



October 17, 2017

Standing Committee on
Social Policy
Room 1405, Whitney Block
Queen's Park, Toronto, ON
M7A 1A2

RE: Conservation Ontario's Submission on Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017 with regard to Amendments to the *Conservation Authorities Act* contained in Schedule 4

Thank you for the opportunity to provide a brief presentation at the October 17th hearing of the Standing Committee on Social Policy with regard to these comments and suggested amendments to the *Conservation Authorities Act* contained in Schedule 4 of Bill 139. The following comments provide more detail for your consideration on proposed amendments to the Act.

Conservation Ontario represents Ontario's 36 conservation authorities. These proposed amendments were circulated to our members and discussed at our September 25, 2017 Council meeting. As well, these proposed amendments have been discussed with Ministry of Natural Resources and Forestry staff and their constructive feedback is acknowledged.

Conservation Ontario supports the leadership demonstrated by the Province in addressing the need to modernize the *Conservation Authorities Act* and encourages the Government to move forward with the passage of this Bill. Conservation authorities play an important historical and successful role in addressing today's environmental and resource management challenges, particularly in light of the growing impacts of climate change and rapid urbanization, and these changes are welcome.

Overall, conservation authorities are very pleased with the proposed changes to the *Conservation Authorities Act*. As organizations that are accountable to both government agencies and Ontario residents, we welcome the proposed improvements to governance and accountability. These will provide a baseline standard for all conservation authorities as well as improve transparency and effectiveness of our operations. We are very pleased to see that the Province acknowledges the broader watershed management role of conservation authorities and the effect it has on protecting the sustainability of Ontario's important natural resources.

The following comments are primarily focused on specific recommended amendments to the legislation.

PART VII ENFORCEMENT AND OFFENCES

1) Commencement of Part VII Enforcement and Offences Provisions within Three Months

Recommendation: That amendments be made so that Part VII Enforcement and Offences provisions can come into force within 3 months of enactment

Conservation authorities regulate development and other activities in areas of water-related natural hazards such as floodplains, shorelines, wetlands and hazardous lands in order to protect people and prevent costly property and infrastructure damages. In order to do so, the Conservation Authorities Act provides a number of regulatory and enforcement tools. As one example, keeping people and buildings out of flood prone areas through the Conservation Authority regulatory program has benefited all levels of government by preventing more costly flood impacts that other jurisdictions, without regulations, are experiencing.

Conservation authorities have been waiting for several years for modernized enforcement provisions. They have been struggling to find efficient ways to address significant non-compliance issues in the absence of the legislative tools required to fulfill their mandated legislative roles. Costly injunctions, legal proceedings, and countless staff time are allocated to address issues that could be otherwise handled effectively with the timely enactment of the proposed enforcement provisions in Part VII of Schedule 4. For example, as CAs have no ability to stop unauthorized work on a site, they have to proceed civilly through the courts to apply for an injunction. For example, the Grand River Conservation Authority (GRCA) recently obtained an injunction to stop the filling of a provincially significant wetland. This legal avenue is costly, with the GRCA incurring \$28,000.00 in legal fees, and does not allow a CA to address a violation in a timely manner (see photo - Attachment 1). By the time that the injunction is granted, the damage is likely irreparable. In this case, the use of a stop (work) order may have been sufficient to prevent extensive damage to the wetland and would have been less costly. In the case of Sault Ste Marie Region Conservation Authority, they cannot afford the legal costs of an injunction and a 83.9 ha/207 acre wetland continues to be destroyed as we speak. This lack of basic enforcement tools, which are consistent with other pieces of comparable legislation, creates an uneven application of a provincial statute and results in the conservation authority not meeting the expectations of the public that they serve.

New tools such as stop (work) orders and increased fines must be available given the changed nature and extent of offences conservation authorities are tackling. As an example, there is a growing movement of excess soils around the province. The Ministry of the Environment and Climate Change is in the process of developing a policy framework for its management, but implementation of this framework will be left to municipalities and CAs. Given the significant discrepancy in enforcement tools and fine structures available to municipalities, illegal operators often target CA regulated areas (including low-lying provincially significant and other wetlands, floodplains, etc.) as fill site locations. Enabling Part VII will allow a court that convicts a person of an offence to increase the fine it imposes on the person by an amount equal to the amount of the monetary benefit that was acquired by the person,

or that accrued to the person, as a result of the commission of the offence. This proposed amendment will be a significant disincentive for unscrupulous operators, in comparison to the current maximum fine of \$10 000.00. The scale of these operations is illustrated in the photos from Mississippi Valley Conservation Authority, Kawartha Conservation and Lakehead Region Conservation Authority in Attachment 2.

In summary, commencement of Part VII within 3 months of enactment of the legislation will help to reduce tax payer burden, provide better customer service to watershed residents, and modernize the Act to be consistent with comparable pieces of legislation. Conservation Ontario has a current provincial offenses officer training program which has benefitted from financial support from the Ministry of Natural Resources and Forestry. Training of CA Provincial Offences Officers and updates to Regulatory Compliance implementation guidelines can be delivered within three months of enactment.

Again, Conservation Ontario is requesting that amendments be made so that Part VII Enforcement and Offences provisions can commence within three months of enactment of the legislation. This would involve: i) amending subsection 34(2) of Bill 139 dealing with 'Commencement' and, ii) the disentanglement of Sections repealed from the current subsections which cover enforcement and offences provisions. Disentanglement is necessary because Section 25 of Bill 139 repeals Section 28 in its entirety. Instead, it is recommended that a Section be added which repeals the current enforcement and offences subsections 28(16) to 28(24) and current subsection 30.1. This way, the Part VII amendments can commence within our recommended 3 month timeline. This would enable conservation authorities to utilize the new enforcement tools under its current regulations and whenever new regulations are enacted.

2) Amendment to the Appeal Process for Stop Orders

Recommendation: Change the appeal mechanism for a stop order to the courts (which is consistent with the Ontario Building Code) or directly to the Minister, who could appoint a hearing officer (which is consistent with the Endangered Species Act) instead of the CA Board

While conservation authorities are not opposed to an appeal process for stop orders, the current proposed Subsection 30.3(6) provides for a person the right to a hearing to the Authority Board, or executive committee. This appeal mechanism could potentially place the Authority Board, or executive committee in a conflict position for two important reasons. The proposed right to a hearing before the Authority Board or executive committee may lead the applicant to question whether the hearing was fair and impartial. This will most certainly lead to an appeal to the Minister in circumstances where a stop order has been confirmed. Secondly, Authority Boards or their executive committees are the decision makers when it comes to permissions granted under Section 28 of the Act. Subsequent decisions based on a proposed development could be perceived as being swayed by a previous stop order hearing pertaining to that particular property or individual. Again, this will most certainly lead to an appeal to the Minister in circumstances where a stop order has been confirmed.

It is therefore recommended that the appeal to the CA Board be removed and that an amendment to the appeal mechanism for stop orders be addressed through one of two options: i) appeal to the Courts

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(same as the Building Code), or, ii) appeal directly to the Minister who could appoint a hearing officer (same as the Endangered Species Act). Either of these options would provide for a fair and impartial process for people who request an appeal of the stop order.

3) Additional Modernized Provisions

Recommendation: Provide some additional enforcement provisions that will increase the effectiveness and for modernization of Part VII Enforcement and Offences.

The following additional provisions are requested:

- i) Order to Comply /Take Remedial Action – Requested by CO Council in 2012, this type of order would provide immediate direction to property owners on outstanding issues (e.g. sediment and erosion controls) rather than going immediately to a stop order.
- ii) Court Orders on Title Following Conviction – the current Act allows for a rehabilitation order to be issued by the court upon conviction; but court orders can often be unfulfilled. Having the order registered on title would ultimately hold the owner responsible for the required rehabilitation prior to the transfer of the property.
- iii) Appointment of officers – amend the proposed s.30 to include that “officer” means a peace officer as defined by regulation. CA Boards could then appoint officers for the relevant section that they enforce, rather than generically and thus simplify the advanced training needs of officers. Through the development of the regulations, additional powers could be ascribed to the officers (e.g. Off-Road Vehicles Act for S. 29 Conservation Area regulations).

PART IV MEMBERSHIP AND GOVERNANCE

Recommendation: That amendments be made so that administrative by-law provisions and enforcement provisions can be commenced independent from one another

Conservation Ontario supports provisions in Bill 139 that enhance governance and accountability. Section 16 of Bill 139 adds a new Section 19.1 to the Conservation Authorities Act entitled ‘By-laws’. The new Section 19.1 will establish a baseline standard for all conservation authorities’ by-laws as well as improve transparency and effectiveness of our Board operations. Currently Conservation Ontario is working on best management practices for CA administration by-laws that are consistent with the proposed legislative amendments.

Section 16 should repeal the current Section 30 which governs the current CA Administrative Bylaws. Currently repeal of Section 30 is entangled with the repeal of an enforcement provision (Section 30.1) and, these should be disentangled so that there is the ability to move forward on these two separate business areas independent of one another.

REQUEST NEW CLAUSE – Liability Protections for CAs Operating Flood and Erosion Control Infrastructure in Good Faith on Behalf of the Province

Recommendation: That a clause be added to the Act with respect to flood and erosion control liability to protect conservation authorities operating in good faith.

As we experience stronger and more frequent storms and flooding, the liability risk for conservation authorities – and their government partners - grows. Conservation authorities are looking for more protection from liability risk for the good will operation of flood and erosion control infrastructure. Conservation authorities are mandated responsibility for this role on behalf of the Province and should be provided some form of statutory immunity for the good will operation of this essential infrastructure. We have wording from enabling legislation for a similar agency in the Province of Saskatchewan.

The following is suggested wording based on section 95 of the Water Security Agency Act, SS 2005, c W-8.1 (Province of Saskatchewan):

"No action or proceeding lies or shall be commenced against the Crown, the minister, the authority, any member of the authority, any officer or employee of the authority or any person authorized by the authority, if that person is acting pursuant to or under this Act or the regulations, for anything in good faith done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations."

PART V OBJECTS, POWERS AND DUTIES

Recommendation: That the Objects of an authority be clarified to not include "the extraction of" gas, oil, coal and minerals to support possible future roles of conservation authorities in support of climate change mitigation

Section 18 amends subsection 20(1) of the Act. It is recommended that the words, "the extraction of" be inserted into the proposed amended Section 20 (1) as follows: The objects of an authority are to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than **the extraction of** gas, oil, coal and minerals.

This request is to provide clarity and avoid possible restrictions on the role of conservation authorities in climate change mitigation concerning energy conservation, emission reductions, etc. around various voluntary programs.

Overall, Conservation Ontario is very supportive of the Province's initiative to modernize the *Conservation Authorities Act* and your consideration of the suggested amendments is greatly appreciated. The conservation authorities look forward to working with the Province and our watershed stakeholders to implement this new legislation. If you have any questions regarding these suggested

amendments, please contact Bonnie Fox, Manager of Policy and Planning at ext 223.

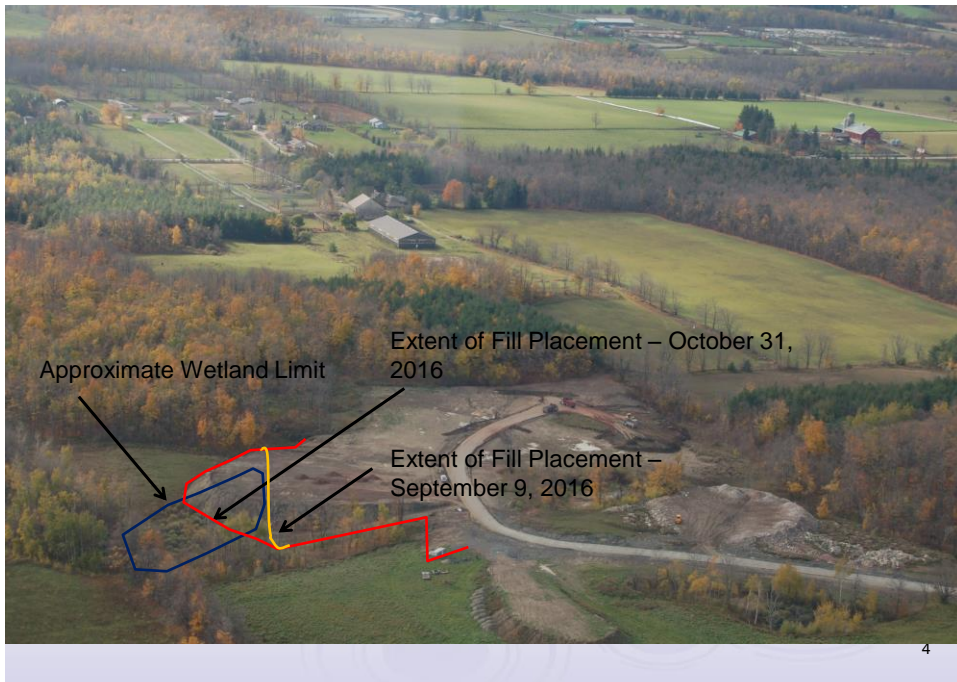
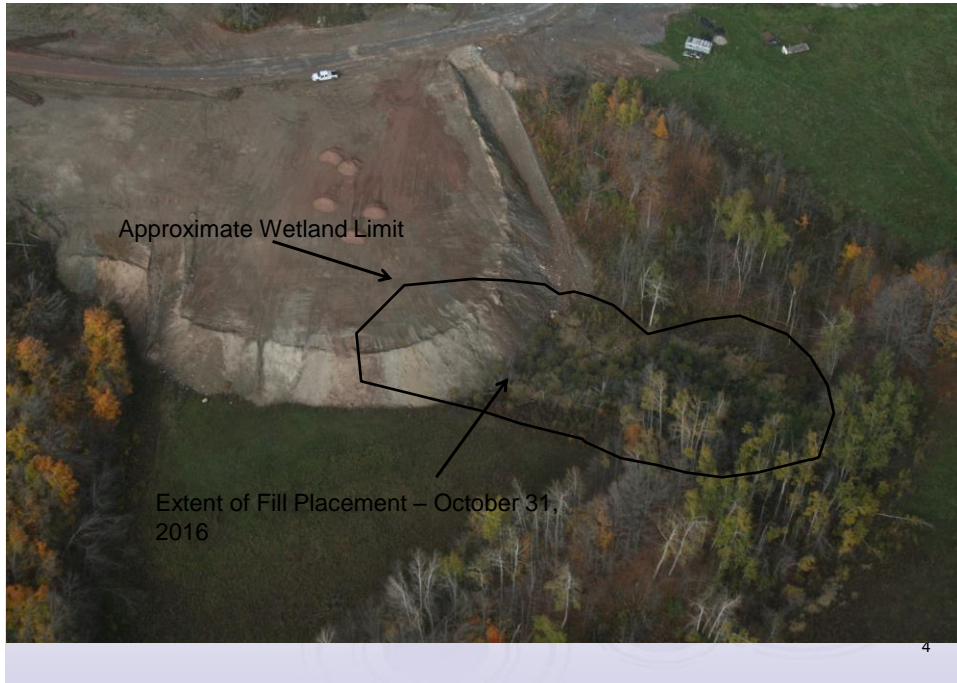
Sincerely,

A handwritten signature in black ink that reads "Kim Gavine". The signature is written in a cursive, flowing style.

Kim Gavine,
General Manager

cc: All Conservation Authorities, General Managers

Attachment 1: Grand River CA Provincially Significant Wetland Fill Violation



The Grand River Conservation Authority has incurred \$28 000 in legal and court fees pursuing an injunction to “stop work” on this property. This case has now proceeded to trial.

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Attachment 2: Large-scale Fill Violations Across the Province

Photo 1: Mississippi Valley Conservation



The landowner conducted extensive alterations to approximately 3 ha of PSW. The landowners were advised of the violation, but continued to work until the conservation authority laid charges. Having stop order powers may have potentially halted the landowner and preserved some of the PSW. The landowners were found guilty and assessed a \$7500 fine. The conservation authority had to appeal the sentence and a rehabilitation order was imposed. The landowners were to have the wetland remediated by October 19, 2017, but have had no contact with the conservation authority since the appeal was granted in April.

Photo 2: Kawartha Region Conservation Authority



In many cases, the valuable organic soil/peat moss will be removed prior to excess soil being brought on to the site. This removal of the organic soil is a major hindrance to any future wetland restoration efforts.

Photo 3: Lakehead Region Conservation Authority



The landowner conducted extensive alterations in the form of dredging to the watercourse and wetland over a period of several years. Upon channelization of the watercourse, the landowner attempted to fill in the floodplain and the surrounding wetland. Since the conservation authority had to seek an injunction to stop the work on site, this case was heard at the Ontario Superior Court of Justice and was appealed to the Ontario Court of Appeal. The conservation authority was successful and was awarded costs; however, they have not been paid. The total legal costs to the conservation authority were \$123,630.66.