



November 2, 2009

Sue Jones
Technical Officer
Ministry of Natural Resources
Lands and Waters Branch
5th Floor, South Tower, 300 Water Street
Peterborough, Ontario K9J 8M5

RE: Review of the waterpower and windpower site release policies and procedures (EBR #010-7895)

Dear Ms. Jones,

Thank you for the opportunity to provide comments regarding the Ministry of Natural Resources' waterpower and windpower site release policies and procedures, and to remain apprised of the review of these guidance documents. Conservation Ontario, on behalf of Ontario's 36 Conservation Authorities (CAs), acknowledges the importance of renewable energy for sustainable growth, to combat climate change, and to protect, maintain and restore the overall health of our watersheds. Conservation Ontario wishes to support the Province in developing legislation, regulations and other policies that facilitate renewable energy projects.

The following comments are submitted for your consideration based upon a review of the draft policies and procedures by staff from Conservation Ontario, the Upper Thames River Conservation Authority and Conservation Halton.

General

Projects located in areas regulated under the *Conservation Authorities Act* (i.e. development and activities in or adjacent to river or stream valleys, Great Lakes and large inland lakes shorelines, watercourses, hazardous lands and wetlands) will require approval from the local CA, where one exists. According to the Ministry of Natural Resources' (MNR's) Land Management Section, Section 28 regulations made under the *Conservation Authorities Act* apply to regulated activities taking place in regulated areas of Crown land as far as the CA's jurisdictional boundary extends when the proponent undertaking the activity on it is a third party/private citizen (i.e. not the Crown). Therefore, MNR District staff should be made aware through these policies and procedures that Crown land proposed to be developed by a third party is subject to the *Conservation Authorities Act* (where a CA exists and to the extent of the CA jurisdictional boundary). Additionally, they should be made aware that CAs can only issue permits to the landowner and therefore CAs would require proof of an MNR disposition in order to grant a permit.

As waterpower and windpower projects may be subject to CA regulations, failing to obtain the necessary CA approvals could result in project delays (for example, due to previously unidentified natural hazards); and in cases where a permit could not be approved, the project could not proceed. It is recommended that the policies and procedures guide MNR District office staff:

P.O. Box 11, 120 Bayview Parkway Newmarket Ontario L3Y 4W3
Tel: (905) 895-0716 Fax: (905) 895-0751 Email: info@conservation-ontario.on.ca

www.conservation-ontario.on.ca

- to encourage proponents of renewable energy projects to contact the local CA early in their planning process; and,
- to consult with and engage with the local CA as necessary, and copy the CA on applications and decisions regarding projects proposed within their watershed jurisdictions (note: many CA jurisdictions extend out into the Great Lakes; some as far as the international boundary).

Specific Comments

The following comments reflect Conservation Ontario's current understanding that projects undertaken by third party proponents on Crown land are subject to requirements under the *Conservation Authorities Act*.

Waterpower Site Release and Development Review Policy – Crown Land (PL 4.10.05)

2.0 Introduction

Given that waterpower projects may be subject to regulations administered by CAs, and, consistent with the *Class Environmental Assessment for Waterpower Projects* (Ontario Waterpower Association, 2008), it is recommended that the second-to-last sentence of this section be revised as follows:

*Various other statutes and regulations administered by provincial, ~~and~~ federal **and other** agencies also govern or impact waterpower development such as the Ontario Environmental Assessment Act, ~~and~~ the federal Fisheries Act and the Conservation Authorities Act.*

Given that the development of a waterpower project may also be dependent on the permissions of agencies other than MNR, it is recommended that the last sentence of this section be revised as follows:

In cases involving Crown land, the final decision concerning the disposition ~~and~~ development of potential waterpower sites will be made by MNR.

4.3 Development Review

Second paragraph: “*Applicants are advised that failure **to** engage in coordination efforts may result in significant delays for approvals and permitting.*”

Waterpower Site Release and Development Review Procedure – Crown Land (PL 4.10.05)

3.1.2, 3.2.2 & 3.4.2 Verification

Part ‘b’ of these sections outline the agencies that are to be copied on applications. Given CAs’ roles and responsibilities under the *Conservation Authorities Act*, it is recommended that the procedure be amended to state that the local CA, where one exists, is also to be copied on applications. The following wording is included for your consideration:

*b) The BPO [Business Process Officer] will send the application to the MNR District Office and copies of the application to the Regional Renewable Energy Coordinator (REC), other Provincial Agencies, **the local conservation authority (where one exists)**, the Ontario Regions of the Federal Department of Fisheries and Oceans and Environment Canada. The BPO will retain a copy on file.*

5.0 Site Development and Coordination

It is recommended that the beginning of this section be revised as follows:

*Waterpower projects are subject to development review and approvals by both federal departments, ~~and~~ provincial ministries **and other agencies**. The following section provide an overview...ways for coordinating federal, ~~and~~ provincial **and other agencies'** processes.*

These edits would be in keeping with the last sentence of the paragraph, which states “*Relevant ministries, departments and agencies are to be consulted for more detailed guidance...*”.

5.1 Coordination of Development Review and Approvals – Greenfield Site Development

As waterpower projects may be subject to CA regulations, it is recommended that the *Conservation Authorities Act* be added to the list of principal federal and provincial statutes that are relevant to the development and review process.

Windpower Site Release and Development Review Policy – Crown Land (PL 4.10.04)

4.1.1 Application Review

This section states that applicants should pre-consult with other agencies prior to submitting an application. There is a concern that proponents may not be aware that they may need permission from the local CA prior to commencing work, which could result in project delays. To reduce this risk, is recommended that this section be revised as follows: “*Applicants are strongly encouraged to pre-consult with MNR District office staff and other agencies, **such as the local conservation authority, where one exists**, prior to applying, to assist in scoping potential issues, opportunities and challenges.*”

Windpower Site Release and Development Review Procedure – Crown Land (PL 4.10.04)

2.1.3 MNR District Review and Site Description Preparation

It is recommended that the note at the end of Section 2.1.3 specify CAs as other agencies whose approvals and input may also need to be sought. CAs' Section 28 regulations may apply to wind testing or development projects; because CAs are not municipal agencies/authorities, it is important that CAs be specified here to ensure that all necessary approvals will be sought prior to commencing work.

The following addition is suggested:

*Note: Other agencies such as (but not limited to) Transport Canada, Department of Fisheries and Oceans, Environment Canada or the Ministry of Culture and Recreation may identify values that could impact wind testing or development potential. It is the responsibility of the Applicant to secure all necessary Municipal, **conservation authority**, Provincial and Federal approvals and input.*

2.2.1 The Pre-screening Meeting

For clarity, the following addition is recommended to the last sentence of the first paragraph:

The purpose of this meeting is to review the SDP [site description package] with the Applicant and identify the Ministry's land use planning interests and/or constraints and

*other environmental, resource, public or Aboriginal issues that the Applicant will be required to address throughout the review process. This meeting will assist the Applicant in making a decision on whether to proceed with the application. **The applicant is encouraged to pre-consult with representatives from other relevant agencies as well.***

2.2 The Pre-Screening Meeting

It is recommended that the last sentence of the third paragraph be revised and strengthened to state “*District staff ~~may also wish to~~ will invite other relevant Ministries or Agencies (e.g. MNDM) as appropriate.*”

2.3.1 Non-Competitive Opportunity to Explore Site Release Method &

2.3.2 Competitive site release

This section states that, should the Applicant declare their intent to pursue the Non-Competitive Opportunity to Explore site release method, the following steps will be taken: “a) *District advises the local municipality(ies) of the pending application (where applicable)*”. It is recommended that this section specify that the local CA is also to be advised of the pending application. The following wording is suggested:

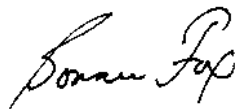
*a) District advises the local municipality(ies) **and conservation authority (where one exists)** of the pending application (where applicable);*

4.1 Windpower Site Strategy (WSS)

It is recommended that part ‘c’ be revised and strengthened to state “*District staff ~~may wish to~~ will invite other relevant Ministries or Agencies to this meeting, as appropriate.*”

Once again, thank you for the opportunity to provide comments on the review of MNR's waterpower and windpower site release policies and procedures. If you have any questions regarding the above comments please contact myself at (905) 895-0716 ext. 223 or Natasha Leahy at ext. 228.

Sincerely,



Bonnie Fox
Manager, Policy and Planning

c.c. CA GMs/CAOs
CA Section 28 Regulations Contacts
Liz Mikel, Policy and Program Advisor, Water Resources Section, Ministry of Natural Resources
Pauline Desroches, Manager, Land Management Section, Ministry of Natural Resources