

December 27, 2022

MNRF – PD – Resources Planning and Development Policy Branch
300 Water Street
6th Floor, South Tower
Peterborough, ON
Canada K9J 8M5

Attn: Public Input Coordinator

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

Dear Sir/Madam.

Thank you for the opportunity to provide feedback on the Ministry of Natural Resources and Forestry's (MNRF) **ERO 019-2927 Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario** and its companion document **Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide**.

ERO 019-2927's purpose is *"to streamline approvals under the Conservation Authorities Act to focus on natural hazards and help meet Ontario's housing supply needs. These changes would improve clarity and consistency in decision making to support faster, more predictable, and less costly approvals."*¹

While we can all agree on the need to streamline the approvals process to bring clarity and consistency to the decision-making process that reduces costs, concern remains regarding the proposed approach.

Overview of the Proposed Regulation²

First and foremost is the unproven assumption that Conservation Authorities (CAs) impede growth, necessitating the removal of their powers to resolve the affordable housing supply crisis. Restricting their focus on flooding and other natural hazards ignores their essential oversight role related to manufactured threats such as pollution.

Based on my experience as a former municipal councillor, our local CA set high service-level commitments and turnarounds for its development reviews. At the same time, the province

¹ ERO 019-2927 Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario. October 25, 2022.

² Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

was infamous for its delays. It took more than a year to obtain the Ministry of Transportation's approval to bore a water line and sewer main horizontally under a local highway to service future residential development. The consent terms were highly restrictive and unsupportive of our need to increase our housing supply.

George Darouze, Deputy Mayor and Councillor, Osgoode Ward, City of Ottawa, shares a similar view *"Conservation Authorities are not a barrier to growth and CAs in high-growth areas of the province are already participating in a Timely Review Task Force with service level commitments of 14, 21, and 28 day reviews, compared to the Province's 30 and 90 day timelines."*³

The Province's Housing Affordability Task Force Report (2022)⁴ included 55 recommendations to address the housing shortage, yet there were no recommendations for CAs.⁵ Their absence from the report suggests CAs fulfilled their roles and met expectations.

Given this evidence, one must question why this attack against CAs and the need to limit their powers. The public has a right to know and challenge the government's approach and ask whom the changes genuinely serve.

Second, undermining Conservation Authorities' regulatory ability to protect people, property, livelihoods, and natural heritage areas from natural and manufactured hazards to increase our housing supply is concerning. Removal of "conservation of lands" and "pollution" as part of their permit decision process is highly questionable, as is the failure to identify who will fulfill this oversight role.

The province needs *"to strengthen rather than weaken CAs role in providing science-based watershed-level planning across the province. They serve a vital role in promoting and maintaining healthy, biodiverse ecological systems that farmers rely on for production"*⁶ and municipalities rely on for water fit to drink. *"There is plenty of land available within existing urban boundaries for housing development, and the CAs' current powers to protect the remaining natural heritage and agricultural land surrounding Ontario's rural and urban communities is necessary to uphold the provincial policy directives of the Local Food Act, 2013, to feed a growing population, and ensure that local greenspace and farmland provides economic, social, and health benefits for all Ontarians."*⁷

³ Carl Bickerdike. (2022) "Loss of Local Decision-Making" - Conservation Authorities Respond to Province's Housing Bill 23 "More Homes Built Faster Act."

⁴ Jake Lawrence et al. (2022) Report of the Ontario Housing Affordability Task Force

⁵ Carl Bickerdike. (2022) "Loss of Local Decision-Making" - Conservation Authorities Respond to Province's Housing Bill 23 "More Homes Built Faster Act."

⁶ Max Hansgen. (2022) Response to Proposed Changes to the Conservation Authorities Act (ERO 019-6141). Ontario National Farmers Union.

⁷ Max Hansgen. (2022) Response to Proposed Changes to the Conservation Authorities Act (ERO 019-6141). Ontario National Farmers Union.

The Conservation Authorities Act defines pollution as *"any deleterious physical substance or other contaminant that has the potential to be generated by development in an area..."*⁸

Removing CAs' responsibility to oversee pollution and land conservation goes against The Clean Water Act 2006. *"The intent of the Clean Water Act (CWA) is to protect existing and future sources of drinking water, as part of the government's overall commitment to protecting and enhancing human health and the environment. Source protection represents the first barrier in the multi-barrier approach to providing a safe supply of water."*⁹ The Act clarifies CAs' role in source water protection and their oversight in source protection regions.¹⁰ Please explain how this government and its ministry's decision to remove CAs' conservation of land and pollution oversight on permit decisions satisfy the Clean Water Act, 2006's expectations of protecting and enhancing human health and the environment.

Third, the province proposes consolidating all 36 Conservation Authorities Acts into one overarching regulation that will address local differences.¹¹ While this approach brings a more consistent approach across all CAs regarding their regulatory role, local watershed conditions (e.g., different regulatory flood standards) should be flexible.¹²

Activities Prohibited under the Conservation Authorities Act¹³

The proposed changes to prohibited activities under Section 28 are unclear whether the activities could proceed with Conservation Authority approval. Situations may exist where it is prudent to make exceptions (e.g., divert a tiny watercourse). Diverting a tiny watercourse several metres upstream of an existing culvert may be appropriate to reduce the number of adjacent culverts to be replaced from two to one. CAs should retain the authority to prohibit, regulate or grant permission in these situations.

The province could improve the updated definition of the watercourse to include stream beds that periodically dry up. The primary safety risk is allowing construction near these periodically dry watercourses, which could become raging torrents under certain climatic conditions.

Streamlining approvals for low-risk activities, based on the provided list, makes sense.¹⁴

⁸ Conservation Authorities Act R.S.O. 1990, Chapter C.27

⁹ The Clean Water Act. Drinking Water Source Protection Remembering Walkerton.

<https://www.sourcewaterprotection.on.ca/clean-water-act-2/>

¹⁰ Clean Water Act, 2006, S.O. 2006, c. 22 version June 1, 2021

<https://www.ontario.ca/laws/statute/06c22/v16#BK6>

¹¹ ERO 019-2927 Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario. October 25, 2022.

¹² Robert Foster. (2022) NPCA Comments – Environmental Registry of Ontario Postings: 019-6160,019-2927, 019-6141 and 019-6161. Niagara Peninsula Conservation Authority.

¹³ Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

¹⁴ Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

Preventing development within 30 metres of all wetlands seems reasonable for water quality benefits. However, it is essential to note that this requirement is only one of three components of a wetland setback. The geotechnical allowance (e.g., 10 m from the top of a slope), ecological buffer (e.g., 30 m from a watercourse), and additional setback (e.g., 4 m for a hiking trail) that separates a natural heritage feature from development are among the various components.¹⁵

Issuance of Permits under the Conservation Authorities Act¹⁶

While most of the proposed changes are reasonable, "*limiting the site-specific conditions that a conservation authority may attach to a permit to focus on matters dealing with natural hazards and public safety*" avoids land conservation and pollution. There is also no mention of manufactured hazards that can endanger source protection and public safety.

Program Service Delivery Standards¹⁷

Several new Regulation proposals are administrative (program service delivery standards, notification requirements for mapping changes, etc.). However, these are not new to many CAs who follow Conservation Ontario's service delivery standards.¹⁸

Improved coordination between Conservation Authorities Act regulations and municipal planning approvals¹⁹

Exempting development authorized under the Planning Act from requiring a permit under the Conservation Authorities Act is cause for concern, especially without knowing the specifics. The information provided to date is from a high-level perspective that is too vague to comprehend fully at the implementation level. Each project site will have unique natural heritage characteristics that do not allow across-the-board exemptions. Despite an activity understandably being exempt under the Planning Act, it may pose an environmental threat that must be determined and ameliorated.

Exempting specific municipalities that share a watershed with others should be looked at more closely before considering any exemption. It is crucial to maintain a total watershed

¹⁵ Guidelines for Determining Setbacks and Buffers. Carolinian Canada.
https://caroliniancanada.ca/legacy/Publications/eis_E.pdf

¹⁶ Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

¹⁷ Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

¹⁸ Robert Foster. (2022) NPCA Comments – Environmental Registry of Ontario Postings: 019-6160,019-2927, 019-6141 and 019-6161. Niagara Peninsula Conservation Authority.

¹⁹ Ministry of Natural Resources and Forestry. (2022) Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario: Regulatory proposal consultation guide.

perspective. *"Water flows across municipal boundaries and so do the impacts of development. That's why over the past 75 years, municipalities have formed 36 CAs across Ontario to assess and understand the cumulative impact of development within each watershed. At a time when climate change is causing more frequent and intense storm events, the role of CAs has never been more critical."*²⁰

One would not expect a CA to rule on municipal matters, nor should we expect municipalities to rule on conservation matters. Instead, identify their respective jurisdictional boundaries and areas of expertise to enable them to work together effectively.

Ideally, coordination should recognize and apply the expertise, knowledge, and experience municipalities and CAs bring to the planning approvals process. Coordination should not come at the expense of burdening municipalities with hiring staff or consultants to undertake work previously performed by CAs. It is crucial to maintain a total watershed perspective offered by CAs that an individual municipality or consultants would not appreciate.

Conclusion

While several proposed updates are reasonable in their design and intent, one cannot ignore the province's obsession with stripping powers from CAs, given the province has not presented any verifiable reasons to justify their attack. Furthermore, the province has not provided a viable alternative regarding what body will replace CAs approval role. It is not in the public's best interest to transfer these functions to municipalities that lack the resources and expertise to protect sensitive ecosystems adequately.

CAs provide an essential role in fulfilling the public's expectations related to the Local Food Act, 2013 and the Clean Water Act, 2006, which ensure the economic, social and health benefits of a locally grown food source and water fit to drink. Yet, the province's actions would threaten this security.

Yours truly,

²⁰ John Mesman. (2022) Loss of Local Decision-Making: Bill 23 Does Not Work for Eastern Ontario. South Nation Conservation.