

Memo

To: Ministry of Environment, Conservation and Parks
From: Gabe Charles, Director, Planning Services Department
CC: Neil Garbe, Commissioner, Community Development Services
Date: February 20, 2024
Subject: Concerns and Recommendations on ERO #019-8016 – Regulatory changes under the *Endangered Species Act* (ESA) to improve implementation of the species at risk program

Comments:

The Town of Oakville is aligned with the intention of improving the effectiveness and implementation of the species at risk program. The proposed changes have implications for species at risk found in Oakville. The changes to the *Endangered Species Act* (ESA) include reducing habitat protection for Redside Dace, removing Barn Swallow from the conservation fund due to its species status reassessment, removing the 30-day waiting period between the submission of a Butternut Health Expert Report and registration of an eligible activity, and adding newly listed species to the existing exemptions and other administrative changes. The stated intention of the proposed changes is to improve implementation of the program to increase certainty and streamline processes for Ontarians and to deliver ESA protections where they are needed most, however more scientific evidence relating to some of the proposed changes is requested to ensure the changes will not adversely impact the species that require protection under the legislation and regulations.

The Town of Oakville released and endorsed the Oakville Strategy for Biodiversity (OSB) in 2018. This strategy aims to protect, restore and enhance habitats and species that support biodiversity throughout the town. This includes species protected under the *Endangered Species Act*. Town staff is seeking more direction and clarification on how to achieve their biodiversity goals and continue to protect the natural heritage system as required by the Provincial Policy Statement considering the continued amendments to the *Endangered Species Act*.

In November of 2021, the Office of the Auditor General of Ontario released its Value-for-Money-Audit: Protecting and Recovering Species at Risk. The report found that the

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Ministry's species at risk program misses achieving its central purpose: protecting and recovering species at risk. The Audit also explains that "the purpose of species at risk legislation is to serve as the last line of defence when other programs have been ineffective in conserving nature or have directly contributed to biodiversity loss." This highlights the reliance of municipalities on the province to ensure protection and restoration of species at risk as intrinsic to the management of natural heritage systems within the provincial planning framework as well as strategies to protect and improve biodiversity within the town and province. The Audit specifically recommended that some of the changes made under Bill 108 the *More Homes, More Choice Act*, 2019, be reversed, including the reclassification of species based on their status outside of Ontario. Staff notes that the proposed changes further implement the changes made under Bill 108 by continuing to reassess species under the new criteria. It is not clear what actions the Ministry has taken to address the findings of the 2021 Value-for-Money-Audit.

Town staff has the following comments:

Proposed Regulatory amendments regarding Redside Dace

These proposed changes amount to a narrowing of scope of protection at a time when species are in decline and biodiversity is under particular threat due to human activity and climate change. Given this species is/has been present in watercourses in Oakville, staff is concerned that this change may amount to reduced protection for this species and lead to its continued decline in Oakville and more broadly.

Proposed Regulatory Amendment to Conservation Fund Species and Related Administrative Changes

Town staff requests the province provide direction on how to handle the transitional period from the time a species is reassessed to a category of lesser protection. Staff suggests that there be transitional measure in place to protect habitat created when the species was assessed as a higher concern species. Staff also asks that the province provide direction on how to ensure no negative impact to species that are now considered under the policy category of significant wildlife habitat.

Proposed Regulatory Amendment Regarding the Butternut Health Expert Report 30-day Waiting Period

It is not clear how this will ensure continued protection of butternut trees if there is no review or oversight to verify the Butternut Health Expert Report. Given this species is

present in Oakville, staff is concerned that this change will lessen protection for this species and lead to its continued decline in Oakville and more broadly.

Due to timelines, town staff could not obtain Town of Oakville Council endorsement prior to the end of the ERO commenting period. These comments represent the opinion of town staff. This memo will be forwarded to Council for their information.

If there are any questions, please contact Oakville Planning Services.