

HAMILTON CONSERVATION AUTHORITY POLICIES AND PROCEDURES FOR PLAN REVIEW AND PERMITTING ACTIVITIES

(July 6, 2011)

The intent of this chapter is to describe the roles of Conservation Authorities (CAs) in the areas of municipal planning, plan review, and Conservation Authorities Act S. 28 permitting related to development activity and natural hazard prevention and management and the protection of environmental interests.

PART A - BACKGROUND

1.0 DESCRIPTION OF CONSERVATION AUTHORITY ROLES AND ACTIVITIES

Conservation Authorities (CAs) are corporate bodies created through legislation by the province at the request of two or more municipalities in accordance with the requirements of the *Conservation Authorities Act (CA Act)*. Each CA is governed by the CA Act and by a Board of Directors whose members are appointed by participating municipalities located within a common watershed within the CA jurisdiction. CA Board composition is determined by the CA Act according to the proportion of the population from participating municipalities within the watershed.

Section 20 of the *CA Act* sets out the objects for CAs to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.

Section 21 of the *CA Act* outlines the powers of CAs including the power to establish watershed-based resource management programs and/or policies and the power to charge fees for services, the services for which are approved by the Minister of Natural Resources. The fundamental provincial role for all CAs focuses on water related natural hazard prevention and management and includes flood and erosion control. CAs may undertake the following roles and activities:

- i. Regulatory Authorities- Under Section 28 of the CA Act, subject to the approval of the Minister of Natural Resources and in conformity with the Provincial Regulation 97/04 governing the content, CAs may make regulations applicable to the area under its jurisdiction to prohibit, restrict, regulate or give required permission for certain activities in and adjacent to watercourses (including valley lands), wetlands, shorelines of inland lakes and the Great Lakes-St. Lawrence River System and other hazardous lands
- ii. Delegated 'Provincial Interest' in Plan Review- As outlined in the Conservation Ontario/ Ministry of Natural Resources (MNR) /Ministry of Municipal Affairs and Housing (MMAH) Memorandum of Understanding (MOU) on CA Delegated

Responsibilities (Appendix 1), CAs have been delegated responsibilities from the Minister of Natural Resources to represent the provincial interests regarding natural hazards encompassed by Section 3.1 of the *Provincial Policy Statement, 2005 (PPS, 2005)*. These delegated responsibilities require CAs to review and provide comments on municipal policy documents (Official Plans and comprehensive zoning by-laws) and applications submitted pursuant to the *Planning Act* as part of the Provincial One-Window Plan Review Service.

- iii. Resource Management Agencies- In accordance with Section 20 and 21 of the CA Act, CAs are local watershed-based natural resource management agencies that develop programs that reflect local resource management needs within their jurisdiction. Such programs and/or policies are approved by the CA Board of Directors and may be funded from a variety of sources including municipal levies, fees for services, provincial and/or federal grants and self-generated revenue.
- iv. Public Commenting Bodies- Pursuant to the *Planning Act*, CAs are 'public commenting bodies', and as such are to be notified of municipal policy documents and planning and development applications. CAs may comment as per their Board approved policies as local resource management agencies to the municipality or planning approval authority on these documents and applications.

CAs may also be identified as commenting bodies under other Acts and Provincial Plans.

- v. Service Providers- Individual CAs may enter into service agreements with federal and provincial ministries and municipalities to undertake regulatory or approval responsibilities and/or reviews (e.g. reviews under the *Fisheries Act* Section 35; septic system approvals under the Ontario Building Code).

CAs may also perform a technical advisory role to municipalities as determined under the terms of service agreements. These services may include, matters related to policy input and advice, the assessment or analysis of water quality and quantity, environmental impacts, watershed science and technical expertise associated with activities near or in the vicinity of sensitive natural features, hydrogeology and storm water studies.

- vi. Landowners- CAs are landowners, and as such, may become involved in the planning and development process, either as an adjacent landowner or as a proponent. Planning Service Agreements with municipalities have anticipated that as CAs are also landowners this may lead to a conflict with the CA technical advisory role to municipalities. This potential conflict of interest is addressed by establishing a mechanism for either party to identify a conflict and implement an alternative review mechanism as necessary.

2.0 LEGISLATION

2.1 *Conservation Authorities Act*

2.1.1 Section 20 of the *CA Act* describes the objects of a CA, which are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development, and management of natural resources other than gas, oil, coal, and minerals.

2.1.2 Section 21 of the *CA Act* lists the powers which CAs have for the purpose of accomplishing their objects. The objects identified in the *CA Act* relevant to this chapter include:

- (a) to study and investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed;
 - (e) to purchase or acquire any personal property that it may require and sell or otherwise deal therewith;
 - (l) to use lands that are owned or controlled by the authority for purposes, not inconsistent with its objects, as it considers proper;
 - (m) to use lands owned or controlled by the authority for park or other recreational purposes, and to erect, or permit to be erected, buildings, booths and facilities for such purposes and to make charges for admission thereto and the use thereof;
 - (m.1) to charge fees for services approved by the Minister (see Policies and Procedures manual chapter on CA fees);
 - (n) to collaborate and enter into agreements with ministries and agencies of government, municipal councils, local boards and other organizations;
 - (p) to cause research to be done;
 - (q) generally to do all such acts as are necessary for the due carrying out of any project
- R.S.O. 1990, c. C.27, s. 21; 1996, c. 1, Sched. M, s. 44 (1, 2); 1998, c. 18, Sched. I, s. 11.

2.1.3 Pursuant to Section 28 (1) of the *CA Act* and in accordance with Ontario Regulation (O. Reg.) 97/04 "Content of Conservation Authority Regulations under Subsection 28(1) of the Act: Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses" (i.e. Generic or Content Regulation), "*subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction,*

(b) prohibiting, regulating or requiring the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;

(c) prohibiting, regulating, or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

2.1.4 Section 28 (25) of the *CA Act* defines development as meaning:

- the construction, reconstruction, erection, or placing of a building or structure of any kind
- any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure
- site grading
- the temporary or permanent placing, dumping, or removal of any material originating on the site or elsewhere

Note: This definition for “development” differs from the definition that is contained in the *PPS, 2005* (see Section 2.2.5). The relevant definition needs to be applied to the appropriate process.

PART B - Policy

3.0 General

3.1 The Hamilton Conservation Authority (HCA) has been delegated responsibility to review municipal policy documents and applications under the *Planning Act* to ensure that they are consistent with the natural hazards policies Section 3.1 of the *Provincial Policy Statement (PPS), 2005*. The HCA has not been delegated responsibilities to represent or define other provincial interests on behalf of the Province under the *Planning Act*, the *PPS, 2005* or other provincial legislation (e.g. *Endangered Species Act, 2007*) or provincial plans (e.g. Greenbelt Plan, etc.).

3.2 Under the CO/MNR/MMAH MOU on CA Delegated Responsibilities, the HCA has a commenting role in approval of new or amended ‘Special Policy Areas’ for flood plains under Section 3.1.3 of the *PPS*, where such designations are feasible. Special Policy Areas (SPAs) are areas within flood plain boundaries of a watercourse where exceptions to the development restrictions of the natural hazards policy (3.1) in the *Provincial Policy Statement (PPS), 2005*, may be permitted in accordance with technical criteria established by the MNR.

The HCA provides supportive background and technical data regarding existing and proposed SPAs. New SPAs and any proposed changes or deletions to existing boundaries and/or policies are approved by both the Ministers of Natural Resources and Municipal Affairs and Housing, with advice from HCA, prior to being designated by a municipality or planning approval authority.

3.3 The HCA is considered a public commenting body pursuant to Section 1 of the *Planning Act* and regulations made under the *Planning Act*. As such, The HCA must be notified of municipal policy documents and applications within its jurisdiction as prescribed. To streamline this process, the HCA has screening protocols with its watershed municipalities, normally through service agreements, which identifies those applications that the HCA should review.

3.4 In addition to the HCAs' legislative requirements and mandated responsibilities under the CA Act, Section 28 Regulations as regulatory authorities, and Section 3.1 of the PPS as delegated plan reviewers for provincial interest, the HCAs' role as a watershed-based, resource management agency also allows the HCA to review municipal policies, planning documents and applications pursuant to the *Planning Act* as a 'public commenting body' as outlined in the CO/MNR/MMAH MOU on CA Delegated Responsibilities (see appendices).

3.5 In some cases, provincial plan (e.g. Greenbelt Plan; Niagara Escarpment Plan) requirements may exceed HCA regulatory requirements and such greater requirements take precedence. For example, the provincial plans may have greater requirements for vegetation buffers or more restrictions on the uses permitted than HCA regulatory requirements.

A typical requirement of the legislation for those plans is that comments, submissions, or advice provided by the HCA, that affect a planning matter within those areas, shall conform to the provincial plan. Similarly, where there are regulations (including *CA Act* Section 28 and the *Fisheries Act*) that are more restrictive than those contained in these provincial plans, the more restrictive provisions prevail.

3.6 The "principle of development" is established through *Planning Act* approval processes, whereas the CA Act permitting process provides for technical implementation of matters pursuant to Section 28 of the *CA Act*. The scope of matters that are subject to CA Act S. 28 regulations is limited to the activities in areas set out under Section 28(1) and Section 28(5) of the *CA Act*.

HCA staff should ensure that concerns they may have regarding the establishment of the "principle of development" are conveyed to the municipality/planning approval authority during the preparation of a municipal Official Plan, secondary plan or Official Plan amendment, or during the *Planning Act* approvals process and not through the CA Act S. 28 permitting process.

An established 'principle of development' does not preclude the ability of the HCA (or MMAH as per the MOU) to appeal a planning matter to the Ontario Municipal Board (OMB) (e.g., based on newer technical information relevant to the PPS). It is recognized that there may be historic planning approval decisions that were made in the absence of current technical information which could now preclude development under the *CA Act* regulations. Where possible, if an issue remains unresolved, the HCA will work with the proponent and the municipality to pursue a resolution.

3.7 The HCA may provide a number of other programs and services (extension services, community relations, information, education services and permissions under other legislation) that may or may not be linked to applications made pursuant to the *Planning Act* or *CA Act* S. 28 regulation permissions. These programs and services are not governed by this chapter.

4.0 POLICIES AND PROCEDURES FOR MUNICIPAL PLAN REVIEW BY CONSERVATION AUTHORITIES

4.1 *'Provincial Interest' Memorandum of Understanding of CA Delegated Responsibilities*
Through the Minister's delegation letter and under the accompanying MOU signed in 2001, CO, MNR and MMAH agreed to support the provisions of the MOU as an appropriate statement of the roles and responsibilities of the relevant Ministries and CAs in the implementation of the *PPS* and now continued in the *PPS, 2005*.

Pursuant to the delegation letter and the MOU, CAs have been delegated the responsibility to review municipal policy documents and planning and development applications submitted pursuant to the *Planning Act* to ensure that they are consistent with the natural hazards policies found in Section 3.1 of the *PPS, 2005*. These delegations do not extend to other portions of the *PPS, 2005* unless specifically delegated or assigned in writing by the Province.

Note: At the time of signing, the 2001 CO/MNR/MMAH MOU stipulates that plan review was to determine whether application had "regard to" Section 3.1 of the *PPS, 1997*, while the amendment made to the *Planning Act* 3 (5) and 3 (6) by the *Strong Communities (Planning Amendment) Act* (Bill 51) and described in S. 4.2 of the *PPS, 2005* changes this wording, "to be consistent with" the policies outlined in the *PPS, 2005*.

4.2 The *PPS, 2005* provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. The policies of the *PPS* may be complemented by provincial plans or by locally-generated policies regarding matters of municipal interest. Provincial plans and municipal Official Plans provide a framework for comprehensive, integrated and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment and economic growth, for the long term.

4.3 The HCA will collaborate with watershed municipalities to recommend policies and provisions for inclusion into Official Plan policies for complete planning application requirements so that information or studies needed by the HCA for reviewing *Planning Act* applications from the delegated responsibility for natural hazards policies found in Section 3.1 of the *PPS* is addressed early in the process.

4.4 The HCA should ensure that all concerns relevant to its delegated responsibilities for natural hazards are made available to watershed municipalities and planning approval authorities under the *Planning Act* during the application review process.

In participating in the review of development applications under the *Planning Act*, the HCA should at the earliest opportunity:

- (i) ensure that the applicant and municipal planning authority are also aware of the Section 28 regulations and requirements under the *CA Act*, and,
- (ii) assist in the coordination of applications under the *Planning Act* and the *CA Act* to eliminate unnecessary delay or duplication in the process.

4.5 The HCA will confer with watershed municipalities to recommend policies and provisions for potential inclusion into Official Plans and comprehensive zoning by-laws that may be complementary to HCA Board-approved policies as resource management agencies and other planning responsibilities as outlined in Section 1.0 to ensure that municipal land use decisions may address them.

4.6 Recognizing that there is no requirement for watershed municipalities to invite the HCA to pre-consultation meetings, the HCA will contact municipalities, where appropriate, to ensure that the Authority is involved in pre-consultation and attend associated meetings on *Planning Act* applications, especially where such applications may trigger a related permit application under the *CA Act* S. 28. Technical service agreements between watershed municipalities and the HCA may formalize arrangements for CA involvement in pre-consultation. As coordinated by the municipality or planning approval authority, depending on the scope of the project, pre-consultation could include staff from the following parties: the HCA, the municipality (for example, planning and engineering staff), the applicant, consultants, the developer (owner) and may be supplemented by staff from provincial ministries, Parks Canada and any other government agencies.

4.7 If involved in providing a technical advisory role, CAs and municipalities should establish formal technical service agreements. CAs should ensure that the service agreement with a municipality addresses obligations of the CA to participate in pre-consultation and other meetings; how the CA may participate in OMB hearings or other tribunals; how the parties or participants may be represented at hearings for the purpose of legal representation; and, limits on the CA's ability to represent the municipality's interests. Service agreements or contracts should specify that regular reviews by the parties of the agreement or contract are required and should be publicly accessible (e.g. posted on the respective CA and municipal websites). *Refer to HCA/Regional Municipality of Hamilton-Wentworth Memorandum of Agreement, 1996 or any updates or amendments thereto.*

4.8 The HCA will operate in accordance with the provisions of the CO-MNR-MMAH MOU when undertaking its role in plan review. This will include informing a municipality as to which of its comments or inputs, if any, pertain to the HCAs' delegated responsibilities for the provincial interest on natural hazards and which set of comments are provided on an advisory basis or through another type of authority (e.g. as a 'resource management agency' or as a 'service provider' to another agency or the municipality).

4.9 MNR has natural heritage responsibilities under the *PPS 2005* and some provincial plans for the delineation and technical support in the identification of natural heritage systems, the identification or approval of certain natural heritage features as significant or key features, and the identification of criteria related to these features.

As part of the HCA commenting or technical advisory function, the HCA will identify natural heritage features and systems through the initial plan review process. HCA developed natural heritage systems are advisory unless corresponding designations and policies are incorporated into the municipal Official Plan (i.e., municipality has the decision-making authority under the *Planning Act*). Where service agreements are in place with participating municipalities, CAs are encouraged to collaborate with local MNR District offices to ensure the appropriate and best available information on natural heritage is provided to a municipality. MNR is responsible for notifying municipalities and the HCA when there is new information about a feature for which MNR has responsibilities; for example, a wetland is evaluated and approved as a provincially significant wetland (PSW), so that advice can be given and decisions made accordingly.

Where provincial plans and associated guidance materials apply, HCA comments shall reflect the policy direction contained in these provincial plans or guidance materials as these pertain to matters relating to natural heritage systems and features, including:

1. Definitions of "significant" features;
2. Minimum setbacks for these defined features;
3. Outlining a process for determining whether the minimum setbacks are adequate and, if not, recommend appropriate setbacks;
4. Specifying permitted uses, setbacks and policies within identified significant features;
5. Delineation of natural heritage systems.
6. The HCA may provide input, as a public commenting body or 'resource management agency', on matters of local or regional interest within their watershed with respect to natural heritage with participating municipalities and liaise with the MNR regarding natural heritage interests including and beyond those covered by 2.9 (those of "provincial interest") to promote sharing of the most up-to-date natural heritage information and to promote coordinated planning approaches for these interests.

5.0 CONSERVATION AUTHORITIES ACT SECTION 28 PERMITTING

5.1 Background Information

Pursuant to Section 28 of the *CA Act*, under Ontario Regulation 97/04 "Content of Conservation Authority Regulations under Subsection 28 (1) of the Act: "Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses" (Content Regulation), each CA has developed individual regulations approved by the Minister that identify and regulate certain activities in and adjacent to watercourses (including valley lands), wetlands, shorelines of inland lakes and hazardous lands'. In general, permissions (permits) may be granted where, in the opinion of the CA, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land is not impacted.

An application for a CA Act S. 28 permission (permit) is made, usually by the landowner or an agent on behalf of a landowner or an infrastructure manager and owner such as a Municipal Corporation. Information required to support an application is outlined in the Appendices section of the document.

5.2 Pre-consultation on Permission (Permit) Applications

5.2.1 Pre-consultation is encouraged to provide clarity and direction, to facilitate receipt of complete applications and to streamline the permit application review and decision making process. To meet these objectives, depending on the scale and scope of the project, pre-consultation may include staff from the following parties: HCA, the municipality (for example, planning and engineering staff), the applicant, consultants, the developer and owner, and may be supplemented by staff from provincial ministries, Parks Canada and any other appropriate government agencies; and may occur concurrently with *Planning Act* pre-consultation.

5.2.2 The HCA may request pre-consultation, prior to the submission of a permission (permit) application, to provide an opportunity for the HCA and applicants to determine complete application requirements for specific projects. Applicants are encouraged to engage in pre-consultation with the HCA prior to submitting an application.

5.2.3 Applicants may request that the HCA undertake pre-consultation, prior to the submission of a permit application, to provide an opportunity for the HCA and applicants to determine complete permit application requirements for specific projects. The HCA will engage in pre-consultation in a timely manner so as not to delay the proponent's ability to submit an application.

5.2.4 In order to determine complete application requirements, applicants should submit in writing adequate information for pre-consultation, such as property information (lot number, concession number, township, etc.), a concept plan of the proposed development which shows the property limit, and a description of what is being proposed (i.e. what is being planned and when the work will take place).

5.2.5 The HCA will identify and confirm complete application requirements for specific projects, in writing within 21 days of the pre-consultation meeting. However, substantial changes to a proposal or a site visit after pre-consultation may warrant further pre-consultation and/or necessitate changes to the complete application requirements.

5.3 Complete Permission (Permit) Application

5.3.1 The HCA will notify applicants, in writing within 21 days of the receipt of a permit application, as to whether or not the application has been deemed complete.

5.3.2 If a permit application is deemed incomplete, the HCA will provide the applicant with a written list of missing and needed information when notifying the applicant that the application has been deemed incomplete.

5.3.3 If not satisfied with the decision on whether an application is deemed complete, the applicant can request an administrative review by the HCA Chief Administrative Officer (CAO). This review will be limited to a complete application policy review and will not include review of the technical merits of the application.

5.3.4 During the review of a 'complete application', the HCA may request additional information if the Authority deems a permit application does not contain sufficient technical analysis. Delays in timelines for decision making may occur due to HCA requests for additional information to address errors or gaps in information submitted for review (refer to 5.4.3). Thus, an application can be put "on hold" or returned to the applicant pending the receipt of further information. If necessary, this could be confirmed between both parties as an "Agreement to Defer Decision".

5.4 Decision Timelines for Permissions (Permits)

5.4.1 From the date of written confirmation of a complete application, the HCA will make a decision (i.e. recommendation to approve or refer to a Hearing) with respect to a permit application and pursuant to the *CA Act* within 30 days for a minor application and 90 days for a major application.

Major applications may include those that:

- 1) are highly complex, requiring full technical review, and need to be supported by comprehensive analysis
- 2) do not conform to existing *HCA Planning and Regulation Policies and Guidelines (June, 2009)* or updated version

5.4.2 If a decision has not been rendered by the HCA within the appropriate timeframe (i.e. 30 days for minor applications and 90 days for major applications) the applicant can submit a request for administrative review by the CAO.

5.4.3 Subsequent to receipt of a complete application, delays in timelines for decision making on a permit application may occur due to HCA requests for additional information to address errors or gaps in technical information submitted for review (refer to 3.3.5). Through an "Agreement to Defer Decision" between the applicant and the HCA, applications can be put "on hold" or returned to the applicant pending the receipt of further information to avoid premature refusals of permissions (permits) due to inadequate information.

5.5 Hearings and Appeals

5.5.1 If the decision is "referred to a Hearing of the Authority Board" the *MNR/CO Hearings Guidelines* (approved 2005) will be followed. Copies of the Hearing Guidelines can be obtained by contacting the Integration Branch of the Ministry of Natural Resources.

As per the guidelines and subsections 28 (12), 28 (13), 28 (14) and 28 (15) of the *CA Act* and in summary:

After holding a hearing, the HCA shall: refuse the permission; grant the permission with conditions; or, grant the permission without conditions. If the HCA refuses permission or grants permission subject to conditions, the HCA, shall give the person who requested permission written reasons for the decision.

A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the written reasons appeal in writing to the Minister of Natural Resources.

The Office of the Mining and Lands Commissioner (OMLC) has been delegated the authority, duties and powers of the Minister of Natural Resources under the *Ministry of Natural Resources Act O. Reg. 571/00* to hear appeals from the decisions of CAs made under *CA Act S. 28* regarding a refusal to grant permission (permit) or with respect to conditions imposed on a permission (permit) granted by the HCA. The Mining and Lands Commissioner (MLC) may: refuse the permission; or, grant the permission, with or without conditions.

If the applicant does not agree with the MLC decision, under the *Mining Act* an appeal can then be made to the Divisional Court, a Branch of the Superior Court of Justice.

5.6 Expiry of Permission (Permit)

By regulation, a permit shall not be extended. The maximum period of validity of a permit is 24 months. If the works covered by the application are not completed within the legislated timeframe, the applicant must reapply and delays in approval may result. Typically, the policies in place at the time of the re-application will apply.