

April 29, 2022

Planning Consultation
Provincial Planning Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON
M7A 2J3

Submitted via email to: planningconsultation@ontario.ca

Dear MMAH officials:

**RE: ERO #019-5284 and Proposal #22-MMAH006 – Proposed *Planning Act* Changes
(the proposed *More Home for Everyone Act*, 2022)**

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members across the Province. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. We are passionate and dedicated to ensuring the agri-food sector and our rural communities are included, consulted, and considered in any new and changing legislation that impacts the sustainability and growth of our farm businesses.

Ontario's diverse and innovative agri-food sector is a powerhouse for the Province – growing and producing more than 200 farm and food products, fuelling our rural communities and driving the provincial economy by generating more than 860,000 jobs and contributing over \$47 billion to Ontario's annual GDP. We are the leading agricultural advocate for Ontario farmers, their businesses and their communities. Decision-makers must never lose sight of this reality when making decisions about future agricultural land loss to development for population and employment growth.

The Ministry has already implemented these proposed changes to the *Planning Act*, with the *More Homes for Everyone Act*, 2022 receiving Royal Assent on April 14, 2022. Therefore, all of the discussed 'proposed' changes are already in effect. Regardless, OFA appreciates this opportunity to provide input to ERO #019-5284 and Proposal #22-MMAH006 on the changes to the *Planning Act*, as per Schedule 5 in the *More Homes for Everyone Act*.

Before providing comments concerning the changes, we must acknowledge that less than 5% of Ontario's land base can support agricultural production. Ontario's agricultural lands are a finite and shrinking resource. We cannot sustain continuing losses of agricultural land while maintaining our ability to produce food, fibre and fuel from this limited and declining agricultural land base. From 2011 to 2016, the Census of Agriculture indicated that Ontario lost 319,700 acres of Ontario farmland, equivalent to 175 acres of farmland per day. Further, between 2000 – 2017, southern Ontario lost more than 72,000 acres of prime agricultural land to Official Plan Amendments

approved for urban development.¹ Ontario is losing some of its most productive agricultural land to pressures for urbanization and growth enabled by provincial policies and tools. When agricultural land is developed, it is lost forever. If our Province plans to continue to grow and prosper, we must also have a plan to protect Ontario's position to produce food, fibre and fuel for the people of this Province and beyond.

Changes to the *Planning Act* and Ontario's land use planning policy framework must recognize that our agricultural areas provide us with food, fibre and fuel, and a broad range of environmental and ecological goods and services that benefit all residents in our Province. More robust protection against development on agricultural land combined with fixed, permanent urban and settlement area boundaries and mandatory compliance with urban density and intensification requirements would achieve objectives for sustainable community building and farmland protection for future generations. We emphasize that there is only one Ontario landscape. The full range of urban, rural, agricultural, natural heritage, cultural heritage, and mineral extraction land uses across the Province must coexist in the same space. Intensification of residential development within the existing urban footprint, in the context of complete and liveable communities, along with the distribution of economic development province-wide, addresses housing needs. Intensification will boost economic growth, create new jobs, provide new affordable housing options, support municipal infrastructure systems, ensure food security, and contribute to environmental stewardship.

Deferrals and Appeals to the Ontario Land Tribunal

New subsection 17 (40.1) to (40.1.3) – Official Plan Approvals – outlines rules respecting when the Minister, as the approval authority, can provide notice to suspend the period of time after which there may be appeals of the failure to make a decision in respect of a plan (i.e., a 'stop the clock' mechanism). As well, new subsections 17 (55) to (64) provide a process for the Minister as an approval authority to refer plans to the Ontario Land Tribunal (OLT) for a recommendation or decision.

Currently, no criteria are outlined for how the Minister would utilize this 'stop the clock' mechanism. OFA would like the requirements outlined for transparency in using this new mechanism. For instance, what is the qualifying length of time to have lapsed for the Minister to suspend the ability to appeal? Further, OFA would like clarity on the justification for these changes. The Minister already has the authority to approve, change, and render decisions on Official Plans, which cannot be appealed. OFA would like to ensure that with these newly legislated changes, the planning process is given an appropriate amount of time to be addressed at the municipal level, based on the complexity of the Official Plan Review or Official Plan Amendment.

OFA has concerns about the Ministerial authority to defer plans to the OLT for a decision, and questions how doing so would address priorities for provincial housing supply. The Affordable Housing Task Force Report² and the Office of the Auditor General of Ontario Value-for-Money Audit³ explain that the OLT is severely inundated with a backlog of appeals. Many appeals may not be meritorious or otherwise contribute to the supply of 'missing middle' higher-density housing

¹ Caldwell, Wayne, Sara Epp, Xiaoyuan Wan, Rachel Singer, Emma Drake, and Emily C. Sousa. "Farmland Preservation and Urban Expansion: Case Study of Southern Ontario, Canada." *Frontiers in Sustainable Food Systems* 6 (February 18, 2022): 777816. <https://doi.org/10.3389/fsufs.2022.777816>.

² Housing Affordability Task Force, and Ministry of Municipal Affairs and Housing. "Report of the Ontario Housing Affordability Task Force." Queen's Printer for Ontario, February 8, 2022. <https://files.ontario.ca/mmah-housing-affordability-task-force-report-en-2022-02-07-v2.pdf>.

³ Office of the Auditor General of Ontario. "Value for Money Audit: Land-Use Planning in the Greater Golden Horseshoe." Value-for-Money Audit. Ontario, 2021. https://auditor.on.ca/en/content/annualreports/arreports/en21/AR_LandUse_en21.pdf.

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built in existing settlements and urban boundaries. Specifically, to weed out or prevent appeals launched to delay projects and prioritize and assess appeals worthy of review, such as those which would increase housing quickly and sustainably. Delegating the decision to the OLT by the Minister is redundant as the Minister can already make plan decisions and approvals under existing authority in the *Planning Act*. Moreover, these decisions would only apply to a minimal subset of municipalities in Ontario, specifically those where the Minister has approval authority (i.e., upper-tier and single-tier Official Plans), therefore excluding all lower-tier Official Plans.

Additional Ministerial powers to defer the periods for appeals resulting from failure to make a planning decision is not enough to address the root challenges of our provincial housing supply. OFA is therefore concerned about this approach. This concern is heightened when considering that there are existing land-use planning policies rigorously designed and consulted on to achieve these objectives and matters of provincial interest, and yet every decision at the municipal level may be subjected to unworthy appeals. Too often, proponents depend on the OLT, a quasi-judicial body, to greenlight projects that the municipality should have approved and already conform to municipal requirements, like Official Plans and Zoning By-laws. As a result, the OLT currently faces a backlog of more than 1,000 cases and requires reform to prioritize cases that would increase the housing supply quickly. OFA sees a greater need to reform the OLT altogether.

For greater clarity, OFA respects the rights of citizens to launch appeals to the OLT based on processes and reasons outlined in the *Planning Act*. We support our members and other citizens in participating in the public planning process and providing their input. Ontario farmers increasingly need an appeal process for decisions that will impact agriculture, rendered by increasingly urbanizing municipalities whose councils may not apply an agricultural lens to their decision-making processes. However, we see an abuse of the OLT because of changes to the hearing formats, procedures, and legislation over the years, contributing to frustration amongst all parties in trying to achieve the best planning outcome. Ideally, one that conforms to the Provincial Policy Statement (PPS) and achieves objectives in balancing provincial interests, such as farmland protection and growth management. Concerning OLT reform, OFA offers the following comments:

OFA maintains its stance on limiting appeals to exclude municipal decisions that conform to the PPS, provincial plan, or other, preserving the end of de novo hearings as part of the OLT hearing format, and limiting hearings to those based on errors in law or procedures. We firmly believed then, and still do, that the sole role of the OLT is to determine if the decision under appeal is the "correct" decision, based on applicable laws and policies in Ontario's land use planning policy framework. Doing so otherwise would revert to a OLT hearing format that is too time-consuming, costly, and rendering decisions that are subjective and non-compliant with provincial policy. OFA also strongly opposes any return to de novo hearings. We recommend that decisions of OLT be based solely on conformity to the PPS, applicable provincial plan, or to a lower-tier Official Plan's conformity with its upper-tier policies.

Concerning cost awards in this recommended reform, OFA maintains its current position, which is that:

1. Cost awards are eliminated altogether, or if cost awards remain an option, that there be strict limits on these awards;
2. Procedural safeguards are in place to limit the circumstances that may give rise to costs, and;

3. If costs are awarded from a hearing, the claims for expenses incurred by the winning party are substantiated through studies, reports, or other forms of evidence submitted to the OLT during a hearing.

While costs are not automatically awarded to a successful party at the OLT, the winning party may put forward a motion to do so. They must prove that the appellant's conduct was unreasonable, frivolous, vexatious, or a party has acted in bad faith, such as deliberately attempting to delay a project. However, allocating cost awards has exposed farmers to risks in bringing cases involving agricultural land protection to the OLT (formerly Local Planning Appeal Tribunal and the Ontario Municipal Board). To protect Ontario's farmers as citizens who wish to appeal developments threatening the loss of farmland in their communities (as protected by the PPS), we urge that cost awards be stringently outlined in legislation, as recommended above.

Lastly, we continue recommending the provincial government reinstate the 'Local Planning Appeal Support Centre', or a format like its prior operations before its shutdown and provide it with the staff and financial resources to fulfil its intended role. OFA previously opposed this move as private citizens need information and guidance on how the OLT Hearing formats work, including necessary appeal-related documents and processes behind how an appeal is launched.

New Rules Respecting Municipally Refunded Application Fees

New subsections 34 (10.12) and 41 (11.1) provide rules respecting when municipalities are required to refund fees regarding Zoning By-law Amendments and Site Plan Control applications. It is understood that these new requirements to refund application fees may work to depoliticize the decision-making process around housing developments and legislate timelines for approvals to allow housing to be built more quickly and affordably. This measure may incentivize municipalities to reduce the time needed to issue decisions concerning development applications and hope to minimize project delays that impact a proposal's financial feasibility. We previously supported reduced timelines in proposed changes to the *Planning Act* due to Bill 108, *More Homes, More Choice*. We commented that these reduced timelines should leave ample time for municipal review and approval and citizen input while neither creating unnecessarily long review periods nor curtailing necessary citizen participation.

OFA supports streamlined development processes to get more 'missing middle' and higher-density housing built in existing settlement areas and urban boundaries more quickly if decisions conform to the PPS and Official Plan. However, we question the appropriateness of subjecting the public planning process to the likeliness of a 'timely pizza delivery guarantee' to do so. Under the current proposed changes, it is unclear how such mandated timelines and refund schedules will ensure good planning decisions that evaluate and justify the best of community interests without fear of penalty. These changes will only undermine public confidence and trust in the planning process and take needed money and resources out of the municipal planning approval process.

The Housing Affordability Task Force Report⁴ noted the increasingly politicized planning decision-making process at the municipal level, often fuelled by NIMBYism ('Not In My Backyard') opposition from residents against higher density housing and local councillors dependent on votes

⁴ Housing Affordability Task Force, and Ministry of Municipal Affairs and Housing. "Report of the Ontario Housing Affordability Task Force." Queen's Printer for Ontario, February 8, 2022. <https://files.ontario.ca/mmah-housing-affordability-task-force-report-en-2022-02-07-v2.pdf>.

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of residents determined to maintain the status quo. The threat of partially refunding application fees if a decision is not made may lead municipal councils to characterize decision-making with a risk-aversion strategy – such as where applications are quickly approved or denied based on local opposition without proper consideration for the public interest or where a municipality has refused an approval to avoid missing a legislated deadline. These strategies have characterized municipal decision-making around housing so far. Without further measures, municipal decision-makers may further maintain the status quo – further lagging approval timelines, introducing more traffic at the OLT, and limiting the efficient and quality construction of the higher density and mix of housing projects.

OFA recommends that legislated fee refund schedules as part of development approval timelines coincide with mandated province-wide, higher transit-supportive urban density and intensification targets for proposed residential developments. Mandating higher density and intensification requirements and timelines would better utilize existing infrastructure and reduce demand on vital agricultural land resources for housing developments. These mandated requirements would further incentivize municipalities to make planning decisions that increase density and create more housing quickly, affordably, and efficiently without getting lost in the politics of NIMBYism.

Municipal Parameters for a Minister's Zoning Order

An additional type of Minister's Order is added to the *Planning Act* in section 34.1. This 'Order' is referred to as the Community Infrastructure and Housing Accelerator (CIHA) in most consultation documents. The Minister makes these Orders (i.e., Minister's Zoning Order or 'MZO') at the request of a municipality. This section sets out the process and rules respecting such Orders, including the guidelines that would need to be in place before the Minister could issue an order and the criteria that the Minister can only issue Orders outside the Greenbelt Area. These proposed changes effectively bring the 'unwritten rules' that the Ford Administration has been using when issuing MZOs over recent years into legislation. The current MZO legislation found in Section 47 of the *Planning Act* is proposed to remain intact. The power under Section 47 is still available to the Minister to continue to issue MZOs unprecedentedly, as this provincial government has unjustifiably done.

OFA has continuously emphasized our opposition to the frequent use of MZOs in areas where there is already a robust planning process. We have requested the Minister's support in deterring the use of MZOs for municipalities with well-developed, Ministry-approved Official Plans and Zoning By-laws.

These changes now put municipalities in the driver's seat; however, the actual issuing of the MZO resides with the Minister. These changes provide the legislated opportunity for municipal endorsement (and requests) for an MZO and the need to give notice and consult with local citizens before requesting an Order from the Minister. OFA believes providing advanced public notice for MZOs, and any amendments to them are important. However, while we view this additional power and autonomy legislated to municipalities as positive, MZOs are still proliferating amongst this government to fast-track development at the expense of good planning outcomes and disregard for matters of provincial interest. The continuous unprecedented use of MZOs is a significant threat that will result in the permanent loss of farmland to development – regardless of whom they may be issued or requested by.

The provincial land use planning policy framework, such as the PPS (2020) and the Growth Plan for the Greater Golden Horseshoe work together to support the government's objectives to increase housing choices. An existing range of tools, including financial, regulatory, and policy,

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also support this land use policy framework. Many municipalities in southern Ontario already have rigorously designed and implemented Official Plans and Zoning By-laws informed by community input. If municipalities desire quick and efficient change to these policies, then there are existing tools and processes in place to do so. Examples include the Official Plan Review, Official Plan Amendments, Zoning By-law Amendments, Community Planning Permit System by-laws, inclusionary zoning, incentives within development charges by-laws, addressing issues with municipal capacity at the provincial level, and more. OFA recommends using these existing tools, policies, and processes to manage the housing situation, which must pursue responsible planning outcomes and contribute to developing complete, dense, and transit-supportive communities.

Lastly, the provision that the Minister cannot issue these Orders in the Greenbelt Area is a piecemeal approach to farmland and environmental protections. Irrespective of excluding these Orders from the Greenbelt area, areas outside the Greenbelt boundary are under intense pressure for residential development. These pressures are only exacerbated by tools such as MZOs. The current system results in a cumulative loss of agricultural lands by prioritizing development and growth over farmland preservation.

We urge the provincial government to implement changes to the *Planning Act* that fully reflect that growth management and farmland protection are two sides of the same coin. More robust protection against development on agricultural land combined with fixed, permanent urban boundaries and mandatory compliance with urban density and intensification requirements would achieve both community development and farmland protection objectives. We emphasize that there is only one Ontario landscape. The full range of urban, rural, agricultural, natural heritage, cultural heritage, and mineral extraction land uses across the provincial landscape must coexist in the same space. Intensification of residential development within the existing urban footprint, in the context of complete and liveable communities, along with the distribution of economic development province-wide, addresses housing needs. Intensification will boost economic growth, create new jobs, provide new affordable housing options, support municipal infrastructure systems, ensure food security, and contribute to environmental stewardship.

We know there are existing opportunities in Ontario's land-use planning system to streamline and encourage responsible development, which can clearly outline provincial and municipal goals and will not be open to interpretation or lengthy reviews and appeals. These opportunities will reduce red tape, satisfy our need for sustainably built housing, and attract economic investment. Agriculture and agri-food businesses must be able to invest in their operations and diversify their products with confidence that farmlands will be available. Ontario farmers cannot do so if MZOs as draconian tools are continuously used to pave over our farmlands. Their ability to feed our province and economy relies on knowing that encroaching development will be limited and not hinder their ability to farm and remain viable into the future.

Community Benefit Charges

New subsections 37 (54) to (59) require regular reviews of Community Benefit Charges by-laws and provide rules respecting such reviews. OFA supports changes to proposed amendments to Section 37 of the *Planning Act*, which deals with Community Benefit Charges. Requiring municipalities to review their Community Benefit by-laws and consult the public as part of that review at least once every five years will increase transparency and strengthen local by-laws.

Community Benefit Charges are an important tool to help municipalities recover development-related costs that Development Charges do not capture. Applying Community Benefit Charges

would lessen the burden on local property taxpayers who are left covering residual development-related costs that are not fully covered by Development Charges.

Given that Community Benefits Charges, much like Development Charges, are intended to cover the capital costs associated with development and that farm buildings/structures do not contribute to such capital costs, OFA requests that farm buildings/structures be exempt from all Community Benefits Charges.

Site Plan Control

Several amendments are made to section 41 – Site Plan Control Area. Site Plan Control is an optional tool under the *Planning Act* that allows the council of a local municipality to control certain matters on and around a site proposed for development. This control over detailed site-specific matters, such as access, lighting, waste facilities, landscaping, drainage, and exterior design, ensures that a development proposal is appropriately planned and designed, fits in with the surrounding uses and minimizes any negative impacts.

The new subsection (4.0.1) requires an authorized staff member with trained expertise, by the municipal council, as the approval authority for subsection (4). Site Plan applications and decision-making are highly technical and require leveraging knowledge and collaboration amongst municipal departments (e.g., planning, engineering, public works, landscape architecture, building, and urban design). Under the *Planning Act*, Site Plan Control is meant to be a technical review of the external features of a building. Delegating approvals to municipal staff experts in their craft will streamline Site Plan approvals. OFA firmly believes that Site Plan Control is an area best left to those with this type of expertise at the municipal level and supports these proposed changes.

While the delegation of Site Plan approval authority to municipal staff should speed up the planning process in theory, OFA wants the Ministry to recognize that implementation may challenge rural municipalities. OFA worries these changes will disproportionately impact rural communities that may not have the municipal capacity to adopt these proposed changes, such as not having the available staff resources or expertise to delegate approval authority. Many of Ontario's rural municipalities have only one (1), half (0.5), or no (0) planners on staff.⁵ In these cases, municipal councils would lead the site plan process themselves or subject all applications to a Zoning By-Law Amendment if the use is not permitted as of right. This process is much more time- and cost-intensive, is open to public consultation, and is still subject to appeals – adding as many as 18 or more months to the approval process.⁶ In these instances, municipalities will revert to square one when attempting to streamline planning approvals. In contrast, Site Plan Control is informed by expertise, can be simplified, scoped to fit the context of the property, and is only appealable by the applicant. OFA wants all municipalities to be able to take full advantage of the Site Plan process.

Municipalities may update their Zoning By-laws to be more permissive and progressive when permitting higher-density and transit-supportive housing options as-of-right and then subject these applications to a streamlined Site Plan Control process. However, many rural municipalities,

⁵ Caldwell, Wayne, Elise Geschiere, Emily Sousa, and Regan Zink. "Municipal Capacity: A Case Study of Ontario's Greenbelt to Respond to Emerging Agriculture and Agri-Food Priorities." *International Journal of Environmental Impacts: Management, Mitigation and Recovery* 4, no. 3 (July 28, 2021): 243–61. <https://doi.org/10.2495/EI-V4-N3-243-261>.

⁶ Ontario Professional Planners Institute (OPPI). "OPPI's Top 10 Housing Supply & Affordability Recommendations," February 10, 2022. https://ontarioplanners.ca/OPPIAssets/Documents/Policy-Papers/OPPI-Top-10-Housing-Supply-and-Affordability-Recommendations.pdf?fbclid=IwAR2mFhW1OyGZxiRK7stqoNB1b7au6LATqGgDXOwZGxOcnyakeH5_87enlxs.

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particularly at the lower-tier level, have outdated Zoning By-laws as they lack the resourcing to update policies to conform to new policy changes at the upper-tier and provincial levels. As a result, OFA worries rural municipalities will be left behind in the provincial legislative push for more housing as they continuously try to 'catch up' on the legislative and policy treadmill. We urge the Ministry to ensure any further changes to support housing at the provincial level have been analyzed from and reflect a rural-municipal perspective and that the necessary supports, such as additional time, funding, training, and expertise, are provided to municipalities to enable them to utilize these legislative tools to their benefit.

Section 41 of the *Planning Act* provides authority for a municipality to designate specific areas within municipal boundaries as an area of "Site Plan Control." OFA urges the Province and municipal counterparts to continue exempting agricultural uses, buildings, and structures from designated Site Plan Control areas. We also suggest agriculture-related *uses* and *on-farm diversified uses* be subjected to a streamlined Site Plan Control process with scaled back fees and requirements at the municipal level. All Site Plan Control processes should be appropriate for the agricultural area; the procedure and conditions must be designed with a rural and agricultural lens suited for the property. We encourage the Province to guide municipalities to design and implement a streamlined Site Plan process appropriate for the development in question at the municipal level.

Plan of Subdivision Approvals

New rules are added to section 51 – Plan of Subdivision Approvals – which establishes the Minister's regulation-making authority to prescribe what cannot be required as a condition of subdivision approval. Agricultural Impact Assessments (AIAs) are currently required to expand a municipal settlement area boundary within the Growth Plan Area. OFA firmly believes in the widespread use of AIAs. As studies, AIAs identify opportunities to increase compatibility between agricultural and non-agricultural uses by looking for ways to avoid, minimize, then mitigate adverse impacts on agricultural operations and the Agricultural System.

AIAs will help us plan for 'farm-friendly' urban development that promotes compatibility at the urban-agricultural interface. Subdivision plan design offers opportunities to improve compatibility between agriculture and residential development. For example, parcel size, configuration, building setbacks, road patterns, institutional locations, drainage patterns and location of municipal servicing will all have implications for agriculture. Informed by the recommendations outlined in an AIA, subdivision plan design as a tool can achieve site and building design layouts that will avoid, minimize, and mitigate potential land-use conflicts. These tools will ensure that *agricultural uses* continue and *normal farm practices* are protected.

OFA believes that existing provincial policy requirements, such as mandated AIAs, must continue to apply to settlement area expansions. We encourage greater use of this crucial resource in the future, including in plans of subdivision approvals. We urge the Minister to recognize the evidence-based advice outlined in AIAs and ensure the measures and recommendations are included in the conditions for subdivision approval. We look forward to seeing province-wide implementation and widespread use of AIAs as we work to address the growth of our Province's housing supply while also enabling a thriving agri-food sector.

OFA appreciates the opportunity to provide our feedback and agricultural perspectives on the proposed changes to the *Planning Act*. We look forward to working with the provincial government and our municipal counterparts to grow our Province's housing supply and communities

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sustainably. We must ensure that any future changes to Ontario's land use planning policy framework protect our agricultural land base and support our agri-food sector as an economic powerhouse.

Sincerely,



Peggy Brekveld
President

cc: The Honourable Steve Clark, Minister of Municipal Affairs and Housing
The Honourable Lisa Thompson, Minister of Agriculture, Food, and Rural Affairs
OFA Board of Directors