

December 30, 2022

Electronic Submission only

ATT: Public Input Coordinator

Ministry of Natural Resources and Forestry
Resource Planning and Development Policy Branch
300 Water Street, 6th Floor, South Tower
Peterborough, ON K9J 8M5

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

ERO Posting 019-2927

Background:

Through proposed modifications to Sections 21 & 28 of the *Conservation Authorities Act* (CAA), as well as forthcoming Regulations, a number of Conservation Authority processes are expected to be altered or further defined. The following items are understood to be proposed:

- A new Regulation will be created and adopted that will be applicable to all thirty-six (36) CAs. This Regulation will:
 - Formalize pre-consultation requirements for CAA permits.
 - Formalize complete application requires including, but not limited to, studies and/or technical information.
 - Limit the type of site-specific conditions applied to CAA permits.
 - Expand CA's ability to issue maximum length permits and issue extensions.
 - Formalize development related policy requirements and application review procedures.
 - Describe 'low-risk' activities that could be exempted from requiring a CAA permit.
- The new Regulation will update a number of definitions including *watercourse* and *wetland*.
- Requirement for CAs to formally map regulated areas and notify the public when/if these areas are expanded upon.
- Allow development to be exempt from CAA permits where a *Planning Act* authorization has been provided. The use of the exemption tool will be subject to conditions provided in a future Regulation.

Comments:

Coupled with the changes proposed to the CAA through ERO posting 019-6141, this proposal will significantly alter how CAs operate in their permitting role and alter the way they interact with the development review process under the *Planning Act*. As a result, municipalities in Halton Region, including the City of Burlington, may no longer be able to rely on some of the valuable services in the development review process that have previously been undertaken in partnership with Conservation Halton (CH) and Halton Region. Currently, the City of Burlington is party to a Memorandum of Understanding (MoU) for the provision of planning services, focused on ecological review, between the Region and CH. Given the proposed direction of providing the ability for development authorized by the *Planning Act* to be exempted from permitting requirements under CAA, there is a significant concern that this signals the downloading of risks and responsibilities for natural hazards to municipalities. The following impacts on municipalities as a result of these changes and potential means of mitigating those impacts should be considered:

- Reduced access to technical expertise residing at conservation authorities in the development review process including, but not limited to ecology, hydrogeology, hydrology, hydraulic modelling.
- Additional financial burden to retain technical expertise to assess aspects of development applications previously reviewed by CA staff.
- Additional financial and staff burden to take on the responsibility of monitoring, inspection, and compliance responsibilities where an exemption from a CAA permit is given.
- Additional risks and responsibilities for natural hazards being downloaded to municipalities including inspection, compliance, and technical review.
- Duplication of studies and technical reports where *Planning Act* and CAA permits are filed for concurrently. This has potential impact to the delivery of Halton Region's 'one-study' approach to Environmental Impact Assessments (or equivalent).
- Study duplication as a result of differing applicable standards and application requirements that will result from an inability to effectively coordinate *planning act* approvals and CAA permits.
- Diminished oversight of the impacts to the natural environment and water resources where a development is exempt from a CAA permit, or where development is authorized by a MZO.
- Diminished oversight regarding assumed 'low-risk' development in regulated areas through provided expanded exemptions.

The City of Burlington remains supportive of changes to the legislation that will aid in ensuring the issue of housing availability is addressed while balancing the protection of the natural environment and the protection of life and property from natural hazards. The City works together with agency partners including Conservation Halton to understand

the risks posed by natural hazards and to formulate mitigation and enhancement strategies to ensure a safe and resilient outcome for all stakeholders.

The Province has posed four (4) questions to the public and agencies regarding the creation of an CAA permit exemption mechanism for use through the *Planning Act*. Those questions are:

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

Before a substantive response can be provided on the questions posed, it must first be clarified to what extent the use of this exemption tool will make municipalities responsible for the risk and liability that goes with development planning within natural hazards. Section 3.0 of the *Provincial Policy Statement (PPS) 2020* has historically provided strategic direction to public bodies, including municipalities, on how to adequately plan for and protect citizens from natural hazards as follows:

Ontario's long-term prosperity, environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazard [...]

Mitigating potential risk to public health or safety or of property damage from natural hazards, including risks that may be associated with impacts of a changing climate, will require the Province, planning authorities and conservation authorities to work together. (PPS, 2020. Pg. 32)

Taking this Provincial direction seriously, the City of Burlington in partnership with the Region of Halton and Conservation Halton, have moved to an integrated *one-study* approach to natural hazards planning within the development review process. This process permits all those agencies with vested interest or legislated responsibility for hazards to provide a coordinated response regarding study requirements and mitigation expectations. Restricting the ability of CAs to participate wholly within *Planning Act* applications and providing an exemption tool to effectively circumvent CA regulatory authority seems to be antithetical to the strategic direction reflected in the PPS (2020).

If the implementation of a CAA exemption mechanism is being seriously considered by the Province, it would make most sense to make its implementation at the discretion of individual municipalities. It would be further prudent to require a municipality to implement Official Plan (OP) policy authorizing the use of the exemption tool and describing the conditions under which it can be utilized. This would represent a more transparent approach to implementation that would include public consultation.

The impacts being felt locally, and globally, as a result of climate change cannot be understated. A healthy and functional natural heritage system represents the pre-eminent tool in adapting to impacts as a result of exacerbated natural hazards. The health and function of these systems have traditionally been addressed through a partnership of municipalities, public bodies, non-governmental agencies, and private developers working together on a common path. Bill 23's proposed changes to the role of Conservation Authorities in protecting life and property from natural hazards represent a threat to the ability of the City to adapt and achieve resiliency.

The City, in partnership with the Region of Halton and Conservation Halton, have moved towards to an integrated *one-study* approach within the development review process. With the proposed changes to the CAA these coordinated efforts would be negatively impacted. If the ability to coordinate aspects of natural hazard planning with the regulatory authority responsible for them is removed, it is likely that municipalities will have to assume the related risks and responsibilities as well as the associated liabilities. To mitigate this risk municipalities will require access to technical expertise that have not been historically retained to avoid duplication with CAs. This is being viewed as having the potential to have a significant financial and staffing impact on municipalities.

It is more important than ever for the City to ensure the best tools and partnerships are able to be leveraged to ensure the health and resiliency to mitigate hazards being exacerbated by elements of climate change.

Next Steps:

The Province has City of Burlington remains supportive of the previous changes to the CAA and the accompanying Regulations that formed part of Bill 229: *Protect, Support and Recover from COVID-19 Act*. Those changes ensured that conservation authorities core services were appropriately defined (Category 1 services), and also set out the requirements that would need to be in place if a municipality sought certain programs or services from CAs beyond those mandatory services (Category 2 & 3 services). The City utilizes this flexibility to work in partnership with Conservation Halton and the Region of Halton through an established MoU for defined planning services. This has resulted in a more streamlined review of environmental impacts and natural hazards while also providing more clarity and consistency in required submission materials. It is the City's position that the diminishment of the role of CAs within the development and permitting processes will result in a prolonged pre-application process as well as the duplication of studies and requirements borne out of restrictions placed on CAs participation in applications under *prescribed Acts*. The City it respectfully requesting the Province reconsider continuing the direction that was prescribed through Bill 229.

Please accept this letter and its attachment as the City of Burlington submission on ERO Posting 019-2927. Staff will be sharing these comments with the City's Committees and

Council at the earliest opportunity. Refinements and clarification will be provided as required.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Simeoni". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Mark Simeoni, MCIP, RPP
Director of Community Planning
Community Planning Department
City of Burlington

Theme: Streamlining development approvals. Contributor: Policy and Community			
Primary Associated ERO Postings: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario – ERO 019-2927			
Notice Type: Regulation			
Deadline: December 30, 2022			
Summary of Changes	Staff Comments/Questions	Guiding Principle (see the Options considered section of the hyperlinked report) (indicate support or concern)	Approaches or alternatives for consideration
<ul style="list-style-type: none"> - Newly proposed O.Reg. for regulation of development in or near hazards (O.Reg. not yet released). Is intended to apply to all 36 CAs. - The new regulations will: <ol style="list-style-type: none"> i. detail <i>complete application requirements</i> for Conservation Authority Permits ii. Limit the site-specific conditions a CA may attach to a permit with the focus being on hazards and public safety. iii. Expand a CA's ability to issues maximum length permits and issue 	<ul style="list-style-type: none"> - The proposed complete application requirements are fairly standard except for (h) that identifies: <u><i>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.</i></u> - Its unclear which process would take precedence when a <i>Planning Act</i> application and a CA Permit application are concurrently filed. Limiting CA's ability to comment/participate in the planning process will lead to duplication of effort at the pre-consultation stage of development applications. - Conservation Halton already implements many of the service delivery 	<p>More homes built faster – concern</p> <p>Duplication of study requirements and separate, uncoordinated development review processes is not likely to streamline required approval processes.</p>	<ul style="list-style-type: none"> - Please clarify if low risk activities being considered for exemption would be applicable within 30.0 m of a wetland or required buffers of other key features. - Please clarify how additional study requirements and two separate, uncoordinated processes would result in streamlining compared to all agencies working within the same, coordinated process? - Consider continuing to allow CAs to provide Category 2 services to municipalities where there is an agreement in place between the municipality and the CA.

<p>extensions. (max. 60 months). Written application 60 days before expiry for extension, demonstrates <i>circumstances beyond the control of the holder of the permission.</i></p> <ul style="list-style-type: none"> - CAs will be required to develop, consult on, make publicly available, and periodically review a policy that includes: <ul style="list-style-type: none"> - Additional complete application details - Timelines for confirmation/notification of complete application including administrative process if notification does not occur. - Timelines for decision following complete application - Additional technical details on regulator requirements and application review procedures. 	<p>standards that are going to be considered in the new Regulation</p>		
<ul style="list-style-type: none"> - Site-specific conditions a CA may attach to a permit will be limited to conditions that mitigate: 	<ul style="list-style-type: none"> - It is assumed that CAs would be able to continue to apply standard permit conditions (non-site specific) that have been developed and consulted on over time. If so, defining the extent of site- 	<p>Environment, Urban design and Climate Change – concern</p> <p>If monitoring or compliance related conditions cannot be implemented</p>	<ul style="list-style-type: none"> - Please clarify if CA standard conditions would continue to be applied and applicable.

<ul style="list-style-type: none"> - 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 person or result in the damage or destruction of property. 	<p>specific conditions to encompass, generally, CA core mandate issues should not be an issue. Until the regulation is drafted it is difficult to comment on the extent of potential restrictions.</p> <ul style="list-style-type: none"> - If conditions related to monitoring, inspection, compliance are impacted those may fall on the municipalities to implement through the development approval process. 	<p>additional impacts to hazards and key features should be anticipated during and after construction phase.</p> <p>Growth pays for growth – concern</p> <p>If monitoring or compliance related conditions cannot be implemented, it may fall on municipal resources to carry out those tasks</p>	
<ul style="list-style-type: none"> - CAs are required to map where a permit will be required and must notify the public when enlargements to these areas are being proposed through mapping updates. 	<ul style="list-style-type: none"> - Conservation Halton, working with the City of Burlington, is proactive in mapping updates. The updating process includes public engagement opportunities including review of mapping results. 	<p>Matters of Provincial Interest – support</p> <p>Having access to high quality hazard mapping allows municipalities to more efficiently deliver on a number of provincial interests.</p> <p>Complete Communities – support</p> <p>Having access to recent, quality data on hazards impacting current and future neighbourhoods helps plan for safer and healthier communities.</p> <p>Public Health and Life Safety – support</p> <p>Hazard mapping allows for best management practices to be</p>	<ul style="list-style-type: none"> - There is general support for hazard mapping projects as well as the supporting public engagement opportunities.

		<p>implemented where there is a known risk to existing or future development.</p> <p>An Engaged Community – support</p> <p>Public notification and engagement in the hazard mapping process ensures municipal residents are informed and engaged in process affecting them.</p>	
<ul style="list-style-type: none"> - Definition of watercourse will be updated to read: <i>a defined channel having a bed, and banks or sides.</i> - Definitions for wetland and hazardous land will be set out in regulation 	<ul style="list-style-type: none"> - There is a concern that the proposed definition of watercourse may result in altered or difficult to define sections of a watercourse to be left out of hazard mapping. - The definition of wetland has not been harmonized with all Provincial Plans. 	<p>Environment, Urban design and Climate Change – concern</p> <p>Watercourse, wetlands, and other key features play an important role in overall environmental health of municipalities as well as offering mitigation from the effects of a changing climate. Issues arising from the improper definition of such features may lead to the loss of system features or the diminishment of existing protections.</p>	<ul style="list-style-type: none"> - Recommend taking the opportunity to harmonize the definition of wetlands to be consistent with other Provincial policy documents.
<ul style="list-style-type: none"> - S.28 CAA is updated to allow for development to be exempted from requiring a CAA permit where a <i>planning act</i> decision has authorized the development. - It is proposed that a <i>planning act</i> approval would have to meet certain conditions for the exemption to apply. These conditions are to be provided through a future Regulation. The 	<ul style="list-style-type: none"> - The ability for planning act decisions to exempt development from obtaining a required CAA permit could result in municipalities having to take on the risk and responsibility for development in hazards. - CA permits often carry conditions for inspection and compliance. A role municipalities would likely have to take on if a CA permit is exempted. - To adequately respond to these added roles and responsibilities, many municipalities would have to retain additional staff in technical disciplines 	<p>Public Health and Life Safety – concern</p> <p>May result in less stringent application of standards that are implemented to mitigate impact to the natural environment and protect people and property from natural hazards.</p> <p>Growth pays for growth – Concern</p> <p>If additional responsibilities and risks are to be borne by the municipality through</p>	<ul style="list-style-type: none"> - Any exemption process or policy being considered by the Province should be made to be voluntary and require a municipality to have enabling Official Plan policies for use of CAA permit exemption authority. - Please clarify if use of the exemption would result in the risks and liabilities of hazard regulation being downloaded to the municipality. - Please clarify if funding for additional technical expertise/staff will be provided for municipalities taking on additional compliance/inspection responsibilities.

<p>Province is seeking feedback on the development of this Regulation posing the following four (4) questions:</p> <ul style="list-style-type: none"> i. In which municipalities should the exemption apply? How should this be determined? ii. Which <i>Planning Act</i> authorizations should be required for the exemption to apply? iii. Should a municipality be subject to any requirements or conditions where this type of exemption is in place? iv. Are there any regulated activities to which this exemption shouldn't apply? 	<p>that have traditionally been addressed by expertise residing at CAs.</p> <ul style="list-style-type: none"> - These changes can be viewed as additional downloading of Provincial responsibilities onto municipalities without clear efficiencies being gained as a result. 	<p><i>planning act</i> decisions, municipalities will have to seek additional personnel or third-party reviewers in technical disciplines previously addressed by CAs.</p> <p>Matters of Provincial Interest – concern</p> <p>Delivery of a number of provincial interests could be impacted through this shifting in responsibility from the province to municipalities.</p>	
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