

Grand River Conservation Authority

Report number: GM-11-22-88

Date: November 10, 2022

To: Ad-Hoc Conservation Authorities Act Regulations Committee

Subject: ERO No. 019-6141- Legislative and regulatory proposals affecting Conservation

Recommendation:

THAT Report: ERO No. 019-6141- Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0 be submitted to the Environmental Registry Ontario and,

THAT Report: ERO No. 019-6141- Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0 be circulated to the General Membership at the November 25, 2022 meeting to be received as information.

Summary:

On October 25, 2022 the Ministry of Natural Resource and Forestry (MNRF) posted on the Environmental Registry of Ontario (ERO) a proposal titled Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0. This proposal recommends legislative and regulation changes under the Conservation Authorities Act to streamline processes, provide clarity and certainty for development, and focus on conservation authorities' natural hazards mandate.

Over the last two years, the Province has worked to clarify the conservation authority mandate and responsibilities ensuring their focus on protecting people and property from natural hazards such as flooding and erosion. Several of these legislative and regulatory changes will undermine the work done to date, shift responsibilities and liability to municipalities and increase costs for the municipalities and taxpayers.

It is important that the Province allows for additional time to consult on the provincial proposals to ensure that the Province, Conservation Authorities, and other stakeholders fully understand the potential short and long-term implications of the proposed legislative changes and new regulations.

Based on a review of the ERO posting, the following comments and recommendations are provided:

1. The Province proposes to transfer some or all of the conservation authority regulatory responsibilities to municipalities where *Planning Act* approvals are in place. The planning process is insufficient to ensure natural hazard concerns are addressed through design and construction. This will place additional responsibility and liability on municipalities.
2. The Province should let municipalities decide if they want to enter into voluntary agreements with conservation authorities on development applications such as natural heritage and water resource plan review. This is an important role for many conservation authorities, on behalf of municipalities, across the province.
3. The Province should require conservation authorities to demonstrate that permit and planning fees do not exceed the cost required to deliver the program and service and

only consider freezing fees if conservation authorities are exceeding 100% cost recovery.

The GRCA is disciplined and focused on providing mandatory programs and services related to natural hazards. We have a transparent and proven track record of providing regulatory services that are streamlined, accountable and centred on rigorous service delivery standards. Our commitment focuses on stakeholder engagement, from meeting homeowners on-site to engaging with the development community to better understand perceived barriers. This approach helps us find innovative solutions for safe growth and development in the municipalities we serve.

Finally, we recommend that the Province re-engages with the Conservation Authority Working Group (CAWG) to provide advice and solutions for successful implementation.

Report:

On October 25, 2022 the Ministry of Natural Resources and Forestry posted on the Environmental Registry of Ontario (ERO) a proposal to amend legislation and regulations under the *Conservation Authorities Act*. These changes are being proposed in support of Ontario's Housing Supply Action Plan 3.0 and the government's commitment to support the construction of 1.5 million new housing units over the next ten years. These proposed changes are intended to streamline processes, provide clarity and certainty for development, and focus on Conservation Authorities' natural hazard mandate.

While we acknowledge that it is important to build more homes in Ontario and make the development process more efficient. The GRCA has worked hard to ensure we provide efficient and effective customer service to watershed municipalities, residents and the development community.

Based on GRCA's review of the proposed changes, we are providing the following comments and recommendations:

1. Regulation to transfer Conservation Authority regulatory powers to municipalities through Planning Act approvals

The proposed legislative changes include exemptions from requiring a permit under the Conservation Authorities Act in prescribed municipalities where a Planning Act approval has been granted. It is unclear whether it will be limited to certain types of low-risk development and hazards, or if the purpose is to transfer conservation authorities (CA) responsibilities to municipalities on a much broader scale. While the government wants to focus CAs on their core mandate, this proposed sweeping exemption signals the exact opposite. As proposed in the legislation, the CA exclusions will nullify the core functions of CAs and open up significant holes in the delivery of our natural hazard roles, rendering them ineffective. This will negatively impact our ability to protect people and property from natural hazards, which seem to be more and more prevalent with extreme weather events.

Currently, the GRCA streamlines permit review and development application processes to ensure timely and efficient review responses. Without limitations or further scoping, these proposed changes signal the likelihood of future delegation of CA permitting roles to municipalities that have neither capacity nor expertise in water resource engineering, environmental and natural resource planning and regulatory compliance. This will result in longer response times and increased costs which will impede the government's goal of making life more affordable.

With these changes, municipalities will also assume the sole liability for the impact of development on natural hazards within municipal boundaries and on neighbouring upstream

and downstream communities, which is a significant and new responsibility that they have never had to manage before.

We strongly encourage the Province to maintain natural hazard responsibility with CAs. At the GRCA we have a long and proven history of working with watershed municipalities and the development industry on *Planning Act* applications and CA permit processes to ensure an efficient and effective review of our natural hazards responsibilities.

CAs have developed and are currently implementing a streamlined approach to plan review and approvals. In 2021, 91% of all permits issued by high growth CAs met provincial timelines. A total of 93% of all permits issued by non-high growth CAs met provincial timelines.

We would encourage the Province to re-engage the existing multi-stakeholder Conservation Authority Working Group (CAWG) to ensure there is a streamlined, consistent and scoped process for CAs to help the Province achieve its housing goals.

2. Proposed changes that would scope CAs role with respect to development applications and land use planning to their core mandate under the Mandatory Programs and Services Regulation and prohibit CAs from entering into agreements or Memorandum of Understanding (MOU) with municipalities for other services (e.g. natural heritage reviews, select aspects of stormwater management reviews, etc.)

The proposed changes would limit a CAs ability to review and comment on a number of application types outside of the scope of the natural hazards. The proposed changes would also prevent municipalities from entering into agreements with CAs to provide advisory comments on natural heritage and other environmental matters. The GRCA has a longstanding relationship with our watershed municipalities in providing support and advice on natural heritage management. Using CA's long-standing watershed technical knowledge provides context for science-based decision making and offers value for money as well as certainty and predictability in the development review process.

Many lower-tier and upper-tier municipalities rely on CAs for their expertise in areas such as natural heritage and stormwater management as many smaller municipalities may lack this expertise. CAs provide these programs and services to municipalities in a cost-effective way across the watershed. If these municipalities and other agency partners are prohibited from entering into MOUs or agreements with CAs for these services, it will result in delays and increased costs to municipalities as they hire or contract out the work required, require increased coordination amongst neighbouring municipalities as natural heritage features do not follow political boundaries and insufficient reviews of natural heritage and stormwater management in development applications due to lack of watershed information/context.

Previous legislative amendments require that CA enter into MOUs or agreements with municipalities when commenting beyond the scope of the mandatory programs and services. Municipalities have the choice if they want to contract this work out or utilize their local CA for these services. It is our recommendation that municipalities retain the option to enter into MOUs or agreements with CAs for natural heritage review as already identified under the existing legislation and in keeping with the requirements specified in the existing regulations.

Again, we would encourage the Province to re-engage the existing multi-stakeholder Conservation Authority Working Group (CAWG) to assist with the development of tools or guidelines that may assist or address the Provincial concerns regarding CAs commenting on development applications outside the scope of the mandatory programs and services.

3. Freezing CAs fees

The proposed amendments to the Conservation Authorities Act would enable the Minister to freeze conservation authority fees as early as January 1, 2023. The current proposed wording indicates that the Minister would have the ability to freeze all CA fees, there is a reference in the

ERO posting that the intent of the amendments is to support housing development. Currently, conservation authority development/permit fees are limited to cost recovery, as referenced in the Minister's Fee Classes Policy (2022). A freeze on fees will quickly create a program deficit. Not enabling cost recovery for the program will mean CAs will be forced to make up any program shortfalls from the municipal levy.

The GRCA has commenced a fee study to evaluate our current development/permit fees to implement rates more reflective of cost recovery. The intent of this study is to reduce the use of municipal levy for activities that are directly attributable to services where user fees are appropriate. The GRCA regularly consults with the Homebuilders Liaison Committee on fees, potential changes to fees, and provides a forum for discussion of other issues that may arise. We also consult with watershed municipalities and other conservation authorities to ensure our fees are consistent and fair with other similar organizations.

We would recommend that the Province require CAs to demonstrate that permit and planning fees do not exceed the cost to deliver the program and service. Should the CA demonstrate that they are exceeding 100% cost recovery for the program and service at that point the Province should consider freezing fees.

4. Identifying CA lands suitable for housing and streamlining CA disposition and severance processes

The Grand River Conservation Authority (GRCA) owns and manages approximately 20,000 hectares of land within the Grand River watershed. This represents 2.8% of the total watershed. Land acquisition started when the former Grand River Conservation Commission began work on the Shand Dam, which was completed in 1942. Over the years, land has been acquired for several reasons:

- To build infrastructure such as dams and dikes
- To protect natural areas and habitat
- To create recreational areas, e.g.: conservation areas

The majority of the land that is owned by the GRCA contains significant natural heritage features or is hazardous land that would not be suitable for development. That being said, the GRCA will incorporate a review of our landholdings for housing as we complete the mandatory inventory of our lands.

The GRCA disposes of portions of properties, or entire properties when they are deemed to be surplus to the needs of the Authority. Through the required regulatory (*Ontario Regulation 686/21*) deliverable, the Conservation Area Strategy, the GRCA is required to develop a policy to govern land dispositions (surplus lands).

The GRCA appreciates the changes in the legislation, to both the *Conservation Authorities Act* and the *Planning Act* that will streamline the administrative land disposition and severance processes.

Finally, we recommend that the Province continue to require CAs to direct Section 39 land sale proceeds to a land sale reserve that is regulated by Province. This provincial-controlled reserve permits land sale proceeds to be used for activities that provide a public benefit. Examples of these activities include purchasing of environmentally sensitive properties, floodplain and erosion mapping and maintenance of flood control infrastructure. Requiring CAs to direct Section 39 land sale proceeds to Category 1 programs and services is not a sustainable funding model and potentially creates significant fluctuations in annual levy requirements.

Final Recommendations:

1. The Province should re-engage the Conservation Authority Working Group (CAWG) to provide advice and support on the proposed legislative changes, new regulations and

any required tools and/or guidance documents required for implementation. From 2021-2022, the Ministry of Environment, Conservation and Parks led a multi-stakeholder Conservation Authority Working Group (CAWG) to guide the implementation of earlier legislative changes to conservation authority business. This group included representatives from CAs, municipalities, the development industry and the agricultural sector. The working group worked closely with the ministry to provide advice on the proposed regulations, guidelines and policies that impact conservation authorities and their participating municipalities.

2. Development subject to *Planning Act* authorizations should not be exempt from requiring CA permits and CA regulations should not be delegated, whole or in part, to municipalities. The ability of CAs to regulate development in all hazardous areas is critical for successful emergency preparedness, public safety and to protect life and property. The planning process is insufficient to ensure natural hazard concerns are addressed through design and construction. Should this amendment go through, this will place additional responsibility, and liability, on municipalities.
3. Using CAs long-standing watershed technical knowledge provides context for science-based decisions making and offers value for money as well as certainty and predictability in the development review process. The Province should allow municipalities to enter into voluntary agreements with CAs for review and comment on development applications such as natural heritage and water resource plan review.
4. CA plan review and permitting fees are based on cost recovery and currently there is no mechanism being proposed to make up for the accumulating shortfall in the future. Not enabling cost recovery means that the municipal tax payer will have to subsidize development.

Financial Implications:

N/A

Other Department Considerations:

The Land, Water and Administration divisions were consulted in the preparation of these comments.

Submitted by:

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