



Ontario
Home Builders'
Association

Conservation Authorities Review

EBR – 012-4509

BILD
Bluewater
Brantford
Chatham-Kent
Cornwall
Greater Dufferin
Durham Region
Grey-Bruce
Guelph & District
Haldimand-Norfolk
Haliburton County
Hamilton-Halton
Kingston-Frontenac
Lanark-Leeds
London
Niagara
North Bay & District
Greater Ottawa
Oxford County
Peterborough &
The Kawarthas
Quinte
Renfrew
Sarnia-Lambton
Simcoe County
St. Thomas-Elgin
Stratford & Area
Sudbury & District
Thunder Bay
Waterloo Region
Windsor Essex



Submitted to: Hon Bill Mauro
Minister of Natural Resources and Forestry
October 19, 2015



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About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 30 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction, including: builders, developers, professional renovators, trade contractors, manufacturers, consultants and suppliers. Our members have built over 700,000 homes in the last ten years in over 500 Ontario communities. The residential construction industry employed over 300,000 people and contributed over \$45.6 billion to the province's economy in 2014.

OHBA is committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

Background

The *Conservation Authorities Act*, administered by the Ministry of Natural Resources and Forestry (MNRF), enables two or more municipalities in a common watershed to establish a conservation authority in conjunction with the province. The purpose of a conservation

authority is to deliver a local resource management program at the watershed scale for both provincial and municipal interests. Conservation authorities have played a significant role in Ontario's natural resource management landscape for nearly 70 years, establishing a successful legacy of resource stewardship and an impressive record of protecting people, property, and communities from water-related natural hazards (e.g. flooding, drought, erosion).

In order to ensure that the Act continues to meet the needs of Ontarians today, the MNR is seeking to engage with ministries, municipalities, Aboriginal communities, conservation authorities, stakeholders and the public to initiate a review of the *Conservation Authorities Act*, including addressing roles, responsibilities, funding and governance of conservation authorities in resource management and environmental protection.

Through the current review, OHBA members had the opportunity to participate directly in the consultation process. OHBA appreciated the opportunity for members of our Building Industry and Land Development Association (BILD), Guelph & District Home Builders' Association, Hamilton-Halton Home Builders' Association, London Home Builders' Association, Niagara Home Builders' Association and the Waterloo Region Home Builders' Association to meet with MNR in Guelph on September 14th. OHBA members from BILD, the Niagara Home Builders' Association and the Stratford and Area Builders' Association also attended an executive level consultation with MNR in Aurora on September 22nd. Lastly, OHBA and BILD co-hosted a Ministry consultation as part of a joint OHBA Land Development Committee and BILD Land Council meeting in Toronto on October 6th. OHBA appreciates the extensive consultation and direct engagement between MNR and our local associations and members.

Executive Summary

OHBA is pleased to respond to the provincial review of the *Conservation Authorities Act*. Conservation authorities play an important role in local water resource management at the watershed scale for both provincial and municipal interests. Our members from across Ontario and the 36 conservation authority watersheds have extensive experience working with conservation authorities and navigating the plan review and permitting process. OHBA appreciates the opportunity to present our views and recommendations to the Ministry of Natural Resources and Forestry.

The review of the *Conservation Authorities Act* provides a critical opportunity to clarify the roles and responsibilities of conservation authorities as well as enhance the accountability and transparency of conservation authority operations. While conservation authorities have an important role in watershed management, OHBA has become increasingly concerned that a number of conservation authorities are extending their reach well beyond a core mandate related to natural hazards (i.e., PPS section 3.1) and are adversely impacting a number of provincial goals and objectives. The protection of people and property from natural hazards is of paramount importance to Ontarians. However, this needs to be appropriately balanced to allow planning authorities to build strong, healthy communities and to achieve efficient development patterns that optimize the use of lands, resources, and public investment in infrastructure and public service facilities.

OHBA has been actively involved in previous conservation authority consultations that have aimed to improve efficiencies in the planning and permitting review process. Beginning in 2007 OHBA, along with BILD and the Hamilton-Halton Home Builders' Associations participated as members of the Conservation Authority Liaison Committee (CALC) along with municipalities, the province and other stakeholders. The goal of CALC was to respond to a lack of clarity on conservation authority roles and responsibilities in plan review and permitting. In 2010, MNRF and MMAH approved the *Policies and Procedures for Conservation Authority Plan Review and Permitting* document that would form part of MNRF's Conservation Authority Policies and Procedures Manual. OHBA believed at the time that the new *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* would address a number of concerns with respect to accountability, transparency and the consistent and timely analysis of conservation authority plan review and permitting. In 2010 OHBA and BILD also supported amendments to Ontario Regulation 97/04 of the *Conservation Authorities Act* (1990) to streamline and improve the conservation authority plan review and permitting process by enabling the delegation of powers and extending the period of validity of permits. These were positive improvements, but the MNRF now needs to take a more active and direct role to ensure conservation authorities are effectively delivering their core responsibilities and mandate and supporting the broader provincial planning principles established in the PPS, *Planning Act* and Growth Plan.

The review of the conservation authority legislative framework provides an opportunity to ensure that conservation authorities are implementing provincial policy objectives related principally to natural hazards, while enhancing accountability and transparency. It is therefore critical that the planning and permitting functions as well as the fee schedules be

made appealable to independent third parties. The *Conservation Authorities Act* should also be updated to include reasonable approval and review timelines that require conservation authorities to be accountable for the services they deliver. Revenue reporting requirements and stakeholder participation in planning and permitting fees development must also be enhanced. Achieving consistency in fee structures across conservation authorities should be a priority.

Additionally, the review provides an opportunity to clearly outline the scope of conservation authority roles and responsibilities which will help to reduce duplication and overlap of various agencies. The MNR must undertake a much stronger and more active role in the direct oversight of conservation authorities to ensure consistency, adequate performance and service as well as the implementation of their mandate specific to their roles and responsibilities. The Act also needs to provide for enhanced public participation in the formulation and implementation of conservation authority policies and programs. OHBA notes that the recent reviews of the development charges and land use planning and appeals system focused on legislative and regulatory changes intended to achieve more predictability, transparency, accountability and most importantly, better outcomes for communities across Ontario. The comments and recommendations provided in this submission focus on these themes.

OHBA appreciates the opportunity to present our views and recommendations to the government. We are hopeful that these positive and constructive recommendations will assist and inform the province in updating the Conservation Authority legislative framework to more effectively and efficiently deliver their mandate.

Key Recommendations

OHBA is pleased to submit our key recommendations that will help inform the *Conservation Authorities Act* review moving forward:

1. The conservation authority core mandate be prioritized around the achievement of priorities associated with the Natural Hazard policies of the PPS.
2. That conservation authorities work should not extend beyond the scope of the *Conservation Authorities Act* and Ontario Regulation 97/04, unless an additional role is clearly defined in a publically posted MOU. A scoped and more clearly defined mandate should be applied to all conservation authorities, especially in areas outside of a core mandate related to Natural Hazards.
3. All MOUs should outline which agency is responsible for specific items and should be publically posted on the conservation authority website and available as part of an annual report. Additional accountability measures should be implemented to allow the MNRF to provide direct oversight of the implementation of those MOUs.
4. Conservation authority activities in areas well outside the intended mandate (e.g., energy, transportation, green infrastructure, green building design, agriculture, cultural heritage) be subject to critical review and oversight from the MNRF to eliminate and/or reallocate activities better delivered (or already being delivered) by

others (e.g., MOECC, MMAH, MEDEI, academic and research institutions, private sector, etc.).

5. Conservation authorities be mandated to follow the intent of Official Plans and provincial policy across Ontario. A provincial oversight mechanism, specifically through the MNRF must be established to pro-actively monitor and review all conservation authorities policies, guidelines, standards and activities for consistency with provincial policies and initiatives
6. Public consultation requirements for the creation of conservation authority policies and programs should be enhanced in the *Conservation Authorities Act*.
7. Conservation authorities be mandated to establish fair and reasonable rules with respect to development application review fees for permits and that the appeal mechanism be the Ontario Municipal Board to enhance accountability for fees. These fees should be linked to the anticipated costs to the conservation authority in terms of processing each type of application provided for in the fee.
8. The *Conservation Authorities Act* be included in the Schedule in the *Consolidated Hearings Act* to enhance accountability and transparency through independent third party appeals for planning and permitting roles as well as fee schedules.
9. Development and maintenance of ESA (environmentally significant/sensitive areas) programs (initially formulated in the 1970s/80s) should be superseded by Natural

Heritage Systems (NHS), which are to be identified, by municipalities, as per section 2.1.3 of the PPS.

10. When commenting on planning matters conservation authorities should be required to preface comments, in writing, to indicate the comments are “advisory”, and/or refrain from conjecture
11. Conservation authority comments must be timely and be part of the planning application review process. Failure to provide comments on an application within 180 days shall be appealable.
12. Conservation authorities should be excluded from the site plan review application process where the site plan is within an approved plan of subdivision.
13. The *Conservation Authorities Act* Review must clearly define the roles and responsibilities (i.e., “who does what”) of conservation authorities, municipalities, the federal government and Ministries including the MNR and MOECC. Specific roles and responsibilities should be entrenched in legislation.
14. Conservation authority accountability should be improved by requiring conservation authorities produce and publically post annual reports and financial statements, which clearly link revenues and expenses related to areas of core mandate and other specific activities.

15. Any provincial policies or programs delivered by conservation authorities should be funded by the province. This should also be applied to any federal undertakings conservation authorities may participate in. These transfer payments should be clearly outlined in annual financial statements and in annual reports produced by conservation authorities.
16. The *Conservation Authorities Act* Review should include revisiting the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* developed by CALC to establish performance measuring and enforcement mechanisms. In particular, roles and responsibilities related to local “Resource Management Agencies” should be scoped to eliminate activities that do not complement a defined core mandate and/or which do not meet tests of efficient and optimal outcomes.
17. The review of the *Conservation Authorities Act* should consider assets owned, operated and managed by conservation authorities to ensure that the best possible outcomes are being achieved through asset management planning for the public in an efficient and economical manner. This may include the prioritization of assets for disposition where they do not represent or contribute to core mandates.
18. Section 28(15) of the *Conservation Authorities Act* be amended to include the ability to appeal non-decisions on permit approvals.
19. Conservation authority funding should be based on a scoped conservation authority mandate that has been rationalized.

20. The *Conservation Authorities Act* Review should contemplate implementing a process similar to the *Development Charges Act* for the preparation, review and public consultation of background studies that inform fee structure updates.
21. A consistent fee schedule structure should be applied across conservation authorities that clearly define fee categories, and distinguish between complex and less complex applications. Actual fees could be differentiated between conservation authorities, but the structure should be consistent.

Roles and Responsibilities

OHBA notes that the provincial planning framework has evolved significantly since the last major review of the *Conservation Authorities Act*. Over the past decade the Greenbelt, PPS (both 2005 & 2014), Growth Plan, *Planning Act*, *Endangered Species Act*, Source Water Protection Plans and other planning related legislation have been implemented and/or updated. As such, the review of the *Conservation Authorities Act* is timely as conservation authorities roles and responsibilities need to be modernized and clarified to reflect their role within the new planning regime and watershed management framework. Conservation authorities need to better align their mandates with the current legislative and planning framework as well as broad provincial public policy objectives and local city building objectives. OHBA recommends that this review consider updating the conservation authority mandate to rationalize the roles and responsibilities of conservation authorities within the context of the public policy and planning regime.

OHBA is supportive of the conservation authority role related to natural hazards (PPS section 3.1) and related watershed activities, as well as technical expertise they provide in their planning/permitting functions within the scope of the *Conservation Authorities Act* and O.Reg 97/04. OHBA notes however, that some conservation authorities have expanded their areas of interest well beyond the scope of their core functions. In many cases, conservation authorities by their own discretion (rather than through a municipal MOU or provincially delegated authority) are engaged in activities beyond their jurisdiction. OHBA also notes that many conservation authorities are involved in commenting on planning matters outside their scope of review. Other examples include commenting on or holding up permit approvals based on Species At Risk in Ontario issues that are under MNR authority. Stemming from a lack of clarity in roles and responsibilities, this extension of power results in duplication, a slow approvals process, unnecessary costs and conflict.

A review of the conservation authority mandate should allow for conservation authority priorities to be reset and streamlined to ensure they are better positioned to effectively deliver on their core functions. Currently, conservation authorities are engaging in work that is often redundant to municipalities (e.g., creating EIA Guidelines, defining Natural Heritage System conservation and enhancement areas and developing Compensation Guidelines). In many other cases, conservation authorities are engaging in work that is redundant to other ministries and institutions that are better positioned to undertake this work. As such, the *Conservation Authorities Act* review should evaluate if there are specific conservation authority roles and responsibilities that would be more efficiently handled elsewhere. For example, the question remains of if conservation authorities are the most

appropriate agency to undertake research initiatives, operate recreational facilities and maintain infrastructure assets. OHBA believes these activities are taking limited conservation authority resources away from achieving their core responsibilities and functions. A resetting of the conservation authority mandate would clearly define what conservation authority priorities should be, where conservation authorities should invest limited resources and would allow conservation authorities to focus on delivering their core mandate more efficiently and more effectively. A refined and modernized mandate must apply across the board to all conservation authorities to ensure consistency in policy and service standards to the public and stakeholders.

OHBA recommends that conservation authority work should not extend beyond the scope of the *Conservation Authorities Act* and Ontario Regulation 97/04, unless an additional role is clearly defined in a publically posted MOU or delegated authority. Furthermore, clear delineation is needed between what their authority is under the regulation and what their commenting role is under the *Planning Act*. To help solidify a clear delineation, OHBA recommends that when providing comments on a planning matter, conservation authorities should be required to preface comments clearly indicating that the comments are “advisory” and not as an extension of their legislative authority under the *Conservation Authorities Act*.

OHBA understands and respects that some conservation authorities have undertaken additional responsibilities through MOUs with municipalities and delegated authorities with other provincial Ministries. Of particular concern for OHBA is the lack of clarity or accountability mechanisms for evaluating if conservation authorities are operating within the scope of those MOUs or if they are branching out into other areas on their own initiative.

With each conservation authority having multiple MOUs, it has created a very unclear regulatory landscape. As a result, OHBA believes that some MOUs with municipalities have contributed to “mandate creep” as municipalities continue to outsource for items that they don’t have technical expertise on. MOUs need to clearly define the roles and responsibilities of conservation authorities and municipalities to ensure that they can be held accountable for their specific roles and responsibilities.

From the industry’s perspective, the problem is when both municipalities and conservation authorities become involved in a duplicative process. Moreover additional autonomy and delegated authority has emboldened mandate creep and *ultra vires* positions of commenting agencies as “experts”. Therefore, the *Conservation Authorities Act* review process is a much needed opportunity to modernize the legislation and create greater transparency. OHBA recommends that all MOUs outline which agency is responsible for specific items, and these MOUs should be publically posted on conservation authority’s website and provided as part of an annual report. Lastly, additional accountability measures should be implemented in legislation for the MNRF to provide direct oversight regarding the coordination and implementation of those MOUs. This should include evaluation to ensure applicants are not being charged twice for the same service. OHBA strongly believes that a lack of oversight has resulted in mandate creep, unnecessary duplication, lack of consistency, eroding service standards and municipal MOUs that should garner greater scrutiny from the Ministry. OHBA believes that this is a direct role that the Ministry should undertake to enhance conservation authority accountability and transparency.

OHBA members have noted that another undesirable outcome of a broad conservation authority mandate is the chronic backlog and shortage of staff to deal with their core roles

and responsibilities. This delays city building initiatives for both public and private sector partners. Conservation authorities spend an inordinate amount of time reviewing and commenting, even on relatively straightforward applications. Furthermore, timelines are not guaranteed, are generally too long and do not align themselves well with *Planning Act* application processes and timelines. A scoped mandate would refocus staff priorities to improving efficiencies in delivering services associated with their mandated responsibilities. Conservation authority comments must be timely and be part of the planning application review process. OHBA recommends that failure to provide comments on an application within 180 days shall be appealable.

Additionally, OHBA recommends that conservation authorities be excluded from participating in the site plan review process. This review should only be dealt with by a municipality where the land in question has already gone through the subdivision approval process and the conservation authority has already had the opportunity to review and comment on the plan of subdivision. A second review through the site plan review process is a duplicative process that should be eliminated. Site plans should therefore be exempted from conservation authority review when a subdivision approval has been secured.

Furthermore, conservation authorities need to be accountable for ensuring the tools they use for permit review are up-to-date. For example, through the subdivision approval process, the regulated area (line) should be finalized and all mapping (which is an important tool for applications) should be updated immediately upon securing approvals for permits. OHBA members have become increasingly frustrated by redundant and unnecessary application reviews and/or permitting requirements triggered by outdated and incorrect mapping.

Another example of duplication of roles is between the MOECC and conservation authorities around stormwater management project approvals and well head protection where it is not always clear which agency has an active role in approvals and which agency may simply be commenting. The review of the *Conservation Authorities Act* should provide clarity and specify where different agencies become involved in the approvals process and strive to eliminate duplication in the review and approval process.

Another way to reduce duplication is through the use of pre-consultation as set out in the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities*. Conservation authorities can help streamline their permitting function under Section 28 of the *Conservation Authorities Act* by facilitating pre-consultation meetings with applicants and reviewing check lists for complete applications prior to the submission of a *Conservation Authorities Act* permitting application. However, OHBA believes that there needs to be more critical thinking at the pre-consultation meeting to set expectations for the process and what will be required of the applicant. At the pre-consultation meeting for a development application, it would be beneficial for the conservation authority to disclose what components of the review they are addressing on behalf of the conservation authority, the MNR and the Municipality. This disclosure and understanding would help clarify each other's role and responsibilities.

In addition to duplication, mandate creep can also lead to slightly different or contradictory opinions and comments being provided on the same application that cannot be reconciled by the applicant. This is a serious issue that creates impasses and quagmires where the process comes to a halt as there is no simple way of resolving such contradictory opinions

and comments from multiple agencies. For the applicant, the process becomes more about stickhandling through a convoluted process than actually coming to the right solution simply because so many agencies are involved. A specific example of this is when MNR mapping is used by municipalities which may conflict with conservation authority mapping. Without having a protocol in place, these situations become confusing and lead to time consuming discussions on how to resolve the differences. Therefore, the *Conservation Authorities Act* Review must clearly define the roles and responsibilities of conservation authorities, municipalities, the federal government and delegated authority from Ministries including the MNR and MOECC for “who does what”. This should assist with the issue of escalating approvals and contradictory opinions that simply paralyze the process. It will also help to reduce the amount of duplication in the review process, and in turn fee duplication.

OHBA is also concerned that the lack of clarity in roles and responsibilities has resulted in some municipalities choosing to circulate “everything” for comment thus resulting in some conservation authorities becoming inundated with superfluous circulations for minor items they shouldn't be looking at. This distracts from their core work. Higher quality screening maps (that are regularly updated) could assist to reduce duplication and unnecessary reviews as conservation authorities should not even be circulated on applications outside of the O.Reg 97/04 area. OHBA also notes that applications can often result in requests to produce new or unnecessary reports when updating existing reports would be sufficient.

The *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* also assisted to clarify roles, responsibilities, pre-submission consultation procedures, timelines and how the principle of development is established through the planning

process. Ultimately, there should be a certain degree of service standards across all conservation authorities to improve accountability. To achieve this, OHBA would support additional conservation authority staff training with respect to the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities*. As the chapter is now approximately five years old, education is critically important as staff turns over.

Additionally, OHBA recommends the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* be revisited to contemplate the addition of service delivery monitoring and provide greater clarity of what constitutes a complete application. OHBA is particularly concerned that processing application timelines remain subjective. OHBA members have also expressed frustration that it is unclear how reviewing priorities are set and what the rationale is for prioritizing some applications over others. Specifically, this review should go beyond guidelines and consider standardizing timelines (with appeal rights for non-decisions when/if timelines expire), fee structures and appeal mechanisms in legislation to improve conservation authority accountability. To assist in monitoring consistent standards, the Conservation Authority Liaison Committee should reconvene annually.

Governance

Through the *Conservation Authorities Act* review, OHBA believes that the processes, structures and frameworks that direct conservation authority decision-making and operations can be refined to enhance transparency, accountability and enforcement

mechanisms. Greater accountability can be achieved by entrenching clarity on guiding principles and the roles and responsibilities of various agencies in legislation. OHBA notes that conservation authorities are not currently considered as agencies, boards or commissions of the province and that MNRF has limited powers to enforce authority compliance with the *Conservation Authorities Act*. This is clearly a problem that must be addressed in the current legislative review by entrenching greater direct oversight by the MNRF over conservation authorities within amended legislation. Increasing direct oversight by the Ministry would vastly enhance accountability, consistency and transparency in terms of governance as well as roles and responsibilities.

One of OHBA's utmost concerns is the lack of accountability associated with conservation authority permit refusals and non-decisions. OHBA members believe there is a lack of tension in the system that allows conservation authorities to operate under unreasonably long timelines and without an appropriate appeal mechanism. To enhance accountability OHBA recommends that Section 28(15) of the *Conservation Authorities Act* be amended to include the ability to appeal non-decisions on permit approvals. This section of the Act should include a subsection that states "An application who has not received a decision within 180 days may be appealed to the Minister under section 15". To further increase accountability Section 28(15) should be amended to include the ability of appeals to be referred to the Ontario Mining and Lands Commissioner or the Ontario Municipal Board. Specifically, the section should be updated to include a subsection (c) that states "May refer the appeal to the Ontario Mining and Lands Commissioner or the Ontario Municipal Board". To implement the ability of applicants to seek a joint hearing, the *Consolidated Hearings Act* Schedule should be amended to include "Referrals by the Minister of Natural Resources pursuant to section 28 (15) of the *Conservation Authorities Act*" as would be amended by the

above. An additional provision is required related to the list of Acts that could be heard by the Ontario Municipal Board. The *Conservation Authorities Act* and the Ontario Mining and Lands Commissioner should be added to that list of Acts as parties that could be heard at an Ontario Municipal Board hearing. This is an essential improvement to define the jurisdiction of the Ontario Municipal Board in planning matters that may need to consider *Conservation Authorities Act* and Mining and Lands Commissioner matters in the principle of approval associated with a development application.

It is necessary to ensure that planning decisions and principles of approval for development are not limited to the hearing that sets the principle of approval for the development. This decision needs to be extended to include the implementation of the approval through subsequent planning implementation approvals and associated technical approvals that follow the Ontario Municipal Board decision that sets the principle of approval to develop. The implementation must be advanced in the same spirit as the original principle of approval for development that was granted as part of the approval process and when necessary by the Ontario Municipal Board.

It is also necessary to link the decisions made by the Ontario Municipal Board related to the principle of approval for development. This would allow for the Ontario Municipal Board to be asked to come back to a decision that is made by this body should there be a disconnect between the decision and the implementation through permitting and subsequent clearances by conservation authorities that may be needed under the *Conservation Authorities Act* to allow for the physical implementation of a project. This provision is included to ensure consistency between the intent and principle of approval granted by the conservation authority conditions as part of the processing of the application and/or the

Ontario Municipal Board decision and where the implementation details associated with this approval are not consistent with the original approval granted by the conservation authority or the Ontario Municipal Board. In cases where this is needed it will be necessary to scope the amount of time needed to have the matter dealt with by the board.

Enhanced accountability can also be achieved by improving stakeholder access to conservation authority business operations. Conservation authorities should produce annual reports and financial statements that detail conservation authority priorities, timelines and structures, MOUs and delegated authorities as well as revenues and expenses. These reports should make specific reference to the guidelines set out in *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* document prepared by CALC. By providing access to this information, conservation authority service users and the public would be able to ensure alignment between conservation authority operations and the services being provided. The annual budgets of conservation authorities should demonstrate a direct correlation between fees and services and that the majority of funding and expenses are directly related to the core mandate area (i.e., natural hazards) and areas of defined delegated authority.

These annual reports should also be accompanied by direct Ministry oversight and enforcement mechanisms to ensure the level of service being provided is acceptable. This could include revisiting the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* to contemplate the addition of performance measures and monitoring. This would facilitate a consistent application of the policies and procedures in this document and create predictability in the review process. To maintain this sentiment, OHBA recommends establishing liaison committees between conservation authorities and

stakeholders, including the public and development industry. It is important that conservation authorities are both fiscally sustainable and fiscally responsible in carrying out their services and investing in capital projects.

OHBA also recommends changes to the governance structure of conservation authority Boards in order to improve accountability of conservation authorities. OHBA is supportive of a Board structure that only includes elected officials. This ensures inherent accountability to the municipality and the voting public they serve. Conservation authorities should appoint a Board that is representative of all community perspectives to ensure decisions made by the Board are in line with the strategic planning and visioning of the communities that make up the watershed. While the conservation authority Boards should oversee staff, the province should provide some direct oversight of conservation authority Boards to ensure their operations are transparent and Board members are held accountable for decision making. Provincial oversight should also include technical guidelines, best practices and other support for both conservation authority Boards and staff. Provincial oversight should also ensure the conservation authority mandate is being implemented appropriately. OHBA also supports Board member training on the contents of the *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* CALC document.

Funding

OHBA believes the first step in establishing appropriate funding mechanisms is rationalizing the conservation authority mandate based on their core functions under the

Conservation Authorities Act and O.Reg 97/04. Funding should be reflective of a reduced and appropriately scoped mandate that has been prioritized and rationalized based on the broader environmental and planning legislative and regulatory landscape. This should eliminate the need to establish new sources of funding for conservation authorities.

With this being said, OHBA acknowledges and is concerned that funding provided by the province is based on 1990's operating costs. This funding formula is outdated. Conservation authorities that provide services based on provincial policy objectives should receive provincial funding that reflects their provincial policy undertakings. If conservation authorities are undertaking provincial roles and responsibilities, financial arrangements must be transparently reported in financial statements and annual reports. This same sentiment applies to any federal roles and responsibilities conservation authorities may undertake.

Of particular concern for OHBA is the transparency and consistency of how planning and permitting review costs are determined. OHBA is supportive of the principles set out in the MNRF's *Policies and Procedures for Charging Conservation Authority Fees*, specifically:

- Parity with neighbouring Conservation Authorities to promote consistency;
- Prevention of duplicative fees charged by local municipalities, and other agencies and ministries for related services;
- Consistency in fee schedules with local municipalities, and other agencies and ministries for related services; and

- Fees shall be reflective of the complexity of the application and level of effort required to administer the application.

As such, conservation authorities should conduct transparent fee reviews and be accountable for a level of service that is reflective of updates to fees and charges. Conservation authorities should be open about the financial inputs and calculations used to create fee schedules. This should include a background study process similar to the background study process legislated by the *Development Charges Act*. This will allow stakeholders to ensure that planning fees are appropriate and are not being duplicated by other agencies. Furthermore, opportunities to conduct peer reviews of fee structures should be explored. OHBA believes that if the conservation authority mandate is scoped, that fees charged will better align with the service being delivered and reduce the duplication of fees charged by other agencies. To ensure transparency and predictability of fees, conservation authority fee schedules should be clear on the definition of each fee category and the difference between “major” and “minor” applications. Fees should be predictable so applicants can pre-plan their costs with a high degree of certainty. OHBA recommends that the *Conservation Authorities Act* review should contemplate a consistent fee schedule with clearly defined service categories that can be applied by all conservation authorities (individual conservation authority fees would be differentiated, but categories and definitions would be consistent).

Currently, there is a lack of protocol for reporting revenues. Therefore, reporting is different across the various conservation authorities. Open and consistent reporting will allow stakeholders to evaluate whether or not conservation authorities are collecting planning and permitting fees based on a cost for service basis without generating excess

revenues. Annual reports should include a detailed explanation of funding sources, expenditures and demonstration that fees charged for planning and permitting reviews do not exceed the cost of delivering the service and are not subsidizing other conservation authority operations. Annual reporting should also include performance measures and monitoring by MNRF.

OHBA recommends that this review consider enhanced enforcement mechanisms to improve conservation authority accountability and ensure the level of service provided is commensurate with the fee charged for review. Conservation authorities should be mandated to establish fair and reasonable rules with respect to development application review fees for permits and that the appeal mechanism for fees be the Ontario Municipal Board to enhance accountability for fees. These fees should be linked to the anticipated costs to the conservation authorities in terms of processing each type of application provided for in the fee. Enforcement mechanisms could also include enhanced requirements or processes for the MNRF to undertake conservation authority audits where complaints about the adherence to the *Policies and Procedures for Charging of Conservation Authority Fees* are received.

OHBA is broadly supportive of measures to establish mechanisms to encourage evidence-based and strategic long-term infrastructure planning that supports job creation, economic growth and the protection of the environment. The recently passed *Infrastructure for Jobs and Prosperity Act* (Bill 6), offers an important function to ensure that the government, and every broader public sector entity (as defined in section 2 of the legislation), must consider a specified list of infrastructure planning principles when making decisions respecting

infrastructure. OHBA was supportive of the legislation (Bill 6) and had even recommended that the legislation be strengthened to reflect the importance of asset management plans.

In keeping with the spirit of this sentiment, OHBA recommends that the current review of the *Conservation Authorities Act* consider assets owned, operated and managed by Conservation Authorities to ensure that the best possible outcomes are being achieved for the public in an efficient and economical manner. Conservation authorities should examine asset management plans through life cycle (maintain and replace) costing for infrastructure and other assets. It is therefore critical that the province ensure greater accountability and transparency in the preparation of infrastructure asset management plans. Accountability mechanisms should be put in place to ensure asset management plans are prepared with rigour and that there is Ministry accountability and oversight as well as a public and stakeholder engagement process. Asset management planning will provide insight into whether there should be some disposition of assets to third parties, such as recreational facilities and heritage sites to achieve more efficient management.

Furthermore, as part of this mandate the conservation authorities are funded by a number of sources that are federal, provincial and local. The funding mechanism varies by the conservation authority. It is unclear at present how much of the funding is for capital costs associated with hazards management in particular. As such, OHBA recommends that the levy needs to be revisited to see that it is right sized for the capital project needs of each area. In many cases the levy includes funds for natural hazards management and covers a variety of programs.

Since the establishment of the *Conservation Authorities Act* a number of Acts affecting municipal infrastructure funding have been established to deal with the capital infrastructure for municipalities. It is time to review the capital projects that have been in the hands of conservation authorities to establish whether they are still the best stewards of these projects or whether the stewardship of these projects would be better aligned if put into the hands of a municipality or Region and included in the Development Charges that are imposed by the Region and or the local municipality.

It is also appropriate to delve into what is included in the funding program to see if the funding meets the maintenance needs of the infrastructure in question and what the specific projects are as we are aware that the funding of these projects has not been materially updated since 1990 when it comes to funding from the province and in the case of the annual levy payment from the municipalities this varies from year to year.

In cases where the management of hazards overlaps with municipal capital infrastructure an inventory and evaluation should occur as part of the Act review to establish whether some of the works in the various municipalities should best remain in the conservation authority stewardship. This would also need to examine the topic of whether there is still a need to have a provincial transfer payment for capital works that have historically been funded by the province or the federal government. As the conservation authorities have been created by two or more municipalities in each jurisdiction, they too can make financial decision on where the capital projects are best funded from and what funds need to be spent.

In order to do a full inventory assessment of the capital funding provided by municipalities, the province and federal government it has to be identified what type of projects have been earmarked for funding and will establish whether the funding meets the needs of the projects. By means of example, if a culvert or bridge over a natural feature is currently part of a conservation authority overview it may be appropriate to consider the transfer of the obligation to the municipality if the road over the culvert is a municipal or regional road that may be eligible to be maintained under the municipal capital program or the *Development Charges Act* whereby the cost of the maintenance, repair and/or expansion may be adequately allocated to existing, or population associated with new development. This will keep the responsibility for these works in the most appropriate place and create a management program for the ongoing maintenance needs. For larger projects such as dams or reservoirs there can be a more detailed review of where to best allocate the maintenance and ongoing management of the capital infrastructure to guarantee the appropriate upkeep and to define whether the improvement and expansion is to meet the existing population's needs or whether it is related to new development pressures.

Lastly, to enhance accountability and transparency to the public who contribute funding to conservation authorities through property taxes and the municipal levy, the municipal levy should be listed as a separate item on property taxes. Similar to some services and utilities delivered in some municipalities such as water and/or garbage that are separately itemized, the municipal levy on property taxes would increase public awareness for how tax dollars are being allocated. It would increase transparency and ensure conservation authorities actions, services and operations are directly accountable to ratepayers and voters.

Conclusion

The new housing and land development industry is a crucial private sector partner in the delivery of housing that is affordable for people to rent or purchase and employment facilities that support jobs. OHBA is concerned that this role is becoming increasingly difficult due to barriers in housing supply, uncertain and lengthy approvals process, increased regulations and taxes, fees and charges. OHBA looks forward to continuing to work with the Ontario Government in the review of the conservation authority legislative framework and working towards improving *Conservation Authority Act* process efficiencies, transparency and accountability.

OHBA strongly believes that the review should result in a clearly defined scope of roles and responsibilities for conservation authorities. Furthermore, it is critical that measures to enhance accountability through independent third party appeals and greater direct Ministry oversight be established in legislation. Lastly service delivery and costs/fees levied on the industry for extensive, duplicative and uncertain service timelines must be resolved.

OHBA recommends that the second stage of the *Conservation Authorities Act* Review involve a multi-stakeholder round table to facilitate a common understanding of the collective positions that will help shape the outcome of this review. OHBA appreciates the opportunity to provide our recommendations to improve the *Conservation Authorities Act*.