



July 24, 2009

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Ministry of Natural Resources  
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**RE: Draft Approval and Permitting Requirements for Renewable Energy Projects (EBR #010-010-6708)**

Dear Ms. Jones,

Thank you for the opportunity to comment on the Ministry of Natural Resources' Draft Approval and Permitting Requirements Document for Renewable Energy Projects, which was posted for public comment on the Environmental Registry ([EBR #010-6708](#)). Conservation Ontario represents Ontario's 36 Conservation Authorities.

Conservation Ontario acknowledges the importance of renewable energy for sustainable growth, to combat climate change and to protect, maintain and restore the health of our watersheds. Conservation Ontario supports the Province's intent to develop legislation, regulations and other policies that facilitate renewable energy projects and streamline the application process for these projects. Considerable effort has been taken to prepare these comments to provide clarity for proponents of renewable energy projects with regard to the requirements of the *Conservation Authorities Act* and to ensure a streamlined application process for them.

The following comments are provided for your consideration based upon a review of the Draft Approval and Permitting Requirements document by staff from Conservation Halton, the Toronto and Region Conservation Authority, Kawartha Conservation, Rideau Valley Conservation Authority and Conservation Ontario.

#### General

The policy document contains significant detail relating to the statutes that the Ministry of Natural Resources (MNR) administers directly (e.g. *Lakes and Rivers Improvement Act*, *Endangered Species Act, 2007*, etc.). The same level of detail is not included regarding the *Conservation Authorities Act* (CAA) that MNR administers but for which regulatory authority rests with Conservation Authority Boards. Conservation Ontario is concerned that the lack of information regarding the requirements of the CAA could result in applicants being unaware that their project(s) may be subject to it and the implications to their projects if the necessary approvals are not obtained.

CAs do not want to impede renewable energy projects and share the Province's goal of facilitating timely approvals. Proponents of renewable energy projects that are proposed to take place in areas regulated

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under Section 28 of the CAA must be aware that they may require permits. Therefore, it should be clearly outlined for the proponent that their project(s) may require CA permits, that the onus is on them to obtain approvals, where necessary, from the local CA (where one exists) prior to commencing work and the process for doing so.

It is also recommended that the importance of proponents seeking advice from CAs as early in their planning process as possible be reinforced throughout the approval and permitting requirements document. Pre-consultation with CA staff should take place in the preliminary planning stages of a renewable energy project to ensure adequate technical assessment is undertaken and to facilitate timely permits prior to the commencement of work. As the Ministry responsible for administering the CAA and for delegating responsibility for natural hazards under the Provincial Policy Statement to CAs (where they exist), it makes sense that MNR would champion the need for pre-consultation with CAs. It is noted that this would not be inconsistent with the proposed content for the Ministry of Environment's (MOE's) proposed Renewable Energy Approval Regulation which requires public notice and community consultation.

Below are specific comments regarding MNR's draft approval and permitting requirements document.

### Specific Comments

#### **1.1 Relevant Statutes**

It is recommended that the description noted under the *Conservation Authorities Act* should specifically make note of the areas regulated by CAs. The last sentence should be deleted and replaced with: **"In 2006, the Minister of Natural Resources approved the Development, Interference and Alteration Regulations for all Conservation Authorities (Ontario Regulations 42/06 and 146/06 to 182/06) consistent with Ontario Regulation 97/04 under Section 28 of the *Conservation Authorities Act*.**

**Through these regulations CAs are empowered to regulate development in river or stream valleys, wetlands, shorelines and hazardous lands and associated allowances; the straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream, watercourse or for changing or interfering in any way with a wetland."**

#### **2 The Approval and Permitting Requirements Document for Renewable Energy Projects**

It is suggested that the following sentence be added to Section 2: **"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 (see Appendix C)."**

#### **3.1 Renewable Energy Facilitation Office (REFO)**

This sections states *"The Office will provide information and liaison with or connection to appropriate staff and subject experts in other ministries as well as inform proponents of potential requirements imposed by the Government of Canada."* In addition to providing advice and liaison support with respect to other ministries, it is strongly recommended that the REFO understand the role of CAs in the renewable energy project development process, direct proponents to contact the local CA early in their planning process and liaise with CAs as necessary. This would be facilitated by inclusion of more information on the CAA regulatory requirements throughout the MNR Approval and Permitting Requirements.

#### **3.2 Preparing a complete submission**

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. Conservation Ontario feels it is necessary to ensure that applicants are made aware of that fact before they invest a great deal of time or money into the application. Therefore, it is recommended that

this section of the policy strongly advise applicants to consult with the local CA, where one exists, regarding Section 28 approvals. It is recommended that a letter from the local CA, stating that they have been consulted with and whether CA permits will be required for the project, be a required component of the complete submission package. This is especially important considering the fact that MNR will not be reviewing natural hazards where CAs exist since, for over ten years, the CAs have been delegated responsibility for providing input with respect to provincial interests under Section 3.1 – Natural Hazards of the Provincial Policy Statement (PPS) under the *Planning Act*.

### 3.4 Issuance of approvals

Reference is made a number of times to the “established timeframe for approvals”; it is recommended that the timeframe be specified within the approvals and permitting requirements document.

The draft policy states that “*Within an established timeframe of the complete submission being accepted, the Ministry will issue all applicable permits, licenses and authorizations with any associated conditions and the Ministry of Environment will make a decision on the issuance of the Renewable Energy Approval, and where approved, will issue them within the established timeframe.*” Conservation Ontario questions whether this statement may suggest to the proponent that any and all necessary approvals can be issued by the Ministry. Therefore, it is suggested that the following statement be added after the introductory sentence: “**Where permits are required from the local CA, the onus is on the proponent to ensure these approvals are obtained prior to the commencement of work.**”

Similarly, it is believed that the following statement is also misleading to proponents: “*For successful proponents once the appeal or inquiry is over or any appeals or inquiry have been resolved, the proponent may apply for any necessary building permits or once interim authority is granted, may begin construction while awaiting final tenure documents.*” This statement does not account for the fact that CA approvals may also be required by the proponent before the work may commence.

### 3.5 Disposition of Crown land

According to 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). It is noted that many CA boundaries extend out into the Great Lakes’ international boundary and that the beds of the Great Lakes are Crown land. Conservation Ontario suggests this be noted in Section 3.5 so that applicants are aware that despite receiving a Crown land disposition their project could still be subject to the CAA, and therefore advice should be sought from the local CA, where one exists, as early as possible in the project planning process.

CAs issue Section 28 regulations permits to landowners; the CAA regulations do not bind Crown proponents for activities taking place on Crown land, but as indicated above, a third party proponent not acting on behalf of the Crown would be subject to them. Conservation Ontario believes the document should be clear that CAs can only issue permits to the landowner; therefore, they would require proof of a “disposition of Crown land” (in whatever form that takes) in order to grant a permit. For a renewable energy project application, this proof could be in the form of a project pre-approval notice from MNR. To ensure a streamlined process, the approach needs to be confirmed by the Land Management Section, in collaboration with Conservation Ontario, and then clarified for CAs and for local MNR District Offices.

### 4.0 Requirements for all renewable energy testing projects proposed on Crown land

If the testing of a project by a third party proponent will take place on Crown land that falls within the jurisdiction of a CA and within a regulated area, approval by the local CA may be required. Conservation Ontario recommends that this section direct applicants to contact the local CA, where one exists, for advice regarding whether permits would be required for project testing, as early in their planning process as possible. The applicant should be aware that impacts to/from natural hazards from/on the proposed

testing may need to be addressed (i.e. where it fits the CAA definition of development).

## **5 Requirements for all renewable energy projects proposed on Crown land**

This section outlines the relevant Ministry requirements that a proponent must meet as part of the complete submission. Conservation Ontario recommends that this section explicitly state that if the project is proposed on Crown land within a CA's jurisdiction, a statement from the CA that indicates it has been contacted by the applicant, acknowledging an awareness of the project, and stating whether permits have to be obtained, is included. This section should also reiterate that in order for the local CA to grant a permit for activities or development taking place in areas they have regulatory authority over, confirmation from MNR that a disposition will be issued upon approval of the application will be required. This would ensure that the applicant is aware when they must obtain a CA permit, and mitigates the risk of the applicant experiencing delays in commencing work once all Ministry approvals are obtained.

### **5.5.1 Natural environment baseline information**

It is recommended that this section acknowledge that hazard lands in areas with CAs, and not just in areas without CAs, will need to be considered.

It is also recommended that this section acknowledge the role that Fisheries and Oceans Canada (DFO) and CAs play in the protection and management of the natural features listed with respect to fish habitat.

### **5.5.2 Setbacks for significant natural features**

It should be noted that some natural features (e.g. wetlands, valleylands) are also regulated areas under the CAA and that related permissions must be obtained from the local CA.

### **5.5.3 Other natural features**

It is recommended that existing watershed/subwatershed plans, as well as local official plans, should also be used in evaluating plans and making decisions on related permits or approvals, including decisions, related to cumulative effects. The Ministry should therefore be provided this information by the proponent as part of the application package, particularly because Watershed Management Plans are in the process of being incorporated into Municipal Official Plans.

### **5.7.1 Water crossings, bridges, culverts and causeways**

Conservation Ontario recommends that this section reiterate for the applicant that, when working in or around water or wetlands, advice from CAs should be sought as early as possible in the application planning process, as approvals may be required under CAA Section 28 regulations and reviews may be required under Section 35 of the *Fisheries Act* (which have been delegated to CAs by DFO).

## **6.2.2 Natural environment baseline information**

It is recommended that this section acknowledge that hazard lands in areas with CAs, and not just in areas without CAs, will need to be considered.

## **6.4 Waterpower projects**

Conservation Ontario recommends that this section reiterate for the applicant that, when working in or around water or wetlands, advice from CAs should be sought as early as possible in the project planning process, as approvals may be required under CAA Section 28 regulations.

#### 6.4.1 Information for local approval

CAs have a considerable amount of information on the items listed in the section, including watershed maps, ecological information, and hazard lands, and would serve as a valuable information source for the review or consideration of applications.

#### 7.5 Projects proposed in natural hazard lands (not regulated by a Conservation Authority)

It is recommended that this section clearly state that in areas where a CA is present they regulate development on natural hazard lands and should therefore be contacted as early in the planning process as possible for advice regarding necessary permits.

#### 8 Requirements for all renewable energy projects proposed on private land

It is recommended that Section 8 include a reference that CAs are the regulatory agencies under the CAA, and that approvals may be required from them under Section 28 regulations. Therefore, the applicant is strongly advised to consult with the local CA, where one exists, regarding the approvals that may be required, as early in the application planning process as well.

#### 9.2 Conservation Authority appeals

The amount of information included in the document about CA appeals seems disproportionate given the lack of information provided about CA permit requirements. For clarity for the proponents of green energy projects, the CAA should be addressed proactively throughout the document as suggested in these comments thus avoiding an adversarial focus.

The reference to appeals is incomplete because there is no reference to permissions for alteration to watercourses or interference with wetlands and there is no reference regarding the ability to appeal a "condition" on a permit. To simplify this section, it is suggested that the incomplete reference be deleted and the sentence be amended as follows: "The OMLC has been assigned the authority...regarding a refusal to grant permission to a property owner ~~for the development of lands within floodplains, hazardous lands, dynamic beaches and wetlands~~ **or with respect to conditions imposed on a permission granted by the CA.**"

#### Appendix A – Definitions

Development: It is recommended that the definition of development provided should be the same as that defined in the *Conservation Authorities Act* (Section 28(25)), which states:

*"development" means,*

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,*
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,*
- (c) site grading, or*
- (d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere; ("aménagement")*

Therefore, the following would also be considered development: construction or reconstruction, changes to a building or structure that would have the effect of altering the use or potential use of the building or structure, site grading, and/or temporary or permanent placing, dumping or removal of material. If the definition of development found in Appendix A is not the same as that for the CAA that fact should be acknowledged within the document.

Hazard lands: Similar to the comment above, it is questioned whether hazard lands should be defined in the same way as it is in the CAA. Therefore, unstable soil or bedrock would also be included in the definition. The *Conservation Authorities Act* (Section 28(25)), states:

*"hazardous land" means land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock; ("terrain dangereux")*

The definition proposed in the document is that from the Provincial Policy Statement (PPS) and if it is used then the definition for hazardous sites from the PPS should also be included, which encompasses areas of unstable soils or bedrock.

Significant: It is recommended that consideration be given to the local municipality's definition for significant (e.g. a municipality's definition for significant woodlands).

### **Appendix C – Conservation Authorities**

Conservation Ontario would like this document to provide applicants with an appreciation of the need to obtain permits for development and activities that are being proposed within regulated areas, and encourage communication between the applicant and the local CA as early in the project planning process as possible so as to avoid delays. In this respect, Conservation Ontario believes it would be valuable for the Appendix to list the information CAs **may** require from applicants in order to make decisions about a permit application. Possible application criteria, property constraints and technical study requirements are attached to this letter for your consideration.

Thank you again for the opportunity to provide comments on MNR's draft Approval and Permitting Requirements for Renewable Energy Projects. If you have any questions regarding these 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. All Conservation Authorities, CAOs/GMs  
Marcia Wallace, Manager, Renewable Energy Project, Ministry of Environment  
Pauline Desroches, Manager, Land Management Section, Ministry of Natural Resources  
Charlene Vantighem, A/Coordinator Conservation Authorities and Watershed Management Unit,  
Water Resources Section, Ministry of Natural Resources  
Gord Miller, Environmental Commissioner of Ontario

## ATTACHMENT

### INFORMATION THAT MAY BE REQUESTED/REQUIRED IN SUPPORT OF A PERMIT APPLICATION UNDER SECTION 28 REGULATIONS FOR A RENEWABLE ENERGY PROJECT

It is recommended that it be noted that Conservation Authorities may require, but are not limited to, the following information to help ensure a timely response to permit applications related to renewable energy projects.

#### APPLICATION CRITERIA

- 1) Completed Application Form (with reference number)
- 2) Application Fee
- 3) Legal Survey of the property
- 4) Location Map showing nearest intersections
- 5) Letter of Authorization from owner to applicant
- 6) Statement of Agreement from any persons sharing right of ways, easements, etc.
- 7) Letter/Report describing the proposal, including:
  - a) How the site is intended to be used or altered
  - b) Relationship to adjacent development, natural system, and natural hazards
  - c) Proposed alterations to the site
- 8) Four sets of plans/drawings illustrating existing site conditions and proposed development and site alteration, including:
  - a) Property boundaries
  - b) Existing and proposed grades
  - c) Existing and proposed structures or alterations to structures (including location and use of buildings, vehicular entrances, fences and walls, parking lots, exterior site uses and facilities)
  - d) Natural hazards
  - e) Natural features including watercourses, wetlands, shorelines, dynamic beaches and valleys (as related to flooding and erosion)
  - f) Buffers from hazards and features, which should be based on the policies of the local Conservation Authority
  - g) All plans also to be provided in digital format
  - h) Reduced-sized plans, if possible
  - i) Drawings/plans must be stamped, signed and dated by a qualified Professional Engineer
  - j) Note: All plans must be metric and folded to 8.5" x 11"

#### PROPERTY CONSTRAINTS

Under each of the Conservation Authority regulations the following hazards/features and any associated allowances/adjacent lands (i.e. setbacks or buffers to natural hazards/heritage features) must be identified as applicable

- 1) Erosion Hazard
- 2) Flood Hazard
  - a) One Zone
  - b) Two Zone Policy Areas
  - c) Special Policy Area
- 3) Wetland and/or Area of Interference
- 4) Watercourse(s)
- 5) Dynamic beach hazard
- 6) Hazardous Lands
- 7) Other Applicable Features/Designations Related to Interference (i.e. wetlands/watercourses)
  - a) Area of Natural and Scientific Interest
  - b) Environmentally Significant Area
  - c) Natural Heritage Features(s)

## TECHNICAL STUDY REQUIREMENTS

The following supporting technical study requirements **may be** required to assess the impact of the project. As outlined in Section 28 (1)( b) and (c) of the *Conservation Authorities Act*, the purpose of these studies is to demonstrate the impact of the proposed development with respect to control of flooding, erosion, dynamic beaches and pollution, and to assess interference to wetlands and watercourses. The studies required will be determined and scoped through the preconsultation based on the location of the site, site characteristics and complexity of the proposed works.

- 1) Channel Crossing Assessment/Design Review
- 2) Edge Management Plan
- 3) Erosion and Sediment Control Plans
- 4) Erosion Protection Work (valleyland and shoreline)
- 5) Floodline Delineation Study/Hydraulic Impact Assessment (with detailed topographic mapping and modelling)
- 6) Functional Servicing Plan
- 7) Geotechnical/Slope Stability Study
- 8) Grading Plans
- 9) Hydrologic Impact Study
- 10) Hydrogeological Assessment (Water Balance)
- 11) Landscaping/Site Rehabilitation Plans
- 12) Letter of Opinion that structure can withstand flood depth and velocity, certified by a professional engineer
- 13) Natural Channel Modification/Design
- 14) Scoped or Full Environmental Impact Study
- 15) Structural elevation and construction details
- 16) Stormwater Management Facility Design
- 17) Stormwater Management Study
- 18) Supporting architectural drawings
- 19) Topsoil Stripping Review
- 20) Watercourse Erosion Impact Analysis
  - a) Off site impact assessment
  - b) Meander Belt and Fluvial Geomorphology assessment
- 21) Natural Feature and top of bank field verification and survey of verified features, hazards and development limits
- 22) Other