



Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations d'Ottawa

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Public Input Coordinator
PD - Resources Planning and Development Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street, 2nd Floor, South tower
Peterborough, ON K9J 3C7

Re: ERO# 019-2927 Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario

Dear MNRF Representative,

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as a submission to the government's request for proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario (ERO# 019-2927).

In order to be considered in their totality, these comments should be read along with GOHBA's submissions to ERO 019-6160 (Proposed Updates to the Ontario Wetland Evaluation System), ERO 019-6141 (Legislative and regulatory proposals affecting conservation authorities), and ERO 019-6161 (Conserving Ontario's Natural Heritage).

We provide comments and additional suggestions on ERO #019-2927's specific proposals below.

The ministry is proposing to make a single provincial regulation to ensure clear and consistent requirements across all conservation authorities while still addressing local differences.

In principle, GOHBA supports the establishment of province-wide rules and regulations to provide consistency between different Conservation Authorities ("CA") (and sometimes between different staff at the same Conservation Authority) subject to geographic specific contexts also being considered.

Recognition of regional context and natural features is critical to appropriate decision-making. GOHBA is concerned that a CA employee located elsewhere in the province (for example in Essex county/ Windsor) will not appreciate the geographic/environmental/biological context of the Ottawa area.

GOHBA agrees that 36 different conservation authorities are likely not required - there are 3 applicable in Ottawa alone - so it looks forward to discussions as to how a single CA regulation will account for differences or, GOHBA suggests, it may be appropriate to retain regional offices.

Transition and Implementation

GOHBA seeks clarity and guidance on transition and implementation of the new legislation and policies is required as Bill 23 did not address how these changes are to be consolidated and enacted. As an example, where charges have been issued for failure to have a permit, or where investigations have occurred but no charges have been brought, will the proposed new single CA have jurisdiction to continue these matters?

The government will also need to provide clarity regarding transition provisions for applications that are in process. What happens to applications that are being processed but become moot as a result of the legislative changes? There are additional matters that require discussion and clarification.

Proposed Updates to Regulation of Development for the Protection of People and Property from Natural Hazards

In general GOHBA supports the content of the Regulatory Proposal Consultation Guide. We provide the following specific comments and recommendations:

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

- GOHBA supports the concept of adding Subsection 28.1 (4.1) and (4.2) depending on the activities, municipalities, types of Planning Act authorizations, and conditions/restrictions prescribed through the regulations. Before this is implemented GOHBA suggests additional discussions are required to establish these details.
- The exemption would be associated with activity “authorized under the Planning Act” meaning the CA still has the authority to regulate just at a different stage of the process. This is an improvement but does not completely remove CAs from the process.
- Would the Planning Approval Authority require the permission of a CA to approve a development that includes regulated areas (Subsection 28 (1))? Or do the CAs submit commentary and the Approval Authority considers it as part of the approval? OR is the change to be read “as soon as there’s a Planning Act authorization involved, the CA does not have authority to regulate”. We are unclear on this component of the ERO posting.

- Depending on the outcome of the above mentioned question, some changes may be warranted to subsection 28.1 (4.1) clause (a):

*(4.1) subject to subsection (4.2), the **prohibitions in 28 (1) do not apply to an activity** within a municipality prescribed by the regulations if;*

*(a) **the activity is part of development authorized under the Planning Act;** and*

(b) such conditions and restrictions as may be prescribed for obtaining the exception and on carrying out the activity are satisfied

(4.2) if a regulation prescribes activities, areas of municipalities or types of authorizations under the Planning Act for the purposes of this subsection, or prescribes any other conditions or restrictions relating to an exception under subsection (4.1), the exception applies only in respect of such activities, areas and authorizations and subject to such conditions and restrictions

- Regarding the 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, this was previously potentially allowed subject to obtaining a permit. It is unclear if there will be NO further opportunity to re-align a watercourse – which would create problems. It is also unclear if section 2.2 negates this concern in that CAs can still issue a permit for these types of activities?

GOHBA would strongly support maintaining the flexibility to work with existing natural features where appropriate and with the appropriate compensation to facilitate logical land use requirements, in consultation with the municipality and Conservation Authority. The wording should be clarified to ensure that a watercourse may be realigned if the appropriate approvals have been obtained.

- Key changes in the proposed regulation from current requirements regarding what activities are prohibited, and areas where activities are prohibited, include updating the “other areas” in which the prohibitions on development apply to within 30 metres of all wetlands. In some cases this is a GREATER buffer than currently required for some non-Provincially Significant Wetlands. GOHBA does not support increasing the area to which the regulations will apply.

There may be a conflict between keeping the same wetland definition and 30 metre setback as present with the changes proposed to the OWES.

Section 2.1.1 Prohibited Activities

- The activities proposed for streamlined approvals are reasonable. It is helpful that maximum areas have been included. This provides a clear definition and facilitates a consistent application.

Section 2.1.2 Areas where activities are prohibited

- The proposed change to the definition of “Watercourse” through the Regulations is a step in the right direction. This has always been a challenge and the proposed definition seems reasonable.
- Why it matters: a “watercourse” is a regulated feature, and the definition of “wetland” (which determines whether or not a feature is regulated) depends on there being a ‘direct contribution to the hydrologic function of a watershed through connection with a surface watercourse’
- The proposed change is an improvement and will eliminate ephemeral drainage routes with marginal definition. However, GOHBA recommends additional clarity to specifically exclude ditches, municipal open course drains, swales, etc.
- We suggest the word “regularly” is very subjective and the definition of “hazard lands” already includes “naturally occurring”. Therefore, we suggest adding following to ensure clarity and conformity of language, and to ensure channels that flow only in the spring but provide important functions are captured:

*A **naturally occurring** defined channel, having a bed and banks or sides, in which a flow of water regularly, **including throughout the spring period**, or continuously occurs.*

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

- GOHBA remains concerned that too much subjective control still lies with the authority when issuing Section 28 permits. Subsection 28.1 (1) reads:

*28.1 (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,***

- (a) the activity is not likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;*
- (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. 2017, c. 23, Sched. 4, s. 25.*

- We recommend that the section be revised to indicate that the Authority “shall” issue a permit unless the activity is:

28.1 (1) An authority ~~may~~ **shall** issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, **unless if, in the opinion of the authority,**

(a) the activity is ~~not~~ likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;

(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 **not** met. 2017, c. 23, Sched. 4, s. 25.

Section 2.2.1 Permit Applications

- GOHBA generally supports the requirements for Section 28 Permit application, but we request to add the following:

A description of the sediment and erosion control measures to be implemented.

- As well, we note that if a permit is required governing future actions under the authorization of the Planning Act, then 60 months may not be enough time.

2.3.1 Conservation Authority Policies

- As mentioned above, GOHBA is generally supportive of consolidating all of the different CA regulations into one to provide consistency between different Conservation Authorities (and sometimes between different staff at the same Conservation Authority) subject to geographic specific contexts also being considered.
- However, the consultation document seems to suggest that the regulation would generally allow CAs to create their own policy, which in our view does not solve the problem.
- As opposed to “The regulation would require each conservation authority to development, consult on, make publicly available and periodically review a policy”, GOHBA recommends these elements should be prescribed by the Province through the regulations for consistency.

- Also, GOHBA disagrees with the approach of “further details about the complete application requirements listed above, as necessary” will be established. The regulation(s) should be clear what elements/details can be requested to form a complete application. And these elements would need to be established at the time of consultation.
- In regard to “timelines for confirming the requirements for a complete application following pre-consultation”, GOHBA recommends there should be guidance within the Act. For example: policies to specify response time based on the type of activity/interference, but the regulation should stipulate that comment return (consultation record) from the CA cannot exceed 30 days.
- “[T]imelines for notifying applicants as to whether a permit application is deemed complete”, GOHBA recommends this be prescribed in the Act (consistent for each CA)
- “[P]rocess for an administrative review if an applicant is not notified of a complete application with a specified timeframe, and of a decision on whether a permit application is complete”; GOHBA would prefer to see the regulation set this so that after 30 days an applicant can make a request to the Board (CA Board) for determination. Disputes should be directed to the OLT through a motion to determine whether the information provided meets the requirements for complete application based on the permissions of the regulation and the consultation record. This would parallel the ‘complete application’ provisions currently contained in the Planning Act sections 34(10.4 to 10.6).
- “Additional technical details on regulatory requirements and permit application and review procedures”; In general, if CAs are commenting on development applications then there needs to be ‘checks-and-balances’ put in place. Public circulation, opportunity to comment at a meeting of the CA board, and the opportunity to appeal or question any of the policies implemented should be included.

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

- GOHBA supports the general direction of the proposed regulatory changes regarding mapping, subject to mandatory consultation and establishing a method of public circulation and direct notice to an affected landowner.
- There needs to be base line criteria to amend the mapping including justifiable data and evidence.
- We recommend that the regulations should stipulate/limit that a CA can update their mapping once a year and that changes must be summarized and publicly circulated, prior to Board approval.

- We recommend that any proposed changes should be posted at least 20 days to the CA website for comment prior to the CA Board meeting.

Section 3 Improved coordination between Conservation Authorities Act regulations and municipal planning approvals

As mentioned in our submission to ERO #019-6141, Conservation Authorities play a role in the land development and planning process to protect people and property from hazards and flooding, and Home Builders' Associations across the province, as in Ottawa, support the provincial objective to clarify roles and responsibilities to streamline the approvals process to support the building of more homes faster. However, shifting some aspects of technical approvals to municipalities has the potential to increase costs and slow the process down if municipalities are given responsibilities for which they do not have expertise and for which local political considerations could impact technical decision-making.

This could result in inconsistent responses among the different municipalities and provide the potential for inappropriate retention of features or areas that are not actually natural environment features.

In terms of which Planning Act authorizations should be required for the exemption to apply, GOHBA recommends the following:

- Section 41 – Site Plan Control
- Section 46 – mobile homes, land leases
- Section 47 – Minister approvals
- Section 51 – Plans of Subdivision
- Section 53 – Consents

GOHBA further recommends retroactive consideration (e.g. If a Plan of Subdivision was draft plan approved and/or registered in the last 5 years.)

Comments on Protecting People and Property: Ontario's Flooding Strategy

Regarding the establishment of a Multi-Agency Flood Mapping Technical Team to coordinate the activities within this action as well as provide input into the review and update of current flood mapping technical guides – GOHBA inquires why is there no industry expert included in this multi-agency technical team?

GOHBA recommends that, as a minimum, there should be some level of inclusion or informing the residential construction and land development industry of interim discussions for input.

In terms of the update to Provincial Standards for Flood Mapping, this section relates to improvement and consistency of the "tools" but currently does not include changes required to address inconsistency between the MNRF Floodplain Mapping guidelines and the PPS related to the use and recognition of regional storm controls to mitigate floodplain impacts due to new

development areas. GOHBA would like to further discuss how this inconsistency may be rectified.

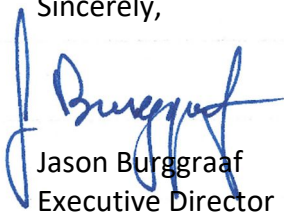
Comments on review of policy and ideological approaches of existing guidance to further evaluate the use of regional flood control facilities in Ontario and determine whether the province should take steps to regulate their use while considering a range of options from allow to prohibit.

GOHBA believes that this initiative is absolutely required. The PPS requires there to be no impact to downstream hazards – this is too strong of a statement. New development will often create impacts that may be addressed if mitigation measures (stormwater management ponds/attenuation) are implemented. The MNRF technical guideline does not allow ponds to be recognized for their mitigation/contribution when preparing floodplain mapping. So although it is appropriate to allow the use of stormwater ponds to mitigate risk, the Ministry policy does not allow the ponds to be recognized when doing the floodplain mapping. This significant conflict in provincial policy and guidance needs to be addressed.

Thank you for the opportunity to provide comments on this proposal.

We are pleased to answer questions or provide further information as requested.

Sincerely,



Jason Burggraaf
Executive Director