Rescue Lake Simcoe Charitable Foundation
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May 21, 2019

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RE: Conservation Authorities Modernization (Operations and Permitting) ERO Numbers: 013-5018 and 013-4992 & Schedule 2, Bill 108

Dear Ms. O'Neill and Mr. McLeod:

The Rescue Lake Simcoe Coalition is a lake-wide member-based organization, representing 22 groups in the Lake Simcoe watershed, that provides leadership and inspires people to take action to protect Lake Simcoe. www.rescuelakesimcoe.org

The Rescue Lake Simcoe Coalition supports the attached submission, drafted by Environmental Defence and the Canadian Environmental Law Association. In addition to their thorough submission, we respectfully submit the following comments.

The *Lake Simcoe Protection Act* and Plan are set to be reviewed by the Province in 2019, and we hope for the best. Our priorities are available here: https://rescuelakesimcoe.org/wp-content/uploads/2019/03/Protect_Our_Plan-LSPP_Ask_Mr_23.pdf

At the same time, regulatory and budgeting changes proposed in the Conservation Authorities Modernization bill, Focusing conservation authority development permits on the protection of people and property, Bill 108, and other recent provincial initiatives undoubtedly impact the

Lake's health, and threaten to undermine the positive impact of the *Lake Simcoe Protection Act* and Plan (LSPP).

The Lake Simcoe Region Conservation Authority plays a critical role in the implementation of "designated" (having legal affect), "strategic action", and monitoring policies of the LSPP. It is important that their core activities not be limited to implementing those LSPP policies having legal effect.

CELA and ED's submission notes the following:

In describing the mandatory programs and services, the notice uses the term ***"as prescribed by"*** *the legislation enabling drinking water source protection (Clean Water Act, 2006) and* ***enabling*** *Lake Simcoe watershed protection (Lake Simcoe Protection Act, 2008). Using this term in amendments to the Conservation Authorities Act* ***may inadvertently limit the complementary programs and services that conservation authorities provide*** *in aid of safeguarding drinking water and the Lake Simcoe watershed. (p 5)*

Recommendation: The Rescue Lake Simcoe Coalition recommends that the wording in the Conservation Authorities Modernization bill be changed so as to not limit the LSRCA's activities to designated policies under the LSPP.

The Rescue Lake Simcoe Coalition is concerned that the implementing regulations that will follow the passage of the Conservation Authorities Modernization bill will not be open for public consultation. These details matter, and input must be sought from a trusted community of scientists.

Recommendation: At a minimum, the provincially appointed Lake Simcoe Coordinating Committee and Lake Simcoe Science Committee must be consulted in a meaningful way on the CA Modernization bill and accompanying regulations, on the proposed changes as they affect Lake Simcoe.

Next, we present an example of the above noted concern. Frankly, all of the following, quoted from the "Focusing conservation authority development permits on the protection of people and property" ERO 013-4992 notice, concerns the Rescue Lake Simcoe Coalition. If the definitions of wetlands, watercourses and pollution are to be changed in another piece of legislation (some will be changed in the Provincial Policy Statement by an order of Cabinet – ie. no public consultation), then it is completely unclear what the impact of the proposed changes would be. It is impossible to provide a coherent or evidence-based response to the proposals as the province proposes to roll them out. If this approach is meant to divert and confuse, it is working. This is not acceptable for "the people" we represent.

For the purposes of this regulation the Ministry is also proposing to:

- *Update definitions for key regulatory terms to better align with other provincial policy, including: "wetland", "watercourse" and "pollution";*
- *Defining undefined terms including: "interference" and "conservation of land" as consistent with the natural hazard management intent of the regulation;*
- ***Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;***
- *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;*
- *Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;*

(Focusing conservation authority development permits on the protection of people and property ERO Notice)

The setbacks established in the LSPP on Natural Heritage and Hydrologic features in the Lake Simcoe watershed are necessary, at a minimum. The setbacks are between 30 and 120 m, depending on the proposed activity / site alteration and the results of an Environmental Impact Statement. The Lake Simcoe Science Advisory Committee, which advised the province in the lead up to the creation of the Lake Simcoe Protection Plan, and who authored *Lake Simcoe and its Watershed: Report to the Minister of the Environment,* 2008, recommended that, "existing wetlands should be buffered from adjacent converted areas by at least 300 m where ever possible," p. 74. Setbacks to wetlands should be bigger, not smaller, if we are to listen to scientists advice.

We will use riparian buffers (along streams) as another example. The Province's Lake Simcoe Monitoring Report, 2014, notes:

> *While a 30 – m wide buffer may be suitable for shading and erosion and sediment control,* ***wider vegetated riparian areas within 120 m of a stream provide additional and prolonged stream quality and hydrological benefits, and serve as functioning wildlife habitats and corridors.*** *The Lake Simcoe watershed had 44% natural cover within a 120 - m riparian zone. Strategic increases of natural vegetation within riparian zones can be achieved through active restoration, which includes tree planting and stabilizing banks, and/or passive restoration that allows natural succession to occur.*
>
> (Lake Simcoe Monitoring report, 2014, pg. 18)

Existing buffers or setbacks on natural features today are the minimum required to protect the natural features that keep Lake Simcoe and other water bodies clean. Science-based advice

should be heeded where we are trying to protect a natural resource. There is no compelling evidence that Ontario's water quality is improving so much as to justify easing restrictions.

Recommendation: Do not reduce regulatory restrictions on the buffers surrounding wetlands, key natural heritage features, key hydrologic features, shorelines, or riparian areas.

Recommendation: Do not change the definition of wetlands in the provincial policy statement (PPS).

Recommendation: Do not ask the public to comment on changes to policy before the full impact of the changes across a number of policies is public.

No one will argue against cutting red tape, thoughtfully. But please do not confuse a desire to streamline administrative procedures with public approval for reducing environmental protections. We love Lake Simcoe, and we want it to stay clean. Please reconsider your proposals, with an eye to ensuring that we can implement the Lake Simcoe Protection Plan in its entirety, and to protect all Ontario waters.

On behalf of the Rescue Lake Simcoe Coalition and our 22 member groups, I appreciate having the opportunity to share insights with the readers.

Sincerely,

Claire Malcolmson

Executive Director

Rescue Lake Simcoe Coalition

CC: Cc

MPP Khanjin
MPP Jill Dunlop
MPP Downey
MPP Mulroney
MPP Elliot
MPP Scott
MPP Wilson

MPP Bethlenfalvyco
MPP Parks
MPP Calandra
MPP Phillips
Lake Simcoe Science Committee Chair Peter Dillon
Lake Simcoe Region Conservation Authority CAO Mike Walters

SUBMISSION of ENVIRONMENTAL DEFENCE AND CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Conservation Authorities Modernization (Operations and Permitting) ERO Numbers: 013-5018 and 013-4992 Schedule 2, Bill 108

Authored by:

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Kelsey Scarfone, Program Manager, Water Environmental Defence Canada

May 15, 2019

This submission represents our comments to date regarding two Environmental Registry of Ontario (ERO) proposals - “Modernising conservation authorities operations – Conservation Authorities Act” (ERO Number: 013-5018) and “Focusing conservation authority development permits on the protection of people and property” (ERO Number: 013-4992). It also contains our preliminary comments regarding Schedule 2, Bill 108, the proposed More Homes, More Choices Act, 2019. We reserved the right to provide further comment during the legislative process regarding Bill 108.

Overview

On April 5, 2019, two proposal notices regarding conservation authorities modernization (operations and permitting) were posted to the Environmental Registry of Ontario (ERO) for public comment. In a news release on the same day, it was stated, “These recommended changes are part of Ontario's commitment to support conservation and environmental planning and improve Ontario's resilience to climate change.”

A week later, Conservation Ontario received the news that the province will cut the natural hazards funding in half (from $7.4million shared across Ontario's 36 conservation authorities) as a result of the 2019 budget entitled "Protecting What Matters Most".

On May 2, 2019, Bill 108, the proposed More Homes, More Choices Act, 2019 was introduced for first reading. Schedule 2 of Bill 108 proposes amendments to the Conservation Authorities Act. We are deeply disappointed that amendments to the Conservation Authorities Act were tabled in the Ontario Legislature, well before the close of the public consultation (ERO Number: 013-5018 comments are due May 20, 2019 and ERO Number: 013-4992 comments are due May 21, 2019). The Environmental Bill of Rights, 1993 (EBR) requires that a Minister shall do everything in his or her power to ensure that there will be at least 30 days of notice before a proposal is implemented1 and that the Minister shall consider giving more than 30 days of notice for proposed legislative changes to permit "more informed public consultation"2. Further, the EBR requires that a Minister "shall take every reasonable step to ensure that all comments" received "are considered when decisions about the proposal are made in the ministry".3 These statutory requirements are not being met in the Ministry of the Environment, Conservation and Parks proposals regarding changes to the Conservation Authorities Act.

Further, and contrary to the media statement on April 5, 2019, Bill 108 is not aimed at improving Ontario's resilience to climate change, rather (as the preamble states):

The government's vision is that all people and their families find a home that meets their needs and budget. The best way to achieve this is to increase housing supply by: …

Giving municipal government greater authority over conservation authorities to make them more accountable;

Debate on second reading of Bill 108 has emphasized the government's focus on "speed, cost, mix, rent and innovation."4 Specifically, the government wishes to increase speed and reduce cost of development through so-called "red tape reduction":

We need to turn things around. The proposed legislative amendments I will be speaking to today would, if passed, help bring more housing, more quickly, to our province. They include changes to the Planning Act and the Development Charges Act, along with an impressive suite of legislative policy and regulatory changes that will support our robust plan to address development challenges in Ontario.5

We are taking a whole-of-government approach to this file. Legislation administered by several ministries across government impacts housing development. We can't just fix the problem by changing one act. We have to fix the system, and we have to reduce duplication and unnecessary delays so that it works more efficiently.6

1 Environmental Bill of Rights, 1993, SO 1993, c 28, s 15(1).
2 Ibid., s17(1).
3 Ibid., s35(1).

4 Ontario, Legislative Assembly, Hansard, 42nd Parl, 1st Sess, No 103 (8 May 2019) at 4846 (Hon Steve Clark).
5 Ibid. at 4845 (Hon Steve Clark).
6 Ibid. at 4848 (Hon Steve Clark).

We strongly encourage the Ministries to hold fulsome and meaningful public consultations, aimed at ensuring that the proposed budgetary, legislative, and any future regulatory changes meet the desired vision of improving Ontario's resilience to climate change. Until such time as a full assessment of the proposed changes is complete, we call on the government to delay enacting Bill 108, Schedule 2.

Recommendation 1: Delay enacting Bill 108, Schedule 2 until fulsome and meaningful public consultations, aimed at ensuring that the proposed budgetary, legislative, and any future regulatory changes meet the desired vision of improving Ontario's resilience to climate change have been undertaken.

Conservation Authority Operations

One proposal is from the Ministry of the Environment, Conservation and Parks (MECP), titled "Modernising conservation authorities operations – Conservation Authorities Act" (ERO Number: 013-5018). Comments are due May 21, 2019 and are be directed to Carolyn O'Neill in the Great Lakes Office (glo@ontario.ca).

The ERO notice indicates that amendments will be proposed to the Conservation Authorities Act that are aimed at:

Clearly distinguishing between the conservation authority's core mandatory programs and services and non-mandatory programs and services, the latter to be transitioned to having agreements with relevant municipalities (eg, over 18 – 24 months).

Creating more transparency in conservation authority levies, particularly providing for a regular review (eg, every 4 – 8 years) for non-mandatory programs and services.

Providing for greater scrutiny (eg, give the Minister the ability to appoint an investigator) and accountability (eg, clarifying the duty of conservation authority boards to act in the best interests of the conservation authority, as is the case for non-profit organizations). The "core mandatory programs and services" will be limited to natural hazards protection/management, conservation/management of conservation authority lands, drinking water source protection and Lake Simcoe watershed protection.

The notice suggests that various yet-to-be-proclaimed provisions from the 2017 amendments will be brought into force, including fees for programs and services, approval of projects with provincial grants, recovery of capital costs and operating expenses from municipalities,

regulation related to conservation authorities jurisdiction, enforcement and offences, and additional regulations.

Analysis – Conservation Authority Operations

In describing the mandatory programs and services, the notice uses the term "as prescribed by" the legislation enabling drinking water source protection (Clean Water Act, 2006) and enabling Lake Simcoe watershed protection (Lake Simcoe Protection Act, 2008). Using this term in amendments to the Conservation Authorities Act may inadvertently limit the complementary programs and services that conservation authorities provide in aid of safeguarding drinking water and the Lake Simcoe watershed.

Further, with respect to the division of programs and services into mandatory versus nonmandatory, consideration must be given to all provincially mandated conservation authority responsibilities (conservation authorities are mentioned in numerous statutes). Specific mandatory programs and services will be set out in a future regulation, and will be limited to those that are within the identified categories: natural hazards protection/management, conservation/management of conservation authority lands, drinking water source protection and Lake Simcoe watershed protection (proposed s21.1(2), 21.1(3)). Similarly, programs and services will be mandated to be provided in accordance with standards and requirements set out in future regulations (proposed s21.1(3)). Non-mandatory programs and services will be enabled through memorandums of understanding with municipalities (proposed s21.1.1) or, if the conservation authority determines a program or service is "advisable to further its objects" and funding from municipalities is required, through agreements with municipalities as set out in future regulations (proposed s21.1.2). The proposed amendments also contemplate a transition plan related to funding agreements with municipalities (proposed s21.1.3) and consultations regarding programs and services, the details of which will be set out in future regulations (proposed s21.1.4).

The notice also includes as mandatory the conservation and management of "conservation authority lands". This is a legally defined term: "conservation authority land means land owned by a conservation authority" (s1, Conservation Land Act). Limiting core programs and services related to conservation and management only to those lands owned by conservation authorities will be a lost opportunity for leading integrated watershed management and climate change resilience.

With the recent announcement of a dramatic reduction in the natural hazards transfer payment, there is concern about how the necessary funds will be raised to ensure that the core (and provincially mandated) programs and services will be provided adequately across all conservation authorities.

Transparency and accountability in conservation authorities operations is something that has been discussed over a number of years. We are supportive of moving forward on implementation. In particular, we are supportive of identifying the duty of conservation authority boards to act in the best interests of the conservation authority (proposed s14.1). The proposed amendments also contemplate the ability for the Minister to appoint an investigator or investigators to conduct an investigation of a conservation authority's operations and require that the conservation authority pay (all or part of) the cost (proposed s23.1(4)-23.1(8)). The as yet to be proclaimed provisions relating to recovery of capital costs and operating expenses will be amended to prohibit the apportionment of non-mandatory programs, except by agreement with municipalities, after a date to be set by regulation (proposed s25(1.1)-25(1.3) and s27(1.1)-27(1.3)). There will be new provisions related to determining amounts owed by municipalities to conservation authorities as a result of programs and services related to drinking water source protection and Lakes Simcoe protection (proposed s27.1). As we submitted in relation to proposed amendments to the Conservation Authorities Act in 2017:

… we have serious concerns about the number of provisions that will not come into force until a date to be proclaimed by Cabinet, the extent to which the new amendments will require regulations before the intention of those provisions can be realized, and the lack of a clear commitment to increased resources to accompany the increased provincial oversight and enhanced CA responsibility.7

Although there are some additional details in this proposal, our concerns remain equally relevant now as they were in 2017.

Finally, we suggest that regular review of non-mandatory programs and services be done on a cycle that is sufficiently long to be able to assess progress and does not directly coincide with the municipal election cycle (eg, so that the review is not happening at the exact same time as new board members are being orientated to their conservation authority's programs and services).

Recommendation 2: Ensure that legislative amendments to the Conservation Authorities Act do not hamper or limit the ability of conservation authorities to develop and deliver watershed-wide programs and services aimed at Ontario's climate resilience.

Recommendation 3: Provide additional details related to the timing of bringing various new provisions into force, as well as the content and development of future regulation(s).

Recommendation 4: Provide adequate resources for conservation authorities to achieve the goal of climate resilience across Ontario's watersheds.

7 Submission dated July 26, 2017 re Proposed amendments to the Conservation Authorities Act as part of Bill (139), the Building Better Communities and Conserving Watersheds Act, 2017; EBR Registry Number 013-0561.

Conservation Authority Development Permits

A second proposal is from the Minister of Natural Resources and Forestry (MNRF), titled "Focusing conservation authority development permits on the protection of people and property" (ERO Number: 013-4992). Comments are due May 21, 2019 and are to be directed to Alex McLeod in the Natural Resources Conservation Policy Branch (alex.mcleod@ontario.ca).

Conservation authorities are the only agency in Ontario that hold deep expertise in watershed features and health. This expertise has been acquired through decades of extensive stewardship, monitoring, research, mapping and on-the-ground contact with the watershed resources and stakeholders in the regions in which they operate. There is no other agency, Ministry, or entity in Ontario with the same comprehensive understanding of integrated watershed management (IWM).

The proposed changes will severely limit conservation authorities' ability to achieve effective IWM in order to prevent hazards from flooding, and achieve sustainable outcomes for watershed health in the province. The consequences of these changes include severed watershed management, increased risk of flooding, loss of coordination among stakeholders and agencies, along with severe degradation of ecological health and water quality in our headwaters, lakes, rivers, and wetlands of the Great Lakes basin.

Integrated Watershed Management

IWM is based on the perception of water as an integral part of the ecosystem, a natural resource and social and economic good8. IWM provides direction to human activities in order to protect and rehabilitate water, the aquatic and terrestrial health and the social and economic resources and assets in the watershed. Through an IWM model, conservation authorities are able to achieve coordinated development and management of water and land resources that protects people and property, as well as the health of ecosystems upon which our societies and economies rely.

Conservation authorities provide services and deliver programs in their regions in order to achieve these goals of protecting people and property. Effective IWM includes not only flood mapping, mitigation and hazard protection but must also include programs and services such as wetland protection, climate change mitigation, biodiversity health and land use planning.

Further, in his Part Two Report of the Walkerton Inquiry, the Honourable Dennis O'Connor stressed the need to have a comprehensive approach to watershed management:

Because drinking water source protection is one aspect of the broader subject of watershed management, it makes the most sense in the context of an overall watershed management plan.

8 https://conservationontario.ca/fileadmin/pdf/policypriorities_section/IWM_OverviewIWM_PP.pdf

In this report, I restrict my recommendations to those aspects of watershed management that I think are necessary to protect drinking water sources. However, I want to emphasize that a comprehensive approach is needed and should be adopted by the Province. Source protection plans should be a subset of broader watershed management (emphasis added).9

The Ministry's proposal to "further define" conservation authority jurisdiction, and amend or add definitions for "wetland", "watercourse", "pollution", "interference and conservation of land" will severely limit conservation authorities' ability to carry out their mandate in protecting people and property through IWM. The existing five tests of pollution and conservation under existing development regulation are necessary in order to holistically evaluate the risk a development poses to the watershed and to people and property. The proposed changes would severely limit or eliminate conservation authorities' role in environmental protection and IWM.

By association, this will further limit their ability to focus on protected lands and natural hazards, as the framework for evaluation would be left severed and unclear.

Further to this, we also note that the Ministry's proposal to "better align" the definitions of wetlands, watercourses and pollution "with other provincial policy" is extremely problematic. It is impossible to derive definitions or standards that align with provincial policy, because Ontario currently lacks any coherent watershed management, flood protection, pollution or environmental management regulation for wetlands and watercourses outside of those in the Conservation Authorities Act. The most recent Ontario strategy on wetlands published in 2017 is the only other provincial proposal on wetland management, and it states quite clearly that a landscape-based, ecosystem management and IWM approach must be included in any regulatory regime that is to be effective10.

Limiting the scope of conservation authorities in Ontario, as proposed by this notice and in Bill 108, Schedule 2 is counterproductive to the goal of protecting people and property from flood hazard and mitigation. Holistic and well implemented IWM requires a multi-disciplinary approach that includes in depth on-the-ground knowledge of watershed features including wetlands and ecosystem services. The only agencies with this knowledge in Ontario are conservation authorities. Therefore, in order to achieve the best outcomes for watershed health and for the protection of people and property, the full mandate of conservation authorities to implement IWM must be respected.

Recommendation 6: Conservation authorities' five tests for development proposals must remain to include the consideration of wetlands and watercourses.

9 The Honourable Dennis R. O'Connor, Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water (2002) at pp 89-90.

10 Ministry of Natural Resources and Forestry, A Wetland Conservation Strategy for Ontario 2017–2030 (2017).

Recommendation 7: Conservation authorities' mandate must reflect their ability to implement effective integrated watershed management in a holistic way through their existing programs and services.

Exemption of low-risk developments

The proposal to exempt "low-risk" developments from requiring a permit subject to the Drainage Act and Conservation Authorities Act is highly concerning. The three proposed changes to allow these exemptions will result in increased risk to the watershed to flooding hazards and other impacts. The entire purpose of the permitting process is to evaluate the level of risk and determine if the criteria for "low-risk" have been met. Without the permitting process, there is no way to determine with certainty if a proposed development is truly low-risk to the watershed and therefore to people and property.

Risks posed by a development are unique and site-specific; therefore the proper permitting evaluations must be conducted in order to know if the activity poses a risk in that specific circumstance and location. When an activity is found to have no negative impacts, it will be eligible for the permit. Therefore, there is no need for an exemption as the process already allows for a low-risk development to proceed when and only when it is proven not to have negative impacts.

By allowing exemptions without an evaluation of risk, there would be a severe reduction of oversight and allow blanket authorizations to activities that could have unknown risks to environment and to people and property. Using rules of thumb and approximations are impossible to justify with scientific evidence when a development is not properly assessed and reviewed. In fact, these proposed changes run contrary to the government's own goals of focusing on the protection of people and property. Without a permitting process, a seemingly low-risk development could proceed and contribute to the exact flooding hazards that the Conservation Authorities are tasked to prevent. These changes will also render permitting more ambiguous, less certain and unclear to the public. This also runs contrary to the government's proposed goal to make development approvals more accessible by the public.

Recommendation 8: There should be no, so called "low-risk", developments exempted from development regulations and the permitting process.

Respecting Conservation Authorities

This spring, we experienced flooding that impacted thousands of Ontarians, forcing them out of their homes and onto the streets with their neighbours sandbagging desperately to protect themselves and their homes. The proposal to limit conservation authorities' ability to deliver their programs and services is reprehensible. We know that in the coming years, floods will

become more frequent and more severe, costing our province billions and risking human life11. The above changes are a step in the wrong direction. If the province is serious about protecting people and property from the hazards of flooding, they will respect conservation authorities in their delivery of programs and services in an IWM approach.

Conservation authorities are the only agencies in Ontario that can protect us from the severe impacts of flooding and advance watershed health to the benefit of our society, economy and environment. For this reason, the recent announcement to cut provincial transfer payments for flood hazard mitigation to conservation authorities is alarming. Conservation authorities need stable and adequate funding to deliver on their mandate regardless of the changes proposed in this registry notice or in Bill 108, Schedule 2. The reduction in Ontario's transfer payments to conservation authorities for flood mitigation is wholly inconsistent with the proposed changes, or their claims to want to prioritize the protection of people and property.

Recommendation 9: Adopt a stable funding model to allow conservation authorities to fully exercise their development oversight function independently.

11 Insurance Bureau of Canada, et al., Combatting Canada's Rising Flood Costs: Natural infrastructure is an underutilized option (2018).

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