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Alex McLeod  
Natural Resources Conservation Policy Branch  
300 Water Street  
Peterborough , ON  
K9J 8M5

May 7, 2019

Dear Mr. McLeod

**Re: ERO Number 013-4992**

At its regular meeting on April 26, 2019, the General Membership of the Grand River Conservation Authority passed the following resolution:

19-77

Moved By Don Brunk

Seconded By Susan Foxtan

*THAT Report Number – Proposed Amendment to Conservation Authorities Regulations for Development Permits (ERO Posting #013-4992) be received as information, AND THAT Grand River Conservation Authority Report GM-04-19-39 be submitted to the Province through the Environmental Registry.*

In addition to these comments, the General Membership indicated the Province should be investing in the development of natural hazard mapping.

In accordance with the above resolution, enclosed is a copy of GRCA staff report GM-04-19-39 which summarizes our comments for Environmental Registry posting number 013-4992.

Regards,

A handwritten signature in blue ink that reads "Joe Farwell".

Joe Farwell, P.Eng.  
Chief Administrative Officer

enc (1)

# Grand River Conservation Authority

**Report number:** GM-04-19-39  
**Date:** April 26, 2019  
**To:** Members of the Grand River Conservation Authority  
**Subject:** Proposed Amendment to Conservation Authorities Regulations for Development Permits (ERO Posting #013-4992)

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## **Recommendation:**

THAT Report Number GM-04-19-39 – Proposed Amendment to Conservation Authorities Regulations for Development Permits (ERO Posting #013-4992) be received as information, and

THAT Grand River Conservation Authority Report GM-04-19-39 be submitted to the Province through the Environmental Registry.

## **Summary:**

On April 5, 2019, the Province posted a proposal for “Focusing conservation authority development permits on the protection of people and property”. This proposal would create one new regulation for all conservation authorities and it will replace 36 existing individual Conservation Authority regulations under Section 28 of the Conservation Authorities Act.

The province has noted that Conservation Authority regulations are a critical component of Ontario’s approach to reducing risks posed by flooding and other natural hazards and strengthening Ontario’s resiliency to extreme weather events. This renewed focus on natural hazards has been included in the Made-in-Ontario Environment Plan. It is proposed that a consistent regulation and approaches for conservation authority permits will support faster approvals while ensuring there are no impacts on natural hazards and public safety. The proposal includes exemptions for some low risk activities and other initiatives which will result in less costly approvals and allow conservation authority staff to focus on more complex applications to provide faster approvals.

## **Report:**

On April 5, 2019, the Province posted a *Proposed Amendment to Conservation Authorities Regulations for Development Permits* to create one regulation for all Conservation Authorities for development and alteration permits for natural hazards and public safety (ERO# 013-4992). The province has stated that the proposed regulation will make rules for development in hazardous areas more consistent to support faster, more predictable and less costly approvals for the business sector. The proposal includes some local flexibility on regulation streamlining based on differences in risks posed by flooding and other natural hazards. The closing date for comments on the proposal is May 21, 2019.

As noted in the province’s proposal “Prohibited activities set out in Section 28 of the *Conservation Authorities Act* as amended by Schedule 4 of the *Building Better Communities and Conserving Watersheds Act*, 2017 include:

- 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 (MNRF) is proposing to create a regulation further defining the ability of a conservation authority to regulate prohibited development and other activities for impacts to the control of flooding and other natural hazards.

The Ministry proposals and Grand River Conservation Authority (GRCA) responses are included below:

1. Update definitions for key regulatory terms to better align with other provincial policy, including: “wetland”, “watercourse” and “pollution”;

**GRCA response:**

- GRCA supports this proposal. Conservation Authorities through Conservation Ontario have encouraged the province to define these terms in relation to natural hazards to provide clarity and minimize variation across the province. In order to achieve a consistent interpretation of these terms and to assist in future legal matters that may challenge these definitions, the MNRF should also consider providing supporting documentation in the future e.g. fact sheets or implementation guidelines.
2. Defining undefined terms including: “interference” and “conservation of land” as consistent with the natural hazard management intent of the regulation;

**GRCA response:**

- GRCA supports this proposal. These terms are integral to the implementation of a new regulation and the evaluation of an activity that requires a permit. Definitions for these terms and future implementation guidelines or fact sheets would provide clarity for conservation authorities, applicants and legal matters.

A portion of the Conservation Authorities Act (CAA) is not proclaimed at this time. The province has indicated that it is proposing to proclaim sections of the CAA following the approval of the proposed Regulation. This includes: “S28.1 (1) An authority may issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, if, in the opinion of the authority, ... (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.”

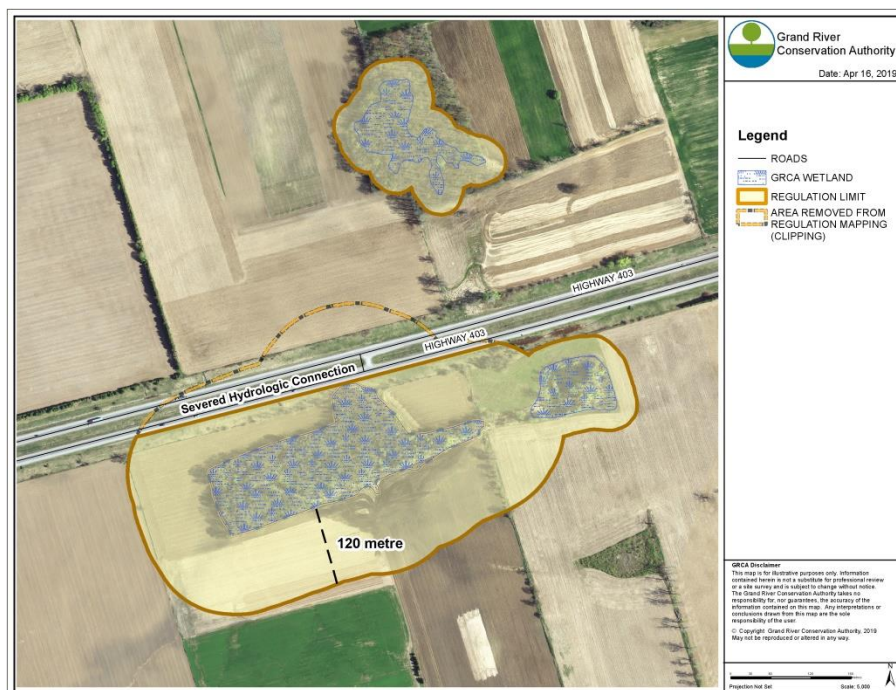
- GRCA requests that the province also provide guidance on the interpretation and implementation of this clause to assist in the review of permit applications where this test may apply. Factors that may be considered include, but are not limited to:
    - safe ingress and egress of people and vehicles during a flood event
    - health and safety of emergency responders entering flood waters
    - floodproofing requirements
    - damage to structures on the site or to other landowners (offsite impacts)
    - future costs to protect property or manage risk to people and property due to climate change
3. Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;

## GRCA response:

- The GRCA supports the reduction of regulatory restrictions between 30m and 120m from a wetland for low risk activities that would not impact the hydrologic function or public safety. A GRCA assessment of 2017 permits found that 148 of 852 were located in the 30m -120m regulated area and many of these permits could be considered low risk activities. In this case, low risk would be considered as a project that would not have a substantial effect on the hydrologic function of the wetland. Examples include: sheds, barns, garages, replacement septic systems, small additions to single family dwellings etc.
- GRCA would be pleased to meet with the province to define low risk activities that may be considered appropriate for the regulated area 30m-120m from a wetland. It's important to note that there are activities that should not be considered low risk activities such as large scale excess soil/fill placement and grading activities, major infrastructure (e.g. roads, servicing or utility corridor).
- It is unclear what is meant by “where a hydrological connection has been severed”. GRCA would support an interpretation of this statement as:
  - Inclusion of a clause in the regulation that allows a modification of the extent of the regulated area where significant linear/transportation infrastructure has limited the hydrologic connection between the wetland on one side of the linear feature and ‘non-wetland’ on the other side e.g. where a wetland goes up to a provincial or municipal road and the other side of the road is a farm field.

GRCA regulation mapping currently includes this approach for areas where there is a road within 120m of a wetland. It is a practice we call ‘clipping’. It has reduced the regulated area shown on GRCA mapping by over 8,700 hectares (watershed wide). It would be beneficial to have this practice enabled in the Regulation and future policy guidance provided to outline criteria for its use. GRCA would be pleased to participate in the development of future policy or implementation guidance on this practice. An example of a clipped map is shown below.

## Example: 120 Metre Regulation Limit is Not Mapped Across a Road



4. Exempt low-risk development activities from requiring a permit including certain alterations and repairs to existing municipal drains subject to the *Drainage Act* provided they are undertaken in accordance with the *Drainage Act* and *Conservation Authorities Act Protocol*;

**GRCA response:**

- The GRCA supports the inclusion of this provision to enable the explicit exemption of some low risk activities. In some regulated areas, there are low risk activities that currently require a permit that could be considered for exemption. GRCA policies currently include activities of this nature that occur outside of a wetland or some hazard areas such as minor landscaping or grading, replacement of service connections, small non-habitable accessory structures e.g. shed. The proposed exemption and other initiatives outlined in this proposal will result in less costly approvals and will also allow conservation authority staff to focus on more complex applications and provide faster approvals. GRCA would be pleased to work with MNRF and other stakeholders to review activities that may be included for exemption.
  - GRCA is also supportive of including the low risk activities outlined in the *Drainage Act* and *Conservation Authorities Act* protocol. Since this protocol was developed in 2008 and approved by the province 6 years ago, a review of the protocol may be warranted.
5. Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;

**GRCA response:**

- GRCA supports this initiative to allow individual conservation authorities to identify low risk activities in limited parts of natural hazard areas where there is current technical information and mapping. Exemption of low risk activities includes two options: outright exemption and a permit by rule system. Permit by rule is used in other provincial legislation where the applicant agrees to a specific set of rules before they start a specific regulated activity in a defined area. The applicant may be required to register their activity with the GRCA and inspections may be required.

The MNRF should consider the requirements that will need to be in place for the implementation of this provision such as regulation maps that are current and a regular maintenance process is in place. Provincial investment in updating components of the natural hazard maps may be necessary e.g. floodplain and wetland mapping. Current and reliable maps are a key part of the successful implementation of this option so the public can use the conservation authority regulation maps to identify where an exemption may or may not be applicable and avoid enforcement issues. GRCA regulation policies would need to be updated and approved by the Board in order to be clear on the type of activities and what type of an exemption may apply.

The GRCA has invested significant resources over many years to develop regulation mapping and associated metadata that is available to the public. This link connects you to the GRCA regulation mapping:

<https://www.grandriver.ca/en/Planning-Development/Map-Your-Property.aspx>

- GRCA has been investigating the option of an e-permit process that may be used for a streamlined permit approval or a permit by rule option if this provision is included in a future regulation.

6. Require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions;

**GRCA response:**

- GRCA supports this proposal. GRCA permit policies approved by the Board have been in place since 2008. A consultation process has been implemented for these policies and subsequent updates. These policies are public documents and are posted on the GRCA website at <https://www.grandriver.ca/en/Planning-Development/Policies-and-guidelines.aspx>.

7. Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries; and

**GRCA response:**

- GRCA supports this proposal. Notification may be provided to the public in several ways. Where the GRCA is leading a comprehensive update such as a watershed wide or subwatershed study, a process similar to municipal comprehensive studies is used including: broad public notification through local print media, online media, website postings, public meetings and reports presented at the GRCA board meeting which is open to the public.
- Where a municipality is undertaking a land use planning approval such as a secondary or community plan or environmental assessment and new or updated natural hazard mapping is available, the GRCA considers the public to be notified of these changes through the municipal consultation process. This avoids duplicate public processes.
- Many updates to mapping are the result of site specific planning or permit applications and the landowner is notified as part of the process. These are considered minor housekeeping updates and are undertaken from time to time. Since effected parties are involved and aware of the changes, additional public notification is not undertaken.
- Guidance on acceptable public notification processes would be helpful to outline options available to conservation authorities. The guidelines should consider factors such as the scale and scope of changes, alternative public notification opportunities to avoid duplication as well as the size of the watershed for comprehensive update.

8. Require conservation authorities to establish, monitor and report on service delivery standards including requirements and timelines for determination of complete applications and timelines for permit decisions.

**GRCA response:**

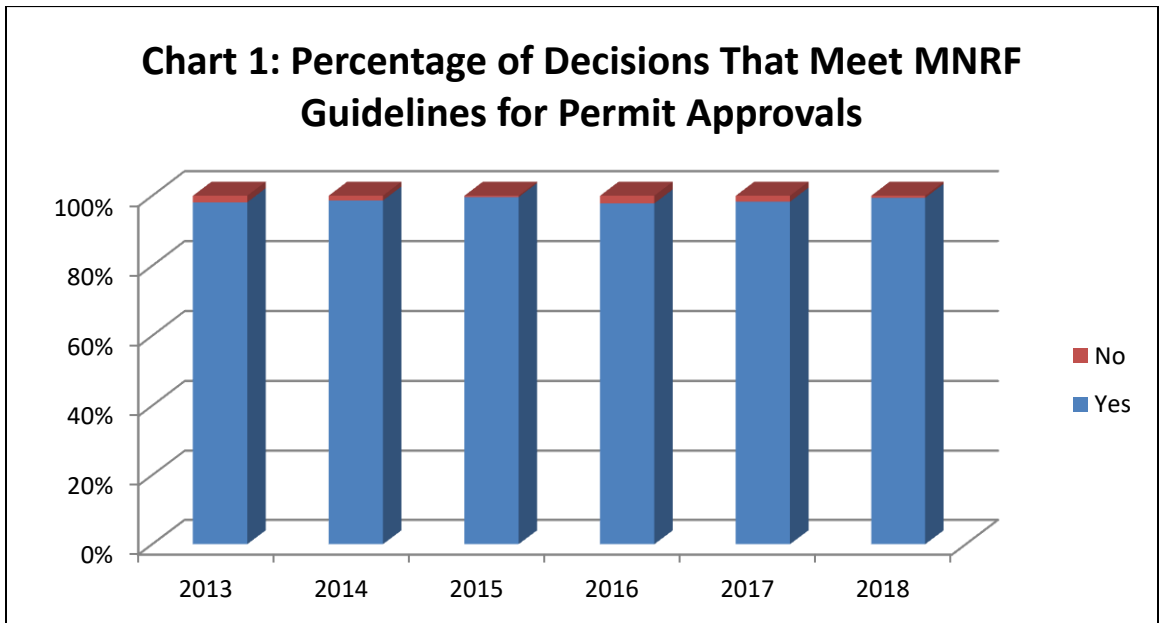
- GRCA supports this proposal. Since 2010 GRCA has been monitoring performance for permit approvals using the MNR guidelines which include: 21 days to determine if an application is complete application and a decision within 30 days for minor applications or within the 90 days for major applications. The GRCA has reported the permit approval statistics to the development industry at the quarterly Home Builder's and GRCA Liaison Committee meetings. In the past, this committee has established checklists and guidelines that have focused the efforts of the development industry and CA staff on providing timely and clear pre-consultation criteria to encourage complete and thorough technical submissions. This effort to address complete applications and complex issues at the beginning of the land use planning or permit process has resulted in the GRCA achieving a very high compliance rate with MNR guidelines for permit approvals. A summary of GRCA permit approvals timelines from 2013 to 2018 is provided in Table 1 and Chart 1.

- Although the GRCA is able to achieve success in meeting the provincial timelines, there are opportunities to improve the complete application process and improve the quality of technical submissions and achieve faster approvals. Technical guidelines and checklists are used for this purpose. GRCA would support an update to the 2002 Provincial Natural Hazard Guideline including new information to address climate change.

**Table 1: GRCA Permit Decisions within MNRF Guidelines (April 2019)**

Year	# of Permits	Permits approved within timeline	Permits not approved within Timeline	% No	% Yes
2013	751	737	14	1.90%	98.14%
2014	665	656	9	1.37%	98.65%
2015	771	768	3	0.39%	99.61%
2016	827	809	18	2.22%	97.82%
2017	885	870	15	1.72%	98.31%
2018	853	839	5	0.72%	98.36% *

\*8 applications still in process



- Once a Regulation is established, the province is also proposing to bring into force un-proclaimed sections of the *Conservation Authorities Act* associated with conservation authority permitting decisions and regulatory enforcement.

**GRCA response:**

- The GRCA supports proclaiming S.28 and S.30 of the Conservation Authorities Act. These sections of the Act outline the conservation authority regulation of areas where GRCA has jurisdiction i.e. natural hazards and enforcement and offences. The Act was updated to include modern approaches to the compliance and enforcement requirements including the ability to use tools such as a 'Stop

Order' for work started without approval. There are also substantial increases in fines that may be a deterrent to illegal activities.

GRCA would be pleased to meet with the Province and other stakeholders to provide input to the content of the regulation and policy and guideline proposals related to natural hazards.

**Financial implications:**

The extent of financial impact of this proposal is unknown at this time. If approved, some activities that currently require permit from the GRCA may be exempt or subject to a permit by rule process with a reduced fee. The effect on revenue from application fees and expenses related to permit activities will need to be evaluated when the text of a new regulation is provided by the Province.

**Other department considerations:**

Resource planning, natural heritage, engineering and information systems programs support the GRCA permit process and may be affected by this proposal.

**Prepared by:**

Nancy Davy  
Director of Resource Management

**Approved by:**

Joe Farwell, P.Eng  
Chief Administrative Officer