

November 24, 2022

Electronic Submission only

ATT: Public Input Coordinator

Ministry of Natural Resources and Forestry
Resource Planning and Development Policy Branch
300 Water Street, 6th Floor, South Tower
Peterborough, ON K9J 8M5

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

Background:

Through proposed modifications to Sections 21 & 28 of the *Conservation Authorities Act* (CAA), Conservation Authorities in Ontario will no longer be able to provide a municipal program or service related to the commenting on applications under *prescribed acts*. These *prescribed acts* include, but are not limited to, *the Planning Act*, *the Niagara Escarpment Planning and Development Act*, and *the Aggregate Resources Act*. While these modifications preclude Conservation Authorities from providing comment related to municipal services for proposals under the *Planning Act*, services related to the risk of natural hazards are still listed as a mandatory program. As a result, it is expected that Conservation Authorities will continue to advise on development applications, under the prescribed Acts, as it relates to their listed mandatory services. O.Reg 687/21 currently defines mandatory programs and services as they are listed in S. 21.1 of the CAA, which does not include items such as wetlands or valleylands despite being conservation authority regulated features per S. 28 of the CAA.

Permitting requirements under the CAA have been altered, and a process for potential exemption from CAA permitting has been proposed. S. 28.1 (1) (a) of the CAA has been altered to remove a conservation authority's ability to consider impacts related to *pollution* or the *conservation of land* in review of proposed activities prohibited by S. 28. The language has been further clarified to include the ability to consider impacts to unstable soil or bedrock. Additionally, S. 28 has been updated to include the ability to exempt proposed development from requiring a permit under the CAA if a *Planning Act* approval has been given in relation to the proposed project and where prescribed conditions and restrictions are satisfied. Such conditions and restrictions are not described within the legislative changes of Bill 23, rather they will be considered as part of a future *Regulation*.

Conservation Authorities will be required to issue permits for activities prohibited by S. 28 of the CAA where projects are subject to an infrastructure and housing accelerator order

under S. 34.1 of the *Planning Act* and would permit the Minister of MNRF to amend any condition applied to such permits. Further, for permits required for projects that are part of a Minister's Zoning Order under Section 34.1 or 47 of the *Planning Act*, is it proposed that the Minister of MNRF would have an expanded ability to prescribe limits on conditions applied to such CAA permits and would now be able to permit development to begin where an ecological compensation agreement is required but not yet complete.

In addition to the proposed changes to CA's permitting and *planning act* roles, Bill 23 also seeks to 'freeze' conservation authority fees at current (2022/2023) levels and require that CAs inventory their land holdings and identify properties that could reasonably support housing.

Comments:

The changes to the role of conservation authorities proposed through Bill 23 represents a significant change to the planning and development review process in Ontario and signifies a different direction to the delivery of municipal programs and services than that which was provided in 2021 through *Bill 229, Protect, Support and Recover from COVID-19 Act* and the associated regulations. As a result of proposed Bill 23, municipalities in Halton Region will no longer be able to rely on some of the valuable services in the development review process that have previously been undertaken in partnership with Conservation Halton (CH) and Halton Region. Currently, the City of Burlington is party to a Memorandum of Understanding (MoU) for the provision of planning services, focused on ecological review, between the Region and CH. As a result of Bill 229, this MoU was set to be updated as required by *O.Reg 687/21* and an additional MoU for watershed services was being developed. Given the proposed prohibition on CAs commenting on municipal services for applications under the *Planning Act*, it can be reasonably assumed that these responsibilities will now fall solely to the municipalities. The following impacts on municipalities as a result of these changes and potential means of mitigating those impacts should be considered:

- Reduced access to technical expertise residing at conservation authorities in the development review process including, but not limited to ecology, hydrogeology, hydrology, hydraulic modelling.
- Delivery of Halton Region 'one-study' approach to Environmental Impact Assessments (or equivalent).
- Study duplication as a result of the inability to effectively coordinate *planning act* approvals and CAA permits.
- Potential for an increase to municipal tax levy if CAs cannot achieve full cost recovery of mandatory services due to the proposed freezing of fee schedules.
- Diminished oversight of the impacts to the natural environment and water resources where a development is exempt from a CAA permit, or where development is authorized by a MZO.
- Impacts of pollution on key natural features and hydrologic features will become limited to municipal boundaries rather than utilizing a watershed approach.

- Increase in cost of servicing conservation lands if identified for housing redevelopment.

The City of Burlington remains supportive of changes to the legislation that will aid in ensuring the issue of housing availability is addressed while balancing the protection of the natural environment for future generations. The City is committed to a systems-based approach to natural heritage planning that utilizes a science-based approach to understanding the impacts on natural systems that may be realized as a result of proposed development. The citizens that the City represents rely on the health of these systems for clean water, clean air, and other social and cultural benefits. The City relies on the health and resiliency of these systems to augment traditional infrastructure, guard against natural hazards, and to maintain the overall well-being of the citizens of the City of Burlington.

The impacts being felt locally, and globally, as a result of climate change cannot be understated. A healthy and functional natural heritage system represents the pre-eminent tool in adapting to these impacts and ensuring resiliency into the future. The health and function of these systems have traditionally been addressed through a partnership of municipalities, public bodies, non-governmental agencies, and private developers working together on a common path. Bill 23's proposed changes to the role of conservation authorities in protecting the natural environment represents a threat to the ability of the City to ensure the resiliency and future health of its natural heritage system. The City, in partnership with the Region of Halton and Conservation Halton, have moved towards an integrated *one-study* approach to natural heritage planning within the development review process. The changes to the *Conservation Authorities Act*, coupled with further proposed changes to the Ontario Wetland Evaluation System (OWES) and proposed ecological offsetting criteria is likely to result in an overall future loss of natural heritage in the City, particularly within the urban area. These changes may also introduce more uncertainty into the development review process as municipalities take on more responsibility without the benefit of effective communications with a regulatory authority. Like many GTA municipalities, the natural heritage system within the urban area of the City has been degraded as a result of historical urbanization. It is more important than ever for the City to ensure the best tools and partnerships are able to be leveraged to ensure the health and resiliency of the City's natural heritage system.

Next Steps:

The City of Burlington remains supportive of the previous changes to the CAA and the accompanying Regulations that formed part of Bill 229: *Protect, Support and Recover from COVID-19 Act*. Those changes ensured that conservation authorities core services were appropriately defined (Category 1 services), and also set out the requirements that would need to be in place if a municipality sought certain programs or services from CAs beyond those mandatory services (Category 2 & 3 services). The City utilizes this flexibility to work in partnership with Conservation Halton and the Region of Halton through an established MoU for defined planning services. This has resulted in a more streamlined review of environmental impacts and natural hazards while also providing

more clarity and consistency in required submission materials. It is the City's position that the diminishment of the role of CAs within the development and permitting processes will result in a prolonged pre-application process as well as the duplication of studies and requirements borne out of restrictions placed on CAs participation in applications under *prescribed Acts*. The City is respectfully requesting the Province reconsider continuing the direction that was prescribed through Bill 229.

Please accept this letter and its attachment as the City of Burlington submission on ERO Posting 019-6141. Given the short period for consultation the attached comments have not been approved by City Council. This letter and its attachment will be shared with the City's Committee's and Council at the earliest opportunity. Should Council determine any additional comments or refinements to the attached comments are required the Province will be advised at the earliest opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark H. Simeoni', written in a cursive style.

Mark H. Simeoni, MCIP, RPP
Director of Community Planning
Community Planning Department
City of Burlington

Theme: Streamlining Development Approvals Contributor: Policy and Community Primary Associated ERO Postings: <u>Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0 – ERO 019-6141 Schedule 2.</u>			
Summary of Changes	Staff Comments/Questions	Guiding Principle (indicate support or concern)	Approaches or Alternatives for Consideration
Conservation Authorities (CAs) restricted from commenting on applications under <i>prescribed Acts</i> for matters outside their core mandate (Category 1 Services)	<ul style="list-style-type: none"> • This undoes the direction provided by the Province through Bill 229 and the associated O.Regs (686/21 & 687/22). • Taken with the proposed changes to the Regulations proposed by ERO # 019-2927 this may result in duplication of studies and plans at the pre-consultation stage if CAs cannot comment on <i>Planning Act</i> applications outside matters related to Category 1 services. • Further, Section 21 of the CAA does not include <i>wetlands</i>, yet Section 28 keeps <i>wetlands</i> within the regulatory purview of CAs. This is likely to result in differing requirements under 	<p>Environment, Urban Design and Climate Change – concern</p> <p>CAs provide important technical expertise relating to environmental protection and climate change adaptation/mitigation that will no longer be part of the development process.</p> <p>Public Health and Safety – concern</p> <p>Municipalities may have to take on responsibilities and liabilities for development and compliance in hazard areas.</p> <p>Matters of Provincial Interest – concern</p>	<ul style="list-style-type: none"> • clarify or formally delegate permitting requirements for development on or in hazards, and that the CAs are permitted to comment on <i>Planning Act</i> applications for all S.28 items (hazards, wetlands, valleylands) • The MoU direction for Category 2 Services established through Bill 229 and associated O.Regs. should be continued and the proposed wording changes related to CAs involvement in applications under <i>prescribed Acts</i> should be abandoned. This would keep municipalities on track with the progress on applicable MoUs that have been in the works since the passing of Bill 229 which was aimed at ensuring municipalities would have more flexibility in the services they obtained from CAs.

	<p>the <i>CAA</i> and <i>Planning Act</i> for the assessment of wetlands.</p> <ul style="list-style-type: none"> • Municipalities would require additional Staff to fill in the technical gaps in application review (ecology, hydrology, modelling). • Section 28 (1) of the <i>CAA</i> still lists hazard lands, wetlands, rivers/valleys, shoreline as items under the CA's purview <u>as they relate to development</u>. These proposed changes seem more geared to prohibiting communication and collaboration between municipalities and CAs. • The delivery of the Region of Halton's '1-study' approach to EIAs would be impacted, as would the delivery of Category 2 Services under the MoU for planning services and watershed services between the Region and CH of which all Halton municipalities are party to. 	Impact to ability and cost for municipalities to deliver on a number of listed matters of Provincial Interest.	
Ability to exempt requirements for CA permits where approvals under a <i>prescribed Act</i> has been given.	<ul style="list-style-type: none"> • Certain conditions would need to be met to exempt applicants from CA permitting requirements 	<p>Financial Impacts on Municipalities – concern</p> <p>If the changes result in additional risks being born by</p>	<ul style="list-style-type: none"> • If this direction is being pursued, it is suggested that a Letter of Clearance from the CA be a condition of exemption so that municipalities are not taking on

	<p>(Section 28). It is unclear what these conditions will be.</p> <ul style="list-style-type: none"> • If conditions are too lenient this could result in Municipalities having to accept the risk associated with development that would normally require a CA permit per S. 28 of the CAA. 	<p>municipalities, additional staffing may be required to ensure proper technical review to protect property and life. This risk and technical expertise largely reside at CAs currently.</p> <p>Environment, Urban Design and Climate Change – concern</p> <p>Without the financial ability to retain the necessary technical expertise negative impact to the natural environment and increase risk to life and property may result.</p>	<p>additional risk for matters regulated by CAs.</p>
<p>CAs no longer considered a <i>public body</i> capable of appealing decisions under <i>prescribed Acts</i>.</p>	<ul style="list-style-type: none"> • Given the CAs have their own permitting process and associated appeal process there is limited impact in this change. • If letters of clearance from a CA are required in-lieu of permits for applications under <i>prescribed Acts</i> there would sufficient oversight for CAs to ensure matters pursuant to Section 28 CAA are either accounted for or 	<p>Environment, Urban Design and Climate Change – concern</p> <p>Decisions on development applications may not fully consider matters under CA regulation if they can be exempted from CA permitting without oversight.</p> <p>Public Health and Safety – concern</p>	<ul style="list-style-type: none"> • There would be general support for this proposed change if the forthcoming exemption conditions include a requirement of a letter of clearance from a CA.

	subjected to CA permitting requirements.	Decisions on development applications may not fully consider hazard matters under CA regulation if they can be exempted from CA permitting without oversight.	
CA fee schedules to be frozen at 2022/2023 levels.	<ul style="list-style-type: none"> Freezing CAs fees coupled with the newfound ability to exempt certain development from obtaining a CA permit will put significant strain on CA resources in the long term. This could result in higher municipal levy rates to offset costs. 	<p>Growth Pays for Growth – concern Additional costs may be borne by the existing tax base.</p> <p>Financial Impacts on Municipalities – concern Additional costs may be borne through municipal levy contributions.</p>	<ul style="list-style-type: none"> Allow CA permitting fees to achieve full cost recovery at minimum.
CAs no longer has a role in regulating the impacts of <i>pollution</i> in relation to development. Minister and/or Tribunal no longer has to consider <i>pollution</i> in appeals.	<ul style="list-style-type: none"> CAs provide a watershed lens when assessing impacts to key features. The cumulative and downstream impacts of development is often better assessed on a watershed basis. Coupled with removal of commenting capabilities this change may lead to impacts of development only being considered within a municipal boundary lens. Cross-boundary disputes may increase. 	<p>Environment, Urban Design and Climate Change – concern May result in cross-boundary/downstream impacts to key hydrologic and natural features.</p> <p>Matters of Provincial Interest – concern Impact to ability and cost for municipalities to deliver on a</p>	<ul style="list-style-type: none"> Retain references to pollution in S. 28 of the CAA.

	<ul style="list-style-type: none"> • CAs ability to regulate sediment/erosion impacts would be diminished. • Powers of CA and the ability to create Regulations pertaining to prohibiting, regulating, permitting control of <i>pollution</i> still exist in Sections 21 & 28 of the CAA. 	number of listed matters of Provincial Interest.	
CAs must inventory their land holdings and identify properties that could reasonably support housing.	<ul style="list-style-type: none"> • Its currently unclear how lands identified that could reasonably accommodate housing would be transferred and/or planned for to accommodate residential uses. Also unclear is how the test of <i>reasonable</i> is being carried out. • Most CA owned lands are comprised of ecologically sensitive lands or important recreational lands available for public use. • Additional land use planning approvals are highly likely to be required to accommodate residential uses. • Land use compatibility needs to be seriously considered in the assessment of <i>reasonable</i>. • Lands in settlement areas are most likely to be 	<p>Matters of Provincial Interest – concern</p> <p>Impact to ability and cost for municipalities to deliver on a number of listed matters of Provincial Interest.</p> <p>Environment, Urban Design and Climate Change – concern</p> <p>CAs hold environmentally sensitive lands. If these are lost there will be a resulting negative impact to the natural environment.</p> <p>Public Health and Safety – concern</p> <p>Natural and recreation areas have a positive and important influence on the health of</p>	<ul style="list-style-type: none"> • Test of <i>reasonable</i> needs to include: <ul style="list-style-type: none"> ○ Land Compatibility Assessment. ○ Natural Environment Evaluation. ○ Financial Impact Assessment. • Municipalities should be included in the assessment of properties as stakeholders and decision-makers on future Planning Act applications.

	<p>targeted. Ecosystem services needs to be a serious consideration as should the threat of reduction to the City's Natural Heritage System.</p>	<p>citizens. Diminishing the availability of these areas will result in a decrease to public health and well-being.</p> <p>Complete Communities – concern.</p> <p>Much of CA land holdings already form important components in the planning of complete communities. Removing these properties would diminish the ability to plan for complete communities.</p>	
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