



April 23, 2012

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Re: Conservation Ontario's Comments on the "Drainage Act and Conservation Authorities Act Protocol- Protocol for Municipalities and Conservation Authorities in Drain Maintenance and Repair Activities" (EBR #011-5657)

Ms. Leckie:

Thank you for the opportunity to provide comment on the "Drainage Act and Conservation Authorities Act Protocol- Protocol for Municipalities and Conservation Authorities in Drain Maintenance and Repair Activities". Conservation Ontario (CO) appreciates the efforts of the entire Drainage Act & Section 28 Regulations Team (DART) for the creation of the protocol. When implemented, the protocol will provide a solid basis for streamlining permissions under the *Conservation Authorities Act* and is an excellent example of collaborative policy work. Eighteen Conservation Authorities (CAs) reviewed and provided comment on this protocol. This letter therefore reflects the position that Conservation Ontario has been asked to bring forward on behalf of those eighteen CAs.

With the goal of improving this protocol, some of the main themes identified by the CA reviewers are included below. In addition, comments have been provided within the document as "track changes" and comment boxes. Conservation Authority staff recognize that municipal drains are an important part of Ontario's rural infrastructure and therefore through this protocol are seeking to establish a balanced approach to the review of applications made under the *Conservation Authorities Act* to maintain or repair municipal drains.

Major Concerns- Factors for Success

Conservation Authority staff support the use of this protocol as "provincially-approved guidance". In order for this protocol to be successful, good communication between all parties will be essential. It is recommended that more emphasis be placed on the (at minimum) annual meeting between Conservation Authority staff and the Drainage Superintendents to discuss the annual drain workplan, in order to open up communication and to expedite service. The scope, scale and frequency of the meetings should reflect the level of activity in a given

watershed. These meetings will also allow CAs and Drainage Superintendents to periodically review the success of the implementation of this protocol locally and make any necessary adjustments.

Service Delivery

Although discussed previously at the DART table, Conservation Authority staff have continued to express concern with the service delivery timelines proposed within this protocol. It is strongly felt that a 21 day review period is the most appropriate timeline for review of a project meeting the Standard Compliance Requirements. This timeframe would allow a Conservation Authority some “breathing room” during periods of a high volume of submissions. As recommended above, having the expectation that CAs and Drainage Superintendents will have at least an annual meeting to discuss workplan will help to expedite any CA approvals. The province has already set service delivery standards for Conservation Authority approvals through the “Policies and Procedures for Conservation Authority Plan Review and Permitting Activities” process which includes steps that enable 21+21+30 days for a minor permit. As a result, the CA proposed timelines for review of projects meeting a SCR represent a significant time savings.

As outlined in our June 15, 2011 letter and Section 21 of the *Conservation Authorities Act* it is critical that this protocol contain reference to the CA ability to charge fees for service. It must be acknowledged that CA Boards of Directors may choose to require a fee for a SCR or permit as this is a potential area of conflict and one which may create confusion locally. As outlined in the “Policies and Procedures” document, fees “are set to recover but not exceed the costs associated with administering and delivering the services on a program basis”. The track changes document highlights an area where the collection of fees could be inserted.

Major Concerns- Legislative Integrity

Standard Compliance Requirements

Notwithstanding previous discussion at the DART table, Conservation Authority staff continued to express concern that the description of typical works, activity-specific mitigation requirements and general mitigation requirements lacked meaningful detail. It is therefore critical to the success of the implementation of the protocol that these descriptions be improved. Adequate descriptions are necessary in order for Conservation Authorities to fulfill their legislative duty under the *Conservation Authorities Act*.

In order to clarify the description of typical works, it is recommended that an appendix be added to the document providing graphics for the description of works and standard drainage best management practices. Attached to this letter are graphics developed through the Drains Action Working Group (DAWG) which illustrate a number of the activities identified in the SCRs within this protocol. These graphics should be considered by DART for inclusion in this protocol.

For the Activity-Specific Mitigation Requirements and General Mitigation Requirements Conservation Ontario has inserted suggested wording into the document to clarify the requirements. Conservation Authority staff also request the option to insert 1-2 additional requirements to be determined in consultation with the Drainage Superintendents into the Activity-Specific Mitigation Requirements to allow them to use SCRs rather than a permit when minor issues are easily addressed. It is understood that there are many circumstances where a SCR is appropriate, but the SCRs also need to be clear when a permit is recommended. Conservation Ontario has inserted wording into the protocol to make the SCRs reflective of “Table 1: Recommended use of Standard Compliance Requirements and permits for drain maintenance and repair activities”.

Conservation Authority staff consulted with have also recommended additions to all SCRs to ensure that they include all of the elements typically included in CA permissions. These necessary additions include:

- A space for location details (lot/concession/Township/length of proposed work);
- A space to insert validity periods;
- A space for insertion of a file number;
- A space for the Drainage Superintendent to sign, confirming that they will comply with the mitigation requirements;
- A standard clause in the General Mitigation Requirements that the works are also subject to federal, provincial and municipal statutes, regulations and by-laws; and
- A reference to the Engineer's Report as CA permissions typically reference drawings.
- For formatting of the document it is recommended that SCRs should be numbered or lettered for ease of reference and they should include a version number to allow for future updates.

Notification Form

CA staff supported the use of the Notification Form in order to simplify the process for Drainage Superintendents. Overall it was felt that a document should accompany the Notification Form providing a description of how to properly complete the form, what the purposes of the signatures are and how (and to whom) the forms should be submitted. This could be accomplished by providing a sample completed Notification Form and a flow-chart outlining the process. These suggested changes are highlighted in the attached track changes version of the Notification Form.

In addition, CA staff outlined the following additional requirements and recommendations:

- Add a space for the insertion of a file number;
- Add a space for landowners to sign to authorize CA staff entry onto the property for review of projects and monitoring;
- Alternatively, a separate landowner authorization form could be created that a Drainage Superintendent could get the landowners to sign, to allow them to act as the landowner's agent for the application under the *Conservation Authorities Act*;
- That the text in the "acknowledgement of receipt of notification form" on the Notification Form be modified to ensure that it will not be misconstrued as permission under the *Conservation Authorities Act*. The text in the box needs to clarify that permission for the work is not granted until a SCR or permit is released. Alternatively, this could be described in the accompanying notification form process descriptor; and
- That references to the *Endangered Species Act* (per CO's comments below) be removed.

Please note that it is absolutely necessary for Conservation Authority employees to have landowner authorization to enter a property to evaluate or monitor an approval made under the *Conservation Authorities Act*.

Description of the Conservation Authorities Act

Conservation Authority staff that reviewed this protocol noted that some of the descriptions of the *Conservation Authorities Act* found within this protocol differ from other provincially approved documents. This may lead to confusion around whether or not there are multiple interpretations of the Act. Conservation Ontario has inserted recommended changes into this document to make the description consistent with other provincially approved documents.

Additional Comments

Endangered Species Act

The purpose of this document is to provide “provincially-approved guidance” to conservation authority and municipal staff related to the intersection of the *Conservation Authorities Act* and the *Drainage Act*. The addition of the provincial *Endangered Species Act* (ESA) in the Notification Form and described in the procedures has caused a great deal of confusion for CA staff. Questions arose around who was responsible for confirming if the drain was covered under an ESA Exemption Agreement, how the Notification Form would get to MNR in the first place and what to do if the drain classification on the Notification Form sent to MNR was incorrect. Moreover, CAs were concerned that this document was prescribing a role to them in the review of ESA when they do not have the mapping or the expertise to review those applications.

In order to clarify the document it is recommended that all references to the *Endangered Species Act* be removed from the protocol and the notification form. Alternatively, the protocol must be revised to have a thorough explanation of how Drainage Superintendents will submit the (corrected) Notification Form to MNR and how MNR’s review will impact the Drainage Act and Conservation Authorities Protocol.

Drainage Issues Resolution Team (DIRT)

Conservation Authority staff supported the idea of the optional DIRT program. They required additional detail on how they would determine who the “designated representative” is that they should contact and how a representative would be appointed to DIRT. CA staff felt that the representatives should be regional in nature but that DIRT must also be set up to prevent future apprehension of bias. It is also recommended that the list of CA volunteers and those appointed to DIRT should be decided by the Ministry of Natural Resources in collaboration with Conservation Ontario.

CO has proposed language throughout the protocol in order to reiterate that DIRT is an optional resolution tool and that prescribed appeal processes within both the *Conservation Authorities Act* and the *Drainage Act* remain available. To maintain its status as an optional resolution tool, DIRT sessions should be undertaken without prejudice and the mediation should not be precedent setting. Clarity in this regard is critical to ensure the legislative integrity of the *Conservation Authorities Act*.

Formatting of Document

In order to improve the ease of use of this document, CA staff have suggested a number of additions to this document’s formatting. The proposed formatting changes have been marked as “track changes” in the attached version of the DART protocol. These include:

- Numbering the sections;
- Bolding the terms which are defined in the glossary;
- Numbering the procedural bullets; and
- Providing the updates to the SCRs and Notification Forms to satisfy the requirements of the *Conservation Authorities Act* that were previously described.

Need for Training

Through the review of this proposed protocol Conservation Authority staff have identified a number of areas where additional training will be required. Conservation Ontario wishes to reiterate its support for joint training on the implementation of this protocol and have created a list of training items to be shared with the DART.

Thank you for the opportunity to provide comment on the "Drainage Act and Conservation Authorities Act Protocol- Protocol for Municipalities and Conservation Authorities in Drain Maintenance and Repair Activities". Conservation Authority staff are committed to working with their municipal partners to provide permission for agreeable works on municipal drains. We trust that these comments are helpful in finalizing the protocol for use by CA and municipal staff. Should you have any questions or comments about this letter, please contact Leslie Rich at extension 228.

Sincerely,



Leslie Rich
Policy and Planning Officer

3 attachments

- CO Track Changes on Drainage Act and Conservation Authorities Act Protocol
- CO Track Changes on Notification Form
- Proposed Drawings to Accompany Description of Typical Works (for inclusion in the Drainage Act and Conservation Authorities Act Protocol)

c.c. CAOs/GMs of Conservation Authorities
Environmental Commissioner's Office