

Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario

Regulatory proposal consultation guide

Ministry of Natural Resources and Forestry

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Ontario 

Purpose

As part of the Housing Supply Action Plan, the government is streamlining approvals under the *Conservation Authorities Act* to focus on natural hazards and to help meet Ontario's housing supply needs. These changes will improve clarity and consistency in decision making to support faster, more predictable and less costly approvals.

The Ministry's proposal is posted for consultation on the [Environmental Registry of Ontario](#) and [Ontario's Regulatory Registry](#). The purpose of this document is to outline the proposed changes in order to inform your feedback on these postings.

Comments on the proposal may be submitted through Environmental Registry posting #019-2927 during the comment period indicated or by email to mnrwaterpolicy@ontario.ca.

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1. Introduction

Prevention is a key part of Ontario's approach to managing natural hazards like flooding and erosion. Directing development away from floodplains and other hazardous areas helps reduce the risk to communities and individuals posed by flooding and other natural hazards and strengthens Ontario's resiliency to extreme weather events.

The objectives of directing development away from hazardous areas are to:

- Increase public health and safety and prevent loss of life
- Reduce property and environmental damage and social and economic disruption
- Reduce costs to people and governments for emergency operation, evacuation, restoration and protection infrastructure or other measures

This prevention-based approach is supported by two key tools: 1) municipal planning in accordance with the *Planning Act*, *Provincial Policy Statement, 2020* and other provincial plans, and 2) regulations under the *Conservation Authorities Act*. These two tools were intended to work efficiently together to ensure people and property are not put in harms way, and development and other activities do not worsen hazards like flooding and erosion.

Each of Ontario's 36 conservation authorities currently administer a separate, provincially-approved regulation in respect of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses created under section 28 of the *Conservation Authorities Act*.

Under these regulations, conservation authorities are responsible for regulating development and other activities for the purpose of natural hazard management. Regulated activities which require permission from a conservation authority are:

- Development in areas related to natural hazards such as floodplains, shorelines, wetlands and hazardous lands (i.e., lands that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock); and
- Interference with or alterations to a watercourse or wetland.

The Ministry of Natural Resources and Forestry (the Ministry) is proposing to update the regulation of these activities under the *Conservation Authorities Act*. This includes replacing the existing regulations with a single, new regulation that will apply across all

36 conservation authorities. This regulation will allow updates made to the *Conservation Authorities Act* in recent years to come into effect.

2. Overview of the Proposed Regulation

The Ministry is proposing to create a regulation governing the activities that require permits under the *Conservation Authorities Act*¹. The proposed regulation would focus 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 streamline rules for development, and is a first step towards improved coordination between conservation authority permitting and municipal planning approvals. This regulation would apply to all authorities to ensure clear and consistent requirements while still addressing local differences.

The proposed regulation is part of the government's commitment under the Housing Supply Action Plan to support the construction of 1.5 million homes over the next 10 years to address Ontario's housing supply needs while continuing to protect Ontario families, communities, and critical resources.

Proposed changes will also deliver on the commitments and objectives in [Protecting People and Property: Ontario's Flood Strategy](#). The strategy outlines Ontario's plan to strengthen the approach to flooding in the province including updates to the regulation of hazard lands under the *Conservation Authorities Act* and their relationship to land use planning under the *Planning Act*.

The Ministry is also considering this proposal in the context of the [Lake Simcoe Protection Plan](#). To help implement the Plan, the *Lake Simcoe Protection Act* requires that permit decisions by the Lake Simcoe Region Conservation Authority conform with certain Plan policies. Elements of the proposed regulation may apply differently to the Lake Simcoe Region Conservation Authority to continue to advance the objectives of the Plan, which may include adjustments to areas where permits are required or to the criteria considered in a permit decision.

2.1 Activities Prohibited under the *Conservation Authorities Act* (section 28)

The updated Section 28 of the *Conservation Authorities Act*² when brought in force will prohibit the following activities within the area of jurisdiction of a conservation authority:

¹ As enacted by the *Building Better Communities and Conserving Watersheds Act, 2017* and amended by the *Protect, Support and Recover from COVID-19 (Budget Measures) Act, 2020*

² as enacted by the *Building Better Communities and Conserving Watersheds Act, 2017* and proposed to be amended by the *More Homes Built Faster Act, 2022*, introduced on October 25, 2022.

1. Activities to straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or to change or interfere in any way with a wetland.
2. Development activities in areas within the authority's area of jurisdiction that are,
 - i. hazardous lands;
 - ii. wetlands;
 - iii. river or stream valleys the limits of which shall be determined in accordance with the regulations;
 - iv. areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to an inland lake and that may be affected by flooding, erosion or dynamic beach hazards, such areas to be further determined or specified in accordance with the regulations; or
 - v. other areas in which development should be prohibited or regulated, as may be determined by the regulations.

Key changes in the proposed regulation from current requirements regarding what activities are prohibited and areas where activities are prohibited include:

- Updating the definition of "watercourse" from an identifiable depression in which water regularly or continuously flows, to a defined channel having a bed, and banks or sides.
- Updating the "other areas" in which the prohibitions on development apply to within 30 metres of all wetlands.
- Streamlining approvals for low-risk activities, which may include exempting the need for a permit if certain requirements or conditions are met (i.e., requiring that an activity be registered with an authority).

2.1.1 Prohibited Activities

Under the updated section 28, the definitions of certain terms will be set out in regulation, including the definition of "development activity".

The following definition is being proposed:

"Development Activity" is proposed to be the same as the definition currently set out in the Act for "development", which is:

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind;

(b) 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;

(c) site grading; or

(d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

It is also proposed that the regulation would include streamlined approvals for certain low-risk development activities from requiring a permit. In appropriate cases the activity could be fully exempted from a permit requirement provided that certain rules are followed, including potentially that the individual register the activity with an authority.

Activities proposed for streamlined approvals include:

- a non-habitable accessory structure 10 square metres or less that is not placed within hazardous land or a watercourse or wetland;
- an unenclosed detached deck or patio 10 square metres or less that is not placed adjacent or close to the shoreline of a lake or within hazardous land and does not utilize any method of cantilevering;
- one-time placement of fill not exceeding 10 cubic metres that is not placed within hazardous land or a watercourse or wetland;
- a seasonal or floating dock 10 square metres or less that does not require permanent support structures and can be removed in the event of flooding;
- installation of a fence with a minimum of 75 mm of space between panels;
- well installation that is not within hazardous land or a wetland, including private drilled or bored water well installation and the installation of municipal water monitoring wells;
- installation of tile drain and maintenance or repair of existing tile drains that are not within a wetland or “other area” outside of a wetland where development is prohibited and with an outlet that is not directed or connected to a watercourse, wetland or valley (steep slope);
- installation and maintenance of an offline pond for watering livestock that is not connected to or within a watercourse or wetland, and where no excavated material is deposited within a watercourse, wetland or valley (steep slope);
- installation of agricultural in-field erosion control measures with an outlet that is not directed or connected to a watercourse, wetland or steep slope;
- installation of a utility pole and anchor;
- maintenance or repair of a driveway/access that is outside of a wetland or maintenance or repair of an existing public road, provided that the driveway or

road is not extended or widened, or the elevation, bedding materials, or existing culverts are not altered; and,

- maintenance and repair activities for existing municipal drains, including pipes, junction boxes or catch basins, in accordance with the [Drainage Act and Conservation Authorities Act Protocol](#).

2.1.2 Areas where activities are prohibited

Under the new section 28 of the *Conservation Authorities Act*, the definitions of the following terms will also be set out in regulation: “Watercourse”, “Wetland” and “Hazardous Land”.

There are proposed updates to the definition of “watercourse”. The definitions of “hazardous land” and “wetland” are not proposed to be changed from the current definition used within the Act.

In addition to these definitions, the regulation would further identify how the limits of certain areas where the prohibitions apply are to be determined - including the flood event standards to be used by various authorities. These areas include: rivers and stream valleys; areas that are adjacent to or close to the shoreline of the Great Lakes-St. Lawrence River System or to an inland lake and that may be affected by flooding, erosion or dynamic beach hazards; and other areas in which development is prohibited.

The following definitions are being proposed:

“Watercourse” is proposed to be defined as:

A defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs.

“Wetland” is proposed to be the same as the definition currently set out in the Act for “development”, which is:

Land that:

- a) is seasonally or permanently covered by shallow water or have a water table close to or at its surface;
- b) directly contributes to the hydrologic function of a watershed through connection with a surface watercourse;
- c) have hydric soils, the formation of which have been caused by the presence of abundant water; and
- d) have vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which have been favoured by the presence of abundant water.

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But does not include periodically soaked or wet land being used for agricultural purposes and which no longer exhibits a wetland characteristic referred to in clause (c) or (d).

“Hazardous land” is proposed to be the same as the definition currently set out in the Act, which is:

Land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock.

Rivers and stream valleys limits and areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards:

The limits of the areas where the prohibitions apply are not proposed to be significantly changed from the descriptions under existing conservation authority regulations, but certain changes are under consideration to make these limits consistent across conservation authorities while still allowing for local context (i.e., where an authority’s jurisdiction contains any Great Lakes shoreline). The current descriptions can be viewed in existing conservation authority regulations available online at: <https://www.ontario.ca/laws/statute/90c27>.

Flood standards for the determination of hazardous lands associated with flooding:

The applicable flood event standards that will be used determine the susceptibility to flooding of lands or areas within the watersheds in the jurisdiction of each authority, are not currently being proposed to change from the standards outlined in current conservation authority regulations. The current standards can be viewed in existing conservation authority regulations available online at: <https://www.ontario.ca/laws/statute/90c27>.

As per commitments in *Protecting People and Property: Ontario's Flooding Strategy*, these standards are being reviewed as part of a broader provincial review of the natural hazard technical guides used for hazard management purposes, including for municipal planning as well as conservation authority regulatory purposes.

Other areas in which development is prohibited:

It is proposed that other areas in which development is prohibited would be areas within 30 metres of all wetlands.

2.2 Issuance of Permits under the Conservation Authorities Act (sections 28.1, 28.2)

Subsection 28.1 (1) of the *Conservation Authorities Act*³ provides that a conservation authority may issue a permit, with or without conditions, for activities that are otherwise prohibited by the act, where, in the opinion of the authority,

- a) the activity is not likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;
- b) the activity is not likely to 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; and
- c) any other requirements that may be prescribed by the regulations are met.

Key changes in the proposed regulation from current requirements for permit applications and issuance of permits are:

- Requiring conservation authorities to request any information or studies needed prior to the confirmation of a complete application.
- Limiting the site-specific conditions a conservation authority may attach to a permit to focus on matters dealing with natural hazards and public safety.
- Providing increased flexibility for an authority to issue a permit up to its maximum length of validity, and issue extensions as necessary.

2.2.1 Permit Applications

In order to create more clarity and consistency in what is required as part of a conservation authority permit application, it is proposed that the regulation include complete application requirements.

It is proposed that a complete application for a permit would consist of:

- a) A plan of the area showing the type and location of the proposed development activity or a plan of the area showing plan view and cross-section details of an activity to alter the existing channel of a river, creek, stream or watercourse, or change or interfere with a wetland;

³ as enacted by the *Building Better Communities and Conserving Watersheds Act, 2017* and proposed to be amended by the *More Homes Built Faster Act, 2022*, introduced on October 25, 2022.

- b) The proposed use of any buildings and structures following completion of the development activity, or a statement of the purpose of an activity to alter the existing channel of a river, creek, stream or watercourse, or change or interfere with a wetland;
- c) The start and completion dates of the development or other activity;
- d) A description of the methods to be used in carrying out an activity to alter the existing channel of a river, creek, stream or watercourse, or change or interfere with a wetland;
- e) The elevations of existing buildings, if any, and grades and the proposed elevations of any buildings and grades after the development;
- f) Drainage details before and after the development or other activity;
- g) A complete description of the type of fill proposed to be placed or dumped; and
- h) Such other technical information, studies or plans, as the authority may request *prior* to the confirmation of a complete application by the authority, including as determined during any pre-consultation between the authority and the applicant.

2.2.2 Issuance of Permits

The regulation will also address the maximum period of permit validity, address the conditions the conservation authority may or may not attach to a permit, and address permit extension.

It is proposed that the maximum period of validity for which a permit can be issued is 60 months. An authority may issue a permit for less than this length.

It is proposed that the site-specific conditions a conservation authority may attach to a permit be limited to conditions to mitigate:

- effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock; and
- conditions or circumstances created by the development project 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.

Along with any conditions to support the implementation or administration of the permit.

As per the process currently in place under the regulations, it is proposed that the authority may grant an extension of a permit if:

- a. the holder of the permission submits a written application for an extension to the authority at least 60 days before the expiry of the permit;

- b. no extension of the permit has been granted previously; and
- c. the application sets out the reasons for which an extension is required and demonstrates that circumstances beyond the control of the holder of the permission will prevent completion of the project before the expiry of the permit.

2.3 Program Service Delivery Standards

The list of mandatory programs and services that conservation authorities must deliver related to the risk of natural hazards outlined in O.Reg. 686/21 which includes the administration of permits under section 28.1 of the *Conservation Authorities Act*. Section 21.1(3) of the Act allows the government to prescribe standards and requirements for these programs.

The following service delivery standards are being proposed related to the administration of permits as part of the mandatory programs and services that a conservation authority must carry out related to the risk of natural hazards.

2.3.1 Conservation Authority Policies

The regulation would require each conservation authority to develop, consult on, make publicly available and periodically review a policy that includes:

- Further details about the complete application requirements listed above, as necessary;
- Timelines for confirming the requirements for a complete application following pre-consultation;
- Timelines for notifying applicants as to whether a permit application is deemed complete;
- A process for an administrative review if an applicant is not notified of a complete application within a specified timeframe, and of a decision on whether a permit application is complete;
- Timelines for a decision on a permit application following the submission of a complete application; and
- Additional technical details on regulatory requirements and permit application and review procedures.

If the authority wishes to make changes to this policy, they shall give notice of the proposed change to the public in a manner it considers appropriate, and each conservation authority shall prepare and publish a report annually that outlines statistics on permits issued, including reporting on the level of achievement of service delivery standards.

2.3.2 Mapping of areas where development or other activities are prohibited.

Under section 21.1 of the Act, conservation authorities would be required to create maps of areas within their jurisdiction generally depicting where a permit is required for development and other activities and make these maps publicly available at the head office of the authority and in any other manner consistent with conservation authority policy. In some cases, regulated areas will still need to be confirmed based on the technical description as set out in the regulation, which is what officially determines the areas where permits are required.

It would also be required that if the conservation authority makes significant changes to this mapping based on new information or technology, or changes in watershed conditions (i.e., beyond any minor modifications or corrections or adjustments made regarding site specific applications) that result in an enlargement of the area depicting where the permitting requirements apply, the authority shall provide notice to the public in an appropriate manner, as set out in a policy adopted by the authority, and consider public comments in making any decisions regarding the proposed mapping changes.

2.3.3 Pre-consultation on permit applications

Under section 21.1 of the Act, it would be specified that either a conservation authority or a permit applicant may request pre-consultation prior to the submission of a permit application in order to confirm requirements for a complete application for the activity in question. To support the pre-consultation process, the conservation authority may request initial information on the activity to be undertaken and regarding the property where the activity will take place.

3. For Discussion: Improved coordination between Conservation Authorities Act regulations and municipal planning approvals

The updated Section 28 of the *Conservation Authorities Act* as proposed to be amended by the *More Homes Built Faster Act, 2022*, introduced on October 25, 2022, would provide the ability to exempt development authorized under the *Planning Act* from requiring a permit under the *Conservation Authorities Act*. This exemption would apply in the municipalities set out in regulation and could be subject to certain conditions also set out in regulation. Conservation authorities would continue to permit other activities not subject to municipal authorization.

The Ministry has not proposed a regulation utilizing this exemption tool as part of this regulatory proposal but is requesting initial feedback on how it may be used in the future to streamline development approvals while still ensuring the protection of people and property from natural hazards.

Considerations for the use of this tool include:

- In which municipalities should the exemption apply? How should this be determined?
- Which *Planning Act* authorizations should be required for the exemption to apply?
- Should a municipality be subject to any requirements or conditions where this type of exemption is in place?
- Are there any regulated activities to which this exemption shouldn't apply?