



MNRF – PD – Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South Tower
Peterborough, ON K9J 8M5

December 15, 2022

Re: Conservation Ontario’s comments on “Proposed Updates to the Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario” (ERO # 019-2927)

To Whom it May Concern:

Thank you for the opportunity to provide comments on “Proposed Updates to the Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario”. Conservation Ontario (CO) is the network of Ontario’s 36 Conservation Authorities (CAs). These comments are not intended to limit comments submitted by CAs on this proposal.

Conservation Ontario is pleased that the government is moving forward with the proposal to update the Section 28 (S.28) regulation made under the *Conservation Authorities Act (CAA)*. As CAs are the organizations solely responsible for implementing this regulation, it is imperative that CAs be involved as the government moves forward with drafting the regulation. This involvement will advise on administrative efficiency, particularly as it relates to clarity, ease of use and consistency amongst CAs.

Recommendation #1: THAT CAs be directly consulted by MNRF on the development of the S. 28 Regulation.

This letter includes general comments and a detailed Attachment 1 which provides specific comments on all aspects of the proposal, based on Conservation Ontario’s current understanding.

General Comments

Exemption of Development Authorized Under the *Planning Act*

The Province recently confirmed the mandate of CAs, which includes regulating development to address the risk of natural hazards. Subsection 7(2) of Bill 23 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.

Permit exemptions for *Planning Act* approvals will place additional pressure, responsibility (e.g., enforcement and compliance), 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.

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.

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 (4) of the CAA. Careful consideration is required to avoid unintended risk to public safety, properties, or natural hazards.

Recommendation #2: THAT advice be sought from the multi-stakeholder Conservation Authorities Working Group about which development activities may be suitable for exemption to avoid unintended risk to public safety, properties, or natural hazards.

Considering a Range of Solutions

Recent amendments to the CAA through Schedule 2 of Bill 23 included the removal of the tests of “conservation of land” and “pollution”. Further to comments submitted in response ERO#019-6141, Conservation Ontario recommends that the government continue with 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 on a site. 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.

Conservation Ontario is concerned that with the removal of the test of “conservation of land”, that there may be a sole focus on hard engineering solutions to manage hazards on the landscape. Conservation Authorities, as experienced watershed managers, consider a range of solutions, including the maintenance or installation of green infrastructure.

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.

Recommendation #3: THAT the regulations should be designed to ensure that a range of solutions to manage natural hazards can be employed. The Province should retain the tests of “conservation of land” and “pollution” and tie the definitions back to mitigating hazards.

Ongoing Support Required

This proposal contains a number of “Program Service Delivery Standards” including requiring CAs to develop, consult on, make publicly available and periodically review a policy that includes details about

complete application requirements, timelines for decisions, and any additional technical details on regulatory requirements and permit application and review procedures. Conservation Ontario is strongly supportive of these transparency measures and note that most CAs already employ these best practices. Many early CA policies were developed, in part, based on Province-wide policies that were developed collaboratively between Conservation Ontario and individual CAs, utilizing the CO Section 28 Regulations Committee. To encourage consistency amongst the CAs, it is recommended that the Ministry participate as part of an update to Section 28 implementation guidance prepared by Conservation Ontario. This model guidance can serve as the basis for CA internal policies and assist with an expedient transition to implementing the new regulatory framework.

Recommendation #4: THAT MNRF staff participate in and support Conservation Ontario in developing model guidance for CA internal policies.

It is further noted that this proposal does not contain a timeframe for enactment of a new S. 28 regulation. Given that amendments to the CAA were included in Bill 23, *More Homes Built Faster, 2022* and as part of the Housing Supply Action Plan 3.0 it is assumed that an update to the S. 28 regulation will occur in the near future. As the CAs are not aware of what will exactly be contained within the updated S. 28 (preventing them from commencing new policy development) and no provincial implementation support material has been prepared, it is recommended that the regulation include a two-year transition period to update CA policies. This is especially pertinent given (potential) additional consultation requirements prior to CA adoption of policies locally, the likely need for updated regulations mapping, and the concurrent need to issue permits in a timely manner.

Recommendation #5: THAT the regulation include a two-year transition period to update CA policies to be consistent with the Provincial implementation support materials.

Conservation Ontario notes that CAs and Municipalities rely on outdated provincial technical guidance to make decisions from a land use planning and regulatory perspective. This provincial technical guidance has not been updated since 2002 and does not reflect current science, land use patterns and the changing climate. In this regard, CAs, Municipalities and the development sector have staff expertise and experience to guide the renewal of these documents under provincial leadership. For greater efficiency and certainty for proponents, in addition to supporting land use planning decisions under the Provincial Policy Statement, the updated technical guidance should also serve as technical guidance for permit decisions made under S.28 of the CAA.

Recommendation #6: THAT the Province work with CAs, Municipalities and the development sector to update technical guidance to protect people and property from flooding and natural hazards to support land use planning decisions under the Provincial Policy Statement and permit decisions under S. 28 of the *Conservation Authorities Act*.

To promote consistency, transparency and accountability, MNRF should also coordinate mandatory training on the new S.28 regulation. This training should also be recorded for future use of new CA staff. This training should take place prior to promulgation of the new S. 28 regulation

Recommendation #7: THAT MNRF should coordinate mandatory training on the new S.28 regulation and its Provincial implementation support materials.

Ontario has recently experienced a number of extreme weather events that have threatened people and property, including homes, businesses and infrastructure as a result of flooding. As we adapt to changing weather events, including concentrated periods of heavy precipitation within isolated storm cells and an increase in impervious surfaces, it may be time to re-evaluate the current flood event standards found within the individual S. 28 regulations. It is therefore recommended that the Province undertake a review of the current flood event standards and update them based on the best available science, including observed flooding. This update to the standards should include provisions to consider climate change from a regulatory perspective.

Recommendation #8: THAT the Province update, as necessary, the Flood Event Standards found within the existing S. 28 regulations based on the best available science and including a factor of safety for climate change.

Conservation Authorities are committed to working with the Province and other stakeholders to increase housing supply in Ontario. It is strongly recommended that the Province reconvene the multi-stakeholder Conservation Authorities Working Group to work through outstanding issues related to development review while not jeopardizing public health and safety or the environment. More detailed comments on individual portions of the proposal are found within Attachment 1. We look forward to ongoing dialogue with the Province as they move forward with the enactment of a new S. 28 regulation.

Sincerely,



Leslie Rich, RPP
Policy and Planning Specialist

c.c. All CA GMs/CAOs

1 Attachment

Conservation Ontario's Detailed Comments on the "Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario"

Conservation Ontario
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ATTACHMENT 1

Conservation Ontario’s Detailed Comments on the “Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario” (ERO #019-2927)

Proposed Changes	Response	Potential Details for the Regulation
Consolidating and harmonizing the existing 36 individual conservation authority-approved regulations into 1 Minister of Natural Resources and Forestry approved regulation	Conservation Ontario acknowledges the proposal to consolidate and harmonize the existing 36 individual CA regulations into one Minister of Natural Resources and Forestry approved regulation.	The updated regulation should include schedules which outline the appropriate flood event standards for all 36 watersheds and the ability to incorporate shoreline management plans where they have been established. These flood event standards should be updated based on the best available science.
Updating the definition of “watercourse”.	Conservation Ontario acknowledges the proposal to update this definition. There are concerns that there are some watercourses on the landscape which have a large drainage area but would not meet the new criteria to be considered a watercourse. This definition will also result in the non-contiguous regulation of watercourses (i.e., a watercourse will be regulated upstream and downstream of a wetland).	Criteria / technical guidelines will be required to assist CAs as they update their regulatory mapping. Implementation support materials will be required to assist with consistency in implementation of the regulations.
Updating the “other areas” in which the prohibitions on development apply to within 30 m of all wetlands	Conservation Ontario acknowledges it may be reasonable to reduce the regulatory restrictions between 30 m and 120 m of a wetland but only in a manner that maintains the protection of its hydrology. Extreme weather events, such as flooding, have the potential to threaten our homes, businesses and infrastructure. Wetlands play an important role to help reduce flows and store floodwaters, which reduces risk and allows people greater response time to flooding emergencies. In addition, impacts to a wetland’s hydrology can result in local flooding. It is recognized that the	Consider maintaining the “other areas” of regulations for certain large-scale, high risk activities taking place beyond 30 m from a wetland that have the capacity to impact the hydrology of that wetland. These activities must continue to be regulated by CAs to control flooding. These activities include:

Proposed Changes	Response	Potential Details for the Regulation
	<p>potential impacts to the hydrologic function of a wetland is based on the scope and scale of the proposed development.</p>	<ul style="list-style-type: none"> ○ site grading, involving areas cumulatively equal to or greater than 1 hectare; ○ the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere, involving areas cumulatively equal to or greater than 1 hectare; ○ Municipal servicing; ○ utility corridors; ○ public roads; ○ infrastructure associated with Permits to Take Water; and ○ development, such as greenhouses, cumulatively ½ hectare or greater in size.
<p>Streamlining approvals for low-risk activities</p>	<p>Conservation Ontario is supportive of streamlining where risk to public safety, properties and natural hazards can be managed. Conservation Ontario is generally supportive of the proposed streamlined approvals identified in the guide. Many CAs have supported streamlined approvals in some capacity for certain low-risk activities.</p> <p>Conservation Ontario requests involvement in any additional conversations related to potential exemptions for low-risk activities. It is anticipated that there will be ongoing enforcement and compliance costs for CAs to continue to monitor such activities for compliance with the approval.</p>	<p>The ability to register an activity will require significant provincial investment to enable CAs to create online registration systems.</p>
<p>Development Activity – proposed to be the same as</p>	<p>Conservation Ontario supports this proposal.</p>	

Proposed Changes	Response	Potential Details for the Regulation
the definition currently set out in the Act for “development”		
No proposed change to the definition of hazardous land	Conservation Ontario supports the maintenance of the existing definition, however, the regulatory limit around hazardous lands should include an allowance to reflect a factor of safety associated with the mapping of hazardous land (e.g., leda clay, karst, etc.)	Include an allowance around hazardous lands within the regulation.
No proposed change to the definition of wetland.	Conservation Ontario recommends that the definition of wetland be amended to be consistent with the definition of wetland found within the Provincial Policy Statement, 2020. This will result in regulatory efficiencies by having a single definition for land use planning approvals and will also be consistent with O. Reg. 686/21: Mandatory Programs and Services under the CAA.	Update definition of wetland to be consistent with the definition found within the Provincial Policy Statement, 2020.
Requiring CAs to request any information or studies needed prior to the confirmation of a complete application	Conservation Ontario has been working with CAs through the Client Service and Streamlining Initiative to further clarify complete application requirements as well as customer service standards. Additional implementation support materials will be required to ensure that this new provision is successful.	
Limiting the site-specific conditions a CA may attach to a permit to focus on matters dealing with natural hazards and public safety.	<p>Through Bill 23 the Province has added additional “tests” to the regulation which will further clarify CA responsibility regarding matters associated with natural hazards and public safety. Conservation Ontario is concerned that with the removal of the test of “conservation of land”, that there may be a sole focus on hard engineering solutions to manage hazards on the landscape. CAs, as experienced watershed managers, consider a range of solutions, including the maintenance or installation of green infrastructure to address the hazard (see recommendation #3).</p> <p>In addition, when focusing on matters dealing with natural hazards and public safety it is important to note that natural hazard and natural heritage</p>	Continue to enable conditions that use science-based evidence to support the maintenance of healthy watersheds to best protect public health and safety.

Proposed Changes	Response	Potential Details for the Regulation
	systems often have overlap and both are dynamic in nature.	
Providing increased flexibility for an authority to issue a permit up to its maximum length of validity, and issue extensions as necessary.	<p>Conservation Ontario is supportive of these proposed amendments. Extension requests must meet current application standards in order for them to be re-issued. Consideration could be given to removing 2.2.2. b (no extension has been granted previously) and c (setting out reasons why the permit extension is required) as a requirement for an extension to reduce regulatory burden. Renewal requests should be assessed based on their technical merit.</p> <p>To further streamline approvals, it is recommended that staff be empowered to issue a permit up to 60 months where that authority has been delegated by the Members of the CA.</p>	<p>Extension requests must meet current application standards in order for the permit to be re-issued.</p> <p>Create delegation authority for the issuance of permits up to 60 months.</p>
Service Delivery Standards	<p>Conservation Ontario is supportive of this proposed requirement for CAs to establish, monitor and report on service delivery. When developing the parameters of this requirement, it is recommended that the MNRF consider the Conservation Ontario “Client Service Standards for Conservation Authority Plan and Permit Review” as the basis for these requirements.</p> <p>There are opportunities to improve the complete application process and improve the quality of technical submissions to achieve faster approvals. Technical guidelines and checklists are important for this purpose and are outlined as a best practice in CO’s Client Service and Streamlining Initiative.</p> <p>A transition period is required to enable CAs to update their policies to be consistent with provincial requirements and to give notice of the proposed changes to the public (see recommendation #5). In addition, it is recommended that the province work with CAs, Municipalities and the development sector to update technical guidance (see recommendation #6).</p>	<p>Recommend that the requirements are consistent with the CO Client Service and Streamlining Initiative. Most CAs are already reporting annually using a standardized template and could quickly adapt this reporting to the Province’s needs.</p>
Mapping of Areas	Conservation Ontario supports this recommendation. In April, 2018 Conservation Ontario Council endorsed the “Procedure for Updating Section 28 Mapping: Development, Interference with Wetlands and Alterations to	Recommend that the requirements are consistent with the CO “Procedure for Updating Section 28 Mapping: Development,

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	<p>Shorelines and Watercourses Regulations” which could form the basis for these notification requirements. The April, 2018 document includes notification requirements which expand beyond solely public notification.</p> <p>Currently the regulations are what is referred to as a “text based” regulation and not a “mapped based” regulation. While it is acknowledged and supported that CAs should notify the public of changes to mapped regulated areas it should be equally acknowledged that the text of the regulation prevails. Maintaining a text based regulation is critical for the protection of people and property from natural hazards and reflects the dynamic nature of these hazards.</p> <p>Furthermore, the requirement for public notification should differentiate between notifying the public of changes already made (e.g., updated provincially significant wetland boundary) and of proposed changes (e.g., the CA is undertaking a flood plain mapping project). The requirement for public notification should also relate the scale and scope of changes, alternative public notification opportunities to avoid duplication as well as the size of the watershed for comprehensive update.</p>	<p>Interference with Wetlands and Alterations to Shorelines and Watercourses Regulations”.</p>
<p>Pre-consultation on permit applications</p>	<p>While Conservation Ontario supports pre-consultation on permit applications, it is unclear whether an additional legislative amendment is being proposed via this consultation; “[U]nder section 21.1 of the Act, it would be specified that either a CA or a permit applicant may request pre-consultation prior to the submission of a permit applications in order to confirm requirements for a complete application for the activity in question”. Conservation Ontario requests clarification from the Province on this point.</p> <p>Conservation Ontario supports high-quality pre-consultation as a critical value-added service that assists applicants with the application process. It is recommended that the Province consider Conservation Ontario’s “Guideline for Conservation Authority Pre-Consultation (Planning and Permitting Applications)”.</p>	<p>Consider the best practices identified through the Conservation Ontario “Guideline for Conservation Authority Pre-Consultation (Planning and Permitting Applications)”.</p>

Proposed Changes	Response	Potential Details for the Regulation
	<p>Applications” as a basis for further work on this topic.</p>	
<p>Exemption of Development Authorized Under the <i>Planning Act</i></p>	<p>See recommendation #2 for further details.</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 (4) of the <i>CAA</i>. Careful consideration is required to avoid unintended risk to public safety, properties, or natural hazards.</p> <p>If the Province wishes to continue dialogue around improved coordination between <i>CAA</i> regulations and Municipal planning approvals, consideration should also be given to the community planning permit system which is enabled under the <i>Planning Act</i>. An example of improved coordination exists in the Town of Innisfil with the Lake Simcoe Region CA for shoreline permits.</p> <p>CAs support development directed outside of hazardous lands and that does not increase the risk upstream or downstream.</p>	<p>Utilize existing provisions within S. 28(3) and (4) to consider exemption of low-risk activities.</p> <p>Consider use of tools found within the <i>Planning Act</i> such as the community permit planning system.</p>