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June 3, 2015

Dear Mr. Ballantine and Mr. Petersen:

Re: Bill 73 - *Smart Growth for Our Communities Act, 2015* (EBR 012-3651)

Thank you for the opportunity to comment on the proposed "*Smart Growth for Our Communities Act, 2015*". Conservation Ontario (CO) represents Ontario's 36 Conservation Authorities (CAs), which are local watershed management agencies, whose mandate includes a variety of responsibilities and functions in the land use planning and development process.

CAs work in partnership with regional and local municipalities to provide input and technical support in the development and implementation of official plans, secondary plans, environmental studies/reports and special municipal by-laws. They provide valuable information and advice on flood control, stormwater management and the conservation of significant natural features and functions within their respective watersheds. CAs have been delegated responsibilities from the Ministry of Natural Resources and Forestry (MNRF) to represent provincial interests regarding natural hazards encompassed by Section 3.1 of the *Provincial Policy Statement, 2014* (PPS). Furthermore, CAs provide a crucial role in the planning and development approval process by assisting municipalities in fulfilling their responsibilities associated with natural heritage, water resources and natural hazard management.

The following comments are submitted for your consideration based upon a review by CAs. These comments are not intended to limit consideration of comments shared individually by CAs. The comments below have been separated into those pertaining to proposed legislative amendments to the *Planning Act* and the *Development Charges Act, 1997*.

Proposed Amendments to the *Planning Act*

1. Enhancing Role of Third party Comment and Review

1.1) CAs are supportive that the Bill recognizes successful land use planning in Ontario depends on collaboration with partner agencies and stakeholders and a transparent planning process. The Bill contains several provisions aimed at enhancing opportunities and roles for persons or bodies commenting on planning matters to an approval authority, such as:

- Official plans would be required to include descriptions of the measures and procedures for informing and obtaining the views of the public (subsections 16 (1) and (2));
- Alternative means for informing and obtaining the views of the public for plans of subdivisions and consents (subsections 51 (19.3.1), 53 (4.3)); and
- Requirements for various decision-makers to explain the effect of written and oral submissions on their decisions (subsections 17 (23.1) and (35.1), 22 (6.7), 34 (10.10) and (18.1), 45 (8.1), 51 (38), 53 (18)).

CAs hope the changes noted above will result in a more transparent process for both the public, as well as, public commenting bodies (such as CAs). CAs are very supportive of the amendment requiring decision-makers to explain the effect of written and oral submission on their decisions, and hope this change will hold decision makers more accountable to in-depth consideration of CA comments. Further, this amendment may have the potential to enhance the commenting role of CAs on *Planning Act* applications as an explanation will be provided as to how their comments were addressed and/or considered.

1.2) CAs are not always advised of pre-consultation meetings, nor do CAs always have input into the determination by the municipality that an application is complete. CAs are then required to participate in a hearing without the means of funding their participation in the hearing and without the ability to require that technical studies be completed and reviewed prior to the hearing proceeding. CA staff recommend an amendment to the *Planning Act* and/or the regulatory framework to modify pre-consultation and complete application requirements to include participation by all public bodies (including CAs) prior to an application being signed off as complete by the municipality. The amendment should pertain to all sections of the *Planning Act* that deal with pre-submission consultation and declaring applications complete, and should include a requirement to describe the measures taken for obtaining input from public bodies. This change would strengthen the protection of provincial interests and would streamline the planning process by preventing appeals to the OMB for reasons of non-decision in cases where technical studies are lacking.

RECOMMENDATION:	An additional amendment to the <i>Planning Act</i> and/or the regulatory framework to modify pre-consultation and complete application requirements to include participation by all public bodies prior to an application being signed off as complete by the municipality. At a minimum it is suggested that municipalities should be required to notify public bodies of any pre-consultations that are held.
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2. Technical Review and OMB Appeals

2.1) CA staff are supportive of the following provisions outlined in the Bill that reform aspects of the OMB appeals process:

- Appellants who argue that decisions are inconsistent with the PPS, provincial plans or upper-tier official plans will be required to identify the issues of inconsistency in their notices of appeal (subsections 17 (25.1) and (37.1) and 34 (19.0.1)); and
- Appeals to the OMB are prevented in relation to official plans in connection with the specified (provincial) matters (i.e. source protection, provincial plans) (subsections 17 (24.4), (24.5) and (36.4)).

The changes listed above can support CA roles as a public commenting body by ensuring that appellants clearly articulate what aspects of provincial policy are at issue in instances where provincial policies on natural hazards, water, or natural heritage are challenged.

2.2) CAs are highly supportive of the proposed amendments to the *Planning Act* that will allow the process for a hearing to be delayed for 60 days for certain appeals to facilitate the use of mediation, conciliation and other dispute resolution techniques (subsections 17 (26.1) to (26.4), 17 (37.2) to (37.5), 22 (8.1) to (8.4), 34 (11.0.0.1) to (11.0.0.4), 34 (20.1) to (20.4), 51 (49.1) to (49.4) and 53 (27.1) to (27.4)). Promotion of dispute resolution is welcomed in order to avoid costly and unpredictable OMB proceedings.

It is not clear whether the 60 day dispute process might be used by other agencies such as CAs to ensure required technical work is completed prior to a hearing. If this mechanism cannot be used to ensure this, another one is needed.

RECOMMENDATION:	Conservation Authorities recommend that a mechanism be introduced that would provide adequate time for required technical work in support of an application to be completed and reviewed prior to an appeal of non-decision to the Ontario Municipal Board (including technical work needed by public bodies such as Conservation Authorities).
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2.3) New technical information is often introduced during the OMB hearing process that can result in plan review for major development being done at the OMB within unrealistic timelines, rather than through the municipal planning process. This can lead to decisions being made without local input and in absence of thoughtful analysis of technical studies submitted.

RECOMMENDATION:	Conservation Authorities recommend that where new technical work in support of an application is introduced during an Ontario Municipal Board hearing for reason of non-decision, the hearing should be suspended and the application should continue to be processed to decision in the municipal planning realm for a set period of time. This would encourage more up-front planning and strengthen the protection of provincial interests.
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3. *Special Policy Areas*

3.1) The proposed amendments to the *Planning Act* do not address the role of the OMB with respect to appeals associated with Special Policy Areas (SPAs). In accordance with Section 3.1.4 (a) of the PPS, the designation of a SPA, and any change or modification to the site-specific policies or boundaries applying to a SPA, must be approved by the Ministers of MMAH and MNRF prior to the approval authority approving such changes or modifications. The proposal for a new SPA or modifications to the boundaries or policies of an existing provincially approved SPA may only be initiated by lower-tier or single-tier municipalities as

the proponent. The fact that the criteria and procedures for approval are established by the Province needs to be clear to inform OMB hearings for appeals within SPAs.

RECOMMENDATION:	Improved clarity and transparency of the role of the Ontario Municipal Board, if any, with respect to any appeals associated with a Special Policy Area is needed, given that the approval authority ultimately rests with the Ministers of Municipal Affairs and Housing and Natural Resources and Forestry.
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4. *Other Planning Act Comments*

4.1) The *Planning Act* and its associated Regulations currently do not specify that CAs must be circulated on notice of site plan control applications. This results in municipalities circulating site plan applications to CAs as they see fit, which leads to circulation inconsistencies within and among municipalities. An amendment to the *Planning Act* requiring CAs be notified of circulation of site plan applications is critical due to CAs' delegated responsibilities from the MNRF to represent provincial interests regarding natural hazards encompassed by Section 3.1 of the PPS.

RECOMMENDATION:	That an amendment be inserted under section 41 of the <i>Planning Act</i> to clearly specify notice of circulation requirements for site plan control applications. The amendment should state the secretary-treasurer of the Conservation Authority must receive notice of circulation of a proposed site plan control application where lands are subject to Regulation under the <i>Conservation Authorities Act</i> .
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4.2) Subsection 26 (1) has been changed to state that council shall revise an official plan no less frequently than 10 years after it comes into effect and every five years thereafter.

CAs recommend permitting revisions of official plans within the initial 10 year timeframe to allow an adaptive approach and ensure that provincial interests are incorporated into official plans in a timely manner.

RECOMMENDATION:	Where new provincial direction/plan/legislation are approved within the 10-year time frame, its recommend that the Province allow for discretion to direct revisions to official plans to reflect provincial interests within a specified period of time subsequent to approval of the provincial direction/plan/legislation.
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Proposed Amendments to the *Development Charges Act, 1997*

1. *Recreation Facility*

With rapid growth across Ontario, more and more pressure is being placed on near-urban conservation areas. Intensification puts additional pressures on publicly owned parks and open space systems and the demand to provide recreation, a network of trails and active transportation. The ability to collect development charges to account for the cost of upgrading and expansion of existing open space facilities (such as trails, cycle paths, etc.) that are needed to support new growth is essential to facilitate community sustainability for the long term.

RECOMMENDATION:	The <i>Development Charges Act, 1997</i> should be amended to allow for the collection of development charges to account for the cost of upgrading and expansion of existing open space facilities.
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2. *Municipal Services*

CAs are supportive of the proposed changes to the *Development Charges Act, 1997*, that would allow for increased funding for some types of growth related infrastructure. Additionally, CAs are pleased the Act recognizes the importance of other agencies in providing services which are applicable to development charges. It should be acknowledged that the scope of services provided by CAs extend beyond the provision of recreation, and the *Development Charges Act* should be extended to include more broadly the services supplied by an Authority.

RECOMMENDATION:	Conservation Authorities work in partnership with municipalities to provide public services that are impacted by growth and development and therefore should be explicitly identified in the <i>Development Charges Act, 1997</i> as eligible recipients of development charges revenue collected through their municipalities.
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CAs support “growth pays for growth” and encourage municipalities to take full advantage of funding available for eligible services. Therefore, it is critical municipalities can access development charges more effectively and easily and for a greater range of projects which support “municipal or public services” which are being impacted by growth and development, whether municipally owned or otherwise.

RECOMMENDATION:	The <i>Development Charges Act, 1997</i> should not preclude the ability of municipalities to collect development charges for facility and infrastructure upgrades which are required as part of “municipal services” provided to the public, whether municipally owned or otherwise.
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3. *Development Charges Working Group*

We understand the government is now establishing a development charges working group to support the proposed regulatory amendments and review substantive issues that were not addressed during the 2013-14 consultations. It is our understanding this working group will provide the government with options and recommendations for future regulatory amendments to the *Development Charges Act, 1997* including whether other ineligible services should be made eligible for development charges.

RECOMMENDATION:	Given Conservation Authorities’ important roles in activities that are impacted by development, we suggest that at least one representative from a Conservation Authority be invited through Conservation Ontario to participate in this working group.
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Thank you once again for the opportunity to comment on “Bill 73- proposed *Smart Growth for Our Communities Act*”. CAs recognize the need for amendments to the provincial planning framework, and the Province is commended for conducting province-wide consultations and announcing the proposed Bill. Overall, CAs are supportive of the main goals and objectives of the modifications in the Bill. Should you have any questions regarding the above comments please contact Taylor Knapp (Policy and Planning Officer) at 905-895-0716 ext. 266.

Sincerely,

A handwritten signature in black ink that reads "Bonnie Fox". The signature is written in a cursive, flowing style.

Bonnie Fox
Manager, Policy and Planning