

March 28, 2022

DELIVERED VIA EMAIL

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Re: Draft Low Impact Development Stormwater Management Guidance Manual (ERO Number: 019-4971)

Canadian Environmental Law Association (“CELA”) provides the following brief comments in response to the proposed Low Impact Development Stormwater Management Guidance Manual (the “Guidance Manual”).

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.

In 2017, CELA and Green Infrastructure Ontario Coalition provided comments in response to the proposal to develop a Low Impact Development Stormwater Management Guidance Manual (ERO Number: 012-9080). The following comments and recommendations build upon our response to that prior proposal¹.

B. Analysis of Low Impact Development Stormwater Management Guidance Manual

(i) Low Impact Development Stormwater Management - Generally

CELA continues to support the shift away from conventional stormwater management practices in Ontario towards an approach designed to control and treat precipitation where it falls. Our

¹ See CELA’s comments in response to the Low Impact Stormwater Management Guidance Manual (ERO Number: 012-9080) (2017), online: https://cela.ca/wp-content/uploads/2019/07/GIO-CELA-runoff-volume-control_0.pdf

support for this approach rests on our understanding of the profound hydrological transformation that has occurred as a result of urbanization, a long list of damaging impacts, and the need for corrective action.

This approach is also consistent with established policy direction that has been in place for decades in this province. For example, the *Great Lakes Protection Act, 2015*, “enshrines”² Ontario's *Great Lakes Strategy*³, which contains numerous references to the need for green infrastructure to protect Great Lakes water quality, and recommendations for implementation, including:

- seeking environmental considerations such as use of low impact development and use of green infrastructure early in municipal planning decisions, so that stormwater is considered as part of project design and approvals, not after the fact;
- promoting innovative and cost-effective approaches for managing nutrients in wastewater and stormwater (including green infrastructure and low impact development); and
- encouraging industrial practices that minimize water consumption, recycle water, use reclaimed wastewater or stormwater for business operations or processing, and apply low impact development to stormwater management. (e.g., permeable pavement in parking lots).

Similarly, the *2021 Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health*⁴ pledges Ontario to:

- update wastewater policies, including policies specific to treatment requirements, sewage overflows and bypasses, and develop a new stormwater management policy to enhance environmental protection and reduce nutrient loadings;
- work with developers, municipalities, conservation authorities and others to promote and support the use of green infrastructure and low impact development systems for stormwater management, including clarifying and enhancing policies; and
- support studies that improve understanding of the correlation between phosphorus load reduction and implementation of green infrastructure and low impact development.

CELA believes the Guidance Manual outlines a necessary shift in stormwater management practice that mandates the protection of natural systems through better site design and systematic implementation of low impact development (“LID”) in new development and redevelopments in Ontario. However, CELA has reviewed the Guidance Manual from a public interest perspective

² *Great Lakes Protection Act, 2015*, SO 2015, c 24 at s 5 [*Great Lakes Protection Act*].

³ Ministry of the Environment, Conservation and Parks, “Ontario’s Great Lakes Strategy” (2016), online: <https://www.ontario.ca/page/ontarios-great-lakes-strategy>

⁴ *Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health, 2021* (2021), online: <https://files.ontario.ca/mecp-coa-great-lakes-en-2021-05-26.pdf>

and makes the following comments and recommendations to the Ministry of Environment, Conservation and Parks (“Ministry”).

ii. A Consistent, Watershed-Based Planning Approach is Required in Land-Use Planning Documents

On January 27, 2022, the Ministry posted three related policy proposals on the Environmental Registry of Ontario:

- Subwatershed Planning Guide (ERO Number: 019-4978)⁵
- Low Impact Development Stormwater Management Guidance Manual (ERO Number: 019-4971)⁶
- Municipal Wastewater and Stormwater Management in Ontario Discussion Paper (ERO Number: 019-4967)⁷

All three of these proposals deal with land-use planning in Ontario as it relates to water, wastewater and stormwater management, drinking water source protection and climate change resilience. However, CELA submits they are inconsistent in their overall approach and fail to apply a consistent planning scale.

For example, the Subwatershed Planning Guide states that “[w]atershed planning, where undertaken, may inform subwatershed planning.”⁸ In contrast, the Guidance Manual states the following about watershed and subwatershed plans:

Watershed planning is an effective tool to ensure that stormwater management solutions are based on an appropriate scale and consider cumulative effects of urbanization and growth. As outlined in the 2003 Stormwater Manual, watershed planning should inform environmentally sound land use and infrastructure decision-making within the context of municipal planning and growth management.⁹

To ensure successful integrated watershed management in Ontario, CELA submits that LID must *always* be informed by subwatershed planning, which in turn must always be informed by watershed planning at a larger scale. CELA **recommends** the Ontario government demonstrate its commitment to fully implementing integrated watershed management in the province by taking our comments and others received to date into account and re-posting the Subwatershed Planning Guide and Guidance Manual for further consultation. We also re-iterate our **recommendation** that

⁵ <https://ero.ontario.ca/notice/019-4978>

⁶ <https://ero.ontario.ca/notice/019-4971>

⁷ <https://ero.ontario.ca/notice/019-4978>

⁸ Draft Subwatershed Planning Guide at p 8 [emphasis added].

⁹ Low Impact Development Stormwater Management Guidance Manual at p 42 [emphasis added].

the Ministry re-post an updated version of the Watershed Planning Guidance document from 2018.¹⁰

RECOMMENDATION NO. 1: Taking into account comments and recommendations received, the Ministry should re-post an updated Subwatershed Planning Guide, Guidance Manual, and Watershed Planning Guidance document for further consultation.

iii. MECP Must Apply an Equity Lens in the Guidance Manual

As CELA has noted in previous submissions, land use planning decisions have and continue to play a role in creating and perpetuating discriminatory practices against low-income, vulnerable, and disadvantaged communities.¹¹

In its report on environmental racism in Canada, the Canadian Commission for UNESCO highlights that the failure of provinces to look at land use decisions through an equity lens helps to perpetuate inequity by lowering property values and forcing low-income, vulnerable and disadvantaged communities to remain in or move into highly polluted areas.¹² A recent report published by the City of Edmonton similarly concludes that various planning policies have been or can be discriminatory, as they produce deeply inequitable outcomes for different population groups, such as low-income communities.¹³ The report confirms that “establishing and propagating equity, and making cities inclusive, are fundamental tasks in planning.”¹⁴

While contaminated stormwater poses risks for everyone, “some communities are at greater risk because of past and current discrimination that has led to residential segregation, disinvestment, and lack of political power to shape land-use and stormwater management decisions. The result is that these neighborhoods are often paved-over and lacking in green spaces that could absorb stormwater and filter contaminated urban runoff.”¹⁵

CELA submits LID offers opportunities to address inequities through improving water quality by better managing stormwater and enhancing outdoor green spaces. A recent study on the public health impacts of green infrastructure in Ontario found that the “application of productive and publicly accessible green infrastructure is a climate change and public health intervention that can

¹⁰ See CELA’s Submission in response to the Draft Subwatershed Planning Guide (2022), online: <https://cela.ca/wp-content/uploads/2022/03/CELA-Submission-Subwatershed-Planning-Guide-ERO-Number-019-4978.pdf>

¹¹ CELA’s submission in response to Ontario’s Land Use Compatibility Guideline (2021), online: https://cela.ca/wp-content/uploads/2021/06/CELA_Submission_Land_Use_Compatibility_Guideline.pdf.

¹² See also Canadian Commission for UNESCO, “Environmental Racism in Canada” (2020) at pp 2-3.

¹³ City of Edmonton, Edmonton’s Zoning ByLaw Under the Lens of Equity” (2021) online:

https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/ZoningBylaw_ThroughLensofEquity_Report.pdf at p 18.

¹⁴ *Ibid.*

¹⁵ Manal J Aboelata and Elva Yañez, “Stormwater Management is an Equity Issue” (2021), online: <https://meetingoftheminds.org/stormwater-management-is-an-equity-issue-33258>.

moderate harms and capitalize upon beneficial opportunities for vulnerable populations who are disproportionately affected by the changing climate.”¹⁶

At the same time, LID also has the potential to result in the dispossession and displacement of low-income, vulnerable and disadvantaged communities—a phenomenon known as “green gentrification.” For example, East Boston—a historically working-class Latino and Italian neighborhood—has recently been subject to a number of green infrastructure projects which are meant to buffer against sea level rise and flooding. Unfortunately, this has meant the interests of socially vulnerable groups and racial/ethnic minorities have been deprioritized as they face displacement and physical insecurity.¹⁷

Given the potential of LID to significantly either benefit or harm low-income, vulnerable and disadvantaged communities depending on how it is carried out, CELA submits it is critical to consider equity and environmental justice when making decisions about green infrastructure and LID.

Unfortunately, despite the need for planning policies that explicitly aim to ameliorate inequities, the Guidance Manual fails to look at LID through an equity lens. Without any explicit guidance, contaminated stormwater and poorly planned LID projects will continue to have disproportionate effects on low-income, vulnerable and disadvantaged communities.

CELA **recommends** that an equity lens be applied when MECP is reviewing all existing policies and crafting new ones, such as the Guidance Manual. While there is no one clear definition of equity, “many scholars agree that equity stands for the justice and fair treatment of individuals in society regardless of their social, economic, and political placements in the community.”¹⁸ This means the Guidance Manual, and all other MECP policies, must be crafted in such a way that it does not lead to differential treatment, hardship, or disadvantage to some populations.

RECOMMENDATION NO. 2: The Ministry should apply an equity lens in the Guidance Manual.

¹⁶ Vidya Anderson, William A Gough and Branka Agic, “Nature-Based Equity: Public Health Impacts of Green Infrastructure in Ontario Canada” (2021) 18:11 Int J Environ Res Public Health 5763.

¹⁷ Isabelle Anguelovski et al, “Opinion: Why green “climate gentrification” threatens poor and vulnerable populations” (2019) 116:52 Proc Natl Acad Sci USA 26139.

¹⁸ City of Edmonton, Edmonton’s Zoning ByLaw Under the Lens of Equity” (2021) online: https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/ZoningBylaw_ThroughLensofEquity_Report.pdf at p 14.

iv. *Low Impact Development Must be Informed by Subwatershed and Watershed Planning*

The Guidance Manual states “[t]his Manual is intended be read in conjunction with the 2003 Stormwater Management Planning and Design Manual and the 2008 Design Guidelines for Sewage Works.”¹⁹ CELA **recommends** addition of the following:

- the *Great Lakes Protection Act*, as it 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 Act²⁰; and
- the Subwatershed Planning Guide.

As noted above, LID must always be informed by subwatershed and watershed planning. The Guidance Manual does recognize that “[w]atershed planning is an effective tool to ensure that stormwater management solutions are based on an appropriate scale and consider cumulative effects of urbanization and growth” and states that “watershed planning should inform environmentally sound land use and infrastructure decision-making within the context of municipal planning and growth management.”²¹ To this end, CELA again **recommends** the Ministry re-post an updated version of the Watershed Planning Guidance document from 2018 on the ERO and that the Guidance Manual also be read in conjunction with this key planning document.²²

RECOMMENDATION NO. 3: The Guidance Manual should explicitly recognize the *Great Lakes Protection Act* and the Subwatershed Planning Guide in its assessment of the policy context for LID.

RECOMMENDATION NO. 4: The Ministry should update and release new Watershed Planning Guidance for further consultation, and this Guidance should inform the policy context for LID in the Guidance Manual.

v. *Adequate Funding and Resources*

CELA submits that all authorities responsible for the development and implementation of LID (including municipalities, developers, builders, Indigenous communities, members of the public, and others) must be provided with adequate resources (including funding or funding tools,

¹⁹ Low Impact Development Stormwater Management Guidance Manual at p i.

²⁰ *Great Lakes Protection Act*.

²¹ Low Impact Development Stormwater Management Guidance Manual at p 42 [emphasis added].

²² See CELA’s Submission in response to the Draft Subwatershed Planning Guide (2022), online: <https://cela.ca/wp-content/uploads/2022/03/CELA-Submission-Subwatershed-Planning-Guide-ERO-Number-019-4978.pdf>.

education, capacity development, technical expertise and training, etc.) to match those responsibilities and allow them to be carried out.

A report prepared by the University of Guelph about LID stormwater management in the Muskoka Watershed found that lack of public participation and understanding was identified as a major barrier for LID. The authors note:

Regardless of the economic incentives used to encourage LID implementation, if communities have limited experience with LID technologies, professional training, education and design, adoption will be difficult (Roy et al., 2008). Roy et al. (2006) and Thurston et al. (2010) note the potential of the general public, specifically homeowners, in which they can significantly influence the implementation of LID.²³

For example, the City of Lincoln developed a community-based program for public empowerment, participation and education in LID, and, after two years, opinion polls illustrated significant increases in the number of citizens who both understood issues pertaining to degraded surface water and had increased interest in incorporating LID on their property.²⁴

It is clear that gaining acceptance and momentum from all stakeholders is imperative for the widespread approval and implementation of LID. As such, we **recommend** the Guidance Manual provide more information and guidance about where the above-mentioned resources will come from.

Conservation Authorities are leaders in LID and have a long history of working in partnership with municipalities, provincial ministries, and many other stakeholders to manage Ontario's water resources. As such, CELA **recommends** that Conservation Authorities should play an active role in training, education and outreach related to LID and LID best management practices.

RECOMMENDATION NO. 5: Provide more information about the funding and resources that will be provided to assist those responsible for the development and implementation of LID.

RECOMMENDATION NO. 6: Conservation Authorities should play an active role in training, education and outreach related to LID and LID best management practices.

²³ University of Guelph, "Low Impact Development Stormwater Management in the Muskoka Watershed" (2011), online: <https://www.muskokawatershed.org/wp-content/uploads/2011/12/LID-April20111.pdf> at 48.

²⁴ *Ibid* at 48-49.

vi. Periodic Updates are Required

LID technologies and best management practices are constantly evolving. Therefore, CELA **recommends** that there be regular, periodic reviews and updates of the Guidance Manual based on new technologies, models, and approaches, and evaluation of the effectiveness of LID over time.

RECOMMENDATION NO. 7: There should be regular, periodic reviews and updates of the Guidance Manual based on new technologies, models, and approaches, and evaluation of the effectiveness of LID over time.

C. Summary of Recommendations and Conclusion

In summary, CELA makes the following recommendations to the Ministry:

RECOMMENDATION NO. 1: Taking into account comments and recommendations received, the Ministry should re-post an updated Subwatershed Planning Guide, Guidance Manual, and Watershed Planning Guidance document for further consultation.

RECOMMENDATION NO. 2: The Ministry should apply an equity lens in the Guidance Manual.

RECOMMENDATION NO. 3: The Guidance Manual should explicitly recognize the *Great Lakes Protection Act* and the Subwatershed Planning Guide in its assessment of the policy context for LID.

RECOMMENDATION NO. 4: The Ministry should update and release new Watershed Planning Guidance for further consultation, and this Guidance should inform the policy context for LID in the Guidance Manual.

RECOMMENDATION NO. 5: Provide more information about the funding and resources that will be provided to assist those responsible for the development and implementation of LID.

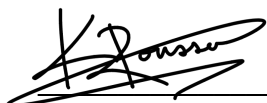
RECOMMENDATION NO. 6: Conservation Authorities should play an active role in training, education and outreach related to LID and LID best management practices.

RECOMMENDATION NO. 7: There should be regular, periodic reviews and updates of the Guidance Manual based on new technologies, models, and approaches, and evaluation of the effectiveness of LID over time.

Thank you for the opportunity to comment on the Guidance Manual. 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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