



February 5, 2010

Carrie Hoskins
Program Officer, Renewable Energy
Ministry of Natural Resources
300 Water Street
Peterborough, Ontario K9J 8M5

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

Dear Ms. Hoskins,

Thank you for the opportunity to provide comments regarding the Ministry of Natural Resources' revised waterpower and windpower site release policies and procedures, and to remain apprised of the review of these guidance documents. It is recognized that a protocol is proposed to be developed to assist in providing clarity around inter-relationships between Conservation Authorities and the provincial approval process however, it should not be considered an alternative to clear direction in these types of MNR Policies & Procedures.

The following comments are submitted for your consideration based upon a review of the draft policies and procedures by staff from Conservation Ontario and the Toronto and Region Conservation Authority.

General

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). 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. 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); in cases where a permit can not be approved, the project can not proceed.

Because MNR administers the *Conservation Authorities Act*, and regulations made under this Act may apply to renewable energy projects on Crown land, MNR has a responsibility to ensure that renewable energy proponents are made aware of potential permit requirements at the very outset of their planning process.

As the site release process is the first step for proponents wishing to develop Crown land for renewable energy, the MNR should direct proponents to consult with the local CA, where one exists, as early as possible during planning. This will help to identify if:

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

- the development could not proceed, saving time and money; or,
- there are conditions that must be met to develop the site, so that the proponent can decide if they want to proceed with the project or if the site's requirements are cost prohibitive.

The need for MNR to advise off-shore project proponents to consult with other agencies is particularly great, as off-shore opportunities are newer and applicants are less likely to be aware of what other approvals may be required.

Therefore, it is recommended that the policies and procedures guide MNR District office staff to encourage proponents of renewable energy projects to contact the local CA early in their planning process. MNR District staff should direct proponents to consult with other agencies prior to or during the pre-screening meeting to ensure that proponents are informed of what permits may be required, and if these permits can be obtained, before the Applicant of Record letter is issued, at which time the District collects non-refundable grid cell and bid/non-competitive fees. The policies and procedures for both waterpower and windpower should also consistently direct District staff 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.

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*. Comments are provided for each policy and procedure; where the policies or procedures have similar clauses some of the comments are repetitive.

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

1.0 Introduction

Given that the development of a waterpower project may also be dependent on the permissions of agencies other than MNR, the excerpt below is incorrect. It is recommended that the statement be revised as follows:

The final decision concerning the disposition ~~and development~~ of potential waterpower sites on Crown land is made by MNR.

2.1 Application

It is recommended that an additional bullet be added to the list beneath "*Development on Crown land may be prohibited or constrained by legislation, regulation or policy including*" to reflect the fact that Section 28 regulations made under the *Conservation Authorities Act*, which is another piece of legislation administered by MNR, may also apply to and constrain development on a potential renewable development site:

- **Areas regulated under the *Conservation Authorities Act* Section 28 regulations.**

7.1 Statutory [References]

The *Conservation Authorities Act* is also legislation administered by the MNR that may apply to a proposed site, and as such it is recommended that it be added to the list of statutes found here.

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

2.2.4 & 2.4.3 Site Description Package and Pre-Screening

As was included in the procedure for windpower, it is recommended that this section (e.g. part (b)) include a statement that the District may invite other agencies to the pre-screening meeting.

2.2.6, 2.3.8 & 2.4.6 Applicant of Record Status

It is recommended that the procedure direct District staff to copy all of the ministries and agencies notified in the preceding steps when Applicant of Record status is granted. Doing so will notify agencies that proponents may be proceeding to apply for permits or other necessary approvals.

11.1 Statutory [References]

It is recommended that the list of statutes found here to be expanded to include the *Conservation Authorities Act*, which is a piece of legislation that is administered by MNR and may apply to projects for which site release is being sought.

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

2.2. Application

It is recommended that an additional bullet be added to the list beneath “*Use of Crown land may be prohibited or constrained by legislation, regulation or policy including*”:

- **Areas regulated under the *Conservation Authorities Act* Section 28 regulations.**

9.1 Statutory [References]

As a piece of legislation administered by MNR, and one which could apply to a proposed site, it is recommended that the *Conservation Authorities Act* be added to the list of statutes found here.

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

2.3 Application Review

It is recommended that the last sentence be revised to state: “*Other agencies such as...may identify values **and/or have permit requirements** that could impact wind testing or development.*”

2.5 Applicant Decision to Proceed

This section directs District staff to advise the local municipality(ies) of a pending application. MNR is requested to also notify the local CA of a pending application and therefore to revise the last sentence of this section as follows: “*The District advises the local municipality(ies) **and conservation authority (where one exists)** of the pending application.*”

6.1 Statutory [References]

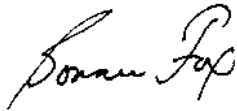
As with the other waterpower and windpower policies and procedure, it is recommended that the *Conservation Authorities Act* be added to the list of statutes found here.

Appendix E – Windpower Site Release Process

In keeping with the amendments requested above, it is recommended that the "Notification" box on the flow chart be edited to state "MNR District advises municipality **and local conservation authority.**"

As stated previously, it is recognized and appreciated that a protocol is proposed to be developed to assist in providing clarity around inter-relationships between Conservation Authorities and the provincial approval process however, it should not be considered an alternative to clear direction in these types of MNR Policies & Procedures. 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
Dan Marinigh, Director, Integration Branch, Ministry of Natural Resources (MNR)
Darlene Dove, Policy & Program Advisor, Integration Branch, MNR
Ken Cain, Manager (A), Renewable Energy Program, MNR
Pauline Desroches, Manager, Lands & Non-Renewable Resources Section, MNR
Rebecca Dixon, Policy & Program Officer, Renewable Energy Program, MNR