

To: *Conservation Ontario Council – Committee of the Whole*

From: *Natasha Leahy and Bonnie Fox, Conservation Ontario*

Subject: *Natural Heritage Assessment Guide: For natural heritage assessment sections of Ontario Regulation 359/09 (Renewable Energy Approval) issued under the Environmental Protection Act (EBR #011-1845)*

Date: *February 16, 2011*

Background

A key element of the *Green Energy Act* is a coordinated provincial approvals process for renewable energy projects based on the concept of a complete submission. The complete submission integrates provincial ministry requirements for review and decision making on proposed renewable energy generation or testing projects. This approach provides a single streamlined process, while continuing to address the legislative requirements set out by various ministries.

The primary component of a complete submission is the application for issuance of a Renewable Energy Approval (REA). The requirements which applicants must meet to receive a REA are outlined in the REA Regulation (O.Reg 359/09) made under the *Environmental Protection Act*, and administered by the Ministry of the Environment (MOE).

The REA Regulation addresses natural heritage protection for renewable energy projects on private land and provincial Crown land in Ontario. Protection of natural heritage in the REA Regulation is based on development prohibitions within certain natural features and established setbacks from those features. Applicants proposing to locate a renewable energy project within protected natural features or their setbacks must prepare an environmental impact study (EIS) to demonstrate how any potential negative environmental effects will be addressed. The same approach applies to projects proposed within established setbacks from provincial parks and conservation reserves. The REA Regulation requires that applicable renewable energy projects complete a natural heritage assessment (NHA). Through the NHA, applicants identify natural features and provincial parks and conservation reserves near the proposed project location, determine if prohibitions and setbacks apply, and undertake an EIS if necessary.

The NHA must be conducted following procedures established or accepted by the Ministry of Natural Resources (MNR). Applicants submit NHA reports to MNR for review and written confirmation of approach. Similarly, applicants submit EIS reports to MNR for review and written confirmation that the EIS was prepared using procedures established by MNR. The confirmation(s) from MNR are submitted to MOE as part of the application documentation for REA. MNR may also provide additional comments on the project, which will be considered by MOE and may inform conditions on the approval of the application.

MNR has drafted a Natural Heritage Assessment Guide (draft Guide) that outlines proponents' renewable energy approval requirements surrounding natural heritage features. The Guide applies to both Crown and private lands.

On December 8, 2010, the draft Guide was posted on the Environmental Registry (EBR) for public comment (EBR #011-1844) for a 47-day posting. Conservation Ontario staff coordinated a response to the posting, which was circulated to all CA GMs/CAOs for review, and c.c.'d to CA Natural Heritage Contacts. Comments were requested by January 12, 2011.

Note that, according to the EBR posting, this draft Guide provides interim direction for MNR's review of renewable energy projects under the REA Regulation.

Current Status

Comments to the posting of the *Natural Heritage Assessment Guide* for REA were received from the following CAs: Conservation Halton, Essex Region, Grand River, Kawartha, and, Toronto & Region. Additionally, Dena Lewis (TRCA) who lead the CO review of the *Natural Heritage Reference Manual* for the Provincial Policy Statement under the *Planning Act*, also agreed to review CO's draft submission for this posting and provide comments.

The attached January 24, 2011, Conservation Ontario response to the draft Guide was submitted to MNR. In general, the guideline document is supported by CAs. MNR was commended for being clearly identified as the responsible agency for the natural heritage assessment requirements of REA applications. A number of comments were submitted for MNR's consideration, which focused on clarifying the information in the document and ensuring it is consistent with other Provincial guidance, such as the Provincial Policy Statement and the associated *Natural Heritage Reference Manual* (2010). MNR was urged to ensure that the draft Guide consistently recognize local planning authorities' role in natural heritage information and protection, and require assessment of natural features for significance so that the appropriate protection and mitigation is afforded to them.

Additionally, the draft Guide outlines the roles and responsibilities of CAs related to renewable energy projects (both in terms of Section 28 permit applications and the information available by CAs for the records review required under the REA Regulation) beyond any other REA-related policy/guidance document released by the Province to-date.

Conclusion

Comments (dated January 24, 2011) in response to MNR's draft Natural Heritage Assessment Guide for applications made under the REA Regulation were submitted to MNR, following a review of the draft by CA staff and a review of the draft submission by Dena Lewis (TRCA).

While many comments were submitted, CA staff expressed support of the guidelines and MNR's general approach to them. The comments submitted are anticipated to clarify the direction provided within the draft Guide.

It is noted that the draft Guide reflects interim guidelines that MNR will enforce until the Guide is finalized.

It is also noted that, MOE has posted a *Renewable Energy Approval Technical Guidance for Water Assessment and Water Body Reports* on the EBR for public review; CAs have been asked to provide comments to CO staff by March 4, 2011.

Recommendation

THAT the comments submitted to the Ministry of Natural Resources (dated January 24, 2011) in response to the draft Natural Heritage Assessment Guide: For natural heritage assessment sections of Ontario Regulation 359/09 (Renewable Energy Approval) issued under the Environmental Protection Act (EBR #011-1845) be endorsed.