via Email

Dear Minister Clark,

RE: Issuance of Minister's Zoning Orders

We endorse the letter submitted by Ontario Nature, Environmental Defence and 94 other NGOs on November 16, 2020, and are also strongly opposed to the use of Minister's zoning orders (MZO) to override policy protections for provincially significant wetlands (PSWs) in Ontario.

We ask that you revoke two recently issued MZO that will lead to the destruction of PSWs in the cities of Vaughan and Pickering, and that you refrain from using MZO for this purpose in the future.

The Georgian Bay Association (GBA) is an umbrella organization for 19 community associations along the east and north shores of Georgian Bay, representing around 3,000 families. We have been advocating on behalf of our land-owning members for over 100 years and estimate that we reach around 18,000 residents of the Georgian Bay. Our mandate is to work with our water-based communities and other stakeholders to ensure the careful stewardship of the greater Georgian Bay environment.

Wetlands preservation is particularly important on the eastern and northern shores of Georgian Bay as there are ~19,000 wetlands located on the 30,000 islands, the coast and the nearby watershed, which hold the largest biodiversity of amphibians and reptiles in Canada, and 53 species at risk and endangered species. Their water filtration is a vital component in maintaining good water quality in Georgian Bay, Lakes Huron and Michigan and downstream through the Great Lakes system.

Wetlands are among the most productive and diverse habitats on Earth. They provide incalculable benefits for communities, including flood mitigation, water filtration, carbon sequestration, wildlife habitat, wild foods and medicines, recreational opportunities and more.

They are also of immense economic value. For example, wetlands can reduce the financial costs of floods by up to 38 percent. Wetlands retain water during extreme storm events to prevent flooding into nearby developed areas. This flood protection function is becoming increasingly important as climate change increases the frequency and intensity of extreme storm events. In the Great Lakes region, the benefits provided by wetlands are worth substantially more than the cost of protecting or restoring them, and their ecological services have been evaluated by the Great Lakes Wetlands Consortium at about US \$1,500 per acre per year. In southern Ontario alone wetlands provide over \$14 billion dollars in benefits every year.

Provincial planning law and policy rightly prohibit development on wetlands that are deemed to be provincially significant. In fact, PSWs in southern Ontario enjoy the highest level of protection of any natural feature. Strict protection of PSWs is also a key component of the Ontario Government's Wetland Conservation Strategy for Ontario, 2017-2030, which aims to achieve a net gain in wetland area and function by 2030. This approach was endorsed by the Ministry of Natural Resources and Forestry's multi-party Wetlands Conservation Strategy Advisory Panel in their 2018 report, and this panel included representatives from the development, agricultural, waterpower and municipal sectors.

We agree with the opinion expressed in the November 16 letter referenced above that the use of MZOs to circumvent these protections and commitments is unacceptable. The circumstances under which Minister's zoning orders should be applied (and not applied) are clear. The Planning Act gives the Minister of Municipal Affairs the authority to zone any property in the province, but MZOs should not be used where municipalities have existing zoning by-laws, unless they are being used to protect a provincial interest. MZOs are primarily designed for use in areas of northern Ontario where there is no local municipality or local zoning by-law.

We are aware of two recent instances where MZOs use has been inconsistent with the above limitations on application. There does not appear to be any "protection of a provincial interest" involved with either of these developments. The reason MZOs were used appeared to be solely for the purpose of circumventing the proper public consultation and environmental assessment processes in order to allow these two developments to proceed. This sets deeply troubling precedents.

The first was an MZO to demolish three PSWs on agriculturally zoned land in Vaughan adjacent to a planned Walmart distribution facility. The second was an MZO to authorize the destruction of a large coastal PSW in Pickering to make room for a warehousing facility. As is typically the way with MZOs, there was no public notice and no opportunity for public comment in either case. Further, MZOs are not subject to appeal.

In issuing these MZOs, we also understand that the Ontario government failed in its Treaty obligations and constitutional duty to consult with affected First Nations. The duty to consult arises from s.35 of the *Constitution Act, 1982*, and is triggered whenever the Crown has either constructive or real knowledge of the potential existence of an Indigenous right or title and contemplated conduct that may adversely affect it. Further, issuing MZOs without proper consultation is inconsistent with the spirit and intent of the revised *Provincial Policy Statement 2020*, whereby planning authorities must: “engage with Indigenous communities and coordinate on land use planning matters.” Your ministry must recognize Indigenous rights and fulfill its duty to consult.

Ontarians can and should play a meaningful role in planning processes that affect their communities. Public participation is vital for ensuring that decisions are in the public interest. Yet MZOs eliminate this possibility, allowing deals to be cut with developers behind closed doors, without public input or scrutiny. Such lack of accountability paves the way, in this case, for the loss of wetlands that are critical not only to preserving biodiversity, but also to building community resilience to address climate change impacts.

We urge you to cease using MZOs to circumvent policies that protect Ontario’s natural areas and farmland and to reaffirm your government’s commitment to respecting and upholding protection for all PSWs in Ontario.

We hope that you can give due consideration to these recommendations and look forward to hearing from you in this respect.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Kindersley". The signature is written in a cursive style with a horizontal line underneath the name.

Rupert Kindersley
Executive Director

Copied to: The Honourable John Yakabuski, Minister of Natural Resources and Forestry
The Honourable Rod Phillips, Minister of Finance