



Healthy watersheds for today
and tomorrow.

November 24, 2022

Via email and upload to the Environmental Registry of Ontario

Ms. Jennifer Keyes, Director
Resource Planning and Development Policy Branch
Ministry of Natural Resources and Forestry
2nd Floor, 300 Water Street,
Peterborough, ON K9J 3C7

Dear Ms. Keyes:

**Subject: Central Lake Ontario Conservation Authority Comments for More Homes Built Faster Act, 2022
CLOCA File# ASLA3**

At their meeting of November 23, 2022, the Central Lake Ontario Conservation Authority (CLOCA) Board of Directors passed the following Resolution:

Res. #75 ***Moved by B. Nicholson***
 Seconded by J. Neal

AMENDMENT ***Moved by B. Nicholson***
 Seconded by R. Hooper

THAT the CLOCA Board of Directors supports local conservation authority agreements with partners to review and provide comprehensive environmental and ecological planning advice on development proposals;

THAT the CLOCA Board of Directors calls on the Minister of Natural Resources and Forestry to not prescribe the Planning Act and Environmental Assessment Act as it relates to Section 21.1.1 and 21.1.2 of the Conservation Authorities Act to allow for locally developed plan review agreements between municipalities and conservation authorities for natural heritage and water resource plan review;

THAT the CLOCA Board of Directors recommends that development authorized under the Planning Act not be exempted from a requirement for a permit under the CA Act and that all current conservation authority hazard-related responsibilities remain unchanged;

THAT the Province re-establish the multi-stakeholder, solutions-oriented Conservation Authority Working Group to provide meaningful input prior to finalizing the legislative, regulatory and policy changes;

THAT the Commentary in Staff Report #5805-22 and attachment be endorsed and submitted to the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Environmental Registry Postings ERO 019-6141, ERO 019-2927 & ERO 019-6161;

THAT Staff Report #5805-22 be circulated to Watershed Municipalities with a request for endorsement of this resolution; and,

THAT Staff Report #5805-22 be circulated to Members of Provincial Parliament, Members of Parliament, Conservation Ontario and adjacent Conservation Authorities for their information.

Res. #75, CARRIED AS AMENDED

Accordingly, please find the endorsed staff report and attachments enclosed with this letter for detailed commentary from CLOCA.

Please contact me if you have any questions with respect to this submission.

Yours truly,



Chris Darling, MCIP, RPP
Chief Administrative Officer
CD/lv

Encl. CLOCA Staff Report 5805-22 and attachments

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REPORT

CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

DATE: November 22, 2022
FILE: ASLA3
S.R.: 5805-22
TO: Chair and Members, CLOCA Board of Directors
FROM: Chris Darling, Chief Administrative Officer
SUBJECT: **More Homes Built Faster Act, 2022**

APPROVED BY C.A.O. 

Purpose:

On October 25, 2022, the Province of Ontario introduced Bill 23, More Homes Built Faster Act, 2022, which proposes amendments to various acts including the Conservation Authorities Act and Planning Act. At the time of writing this report, Bill 23 had passed first and second reading and was currently being considered by the Provincial Standing Committee on Heritage, Infrastructure and Cultural Policy. It is expected that the Bill could be enacted shortly thereafter. This report provides comments on Bill 23 and related proposed regulatory and policy changes for the Board's endorsement.

Background:

Below is a list of Environmental Registry and Regulatory Registry of Ontario (ERO) Postings related to The More Homes Built Faster Act, 2022 that affect CLOCA and that are addressed in this staff report.

- ERO 019-6141: Legislative and regulatory **proposals affecting conservation authorities** to support the Housing Supply Action Plan 3.0, Comments Due Nov. 24, 2022
- ERO 019-2927: Proposed updates to the **regulation of development** for the protection of people and property from natural hazards in Ontario, Comments Due Dec 30, 2022
- ERO 019-6161: Conserving Ontario's **Natural Heritage** – discussion paper regarding a proposal to create an offsetting policy, Comments Due Dec 30, 2022

The postings propose a series of legislative and regulatory changes to the Conservation Authorities Act (CA Act) as well as policy proposal in the form of a discussion paper. Key proposals include:

- **Removal of Ability to Review and Comment on Development Applications** (ERO 019-6141)

The CA Act currently authorizes conservation authorities to provide, within its area of jurisdiction, programs and services that it agrees to provide on behalf of a municipality under a memorandum of understanding in respect of the programs and services.

These sections are proposed to be amended by adding a new subsection legally preventing conservation authorities from commenting on development proposals to municipalities on Planning Act and other Acts such as the Environmental Assessment Act, except as it relates to natural hazards.

The effect of this amendment is that conservation authorities will be legally prevented from undertaking its longstanding role as the local environmental voice in the review and comment on development applications and supporting studies received on behalf of a municipality, except as it applies to natural hazards.

- **Changes our Section 28 permitting Responsibility** (ERO 019-6141 & ERO 019-2927)

Currently the CA Act provides a requirement that all development close to natural hazards, watercourses and wetlands must first have a permit. Amendments to the Act are proposed that would give the province broad and undefined powers to exempt development from needing conservation permits.

These powers would be defined at some future date through regulations made under this new power and could apply to entire watersheds, municipalities, or specific sites.

Other section 28 permitting changes include:

- remove the terms “conservation of land” and “pollution” and add the terms “unstable soils and bedrock” while also maintaining “flooding”, “erosion”, and “dynamic beaches” to the legal tests considered in permit decisions
 - update the timeframe after which an applicant may automatically appeal the failure of the conservation authority to issue a permit to the Ontario Land Tribunal from 120 days to 90 days
 - require conservation authorities to issue permits for projects subject to a Community Infrastructure and Housing Accelerator order under section 34.1 of the Planning Act and allowing the Minister to review and amend any conditions attached to those permits
 - Update the definition of “watercourse” to limit the amount of features that would qualify
 - Update the “other areas” in which a permit is required from 120m to 30m around a wetland
 - Define terms, reduce regulated areas, streamline approvals for low-risk activities through automatic exemptions in regulations
- **Freezing conservation authority fees** (ERO 019-6141)

An amendment to the CA Act is proposed to enable the Minister to direct a conservation authority to maintain its fees charged for programs and services, including reviewing and commenting on planning and development related proposals, as well as for permits issued by conservation authorities. It is understood that the government intends to use this new power to freeze conservation authority fees for an undefined period of time.

- **Identifying conservation authority lands suitable for housing** (ERO 019-6141)

Proposal to require conservation authorities to identify owned or controlled lands that could support housing development. In identifying these lands, the authority would consider the current zoning, and the extent to which the parcel or portions of the parcel may augment natural heritage land or integrate with provincially or municipally owned land or publicly accessible lands and trails.

- **Discussion paper regarding the creation of an offsetting policy** (ERO 019-6161)

The discussion paper proposes high level ideas for ecological offsetting, an approach in which negative impacts of land use decisions on natural heritage are offset by the intentional restoration, creation of new natural heritage features like wetlands, or funding to provide even greater positive environmental impacts.

Analysis and Response:

In addition to the comments below, Table 1 attached to this report provides a complete list and commentary on the proposed changes outlined in the postings.

Removal of Ability to Review and Comment on Development Applications

The most concerning proposal is the elimination of conservation authority environmental review of development applications, except as it relates to flooding and erosion. Specifically, CLOCA will not be able to offer its expertise on ecology, natural heritage, water resources and biodiversity for proposals under prescribed Acts including the: *Planning Act*, *Aggregate Resources Act*, *Condominium Act*, *Drainage Act*, *Endangered Species Act*, *Environmental Assessment Act*, *Environmental Protection Act*, *Ontario Heritage Act*, and *Ontario Water Resources Act*. This proposed approach is a direct departure from recent provincial amendments to the Act – allowing municipalities to choose whether to ask conservation authorities for technical advice based on their specific needs.

CLOCA has a long-standing practice and agreement with our respective municipal partners (both the Region of Durham and area municipalities in the watershed) to provide environmental planning advice on development applications. Our municipal partners rely on our environmental planning review advice because of our expertise, cost effective service and it helps achieve local planning objectives. These are local agreements that are set up to reflect what works best for local circumstances and have been built up through local investment for several decades. The decision to maintain/establish plan review agreements should not be imposed by the province, but rather be left up to local conservation authorities and their municipalities who knows what works best for streamlined review and informed decisions.

Prohibiting conservation authorities from providing environmental advice to our municipal partners will have multiple unintended consequences including delaying approvals, adding costs to developers and municipalities, environmental impacts.

Increased Costs: The elimination of conservation authority environmental advice in the planning process will result in the absence of required information and data that municipalities require to make informed decisions and create anti-scientific silos between critical natural environment information and flooding and hazard information. Consequently, municipalities would have to build more costly environmental review capacities from ground zero and abandon decades of previous investment. CLOCA provides cost effective planning advice at an economy of scale. One small CLOCA team of four planning professionals provides detailed support to eight municipal partners, much more cost effective than each municipality hiring staff. Furthermore, there will be an increased cost in the preparing environmental studies to fill information gaps that conservation authorities currently provide. This increased consultant costs will be passed onto developers and ultimately residents.

Application approval delays: There is no evidence that conservation authorities delay development approvals. In fact, conservation authorities facilitate and expedite environmentally sound development by guiding proposals through environmental requirements. CLOCA provides timely development review advice service with the goal of meeting specified timelines provided by our municipal partners. Conservation authorities do not have the authority to make decisions under the *Planning Act*, we provide professional advice to decision makers – ultimately planning approvals timelines are in the hands of municipalities, not conservation authorities. Further, not all development application are circulated to conservation authorities; only applications that are screened to have potential environmental impacts or natural hazards risks are circulated. The environmental expertise that CAs provides valuable data and science needed to streamline environmental impact analysis.

Conservation authorities play a vital role in helping potential investors undertake due diligence by their local presence in the community and sharing critical local environmental information. Conservation authorities identify potential constraints early to find solutions. Without our input, consultants will also be responsible for collecting and analysing environmental information which will lengthen study time. Municipalities will also need to establish a new capacity for environmental plan review which would delay development review.

Environmental Impacts and increased risk of flooding and erosion: Conservation authorities provide the necessary watershed lens to ensure environmental impacts are mitigated and municipal planning objectives are achieved. Eliminating conservation authorities from natural heritage development review will result in an increased risk of environmental impacts and adversely impact community's livability and attractiveness to future investment as well as increasing our vulnerability to climate change impacts.

Hydraulic functions of wetland related to flood control and erosion are intrinsically related to the overall health of a wetland. In order to effectively address flooding and erosion, ecological health of wetlands must be considered through the land use planning process.

In summary, the proposed amendments to the Conservation Authorities Act regarding our review role must not be implemented: they degrade our ability to comment on development applications under various Acts; they will destroy decades of investment; and will prevent our multiple municipal partners from receiving the locally-grown expertise they want, need and rely on daily to attract environmentally sound economic investment and to understand and implement critical environmental planning considerations. The amendments will lead to less homes built slower and thereby directly undermine the objectives of the Government's housing plans.

Changes Section 28 permitting Responsibility

Also of significant concern are certain aspects of the proposed changes to the section 28 permitting responsibilities. As outlined in Table 1 to this report, there are some proposed changes that could ultimately weaken or fundamentally undermine our permitting system that protects people and property from flooding and erosion, at a time when the impacts of climate change are increasingly prevalent. The proposed changes include exemptions from the need for section 28 permits in prescribed municipalities where a *Planning Act* approval has been granted. As this proposed broad new government power has not been defined with any precision, it is unclear if this exemption would be limited to certain types of low-risk development and hazards, or if the purpose is to remove flooding and erosion oversight on a much broader scale.

Section 28 permitting is not static like planning approvals but is flexible and responds to the dynamic nature of natural hazards by incorporating the latest science and knowledge of flooding and erosion hazards as they arise. Our hazards regulation is an effective technical development implementation tool with clear direction and priority focused on addressing natural hazards whereas the *Planning Act* is less focussed on natural hazards and seeks to balancing of several considerations. Permit exemptions for The *Planning Act* approvals will place additional pressure, responsibility, and liability on municipalities and could result, for example, in building permits being issued in error. Working beyond political boundaries is essential in the permitting role to consider impacts on upstream and downstream communities. Natural hazards must be considered at both site-specific and watershed levels to ensure safety.

While the government wants to focus conservation authorities on their core mandate, this proposed sweeping exemption signals the exact opposite. As proposed in the legislation, the exclusions could nullify the core functions of conservation authorities and open up significant holes in the delivery of our natural hazard roles without any oversight, rendering them ineffective. Conservation authorities have a proven track record of providing streamlined section 28 permitting process. The proposed changes are a broad overreach, will not result in further streamlining, and given that they are presented without detail, could negatively impact our ability to protect people and property from natural hazards.

Conclusion

Bill 23 and the related regulatory and policy proposals have elements that severely weaken environmental protection in Ontario by prohibiting longstanding and effective local environmental review and by putting people and property at greater risk from flooding and erosion. Over the last two years, the Province has made progress through the multi-stakeholder CA Working Group in reviewing and providing feedback on proposed legislative and regulatory proposals. Bill 23 changes that impact conservation authorities were not brought to this forum. Continued dialog with conservation authorities through this Group would help address concerns outlined in this report.

RECOMMENDATION:

THAT the CLOCA Board of Directors supports local conservation authority agreements with partners to review and provide comprehensive environmental and ecological planning advice on development proposals;

THAT the CLOCA Board of Directors calls on the Minister of Natural Resources and Forestry to not prescribe the Planning Act and Environmental Assessment Act as it relates to Section 21.1.1 and 21.1.2 of the Conservation Authorities Act to allow for locally developed plan review agreements between municipalities and conservation authorities for natural heritage and water resource plan review;

THAT the CLOCA Board of Directors recommends that development authorized under the Planning Act not be exempted from a requirement for a permit under the CA Act and that all current conservation authority hazard-related responsibilities remain unchanged;

THAT the Province re-establish the multi-stakeholder, solutions-oriented Conservation Authority Working Group to provide meaningful input prior to finalizing the legislative, regulatory and policy changes;

THAT the Commentary in Staff Report #5805-22 and attachment be endorsed and submitted to the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Environmental Registry Postings ERO 019-6141, ERO 019-2927 & ERO 019-6161;

THAT Staff Report #5805-22 be circulated to Watershed Municipalities with a request for endorsement of this resolution; and,

THAT Staff Report #5805-22 be circulated to Members of Provincial Parliament, Members of Parliament, Conservation Ontario and adjacent Conservation Authorities for their information.

Table 1

Proposed Changes in Bill 23 & ERO #019-6141	Comments/Recommendations
Prohibited conservation authorities from commenting on conservation and environmental matters, except for flooding and erosion	<p>As outlined in the staff report, the proposed amendment will deprive our multiple municipal partners of the locally grown expertise they want and need to understand and implement environmental planning considerations. Proposal will lead to less homes built slower and thereby directly undermine the objectives of the Government's housing plans.</p> <p>Recommendation: That Sections 3 and 4 and Subsection 14 (3) of Schedule 2 to Bill 23 (proposed amendment to Subsection 21.1.1 (1), 21.1.2. (1) & 40.3 of the Act) be removed.</p>
Enable the exemption of development authorized under the <i>Planning Act</i> from requiring a permit under Section 28 of the <i>CA Act</i> in municipalities set out in regulation, where certain conditions are met as set out in regulation.	<p>Enabling such exemptions would weaken the existing Section 28 permitting system that protects people and property from flooding and erosion. Section 28 permitting is an effective technical development review tool with clear direction and priority focused on addressing natural hazards, unlike the <i>Planning Act</i> that balances several considerations. Proposed exemption is too broad, ill-defined and will negatively impact our ability to protect people and property from natural hazards.</p> <p>Recommendation: That activities authorized under the <i>Planning Act</i> not be exempt from the requirement for a permit under the <i>CA Act</i> and maintain CA core mandate responsibilities for delivery of natural hazard management through Plan Review.</p>
Remove the terms "conservation of land" and "pollution" and add the terms "unstable soils and bedrock" while also maintaining "flooding", "erosion", and "dynamic beaches" to the matters considered in permit decisions	<p>Removal of these terms is a fundamental alteration to the mandate of conservation authorities and will have a negative impact on the ability to address natural hazards.</p> <p>Recommendation: Maintain terms and include the following definitions: "Pollution" defined as, Any deleterious physical substance that has the potential to be generated by a development activity which, individually, or in combination with other substances could contribute to erosion or sedimentation, or any substance associated with a development activity that is normally considered hazardous to the health or safety of persons and could pose a danger due to its presence in hazardous lands.</p> <p>"Conservation of land" defined as, The maintenance of lands and natural features which are important for watershed hydrologic functions that contribute to the control of natural hazards.</p>
Update the timeframe after which an applicant may appeal the failure of the conservation authority to issue a permit to the Ontario Land Tribunal from 120 days to 90 days	No concern
Require conservation authorities to issue permits for projects subject to a Community Infrastructure and Housing Accelerator order under section 34.1 of the <i>Planning Act</i> and allowing the Minister to review and amend any conditions attached to those permits.	No concern

<p>With regards to permits issued where a zoning order has been made under the <i>Planning Act</i>:</p> <ul style="list-style-type: none"> • extend the existing regulation making authority of the Minister to prescribe conditions on a permit issued by a conservation authority where there is a Minister's Zoning Order, to enable the Minister to also prescribe limits on what conditions a conservation authority may include • specify that where the Minister has made a regulation allowing development to begin prior to an ecological compensation agreement being signed and has set a date by which it must be signed, the development may not continue if the agreement has not been reached within the time period outlined in regulation 	<p>Concern that this new subsection may weaken natural hazard protection and may allow a development project to commence prior to the required agreement being entered into which could create enforcement challenges with the prohibition on carrying out the development project once the project has started, if the agreement is not entered into by the date identified in the regulation.</p>
<p>Enable the Minister to direct a conservation authority to maintain its fees charged for programs and services at current levels. This would enable the Minister to issue temporary direction to a conservation authority preventing the authority from changing the amount of a fee it charges under subsection 21.2 (10) for its programs and services, including reviewing and commenting on planning and development related proposals, as well as for permits issued by conservation authorities.</p>	<p>CLOCAs planning and regulatory fees are cost recovery only and have a negligible impact on housing affordability. A fees freeze will result in either a decline in service level standards or transfer new costs on to existing local property taxpayers instead of developers which is contrary to past Regional and Board direction and contrary to recent CA fee policy developed by the province established a user pay principle.</p> <p>Need to maintain principle of development pays for development and cost recovery through appropriate fees.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • Require CAs to demonstrate to the Province that permit and planning fees do not exceed the cost to deliver the program or service and only consider freezing fees if CAs are exceeding 100% cost recovery
<p>Identifying conservation authority lands suitable for housing and streamlining conservation authority severance and disposition processes that facilitate faster development</p>	<p>CLOCA owned lands are critical community assets providing communities with flood protection, protection of natural resources, support climate change mitigation and provide places to recreate and access for personal well-being.</p> <p>Recommendation: Need more firm parameters of what land can be developed on. Only urban designated land that is serviceable, and not subject to natural hazards, natural heritage significance and linkages to other greenspace should be identified as suitable for housing.</p>
<p>Streamline processes associated with the disposition (sales, easements, leases) of conservation authority owned land that was previously acquired using a provincial</p>	<p>Support</p>

grant under section 39 of the <i>CA Act</i> .	
Expedite the existing processes associated with the severance and conveyance of land, regardless of whether provincial grant money was provided under the <i>CA Act</i> , for the purposes of projects related to flood control, erosion control, bank stabilization shoreline management works or the preservation of environmentally sensitive lands	Support
Proposed Changes in ERO 019-2927	
Update the definition of “watercourse” from an identifiable depression to a defined channel having a bed, and banks or sides	<p>Concern that the proposed definition will exempt headwaters from regulatory areas. Headwaters play an important role in attenuation of flooding, the production of sediment. Development within and adjacent to headwaters should be subject to section 28 permitting to ensure flooding and erosion concerns are addressed.</p> <p>Recommendation: that the current definition of watercourse be maintained.</p>
Updating the “other areas” in which the prohibitions on development apply to within 30 metres of all wetlands	<p>Some forms of major development have the potential to impact wetlands beyond 30m.</p> <p>Recommendation: That development activities that cover a cumulative area greater than or equal to a half hectare in size be regulated between 30 and 120 metres outside of all wetlands greater than or equal to 2 hectares in size, not including portions of these areas where a hydrologic connection to the wetland has been severed by existing development.</p>
Streamlining approvals for low-risk activities, which may include exempting some activities from requiring a permit if certain requirements or conditions are met (i.e., requiring that an activity be registered with an authority before it can proceed)	<p>Agree with intent, however CA need to be able to establish a system to ensure activities meet the requirements.</p> <p>Recommendation: Activities exempted from permits be required to registered and received compliance notice issued by a conservation authority</p>
Requiring conservation authorities to request any information or studies needed prior to the confirmation of a complete application	No concerns
Limiting the site-specific conditions a conservation authority may attach to a permit to matters dealing with natural hazards and public safety.	No concerns
Providing increased flexibility for an authority to issue a permit up to its maximum length of validity, and issue extensions as necessary	No concerns
Develop, consult on, make publicly available, and periodically review internal policies that guide permitting decisions	No concerns

Establish, monitor, and report on service delivery standards including requirements and timelines for determination of complete applications	No concerns
Provide maps depicting the areas where permitting requirements apply and notify the public and consult on any significant changes	No concerns
Outline a process for pre-consultation on a permit to ensure clear understanding of requirements for a complete application	No concerns
ERO 019-6161 proposal to create an ecological offsetting policy	<p>Ecological offsetting is an approach in which negative impacts of land use decisions on natural heritage are offset by the intentional restoration or creation of new natural heritage features like wetlands to provide even greater positive environmental impacts. The proposal is a very high-level document for the purpose of obtaining feedback towards the development of a provincial offsetting policy.</p> <p>Given the hydraulic and ecological importance of wetlands the use of offsetting should not be allowed in the case of non-Provincially Significant Wetlands (based on the current OWES scoring criteria). Offsetting should also not be used for complete removal of a feature to facilitate development but instead for minor rounding of feature boundaries.</p> <p>Key Recommendation: Offsetting should be limited to non-Provincially Significant Wetlands where the protection hierarchy has clearly established there is no option for avoidance and an ecological net gain to the watershed natural system can be achieved. Continued dialog with the multi-stakeholder CA Working Group is needed to inform any provincial off-setting policy.</p>