

May 16, 2019

Alex McLeod
Ministry of Natural Resources and Forestry
Policy Division
Natural Resources Conservation Policy Branch
300 Water Street
Peterborough, ON K9J 8M5

Dear Mr. McLeod

**RE: Focusing Conservation Authority Development Permits on the Protection of People and Property
ERO # 013-4992**

Thank you for the opportunity to provide comment on the Ministry of Natural Resources and Forestry's (MNR) proposal to create an updated regulation further defining the ability of Conservation Authorities (CAs) to regulate prohibited development and other activities for impacts to flooding and other natural hazards. It is understood the intention of the anticipated regulation will be to make rules for development in hazardous areas more consistent across Ontario, to support faster, more predictable and less costly approvals. These comments were endorsed by the Kettle Creek Conservation Authority Board of Directors at its meeting of May 15, 2019.

The Ministry proposals and Kettle Creek Conservation Authority (KCCA) responses are included below:

- 1. Consolidating and harmonizing the existing 36 individual conservation authority-approved regulations into 1 Minister of Natural Resources and Forestry approved regulation will help to ensure consistency in requirements across all conservation authorities while still allowing for local flexibility based on differences in risks posed by flooding and other natural hazards.*

KCCA Response:

- KCCA is supportive of the proposal to consolidate and harmonize the existing 36 individual conservation authority regulations into one Minister of Natural Resources and Forestry approved regulation.
- The updated regulation should include schedules which outline the appropriate regulatory storm for all 36 watersheds and the ability to incorporate shoreline management plans where they have been established.

- 2. Update definitions for key regulatory terms to better align with other provincial policy, including: "wetland", "watercourse" and "pollution";*

KCCA Response:

- KCCA supports this proposal. Conservation Authorities through Conservation Ontario have encouraged the province to define these terms in relation to natural hazards to provide clarity and minimize variation across the province. In order to achieve a consistent interpretation of these terms and to assist in future legal matters that may

challenge these definitions, the MNRF should also consider providing supporting documentation in the future e.g. fact sheets or implementation guidelines.

3. *Defining undefined terms including: “interference” and “conservation of land” as consistent with the natural hazard management intent of the regulation;*

KCCA response:

- KCCA supports this proposal. These terms are integral to the implementation of a new regulation and the evaluation of an activity that requires a permit. Definitions for these terms and future implementation guidelines or fact sheets would provide clarity for conservation authorities, applicants and legal matters.

A portion of the Conservation Authorities Act (CAA) is not proclaimed at this time. The province has indicated that it is proposing to proclaim sections of the CAA following the approval of the proposed Regulation. This includes: “S28.1 (1) An authority may issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, if, in the opinion of the authority, ... (b) the activity is not likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.”

- KCCA requests that the province also provide guidance on the interpretation and implementation of this clause to assist in the review of permit applications where this test may apply. Factors that may be considered include, but are not limited to:
 - safe ingress and egress of people and vehicles during a flood event
 - health and safety of emergency responders entering hazardous lands, such as flood waters and erosion prone areas;
 - floodproofing requirements
 - damage to structures on the site or to other landowners (offsite impacts)
 - future costs to protect property or manage risk to people and property due to climate change

4. *Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;*

KCCA response:

- The KCCA supports the reduction of regulatory restrictions between 30m and 120m from a wetland for low risk activities that would not impact the hydrologic function or public safety.
- It’s important to note that there are activities that should not be considered low risk activities such as large scale excess soil/fill placement and grading activities, major infrastructure (e.g. roads, servicing or utility corridor).

5. *Exempt low-risk development activities from requiring a permit including certain alterations and repairs to existing municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act Protocol;*

KCCA response:

- The KCCA supports the inclusion of this provision to enable the explicit exemption of some low risk activities. In some regulated areas, there are low risk activities that currently require a permit that could be considered for exemption. KCCA policies currently include Site Clearances for activities of this nature that occur outside of a wetland or some hazard areas such as minor landscaping or grading, replacement of service connections, small non-habitable accessory structures e.g. shed. KCCA would be pleased to work with MNRF and other stakeholders to review activities that may be included for exemption.
- KCCA is also supportive of including the low risk activities outlined in the Drainage Act and Conservation Authorities Act protocol.
- It is recognized that this proposed exemption would require an update to the DART protocol and it is recommended that the DART be re-convened for this purpose. When considering exemptions, the Province should contemplate the full range of tools embedded in the new S. 28 regulation, including opportunities for permit-by-rule, adopting a document by reference and registration. For example, as drainage works have the potential to impact flood control, it is essential that CAs be notified of the proposed work in advance.

6. *Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;*

KCCA response:

- KCCA supports this initiative to allow individual conservation authorities to identify low risk activities in limited parts of natural hazard areas where there is current technical information and mapping. Exemption of low risk activities includes two options: outright exemption and a permit by rule system. Permit by rule is used in other provincial legislation where the applicant agrees to a specific set of rules before they start a specific regulated activity in a defined area. The applicant may be required to register their activity with the KCCA and inspections may be required.
- The MNRF should consider the requirements that will need to be in place for the implementation of this provision such as regulation maps that are current and a regular maintenance process is in place. Provincial investment in updating components of the natural hazard maps may be necessary e.g. floodplain and wetland mapping. Current and reliable maps are a key part of the successful implementation of this option so the public can use the conservation authority regulation maps to identify where an exemption may or may not be applicable and avoid enforcement issues. KCCA regulation policies would need to be updated and approved by the Board in order to be clear on the type of activities and what type of an exemption may apply.

- It is recommended that the MNRF should also provide implementation support materials to provide the policy framework for exempting low-risk development activities.
- Finally, it should be acknowledged that any exemptions put an unfunded compliance burden on conservation authorities. Conservation authorities will have to give consideration to this issue when developing policies for low-risk development activities.

7. *Require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions;*

KCCA response:

- KCCA supports this proposal. KCCA permit policies are available on our web site: <http://www.kettlecreekconservation.on.ca/planning-regulations/planning-services/>
- To ensure greater consistency across the province, it is recommended that the MNRF should provide implementation support materials for CAs to base their internal policies upon.
- KCCA would support an update to the 2002 Provincial Natural Hazard Guideline including new information to address climate change.

8. *Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries; and*

KCCA response:

- KCCA supports this proposal.
- Where a municipality is undertaking a land use planning approval such as a secondary or community plan or environmental assessment and new or updated natural hazard mapping is available, the KCCA considers the public to be notified of these changes through the municipal consultation process. This avoids duplicate public processes.
- Many updates to mapping are the result of site specific planning or permit applications and the landowner is notified as part of the process. These are considered minor housekeeping updates and are undertaken from time to time. Since effected parties are involved and aware of the changes, additional public notification is not undertaken.
- Guidance on acceptable public notification processes would be helpful to outline options available to conservation authorities. The guidelines should consider factors such as the scale and scope of changes, alternative public notification opportunities to avoid duplication as well as the size of the watershed for comprehensive update.

9. *Require conservation authorities to establish, monitor and report on service delivery standards including requirements and timelines for determination of complete applications and timelines for permit decisions.*

KCCA response:

- KCCA supports this proposal. KCCA has been monitoring performance for permit approvals using the MNRF guidelines which include: 21 days to determine if an application is complete application and a decision within 30 days for minor applications or within the 90 days for major applications. CA staff concentrate on providing timely and clear pre-consultation criteria to encourage complete and thorough technical submissions. This effort to address complete applications and complex issues at the beginning of the land use planning or permit process has resulted in the KCCA achieving a very high compliance rate with MNRF guidelines for permit approvals.
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10. Once a Regulation is established, the province is also proposing to bring into force unproclaimed sections of the Conservation Authorities Act associated with conservation authority permitting decisions and regulatory enforcement.

KCCA response:

- The KCCA supports proclaiming S.28 and S.30 of the Conservation Authorities Act. These sections of the Act outline the conservation authority regulation of areas where KCCA has jurisdiction i.e. natural hazards and enforcement and offences. The Act was updated to include modern approaches to the compliance and enforcement requirements including the ability to use tools such as a ‘Stop Order’ for work started without approval. There are also substantial increases in fines that may be a deterrent to illegal activities.

Thank you for the opportunity to comment.

Sincerely,



Stephen Harvey
Chair

Digitally Signed

cc: Conservation Ontario