



Board of Directors Meeting

Addendum 1

Thursday, March 7, 2024 at 6:00 p.m.

Hamilton Conservation Authority is now conducting meetings in a hybrid format via an in-person and Webex platform.

**All hybrid meetings can be viewed live on HCA's You Tube Channel:
<https://www.youtube.com/user/HamiltonConservation>**

10. Other Staff Reports/Memorandums

- 10.4. Amended Report with Appendix, Provincial Regulatory and Legislative Changes: Regulation of Development for the Protection of People and Property from Natural Hazards

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Report - Amended

TO: Board of Directors

FROM: Lisa Burnside, Chief Administrative Officer

RECOMMENDED & PREPARED BY: Mike Stone, MCIP, RPP, Acting Director, Watershed Management Services

REVIEWED BY: T. Scott Peck, MCIP, RPP, Deputy Chief Administrative Officer

MEETING DATE: March 7, 2024

RE: Provincial Regulatory and Legislative Changes:
Regulation of Development for the Protection of People
Property from and Natural Hazards

STAFF RECOMMENDATION

THAT the Board of Directors receive this report as information and further;

THAT the *Interim Policies & Guidelines for the Administration & Implementation of O. Reg. 41/24* and *Transitional Procedures & Guidelines* prepared by Conservation Ontario be adopted as interim direction to support implementation and compliance with the regulatory and legislative changes taking effect April 1, 2024; and

THAT staff be directed to produce or update existing HCA documents, policies and procedures as may be required to ensure compliance with the new regulations and legislative changes, and to report to the Board periodically on these matters.

BACKGROUND & PURPOSE

On October 25, 2022, the Ministry of Natural Resources and Forestry (MNRF) posted a notice to the Environmental Registry proposing changes to the regulation of development for the protection of people and property from natural hazards in Ontario.

The proposal was for a new regulation to govern the activities that require permits under the *Conservation Authorities Act* (CA Act), and to focus CA permitting decisions on matters related to the control of flooding and other natural hazards, and the protection of people and property. The proposed regulation would also allow a number of the amendments made to the CA Act in recent years to come into effect, including changes flowing from Bills 229 and 23 that were reported on to the Board over the past two years. These amendments include in particular the changes made to Section 28 of the CA Act, which pertain to the regulation of development. The notice indicated the proposed changes were intended to streamline approvals under the CA Act, which would help to support the government's priority of increasing Ontario's housing supply.

On February 16, 2024, the provincial government posted a decision notice to the Environmental Registry indicating it was moving ahead with the proposed regulatory changes to the CA Act and that a new regulation governing CA permitting of development had been passed.

The purpose of this report is to advise the Board of the regulatory and legislative amendments coming into effect on April 1, 2024, to provide a summary of key changes, and to endorse staff recommendations for the adoption of interim policies and updating existing HCA documents, policies and procedures as may be required to ensure compliance with the new regulatory and legislative framework.

STAFF COMMENTS

Ontario Regulation 41/24, *Prohibited Activities, Exemptions and Permits*, comes into effect on April 1, 2024 and addresses a number of matters related to CA regulation of development. Earlier amendments to Sections 28 and 30.1 of the *CA Act*, which also address CA regulation of development, permitting and enforcement will also come into effect on April 1, 2024. With these changes, all individual Conservation Authority development regulations will be revoked, including Ontario Regulation 161/06, *HCA's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*.

The following provides a summary of key changes resulting from the passing of new regulation O. Reg. 41/24 and the enactment of amended sections under the *CA Act*.

1. Definitions and Regulation Limits

- The definition of a *watercourse* has been amended to require that a watercourse be a *defined channel, having a bed and banks or sides* (formerly *an identifiable depression in the ground*)
- The definition of *pollution* is removed
- The regulated area adjacent to a wetland is changed to 30m for all wetlands (formerly 120m for provincially significant wetlands)

2. Regulation Mapping

- Maps depicting regulated areas must be made available to the public on an authority's website
- At least once annually review mapping to determine if updates are required, and make any updates available to the public
- Where significant mapping updates are to be made an authority shall provide notice to the public, municipalities and stakeholders at least 30 days prior to any authority meeting to consider the changes

3. Permit Exemptions

- A number of development activities are exempt from requiring a permit
- Most are minor in nature, and have size and/or location restrictions in order to be exempt:
 - non-habitable accessory structures
 - non-habitable garage replacements
 - detached decks
 - agricultural in-field erosion control
 - installation/maintenance of tile drainage
 - maintenance/repair of driveway or public road
- New regulation did not address/enact exemptions for activities authorized under the *Planning Act*

4. Permit Applications

- An authority must engage in pre-consultation if requested by an applicant
- More detailed list of permit application requirements, including fee submission and landowner authorization
- Must notify applicant in writing within 21 days of receiving an application if application is deemed complete
- Once application deemed complete no new studies/plans can be requested
- An applicant may request a review by an authority if no notice of complete application received within 21 days or if the applicant disagrees with the authority's determination of a complete application or request for additional information
 - Reviews must be completed within 30 days of request
- 90 days for notice of decision for all permits (formerly 30 days for minor permits and 90 days for major permits)
- Requests for permit fee reconsideration must be responded to within 30 days and can be appealed to the OLT for non-decision or continued objection to fee amount

5. Permits

- Existing permit 'tests' related to *pollution* and *conservation of land* are removed
- New tests added for consideration of *unstable soil or bedrock, health or safety of persons, and damage or destruction of property*

- Permit conditions limited to those which assist in preventing or mitigating hazards or effects on health and safety or property damage, or which support permit administration
- Maximum period of validity for permits issued by delegate (or Minister) increased from 24 to 60 months
- New powers for Minister to issue permits and/or direct an authority not to issue a permit
- Applicants may request a Minister's review where authority refuses permit, or imposes conditions on a permit which an applicant objects to
 - Minister's decision is final

6. Enforcement

- Appointment of Officers moved from individual regulations (to be revoked) to Act
- Minor changes to provisions for power of entry to private property
- New powers for Officers to issue Stop Orders where:
 - Activity contravening Act, regulations, or permit conditions
 - Causing or would cause significant damage that would affect hazards, health and safety or property damage
 - Order will prevent/reduce damage
- Maximum fines for offences increased – up to \$50,000 for individuals and \$1 million for corporations, plus additional daily fines and/or court-imposed amounts

7. Other

- Authorities shall develop policy and procedure documents for permit applications and reviews
- Authorities shall prepare and publish an annual report that outlines statistics on permits and its level of compliance with the requirements of O. Reg. 41/24, *Prohibited Activities, Exemptions and Permits*

8. Conservation Areas (Section 29)

- Enactment of O. Reg. 688/21, *Rules of Conduct in Conservation Areas*
- Replaces individual CA regulations, including HCA's Conservation Areas regulation, O. Reg. 109, *Conservation Areas – Hamilton Area*
- Outlines prohibited activities and activities requiring a permit
- Enforcement provisions remain unchanged

As a result of these changes and in order to ensure compliance, Conservation Authorities, including HCA, will be required to undertake a review and update of a number of documents, policies and/or procedures. Based on a preliminary assessment this will include:

- Review and update of existing HCA policy and procedure documents for development review and permitting
- Review and update of HCA's Administrative By-Laws, Hearing Guidelines and Fee Policy

- Review and update of permit application forms
- Review for and removal of all references to Ontario Regulation 161/06
- Review and revision of extent of regulated areas mapping
- Re-designation of Officers under the CA Act
- Review existing/required delegations of authority (e.g. for new administrative review provisions for permit applications)
- Communications to municipalities, stakeholders and the public

Conservation Ontario (CO) has advised certain transitional and interim measures should be in place for April 1, 2024 to ensure compliance with the new regulations and changes to the CA Act. Conservation Ontario is working to support CAs through the provision of supporting guidance materials and templates, and on February 27, 2024, provided CAs with a 'transition checklist' that included a number of resources to assist CAs in working towards an April 1, 2024 effective date. The checklist included recommended messaging for municipal partners and stakeholders, transitional procedures and interim guidelines for the administration of O. Reg. 41/24, as well as recommendations for the delegation of certain authorities/powers for administering the act and regulations, and for the re-appointment of Officers to enforce the act.

HCA will work towards compliance for April 1, 2024, but note not it may not be possible to complete all necessary updates and documentation for this date. Staff are recommending the Board support the adoption of the interim guidelines for the administration of O. Reg. 41/24 (Attachment A) and transitional procedures (Attachment B) provided by CO as interim guidance until such time as HCA staff are able to undertake a more fulsome review and update of policies and procedures.

HCA staff will be participating in an information session regarding the CA Act regulatory changes being hosted by MNRF on March 7, 2024 which should provide further information and clarification on timing for many the administrative updates outlined above.

AGENCY COMMENTS

The email message received from MNRF regarding the changes (item 5.4 in the agenda package) notes that "this updated legislative framework and regulations will clarify and streamline regulatory requirements to focus on natural hazards and public safety and provide greater transparency in the permitting process". Over the last several years, Conservation Ontario along with many individual Conservation Authorities, including HCA, have undertaken advocacy to the province regarding the proposed legislative and regulatory changes to the CA Act, submitting comments to the EROs and letter to Standing Committee. See attached documents in Appendix A.

LEGAL/FINANCIAL IMPLICATIONS

There is no immediate financial impact and staff anticipate relatively few permits annually (e.g. <5) would fall under the permit exemptions for low risk activities. However, it should be noted that the administrative review and updating of documents, policies and procedures that is required to implement the changes will involve significant time from staff.

CONCLUSIONS

New regulations and sections of the CA Act related to the regulation and permitting of development activities will take effect on April 1, 2024. Under the new rules, Conservation Authorities will continue to regulate development activities in watercourses, wetlands and hazard prone areas such as river valleys and shoreline areas, and permits will continue to be required for development activities in such areas in most cases.

While it is anticipated that many of the changes will have only a relatively minor impact on HCA's regulations program, the revisions to the definition of a *watercourse*, and the elimination of the *pollution* and *conservation of land* 'tests' will have a more significant impact. These changes are expected to reduce the extent of regulated watercourses, and will effectively remove the consideration of natural heritage issues in determining if a permit can be issued. New Ministerial powers to issue permits and undertake reviews of denied permits when requested by applicants could also potentially be impactful.

HCA staff will need to review, update and/or produce new documentation and resources to support implementation of the changes. The adoption of the transitional procedures and interim guidelines for the administration of O. Reg. 41/24 provided by CO would provide HCA with interim guidance to support implementation of the changes until such time as a more fulsome review and updating of policies and procedures can be completed. HCA staff will continue to work to review and update documents, policies and/or procedures as may be required for compliance with the new regulations, and will report back to the Board as this work progresses.

ATTACHMENT A

Interim Policy Guidelines for the Administration and Implementation of Ontario Regulation 41/24 (Prohibited Activities, Exemptions and Permits)

Summary

On April 1, 2024, Ontario Regulation 41/24 (Prohibited Activities, Exemptions and Permits) and Part VI of the *Conservation Authorities Act* came into effect. This regulation replaces the [NAME OF CONSERVATION AUTHORITY's] previous "Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation.

The proclamation of the new legislative and regulatory framework necessitates updates to existing Conservation Authority policies and procedures, including the [NAME OF CONSERVATION AUTHORITY's POLICIES/ PROCEDURAL MANUAL / OTHER].

Interim Policy Guidance

As of April 1, 2024, the [NAME OF CONSERVATION AUTHORITY] will review and make decisions on applications for permits in accordance with Part VI of the *Conservation Authorities Act* and Ontario Regulation 41/24. Amendments to the [POLICIES/ PROCEDURAL MANUAL / OTHER] will be forthcoming to reflect this new framework. Per section 12 of O. Reg. 41/24, the [NAME OF CONSERVATION AUTHORITY] will consult with stakeholders and the public during the review and update process as the authority considers advisable. Where discrepancies exist between the text of the legislation or regulation and the information provided within the [POLICIES/ PROCEDURAL MANUAL/ OTHER] and these Interim Policy Guidelines, the text of the legislation and regulation will prevail.

Key variances from the processes in the existing [NAME OF CONSERVATION AUTHORITY's POLICIES/ PROCEDURAL MANUAL / OTHER] include, but are not limited to:

- 1) Assessing permit applications made under Section 28.1 of the *Conservation Authorities Act* to determine if the proposed works will affect the control of flooding, erosion, dynamic beaches, and **unstable soil or bedrock**.
- 2) Assessing applications to determine whether the proposed activity would create conditions or circumstances that, in the event of a natural hazard, might jeopardize the **health or safety of persons** or result in the **damage or destruction of property**.

- 3) Attaching conditions to a permit only if the conditions (1) assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock or (2) assist in preventing or mitigating any effects on human health or safety or any damage or destruction of property in the event of a natural hazard.
- 4) Reducing the regulated area surrounding provincially significant wetlands or wetlands greater than 2 hectares in size [*if applicable to your CA*] from 120 m to 30 m. The other areas in which development activities are prohibited are within 30 m of all wetlands in the [NAME OF CA's] area of jurisdiction.
- 5) Exceptions from CA permits for specific activities outlined in section 5 of O. Reg. 41/24, when carried out in accordance with the regulation.
- 6) Updated complete application requirements (as outlined in section 7 of O. Reg. 41/24), including requirements for landowner authorization and payment of applicable fee.
- 7) A new process for applicants to request an administrative review of an application (circumstances outlined in section 8 of O. Reg. 41/24).
- 8) Updated definition of *watercourse* to a "defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs".
- 9) New requirement (as outlined in subsection 7(2) O. Reg. 41/24) to notify the applicant of whether an application is complete within 21 days and provide the applicant notice of a decision within 90 days following confirmation of a complete application (as outlined in 28.1(22) of the *Conservation Authorities Act*).
- 10) A new process for pre-submission consultation (circumstances outlined in section 6 of O. Reg. 41/24).
- 11) Enforcement procedures, appeals and hearing processes described in Parts VI and VII of the *Conservation Authorities Act*.

ATTACHMENT B

Model Transitional Procedures and Guidelines

(Transitioning from the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation to the NEW Ontario Regulation 41/24)

Background

The existing Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation provided each CA with the power to regulate development and activities in or adjacent to river or stream valleys, shorelines of the Great Lakes-St. Lawrence River system and inland lakes, watercourses, hazardous lands (e.g., unstable soil, bedrock, and slopes), wetlands and other areas around wetlands. Development taking place on these lands may require permission from the CA to confirm that the control of flooding, erosion, dynamic beaches, pollution or the conservation of land are not affected.

On February 16, 2024 the [Prohibited Activities, Exemptions and Permits under Conservation Authorities Act](#) Regulation (Ontario Regulation 41/24) was approved by the Province under subsection 28(1) of the *Conservation Authorities Act*. The administration of O. Reg. 41/24 is a Mandatory Program and Service of the Conservation Authorities as per Section 21.1.1 of the [Conservation Authorities Act](#) and as stipulated in [O. Reg. 686/21: Mandatory Programs and Services](#). Under section 8 of O. Reg. 686/21, Conservation Authorities shall provide programs and services to ensure that the Authority carries out its duties, functions and responsibilities to administer and enforce the provisions of Parts VI and VII of the Act and any regulations made under those Parts.

The transitional policies and procedures are important in the implementation of the new regulations which will become effective as of April 1, 2024.

Purpose

The purpose of this document is to guide Authority staff through the transition from the current individual Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulations to the implementation of the new O. Reg. 41/24: Prohibited Activities, Exemptions and Permits Regulation.

PERMIT APPLICATIONS

Applications Submitted Before April 1, 2024

Applications for permission to develop in a regulated area or interfere with a wetland or watercourse received prior to April 1, 2024, will be subject to the provisions of the applicable Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation in effect at the time the application was received.

If the subject application for the proposed works is not within an area or an activity regulated under the new regulation (O. Reg. 41/24), then the applicant will be advised in writing that a permit is not required for the proposed works.

Applications Submitted After April 1, 2024

All applications received on or after April 1, 2024, will be subject to the provisions of O. Reg. 41/24.

Extension of Permissions Issued under the Current Regulation

Permits issued prior to April 1, 2024, and have expiry dates beyond April 1, 2024 will remain valid for the duration identified on the permission. Inspections and conditions enforced under the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation will continue until the permission expires.

A request for extension of a permit issued before April 1, 2024, that is received prior to April 1, 2024, will be considered in accordance with the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation.

A request for extension of a permit issued before April 1, 2024, that is received after April 1, 2024, will be considered in accordance with O. Reg. 41/24. An applicant requesting an extension will be notified in writing that an extension is not required if the permit is for a development activity or interference/alteration not within a regulated area established under O. Reg. 41/24 or is otherwise subject to an exception under the same.

Requests for an extension of the existing permit must be received by the Authority prior to the date of expiry shown on the permission.

REVIEW OF PLANNING APPLICATIONS

Planning Applications Submitted Before April 1, 2024

All plan review will be conducted in accordance with the O. Reg. 686/21: Mandatory Programs and Services, [O. Reg. 596/22: Prescribed Acts – Subsections 21.1.1 \(1.1\) and 21.1.2 \(1.1\) of the Act](#), as well as based on the provisions of the current Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation. Plan input activities will note that O. Reg. 41/24 will be in effect April 1, 2024.

Planning Applications Submitted After April 1, 2024

All plan input and review will be conducted in accordance with the O. Reg. 686/21: Mandatory Programs and Services, [O. Reg. 596/22: Prescribed Acts – Subsections 21.1.1 \(1.1\) and 21.1.2 \(1.1\) of the Act](#), as well as based on the provisions of O. Reg. 21/24: Prohibited Activities, Exemptions and Permits Regulation.

VIOLATION NOTICES AND LEGAL ACTIONS COMMENCED BEFORE APRIL 1, 2024

Violation Notices issued prior to April 1, 2024 will be addressed and remedied by CA Provincial Offences Officers in accordance with the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation.

Violation Notices issued prior to April 1, 2024, for works in an area or activity no longer regulated under the new O. Reg. 41/24, upon satisfactory resolution of the matter, the proponent will be issued a letter advising that the works occurring in violation of the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation have remedied/ rectified and the violation notice is revoked.

Violation notices issued and prosecutions commenced on or after April 1, 2024, will confirm with Parts VI and VII of the Act and O. Reg. 41/24.

Legal actions that commenced prior to April 1, 2024, may proceed where appropriate under consultation with legal counsel.

Other Agency Approvals

Issuance of a permit does not relieve the applicant from the responsibility of acquiring approval from other agencies or relieve the applicant from compliance with any conditions that other agencies may impose on the work.

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APPENDIX A – HCA Op-Ed and Previous Correspondence to the Province Regarding Bill 23

CONTRIBUTORS

OPINION

Dear Premier Ford: Let's pause Bill 23

There is still time to work together on preventing potential damage to conservation in Ontario, Lisa Burnside writes.

LB

By Lisa Burnside

Fri., Nov. 11, 2022 | 3 min. read

f t e in



Hamilton Conservation Authority (HCA) is asking the Ford government to pause and reconsider Bill 23, the More Homes Built Faster Act, which has already received second reading.

Its broad goals are important and justifiable: address the province's housing supply and affordability issues. However some aspects of the bill would have unintended negative consequences by directly threatening important processes that protect public safety and our natural environment.

Briefly, Bill 23 proposes sweeping changes to the regulatory responsibilities of Ontario's 36 conservation authorities — a core role for us. The province's proposals state that legislative and regulation changes under the Conservation Authorities Act are to support faster and less costly approvals, streamline conservation authority processes and help make conservation land available for housing.

HCA is very concerned that the proposed changes, if passed, would reduce our ability to protect people and property from natural hazards — which the province has repeatedly stated is our core mandate and reduce protection for our green spaces and natural areas. We urge the government to pause. Homes are indeed important, but let's not solve one crisis and create another.

HCA receives and reviews permit and development applications, for everything from a homeowner wanting to build a deck adjacent to a local creek to multi-million-dollar developments that could impact flooding, erosion and natural areas. Our role is to ensure the proposed project doesn't create undue safety risks due to natural hazards or harm the natural environment. We track and report publicly on our response time for permits and approvals.

Under Bill 23's proposals, it appears these responsibilities could be shifted to municipalities, which do not have the expertise or capacity in areas such as water resources engineering, environmental planning and regulatory compliance. The scope of this change is not yet known, but the Association of Municipalities of Ontario has raised alarm bells in public statements about the proposed Bill.

Further, it appears the proposed bill would make it easier to develop where wetlands or other natural features exist. Wetlands and natural areas could be dealt with in a fragmented way, with potential for re-evaluation of what deems a wetland significant and allowances for offsetting of natural heritage features. This may indeed get homes built faster, but at what cost?

Ontario's conservation authorities were created in 1946 to address concerns regarding the poor state of the natural environment and the need to manage natural resources based on watershed boundaries.

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HAMILTON REGION

Senior in life-threatening condition with burns on 80 per cent of his body – but how?

19 hrs ago



CRIME

Hamilton man charged with accessory after the fact in Marko Bakir murder

7 hrs ago



As a conservation authority working in partnership with the two municipalities in our watershed – Hamilton and Puslinch – we are proud of the collaboration and formal agreements that exist between us. We help steer development to appropriate places where it will not harm the environment or create safety risks for people.

With Bill 23, it appears our ability to do so would be greatly diminished. Proposed changes should consider a watershed-based approach and continue to provide conservation authorities with the ability to review and comment on natural heritage and natural hazards in permitting and planning applications.

Further, conservation authorities will be asked to identify conservation lands where development could take place. With about half of the 1.5M new homes in the provincial growth targets for the GTHA, (47,000 new homes slated for Hamilton), our green spaces will be more important than ever. We can say today there is very little land owned by HCA where development would be appropriate.

We request continued collaboration with the province regarding the proposed changes, and support Conservation Ontario's call to engage with the provincially-established multi-stakeholder Conservation Authorities Working Group that helped guide the Province in its implementation of the last round of changes to the Conservation Authorities Act.

We respectfully urge the provincial government to pause, reconsider and work with conservation authorities and municipalities to explore the scope and implications of Bill 23 before it becomes law.

Lisa Burnside is chief administrative officer, Hamilton Conservation Authority.

Read more about: [Climate Change](#)

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REPORT AN ERROR

JOURNALISTIC STANDARDS

ABOUT THE SPEC



A Healthy Watershed for Everyone

VIA EMAIL

November 15, 2022

Laurie Scott, MPP
Chair, Standing Committee on Heritage, Infrastructure and Cultural Policy
College Park 5th Floor
777 Bay Street
Toronto, ON M7A 2J3

Re: Hamilton Conservation Authority (HCA) Comments – Environmental Registry of Ontario Postings: 019-6141; 091-2927; 019-6160; 019-6161

Dear Ms. Scott,

Thank you for the opportunity to provide comments on the above-noted Environmental Registry of Ontario Postings (ERO).

We recognize that increasing the housing supply and affordability are important issues. However, some aspects of Bill 23, specifically Schedule 2, would have unintended negative consequences. These consequences would directly impact important processes that exist to protect the safety of our citizens and our natural environment. Additionally, new responsibilities and costs would be placed on municipalities in relation to natural hazards and natural resources that may lead to inefficiencies in the development review process.

The following are key areas of concern for HCA.

ERO Posting 019-6141 Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0

One of the proposed changes is to exempt developments from the requirement of a Conservation Authority (CA) permit where a *Planning Act* approval is in place. As the details of this proposal are to be set in future regulations, it is unknown if this approach relates to low risk activities and development, or if it is intended to shift these CA responsibilities to municipalities more broadly. This has the potential to significantly limit the CA permitting function, depending on the scope of the regulation. The result would be an ineffective approach to natural hazard protection, an impact to CAs' ability to protect people and property and would shift new responsibilities to municipalities. Liability for the impact of development on natural hazards within municipal boundaries and on neighbouring upstream and downstream communities would then be a significant new liability and responsibility for municipalities. The watershed, not

municipal boundaries, is the effective scale that should be used to assess natural hazards.

Key Recommendation:

- Development subject to *Planning Act* authorizations would not be exempt from requiring a conservation authority permit and conservation authority regulations should not be delegated to municipalities.

As proposed, the changes will focus CAs' review to natural hazard related issues and limit the review of issues outside of this scope such as natural heritage and stormwater management. These proposed changes also relate to the removal of "conservation of land" and "pollution" as matters to be considered in permit decisions. Additionally, under the proposals, CA commenting and review as part of the planning process will focus only on natural hazards with no ability to provide comment on natural heritage.

HCA has a strong history of working cooperatively with our watershed municipalities, residents and businesses to ensure efficient and timely planning and regulatory review processes. We are proud of the collaboration and agreements that exist between HCA and our two participating municipalities, the City of Hamilton and the Township of Puslinch. These proposed changes would prohibit CAs from entering into MOUs with respect to natural heritage impacts, even if our participating municipalities wanted us to. It represents a direct contradiction to recent changes to the *Conservation Authorities Act* allowing municipalities the option to make agreements with CAs for a Category 2 municipally requested service. These agreements have functioned efficiently and effectively for many years. This proposed change will require municipalities to hire additional staff and consultants to fill this void.

Key Recommendations:

- Continued ability by CAs to review and comment on natural heritage in permitting and planning applications and retain responsibility for natural hazard approvals to ensure safe development.
- Municipalities retain the option to enter into MOUs with CAs for municipally requested advisory services.
- Continued collaboration with the Province and its established multi-stakeholder Conservation Authorities Working Group (CAWG) that helped guide the Province in implementing the last round of changes to the *Conservation Authorities Act*.

As noted above, we are concerned with the removal of "conservation of land" and "pollution" as matters considered in permit decisions. Conservation of land and pollution are fundamental to fully consider all impacts related to development, risk to property and life, and the natural environment. These all need to be considered in a wholistic manner to ensure natural hazards and natural heritage issues are recognized as inter-related issues.

Key Recommendations:

- Maintain the term 'conservation of land' but specify a definition to provide certainty in implementation. Conservation Ontario has provided a definition as follows: "The protection, management, or restoration of lands within the watershed ecosystem for the purpose of maintaining or enhancing the natural features and hydrologic and ecological functions within the watershed".
- Maintain the "pollution" test as defined in the *Conservation Authorities Act*. This will allow CAs to continue to prevent pollution from entering watercourses and wetlands and avoid potential long lasting environmental implications.

Regarding fees, there is a proposal to enable the Minister to direct CAs to maintain fees at current levels for a period of time, and we understand this is related to planning and permit fees. Our fees represent cost recovery for applications and are consistent with the Province's user pay approach. The new proposal, if approved, will transfer costs from development proponents to municipalities and the public tax base.

Key Recommendation:

- Permit CAs to work towards cost recovery targets so that development pays for development.

There is a proposal in the Bill that requires CAs to identify lands that could support housing development. The HCA owns land that was acquired to secure natural hazard areas and to conserve watershed natural heritage features. With about half of the 1.5M new homes in the Provincial growth targets for the GTHA, (47,000 new homes slated for Hamilton), our green spaces will be more important than ever and speak directly to our mission to lead in the conservation of our watershed.

Environmentally sensitive lands, lands required for flood protection and hazard management, and lands that contribute to physical and mental well being should not be considered as part of this initiative. These lands also contribute to climate change adaptation measures by capturing emissions, cooling temperatures, and protecting water quality.

There is very little land in HCA's conservation land holdings to achieve new housing developments when current zoning and publicly accessible lands and trails are considered.

Key Recommendation:

- Recognize the importance of CA lands and ensure clear policies to protect them.

ERO Posting: 091-2927 Proposed Updates to the regulation of development for the protection of people and property from natural hazards in Ontario

One regulation is proposed to replace the existing 36 CA stand alone regulations. While HCA understands the need for consistent approaches across the Province regarding natural hazards, the proposed regulation should take into account and

incorporate the flexibility to identify local watershed issues, such as specific flood standards.

We note that a number of the proposed provisions speak to service delivery standards, mapping notification, and pre-consultation requirements. We note that HCA already has such transparent measures in place, with a continued focus on service delivery standards and reporting.

Key Recommendations:

- The new regulation should include and permit existing watershed specific allowances to continue, such as different regulatory standards.
- Continued collaboration with the Province and the established multi-stakeholder CAWG that helped guide the Province in its implementation of the last round of changes to the *Conservation Authorities Act*.

ERO Posting: 019-6160 Proposed Update to the Ontario Wetland Evaluation Systems (OWES)

Wetlands are currently evaluated under the OWES and several proposed changes raise concern, including:

- The proposal would remove wetland complexing and a number of components related to an endangered or threatened species as values to be considered when scoring a wetland.
- The MNRF will no longer be involved with evaluating wetlands, creating a gap and uncertainty regarding who the decision maker is, and ultimately who manages the administrative aspects of the wetland system.
- Wetlands could be dealt with in a fragmented way with potential for re-evaluation of what deems a wetland significant.

These are detailed revisions currently being reviewed by HCA staff to understand the scope and how they will affect our watershed. The proposed changes will reduce the area of protected wetlands on our landscape. The potential for further wetland loss in the watershed is concerning given the critical functions wetlands provide. These functions include minimizing the risk of drought and reducing flooding by absorbing and storing excess water. In addition, wetlands help control erosion which is key for climate change resiliency.

Key Recommendations:

- Work with conservation experts, including CAs, to revise the OWES system to include complexing and scoring using a science-based approach.
- Establish a formal “decision maker” regarding wetland status and mapping. We recommend the MNRF maintains this role.
- If the MNRF does not maintain this role, we recommend CAs be identified as the “decision makers” and a process be developed to maintain wetland mapping and data to ensure consistency and streamlined access to the data.

ERO Posting: 019-6161 Conserving Ontario's Natural Heritage.

Natural heritage features such as wetlands, woodlands, and other natural wildlife habitat provide flood and erosion attenuation as well as ecosystem services. The removal and proposed replication attempt of these features can have a negative impact to both flooding and erosion, as well as their overall function and the benefit they provide to our watersheds and communities. We recommend a cautious approach with a goal of conserving Ontario's natural heritage, protecting these features, and protecting downstream properties.


CAs want to do their part to help the Province address its housing supply issues.


HCA is concerned some proposed changes in the *Act* will:

- Place new responsibilities on municipalities regarding natural hazards and natural resources that may lead to inefficiencies and delays in the development review process.
- Diminish the ability of CAs to implement their core mandate, which is protecting people and property from natural hazards; and
- Reduce critical natural infrastructure like wetlands that reduce flooding and protect waters in our lakes and rivers, and also protect against climate change.

The Province has had positive success through its multi-stakeholder CA working group. HCA encourages re-engagement and collaboration through this group to help address the lack of housing supply prior to the passing of Bill 23.

Sincerely,


Santina Moccio, Chair (Acting)
Hamilton Conservation Authority


Lisa Burnside, CAO
Hamilton Conservation Authority

Cc:

Honourable Doug Ford, Premier of Ontario
Honourable David Piccini, MECP
Honourable Graydon Smith, MNRF
Honourable Steve Clark, MMAH
Honourable Neil Lumsden, MTCS
MPP Donna Skelly
MPP Ted Arnott
Clerk, City of Hamilton
Clerk, Township of Puslinch



A Healthy Watershed for Everyone

November 18, 2022

By Mail and Email – mnrwaterpolicy@ontario.ca

Public Input Coordinator
MNRF – PD – Resources Planning and Development Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street, 6th Floor, South Tower
Peterborough, Ontario
K9J 3C7

Dear Sir/Madam:

**Re: Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0
Environmental Registry of Ontario Number 019-6141**

Thank you for the opportunity to provide comments on the above noted proposal.

Introduction

The Hamilton Conservation Authority (HCA) is a local community-based environmental organization established under the Conservation Authorities Act. We utilize our expertise and knowledge and an integrated and ecologically sound environmental approach to manage natural resources on a watershed basis. We protect communities from flooding and erosion, provide flood forecasting and warning services, operate 3 dams for flood control purposes, provide planning review and permitting services, conserve and restore local ecosystems, manage over 11,000 acres of natural hazard and natural heritage lands and contribute to the quality of life in our communities.

The HCA enjoys a positive working relationship with our partner municipalities that enables the HCA to provide our watershed knowledge and expertise on planning issues related to natural hazard and natural heritage issues in an integrated watershed-based manner. The changes proposed in Bill 23 removes our ability to provide natural heritage advice to a municipality and also removes our ability to consider natural heritage issues for permits with the removal of "conservation of land" and "pollution" as issues to be considered for permit applications. These are just some examples of the negative consequences from Bill 23 as currently written.

Bill 23 proposes measures to support the government's interest in increasing housing supply, and reducing perceived policy, process, approval and financial barriers to development and housing construction. With this approach as outlined in Bill 23, the HCA is concerned that the government is undermining the overall objective of the provincial land use planning framework that seeks to consider and balance the full range of economic, social and environmental considerations and priorities.

ERO 019-6141 Comments

In review of the proposed changes, specifically the addition of sections 28(4.1) and 28(4.2), there is a proposal to exempt developments from Conservation Authority permits where a Planning Act approval is in place. The details of this proposed exemption are to be set in future regulations. It is unknown if this approach relates to low risk activities and development, or if it is intended to shift these CA responsibilities to municipalities more broadly. This could potentially significantly limit the CA permitting function and the associated natural hazard and environmental protections the CA permitting process provides. Depending on the scope of the regulation, we see the potential for an ineffective approach to natural hazard management, which would result in a reduced ability to protect people and property and shift new responsibilities to municipalities.

Key Recommendation:

- Maintain CA core mandate responsibilities and retain responsibility for natural hazard approvals to ensure safe development in all activities.

As proposed, the changes will focus CA's planning and permitting review to natural hazard related issues and limit the review of issues outside of this scope such as natural heritage and stormwater management. The proposed changes include the removal of "conservation of land" and "pollution" as matters to be considered in permit decisions. Additionally, under the proposals, CA commenting and review as part of the planning process will focus only on natural hazards with no ability to provide comment on natural heritage.

HCA has a strong history of working cooperatively with our watershed municipalities, residents and businesses to ensure efficient and timely planning and regulatory review processes. We are proud of the collaboration and agreements that exists between HCA and the City of Hamilton and County of Wellington (Township of Puslinch). These proposed changes would prohibit CAs from entering into MOUs with respect to natural heritage impacts even if our participating municipalities wanted us to enter into such agreements. It represents a direct departure from recent changes to the CA Act allowing municipalities the option to make agreements with CAs for a Category 2 or 3 – municipally requested or provided service. These agreements have functioned efficiently and effectively for many years and there is no indication municipalities can undertake this review faster or at less expense and will require municipalities to hire additional staff or consultants to fill this void.

Further, the new regulation proposes to prescribe a number of Acts, including the Endangered Species Act, the Aggregate Resources Act, the Niagara Escarpment Planning and Development Act, the Water Resources Act, the Environmental Assessment Act and the Planning Act, where a conservation authority can not perform a review or commenting role for

“municipal” or “other” program or services. This removes the CA’s ability to have an “other”, self funded, program or service for commenting on natural heritage, water resources or watershed issues for environmental assessments, Niagara Escarpment Plan Development Permits, Planning Act and Aggregate Resources Act applications. The CA review would be limited to natural hazard issues and our role in commenting of natural heritage issues would be eliminated. This will leave a significant gap in natural heritage and water resources review for many application and development types advanced under a prescribed act.

Key Recommendations:

- Conservation Authorities should continue with the ability to review and comment on natural heritage in permitting and planning applications and for the prescribed acts and retain responsibility for Natural Hazard approvals to ensure safe development.
- Municipalities should retain the option to enter into MOUs with CAs for municipally requested advisory services.
- Continued collaboration with the Province with the established multi-stakeholder Conservation Authorities Working Group (CAWG) that helped guide the Province in its implementation of the last round of changes to the Conservation Authorities Act.

As noted above, we are concerned regarding the removal of “conservation of land” and “pollution” as matters not to be considered in permit decisions. Conservation of land and pollution are fundamental in considering impacts related to development, property, life and the natural environment and need to be considered in a wholistic manner to ensure natural hazards and natural heritage issues are considered as inter-related issues. We specifically note that environmental matters will not be considered for permit applications where there is no related or earlier Planning Act approval to consider such issues.

Key Recommendations:

- Maintain the term ‘conservation of land’ but specify a definition to provide certainty in implementation. Conservation Ontario has provided a definition as follows “the protection, management, or restoration of lands within the watershed ecosystem for the purpose of maintaining or enhancing the natural features and hydrologic and ecological functions within the watershed”.
- Maintain the “pollution” test as defined in the Conservation Authorities Act. This will allow CA’s to continue to prevent pollution from entering watercourses and wetlands and avoid potential long lasting environmental implications.

Regarding fees, there is a proposal to enable the Minister to direct CAs to maintain fees at current levels for a period of time and we understand this is related to planning and permit fees. HCA has Board approved cost recovery targets and underwent a recent and extensive cost-based analysis where we ensured our fees do not exceed the cost for service. In fact, our fees were not achieving cost recovery and our Board approved moving to implement increases for our permit and planning fees which have been benchmarked with other Conservation Authorities and put out for comment with our stakeholders. Our stakeholders had no concerns

in this regard, which included the West End Home Builders Association. Our fees represent cost recovery for applications and are consistent with the Province's user pay approach. The proposal if approved will transfer costs from development proponents to conservation authorities, municipalities and the public tax base.

Key Recommendations:

- Permit Conservation Authorities to work towards cost recovery targets so that development pays for development.

There is a proposal in the Bill that requires Conservation Authorities to identify lands that could support housing development. The HCA owns or manages over 11,000 acres of land that was acquired to secure natural hazard lands and to conserve watershed natural heritage features. With about half the 1.5 million new homes in the Provincial growth targets for the GTHA, (47,000 new homes slated for Hamilton), our green spaces will be more important than ever and speaks directly to our mission to lead in the conservation of our watershed and connect people to nature.

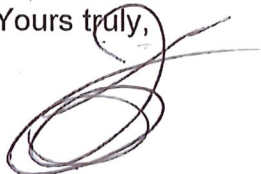
We want to ensure that environmentally sensitive lands, lands required for flood protection and hazard management, and lands that contribute to physical and mental well being for passive and active recreation are not being considered as part of this initiative and are maintained in their natural state for the benefit of the health of our watershed and watershed residents. We note that development is better suited to identified urban areas through an appropriate planning process and that further, there is very little land owned by HCA to achieve new housing developments in our conservation land holdings when provincial plans such as the Greenbelt Plan, current zoning and publicly accessible lands and trails are considered.

Key Recommendations:

- The Province should recognize the importance of Conservation Authority lands and ensure clear policies to protect them.

Thank you again for the opportunity to comment on ERO 019-6160. Should you have any questions regarding HCA's comments, please do not hesitate to contact the undersigned at scott.peck@conservationhamilton.ca or at (905)525-2181, ext.130.

Yours truly,



T. Scott Peck, MCIP/RPP
Deputy CAO/Director, Watershed Management Services

TSP/tsp



Hamilton
Conservation
Authority

A Healthy Watershed for Everyone

December 15, 2022

By Mail and Email – mnrwaterpolicy@ontario.ca

Public Input Coordinator
MNRF – PD – Resources Planning and Development Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street, 6th Floor, South Tower
Peterborough, Ontario
K9J 8M5

Dear Sir/Madam:

**Re: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario
Environmental Registry of Ontario Number 019-2927**

Thank you for the opportunity to provide comments on the above noted proposal.

Introduction

The Hamilton Conservation Authority (HCA) is a local community-based environmental organization established under the Conservation Authorities Act. We utilize our expertise and knowledge and an integrated and ecologically sound environmental approach to manage natural resources on a watershed basis. We protect communities from flooding and erosion, provide flood forecasting and warning services, operate 3 dams for flood control purposes, provide planning review and permitting services, conserve and restore local ecosystems, manage over 11,000 acres of natural hazard and natural heritage lands and contribute to the quality of life in our communities.

The HCA enjoys a positive working relationship with our partner municipalities that enables the HCA to provide our watershed knowledge and expertise on planning issues related to natural hazard and natural heritage issues in an integrated watershed-based manner. The changes proposed in Bill 23 removes our ability to provide natural heritage advice to a municipality and also removes our ability to consider natural heritage issues for permits with the removal of "conservation of land" and "pollution" as issues to be considered for permit applications. These are just some examples of the negative consequences from Bill 23 as currently written.

Bill 23 proposes measures to support the government's interest in increasing housing supply, and reducing perceived policy, process, approval and financial barriers to development and housing construction. With this approach as outlined in Bill 23, the HCA is concerned that the government is undermining the overall objective of the provincial land use planning framework that seeks to consider and balance the full range of economic, social and environmental considerations and priorities.

ERO 019-2927 Comments

One regulation is proposed to replace the existing 36 stand alone regulations. While the HCA understands the need for consistent approaches across the Province related to natural hazards, the proposed regulation will need to take account and incorporate the flexibility to identify local watershed issues such as specific flood standards. As an example, within the HCA's watershed, we utilize both the Hurricane Hazel event and the 100-year event as a regulatory standard. These watershed specific allowances need to be maintained.

Key Recommendation:

- The new regulation should consider local watershed issues and allow for flexibility to address these local watershed issues such as different regulatory standards.

The province recently confirmed the mandate of CAs, which includes regulating development to address the risk of natural hazards. Subsection 7(2) of Bill 23 proposes to exempt certain types and locations of development from the regulation process, with the potential to create a two-tier approach to the protection of people and property. This exemption is contrary to the core mandate of CAs and may put additional people and their homes at risk. The planning process is not designed to review applications at a technical approval level of detail.

Permit exemptions for *Planning Act* assumes natural hazard issues would be addressed through planning process. This raises compliance/enforcement issues. If no CA permit is required, are municipalities then to be responsible for enforcement to ensure developments are constructed as approved and all hazard issues addressed? The HCA recommends that advice be sought from the multi-stakeholder Conservation Authorities Working Group about development activities that may be suitable for exemption from requiring a permit using existing clauses within Section 28(3) and (4) of the CAA. Careful consideration is required to avoid unintended risk to public safety, properties, or natural hazards.

Key Recommendation:

- Advice be sought from the multi-stakeholder Conservation Authorities Working Group about which development activities may be suitable for exemption to avoid unintended risk to public safety, properties, or natural hazards.

The proposal to update the definition of a watercourse from an identifiable depression to a defined channel having a bed, and banks or sides is a concern. The current definition, while perhaps broad, does provide for the inclusion of headwater features that are important to maintain with their associated natural heritage features and natural hazard functions. The proposed definition reduces the scope of defining a watercourse and may impact the natural heritage and natural hazard features of these watercourses.

Key Recommendation:

- Advice be sought from the multi-stakeholder Conservation Authorities Working Group regarding an appropriate definition for a watercourse to ensure natural heritage and natural hazard features are maintained.

Recent amendments to the *Conservation Authorities Act* through Schedule 2 of Bill 23 included the removal of the “tests” of conservation of land and pollution. Further to HCA comments submitted in response ERO#019-6141, we recommend that the government continue with the tests of pollution and conservation of land as part of the permitting process. This should include a definition for conservation of land to provide certainty in implementation.

Conservation Ontario has provided a definition as follows “the protection, management, or restoration of lands within the watershed ecosystem for the purpose of maintaining or enhancing the natural features and hydrologic and ecological functions within the watershed”.

The HCA is concerned that with the removal of the test of conservation of land, that there may be a sole focus on hard engineering solutions to manage hazards on the landscape rather than considering a range of solutions, including the maintenance or installation of green infrastructure.

The HCA is supportive of the proposal to add the terms “unstable soils and bedrock” as it further clarifies the CA role in addressing hazards associated with development on karst topography, marine (Leda) clays, and organic soils.

Key Recommendation:

- The regulations should be designed to ensure that a range of solutions to manage natural hazards can be employed. The province should retain the tests of conservation of land and pollution and provide definitions.

This proposal contains several “Program Service Delivery Standards” including requiring CAs to develop, consult on, make publicly available and periodically review a policy that includes details about complete application requirements, timelines for decisions, and any additional technical details on regulatory requirements and permit application and review procedures. The HCA is supportive of these transparency measures and note that we already employ these best practices. We support pre-consultation, and we note that we already do this and find it effective for ensuring applicants / development proponents understand requirements, which is critical towards ensuring complete submissions and quality reports. Where this does not occur, delays often result because of poor understanding / submissions on the applicant’s part.

We note that early CA policies in this regard were developed, in part, based on province-wide policies that were developed collaboratively between Conservation Ontario and individual CAs,

utilizing the CO Section 28 Regulations Committee. To encourage consistency amongst the CAs, we would encourage the Ministry to participate as part of an update to Section 28 implementation guidance prepared by Conservation Ontario. This model guidance can serve as the basis for CA internal policies and assist with an expedient transition to implementing the new regulatory framework.

Key Recommendation:

- That MNRF staff participate in and support Conservation Ontario in developing model guidance for CA internal policies.

It is further noted that this proposal does not contain a timeframe for enactment of a new S. 28 regulation. Given that amendments to the *Conservation Authorities Act* were included in Bill 23, *More Homes Built Faster, 2022* and as part of the Housing Supply Action Plan 3.0 it is assumed that an update to the S. 28 regulation will occur in the near future. As the CAs are not aware of what will exactly be contained within the updated S. 28 (preventing them from commencing new policy development) and no provincial implementation support material has been prepared, it is recommended that the regulation include a two-year transition period to update CA policies. This is especially pertinent given (potential) additional consultation requirements prior to CA adoption of policies locally.

Key Recommendation:

- The proposed regulation include a two-year transition period to update CA policies to be consistent with the Provincial implementation support materials.

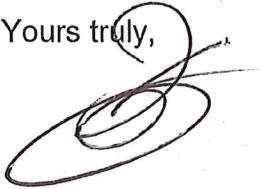
We note that CAs and municipalities rely on outdated provincial technical guidance to make decisions from a land use planning and regulatory perspective. This provincial technical guidance has not been updated since 2002 and does not reflect current science, land use patterns and the changing climate. In this regard, conservation authorities, municipalities and the development sector have staff expertise and experience to guide the renewal of these documents under provincial leadership. For greater efficiency and certainty for proponents, in addition to supporting land use planning decisions under the Provincial Policy Statement, the updated technical guidance should also serve as technical guidance for permit decisions made under S.28 of the *Conservation Authorities Act*.

Key Recommendation:

THAT the Province work with CAs, municipalities and the development sector to update technical guidance to protect people and property from flooding and water-related hazards to support land use planning decisions under the Provincial Policy Statement and permit decisions under S. 28 of the *Conservation Authorities Act*.

Thank you again for the opportunity to comment on ERO 019-2927. Should you have any questions regarding HCA's comments, please do not hesitate to contact the undersigned at scott.peck@conservationhamilton.ca or at (905)525-2181, ext.130.

Yours truly,

A handwritten signature in dark ink, consisting of a large, stylized 'S' followed by a horizontal line and a small flourish.

T. Scott Peck, MCIP/RPP
Deputy CAO/Director, Watershed Management Services

TSP/tsp