

Policy Considerations for Regulatory Proposals (Phase 1) under the Conservation Authorities Act – ERO #019-2986

About IBC

Insurance Bureau of Canada (IBC) is the national industry association representing Canada’s private home, car and business insurers. Its member companies make up 90% of the property and casualty (P&C) insurance market in Canada. For more than 50 years, IBC has worked with governments across the country to help make affordable home, car and business insurance available for all Canadians. IBC supports the vision of consumers and governments trusting, valuing and supporting the private P&C insurance industry. It champions key issues and helps educate consumers on how best to protect their homes, cars, businesses and properties.

The Role of Conservation Authorities in Climate Change Adaptation

The roles and responsibilities of conservation authorities (CAs) have been the subject of several legislative changes over the past few years. The gradual incorporation of these changes has allowed CAs, Conservation Ontario, other interested groups and individuals to provide feedback at each stage.

Changes to the Conservation Authorities Act were made as a result of the regulatory changes outlined in ERO #013-4992, which is titled “Focusing conservation authority development permits on the protection of people and property”; ERO #013-5018 titled “Modernizing conservation authority operations”; and the More Homes, More Choice Act, 2019.

Two years ago, in commenting on the More Homes, More Choice Act, 2019, IBC recommended that:

Any changes to the power, governance and funding models of Conservation Authorities should serve to strengthen, not weaken, their ability to prevent residential or commercial development in flood plains or other areas at risk of flooding.

This is still our industry’s fundamental position. While the legislative recognition of watershed-based resource management strategies is welcome, we have some concerns, both with the proposed regulations, and more broadly about the financial implications of climate change, as well as flood and erosion adaptation measures. The following outlines IBC’s concerns.

Responsibility for Non-Mandated Programs

CAs play critical roles in land stewardship and in helping Ontario and Ontarians manage flood risk. Therefore, IBC is pleased that the amendments to the Conservation Authorities Act and the recently posted proposed regulations are clear that municipalities have a responsibility to support CAs in this mandatory function.

While the mandatory programs outlined in the consultation document align with provincial policy statements, there is a lack of clarity regarding the ongoing responsibility for non-mandatory programs, several of which play an important role in land stewardship.

The pandemic has created a resurgence of community interest in the public spaces and passive recreational activities (e.g., walking trails) that CAs provide. It is important to maintain these valuable community services, and this should be a mandatory role of CAs. If, however, CAs are not tasked with the responsibility of operating and maintaining public spaces and their associated recreational uses under their stewardship, there is a risk these important resources may fall by the wayside. The regulations do not define where responsibility lies for non-mandatory programs; this gap needs to be addressed. The regulations should clearly state that municipalities bear responsibility for the items listed in the “non-mandatory programs and services on behalf of a municipality” and “non-mandatory programs and services an authority determines are advisable” charts.

Ministerial Zoning Orders

IBC shares concerns with other stakeholders that the legislative change that allows a minister’s zoning order to override CAs has the potential to effectively nullify CAs’ efforts to control flood risk and protect provincially significant wetlands. If the government believes that CAs ought to help control flood risk within their watershed, CAs should be allowed to discharge that responsibility. Just as the Ontario Municipal Board often became a vehicle to bypass locally made decisions, IBC is concerned that requests for ministerial zoning orders will become a standard tactic for those wanting to build in flood-risk areas.

Insurers are concerned because products such as overland flood insurance are more difficult to obtain for those at highest risk of flooding. By permitting development in areas with known high flood hazard levels, where there is limited recourse to financial management tools such as insurance, the potential for eventual strategic retreat exposes municipalities and potentially the provincial government to long-term financial risk.

Financial Impact of Flood Mitigation

Across Canada and throughout Ontario, many communities have been built in areas we now know have a substantial flooding and/or erosion risk. Ontario was fortunate to have had CAs guide development for the past half century; because of that, fewer homes and businesses face riverine flood risk than might otherwise have been the case. Even so, older communities and neighbourhoods still have flood and erosion risk that will require mitigation. Insurers are concerned that communities, particularly smaller

ones, may not have the financial capacity to support necessary flood mitigation measures and other necessary levels of service. The downloading of these costs to municipalities with limited taxpayer bases could cause hardship for these communities and their ratepayers. All of Ontario bears some responsibility for this legacy risk, and the province should consider assisting communities in addressing it.

Also, smaller CAs facing an additional administrative burden implementing the proposed regulations may have to redeploy staff and could experience financial constraints. Every effort should be made to streamline reporting so as to limit red tape.

Strategic Retreat

Flood and erosion risk are best managed in a systematic way rather than on a property-by-property basis. (For example, physical mitigation on one property can affect other properties along the shoreline. However, a systematic approach to hazard management can manage that risk.)

Similarly, strategic retreat due to flood and erosion hazards can benefit from a systematic approach. Although most properties in Ontario have a manageable level of flood risk that can be mitigated at the property or community level, a small percentage of properties face significant risk of repeat flooding and erosion that cannot be physically mitigated. The only remaining mitigation measure left for these properties is strategic retreat; once a structure has been removed from an at-risk area, rebuilding should not be allowed.

CAs have historically acted as land stewards and could continue in this role for any properties obtained by municipalities or the province as part of a strategic retreat program. The regulations could incorporate a mechanism for allowing this to take place.

Natural Infrastructure

The regulations contain a reference to “soft infrastructure,” but the meaning of the term is unclear. Wetlands, riparian areas and other types of natural infrastructure are important tools in reducing flood risk. CAs should have the ability to use natural infrastructure in discharging their mandatory flood risk reduction responsibilities. When considering the best mechanism to mitigate flood risk, natural infrastructure should be assessed against a common standard that includes both 1) broader benefits to the community, and 2) a forward-looking lifecycle analysis that incorporates future repair and replacement costs.

The mandatory requirements under the Lake Simcoe Protection Plan differ from the mandatory requirements outside of that specially protected area. However, these monitoring and strategic action policies (e.g., the Natural Heritage regulations) should be mandatory for other CAs as well. But if CA mandatory services are expanded to incorporate all or some of these requirements, small CAs in particular could require financial support. If these programs and services are important enough to be

considered mandatory for the area protected under the Lake Simcoe Protection Plan, they should be considered mandatory in other areas of the province as well.

Flood mitigation measures can be expensive for communities to execute, and municipalities are rightly concerned that levies for CA flood protection measures could affect their financial health. This will be the case with the reduced mandatory responsibilities outlined in the proposed regulations. The solution is not, however, to reduce the scope of flood risk reduction measures but rather to reconsider how these measures are paid for. The changes to CA responsibilities run the risk of leaving some Ontarians without necessary levels of flood protection.

Climate Change Adaptation

The proposed regulations reflect the need to address future adaptation requirements by assessing climate risks for natural hazards. However, IBC is concerned that the requirement to develop and implement a response to those risks is unclear. It is important for communities and the province to understand that adapting to current and future risks comes with a financial cost. The cost of adapting, though, is less than the cost of doing nothing and having to pay to rebuild lives and communities following a catastrophic event.

Conclusion

IBC continues to support the province's broad objective of ensuring that CAs focus their efforts on reducing flood and erosion risk. However, it is concerned that the list of mandatory responsibilities is too narrow to achieve this. IBC is also concerned with the ambiguity about where responsibility lies for the non-mandatory activities outlined in the regulation.

Adapting to our legacy and future flood risks may well be beyond the financial capacity of some communities. In communities where the risk is high and financial resources are limited, the province should assist them in addressing their flood risk.

While Ontarians share responsibility for past decisions made in good faith, communities have a responsibility to plan appropriately for future development. This planning includes not just assessing future risks, but limiting future risk through land-use planning and restricting development in hazardous areas.

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