



December 30, 2022

MNRF - PD - Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South Tower
Peterborough, ON
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To whom it may concern:

RE: Niagara Peninsula Conservation Authority (NPCA) Comments – Environmental Registry of Ontario Posting: 019-2927

Thank you for the opportunity to provide comments on the above noted Environmental Registry of Ontario (ERO) posting. The Province is proposing a regulation that outlines how conservation authorities (CAs) permit development and other activities for impacts to natural hazards and public safety. The proposed regulation would streamline approvals under the Conservation Authorities Act to help better coordinate between CA permitting and municipal planning approvals. In response to this proposal, the NPCA offers the following comments.

The Province is proposing to consolidate the various CA regulations into one new regulation. This should help provide a more consistent approach across all CAs towards regulating natural hazards. We note that many CAs have different hazard event standards (e.g. 100 year storm or Regional storm) and these various standards should continue to apply on a CA-specific basis. Also, many CAs have allowances incorporated into their hazard standards. This should apply to all CAs as such allowances provide additional protection for a changing climate.

The proposed regulation will include a new definition of watercourse: “a defined channel having a bed and banks or sides.” The NPCA appreciates that this definition is clearer than the term “identifiable depression” used in the current definition. We are concerned, however, that the new definition would exclude headwater drainage features (HDFs), which provide important functions for water quality and quantity. It has been our experience that many municipalities do not have the expertise in-house to identify HDFs and it is likely that many of these features would no longer be identified and appropriately managed. We recommend that the Province include HDFs within the proposed definition of watercourse.

The regulation would include streamlined approvals for certain low-risk development activities from requiring a permit. We are supportive in concept of streamlining low-risk development activities but have concerns with a complete exemption from a permit. Based on guidelines from Conservation Ontario, the NPCA has established three categories of permits to reflect the amount of review involved and level of risk with a proposed activity: major, minor and routine. The routine permit, which is for low-risk projects requiring little review, would be a suitable alternative to a full exemption. It allows for a very scoped review and can be issued relatively quickly. It also would serve the same function as having individuals register the activity with the CA. Further discussion should happen through the Conservation Authorities Working Group (CAWG) on how the routine permit could be further streamlined while ensuring an appropriate level of scrutiny.

Should the Province decide to proceed with the proposed exemption categories listed in the consultation guide, we recommend excluding any fill placement in wetlands from an exemption. Wetlands are very sensitive features and should not be included in any exemptions. Another consideration for the Province should be the enforcement of compliance/violations involving exempted activities e.g. failure to register an activity or ensuring a development activity meets all applicable exemption criteria. Clarification should be provided that exempt activities are still subject to the provisions of Section 28/30.1 of the *Conservation Authorities Act*.

The consultation guide indicates that the definition of wetland will remain unchanged. The NPCA recommends the definition of wetland be changed to the same definition in the Provincial Policy Statement (PPS). This would provide better consistency between the *Conservation Authorities Act* and *Planning Act* and simplify CA commenting during planning applications. It also would help simplify administration of the regulation by making it easier for CAs to determine what is and is not a wetland. The current lack of consistency between the two definitions of wetlands leads to administrative confusion between municipalities and CAs of whether a feature is regulated by a CA or not and this creates delays for the municipal planning process.

Generally, the NPCA has no objection to the proposed definition of hazardous land. In considering changes to the areas where prohibitions may apply, the Province should take into account the impacts of a changing climate. This can be achieved by allowing CAs, as part of allowing for local context, to undertake studies to identify and implement appropriate mitigation measures through the proposed regulation. An example could be increasing a flood standard by a percentage to mitigate against the impacts of a changing climate. Further discussion of how to achieve this should be done through the CAWG.

The NPCA has concerns with the proposal to change the extent of other areas associated with potential hydrologic impacts to wetlands to 30 metres for all wetlands. Wetlands are very sensitive features and an integral component of a watershed. They provide a variety of important functions such as carbon sequestration and flood attenuation. While 30 metres may be an appropriate area of influence for some wetlands, it may not be sufficient for others. Rather than a 30 metre area of influence for all wetlands, the NPCA recommends giving CAs the ability to set larger areas of influence through an environmental impact study and/or feature-based water balance (up to 120 metres). This provides a scientific, case-by-case approach that better ensures only wetlands that warrant an area of influence greater than 30 metres are regulated as such.

The NPCA supports the inclusion of criteria for the requirements of a complete application for a permit. The NPCA has included criteria for complete application requirements in our Planning and Permitting Procedural Manual. Establishing this in the regulation will be helpful for CAs. We recommend that in addition to the criteria identified in the consultation guide, written permission/authorization from the land owner where the works are to take place be included as a requirement for a complete application.

The new regulation will address the maximum period of permit validity, address the conditions a CA may or may not attached to a permit and address permit extensions. With respect to the period of permit validity, the NPCA supports maintaining a maximum period of validity of 60 months. We also support making it easier for delegated staff to have more flexibility to issue permits and extensions for the up to the maximum. We are concerned, however, with the proposal to limit the site-specific conditions a CA may attached to a permit. One area not

mentioned in the consultation guide is conditions to address interference with a watercourse and/or wetland. The Province should explicitly include this as a category of conditions that may be attached to a permit.

The NPCA generally supports the inclusion of program delivery standards in the regulation. Most of the proposed criteria has already been addressed through our Client Service Standards Document, which is based upon Conservation Ontario's Client Service Standards. Details around timelines, pre-consultation process, etc. are in these documents. We also note that we provide a report annually to Conservation Ontario that includes statistics for permits issued and performance against our timelines.

The regulation will also outline requirements for CA mapping changes, particularly the requirement for public notification for enlargement of regulated areas. The NPCA supports this inclusion in the regulation and note that Conservation Ontario has long established guidelines for CA mapping requirements, including public notification requirements. Including this in the Regulation will provide greater clarity for CAs when updating our regulation mapping.

The final component in the consultation guide is the proposed exemptions from the requirement for a permit in prescribed municipalities where a *Planning Act* approval has been granted. It is our understanding that the Ministry is not proposing a regulation utilizing the exemption tool under the current regulatory proposal. In general, the NPCA discourages employing the exemption tool as a CA permit is an important part of reducing risk and preventing damage associated with natural hazards. Should the Province wish to further consider such a regulation, we recommend the CAWG be involved in drafting such a regulation. In addition, we offer the following thoughts.

- Only application types that have the ability to impose conditions (e.g. Minor Variances, Consents, Site Plan Control and Plans of Subdivisions) be eligible for exemption as these processes have a framework similar to the CA permit framework.
- Where a condition(s) of a Planning Act approval is used in lieu of a CA Permit, the condition must be recommended by the CA and can only be cleared by the CA. CAs staff have the technical expertise and access to watershed wide data that is critical for proper review of such conditions
- Any exemption Regulation needs to clarify who is responsible for compliance and enforcement of any non-compliance situations. Which legislation would be used for enforcement of the condition? Who assumes liability for the exemption? These details need to be clearly laid out in the Regulation.
- Regulated activities that are high-risk should not be exempted.
- Only municipalities that can demonstrate they have sufficient, qualified staff resources to properly review development proposals in the context of natural hazards should be considered for the exemption. Alternatively, the Province should allow CAs to continue to enter into service level agreements with municipalities for the review of natural hazards where there is a permit exemption in place.



In summary, the NPCA looks forward to working with the Province in establishing and implementing the new regulation. We highly recommend that in developing the regulation, the Province continue working with the CAWG.

Should you have any questions, please contact the undersigned.

Sincerely,

Original signed by:

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cc: NPCA Board of Directors