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Environmental Registry of Ontario

To Whom it May Concern:

Re: Focusing Conservation Authority development permits on the protection of people and property
ERO Number: 013-4992

The Grey Sauble Conservation Authority has had the opportunity to review the regulatory changes to the Conservation Authorities Act Section 28 regulation. Based on this review, we are generally supportive and offer the following comments:

1. Grey Sauble Conservation Authority is generally supportive of the proposal to consolidate and harmonize the existing 36 individual conservation authority regulations into one Minister approved regulation.

However, we note that the updated regulation should include schedules or provisions to accommodate the appropriate regulatory storm for each conservation authority jurisdiction, and even the appropriate regional storm or Special Policy Areas for the various watersheds within each jurisdiction.

The regulation should provide the ability to incorporate shoreline management plans where they have been established for the purposes of defining the high-water levels of the great lakes, and the associated water related hazards.

Additionally, the regulation should provide a factor or adaptation provision to account for changing watershed conditions as a result of climate change.

2. Grey Sauble Conservation Authority supports the proposal to update definitions for “wetlands”, “watercourse” and “pollution”; to create definitions for “development activity” and “hazardous lands”; and to create definitions for “interference” and “conservation of land”.

In order to achieve a consistent interpretation of these terms and to assist in future legal matters, the MNRF should also provide implementation support materials as part of this regulatory update.

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Watershed Municipalities
Arran-Elderslie, Chatsworth, Georgian Bluffs, Grey Highlands
Meaford, Owen Sound, South Bruce Peninsula, Blue Mountains

We recommend the following definitions be used:

Wetland: *“means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.*

Periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not considered to be wetlands for the purposes of this definition”

This is the definition of wetland utilized by the Provincial Policy Statement, 2014 to support the Planning Act. This would achieve consistency between the Planning Act and the Conservation Authorities Act in this regard.

We strongly encourage the Province to not consider the term “hydrological connection” in reference to wetland regulations. Important wetland features such as bogs may not have a direct surface water connection to a watercourse or waterbody, but still provide important ecological and natural functions. Further, these features still hold water on the landscape and therefore reduce flooding in downstream areas.

Watercourse: *“means an identifiable depression in the ground in which a flow of water regularly or continuously occurs”*

This is the existing definition of watercourse within Section 28 of the Conservation Authorities Act. As appropriate, exemptions within CA policy documents could be used to clarify anything that should not be considered a watercourse. These exemptions should be developed in consultation with the affected stakeholders.

Pollution: Grey Sauble Conservation Authority recommends a definition of pollution that is specific to a development project that is intended to control erosion and sedimentation, as well as the potential release of hazardous substances due to the occurrence of natural hazards. Such a definition will provide direct context for the use of this test, and will avoid overlap with MECP legislation (EAA, EPA, etc.)

Development Activity: *“means,*
(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”.

This is the definition that is currently included in Section 28 of the Conservation Authorities Act. This definition provides conservation authorities with enough latitude to adequately protect people and property from damage and loss.

Hazardous Land: Grey Sauble Conservation Authority recommends that the existing definition of hazardous land be maintained, however the regulatory limit around hazardous lands should include an allowance to be consistent with the delineation of the erosion hazard in the existing technical guides.

Further, this definition should not require the presence of a watercourse at the toe of slope for the erosion hazard to apply. Grey Sauble Conservation Authority, through approved regulation, regulates re-entrant valley systems that have receded from the watercourse feature, but still pose a very real and substantial slope hazard.

Additionally, the necessity to regulate “unstable bedrock”, as in karst topography, should be more specifically defined. The most substantial hazard that we observe with most karst features is their tendency to surcharge under certain water conditions, thereby causing substantial backwatering and flooding.

Interference: *“means any anthropogenic act or instance which hinders, disrupts, degrades or impedes in any way the hydrologic and ecologic function of a wetland or watercourse”.*

Conservation of Land: *“means the protection, management, or restoration of lands within the watershed for the purpose of maintaining or enhancing the vegetative cover, hydraulic and ecological functions within the watershed for natural hazard management”.*

In addition to the above noted definitions, Grey Sauble Conservation Authority recommends that the newly proposed regulation offer a definition of “**safe access**” that is consistent with the MNRF Natural Hazard Technical Guides, 2002. This definition should offer more substance than that provided in the Provincial Policy Statement, 2014

3. Grey Sauble Conservation Authority generally supports the reduction of regulatory restrictions between 30 m and 120 m from non-provincially significant wetlands for low risk activities that would not impact the hydrologic function or public safety.

As noted above, we do not support the inclusion of the clause, “*where a hydrological connection has been severed*”. There are several situations where no surface water connection occurs, but the wetland feature may still serve an important function on the landscape. Some examples include, bogs, which by their nature are isolated; wetlands that provide recharge to other water features, which may not have a surface water connection; wetlands

that are large enough to provide flood reduction benefits by holding back water on the landscape; etc. We strongly encourage the Province to fully consider the impacts associated with this clause.

Any proposal to reduce the regulatory setback adjacent to provincially significant wetlands should not apply to the following:

- a) site grading, involving areas cumulatively equal to or greater than 1 hectare;
- b) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere, involving areas cumulatively equal to or greater than 1 hectare;
- c) municipal servicing;
- d) utility corridors;
- e) roads;
- f) infrastructure associated with Permits to Take Water;
- g) Development – if ½ to 1 ha in size;
- h) Other areas as determined through conservation authority policy.

4. Grey Sauble Conservation Authority requires more information on the proposal to exempt some low-risk development activities from requiring a permit, including certain alterations and repairs to municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act (DART) Protocol.

It is recognized that this proposed exemption would require an update to the DART protocol, and it is recommended that the DART be re-convened for this purpose. Any proposal for municipal drains alterations and repairs needs to differentiate between cleanouts to existing drains which may be exempt under DART, versus a new petition on an existing drain which would change the cross-section or alignment of the drain.

Grey Sauble Conservation Authority does not support the broadscale use of a “permit-by-rule” exemption clause unless there is a mechanism to collect a fee to enable the conservation authority to establish a project registry and monitoring system.

5. Grey Sauble Conservation Authority is supportive of the proposal to allow conservation authorities to exempt low-risk development activities from requiring a permit provided it is in accordance with conservation authority policies. This proposal would allow a conservation authority to develop possible exemption policies based on the hazards and development pressures found within their watershed where there is current technical information and mapping.

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 regularly maintained.

6. Grey Sauble Conservation Authority supports the requirement to require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions as it contributes to the overall transparency and accountability of the Section 28 regulatory program.

As many conservation authorities already have such documents, we recommend that a periodic review and renewal timeframe be developed to update existing policies. This renewal process would have a public consultation process that would allow modification to existing policies without the necessity to completely re-write the policy and thereby mitigate the need to completely re-train staff on an entirely new policy framework for the implementation of the regulation.

7. Grey Sauble Conservation Authority could support the proposal to require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains and wetland boundaries if the “text based” format of the regulation is maintained.

Maintaining the precedence of the text of the regulation is of utmost importance in the protection of people and property from natural hazards. This is especially important in rural conservation authority jurisdictions where the update to these features is based on best available data and is frequently being updated as site level reviews are conducted, and new ortho-photos are obtained. The maps that are used to plot the regulated area were originally from the Ontario Basic Mapping (OBM) produced by the Province at 1:10 000 scale in most areas. Over the period since the new regulation came into effect in 2006, conservation authorities have continued to update the mapping as more detailed information becomes available from field inspections by staff and updates to digital data sources. Most of the changes result from inaccuracies in the base maps. Examples include inaccurate stream locations or streams missing from the original OBM maps. Other changes include more accurate definition of slope hazards, flood prone areas and wetland boundaries. Conservation authorities also review updated layers from the Ministry of Natural Resources and Forestry that may affect the regulation such as provincially significant wetlands.

Additionally, the requirement for public notification should differentiate between notifying the public of changes already made (e.g. MNR has updated the provincially significant wetland boundary) and of proposed changes (e.g. the CA is undertaking a flood plain mapping project). The requirement for public notification should also relate the scale and scope of changes, alternative public notification opportunities to avoid duplication as well as the size of the watershed for comprehensive update. That is, ongoing minor updates should not require immediate notification. Annual updates to the conservation authorities Board of Directors and the public should suffice for ongoing minor updates.

In the interest of protecting public safety and property, static maps (similar to zoning and official plan maps) should never take precedence over the text of the legislation and regulation.

8. Grey Sauble Conservation Authority is supportive of the proposed requirement for 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. When developing this requirement, it is recommended that the MNRF consult directly with conservation authority staff.

Grey Sauble Conservation Authority prides itself on our ability to provide this review in a timely and effective manner. This proposed requirement is expected to add a level of transparency and clarity to the process for both applicants and regulators.

9. With regards to the section of the ERO posting stating that the proposed changes will also provide the business sector with a clear and consistent regulatory environment in which to operate and will help to make approval processes faster, more predictable and less costly.

Grey Sauble Conservation Authority recognizes the need to provide the proponents with a clear and consistent regulatory environment in which to operate and the need to make approval processes faster, more predictable and less costly.

One of the items that will help achieve this is the service delivery standards noted above.

Further, it is vital that the Province commit to provide funding to update and/or undertake natural hazard studies. This would go a long way toward speeding the review process for larger developments and would provide a clear understanding of the constraints to land-owners, developers, etc. in advance of the application process. This saves time, reduces proponent costs, and makes our communities more development ready.

10. With regards to the section of the ERO posting stating that as more extreme weather events occur that threaten our homes, businesses and infrastructure, it's important to ensure conservation authorities deliver on their core mandate for protecting people and property from flooding and other natural hazards. Improving the efficiency and effectiveness of these regulations is critical component of this government's strategy for strengthening Ontario's resiliency to extreme weather events.

While Grey Sauble Conservation Authority recognizes the need to have efficient and effective regulations, we also recognize the need for the Province to provide meaningful support of this program in terms of funding for updating natural hazard studies and funding to support compliance enforcement efforts. While Grey Sauble Conservation Authority is strongly in support of the yet to be proclaimed increase in enforcement tools and fines, there is still a substantial financial burden on conservation authorities to enforce compliance of this regulation. One potential funding opportunity would be to allow conservation authorities to utilize crown prosecutors to try cases in court. In this way, conservation authorities would

contribute the staff time required, and the Province would cover the court costs, which in turn could be paid back to the Province through the fines incurred.

Respectfully,

Grey Sauble Conservation Authority