



**Ontario**  
Home Builders'  
Association

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Ministry of the Environment, Conservation and Parks  
Species Conservation Policy Branch  
300 Water Street, Fl 5N  
Peterborough, ON K9J 3C7

**Re: A proposal under the ESA to enable use of the Species at Risk Conservation Fund and to streamline authorizations for certain activities that impact species at risk, while maintaining protections for species at risk**  
**Environmental Registry: 019-2636**

### **About the Ontario Home Builders' Association (OHBA)**

OHBA is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 27 local associations across the province. The residential construction industry employed over 518,000 people and contributed over \$57.8 billion to the province's economy in 2019. OHBA has been engaged with the provincial government since the initial consultations on the *Endangered Species Act, 2007* (ESA) and was an active member of the *Endangered Species Act Stakeholder Group* and a member of the *Bobolink / EML Roundtable*.

OHBA supports the protection of species at risk. OHBA members have an important role to play in protecting and preserving our environment. Through environmental stewardship, building energy efficient new housing or upgrading aging homes, creating transit efficient complete communities or cleaning up brownfields sites, our members are important partners with the government in delivering upon a *Made-in-Ontario Environment Plan*. In this submission, OHBA outlines areas where our industry can play a leading role in protecting species at risk and balancing a healthy environment, with a healthy economy.

### **Background**

In January 2019, the government launched its consultation on how best to update the 10-year old ESA to improve the effectiveness of the program for species at risk (SAR) in Ontario. The MECP posted a Discussion Paper outlining the challenges of the ESA (EBR 013-4143) to which OHBA provided a submission in March 2019. OHBA provided further advice responding to the 10-year review of the ESA in May 2019 (EBR 013-5033). The provincial government followed these consultations with OHBA supported amendments to the ESA through the *More Homes, More Choice Act, 2019* (Schedule 5). These amendments to the ESA in 2019 established a new option for a *Species at Risk Conservation Fund* to provide funding of activities that are reasonably likely to protect or recover conservation fund species or support their protection or recovery.

## **Proposal Summary (019-2636)**

The MECP is proposing new regulations to enable the use of the Species at Risk Conservation Fund (the Fund) and to establish a provincial agency to administer the Fund. MECP is also proposing to amend Ontario Regulation 242/08 to streamline *Endangered Species Act* authorizations by amending certain conditional exemptions.

## **OHBA Executive Summary**

The ESA continues to have a number of operational and implementation challenges for which there are opportunities for innovative solutions while continuing to provide important species at risk protection. OHBA is supportive of the proposal by the MECP that would enable positive outcomes for SAR, while streamlining processes and providing new options and opportunities for those proponents implementing the Act through the new *Species at Risk Conservation Fund*.

The implementation of the ESA over the past decade has been problematic from OHBA's perspective and has required substantial resources by both government and industry stakeholders that have not been used as optimally as they could assist in species protection and recovery. The ability for a new agency to invest in strategic, large-scale and coordinated protection and recovery actions should result in more positive outcomes for a number of different species at risk.

OHBA supports the option for proponents to invest funds and resources into meaningful outcomes for species at risk rather than being allocated towards an uncertain and expensive permitting process. The proposed amendments to Ontario Regulation 243/08 and the Fund are designed to enhance complicated implementation practices with an increased focus on implementation, streamlining of the permit process and a stronger focus on the conservation of key ecosystems. OHBA however has significant concerns with land valuation components of the proposed formulas and costing – which if not adjusted may result in fewer proponents utilizing this new innovative option. Compensation must be calculated in a reasonable fashion that reflects what actual costs would have been under a permitting authorization - meaning any costs associated with land should be based on where the benefit is occurring rather than where impacted. OHBA recommends land costs be recalculated to reflect the benefit across an Eco Region or a much broader landscape than the currently proposed Appendix A that calculates land costs within the municipalities that the impact is occurring.

OHBA supports a greater focus on outcomes that result in better transparency, accountability, consistency and fairness. OHBA supports the proposed regulatory changes that will offer more innovative and coordinated ways of helping species at risk impacted by development projects. OHBA is supportive of the *Made-in-Ontario Environment Plan* and the approach undertaken by the MECP to update ESA Regulations with the caveat that more analysis is required to set fair and reasonable formulas for costing.

## **OHBA General Comments on Proposed Regulatory Changes**

OHBA supports creating a new provincial agency, with expertise to invest in strategic, large-scale, and coordinated actions that would support more positive outcomes for select species at risk. OHBA notes our members will still be required to avoid and minimize impacts on species at risk and their habitats. However, this new option will offer an alternative way to support and benefit species at risk over the long term, by giving proponents the option to fund a new provincial agency that will pool resources and determine the best way to protect and recover select species on a province-wide scale. OHBA is generally supportive of updating the authorization process through conditional exemptions, for some activities that have common and routine mitigation actions or which our members and environmental consultations have well understood requirements to provide an overall benefit for the species.

OHBA is therefore supportive of a *Species Conservation Charge* that would permit otherwise prohibited activities under certain permits, agreements, and regulations. OHBA understands 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.” (source: ERO 019-2636 posting) OHBA however, has specific concerns with some of the proposed formula’s for establishing costs for the funding charge. OHBA notes that the private sector has a strong track record in delivering positive outcomes on the ground and it is important the MECP make adjustments to the proposed costing formulas to ensure costs are actually in the range of what would have been incurred through the existing permitting process.

### **OHBA Comments: Enabling the Species at Risk Conservation Fund**

OHBA is supportive of the MECP proposal to create an independent agency called the *Species at Risk Conservation Fund*, to allow the option to fund certain on-the-ground activities required by the Act. In OHBA’s 2019 submissions to the MECP, we recommended that the legislation should enable the creation of a “Conservation Fund” dedicated to species at risk conservation. OHBA was supportive of changes to the ESA through Schedule 5 of Bill 108 to allow for the use of a new option by proponents that are authorized to undertake activities that impact SAR. The legislative amendments would give proponents the option of contributing to a fund that allows a new provincial agency to pool the resources and determine how best to implement strategic protection, large scale activities and recovery activities that benefit eligible species.

OHBA supports the MECP approach as it has the potential to increase certainty and reduce the length of time required to fulfill authorization requirements while focusing investments on SAR to achieve the best possible outcomes from the species. A proponent using this approach would, in most cases, first need to consider if there are ways to avoid impacting eligible species at risk. The proponent will then have the option of completing beneficial actions for the species themselves (Overall Benefit Permit), or have a new option to contribute to the proposed Fund, which the Agency will use to implement species protection and recovery activities.

OHBA is generally supportive of the MECP approach with proposed regulations that would:

1. Prescribe six species as conservation fund species and determine required contributions to the Fund;
2. Establish a new provincial board-governed agency, called the *Species at Risk Conservation Trust*, to administer the Fund;
3. Enable use of the Fund by proponents registering for certain conditional exemptions in *O. Reg. 242/08* for eligible activities that will impact conservation fund species.

### **Species to be eligible under the Fund**

OHBA is supportive of the proposal to designate a subset of the SARO List (*O. Reg. 230/08*) as conservation fund species eligible for the proposed funding option. OHBA agrees with the criteria in determining conservation fund species, so that the species would benefit from a strategic protection and recovery approach and that there is high demand for authorizations. OHBA is supportive of the initial list of six species:

- Butternut
- Barn Swallow
- Bobolink
- Eastern Meadowlark
- Eastern Whip-poor-will
- Select populations of Blanding’s Turtle

OHBA notes that there are additional species in certain eco-regions that are regularly encountered through the authorization process for which the MECP should consider expanding the list of eligible species within the Fund. In particular, OHBA recommends the MECP consider three additional SAR for which there are high volumes of permits that we believe would benefit strategically by being eligible for the fund: Eastern Foxsnake, Bulter's Gartersnake and Willowleaf Aster.

### **Eligibility of activities and authorizations:**

MECP is proposing changes to *O. Reg. 242/08* to make the Fund available for those registering for the following conditional exemptions:

- Barn Swallow (Section 23.5)
- Bobolink, Eastern Meadowlark (Section 23.6)
- Butternut (Section 23.7)

OHBA has consistently recommended a “rules in regulation” approach and supports the proposed framework where conditional exemptions require completion of certain on-the-ground actions, such as enhancing habitat for Bobolink and Eastern Meadowlark, creating habitat structures for Barn Swallow or planting Butternut seedlings. OHBA supports proposed amendments to *O. Reg. 242/08* that would give proponents the *Species Conservation Charge* option. The key aspect of MECP’s proposal is, when it comes to the beneficial action requirements for eligible species, proponents will have the option of completing these actions themselves or choosing the Agency to use funds. What is critical for SAR is that under both options, beneficial actions for eligible species would be completed.

OHBA would like to highlight examples from our 2019 submissions where a *Species at Risk Conservation Fund* could achieve substantial benefits:

- Funds could be pooled towards promoting disease resistant Butternut Trees rather than planting small groups of trees. OHBA notes that due to the widespread nature of the disease, local actions like tree planting may not be effectively contributing to the recovery of the species.
- 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.
- Funds could be pooled to acquire large contiguous areas of managed habitat (working with farmers) 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.

### **Calculation of species conservation charges**

The proposed *Species Conservation Charges* are intended to be informed by the costs that a proponent may have otherwise incurred in fulfilling conditions of an ESA authorization. OHBA has significant concerns that the initially proposed charges have fundamental flaws in the methodology for attributing land value. Furthermore, a costing framework charging what proponents would otherwise incur does not take into consideration that the agency should find efficiencies and broader SAR benefits versus the current smaller scale and uncoordinated approach.

For each conservation fund species, the regulation is proposed by the MECP to set out a formula to calculate the amount of the contribution to be made for the authorized activity, based on the degree of impact to the species and its habitat. While OHBA is generally supportive of the concept, we have concerns with some of the assumptions within the proposed charge formulas.

OHBA’s comments on the charge formulas include consideration of the following factors:

- **Beneficial actions:** Costs associated with on-the-ground beneficial actions that a proponent would typically have otherwise been required to complete as part of their authorization. OHBA has not specific comments.

- **Cost of land, where applicable:** Costs associated with acquiring or repurposing land to provide habitat that a proponent would typically have been required to incur as part of their authorization. OHBA has significant concerns with the proposed land costs and their breakdown across the province as have been presented in the supporting materials for ERO 019-2636.

The Ministry must recognize significant divergence in land values between urban and rural areas. Most SAR impacts from proponents involved in residential construction will occur in high land value locations inside urban boundaries, whereas actions to benefit and recover SAR will (and should) occur in more rural and natural areas where the species is best positioned to thrive. This raises questions on the appropriateness of some of the land value calculations. When an environmental consultant carries out an Overall Benefit Permit, they typically look for providing benefits in the same eco-region, which is vastly larger than the urban region where habitat is being impacted. Furthermore, it may be more appropriate to the success of the SAR for the Agency to be flexible in their approach and to be taking beneficial actions in different regions/areas (but in the same Eco-Region). It is difficult to replace habitat – especially large scale habitat – in urban areas. Therefore the land value calculation should reflect that a more effective solution for SAR are for new habitat lands outside of settlement areas. It is important for land valuation to recognize where actions should be undertaken if it will result in a better outcome.

OHBA recommends the MECP revise land value calculations to not reflect the land value where the impact is occurring, but rather the land value where the benefit is occurring. To achieve such an outcome, an alternative would be to average out the municipally based values contained in Appendix A of the ERO 019-2636 formulas and costing document and base those costs on a broader landscape than currently proposed municipal boundaries. This approach could be set across the entire Eco-Region or a slightly smaller scale that is still a broad landscape approach. Such a methodology would better reflect actual costs incurred by proponents through the Overall Benefit permitting process.

- **Benefit ratio:** The amount of benefit to be generated for the species in order to compensate for adverse impacts. This is expressed as a ratio of the level of the impact compared to the level of the benefit. A ratio of 1:1.5 is proposed by the MECP, unless a different ratio is specified in the proposed species conservation charge formulas. OHBA recognizes that there are risks to achieving intended outcomes, thus a ratio of greater than the 1:1 is required. OHBA believes a 1:1.5 ratio is too high and will contribute to costs potentially exceeding what a proponent would have incurred through the permitting process. OHBA would also note that the quality of a managed habitat of the funding area versus the unmanaged habitat of the impacted area needs to be considered against the rough quality approach taken by the proposed 1:1.5 ratio.
- **Administration:** The consultation document outlines costs that a proponent would typically have otherwise incurred by carrying out beneficial actions (e.g., project management, contract management). The proposal is to add 10 percent for administrative costs to the calculation of the beneficial action component of the species conservation charge. OHBA notes that under the permitting process, that any administrative costs would never have contributed actual benefits to species at risk. Therefore it is inappropriate to lump these costs into the *Species Conservation Charge*. The additional administrative costs (variable/fixed) contribute to cost escalation – especially in high land value locations (the reality is that any administrative costs for the Agency should be no different for projects occurring in Nipissing or Peel). While some fixed administration costs may be reasonable to incorporate, a 10% surcharge is a significant additional cost. OHBA recommends a maximum 5% administrative costs with a capped administration fee of \$50,000. Again, having an administrative cost as a percentage of the land value is unjustified and requires both a lowering of the charge and a cap on the maximum fee. The administrative work of a \$20,000 contribution as a result of the formula is no different than the administrative work of a \$1,000,000 contribution based on the formula.

- **Inflation:** OHBA is generally supportive of an inflationary change, based on Statistics Canada’s CPI for Ontario to be applied to costs to enhance habitat to ensure the value of the charge remains appropriate over time.

OHBA members have brought forward examples of Overall Benefit Permits for which the offsets costs to qualify for an overall benefit permit under the existing system were a fraction of what the MECP has proposed in the supplementary material accompanying ERO 019-2636. OHBA encourages further research and direct dialogue between the MECP and OHBA members that have brought forward examples and costing data during the consultation.

Species	OHBA Comments
Bobolink, Eastern Meadowlark & Eastern Whip-poor-will	<ul style="list-style-type: none"> <li>• OHBA has concerns that the proposed ratio is too high</li> <li>• OHBA recommends land value be based on where the benefit is occurring, not where the impact is occurring</li> <li>• Modified and maintained habitat requires effective collaboration with the agricultural industry, which again requires beneficial actions to occur in rural (not settlement) areas</li> </ul>
Barn Swallow	<ul style="list-style-type: none"> <li>• Most Barn Swallow related costs through an Overall Benefit Permit are not land based, but rather for actual physical structures used by Barn Swallows</li> </ul>
Blandings Turtle	<ul style="list-style-type: none"> <li>• No comments</li> </ul>
Butternut	<ul style="list-style-type: none"> <li>• OHBA is concerned the costing being proposed does not reflect actual cost incurred by our members in fulfilling an Overall Benefit Permit</li> <li>• OHBA has concerns that the proposed ratio for Category 3 Butternuts is too high</li> <li>• OHBA has concerns that the habitat for Butternut is in no way limiting and thus should not be included in the cost calculation</li> </ul>

### Providing funds to the Agency

OHBA is generally supportive of the MECP proposal that funding be required before the start of any activities that impact the conservation fund species and its habitat within 30 days. OHBA is also generally supportive of the supporting information requirement with the funding and the refund circumstances proposed by the MECP.

### Establishing the Species at Risk Conservation Trust

OHBA is generally supportive of the oversight provisions to support the Agency in meeting the purposes of the Fund. OHBA notes it will be important for the Agency to demonstrate value through maintaining efficiency and being effective in administering the Fund. OHBA is supportive of the proposal for an MOU between the Agency and the Minister to govern how the Agency would operate. It is important that the agency ensure informed and unbiased decisions are made to disburse funds to third parties that will undertake the activities to benefit SAR. OHBA reiterates our 2019 submission recommendation that it have third party oversight and be mandated to distribute funds over the broader landscape that would be most effective and beneficial to the species.

### Board of Directors

Under the proposal, the Agency’s board of directors would be appointed by the LGIC consist of:

- Three to five voting directors, including one Chair and up to two Vice Chair positions
- One non-voting director who is an employee of the Ontario Public Service

OHBA is generally supportive of the proposal for the Agency’s board to include some members that have expertise related to the protection or recovery of SAR. It should be clear that the SAR is not an approval agency of

government but serves to distribute the funds to third parties with the expertise in SAR recovery. OHBA is supportive of the proposal to include provisions to guide the Agency in how it would distribute funds that best support the specific recovery needs of a species.

### **Plans for conservation fund species**

To ensure spending decisions are sound, it will be important for the Agency to understand the specific needs of a conservation fund species and develop a plan to support sound investments. OHBA is supportive of the Agency being required to submit to the MECP a plan for each conservation fund species before any funds are disbursed. These plans should include the types of activities that are priorities and the locations in Ontario where funding would most benefit the species.

### **Reporting**

To maximize transparency, OHBA is supportive of additional reporting elements within the Agency's Annual Reports, which are required to be made public on the Agency's website. OHBA also supports the proposal for the Agency to provide a report after every five years on the effectiveness of the Fund in achieving its purpose.

### **Terms and conditions on the Fund**

OHBA is generally supportive of the proposal that the Agency be restricted from Purchasing land and, funding any actions that a person is already obligated to undertake.

### **OHBA Comments: Further streamlining ESA authorizations**

The ERO posting notes the "General" regulation under the ESA (*O. Reg. 242/08*) provides conditional exemptions for proponents from prohibitions in the ESA (i.e. without having to obtain an ESA permit or agreement). Conditional exemptions were created to authorize activities that follow standard procedures, have predictable effects, and require common approaches for minimizing adverse effects and achieving benefits for species.

OHBA is supportive of the proposal to amend the conditional exemptions to make more activities eligible in order to get those that maintain standards for and/or benefit SAR underway faster. OHBA believes that this would further streamline ESA authorizations for proponents while maintaining standards for the protection and recovery of species. OHBA notes 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. The conditional exemption regulation should improve transparency, consistency and fairness.

### **Species protection and recovery activities (section 23.17)**

MECP is proposing to expand eligibility for the existing conditional exemption for activities that are intended to assist in the protection or recovery of SAR. OHBA is supportive of changes that would make the following activities eligible for conditional exemptions and thereby shorten the timelines for obtaining ESA authorization:

- Conducting surveys that proponents may be required to complete before starting an activity
- All activities that have been approved to receive funding through Ontario's SAR Stewardship Program
- Certain low-risk protection/recovery activities recommended in government-approved recovery documents
- Actions to minimize the distress of an animal that becomes ill or is unintentionally injured during a protection or recovery activity and has no possibility of survival, provided specific conditions are met

## **Butternut trees (section 23.7)**

OHBA is generally supportive of the framework for the conditional exemption for Butternut trees that require proponents to plant, tend and monitor a certain number of Butternut seedlings. Based on MECP's experience, there are opportunities to broaden conditional exemptions for activities that are routinely and frequently authorized through permits. OHBA is generally supportive of the MECP proposal to increase the number of Butternut trees that may be impacted under the conditional exemption:

- Higher number of trees assessed as being relatively healthy (Category 2: from 10 to 15 trees)
- Trees assessed as being potentially resistant to infection (Category 3: from 0 to 5 trees)

OHBA is generally supportive of the proposal that would standardize in the conditional exemption the approaches commonly used in permits for activities that impact Butternut such as requiring proponents to take steps to minimize the adverse effects of their activity. OHBA is however opposed to the proposed change in the duration of the period that seedlings are to be monitored and tended from 2 to 5 years. OHBA is supportive of the proposal to make changes to the way that Butternut health assessments are completed. The changes are proposed to reduce cost and burden for proponents, while continuing to require that the assessment reports satisfy the ministry's requirements.

## **Hydro-electric generating stations (section 23.12)**

OHBA has no comments on this section.

## **Prescribing requirements for changing or cancelling a registered activity**

MECP is proposing to prescribe requirements for registrations in respect of conditional exemptions to be updated if the registered activity is changed or cancelled. OHBA has not specific comments.

## **Conclusion**

OHBA believes that the current proposal, as it relates to the *Species at Risk Conservation Fund*, will provide greater flexibility to proponents seeking ESA authorizations by enabling use of an option to complete beneficial actions themselves, or choose to have a new Agency determine how best to implement long-term, large-scale, and coordinated species protection and recovery activities, using funds provided by proponents. OHBA is supportive of an approach for which proponents would be able to choose the approach, within the legislative framework, that works best for the application. OHBA shares MECP's perspective that this new approach will shorten timelines, reduce burdens and provide cost certainty.

OHBA is supportive of the government's commitment to ensuring that the ESA provides protections for SAR. Overall, OHBA is supportive of the MECP proposed *Species at Risk Conservation Fund* to provide greater certainty to business and better enable positive outcomes for SAR compared to the current piece-meal approach. OHBA shares the MECP's perspective that the conservation fund species will benefit from a more strategic and coordinated approach to planning and implementing protection and recovery activities. OHBA supports an approach that increases clarity of requirements, streamlines the process and implements fair and reasonable response times. OHBA strongly recommends the MECP review and revise a number of specific components of the Species Conservation Charge formulas and costing with a specific emphasis on the fact that land values should be calculated across a broader landscape based on where the benefit is occurring and **NOT** where the impact is occurring. OHBA strongly supports a balanced approach to the environmental, social and economic goals of the Province to ensure a prosperous and high quality of life for Ontario citizens.