



November 30, 2022

Ministry of Natural Resources and Forestry (MNRF)  
Policy Division (PD) - Resources Planning and Development Policy Branch  
300 Water Street, 2nd Floor, South Tower  
Peterborough, ON  
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**Re: Conservation Ontario's Comments on "Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0" (ERO #019-6141)**

To whom it may concern:

Thank you for the opportunity to comment on "Legislative and regulatory proposals affecting Conservation Authorities (CAs) to support the Housing Supply Action Plan 3.0" and the opportunity to speak to the proposed changes to the *Conservation Authorities Act (CAA)* in Schedule 2 of Bill 23 *More Homes Built Faster* at Standing Committee. Conservation Ontario is the network of Ontario's 36 CAs. These comments are not intended to limit comments submitted by CAs through this consultation.

Conservation Authorities are committed partners with Municipalities, the development sector, and the Province to increase housing supply in Ontario and can assist the Province in meeting its goal of building 1.5 million homes over the next ten years. We wish to work collectively with the Province to identify solutions that will increase Ontario's housing supply without jeopardizing public safety. This includes building on the success of the previous amendments to the *CAA* undertaken by this government and the work of the multi-stakeholder Conservation Authorities Working Group. We want to ensure safe development in our partner Municipalities.

Bill 23 received Royal Assent on November 28<sup>th</sup> and we remained concerned that some changes will:

- Place new responsibilities on Municipalities for natural hazards and natural resources that may lead to inefficiencies, inconsistencies, and delays in the development review process;
- Weaken the ability of Conservation Authorities to protect people and property from natural hazards and deliver on their core mandate; and,
- Reduce critical, natural infrastructure like wetlands and greenspaces that reduce flooding and erosion, and protect water quality, thus mitigating the impacts of a changing climate.

We offer the following comments on this consultation.

**1. Proposed Updates to the Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario (legislative changes)**

Ontario’s Special Advisor on Flooding produced “An Independent Review of the 2019 Flood Events in Ontario” and recognized:

*Ontario’s preventative approach of directing development away from floodplains and other hazardous areas is highly effective in preventing property damage... These policies will be increasingly valuable in protecting Ontarians from flooding and other natural hazards. Losses associated with flooding and other natural hazards continue to increase because of increasing property values and income levels, urbanizations, ongoing loss of wetlands and other green infrastructure, and the increasing frequency and intensity of extreme rainfall events. As these losses rise, so does the value of Ontario’s floodplain and broader hazard management policies.*

Conservation Authorities are committed to working with the Province and Municipalities to direct development outside of hazard areas to protect life and property and the ongoing prosperity of Ontario.

<b>Proposed Legislative Changes to the <i>Conservation Authorities Act</i></b>	<b>Preliminary Comments</b>
<p>-enable the exemption of development authorized under the <i>Planning Act</i> from requiring a permit under the <i>Conservation Authorities Act</i> in Municipalities set out in regulation, where certain conditions are met as set out in regulation</p>	<p>The Province recently confirmed the mandate of CAs, which includes regulating development to address the risk of natural hazards. Subsection 7(2) proposes to exempt certain types and locations of development from the regulation process, with the potential to create a two-tier approach to the protection of people and property. This exemption is contrary to the core mandate of CAs and may put additional people and their homes at risk. The planning process is not designed to review applications at a technical approval level of detail.</p> <p>Permit exemptions for <i>Planning Act</i> approvals will place additional pressure, responsibility, and liability on Municipalities and could result, for example, in building permits being issued in error. Working beyond political boundaries is essential in the permitting role to consider impacts on upstream and downstream communities. Natural hazards must be considered at both site-specific and watershed levels to ensure safety.</p> <p>Since 1956, in acknowledgement of the severe economic and human losses associated with Hurricane Hazel, CAs have been regulating development. Conservation Authorities are uniquely positioned to fulfill this role which has been demonstrated to assist in emergency preparedness and to prevent the worst outcomes.</p> <p>Conservation Ontario recommends that advice be sought from the multi-stakeholder Conservation Authorities Working Group about development activities that may be suitable for exemption from requiring a permit using existing clauses within Section 28(3) and</p>

	(4) of the CAA. Careful consideration is required to avoid unintended risk to public safety, properties, or natural hazards.
-remove the terms “conservation of land” and “pollution” and add the terms “unstable soils and bedrock” while also maintaining “flooding”, “erosion”, and “dynamic beaches” to the matters considered in permit decisions	<p>Conservation Ontario recommends that the government continue the tests of “pollution” and “conservation of land” as part of the permitting process. To increase clarity for all involved in the development process, it is recommended that the updated Section 28 regulation include a definition of “conservation of land” and the definition of pollution be revised to link it to erosion and sediment controls. The new definition of conservation of land should be constructed to enable a broader range of solutions such as natural channel design, natural bank stabilization for the mitigation of the hazard, and maintaining vegetation on the landscape to reduce erosion and slow flood waters. Tying the definition back to mitigating the hazard risk will increase certainty within the approvals process.</p> <p>Conservation Ontario is supportive of the proposal to add the terms “unstable soils and bedrock” as it further clarifies the CA role in addressing hazards associated with development on karst topography, marine (Leda) clays, and organic soils.</p>
-update the timeframe after which an applicant may appeal the failure of the conservation authority to issue a permit to the Ontario Land Tribunal from 120 days to 90 days	<p>Conservation Authorities are committed to timely review and excellence in customer service. Key components to ensure timely customer service is pre-consultation on an application followed by a high-quality submission that addresses the required technical aspects of an application. In addition to allowing appeals of non-decisions, Conservation Ontario encourages the Province to work with the multi-stakeholder Conservation Authorities Working Group to identify complete application requirements as well as when the application review period should be paused and, in some cases, cancelled and re-started due to significant changes to the proposed development by the proponent.</p>
-require Conservation Authorities to issue permits for projects subject to a Community Infrastructure and Housing Accelerator order under section 34.1 of the <i>Planning Act</i> and allowing the Minister to review and amend any conditions attached to those permits	<p>Conservation Authorities support development directed outside of hazardous lands and that does not increase the risk upstream or downstream. Working closely with their municipal partners, CAs routinely assist Municipalities to develop proposals that ensure public safety while realizing municipal development priorities. Requiring the issuance of a permit for certain developments eliminates the opportunity to review these applications on their own merit with the potential to increase the risk to people and property and any associated liabilities.</p>
-with regards to permits issued where a zoning order has been	<p>Conservation Authorities support development directed outside of hazardous lands and that does not increase the risk upstream or downstream. Requiring the issuance of a permit for certain</p>

<p>made under the <i>Planning Act</i> (under section 34.1 or 47):</p> <ul style="list-style-type: none"> <li>-extend the existing regulation making authority of the Minister to prescribe conditions on a permit issued by a conservation authority where there is a Minister's Zoning Order, to enable the Minister to also prescribe limits on what conditions a conservation authority may include</li> <li>-specify that where the Minister has made a regulation allowing development to begin prior to an ecological compensation agreement being signed and has set a date by which it must be signed, the development may not continue if the agreement has not been reached within the time period outlined in regulation</li> </ul>	<p>developments eliminates the opportunity to review these applications on their own merit with the potential to increase the risk to people and property and any associated liabilities.</p>
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Conservation Ontario will provide comments on “Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario” (ERO #019-2927).

**2. Proposed updates to Conservation Authorities’ role in review of development related proposals and applications**

Previous legislative amendments require CAs to enter into agreements with Municipalities prior to providing comments from a ‘non-mandatory’ perspective on development applications. Recently released regulations define requirements to be included in these voluntary agreements and require CAs to transition to new budget and program delivery frameworks. As part of their transition, ongoing dialogue with participating Municipalities is occurring; further refining the programs and services that Municipalities wish to have offered by their CAs. For any Acts that are prescribed in a future Minister’s Regulation, Bill 23 will prevent CAs from entering into memoranda of understanding (MOUs) with Municipalities for review and commenting services. Many Municipalities choose to enter into agreements with CAs to deliver development review and commenting services for natural heritage, water resources and watershed planning issues due to the efficiency it brings. Having up to 36 CAs deliver these services as compared to more than 300 Municipalities also promotes consistency and efficiency for the development sector.

Conservation authority (CA) participation in the planning process ensures that watershed science and data is being applied to planning and land use decisions. Development review is needed to determine if Official Plan policies are being implemented through site specific analysis and identification of site-specific mitigation measures. Efforts to limit CA involvement in identifying constraints up front will only

result in misdirected development investments and delays in approval processes for future construction. Additionally, it avoids new municipal costs for hiring additional staff or consultants to do this work.

Due to these reasons, Conservation Ontario recommended to the Standing Committee that subsections 3 and 4 of Schedule 2 of Bill 23 be removed in their entirety and with Royal Assent of Bill 23, it is now recommended that no Acts be prescribed in regulation. Instead, to further direct service delivery expectations, the Province should consider the use of existing regulation-making ability to prescribe service standards as part of municipal and other programs and services. The details of this regulation could be established with input from the multi-stakeholder Conservation Authorities Working Group.

Any decision to move forward with prescribing Acts under a Minister’s Regulation should also be advised by dialogue and discussion amongst the multi-stakeholder Conservation Authorities Working Group. In the meantime, Conservation Ontario provides the following preliminary comments in the table below.

<b>Proposed Act to be Prescribed</b>	<b>Preliminary Comments</b>
Aggregate Resources Act (ARA)	Should not be prescribed; it is important to allow CAs to continue to work with Municipalities and the Province. Under Section 28 of the CAA areas licensed under the ARA are exempt from the regulation. Under regulations made under the ARA, CAs are circulated applications for the purposes of determining flooding, erosion, and other natural hazard issues, including drought. MNRF takes the lead in determining any potential impact to sources of drinking water.
The Condominium Act	In general, CAs do not provide comments as it relates to the <i>Condominium Act</i> .
The Drainage Act	Should not be prescribed; this will stifle creative solutions and increase costs. CAs work with their municipal partners to review these applications from a watershed scale, rather than a drainage area scale. Through this review, CAs may for example, identify opportunities to undertake stewardship and restoration work that will help to maintain soil on the farmers’ fields and increase resiliency on the landscape. This in turn reduces ongoing maintenance costs and can result in increased yields by maintaining healthy topsoil.
The Endangered Species Act	Should not be prescribed; Province should consider outlining the types of services that it wishes the CAs to provide. Under the CAA many CAs collect information upon which the Province relies to fulfill their responsibilities under Acts, including the ESA. This information will also be very helpful if the Province chooses to move forward with other complementary initiatives, including ecological offsetting.
The Environmental Assessment Act (EAA)	Should not be prescribed; CAs are a key partner in fulfilling the purposes of the Act, “providing for the protection, conservation and wise management in Ontario of the environment”. This contribution is recognized through being embedded within the EA process by the Province. CA involvement in the EAA allows for the early identification of issues through their knowledge of watershed conditions. Many CAs provide value-added services to Municipalities, proponents, and the Province through proactive

	review of proposals. In addition, major linear infrastructure is exempt from the planning process, requiring issue identification through the EA.
The Environmental Protection Act	Should not be prescribed; CAs generally do not provide comments under this Act however it is important to allow CAs to continue to work with Municipalities and the Province regarding the management of excess soil.
The Niagara Escarpment Planning and Development Act	Should not be prescribed; the Niagara Escarpment Commission should instead consider entering into agreements with CAs for reviewing and commenting on a proposal, application, or other matter.
The Ontario Heritage Act (OHA)	In general, CAs do not provide comments as it relates to OHA however CAs own properties that contain buildings or structures that are of cultural significance. CAs must retain the ability to comment as it relates to their own assets.
The Ontario Water Resources Act	Should not be prescribed; this will limit creativity in addressing housing shortages and result in increased costs for the applicants. For example, some CAs have created innovative programs as it relates to the review and design of stormwater management. This has drastically reduced approval timelines resulting in savings to developers in both time and carrying costs.
The Planning Act	Should not be prescribed; agreements offer value for money as well as certainty and predictability in the review process. The MOUs that CAs have with Municipalities are a cost-effective means of undertaking development reviews. Having CAs undertake some of these reviews promotes consistency for applicants.

Overall, CAs have helped the Province and Municipalities meet their obligations under these Acts in a consolidated approach that is timely and makes efficient use of watershed science. Where additional streamlining is required, service standards can be put in place to support affordable housing development.

### **3. Proposal to Freeze Conservation Authority fees**

Bill 23 will amend the CAA to enable the Minister to issue a Direction to a CA to freeze its fees for a specified time and for a CA to comply with such a Minister’s Direction. The stated intent of the Province is to reduce “the financial burden on developers and other landowners making development related applications and/or seeking permits from CAs, further accelerating housing in Ontario to make life more affordable.” There is no evidence provided that CA fees are a significant barrier to achieving affordable housing. Based upon past reviews of fees with the development community, Conservation Ontario submits that CA fees are a nominal part of the overall fees associated with development applications.

Legislative amendments made earlier this year directed CAs to demonstrate that self-generated revenue such as fees for service are considered where possible to reduce pressure on the municipal levy. This includes plan review and permitting fees that are collected to offset program costs, but not exceed them. Freezing the fees limits the CAs’ ability to modernize and implement best practices in consultation with their clients who would be bringing forward the most significant number of new

housing starts (i.e., developers, Municipalities). It is a limitation because CA plan review and permitting fees are based on cost recovery and improvements to meet service delivery standards may involve the need for additional staff to process applications more quickly. These costs need to be covered for effective delivery of Mandatory and non-mandatory reviews and comments to protect life and property from natural hazards and to protect sources of drinking water.

In application, a Minister's Direction should be utilized where it is deemed necessary to confirm that a CA's permit and planning fees do not exceed the cost of delivering the program or service. Within that Direction, if the 'freeze' exceeds a one-year period, it is recommended that it provides the CA with the ability to increase fees by an annual cost of living adjustment (e.g., Consumer Price Index). Overall, this approach will allow CAs to properly set budgets and avoid the need for Municipalities to fund deficits for Mandatory programs and services, or force CAs to reduce levels of service thereby increasing response times for review of applications. It supports the user-pay principle i.e., those who benefit from the service would pay for the service, not the taxpayers.

#### **4. Proposal to Identify Conservation Authority lands suitable for housing and streamlining severance and disposition processes for S.39 lands**

At Standing Committee, Conservation Ontario remained silent on the proposed amendments that result in process improvements to enable CAs to sever and dispose of land that has received a Section 39 grant from the Minister. These amendments were considered relatively low risk as their implementation will be guided by CA land acquisition and disposition policies and a Conservation Area Strategy that will undergo stakeholder and public consultation.

Regarding identification of CA lands suitable for housing through the mandatory land inventory, careful consideration is required when identifying CA lands to support housing development. Clear policies are needed to protect these locally valued conservation lands and land use should only be considered for housing in exceptional circumstances. The generally accepted rule should be that locally valued conservation lands are not for sale and especially where there is lack of data on the specific natural heritage values of the property.

As proposed by the Province, special considerations in identifying lands include "current zoning and the extent to which the parcel or portions of the parcel may augment natural heritage land or integrate with provincially or municipally owned land or publicly accessible lands and trails". These are a start, and it cannot be understated that CA lands are important greenspace for a growing population and provide important recreational and mental health benefits as clearly demonstrated during the COVID pandemic.

Additional important considerations for excluding land from housing development, include:

- a) any constraints placed on the properties as a condition of acquisition and/or management of the property. CA lands are often acquired through a wide variety of means, some of which result after complex negotiations with private or other public funders or donors with conditions which must be respected and upheld.
- b) provincially significant lands, including:
  - areas of natural and scientific interest, lands within the Niagara Escarpment Planning Area, or wetlands defined in section 1 of the *Conservation Land Act*;
  - the habitat of threatened or endangered species;

- lands in respect of which the authority has entered into an agreement with the Minister in relation to forestry development under section 2 of the *Forestry Act*;
  - land that is impacted by a type of natural hazard described in subsection 1 (1) of the Mandatory Programs and Services regulation (O. Reg. 686/21).
  - land that protects sources of drinking water; and/or,
  - land that has been designated to contribute to provincial and/or federal climate change targets (e.g. Greenhouse gas emissions).
- c) matters of federal jurisdiction.
- d) local values and/or purposes as identified through public and stakeholder consultations in the Conservation Area Strategy process.

CA lands provide significant public benefit and it's unlikely that many hectares will be identified for housing development. This proposal will further benefit from discussions with the multi-stakeholder Conservation Authorities Working Group.

### **Conclusion**

Thank you for the opportunity to provide comments on "Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0". Conservation Ontario is concerned these proposals may result in several unintended consequences including, undermining CA ability to deliver on their core mandate; increasing costs and timelines associated with development review; subsidizing growth through municipal taxpayers; and, reducing greenspace at a time of rapid residential growth in the Province.

Conservation Authorities are committed to working with the Province and other stakeholders to increase housing supply in Ontario. We urge the Province to pause implementation of Bill 23 and to reconvene the Conservation Authorities Working Group to work through outstanding issues related to development review while not jeopardizing public health and safety or the environment.

Sincerely,



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c.c. All CA GMs/CAOs

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