



Ontario
Home Builders'
Association

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December 30, 2022

Ministry of Natural Resources & Forestry
Resources Planning and Development Policy Branch
300 Water Street, 6th Floor, South tower
Peterborough, ON K9J 8M5

Proposal Number: ERO 019-2927

RE: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario

The Ontario Home Builders' Association (OHBA)

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario. OHBA represents over 4,000 members including builders, developers, professional renovators, trade contractors and many others within the residential construction sector.

The OHBA is coordinating our public policy response with regards to Bill 23, the More Homes Built Faster Act, 2022 with input from members across Ontario. OHBA is proudly affiliated with the Building Industry and Land Development Association (BILD), the West End Home Builders' Association (WEHBA) and the Greater Ottawa Home Builders' Association (GOHBA).

On December 6th as part of a previous consultation on Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0 (Environmental Registry 019-6141), OHBA and our colleagues at WEHBA, BILD and the GOHBA noted that Conservation Authorities play an important role in the land development and planning process to protect people and property from hazards and flooding. A key recommendation in that submission was for the provincial government to exercise caution and call a meeting of the multi-stakeholder Conservation Authorities Working Group (CAWG). Our association strongly supports the provincial objective to clarify roles and responsibilities to streamline the approvals process to support the building of more homes faster. However, shifting some aspects of technical approvals to municipalities has potential to increase costs and slow down processes.

OHBA supports a focus on increasing housing supply in complete communities that are environmentally responsible and protected from floods and natural hazards. We agree there is a need for systemic reform. Our concern is that system overhaul in the absence of addressing potential challenges runs the risk of slowing the approvals process. The potential for municipalities to be given responsibilities for which they do not have expertise remains a concern for our membership. Building on this, we have concerns that local political considerations could impact technical decision making. We recommend that the provincial government reconvene the multi-stakeholder Conservation Authorities Working Group with a clear objective to streamline processes while considering roles and responsibilities for "who does what".



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Specific Comments on the Proposed Updates to the Regulation

The OHBA supports the general direction of the proposed regulatory changes regarding mapping and establishing a method of public circulation. We recommend the regulations should stipulate/limit conservation Authorities to once yearly mapping updates, and that proposed changes be summarized and publicly circulated, prior to Board approval.

Furthermore, municipalities should also demonstrate how otherwise developable land inventory which ultimately ends up with environmental conservation will be replaced through zoning permissions elsewhere in the municipality. i.e. no net loss of potential housing units. We would suggest mapping be posted to the Conservation Authority website for at least 20 days and public comment prior to the Authority's Board meeting. In addition to this, we support mandatory consultation, and would recommend establishing base line criteria Conservation Authorities must meet to amend their mapping, including justifiable data and evidence. Below are our comments on specific aspects of the consultation.

2.1 Activities Prohibited under the Conservation Authorities Act (section 28)

- OHBA supports the concept of adding Subsection 28.1 (4.1) and (4.2) depending on the activities, municipalities, types of Planning Act authorizations, and conditions/restrictions prescribed through the regulations.
- The exemption would be associated with activity "authorized under the Planning Act" meaning the CA will retain authority for regulation, just at a different stage in the process. OHBA notes this is an improvement but does not completely remove CA's from the process.
- OHBA seeks clarification as to whether the Planning Approval Authority would require the permission of a CA to approve a development that includes regulated areas under (Subsection 28 (1)) or if the CA's would submit commentary that the Approval Authority considers it as part of the approval? Furthermore, the change could be read as "as soon as there's a Planning Act authorization involved, the CA does not have authority to regulate". We are unclear on this component of the ERO posting, and depending on the outcome of the above-mentioned question, some changes may be warranted to subsection 28.1 (4.1) clause (a):

*(4.1) subject to subsection (4.2), the **prohibitions in 28 (1) do not apply to an activity** within a municipality prescribed by the regulations if;*

(a) the activity is part of development authorized under the Planning Act; and

(b) such conditions and restrictions as may be prescribed for obtaining the exception and on carrying out the activity are satisfied

(4.2) if a regulation prescribes activities, areas of municipalities or types of authorizations under the Planning Act for the purposes of this subsection, or prescribes any other conditions or restrictions relating to an exception under subsection (4.1), the exception applies only in respect of such activities, areas and authorizations and subject to such conditions and restrictions

- Regarding the activities to straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse, or to change or interfere in any way with a wetland, OHBA notes



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that this was previously allowed subject to obtaining a permit. OHBA is unclear if there will be no further opportunity to re-align a watercourse, or if section 2.2 negates this concern as CA's can still issue a permit for these types of activities.

- OHBA would strongly support maintaining the flexibility to work with existing natural features (channel of a river, creek, stream, watercourse or wetland) where appropriate and with the appropriate compensation to facilitate logical land-use requirements, in consultation with the municipality and Conservation Authority. OHBA notes in many cases, a 30 m buffer is not supported by the best, current science.
- OHBA notes changes in the proposed regulation from current requirements will in some cases require a greater buffer than currently required for non-Provincially Significant Wetlands. This is regarding what activities and areas are prohibited includes updating the "other areas" provision, in which the prohibitions on development apply to within 30 metres of all wetlands, whereas previously this was not always required for all non-Significant wetlands.
- The proposed change to the definition of "Watercourse" through the regulations is a step in the right direction and will eliminate ephemeral drainage routes with marginal definition.
 - The current definition of "watercourse" is an identifiable depression in the ground in which a flow of water regularly or continuously occurs, whereas the proposed definition of "watercourse" is a defined channel, having a bed and banks or sides, in which a flow of water regularly, or continuously occurs. This proposed change matters as a "watercourse" is a regulated feature, and the definition of "wetland" (which determines whether or not a feature is regulated) depends on there being a 'direct contribution to the hydrologic function of a watershed through connection with a surface watercourse'.
 - This change is a positive improvement, however OHBA recommends additional clarity that excludes ditches, municipal open course drains, swales, and other non-naturally occurring features. Our policy language recommendation is as follows:

"Watercourse" is a naturally occurring defined channel, having a bed and banks or sides, in which a flow of water regularly, including throughout the spring period or continuously occurs
 - OHBA suggests "regularly" is subjective and the definition of "hazard lands" already includes "naturally occurring", therefore for consistency this is a reasonable request for clarity.

2.2 Issuance of Permits under the Conservation Authorities Act (sections 28.1, 28.2)

- OHBA remains concerned that too much subjective control still lies with a Conservation Authority when issuing Section 28 permits. Subsection 28.1 (1) reads:

28.1 (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,

- (a) the activity is not likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (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; and
- (c) any other requirements that may be prescribed by the regulations are met. 2017, c. 23, Sched. 4, s. 25.



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- OHBA recommends that section be revised to indicate that the Authority “shall” issue a permit unless the activity is:

28.1 (1) An authority ~~may~~ shall issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, unless if, in the opinion of the authority,

- (a) the activity is ~~not~~ likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;*
- (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; and*
- (c) any other requirements that may be prescribed by the regulations are not met. 2017, c. 23, Sched. 4, s. 25.*

2.2.1 Permit Applications

- OHBA generally supports the requirements for Section 28 Permit applications. However, if a permit is required governing future actions under the authorization of the Planning Act, then 60 months may not be enough time.

2.3.1 Conservation Authority Policies

- OHBA is very supportive of consolidating all of the different CA regulations into one. That will significantly streamline the process and provide greater consistency. However, the regulatory document provided for consultation appears to suggest the regulation would generally allow CAs to create their own policy. In OHBA’s view this will not address the problem.

“The regulation would require each conservation authority to develop, consult on, make publicly available and periodically review a policy”.

- OHBA recommends these elements should be prescribed by the Province through the Regulations for consistency. The province should not continue to allow the creation and adoption of redundant and overlapping policies for the same purpose created by multiple CAs (e.g., feature-based water balance, off-setting).

“Further details about the complete application requirements listed above, as necessary”

OHBA disagrees with this approach. The Regulation(s) should be clear what elements can be requested to form a complete application. These elements would need to be solidified at the time of consultation.

“Timelines for confirming the requirements for a complete application following pre-consultation”

OHBA recommends there should be guidance within the Act. Example: policies to specify response time based on the type of activity/interference, but the regulation should stipulate that comment return (consultation record) cannot exceed 30 days.

“Timelines for notifying applicants as to whether a permit application is deemed complete”

OHBA recommends this be prescribed in the Act (consistent for each CA)



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“process for an administrative review if an applicant is not notified of a complete application with a specified timeframe, and of a decision on whether a permit application is complete”

OHBA would prefer to see the Regulation set this, so that after 30 days an applicant can make a request to the Board (CA Board) for determination.

Disputes should be able to be brought to Ontario Land Tribunal through a motion to determine whether the information provided meets the requirements for complete application based on the permissions of the Regulation and the consultation record.

“Additional technical details on regulatory requirements and permit application and review procedures”

If CAs are commenting on development applications in any capacity, there should be ‘checks-and-balances’ put in place. This could include public circulation, opportunity to comment at a meeting of the CA board, and the opportunity to appeal or question any of the policies implemented.

Improved coordination between Conservation Authorities Act regulations and municipal planning approvals

- Which Planning Act authorizations should be required for the exemption to apply?
 - Section 41 – Site Plan Control
 - Section 46 – mobile homes, land leases
 - Section 47 – Minister approvals
 - Section 51 – Plans of Subdivision
 - Section 53 – Consents
 - OHBA further recommends retroactive consideration (e.g. If a Plan of Subdivision was draft plan approved and/or registered in the last 5 years.)
- Should a municipality be subject to any requirements or conditions where this type of exemption is in place?
 - This is likely pending the outcome of a government decision about what municipalities and what authorizations are exempted.

Comments on Protecting People and Property: Ontario’s Flooding Strategy

Regarding the establishment of a Multi-Agency Flood Mapping Technical Team to coordinate the activities within this action OHBA recommends a development industry expert should be included in this multi-agency technical team. At a minimum, there should be some level of inclusion or informing the residential construction and land development industry of interim discussions for input.

Regarding the update Provincial Standards for Flood Mapping, this section relates to improvement and consistency of the “tools”. However, it currently does not address the changes required to provincial policy inconsistency between the Ministry of Natural Resources and Forestry (MNRF) Floodplain Mapping guidelines and



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the Provincial Policy Statement (PPS) related to the use and recognition of Regional Storm controls to mitigate floodplain impacts due to new development areas.

Regarding the review of policy and ideological approaches of existing guidance to further evaluate the use of regional flood control facilities in Ontario and determine whether the province should take steps to regulate their use while considering a range of options from allow to prohibit, OHBA believes this initiative is absolutely required. The PPS requires there to be no impact to downstream hazards. New development often will create impacts if mitigation measures (stormwater management ponds/attenuation) were not implemented. However, the MNRF technical guideline does not allow ponds to be recognized when preparing floodplain mapping, so although municipalities and conservation authorities allow the use of Regional SWM ponds to mitigate risk, Ministry policy does not allow the ponds to be recognized when doing the floodplain mapping. This significant conflict in provincial policy and guidance that needs to be addressed.

Conclusion

Now is the time for bold action on housing across Ontario. It is critical that there is a holistic provincial planning framework to provide a broad, long-term, and comprehensive plan that promotes prosperity, employment growth and an appropriate supply of housing. Through the changes in the Growth Plan (2019 and 2020), the Housing Supply Action Plans 1.0 and 2.0 and now Bill 23 and the Housing Supply Action Plan 3.0, the provincial government has moved to restore balance in housing choice and permit the ability to provide housing that meets the aspirations of Ontario families, while balancing the need to continue to urbanize and achieve transit-oriented communities. After a decade and a half of policies that produced the current housing supply crisis, it will take time and a determined continued effort to turn things around.

In previous comments, we stated that Conservation Authorities have an important role in watershed management, and that while some Conservation Authorities have made significant strides to improve planning and permitting while working cooperatively with the industry, we remain concerned that a number of Conservation Authorities have extended their reach well beyond a core mandate related to natural hazards and watershed management.

We further recommend that the province consider right sizing and re-organizing some Conservation Authorities to ensure that adequate resources are available to deliver core programs. Substantial efficiencies may be gained by amalgamating some small Conservation Authorities and ensuring others are not over-resourced to deliver core programs. Our industry supports a continued role for watershed-based planning to protect people and property from hazards and flooding. However, consolidation between some of the smaller Conservation Authorities and watersheds may create administrative efficiencies and allow for consolidation of staffing resources while supporting retaining appropriate technical experts that may not have realistically been possible with some smaller Conservation Authorities.

Through environmental stewardship, building energy efficient new housing, upgrading aging homes, creating transit-oriented communities and remediating brownfield sites, our members are important partners with the government in delivering complete communities and protecting environmental resources. Working with other



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approval authorities, Conservation Authorities should continue to have an important role in the future of Ontario's planning process through their core role of protecting people and property from hazards and flooding.

We thank the Ministry for the opportunity to comment on these proposals. We also recognize that there is still more work to do and OHBA may provide further comments at a later date. We look forward to continuing engaging with the Ministry in order to ensure these proposals are aligned with the goal of increasing housing attainability.