

Executive Summary

The following submission sets out the formal response of EnPointe Development Incorporated (“EnPointe”) to the Environmental Registry of Ontario (“ERO”) post 013-5018 *Modernizing conservation authority operations - Conservation Authorities Act*.

EnPointe Development Incorporated would offer qualified support to the proposals in modernizing conservation authority (“CA,” or “CAs”) operations.

Several outstanding issues with respect to the changes remain; EnPointe encourages the Ministry of Environment, Conservation, and Parks (“MECP,” or the “Ministry”) to work with stakeholders to refine and bring further focus to the proposals. Collaboration in this regard will ensure that broad overreach and mandate exit are prevented. It could also cement sound adherence to the original mandate of conservation authorities established at their formation.

EnPointe Development Incorporated

Founded in 2015, EnPointe Development is a London-based public advocacy and public policy analysis firm that assists citizens and privately-held businesses in navigating the often difficult legislative and regulatory frameworks of government at the federal, provincial, and municipal tiers.

Public agencies, authorities, boards, crown agencies, and institutions, also attract an equal share of concern of EnPointe clientele

EnPointe provides an administrative and political recourse for citizens and privately-held businesses. The firm boasts powerful and significant partnerships in academia, environmental sciences, law, and professionals in engineering, planning, and other spheres of public policy to transform regulatory roadblocks and red-tape.

Background

EnPointe has been engaged in a consistent manner representing private citizens and privately-held businesses for over four years as mentioned. Up to sixty percent of our clientele have encountered administrative and regulatory conflict with conservation authorities about private property. This has been a consistent trend rather than exceptional and isolated interactions.

In short, conservation authorities act in many quantifiable instances, with both direct and wilful intent outside their mandate and statutory framework. Several authorities have in EnPointe’s experience failed to meet reasonable and broadly accepted norms and standards of administrative review, procedural fairness, and justification/quantification of their decision-making processes and analyses.

EnPointe agrees and supports the Government of Ontario (the “government”) engaging in a full-scale re-examination of conservation authorities and their mandate in the province.

EnPointe’s qualified support of the government’s proposals is specific for a reason:

EnPointe would counter-propose that conservation authorities in their present operations be eliminated and their mandates and responsibilities be transferred to existing municipal governments and relevant provincial ministries.

The ERO post however is specific in expressing that a full-scale disbandment of conservation authorities and transfer of their existing and/or future role(s) are not considerations. EnPointe has therefore limited its submissions to the scope of the proposals contained in the ERO post but would welcome further dialogue on a longer-term solution on resetting the conservation narrative and posture in Ontario.

Introduction

A distinct public policy dilemma in Ontario exists surrounding not just conservation authorities but all environmental and environmentally-oriented law.

Why is this a dilemma?

The outward objective of environmental law and those influence the same in either direct or indirect manners is to protect the environment, preserve natural resources, and provide long-term sustainable management and use of each for present and future generations.

Where conflict and confusion has arisen is due to the misinterpretation of laws and policies and misunderstanding in the role and exercise of enforcement, inquiry, and investigation.

Indeed, the Supreme Court of Canada has expressed that:

Environmental legislation embraces an expansive approach, to ensure that it can adequately respond “to a wide variety of environmentally harmful scenarios, including ones which might not have been foreseen by the drafters of the legislation”¹

The Ministry would be aware of the trends and wide body of case-law of civil proceedings involving environmental legislation and those in provincial offences court related to enforcement.

¹ Supreme Court in R. v. Canadian Pacific Ltd., [1995] 2 S.C.R. 1031 (S.C.C.), para 43

The prevailing view is indicative that courts at all levels view environmental legislation and those statutorily enabled to interpret and enforce the laws, statutes, and regulations thereof ought to be afforded a 'deference' in interpreting and fulfilling their respective mandates.²

A significant constraint thus arises: citizens and private enterprise cannot reasonably trust that their individual conflicts and application for relief from governments and their agencies will be afforded parity to the latter's actions and positions. Citizens can be dissuaded from seeking fair consideration of their issues due to an erosion of faith in the balance, equity, utility, and worthiness of the processes created to afford them fairness.

Therein lay the dilemma.

It would be politically convenient to vent frustration at the courts for their broad interpretations. That is not a tenable position to adopt to improve the posture of the law and refine the practical implementation of it.

An analysis of the trends on environmental legislation - that includes CAs and their legislative framework, should offer realistic and workable considerations. Courts will then be limited interpreting legislation in such broad and expansive manners if the legislative branch of government enacted a better standard of law. That standard ought to be accurate, brief, and concise. Any attached regulations to implement must be clear, limited in scope, and provide ample and substantive avenues for relief.

Good law begets good public policy that is fair, workable, and practical while achieving its objects and purpose.

ENPOINTE POSITION

The proposals being advanced by the government are a good-faith first iteration. The strength of certain specific elements however fall short of a defensible standard for reasons of breadth, expansiveness, and likelihood for misapplication and operational overreach.

ANALYSIS AND REVIEW

EnPointe submits that on review it is prepared to offer qualified support to specific proposals below, AND offer alternatives to strengthen deficiencies where observed.

SCHEDULE 2 - CONSERVATION AUTHORITIES ACT

1 The definition of "Minister" in section 1 of the Conservation Authorities Act is repealed and the following substituted:

² Gilmore v. Nottawasaga Valley Conservation Authority, 2017 ONCA 414, para 37

“Minister” means the Minister of the Environment, Conservation and Parks or such other member of the Executive Council as may be assigned the administration of this Act under the Executive Council Act; (“ministre”)

2 Clause 13.1 (6) (c) of the Act is amended by striking out “of the Environment”.

3 The Act is amended by adding the following section: Duty of members

14.1 Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority.

ENPOINTE COMMENT: in the public interest.

4. Section 21.1 of the Act is repealed and the following substituted:
Mandatory programs and services

21.1 (1) If a program or service that meets any of the following descriptions has been prescribed by the regulations, an authority shall provide the program or service within its area of jurisdiction:

1. Programs and services related to the risk of natural hazards.

ENPOINTE COMMENT: Delete and remove from the purview of CAs. Natural hazard designation and monitoring to be shared between the Government of Ontario and municipalities for oversight on planning and land use, and emergency management for flood control and management.

2. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.

ENPOINTE COMMENT: Too broad. Programs and services must be enumerated in the attached operational regulations of each CA with direction from the province. They must be specific. CAs have enlarged their scope and mandate by exploiting the generic nature of the Conservation Authorities Act and appending operational regulations promulgated by the government that are deliberately vague.

3. Programs and services related to the authority’s duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006.

ENPOINTE COMMENT: Re-phrase: “An authority will pass operational regulations that incorporate its duties, functions, and responsibilities as a source protection authority as defined under the Clean Water Act, 2006.

4. Programs and services related to the authority’s duties, functions and responsibilities under an Act prescribed by the regulations.

Same, Lake Simcoe Region Conservation Authority

ENPOINTE COMMENT: A review of the particularities distinct to Lake Simcoe Region Conservation Authority is outside the scope of EnPointe’s commentary of this act.

(2) In addition to the programs and services required to be provided under subsection (1), the Lake Simcoe Region Conservation Authority shall provide within its area of jurisdiction such programs and services as are prescribed by the regulations and are related to its duties, functions and responsibilities under the Lake Simcoe Protection Act, 2008.

Standards and requirements

(3) Programs and services required to be provided under subsections (1) and (2) shall be provided in accordance with such standards and requirements as may be set out in the regulations.

Municipal programs and services

21.1.1 (1) An authority may provide within its area of jurisdiction municipal programs and services that the authority agrees to provide on behalf of a municipality situated in whole or in part within its area of jurisdiction under a memorandum of understanding or such other agreement as may be entered into with the municipality in respect of the programs and services.

ENPOINTE COMMENT: Add - “An authority may provide within its area of jurisdiction municipal programs and services that the authority agrees to provide on behalf of a municipality situated in whole or in part within its area of jurisdiction under a memorandum of understanding “as prescribed in the regulations.” Delete - “or such other agreement as may be entered into with the municipality in respect of the programs and services.”

The effect of the original clause is too broad and can permit mandate exit by CAs to persuade municipalities to request provision of a program or service wholly or in part outside its mandate by using “such other agreement as may be entered into the municipality.”

Similarly, the government must prescribe a format for a program or service MOU between CAs and municipalities to ensure consistency, clarity, and understanding.

Memorandum, agreement available to public

(2) An authority shall make a memorandum of understanding or other agreement available to the public in such manner as may be determined in the memorandum or agreement.

ENPOINTE COMMENT: Delete all after “in such manner as may be determined...,”

CAs are public agencies and their agreements with municipal tiers of government must be public record without exception.

The Ombudsman of Ontario has found regular and repeated misinterpretations on the part of municipalities with respect to closed meetings. The Information and Privacy Commissioner had also made numerous rulings of malfeasance and the wilful withholding of records by local boards and agencies.

Subsection (2) must be clear and indisputable.

Periodic review of memorandum, agreement

(3) An authority and a municipality who have entered into a memorandum of understanding or other agreement shall review the memorandum or agreement at such regular intervals as may be determined in the memorandum or agreement.

ENPOINTE COMMENT: Replace with the following: “An authority and a municipality who have entered into a memorandum of understanding as prescribed in the regulations must conduct a review of the memorandum in the manner prescribed in the regulations with the assessment completed and the report thereon published in the public record within five (5) years of the memorandum becoming enforceable.”

The regulations can prescribe the specific methodology and the tests that must be satisfied such as attaining the object(s), cost, regulatory efficacy, etc...

This subsection is too flexible and voluntary. It does not compel administrative review for a justifiable purpose; it merely makes it available. The government would not be conducting a review of operations if the broad terms and parameters were working in an effective manner.

Terms and conditions

(4) Programs and services that an authority agrees to provide on behalf of a municipality shall be provided in accordance with the terms and conditions set out in the memorandum of understanding or agreement.

ENPOINTE COMMENT: Delete all after “or agreement.”

Consistency with all covenants being only in MOU format per the clauses amended above.

Other programs and services

21.1.2 (1) Subject to subsection (2), in addition to programs and services described in sections 21.1 and 21.1.1, an authority may provide within its area of jurisdiction such other programs and services as the authority determines are advisable to further its objects.

ENPOINTE COMMENT: Delete. This clause permits mandate exit and is too broad a determination by CAs to expand their mandate.

CA board members are volunteers and do not have support staff other than CA personnel. They rely upon the advice and recommendations of CA personnel or contracted experts often to the exclusion of countervailing views. Deletion of this clause narrows interpretative manoeuvrability.

Agreement

(2) On and after the day prescribed by the regulations, if financing under section 25 or 27 by a participating municipality is necessary in order for an authority to provide a program or service authorized to be provided under subsection (1), the program or service shall not be provided by the authority unless an agreement that meets the following criteria has been entered into between the authority and the participating municipality in respect of the program or service:

ENPOINTE COMMENT: Substitute “agreement,” with “memorandum of understanding.”

1. The agreement must provide for the participating municipality to pay to the authority,
 - i. an apportioned amount under section 25 in connection with a project related to the program or service, or
 - ii. an apportioned amount under section 27 in respect of the program or service.
2. The agreement must include provisions setting out the day on which the agreement terminates and a requirement that it be reviewed by the parties within the period specified in the regulations for the purpose of determining whether or not the agreement is to be renewed by the parties.

ENPOINTE COMMENT: Amend after ‘within’ with: “the prescribed period of five (5) years as stipulated under Section 21.1.1(3) in accordance with the procedures prescribed under the regulations and that any renewal of the agreement may not be entered into by the parties without the review provisions having been satisfied.”

Compels the consistent and regular re-examination of programs and services by controlled methodology.

3. The agreement must meet such other requirements as may be prescribed by the regulations.

Terms and conditions

(3) Programs and services that an authority agrees to provide under an agreement entered into as described in subsection (2) shall be provided in accordance with such terms and conditions as may be set out in the agreement.

Transition plan re subs. 21.1.2 (2)

21.1.3 (1) Every authority shall develop and implement a transition plan for the purpose of ensuring that it will be in compliance with subsection 21.1.2 (2) by the day prescribed by the regulations for the purpose of that subsection.

Contents

(2) The transition plan shall address the following matters in accordance with the regulations:

1. Preparation by the authority of an inventory of the authority's programs and services.
2. Consultation by the authority with participating municipalities on the inventory of programs and services mentioned in paragraph 1.
3. If financing under section 25 or 27 by a participating municipality is necessary in order for the authority to provide a program or service authorized to be provided under subsection 21.1.2 (1), steps to be taken by the authority for the purposes of seeking to enter into an agreement with the participating municipality in respect of that program or service.
4. Such other matters as may be prescribed by the regulations.

Consultation

21.1.4 An authority shall carry out such consultations with respect to the programs and services it provides as may be required by regulation and shall do so in the manner specified by regulation.

ENPOINTE COMMENT: The Regulations in this respect must be consistent, evenly applicable, and clear. EnPointe welcomes the opportunity to contribute to the development of practical and efficient regulations governing public consultation on CA operations prior to promulgation.

5 Section 23.1 of the Act is amended by adding the following subsections:

Investigator

ENPOINTE COMMENT: EnPointe supports the government's addition of Section 23.1. EnPointe advises the government to consider the sole management and discretion of the same. It cannot mirror the problematic reality of certain municipalities exercising the right under the *Municipal Act* to appoint their own investigators whose appointment and remuneration is subject to the same body that appoints such investigators.

(4) The Minister may, at any time, appoint one or more investigators to conduct an investigation of an authority's operations, including the programs and services it provides.

ENPOINTE COMMENT: Divide (4) into (4)(i) and (4)(ii):

(4)(i) The Minister may, at any time, appoint one or more investigators to conduct an investigation of an authority's operations, including the programs and services it provides.

(4)(ii) The Minister may, at any time, order an investigator or investigators to conduct an investigation at the formal request of an authority's constituent municipality or by a citizen that can petition the Minister for the same by submitting such a petition in accordance with the prescribed regulations.

This can provide both a municipality and/or citizen(s) with the right to administrative review when reasonable grounds are brought to the Minister's attention. Such petitions can then follow a fair and transparent procedure in the regulations.

Powers of investigator

(5) For the purposes of an investigation under subsection (4), an investigator may,

(a) inquire into any or all of the authority's affairs, financial and otherwise;

(b) require the production of any records that may relate to the authority's affairs;

(c) inspect, examine, audit and copy anything required to be produced under clause (b);

(d) conduct a financial audit of the authority's operations, including its programs and services; and

(e) require any member of the authority and any other person to appear before the investigator and give evidence on oath about the authority's affairs.

Application of Public Inquiries Act, 2009

(6) Section 33 of the Public Inquiries Act, 2009 applies to an investigation under subsection (4).

Report of investigator

(7) On completion of an investigation, an investigator shall report in writing to the Minister, who shall promptly transmit a copy of the report to the authority.

ENPOINTE COMMENT: Add after 'authority.' the following: "The authority will make public the report of the investigator transmitted by the Minister, but only

after redacting any such information so required under other legislation and regulations as directed by the Minister."

Unless there is a compelling reason, all investigation findings should form part of the public record.

Cost of investigation

(8) The Minister may require the authority to pay all or part of the cost of an investigation under subsection (4).

ENPOINTE COMMENT: Substitute with the following "The Minister will require the authority to pay all or part of the cost of an investigation under subsection (4) if the investigation determines in whole or in part wrongdoing on the part of the authority in the matter investigated."

Expresses a culture of administrative accountability and further acts as a diligence tool to ensure compliance and soundness in the actions of CAs. In most review and tribunal processes a guilty party or the party from whom relief is granted are responsible for costs.

6 Section 25 of the Act, as re-enacted by section 23 of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017, is amended by adding the following subsections:

Limitation

(1.1) Subject to subsections (1.2) and (1.3), an authority shall not, on and after the day prescribed by the regulations, include in the apportionment any capital costs in connection with a project related to a program or service authorized to be provided under subsection 21.1.2 (1).

Same

(1.2) An authority shall include in the apportionment of capital costs to a participating municipality any capital costs in connection with a project related to a program or service that has been identified in an agreement between the municipality and the authority as described in subsection 21.1.2 (2).

ENPOINTE COMMENT: Substitute "an agreement," with "a memorandum of understanding."

Extension of time

(1.3) If the circumstances prescribed by the regulations apply in respect of an authority, a person designated by the Minister may, by written notice to the authority, specify that a later day than the day prescribed by the regulations under subsection

(1.1) applies to the authority and if such a notice is issued, the prohibition set out in subsection (1.1) applies to the authority on and after the day set out in the notice.

7 (1) Section 27 of the Act, as re-enacted by subsection 24 (1) of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017, is amended by adding the following subsections:

Limitation

(1.1) Subject to subsections (1.2) and (1.3), an authority shall not, on and after the day prescribed by the regulations, include in the apportionment any operating expenses related to a program or service authorized to be provided under subsection 21.1.2 (1).

Same

(1.2) An authority shall include in the apportionment of operating expenses to a participating municipality any operating expenses related to a program or service that has been identified in an agreement between the municipality and the authority as described in subsection 21.1.2 (2).

ENPOINTE COMMENT: Substitute “an agreement,” with “a memorandum of understanding.”

Extension of time

(1.3) If the circumstances prescribed by the regulations apply in respect of an authority, a person designated by the Minister may, by written notice to the authority, specify that a later day than the day prescribed by the regulations under subsection

(1.1) applies to the authority and if such a notice is issued, the prohibition set out in subsection (1.1) applies to the authority on and after the day set out in the notice.

(2) Subsection 27 (2) of the Act, as re-enacted by subsection 24 (1) of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017, is amended by striking out “subsection (1)” wherever it appears and substituting in each case “subsections (1) and (1.1)”.

8 (1) The Act is amended by adding the following section:

Other amounts owing to authority

Specified municipality

27.2 (1) In this section,

“specified municipality” means, when used in reference to an authority,

(a) a municipality that is designated under the regulations made under the Clean Water Act, 2006 as a participating municipality for the authority for the purposes of that Act but that is not one of the authority’s participating municipalities under this Act, or

(b) a municipality that is designated under the regulations made under the Lake Simcoe Protection Act, 2008 as a participating municipality for the Lake Simcoe Region

Conservation Authority for the purposes of that Act but that is not one of the authority's participating municipalities under this Act.

Determination of amounts owing by specified municipality

(2) An authority may, from time to time and in accordance with the regulations, determine the amounts owed by any of its specified municipalities in connection with the programs and services the authority provides in respect of the Clean Water Act, 2006 and Lake Simcoe Protection Act, 2008.

ENPOINTE COMMENT: Government should consider synchronizing a time qualification on the determination of amounts under both these provisions and those of the *Clean Water Act*.

Notice

(3) If the authority determines under subsection (2) that amounts are owing by any of its specified municipalities, the authority shall send a notice in writing to the specified municipality, setting out the amounts that the specified municipality owes to the authority.

Payment of amounts

(4) Subject to subsections (5) to (10), each specified municipality shall pay to the authority the amounts specified in the notice in accordance with the requirements set out in the notice.

Review of notice

(5) Any specified municipality that receives a notice under subsection (3) may, within 30 days after receiving the notice, apply to the Mining and Lands Commissioner, or to such other body as may be prescribed by regulation, for a review of the amounts owing.

ENPOINTE COMMENT: Substitute "Mining and Lands Commissioner," with "Local Planning Appeal Tribunal (LPAT)"

The Mining and Lands Commissioner has adopted a deferential posture with respect to CAs. The LPAT has a codified, thorough process for appeals and relief in a manner superior to the Mining and Lands Commissioner. Remove any other form of review from any potential regulations.

Same

(6) The specified municipality that makes an application under subsection (5) shall send a copy of the notice of application to the authority and to every other participating municipality and specified municipality of the authority.

Hearing

(7) The Mining and Lands Commissioner, or such other body as may be prescribed by regulation, shall hold a hearing to reconsider the amounts owing, including considering

whether the determination of the amounts owing was carried out in accordance with subsection (2).

ENPOINTE COMMENT: Substitute “Mining and Lands Commissioner,” with “Local Planning Appeal Tribunal (LPAT).” Delete all after “Local Planning Appeal Tribunal (LPAT)” and substitute with “in the manner prescribed under the Planning Act with respect to appeals to the LPAT for relief.”

Parties

(8) The parties to the hearing are the applicant municipality, the authority, any other participating municipality or specified municipality of the authority that requests to be a party and such other persons as the Mining and Lands Commissioner, or such other body as may be prescribed by regulation, may determine.

ENPOINTE COMMENT: Delete per comments made about Section (7) and referral to the LPAT.

Powers on hearing

(9) Upon hearing an application under this section, the Mining and Lands Commissioner, or such other body as may be prescribed by regulation, may confirm or vary the amounts owing and may order the specified municipality to pay the amounts.

ENPOINTE COMMENT: Delete per comments made about Section (7) and referral to the LPAT.

Decision final

(10) A decision under subsection (9) is final.

ENPOINTE COMMENT: Substitute with “(8) A decision so made by the LPAT under subsection (7) is final.”

Debt due

(11) The amounts owed to the authority set out in a notice sent to a specified municipality or in an order under subsection (9), as the case may be, are a debt due by the specified municipality to the authority and may be enforced by the authority as such.

ENPOINTE COMMENT: Substitute with “The amounts owed to the authority set out in a notice sent to a specified municipality or in an order under subsection (7), as the case may be, are a debt due by the specified municipality to the authority and may be enforced by the authority as such.”

(2) Section 27.2 of the Act, as enacted by subsection (1), is amended by striking out “Mining and Lands Commissioner” wherever it appears and substituting in each case “Mining and Lands Tribunal”.

ENPOINTE COMMENT: Substitute with “Section 27.2 of the Act, as enacted by subsection (1), is amended by striking out “Mining and Lands Commissioner” wherever it appears and substituting in each case “Local Planning Appeal Tribunal (LPAT)”.

9 (1) Section 40 of the Act is repealed and the following substituted:
Regulations, Lieutenant Governor in Council

40 (1) The Lieutenant Governor in Council may make regulations,

(a) governing the composition of conservation authorities and prescribing additional requirements regarding the appointment and qualifications of members of conservation authorities;

ENPOINTE COMMENT: EnPointe welcomes the opportunity to contribute to the development of practical and efficient regulations on 40(1)(a) prior to promulgation.

(b) governing advisory boards established under subsection 18 (2), including requiring authorities to establish one or more advisory boards and prescribing requirements with respect to the composition, functions, powers, duties, activities and procedures of any advisory board that is established;

ENPOINTE COMMENT: EnPointe welcomes the opportunity to contribute to the development of practical and efficient regulations on 40(1)(b) prior to promulgation.

(c) prescribing programs and services for the purposes of subsections 21.1 (1) and (2) and prescribing Acts for the purposes of paragraph 4 of subsection 21.1 (1);

ENPOINTE COMMENT: EnPointe welcomes the opportunity to contribute to the development of practical and efficient regulations on 40(1)(c) prior to promulgation.

(d) respecting standards and requirements applicable to programs and services for the purposes of subsection 21.1 (3);

(e) governing the apportionment of an authority’s capital costs in connection with a project for the purposes of section 25;

ENPOINTE COMMENT: EnPointe welcomes the opportunity to contribute to the development of practical and efficient regulations on 40(1)(e) prior to promulgation.

(f) governing reviews under sections 26 and 27.1, including prescribing a body that may conduct such reviews instead of the Local Planning Appeal Tribunal or the Mining and Lands Commissioner, as the case may be;

ENPOINTE COMMENT: Delete this section as it counteracts earlier provisions of review oversight.

(g) governing the apportionment of an authority's operating expenses for the purposes of section 27, prescribing expenses as operating expenses for the purposes of section 27, governing the amount that participating municipalities are required to pay under section 27, including the fixed amount that a participating municipality may be required to pay under subsection 27 (2), and restricting and prohibiting the apportionment of certain types of operating expenses;

(h) defining any term that is used in this Act and that is not defined in this Act;

(i) respecting anything that is necessary or advisable for the proper administration of this Act.

Same

(2) The standards and requirements established for programs and services in a regulation made under clause (1) (d) may include standards and requirements to mitigate the impacts of climate change and provide for adaptation to a changing climate, including through increasing resiliency.

ENPOINTE COMMENT: EnPointe would advise deletion of this clause as any standards or requirements must manifest in the legislation as a relevant section or in the prescribed regulations. Reliance upon non-statutory instruments such as guidelines or provincial policy statements must end for consistency, fairness, and reasonableness.

Regulations, Minister

(3) The Minister may make regulations,

(a) prescribing matters that may be the subject of by-laws made under clause 19.1 (1) (j);

(b) respecting the amount of any fee that may be charged by an authority in relation to a program or service, including determining the manner in which the fee is calculated;

ENPOINTE COMMENT: EnPointe supports this determination and applauds that it will be expressed as regulations appended to the Act.

- (c) prescribing the period for the purposes of paragraph 2 of subsection 21.1.2 (2);
- (d) prescribing requirements for the purposes of paragraph 3 of subsection 21.1.2 (2);
- (e) governing the matters to be addressed in a transition plan under section 21.1.3 and prescribing additional matters to be addressed;
- (f) governing consultations that an authority must carry out for the purposes of section 21.1.4;
- (g) governing the information that authorities must provide to the Minister under section 23.1, including the publication of that information;
- (h) prescribing a day for the purposes of subsections 25 (1.1) and 27 (1.1);
- (i) prescribing circumstances for the purposes of subsections 25 (1.3) and 27 (1.3);
- (j) governing the determination of amounts owed under subsection 27.2 (2).

(2) Section 40 of the Act, as re-enacted by subsection (1), is amended by adding the following subsection: Minister's regulations, ss. 28 to 28.4 of the Act

(4) The Minister may make regulations,

(a) governing the prohibitions set out in section 28, including,

(i) prescribing the limits on river and stream valleys for the purposes of subparagraph 2 iii of subsection 28 (1),

(ii) determining or specifying areas for the purposes of subparagraph 2 iv of subsection 28 (1),

(iii) determining areas in which development should be prohibited or regulated for the purposes of subparagraph 2 v of subsection 28 (1),

ENPOINTE COMMENT: If the Minister determines these items it reinforces that oversight and management of the same ought not to be vested in CAs.

(iv) prescribing activities or types of activities to which the prohibitions set out in subsection 28 (1) do not apply and respecting the manner or circumstances in which the activities or types of activities may be carried out and any conditions or restrictions that apply to the activity or type of activity,

(v) prescribing areas in which the prohibitions set out in subsection 28 (1) do not apply and respecting the manner or circumstances in which the activities may be carried out

in such areas and any conditions or restrictions that apply to carrying out activities in such areas,

(vi) defining “development activity”, “hazardous land”, “watercourse” and “wetland” for the purposes of section 28;

ENPOINTE COMMENT: EnPointe advises due caution in the determination of these definitions to ensure respect with superior legislation, patents, and covenants.

(b) governing applications for permits under section 28.1, the issuance of the permits and the power of authorities to refuse permits, including prescribing requirements that must be met for the issuance of permits under clause 28.1 (1)

ENPOINTE COMMENT: EnPointe encourages the government to be prescriptive and concise in the expression of these regulations so they may not be interpreted broadly or liberally by either CAs, appellate bodies, or the courts.

(c), conditions that may be attached to a permit or circumstances in which a permit may be cancelled under section 28.3 and respecting the period for which a permit is valid under section 28.2;

ENPOINTE COMMENT: EnPointe encourages the government to be prescriptive and concise in the expression of these regulations so they may not be interpreted broadly or liberally by either CAs, appellate bodies, or the courts.

(c) defining “pollution” for the purposes of section 28.1;

ENPOINTE COMMENT: EnPointe encourages the government to be prescriptive and concise in the expression of these regulations so they may not be interpreted broadly or liberally by either CAs, appellate bodies, or the courts.

(d) governing the delegation of powers by an authority under section 28.4 and prescribing any limitations or requirements related to the delegation.

ENPOINTE COMMENT: EnPointe encourages the government to be prescriptive and concise in the expression of these regulations so they may not be interpreted broadly or liberally by either CAs, appellate bodies, or the courts.

(3) Clause 40 (1) (f) of the Act, as enacted by subsection (1), is amended by striking out “Mining and Lands Commissioner” and substituting “Mining and Lands Tribunal”.

ENPOINTE COMMENT: Substitute with “Clause 40 (1) (f) of the Act, as enacted by subsection (1), is amended by striking out “Mining and Lands Commissioner” and substituting “Local Planning Appeal Tribunal”

Repeals

10 (1) Subsection 20 (2) of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017 is repealed.

(2) Section 33 of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017 is repealed.

Commencement

11 (1) Subject to subsection (2), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Section 10 comes into force on the day the More Homes, More Choice Act, 2019 receives Royal Assent

ADDITIONS

EnPointe would further advise the value of inclusion into all prescribed regulations a clear and definitive definition and declaration of property rights, riparian rights, and all others related to or influencing private property in Ontario. This will be a helpful and necessary mechanism for citizens in Ontario to expect that conservation authorities are strictly confined to mandated programs and services with respect to public conservation lands and not of private property.

Ontarians ought to be able to expect a modicum of operational consistency and access to relief in manners that reasonably parallel other creatures of provincial legislation like municipalities, public health units, etc... Conservation authorities have long acted outside operational and transparent norms.

The province should consider the addition of a restrictive clause disallowing conservation authorities from accepting any funds, grants, transfers or other monetary instruments from public entities other than the provincial government and constituent municipalities. Departments of the federal government have bypassed the provincial ministries on conservation-based funding and allocated the same directly to CAs to administer. Any further bypass ought to be subject to the Minister's review and approval to prevent mandate and program exit.

EnPointe reiterates its offer of collaboration with the Ministry on the development of regulations prior to promulgation.

CONCLUSION

EnPointe submits that the proposed amendments, deletions, revisions, and substitutions offered herein can strengthen the proposals regarding *Modernizing conservation authority operations - Conservation Authorities Act*.

Refining the proposals will ensure that broad overreach and mandate creep on the part of conservation authorities are prevented. This will cement sound adherence to the original mandate of conservation authorities established at their formation, reduce duplication and waste, and ensure a fair legal framework responsive to the needs of conservation and residents of Ontario.

All respectfully submitted this twenty-first (21st) day of May, two-thousand and nineteen.

ENPOINTE DEVELOPMENT INCORPORATED.